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 STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF ITS MOTIONS FOR SUMMARY JUDGMENT

Pursuant to Local Civil Rule 56.1(a) of the Local Rules of the United States District Court for the Southern District of New York, Defendant Caesars Entertainment Corporation ("CEC") respectfully submits this statement of undisputed material facts in support of its motions for summary judgment in the above-captioned cases.

I. CAESARS

1. CEC and its subsidiaries, including Caesars Entertainment Operating Company, Inc. ("CEOC"), own, operate, or manage approximately 50 casinos in 14 U.S. states and five countries. Declaration of David B. Sambur ("Sambur Decl.") ¶ 3.

II. THE INDENTURE AND THE GUARANTEE

2. The face value of CEOC debt not held by Caesars affiliates as of December 31, 2013, was approximately $18 billion, separated into 21 different tranches. Declaration of Philippe Adler ("Adler Decl.") Ex. 1 (Caesars Entm't Corp., Annual Report Form 10-K (Mar. 17, 2014)), at 83.

3. CEOC issued 6.5% Senior Notes due 2016 (the "2016 Notes") under an indenture, dated June 9, 2006 (the "2006 Indenture"). *Id*. Ex. 7 (Trilogy-SDNY-0012057), at 12059. The original parties to the 2006 Indenture include CEOC, CEC, and the initial trustee, U.S. Bank National Association. *See generally id*.

4. Article XV of the 2006 Indenture sets forth the terms of CEC's Parent Guarantee of the 2016 Notes. *See id*. at 12111–14.

5. Section 1503 of the 2006 Indenture provides:

> The Guarantor shall be released from all of its obligations under the Guarantee with respect to Securities of any series and under this Indenture if:
>
> > (i) [CEOC] or [CEC] has transferred all or substantially all of its properties and assets to any Person . . . , or has merged into or consolidated with another Person . . . ;
> >
> > (ii) [CEC] liquidates . . . and complies, if applicable, with the provisions of this Indenture . . . ; or
> >
> > (iii) [CEOC] ceases for any reason to be a "wholly owned subsidiary" of [CEC] (as such term is defined in Rule 1-02(z) of the Regulation S-X promulgated by the SEC).

Id. at 12112–13.

6. Rule 1-02(z) of Regulation S-X (subsequently renumbered as Rule 1-02(aa)) defines a "wholly owned subsidiary" as "a subsidiary substantially all of whose outstanding voting shares are owned by its parent and/or the parent's other wholly owned subsidiaries." 17 C.F.R. § 210.1-02(aa).

7. The 2016 Notes were registered with the SEC through a Form S-3 and accompanying Prospectus that describes the "debt securities" being offered. Adler Decl. Ex. 18 (Danner 002582), at 2591–92. The Prospectus also describes the Guarantee of the 2016 Notes, but does not indicate that it is separately available for purchase. *See id*. at 2591–95. The 2016 Notes were marketed by a Prospectus Supplement that summarized the 2016 Notes and indicated that the Guarantee was a feature of the 2016 Notes, but did not separately market the Guarantee for purchase. Adler Decl. Ex. 19 (CEC-NOTEHOLDER_00099877).

8. Section 202 of the 2006 Indenture sets forth the "Form of Face" for the 2016 Notes, and provides that the 2016 Notes will be authenticated and executed. *Id*. Ex. 7 (Trilogy-SDNY-0012057), at 12078–79.

9. Section 1502 of the 2006 Indenture provides that the guarantee shall be "endorsed on each Security authenticated and delivered by the Trustee." *Id*. at 12112.

10. Section 902 of the 2006 Indenture provides that CEOC, CEC, and the Trustee "may enter into a supplemental indenture with the written consent of the Holders of at least a majority in principal amount of the Outstanding Securities of each series affected by such supplemental indenture . . . , for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the Holders of the Securities of such series." *Id.* at 12103. "Outstanding" securities is defined in the 2006 Indenture to exclude "Securities owned

by [CEOC] or any obligor upon the Securities or any Affiliate of [CEOC] or any such other obligor." *Id*. at 12071. "Affiliate" is defined in the 2006 Indenture as "any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person." *Id*. at 12068. "Control" is defined in the 2006 Indenture as "the power to direct the management and policies . . . directly or indirectly, whether through the ownership of voting securities, by contract or otherwise." *Id*.

11. Section 902(1) of the 2006 Indenture prohibits amendments to the indenture without the unanimous consent of all holders that "change the Stated Maturity of the principal of, any installment of principal of or interest on, any Security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, or reduce the amount of the principal of an Original Issue Discount Security or any other Security which would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 502 . . . , or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date)." *Id*. at 12103.

12. Section 904 of the 2006 Indenture provides that "[u]ntil an amendment or waiver becomes effective, a consent to it by a Holder of a Security of each series affected by such amendment or waiver is a continuing consent by the Holder." *Id.* at 12104.

13. Section 508 of the 2006 Indenture provides: "Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and any premium and . . . interest on such Security on the respective Stated Maturities expressed in such Security . . . and to institute suit

for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder." *Id.* at 12093.

14. "Securities" is defined in the 2006 Indenture as "the meaning stated in the first recital of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture." *Id*. at 12072. The first recital of the 2006 Indenture provides: "[CEOC] and [CEC] have duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of unsecured debentures, notes or other evidences of indebtedness (together with the related guarantees provided by [CEC], the 'Securities'), to be issued in one or more series as provided for in this Indenture." *Id*. at 12068.

15. Section 309 of the 2006 Indenture provides that CEOC "may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which [CEOC] may have acquired in any manner whatsoever." *Id*. at 12088.

16. Article XI of the 2006 Indenture governs "Redemption of Securities." *Id*. at 12106.

17. Section 1101 of the 2006 Indenture provides: "Securities of any series shall not be redeemable before their Stated Maturity at the option of any Holder thereof, upon the occurrence of any particular circumstances or otherwise. Securities of any series which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 301 for such Securities) in accordance with this Article." *Id.* at 12106.

18. Section 1102 of the 2006 Indenture provides: "The election of [CEOC] to redeem any Securities shall be evidenced by a Board Resolution or in another manner specified as contemplated by Section 301 for such Securities. In case of any redemption at the election of

[CEOC], [CEOC] shall, at least 45 days prior to the Redemption Date fixed by [CEOC] (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date, of the principal amount of Securities of such series to be redeemed and, if applicable, of the tenor of the Securities to be redeemed. In the case of any redemption of Securities (A) prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, or (B) pursuant to an election of [CEOC] which is subject to a condition specified in the terms of such Securities or elsewhere in this Indenture, [CEOC] shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction or condition." *Id*.

19. Section 1103 of the 2006 Indenture provides that if "less than all the Securities of any series are to be redeemed . . . , the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption." *Id.*

20. Section 501(5) of the 2006 Indenture provides that it is an "Event of Default" for CEOC "or any of its Significant Subsidiaries pursuant to or within the meaning of any Bankruptcy Law: (a) commence[] a voluntary case, (b) consent[] to the entry of an order for relief against it in an involuntary case, (c) consent[] to the appointment of a Custodian of it or for all or substantially all of its property, (d) make[] a general assignment for the benefit of its creditors, or (e) generally is not paying its debts as the same become due." *Id*. at 12090. A bankruptcy of CEC is not an "Event of Default." *See generally id*. at 12089–90.

21. Section 301(20) of the 2006 Indenture provides that "any addition to or change in the covenants set forth in Article Ten" of the 2006 Indenture "shall be . . . set forth . . . in an Officer's Certificate." *Id*. at 12081–83.

22. The 2006 Indenture defines "Officer's Certificate" as "a certificate signed by an Officer and delivered to the Trustee." *Id*. at 12071. "Officer" is defined as "the Chairman of the Board, the President, any Vice-President, the Treasurer, the Secretary, any Assistant Treasurer or any Assistant Secretary of the Corporation, or the Guarantor." *Id*.

23. On June 9, 2006, the date that the 2006 Indenture was issued, an Officer's Certificate, signed by Jonathan Halkyard, then-Senior Vice President and Treasurer of CEOC, was delivered to the trustee for the 2006 Indenture that added additional covenants to the 2006 Indenture. *Id*. at 12068, 12117–22.

24. Section 1007 of the 2006 Indenture, as described in the corresponding Officer's Certificate, provides that neither CEOC "nor any of its Subsidiaries may issue, assume or guarantee any Indebtedness secured by a Lien upon any Consolidated Property or on any Indebtedness or shares of capital stock of, or other ownership interests in, any Subsidiaries," subject to certain enumerated exceptions. *Id.* at 12117–19. The restrictions of Section 1007 do not apply to CEC. *See generally id*.

25. Section 1008 of the 2006 Indenture, as described in the corresponding Officer's Certificate, provides that neither CEOC "nor any of its Subsidiaries will enter into any Sale and Lease-Back Transaction," subject to certain enumerated exceptions. *Id*. at 12119. The restrictions of Section 1008 do not apply to CEC. *See generally id*.

26. Plaintiff Trilogy Portfolio Company, LLC ("Trilogy") holds [redacted] in face value of 2016 Notes, [redacted] *Id*. Ex. 8

(Trilogy-SDNY-0076171), at 76176. [redacted] *Id*. [redacted] *Id*.

27. Plaintiff Relative Value-Long/Short Debt Portfolio ("Relative Value") holds $4,432,000 in face value of 2016 Notes. Trilogy Amended Compl. ¶ 23, No. 14-7091, ECF No. 31. [redacted] Adler Decl. Ex. 9 (Meehan-SDNY-0152597), at 152599.

III. THE B-7 REFINANCING AND 5% STOCK SALE

28. In 2014, CEOC raised $1,750,000,000 in new "B-7" term loans (the "B-7 Refinancing"). *Id*. Ex. 23 (CEC-NOTEHOLDER_00044555), at 44555; *id*. Ex. 24 (Sambur Tr.), at 69:6–11.

29. To consummate the B-7 Refinancing, CEOC executed an "Incremental Facility Amendment and Term B-7 Agreement," dated June 11, 2014 (the "B-7 Agreement"). *Id*. Ex. 23 (CEC-NOTEHOLDER_00044555).

30. The funds raised in the B-7 Refinancing were used to pay off all of CEOC's debt that was set to mature in 2015, and some CEOC debt that was set to mature in 2016 and 2017. *Id*. Ex. 24 (Sambur Tr.), at 66:5–18, 71:4–72:21, 205:13–21; *id*. Ex. 25 (Beato Tr.), at 45:19–23.

31. On May 6, 2014, CEC publicly announced a tender offer made by CEOC to repurchase all outstanding 5.625% Senior Notes due 2015 and 10.00% Second-Priority Senior Secured Notes due 2015. *Id*. Ex. 26 (Caesars Entm't Corp., Current Report Form 8-K (May 6, 2014)); *id*. Ex. 24 (Sambur Tr.), at 68:8–12.

32. By July 29, 2014, approximately 99.1% of the 5.625% Senior Notes due 2015 had been tendered. Sambur Decl. ¶ 20.

33. CEOC redeemed the remaining non-tendered 5.625% Senior Notes due 2015 on August 15, 2014. *Id.*; *id.* Ex. D; *see also* Adler Decl. Ex. 24 (Sambur Tr.), at 71:4–72:21.

34. In connection with the B-7 Refinancing, CEOC's first lien credit facility with its bank lenders was amended to relax certain financial covenants. Adler Decl. Ex. 27 (CEC-NOTEHOLDER_00025379). That same credit facility was previously amended on May 20, 2011 and March 1, 2012. *Id.* at 25384–85.

35. Section 4.1(b)(6) of the B-7 Agreement provides that the completion of the B-7 Refinancing was contingent on CEOC no longer being a "Wholly-Owned Subsidiary" of CEC. *See id.* Ex. 23 (CEC-NOTEHOLDER_00044555), at 44563–64 ("Prior to or substantially concurrently with the assumption of the Initial Term B-7 Loans by [CEOC], [CEOC] shall not be a Wholly-Owned Subsidiary of [CEC].").

36. The B-7 Agreement did not result in any amendment to any indenture governing CEOC's debt. *See id.* at 44559–62; *see also* Sambur Decl. ¶ 17.

37. The B-7 Agreement does not refer to the 2014 Performance Incentive Program (as defined below) or any employee incentive program for CEOC employees. *See generally* Adler Decl. Ex. 23 (CEC-NOTEHOLDER_00044555).

38. The B-7 Agreement does not refer to the NPSA (as defined below) or any amendments to any indentures governing any CEOC debt. *See generally id.*

39. The B-7 Agreement does not refer to the RSA (as defined below) or propose or constitute a comprehensive reorganization of CEOC's capital structure. *See generally id.*

40. On May 5, 2014, CEC entered into a separate "Stock Purchase Agreement" with each of Scoggin LLC, Paulson & Co., Inc., and Chatham Asset Management, LLC to sell a total of 68.1 shares of its CEOC stock for $6,150,000 (the "5% Stock Sale"). *Id*. Ex. 28 (CEC-NOTEHOLDER_00024129); *id*. Ex. 29 (CEC-NOTEHOLDER_00024143); *id*. Ex. 30 (CEC-NOTEHOLDER_00024157) (collectively, the "Stock Purchase Agreements"). Prior to these agreements, CEC held 100% of CEOC's stock, and the 68.1 shares sold represented 5% of the 1,362 shares of CEOC stock held by CEC before the sale. Sambur Decl. ¶ 16.

41. The Stock Purchase Agreements were not contingent upon the B-7 Refinancing. *See generally* Adler Decl. Ex. 28 (CEC-NOTEHOLDER_00024129); *id*. Ex. 29 (CEC-NOTEHOLDER_00024143); *id*. Ex. 30 (CEC-NOTEHOLDER_00024157).

42. The Stock Purchase Agreements do not refer to the 2014 Performance Incentive Program (as defined below) or any employee incentive program for CEOC employees. *See generally id*. Ex. Ex. 28 (CEC-NOTEHOLDER_00024129); *id*. Ex. 29 (CEC-NOTEHOLDER_00024143); *id*. Ex. 30 (CEC-NOTEHOLDER_00024157).

43. The Stock Purchase Agreements do not refer to the NPSA (as defined below) or any amendments to any indentures governing CEOC debt. *See generally id*. Ex. 28 (CEC-NOTEHOLDER_00024129); *id*. Ex. 29 (CEC-NOTEHOLDER_00024143); *id*. Ex. 30 (CEC-NOTEHOLDER_00024157).

44. The Stock Purchase Agreements do not refer to the RSA (as defined below) or propose or constitute a comprehensive reorganization of CEOC's capital structure. *See generally id*. Ex. 28 (CEC-NOTEHOLDER_00024129); *id*. Ex. 29 (CEC-NOTEHOLDER_00024143); *id*. Ex. 30 (CEC-NOTEHOLDER_00024157).

45. The 5% Stock Sale did not result in any amendment to any indenture governing any CEOC debt. *Id*. Ex. 24 (Sambur Tr.), at 725:19–26:11; Sambur Decl. ¶ 17; *see also* Adler Decl. Ex. 28 (CEC-NOTEHOLDER_00024129); *id*. Ex. 29 (CEC-NOTEHOLDER_00024143); *id*. Ex. 30 (CEC-NOTEHOLDER_00024157).

46. Following the 5% Stock Sale, CEC no longer owned 100% of CEOC stock. Sambur Decl. ¶ 16.

47. On May 6, 2014, CEC publicly announced that it had completed the 5% Stock Sale and that the transaction "resulted in the release of the [CEC] guarantee of CEOC's bonds in accordance with the terms of the bond indentures." Adler Decl. Ex. 26 (Caesars Entm't Corp., Current Report Form 8-K (May 6, 2014)), at Ex. 99.3, p. 3.

48. Neither CEC nor CEOC restated any financial statements as a result of the B-7 Refinancing or 5% Stock Sale. Sambur Decl. ¶ 17; *see also* Adler Decl. Ex. 20 (Kopacz Tr.), at 159:3–16; *id*. Ex. 21 (Shaked Tr.), at 85:6–23.

IV. THE 6% STOCK TRANSFER

49. CEC's Human Resources Committee considered implementation of a stock incentive program for Caesars employees during a meeting on May 7, 2014. Adler Decl. Ex. 31 (CEC-NOTEHOLDER_00024330), at 24332.

50. On May 28, 2014 and May 30, 2014, respectively, CEC and CEOC approved adoption of the "2014 Performance Incentive Program." *Id*. Ex. 32 (CEC-NOTEHOLDER_00055542); *id*. Ex. 33 (CEC-NOTEHOLDER_00039619).

51. On May 30, 2014, CEOC undertook a stock split in which each share of its stock was automatically converted into 1,000 shares of its stock. *Id*. Ex. 33 (CEC-NOTEHOLDER_00039619), at 39626.

52. In connection with the 2014 Performance Incentive Program, CEOC distributed 86,936 shares of its stock, representing approximately 6% of its outstanding stock, to various Caesars employees (the "6% Stock Transfer"). *Id*. at 39620–21, 39632; Sambur Decl. ¶ 18.

53. The 2014 Performance Incentive Program does not refer to the B-7 Agreement, or any refinancing of CEOC debt. *See generally* Adler Decl. Ex. 33 (CEC-NOTEHOLDER_00039619).

54. The 2014 Performance Incentive Program does not refer to the Stock Purchase Agreements, or any sale of CEOC stock by CEC to third parties. *See generally id*.

55. The 2014 Performance Incentive Program does not refer to the NPSA (as defined below) or any amendments to any indentures governing any CEOC debt. *See generally id*.

56. The 2014 Performance Incentive Program does not refer to the RSA (as defined below) or propose or constitute a comprehensive reorganization of CEOC's capital structure. *See generally id*.

57. The 6% Stock Transfer did not result in any amendment to any indenture governing any CEOC debt. *See generally id*.; *see also* Sambur Decl. ¶ 18.

58. Following the 6% Stock Transfer, CEC held approximately 89% of CEOC's stock. Sambur Decl. ¶ 18.

59. Neither CEC nor CEOC negotiated the terms of the 6% Stock Transfer with any creditor of CEOC. *Id*.

60. Neither CEC nor CEOC restated any financial statements as a result of the 6% Stock Transfer. *Id.*; *see also* Adler Decl. Ex. 20 (Kopacz Tr.), at 159:3–16; *id.* Ex. 21 (Shaked Tr.), at 85:6–23.

V. THE AUGUST 2014 TRANSACTION

61. On May 15, 2014, Andrew Dietderich, acting as a representative to certain holders of the 2016 Notes and CEOC's 5.75% Senior Notes due 2017 (the "2017 Notes"), sent a letter to representatives of CEC and CEOC concerning the 5% Stock Sale. Adler Decl. Ex. 34 (CEC-NOTEHOLDER_00010306). Those holders of the 2016 Notes and 2017 Note were not affiliated with CEC, nor did CEC or CEOC have any role in selecting them. Sambur Decl. ¶ 21. The May 15, 2014 letter led to a transaction that closed on August 22, 2014 (the "August 2014 Transaction"). *Id.* ¶ 22.

62. The August 2014 Transaction was the result of extensive negotiations. Adler Decl. Ex. 24 (Sambur Tr.), at 327:3–29:8 (describing proposals made by noteholders), 334:16–35:14 (describing disagreements between noteholders and CEC), 337:17–38:8 (stating that prices for August 2014 Transaction were arrived at "through negotiation"); *id.* Ex. 35 (Dietderich Tr.), at 40:6–14 [redacted] 68:10–11 [redacted] 77:6–11 [redacted]

63. On August 12, 2014, a Note Purchase and Support Agreement (the "NPSA") was executed by CEC, CEOC, and four holders of 2016 Notes and 2017 Notes (the "Participating Noteholders"). *Id.* Ex. 36 (CEC-NOTEHOLDER_00047687), at 47702–47707.

None of the Participating Noteholders were participants in the 5% Stock Sale or 6% Stock Transfer. *Compare id*. at 47704–47707, *with id*. Ex. 28 (CEC-NOTEHOLDER_00024129), at 24129, *and id*. Ex. 29 (CEC-NOTEHOLDER_00024143), at 24143, *and id*. Ex. 30 (CEC-NOTEHOLDER_00024157), at 24157, *and id*. Ex. 33 (CEC-NOTEHOLDER_00039619), at 39661–39670.

64. As of August 12, 2014, the Participating Noteholders held $130,226,000 in face value of the 2016 Notes. *Id*. Ex. 36 (CEC-NOTEHOLDER_00047687), at 47711. This was more than 50% of the $248.7 million in "Outstanding" 2016 Notes not held by CEC, CEOC or any of their affiliates. *Id*. Ex. 1 (Caesars Entm't Corp., Annual Report Form 10-K (Mar. 17, 2014)), at 83; *id*. Ex. 7 (Trilogy-SDNY-0012057), at 12071; *id*. Ex. 35 (Dietderich Tr.), at 81:5–14.

65. As of August 12, 2014, the Participating Noteholders held $107,566,000 in face value of the 2017 Notes. *Id*. Ex. 36 (CEC-NOTEHOLDER_00047687), at 47711. This was more than 50% of the $147.9 million in 2017 Notes not held by CEC, CEOC or any of their affiliates. *Id*. Ex. 1 (Caesars Entm't Corp., Annual Report Form 10-K (Mar. 17, 2014)), at 83; *id*. Ex. 35 (Dietderich Tr.), at 81:5–14.

66. Section 2.2(a) of the NPSA provides that at closing each Participating Noteholder shall "transfer all of such Holder's Purchased Notes to CEOC or CEC." *Id*. Ex. 36 (CEC-NOTEHOLDER_00047687), at 47688. The NPSA defines "Purchased Notes" as $89,426,328 in face value of 2016 Notes and $65,973,672 of 2017 Notes held by the Participating Noteholders. *Id*. at 47698, 47711.

67. Section 2.2(b) of the NPSA provides that at closing each of CEC and CEOC "shall pay to the Holders . . . $77.7 million in cash." *Id*. at 47688.

68. Section 2.2(c) of the NPSA provides that at closing "CEOC will execute and deliver to the applicable trustees for the Notes a supplemental indenture with respect to each indenture governing the 2016 Notes and the 2017 Notes." *Id*. at 47688.

[redacted]Section 5.1 of the NPSA provides that "[b]y execution hereof, each [Participating Noteholder] hereby delivers its consent . . . to the proposed amendments" to the 2006 Indenture and the indenture governing the 2017 Notes. *Id*. at 47691. The proposed amendments are set forth in Schedule A of the NPSA. *Id*. Schedule A of the NPSA provides that the Participating Noteholders will agree to "[c]onsent to the removal and acknowledgement of the termination of the CEC guarantee" of the 2016 Notes and 2017 Notes. *Id*. at 47709. Schedule A also provides that the Participating Noteholders, "in the event of a Qualified Solicitation, . . . will be deemed to have consented or approved any act of the holders of Senior Notes." *Id*. at 47710; *see also id*. Ex. 35 (Dietderich Tr.), at 74:7–23 [redacted]

70. In connection with the August 2014 Transaction and the NPSA, CEOC did not provide notice of a redemption to the trustee for the 2006 Indenture. Sambur Decl. ¶ 22.

71. The NPSA does not refer to the B-7 Agreement, or any refinancing of CEOC debt. *See generally* Adler Decl. Ex. 36 (CEC-NOTEHOLDER_00047687).

72. The NPSA does not refer to the Stock Purchase Agreements, or any sale of CEOC stock by CEC to third parties. *See generally id*.

73. The NPSA does not refer to the 2014 Performance Incentive Program or any employee incentive program for CEOC employees. *See generally id*.

74. The NPSA does not refer to the RSA (as defined below) or propose or constitute a comprehensive reorganization of CEOC's capital structure. *See generally id*.

75. On August 19, 2014, Cede & Co., the holder of record for the 2016 Notes held by the Participating Noteholders, sent CEOC and Law Debenture Trust Company of New York, the successor trustee under the 2006 Indenture, letters indicating that, on the request of the Participating Noteholders, Cede & Co. "hereby consents to the amendments to the [2006] Indenture." *Id*. Ex. 37 (CEC-NOTEHOLDER_00006062; CEC-NOTEHOLDER_00006074; CEC-NOTEHOLDER_00006084).

76. On August 22, 2014, CEOC and Law Debenture Trust Company of New York, the successor trustee under the 2006 Indenture, executed a First Supplemental Indenture governing the 2016 Notes. *Id*. Ex. 38 (CEC-NOTEHOLDER_00048497); *id*. Ex. 24 (Sambur Tr.), at 400:3–21. Section 2 of the First Supplemental Indenture governing the 2016 Notes eliminated the definition of "Guarantor" from the 2006 Indenture and eliminated Article XV of the 2006 Indenture in its entirety. *Id*. Ex. 38 (CEC-NOTEHOLDER_00048497), at 48498.

77. On August 22, 2014, CEOC and Law Debenture Trust Company of New York, the successor trustee under the indenture governing the 2017 Notes, executed a First Supplemental Indenture governing the 2017 Notes. *Id*. Ex. 39 (CEC-NOTEHOLDER_00048492); *id*. *id*. Ex. 24 (Sambur Tr.), at 400:3–21. Section 2 of the First Supplemental Indenture governing the 2017 Notes eliminated the definition of "Guarantor" from the indenture governing the 2017 Notes and eliminated Article XII of that indenture in its entirety. *Id*. Ex. 39 (CEC-NOTEHOLDER_00048492), at 48493.

78. The August 2014 Transaction closed on August 22, 2014. Sambur Decl. ¶ 22; Adler Decl. Ex. 41 (CEC-NOTEHOLDER_00048643), at 48643. At closing, the Participating Noteholders transferred to CEC and CEOC approximately $155.4 million of the 2016 Notes and 2017 Notes, and CEC and CEOC each transferred $77.7 million in cash to the

Participating Noteholders, while CEOC paid the Participating Noteholders for accrued and unpaid interest. Sambur Decl. ¶ 22.

79. Neither CEC nor CEOC restated any financial statements as a result of the August 2014 Transaction. Sambur Decl. ¶ 23; *see also* Adler Decl. Ex. 20 (Kopacz Tr.), at 159:3–16; *id*. Ex. 21 (Shaked Tr.), at 85:6–23.

VI. THE RESTRUCTURING SUPPORT AGREEMENT AND CEOC BANKRUPTCY

80. On September 12, 2014, CEC publicly announced that CEC and CEOC had executed non-disclosure agreements with certain senior creditors of CEOC. Adler Decl. Ex. 44 (Caesars Entm't Corp., Current Report Form 8-K (Sep. 12, 2014)).

81. On December 19, 2014, CEC and CEOC executed a Restructuring Support Agreement (the "RSA") certain holders of CEOC's First Lien Notes. *Id*. Ex. 45 (Caesars Entm't Corp., Current Report Form 8-K/A (Dec. 22, 2014)), at Ex. 10.1; *id*. Ex. 46 (Genereux Tr.), at 190:10–91:4. None of the creditor-parties to the RSA were participants in the 5% Stock Sale, 6% Stock Transfer, or the August 2014 Transaction. *Compare id*. Ex. 45 (Caesars Entm't Corp., Current Report Form 8-K/A (Dec. 22, 2014)), at Ex. 10.1, p. 6, *with id*. Ex. 36 (CEC-NOTEHOLDER_00047687), at 47704–47707, *and id*. Ex. 28 (CEC-NOTEHOLDER_00024129), at 24129, *and id*. Ex. 29 (CEC-NOTEHOLDER_00024143), at 24143, *and id*. Ex. 30 (CEC-NOTEHOLDER_00024157), at 24157, *and id*. Ex. 33 (CEC-NOTEHOLDER_00039619), at 39661–39670.

82. The RSA sets forth the economic terms of a proposed plan for the reorganization of CEOC and other debtor-affiliates. *See generally id*. Ex. 45 (Caesars Entm't Corp., Current Report Form 8-K/A (Dec. 22, 2014)), at Ex. 10.1, Ex. B. The parties to the RSA did not include the three purchasers of CEOC stock in the 5% Stock Sale, the recipients of the

6% Stock Transfer, or the Participating Noteholders in the August 2014 Transaction. *See generally id*.

83. Under the RSA, CEOC and other debtor-affiliates will be reorganized into two separate entities, one of which will own the casino properties currently owned by CEOC, and one of which will lease those properties and manage them. *Id*. at Ex. B, p. 7–10.

84. The RSA contemplated that CEOC creditors would receive a combination of new debt and equity in the reorganized company. *Id*. at Ex. B, p. 1–3.

85. As contemplated by the RSA, CEOC filed a voluntary petition for bankruptcy under Chapter 11 of the Bankruptcy Code on January 15, 2015. Chapter 11 Voluntary Petition, *In re Caesars Entertainment Operating Co.*, No. 15-1145 (Bankr. N.D. Ill.), ECF No. 1.

86. Since filing its initial verified statement identifying members of the Ad Hoc Committee of First Lien Noteholders on February 25, 2015, and their economic interests, *see* Adler Decl. Ex. 48 (ECF No. 474), the Ad Hoc Committee has amended that disclosure seven times. *See id*. Ex. 49 (ECF No. 632); *id*. Ex. 50 (ECF No. 1664); *id*. Ex. 51 (ECF No. 2226); *id*. Ex. 52 (ECF No. 2609); *id*. Ex. 53 (ECF No. 3134); *id*. Ex. 54 (ECF No. 3357); *id*. Ex. 55 (ECF No. 3500).

VII. DISCOVERY IN THESE ACTIONS

87. On March 6, 2015, CEC served the following document request on the plaintiffs in the *Trilogy* action:

> All Documents concerning the Notes, including but not limited to: all Documents otherwise concerning any purchase or sale . . . of any Notes, including . . . any other terms of each such transaction.

Id. Ex. 60 (Trilogy's Responses and Objections to First Request for the Production of Documents, served on April 6, 2015), at 8. The plaintiffs in the *Trilogy* action responded to this

request by indicating that they would produce "non-privileged documents . . . that are in their possession, custody or control" concerning this topic. *Id.* at 8–9. CEC has not identified documents reflecting an assignment of TIA claims by the holders of the 2016 Notes that sold those 2016 Notes to the plaintiffs in the *Trilogy* action in the documents produced by those plaintiffs. Adler Decl. ¶ 7.

88. Fact discovery closed in these cases on October 13, 2015. Order, *BOKF N.A.* v. *Caesars Entm't Corp.*, No. 15 Civ. 1561, ECF No. 58.

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