

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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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  
COMPANY, INC.,

Defendants.

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Case No. 1:14-cv-07091 (JSR)

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

Plaintiff,

v.

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

Defendants.

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Case No. 1:14-cv-07973 (JSR)

[Rel. Case No. 1:14-cv-07091 (JSR)]

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

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 and Eastern District of New York, Plaintiffs, Trilogy Portfolio Company, LLC (“Trilogy”) and Relative Value-Long/Short Debt Portfolio, a Series of Underlying Funds Trust (“Long/Short,” and with Trilogy, the “Trilogy

Plaintiffs”), and Frederick Barton Danner (“Danner,” and with the Trilogy Plaintiffs, “Plaintiffs”), respectfully submit: (a) their response to the specific numbered paragraphs of Defendant Caesar Entertainment Corporation’s (“CEC”) Local Civil Rule 56.1 Statement of Undisputed Material Facts in Support of the Motions for Summary Judgment (TRILOGY ECF 137; DANNER ECF 124)<sup>1</sup> (“CEC Statement”); and (b) Plaintiffs’ counter-statement of material facts. These responses are submitted solely for the purposes of CEC’s motion for summary judgment. Nothing herein shall be deemed an admission of the truth, materiality, relevance or admissibility of any CEC statement or declaration at trial or for any other purpose.

**A. Response to CEC’s Counter-Statement of Material Facts.**

(i) General Responses and Objections. In addition to the specific responses to the CEC Statement, Plaintiffs generally respond as follows:

CEC failed to support each allegation in the CEC Statement with citations to admissible evidence. Local Civil Rule 56.1(d) requires that “[e]ach statement by the movant or opponent pursuant to Rule 56.1(a) and (b), including each statement controverting any statement of material fact, must be followed by citation to evidence which would be admissible, set forth as required by Fed. R. Civ. P. 56(c).” Here, eight of the eighty-eight paragraphs or sentences in the CEC Statement are based solely on the Declaration of David B. Sambur in Support of CEC’s

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<sup>1</sup> Citations herein are formatted as follows:

- Documents in this Court’s ECF docket will be cited by ECF number with a short description in parentheses; *e.g.* DANNER ECF 28 or TRILOGY ECF 31 (First Am. Compl.) ¶ 1.
- An exhibit to an ECF document will be cited by docket and exhibit number, with a description of the exhibit; *e.g.* Exhibit A to DANNER ECF 28 would be cited as “ECF 28-1 (2016 Notes Indenture) § 1.01.”
- Documents from the ECF docket of *In re Caesars Entertainment Operating Co., Inc.*, Case No. 15-01145 (ABG) (Bankr. N.D. Ill. 2015) will be cited as “CEOC” followed by ECF number and a short description in parentheses; *e.g.* CEOC ECF 4 (First Day Memo.).

Motions for Summary Judgment (TRILOGY ECF 139; DANNER ECF 120) (“Sambur Decl.”). Fed. R. Civ. Proc. 56(c)(4) requires that “[a]n affidavit or declaration used to support or oppose a motion [for summary judgment] must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.” Here, the Sambur Decl. is not based on “personal knowledge,” but rather “personal knowledge and CEC’s business records.” Sambur Decl. ¶ 1. The Sambur Decl. does not indicate which of the statements included therein are based on Mr. Sambur’s personal knowledge or some other (unspecified) source of information given that the Sambur Decl. contains no citations to admissible evidence from the record. Nor does the Sambur Decl. specify the CEC “business records” relied on by Mr. Sambur. Notably, when testifying as CEC’s Rule 30(b)(6) witness, Mr. Sambur answered “I don’t know” or variations thereon approximately three-hundred fifty (350) times during his 2-day deposition.

This Court has broad discretion to disregard any statements contained in the Sambur Decl. or the CEC Statement that the Court finds to be improper under the Federal Rules of Civil Procedure. *See Primmer v. CBS Studios*, 667 F.Supp.2d 248, 255 (S.D.N.Y. 2009). Because Mr. Sambur fails to establish any foundation for his competence to testify regarding the facts set forth in his Sambur Decl.—thereby violating both Fed. R. Civ. Proc. 56(c) and Local Rule 56.1(b)—Plaintiffs respectfully submit that the Court should disregard the Sambur Decl.

The foregoing general responses and objections are fully incorporated by reference into each of the specific responses set forth below. Any specific response to a CEC Statement is not a waiver, in whole or in part, of any of the foregoing general responses and objections.

**I. PLAINTIFFS' RESPONSES TO CEC'S STATEMENT OF MATERIAL FACTS**

1. Admitted.
2. Admitted that the face value of CEOC debt not held by affiliates of CEC or CEOC as of December 31, 2013, was approximately \$18 billion, separated into approximately 21 different tranches.
3. Admitted.
4. Admitted.
5. Admitted that Section 1503 of the indenture agreement, dated June 9, 2006 (the "2006 Indenture"), contains the language quoted in CEC Statement No. 5.
6. Admitted.
7. Admitted, except denied to the extent CEC Statement No. 7 asserts that the disclosures made or omitted in the Prospectus filed by Harrah's Entertainment, Inc. and Harrah's Operating Company, Inc., dated April 6, 2006 (the "Prospectus") or the Prospectus Supplement to the Prospectus, each a non-governing document that purports to summarize the terms of the 2006 Indenture (*i.e.*, the governing document), have any bearing on whether the Guarantee is a "security" or on the unambiguous terms of the Indenture.
8. Admitted.
9. Admitted that Section 1502 of the 2006 Indenture contains the language quoted in CEC Statement No. 9.
10. Admitted that Section 902 of the 2006 Indenture contains the language quoted in the first sentence of CEC Statement No. 10. The second sentence of CEC Statement No. 10 is denied, except to admit that "Outstanding" when used with respect to Securities is defined in the 2006 Indenture to exclude "Securities owned by [CEOC] or any other obligor upon the Securities

or any Affiliate of [CEOC] or any such other obligor. . . .” (*Id.* § 101). The third sentence of CEC Statement No. 10 is admitted.

11. Admitted that Section 902(1) of the 2006 Indenture contains the language quoted in CEC Statement No. 11.

12. Admitted that Section 904 of the 2006 Indenture contains the language quoted in CEC Statement No. 12.

13. Admitted.

14. Admitted.

15. Admitted that Section 309 of the 2006 Indenture contains the language quoted in CEC Statement No. 15.

16. Admitted.

17. Admitted.

18. Admitted.

19. Admitted that Section 1103 of the 2006 Indenture contains the language quoted in CEC Statement No. 19.

20. Admitted that Section 501(5) of the 2006 Indenture contains the language quoted in the first sentence of CEC Statement No. 20. The second sentence of CEC Statement No. 20 is admitted.

21. Admitted.

22. The first sentence of CEC Statement No. 22 is admitted. Admitted that Section 101 of the 2006 Indenture contains the language quoted in the second sentence of CEC Statement No. 22.

23. Admitted.

24. Admitted.

25. Admitted.

26. Admitted.

27. Admitted.

28. Admitted.

29. Admitted.

30. Admitted.

31. Admitted.

32. Admitted, except denied to the extent that CEC Statement No. 32 conflicts with CEC's representation in its annual report for 2014 that "CEOC retired and redeemed 100.0% of the outstanding amount of the 5.625% Notes." (CEC Annual Report (period ended December 31, 2014), available at <http://investor.caesars.com/secfiling.cfm?filingID=858339-15-55&CIK=858339>.)

33. Admitted.

34. Admitted.

35. Admitted.

36. Admitted.

37. Admitted.

38. Admitted.

39. Denied, except to admit that the "Incremental Facility Amendment and Term B-7 Agreement," dated June 11, 2014, does not refer to the Restructuring Support Agreement, dated December 19, 2014 (the "RSA"). (TRILOGY ECF 140 and DANNER ECF 121 (Declaration of Philippe Adler ("Adler Decl.))) Ex. 23)

40. Admitted.

41. Admitted.

42. Admitted.

43. Admitted.

44. Denied, except to admit that each “Stock Purchase Agreement” CEC entered into with each of Scoggin LLC, Paulson & Co., Inc., and Chatham Asset Management, LLC does not refer to the RSA. (Stock Purchase Agreement between Caesars Entertainment Corporation and Chatham Asset Management, LLC, May 5, 2014, CEC-NOTEHOLDER\_00000796 – 00000809; Stock Purchase Agreement between Caesars Entertainment Corporation and Paulson & Co., Inc., May 5, 2014, CEC-NOTEHOLDER\_00007118 – 00007131; Stock Purchase Agreement between Caesars Entertainment Corporation and Scoggin LLC, May 5, 2014, CEC-NOTEHOLDER\_00000810 – 00000823)

45. Admitted.

46. Admitted, except denied to the extent CEC Statement No. 46 asserts that following CEC’s sale of 68.1 shares, or five percent (5%), of CEOC common stock (the “5% Stock Sale”), CEOC was no longer a “wholly owned subsidiary” of CEC under 2006 Indenture provisions. (TRILOGY ECF 144 (Declaration of Clay J. Pierce in Support of Plaintiffs’ Joint Motion for Summary Judgment (“Pierce Decl.”), Ex. A (2006 Indenture) § 1503(3))

47. Admitted.

48. Admitted.

49. Denied. On May 7, 2014, CEC’s Human Resources Committee considered implementation of a stock incentive program for employees of CEOC. (TRILOGY ECF 140 and DANNER ECF 121 (Adler Decl.)) Ex. 31, at CEC-NOTEHOLDER\_00024332)

50. Denied, the 2014 stock “performance incentive plan” for CEOC common equity (the “PIP”) and the transfer and grant of 86,936 shares of CEOC common stock, which equaled six percent (6%), for distribution (the “6% Stock Transfer”), were not formally adopted and ratified by the CEOC Board until July 30, 2014. (CEOC ECF 3401-13 (Exam. Report Vol. 14) at 813; CEC-NOTEHOLDER\_00010394-CEC-NOTEHOLDER\_00010422)

51. Admitted.

52. Admitted.

53. Admitted.

54. Admitted.

55. Admitted.

56. Denied, except to admit that the 2014 Performance Incentive Program does not refer to the RSA. (TRILOGY ECF 140; DANNER ECF 121 (Adler Decl.) Ex. 33)

57. Admitted.

58. Denied. Following the 5% Stock Sale and the PIP, CEC owned 89.3% of CEOC’s equity. (Defendant Caesars Entertainment Corporation’s Responses & Objections to Plaintiffs’ First Set of Requests for Admissions (“CEC Admis.”) No. 56; CEOC ECF 1 (Petition) at Ex. A.

59. Denied. [REDACTED]

[REDACTED], CEOC provided additional compensation when it made payment to each participant in the PIP in an amount such that, after payment by the participant of all federal, national, state, provincial and local income and employment taxes imposed under U.S. law (including any interest or penalties imposed with respect to such taxes), the participant retained an amount equal to the income taxes due on the grant of the CEOC shares awarded



through the PIP. (Pierce Decl., Ex. G (Email from Diane Wilfong to Michael McClellan and Chris Steiglitz, “Tax gross up on CEOC stock grant,” August 2, 2015); CEC Admis. No. 38)

60. Admitted.

61. The first and third sentences of CEC Statement No. 61 are admitted. For the reasons set forth above, the second sentence of CEC Statement No. 61 is not supported by citation to admissible evidence. To the extent any response is required, Plaintiffs deny the second sentence of CEC Statement No. 61.

62. Admitted.

63. The first sentence of CEC Statement No. 63 is denied. On August 12, 2014, the Note Purchase and Support Agreement (the “NPSA”) was executed by CEC; CEOC; [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (collectively, the

“Favored Noteholders”). (CEC Admis Nos. 40-41; Pierce Decl. Ex. D (NPSA)) The second sentence is admitted.

64. Admitted.

65. Admitted.

66. The first sentence of CEC Statement No. 66 is denied, Section 2.2(a) of the NPSA provides that at closing each of CEC and CEOC “transfer all of such Holder’s Purchased Notes to CEOC or CEC, as applicable, or the designated intermediary of CEOC or CEC, as applicable;...” (Pierce Decl., Ex. D (NPSA) § 2.2(a)). The second sentence of CEC Statement No. 66 is admitted.

67. Denied, Section 2.2(b) of the NPSA provides that “(i) CEC shall pay to the Holders, [REDACTED] [REDACTED] \$77.7 million in cash, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] (Pierce Decl., Ex. D (NPSA) § 2.2(b))

68. Denied, Section 2.2(c) of the NPSA provides “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 [REDACTED] [REDACTED] (Pierce Decl., Ex. D (NPSA) § 2.2(c)).

69. The first, third and fourth sentences of CEC Statement No. 69 are admitted. The second sentence of CEC’s Statement No. 69 is denied, as Schedule A provides for the “Consent Terms”, but not the actual proposed amendments to the Indenture. (Pierce Decl., Ex. D (NPSA) Schedule A).

70. For the reasons set forth above, CEC Statement No. 70 is not supported by citation to admissible evidence. To the extent any response is required, Plaintiffs deny CEC Statement No. 70.

71. Admitted.

72. Admitted.

73. Admitted.

74. Denied, except to admit the NPSA does not refer to the Restructuring Support Agreement (“RSA”). (TRILOGY ECF 140 and DANNER ECF 121 (Adler Decl.) Ex. 36)

75. Admitted.

76. Admitted.

77. Admitted.

78. Admitted.

79. Admitted.

80. Admitted.

81. Admitted.

82. The first sentence of CEC Statement No. 82 is admitted. The second sentence of CEC Statement No. 82 is denied to the extent the RSA does not expressly identify the noteholders and/or the ultimate beneficial holder who are party to the RSA. (CEC Form 8-K/A filed Dec. 22, 2014, at Ex. 10.1, Ex. B)

83. Admitted.

84. Admitted

85. Admitted.

86. Denied, excepted admitted that counsel for a purported Ad Hoc Committee of First Lien Noteholders filed statements pursuant to Rule 2019 of the Federal Rules of Bankruptcy Procedure purporting to identify its clients and their respective economic interests relative to CEOC. (DANNER ECF 121 (Adler Decl.) Exs. 48-55)

87. The first and second sentences of CEC Statement No. 87 are admitted. The third sentence of CEC Statement No. 87 is denied as Plaintiffs objected to the production of “documents and/or information that: (a) are already in CEC’s possession, custody or control; ... (c) are in the possession, custody, or control of third parties. . . ,” which include, for purposes of CEC Statement No. 87, letters dated October 6 and October 16, 2014 from Cede & Co., the holder of the record of the 2016 Notes, addressed and sent to CEOC regarding both Trilogy and Long/Short. (TRILOGY ECF 140 and DANNER ECF 121 (Adler Decl.) Ex. 60 (General Objection No. 8); *see also* Declaration of Clay J. Pierce in Opposition to Caesars Entertainment Corporation’s Motion for Summary Judgment, dated May 31, 2016 (“May 31 Pierce Decl.”) Exs. A-B)

88. Admitted.

## II. PLAINTIFFS' JOINT COUNTER-STATEMENT OF MATERIAL FACTS

1. Plaintiffs hereby incorporate by reference all statements made in the Statement of Undisputed Material Facts Pursuant to Local Civil Rule 56.1 in Support of Plaintiffs' Joint Motion for Partial Summary Judgment (TRILOGY ECF 143; DANNER ECF 124) ("Plaintiffs' SUMF").

2. Danner is a holder of 6.50% senior unsecured notes due 2016 issued by CEOC (the "2016 Notes") and has held such notes as of April 30, 2007. (Danner 000001, 000009; DANNER ECF 63 Ex. A; DANNER ECF 64 ¶ 1; DANNER ECF 72 ¶ 1, DANNER ECF 28 ¶ 18)

3. CEC registered its Guarantee of the 2016 Notes with the SEC at the time the 2016 Notes were issued and specifically "identified the Guarantee as a 'class of securities'" in its SEC Registration Statement. (Form S-3 Registration Statement filed by CEC on April 6, 2006 (the "Registration Statement"), [http://www.sec.gov/Archives/edgar/data/858339/000110465906023155/a06-8200\\_1s3asr.htm](http://www.sec.gov/Archives/edgar/data/858339/000110465906023155/a06-8200_1s3asr.htm); (CEC Statement No. 7)

4. The Guarantee was prominently featured on the cover of the Prospectus for the 2016 Notes. (TRILOGY ECF 140 and DANNER ECF 121 (Adler Decl.) Ex. 18)

5. David Sambur, CEC's Rule 30(b)(6) witness, [REDACTED] (September 9, 2015 Deposition Transcript of David Sambur 539:17-25)

6. On June 6, 2014 (31 days after announcing the 5% Stock Sale and 7 days after CEC's authorizing the CEOC board to adopt the PIP), Mr. Sambur [REDACTED]

[REDACTED] pixie dust.” (May 31 Pierce Decl., Ex. C (APOLLO-NOTEHOLDER\_00010773))

7. On May 27, 2016, CEOC and its affiliated debtors filed their Disclosure Statement (the “Amended Disclosure Statement”) for the Debtors’ Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code (the “Amended Plan”). (CEOC ECF 3834-1 (Amended Disclosure Statement); CEOC ECF 3832-1 (Amended Plan))

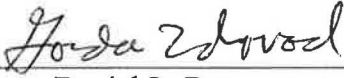
8. Under the Amended Plan, senior unsecured creditors that accept the Amended Plan are expected to receive a 33-56% recovery, while senior unsecured creditors that reject the Amended Plan are expected to receive a 22-33% recovery. (CEOC ECF 3834-1 (Amended Disclosure Statement) at 90)

*[Signature Page Follows]*

Dated: New York, New York  
May 31, 2016

GRANT & EISENHOFER P.A.

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May 31, 2016

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