

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

TRILOGY PORTFOLIO COMPANY, LLC and
RELATIVE VALUE-LONG/SHORT DEBT
PORTFOLIO, A SERIES OF UNDERLYING
FUNDS TRUST,

Plaintiffs,

v.

CAESARS ENTERTAINMENT CORPORATION.
and CAESARS ENTERTAINMENT OPERATING
CO., INC.,

Defendants.

No. 1:14-cv-07091-JSR

FREDERICK BARTON DANNER, Individually
and On Behalf of All Others Similarly Situated,

Plaintiffs,

v.

CAESARS ENTERTAINMENT CORPORATION.
and CAESARS ENTERTAINMENT OPERATING
CO., INC.,

Defendants.

No. 1:14-cv-07973-JSR

**CAESARS ENTERTAINMENT CORPORATION'S
LOCAL CIVIL RULE 56.1 RESPONSE TO PLAINTIFFS'
COUNTER-STATEMENT OF UNDISPUTED MATERIAL FACTS**

Pursuant to Local Civil Rules 56.1(a)–(b) of the Local Rules of the United States District Court for the Southern District of New York, Defendant Caesars Entertainment Corporation (“CEC”) respectfully submits these responses to Plaintiffs’ counter-statement of undisputed material facts. Capitalized terms not defined herein have the same meaning as assigned in CEC’s Memorandum of Law in Support of its Motion for Summary Judgment,

CEC's Statement of Undisputed Material Facts ("CEC 56.1"), and CEC's Response to Plaintiffs' Statement of Undisputed Material Facts ("CEC 56.1 R") and Counter-Statement of Undisputed Material Facts ("CEC 56.1 CS").

Plaintiffs' Response to CEC's Statement of Material Facts begins with a general objection to the reliance on a sworn declaration submitted by David B. Sambur, a Board Member of CEC. Plaintiffs contend that the Federal Rules require a declaration to be based on personal knowledge, and that Mr. Sambur's declaration does not meet this test because it states that it is based on "personal knowledge and CEC's business records." Based on this supposed deficiency, Plaintiffs ask this Court to disregard the declaration. Plaintiffs' request is meritless, and should be rejected, for several reasons:

First, Plaintiffs' request is procedurally improper. Local Rule 56.1 does not authorize a party to make a general objection in a 56.1 Response. Rather, the relief sought by Plaintiffs—that the Court disregard the declaration—is properly sought via motion to strike, as Plaintiffs' own authority makes clear. *See Primmer v. CBS Studios*, 667 F. Supp. 2d 248, 255 (S.D.N.Y. 2009). Plaintiffs make no such motion (likely because the vague bases for their "general objection" are meritless), and their request should be disregarded.

Second, Mr. Sambur's declaration is based on personal knowledge, as well as certain identified business records. Plaintiffs' contentions that the declaration does not identify the business records in question or when a statement is based on personal knowledge and when it is supplemented by a business record is refuted by the declaration on its face. The declaration attaches the specific business records in question (which Mr. Sambur separately authenticates), and it indicates by citation when the factual statement is supported by those documents. There is no basis—and Plaintiffs provide none—to disregard such evidence. *Bank of Am., N.A. v.*

Kamico, Inc., No. 11 Civ. 5255, 2012 WL 1449185, at *5–6 (S.D.N.Y. Apr. 24, 2012) (holding that there was no question as to the competence of a declaration by the vice president of a party because the witness was qualified and duty-bound to review the relevant business records before making the affidavit); *New York v. St. Francis Hosp.*, 94 F. Supp. 2d 423, 426 (S.D.N.Y. 2000) (“Affiants may testify as to the contents of records they reviewed in their official capacity.”).

Third, Plaintiffs’ statement that Mr. Sambur could not recall certain information during his deposition is neither here nor there. Mr. Sambur was asked thousands of questions over the course of his two days of testimony, and in certain circumstances he did not have the information requested. For example, after it was established that Mr. Sambur was not a party to conversations between two committees, Mr. Sambur stated, when asked what the committees said to each other: “I don’t know what they said.” (Sambur Tr. at 104:9–25.) Similarly, after it was established that Mr. Sambur did not participate in discussions between a trustee and legal counsel, Mr. Sambur responded, when asked if he knew which individuals were part of those discussions: “No.” (*Id.* at 445:7–18.) But Mr. Sambur’s lack of knowledge on such topics is irrelevant. His prior answers are relevant only to the extent that there is anything in his declaration that is inconsistent with those answers. There is not. And Plaintiffs identify no such inconsistencies. Thus, there is no basis for the Court to disregard his sworn declaration.

Responses to Plaintiffs’ Counter-Statement of Undisputed Facts

1. CEC objects to the statement on the ground that it does not set forth a short and concise statement of additional material fact as required by Local Civil Rule 56.1(b). To the extent a response is required, CEC incorporates its Response to Plaintiffs’ Statement of Undisputed Material Facts. (*See* CEC 56.1 R ¶¶ 1–239.)

2. Undisputed.

3. Undisputed that on April 6, 2006, the predecessor entities to CEC and CEOC filed a Form S-3 with the SEC. CEC disputes that the quoted language in the statement appears in the Form S-3. *See generally* CEC and CEOC Registration Statement (Form S-3) (Apr. 6, 2006), *available at* http://www.sec.gov/Archives/edgar/data/858339/000110465906023155/a06-8200_1s3asr.htm (the “Form S-3”). CEC further disputes the statement to the extent that it implies that CEC admitted that the Guarantee of the 2016 Notes constitutes an “indenture security” under the 2006 Indenture or a “security” under the Securities Act. The Form S-3 states that “[n]o separate consideration will be received for the Guarantee,” *id.*, describes “[t]he debt securities *and related guarantees*,” *id.* (emphasis added), contains a section titled “Guarantee of Debt Securities,” *id.* at 8 (emphasis added), and another section titled “Validity of the Securities *and Guarantees*.” *Id.* at 17 (emphasis added). The Guarantee was not separately marketed or made available for purchase. (CEC 56.1 ¶ 7.)

4. The cited document speaks for itself. CEC disputes the characterization of the Guarantee as being featured “prominently” on the Prospectus. Undisputed that the first page of the Prospectus describes “Debt Securities Guaranteed by [CEC].” *See* Form S-3.

5. Undisputed.

6. The cited document speaks for itself. Disputed to the extent that the statement implies that Mr. Sambur’s testimony concerning the value of CEOC common stock at the time the PIP was implemented is contradicted by the cited document, as that document refers to other parties’ opinion as to the value of CEOC stock. *See* Declaration of Clay J. Pierce (May 31, 2016), ECF No. 150, Ex. C; (*see also* CEC 56.1 R ¶ 148.)

7. Undisputed. For clarity, CEC notes that on June 6, 2016, CEOC and its affiliated debtors filed an updated Second Amended Joint Plan of Reorganization Pursuant to

Chapter 11 of the Bankruptcy Code and related Disclosure Statement. *See* Second Modified Chapter 11 Plan of Reorganization, *In re Caesars Operating Co., Inc.* 15 BR 1145 (Bankr. N.D. Ill.), ECF No. 3951; Disclosure Statement, *In re Caesars Operating Co., Inc.*, 15 BR 1145 (Bankr. N.D. Ill.), ECF No. 3952.

8. Undisputed. For clarity, CEC notes that the updated Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code and related Disclosure Statement filed on June 6, 2016, also state that senior unsecured creditors are expected to receive a 33–56% recovery, while senior unsecured creditors that reject the Second Amended Plan are expected to receive a 22–33% recovery. *See* Disclosure Statement, *supra*.

