

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**BOKF, N.A., solely in its capacity as successor
Indenture Trustee for the 12.75% Second-
Priority Senior Secured Notes due 2018,**

Plaintiff,

v.

**CAESARS ENTERTAINMENT
CORPORATION,**

Defendant.

Case No. 1:15-cv-01561 (SAS)

**UMB BANK, N.A. solely in its capacity as
Indenture Trustee under those certain
indentures, dated as of June 10, 2009, governing
Caesars Entertainment Operating Company,
Inc.'s 11.25% Notes due 2017; dated as of
February 14, 2012, governing Caesars
Entertainment Operating Company, Inc.'s 8.5%
Senior Secured Notes due 2020; dated as of
August 22, 2012, governing Caesars
Entertainment Operating Company, Inc.'s 9%
Senior Secured Notes due 2020; dated as of
February 15, 2013, governing Caesars
Entertainment Operating Company, Inc.'s 9%
Senior Secured Notes due 2020,**

Plaintiff,

v.

**CAESARS ENTERTAINMENT
CORPORATION,**

Defendant.

Case No. 1:15-cv-04634 (SAS)

**PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS
PURSUANT TO LOCAL CIVIL RULE 56.1
IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 56.1 of the Local Civil Rules of the United States District Court for the Southern District of New York, plaintiff in the first above-captioned action (the “BOKF Action”), BOKF, N.A. (“BOKF”),¹ and plaintiff in the second above-captioned action (the “UMB Action,” and together with the *BOKF* Action, the “Actions”), UMB Bank, N.A. (“UMB,”² and together with BOKF, the “Trustees”), respectfully submit that the following material facts are undisputed.³

¹ BOKF appears solely in its capacity as successor Indenture Trustee under the Indenture dated as of April 16, 2010 (as supplemented or amended, the “BOKF Indenture”) for the 12.75% Second-Priority Senior Secured Notes due 2018 (the “Second Lien Notes”).

² UMB appears solely in its capacity as Indenture Trustee under those certain indentures (as supplemented or amended, the “UMB Indentures,” and together with the BOKF Indenture, the “Indentures”), dated as of June 10, 2009, governing Caesars Entertainment Operating Company, Inc.’s (“CEOC”) 11.25% Senior Secured Notes due 2017; dated as of February 14, 2012, governing CEOC’s 8.5% Senior Secured Notes due 2020; dated as of August 22, 2012, governing CEOC’s 9% Senior Secured Notes due 2020; and dated as of February 15, 2013, governing CEOC’s 9% Senior Secured Notes due 2020 (the “First Lien Notes,” and together with the BOKF Notes, the “Notes”).

³ Citations herein are formatted as follows:

- Documents in this Court’s ECF docket in the *BOKF* Action and the *UMB* Action will be cited by each action and ECF number with a short description in parentheses; *e.g.*, “BOKF ECF No. 1 (Complaint) ¶ 1” and “UMB ECF No. 1 (Complaint) ¶ 1,” respectively.
- An attachment to an ECF document will be cited by docket and attachment number, with a description of the attachment; *e.g.*, Attachment 2 to BOKF ECF No. 1 would be cited as “BOKF ECF No. 1-2 (Indenture Pt. 1) § 1.01 at ___.” Where multiple attachments are referenced, the corresponding page numbers will be listed in the order of the attachments, such as: UMB ECF No. 1-1 to 1-4 (UMB Indentures) § 12.01(a) at 116, 103, 104, 104.
- Other documents will be cited by the Exhibit Number to the Declaration of Andrew I. Silfen, with a short description of the Exhibit in parentheses; *e.g.*, “Ex. A (Sambur Dep.) at ___.”

I. PARTIES

1. BOKF and UMB are Indenture Trustees under the Indentures. BOKF ECF No. 1 (Complaint) ¶ 29; BOKF ECF No. 10 (Answer) ¶ 29.⁴

2. Defendant CEC, through its affiliates, owns, manages, or operates numerous gambling casinos and entertainment properties throughout the United States and internationally.* BOKF ECF 1 (Complaint) ¶ 30; BOKF ECF 10 (Answer) ¶ 30. CEC is the guarantor of the Notes issued by CEOC.* BOKF ECF No. 1-3 (BOKF Indenture Pt. 2) § 12.01(a) at 116; UMB ECF No. 1-1 to 1-4 (UMB Indentures) § 12.01(a) at 116, 103, 104, 104. CEC and its affiliates, including CEOC, are referred to collectively as “Caesars.”

II. CEOC’S AND CEC’S OBLIGATIONS UNDER THE INDENTURES

3. The Indentures govern the terms of the repayment of approximately \$7 billion in Notes issued by CEOC. BOKF ECF No. 1-2 (BOKF Indenture) § 2.01 at 48; UMB ECF No. 1-1 to 1-4 (UMB Indentures) § 2.01.

4. Under the terms of the Indentures, the BOKF Notes are secured by a second lien on CEOC’s assets, *see* BOKF ECF No. 1-3 (BOKF Indenture) § 11.01, and the UMB Notes are secured by a first lien on CEOC’s assets, *see* UMB ECF No. 1-1 to 1-4 (UMB Indentures) § 11.01 at 109, 97, 98, 98.

5. Section 12.01(a) of the Indentures states CEC’s irrevocable and unconditional guarantee (the “Parent Guarantee”) as follows:

SECTION 12.01. Guarantee.

(a) Each Guarantor hereby jointly and severably, ***irrevocably and unconditionally guarantees***, (x) in the case of the Parent Guarantor, on an

⁴ Any paragraph marked with an asterisk (*) states facts substantially admitted by CEC in its Responses to BOKF’s and/or UMB’s Statements of Material Facts and Counter-Statement of Material Facts, BOKF ECF No. 39, UMB ECF No. 42.

unsecured basis, and (y) in the case of a guarantee by a Subsidiary Pledgor, on a second-priority secured basis, and in the case of each of (x) and (y) as a primary obligor and not merely as a surety, to each holder and to the Trustee and its successors and assigns (i) **the full and punctual payment when due, whether at Stated Maturity, by acceleration, by redemption or otherwise, of all obligations of the Issuer under this Indenture (including obligations to the Trustee) and the Notes, whether for payment of principal of, premium, if any, or interest on in respect of the Notes and all other monetary obligations of the Issuer under this Indenture and the Notes** and (ii) the full and punctual performance within applicable grace periods of all other obligations of the Issuer whether for fees, expenses, indemnification or otherwise under this Indenture and the Notes (all the foregoing being hereinafter collectively called the “Guaranteed Obligations”). Each Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from any Guarantor, and that each Guarantor shall remain bound under this Article XII notwithstanding any extension or renewal of any Guaranteed Obligation.*

BOKF ECF No. 1-3 (BOKF Indenture Pt. 2) § 12.01(a) at 116; UMB ECF No. 1-1 to 1-4 (UMB Indentures) § 12.01(a) at 116, 103, 104, 104.

6. CEC’s Parent Guarantee constitutes a guarantee of payment. BOKF ECF No. 1-3 (BOKF Indenture Pt. 2) § 12.01(d) at 117; UMB ECF No. 1-1 to 1-4 (UMB Indentures) § 12.01(d) at 117, 104, 104, 105.

7. Section 12.01(g) of the Indentures established that the Parent Guarantee would remain in full force and effect until the Notes were fully paid:

Each Guarantor agrees that its Note Guarantee shall remain in full force and effect until payment in full of all the Guaranteed Obligations.*

BOKF ECF No. 1-3 (BOKF Indenture Pt. 2) § 12.01(g) at 117; UMB ECF No. 1-1 to 1-4 (UMB Indentures) § 12.01(g) at 117, 104, 105, 105.

8. The Form of Initial Note in Appendix A to the Indentures states:

To guarantee the due and punctual payment of the principal and interest on the Notes and all other amounts payable by the Issuer under the Indenture and the Notes when and as the same shall be due and payable, whether at maturity, by acceleration or otherwise, according to the terms of the Notes and the Indenture, ***the Parent Guarantor has unconditionally guaranteed the Guaranteed Obligations pursuant to the terms of the Indenture*** and any Subsidiary Pledgor that executes a Note

Guarantee will unconditionally guarantee the Guaranteed Obligations on a second-priority senior secured basis pursuant to the terms of the Indenture.*

BOKF ECF No. 1-3 Ex. A (Form of Initial Note) at A-8 (emphasis added); UMB ECF No. 1-1 to 1-4 (UMB Indentures) Ex. A (Form of Initial Note) at A-8, A-7, A-7, A-7.

9. The Indentures expressly prohibit any action by any party obligated under the Indentures, including CEC and CEOC, that:

[I]mpair[s], as between the Issuer [CEOC] and the holders of Notes, the obligation of the Issuer, which is ***absolute and unconditional, to pay principal of, premium and interest on Notes in accordance with their terms or to perform any other obligation of the Issuer or any other obligor*** under this Indenture, the Notes, ***the Parent Guarantee*** and the Security Documents.

BOKF ECF No. 1-3 (BOKF Indenture Pt. 2) § 10.01(a) at 108 (emphasis added); UMB ECF No. 1-1 to 1-4 (UMB Indentures) § 10.01(a) at 108, 96, 96, 97. (emphasis added).

10. The Indentures further provide as follows:

SECTION 6.07. Rights of the Holders to Receive Payment. Notwithstanding any other provision of this Indenture, ***the right of any holder to receive payment of principal of and interest on the Notes held by such holder, on or after the respective due dates expressed or provided for in the Notes***, or to bring suit for the enforcement of any such payment on or after such respective dates, ***shall not be impaired or affected without the consent of such holder.****

BOKF ECF No. 1-3 (BOKF Indenture Pt. 2) § 6.07 at 93 (emphasis added); UMB ECF No. 1-1 to 1-4 (UMB Indentures) § 6.07 at 92, 83, 83, 84.

11. The Indentures are qualified under the Trust Indenture Act (the “TIA”) by filing with the Securities and Exchange Commission (the “SEC”).* See CEC & CEOC, Notice of Effectiveness (Form S-4) (March 31, 2011), available at https://www.sec.gov/Archives/edgar/data/858339/999999999511000855/xs1EFFECTX01/primary_doc.xml; UMB ECF No. 1-1 to 1-4 (UMB Indentures) § 9.03 at 106, 95, 95, 96.

12. Section 13.10 of the Indentures provides that the TIA governs the Indentures and controls in the event of an inconsistency between the TIA and Indentures:

SECTION 13.01. Trust Indenture Act Controls. If and to the extent that any provision of this Indenture limits, qualifies or conflicts with the duties imposed by, or with another provision (an “incorporated provision”) included in this Indenture by operation of, Sections 310 to 318 of the TIA, inclusive, such imposed duties or incorporated provisions shall control.*

BOKF ECF No. 1-3 (BOKF Indenture Pt. 2) § 13.01 at 120; UMB ECF No. 1-1 to 1-4 (UMB Indentures) § 13.01 at 120, 107, 107,108.

13. Upon the occurrence of an Event of Default under the Indentures, CEC’s and CEOC’s obligations under the Notes become due and owing:

SECTION 6.02. Acceleration. If an Event of Default (other than an Event of Default specified in Section 6.01(e) or 6.01(f) hereof with respect to the Issuer) occurs and is continuing, the Trustee or the holders of at least 30% in principal amount of outstanding Notes by notice to the Issuer may declare the principal of, premium, if any, and accrued but unpaid interest on all the Notes to be due and payable; *provided, however*, that so long as any Bank Indebtedness remains outstanding, no such acceleration shall be effective until the earlier of (1) five Business Days after the giving of written notice to the Issuer and the Representative under the Credit Agreement and (2) the day on which any Bank Indebtedness is accelerated. Upon such a declaration, such principal and interest shall be due and payable immediately. **If an Event of Default specified in Section 6.01(e) or (f) with respect to the Issuer occurs, the principal of, premium, if any, and interest on all the Notes will become *immediately due and payable without any declaration or other act on the part of the Trustee or any holders*.** Under certain circumstances, the holders of a majority in principal amount of outstanding Notes may rescind any such acceleration with respect to the Notes and its consequences.

BOKF ECF No. 1-3 (BOKF Indenture Pt. 2) § 6.02 at 91 (emphasis added); UMB ECF No. 1-1 to 1-4 (UMB Indentures) § 6.02 at 90-91, 81, 82, 82.

14. Section 6.01 provides, in relevant part, that an “Event of Default” occurs as follows:

SECTION 6.01. Event of Default. An “Event of Default” occurs with respect to Notes if:

(e) either the Issuer or any Significant Subsidiary of the Issuer pursuant to or within the meaning of any Bankruptcy Law:

(i) commences a voluntary case [or]

(h) the Note Guarantee of the Parent Guarantor . . . ceases to be in full force and effect (except as contemplated by the terms thereof) or the Parent Guarantor denies

or disaffirms its obligations under this Indenture or its Parent Guarantee and such Default continues for 10 days.*

BOKF ECF No. 1-3 (Indenture Pt. 2) § 6.01(h); UMB ECF No. 1-1 to 1-4 (UMB Indentures) § 6.01(h) at 90, 80, 81, 81.

15. Indenture Section 12.02(c) addresses the termination of the Parent Guarantee:

(c) The Parent Guarantee shall terminate and be of no further force or effect and the Parent Guarantor shall be deemed to be released from all obligations under this Article XII upon:

(i) the Issuer ceasing to be a Wholly Owned Subsidiary of Harrah's Entertainment;

(ii) the Issuer's transfer of all or substantially all of its assets to, or merger with, an entity that is not a Wholly Owned Subsidiary of Harrah's Entertainment in accordance with Section 5.01 and such transferee entity assumes the Issuer's obligations under this Indenture; and

(iii) the Issuer's exercise of its legal defeasance option or covenant defeasance option under Article VIII or if the Issuer's obligations under this Indenture are discharged in accordance with the terms of this Indenture.*

BOKF ECF No. 1-3 (BOKF Indenture Pt. 2) § 12.02(c) at 119; UMB ECF No. 1-1 to 1-4 (UMB Indentures) § 12.02(c) at 119, 106, 106, 107.

16. Section 12.02(c) of the Indentures further provides that CEOC can elect – but is not required – to release the Parent Guarantee of the obligations under the Indentures once CEC's guarantee of the Credit Agreement or Existing Notes has been released or discharged:

In addition, the Parent Guarantee will be automatically released upon the election of the Issuer and Notice to the Trustee if the guarantee by Harrah's Entertainment of the Credit Agreement, the [Existing] Notes or any Indebtedness which resulted in the obligation to guarantee the Notes has been released or discharged.*

BOKF ECF No. 1-3 (BOKF Indenture Pt. 2) § 12.02(c) at 119; UMB ECF No. 1-1 to 1-4 (UMB Indentures) § 12.02(c) at 119, 106, 107, 107.

17. Section 12.02(c) of the Indentures originally used the defined term "Retained Notes," but pursuant to subsequent supplemental indentures, "Retained Notes" was replaced with

“Existing Notes,” a defined term under the Indenture that includes the four Retained Notes. The Retained Notes are the: (i) 5.500% Senior Notes due 2010; (ii) 8% Senior Notes due 2011; (iii) 5.375% Senior Notes due 2013; and (iv) 8.125% Senior Subordinated Notes due 2011. The “Existing Notes” are the four Retained Notes as well as the: (v) 5.625% Senior Notes due 2015; (vi) 6.50% Senior Notes due 2016; (vii) 5.75% Senior Notes due 2017; (viii) 10.75% Senior Notes due 2016; and (ix) 10.75%/11.50% Senior Toggle Notes due 2018.* BOKF ECF No. 1-2 (BOKF Indenture Pt. 1) § 1.01 at 18, 37; BOKF ECF No. 1-5 (BOKF Second Supplemental Indenture) at 1; UMB Indentures⁵; UMB Supplemental Indentures at 1, 1, 1, 1.

III. BACKGROUND

18. On January 28, 2008, Apollo Global Management, LLC (“Apollo”) and TPG Capital LP (“TPG”) and their respective affiliates and co-investors (collectively, the “Sponsors”) acquired CEC in a \$30.7 billion leveraged buyout transaction.* Ex. 1 (FDM) at 4.

19. The Sponsors contributed approximately \$6.1 billion to the leveraged buyout transaction, and the remainder was funded through the issuance of approximately \$24 billion in debt, approximately \$19.7 billion of which was secured by liens on substantially all of CEOC’s assets.* *Id.*

20. At the time the Notes were issued, CEC operated through two primary groups of wholly owned subsidiaries: (i) CEOC, which held all of the operating assets subject to the Noteholders’ liens and (ii) a group of six subsidiaries financed by commercial mortgage-backed securities (the “CMBS Properties”).* *Id.* at 16.

⁵ “Existing Notes”: UMB ECF 1-2 to 1-4 § 1.01 at 16, 17, 17.

“Retained Notes”: UMB ECF 1-1 to 1-4 § 1.01 at 38, 34, 35, 35.

A. CEC And CEC Shareholders (the Sponsors) Control CEOC

21. [REDACTED]

[REDACTED]. Ex. 2 (Sambur Dep.) at 44:2-22; *see also* Ex. 3 (Garrison Dep.) at 26:5-10. T [REDACTED]

[REDACTED]. Ex. 2 (Sambur Dep.) at 44:15-22.

22. [REDACTED]

[REDACTED]. Ex. 4 (Hession Dep.) at 63:25-64:7.

23. In fact, prior to June 27, 2014, CEOC's board of directors included only two members, each of whom was also an officer of CEC. The first was Gary Loveman, who was the CEO of *both* CEC and CEOC. Ex. 5 (Disclosure Statement) at 18. The second was initially Michael Cohen, who was the deputy general counsel and corporate secretary of CEC. Ex. 6 (M. Cohen LinkedIn profile); Ex. 7 (Loveman Dep.) at 20:19-22; 134:5-25; Ex. 4 (Hession Dep.) at 64:11-65:4; Ex. 8 (June 2014 8-K) at Item 8.01 (noting the election of new members to CEOC's Board on June 27, 2014). Mr. Cohen was replaced as a CEOC director by Eric Hession, then Treasurer and now the Chief Financial Officer of CEC. Ex. 4 (Hession Dep.) at 59:18-22; 60:18-61:4; 64:23-65:17.

24. The Sponsors, in turn, own approximately 61% of CEC stock, elect all of the members of CEC's board of directors, and have voting control of CEC.* Ex. 9 (2014 Annual Report) at 26; Ex. 2 (Sambur Dep.) at 40:4-41:13; 43:15-44:14; Ex. 4 (Hession Dep.) at 189:15-190:8.

B. CEOC'S Financial Condition Deteriorates As Liquidity, Maturity And Covenant Pressures Mount; CEC Determines That CEOC Will Be Unable To Pay Its Debts And Contemplates A "Restructuring"

25. Since the 2008 leveraged buyout, CEOC remained a "highly leveraged" company through the Spring of 2014; Ex. 4 (Hession Dep.) at 139:9; Ex. 10 (2013 Annual Report) at 10.

26. By the end of the first quarter of 2014, CEC guaranteed almost \$17.5 billion of CEOC's debt, including the Notes. Ex. 11 (Sambur Decl.) at ¶ 11.

27. By year end 2014, CEOC's annual EBITDA⁶ declined to \$816 million as its debt increased to \$16.1 billion. Ex. 9 (2014 Annual Report) at 46, 86. As a result, the debt to EBITDA ratio increased to 19.7. "[REDACTED]" Ex. 4 (Hession Dep.) at 139:16-19.

28. Business challenges experienced by CEOC "included the recession, changing consumer preferences in the gaming industry, and increased competition for gaming dollars resulting from a rise in the number of casinos in various states." Ex. 11 (Sambur Decl.) at ¶ 4.

29. As of December 31, 2013, CEOC had approximately \$19.589 billion in face value of outstanding indebtedness and debt service obligations over the next twelve (12) months in the amount of approximately \$1.967 billion, including estimated interest payments of approximately \$1.854 billion due in 2014.* Ex. 10 (2013 Annual Report) at 10.

30. [REDACTED]

[REDACTED]" Ex. 4 (Hession Dep.) at 173:13-17. "[REDACTED]"

[REDACTED]" *Id.* at 170:5-

11.

⁶ EBITDA is earnings before interest, taxes, depreciation and amortization and is a commonly used definition of cash flow as it approximates the amount of cash generated by operations. Ex. 4 (Hession Dep.) at 128: 7-15.

C. Liquidity Pressures

31. [REDACTED]

[REDACTED]. Ex. 12 (Dec. 2013 Reg. Pres.) at 15, 26.

32. [REDACTED]. Ex. 4 (Hession Dep.) at 140:11-15. “[REDACTED]” *Id.* at 139:23-140:5.

33. CEOC’s 2014 EBITDA was estimated to be less than \$1 billion compared with over \$18 billion in outstanding indebtedness.* Ex. 1 (FDM) at 7-8. [REDACTED] s. Ex. 13 (May 1, 2014 Reg. Pres.) at 10.

34. [REDACTED]” Ex. 4 (Hession Dep.) at 143:12-17.

35. In an SEC filing made on March 17, 2014 for the period ending December 31, 2013, CEC stated that it did not expect “that cash flow from operations will be sufficient to repay CEOC’s indebtedness in the long-term and we will have to ultimately seek a *restructuring*, amendment or refinancing of our debt, or if necessary, pursue additional debt or equity offerings.”* Ex. 10 (2013 Annual Report) at 46 (emphasis added).

36. CEC repeated this statement in its subsequent SEC filings, including Ex. 14 (April 15, 2014 8-K) at Ex. 99.1, p. 23; Ex. 15 (May 6, 2014 8-K) at Ex. 99.2; Ex. 16 (May 9, 2014 10-Q) at 10; and Ex. 17 (May 30, 2014 8-K) at Ex. 99.1, p. 14.

37. [REDACTED]

[REDACTED] Ex. 18 (Loveman Restructuring Email) (emphasis added).

D. Covenant Pressures

38. [REDACTED]

[REDACTED] Ex. 4 (Hession Dep.) at 143:18-146:9. [REDACTED]

[REDACTED] Ex. 7 (Loveman Dep.) at 113:18-19. [REDACTED]

[REDACTED] Ex. 20 (Rowan Dep.) at 146:19-24.

39. [REDACTED] Ex. 2 (Sambur Dep.) at 66:23-25, [REDACTED] Ex. 4 (Hession Dep.) at 163:11-17; Ex. 7 (Loveman Dep.) at 114:16-17; Ex. 2 (Sambur Dep.) at 74:15-20; Ex. 20 (Rowan Dep.) at 48:25-49:8.

40. CEOC's bank credit facility at the time also contained a SSLR covenant, which required CEOC to maintain a ratio of first lien debt (net cash on hand) to EBITDA of no more than 4.75. Ex. 10 (2013 Annual Report) at 46. As of year-end 2013, the SSLR ratio had reached 4.52, *id.*, and CEOC "had been at risk of breaching" the SSLR covenant. Ex. 11 (Sambur Decl.) at ¶ 13. In an April 21, 2014 presentation to CEC's board, CEC's financial advisor (Blackstone) stated

that “ [REDACTED] ” Ex. 21 (April 21, 2014 BX Pres.) at 4.

E. Maturity Pressures

41. CEOC was also experiencing maturity pressures as approximately \$1.2 billion in long-term debt was expected to mature in 2015. Ex. 10 (2013 Annual Report) at 67. [REDACTED]

[REDACTED] ” Ex. 4 (Hession Dep.) at 145:3-146:9.

IV. CEC DEVELOPS THE “CEOC PLAN”

42. [REDACTED] . *Id.* at 152:8-159:2.

43. [REDACTED] ” Ex. 12 (Dec. 2013 Reg. Pres.) at 31.

44. By late 2013 and early 2014, CEC management began discussing the “CEOC Plan,” *id.* at 27, which it described as “ [REDACTED] ” affecting CEOC (the “Plan”). Ex. 4 (Hession Dep.) at 157:8-18; Ex. 22 (Beato Email to Hession re: Sequencing of CEOC Plan).

45. “ [REDACTED] ” *Id.* As CEC’s Treasurer at the time elaborated, “ [REDACTED]

[REDACTED]

[REDACTED] ” Ex. 4 (Hession Dep.) at 172:14-20.

46. CEC’s management has described addressing these concerns as “ [REDACTED] ” *Id.* at 168:18-169:3.

47. “[REDACTED]
[REDACTED]” *Id.* at 228:24-229:18. [REDACTED]

[REDACTED]. Ex. 22 (Beato Email to Hession re: Sequencing of CEOC Plan); Ex. 4 (Hession Dep.) at 229:6-230:17; 172:21-173:5.

48. [REDACTED]. Ex. 12 (Dec. 2013 Reg. Pres.).

49. The purpose of the December 2013 presentation was to “[REDACTED]
[REDACTED]” *Id.* at 2.

50. After commenting on the decline in EBITDA, *Id.* at 21, annual interest expense “[REDACTED]” *id.* at 24, and [REDACTED]
[REDACTED], *id.* at 26, the presentation to CEC’s regulators stated:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Id. at 31 (emphasis added).

51. Under the heading of “██████████,” the presentation then laid out four discrete steps of the Plan (*id.* at 27-28):

██████████

██████████

██████████

██████████

52. “██████████

██████████

██████████” *Id.* at 28.

53. CEC’s description of its Plan to the regulators was unchanged five months later in May 2014, when it provided to the gaming regulators “██████████
██████████” Ex. 13 (May 1, 2014 Reg. Mat.) at 2. In a section entitled “██████████,” CEC proposed to “██████████” *Id.*
p. 12.

54. “██████████” remained a part of the Plan. *Id.* This was intended to result in “██████████.” *Id.*

55. As Hession explained, “██████████

██████████

██████████

[REDACTED]” Ex. 4
(Hession Dep.) at 167:8-16. (emphasis added).

A. First Step Of The Plan: The Asset Sales

56. CEC expected that the sale of CEOC’s assets would “[REDACTED]” Ex. 22
(Beato Email to Hession re: Sequencing of CEOC Plan), and also “[REDACTED]
[REDACTED]” Ex. 12 (Dec. 2013 Reg. Pres.) at 27.

57. In addition, [REDACTED]
[REDACTED] Ex. 4 (Hession Dep.) at 158:7-20. First, having cash on the balance sheet
“[REDACTED]
[REDACTED]. *Id.* Second, additional cash on the balance sheet “[REDACTED]
[REDACTED]
[REDACTED] *Id.*; ¶ 40 above.

58. [REDACTED]
[REDACTED]
[REDACTED]” Ex. 12 (Dec. 2013
Reg. Pres.) at 27. For example, the presentation pointed out that [REDACTED]
[REDACTED]
[REDACTED]” *Id.*

59. [REDACTED]
[REDACTED]” *Id.* [REDACTED]
[REDACTED]. *Id.*

60. By the time CEC set forth its Plan in the December 2013 Regulatory Discussion Materials, a number of asset sales contemplated as the first step of the Plan had already occurred. ¶¶ 61-76 below.

B. Caesars Forms New Affiliates

61. In October 2013, CEC formed Caesars Entertainment Resort Properties LLC (“CERP”) as a subsidiary of CEC.* BOKF ECF No. 1 (Complaint) ¶ 76; BOKF ECF No. 10 (Answer) ¶ 76; Ex. 9 (2014 Annual Report) at 2; Ex. 1 (FDM) at 32-33.

62. Also in October 2013, CEC and the Sponsors formed Caesars Acquisition Company (“CAC”), a public company, to raise capital for Caesars.* BOKF ECF No. 1 (Complaint) ¶ 33; BOKF ECF No. 10 (Answer) ¶ 33; Ex. 10 (2013 Annual Report) at 7-8; Ex. 1 (FDM) at 17.

63. Caesars Growth Partners LLC (“CGP”) was formed in October 2013 as a direct subsidiary of CAC for the purpose of acquiring certain businesses and assets of Caesars.* Ex. 10 (2013 Annual Report) at 7.

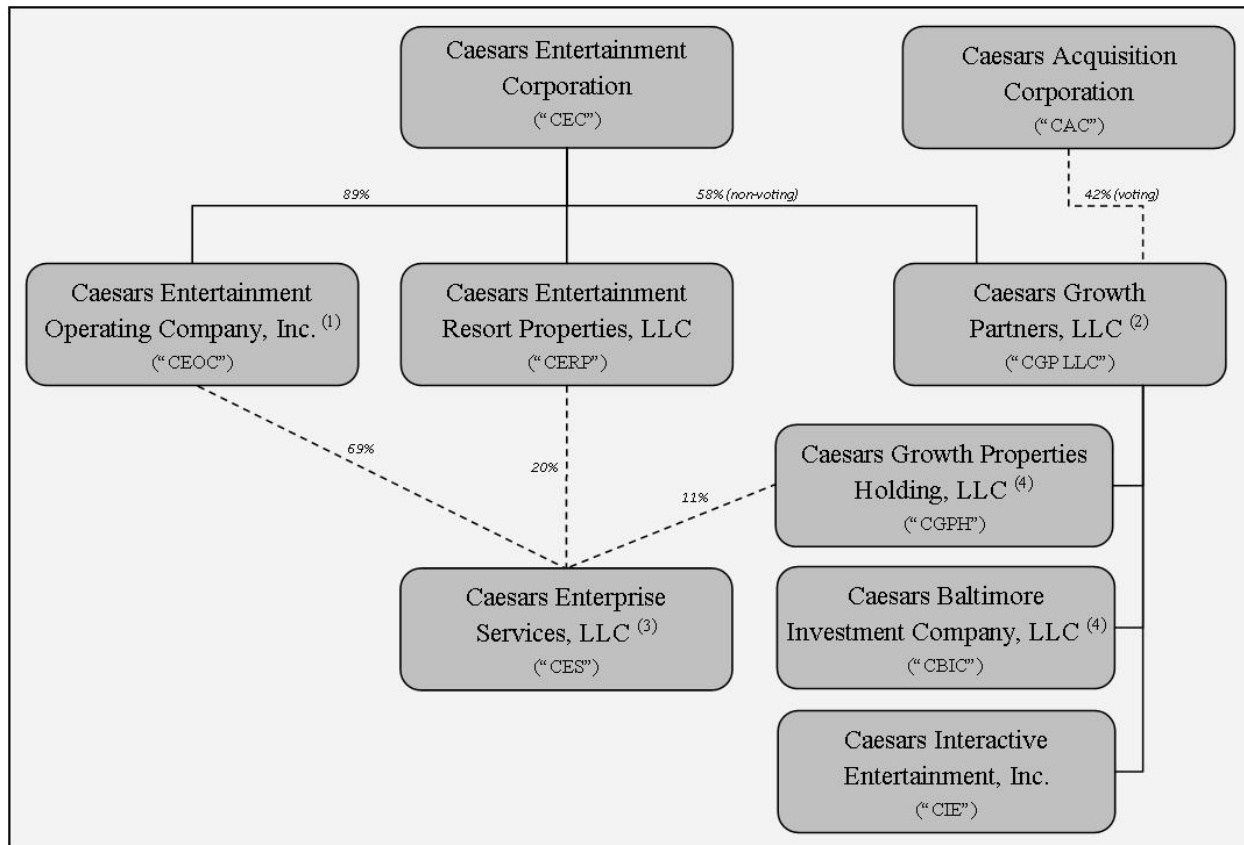
64. CGP was a partnership between CAC and CEC, with CEC obtaining approximately 58% ownership interest and no voting interest in CGP, and CAC obtaining approximately 42% ownership interest and 100% of the voting rights.* Ex. 9 (2014 Annual Report) at 2; Ex. 1 (FDM) at 17.

65. In October 2013, CEC contributed its interests in Caesars Interactive Entertainment Inc. (“CIE”) to CGP.* BOKF ECF No. 1 (Complaint) ¶ 86; BOKF ECF No. 10 (Answer) ¶ 86.

66. In April 2014, Caesars Enterprise Services, LLC (“CES”) was created as a joint venture by and among CEOC, CERP and Caesars Growth Properties Holdings LLC (“CGPH”), a subsidiary of CGP.* BOKF ECF No. 1 (Complaint) ¶ 35; BOKF ECF No. 10 (Answer) ¶ 35.

67. CES was created after the formation of CAC, CERP and CGP because historically, CEOC had managed and centralized corporate functions for shared services across all Caesars branded properties. Ex. 1 (FDM) at 18.

68. In its 2014 Annual Report, CEC identified key entities and subsidiaries resulting from these transactions as follows:*



- (1) On January 15, 2015, CEOC filed for bankruptcy protection under Chapter 11 of the US Bankruptcy Code. See Note 23, “Subsequent Events - CEOC Bankruptcy and Deconsolidation.”
- (2) CAC is party to the series of transactions that formed CGP LLC, and owns 100% of the voting membership units in CGP LLC. CEC owns 100% of the non-voting membership units in CGP LLC and consolidates CGP LLC as a variable interest entity. See Note 2, “Basis of Presentation and Principles of Consolidation.” See information about CEC’s announced merger with CAC in Note 1, “Description of Business.”
- (3) CES is a services joint venture formed by CEOC, CERP, and CGPH. See Note 2, “Basis of Presentation and Principles of Consolidation.”

(4) *CGPH and CBIC and their subsidiaries together represent the primary operations of Caesars Growth Partners Casino Properties and Developments (“CGP LLC Casinos”).*

Ex. 9 (2014 Annual Report) at 2.

69. CEOC contributed to CES its rights to certain intellectual property, including a non-exclusive, irrevocable, world-wide royalty-free license related to its Total Rewards program, the industry’s first and best known loyalty program.* BOKF ECF No. 1 (Complaint) ¶ 104; BOKF ECF No. 10 (Answer) ¶ 104; Ex. 9 (2014 Annual Report) at 5.

70. CERP and CGPH contributed \$42.5 million and \$22.5 million in cash for which they received 20.2 percent and 10.8 percent ownership of CES, respectively, with CEOC owning the remaining 69 percent of CES. Ex. 1 (FDM) at 18. Each of CEOC, CERP and CGPH, however, have equal 33 percent voting control over CES. *Id.*

71. In fall 2013, CEOC sold to CERP CEOC’s interests in the Octavius Tower, the newly constructed tower at Caesars Palace, and Project Linq, a retail, dining, and entertainment development, for \$80.7 million in cash and the retirement of \$52.9 million of CEOC notes. *See* Ex. 1 (FDM) at 6.

72. Also in the fall of 2013, CEOC sold to CGP (the new partnership formed by CEC and CAC) its interests in (i) the Planet Hollywood Resort & Casino in Las Vegas, (ii) the Horseshoe Baltimore and (iii) 50% of the management fees for those properties for \$360 million in cash. *Id.*

73. In May 2014, CEOC sold to CGP its interests in (i) The Cromwell in Las Vegas, (ii) The Quad in Las Vegas, (iii) Bally’s Las Vegas, (iv) Harrah’s New Orleans, and (v) 50% of the management fees for those properties for approximately \$1.8 billion in cash. *Id.* at 6-7.

74. [REDACTED]

[REDACTED]. Ex. 12 (Dec. 2013 Reg. Pres.) at 27; Ex. 4 (Hession Dep.)

at 157:19-158:15. The governing agreements in that transaction expressly stated that the “Caesars Parties will effectuate a *restructuring*.” Ex. 15 (May 6, 2014 8-K), Ex. 2.1 thereto, at 1 (emphasis added).

75. As a result of these out-of-court transactions, certain assets originally owned and operated by CEOC are now owned by CERP, CAC, CGP, CES, and CIE or their subsidiaries.* BOKF ECF No. 1 (Complaint) ¶ 65; BOKF ECF No. 10 (Answer) ¶ 65.

76. The transactions provided “billions of dollars” of liquidity for CEOC and were designed to, among other things, “generate capital for CEOC to deleverage, ensure maintenance with [*sic*] debt covenants, and push out debt maturities.” Ex. 11 (Sambur Decl.) at ¶ 6; Ex. 1 (FDM) at 7 (stating that since the CERP transaction, CEOC raised over \$2 billion in liquidity).

C. CEC Retains Blackstone’s Restructuring Advisory Group, Outlines Next Steps Of The Plan With Its Help

77. [REDACTED]
[REDACTED]. Ex. 23 (Genereux Dep.) at 90:4-22. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]” *Id.* at 18:14-17; 19:7-23; 20:6-10; 20:24-21:5.

78. [REDACTED]
[REDACTED]” Ex. 24 (April 10, 2014 BX Pres.) at 2.

79. [REDACTED]
[REDACTED]” Ex. 23 (Genereux Dep.) at 34:1-24.

80. [REDACTED]
[REDACTED]. *Id.* at 91:16-25; Ex. 25 (First Blackstone Engagement Letter).

[REDACTED]. Ex. 23 (Genereux Dep.) at 23:16-24:1.

81. [REDACTED]

[REDACTED]” Ex. 25 (First Blackstone Engagement Letter) at 1. [REDACTED]

[REDACTED]” *Id.* at 1-2. [REDACTED]

[REDACTED]. Ex. 26 (June Email re: Blackstone Phase 1 Invoice); Ex. 23 (Genereux Dep.) at 147:7-148:17.

82. [REDACTED]

[REDACTED]” Ex. 27 (Second Blackstone Engagement Letter) at 1. [REDACTED]

[REDACTED]. *Id.* at 1.

D. Next Steps Of The Plan Reviewed And Approved By CEC Board

83. [REDACTED]

[REDACTED]” Ex. 22 (Beato Email to Hession re: Sequencing of CEOC Plan).

84. On April 21, 2014, a meeting of the CEC board occurred. Ex. 28 (April 21, 2014 CEC Bd. Min.). [REDACTED]

[REDACTED]

85. The Presentations outlined for the CEC Board’s preliminary approval a number of proposed transactions to implement the next set of actions Caesars would undertake to “[REDACTED]” Ex. 29 (April 21, 2014 Bd. Pres.) at 2,13; Ex. 28 (April 21, 2014 CEC Bd. Min.).

86. The “integrated series of transactions” presented for board approval (*see* Ex. 28 (April 21, 2014 CEC Bd. Min.)) included:

[REDACTED]

87. [REDACTED] Ex. 4 (Hession Dep.) at 168:10-12; 230:13-231:3; Ex. 29 (April 21, 2014 Bd. Pres.) at 13 ([REDACTED])

[REDACTED]; Ex. 21 (April 21, 2014 BX Pres.) at 3 ([REDACTED])

88. The April 21, 2014, Blackstone Presentation stated [REDACTED]
[REDACTED]
[REDACTED]” Ex. 21 (April 21, 2014 BX Pres.) at 3. A prior, April 10, 2014 Blackstone presentation to the CEC board identified “[REDACTED]
[REDACTED]. Ex. 24 (April 10, 2014 BX Pres.) at 5.

89. [REDACTED]
[REDACTED]. Ex. 4 (Hession Dep.) at 189:15-191:15.

90. [REDACTED]
[REDACTED], Ex. 19 (Colvin Dep.) at 20:13-15; 21:16-22. [REDACTED]
[REDACTED]
[REDACTED]” Ex. 12 (Dec. 2013 Reg. Pres.) at 31.
[REDACTED], Ex. 4 (Hession Dep.) at 183:14-184:16; 186:10-19; 232:20-233:1, [REDACTED]
[REDACTED]. *Id.* at 188:11-19].

91. Second, CEC contends that the B-7 Refinancing lenders would only agree to extend the loan if CEC’s parent guarantees of other CEOC debt (including the Parent Guarantee) were terminated so that any CEC guarantee would be limited to the bank debt held by lenders consenting to the amendment to the Credit Agreement and up to no more than \$2.9 billion of additional indebtedness.* Ex. 15 (May 6, 2014 8-K) at Ex. 99.3 attached thereto; Ex. 30 (Caesars NY

Complaint) ¶ 89(b); BOKF ECF No. 19 (CEC Letter to the Court) at 2; *see also* Ex. 11 (Sambur Decl.) at ¶ 14; Ex. 20 (Rowan Dep.) at 48:25-49:10.

92. According to CEC, termination of the Parent Guarantee provided enhanced credit support for the B-7 Refinancing loan.* Ex. 30 (Caesars NY Complaint) ¶ 89(b).

93. Another rationale given for removal of the Parent Guarantee through the equity sale was that it would “ [REDACTED] ” Ex. 21 (April 21, 2014 BX Pres.) at 3; Ex. 24 (April 10, 2014 BX Pres.) at 5 (describing “ [REDACTED] ”). As CEC’s CFO at the time explained, [REDACTED] ” Ex. 19 (Colvin Dep.) at 39:21-40:12. “ [REDACTED] ” *Id.*

94. As CEC’s then Treasurer explained, [REDACTED] Ex. 4 (Hession Dep.) at 246:15-247:19, 248:14-21. [REDACTED] ” *Id.* at 250:4-251:17.

95. Blackstone also anticipated that in order “ [REDACTED] ” the trading prices of CEOC debt had to “ [REDACTED] ” Ex. 24 (April 10, 2014 BX Pres.) at 4. [REDACTED]

[REDACTED]” *Id.* at 5.

As Mr. Genereux explained, “[REDACTED]
[REDACTED]
[REDACTED]” Ex. 23 (Genereux Dep.) at 265:12-16.

96. Market commentators had previously suggested to CEC that “[REDACTED]
[REDACTED]
[REDACTED]” Ex. 31 (Beato/Hession Capital Structure Email). CEC’s then Treasurer stated that “[REDACTED]
[REDACTED]
[REDACTED]” Ex. 4 (Hession

Dep.) at 265:7-19. Thus, [REDACTED]
[REDACTED]
[REDACTED]” *Id.* at 269:2-16.

97. A final rationale given for the equity sale was that [REDACTED]
[REDACTED]
[REDACTED]” Ex. 29 (April 21, 2014 Bd. Pres.) at 5, 13; Ex.

21 (April 21, 2014 BX Pres.) at 5; Ex. 4 (Hession Dep.) at 161:14-162:13; 172:13-173:7; 230:4-10; Ex. 20 (Rowan Dep.) at 218:18-24 (“[REDACTED]
[REDACTED]”); Ex. 24 (April 10, 2014 BX Pres.) at 5 ([REDACTED]
[REDACTED]”). A “[REDACTED]
[REDACTED] Ex. 29 (April 21, 2014 Bd. Pres.) at 13; Ex. 24

(April 10, 2014 BX Pres.) at 5; *see also* Ex. 21 (April 21, 2014 BX Pres.) at 5 (“[REDACTED]

[REDACTED]

[REDACTED]).

98. [REDACTED]

[REDACTED]. Ex. 2 (Sambur Dep.) at 212:21-24; Ex. 4 (Hession Dep.) at 305:14-306:12; Ex. 20 (Rowan Dep.) at 145:12-146:10; Ex. 32 (McLellan Dep.) at 134:8-20.

99. At the time, CEOC's balance sheet reflected *negative* stockholder equity of more than \$6 billion. Ex. 16 (March 2014 10-Q) at 32.

100. Blackstone's attempts at valuation using "[REDACTED]" Ex. 21 (April 21, 2014 BX Pres.) at 5; Ex. 23 (Genereux Dep.) at 125:6-126:12.

101. The Blackstone Presentation stated that "[REDACTED]"

[REDACTED]

[REDACTED]"

Ex. 21 (April 21, 2014 BX Pres.) at 7.

102. [REDACTED]

[REDACTED]

[REDACTED]. Ex. 29 (April 21, 2014 Bd. Pres.) at 1, 7.

103. As a part of the same transaction, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 8-9; Ex. 33 (April

28, 2014 CEC Bd. Min.) at 4. [REDACTED]

[REDACTED]. Ex. 29 (April 21, 2014 Bd. Pres.) at 10.

104. [REDACTED]

[REDACTED]. Ex. 28 (April 21, 2014 CEC Bd. Min.) at 3; Ex. 33 (April 28, 2014 Bd. Min.) at 2-6.

E. CEC Completes The First Guarantee Transaction (The May 2014 Transaction), Claims To Have Stripped The Parent Guarantee

105. On May 6, 2014, CEC announced the B-7 Refinancing of CEOC's existing first lien debt under the credit agreement (the "Credit Agreement") whereby CEOC sought to issue \$1.75 billion in new "B-7" term loans, use the net cash proceeds to refinance existing indebtedness maturing in 2015 and existing term loans, and launch an amendment to the Credit Agreement to modify CEC's guarantee of CEOC's indebtedness.* Ex. 15 (May 6, 2014 8-K) at Item 7.01 and Ex. 99.3 attached thereto; Ex. 1 (FDM) at 35-36 (stating that CEC and CEOC announced a financing plan designed to extend CEOC's near term maturities and provide it with covenant relief and the stability to execute its business plan).

106. As a part of the B-7 Refinancing, CEC, CEOC, the lenders, and the administrative agent amended the Credit Agreement to: (i) relax the financial covenants; (ii) make CEC's guarantees of the Credit Agreement obligations guarantees of collection rather than of payment; and (iii) limit that guarantee to debt held by consenting first lien lenders and up to approximately \$2.9 billion of additional indebtedness.* *Id.*; Ex. 30 (Caesars NY Complaint) ¶ 89(c).

107. The amendment to the Credit Agreement was consented to by at least the amount of consenting lenders required under the Credit Agreement.* Ex. 34. (July 28, 2014 8-K) at Item 1.01 and Ex. 10.1 attached thereto, at 2-3.

108. Consenting lenders holding a revolving facility commitment received a consent fee of 2% of the aggregate principal amount of such consenting lender's revolving facility commitment, and consenting lenders holding term loans (excluding the initial B-7 term loans) received a consent fee in an aggregate amount of \$50 million, which amounts were payable to each consenting lender holding term loans on a pro rata basis based on the aggregate principal amount of term loans held by such consenting lender.* *Id.* at Item 1.01 and Ex. 10.1 attached thereto.

109. Upon closing the B-7 Refinancing in July 2014, proceeds from the B-7 Refinancing were used to repay CEOC term loans in the aggregate principal amount of \$794 million held by consenting lenders.* Ex. 9 (2014 Annual Report) at 89.

110. The proceeds of the B-7 Refinancing were also used to pre-pay, at a premium, CEOC debt held by newly formed affiliate CGP and Chatham Asset Management, LLC (an entity that was also one of the purchasers of CEOC stock, *see* ¶ 118 below). Specifically, through the private note purchase transactions, CEOC purchased (i) \$740.5 million in aggregate principal amount of the 5.625% Senior Notes due 2015 for a price of \$1,048.75 per \$1,000 principal amount, and (ii) \$106.6 million in aggregate principal amount of the 10% Second-Priority Senior Secured Notes due 2015 for a price of \$1,022.50 per \$1,000 principal amount.* Ex. 38 (July 29, 2014 8-K) at Ex. 99.1 attached thereto; Ex. 35 (Original Chatham NPA) at Schedule A; Ex. 36 (Amended Chatham NPA) at Schedule A; Ex. 37 (CGP Note Purchase Agreement) at Schedule A.

111. CGP received approximately \$451.9 million of consideration (including accrued and unpaid interest) as part of the note purchase transaction.* Ex. 38 (July 29, 2014 8-K) at Ex. 7.01. Chatham received approximately \$435 million of consideration (including accrued and unpaid interest) as part of the note purchase transaction. Ex. 36 (Amended Chatham NPA) at Schedule A.

112. Further, upon completion of CEOC's tender offer in July 2014, CEOC agreed to purchase the following notes validly tendered: (i) \$44.345 million aggregate principal of 5.625% Senior Notes due 2015 for total consideration of \$1,048.75 per \$1,000 principal amount; and (ii) \$103.016 million in aggregate principal amount of the 10% Second-Priority Senior Secured Notes due 2015 for total consideration of \$1,022.50 per \$1,000 principal amount.* Ex. 38 (July 29, 2014 8-K) at Ex. 99.1 attached thereto.

113. [REDACTED]. Ex. 39 (Gaming Enforcement Letter); Ex. 4 (Hession Dep.) at 196:16-197:2. [REDACTED]
[REDACTED]
[REDACTED] Ex. 39 (Gaming Enforcement Letter); Ex. 4 (Hession Dep.) at 194:7-196:6.

114. The B-7 Refinancing closed on July 25, 2014. Ex. 34 (July 29, 2014 8-K), Item 7.01 at 3.

115. [REDACTED]. Ex. 4 (Hession Dep.) at 170:12-24.

116. [REDACTED]
[REDACTED], *id.* at 170:18-24, [REDACTED]
[REDACTED], *id.* at 230:18-23.

117. On May 6, 2014, the day of the B-7 Refinancing announcement, CEC also announced that in connection with the B-7 Refinancing, on May 5, 2014, CEC sold 68.1 shares, or five percent (5%) of CEOC's common stock, to certain institutional investors for \$6.15 million (the "5% Stock Sale," and together with the B-7 Refinancing, the "May 2014 Transaction").* Ex. 15 (May 6, 2014 8-K) at Item 1.02; Ex. 1 (FDM) at 35-36.

118. The three institutional investors who purchased the CEOC stock were Paulson & Co., Inc. (“Paulson”), Scoggin Capital Management LLC (“Scoggin”) and Chatham Asset Management, LLC (“Chatham”). Ex. 40 (Stock Purchase Agreements).

119. All three purchasers paid the same price of \$90,308 per share for CEOC stock. *Id.*

120. At the time, Paulson [REDACTED]. Ex. 2 (Sambur Dep.) at 167:13-30, while Scoggin [REDACTED]. Ex. 41 (Dhingra Dep.) at 47:4-12. Paulson’s 10% stake equated to 13,716,118 shares. Ex. 10 (2013 Annual Report) at 33 (showing total 137,161,183 CEC shares outstanding).

121. As of May 5, 2014, CEC stock was trading at no less than \$18.39 per share. Ex. 42 (CZR May 5, 2014 Historical Stock Price). Therefore, as of the date of the 5% Stock Sale, Paulson [REDACTED], while Scoggin [REDACTED].

122. As part of the note purchase transaction which was executed on the same day as the 5% Stock Sale (May 5, 2014), CEOC repurchased approximately \$435 million of unsecured and second lien CEOC notes held by the third buyer, Chatham, at 100 cents on the dollar, plus accrued interest. Ex. 35 (Original Chatham NPA) (dated May 5, 2014); Ex. 36 (Amended Chatham NPA) at Schedule A (noting purchase price of 5.625% Senior Notes due 2015 was \$1,048.75 per \$1,000 principal amount and purchase price of 10.00% Second-Priority Senior Secured Notes due 2015 was \$1,022.50 per \$1,000 principal amount); ¶¶ 110-111 above. The purchase price paid to Chatham was “[REDACTED]” Ex. 4 (Hession Dep.) at 302:22-303:4. CEOC’s receipt of sufficient B-7 Refinancing proceeds was one of the conditions to the closing of Chatham’s purchase of CEOC stock. Ex. 35 (Original Chatham NPA), § 6.3 at 5; Ex. 36 (Amended Chatham NPA), § 6.3 at 5.

123. [REDACTED]. Ex. 4 (Hession Dep.) at 170:12-24.

124. CEC has asserted that the 5% Stock Sale automatically terminated the Parent Guarantee under Section 12.02(c)(i) of the Indentures because CEOC was no longer a wholly owned subsidiary of CEC.* Ex. 15 (May 6, 2014 8-K) at Item 1.02; Ex. 1 (FDM) at 35.

125. However, CEC has admitted that the conditions to releasing the Parent Guarantee enumerated in § 12.02(c)(ii) and (iii) have not occurred. See BOKF ECF No. 61-1 (CEC's Response to Requests for Admissions) at 4-5; BOKF ECF No. 10 (CEC's Answer to BOKF Complaint) at ¶ 126 ("admits that CEC does not contend that the events described in Sections 12.02(c)(ii) and (iii) of the 2010 Indenture have occurred...").

F. Creditors Challenge the Purported Release Of CEC's Guarantee Based on The 5% Stock Sale

126. On May 15, 2014, shortly after CEC's assertion that the 5% Stock Sale stripped the Parent Guarantee, a group of noteholders holding CEOC's outstanding 6.5% Senior Notes due 2016 (the "2016 Notes") and 5.75% Senior Notes due 2017 (the "2017 Notes," and together with the 2016 Notes, the "Unsecured "Notes") informed CEC that [REDACTED]. Ex. 43 (Dietderich Dep.) at 30:23-31:10; Ex. 44 (May 15, 2014 S&C Letter) at 2 (stating that [REDACTED] [REDACTED]").

127. Those noteholders (the "Preferred Noteholders") argued that [REDACTED] [REDACTED] [REDACTED]. Ex. 43 (Dietderich Dep.) at 33:10-34:11.

128. Specifically, the Preferred Noteholders cited to language in the Unsecured Indentures which required that CEOC cease to be a wholly owned subsidiary of CEC under SEC Reg. S-X in order to release the CEC guarantee of the Unsecured Notes. *MeehanCombs Global Credit Opportunities Master Fund, LP v. Caesars Entm't Corp.*, No. 14-cv-7091 (S.D.N.Y.), ECF 1-5 (2016 Indenture) § 1503 at 44-46; *MeehanCombs Global Credit Opportunities Master Fund, LP v. Caesars Entm't Corp.*, No. 14-cv-7091 (S.D.N.Y.), ECF 1-4 (2017 Indenture) § 12.3 at 54-55.

129. In addition, the Preferred Noteholders identified a concern about the tension between the “ [REDACTED] . Ex. 43 (Dietderich Dep.) at 75:21-76:6. [REDACTED] . *Id.* at 39:4-18.

G. CEC Claims To Have Completed The Second Guarantee Transaction (The 6% Stock Transfer) And (Again) Claims To Have Stripped The Parent Guarantee

130. Following the Preferred Noteholders’ challenge to the purported termination of CEC’s guarantee based on the 5% Stock Sale, Caesars undertook another transaction that had the effect of transferring additional CEOC stock away from CEC. Ex. 11 (Sambur Decl.) at ¶ 16).

131. On May 30, 2014, CEC authorized the CEOC Board to adopt a 2014 stock performance incentive plan, which was adopted by the CEOC Board on the same date.* Ex. 8 (June 2014 8-K) at Item 8.01.

132. Pursuant to the stock performance incentive plan, CEOC granted 86,936 shares of its common stock to various individuals, including directors and officers of CEOC (the “6% Stock Transfer”).* *Id.*

133. The 6% Stock Transfer was the “[REDACTED]
[REDACTED]. Ex. 4 (Hession
Dep.) at 234:7-235:7; Ex. 23 (Genereux Dep.) at 248:15-249:24; ¶ 97 above.

134. “[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]” Ex. 11 (Sambur Decl.) at ¶ 16; Ex. 20 (Rowan Dep.) at 179:5-10.

135. [REDACTED]
[REDACTED]. Ex. 4 (Hession Dep.) at
538:12-539:9; Ex. 45 (Hession No Valuation of CEOC Stock Email); Ex. 32 (McLellan Dep.) at
134:20-135:5.

136. [REDACTED]. *Id.*
at 151:23-152:5. Michael McLellan, who was CEC’s Vice President of Compensation and
Leadership Development and was involved in the 6% Stock Transfer and other Caesars’ incentive
plans, *id.* at 18:13-19:17; 233:6-10, testified that [REDACTED]
[REDACTED]. *Id.* at 233:6-10;
233:16-19.

137. McLellan also testified that [REDACTED]
[REDACTED]. *Id.* at 233:21-235:13.

138. [REDACTED]
[REDACTED]. *Id.* at 55:16-20; 233:6-15.

139. [REDACTED]. *Id.* at 39:24-40:3; 42:24-45:10.

140. [REDACTED]

[REDACTED]. *Id.* at 40:4-16; 45:8-10.

141. [REDACTED]

[REDACTED]. Ex. 46 (Nadel Dep.) at 384:24-385:20.

142. [REDACTED]

[REDACTED]. Ex. 32 (McLellan Dep.) at 147:17-19; Ex. 47 (Tax Gross Up Adjustment Email).

143. [REDACTED]

[REDACTED] Ex. 48 (Tax Gross Up Email) at 2; Ex. 49 (2014 Tax Return Prep. Email).

144. [REDACTED]

[REDACTED]. Ex. 32 (McLellan Dep.) at 53:14-54:5; 137:4-24.

145. [REDACTED]

[REDACTED]. *Id.* at 54:6-12; 235:14-19.

146. [REDACTED]

[REDACTED]. Ex. 46 (Nadel Dep.) at 386:5-8.

147. According to McLellan, [REDACTED]

[REDACTED]. Ex. 32 (McLellan Dep.) 30:20-32:15.

148. [REDACTED]

[REDACTED]. *Id.* at 68:2-5; Ex. 4 (Hession Dep.) at 400:4-401:6.

149. [REDACTED]

[REDACTED]. Ex. 32 (McLellan Dep.) at 109:5-110:9; 112:4-7; 113:22-114:12.

150. Nevertheless, by June 6, 2014, Caesars only obtained “[REDACTED]” *Id.* at 247:7-247:21.

151. In fact, [REDACTED]

[REDACTED]. *Id.* at 118:4-125:4.

152. Still, on June 2, 2014, the same day Caesars first sought the participants’ signatures on the documents, CEOC delivered to the Trustees and/or their predecessors a CEOC Officer’s Certificate (the “June 2nd Election Notices”) contending that CEC’s Parent Guarantee had been automatically terminated under Section 12.02(c)(i) of the Indenture and automatically released by CEOC pursuant to the last paragraph of Section 12.02(c) of the Indenture. BOKF ECF No. 1-7 (June 2nd Election Notice); Ex. 78 (June 2, 2014 First Lien Notes Election Notice).

153. The 6% Stock Transfer was announced by CEC on June 27, 2014.* Ex. 8 (June 2014 8-K) at Item 8.01. That same day, CEC asserted that its Parent Guarantee of the Notes had been released because CEOC elected to release the Parent Guarantee of its own debt under Section 12.02(c) of the Indenture for the additional reason that CEC’s guarantee of the other “Existing Notes,” as defined in the Indentures had been released. BOKF ECF No. 1-7 (June 2nd Election Notice); Ex. 78 (June 2, 2014 First Lien Notes Election Notice).

H. Caesars Undertakes The August Unsecured Notes Transaction After Creditors Challenge The Sufficiency Of The 5% Stock Sale And 6% Stock Transfer To Strip The Guarantee

154. [REDACTED]

[REDACTED]

[REDACTED]” Ex. 43 (Dietderich Dep.) at 39:4-43:20.

155. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]” Ex. 50 (Sullivan & Cromwell Fee Letter) at 1; Ex. 2 (Sambur Dep.) at 550:14-551:15.

156. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]” *Id.* at 1.

157. On August 12, 2014, CEC announced that it had entered into a private transaction with the Preferred Noteholders who held approximately \$237.8 million in aggregate principal and greater than 51% of each of the 2016 Notes and 2017 Notes (the “August Unsecured Notes Transaction”). Ex. 53 (August 12, 2014 8-K).

158. [REDACTED]

[REDACTED]. Ex. 20 (Rowan

Dep.) at 20:18-21 (“[REDACTED]

[REDACTED]”); *id.* at 31:10-32:9 ([REDACTED]

[REDACTED]”).

159. [REDACTED]

[REDACTED]. Ex. 54 (August 2014 CEC Bd. Pres.) at 4 ([REDACTED]).
[REDACTED]
[REDACTED]
[REDACTED]”).

160. Pursuant to the August Unsecured Notes Transaction, which closed on August 22, 2014, CEC and CEOC repurchased for cash at par approximately \$89.4 million of 2016 Notes and approximately \$66.6 million of 2017 Notes, with CEC and CEOC each making a cash payment of \$77.7 million. Ex. 55 (Aug 22, 2014 8-Ks) at Item 1.01.

161. CEOC also paid accrued and unpaid interest to the Preferred Noteholders. Ex. 11 (Sambur Decl.) at ¶ 18.

162. [REDACTED].
Id.; Ex. 56 (August Note Purchase and Support Agreement) at § 5.5. [REDACTED]
[REDACTED]
[REDACTED]. *Id.* at § 9.1. [REDACTED]
[REDACTED]. Ex. 43 (Dietderich Dep.) at 66:1-17; Ex. 50 (S&C Fee Letter).

163. In addition, the Preferred Noteholders agreed to amend the Unsecured Indentures (the “Amendments”) to [REDACTED]
[REDACTED]
[REDACTED]. *Id.*; see also Ex. 57 (Aug 25, 2014 8-K) at Ex. 4.1 and 4.2.

164. [REDACTED]

[REDACTED] Ex. 56 (August Note Purchase and Support Agreement) at Section 5.2(a), 5.4 and Schedule A. [REDACTED]

[REDACTED]⁷ *Id.* at 5.4.

165. [REDACTED]

[REDACTED] Ex. 52 (August 2014 Closing Memo) at 4.

166. [REDACTED]

[REDACTED] *Id.*; First Trilogy SMF, ¶ 37; Ex. 52 (August 2014 Closing Memo) at 4.

⁷ Credit Event under the Note Purchase and Support Agreement means a “credit event” within the meaning of Section 4.2 (Bankruptcy) or 4.5 (Failure to Pay) of the 2003 ISDA definitions (as modified). Ex. 56 (August Note Purchase and Support Agreement) at 10.1(b).

167. [REDACTED]

[REDACTED]. *Id.* at 4.

168. [REDACTED]

[REDACTED]. Ex. 58 (Recovery Agreement). [REDACTED]

[REDACTED]

[REDACTED]” *Id.* at 1. [REDACTED]

[REDACTED]

[REDACTED]. *Id.* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Id.*

169. On August 22, 2014, CEC announced the consummation of the August Unsecured Notes Transaction. CEC announced in a separate Form 8-K, dated August 22, 2014, that:

[I]n connection with the effectiveness of the supplemental indentures to the indentures governing CEOC’s 6.50% Senior Notes due 2016 and 5.75% Senior Notes due 2017 that removed provisions relating to CEC’s guarantee of such notes . . . CEOC provided notice to the trustees of its outstanding first-priority senior secured notes and second-priority senior secured notes reaffirming CEOC’s prior notices issued in June 2014 regarding the automatic release of CEC’s guarantee of all of CEOC’s first-priority senior secured notes and second-priority senior secured notes as a result of the guarantee of CEOC’s unsecured senior notes being released.

Ex. 55 (Aug. 22, 2014 8-Ks).

170. On August 22, 2014, CEOC delivered to the Trustees and/or their predecessors CEOC Officer’s Certificates (the “August 22nd Election Notices”) contending that (i) the Parent Guarantee had been automatically terminated when CEOC ceased to be a wholly owned subsidiary

as a result of the 5% Stock Sale on May 5, 2014; and (ii) CEC's guarantee of the Existing Notes had been released or discharged and CEOC had elected to automatically release the guarantee pursuant to Section 12.02(c) of the Indentures. BOKF ECF No. 1-7 (August 22nd Election Notice); Ex. 79 (August 22, 2014 First Lien Notes Election Notice).

171. Holders of the Notes did not consent, and were not afforded the opportunity to consent, to the transactions that purportedly gave rise to the termination or release of the Parent Guarantee.* BOKF ECF No. 1 (Complaint) ¶ 12; BOKF ECF No. 10 (Answer) ¶ 12; UMB ECF No. 1 (Complaint) ¶ 47.

172. Despite the numerous out-of-court restructuring transactions, CEOC remained overleveraged and realized an even more comprehensive restructuring was necessary. Ex. 1 (FDM) at 7-8.

173. On December 19, 2014, CEC announced that it had signed a restructuring support agreement (which was subsequently amended) with its most senior bondholders to restructure CEOC's indebtedness (the "RSA"). BOKF ECF No. 1 (Complaint) ¶ 21; BOKF ECF No. 10 (Answer) ¶ 21.

V. NEGOTIATIONS WITH CREDITORS

174. Caesars negotiated with CEOC creditors throughout the period of time when Caesars undertook the transactions detailed above. *See, e.g.*, Ex. 19 (Colvin Dep.) at 40:2-10 (stating that "[REDACTED]

[REDACTED]

[REDACTED]").

175. First, a number of the transactions in CEC's Plan for CEOC involved creditor negotiations, including the B-7 Refinancing, the 5% Stock Sale, and the August Transaction. *See* ¶¶ 91-96, 103, 105-108, 110-112, 118-122, 126-129, 154-169 above.

176. Second, [REDACTED] C. Ex. 22 (Beato Email to Hession re: Sequencing of CEOC Plan); Ex. 4 (Hession Dep.) at 172:21-173:5.

177. In July 2014, Blackstone prepared a timeline "[REDACTED]". Ex. 59 (CEC Creditor Negotiation Timeline); Ex. 23 (Genereux Dep.) at 197:7-199:16.

178. [REDACTED] y. *Id.*

179. [REDACTED] Ex. 60 (BX Proposal Email), Ex. 61 (September BX First Lien Pres.); Ex. 23 (Genereux Dep.) at 217:14-219:25.

180. Blackstone produced in discovery some of the documents relating to these negotiations. For example, by July 10, 2014, Blackstone had prepared a presentation entitled "[REDACTED]". [REDACTED] Ex. 62 (July BX First Lien Pres.); Ex. 23 (Genereux Dep.) at 149:18-24.

181. [REDACTED] Ex. 63 (April First Lien Letter); Ex. 64 (Email re: First Lien April Letter); Ex. 65 (April First Lien Counsel Letter); Ex. 66 (CEC Counsel First Lien Response Letter).

182. Blackstone's July 10 presentation stated that "[REDACTED]
[REDACTED]" Ex. 62 (July BX First Lien Pres.) at 1. One of the
"[REDACTED]" to the first lien creditors was to "[REDACTED]
[REDACTED]" *Id.* at 2.

183. [REDACTED]
[REDACTED]. *Id.* at 3.

184. [REDACTED]
[REDACTED]. Ex. 23 (Genereux Dep.) at 150:7-151:23; 153:9-24.

185. [REDACTED]
[REDACTED]. *Id.* at 151:24-153:4.

186. P [REDACTED]
[REDACTED]"
Id. at 166:1-167:14. [REDACTED]
[REDACTED]. Ex. 67 (First Lien
Counsel Fee Agreement); Ex. 2 (Sambur Dep.) at 620:7-12. [REDACTED]
[REDACTED]. Ex. 68 (First Lien Financial Advisor Fee Email) at 1.

187. Subsequent meetings where proposals were exchanged occurred on:

- [REDACTED], Ex. 69 (August 2, 2014 BX Pres.) at 1; Ex. 2 (Sambur Dep.) at 627:18-628:7;
- [REDACTED], Ex. 69 (August 2, 2014 BX Pres.) at 1 (proposal received from certain second lien noteholders on August 1, 2014);
- [REDACTED], CEC responded with a counter-proposal. Ex. 69 (August 2, 2014 BX Pres) at 1; and

- [REDACTED], Ex. 70 (September 2014 BX First Lien Pres.) at 23.

188. [REDACTED]

[REDACTED]. Ex. 71 (March 2014 Second Lien Notes Letter); Ex. 72 (June 2014 Second Lien Notes Default Letter); Ex. 73 (Response to Second Lien Notes Default Letter); Ex. 74 (Second Lien Notes Reply to Default Response).

VI. CEOC BANKRUPTCY COMMENCES

189. On January 12, 2015, three holders of second-priority senior secured notes issued by CEOC filed an involuntary bankruptcy petition against CEOC in the United States Bankruptcy Court for the District of Delaware, Case No. 15-10047 (KG), pursuant to Section 303 of title 11 of the United States Code (the “Bankruptcy Code”). BOKF ECF No. 1 (Complaint) ¶ 22; BOKF ECF No. 10 (Answer) ¶ 22.

190. On January 15, 2015, CEOC and 172 of its subsidiaries filed voluntary chapter 11 cases in the United States Bankruptcy Court for the Northern District of Illinois, captioned *In re Caesars Entertainment Operating Company, Inc., et al.*, Case No. 15-01145 (ABG) (the “IL Voluntary Bankruptcy Cases”). BOKF ECF No. 1 (Complaint) ¶ 23; BOKF ECF No. 10 (Answer) ¶ 23; Ex. 75 (Chapter 11 Petition).

191. All or substantially all of the affiliated debtors in the IL Voluntary Bankruptcy Cases are subsidiary guarantors under the Indenture. *Id.*; BOKF ECF No. 1-3 (BOKF Indenture Pt. 2) § 4.11 at 81-82; UMB ECF No. 1-1 to 1-4 (UMB Indentures) § 4.11 at 82-83, 74. 74-75, 74-75.

192. As of the date of filing of the IL Voluntary Bankruptcy Cases, CEOC had outstanding funded debt obligations of approximately \$18.4 billion comprising:

- four tranches of first lien bank debt totaling approximately \$5.35 billion notional principal amount;
- three series of outstanding first lien notes totaling approximately \$6.35 billion notional principal amount;
- three series of outstanding second lien notes totaling approximately \$5.24 billion notional principal amount;
- one series of subsidiary-guaranteed unsecured debt of approximately \$479 million notional principal amount; and
- two series of senior unsecured notes totaling approximately \$530 million*

Ex. 1 (FDM) at 4.

193. The filing of the IL Voluntary Bankruptcy Cases is an immediate Event of Default under Section 6.01 of the Indentures. BOKF ECF No. 1-3 (BOKF Indenture Pt. 2) § 6.01(e) at 89; UMB ECF No. 1-1 to 1-4 (UMB Indentures) § 6.01(e) at 89, 80, 80, 81.

194. Upon the occurrence of an Event of Default under the 2010 Indenture, CEC and CEOC's obligations under the Notes become immediately due and owing. *Id.* § 6.02 at 91.

195. BOKF served CEC with a Demand for Payment of Guaranteed Obligations on February 18, 2015. BOKF ECF No. 1-9 (BOKF Demand Letter February 18, 2015); Declaration of George Kubin ("Kubin. Decl.") at ¶ 7.

196. On February 23, 2015, CEC announced its position that CEC is not subject to the Parent Guarantee.* Ex. 76 ECF 32-14 (February 23, 2015 8-K) at Item 7.01.

197. On April 4, 2016, CEOC and its affiliated debtors filed their Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code (the "Chapter 11 Plan"), which is based upon the RSA. Ex. 77 (Chapter 11 Plan).

198. Holders of the First Lien Notes and Second Lien Notes are deemed impaired under the Chapter 11 Plan. *Id.* at 32 (describing status of First Lien Notes and Second Lien Notes as impaired).

VII. DAMAGES

199. As of the date of the filing of this Motion, the outstanding principal amount of debt owed under the First Lien Indentures is \$6,345,000,000.00 comprised of the following:

- June 10, 2009, governing 11.25% Senior Secured Notes due 2017: \$2,095,000,000.00;
- February 12, 2012, governing CEOC's 8.5% Senior Secured Notes due 2020: \$1,250,000,000.00;
- August 22, 2012, governing 9% Senior Secured Notes due 2020: \$1,500,000,000.00; and
- February 15, 2013, governing 9% Senior Secured Notes due 2020: \$1,500,000,000.00.

See Declaration of Gavin Wilkinson (the "Wilkinson Decl.") at ¶¶ 4-12.

200. As of the date of the filing of this Motion, the outstanding principal under the BOKF Indenture is \$750,000,000.00. *See* Kubin Decl., ¶ 5.

201. The amount of interest due on Second Lien Notes under the BOKF Indenture and on the First Lien Notes under the UMB Indentures changes daily. *See* Kubin Decl., ¶ 6; Wilkinson Decl., ¶ 13.

202. None of the amounts set forth in ¶¶ 199-201 above has been paid despite the Trustees' demands. *See* Kubin Decl., ¶¶ 7-8; Wilkinson Decl. ¶ 14.

Respectfully submitted,

Dated: New York, New York
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