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 COMPANY, INC., Defendants.	:	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.	:	Case No. 1:14-cv-07973 (JSR) [Rel. Case No. 1:14-cv-07091 (JSR)]

STATEMENT OF UNDISPUTED MATERIAL FACTS
PURSUANT TO LOCAL CIVIL RULE 56.1 IN SUPPORT OF
PLAINTIFFS' JOINT 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 and Eastern District of New York, and in support of their motion for partial summary judgment, 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, the "Plaintiffs"), hereby set forth (this "SUMF") those material facts as to which there is no genuine dispute between the parties.[1]

I. THE PARTIES

1. Trilogy acting through its investment manager, Trilogy Capital Management, LLC, is a holder of 6.50% senior unsecured notes due 2016 (the "2016 Notes") issued by Caesars Entertainment Operating Company, Inc. ("CEOC"). CEOC ECF 3422 (Sixth Supplemental Verified Statement of Drinker Biddle & Reath Pursuant to Federal Rule of Bankruptcy Procedure 2019("Sixth Supp. Verified Rule 2019")) Ex. A. Trilogy maintains its principal place of business in Greenwich, Connecticut. TRILOGY ECF 31 (Amended Complaint for Declaratory Relief and Damages ("TRILOGY First Am. Compl.")) ¶ 26. Trilogy and its affiliate hold and/or manage $9,400,000.00 of the 2016 Notes. CEOC ECF 3422 (Sixth Supp. Verified Rule 2019) Ex. A.

2. Long/Short is a Delaware statutory trust, with principal place of business in Raleigh, North Carolina, and is a holder of $4,432,000.00 of the 2016 Notes. TRILOGY ECF 31 (First Am. Compl.) ¶ 23; CEOC ECF 3422 (Sixth Supp. Verified Rule 2019) Ex. A.

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[1] 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 *BOKF, N.A. v. Caesars Entertainment Corporation*, No. 15-cv-01561 (SAS) will be cited as "BOKF" followed by ECF number and a short description in parentheses; *e.g*. BOKF ECF 39 (BOKF CEC SUMF Resp.).
- 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.).

3. Danner is a holder of the 2016 Notes issued by CEOC. DANNER ECF 28 (First Amended Class Action Complaint ("DANNER First Am. Compl.") ¶ 18; DANNER 000001; DANNER 000009; DANNER 000025; DANNER 000033.

4. Defendant Caesars Entertainment Corporation ("CEC"), formerly known as Harrah's Entertainment, Inc. ("Harrah's Entertainment"), is a Delaware corporation. TRILOGY ECF 35 (Defendant Caesars Entertainment Corporation's Answer to the Amended Complaint ("Answer")) ¶ 27.

5. CEC's principal place of business is One Caesars Palace Drive is Las Vegas, Nevada. TRILOGY ECF 35 (Answer) ¶ 27.

6. CEC and CEOC, through their affiliates, own, operate, or manage approximately 50 casinos in 14 U.S. states and five countries. Defendant Caesars Entertainment Corporation's Responses & Objections to Plaintiffs' First Set of Requests for Admissions ("CEC Admis.") No. 80; BOKF ECF 33 (Plaintiff BOKF, N.A.'s Statement of Undisputed Material Facts Pursuant to Local Civil Rule 56.1 in Support of its Motion for Partial Summary Judgment) ("BOKF SUMF")) ¶ 2; BOKF ECF 39 (Caesars Entertainment Corporation's Local Civil Rule 56.1 Response to BOKF, N.A.'s Statement of Material Facts and Counter-Statement of Material Facts ("BOKF CEC SUMF Response")) ¶ 2.

7. CEOC, formerly known as Harrah's Operating Company, Inc., is a direct operating subsidiary of CEC. TRILOGY ECF 35 (Answer) ¶ 28.

II. THE 2016 NOTES INDENTURE AND CEC'S OBLIGATIONS THEREUNDER

8. The 2016 Notes were sold pursuant to a registered public offering. Supplement to Prospectus Dated Apr. 6, 2006 (http://www.sec.gov/Archives/edgar/data/858339/000110465906040050/a06-12774_1424b2.htm).

9. The 2016 Notes are governed by an indenture agreement, dated June 9, 2006 (the "2016 Notes Indenture"), by and among CEOC (as Issuer), CEC (as Guarantor), and U.S. Bank National Association (as Trustee). Declaration of Clay J. Pierce in Support of Plaintiffs' Joint Motion for Partial Summary Judgment ("Pierce Decl.") Ex. A (2016 Notes Indenture); CEC Admis. No. 1.

10. The terms of the 2016 Notes were supplemented pursuant to an Officers' Certificate dated June 9, 2006, and executed by Jonathan S. Halkyard, the Senior Vice President and Treasurer of Harrah's Operating Company, Inc. (predecessor to CEOC), and Michael D. Cohen, the Vice President, Associate General Counsel and Corporate Secretary of Harrah's Operating Company, Inc. (predecessor to CEOC) and and Harrah's Entertainment, Inc. (predecessor to CEC). Harrah's Entertainment Inc. Form 8-K, filed June 9, 2006 (Officers' Certificate).

11. CEOC issued a total of $750,000,000 in 2016 Notes pursuant to the 2016 Notes Indenture, and CEC guaranteed the payment of all principal and interest. CEC Admis. No. 2; [redacted]; *see also* DANNER ECF 64 (Danner's Statement of Undisputed Material Facts Pursuant to Local Civil Rule 56.1 in Support of his Motion for Summary Judgment ("First DANNER SUMF")) ¶ 11.

12. The CUSIP Number for the 2016 Notes referenced in the preceding paragraph is [redacted]. 2016 Notes; *see also* DANNER ECF 64 (First DANNER SUMF) ¶ 12.

13. The 2016 Notes have a fixed coupon rate of 6.50%. Interest is calculated on a 360 day year and is to be paid on June 1 and December 1 annually. TRILOGY ECF 31 (First Am. Compl.) ¶ 37; TRILOGY ECF 35 (Answer) ¶ 37. The 2016 Notes have a scheduled maturity date of June 1, 2016. *Id.*

14. The 2016 Notes Indenture, the 2016 Notes, and the Guarantee (as defined below) are all governed by the Trust Indenture Act of 1939, 15 U.S.C. §§ 77aaa, *et seq.* (the "TIA"). TRILOGY ECF 31 (First Am. Compl.) ¶ 2; TRILOGY ECF 35 (Answer) ¶ 2.

15. The "Recitals" to the 2016 Notes Indenture state:

> The Corporation and the Guarantor 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 the Guarantor, the "Securities"), to be issued in one or more series as provided for in this Indenture. All things necessary to make this Indenture a valid agreement of the Corporation and the Guarantor, in accordance with its terms, have been done.

Ex. A to Pierce Decl. (2016 Notes Indenture).

16. Section 101 of the 2016 Notes Indenture states in part:

> 'Securities' has the meaning stated in the first recital of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture.

Id.

17. CEC and/or CEOC drafted or instructed counsel to draft a memorandum in which it states in part that "[u]nder US securities laws, a guarantee of a security is considered to be a security separate and apart from the security it guarantees." CEC-NOTEHOLDER_00002704.

18. Section 107 of the 2016 Notes Indenture states:

> <u>Conflict with the Trust Indenture Act.</u>
>
> If any provision hereof limits, qualifies, or conflicts with a provision of the Trust Indenture Act which is required under such provision of the Trust

> Indenture Act to be a part of and govern this Indenture, the latter provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act which may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

Ex. A to Pierce Decl. (2016 Notes Indenture); CEC Admis. No. 5.

19. Section 112 of the 2016 Notes Indenture provides that "[t]his Indenture and the Securities shall be governed by and construed in accordance with the laws of the State of New York without regard to conflicts of laws principles thereof." *Id.*

20. Section 203 of the 2016 Notes Indenture states in part:

> Form of Reverse of Security
>
> No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Corporation, which is absolute and unconditional, to pay the principal of and premium, if any, and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

Id.

21. Section 501 of the 2016 Notes Indenture defines an "Event of Default" as, among other things, the following:

> (5) [CEOC] or any of its Significant Subsidiaries pursuant to or within the meaning of any Bankruptcy Law:
>
> > (a) commences a voluntary case,
> >
> > (b) consents to the entry of an order for relief against it in an involuntary case,
> >
> > (c) consents to the appointment of a Custodian of it or for all or substantially all of its property,
> >
> > (d) makes a general assignment for the benefit of its creditors, or
> >
> > (e) generally is not paying its debts as the same become due.

Id.

22. Section 502 of the 2016 Notes Indenture states in part:

> If an Event of Default specified in Section 501 (5) or (6) shall occur, the principal amount (or specified amount) of and accrued and unpaid interest, if any, on all Outstanding Securities shall *ipso facto* become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

Id.

23. Section 507 of the 2016 Notes Indenture states in part:

> Limitation on Suits
>
> No Holder of any Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless . . . it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all of such Holders.

Id.

24. Section 508 of the 2016 Notes Indenture states:

> Unconditional Right of Holders to Receive Principal, Premium and Interest.
>
> 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 (subject to Section 307) interest on such Security on the respective Stated Maturities expressed in such Security (or, in the case redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

Ex. A to Pierce Decl. (2016 Notes Indenture); CEC Admis. No. 6.

25. Section 508 of the 2016 Notes Indenture was included in the 2016 Notes Indenture pursuant to Section 316(b) of the TIA, which the 2016 Notes Indenture acknowledges. DANNER ECF 28-1 (2016 Notes Indenture) at i; *see also* DANNER ECF 64 (First DANNER SUMF) ¶ 21.

26. Section 512 of the 2016 Notes Indenture states:

> Control By Holders.
>
> The Holders of a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Securities of such series; provided that:
>
> > (1) such direction shall not be in conflict with any rule of law or with this Indenture,
> >
> > (2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction,
> >
> > (3) such direction is not unduly prejudicial to the rights of other Holders of Securities of that series not joining in that action;
> >
> > (4) subject to the provisions of Section 501, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall, by a Responsible Officer of the Trustee, determine that the proceeding so directed would involve the Trustee in personal liability.

Id.

27. Section 801 of the 2016 Notes Indenture states:

> Corporation May Consolidate, Etc., on Certain Terms.
>
> The Corporation shall not consolidate with or merge with or into any other Person or, directly or indirectly, sell, lease or convey all or substantially all of its assets to another Person, and may not permit any Person to, directly or indirectly, sell, lease or convey all or substantially all of its assets to the Corporation, whether in a single transaction or a series of related transactions, unless:
>
> > (1) either the Corporation shall be the continuing person, or the Person (if other than the Corporation) formed by such consolidation or into or with which the Corporation is merged or to which the assets of the Corporation are transferred shall be a corporation organized and validly existing under the laws of the United States or any State thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, all the obligations of the Corporation on the Outstanding Securities and under this Indenture;
> >
> > (2) immediately after giving effect to such transaction, no Event of Default, and no event or condition which, after notice or lapse of

> time or both, would become an Event of Default, shall have occurred and be continuing; and
>
> (3) the Corporation has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, conveyance or lease and such supplemental indenture comply with this Section 801 and that all conditions precedent herein provided for relating to such transaction have been complied with.

Id.

28. Section 901 of the 2016 Notes Indenture states in part:

> <u>Supplemental Indentures Without Consent of Holders</u>
>
> Without the consent of any Holders, the Corporation, the Guarantor and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form reasonably satisfactory to the Trustee, for any of the following purposes:
>
> > (5) to change or eliminate any of the provisions of this Indenture in respect of one or more series of Securities, provided that any such change or elimination (A) shall neither (i) apply to any Security entitled to the benefit of such provision nor (ii) modify the rights of the Holder of any such Security with respect to such provision, or (B) add any new provision to this Indenture, provided that any such addition does not apply to any Security of any series created prior to the execution of such supplemental indenture or (C) shall become effective only when there is no such Security Outstanding; or
> >
> > (6) make any other change that does not adversely affect the rights of any Holder . . . .

Id.

29. Section 902 of the 2016 Notes Indenture states in part:

> <u>Supplemental Indentures With Consent of Holders</u>
>
> The Corporation, the Guarantor 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 (including consents obtained in connection with a tender offer or exchange offer for the Securities of such series), 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; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby,
>
>> (1) 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 change any place of payment where or the coin or currency in which any Security or any premium or interest thereon is payable, 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), or
>>
>> (4) modify any of the provisions of this Section, Sections 508, 513, 116 or 1006, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby; provided, however, that this clause (4) shall not be deemed to require the consent of any Holder with respect to changes in the references to "the Trustee" and concomitant changes in this Section and Section 1006, or the deletion of this proviso, in accordance with the requirements of Sections 611 and 901(8).

Id.

30. Section 905 of the 2016 Notes Indenture requires that every supplemental indenture comply with the TIA. *Id.*

31. Section 1103 of the 2016 Notes Indenture states:

> If less than all the Securities of any series are to be redeemed (unless all the Securities of such series and of a specified tenor are to be redeemed or unless such redemption affects only a single Security), 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 of a portion of the principal amount of any Security of such series; provided that the unredeemed portion of the principal amount of any Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for

> such Security. If less than all the Securities of such series and of a specified tenor are to be redeemed (unless such redemption affects only a single Security), 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 and specified tenor not previously called for redemption in accordance with the preceding sentence.

Id.

32. Section 1501(1) of the 2016 Notes Indenture states CEC's irrevocable and unconditional guarantee of the 6.5% Senior Notes (the "Guarantee") as follows:

> <u>Guarantee</u>
>
> Subject to Section 1501(2), below, the Guarantor hereby irrevocably and unconditionally guarantees (such guarantee being the "*Guarantee*") to each Holder of a Security of any series authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture and the Securities of any series hereunder, that: (i) the principal of, premium, if any, and interest on the Securities of such series promptly will be paid in full when due, whether at the Maturity, by acceleration . . . . Failing payment when due by the Corporation of any amount so guaranteed for whatever reason, the Guarantor [(CEC)] shall be obligated to pay same immediately. The Guarantor hereby agrees that its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Securities of any series of this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of such Securities with respect to any provisions hereof or thereof, the recovery of any judgment against the Corporation, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor.

Ex. A to Pierce Decl. (2016 Notes Indenture); CEC Admis. No. 7.

33. Section 1503(3) of the 2016 Notes Indenture states in part:

> <u>Release of Guarantor</u>
>
> 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:
>
> * * *

> (3) the Corporation ceases for any reason to be a "wholly owned subsidiary" of the Guarantor (as such term is defined in Rule l-02(z) of the Regulation S-X promulgated by the SEC).
>
> Upon any assumption of the Guarantee by any Person pursuant to this Section 1503, such Person may exercise every right and power of the Guarantor under this Indenture with the same effect as if such successor corporation had been named as the Guarantor herein with respect to Securities of any series, and all the obligations of the Guarantor, hereunder and under the Guarantee and the Indenture shall terminate with respect to Securities of any series.

Ex. A to Pierce Decl. (2016 Notes Indenture).

34. Rule 1-02(aa) of Reg. S-X (formerly Rule 1-02(z)), now found at 17 C.F.R. § 210.1-02(aa), defines a "[w]holly 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.

35. Rule 1-02(z) of Reg. S-X defines "[v]oting shares" to mean "the sum of all rights, other than as affected by events of default, to vote for election of directors and/or the sum of all interests in an unincorporated person." 17 C.F.R. § 210.1-02.

36. The Form of Notation of Guarantee of Harrah's Entertainment, Inc. (n/k/a CEC), in Exhibit A to the 2016 Notes Indenture ("Form of Notation"), states:

> For value received, the undersigned, Harrah's Entertainment, Inc. (the "Guarantor") (which term includes any successor person under the Indenture), has unconditionally guaranteed, to the extent set forth in the Indenture and subject to the provisions in the Indenture, dated as of (the "Indenture"), among Harrah's Operating Company, Inc. (the "Corporation"), the Guarantor and U.S. Bank National Association, as trustee (the "Trustee"), (a) the due and punctual payment of the principal of, premium, if any, and interest on, the Securities, whether at maturity, by acceleration, redemption or otherwise, the due and punctual payment of interest on overdue principal of and interest on the Securities, if any, if lawful, and the due and punctual performance of all other obligations of the Corporation to the Holders or the Trustee all in accordance with the terms of the Indenture and (b) in case of any extension of time of payment or renewal of any Securities or any of such other obligations, that the same will be promptly paid in full when due or performed in accordance with

> the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. The obligations of the Guarantor to the Holders of Securities and to the Trustee pursuant to the Guarantee and the Indenture are expressly set forth in Article 15 of the Indenture and reference is hereby made to the Indenture for the precise terms of the Guarantee. Each Holder of a Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee, on behalf of such Holder, to take such action as may be necessary or appropriate to effectuate the subordination as provided in the Indenture and (c) appoints the Trustee attorney-in-fact of such Holder for such purpose; *provided, however*, that the Indebtedness evidenced by this Security Guarantee shall cease to be so subordinated and subject in right of payment upon any defeasance of this Security in accordance with the provisions of the Indenture.

TRILOGY ECF 69-2 (Form of Notation); Ex. A to Pierce Decl. (2016 Note Indenture), Ex. A.

37. The 2016 Notes Indenture was purportedly amended by two supplemental indentures dated August 22, 2014 (collectively, the "Supplemental Indentures"). TRILOGY ECF 31 (First Am. Compl.) ¶ 8; TRILOGY ECF 35 (Answer) ¶ 8.

38. The 2016 Notes Supplemental Indentures are subject to the TIA. TRILOGY ECF 31 (First Am. Compl.) ¶ 2; TRILOGY ECF 35 (Answer) ¶ 2.

39. CEOC also issued the 5.75% Senior Notes due 2017 (the "2017 Notes") pursuant to an Indenture dated as of September 28, 2005 by and among CEOC (as Issuer), CEC (as Guarantor), and U.S. Bank National Association (as Trustee) (the "2017 Notes Indenture"). TRILOGY ECF 31-10 (2017 Notes Indenture).

40. Section 12.3 of the 2017 Notes Indenture contains an identical release provision to Section 1503 of the 2016 Notes Indenture. TRILOGY ECF 31-11 (2017 Notes Indenture) § 12.3.

41. Unlike the 2016 Notes Indenture, the indenture agreements entered into by CEOC and CEC following the 2008 leveraged buyout (the "2008 LBO") did not incorporate Regulation S-X's definition of wholly owned subsidiary into the guarantee release provisions. BOKF ECF

33 (BOKF SUMF) ¶ 14; BOKF ECF 39 (BOKF CEC SUMF Resp.) ¶ 14; *see also* TRILOGY ECF 68 (Local Rule 56.1 Statement of Undisputed Material Facts in Support of Trilogy Plaintiffs' Motion for Partial Summary Judgment ("First TRILOGY SUMF")) ¶ 27.

42. Unlike the 2016 Notes Indenture, the indenture agreements entered into by CEOC and CEC following the 2008 LBO did not provide that each holder's right to recover under the parent guarantee is "absolute and unconditional." BOKF ECF 33 (BOKF SUMF) ¶ 6; BOKF ECF 39 (BOKF CEC SUMF Resp.) ¶ 6; *see also* TRILOGY ECF 68 (First TRILOGY SUMF) ¶ 28.

43. The Plaintiffs have satisfied all of their obligations under the 2016 Notes Indenture as each of their complaints demand payment for the guaranteed obligations. TRILOGY ECF 31 (First Am. Compl.); DANNER ECF 28 (First Am. Compl.).

III. THE AUGUST TRANSACTION

44. Prior to the August Transaction (as defined below), on May 5, 2014, CEC sold 68.1 shares, or five percent (5%), of CEOC common stock (the "5% Stock Sale"). Immediately after the 5% Stock Sale, CEC issued a press release stating that CEC's guarantee obligations had been terminated because CEOC was no longer a wholly owned subsidiary of CEC. May 6, 2014 Comprehensive Financing Plan (http://investor.caesars.com/releasedetail.cfm?releaseid=845827).

45. The terms of the 5% Stock Sale did not entail any modifications to any of the [CEOC] indentures. TRILOGY ECF 77 (Declaration of David B. Sambur in Support of Caesars Entertainment Corporation's Opposition to Plaintiffs' Motions for Partial Summary Judgment ("Sambur Decl.")) ¶ 13.

46. Prior to the August Transaction, $573.2 million in aggregate principal amount of the 2016 Notes was outstanding. CEOC Form 10-Q filed June 30, 2014, Note 9.

47. [REDACTED]

(collectively, the "Favored Noteholders"), all holders of the 2016 Notes and the 2017 Notes, engaged Sullivan & Cromwell ("S&C") to dispute the release of CEC guarantees. CEC Admis No. 40, 41; Ex. D to Pierce Decl. (NPSA (as defined below)) (Signature Pages and Schedule B, Schedule C, and Schedule D to the Note Purchase and Support Agreement entered into as of August 12, 2014 by and among CEOC, CEC, and certain non-public holders of CEOC's 6.5% Senior Notes due 2016 and/or 5.75% Senior Notes due 2017).

48. On May 15, 2014, CEC received a letter sent by S&C on behalf of the Favored Noteholders (the "May 15 Letter"). CEC Admis. No. 39; Ex. C to Pierce Decl. (May 15 Letter); Ex. H to Pierce Decl. (August 17, 2015 Deposition Transcript of Andrew Dietderich) ("Dietderich Tr."), 30:23-31:4.

49. In the May 15 Letter, the Favored Noteholders disputed CEC's statement in its May 6, 2014 Form 8-K that, among others, CEC's Guarantees for the 2016 Notes and the 2017 Notes were released as a result of the 5% Stock Sale. CEC Admis. No. 40.

50. In the May 15 Letter, the Favored Noteholders stated that CEC's Guarantees for the 2016 Notes and the 2017 Notes were irrevocable and remained in full force and effect as of the date of such letter. CEC Admis. No. 41.

51. During the period from May 15, 2014 to August 12, 2014, CEC, CEOC, and S&C, on behalf of the Favored Noteholders, negotiated a transaction (the "August Transaction"), the terms of which were documented in a Note Purchase and Support Agreement, dated August 12, 2014 (the "NPSA") documenting the August Transaction. Ex. D to Pierce Decl. (NPSA); Ex. H to Pierce Decl. (Dietderich Tr.), 245:10-12.

52. CEC required that only 51% of the holders of the 2016 Notes and the 2017 Notes participate in the August Transaction. Ex. D to Pierce Decl. (NPSA) § 7.4, Sched. A, Sched. B.

53. As part of the August Transaction, CEC agreed to "indemnify and hold harmless each [Majority] Holder and its Affiliates . . . from and against any and all losses, liabilities, causes of action, demands, claims, damages, judgments, costs and expenses . . . arising out of, related to or in connection with [the NPSA], the Supplemental Indentures or any of the transactions contemplated hereby or thereby . . . ." Ex. D to Pierce Decl. (NPSA) § 9.1.

54. S&C and the Favored Noteholders agreed to go forward with the August Transaction because, in part, they were being indemnified by CEC. Ex. D to Pierce Decl. (NPSA) § 9.1; Ex. H to Pierce Decl. (Dietderich Tr.) 85:11-22.

55. Shortly before the NPSA was executed, U.S. Bank, N.A. resigned as indenture trustee for the 2016 Notes. TRILOGY ECF 35 (Answer) ¶ 34.

56. On or about July 29, 2014, Law Debenture Trust Company of New York ("Law Debenture") became successor indenture trustee for the 2016 Notes. TRILOGY ECF 35 (Answer) ¶ 34.

57. On August 12, 2014, CEC and CEOC entered into the NPSA with the Favored Noteholders. Ex. D to Pierce Decl. (NPSA).

58. Prior to the August Transaction, the 2016 Notes were trading at approximately at 57 cents on the dollar. CEOC ECF 3401-13 (Examiner's Final Report ("Exam. Report" Vol. 14) at 822.

59. Pursuant to the NPSA, the Favored Noteholders, representing $[redacted] million aggregate principal amount of the 2016 Notes and the 2017 Notes, collectively, agreed to sell to CEC and CEOC an aggregate principal amount of approximately $[redacted] million of the 2016 Notes and an aggregate principal amount of approximately $[redacted] million of the 2017 Notes. Ex. D to Pierce Decl. (NPSA) § 7.4; Sched. A; Sched. B.

60. Pursuant to the NPSA, the Favored Noteholders agreed to provide consents to the amendment of the 2016 Notes Indenture and 2017 Notes Indenture by the Supplemental Indentures to: (a) remove the CEC guarantee under the indentures; and (b) modify the covenant restricting disposition of "substantially all" of CEOC's assets to measure future asset sales based on CEOC's assets as of the date of the amendment. TRILOGY ECF 31-1 (CEC Form 8-K, filed August 12, 2014) at Item 1.01.

61. As set forth in, among other, Section 5.1 of the NPSA, consents to the Supplemental Indentures provided by the Favored Noteholders were subject to various transfer restrictions and were not effective until the closing date of the sale of the 2016 and 2017 Notes to CEC and CEOC, which occurred on August 22, 2016 (the "Closing Date"). Ex. D to Pierce Decl. (NPSA); TRILOGY ECF 77 (Sambur Decl.) ¶ 17.

62. On the Closing Date, CEC and CEOC each transferred $77.7 million in cash to the Favored Noteholders (for a total amount of $155.4 million), and CEOC paid the Favored

Noteholders for accrued and unpaid interest. TRILOGY ECF 77 (Sambur Decl.) ¶ 17; Ex. D to Pierce Decl. (NPSA), § 2.2(b).

63. The Favored Noteholders held an additional $41 million in 2016 Notes that were not purchased by CEOC and/or CEC under the August Unsecured Notes Transaction. Ex. D to Pierce Decl. (NPSA) Sched. B.

64. CEC, CEOC, and the Favored Noteholders were the only parties to the August Transaction. CEC Admis. Nos. 46, 48; Ex. H to Pierce Decl. (Dietderich Tr.) 43:5-16, 65:4-15, 99:21-23.

65. CEC considered and treated the August Transaction as a confidential, private transaction. Ex. H to Pierce Decl. (Dietderich Tr.) 65:4-15, 99:21-23; DANNER ECF 64 (First DANNER SUMF) ¶ 60.

66. CEC and CEOC did not seek and did not obtain consent from any other holders of the 2016 Notes, beyond those who were parties to the NPSA, to amend the 2016 Notes Indenture. CEC Admis. No. 47.

67. Neither CEC nor CEOC offered all holders of 2016 or 2017 Notes the opportunity to participate in the August Transaction. CEC Admis. Nos. 44, 45; Ex. H to Pierce Decl. (Dietderich Tr.) 63:8-64:10, 99:21-23.

68. CEC and CEOC did not obtain the consent of all holders of the 2016 Notes and the 2017 Notes to the Supplemental Indentures. CEC Admis. No. 47.

69. CEC and CEOC paid the Favored Noteholders par plus unpaid and accrued interest on certain of the 2016 Notes and the 2017 Notes that were sold as part of the August Transaction. TRILOGY ECF 68 (First TRILOGY SUMF) ¶ 36; Ex. H to Pierce Decl. (Dietderich Tr.) 96:20-97:2.

70. As part of closing the August Transaction, CEC and CEOC paid $[redacted] to S&C and $[redacted] to GLC Advisors & Co., LLC in connection with the August Transaction. CEC-NOTEHOLDER_00006099 – 00006109 (August Transaction Closing Memo.).

71. CEC announced the August Transaction on August 12, 2014. CEC Admis. No. 42.

72. 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 [the 2016 Notes] and [the] 5.75% [Notes] 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 . . . 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 . . . as a result of the guarantee of CEOC's unsecured senior notes being released.

CEC Form 8-K, filed August 22, 2014.

73. On August 22, 2014, CEOC delivered to the successor Trustee, Law Debenture, an officer's certificate executed by Ms. Mary Higgins, CEOC's Chief Financial Officer in connection with the execution of the First Supplemental Indenture concerning the 2016 Notes (the "First Supplemental Indenture"), attesting that consents to the First Supplemental Indenture had been given by "[h]olders holding an aggregate principal amount of $130,226,000 of the [2016 Notes], representing approximately 52.4% of the aggregate principal amount of such [2016 Notes] outstanding (disregarding any [2016 Notes] held by [CEOC] or its Affiliates)." CEC-NOTEHOLDER00023763-67; CEC-NOTEHOLDER_00005928-5932.

74. On August 22, 2014, CEOC issued Officer's Certificates to the indenture trustees for other CEOC notes that reiterated that on June 2, 2014, CEOC had issued Officer's Certificates informing those indenture trustees of the release of CEC's guarantees as a result of

the 5% Stock Sale (defined below) and CEOC's election under the terms of their indentures. Exhibits 39 to August 27, 2015 Mary Higgins Deposition; UMB0004186.

75. CEC announced the consummation of the NPSA on August 22, 2014. CEC Admis. No. 43.

76. On August 25, 2014, CEOC filed a Form 8-K/A containing the executed First Supplemental Indenture dated as of August 22, 2014, by and among CEOC, as issuer, CEC, as Guarantor, and Law Debenture. DANNER ECF 28-5 (CEOC's Form 8-K/A, filed August 25, 2014); Ex. E to Pierce Decl. (First Supp. Inden.).

77. On August 25, 2014, CEOC filed a Form 8-K/A containing the executed Second Supplemental Indenture dated as of August 22, 2014, by and among CEOC, as issuer, and Law Debenture, as successor trustee. DANNER ECF 28-5 (CEOC's Form 8-K/A, filed August 25, 2014); Ex. F to Pierce Decl. (Second Supp. Inden.).

78. The First Supplemental Indenture purported to remove the guarantees of the 2016 Notes Indenture. Ex. E to Pierce Decl. (First Supp. Inden.).

79. The First Supplemental Indenture states:

> WHEREAS, Holders of at least a majority in principal amount of the Securities have consented to the changes and eliminations effected by this Supplemental Indenture in accordance with the provisions of the Indenture, and evidence of such consents has been provided by the Corporation to the Trustee;

Ex. E to Pierce Decl. (First Supp. Inden.).

80. Section 2 of the First Supplemental Indenture provides:

> SECTION 2. Amendments to the Indenture. The Indenture shall hereby be amended as follows:
>
>> (a) The definition of "Guarantor" set forth in Section 101 of the Indenture is hereby deleted in its entirety.

> (b) Article XV of the Indenture is hereby deleted in its entirety. CEC shall have no further obligations under the Indenture and the Securities.
>
> (c) Section 801 of the Indenture is hereby amended by adding "held as of August 22, 2014" between "directly or indirectly, sell, lease or convey all or substantially all of its assets" and before "to another Person."

Ex. E to Pierce Decl. (First Supp. Inden.).

81. Also on August 25, 2014, CEOC filed a Form 8-K/A containing the executed First Supplemental Indenture dated as of August 22, 2014, by and among CEOC, as issuer, and Law Debenture, as successor trustee for the 2017 Notes (the "First Supplemental Indenture for the 2017 Notes"). TRILOGY ECF 31 (First Am. Compl.) ¶ 8; TRILOGY ECF 35 (Answer) ¶ 8.

82. CEC also announced that in connection with the effective date of the amendments to the 2016 Notes Indenture and the 2017 Notes indenture, CEOC had provided notice to the indenture trustee for CEOC's first-lien and second-lien notes reaffirming CEOC's prior notices issued in June 2014 regarding its contention that CEC's guarantees of all of CEOC's first-lien and second-lien senior secured notes were released as a result of the release of the guarantee of the 2016 Notes and the 2017 Notes. CEC Form 8-K, filed August 22, 2014, Item 8.01.

83. The August Transaction was executed to, among other things, ensure the Guarantee of the 2016 Notes had been released. CEOC ECF 3406-1 (Exam. Report Vol. 1) at 69; CEC Admis. Nos. 81.

84. [REDACTED] Ex. K to Pierce Decl. (September 9, 2015 Deposition Transcript of David Sambur ("Sambur 9/9 Tr.")) 336:25-337:7; DANNER ECF 64 (First DANNER SUMF) ¶ 59.

85. Ex. K to Pierce Decl. (September 10, 2015 Deposition Transcript of David Sambur ("Sambur 9/10 Tr.")) 413:15-413:25; DANNER ECF 64 (First DANNER SUMF) ¶ 61.

IV. EVENTS LEADING UP TO THE AUGUST TRANSACTION

A. The 5% Stock Sale

86. By the end of first quarter of 2014, CEC guaranteed almost $17.5 billion of CEOC's debt, including the 2016 Notes. Sambur Decl. ¶ 11.

87. Ex. L to Pierce Decl. (September 17, 2015 Deposition Transcript of Eric Hession) 140:11-15 ("").

88. In May 2014, CEOC prepared an offering memorandum for the sale of 68.1 shares of its common stock. In this offering memorandum, CEOC described the financial condition of the Company. "Caesars Entertainment Operating Company Offering Memorandum," May 4, 2014, CEC-NOTEHOLDER_00007926 at CEC-NOTEHOLDER_00007942 ("May 4, 2014 Offering Memorandum"); CEOC ECF 3401-13 (Exam. Report Appendix) 1-6, at 9.

89. CEC did not file the May 4, 2014 Offering Memorandum with the U.S. Securities and Exchange Commission in May 2014. CEC Form 8-K, filed May 6, 2014.

90. On May 6, 2014, CEC announced that on May 5, 2014, it had sold 68.1 shares, or five percent (5%) of its CEOC common stock (the "5% Stock Sale") to three (3) insiders: (i) funds managed by Paulson & Co., Inc. ("Paulson"); (ii) funds managed by Scoggin LLC

("Scoggin"); and (iii) funds managed by Chatham Asset Management, LLC ("Chatham") for a total of $6.15 million. TRILOGY ECF 68 (First TRILOGY SUMF) ¶¶ 47, 48; Stock Purchase Agreement between Caesars Entertainment Corporation and Chatham Asset Management, LLC, May 5, 2014, CEC-NOTEHOLDER_00000796 – 00000809 ("Chatham SPA"); Stock Purchase Agreement between Caesars Entertainment Corporation and Paulson & Co., Inc., May 5, 2014, CEC-NOTEHOLDER_00007118 – 00007131 ("Paulson SPA"); Stock Purchase Agreement between Caesars Entertainment Corporation and Scoggin LLC, May 5, 2014, CEC-NOTEHOLDER_00000810 – 00000823 ("Scoggin SPA," and with the Chatham SPA and Paulson SPA, the "Stock Purchase Agreements"); CEOC ECF 3401-1 (Exam. Report Vol. 2) at 124.

91. Ex. N to Pierce Decl. (September 28, 2015 Deposition Transcript of Ty Wallach ("Wallach Tr.")) 54:12-14; Ex. O to Pierce Decl. (September 29, 2015 Deposition Transcript of Guatam Dhingra ("Dhingra Tr.")) 88:25-90:8; Ex. P to Pierce Decl. (September 30, 2015 Deposition Transcript of Greg Roselli ("Roselli Tr.")) 47:6-11.

92. The share price for the 5% Stock Sale was $90,308 per share. Chatham SPA, at CEC-NOTEHOLDER_00000796; Paulson SPA, at CEC-NOTEHOLDER_00000782, Scoggin SPA, at CEC-NOTEHOLDER_00000810.

93. CEC received a total of $6,150,000 as a result of the 5% Stock Sale. Chatham SPA, at CEC-NOTEHOLDER_00000796; Paulson SPA, at CEC-NOTEHOLDER_00000782, Scoggin SPA, at CEC-NOTEHOLDER_00000810.

94. Prior to the 5% Stock Sale, CEC owned 100% of CEOC's equity. CEC Admis. No. 56.

95. Prior to the 5% Stock Sale, the Guarantee had not been released and was in full force and effect. CEC Admis. No. 34.

96. At the time of the 5% Stock Sale, the face amount of CEOC's debt exceeded the book value of the assets on its balance sheet. CEC Admis. No. 35.

97. CEC entered into the 5% Stock Sale in an effort to, among other things, release its guarantee of CEOC's bonds. CEC Admis. No. 34.

98. CEC has asserted that the 5% Stock Sale automatically terminated the Guarantee under Section 1503(3) of the 2016 Notes Indenture because CEOC was no longer a wholly owned subsidiary of CEC as that term is defined under Regulation S-X. CEC Form 8-K, filed May 6, 2014, Item 1.02.

99. On May 6, 2014, CEC disaffirmed its guarantee of various secured and unsecured notes issued by CEOC. The secured and unsecured notes subject to CEC's disaffirmance include, without limitation,

- $6,345,000,000 of first lien bond debt issued by CEOC as issuer and CEC as guarantor, comprised of (A) 11.25% First-Lien Senior Secured Notes due 2017, (B) 8.5% First-Lien Senior Secured Notes due 2020, (C) 9% First- Lien Senior Secured Notes due 2020 (collectively, the "First Lien Notes");
- $5,492,900,000 of second lien bond debt issued by CEOC as issuer and CEC as guarantor comprised of (A) 12.75% Second-Lien Senior Secured Notes due 2018, and (B) 10% Second- Lien Senior Secured Notes due 2015 and 2018 (collectively, the "Second Lien Notes");
- 10.75% Senior Unsecured Notes due 2016;
- 6.5% Senior Unsecured Notes due 2016; and
- 5.75% Senior Unsecured Notes due 2017.

CEC Form 8-K, filed May 6, 2014, Item 1.02 (incorporating by reference CEC Form 10-K filed March 17, 2014, Note 9).

100. In a presentation, dated April 21, 2014, (the "Blackstone Presentation") delivered to CEC's Board of Directors, Blackstone Advisory Partners, L.P. ("Blackstone") [REDACTED] Ex. B to Pierce Decl. (Blackstone Presentation) at 7; CEOC ECF 3401-13 (Exam. Report Vol. 13) at 794.

101. In the Blackstone Presentation, Blackstone also advised CEC's Board of Directors that, [REDACTED] Ex. B to Pierce Decl. (Blackstone Presentation) at 5; CEOC ECF 3406-1 (Exam. Report Vol. 1) at 68.

102. [REDACTED] CEC-NOTEHOLDER_00003435.

103. [REDACTED] CEC-NOTEHOLDER_00003435.

104. [REDACTED] Ex. M to Pierce Decl. (September 22, 2015 Deposition Transcript of Alex Van Hoek ("Van Hoek Tr.")) 380:8-10.

105. [REDACTED] Ex. M to Pierce Decl. (Van Hoek Tr.) 380:11-15.

106. Prior to the 5% Stock Sale, [redacted]

[redacted] Ex. O to Pierce Decl. (Dhingra Tr.) 47:6-12. At the time of the 5% Stock Sale, Scoggin's [redacted] Ex. O to Pierce Decl. (Dhingra Tr.) 47:6-12.

107. In connection with the 5% Stock Sale, Scoggin [redacted] Scoggin SPA at 1, at CEC-NOTEHOLDER_00000810.

108. Since 2010, Paulson [redacted] At the time of the 5% Stock Sale, [redacted] Ex. N to Pierce Decl. (Wallach Tr.) 44:21-45:9, 87:9-25, 114:20-115:2, 146:12-20.

109. Paulson [redacted] Paulson SPA at 1, at CEC-NOTEHOLDER_00000782.

110. [redacted] Ex. N to Pierce Decl. (Wallach Tr.) 65:22-66:20; Ex. O to Pierce Decl. (Dhingra Tr.) 47:4-9, 52:19-24.

111. Prior to the 5% Stock Sale, Chatham [redacted] TRILOGY ECF 69-3 ("Note Purchase Agreement" between CEC and Chatham ("Chatham NPA")) Sched. A.

112. [redacted] CEC-NOTEHOLDER_00030616-CEC-NOTEHOLDER_00030627, at CEC-NOTEHOLDER_00030627.

113. Chatham paid [REDACTED] CEC-NOTEHOLDER_00033521.

114. The Stock Purchase Agreements governing the 5% Stock Sale to Paulson, Scoggin, and Chatham each contained no representations or warranties in favor of those purchasers respecting CEOC's business, assets, financial condition, or prospects, other than a capitalization representation and a representation and warranty that the subsidiaries of CEC (which would include CEOC) had filed or furnished the SEC with all required reports and documents. Chatham SPA, Article III, at CEC-NOTEHOLDER_00000799; Paulson SPA, Article III, at CEC-NOTEHOLDER_00000785; Scoggin SPA, Article III, at CEC-NOTEHOLDER_00000813.

115. CEC agreed to indemnify each of Paulson, Scoggin, and Chatham for any and all Expenses incurred or suffered by any indemnified persons as a result of the agreement, the transactions or the purchased shares. Chatham SPA, § 7.10, at CEC-NOTEHOLDER_00000805; Paulson SPA, § 7.10, at CEC-NOTEHOLDER_00000791; Scoggin SPA, § 7.10, at CEC-NOTEHOLDER_00000819.

116. In a May 6, 2014 press release, CEC stated that the sale of CEOC equity "resulted in the release of the Caesars Entertainment guarantee of CEOC's bonds in accordance with the terms of the bond indentures" because it was no longer a wholly owned subsidiary. TRILOGY ECF 68 (First TRILOGY SUMF) ¶ 77; "Caesars Entertainment Announces Comprehensive Financing Plan Designed to Position Caesars Entertainment Operating Co. for Stock Listing and Significant Deleveraging," PR Newswire, May 6, 2014 (CEC Form 8-K, filed May 6, 2014, Ex. 99.3).

B. The Chatham and CGP Note Purchase Agreements

117. On the same day as the 5% Stock Sale (May 5, 2014), CEOC also entered into the Chatham NPA. CEC Admis. No. 32; TRILOGY ECF 69-3 (Chatham NPA) at 1.

118. Under the Chatham NPA, Chatham [redacted] TRILOGY ECF 69-3 (Chatham NPA) Sched. A; Ex. P to Pierce Decl. (Roselli Tr.) 177:10-178:2, 232:14-233:2.

119. Negotiations regarding both the Chatham NPA and/or the Chatham SPA occurred prior to May 5, 2014, the date each of the agreements was executed. CEC Admis. No. 33; TRILOGY ECF 69-3 (Chatham NPA); Chatham SPA, at CEC-NOTEHOLDER_00000796.

120. On July 25, 2014, CEOC entered into an "Amended & Restated Note Purchase Agreement" with Chatham. TRILOGY ECF 69-5 (Amended & Restated Note Purchase Agreement); CEC-NOTEHOLDER_00030616-CEC-NOTEHOLDER_00030627.

121. In July 2014, CEOC completed a tender offer to repurchase the remaining 5.625% Notes and 10% 2L Notes due 2015 on the same economic terms as offered to Chatham under the Chatham NPA and Caesars Growth Partners, LLC ("CGP") under a note purchase agreement dated May 5, 2014, by and among, CEOC, CGP, and Caesars Growth Bonds, LLC. Specifically, CEOC offered to purchase the following notes: (i) $44.345 million aggregate principal of 5.625% Notes for total consideration of $1,048.75 per $1,000 principal amount; and (ii) $103.016 million in aggregate principal amount of the 10% 2L Notes due 2015 for total consideration of $1,022.50 per $1,000 principal amount. CEC Form 8-K, filed June 30, 2014, Ex. 99.1; TRILOGY ECF 69-3 (Chatham NPA).

122. Prior to the consummation of the 5% Stock Sale, [redacted]

CHATHAMCES004613-CHATHAMCES004643.

C. The 6% Stock Transfer

123. Following the Favored 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. TRILOGY ECF 77 (Sambur Decl.) ¶ 16.

124.

at APOLLO-NOTEHOLDER_00002710.

125. The PIP was proposed by Marc Rowan of Apollo Global Management, LLC ("Apollo") on May 7, 2014, one day after the public announcement of the 5% Stock Sale, at a meeting of the Human Resources Committee (the "HRC") of the CEC Board of Directors. Attending the meeting were the members of the HRC, Rowan, Kelvin David of TPG, and CEC director Lynn Swann. CEOC ECF 3401-13 (Exam. Report Vol. 14) at 809.

126. On May 18, 2014, Michael McLellan, CEC's Vice President of Compensation and Leadership Development, prepared three possible structures for the PIP based on the number of eligible participants for the Sponsor's review. Each structure presumed a total value of $6 million of CEOC stock would be distributed. CEOC ECF 3401-13 (Exam. Report Vol. 14) at 810.

127. Ultimately, Apollo and TPG Global, LLC ("TPG", with Apollo, and their respective affiliates and co-investors, collectively, the "Sponsors") decided the grant should (i) equal 6% of the total CEOC shares, (ii) be extended to the largest of the three groups

identified by McLellan (which necessitated a stock split), and (iii) be limited to CEC and CEOC employees. CEOC ECF 3401-13 (Exam. Report Vol. 14) at 810; CEC-NOTEHOLDER_00022910.

128. The Sponsors and the HRC proceeded quickly to finalize the terms of the PIP. CEOC ECF 3401-13 (Exam. Report Vol. 14) at 811.

129. The HRC proceeded by written consent in lieu of meeting as opposed to the PIP being addressed and voted on at the next quarterly meeting. CEOC ECF 3401-13 (Exam. Report Vol. 14) at 811-12; CEC-NOTEHOLDER_00039619-.00039670.

130. On May 30, 2014, Scott Wiegand, CEC's corporate secretary and deputy general counsel, forwarded an email to the members of the HRC, along with a form requesting their written consent authorizing CEOC to adopt the PIP and approving a grant of shares thereunder to CEC and CEOC employees identified on a list attached thereto. On the same day, Rowan, Davis, and Swann approved the request *via* email, and they signed and returned the signature pages on June 2, 2014. CEOC ECF 3401-13 (Exam. Report Vol. 14) at 812.

131. On May 30, 2014, CEOC executed the PIP and transferred and granted 86,936 shares of CEOC common stock, which equaled six percent (6%), for distribution (the "6% Stock Transfer") to 377 employees and other various individuals, including directors and officers of CEC and CEOC, for no investment of PIP participant funds. TRILOGY ECF 77 (Sambur Decl.) ¶ 15; CEC Admis. No. 72.

132. [REDACTED] Ex. J to Pierce Decl.

(September 2, 2015 Deposition Transcript of Michael McClellan ("McClellan Tr.")) 109:10-22; 118:23 – 119:9.

133. [REDACTED] Ex. J to Pierce Decl. (McLellan Tr.) 247:7-247:21.

134. [REDACTED] Ex. J to Pierce Decl. (McLellan Tr.) 118:4-125:4.

135. [REDACTED] CEC-NOTEHOLDER_00010493; CEC-NOTEHOLDER_00022910.

136. The 6% Stock Transfer was announced by CEC on June 27, 2014. CEC Admis. No. 73; BOKF ECF 33 (BOKF SUMF) ¶ 58; BOKF ECF 39 (BOKF CEC SUMF Resp.) ¶ 58.

137. Despite the fact that the PIP participants were notified on June 2, 2014, the PIP and the grants distributed as part of 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.

138. Following the 6% Stock Transfer, CEC reiterated in public filings that its guarantee obligations for CEOC's bonds had been terminated. CEC Form 8-K, filed June 27, 2014, Item 8.01.

139. at CEC-NOTEHOLDER_00008109.

140. Ex. J to Pierce Decl. (McLellan Tr.)127:17-128:6.

141. at CEC-NOTEHOLDER_00008109; *see also* Ex. M to Pierce Decl. (Van Hoek Tr.) 404:17-19 ( ).

142. Ex. G to Pierce Decl. (Email from Diane Wilfong to Michael McClellan and Chris Steiglitz, "Tax gross up on CEOC stock grant," August 2, 2014).

143. at CEC-NOTEHOLDER_00003435.

144. Ex. J to Pierce Decl. (McLellan Tr.) 60:14-16.

145. Ex. J to Pierce Decl. (McLellan Tr.) 125:19-22.

146. Ex. J to Pierce Decl. (McLellan Tr.) 134:15-16.

147. According to David Sambur, a partner at Apollo and board member of CEC and CEOC, "the 6% Stock Transfer provided incentive compensation to employees and also allowed CEOC to disperse ownership of its stock and thus facilitated the listing of CEOC stock on an exchange, with the potential to create a liquid and tradable equity currency for CEOC to enable future capital markets transactions and debt-for-equity exchanges." TRILOGY ECF 77 (Sambur Decl.) ¶ 15.

148. David Sambur of Apollo, in a June email, "equated the value of the CEOC shares as 'pixie dust.'" CEOC ECF 3406-1 (Am. Exam. Report) at 68.

149. The CEOC common stock subject of the PIP and 6% Stock Transfer was valued, for tax purposes, based on the purchase price of CEOC common shares in the 5% Stock Sale. CEOC ECF 3401-13 (Exam. Report Vol. 14) at 814-15.

150. Ex. J to Pierce Decl. (McClellan Tr.) 55:16-20; 233:6-15.

151. Ex. J to Pierce Decl. (McClellan Tr.) 39:24-40:3, 42:24-45:10.

152. Ex. Q to Pierce Decl. (February 11, 2016 Deposition Transcript of Alan A. Nadal) ("Nadal Tr."), 384:24-385:20.

153. Ex. G to Pierce Decl. (Email from Diane Wilfong to Michael McClellan and Chris Steiglitz, "Tax gross up on CEOC stock grant," August 2, 2015); Ex. J to Pierce Decl. (McClellan Tr.) 131:12-15.

154. CEOC made payment (the "Gross-Up 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. CEC Admis. No. 38.

155. Ex. J to Pierce Decl. (McLellan Tr.), 54:6-12, 235:14-19.

156. Ex. Q to Pierce Decl. (Nadal Tr.), 386:5-8.

157. CEC-NOTEHOLDER_00044535 – 00044541, at CEC-NOTEHOLDER_00044538.

158. The PIP and, ultimately, the 6% Stock Transfer, were completed, at least in part, because CEC viewed it as sufficient to release its guarantees of CEOC bonds. TRILOGY ECF 68 (First TRILOGY SUMF) ¶ 75; CEC Admis. No. 36.

159. At the time of the PIP and the 6% Stock Transfer, the face amount of CEOC's debt exceeded the book value of the assets on its balance sheet. CEC Admis. No. 37.

160. Following the 5% Stock Sale and the PIP, CEC owned 89.3% of CEOC's equity. CEOC ECF 1 (Voluntary Petition ("Petition")) Ex. A.

161. The 5% Stock Sale purchasers, Paulson, Chatham, and Scoggin, [REDACTED] Ex. N to Pierce Decl. (Wallach Tr.) 134:17- 135:11.

162. The 5% Stock Sale purchasers, Paulson, Chatham, and Scoggin, [REDACTED] Ex. N to Pierce Decl. (Wallach Tr.) 147:13-22; Ex. O to Pierce Decl. (Dhingra Tr.) 268:2 – 269:4; Ex. P to Pierce Decl. (Roselli Tr.) 301:7-10.

V. THE CAESARS ENTERPRISE

163. On January 28, 2008, CEC was acquired by the Sponsors in a $30.7 billion leveraged buyout transaction that included the assumption of $12.4 billion in debt and approximately $1.0 billion in acquisition costs. CEC Admis. No. 12.

164. The Sponsors contributed approximately $6.1 billion to the 2008 LBO, 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. CEC Admis. No. 13.

165. Upon completion of the 2008 LBO, Harrah's Entertainment changed its name to Caesars Entertainment Corporation and Harrah's Entertainment changed the name of its wholly-owned operating subsidiary from Harrah's Operating Company Inc. to Caesars Entertainment Operating Company, Inc. CEOC ECF 4 (Memorandum in Support of Chapter 11 Petitions ("First Day Memo")) at 4.

166. Prior to the 5% Stock Sale, CEC owned 100% of CEOC's equity. Following the 5% Stock Sale and the PIP, CEC owned 89.3% of CEOC's equity. CEC Admis. No. 56; CEOC ECF 1 (Petition) at Ex. A.

167. As of December 31, 2013, affiliates of Apollo and TPG owned or controlled approximately 64% of CEC's common stock, had the power to elect all of the company's board of directors, and had voting control of the company. CEC Admis. No. 14; BOKF ECF 33 (BOKF SUMF) ¶ 20; BOKF ECF 39 (CEC SUMF Resp.) ¶ 20.

168. CEC's 2014 Annual Report disclosed that, as of December 31, 2014, Hamlet Holdings LLC, the members of which were compromised of individuals affiliated with Apollo and TPG, beneficially owned approximately 61% of CEC stock pursuant to an irrevocable proxy providing Hamlet Holdings LLC with sole voting and sole dispositive power over those shares, and that, as a result, Apollo and TPG had the power to elect all of CEC's directors. CEC Admis. Nos. 50, 51; BOKF ECF 33 (BOKF SUMF) ¶ 23; BOKF ECF 39 (CEC SUMF Resp.) ¶ 23.

169. As of December 31, 2013, CEOC had approximately $18.1 billion in face value of outstanding indebtedness, of which approximately $13.5 billion was bond debt, governed by at least eight separate indenture agreements. CEC Form 10-K filed March 17, 2014 at 10.

170. "In its 2013 Annual Report, issued on March 17, 2014, CEC stated that '[w]e do not expect that cash flow from operations will be sufficient to repay CEOC's indebtedness in the longterm and we will have to ultimately seek a restructuring, amendment or refinancing of our debt, or if necessary, pursue additional debt or equity offerings.'" CEC Admis. Nos. 48(a), 49; DANNER ECF 64 (First DANNER SUMF) ¶ 27.

VI. CORPORATE GOVERNANCE OF THE CAESARS ENTERPRISE

171. Affiliates of Apollo and TPG, along with certain co-investors, acquired CEC in 2008. TRILOGY ECF 35 (Answer) ¶ 27; CEC Admis. No. 13.

172. During May through August 2014, CEC's Board of Directors (the "CEC Board") consisted of the following individuals:

- Jeffrey Benjamin
- David Bonderman
- Kelvin Davis
- Fred J. Kleisner
- Gary W. Loveman
- Eric Press
- Marc Rowan
- David Sambur
- Lynn C. Swann
- Christopher J. Williams

CEOC ECF 3401-1 (Examiner's Report Vol. 2) at 105.

173. Jeffrey Benjamin serves as a consultant to Apollo with respect to investments in the gaming industry, and he was a senior advisor to Apollo from 2002 to 2008. CEC Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934, filed April 20, 2015 at 14.

174. David Bonderman is a founding partner of TPG. CEOC ECF 3401-16 (Exam. Report. Appx. 3) at 7.

175. Kelvin Davis is a senior partner at TPG. CEOC ECF 3401-1 (Exam. Report Appx. 3) at 7.

176. Fred J. Kleisner is a member of CEC's Board of Directors. CEOC ECF 3401-16 (Exam. Report. Appx. 3) at 9.

177. Gary W. Loveman was the Chief Executive Officer, President, and Chairman of the Board of Directors for CEC until June 2015. CEOC ECF 3401-16 (Exam. Report. Appx. 3) at 16.

178. Eric Press is a senior partner at Apollo. CEOC ECF 3401-16 (Exam. Report. Appx. 3) at 7.

179. Marc Rowan is a co-founder and senior managing director of Apollo. CEOC ECF 3401-16 (Exam. Report Appx. 3) at 7.

180. David Sambur is a partner at Apollo. CEOC ECF 3406-1 (Exam. Report Appx. 3) at 8.

181. Christopher J. Williams is a member of CEC's Board of Directors. CEOC ECF 3401-16 (Exam. Report. Appx. 3) at 9.

182.

CEC-NOTEHOLDER_00054987-CEC-NOTEHOLDER_00054990.

183. Ex. K to Pierce Decl. (Sambur 9/9 Tr.) 44:2-22. Ex. K to Pierce Decl. (Sambur 9/9 Tr.) 44:15-22.

184. Following the 5% Stock Sale and the PIP, CEC continues to have the sole power to elect all directors of CEOC. CEC 8-K Form, filed June 27, 2014, Item 8.01; Amended COI, Art. VIII; Bylaws of Caesars Entertainment Operating Company, Inc. ("CEOC Bylaws") Art. II, § 5.

185. CEOC's certificate of incorporation, adopted on May 2, 2014 (prior to the 5% Stock Sale), states "any vacancy in the Board of Directors that results from an increase in the number of directors, ... [or] resignation … of any director … shall be filled solely by a majority of the total number of directors then in office, … or by a sole remaining director." Amended COI, Art. VIII, §8.4.

186. CEC-NOTEHOLDER_00055034.

187. Ex. P to Pierce Decl. (Roselli Tr.) . 367:23-368:22.

188. Ex. P to Pierce Decl. (Roselli Tr.) 367:23-368:22.

189. Ex. P to Pierce Decl. (Roselli Tr.) 368:23-369:24.

190. Ex. P to Pierce Decl. (Roselli Tr.) 368:23-369:24.

191. Ex. P to Pierce Decl. (Roselli Tr.) 370:8-371:3.

192. Ex. P to Pierce Decl. (Roselli Tr.) 370:11-371:3.

193. Ex. P to Pierce Decl. (Roselli Tr.) 382:19-22.

194. Ex. N to Pierce Decl. (Wallach Tr.) 171:10-18.

195.

GNTY_CEOC_001760; Ex. P to Pierce Decl. (Roselli Tr.) 382:19-383:3.]

196. On May 2, 2014, CEOC amended its certificate of incorporation. Amended and Restated Cert. of Incorporation for CEOC (http://www.sec.gov/Archives/edgar/data/858339/000119312514185140/d721045dex31.htm).

197. Section 4.1 of the Amended and Restated Certificate of Incorporation of Caesars Entertainment Company, Inc., dated May 2, 2014 ("Amended COI"), states:

> The total number of shares of capital stock which the Corporation shall be authorized to issue is 1,375,000,000 shares of capital stock, consisting of 1,250,000,000 shares of common stock, par value $.01 per share (the "Common Stock"), and 125,000,000 shares of preferred stock, par value $.01 per share (the "Preferred Stock").

Amended COI, § 4.1.

198. Section 4.2 of the Amended COI states:

> The Board of Directors is expressly authorized to provide for the issuance of all or any shares of the Preferred Stock in one or more series, to fix the number of shares constituting such series, and to increase or decrease the number of shares of any such series (but not below the number of shares thereof then outstanding) and to fix for each such series such voting powers, full or limited, or no voting powers, and such distinctive designations, powers, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such series including, without limitation, the authority to provide that any such series may be (a) subject to redemption at such time or times and at such price or prices; (b) entitled to receive dividends (which may be cumulative or non-cumulative) at such rates, on such conditions, and at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes or any other series; (c) entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the Corporation; or (d) convertible into, or exchangeable for, shares of any other class or classes of stock, or of any other series of the same or any

other class or classes of stock, of the Corporation at such price or prices or at such rates of exchange and with such adjustments, all as may be stated in such resolution or resolutions. Notwithstanding the foregoing, the rights of each holder of Preferred Stock shall be subject at all times to compliance with all gaming and other statutes, laws, rules and regulations applicable to the Corporation and such holder at that time.

Amended COI, § 4.2.

199. Section 4.3 of the Amended COI states in pertinent part:

(c) Voting Rights. The holders of Common Stock shall be entitled to one vote per share on all matters to be voted on by the stockholders of the Corporation. No holder of shares of Common Stock shall have the right to cumulate votes.(d) Consideration for Shares. The Common Stock and Preferred Stock authorized by this Article shall be issued for such consideration as shall be fixed, from time to time, by the Board of Directors.

Amended COI, § 4.3.

200. Section 6.1 of the Amended COI states:

Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide. For so long as [CEC] and/or any of its affiliates owns or controls a majority in voting power of the outstanding capital stock of [CEOC] entitled to vote, any action to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding Common Stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares of Common Stock entitled to vote thereon were present and voted and shall be delivered to the [CEOC]. From and after such time as [CEC] and/or any of its affiliates cease to beneficially own or control a majority in voting power of the outstanding capital stock of the Corporation entitled to vote, the stockholders may not in any circumstance take action by written consent in lieu of a meeting.

Amended COI, § 6.1.

201. Section 6.2 of the Amended COI states:

Subject to any rights of the holders of Preferred Stock as may be authorized by the Board of Directors in accordance with Section 4.2, unless otherwise prescribed by law, special meetings of stockholders, for any purpose or purposes, may only be called by a majority of the entire Board of Directors, and no other party shall be entitled to call special meetings.

Amended COI, § 6.2.

202. Article 7 of the Amended COI states:

> The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to make, adopt, alter, amend, change or repeal the By-Laws without stockholder action.

Amended COI, Art. 7.

203. Section 8.1 of the CEOC Amended COI states:

> Unless and except to the extent that the By-Laws of the Corporation shall so require, elections of directors need not be by written ballot. At all meetings of the stockholders for the election of directors at which a quorum is present, directors shall be elected by a plurality of the votes cast by the holders of the shares entitled to vote thereat.

Amended COI, § 8.1.

204. Section 8.2 of the CEOC Amended Charter states: ". . . the number of directors may be fixed from time to time by the Board of Directors." Amended COI, § 8.2.

205. Section 8.4 of the CEOC Amended Charter states: ". . . any vacancy in the Board of Directors that results from an increase in the number of directors, from the death, resignation or removal of any director or from any other cause shall be filled solely by a majority of the total number of directors then in office, even if less than a quorum, or by a sole remaining director." Amended COI, § 8.4.

206. Section 8.5 of the Amended COI states:

> Notwithstanding the foregoing provisions of this Article VIII, whenever the holders of any one or more series of Preferred Stock have the right, voting separately by class or series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of this Amended and Restated Certificate of Incorporation and terms of such Preferred Stock applicable thereto.

Amended COI, § 8.5.

207. Section 10.1 of the Amended COI states:

> Neither any contract nor other transaction between the Corporation and any other corporation, partnership, limited liability company, joint venture, firm, association, or other entity (an "Entity"), nor any other acts of the Corporation with relation to any other Entity will, in the absence of fraud, to the fullest extent permitted by applicable law, in any way be invalidated or otherwise affected by the fact that any one or more of the directors or officers of the Corporation are pecuniarily or otherwise interested in, or are directors, officers, partners, or members of, such other Entity (such directors, officers, and Entities, each a "Related Person"). Any Related Person may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the Corporation, provided that the fact that person is a Related Person is disclosed or is known to the Board of Directors or a majority of directors present at any meeting of the Board of Directors at which action upon any such contract or transaction is taken, and any director of the Corporation who is also a Related Person may be counted in determining the existence of a quorum at any meeting of the Board of Directors during which any such contract or transaction is authorized and may vote thereat to authorize any such contract or transaction, with like force and effect as if such person were not a Related Person. Any director of the Corporation may vote upon any contract or any other transaction between the Corporation and any subsidiary or affiliated entity without regard to the fact that such person is also a director or officer of such subsidiary or affiliated entity.

Amended COI, § 10.1.

208. Section 10.2 of the Amended COI states:

> Any contract, transaction or act of the Corporation or of the directors that is ratified at any annual meeting of the stockholders of the Corporation, or at any special meeting of the stockholders of the Corporation called for such purpose, will, insofar as permitted by applicable law, be as valid and as binding as though ratified by every stockholder of the Corporation; provided, however, that any failure of the stockholders to approve or ratify any such contract, transaction or act, when and if submitted, will not be deemed in any way to invalidate the same or deprive the Corporation, its directors, officers or employees, of its or their right to proceed with such contract, transaction or act.

Amended COI, § 10.2.

209. Article 2, Section 3 of CEOC's Bylaws states:

> *Special Meetings*. Unless otherwise prescribed by law or by Certificate of Incorporation, special meetings of stockholders, for any purpose or purposes, may only be called by a majority of the entire Board of Directors or by the Chairman of the President.

CEOC Bylaws, Art. 2, § 3.

210. On June 27, 2014, following the 5% Stock Sale and PIP, CEOC's then board of directors expanded the board of directors from two to seven directors and elected David Bonderman, Kelvin Davis, Marc Rowan, David Sambur, Ronen Stauber and Steven Winograd to serve as members of the CEOC Board. June 27, 2014 Unanimous Written Consent of CEOC directors in lieu of meeting. CEC Form 8-K filed June 27, 2014, Item 8.01; CEC-NOTEHOLDER_00010394 - CEC-NOTEHOLDER_0010422, at CEC-NOTEHOLDER_00010396.

211. On June 27, 2014, in connection with the appointment of Messrs. Bonderman, Davis, Rowan, Sambur, Stauber, and Winograd to the CEOC Board, Eric Hession resigned from the CEOC Board effective as the appointment of the new directors. CEC Form 8-K, filed June 27, 2014, Item 8.01; CEC-NOTEHOLDER_00010394 - CEC-NOTEHOLDER_0010422, at CEC-NOTEHOLDER_00010396.

212. David Bonderman and Kelvin Davis also serve as directors of CEC and are affiliated with TPG. Marc Rowan and David Sambur also serve as directors of CEC and are affiliated with Apollo. CEOC ECF 3401-16 (Exam. Report. Appx. 3) at 7; Ex. I to Pierce Decl. (August 26, 2015 Deposition Transcript of Marc Rowan ("Rowan Tr.")) 10:17-20; Ex. K to Pierce Decl. (Sambur 9/9 Tr.) 29:6-30:8.

213. For the period July through August 2014, the CEOC Board consisted of the following individuals:

- Gary W. Loveman
- David Bonderman
- Kelvin Davis
- Marc Rowan
- David Sambur
- Ronen Stauber
- Steven Winograd

CEC-NOTEHOLDER_00010394 - CEC-NOTEHOLDER_0010422; CEC Form 8-K filed June 27, 2014.

214. Prior to the 5% Stock Sale and the PIP, CEC had the sole power to elect all directors of CEOC. CEC 8-K Form, filed June 27, 2014, Item 8.01; Amended COI, Art. VIII; Bylaws of Caesars Entertainment Operating Company, Inc. ("CEOC Bylaws") Art. II, § 5.

215. Following the 5% Stock Sale and the PIP, CEC continues to have the sole power to take stockholder action, without a meeting, without prior notice, and without a vote, by written consent in lieu of meeting as the party that controls the majority interest in CEOC. Amended COI, Arts. VI & VIII; CEOC Bylaws, Art. II, § 5.

216. Following the 5% Stock Sale and the PIP, CEC continues to have the sole power to cause CEOC to sell its assets. Amended COI, Art. VIII; Amended COI, § 10.2; CEOC Bylaws, Art. II, § 5.

217. On July 30, 2014, a Governance Committee was formed on CEOC's Board, with the two independent directors as its only members, both of whom were chosen by Apollo based on their participation in prior Apollo transactions. TRILOGY ECF 77 (Sambur Decl.) ¶ 19; Ex. I to Pierce Decl. (Rowan Tr.) 304:9-305:3; 305:19-306:10.

218. The Governance Committee was granted the power to evaluate any material financial transactions involving CEOC or its assets that required Board approval, and to exercise sole authority to consider and approve any matter involving a material conflict of interest affecting any other director or any person or group owning more than 5% of the company—including CEC. TRILOGY ECF 77 (Sambur Decl.) ¶ 19.

219. CEC had and continues to have the sole power to ratify any action by CEOC, with the same effect "as though ratified by every stockholder of the Corporation." Amended COI, § 10.2.

220. The 5% Stock Sale purchasers do not have the right to, [REDACTED] designate any of the members of CEOC's board of directors. Amended COI, Art. VIII; Ex. N to Pierce Decl. (Wallach Tr.) 162:17-163:9; Ex. P to Pierce Decl. (Roselli Tr.), 374:5-7.

221. The 5% Stock Sale purchasers do not have any veto or approval rights over extraordinary actions, such as asset sales, mergers, acquisitions, charter amendments, securities offerings, stock repurchases, or incurrence of debt. Amended COI, Arts. VI & VIII; CEOC Bylaws; Ex. O to Pierce Decl. (Dhingra Tr.) 268:24-269:3.

222. The 5% Stock Sale purchasers [REDACTED] Ex. N to Pierce Decl. (Wallach Tr.) 162:24-163:4; Ex. P to Pierce Decl. (Roselli Tr.) 29:25-30:3; 301:3-10.

223. The 5% Stock Sale purchasers do not have the right to call a special meeting of the shareholders of CEOC. Amended COI, § 6.2; CEOC Bylaws, Art. 2, § 3.

224. The employees that hold CEOC common stock transferred as part of the PIP do not have the right to, and in fact did not, designate any of the members of CEOC's board of directors. Amended COI, Arts. VI & VIII.

225. The employees that hold CEOC common stock transferred as part of the PIP do not have any veto or approval rights over extraordinary actions, such as asset sales, mergers, acquisitions, charter amendments, securities offerings, stock repurchases, or incurrence of debt, which would include the August Transaction, the Second Lien Suit and the Chapter 11 filing of CEOC. Amended COI, Arts. VI & VIII; CEOC Bylaws, Art. II.

226. The employees that hold CEOC common stock transferred as part of the PIP do not have the right to call a special meeting of the shareholders of CEOC. Amended COI, § 6.2; CEOC Bylaws, Art. 2, § 3.

227. On March 18, 2016, Marc Rowan resigned from the CEOC board of directors. CEOC ECF 3484-1 (Disclosure Statement for the Debtors' Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code) § II.C.1.

VII. CEOC'S BANKRUPTCY

228. 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. CEC Admis. No. 74.

229. On January 15, 2015, CEOC filed a petition with the United States Bankruptcy Court for the Northern District of Illinois under Chapter 11 of Title 11 of the United States Code. DANNER ECF 28 (First Am. Compl.) ¶ 1; DANNER ECF 29 (Answer) ¶¶ 2, 13, 48, 63; CEC Admis. No. 75; DANNER ECF 64 (First DANNER SUMF) ¶ 63.

230. 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"). CEC Admis. No. 75; TRILOGY ECF 68 (First TRILOGY SUMF) ¶ 119.

231. CEOC's filing of a petition under Chapter 11 of Title 11 of the United States Code is an Event of Default under section 501(5)(a) of the 2016 Notes Indenture. Ex. A to Pierce Decl. (2016 Notes Indenture) § 501(5)(a); CEC Admis. No. 76.

232. On January 15, 2015, CEC filed with the Securities Exchange Commission a Form 8-K wherein it stated: "The filing of the Bankruptcy Petitions described above constitutes an event of default that accelerated CEOC's obligations under" the 2016 Notes Indenture and 2017 Notes Indenture, and that "the Debt Instruments provide that as a result of the Bankruptcy Petitions the principal and interest due thereunder shall be immediately due and payable." CEC Form 8-K, filed Jan. 15, 2015, Item 8.01; DANNER ECF 64 (First DANNER SUMF) ¶68.

233. 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.

CEC Admis. No. 78; CEOC ECF 4 (First Day Memo.).

234. On March 2, 2015, CEOC and its affiliated debtors filed their Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code (the "Initial Plan"). CEOC ECF 555 (Initial Plan).

235. On, April 4, 2016, CEOC and its affiliated debtors filed their Disclosure Statement for the Debtors' Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code (the "Amended Disclosure Statement") and Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code (the "Amended Plan"). CEOC ECF 3483-1 (Amended Plan); CEOC ECF 3484-1 (Amended Disclosure Statement).

236. Under the first plan CEOC proposed, non-first lien creditors that accepted the plan were expected to receive an 18% recovery, while non-first lien creditors that rejected the plan were expected to receive a 5% recovery. Amended Discl. Stmt. at 8 (CEOC Bankr., ECF No. 2403).

237. Neither the Amended Disclosure Statement nor the Amended Plan provides Plaintiffs' estimated recoveries under the Amended Plan. Rather, the Amended Disclosure Statement states that:

> Except to the extent a Holder of an Allowed Unsecured Claim agrees to less favorable treatment, and subject to Article IV.A.9 of the Plan, each such Holder will receive approximately an [___] percent recovery….

CEOC ECF 3484-1 (Amended Disclosure Statement) Art.V.B.

238. The Amended Disclosure Statement goes on to state that the distribution to each holder of an allowed unsecured claim shall consist of unspecified percentages of equity interests and the right to purchase a pro rata share of an unspecified amount of equity. CEOC ECF 3484-1 (Amended Disclosure Statement) Art.V.B.

239. The Amended Plan, like the Initial Plan, provides that CEC will be released from claims in the "Caesars Cases," as defined in the Plan to include the Plaintiff's claims against CEC in this action. CEOC ECF 3483 (Second Amended Plan) Art. VIII.C (third party releases), I.A.253 (definition of "Releasing Parties"), I.A.252 (definition of "Released Parties"), I.A.41 (definition of "CEC Released Parties"), I.A.40 (definition of "CEC"), I.A.36 (definition of "Caesars Cases").

[*Signature Page Follows*]

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May 10, 2016

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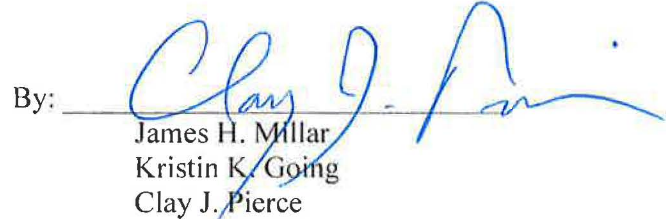

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