UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al.,[1]	)	Case No. 15-01145 (ABG)
	)	(Jointly Administered)
Debtors.	)	**Re: Docket Nos. 5197, 5198**

DEBTORS' PRELIMINARY OBJECTION TO COMBINED MOTION FOR PARTIAL SUMMARY JUDGMENT BY LLTQ ENTERPRISES, LLC AND FERG, LLC IN CONNECTION WITH REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE

[1] A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at https://cases.primeclerk.com/CEOC.

The above-captioned debtors and debtors in possession (collectively, the "Debtors") submit this preliminary objection to LLTQ and FERG's motion for summary judgment [Dkt. 5197] (the "Motion") and related statement of undisputed facts [Dkt. 5198]. In support thereof, the Debtors state as follows:

1. For the past 15 months, LLTQ, FERG, and the Debtors have been litigating two contract rejection motions and a motion for payment of administrative expenses. [Dkts. 1755, 2531, 3000] The Motion seeks partial summary judgment on the payment of administrative expenses. Until recently, the Debtors believed the focus of these motions would be the enforceability of restrictive covenants, the purportedly integrated nature of the contracts, and the benefits (if any) LLTQ and FERG provided postpetition. On August 20, 2016, that all changed.

2. On that day, the Debtors first became aware of news articles reporting that Rowen Seibel, the managing member of LLTQ and FERG, had been sentenced to a month in prison.[2] According to these articles, on April 18, 2016, Mr. Seibel pled guilty to one count of a corrupt endeavor to obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C. § 7212, a Class E Felony. (*See* Exs. A-C, Case No. 1:16-cr-00279-WHP, Dkt. Nos. 2, 14, 15) According to the charging document submitted by the United States government, Mr. Seibel had, for more than a decade, illegally utilized Swiss bank accounts and Panamanian shell corporations to commit tax fraud. (*See generally* Ex. A, Case No. 1:16-cr-00279-WHP, Dkt. No. 2)

3. In the heavily-regulated casino industry, Caesars must have full disclosure regarding its business relationships and the parties to those relationships. Without this

[2] *See, e.g., Restaurateur Seibel Sent to Jail, Then Kitchen, in Tax Scam,* BLOOMBERG.COM, http://www/Bloomberg/com/news/articles/2016-08-19/restaurateur-turned-tax-dodger-readies-for-manhatten-sentencing (last visited Oct. 11, 2016); *Gordon Ramsay's Business Partner Gets Jail Time for Tax Evasion,* PAGE SIX, http://pagesix.com/2010/08/20/ gordon-ramseys-business-partner-gets-jail-time-for-tax-evasion-scheme/ (last visited Oct. 11, 2016).

information, Caesars risks entering into commercial relationships and/or associations that are unacceptable to the various gaming regulatory agencies that have jurisdiction over Caesars and its affiliates. Such gaming regulatory agencies have broad and unfettered discretion to impose disciplinary actions against a gaming license, including, without limitation, the revocation of the gaming licenses and/or the imposition of additional conditions, limitations, and monetary fines upon such licenses. Therefore, if Caesars were to maintain, directly or indirectly, any unsuitable relationships or associations, the regulatory agencies may impose such disciplinary actions.

4. For that reason, the LLTQ and FERG agreements were expressly conditioned on Mr. Seibel's representations that he (a) was not engaged in any illegal activity and (b) had disclosed all material facts relating to any activities that could render him an "Unsuitable Person" under the agreements.[3] (Ex. D, LLTQ Agmt., §§ 2.2(a); 9.1(f); 10.2; Ex. E, FERG Agmt., §§ 2.2(a), 11.2) To further protect itself, Caesars also required LLTQ, FERG, and Mr. Seibel to provide updated disclosures if any prior disclosure regarding his suitability subsequently became inaccurate. (Ex. D, LLTQ Agmt., §§ 10.2; Ex. E, FERG Amgt., § 11.2) Finally, to the extent LLTQ, FERG, or Mr. Seibel failed to satisfy any of these requirements, the agreements provided Caesars with sole discretion to terminate the relationship. (*Id*.)

5. Despite these explicit obligations, Mr. Seibel did not disclose his criminal activities when the contracts were first negotiated and executed. Nor did Mr. Seibel provide the Debtors with an updated disclosure after Mr. Seibel's guilty plea. Instead, Mr. Seibel attempted to transfer of his membership interests and management duties in LLTQ and FERG just ***one***

[3] Under the LLTQ and FERG Agreements, an "Unsuitable Person" includes, *inter alia*, an individual (a) whose association could cause Caesars to face disciplinary action; (b) whose association with Caesars could be anticipated to violate any gaming laws or regulations; or (c) "is or might be engaged or about to be engaged in any activity which could adversely impact the business or reputation of Caesars or its Affiliates." (Ex. D, LLTQ Agmt., at 6; Ex. E, FERG Agmt., at 6)

week before Mr. Seibel was scheduled to plead guilty. Even in that instance, however, Mr. Seibel never disclosed the rationale for the transfer, leaving the Debtors to learn about the felony conviction—and the illegal activities underlying that conviction—through press reports that finally surfaced four months after Mr. Seibel pled guilty.

6. Mr. Seibel's felony conviction and recently-discovered criminal activities have dramatically altered the course of this litigation by introducing key threshold issues that must be resolved before the Court can decide the contract rejection motions, the motion for the payment of administrative expenses, and the instant Motion.

7. Each of these motions assumes that the LLTQ and FERG agreements are valid, enforceable contracts. If not for the events of the past few months, this assumption likely would have never been challenged. Now, however, the Debtors intend to oppose the Motion on the grounds that the agreements are void, voidable, or void *ab initio*.

8. Based on the little information that the Debtors have been able to gather through press reports and sentencing reports, it appears that Mr. Seibel either misrepresented or omitted material facts that the Debtors relied upon when deciding whether to enter into the agreements. In particular, Mr. Seibel never informed the Debtors that he was violating United States tax law by using a Swiss bank account and Panamanian shell corporation. (*See* Exs. A–C, Case No. 1:16-cr-00279-WHP, Dkt. Nos. 2, 14, 15) Thus, the agreements are likely void, voidable, or void *ab initio*. *See* Restatement (Second) of Contracts § 164 (1981) ("If a party's manifestation of assent is induced by either a fraudulent or a material misrepresentation by the other party upon which the recipient is justified in relying, the contract is voidable by the recipient.")

9. To do so, however, the Debtors will need to take additional discovery to identify facts that are essential to its opposition—specifically, the timing, nature, and content of the

negotiations and communications between the parties. To that end, the Debtors intend to file an affidavit pursuant to Rule 56(d) describing the additional discovery and facts the Debtors believe are necessary to oppose the Motion. For the foregoing reasons, the Debtors respectfully request that the Court allow the Debtors to take discovery of facts necessary to oppose the Motion.

10. In addition, the Motion fails on the merits as well. As the Court has noted, LLTQ and FERG have not performed any services postpetition, and therefore the movants are not entitled to any administrative expenses. (11/18/2015 Hr'g Tr. 32:1–32:23.) To get around this fact, LLTQ and FERG claim that their contracts are integrated with certain contracts the Debtors have entered into with Gordon Ramsay. Not so. The agreements contain an integration clause stating clearly that "[t]his Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written." (Ex. D, LLTQ Agmt. § 13.6; Ex. E, FERG Agmt. § 14.6.) Thus, by their very terms, the LLTQ and FERG Agreements cannot be integrated with the two Ramsay agreements. Further, the facts surrounding the negotiation and execution of the Agreement demonstrate that they are not integrated with the two Ramsay agreements. This is because Mr. Ramsay is critical to the operation of the restaurants, and the services provided by FERG and LLTQ are not. For instance, the LLTQ and FERG Agreements are terminable if the Ramsay agreements are terminated (*see* Ex. D, LLTQ Agmt. § 4.2.3; Ex. E, FERG Agmt. § 4.2(c)), whereas the agreements with Mr. Ramsay contain no similar clause. If the Debtors and Mr. Ramsay believed that FERG and LLTQ were critical to the operation of these restaurants, they would have entered into one contract or made both terminable upon the termination of the other. LLTQ's and FERG's integration arguments therefore will not save their administrative claim request. Thus, summary judgment on that issue should be denied.

Dated: October 12, 2016
Chicago, Illinois

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DISTRICT COURT

CLARK COUNTY, NEVADA

ROWEN SEIBEL, an individual and citizen of New York, derivatively on behalf of Real Party in Interest GR BURGR LLC, a Delaware limited liability company, Plaintiff, v. PHWLV, LLC, a Nevada limited liability company; GORDON RAMSAY, an individual; DOES I through X; ROE CORPORATIONS I through X, Defendants, AND ALL RELATED MATTERS	Case No.: A-17-751759-B Dept. No.: 15 Consolidated with: Case No.: A-17-760537-B **APPENDIX OF EXHBIITS IN SUPPORT OF AMENDED MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STAY CLAIMS ASSERTED AGAINST LLTQ/FERG DEFENDANTS – VOLUME IV** This document applies to: A-17-760537-B

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DATED February 22, 2018.

MCNUTT LAW FIRM, P.C.

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that pursuant to Nev. R. Civ. P. 5(b) and EDCR 8.05 on February 22, 2018 I caused service of the foregoing **APPENDIX OF EXHBIITS IN SUPPORT OF AMENDED MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STAY CLAIMS ASSERTED AGAINST LLTQ/FERG DEFENDANTS – VOLUME IV** to be made by depositing a true and correct copy of same in the United States Mail, postage fully prepaid, addressed to the following and/or via electronic mail through the Eighth Judicial District Court's E-Filing system to the following at the e-mail address provided in the e-service list:

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Exhibit N

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
	)	
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., *et al.*,[1]	)	Case No. 15-01145 (ABG)
	)	
	)	(Jointly Administered)
Debtors.	)	
	)	Honorable A. Benjamin Goldgar
	)	
	)	**Hearing Date: May 31, 2017**
	)	**Hearing Time: 9:30 a.m.**

NOTICE OF MOTION

PLEASE TAKE NOTICE that on **May 31, 2017**, at the hour of **9:30 a.m.** (prevailing Central Time), or as soon thereafter as counsel may be heard, the undersigned shall appear before the Honorable A. Benjamin Goldgar, United States Bankruptcy Judge for the Northern District of Illinois, in Courtroom No. 642 of the Everett McKinley Dirksen Federal Building at 219 South Dearborn Street, Chicago, Illinois, 60604 and at that time and place we shall present the **Combined Motion For Protective Order By LLTQ Enterprises, LLC and Ferg, LLC** (the "**Motion**").

PLEASE TAKE FURTHER NOTICE that the Court has established a briefing schedule for the Motion as set forth in that certain **Agreed Discovery Order Concerning FERG/LLTQ Matters** filed March 27, 2017 [Docket no. 6734].

PLEASE TAKE FURTHER NOTICE that copies of the Motion as well as copies of all documents filed in these chapter 11 cases are available free of charge by visiting https://cases.primeclerk.com/CEOC or by calling (855) 842-4123 within the United States or Canada or, outside of the United States or Canada, by calling +1 (646) 795-6969. You may also obtain copies of any pleadings by visiting the Court's website at www.ilnb.uscourts.gov in accordance with the procedures and fees set forth therein. **Please note that a copy of the Motion can also be obtained free of charge upon request to the undersigned counsel.**

[1] The last four digits of Caesars Entertainment Operating Company, Inc.'s tax identification number are 1623. Due to the large number of Debtors in these jointly-administrated chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtor's claims and noticing agent at http://cases.primeclerk.com/CEOC.

DATED this 7th day of April, 2017

ADELMAN & GETTLEMAN, LTD.

/s/ Nathan Q. Rugg

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
	)	
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., *et al.*	)	Case No. 15-01145 (ABG)
	)	
	)	(Jointly Administered)
Debtors.	)	
	)	

COMBINED MOTION FOR PROTECTIVE ORDER BY LLTQ ENTERPRISES, LLC AND FERG, LLC

NOW COME FERG, LLC, a Delaware limited liability company (and its successors and assigns, collectively "FERG") and LLTQ ENTERPRISES, LLC, a Delaware limited liability company (and its successors and assigns, collectively "LLTQ," and together with FERG, "Movants"), by and through their undersigned counsel, and, pursuant to Rule 26 of the Federal Rules of Civil Procedure (the "Civil Rules"), and Rules 7026 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for the entry of a protective order restraining further "Suitability Discovery" (hereinafter defined) in the contested matters pending among Movants and the Debtors (the "Motion").

I. INTRODUCTION

The Debtors issued new discovery to flesh out an alleged defense that they were fraudulently induced into entering into the Pub Agreements with Movants. After five months it is now clear that any additional "Suitability Discovery" is improper and outside the scope of Civil Rule 26 because there are no relevant representations in or related to the Pub Agreements. Rather, the Debtors attempt to manufacture representations by (a) improperly conflating an individual (Mr. Rowen Seibel) with corporate entities (Movants), and (b) invoking representations made by Moti Partners, LLC ("Moti"), an entity that is not a party to the

underlying Pub Agreements and which entered into a wholly separate contract with the Debtors for a wholly separate restaurant project. Through the robust discovery process, the Debtors have obtained substantive responses to interrogatories and requests for admissions, and a series of documents responsive to requests issued to Movants and numerous subpoenas. In addition, the Debtors have already access to, and in fact have obtained, the pleadings in the underlying criminal case against Mr. Seibel.

Any further discovery is outweighed by the burden and expense of responding and is thus not proportional to the needs of the case. The Debtors (a) have in their possession the substantive responses provided to date; and (b) have either obtained or can further access the pleadings, rulings and hearing transcripts from the Seibel criminal case. More fundamentally, the Suitability Discovery has revealed that the underlying factual basis for the Debtors' fraudulent inducement defense is non-existent. Further discovery cannot be relevant to the Debtors' alleged suitability defense as the Debtors have admitted (y) they did not rely on any suitability representations by LLTQ or FERG when entering into the Pubs Agreements; and (z) they in fact conducted no due diligence investigation of LLTQ, FERG or Mr. Seibel in connection with the Pub Agreements. Instead, the Debtors state that when entering into contracts with Movants in 2012 and 2014, they "continued to rely" on disclosures made by Moti in 2009.

The Suitability Discovery appears to be nothing more than a last-ditch effort by the Debtors to distract from the resolution of these contested matters in favor of Movants. The Court should therefore exercise its power under Civil Rule 26 to end the Suitability Discovery.

II. BACKGROUND

A. The Rejection and Administrative Claim Motions

1. LLTQ and Desert Palace Inc., a debtor herein ("Caesars"), are parties to that certain *Development and Operation Agreement between LLTQ Enterprises, LLC and Desert*

Palace, Inc. (the "LLTQ Agreement"), dated April 4, 2012 and attached hereto as Exhibit A. LLTQ is owned by GR Pub/Steak Holdings, LLC, which currently has four members. Caesars entered into the LLTQ Agreement with LLTQ "to design, develop, construct and operate . . .[the] Gordon Ramsay Pub." LLTQ Agmt., Recital B. Caesars and LLTQ each paid approximately $1 million for the design and construction of the pub, and each are entitled to receive a return of capital and share of profits.

2. FERG and Boardwalk Regency Corporation DBA Caesars Atlantic City, a debtor herein ("CAC" and together with Caesars, the "Debtors") are parties to that certain *Consulting Agreement between FERG, LLC and Boardwalk Regency Corporation DBA Caesars Atlantic City* dated and effective as of May 16, 2014 (the "FERG Agreement" and together with the LLTQ Agreement, the "Pub Agreements"), and attached hereto as Exhibit B. CAC entered into the FERG Agreement with FERG "to design, develop, construct and operate . . .[the] Gordon Ramsay Pub and Grill." FERG Agmt., Recital B.

3. Mr. Gordon Ramsay, an individual, is a party to (a) that certain *Development, Operation and License Agreement among Gordon Ramsay, Gordon Ramsay Holdings Limited and Desert Palace, Inc.* (the "Ramsay LV Agreement"), and (b) that certain *Development, Operation and License Agreement among Gordon Ramsay, Gordon Ramsay Holdings Limited and Boardwalk Regency Corporation DBA Caesars Atlantic City* (the "Ramsay AC Agreement").

4. Gordon Ramsay Holdings Limited ("GRHL") is a UK limited company and is party to the Ramsay LV Agreement and to the Ramsay AC Agreement (collectively, the "Original Ramsay Agreements").

5. The Debtors filed a motion to reject the Pub Agreements on June 8, 2015 [Docket No. 1755] (the "Original Rejection Motion"). In support of the Original Rejection Motion, the

Debtors submitted the Declaration of Randall S. Eisenberg, Chief Restructuring Officer for the Debtors ("Eisenberg"). [Docket No. 1755-2]. In his declaration, Eisenberg states in part that the "'Gordon Ramsay Pub & Grill' restaurants are an important and successful element of the Debtors' restaurant offerings in connection with their casino operations." [*Id*. ¶ 7]. The two restaurants are hereinafter collectively referred to as the "Ramsay Pubs." The Debtors continue to operate both Ramsay Pubs.

6. On November 4, 2015, Movants filed that certain *Request for Payment of Administrative Expense* (the "Admin Expense Motion"). [Docket No. 2531]. In support of the Admin Expense Motion, Movants argued, in part, that an administrative expense claim should be awarded because (a) the Debtor continued to operate and receive significant profits from the Ramsay Pubs, and (b) the Pub Agreements and Original Ramsay Agreements are integrated contracts for the development and operation of the Ramsay Pubs.

7. On January 14, 2016, the Debtors filed a motion to reject the Original Ramsay Agreements and simultaneously enter into new agreements for the continued operation of Ramsay Pubs (the "New Rejection Motion"). [Docket No. 3000]. Because the Ramsay Pubs are so profitable, the Debtors seek rejection of the Original Ramsay Agreements only if this Court approves the Debtors' entry into the new agreements with Ramsay.

B. Assignment, Seibel Case and purported termination

8. Mr. Rowen Seibel was not a party to either of the Pub Agreements. Mr. Seibel was a manager of both LLTQ and FERG. He previously had a direct ownership in FERG, and an indirect ownership in LLTQ. Effective as of April 13, 2016, Mr. Seibel resigned as manager, and assigned his membership interests to a trust, in which he is neither a trustee nor beneficiary (the "Assignment"). Mr. Seibel respectively notified Caesars and CAC of the Assignment in separate letters dated April 8, 2016.

9. On April 18, 2016, the United States Attorney's Office filed an information as to Mr. Seibel in case no. 16-CR-00279, in the U.S. District Court South District of New York (the "Seibel Case"). A copy of the docket from the Seibel Case is attached hereto as Exhibit C. On May 16, 2016, the court entered an order accepting Mr. Seibel's guilty plea for violation of Title 26, United States Code, Section 7212(a). [Seibel Case, Docket No. 9].

10. On September 2, 2016, the Debtors issued notices of termination for the Pub Agreements, "effective immediately" (the "Termination"). Movants dispute and will contest the Termination, and continue to reserve all rights, defenses and objections in connection with same.

C. Lengthy and substantive discovery previously issued in the Contested Matters

11. The Debtors and Movants agreed that any and all discovery would be available for use in the consolidated proceedings on the Original Rejection Motion, the Admin Expense Motion and the New Rejection Motion (collectively, the "Contested Matters"). [Agreed Order Extending Discovery Schedule at 3, Docket No. 3393].

12. In connection with *each* of the Contested Matters the parties issued and responded to lengthy and substantive discovery under the Civil Rules, including requests for admission, interrogatories and requests for document production (collectively, the "Original Discovery"). As part of the discovery process the parties held numerous "meet and confer" discussions pursuant to Rule 37 and prosecuted motions to compel for matters they could not resolve by agreement.

D. Proposed resolution of Contested Matters through summary judgment

13. As the Original Discovery process wound down around August 2016, the parties notified the Court that they believed the Contested Matters could be resolved through a summary judgment process. From Movants' perspective, the Contested Matters were dependent on two

issues, (a) restrictive covenants contained in the Pub Agreements that survive termination and rejection, and (b) integration of the Pub Agreements with the Original Ramsay Agreements.

14. Integration is a straightforward issue that can be decided based on the terms of the underlying contracts and the original discovery responses of the Debtors. For example, the LLTQ Agreement and Ramsay LV Agreement are integrated under Nevada's three-prong test, announced in *Whitemaine*. *See Whitemaine v. Aniskovich*, 183 P.3d 137, 141-42 (Nev. 2008). Both the LLTQ Agreement and the Ramsay LV Agreement were (a) executed and effective as of the same day, (b) concern the same subject matter, and (c) refer to each other. Further, Caesars is a party to both contracts, which contain the same choice of law, dispute resolution, and other provisions.

15. The restrictive covenant issue is also relatively simple. Under section 4.3 in each of the Pub Agreements, the Debtors are prohibited from operating the Ramsay Pubs at the existing restaurant premises after the termination of the agreements. Caesars also agreed per section 13.22 of the LLTQ Agreement that no restaurant venture similar to the Ramsay Pubs can be pursued without involving LLTQ (or its affiliate) on terms similar to the LLTQ Agreement. Section 4.1 of the FERG Agreement also contains restrictive covenants relevant to the operation of the Ramsay Pub in Atlantic City.

16. Even if the Pub Agreements were rejected, the Pub Agreements are not thereby cancelled or repudiated. *See In re Pre-Press Graphics Co., Inc.*, 300 B.R. 902, 909 (Bankr. N.D. Ill. 2003). Under the express terms of the LLTQ Agreement, section 13.22 survives termination.

III. SUITABILITY DISCOVERY

17. The Termination does not change the fact that the Pub Agreements and the Original Ramsay Agreements are integrated in the first instance, nor does it affect Movants' entitlement to administrative priority claims through at least September 2, 2016. Movants thus

filed a motion for partial summary judgment on October 5, 2016 [Docket No. 5197] to adjudicate the integration issue, which is dispositive to the claim.

18. In response, the Debtors filed a preliminary objection [Docket No. 5246], in which they argued the Pub Agreements "were *expressly conditioned on Mr. Seibel's representations* that he (a) was not engaged in any illegal activity and (b) had disclosed all material facts relating to any activities that could render him an 'Unsuitable Person' under the agreements." Preliminary Objection, ¶4 (emphasis added). The Debtors state that they relied on the alleged misrepresentations "when deciding whether to enter into" the Pub Agreements. *Id.* at ¶8. Five months into the Suitability Discovery process, the Debtors similarly stated that they "intend to show that Mr. Seibel falsely represented that he was a "Suitable Person" when he entered into the [Pub Agreements]." Reply Brief in Support of Motion to Compel [Docket 6635], pp. 12-13.[1]

19. For the reasons discussed below, such allegations are wholly inaccurate and, at best, a misstatement of the relevant language from the Pub Agreements. Based on this false premise, the Debtors stated a need for additional discovery to explore a defense to the Contested Matters that they were fraudulently induced to enter into the Pub Agreements and that such agreements were thus void. Preliminary Objection, ¶¶8, 9.

A. The parties have completed substantive responses to the Suitability Discovery to date

20. The scope of the Suitability Discovery was never formally defined. The Debtors nonetheless issued the following as part of same: (a) Rule 45 subpoena issued to Rowen Seibel, individually, with over 130 document requests; (b) Rule 45 subpoena issued to Rowen Seibel, as

[1] The Debtors are also attempting to use the Suitability Discovery for the improper purpose of re-litigating the Seibel Case. "And though the Debtors believe that Mr. Seibel's felony conviction—which was based on conduct predating his entry into the two agreements—is sufficient, they are wary that Mr. Seibel will place blame, as he did in his criminal case, at the feet of his mother." *Id.* at p. 13

legal guardian for Yvette Seibel (his mother); (c) Rule 45 subpoenas issued respectively to (i) Craig Green, individually, (ii) The Seibel Family 2016 Trust, (iii) LLTQ Enterprises 16, LLC; and FERG 16, LLC, with the number of document requests ranging from 54 to 72, excluding subparts, and seeking documents dating back to January 1, 2002; (d) Rule 45 subpoena issued to Jude Jeffrey Frederick; (e) Rule 33 interrogatories issued to FERG; (f) Rule 36 requests for admissions issued to FERG, containing 63 requests; (g) Rule 34 requests for the production of documents issued to FERG, containing 64 requests; (h) Rule 33 interrogatories issued to LLTQ; (i) Rule 36 requests for admissions issued to LLTQ, containing 63 requests; and (j) Rule 34 requests for production of documents issued to LLTQ, containing 67 requests.

21. Movants and other respondents have provided answers and specific objections to all of the foregoing Suitability Discovery issued by the Debtors to date, including the production of documents, which continues on a rolling basis as of the date of this Motion.

B. Disagreements arose related to scope and propriety of Suitability Discovery

22. In response to the Suitability Discovery, and as part of the parties' meet and confer process under Rule 37, Movants specifically objected to the scope of discovery and the resulting burden imposed, and sought further clarity from the Debtors as to which specific representations are alleged to be at issue. *See e.g.*, correspondences dated January 9, 2017 (pp. 2-3), January 27, 2017 (p. 2), March 9, 2017, March 10, 2017, March 13, 2017, March 15, 2017, and April 4, 2017, attached hereto as Group Exhibit D. As part of this process counsel for Movants had numerous telephone conversations with Debtors' counsel. The Debtors also supplemented their responses to interrogatories (the complete set of responses and amendments are attached hereto as Group Exhibit E (the "Interrogatory Responses") and produced certain documents (the "Document Production").

C. Representations alleged to be at issue do not exist for the Pub Agreements

23. Under the Pub Agreements, there are no representations that expressly state whether LLTQ, FERG, Mr. Seibel or any other person is a "suitable" or "unsuitable" person. Rather, the Pub Agreements allow the Debtors to conduct any necessary due diligence they may require in this regard. For example, section 2.2 of the LLTQ Agreement provides:

> Notwithstanding anything to the contrary contained herein, the rights and obligations of each party under this Agreement (other than the obligations under Section 2.3, 2.4 and 8.1 and Article 13 (other than Section 13.16)), is conditioned upon (*which conditions may be waived by Caesars in its sole and absolute discretion*): (i) submission by LLTQ to Caesars of all information *requested by Caesars* regarding LLTQ, its Affiliates and the directors, officers, employees, agents, representatives and other associates of LLTQ or any of its Affiliates (collectively, the "LLTQ Associates") to ensure that they are not an Unsuitable Person; (ii) Caesars being satisfied, in its sole discretion, that no LLTQ Associate is an Unsuitable Person . . .
>
> LLTQ Agmt., §2.2 (*emphasis added*).

24. Section 2.2 of the FERG Agreement contains nearly identical language, with the notable difference that CAC expressly acknowledged that "the conditions set out in this Agreement have been fulfilled prior to the date hereof." FERG Agmt., §2.2.

25. In addition, the Debtors were not required to make any payment to Movants under the Pub Agreements until the Debtors completed background checks on Movants and their affiliates (which included Mr. Seibel). LLTQ Agmt., §10.2; FERG Agmt., §11.2.

26. Remarkably, the Interrogatory Responses and Document Production (collectively, the "Debtor Responses") reveal that Debtors conducted no due diligence in connection with suitability for either of the Pub Agreements. Rather, for the LLTQ Agreement executed in April 2012, Debtors purport to have relied exclusively on a Business Information Form (a "BIF") submitted by Moti more than three years earlier in January 2009 in connection with a separate restaurant project referred to as "Serendipity 3" (the "Moti BIF"). Interrogatory Responses, No.

11 (Supplemental and Amended Response , p. 15) ("The Debtors continued to rely on Mr. Seibel's representations from the 2009 BIF and the MOTI Agreement when they entered into the LLTQ Agreement").[2]

27. The Moti BIF was submitted as part of a "due diligence investigation" conducted by Caesars or its predecessor, Harrah's Entertainment. A copy of the Request for Due Diligence Investigation and the Moti BIF are attached hereto as Exhibit F. Mr. Seibel signed the Moti BIF on behalf of Moti, as its President.

28. No such due diligence investigation was conducted by the Debtors in connection with either of the Ramsay Pub projects. The Debtors did not obtain a BIF from LLTQ or FERG before the Debtors respectively executed and entered into the Pub Agreements. In fact, the Debtors never obtained a BIF for LLTQ or FERG.

29. Neither of the Pub Agreements reference Moti, the Moti BIF or the Serendipity restaurant. Both agreements have an integration clause, which provides in part "This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written." LLTQ Agmt., §13.6; FERG Agmt., §14.6.

30. In the Debtor Responses, Caesars and CAC also continue to equate Mr. Seibel, an individual, with the separate limited liability companies that contracted with the Debtors. Specifically, the Debtors allege "LLTQ and Mr. Seibel are effectively synonymous" (Interrogatory Responses (Amended and Restated), p. 15), and "FERG and Mr. Seibel are effectively synonymous" (*Id*. at p. 27).

[2] The Debtors supplemental amended answer demonstrates that their response to Interrogatory No. 14 (describe all actions you took to determine whether LLTQ and its Associates were unsuitable persons prior to entering into the LLTQ Agreement) is patently inaccurate. "The Debtors state the LLTQ, FERG, Mr. Seibel, and other entities doing business with the Debtors submitted Business Information Forms that contained information relevant to the parties' suitability to enter into an agreement with Caesars." To the contrary, there are no BIFs for Movants or Mr. Seibel.

31. Moreover, the Debtors attribute all representations and obligations of LLTQ under the LLTQ Agreement as if they were personal to Mr. Seibel, a non-party. For example, the Debtors allege:

a. "the Debtors state that Mr. Seibel and LLTQ made the following representations and warranties in section 9.2 of the LLTQ Agreement . . ." *Id.* at p. 3;

b. "In the section titled "Standards," LLTQ and Mr. Seibel acknowledged. . ." *Id.* at p. 11; and

c. "there are no actions, suits or proceedings pending or, to the best knowledge of LLTQ, threatened against LLTQ in any court or before any administrative agency that would prevent LLTQ from completing the transactions provided for herein." (LLTQ Agreement § 9.2(d)). *Id.* at p. 7.

    i. The Debtors allege this was false because "Mr. Seibel was aware that his conduct was illegal and could result in proceedings *against him*." *Id.* at p. 11 (emphasis added).

d. "Mr. Seibel and LLTQ also misrepresented that they had the legal capacity to execute and deliver the LLTQ Agreement. Given his prior experience (and the statements in the LLTQ Agreement), Mr. Seibel and LLTQ either knew or should have known that they could not enter into a contract with Caesars given his illegal conduct." *Id.* at pp. 12-13.

e. "LLTQ and Mr. Seibel misrepresented that they had the ability to perform obligations" under the "Standards" and "Privileged Licensed" section of the LLTQ Agreement. *Id.* at p. 12.

The Debtors can only allege that the representations are false if they are personally attributed to Mr. Seibel. The Debtors effectively replicate the above arguments for FERG and the FERG Agreement. *Id.* at pp. 16-28.

IV. LEGAL STANDARDS AND ARGUMENT

32. Over the past eighteen months while incurring considerable costs, the parties have conducted the Original Discovery and completed the vast majority of the Suitability Discovery issued to date. In addition to the information obtained therefrom, the Debtors have accessed the Seibel Case docket, including all pleadings and hearing transcripts in the case.

33. The Seibel Case is alleged to be the trigger for the Debtors' fraudulent inducement defense. That matter is closed and its record is complete, yet the Debtors now seek to continue the Suitability Discovery to further investigate Mr. Seibel's actions that were at issue in the Seibel Case. The Debtors cannot now act as the United States Attorney. The Seibel Case record cannot be changed through the Suitability Discovery, where the Debtors improperly seek to re-litigate the Seibel Case. *See* Reply Brief in Support of Motion to Compel [Docket 6635], pp. 12-13 ("And though the Debtors believe that Mr. Seibel's felony conviction . . . is sufficient, they are wary that Mr. Seibel will place blame, as he did in his criminal case, at the feet of his mother").[3]

34. As such, any further discovery cannot be proportional to the needs of the Contested Matters. All pertinent issues are ripe for adjudication and the Debtors have access to all relevant information. Any additional discovery will necessarily cause parties and non-parties to incur further burdens and costs, for which there can be no benefit. The Debtor Responses have revealed critical factual gaps in the purported basis for the Debtors' fraudulent inducement defense, which cannot be cured by any further Suitability Discovery. There is thus no legal or factual basis upon which to pursue additional discovery.

A. A protective order is available under Civil Rule 26 to terminate the Suitability Discovery

35. Discovery is generally limited to nonprivileged matters, relevant to a claim or defense, that are proportional to the needs of the case, considering the importance of the issues at stake, "the amount in controversy, the parties' relative access to relevant information, the parties'

[3] Similarly, in their memorandum in support of a Motion to Compel document production from Mr. Seibel (in connection with a subpoena with numerous requests that overlap with the Suitability Discovery issued against Movants) the Debtors assert that although Mr. Seibel pleaded guilty, "in his submissions to the court he never accepted responsibility for his actions and instead attempted to blame his mother for his illegal conduct. As a result, the Debtors are seeking certain documents from both Mr. Seibel and Mr. Seibel's mother *relating to the respective roles they played in illegal conduct*." Docket No. 6752, p. 5 (fn 3)).

resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b). Here, proportionality has reached a tipping point now that the Debtors have fulsome responses to the Original Discovery and Suitability Discovery and have access to the Seibel Case pleadings. Further, any burden or expense imposed by future fact depositions and expert testimony will outweigh the benefits as there are no underlying facts to support the Debtors' defense.

36. Civil Rule 26(c) provides, in relevant part, that:

> The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:
>
> (A) forbidding the disclosure or discovery;
>
> ****
> (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters . . . .

Fed. R. Civ. P. 26(c)(1).

37. Civil Rule 26(b) provides that pursuant to a motion under Rule 26(c) or upon its own initiative, a court may act to limit the frequency or extent of the use of discovery methods if it finds:

> (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
>
> (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
>
> (iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).
>
> Fed. R. Civ. P. 26

The Debtor Responses have revealed that the Debtors' do not have a fraudulent inducement defense because there are no relevant representations and warranties actually made by Movants.

38. The Court has discretion and authority under Civil Rule 26 to terminate the Suitability Discovery that has run its course beyond any further usefulness. A trial court has "broad discretion . . . to decide when a protective order is appropriate and what degree of protection is required." *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984). Civil Rule 26 is supplemented by a court's "inherent authority to manage and oversee the discovery process" and to "remedy unfair litigation practices." *Costello v. Poisella*, 291 F.R.D. 224, 230 (N.D. Ill. 2013) (internal citation omitted).

39. In deciding whether to grant a protective order under Civil Rule 26, a court "must balance the interests of the parties, taking into account the harm to the party seeking the protective order and the importance of the disclosure to the nonmoving party." *Malibu Media, LLC v. John Does 1-6*, 291 F.R.D. 191 (N.D. Ill. 2013) (internal citation omitted).

B. Further discovery cannot generate facts to support a fraudulent inducement defense

40. To establish fraud in the inducement as grounds for rescission, the Debtors must establish by clear and convincing evidence that: (a) Movants made a false representation; (b) Movants had knowledge of the falsity of the representation; (c) Movants intended to induce the Debtors to rely on the representation; (d) the Debtors in fact relied on the representation; and (e) the Debtors suffered damages as a result of their reliance. *See J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290, 89 P.3d 1009, 1018 (2004).

(1) The Debtors have admitted that they conducted no due diligence investigation of LLTQ, FERG, or Mr. Seibel in the first instance

41. The Debtors have admitted that they did not conduct the due diligence discovery in connection with the Pub Agreements. Rather they purport to have relied exclusively on the Moti BIF submitted by Moti, a stranger to the Pub Agreements and the Ramsay Pubs. Moreover, Moti submitted the Moti BIF over three years prior to the execution of the LLTQ Agreement.

42. Neither LLTQ nor FERG made any representations regarding suitability. Under the Pub Agreements there are no representations of whether a party or affiliate is "suitable" or "unsuitable." Rather, the Debtors have the right and the burden of conducting such investigation, which they did not. There is thus no representation related to suitablity upon which the Debtors relied. Without an underlying representation, no fraudulent inducment can be alleged.

43. The fraudulent inducement claim thus fails on its face because it is directly contradicted by the express terms of the Pub Agreements. Under sections 2.2 of the Pub Agreements, section 10.2 of the LLTQ Agreement and section 11.2 of the FERG Agreement, the suitability issue is squarely a matter for the Debtors to determine based on their own investigation. These sections address all matters relevant to suitability, including the investigation to determine suitability, remedies available to the Debtors, and waiver of the contractual obligations. The Debtors, however, elected not to conduct any investigation in the first instance. Instead the Debtors assert that they "continued to rely on Mr. Seibel's representations from the [Moti] BIF and the MOTI Agreement when they entered into the LLTQ Agreement." Interrogatory Responses, No. 11 (Supplemental and Amended Response, p. 15).

44. Moreover, even if any due diligence had been conducted by the Debtors regarding suitability, the LLTQ Agreement expressly provides that the conditions to the effectiveness of the LLTQ Agreement set forth in section 2.2 of the LLTQ Agreement are waivable (including the requirement of LLTQ to submit to Caesars all information *requested by Caesars* regarding the LLTQ Associates to ensure that they are not an Unsuitable Person).

(2) The Debtors have only benefitted from entering into the Pub Agreements in the form of millions of dollars of net profits

45. The Debtors also admit they have no damages. Specifically, the Debtors have not incurred any sanctions, fines, or penalties imposed by the Nevada or New Jersey gaming in

connection with FERG, LLTQ, and Mr. Seibel. Interrogatory Responses, no. 23. Further, the only purported "damages" asserted by the Debtors relate to attorneys' fees incurred as part of the attempt to reject the Pub Agreements. *Id.* at no. 24. Such damages cannot be said to arise from entering into the Pub Agreements in reliance of the alleged misrepresentations.

46. Indeed, far from being damaged at all, the Debtors continue to operate and profit from the Ramsay Pubs, "an important and successful element of the Debtors' restaurant offerings." This is significant as the stated purpose of the Pub Agreements is to design, develop and operate the Ramsay Pubs. Further, Movants estimate that the Debtors have netted over $10 million in profits from the operation of the Ramsay Pubs to date.

C. The Debtors have improperly used Suitability Discovery to manufacture representations into the Pubs Agreements

47. No further burden or expense for discovery can be justified under Rule 26 where the Debtors have failed to demonstrate any representations from the Pubs Agreements are implicated by the Seibel Case in the first instance. Rather, the Debtors have invoked representations by Moti, cited benign representations from the Pub Agreements, and attributed same to Mr. Seibel. Such arguments do not justify the burden of additional Suitability Discovery. "The mere hope that additional discovery may give rise to winning evidence does not warrant the authorization of wide-ranging fishing expeditions." *Tolliver v. Fed. Republic of Nigeria*, 265 F. Supp. 2d 873, 880 (W.D. Mich. 2003) (citing *Ameristar Jet Charter, Inc. v. Signal Composites, Inc.,* 244 F.3d 189, 192–93 (1st Cir. 2001).

(1) The parol evidence rule precludes the Debtors from incorporating the Moti Agreement and Moti BIF to manufacture representations from the Pub Agreements

48. The Debtors may not rely on the Moti Agreement and the Moti BIF (provided in 2009) to manufacture a fraudulent inducement claim for the Pub Agreements (respectively executed in 2012 and 2014) based on a criminal case filed in 2016.

49. Under Nevada law, the parol evidence rule provides that "when a contract is clear, unambiguous, and complete, its terms must be given their plain meaning and the contract must be enforced as written; the court may not admit any other evidence of the parties' intent because the contract expresses their intent." *Ringle v. Bruton*, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004); *see also Khan v. Bakhsh*, 306 P.3d 411, 413 (Nev. 2013) ("The parol evidence rule generally bars extrinsic evidence regarding prior or contemporaneous agreements that are contrary to the terms of an integrated contract.") (citation omitted).

50. New Jersey courts are more lenient in allowing extrinsic evidence, which "may be used to uncover the true meaning of contractual terms. *Conway v. 287 Corp. Ctr. Associates*, 187 N.J. 259, 270, 901 A.2d 341, 347 (2006). The Debtors do not, however, suggest that the language of the Pub Agreements is ambiguous.

51. There is therefore nothing in the Pub Agreements that allows Debtors to incorporate Moti, the Moti BIF or the Serendipity restaurant project (or any representations arising therefrom) into the suitability requirements created under the Pub Agreements. Under their express langauge, the Pub Agreements contain no references to Moti, the Moti BIF, the Serendipity restaurant or any other restaurant projects among the Debtors and entities in which Mr. Seibel previously had an interest.

(2) The inducement defense is premised on destroying the legal distinction between Movants and Mr. Seibel

52. Pursuant to section 13.10 of the LLTQ Agreement, Nevada law governs "the validity, construction, performance and effect" of the contract. LLTQ Agree. § 12.10. Nevada generally treats corporations and shareholders as separate legal entities. *See Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1241 (D. Nev. 2008). Pursuant to section 14.10 of the FERG Agreement, New Jersey law governs "the validity, construction, performance and effect"

of the contract. FERG Agree. § 14.10. New Jersey courts similarly hold as a "fundamental proposition" that a corporation is a separate entity from its shareholders. *Richard A. Pulaski Const. Co., Inc. v. Air Frame Hangars, Inc.*, 195 N.J. 457, 472, 950 A.2d 868, 877 (2008).

53. Throughout their amended Interrogatory Responses, the Debtors treat every representation, warranty and convenant in the Pub Agreements as if they had been made by Movants and by Mr. Seibel, individually. Mr. Seibel, however, is not a party to the Pub Agreements and did not make any representations or warranties in the Pub Agreements. While Mr. Seibel may have had certain duties to perform under the Pub Agreements, he is not a party and not a signatory in his individual capacity.

54. The Debtors continue to improperly conflate Mr. Seibel, an individual, and LLTQ and FERG, both distinct corporate entities that are the original parties to the Pub Agreements. At no time have the Debtors or their affiliates entered into a contract with Mr. Seibel, individually, with respect to the Ramsay Pubs or for any other project. In contrast, Mr. Ramsay (individually) *and* his company GRHL are both parties to the Ramsay LV Agreement, which was negotiated contemporaneously with and entered into at the same time as the LLTQ Agreement.

(3) Rescission is an equitable remedy that is not available for the Debtors

55. Rescission of a contract is an equitable remedy that voids a contract in its entirety "and which seeks to place the parties in the position they occupied prior to executing the contract." *Scaffidi v. United Nissan*, 425 F. Supp. 2d 1172, 1183 (D. Nev. 2005) (citation omitted). It is unclear how the Debtors expect to accomplish rescission, given that they currently operate the Ramsay Pubs –i.e. the sole subject of the Pub Agreements– and plan to keep doing so into the future.

56. Rescission of the Pub Agreements is not available to the Debtors for a number of reasons, including: (a) the Debtors have admitted that they have no damages arising from any

alleged misrepresentation; (b) no damages could be alleged as entry into the Pub Agreements resulted in profitable operations of the Ramsay Pubs that continue presently; (c) it is impossible to put Movants and the Debtors back in their original positions before entering the Pub Agreements, which provided for and in fact accomplished the design, development, construction and successful operations of the Ramsay Pubs; and (d) the Pub Agreements expressly provide a remedy for the "unsuitability" issue that the Debtors have in fact employed –termination of the contracts.

57. Voiding or cancelling a contract through rescission is an extreme remedy available only in courts of equity. The Supreme Court has stated as much:

> Cancelling an executed contract is an exertion of the most extraordinary power of a court of equity. The power ought not to be exercised except in a clear case, and never for an alleged fraud, unless the fraud be made clearly to appear*; never for alleged false representations*, unless their falsity is certainly proved, *and unless the complainant has been deceived and injured by them*.

Atl. Delaine Co. v. James, 94 U.S. 207, 214 (1876) (emphasis added).

58. Even if the Debtors could demonstrate fraud or a misrepresentation existed, the Debtors cannot show the required element of damages where the Debtors have enjoyed (and continue to enjoy) profits from the (on-going) operations of the Ramsay Pubs. *See Anderson v. Reynolds*, 588 F. Supp. 814, 818 (D. Nev. 1984) (damages to the plaintiff resulting from justifiable reliance on the alleged misrepresentation is a required element of intentional fraudulent misrepresentation); and *J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290, 89 P.3d 1009, 1018 (2004). In fact, the Debtors have admitted as much in their Interrogatory Responses.

V. CONCLUSION – SUITABILITY DISCOVERY SHOULD BE TERMINATED

59. The parties have completed a significant portion of the Suitability Discovery, with only depositions and expert discovery remaining. In addition, the Debtors have the Original Discovery responses, all of which was generated through significant time, effort and costs of

Movants and other discovery respondents. The Debtors also have access to the Seibel Case pleadings.

60. Based on this thorough discovery process and the Debtor Responses, it is now clear there are no representations actually made by Movants that can be called into question by the Seibel Case. The basis for the Debtors' allegation of fraudulent inducement thus has no support. Facing this defect, the Debtors are forced to manufacture alleged reliance by equating an individual to a limited liability, and asserting reliance on representations made by Moti in connection with the Serendipity restaurant and a contract executed three years before entering into the LLTQ Agreement.

61. Moreover, the Debtors conducted no investigation for suitability for the Pub Agreements in the first instance, and have nothing from the Movants to rely upon in this regard. Further discovery thus cannot be relevant to the suitability defense. The Debtors have also admitted that they have suffered no damages as a result of any alleged misrepresentations. To the contrary, the Debtors continue to enjoy the benefits of the Ramsay Pubs, a successful restaurant enterprise, in excess of $10 million of profits to date.

62. In light of same, any further discovery cannot be proportional to the needs of this case, as the fraudulent inducement defense is illusory and not supported by fact. Moreover, it is improper to continue discovery so that the Debtors may play the role of the United States Attorney to "investigate" anew the Seibel Case, which has concluded. No further discovery is required, nor should it be allowed.

Respectfully submitted,
FERG, LLC, and
LLTQ ENTERPRISES, LLC

By: /s/ Nathan Q. Rugg
One of Their Attorneys

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Exhibit O

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al.,[1]	)	Case No. 15-01145 (ABG)
	)	(Jointly Administered)
Debtors.	)	

DEBTORS' OBJECTION TO COMBINED MOTION FOR PROTECTIVE ORDER BY LLTQ ENTERPRISES, LLC AND FERG, LLC

[1] A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at https://cases.primeclerk.com/CEOC.

In 2012 and 2014, two Caesars entities entered into agreements for two restaurants with entities owned and managed by Rowen Seibel: LLTQ and FERG. Mr. Seibel was involved in the creation of each entity, had sole decision-making authority for each entity, negotiated the terms of the agreements with Caesars for each entity, signed each agreement as the owner and manager of each entity, and was the individual designated by each entity to interface with Caesars with respect to the performance under each contract. Although the agreements were between corporate entities, the LLTQ and FERG Agreements created relationships between Caesars and Mr. Seibel with respect to the two restaurants. Indeed, the LLTQ Agreement expressly stated that Caesars was "relying upon the skill and expertise of Rowen Seibel in entering into this Agreement . . . ." (Ex. A, LLTQ Agreement § 13.2)

Because of the highly-regulated nature of Caesars' business, the LLTQ and FERG Agreements contain numerous representations, warranties and promises to ensure that Caesars was not entering into a relationship that would jeopardize its good standing with gaming regulators. Among other things, LLTQ and FERG represented that each entity shall and "shall cause its Affiliates to conduct themselves in accordance with the highest standards of honesty, integrity, quality and courtesy to maintain and enhance the reputation and goodwill of Caesars . . . ." (*Id*. § 10.1(b)) For purposes of these representations, each agreement made clear, "[f]or the avoidance of doubt, [that] Rowen Seibel and his Relatives are Affiliates of LLTQ [and FERG]." (*Id*. § 2.1; Ex. B, FERG Agreement § 2.1) The rights and obligations of each party under the LLTQ and FERG Agreements were likewise conditioned on "Caesars being satisfied, in its sole discretion, that no [LLTQ Associate and FERG Associate] is an Unsuitable Person." (Ex. A, LLTQ Agreement § 2.2(a)(ii); *see also* Ex. B, FERG Agreement § 2.2) Mr. Seibel was included

within the definitions of LLTQ Associates and FERG Associates as an "Affiliate" of each Entity. (Ex. A, LLTQ Agreement § 1; Ex. B, FERG Agreement § 1)

Although Caesars had the right to request information from each entity to satisfy itself that Mr. Seibel was suitable from a regulatory perspective, it had a preexisting contract with a different entity owned by Mr. Seibel for a different restaurant. In connection with that deal, Mr. Seibel represented that there was nothing "that would prevent him from being licensed by a gaming authority." (Ex. C, MOTI BIF) To the extent his suitability disclosure became inaccurate, it had to be updated without Caesars making a request. (Ex. D, MOTI Agreement § 9.2) Caesars had not received an updated disclosure and relied on Mr. Seibel's prior representations to satisfy itself that Mr. Seibel remained a suitable person when entering into the LLTQ and FERG Agreements.

Mr. Seibel's disclosure, however, was false when made in 2009 and when Caesars relied on it in again in entering into the LLTQ and FERG Agreements in 2012 and 2014. Beginning in 2004, Mr. Seibel began using foreign bank accounts to defraud the IRS. In 2009, when Mr. Seibel was assuring Caesars that there was nothing "that would prevent him from being licensed by a gaming authority," he was submitting false documentation to the IRS regarding his use of foreign bank accounts. Neither Mr. Seibel nor any of his entities ever updated the disclosure. Instead, Caesars only learned in August 2016 through press reports that Mr. Seibel had pleaded guilty to obstruction of federal tax laws and was sentenced to a month in prison. Caesars promptly terminated all of its agreements with Mr. Seibel and his entities as it never would have entered into any relationship with Mr. Seibel had he made truthful disclosures regarding his criminal activity.

Prior to learning about his criminal activity, Caesars filed a motion to reject the LLTQ and FERG Agreements in June 2015. [Dkt No. 1755] LLTQ and FERG responded with a motion for administrative expense. [Dkt. No. 2531] This Court raised whether suitability is an appropriate topic for discovery with respect to LLTQ and FERG's Motion for Payment of Administrative Expense Claim, given that the Debtors have not filed a separate adversary proceeding. Discovery on the subject of suitability is directly relevant and appropriate here, however, because it will be used to establish that LLTQ and FERG breached the agreements and that breach excuses the Debtors' performance and, thereby, any obligation to pay LLTQ and FERG an administrative expense claim. *Arlington LF, LLC, v. Arlington Hospitality, Inc.,* 657 F.3d 706, 713 (7th Cir. 2011). *Arlington Hospitality* is a case with the exact same procedural posture here: a lender sought payment of an administrative expense claim and the Court held the lender's anticipatory repudiation immediately discharged all of the debtor's remaining duties to the lender. *Id.* No separate adversary proceeding was necessary; the debtor in *Arlington* was entitled to defend the administrative expense claim by proving breach of the contract. So too here. LLTQ and FERG breached the relevant agreements each time they failed to disclose to the Debtors that they and their affiliates were unsuitable parties. The Debtors are entitled to discovery on that breach. Moreover, the Debtors are entitled to discovery into whether they were fraudulently induced into entering the LLTQ and FERG Agreements.

Instead of demonstrating that unsuitability is irrelevant, LLTQ and FERG spend considerable effort attempting to demonstrate that LLTQ and FERG were indeed suitable parties to the contracts and that the Debtors' assertions about suitability are "wholly inaccurate and, at best, a misstatement of the relevant language." [Dkt. No. 6781, at 7] As set forth below, however, suitability was indeed required as a continuing material obligation throughout the

course of the parties' dealings or else Caesars was not permitted to do business with LLTQ and FERG. And LLTQ and FERG cannot separate themselves from Mr. Seibel and his unsuitableness. In any event, the Debtors are not required to *prove* breach and unsuitability in order to be entitled to discovery on it. As even LLTQ and FERG previously argued before this Court, "[d]iscovery is not to be denied because it relates to a claim or defense that is being challenged as insufficient." [Dkt. No. 4674 at 1-2] LLTQ and FERG bear the burden of establishing that good cause exists for entry of its proposed protective order. *See* Fed. R. Civ. P. 26(c); *Johnson v. Jung*, 242 F.R.D. 481, 483 (N.D. Ill. 2007) ("The burden to show good cause is on the party seeking the protective order."). They have failed to satisfy this burden.

FACTUAL AND PROCEDURAL BACKGROUND

Caesars' relationship with Mr. Seibel began in 2009 when the parties commenced negotiations of an agreement relating to the operation of the Serendipity 3 restaurant in Las Vegas (the "MOTI Agreement"). (Ex. D, MOTI Agreement) In connection with the initial discussions between the parties, Caesars required Mr. Seibel to complete a "Business Information Form" ("BIF"). (Ex. C, MOTI BIF) On that form, Mr. Seibel represented that there was nothing "that would prevent him from being licensed by a gaming authority." (*Id*. at ¶ 11) The parties then entered into the MOTI Agreement wherein MOTI agreed that, to the extent any prior disclosure regarding it or its key employees, representatives, or management personnel became inaccurate, MOTI must "update the prior disclosure without Caesars making any further requests." (Ex. D, MOTI Agreement, at 12) Despite these obligations, neither Mr. Seibel nor MOTI ever provided Caesars with an updated disclosure regarding his illegal activities, his investigation by the IRS, or his eventual conviction.

In 2012 and 2014, Caesars entered into two more agreements with entities owned and managed by Mr. Seibel (the LLTQ and FERG Agreements). (Ex. A, LLTQ Agreement; Ex. B,

FERG Agreement) LLTQ and FERG represented in those agreements that "[they] shall and shall cause their Affiliates to conduct themselves in accordance with the highest standards of honesty, integrity, quality and courtesy so as to maintain and enhance the reputation and goodwill of Caesars, the Caesars Las Vegas and the Restaurant and at all times in keeping with and not inconsistent with or detrimental to the operation of an exclusive, first-class resort hotel casino and an exclusive, first-class restaurant." (Ex. A, LLTQ Agreement § 10.1(b); Ex. B, FERG Agreement § 11.1(b)) The agreements also stated that, "[f]or the avoidance of doubt, Rowen Seibel and his Relatives are Affiliates of LLTQ [and FERG]." (Ex. A, LLTQ Agreement § 2.1; Ex. B, FERG Agreement § 2.1) The rights and obligations of each party under the LLTQ and FERG Agreements were likewise conditioned on "Caesars being satisfied, in its sole discretion, that no [LLTQ Associate and FERG Associate] is an Unsuitable Person." (Ex. A, LLTQ Agreement § 2.2(a)(ii); *see also* Ex. B, FERG Agreement § 2.2(a)) Mr. Seibel was included within the definitions of LLTQ Associates and FERG Associates as an "Affiliate" of each Entity. (Ex. A, LLTQ Agreement § 1; Ex. B, FERG Agreement § 1) Furthermore, the agreements imposed on LLTQ and FERG an ongoing obligation to update any prior disclosures regarding LLTQ, FERG, or their key personnel, employees, or management if those disclosures became inaccurate.[2] (Ex. A, LLTQ Agreement § 10.2; Ex. B, FERG Agreement § 11.2) Given that Mr. Seibel and his entities had never updated his suitability disclosures despite an obligation to do so if they changed without Caesars making a request (Ex. B, MOTI Agreement § 9.2), Caesars

[2] The LLTQ and FERG Agreements stated that "[p]rior to the execution of this Agreement and, in any event, prior to the payment of any monies by Caesars to LLTQ hereunder, and thereafter on each anniversary of the Opening Date during the Term, (a) LLTQ shall provide to Caesars written disclosure regarding the LLTQ Associates [*e.g.*, "directors, officers, employees, agents, representatives and other associates of LLTQ or any of its Affiliates] . . . To the extent that any prior disclosure becomes inaccurate, LLTQ shall, within ten (10) calendar days from that event, update the prior disclosure without Caesars making any further request." (Ex. A, LLTQ Agreement § 10.2; Ex. B, FERG Agreement § 11.2)

relied on Mr. Seibel's prior representations to satisfy itself that Mr. Seibel remained a suitable person when entering into the LLTQ and FERG Agreements. Finally, LLTQ and FERG represented that "[a]s of the Effective Date, no representation or warranty made herein by LLTQ [or FERG] contains any untrue statement of a material fact, or omits to state a material fact necessary to make such statements not misleading." (Ex. A, LLTQ Agreement § 9.2; Ex. B, FERG Agreement § 10.2)

Mr. Seibel, as the manager and owner of LLTQ and FERG, signed the LLTQ and FERG Agreements. Mr. Seibel retained "voting control of LLTQ and the sole right to make decisions relating to [the LLTQ] Agreement on behalf of LLTQ. . . . [And Mr.] Seibel . . . [was] the individual designated by LLTQ representing the interests of LLTQ in interfacing with Caesars relative to [the LLTQ] Agreement, in connection with the operation of the Restaurant." (Ex. A, LLTQ Agreement §2.2(b)) LLTQ also acknowledged that "Caesars is relying upon the skill and expertise of Rowen Seibel in entering into this Agreement and accordingly, the obligations and duties of LLTQ specifically designated hereunder to be performed by Rowen Seibel are personal to Rowen Seibel and are not assignable or delegable by LLTQ or Rowen Seibel to any other Person without the prior written consent of Caesars." (Ex. A, LLTQ Agreement § 13.2) Finally, the agreements explicitly state that Rowen Seibel and his Relatives are Affiliates of LLTQ and FERG. (Ex. A, LLTQ Agreement § 2.1; Ex. B, FERG Agreement § 2.1)

The instant litigation began when the Debtors filed a motion to reject the FERG and LLTQ Agreements. [Dkt. No. 1755] Shortly thereafter, LLTQ and FERG filed a request for payment of administrative expenses. [Dkt. 2531] In August 2016, the Debtors discovered from press reports that Mr. Seibel had pled guilty in April 2016 to one count of corrupt endeavor to

obstruct and impede the due administration of the Internal Revenue Laws, 26 U.S.C. § 7212.[3] Based on a review of the pleadings in that case, the Debtors discovered that, in 2004, Mr. Seibel and his mother traveled to UBS offices in Switzerland. (Ex. E, U.S.A. v. Rowen Seibel Information, ¶ 7) While in Switzerland, Mr. Seibel opened and became the beneficiary and account holder of a UBS bank account. (*Id.*)

On or about May 30, 2008, Mr. Seibel traveled back to Switzerland and informed UBS personnel that he wanted to close his Numbered UBS Account. (*Id.* ¶ 8) At the time, there were press reports that the United States government was commencing investigations and pursuing legal action relating to UBS's role in helping United States citizens evade federal income taxes by, among other things, using undeclared foreign bank accounts at UBS. (*Id.*) Mr. Seibel specifically referenced these press reports as the reason he wanted to close the account. (*Id.*)

Prior to closing the UBS Account, Mr. Seibel created a Panamanian shell company called Mirza International ("Mirza"). (*Id*. ¶ 9) Mr. Seibel was the beneficial owner of the shell company. (*Id.*) In addition, Mr. Seibel opened another offshore account at a different Swiss bank, Banque J. Safra. (*Id*.) This time, however, he opened the account in the name of the newly-created Mirza International instead of his own name. (*Id*.)

On or about October 10, 2008, Mr. Seibel filed with the IRS a Form 1040 for calendar year 2007. (*Id*. ¶ 10) On that return, which Mr. Seibel signed under penalty of perjury, he omitted the dividend, interest, and other income he received in one or more bank, securities, and other financial accounts at UBS. (*Id*.) Mr. Seibel also failed to report on Schedule B of his 2007

[3] *See* Jesse Drucker & Christian Berthelsen, *Restauranteur Seibel Sent to Jail, Then Kitchen, in Tax Scam* (Bloomberg, Aug. 19, 2016), https://www.bloomberg.com/news/articles/2016-08-19/restaurateur-turned-tax-dodger-readies-for-manhattan-sentencing; Bradley Martin, *IRS Busts Caesars Palace's Serendipity 3 Owner Rowen Seibel; The Gordon Ramsay Partner Will Serve One Month in Prison* (Eater Las Vegas, Aug. 22, 2016) http://vegas.eater.com/2016/8/22/12580248/Rowen-Seibel-jail-sentence-IRS-tax-evasion.

Form 1040 that he had an interest in or a signature authority over a financial account in a foreign country. (*Id.*) Moreover, because of his authority over the Numbered UBS Account, Mr. Seibel was required to file a Foreign Bank and Financial Accounts, Form TD F 90-22.1 ("FBAR") for calendar year 2007, but did not do so. (*Id.*) Mr. Seibel filed other false forms for calendar year 2008. (*Id.*) Individuals failing to file an FBAR are subject to up to ten years in prison and criminal penalties up to $500,000. Voluntary Disclosure Program, IRS Website, https://www.irs.gov/uac/voluntary-disclosure-questions-and-answers.

In 2009, the IRS announced the Voluntary Disclosure Program. (Ex. E,. U.S.A. v. Rowen Seibel Information, ¶ 12). The Voluntary Disclosure Program was intended to serve as a vehicle for U.S. taxpayers that were not already under investigation by the IRS to avoid criminal prosecution. (*Id.*) It required these individuals to disclose their previously undeclared offshore accounts, pay tax on the income earned in those accounts, and file a FBAR. Under the Voluntary Disclosure Program:

> When a taxpayer **truthfully**, timely, and **completely** complies with all provisions of the voluntary disclosure practice, the IRS will not recommend criminal prosecution to the Department of Justice. . . . The failure to file an FBAR and **the filing of a false FBAR are both violations that are subject to criminal penalties** under 31 U.S.C. § 5322.

Voluntary Disclosure Program, IRS Website, https://www.irs.gov/uac/voluntary-disclosure-questions-and-answers (emphasis added).

In October 2009, Mr. Seibel submitted an application and FBAR to the Voluntary Disclosure Program. (Ex. E, U.S.A. v. Rowen Seibel Information, ¶ 13) The application and FBAR, however, contained several misrepresentations. (*Id.*) First, the application falsely stated that Mr. Seibel had been unaware, during the years 2004 and 2005, that his mother had made deposits into the Numbered UBS Account for Mr. Seibel's benefit. (*Id.*) Second, the application

falsely stated that Mr. Seibel had been unaware, until he made inquiries of UBS in 2009, of the status of his account at UBS. (*Id*.) Third, the application falsely stated that Mr. Seibel reached "the conclusion that deposits [into his Numbered UBS Account] had been stolen or otherwise disappeared." (*Id*.) Contrary to the statements in his application, Mr. Seibel was (a) at all times knowledgeable about the Numbered UBS Account and had taken a role in the oversight of, and transactions in, that account; and (b) was aware as to the disposition of the funds from that account, as Mr. Seibel traveled to Switzerland the year before to effect the closing of the Numbered UBS Account and transfer of its funds into another foreign bank account at a different Swiss bank. (*Id*.)

When Caesars first became aware of Mr. Seibel's felony conviction, it promptly terminated all of its agreements with him due to regulatory and licensing concerns.[4] The Debtors also recognized that Mr. Seibel's conviction and underlying activities meant that many of the representations, warranties, and promises in the LLTQ and FERG Agreements were false when made. And LLTQ and FERG at no point, even as of Mr. Seibel's felony conviction, disclosed to the Debtors that these representations, warranties and promises were no longer true. Mr. Seibel's illegal activities prohibited him and his affiliates from entering into, and continuing to do business under, the LLTQ and FERG Agreements with Caesars. Given these material breaches, the Debtors are relieved of any obligations to perform under the agreements, including any obligation to pay an administrative expense claim. In the alternative, if the representations and

[4] Nevada Gaming Control Regulation 5.011 provides the basis for disciplinary action by the Nevada Gaming Control Board upon a finding of an unsuitable method of operation, which includes "associating with, either socially or in business affairs, persons of notorious or unsavory reputation or who have extensive police records, or persons who have defied congressional investigative committees, or other officially constituted bodies acting on behalf of the United States."

warranties were false when made, then the LLTQ and FERG contracts could be rescinded and LLTQ and FERG would likewise not be entitled to administrative expenses.

Accordingly, the Debtors served discovery on LLTQ, FERG, and Mr. Seibel to determine if the parties to the LLTQ and FERG Agreements were suitable, whether LLTQ and FERG had breached the contracts on the basis of unsuitability, and whether there was a basis to seek rescission of the LLTQ and FERG agreements (the "Suitability Discovery"). (Ex. F, LLTQ RFPs; Ex. G, FERG RFPs; Ex. H, R. Seibel Subpoena; Ex. I, Y. Seibel Subpoena) The requests sought, for example, documents that would reveal whether, as of 2009, 2012 and 2014 when the MOTI, LLTQ, and FERG Agreements were each respectively executed, Mr. Seibel knew he had engaged in criminal activity or was being investigated by the federal government such that his original suitability representation was false and/or should have been updated. For the reasons described below, LLTQ and FERG have failed to meet their burden to shut down this highly relevant discovery.

LEGAL STANDARD

It is well-settled that "relevancy should be interpreted 'very broadly to mean matter that is relevant to anything that is or may become an issue in the litigation.'" *Chan v. City of Chicago*, 1992 WL 170561, at *3 (N.D. Ill. July 16, 1992) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 n. 12 (1978)). Accordingly, relevance "is not limited to the precise issues set out in the pleadings or to the merits of the case. Instead, discovery requests may be deemed relevant if there is any possibility that the information may be relevant to the general subject matter of the action." *Oppenheimer Fund Inc. v. Sanders*, 437 U.S. 340, 351 (1978). LLTQ and FERG do not disagree. As they previously argued before this Court, "[d]iscovery is not to be denied because it relates to a claim or defense that is being challenged as insufficient." [Dkt. No. 4674, at 1–2] LLTQ and FERG bear the burden of establishing that good cause exists

for entry of its proposed protective order. *See* Fed. R. Civ. P. 26(c); *Johnson v. Jung*, 242 F.R.D. 481, 483 (N.D. Ill. 2007) ("The burden to show good cause is on the party seeking the protective order.")

ARGUMENT

I. Suitability is Directly Relevant to the Issues in the Contested Matters.

A. Suitability is Directly Relevant Because a Breach Relieves the Debtors of Any Further Obligation to Perform.

Suitability Discovery is directly relevant because it will be utilized to establish that LLTQ and FERG breached the agreements when they continuously failed to provide the requisite disclosures to the Debtors regarding their lack of suitability. Under both Nevada and New Jersey law,[5] a material breach in a contract excuses a party from its duty to perform. *Crockett & Myers v. Napier, Fitzgerald & Kirby*, 440 F.Supp.2d 1184, 1193 (D.Nev. 2006) ("It is elementary contract law that a material breach by one party to the contract may excuse further performance by another party."); *Tarakji v. Feldman & Fiorello, LLC*, No. A-2669-08T2, 2010 WL 3834810, at *4 (N.J. Super. Ct. App. Div. Oct. 4, 2010) ("The material breach of a contract by one party can excuse further performance by the other party."). If, in fact, LLTQ and FERG breached the relevant agreements, that means the agreements are no longer executory and the breach excuses the Debtors' performance—in this case, a continuing obligation to pay the requested administrative claims.

[5] The LLTQ Agreement provides that "[t]he laws of the State of Nevada applicable to agreements made in that State shall govern the validity, construction, performance and effect of this Agreement." (Ex. A, LLTQ Agreement § 13.10(a)) The FERG Agreement provides that "[t]he laws of the State of New Jersey applicable to agreements made in that State shall govern the validity, construction, and performance and effect of this Agreement." (Ex. B, FERG Agreement § 14.10(a))

Arlington LF, LLC, v. Arlington Hospitality, Inc., 657 F.3d 706, 713 (7th Cir. 2011) is directly on point. In *Arlington,* a post-petition lender sought payment of default interest and fees as an administrative expense claim. The Seventh Circuit held that because the lender had repudiated its lending agreement with the debtor, however, that "[a]t the moment [the lender] repudiated, [the debtor] was entitled to treat the agreement as having ended and was no longer under any obligation to perform." 637 F.3d at 716. The lender had argued that the debtor had "never sought rescission or brought suit against [the lender] for any alleged breach." The Seventh Circuit held, however, that the debtor "did not need to:"

> Unless the non-repudiating party wishes to hold the repudiatory responsible for contract damages, the non-repudiating party need not make efforts to keep the contract in force. [ ] It is [*the lender*] seeking additional money in this case, not [the debtor]. [The debtor]—which paid [the lender] in full for the money it borrowed—simply believes it has no further obligations under the agreement. Once [the lender] declared it was unwilling to perform its obligations memorialized in the Interim Order, [the lender] "was quite clearly not entitled to payments it would otherwise have been due.

Id. (internal citations omitted). Accordingly, because the lender had no basis to demand the debtor's further performance under the contract, the lender had no right to an administrative expense claim.

Here, the topic of suitability is directly relevant to whether or not LLTQ and FERG breached the agreements. If they breached, they have no right to demand the Debtors' continued performance under those contracts through payment of an administrative expense claim. And the Debtors should be able to defend the claim on this basis. No separate adversary proceeding for rescission or breach of contract is required under *Arlington.*

In re C & S Grain Co., Inc., 47 F.3d 233, 237 (7th Cir. 1995) is also illustrative of this point. In *C & S Grain,* the Seventh Circuit held that certain grain contracts with the debtor were not executory and thus, could not be assumed, where the debtor had repudiated the contracts.

With respect to the contracts at issue, the Seventh Circuit noted that "implicit in every grain contract entered into by [the debtor] was an assurance that it was licensed to deal and store grain." *Id.* But the debtor had surrendered its licenses and by doing so, had declared itself unable to perform. Accordingly, the Seventh Circuit held that "in the face of clear evidence of an intent to repudiate, the non-repudiating party is no longer under an obligation to perform . . . [b]ecause one party is not obligated to perform, the contract is no longer executory as defined in bankruptcy." *Id.*

Here, suitability was required of LLTQ, FERG, and their affiliates including Mr. Seibel, or else the Debtors were not permitted to do business with them. Mr. Seibel's illegal activities prohibited him and his affiliates from entering into, and continuing to do business under, the agreements with the Debtors. By not disclosing his unsuitability, he breached the agreements and excused any further performance by the Debtors.

B. Suitability is Directly Relevant to the Debtors' Claims for Fraudulent Inducement and Rescission of the Contracts.

In the alternative, the Debtors have claims for fraudulent inducement and rescission of the contracts. Procedurally, the Court may, under Bankruptcy Rule 9014, direct that Bankruptcy Rules 7008 and 7013 apply to a contested matter. Fed. R. Bankr. P. 9014 ("The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply."). If the Court does so, the Debtors can assert fraudulent inducement as either an affirmative defense or counterclaim. Alternatively, the Debtors are willing to initiate an adversary proceeding if necessary.

Substantively, the Court can fashion a remedy that is equitable to the parties based on their respective conduct. The Court could, for example, rescind the LLTQ and FERG Agreements and place the parties back in the positions they occupied prior to executing the

contracts. If that occurs, the Court could require LLTQ and FERG to disgorge any payments they received from Caesars over and above any initial capital contributions and disallow the requested administrative expenses. The Debtors, on the other hand, would be free to enter into a new contract with Gordon Ramsay and operate the pub restaurants—the same position they were in prior to entering into the LLTQ and FERG Agreements.

LLTQ and FERG argue that rescission is not available because the Debtors did not suffer any damages as a result of Mr. Seibel's, LLTQ's, or FERG's misrepresentations. (Mot. at 18–19) To the contrary, the LLTQ and FERG Agreements required Caesars to make payments to Mr. Seibel even though he provided little benefit pre-petition and no benefit post-petition. Were it not for these misrepresentations, Caesars would have never entered into these contracts or made these payments. In fact, because Mr. Seibel's illegal actions were never disclosed by him or his entities to Caesars—even after he pled guilty—Caesars suffered additional damages in the form of accrued payments to Mr. Seibel and an alleged administrative expense claim. And, of course, the misrepresentations of Mr. Seibel, LLTQ, and FERG have caused the Debtors to incur significant fees and expenses investigating and analyzing Mr. Seibel's illegal activities and litigating the instant motions.

Under both Nevada and New Jersey law, the elements of fraudulent inducement are similar: (a) a false representation; (b) the person making the false representation knew or should have known that the representation was false; (c) the person intended that the representation would induce another to rely on it; and (d) the false representation caused injury to the party relying on it. *See J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.*, 89 P.3d 1009, 1018 (Nev. 2004); *Schillaci v. First Fid. Bank*, 311 N.J. Super. 396, 403 (App. Div. 1998). Moreover, "claims for fraudulent inducement can be predicated on the promisor having no intention of

fulfilling a promise at the time it makes that promise." *UBI Telecom Inc. v. KDDI Am., Inc.*, No. CIV.A 13-1643 KSH, 2014 WL 2965705, at *15 (D. N.J. June 30, 2014). The question at this point is not whether the Debtors will prevail on their fraudulent inducement claims. The only issue before the Court is whether the Suitability Discovery requested by the Debtors is relevant to the issues in the contested matters. On that issue, the answer is plainly yes.

II. LLTQ and FERG Have Not Met Their Burden For A Protective Order.

In their motion, LLTQ and FERG claim that the "Debtors do not have a fraudulent inducement defense because there are no representations and warranties actually made by Movants." (Mot. at 13) Not so. The representations and warranties in the LLTQ and FERG Agreements directly involve Mr. Seibel as an Affiliate and Associated Party of LLTQ and FERG, and implicate him indirectly given his role as the owner and manager of those entities.

As noted, the LLTQ and FERG Agreements state that "the rights and obligations of each party under this Agreement [are] conditioned upon (which conditions may be waived by Caesars in its sole and absolute discretion) . . . (ii) Caesars being satisfied, in its sole discretion, that no LLTQ [or FERG] Associate is an Unsuitable Person; (Ex. A, LLTQ Agreement § 2.2; Ex. B, FERG Agreement § 2.2) The agreements also impose on LLTQ and FERG continuing obligations to update Caesars if any prior disclosures become inaccurate. (Ex. A, LLTQ Agreement § 10.2; Ex. B, FERG Agreement § 11.2) But neither Mr. Seibel nor his entities updated his prior disclosures.

LLTQ and FERG blame the Debtors for not uncovering Mr. Seibel's false statements and argue that their representations cannot be false because the "suitability issue is squarely a matter for the Debtors based on their own investigation." (Mot. at ¶ 43) But, as noted above, Mr. Seibel's entities had ongoing obligations to update the disclosures regarding Mr. Seibel without

any request from Caesars, and failed to do so. Caesars reasonably expected that MOTI would provide those updates if necessary and relied upon MOTI's obligations when it entered into the LLTQ and FERG Agreements.

LLTQ and FERG take issue with the Debtors' reliance on the MOTI BIF and claim that it constitutes parol evidence. But this argument misapprehends the parol evidence rule and the purpose for which the Debtors relied on the BIF. The Debtors are not suggesting that the BIF is extrinsic evidence of the parties' intent. Nor are they suggesting that it should be used to aid in the interpretation of the meaning of the contractual terms. Instead, the BIF was a prior disclosure that Caesars had obtained from Mr. Seibel and MOTI relating to suitability. And, knowing that the MOTI Agreement required that the disclosures be updated when and if necessary, the Debtors believed that any change in Mr. Seibel's suitability would be disclosed in connection with the MOTI Agreement—a disclosure that would bear equally on the suitability requirements imposed by the LLTQ and FERG Agreements. Thus, while LLTQ and FERG make much of the fact that the Debtors did not complete a separate investigation with respect to the LLTQ and FERG Agreements, no separate investigation was necessary given the ongoing obligations under the MOTI Agreement to update any inaccurate disclosures. (Ex. D, MOTI Agreement, at 12)

LLTQ and FERG also argue that the Debtors wrongly treat every representation, warranty, and covenant in the agreements as if they were made by Mr. Seibel individually. (*Id*. at ¶ 53) As a legal matter, Mr. Seibel, LLTQ and FERG should be treated as the same. Under Nevada and New Jersey law, a court will pierce the corporate veil if (a) the corporation is governed and influenced by the people asserted to be its alter egos; (b) there is a unity of interest and ownership such that the two are inseparable; and (c) adherence to the fiction would sanction a fraud or promote injustice. *See Ecklund v. Nevada Wholesale Lumber Co.*, 93 Nev. 196, 197

(1977); *State, Dept. of Environmental Protection v. Ventron Corp.*, 94 N.J. 473, 500 (1983). Although discovery is not complete, there is a strong case for veil piercing here.

First, the information the Debtors have received thus far establishes that LLTQ and FERG are governed and influenced by Mr. Seibel such that there is a unity of interest and ownership. As noted above, Mr. Seibel was the owner and manager of LLTQ, and the sole manager and owner of FERG. And, for compliance and regulatory purposes, the owners of closely-held corporations like LLTQ and FERG are considered to be one and the same as the corporate entities themselves—*i.e.*, if an owner is not suitable, neither is the closely-held corporation. Furthermore, as confirmed by the LLTQ Agreement, Mr. Seibel "retain[ed] voting control of LLTQ and the sole right to make decisions relating to [the LLTQ Agreement] on behalf of LLTQ." (Ex. D, LLTQ Agreement § 2.2(b)) The principal office for both entities was Mr. Seibel's home address. Further discovery will explore the finances of the entities and the treatment of corporate assets.

Second, there is substantial evidence to support the Debtors' belief that a fraud or injustice would result from a failure to pierce the corporate veil. Fraud or injustice exists when the facts are such that adherence to the fiction of a corporate entity would sanction a fraud or promote an injustice. *Ecklund*, 93 Nev. at 197. Here, LLTQ and FERG are attempting to do just that. They would have this Court adhere to the corporate form even though it could permit LLTQ and FERG—and, by extension, Mr. Seibel—to avoid any liability for the ongoing failure to disclose his illegal activities.

As a practical matter, LLTQ and FERG do not actually believe that there is any distinction between Mr. Seibel and the legal entities. Had they actually believed in the corporate distinctions that they are asking this Court to embrace, Mr. Seibel would not have attempted to

assign all of his rights and interests in LLTQ and FERG just days before he pled guilty. As they concede, however, Mr. Seibel's felony conviction was, in fact, a consideration when making the assignment. (Ex. J, LLTQ Responses to Suitability RFAs, at Response 3; Ex. K, FERG Responses to Suitability RFAs, at Response 3) Furthermore, the trust that now purportedly owns LLTQ and FERG has taken a number of steps to separate itself from Mr. Seibel and has assured the Debtors that Mr. Seibel has no association with the entities. Thus, while LLTQ and FERG may claim that Mr. Seibel is distinct, their actions prove otherwise.

CONCLUSION

For the aforementioned reasons, the Debtors respectfully request that the Court deny LLTQ and FERG's Motion for Protective Order.

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Dated: April 26, 2017
Chicago, Illinois

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Exhibit P

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
	)	
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., *et al.,*	)	Case No. 15-01145 (ABG)
	)	
	)	(Jointly Administered)
Debtors.	)	

REPLY IN SUPPORT OF MOTION FOR PROTECTIVE ORDER BY LLTQ ENTERPRISES, LLC AND FERG, LLC

NOW COME Movants, by and through their undersigned counsel, and for their reply in support of their Motion for Protective Order [Docket No. 6781] (the "Motion") [1], respectfully state as follows:

I. Introduction

First, on procedural grounds, the Debtors have not adequately addressed the questions raised by the Court and should not be allowed to pursue the Suitability Discovery. It is undisputed that Bankruptcy Rules 7008 and 7013, which *could* allow for affirmative defenses and counterclaims to be raised, do not currently apply to the Contested Matters. In response, the Debtors effectively state that the Court should enter an order that apply such Bankruptcy Rules. This suggestion does not address the reality that the fraudulent inducement claim, like the issue of whether the Termination was proper in the first instance, is not presently before this Court and should be resolved in separate proceedings (likely in state court or federal district court).

Second, and in addition to these procedural defects, there is a fundamental flaw to the Debtors' efforts to rescind the Pub Agreements; the very object of the contracts, the development and operation of the Ramsay Pubs, has been achieved and continues to generate benefits for the

[1] Capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Motion.

Debtors. The Debtors continue to voluntarily perform under the Pub Agreements by choosing to operate the Ramsay Pubs on an on-going basis. They do so because the Ramsay Pubs are an important and successful component of the Debtors' restaurant operations, and are quite profitable, generating over $10 million in profits for the Debtors to date. As such, there are no damages and there can be no fraudulent inducement claim and no rescission. Rescission does not allow the Debtors to maintain all benefits from the Pub Agreements while disavowing the obligations thereunder, and, as such, is not available as an equitable remedy.

II. Suitability issues have no current or future forum within the Contested Matters

The suitability issues raised by the Debtors are not presently before the Court under any procedure recognized by the Bankruptcy Rules. The Bankruptcy Rules do not automatically allow for counterclaims or affirmative defenses in contested matters. The Court has not entered an order that would allow a fraudulent inducement claim in these Contested Matters. Further, Movants will challenge the propriety of the purported termination of the Pub Agreements in the appropriate venue, likely outside of the Chapter 11 Cases. Termination and the related issue of suitability should remain separate from the Contested Matters.

A. Bankruptcy Rule 9014 carves out affirmative defenses and counterclaims from contested matters

Rules 8 and 13 of the Federal Rules of Civil Procedure are made applicable in adversary proceedings pursuant to Bankruptcy Rules 7008 and 7013. Bankruptcy Rule 9014, however, expressly excludes Bankruptcy Rules 7008 and 7013 from being applicable to contested matters. *See In re Worldwide Wholesale Lumber, Inc.*, 372 B.R. 796, 809 (Bankr. D.S.C. 2007). While the Court may direct Bankruptcy Rule 7008 and 7013 to apply, such relief requires a court order and notice to the parties. *See* Fed. R. Bankr. P. 9014. As no such order has been entered to date, Bankruptcy Rules 7008 and 7013 do not apply to these Contested Matters.

The Contested Matters do not contemplate a separate fraudulent inducement action. The parties conducted and largely completed the Original Discovery for each of the Contested Matters, which the Court may now decide. If the Debtors want to pursue a counterclaim for fraudulent inducement –which is frivolous, for the reasons discussed in the Motion and below– they must bring a separate action. Any such action would be premised on state law and remedies available thereunder. Rescission of the Pub Agreements, which were both entered into prior to the Petition Date, is a state law claim. That action may require the involvement Gordon Ramsay and his rights under the integrated Original Ramsay Agreements. None of FERG, LLTQ, Ramsay or his relevant entities has filed a proof of claim in the Chapter 11 Cases, thereby leaving open an issue as to whether this Court would have authority to resolve the matter.

Relatedly, Movants have not yet challenged the Termination, and may elect to do so in a court outside of the Chapter 11 Cases. Certain of Caesars' non-debtor affiliates are subject to litigation arising out of the purported termination of similar restaurant contracts on the same basis as the Debtors have asserted for the Termination of the Pub Agreements. This litigation necessarily involves the Assignment and challenges to the propriety of the termination of separate contracts related to other restaurant ventures. To the extent the Debtors desire to raise suitability in response to such actions, they may elect to do so in the appropriate forum.

B. Any new breach of contract allegation is irrelevant to the Contested Matters

For the past six months, the Debtors have argued that Suitability Discovery is required to address their theory of fraudulent inducement and related attempt to rescind the Pub Agreements. Now, for the first time in the Objection, the Debtors raise a breach of contract issue and try to time same to justify continued Suitability Discovery. Like their fraudulent inducement theory, this issue also has no place in the Contested Matters.

The Debtors moved to reject the Pub Agreements in June 2015, thereby signaling their intent to breach the contracts. Movants have consistently argued in opposition to the rejection that regardless of whether the Debtors use consulting services available under the Pub Agreements, the Debtors are obligated to pay Movants so long as the Debtors operate the Ramsay Pubs. This is so because (a) the Pub Agreements are integrated with the Original Ramsay Agreements, and (b) the restrictive covenants in the Pub Agreements (i) survive rejection and "any termination or expiration" of the contracts (LLTQ Agmt, § 4.3.1), and (ii) require the Debtors to involve the Movants in any Ramsay Pub venture.

Further, as detailed below, the Debtors' alleged breach rests on precarious factual and legal grounds. The Debtors claim a breach by Movants because they did not update a due diligence form (the Moti BIF) submitted by Moti in 2009. Moti is a separate corporate entity, party to a separate contract with Caesars for an unrelated restaurant project, Serendipity. Movants maintain no obligations with respect to Moti or the Moti BIF, under the Pub Agreements or otherwise. The Debtors simply cannot maintain a breach of contact action related to the Pub Agreements based on the alleged obligations of Moti under the Moti Agreement.

C. *Arlington* and *C & S Grain* are inapplicable here, and neither requires the Court to adjudicate an action for fraudulent inducement as part of the Contested Matters

Both the *Arlington* and *C & S Grain* cases cited by Debtors focus on anticipatory repudiation, an issue not present or even alleged in these Contested Matters. The legal theory and underlying circumstances in those cases provide the Court no guidance for the Contested Matters, and certainly do not mandate inclusion of a new fraudulent inducement counterclaim herein. Indeed the concept of anticipatory repudiation is the antithesis of the Debtors' fraudulent inducement claim; the former addresses a party's declaration that it will not perform in the

future, while the latter focuses on representations made when entering the contract in the first place.

The dispute in *Arlington LF, LLC v. Arlington Hosp., Inc.*, 637 F.3d 706 (7th Cir. 2011) focused exclusively on a post-petition financing agreement and which party breached it first. Rescission and fraud, which is an express affirmative defense under Rule 8 of the Federal Rules of Civil Procedure, were not at issue in *Arlington*. Moreover, *Arlington* examined repudiation under Illinois law to determine whether the debtor could treat the post-petition contact as ended and thus had no duty to perform. 637 F.3d at 713-14. Here, the Debtors voluntarily continue to perform their obligations under the Pub Agreements by operating the Ramsay Pubs.

Arlington also cites *In re C & S Grain Co.*, 47 F.3d 233 (7th Cir. 1995) for the proposition that "Unless the non-repudiating party wishes to hold the repudiator responsible for contract damages, the non-repudiating party need not make efforts to keep the contract in force." *Id.* at 716. If one party's anticipatory repudiation, the other party "is no longer under an obligation to perform." *C & S* Grain, 47 F.3d at 237. The Debtors do not seek to establish repudiation as they (a) previously noticed their intent to breach the Pub Agreements through the filing of the Original Rejection Motion in June 2015, and (b) continue to perform all obligations required under the Pub Agreements, with the exception of their failure to submit (and instead retain) the contractually agreed-upon payments to Movants.

III. Even if the current procedural defects did not exist, the rescission and fraud claims are fundamentally flawed and cannot proceed

The Debtors continue to operate and obtain profits from the Ramsay Pubs, the *sine qua non* of the Pub Agreements. The Debtors entered into the Pub Agreements "to design, develop, construct and operate" the Ramsay Pubs. LLTQ Agmt., Recital B; FERG Agmt., Recital B. The Pub Agreements require the Debtors to, among other things, manage the operations, business,

finance and employees of the Ramsay Pubs, and to supervise the menus and recipes developed by Gordon Ramsay under the Original Ramsay Agreement. *Id.*, §3.4, §3.5. For the Las Vegas location, the Debtors required a $1 million capital contribution from LLTQ to construct and open the Ramsay Pub. Five years after the first of the Ramsay Pubs' opening and after receiving at least $10 million in profits from the pub operations (exclusive of collateral benefits arising from having a destination restaurant at the casino/hotel premises), the Debtors want discovery to pursue a claim for fraud. They insist the Court can somehow put the parties back in the original positions under rescission while allowing the Debtors to continue operating the very Ramsay Pubs subject to the Pub Agreements. Such a "remedy" is a farce as the Ramsay Pubs did not exist in concept or reality prior to the negotiation and execution of, and the performance by the parties under, the Pub Agreements. The Ramsay Pubs are still open and are being operated by the Debtors consistent with the obligations under the Pub Agreements, except that the Debtors are currently retaining not only the profits to which they are entitled under the Pub Agreements, but also the monies contractually-provided for and previously paid to Movants. The Debtors are seeking to retain all of the benefits of the Pub Agreements while simultaneously disavowing the concomitant obligations thereunder. Such a remedy is simply not available.

A. The object and purpose of the Pub Agreements –the Ramsay Pubs– continue to operate successfully

Partial failure to perform under a contract cannot be grounds to rescind "unless it defeats the very object of the contract or renders that object impossible of attainment." *Canepa v. Durham*, 62 Nev. 417, 427, 153 P.2d 899, 903 (1944), supplemented, 62 Nev. 417, 155 P.2d 788 (1945) (quoting Black on Rescission and Cancellation, Vol. I, par. 198, p. 512). Likewise, a breach cannot be grounds for rescinding a contract unless such breach is "so material and substantial a nature that [it] affect[s] the very essence of the contract and serve[s] to defeat the

object of the parties.... [T]he breach must constitute a total failure in the performance of the contract." *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1143 (9th Cir. 2003). Far from a "total failure," the object of the Pub Agreements –development and operation of the Ramsay Pubs—remains in full effect.

Rescission is an equitable remedy that completely abrogates a contract and places the parties in the same position they occupied prior to entering into the contract. *Scaffidi v. United Nissan*, 425 F. Supp. 2d 1172, 1183 (D. Nev. 2005). The Debtors must either rescind or affirm, but cannot do both. *Id.* (citations omitted). However, the Debtors "'cannot at the same time affirm the contact by retaining its benefits and rescind it be repudiating its burdens.'" *Id*. (citations omitted). The Debtors seek the exact relief precluded as a matter of law, retaining the benefits of the Pub Agreements (e.g. profits derived from continued operation of the Ramsay Pubs) while rescinding the burdens (e.g. payment of profits to the Movants).

B. The Debtors' attempt to manufacture purported damages should be disregarded

Fraud in the inducement claims require damages arising from the alleged fraud, which the Debtors cannot plausibly assert here. *See J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290, 89 P.3d 1009, 1018 (2004). The Debtors have admitted that: (a) the Ramsay Pubs are successful restaurants and are an important part of their operations; (b) they continue to operate the Ramsay Pubs and want to continue to do so; and (c) they have not been fined or sanctioned in any manner by the Nevada or New Jersey gaming authorities. The so-called damages the Debtors now assert they have suffered relate only to (y) the Debtors' attempts to end their contractual obligations to Movants, and (z) the payments contractually due to Movants under the Pub Agreements. Rather than suffering damages, the Debtors have only been (and continue to be) enriched by the Pub Agreements.

C. The Debtors' attempt to rewrite the Pub Agreements should be disregarded; no equitable remedy can be crafted under a rescission theory

The Debtors' suggestion of an "equitable" remedy to "place the parties back in the positions they occupied prior to executing the [Pub Agreements]" is more of a wish list than a remedy any court could actually implement. The Debtors want their cake (i.e. retain the profits earned to date under the Pub Agreements), to eat it too (i.e. maintain and operate the Ramsay Pubs into the future), and to eat Movants' cake as well (i.e. disgorge all profits and cease paying future fees required under the Pub Agreements). Objection, pp. 13-14. Such a "remedy" is not rescission and it is not equity; it is theft.

Rescission is simply not available five years after the fact when the object of the contract was obtained in full and continues to exist. *See McKesson HBOC, Inc. v. New York State Common Ret. Fund, Inc.,* 339 F.3d 1087, 1096 (9th Cir. 2003) ("unscrambling this particular egg is virtually impossible" four years after entry into a merger agreement); and *Crowley v. Epicept Corp.*, 547 Fed. Appx. 844, 847 (9th Cir. 2013) (applying New Jersey law, the court found rescission may be appropriate if there has not been substantial performance and rescission would return the parties to their original position).

In the same vein, the Debtors speculate that they would not have entered into the Pub Agreements if they had known about Mr. Seibel's past, notwithstanding that: (a) the Debtors have not been penalized by any gaming authorities in any manner; (b) the Ramsay Pubs have generated millions of dollars of profits for the Debtors; and (c) the indictment in the Seibel Matter was filed more than four years after opening the first Ramsay Pub and more than one year after the Debtors filed the Original Rejection Motion. The Debtors' argument reveals the Debtors' true concern, that they cannot escape their prepetition contractual obligations even when applying section 365 of the Bankruptcy Code. The Debtors are desperate to rescind the

contracts because, as written, the Pub Agreements preclude operation of the Ramsay Pubs without involving LLTQ or its affiliate. Rejection does not solve this issue for the Debtors. The Pub Agreements are clearly integrated with the Original Ramsay Agreements and rejection does not terminate the applicable restrictive covenants agreed upon by the parties.

Faced with these facts, the Debtors apparently now regret the deal they entered into in 2012, even though at that time they (a) needed LLTQ's capital contribution to open the Ramsay Pub, and (b) had no relationship with Gordon Ramsay. Fortunately, the "problem" the Debtors seek to resolve is not a problem at all as the Debtors continue to earn substantial profits from the Ramsay Pubs; they just want a larger share. "Yet, it is not a court's job to rewrite a contract so as to alleviate a party of their bad bargain." *In re Bunting Bearings*, 331 B.R. 313, 321 (Bankr. N.D. Ohio 2005). The Debtors can continue to receive significant profits from the operation of the Ramsay Pubs and pay Movants their agreed-upon share, or the Debtors can elect not to operate the Ramsay Pubs.

Together with the Original Ramsay Agreements, the Pub Agreements were entered into by the Debtors to construct, develop and operate the Ramsay Pubs, and to distribute the profits therefrom. By entering into the Pub Agreements–which, among other things, included a $1 million capital contribution from LLTQ to build the Las Vegas Pub— the Debtors obtained "an important and successful elements of the Debtors' restaurant offerings" that continues to date. The Debtors, through counsel, negotiated the Pub Agreements and bargained for the key restrictive covenants the Debtors now seek to avoid. Where rescission is simply not available, the Debtors cannot use the Court to alter the express terms of the Pub Agreements.

Put another way, with 20/20 hindsight the Debtors want to rewrite history and suggest that five years ago they simply could have entered into a contract for the Ramsay Pub deal with

Ramsay alone. Such revisionism is beyond the mandates of rescission and the Court's equitable powers. *In re Dumas,* 392 B.R. 204, 208-209 (Bankr. D.S.C. 2008) ("absent fraud, mistake, or accident the Court may not use its equitable powers to alter the parties express agreement").

D. The Pub Agreements provide for a contractual remedy for suitability issues, which the Debtors have already sought to employ

The Debtors purportedly terminated the Pub Agreements pursuant to their respective suitability provisions, i.e. section 10.2 of the LLTQ Agreement and section 11.2 of the FERG Agreement. While Movants will contest the validity of the Termination, no such action is currently pending. Importantly, however, the Pub Agreements provides contractual remedies and explicit guidance as to what happens after termination of the contracts. The LLTQ Agreement expressly provides that the restrictive covenants in section 13.22 survive termination. LLTQ Agmt., §4.3.1. This provision precludes Caesars from pursuing another Ramsay Pub (or "any venture generally in the nature of a pub, bar, café or tavern") without entering into an agreement with LLTQ or its affiliate similar to the LLTQ Agreement. *Id.*, §13.22. The contract also provides that Caesars may operate a "restaurant" but not a Ramsay Pub at Caesars Palace. *Id.*, §4.3.2. The FERG Agreement has similar provisions. *See* FERG Agmt, §§ 4.1 ("In the event a new agreement is executed between CAC and/or its Affiliate and Gordon Ramsay and/or his Affiliate relative to the [Ramsay Pub] or the Restaurant Premises, this Agreement shall be in effect and binding on the parties during the term thereof."), and §4.3(b)(d).

Unsatisfied with the contractual remedies potentially available to them, the Debtors now impermissibly seek additional "equitable" remedies while they continue to operate the Ramsay Pubs in the same manner and fashion as they did pre-petition, post-petition, and post-Termination.

E. The Pub Agreements are integrated with the Original Ramsay Agreements and cannot be rescinded by themselves

The Pub Agreements and the Original Ramsay Agreements are integrated under applicable state law. For example, the LLTQ Agreement and the Ramsay LV Agreement were (a) executed and effective as of the same day, (b) concern the development and operation of the Ramsay Pub in Las Vegas, and (c) expressly refer to each other. Caesars is a party to both contracts, which contain the same choice of law, dispute resolution, and other provisions. The contracts are thus integrated under the straightforward test provided by Nevada law. *See Whitemaine v. Aniskovich*, 124 Nev. 302, 308, 183 P.3d 137, 141-42 (Nev. 2008) ("two instruments are presumed to be a single contract if (1) they are contemporaneously executed, (2) they concern the same subject matter, and (3) one of the instruments refers to the other").

Even if rescission was a viable remedy in the first instance, the Debtors cannot rescind the Pubs Agreements without also simultaneously rescinding the Original Ramsay Agreements. *See Sprouse v. Wentz*, 105 Nev. 597, 781 P.2d 1136 (1989). In *Sprouse*, the Supreme Court of Nevada found that two contracts (even though supported by separate consideration) comprised a single agreement and thus held rescission of one agreement should have resulted in the second, integrated agreement being rescinded as well. 105 Nev. at 605-606. The Pub Agreements and Original Ramsay Agreements represent one integrated set of agreements, without which there would be no Ramsay Pubs in the first instance. Accordingly, rescission or voiding the contacts is not an option for the Debtors if they want to maintain the Ramsay Pubs.

F. The Suitability Discovery is improperly based on representations made by a third party entity three years prior to entry into the LLTQ Agreement

In their pleadings and first two responses to interrogatories, the Debtors repeatedly misrepresent that they expressly relied on statements by Mr. Seibel, LLTQ and FERG related to

suitability. After being pressed further as to the specific representation(s) upon which the Debtors relied, finally, in their third response to interrogatories and in the Objection, the Debtors for the first time assert that what they really relied on in entering into the LLTQ Agreement in 2012 was the Moti BIF submitted in January 2009 by Moti Partners.

Moti is a separate corporate entity with a different ownership structure from LLTQ, and is a stranger to the Pub Agreements and the Ramsay Pubs. The Pub Agreements are completely devoid of any reference to the Serendipity restaurant, Moti, the Moti Agreement, or the Moti BIF (or prior representations of any entity). The Debtors are barred from rewriting the Pub Agreements now to incorporate representations made by Moti or any other third party entities that may have some form of common ownership as the Movants. "It has long been the policy in Nevada that absent some countervailing reason, contracts will be construed from the written language and enforced as written." *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 278, 21 P.3d 16, 20 (2001) (quoting *Ellison v. C.S.A.A.*, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990)).

G. The representations in the Moti BIF were accurate when made, and remained accurate leading up to the Assignment

The Moti BIF, completed in January 2009, explicitly asks in question 7 whether Moti or Mr. Seibel had "been indicted, charged with, convicted of, been a party to, or named as an unindicted co-conspirator of any felony." Moti BIF, No. 7. No indictment was filed until April 18, 2016, after the Assignment and seven years after Moti submitted the Moti BIF. Thus, the response to question 7 in the Moti BIF, even if it were applicable here, was accurate when made.

Notwithstanding the specificity of question 7 in the Moti BIF related to formal charges or conviction, the Debtors now suggest that question 11 in the Moti BIF required more detailed disclosures. Question 11 of the MOTI BIF seeks information regarding anything in the past that would prevent Mr. Seibel from being licensed by a gaming authority. The Debtors argue that the

answers provided in 2009 to question 11 required disclosure of acts or omissions that were first placed at issue in April 2016 when the Seibel Matter was filed. Notably, neither question 7 nor question 11 of the Moti BIF asks whether the party has ever been under investigation by a governmental authority. Similarly, the Moti BIF does not require a party to speculate whether they have done anything in their past that may lead to an investigation in the future. None of the pleadings in the Seibel Matter suggest that Mr. Seibel was under investigation in January 2009 when Moti submitted the Moti BIF.

Unsatisfied with the pleadings and record established in the Seibel Matter, the Debtors now seek to play the role of the Office of the United States Attorneys to investigate the Seibel Matter further. A new investigation of a criminal matter is not permitted in the first instance (as the Seibel Matter has concluded), and certainly should not be accommodated in the Contested Matters or any other civil dispute.

H. Movants have no obligation to update representations made by MOTI

Nothing in the Pub Agreements requires LLTQ or FERG to update any disclosure made by Moti, including the disclosures contained in the Moti BIF. Remarkably, the Debtors' theory of fraudulent inducement is premised entirely on Caesars' expectation "that MOTI would provide these updates if necessary" and Caesars' reliance "upon MOTI's obligations when it entered into the [Pub Agreements]." Objection, p. 16. Movants cannot breach the Pub Agreements for an alleged breach by Moti in its separate deal with Caesars. With the glaring omission of any asserted reliance by the Debtors on suitability disclosures actually made by Movants, the Debtors simply have no basis to continue pursuing any Suitability Discovery.

IV. The Debtors raise conclusory veil piercing arguments for the first time in the Objection, which should be disregarded

In the Objection, for the first time in the past two years of litigation of the Contested Matters, the Debtors argue that "as a legal matter, Mr. Seibel, LLTQ and FERG should be treated as the same." Objection, p. 16. To make sense of this theory, Moti's corporate form would have to be disregarded as well. The Debtors' conclusory statement at this point of the litigation demonstrates exactly why discovery should be concluded. The Debtors now threaten "further discovery" to "explore the finance of the entities and the treatment of corporate assets." Objection, p. 17.

Being a member and a manager of a limited liability company is not uncommon and, contrary to the position espoused by the Debtors, is not a basis to pierce the corporate veil. The Supreme Court of Nevada has held that "'[t]he corporate cloak is not lightly thrown aside' and that the alter ego doctrine is an exception to the general rule recognizing corporate independence. *LFC Mktg. Group, Inc. v. Loomis*, 116 Nev. 896, 903–04, 8 P.3d 841, 846 (2000) (citing *Baer v. Amos J. Walker, Inc.*, 85 Nev. 219, 220, 452 P.2d 916, 916 (1969)). Further, to pierce the corporate veil, the Debtors must prove "'that the financial structure of the suspect corporation is only a sham' and that it caused an injustice." *Goff ex rel. Estate of Torango v. Harrah's Operating Co., Inc.,* 392 F. Supp. 2d 1244, 1245 (D. Nev. 2005) (citations omitted).

It is not clear how a veil piercing theory could apply in this instance. "Normally the doctrine of alter ego, or 'piercing the corporate veil' involves holding the individual liable for debts and obligations of the corporation." *Mallard Auto. Group, Ltd. v. LeClair Mgmt. Corp.*, 153 F. Supp. 2d 1211, 1213 (D. Nev. 2001). As discussed above, there are no damages suffered by the Debtors and no claims for money damages pending (or plausible) against LLTQ or FERG. "The 'essence' of the alter ego doctrine is to 'do justice' whenever it appears that the protections provided by the corporate form are being abused." *LFC Mktg. Group, Inc.*, 116 Nev. at 903, 8

P.3d at 845–46. The Debtors do not explain how the corporate forms created protections that are being abused. Rather, to manufacture an unobtainable remedy and to justify their lack of due diligence in 2012, the Debtors seek to equate representations made by Mr. Seibel on behalf of one corporate entity as representations made by separate corporate entities involved in separate deals respectively three and five years later.

The Debtors now seek to use Suitability Discovery to conduct the due diligence that they voluntarily chose to forego in 2012, three years before filing the Chapter 11 Cases and filing the Motion to Reject. Importantly, the suitability requirements are waivable by the Debtors in the Pub Agreements. For example, section 2.2 of the LLTQ Agreement is waivable by its terms and section 10.2 provides that Caesars would not enter into the LLTQ Agreement and/or need not initiate payments thereunder if the suitability requirements were not satisfied. LLTQ Agmt., §§2.2 and 10.2. The Debtors first waived the right to condition the LLTQ Agreement based on any suitability requirement by entering into the LLTQ Agreement in the first instance, and then waived the right by initiating payments to Movants pursuant to the LLTQ Agreement. *Id.*

Finally, the lone case cited by the Debtors does not support their position. In *Ecklund v. Nevada Wholesale Lumber Co.*, 93 Nev. 196, 562 P.2d 479 (1977), the court found the alleged alter ego individual influenced and governed the subject corporation, noting that he "served as president and director of the corporation, and he appears to have been the sole person acting on its behalf." "Considerably more" is required, however. 562 P.2d at 480. Because the subject corporation was not undercapitalized, there were no corporate irregularities and the claimant knew it was dealing with a corporation (and not relying on the individual's credit), the claimant failed to establish an alter ego. *Id.* at 480-481. The Debtors thus cannot rely on *Ecklund* to manufacture an alter ego claim, especially at this point in the Contested Matters.

V. Conclusion

For the reasons stated in the Motion and herein, Movants respectfully request that the Court enter an order terminating the Suitability Discovery in its entirety, and granting such further relief as is appropriate under the circumstances.

Respectfully submitted,

FERG, LLC, and
LLTQ ENTERPRISES, LLC

By: /s/ Nathan Q. Rugg
One of Their Attorneys

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Exhibit Q

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al.,	)	No. 15 B 01145
	)	Chicago, Illinois
	)	10:00 a.m.
Debtor.	)	May 31, 2017

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE A. BENJAMIN GOLDGAR

APPEARANCES:

For the Debtors:	Mr. William Arnault;
For FERG, LLC, LLTQ Enterprises and MOTI Partners:	Mr. Nathan Rugg;

Court Reporter:	Amy Doolin, CSR, RPR U.S. Courthouse 219 South Dearborn Room 661 Chicago, IL 60604.

THE CLERK: Caesars Entertainment Operating Company, Incorporated, et al.

MR. ARNAULT: Good morning, Your Honor. Bill Arnault on behalf of the debtors.

MR. RUGG: Good morning, Your Honor. Nathan Rugg on behalf of FERG, LLC, LLTQ Enterprises, and MOTI Partners.

THE COURT: Good morning. We are here on the motion for a protective order, and I have a ruling that I will read. You can have a seat, if you'd like.

Before me for ruling is the motion of LLTQ Enterprises, LLC, and FERG, LLC, for a protective order. For reasons I will describe, the motion will be denied.

In June 2015, the debtors moved to reject contracts with LLTQ and FERG. The contracts concerned the development and operation of restaurants at Caesars facilities in Nevada and New Jersey. The restaurants bear the name of British celebrity chef Gordon Ramsay who himself had contracts with two of the debtors. Some months later, LLTQ and FERG filed a request for payment of administrative expenses in connection with the restaurants, expenses they said had to be calculated

under the contracts. The debtors then moved to reject the two contracts with Ramsay and to enter into new agreements with him. LLTQ and FERG moved for partial summary judgment on their administrative expense request, but the motion was denied. Each of the motions is consequently still pending and is hotly contested. Discovery on the motions seems to have been extensive.

Meanwhile, in April 2016, Rowen Seibel, a manager and owner of both LLTQ and FERG, pled guilty to federal charges of obstructing the tax laws. In August 2016, the debtors learned of Seibel's conviction and terminated the LLTQ and FERG contracts. The debtors then asserted that Seibel's criminal activities made him an "unsuitable person" with whom they could not have done business and indeed would never have done business had they only known what he was up to. The debtors took the position that Seibel had fraudulently induced them to enter into the two contracts and began discovery on the subject, what both sides call "suitability discovery."

Precisely what discovery the parties have taken on suitability to date is unclear. Their papers on the current motion suggest the discovery

has been primarily if not entirely written, that there have yet to be any depositions. The debtors intend to continue pursuing suitability discovery. LLTQ and FERG maintain that enough is enough. In fact, LLTQ and FERG contend that enough is too much, that no suitability discovery should have been taken. They request a protective order under Rule 26(c)(1) terminating discovery on the subject.

Although I have some sympathy for LLTQ and FERG's position, their motion for protective order must be denied. They argue that suitability discovery should cease because the debtors' arguments about suitability are deficient as a matter both of fact and law. That is not a conclusion I am willing to draw on a discovery motion.

Under Bankruptcy Rules 6004(b), 6006(a), and 9014(c), Fed. R. Bankr. P. 6004(b), 6006(a), 9014(c), Rule 26 of the Civil Rules applies to contested matters like the ones here. The scope of permissible discovery is set out in Rule 26(b)(1). That rule says parties may obtain discovery on any non-privileged matter that is "relevant to any party's claim or defense." Fed. R. Civ. P. 26(b)(1). Relevance for this purpose has the same meaning it has under Rule 401 of the Federal Rules of Evidence.

Zimnicki v. General Foam Plastics Corp., No. 09 C 2132, 2011 WL 833601, at *2 (N.D. Ill. Mar. 3, 2011). Rule 401 says that evidence is relevant "if (a) it has any tendency to make a fact more or less probable than it would be without the evidence, and (b) the fact is of consequence in determining the action." Fed. R. Evid. 401.

For discovery to be permissible under Rule 26(b)(1), though, the matter in question must not only be relevant, it must also be "proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). Proportionality depends on "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Id.

The Federal Rules are designed to promote liberal discovery. Kim v. Hopfauf, No. 15 C 9127, 2017 WL 85441, at *2 (N.D. Ill. Jan. 27, 2017); LaPorta v. City of Chicago, No. 14 C 9665, 2016 WL 4429746, at *3 (N.D. Ill. Aug. 22, 2016). The burden therefore rests with a party resisting discovery to show why discovery is improper and should not be

allowed. Last Atlantis Capital LLC v. AGS Specialist Partners, 292 F.R.D. 568, 573 (N.D. Ill. 2013). Whether to permit discovery is a matter over which a trial court has broad discretion. Kuttner v. Zaruba, 819 F.3d 970, 974 (7th Cir. 2016).

The motion for protective order essentially collapses relevance and proportionality into a single inquiry. LLTQ and FERG say little about the proportionality factors mentioned in Rule 26(b)(1): The importance of the issues, the amount in controversy, the parties' access to information, their resources, the importance of the proposed discovery to the issues, or the burdens and benefits discovery would entail. They offer conclusions but no detail. Instead, they argue principally that the subject of suitability is irrelevant because the debtors have no legally or factually plausible theory under which suitability could have an effect on the outcome of the contested matters. Because suitability is irrelevant, any discovery on the subject would be disproportionate. (See, e.g., Mot. at 20).

I agree that the debtors' legal theories look thin. At an earlier hearing, I raised questions about the fraudulent inducement theory. I

asked about the procedural context in which the debtors might argue fraudulent inducement, since the pending motions did not appear to provide one. I also asked how rescission based on fraudulent inducement could be accomplished since rescission involves restoring each side to its original position. That did not look like a possibility here.

The debtors have yet to answer those questions. Recognizing that there seem to have been no misrepresentations about suitability in connection with either the LLTQ agreement or the FERG agreement, the debtors now maintain that Seibel misrepresented his suitability in connection with another restaurant agreement, the MOTI agreement. But that agreement involved a different entity, MOTI Partners. It involved a different restaurant. And it predated the LLTQ and FERG agreements by several years. It is hard to understand how Seibel's misrepresentation in connection with one agreement in 2009 could have fraudulently induced the debtors to enter into two different agreements three and five years later. The debtors could have trouble demonstrating the requisite mental state as well as the reasonableness of their reliance.

For the first time, the debtors also

argue that LLTQ and FERG breached their agreements when they failed to disclose Seibel's unsuitability. Citing Arlington LF, LLC v. Arlington Hospitality, Inc., 637 F.3d 706 (7th Cir. 2011), a case with which I am all too familiar, the debtors argue that the non-disclosure was an anticipatory repudiation, absolving the debtors of their obligations under the agreements. But as Arlington Hospitality explains, anticipatory repudiation involves a party's manifestation of its intent not to perform under a contract when its performance is due. Id. at 713. The debtors fail to explain how the failure of LLTQ and FERG to disclose Seibel's unsuitability manifested an intent not to perform under the agreements. Perhaps the failure was a breach, but it does not appear to have been an anticipatory repudiation.

My skepticism is not so great, though, that I am prepared to conclude discovery on the subject of suitability should simply stop, as FERG and LLTQ request. The facts adduced thus far suggest that Seibel may have made a false disclosure to the debtors in 2009, a disclosure the debtors insist they relied on in connection with the LLTQ and FERG agreements. The facts also suggest that the LLTQ and

FERG agreements required their affiliates (Seibel was an affiliate) to behave with honesty and integrity. Seibel's conviction, another fact, tends to show he did neither. Although the relevance standard in Rule 26 is narrower than it used to be, it "is still a very broad one." 8 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, Federal Practice & Procedure § 2008 at 130 (3d ed. 2010). Discovery should shut down when the information would have "no conceivable bearing on the case," id. at 142, but the relevance of suitability to the contested matters is certainly conceivable, even if the debtors have explained it poorly. As for the legal sufficiency of the debtors' theories, "[d]iscovery is not to be denied because it relates to a claim or defense that is being challenged as insufficient." Id. at 137.

It might be another matter if LLTQ and FERG had made more of the proportionality end of things, arguing (for example) that suitability discovery should not be permitted because the issues are too insignificant, the expense too great, the benefit too small, and offering specifics to back up the arguments. But they have not. They have objected to the discovery as if they were moving for summary judgment, claiming that the facts and law

show the debtors' theories are so devoid of merit that all discovery on suitability should stop. Dubious though the debtors' legal theories seem to be – at least based on what I have been given to date – that is not a determination I am comfortable making on a discovery motion.

The motion of LLTQ Enterprises, LLC, and FERG, LLC, for a protective order is denied.

Now, we also have a motion to compel, and I had postponed addressing that until I could deal with the protective order motion, figuring that if I granted the protective order motion, I wouldn't have to deal with the motion to compel. Now I have to deal with the motion to compel, and that I will do on June 19.

So everything that is currently set for today will be continued until June 19. And I expect to have a ruling for you on the motion to compel then.

All right. Anything else need to be discussed today?

MR. RUGG: I don't believe so, Your Honor.

MR. ARNAULT: No, Your Honor.

MR. RUGG: Thank you, Your Honor.

MR. ARNAULT: Thank you.

THE COURT: Okay. Thank you very much.

(Brief pause.)

THE COURT: June 21 let's make that. Everything will be continued to June 21. The idea was to put everything with the omnibus date, so that's just my calendar impairedness exhibiting itself.

(Which were all the proceedings had in the above-entitled cause, May 31, 2017, 10:00 a.m.)

I, AMY B. DOOLIN, CSR, RPR, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE.

Exhibit R

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al.,[1]	)	Case No. 15-01145 (ABG)
Debtors.	)	(Jointly Administered)

NOTICE OF FILING OF DEBTORS' THIRD AMENDED JOINT PLAN OF REORGANIZATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

PLEASE TAKE NOTICE that on December 29, 2016, the Debtors filed the *Debtors' Third Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 6191] (the "Plan") with the United States Bankruptcy Court for the Northern District of Illinois (the "Court").

PLEASE TAKE FURTHER NOTICE that the Debtors hereby file a revised *Debtors' Third Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* (the "Modified Plan"). A copy of the Modified Plan is attached hereto as **Exhibit 1**.

PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit 2** is a cumulative redline of the Modified Plan reflecting cumulative changes from the Plan.

PLEASE TAKE FURTHER NOTICE that copies of the Modified Plan and all documents filed in these chapter 11 cases are available free of charge by visiting https://cases.primeclerk.com/CEOC or by calling (855) 842-4123 within the United States or Canada or, outside of the United States or Canada, by calling +1 (646) 795-6969. You may also obtain copies of any pleadings by visiting the Court's website at http://www.ilnb.uscourts.gov in accordance with the procedures and fees set forth therein.

[1] A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at https://cases.primeclerk.com/CEOC.

Dated: January 13, 2017
Chicago, Illinois

/s/ David R. Seligman, P.C.

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Counsel to the Debtors and Debtors in Possession

Exhibit 1

Modified Plan

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al.,[1]	)	Case No. 15-01145 (ABG)
Debtors.	)	(Jointly Administered)

DEBTORS' THIRD AMENDED JOINT PLAN OF REORGANIZATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

Nothing contained herein shall constitute an offer, acceptance, or a legally binding obligation of the Debtors or any other party in interest and this Plan is subject to approval by the Bankruptcy Court and other customary conditions. This Plan is not an offer with respect to any securities. YOU SHOULD NOT RELY ON THE INFORMATION CONTAINED IN, OR THE TERMS OF, THIS PLAN FOR ANY PURPOSE PRIOR TO THE CONFIRMATION OF THIS PLAN BY THE BANKRUPTCY COURT.

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Counsel to the Debtors and Debtors in Possession

Dated: January 13, 2016

[1] The last four digits of Caesars Entertainment Operating Company, Inc.'s tax identification number are 1623. A complete list of the Debtors (as defined herein) and the last four digits of their federal tax identification numbers are identified on **Exhibit A** attached hereto.

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Caesars Entertainment Operating Company, Inc. and the other Debtors in the above-captioned Chapter 11 Cases respectfully propose the following joint plan of reorganization pursuant to chapter 11 of the Bankruptcy Code. Capitalized terms used and not otherwise defined shall have the meanings ascribed to such terms in Article I.A of the Plan. The Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to an order of the Bankruptcy Court. Reference is made to the Disclosure Statement for a discussion of the Debtors' history, businesses, results of operations, historical financial information, projections, and future operations, as well as a summary and analysis of the Plan and certain related matters. Each Debtor is a proponent of the Plan contained herein within the meaning of section 1129 of the Bankruptcy Code.

ARTICLE I.
DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW

A. Defined Terms

As used in the Plan, capitalized terms have the meanings set forth below.

1. "1145 Securities" mean, collectively, (a) the New Interests issued in respect of Claims as contemplated by the Plan, (b) the guaranty under the OpCo Guaranty Agreement of the OpCo First Lien Notes, (c) the OpCo First Lien Notes, the PropCo First Lien Notes, and the PropCo Second Lien Notes, (d) the New CEC Convertible Notes and the New CEC Common Equity issued upon conversion thereof, and (e) the New CEC Common Equity issued in exchange for OpCo Series A Preferred Stock pursuant to the CEOC Merger.

2. "2016 Fee Notes" means the Senior Unsecured Notes arising under the 6.50% Senior Unsecured Notes Indenture with CUSIP No. 413627AX8, other than those held by CAC and members of the Ad Hoc Group of 5.75% and 6.50% Unsecured Notes in the Chapter 11 Cases as disclosed on March 17, 2016 [Docket No. 3422].

3. "5.75% Senior Unsecured Notes Indenture" means that certain Indenture, dated as of September 28, 2005, by and between CEOC, CEC, and the 5.75% Senior Unsecured Notes Indenture Trustee, providing for the issuance of 5.75% Senior Notes due 2017, as amended, amended and restated, supplemented, or otherwise modified from time to time.

4. "5.75% Senior Unsecured Notes Indenture Trustee" means Law Debenture Trust Company of New York, solely in its capacity as indenture trustee under the 5.75% Senior Unsecured Notes Indenture, and any predecessors and successors in such capacity.

5. "6.50% Senior Unsecured Notes Indenture" means that certain Indenture, dated as of June 9, 2006, by and between CEOC, CEC, and the 6.50% Senior Unsecured Notes Indenture Trustee, providing for the issuance of 6.50% Senior Notes due 2016, as amended, amended and restated, supplemented, or otherwise modified from time to time.

6. "6.50% Senior Unsecured Notes Indenture Trustee" means Law Debenture Trust Company of New York, solely in its capacity as indenture trustee under the 6.50% Senior Unsecured Notes Indenture, and any predecessors and successors in such capacity.

7. "8.50% First Lien Notes Indenture" means that certain Indenture, dated as of February 14, 2012, by and between the Escrow Issuers, CEC, and the First Lien Notes Indenture Trustee, providing for the issuance of 8.50% Senior Secured Notes due 2020, as amended, amended and restated, supplemented, or otherwise modified from time to time.

8. "9.00% First Lien Notes Indentures" means (a) that certain Indenture, dated as of August 22, 2012, by and between the Escrow Issuers, CEC, and the First Lien Notes Indenture Trustee, providing for the issuance of 9.00% Senior Secured Notes due 2020, as amended, amended and restated, supplemented, or otherwise modified from time to time, including pursuant to that certain Additional Notes Supplemental Indenture, dated as of December 13, 2012, by and between the Escrow Issuers, CEC, and the First Lien Notes Indenture

Trustee; and (b) that certain Indenture, dated as of February 15, 2013, by and between the Escrow Issuers, CEC, and the First Lien Notes Indenture Trustee, providing for the issuance of 9.00% Senior Secured Notes due 2020, as amended, amended and restated, supplemented, or otherwise modified from time to time.

9. "10.00% Second Lien Notes Indentures" means, collectively, that (a) certain Indenture, dated as of December 24, 2008, by and between CEOC, CEC, and the applicable 10.00% Second Lien Notes Indenture Trustee, providing for the issuance of 10.00% Second-Priority Senior Secured Notes due 2015 and 10.00% Second-Priority Senior Secured Notes due 2018, as amended, amended and restated, supplemented, or otherwise modified from time to time, and (b) certain Indenture, dated as of April 15, 2009, between CEOC, CEC, and the applicable 10.00% Second Lien Notes Indenture Trustee, providing for the issuance of 10.00% Second-Priority Senior Secured Notes due 2018, as amended, amended and restated, supplemented, or otherwise modified from time to time.

10. "10.00% Second Lien Notes Indenture Trustee" means, as applicable, (a) Delaware Trust Company, solely in its capacity as successor indenture trustee under the 10.00% Second Lien Notes Indenture dated as of December 24, 2008, and any predecessors and successors in such capacity, or (b) Wilmington Savings Fund Society, FSB, solely in its capacity as successor indenture trustee under the 10.00% Second Lien Notes Indenture dated as of April 15, 2009, and any predecessors and successors in such capacity.

11. "11.25% First Lien Notes Indenture" means that certain Indenture, dated as of June 10, 2009, by and between the Escrow Issuers, CEC, and the First Lien Notes Indenture Trustee, providing for the issuance of 11.25% Senior Secured Notes due 2017, as amended, amended and restated, supplemented, or otherwise modified from time to time, including that certain Second Supplemental Indenture, dated as of September 11, 2009, between CEOC, CEC, and the First Lien Notes Indenture Trustee.

12. "12.75% Second Lien Notes Indenture" means that certain Indenture, dated as of April 16, 2010, by and between the Escrow Issuers, CEC, and the 12.75% Second Lien Notes Indenture Trustee, providing for the issuance of 12.75% Second-Priority Senior Secured Notes due 2018, as amended, amended and restated, supplemented, or otherwise modified from time to time.

13. "12.75% Second Lien Notes Indenture Trustee" means BOKF, N.A., solely in its capacity as successor indenture trustee under the 12.75% Second Lien Notes Indenture, and any predecessors and successors in such capacity.

14. "Additional CEC Bank Consideration" means an amount equal to $10,000,000 per month (which shall be fully earned on the first day of each month) earned from January 1, 2017, through the earlier of (a) the Effective Date or (b) June 30, 2017, which amount New CEC shall contribute to the Debtors on the Effective Date and which shall be payable in (x) Cash and/or (y) New CEC Common Equity (at a price per share of New CEC Common Equity using an implied equity value for New CEC of $6.5 billion, post conversion of the New CEC Convertible Notes and before giving effect to the Cash that would have otherwise been used to pay the consideration and the New CEC Common Equity Buyback), which shall be issued in exchange for OpCo Series A Preferred Stock pursuant to the CEOC Merger; provided that the election to pay Cash or New CEC Common Equity shall be made in New CEC's sole discretion, provided, further, that, unless consented to by the Requisite Consenting Bank Creditors, such election must be the same as the similar election made by CEC for the Additional CEC Bond Consideration. Subject to the Bank RSA remaining in effect, if and to the extent that the Additional CEC Bond Consideration is increased, the amount of the Additional CEC Bank Consideration will increase by a percentage amount equal to the amount by which the Additional CEC Bond Consideration has been increased.

15. "Additional CEC Bond Consideration" means to the extent that the Effective Date shall not have occurred on or before May 1, 2017, New CEC shall (a) contribute to the Debtors on the Effective Date Cash in the amount of $20,000,000 per month and/or (b) issue New CEC Common Equity (at a price per share of New CEC Common Equity using an implied equity value for New CEC of $6.5 billion, post conversion of the New CEC Convertible Notes and before giving effect to the Cash that would have otherwise been used to pay the consideration and the New CEC Common Equity Buyback) of a value equal to $20,000,000 per month (which shall be issued in exchange for OpCo Series A Preferred Stock pursuant to the CEOC Merger), in both instances commencing on May 1, 2017, and ending on the Effective Date, which amount shall be (x) prorated for any partial month, and (y) so long as New CEC has made all payments required of it under the Bond RSA, reduced by $4,800,000; provided that the

election to pay Cash or New CEC Common Equity shall be made in New CEC's sole discretion, provided, further, that, unless consented to by the Requisite Consenting Bond Creditors, such election must be the same as the similar election made by CEC for the Additional CEC Bank Consideration.

16. "Administrative Claim" means a Claim for the costs and expenses of administration of the Estates pursuant to section 503(b) and 507(a)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estates and operating the businesses of the Debtors; (b) all fees and charges assessed against the Estates pursuant to chapter 123 of the Judicial Code, including the U.S. Trustee Fees; (c) Professional Fee Claims; and (d) Restructuring Support Advisors Fees.

17. "Administrative Claims Bar Date" means the deadline for filing requests for payment of Administrative Claims (other than (x) Professional Fee Claims and (y) Administrative Claims arising in the ordinary course of business), which shall be the first Business Day that is 45 days following the Effective Date, except as specifically set forth in the Plan or in a Final Order, or as agreed-to by the Reorganized Debtors.

18. "Administrative Claims Objection Bar Date" means the deadline for filing objections to requests for payment of Administrative Claims (other than requests for payment of Professional Fee Claims), which shall be the first Business Day that is 180 days following the Effective Date; provided that the Administrative Claims Objection Bar Date may be extended by the Bankruptcy Court after notice and a hearing.

19. "Affiliate" shall have the meaning set forth in section 101(2) of the Bankruptcy Code.

20. "Allowed" means with respect to Claims: (a) any Claim other than an Administrative Claim that is evidenced by a Proof of Claim which is or has been timely Filed by the applicable Claims Bar Date or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) any Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been timely Filed; (c) all Claims classified in Class I (Undisputed Unsecured Claims); (d) any Claims agreed to by the Debtors prior to the Distribution Record Date and included on a schedule to be provided to the Unsecured Creditors Committee on such date; or (e) any Claim Allowed pursuant to (i) the Plan, (ii) any contract, instrument, indenture, or other agreement entered into or assumed in connection with the Plan, or (iii) a Final Order of the Bankruptcy Court; provided that with respect to any Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that with respect to such Claim no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed by a Final Order. Except as otherwise specified in the Plan or any Final Order, and except for any Claim that is Secured by property of a value in excess of the principal amount of such Claim, the amount of an Allowed Claim shall not include interest on such Claim from and after the Petition Date. For purposes of determining the amount of an Allowed Claim, there shall be deducted therefrom an amount equal to the amount of any Claim that the Debtors may hold against the Holder thereof, to the extent such Claim may be offset, recouped, or otherwise reduced under applicable law. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely Filed by the applicable Claims Bar Date, is not considered Allowed and shall be expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court. Notwithstanding anything to the contrary herein, no Claim of any entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such entity pays in full the amount that it owes such Debtor or Reorganized Debtor, as the case may be. "Allow" and "Allowing" shall have correlative meanings.

21. "Alpha Released Parties" means Alpha Frontier Limited, as purchaser under the CIE Asset Sale, and each and all of its respective direct and indirect current and former: shareholders, affiliates, subsidiaries, partners (including general partners and limited partners), investors, managing members, members, officers, directors, principals, employees, managers, controlling persons, agents, attorneys, investment bankers, other professionals, advisors, and representatives, and each and all of their respective heirs, successors, assigns, and legal representatives, each in their capacities as such.

22. "Approvals" shall have the meaning set forth in Article IV.R.3 hereof.

23. "Assumed Executory Contracts and Unexpired Leases Schedule" means the schedule of certain Executory Contracts and Unexpired Leases to be assumed, or assumed and assigned, as applicable, by the Debtors pursuant to the Plan in the form filed as part of the Plan Supplement, as the same may be amended, modified, or supplemented from time to time, which schedule shall be reasonably acceptable to the Requisite Consenting Bond Creditors, the Requisite Consenting Bank Creditors, the Second Priority Noteholders Committee, the Unsecured Creditors Committee, CEC, and the Debtors.

24. "Available Cash" means the excess of (a) the pro forma amount of balance sheet Cash of the Debtors available after giving effect to the Effective Date, the consummation of the Plan, all debt reductions and repayments, the payment of all fees, expenses, and related uses of Cash on the Effective Date in accordance with the Plan over (b) the Minimum Cash Requirement. The pro forma amount of such balance sheet Cash shall exclude (i) Cash held by non-Debtor Chester Downs and Marina, LLC and Chester Downs Finance Corp., (ii) Cash held by the international entities owned by the Debtors, each of which is a non-Debtor other than Caesars Entertainment Windsor Limited, and (iii) customer Cash held in custody by the Debtors.

25. "Avoidance Actions" means any and all avoidance, recovery, subordination, or similar remedies that may be brought by or on behalf of the Debtors or the Estates, including causes of action or defenses arising under chapter 5 of the Bankruptcy Code or under similar or related state or federal statutes and common law, including fraudulent transfer laws.

26. "Backstop Commitment" means the PropCo Preferred Backstop Investors' commitment pursuant to the Backstop Commitment Agreement to backstop with Cash the exercise of the PropCo Preferred Equity Put Right in an amount equal to (a) $250,000,000 plus (b) the PropCo Preferred Equity Upsize Amount.

27. "Backstop Commitment Agreement" means that certain Backstop Commitment Agreement, by and between CEOC and the PropCo Preferred Backstop Investors party thereto from time to time, as the same may be amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with its terms, the form of which shall be included in the Plan Supplement.

28. "Ballot" means the form or forms distributed to certain Holders of Claims or Interests that are entitled to vote on the Plan by which such parties may indicate acceptance or rejection of the Plan.

29. "Bank Debt Contract Rate" means (a) with respect to Term B-4 Loans, a per annum rate equal to 10.50%, (b) with respect to Term B-5 Loans, a per annum rate equal to 6.22%, (c) with respect to Term B-6 Loans, a per annum rate equal to 7.22%, and (d) with respect to Term B-7 Loans, a per annum rate equal to 9.75%.

30. "Bank Debt Tranche" means Term B-4 Loans, Term B-5 Loans, Term B-6 Loans, and/or Term B-7 Loans issued pursuant to the Prepetition Credit Agreement.

31. "Bank Guaranty Accrual Period" means the period from (and including) the Petition Date until (but not including) the Effective Date; provided that from the date of the Bank Pay Down, until (but not including) the Effective Date, the aggregate principal amount of Bank Guaranty Purchased Obligations upon which the Bank Guaranty Settlement Percentage shall be applied will be reduced by $300,000,000 on account of the Bank Pay Down.

32. "Bank Guaranty Accrued Amount" means, with respect to each Bank Debt Tranche held by a Holder of a Prepetition Credit Agreement Claim, an aggregate amount equal to (a) the aggregate principal amount of Bank Guaranty Purchased Obligations of such Bank Debt Tranche held by such Holder multiplied by a rate per annum equal to the product of (x) the Bank Guaranty Settlement Percentage and (y) the Bank Debt Contract Rate, minus (ii) the aggregate amount of Monthly Adequate Protection Payments (as defined in the Cash Collateral Order) received by such Holder during the Bank Guaranty Accrual Period (which Monthly Adequate Protection Payments are deemed to have been paid on account of interest (and not recharacterized as principal or otherwise disallowed)) on account of its Prepetition Credit Agreement Claims, minus (iii) the Upfront Payment paid by CEC to such Holder.

33. "Bank Guaranty Purchased Obligations" means the Debtors' obligation, which shall be funded entirely by CEC or New CEC, to purchase 100% of the rights of each Holder of a Prepetition Credit Agreement Claim for the Bank Guaranty Settlement Purchase Price, in full and final cancellation of all rights under the Prepetition Credit Agreement, including on account of any right to postpetition interest.

34. "Bank Guaranty Settlement" means the settlement set forth in Article IV.A.8 of the Plan, which shall be deemed approved by the Holders of Prepetition Credit Agreement Claims if Class D votes to accept the Plan.

35. "Bank Guaranty Settlement Percentage" means a percentage rate equal to (a) for the period from the Petition Date through and including October 1, 2015, 80.3%, (b) for the period from October 2, 2015, through and including January 1, 2016, 83.3%, (c) for the period from January 2, 2016, through and including April 1, 2016, 86.4%, (d) for the period from April 2, 2016, through and including July 1, 2016, 89.5%, (e) for the period from July 2, 2016, through and including October 1, 2016, 92.6%, (f) for the period from October 2, 2016, through and including January 1, 2017, 95.7%, (g) for the period from January 2, 2017, through and including April 1, 2017, 98.8%, and (h) for the period from April 2, 2017, until the end of the Bank Guaranty Accrual Period, 100%, provided that, for the avoidance of doubt, the aggregate principal amount outstanding under the Prepetition Credit Agreement Bank Debt Tranches shall be reduced by $300,000,000 from the date of the Bank Pay Down, forward through the end of the Bank Guaranty Accrual Period, on account of the Bank Pay Down on such date.

36. "Bank Guaranty Settlement Purchase Price" means, with respect to each Bank Debt Tranche held by a Holder of a Prepetition Credit Agreement Claim, an amount equal to the Bank Guaranty Accrued Amount in respect of the aggregate principal amount of Bank Guaranty Purchased Obligations of such Bank Debt Tranche held by such Holder of a Prepetition Credit Agreement Claim for the Bank Guaranty Accrual Period; provided that each such Holder of a Prepetition Credit Agreement Claim shall remain entitled to receive any distributions set forth herein on account of such Holder's Bank Guaranty Purchased Obligations.

37. "Bank RSA" means that certain Second Amended and Restated Restructuring Support and Forbearance Agreement (including all term sheets, schedules, exhibits, and annexes thereto), dated as of October 4, 2016, as amended, amended and restated, supplemented, or otherwise modified from time to time, by and between, among others, CEOC on behalf of itself and each of the Debtors, CEC, and the Consenting Bank Creditors (as defined therein) party thereto from time to time. As provided in the Bank RSA, the Plan, the Confirmation Order, the documents in the Plan Supplement, and any modifications, amendments, or supplements thereto shall be reasonably acceptable to the Requisite Consenting Bank Creditors and to the extent that any such amendment, supplement, modification, or restatement could have, in the good faith opinion of the Requisite Consenting Bank Creditors, after consulting with its professionals, any material impact on the legal or economic rights of the Prepetition Credit Agreement Claims, shall be approved by the Requisite Consenting Bank Creditors.

38. "Bank Pay Down" means the Debtors' partial principal payment of the Prepetition Credit Agreement Claims held by the Holders of the Prepetition Credit Agreement Bank Debt Tranches (for the avoidance of doubt, exclusive of Swap and Hedge Claims or any Claims on account of letters of credit) in Cash in the amount of $300,000,000 paid on October 3, 2016 (or such other date as the Majority Bank Creditors (as defined in the Bank RSA) may agree to in writing, upon written request of the Debtors), pursuant to, and subject to the terms of, the *Order (A) Authorizing the Repayment of Certain Secured Loan Amounts, and (B) Granting Related Relief* [Docket No. 4666].

39. "Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as now in effect or hereinafter amended, and the rules and regulations promulgated thereunder.

40. "Bankruptcy Court" means the United States Bankruptcy Court for the Northern District of Illinois having jurisdiction over the Chapter 11 Cases, and, to the extent of the withdrawal of any reference under section 157 of the Judicial Code, the United States District Court for the Northern District of Illinois.

41. "Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Cases, promulgated under section 2075 of the Judicial Code and the general, local, and chambers rules of

the Bankruptcy Court, as now in effect or hereinafter amended, and the rules and regulations promulgated thereunder.

42. "BIT Debtors" means the Debtors at which the Holders of General Unsecured Claims are entitled to higher recoveries than Holders of General Unsecured Claims at other Debtors based on the Liquidation Analysis, which Debtors are, collectively, (a) the Par Recovery Debtors, (b) Caesars Riverboat Casino, LLC, (c) Chester Downs Management Company, LLC, and (d) Winnick Holdings, LLC.

43. "Bond RSA" means that certain Sixth Amended and Restated Restructuring Support and Forbearance Agreement (including all term sheets, schedules, exhibits, and annexes thereto), dated as of October 4, 2016, as amended, amended and restated, supplemented, or otherwise modified from time to time, by and between, among others, CEOC on behalf of itself and each of the Debtors, CEC, and the Consenting Creditors (as defined therein) party thereto from time to time. As provided in the Bond RSA, the Plan, the Confirmation Order, the documents in the Plan Supplement, and any modifications, amendments, or supplements thereto shall be reasonably acceptable to the Requisite Consenting Bond Creditors and to the extent that any such amendment, supplement, modification, or restatement could have, in the good faith opinion of the Requisite Consenting Bond Creditors, after consulting with its professionals, any material impact on the legal or economic rights of the Secured First Lien Notes Claims, shall be approved by the Requisite Consenting Bond Creditors.

44. "Business Day" means any day, other than a Saturday, Sunday, or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

45. "CAC" means Caesars Acquisition Company, a Delaware corporation, which is a non-Debtor.

46. "CAC RSA" means that certain Amended and Restated Restructuring Support Agreement (including all exhibits thereto), dated as of July 9, 2016, as amended, amended and restated, supplemented, or otherwise modified from time to time, by and between, among others, CEOC on behalf of itself and each of the Debtors, and CAC.

47. "Caesars Cases" means, collectively, the cases captioned (a) Wilmington Savings Fund Society, FSB, solely in its capacity as successor Indenture Trustee for the 10% Second-Priority Senior Secured Notes due 2018, on behalf of itself and derivatively on behalf of Caesars Entertainment Operating Company, Inc. v. Caesars Entertainment Corporation, et al., Case No. 10004-VCG (Del. Ch.), (b) Trilogy Portfolio Company, LLC, et al. v. Caesars Entertainment Corporation and Caesars Entertainment Operating Company, Inc., No. 14-cv-07091 (S.D.N.Y.), (c) Frederick Barton Danner v. Caesars Entertainment Corporation and Caesars Entertainment Operating Company, Inc., No. 14-cv-7973 (S.D.N.Y.), (d) UMB Bank v. Caesars Entertainment Corporation, et al., C.A. No. 10393-VCG (Del. Ch.), (e) BOKF, N.A., solely in its capacity as successor Indenture Trustee for the 12.75% Second-Priority Senior Secured Notes due 2018 v. Caesars Entertainment Corporation, No. 15-cv-01561 (S.D.N.Y.), (f) UMB Bank, N.A. solely in its capacity as Indenture Trustee under those certain indentures, dated as of June 10, 2009, governing Caesars Entertainment Operating Company, Inc.'s 11.25% Notes due 2017; dated as of February 14, 2012, governing Caesars Entertainment Operating Company, Inc.'s 8.5% Senior Secured Notes due 2020; dated August 22, 2012, governing Caesars Entertainment Operating Company, Inc.'s 9% Senior Secured Notes due 2020; dated February 15, 2013, governing Caesars Entertainment Operating Company, Inc.'s 9% Senior Secured Notes due 2020 v. Caesars Entertainment Corporation, No. 15-cv-04634 (S.D.N.Y.), (g) Wilmington Trust, National Association v. Caesars Entertainment Corporation, No. 15-cv-08280 (S.D.N.Y.), and (h) all claims in, causes of action relating to, and claims arising out of any facts alleged in the Caesars Cases otherwise described in clauses (a)–(g) above.

48. "Caesars Controlled Group" means all members of the NRF Employers' "controlled group" as that term is defined in the Internal Revenue Code (including 26 U.S.C. § 414) and ERISA (including 29 U.S.C. § 1301(b)).

49. "Caesars Palace-Las Vegas" means the hotel, gaming, retail, and resort property located at 3500-3570 Las Vegas Boulevard South, Las Vegas, Nevada 89109, and related properties, including the portion of such property known as The Forum Shops, but specifically excluding the portion of such property commonly known as Octavius Tower.

50. "Caesars Riverboat Casino Unsecured Claim" means a General Unsecured Claim against Debtor Caesars Riverboat Casino, LLC.

51. "Cash" or "$" means the legal tender of the United States of America or the equivalent thereof, including bank deposits and checks.

52. "Cash Collateral Order" means (a) the *Interim Order (I) Authorizing Use of Cash Collateral, (II) Granting Adequate Protection, (III) Modifying the Automatic Stay to Permit Implementation; (IV) Scheduling a Final Hearing and (V) Granting Related Relief* [Docket No. 47], (b) the *Final Order (I) Authorizing Use of Cash Collateral, (II) Granting Adequate Protection, (III) Modifying the Automatic Stay to Permit Implementation, and (IV) Granting Related Relief* [Docket No. 988], and (c) any stipulations thereto.

53. "Causes of Action" means any claim, cause of action (including Avoidance Actions or rights arising under section 506(c) of the Bankruptcy Code), controversy, right of setoff, cross claim, counterclaim, or recoupment and any claim on contracts or for breaches of duties imposed by law or in equity, demand, right, action, Lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, power, privilege, license, and franchise of any kind or character whatsoever, known, unknown, fixed or contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law. Causes of Action also include: (a) all rights of setoff, counterclaim, cross-claim, or recoupment, and claims on contracts or for breaches of duties imposed by law; (b) the right to object to or otherwise contest Claims; (c) claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code; and (d) all claims and defenses set forth in section 558 of the Bankruptcy Code.

54. "CEC" means Caesars Entertainment Corporation, a Delaware corporation formerly known as Harrah's Entertainment, Inc., which is a non-Debtor.

55. "CEC Released Parties" means each and all of: (a) CEC; (b) CAC; (c) the Sponsors; and (d) with respect to each of the foregoing identified in the foregoing clauses (a) through (c), each and all of their respective direct and indirect current and former: shareholders (other than (i) the Debtors and (ii) recipients of New CEC Common Equity Distributed under this Plan who become shareholders solely as a result of such distribution), Affiliates (other than the Debtors), subsidiaries (other than the Debtors and their direct and indirect subsidiaries), partners (including general partners and limited partners), investors, managing members, officers, directors, principals, employees, managers, controlling persons, agents, attorneys, other professionals, advisors, and representatives, and each and all of their respective heirs, successors, and legal representatives, each in their capacities as such.

56. "CEC RSA" means that certain First Amended and Restated Restructuring Support, Settlement, and Contribution Agreement (including all exhibits thereto), dated as of July 9, 2016, as amended, amended and restated, supplemented, or otherwise modified from time to time, by and between, among others, CEOC on behalf of itself and each of the Debtors and CEC.

57. "CEOC" means Caesars Entertainment Operating Company, Inc., a Delaware corporation, formerly known as Harrah's Operating Company, Inc., which is a Debtor.

58. "CEOC Interests" means an Interest in CEOC.

59. "CEOC Merger" means the merger of OpCo into a wholly-owned subsidiary of New CEC that will be disregarded from New CEC for U.S. federal income tax purposes on the Effective Date, pursuant to which OpCo Series A Preferred Stock will be exchanged for New CEC Common Equity, which is intended to be treated as a reorganization under section 368(a)(1)(A) or (G) of the Internal Revenue Code or as a tax-free liquidation (from the perspective of New CEC) under section 332 of the Internal Revenue Code, as applicable.

60. "CEOC Merger Agreement" means the agreement pursuant to which OpCo will consummate the CEOC Merger, the form of which shall be included in the Plan Supplement.

61. "CERP" means Caesars Entertainment Resort Properties, LLC, a Delaware limited liability company, and all of its direct and indirect subsidiaries, each of which are non-Debtors.

62. "CES" means Caesars Enterprise Services, LLC, which is a non-Debtor.

63. "CES LLC Agreement" means that certain Amended Limited Liability Company Agreement of Caesars Enterprise Services, LLC, dated as of May 20, 2014, as amended, amended and restated, supplemented, or otherwise modified from time to time.

64. "CES Shared Services Agreement" means certain Omnibus License and Enterprise Services Agreement, dated as of May 20, 2014, by and between CEOC, CERP, Caesars Growth Properties Holdings, LLC, Caesars World, Inc., and CES, as amended, amended and restated, supplemented, or otherwise modified from time to time.

65. "CGP" means Caesars Growth Partners, LLC, a Delaware limited liability company, and all of its direct and indirect subsidiaries, each of which are non-Debtors.

66. "Challenged Transactions" means all of the transactions that were reviewed by the examiner appointed in the Chapter 11 Cases by the Bankruptcy Court pursuant to section 1106 of the Bankruptcy Code, or that such examiner was empowered or authorized to review pursuant to the *Order Granting in Part and Denying in Part Motions to Appoint Examiner* [Docket No. 675] and the *Order (I) Granting Debtors' Motion for an Order Expanding the Scope of the Examiner's Investigation and (II) Amending the Examiner Order and Discovery Protocol Orders* [Docket No. 2131].

67. "Chapter 11 Cases" means the jointly administered chapter 11 cases commenced by the Debtors in the Bankruptcy Court and styled In re Caesars Entertainment Operating Company, Inc., et al., No. 15-01145 (ABG).

68. "Chester Downs Management Unsecured Claim" means a General Unsecured Claim against Debtor Chester Downs Management Company, LLC.

69. "CIE" means Caesars Interactive Entertainment LLC, a Delaware limited liability company formerly known as Caesars Interactive Entertainment, Inc., which is a non-Debtor.

70. "CIE Asset Sale" means the consummated sale contemplated by that certain Stock Purchase Agreement, dated as of July 30, 2016, between Alpha Frontier Limited and CIE.

71. "CIE Equity Buyback Proceeds" means Cash in the amount of $1,200,000,000 from the CIE Asset Sale proceeds in the CIE Escrow Account, which amount will be used on the Effective Date to make distributions to Holders of Claims in accordance with the distributions set forth in Article III hereof and pursuant to the New CEC Common Equity Cash Election Procedures.

72. "CIE Escrow Account" shall have the meaning set forth in the CIE Proceeds and Reservation of Rights Agreement.

73. "CIE OpCo Deleveraging Proceeds" means Cash in the amount of $500,000,000 from the CIE Asset Sale proceeds in the CIE Escrow Account, which amount will be used to fund distributions to the Holders of Prepetition Credit Agreement Claims and Holders of Secured First Lien Notes Claims.

74. "CIE Proceeds and Reservation of Rights Agreement" means that certain proceeds agreement, dated as of September 9, 2016, by and among CEC, CAC, CIE, and CEOC, as amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with its terms and the *Stipulation Regarding CIE Sale Proceeds* [Docket No. 5078], dated September 22, 2016, by and among CEOC, CAC, CIE, and the Second Priority Noteholders Committee.

75. "Claim" means any claim against the Debtors or the Estates, as defined in section 101(5) of the Bankruptcy Code, including: (a) any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

76. "Claims Bar Date" means the date established by the Bankruptcy Court by which Proofs of Claim must have been Filed with respect to such Claims, pursuant to: (a) the *Agreed Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(b)(9) of the Bankruptcy Code, (II) Establishing the Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form of and Manner for Filing of Claims, Including Section 503(b)(9) Requests, (IV) Approving Notice of Bar Dates, and (V) Granting Related Relief* [Docket No. 1005], entered by the Bankruptcy Court on March 4, 2015; (b) a Final Order of the Bankruptcy Court; or (c) the Plan.

77. "Claims Objection Bar Date" shall mean the later of: (a) the first Business Day following 365 days after the Effective Date; and (b) such later date as may be fixed by the Bankruptcy Court, after notice and a hearing, upon a motion Filed on or before the day that is before 365 days after the Effective Date.

78. "Claims Register" means the official register of Claims maintained by the Notice and Claims Agent.

79. "Class" means a category of Holders of Claims or Interests as set forth in Article III of the Plan in accordance with section 1122(a) of the Bankruptcy Code.

80. "Coletta Claim" means that certain Proof of Claim Number 4053, filed by Alfred Coletta and Rosemary Coletta, Co-Guardians of the Person of Anthony Coletta, Incapacitated, and Alfred Coletta, in his own right, against Debtor Chester Downs Management Company, LLC, as such Proof of Claim may be amended or superseded.

81. "Confirmation" means the entry of the Confirmation Order on the docket of the Bankruptcy Court in the Chapter 11 Cases, within the meaning of Bankruptcy Rules 5003 and 9021.

82. "Confirmation Date" means the date upon which the Bankruptcy Court enters the Confirmation Order on its docket in the Chapter 11 Cases, within the meaning of Bankruptcy Rules 5003 and 9021.

83. "Confirmation Hearing" means the hearing held by the Bankruptcy Court to consider Confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code.

84. "Confirmation Objection Deadline" means November 21, 2016.

85. "Confirmation Order" means the order of the Bankruptcy Court, materially consistent with the Restructuring Support Agreements and the Plan, and reasonably acceptable to the Debtors, CEC, the Requisite Consenting Bank Creditors, the Requisite Consenting Bond Creditors, the Requisite Consenting SGN Creditors (only with respect to their treatment and recovery), the Second Priority Noteholders Committee, the NRF (only with respect to the treatment of the NRF Claim, the NRF Bankruptcy Disputes, the NRF Non-Bankruptcy Disputes, and Article IV.O hereof) and the Unsecured Creditors Committee (in each case, as evidenced by their written approval, which approval may be conveyed in writing by their respective counsel including by electronic mail), confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

86. "Consenting First Lien Bank Lenders" means Holders of Prepetition Credit Agreement Claims who are Consenting Bank Creditors (as defined in the Bank RSA).

87. "Consenting First Lien Noteholders" means Holders of First Lien Notes who are Consenting Creditors (as defined in the Bond RSA).

Exhibit 2

Email from December 12, 2012

To: Michael Grey[mgrey@caesarspalace.com]
From: rowen360@aol.com
Sent: Thur 12/13/2012 9:38:21 PM
Importance: Normal
Subject: Re: Rowen Seibel - concerns with valet
Received: Thur 12/13/2012 9:38:38 PM

Done - good

From: "Michael Grey" <mgrey@caesarspalace.com>
Date: Thu, 13 Dec 2012 21:08:46 +0000
To: 'rowen360@aol.com'<rowen360@aol.com>
Subject: RE: Rowen Seibel - concerns with valet

Tomorrow afternoon way better if that works for you.

From: rowen360@aol.com [mailto:rowen360@aol.com]
Sent: Thursday, December 13, 2012 1:04 PM
To: Michael Grey
Subject: Re: Rowen Seibel - concerns with valet

O man - sorry sorry, just finished Gordon meeting and now going to planet

Can I pop up afterwards?

From: "Michael Grey" <mgrey@caesarspalace.com>
Date: Thu, 13 Dec 2012 19:42:14 +0000
To: 'rowen360@aol.com'<rowen360@aol.com>
Subject: RE: Rowen Seibel - concerns with valet

Sure… 11:45 #9?

From: rowen360@aol.com [mailto:rowen360@aol.com]
Sent: Thursday, December 13, 2012 10:08 AM
To: Michael Grey
Subject: Re: Rowen Seibel - concerns with valet

May I ring u/come see u shortly to discuss. Meeting Gordon now for a bit, then back to palace to corp office.

From: "Michael Grey" <mgrey@caesarspalace.com>
Date: Thu, 13 Dec 2012 18:00:32 +0000
To: 'rowen360@aol.com'<rowen360@aol.com>
Subject: RE: Rowen Seibel - concerns with valet

Food was outstanding last night. Service b- but for first mock day that's pretty good. Staff is not a "pretty" as I had hoped for. Thought on GM? I was indifferent when we hired and thought he might not be hungry enough…. no fire in his belly.

From: rowen360@aol.com [mailto:rowen360@aol.com]
Sent: Thursday, December 13, 2012 9:58 AM
To: Michael Grey
Subject: Re: Rowen Seibel - concerns with valet

I def will and JR too!

From: "Michael Grey" <mgrey@caesarspalace.com>
Date: Thu, 13 Dec 2012 17:56:25 +0000
To: 'rowen360@aol.com'<rowen360@aol.com>
Subject: RE: Rowen Seibel - concerns with valet

No worries just give the guy an apology and I'm sure all will be fine.

From: rowen360@aol.com [mailto:rowen360@aol.com]
Sent: Thursday, December 13, 2012 9:45 AM
To: Michael Grey
Subject: Re: Rowen Seibel - concerns with valet

Mike - its inaccurate to say a scene was caused "several" times. Besides, the car hasn't been missing like this before. - the valet guys are always WELL looked after, and I think we get along real well, always high fiving, joking...
I always tip the guys for saying hello with a smile, and they're usually excellent!

If I used profanity, @ least I don't think so - it certainly was not directed @ them Absolutely not.

The car missing ended up being JR's fault, b/c I asked for the car to be driven back from paris/ph the other day, when I left it there, and it wasn't. She shouldve apologized to the valets for ?ing it.

I apologize if I upset a guest of our hotel. I was late to pick up Gordon (b/c couldn't find the car), and didn't want to mess up the sched by a minute. Ill also speak to the valet guys (if ud like) and make sure they were apologized to, as the car was not misplaced by them @ all.

From: "Michael Grey" <mgrey@caesarspalace.com>
Date: Thu, 13 Dec 2012 17:22:19 +0000
To: rowen360@aol.com<rowen360@aol.com>
Subject: FW: Rowen Seibel - concerns with valet

Please take it easy one the valet guys… for the most part they are a pretty solid team.

From: Kathryn Ashcraft
Sent: Wednesday, December 12, 2012 3:12 PM
To: Christophe Jorcin; Patty Kripitz
Cc: Miguel Nodarse; Al Delio; Ramesh Sadhwani
Subject: Rowen Seibel - concerns with valet

Christophe and Patty,

I know you're slammed right now so I'm sorry to bother you with this but we're hoping for some direction on how to handle….

As I'm sure you know, Mr. Seibel valets his car with us quite frequently and leaves it in our care when he is out of town. Unfortunately several times we have had a "scene" caused in the VIP valet due to Mr. Seibel thinking we've lost his car when he comes to retrieve it though it's never actually been lost. It seems as though Mr. Seibel takes his car out at night and returns to the property using other transportation and forgets that he left it somewhere other than Caesars the next day.

I'm sorry to say that it's our line level associates who catch the brunt of Mr. Seibel's displeasure but normally they dismiss it and move on. Today's episode at the Augustus/Octavius valet was just a little too extreme as he was using quite a bit of profanity and called one of the valets several foul names. When we couldn't find his car on the property today we were able to accommodate him with his assistant's car and through our own research discovered that his Audi was at Planet Hollywood where it had been all night.

As I said, normally we dismiss this type of thing but this was actually brought to my attention by a group of guests who witnessed the interaction and were quite upset with how the valets were treated. Apparently the couple that I spoke to dined at S3 when it opened several years ago and remember who Mr. Seibel is. They were quite offended that someone they deem to be an employee of Caesars Palace would speak to a fellow associate in that way and cause such an embarrassing scene. I handled the guests and explained that he is a valued partner and a good friend to the company, that it was an unusual situation and he is usually very kind to everyone which they accepted but I'd like to get the larger problem solved.

Is there a different way we should be dealing with Mr. Seibel in regards to his car or is there communication from him that

we are missing that would allow us to assist him better? I'd like to do whatever we can so we can eliminate these scenes. They are understandably quite upsetting /embarrassing for our valets and apparently our guests as well. Your direction is appreciated.

Thanks,

Kathryn Ashcraft
Director of Front Office Operations

CAESARS PALACE
LAS VEGAS

3570 Las Vegas Blvd. South
Las Vegas, NV 89109
Direct 702.866.1349 | Fax 702.697.5706
katashcraft@caesarspalace.com | www.caesarspalace.com

Exhibit K

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al.,	)	No. 15 B 01145
	)	Chicago, Illinois
	)	1:30 p.m.
Debtor.	)	August 17, 2016

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE A. BENJAMIN GOLDGAR

APPEARANCES:

For the Debtors:	Mr. David Zott; Mr. Jeffrey Zeiger; Mr. Joseph Graham; Mr. Brent Rogers; Mr. Bill Arnault;
For the U.S. Trustee:	Ms. Denise DeLaurent; Mr. Adam Brief;
For the Noteholder Committee:	Mr. James Johnston;
For the 10.75 Notes Trustee:	Mr. Jason Zakia;
For FERG, LLC and LLTQ Enterprises:	Mr. Steven Chaiken;
For BOKF:	Mr. Andrew Silfen;

Court Reporter:	Amy Doolin, CSR, RPR U.S. Courthouse 219 South Dearborn Room 661 Chicago, IL 60604.

THE CLERK: We are taking up all matters on the call in the Caesars Entertainment Operating Company Incorporated, et al., bankruptcy case.

MR. GRAHAM: Good morning, Your Honor. Joe Graham, Kirkland & Ellis, on behalf of the debtors.

THE COURT: Good afternoon.

MR. GRAHAM: I want to just take care of a couple of quick housekeeping matters. Beginning first, I wanted to note that this morning we announced a deal -- we announced a deal in principle in our 105 pleading last Monday. This morning we actually filed -- CEC filed an 8-K announcing the terms of the deal with the Danner plaintiffs. So that's one of the parties to the 105 litigation.

The second thing --

THE COURT: No deal with any of the other parties, though?

MR. GRAHAM: No, understood, Judge.

THE COURT: Well, I was asking.

MR. GRAHAM: Oh, no, there is no deal at this point with any of the other parties.

In addition, Judge, we filed an updated agenda yesterday.

THE COURT: Yes, I have it.

MR. GRAHAM: One of the things, the third item on the agenda, the Paul Weiss motion to compel, that's been withdrawn. So we'll just skip over that, unless you have any questions.

We also made an error when we moved the NRF stuff. It says the status is going forward, even though it's going to be continued. It should just say the matter is continued. So we won't need to take up the NRF stuff today, unless you have questions.

THE COURT: All right.

MR. GRAHAM: With that, I'm going to hand it to my colleague, Mr. Zott, for our motion to continue the standing motion.

THE COURT: Very well.

MR. ZOTT: Good morning, Your Honor. Good afternoon, I should say.

THE COURT: Are the crutches an improvement over the scooter?

MR. ZOTT: No scooter, Judge. This is considered progress in these things.

THE COURT: Is it? Good.

MR. ZOTT: Apparently. Although the scooter was much more fun, I have to say.

THE COURT: Well, it was certainly a lot more interesting to look at.

MR. ZOTT: Your Honor, this is, I guess, as you know, Your Honor, our motion to continue the standing motion, to stay the standing discovery, and also to stay the actual adversary proceeding that we filed.

THE COURT: Right.

MR. ZOTT: It has been set for presentment. And, Your Honor, there has been four responses to that filed. I'm not sure if you've had a chance to look at those.

THE COURT: Of course, I have.

MR. ZOTT: Okay. So you're probably way ahead of me on this one, Judge.

THE COURT: Well, I saw no real objection to staying the adversary that you filed or postponing the hearing. People had various comments.

MR. ZOTT: Right.

THE COURT: But the committee, whose derivative standing motion it is, didn't have a problem striking the hearing, and at least continuing the motion to the October omnibus date.

MR. ZOTT: Right.

THE COURT: So that would be what I would propose to do.

MR. ZOTT: Okay, Your Honor. Obviously, we were requesting that it be continued through confirmation. But, you know, of course, whatever Your Honor thinks is best.

I will just note that the one issue they raised is really tolling, the fact that we tolled as to six defendants and then sued the vast majority. And on tolling, just so Your Honor knows, we had a healthy dialogue with the Jones Day firm about tolling. We exchanged thoughts on that. We took a very, very hard look.

And as to these six individuals, two law firms and four individuals, we concluded that we're very, very comfortable in the tolling. And so that's really their issue.

THE COURT: But they are not. They aren't that comfortable. And they have some questions about whether the agreements, I think, are enforceable, at least in certain places.

MR. ZOTT: Uh-huh.

THE COURT: And I don't know whether there was more to it than that. But, you know, rather than put that off to a point where it might

suddenly be determined that they're not enforceable and, oh, wait, it's too late now, I think they would rather make sure that no rights were lost. And I would imagine you would like that too. And the only difference of opinion is on enforceability. You want them to be enforceable and they want them to be enforceable. But they have questions.

MR. ZOTT: Absolutely. I was only proposing that the court enters a stay through confirmation, but then we come and, if necessary, brief the tolling issue in October. And if there is any issue, obviously we would have to address it at that point. That was my suggestion.

THE COURT: Well, it may have to be briefed, but I think I would like to give the committee an opportunity to do some research under less stressful conditions.

MR. ZOTT: Sure.

THE COURT: I am willing to dispense with the January -- January, not yet -- the September 12 trial, because even if we have to have a hearing, obviously it would be a lot more limited. Otherwise, I wouldn't be willing to. I mean, I couldn't see postponing what we thought we were going to have to do in September to a later date. That's

just not going to fly.

MR. ZOTT: Very good.

THE COURT: So let's strike the September 12 hearing date on the motion and continue the motion to I think October 19.

THE CLERK: Yes.

THE COURT: Then there's a motion in the adversary, which I think is a couple items down on the agenda. We can take that up at the same time. And that was to stay proceedings on the adversary itself.

Don't you want to serve these complaints?

MR. ZOTT: Oh, we do. We do, Your Honor.

THE COURT: Okay. I think that would be important.

MR. ZOTT: We agree with the noteholders on that. And we will timely serve. And we're intending to do that. If Your Honor wants to put it in the order, that's fine.

THE COURT: Oh, I think it should be in the order.

MR. ZOTT: Yes.

THE COURT: So why don't we make both

of these draft order to follow, and you can supply me with orders that do what we talked about today.

MR. ZOTT: Very good, Your Honor.

THE COURT: But I won't expect to see you on September 12, at least not in connection with the standing motion.

MR. ZOTT: Very good.

THE COURT: Okay.

MR. ZOTT: Thank you, Your Honor.

THE COURT: Thank you.

MR. ARNAULT: Good afternoon, Your Honor. Bill Arnault for the debtors.

MR. CHAIKEN: Good afternoon, Judge. Steve Chaiken on behalf of the movants FERG, LLC, and LLTQ Enterprise, LLC.

THE COURT: Good afternoon.

Before I make any observations about this, I don't suppose you've worked it all out?

MR. CHAIKEN: We have not been able to work this out.

THE COURT: All right. Well, I am going to grant the motion to an extent. I have doubts myself about the legal contentions that both sides have made here. I don't know that the debtors' assertions about the validity of the restrictive

covenant under Nevada law are accurate. The cases they cite would not support the proposition that this is invalid. They don't have a case that I saw, at least based on the information in the memorandum, that would support that.

And in any event, arguments about the merits are not usually good arguments when it comes to discovery. You can't say we're not going to supply discovery because the party's position on the merits is wrong. No one would ever produce anything, supply any discovery, if that kind of argument would fly.

On the other hand, and I don't know that it really goes to this motion, I'm not sure about the movant's position on the Udell case. I mean, Udell, which I have the misfortune to be familiar with from another matter, had to do with whether a claim for an equitable remedy, particularly to enforce a restrictive covenant, was a claim as that term is defined in the Bankruptcy Code. And I'm not sure it goes quite as far as you suggest. But that's by the by.

When I look at the discovery requests here, I think you're entitled to some of what you want, but not all of it. It doesn't seem to me that

you really are entitled to everything that interrogatory number 11 would get you. That asks for identification of every restaurant venture with Mr. Ramsay that the debtors have contemplated since January 1st, 2010. Just thinking about opening a restaurant is neither here nor there. They have to have actually opened it. Just, you know, musings by the by would not produce any kinds of rights even under your view of your restrictive covenant.

So I think just contemplating isn't enough. Actually pursuing the venture would be relevant, it seems to me, and particularly if there were any revenues that were obtained as a result of the venture. I mean, you could pursue it but then never open it. I think that happens in the restaurant business more often than one would like to think.

So I would be willing to enforce interrogatory number 11 and order the discovery limited to ventures that were pursued, but not contemplated. That's too broad.

I don't --

MR. ARNAULT: Your Honor --

THE COURT: Yes, go ahead.

MR. ARNAULT: Sorry to interrupt, Your

Honor.

THE COURT: No, go ahead.

MR. ARNAULT: But we did in fact provide information relating to restaurants that were pursued in the past.

THE COURT: Okay. Then if it's supplied, there's nothing else to be done.

Although I don't love the form of interrogatory number 13, I don't think it's really productive to ask people to identify communications, as a rule. It's not beyond what's permitted. And so to the extent that it requests communications relating to ventures that were pursued, again, I would grant the motion.

I don't have a problem with number 15. That has to do with ventures currently contemplating pursuing. Well, you know, those could still come to fruition. It's the ones that have been contemplated and never went anywhere that I just don't think are relevant at all.

MR. CHAIKEN: Judge, on that note, that's the issue. We did limit this from contemplating to actually discussed, so it wasn't as broad when we were having our conversations.

The concern we have is if restaurants

were discussed and weren't pursued because of the very restriction that's at play here.

THE COURT: Why would that help you? Why would that be relevant?

MR. CHAIKEN: It's relevant to the extent of the issue over the scope of what 1322 means in a restrictive covenant provision. It is one issue here. And if there are communications where the debtors did not pursue restaurants with Mr. Ramsay based on the very provision that's at issue, we think that's relevant.

THE COURT: Right, because it would be behavior of the parties that would inform the interpretation of the provision. That's the theory?

MR. CHAIKEN: Yes.

MR. ARNAULT: And, Your Honor, again, to be clear, we provided that information. We are hearing a switch of the theory. Their motion to compel is based on the premise that these future ventures are relevant to determine whether the money damages can be determinable. It doesn't have anything to do with the interpretation of 1322.

THE COURT: Right. Well, this whole determinable thing goes to the movant's position on the Udell case that I asked a question about.

MR. ARNAULT: And, Your Honor, our point here is that for future ventures, it doesn't matter whether or not these discussions have occurred one way or another to determine whether or not money damages can be calculable.

Let's say they did or let's say they didn't. We know what the breach is going to be. We know what the terms of the agreement was going to be, so there's no need to delve into discovery because it doesn't have a bearing one way or another on whether the money damages can actually be calculable.

In other words, let's say that there were no future ventures that were being contemplated. That wouldn't indicate one way or another if a future breach of this contract provision would make money damages calculable or not. Same thing if ten future ventures were being contemplated. That wouldn't have a bearing on the calculability of those future money damages.

THE COURT: The calculability is not something that's really grabbing me at this point but, of course, I could be mistaken, and maybe it will grab me eventually.

It seems to me that if there have been

discussions about opening a restaurant with Mr. Ramsay in the future, that that would be relevant because calculability or not, the theory here is that if such a restaurant were opened, it would have to involve the movants. And if your position is that it would not, then there would be damages as well from that. So it's not so much the calculability of the damages as their existence. That's why it seemed to me that these matters were relevant.

MR. ARNAULT: Right. But to the extent that there are, as you put it, no agreements that have been entered into, or there's no terms, there are just discussions out in the ether, then they're not going to be relevant to what those damages could potentially be.

THE COURT: It's one thing when those happened in the past and nothing came of them, and it's another thing when they're going on now. So I would rather err on the side of allowing the discovery, which I think is always the best thing to do.

So with those caveats on limitation, I'm going to grant the motion. So we'll call this draft order to follow, and you and counsel can come up with an order.

MR. ARNAULT: Thanks, Your Honor.
MR. CHAIKEN: Thank you, Your Honor.
THE COURT: Thank you.
MR. ZEIGER: Good afternoon, Your Honor. Jeffrey Zeiger, Kirkland & Ellis, on behalf of the debtors.
Your Honor, we're here on the debtors' motion for a protective order with respect to one deposition for the 105 hearing next week.
THE COURT: Right. There seems to be some confusion about the issues for the hearing. The issues for the hearing have not changed. The issues for the hearing are the same issues that are described in the court of appeals' opinion.
What has changed is the amount of time that has passed. With the passage of time, the burden that the movant has in this situation increases. And the case law is very clear that you can get this kind of injunction at the early stages of the case. We're not exactly at the early stages of the case.
So I am not inclined to grant your motion for a protective order. The position that you take on Mr. Stauber really is that he doesn't know anything. Well, that's why you take depositions, to

establish that people don't know anything.

They don't have to take your word for that. And maybe they'd like to explore that for themselves. And, you know, it's one thing to procure an affidavit from somebody that says that, and it's another thing to extract that from them under the bright lights, you know.

So I'm going to grant the motion to compel and deny the motion for a protective order, and have you produce Mr. Stauber.

MR. ZEIGER: We will, Your Honor. I understand.

To be clear, Mr. Stauber -- our point was Mr. Stauber doesn't know anything that Mr. Hayes doesn't also know. We're making Mr. Hayes available for a deposition.

The challenge, Judge, is that obviously this is an accelerated proceeding. And they have committed to, you know, keeping the scope of discovery within essentially the topics that they listed on page 3 of their motion to compel. The concern is that, you know, they've obviously wanted to take discovery of the independent directors on standing. And we kept saying, look, it's going to be duplicative of confirmation.

What we don't want to do is these depositions twice. And so I understand the court's order. We will produce him this Friday as scheduled. But our view is that it should be limited to the topics as they set out in their motion.

THE COURT: Well, I don't have a problem with the topics limited to matters that are relevant to the hearing. And it doesn't seem to me that most of the matters that pertain to the derivative standing motion, which has now been continued anyway --

MR. ZEIGER: Correct.

THE COURT: -- are going to be relevant here. But I think Mr. Stauber should be examined.

Why am I not going to hear from Mr. Millstein at the hearing? He has been your star witness right along. You know, as time goes on, your case peters out. I was quite surprised to see that I was not going to have a chance to question him.

MR. ZEIGER: Your Honor, Mr. Millstein has a similar issue to Mr. Zott, and he can't fly right now. He just had surgery last Friday.

THE COURT: Oh, dear.

MR. ZEIGER: He's unable to fly.

THE COURT: Well, that's too bad.

MR. ZEIGER: So that's why Mr. Hayes will be here instead.

THE COURT: All right. Well, that will happen, I suppose.

I have two comments, though, that I wanted to make in anticipation of the hearing, and I wanted to offer them because these motions suggested some disagreement about the issues with the guaranty plaintiffs, in particular, asserting that the issues have narrowed.

And as I said, they haven't. But my comments may give some guidance to the parties in deciding what evidence to present. And I offer these as well for another reason: On the off-chance that they may promote a global settlement in the few days remaining. Never say "never."

The first comment concerns the debtors' position that this is a "textbook case" for the issuance of a section 105 injunction. I've agreed with that position in the past, because this is a textbook case - in certain respects. The textbook third-party injunction is issued to stop a lawsuit against a non-debtor who guaranteed one or more of the debtors' obligations, intends to make a

financial contribution to the debtors' reorganization, and won't be able to make the contribution if the lawsuit succeeds. Because CEC guaranteed certain of CEOC's obligations and is contributing to its reorganization, and because the lawsuits against CEC arguably jeopardize the contribution, to that extent this case takes textbook form.

But in another important respect, this isn't a textbook case. In the textbook case, the third party that the injunction would protect is a person - an actual human being - rather than a corporation. So, for example, a partner in a debtor partnership or an officer or shareholder in a debtor corporation. In the textbook case, no one stands behind the third party and its contribution. A judgment against a third party consequently spells doom for the reorganization. That was true in United Health Care, in Saxby's Coffee, in Rustic, and Lahman Manufacturing, in Otero Mills, in every decision cited in my published opinion after the first hearing except Lyondell. It was true in the R&G Properties case, as well, which was one of mine.

It isn't true here. CEC is majority-owned by four LLCs. Two of those LLCs

are owned, in turn, by TPG Capital, LP, a large private equity fund. The other two LLCs are owned by Apollo Global Management, LLC, also a large private equity fund. With those entities standing behind CEC, it's hard to argue this is truly the textbook case.

That brings me to my second comment. In requesting relief under section 105, the debtors always proceeded under the theory that the denial of an injunction would, as the court of appeals put it, "endanger the success of the bankruptcy proceedings." They reach that conclusion because they contend that successful reorganization depends on CEC's contribution, and that contribution will disappear if CEC loses the guaranty actions.

But why should the successful reorganization depend on a contribution from CEC alone? As I just observed, several other entities stand behind CEC. Not only that, but the estates here have claims - large ones the examiner found - against some of these entities, entities that include Apollo and TPG, as well as a host of other companies and individuals.

The plan the debtors want to confirm would release those claims. Yet as far as I know,

none of those companies and individuals, all of whom would benefit from the proposed release, has contributed so much as a dime under the plan. Certainly, there's been no evidence to date of any contribution. In fact, Mr. Millstein, the debtors' restructuring advisor, from whom apparently we will not hear, testified as recently as this past June that he had not even considered whether these entities could contribute anything. The current motion asserts perfunctorily that "the sponsors" - Apollo and TPG - are participating in settlement discussions, but the motion doesn't describe their participation and gives no indication that it's any better than pro forma.

The debtors in these cases are asking the guaranty plaintiffs, all of them creditors of the debtors, to take considerably less than they are owed. The guaranty plaintiffs are miffed at being asked to do that when parties potentially liable to the estates would see the claims against them released under the plan - and would pay nothing for that benefit. They're especially miffed when some of the released parties are the ultimate owners of the Caesars enterprise, the very entities that engineered the leveraged buyout that led to these cases. The

guaranty plaintiffs don't see the proposed reorganization here as involving shared pain. I don't blame them.

A section 105 injunction is an equitable remedy. To receive equity, the saying goes, one must do equity. Next week, the debtors might well want to show - if it can be shown - what is equitable about stopping the guaranty plaintiffs from enforcing their contractual rights in order to let the debtors confirm a plan under which alleged wrongdoers are released for free.

With that, we can move on to the next item. I'll see you Tuesday.

MR. JOHNSTON: Your Honor, before we do that, for the record, Jim Johnston of Jones Day on behalf of Wilmington Savings Fund.

First, thank you for your comments. That is very helpful for preparing for next week. You will hear more about those issues in our brief on Friday and next week.

THE COURT: Good.

MR. JOHNSTON: I wanted to raise an issue that just came to my attention this morning, and that has to do with another aspect of the discovery we tendered in connection with the motion,

specifically a document request for the signature pages to the second lien RSA, which you read about in the motion.

We thought we had an agreement from the debtors to produce those signature pages. In fact, Mr. Zeiger memorialized that agreement in an email sent Friday night. But when the production was made, I believe Monday night, the signature pages were produced but were redacted of the relevant information. The relevant information here being the nature of the claims held by the signatories to the agreement.

Again, one of the things you will hear more about on Friday and next week is the nature of the parties who signed the second lien RSA. We have reason to believe that those parties are all substantial shareholders of CEC, or its affiliate, CAC, and have other interests and claims throughout the capital structure that are driving their actions in this case, and that in fact make them less concerned, and perhaps not concerned at all, with recoveries on the second lien notes as second lien notes.

We were never told those signature pages were going to be redacted. They were produced

redacted. We need that information.

THE COURT: I guess this is an oral motion to compel, which is not really appropriate. But, nevertheless, time is short. This is sort of an emergency.

So could you respond to that, Mr. Zeiger.

MR. ZEIGER: Yes, I can. And I just heard about this ten minutes ago. I ended up working in the ten minutes before the hearing started to figure out what the status is.

Under, apparently, the second lien RSA, we are prohibited from sharing that information. Apparently it's very commercially sensitive as to what each specific signatory owns of each of the second lien debt. And what we're trying to do is work on an agreement with counsel to be able to share that on an attorney-eyes only basis.

THE COURT: A protective order in other words?

MR. ZEIGER: I'm sorry?

THE COURT: A protective order in other words?

MR. ZEIGER: Yes. Yes, Your Honor.

THE COURT: Okay.

MR. ZEIGER: So then Jones Day could have that information and we wouldn't be in violation of our RSAs, which, obviously, is a huge point of contention. We have an RSA that we believe is progress. And in response, they have gone out and gotten a cooperation agreement that ensures that the RSA that we negotiated will never become effective, which you'll hear more about next week.

So this is, obviously, a very sensitive issue. We're trying to work with some of the second lienholders who believe that we are making progress. And what we don't want to do is have a foot fault whereby, you know, the progress we made goes out the window.

MR. JOHNSTON: And I will note, Your Honor, the second lien RSA itself contemplates exactly this situation and provides for advisors'-eyes only production. It's Section 5(a) romanette iii.

THE COURT: I take your word for it, since I don't have the document.

MR. JOHNSTON: Yes.

MR. ZEIGER: I will.

MR. JOHNSTON: This is something that the parties actually envisioned when they were

negotiating this agreement, and the agreement categorically does not prohibit the debtors from turning it over.

THE COURT: It sounds as if the production part of this can be worked out pretty simply.

MR. ZEIGER: Correct.

THE COURT: There is the trial question. You know, it's one thing to produce it, and it's another thing then to have it disclosed at trial. And if it's going to come out at trial, it's going to come out. I'm not going to clear the courtroom and shut off the telephone connection for this. So we'll have to give that some thought.

MR. ZEIGER: Yes.

MR. JOHNSTON: I think we all need to think about that. And hopefully we will come to a resolution that works for everyone.

MR. ZEIGER: My assumption is we all want progress here, and we'll figure out a way to allow them to challenge the bona fides of the statement without destroying progress.

THE COURT: Okay. Very good. Thanks.

MR. ZEIGER: Very good.

THE COURT: The next matter is the preference complaint CEC, et al., versus BOKF. There was a report filed of the parties' Rule 26(f) conference. And now because we've gone that route, which I must say is really unusual in the adversary proceedings that I have, we now need a scheduling order under Rule 60(b). I really hate those because they require me to set deadlines for things that I don't like to set deadlines for, but I guess there's no way around it.

So I think what I would like is for the parties to provide me with a proposed scheduling order, since you're in the best position to know how much time you need for discovery. And I don't need to be involved in that. And it's unfortunate that the rule requires a deadline for motions. I don't usually set deadlines for motions, but the rule is the rule. So pick a deadline that you like and we'll go from there.

MR. ROGERS: Your Honor, Brent Rogers from Kirkland & Ellis on behalf of the debtors.

We would be happy to work with the noteholders to come up with a proposed schedule. I want to advise Your Honor that the debtors will be filing a motion to strike certain of the affirmative

defenses and the answers.

THE COURT: Okay.

MR. ROGERS: That will be filed this week.

THE COURT: All right. Thanks for the warning. That won't affect this scheduling matter, of course.

You know, the other thing I didn't see discussed in the report was expert discovery. And I don't know if that's something that you did discuss or whether you're even contemplating any. I imagine you would be, but maybe I'm wrong about that.

MR. ROGERS: Your Honor, I believe in the report what we said was that we would discuss among the parties expert discovery and come up with a schedule for that in advance of the October omnibus hearing.

THE COURT: Okay.

MR. ROGERS: We're happy to incorporate that into the discussions over the scheduling order.

THE COURT: I think you should. I think that should be in the scheduling order. Scheduling orders can always be amended. That's the one thing I'm not restricted from doing. So let's

call it draft order to follow. You can provide me with a scheduling order at some point. And why don't we continue the adversary proceeding to the October 19 date.

Was that your proposal?

MR. ROGERS: It is, Your Honor.

THE COURT: Okay. Let's do that.

MR. ROGERS: And I believe we've already laid out some of the dates in our Rule 26 report.

THE COURT: Right.

MR. ROGERS: And we'll incorporate those into the scheduling order.

THE COURT: Yes, exactly. And you can choose the other dates.

There is another matter that's under the continued matters that I want to call, and that is the debtors' motion for entry of an order that would authorize the payment of certain expenses of the 10.75 SGU notes trustee because I've got parties who are not in agreement about how this should go forward. And I have some folks suggesting that there should be a briefing schedule, and I have the U.S. Trustee asking for a trial. And if we're going to have a trial, I'd just as soon set the date, frankly,

so we know what we're working with.

MR. GRAHAM: Good afternoon, Your Honor. Joe Graham, Kirkland & Ellis, on behalf of the debtors.

MS. DeLAURENT: Good afternoon, Your Honor. Denise DeLaurent.

MR. BRIEF: Adam Brief on behalf of Patrick Layng, the United States Trustee.

THE COURT: So there were a number of objections that went in some very interesting ways I thought. I'm not quite sure how the debtors feel about some of that, since it seems to me to involve a whole lot more expenditures than they had originally contemplated when they filed this motion, although maybe they knew about them all along. I'm not sure. And then, of course, the U.S. Trustee says nobody can be paid.

You wanted a hearing. Is that still your position?

MS. DeLAURENT: You're talking to the United States Trustee?

THE COURT: I sure am.

MS. DeLAURENT: Yes.

THE COURT: You're the only person who asked for one.

MS. DeLAURENT: Yes, okay.

I think initially we think that the issue should be briefed. We think as a threshold issue you have to decide whether the authority they're using, which is 363, is a basis for them to actually pay the fees that they are contemplating paying, which are administrative claims in the estate.

And I think we laid that out in our objection. If you decide they cannot use 363, then they're going to have to come in and I think they're going to have to do what we think they should do, which is proceed under 503 and substantial contribution.

THE COURT: Well, isn't there a factual issue that underlies that question too though? I mean, I thought that was why you wanted a hearing, or one of the reasons. Maybe I'm mistaken.

MR. GRAHAM: They have raised -- I think one of their arguments, Your Honor, was whether Wilmington Trust is a member of the committee was a factual issue that needed to be discussed. We have a footnote, obviously, in our motion, Wilmington Trust is a member of the committee. But I think as Your Honor is well aware, they've had a very active role

as a creditor, representing a bunch of creditors in this case.

THE COURT: Oh, I'm well aware.

MR. GRAHAM: It was predicated on that role. We have a footnote that says that. I believe that that was one of the, you know, predicate issues they raised, practical issues.

THE COURT: Right. So that's a factual question, and we can brief it if you want. But until we know as a factual matter, you know, what they did -- I mean, I know some of what they did. I don't know probably everything they did for which they want to be compensated.

Wouldn't you want to know that?

MS. DeLAURENT: Yeah. We don't probably know everything they did either.

THE COURT: Right.

MS. DeLAURENT: I don't disagree with that. I mean, I think the burden is on the debtor to basically put that forth in the motion. And I'm assuming they put that forth in the motion. I don't know.

Is there more?

MR. GRAHAM: Your Honor --

MS. DeLAURENT: I think there is.

MR. GRAHAM: I mean, we can put out -- we have other -- we have, obviously, plenty of reasons why we reached this deal with Wilmington, with the holders of these subsidiary guaranty notes, who have directed the trustee here throughout the case.

If we need to put on more briefing, I think that's part of our suggestion for why we need to do a briefing -- we need to discuss with the parties a briefing schedule. One, we need to figure out what the issues are, whether people think there is a legal -- threshold legal issues that we can deal with or whether there are certain factual issues that need to be decided first.

I recognize that's what you're asking for here, but we have been contemplating not making the sausage in front of the court, if possible.

THE COURT: It's usually unavoidable in this case.

Well, if it's your preference to go ahead and brief it, then that's fine. But it may just serve to highlight the issues and not do much more, and then we still have to have a hearing. And then you might have to brief it again based on what the evidence at the hearing shows. So that's the

thing about prehearing briefs, they often just add to the pile of paper.

And then the other thing is, you know, the longer we postpone the hearing, the less time I have. I have this other hearing set for January 17th. You may know about it.

MR. GRAHAM: Yes.

THE COURT: And I imagine there will be some activity leading up to that, unless really wonderful things happen in the next few days.

All right. If that's your preference, then why don't we set a briefing schedule now.

MS. DeLAURENT: Yes. Judge, can I just raise too, that, you know, if they're proceeding under 363, it may be a different standard than under 503, 503 substantial contribution.

THE COURT: Well, right.

MS. DeLAURENT: Right?

THE COURT: Very different standard, I would say.

MS. DeLAURENT: Very different standard. And that's why we're saying, I mean, we may be at this issue -- we may brief it more than once.

THE COURT: Okay.

MS. DeLAURENT: That is where we are. I mean, we can definitely sit down and talk to the debtors, see what they have to say about it, and come up with a briefing schedule. I have no problem with doing that.

MR. GRAHAM: Your Honor, obviously, we have the U.S. Trustee up here. I believe we are about to get counsel maybe for BOKF. But, obviously, the committee, as well as the second lien trustees filed objections as well. So I think we need to maybe all discuss the scheduling issues.

THE COURT: Okay. If that's your preference.

MR. SILFEN: Good afternoon, Your Honor. Andrew Silfen, Arent Fox, counsel for BOKF.

THE COURT: Welcome.

MR. SILFEN: I think I just want to provide some comments that may be helpful to all of this because we are dealing with possibly confirmation. And I think there is no disagreement that under 1129(a)(4) and 1123 the indenture trustees can be paid. And the question is timing, can it be paid in contemplation of a confirmed plan or can it be paid during the case?

The challenge here is if we start to

go in this direction, and it may be the right direction, we run into ultimately a different standard vis-a-vis the confirmed plan. Because what you do under a plan is different than what you can do prior to a plan. So from our perspective, this is a timing issue.

THE COURT: I was just going to say --

MR. SILFEN: The indenture trustees will be paid. The question is confirmation or earlier. And, obviously, you've read our papers. We're offended by the discriminatory, coercive nature and the unbalanced approach that's been taken.

THE COURT: Well, it's discriminatory. I don't know if it's coercive.

Does the U.S. Trustee agree that this is really just timing and ultimately this money is going to get paid?

MS. DeLAURENT: Well, it depends on if it's an administrative claim. Okay? Under 503, if you're paying fees at an administrative level or if it's added to the claim. If it's an unsecured claim -- they probably -- they have documents, I'm sure, that provide for payment of attorney's fees. And if that's -- it's a charging lien. They put that in

their papers. And those are often in plans. And we'll look at that and look at that a little differently.

So it kind of depends on where they are going. If you have an administrative claim, and you're being paid priority-wise above everybody prior to confirmation, then that's a different issue.

And Lehman dealt with some of that. And, I mean, that's the seminal case the whole country looks at is Lehman which, you know, that's the case what we cited, and those were the problems.

And I think there are questions whether -- you know, does it matter if you're on the committee or off the committee? I think our position is it doesn't matter either way. But we definitely have all of these parties are on the committee. And beyond that, we have all the parties on the committee, the UCC committee in particular, they are all litigating.

I mean, they are all in major litigation. This is not something new. We have Hilton in litigation. We have the National Labor Relations Board in litigation. We have each of the indenture trustees in litigation.

I used the wrong term for --

THE COURT: I think it's NRF.

MS. DeLAURENT: It's the NRF. I'm sorry.

THE COURT: I haven't seen the NLRB yet. Maybe next week.

MS. DeLAURENT: It's the NRF. I have a different case in my head. It's the NRF. And you have litigation.

So almost every single member of the UCC committee has an independent claim that they have been pursuing in some way in this case.

MR. SILFEN: And I don't think you want to get into arguments today, but I have two comments that may be helpful.

1123 specifically provides that an indenture can be canceled or modified, and it's usually dealt with within the constructs of a plan. Okay? The indentures all are continuing through this case. There are obligations of the debtor. There's obligations of the indenture trustee. One of those obligations is for the debtor to pay. It's still an obligation.

The charging lien, just so that we're clear because that's a term of art that's often used, it gives under the contract, the indenture, the

indenture trustee, the right to have its fees paid out first priority of any distributions before the holders get it. So if the debtor turns over a dollar, and there's 50 cents in fees, the 50 cents in fees can be paid as a priority. It's called the charging lien.

Often what happens is it gets kind of added up. Instead of being deducted, it would be an add-on that's paid by the debtor or it's treated in other ways. This has come to a head because the debtor has chosen to pay one indenture trustee earlier and have not discussed this with the other indenture trustees. And there are other bases to pay indenture trustees that have not been raised by the debtors' motion, which is what the U.S. Trustee has raised.

I was hoping these comments would be helpful. As I listen to myself --

THE COURT: Oh, they are. You don't think so? You have doubts about your own helpfulness?

MR. SILFEN: I'll step aside.

THE COURT: No, no, that's helpful.

You know, when I hear about timing, and it's not a question of just who gets paid but

when, then I sometimes wonder whether it's really worth the fuss. But I'll leave that to you. I don't decide what disputes get brought to me.

MS. DeLAURENT: Well, there is how, how you get paid and under what statutory provision.

THE COURT: Right.

MS. DeLAURENT: Right?

THE COURT: Okay.

MS. DeLAURENT: I mean, it's just not timing.

THE COURT: Well, all right. I raised all of this just because I was trying to arrive at the most efficient way to get it decided, and in particular since you asked for an evidentiary hearing. You know, it may not seem like it now, but time is really short. And time is also at a premium, especially trial time.

MR. GRAHAM: Understood, Your Honor.

THE COURT: So that's why, you know -- and I felt this way about the derivative standing motion of the second lien committee too. You know, I mean, things that get put off, we're going to end up with a problem if we have to have evidentiary hearings down the road.

So I'd rather just get it done and get

it done now. If you want to brief it and you've got a schedule, that's great. If you don't have a schedule now, you can propose one. We can do this a bunch of different ways. You can arrive at a schedule and just submit an order to me. I can put this on a non-omnibus date and we can have another nice chat.

MR. GRAHAM: Your Honor, we have been planning on trying to work with the parties and come back at the next omnibus hearing. If Your Honor thinks that we should do something on an earlier date, you know, I'm sure we can just -- there's, obviously, several of us here, but I'm sure we can all get together and decide how to proceed, and also a briefing schedule, and get either a draft order to follow or to be back here on a non-omnibus hearing date.

THE COURT: I hate to wait a month.

MR. SILFEN: I think all of the parties other than the U.S. Trustee was prepared to put this on to the next omnibus hearing so we can kind of sort through all these issues and not have to bring it before you in this haphazard way. The U.S. Trustee wanted at least to have a discussion. So I think, unless you have an objection, we can put it on

to the next omnibus date and sort through this.

THE COURT: Well, I can do that. My concern, again, is delay that results in difficulty finding trial time. You know, life is unpleasant enough as it is, and I'm reluctant to make it -- it's going to get more unpleasant. But I wouldn't like to make it even more unpleasant than that, frankly.

MS. DeLAURENT: Why don't we go off omnibus and have a status where we come before you.

How about two weeks from now?

MR. ZAKIA: Your Honor, Jason Zakia, White Case for the 10.75 trustee. We have, obviously, have an interest in how this gets resolved as well.

It seems like the parties have agreed to negotiate a briefing schedule. Perhaps that can be done and we can negotiate a briefing schedule and submit it to the court, and then you can set a backstop date in case that breaks down. But I would at least be optimistic we might not need another hearing before Your Honor to enter a briefing schedule because I think that's something that probably everyone can agree to. And I don't know

that we need to wait a month to have that entered. We'd like to get the ball rolling if Your Honor is concerned about timing.

THE COURT: I'd like to get the ball rolling too, and I am concerned.

So, okay. So, in other words, you would rather just treat this as draft order to follow, negotiate a briefing schedule --

MR. GRAHAM: Yes.

THE COURT: -- submit it to me, and I'll see what I think about it?

MR. GRAHAM: That would be the debtors' preference.

THE COURT: That meet with everybody's approval?

MS. DeLAURENT: That's fine, Your Honor.

THE COURT: All right. That's what we will do.

MR. GRAHAM: Thank you, Your Honor.

THE COURT: Okay. I think that's all. Am I correct? I don't have Mr. Seligman here to serve as master of ceremonies. I feel at sea.

MR. GRAHAM: Your Honor, I believe that was the last item on today's agenda. So I think

other than continued matters, we are set. I don't have any other housekeeping matters.

THE COURT: All right. If something wonderful happens before next Tuesday, give us a call. Otherwise, I'll see you Tuesday at 9:00.

(Which were all the proceedings had in the above-entitled cause, August 17, 2016, 1:30 p.m.)

I, AMY B. DOOLIN, CSR, RPR, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE.

Exhibit L

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
	)	
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., *et al.*,[1]	)	Case No. 15-01145 (ABG)
	)	
	)	(Jointly Administered)
Debtors.	)	
	)	Honorable A. Benjamin Goldgar
	)	
	)	**Hearing Date: October 19, 2016**
	)	**Hearing Time: 1:30 p.m.**

NOTICE OF MOTION

PLEASE TAKE NOTICE that on **October 19, 2016**, at the hour of **1:30 p.m.** (prevailing Central Time), or as soon thereafter as counsel may be heard, the undersigned shall appear before the Honorable A. Benjamin Goldgar, United States Bankruptcy Judge for the Northern District of Illinois, in Courtroom No. 2525 of the Everett McKinley Dirksen Federal Building at 219 South Dearborn Street, Chicago, Illinois, 60604 and at that time and place we shall present the **Combined Motion for Partial Summary Judgment by LLTQ Enterprises, LLC and FERG, LLC in connection with Request for Payment of Administrative Expense** (the "**Motion**").

PLEASE TAKE FURTHER NOTICE that any objection to the Motion must be filed with the Court and served upon the undersigned counsel and those entities in accordance with the notice, case management, and administrative procedures established in the above-captioned cases (the "**Case Management Procedures**") by **October 12, 2016 at 4:00 p.m. (prevailing Central Time)**. If no objection is timely filed and served in accordance with the Case Management Procedures, the relief requested in the Motion may be granted without a hearing.

PLEASE TAKE FURTHER NOTICE that copies of the Motion as well as copies of all documents filed in these chapter 11 cases are available free of charge by visiting https://cases.primeclerk.com/CEOC or by calling (855) 842-4123 within the United States or Canada or, outside of the United States or Canada, by calling +1 (646) 795-6969. You may also obtain copies of any pleadings by visiting the Court's website at www.ilnb.uscourts.gov in accordance with the procedures and fees set forth therein. **Please note that a copy of the Motion can also be obtained free of charge upon request to the undersigned counsel.**

[1] The last four digits of Caesars Entertainment Operating Company, Inc.'s tax identification number are 1623. Due to the large number of Debtors in these jointly-administrated chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtor's claims and noticing agent at http://cases.primeclerk.com/CEOC.

DATED this 5th day of October, 2016

ADELMAN & GETTLEMAN, LTD.

/s/ Nathan Q. Rugg

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
	)	
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., *et al.*	)	Case No. 15-01145 (ABG)
	)	
	)	(Jointly Administered)
Debtors.	)	
	)	

COMBINED MOTION FOR PARTIAL SUMMARY JUDGMENT BY LLTQ ENTERPRISES, LLC AND FERG, LLC IN CONNECTION WITH REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE

NOW COME FERG, LLC, a Delaware limited liability company (and its successors and assigns, collectively "FERG") and LLTQ ENTERPRISES, LLC, a Delaware limited liability company (and its successors and assigns, collectively "LLTQ," and together with FERG, the "Movants"), by and through their undersigned counsel, and, pursuant to 11 U.S.C. §§ 365 and 503, Rules 7056 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 7056-1 of this Court's local rules, hereby move for partial summary judgment in connection with their *Request for Payment of Administrative Expense* [Docket No. 2531] (the "Admin Expense Motion"), for the following claims: (1) the "Pub Agreements" are integrated with the respective "Original Ramsay Agreements" for the operation of the "Ramsay Pubs," and (2) Movants are entitled to allowance and payment of administrative expense claims through at least September 2, 2016 (the "Motion"). Filed concurrently herewith is a statement of undisputed material facts in support of the Motion (the "Statement"), which is incorporated herein by reference. Capitalized terms not otherwise defined herein shall have the same meaning as ascribed in the Statement.

I. INTRODUCTION

Debtors and Movants agree that the continued operation of the Ramsay Pubs benefits the estate; that the Debtors have operated the Ramsay Pubs since the filing of these cases through the present; and that under the Debtors' contracts with the Movants, the Debtors are obligated to operate the Ramsay Pubs. In response to the Admin Expense Motion, however, the Debtors attempt to distinguish the last fact by asserting that they do not operate the Ramsay Pubs under the Pub Agreements with the Movants, but rather under the Original Ramsay Agreements with Gordon Ramsay. This distinction is without substance because the Pub Agreements and the Original Ramsay Agreements comprise integrated contracts made to effectuate a single transaction for each of the Ramsay Pubs. The Pub Agreements and the Original Ramsay Agreements were negotiated among the same three parties around the same time; they concern the exact same subject matter (the development and operation of the Ramsay Pubs); they were executed and became effective on the same day; the respective Debtors are party to each; and the contracts reference each other in multiple, critical aspects. As such, unless and until the Debtors reject the Original Ramsay Agreements, the Movants are entitled to payment of an administrative claim.

On September 2, 2016, the Debtors issued notices of termination for the Pub Agreements, "effective immediately." The Movants dispute and will contest the termination of the Pub Agreements, and reserve all rights, defenses and objections in connection with such purported termination. Nonetheless, such termination does not affect the fact that the Pub Agreements and the Original Ramsay Agreements are integrated in the first instance, nor does it affect Movants' entitlement to administrative priority claims through at least September 2, 2016. Thus partial summary judgment is appropriate to determine integration and award an administrative claim.

II. LEGAL STANDARDS

A. Summary Judgment

1. "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a) (made applicable by Bankruptcy Rules 7056 and 9014). The court has "one task and one task only: to decide, based on the evidence of record, whether there is any material dispute of fact that requires trial." *Egan v. Freedom Bank*, 659 F.3d 639, 643 (7th Cir. 2011) (citation omitted).

2. In determining whether there is a "genuine" dispute about a material fact, the court will consider "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

3. To demonstrate the absence of dispute as to material facts, a party may cite "to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1).

4. A 2010 amendment to the Federal Rules of Civil Procedure codified the ability of federal courts to enter partial summary judgment, i.e., judgment on a part of a claim or defense. *See* Fed. R. Civ. P. 56(a); 10B Charles Alan Wright *et al.*, *Federal Practice and Procedure* § 2736 (4th ed. 2016). As amended, Rule 56 enables courts to "narrow the individual factual issues for trial by identifying the material disputes of fact that continue to exist." *BBL, Inc. v. City of Angola*, 809 F.3d 317, 325 (7th Cir. 2015); *see also Hotel 71 Mezz Lender LLC v. Nat'l Ret. Fund*, 778 F.3d 593, 606 (7th Cir. 2015) ("Nothing in Rule 56 demands an all-or-nothing approach to summary judgment.").

B. Hearsay: Definition and Exclusion for Statements of Party Opponent

5. Under the Federal Rules of Evidence, hearsay is generally inadmissible unless it falls within an exception to the hearsay rule. *See* Fed. R. Evid. 802. To be hearsay, evidence must be (a) an out-of-court statement, (b) offered to prove the truth of the matter asserted. *Flournoy v. City of Chi.*, 829 F.3d 869, ___ (7th Cir. 2016); Fed. R. Evid. 801(c).

6. To satisfy the first criterion, evidence must be a "statement," *i.e.*, "a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion." Fed. R. Evid. 801(a); *see also Catalan v. GMAC Mortg. Corp.*, 629 F.3d 676, 695 (7th Cir. 2011). Because it is not an "assertion," neither a request, *Carter v. Douma*, 796 F.3d 726, 735 (7th Cir. 2015); nor a question, *United States v. Thomas*, 453 F.3d 838, 845 (7th Cir. 2006); nor a contractual offer, *Hydrite Chem. Co. v. Calumet Lubricants Co.*, 47 F.3d 887, 892 (7th Cir. 1995), constitutes a statement barred by the hearsay rule.

7. To satisfy the second criterion, a statement must be offered "to prove the truth of the matter asserted in the statement." Fed. R. Evid. 801(c)(2). It follows that a statement offered as evidence of the declarant's belief or intention, rather than the truth of the statement itself, falls outside the hearsay rule. Thus, a statement by one contract party offered to show the parties' mutual intent in entering into their contract is not hearsay. *BKCAP, LLC v. Captec Franchise Trust 2000-1*, 688 F.3d 810, 814 (7th Cir. 2012); *see also Catalan*, 629 F.3d at 694-95; *Aetna Life Ins. Co v. Wise*, 184 F.3d 660, 665-66 (7th Cir. 1999).

8. Federal Rule of Evidence 801 further excludes from hearsay any statement "offered against an opposing party [that] was made by the party's agent or employee on a matter within the scope of that relationship and while it existed." Fed. R. Evid. 801(d)(2)(D).

9. There are only "two relevant requirements" for a statement to qualify as non-hearsay under this rule; it must be (a) "offered against" an opposing party, and (b) have been made while the declarant was "performing the duties of his employment." *Aliotta v. Nat'l R.R. Passenger Corp.*, 315 F.3d 756, 761-62 (7th Cir. 2003). There is no requirement, therefore, that the statement be inculpatory, *United States v. McGee*, 189 F.3d 626, 631 (1999), or even that it have been "conveyed or intended to be seen by anyone," *S. Cent. Bank & Trust Co. v. Citicorp Credit Servs., Inc.*, 863 F. Supp. 635, 646 (N.D. Ill. 1994).

C. Administrative Expenses

10. Section 503 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") provides that, after notice and a hearing, "there shall be allowed administrative expenses . . . including . . . the actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1)(A).

11. A particular expense is entitled to administrative priority under section 503 if it both "(1) arises from a transaction with the debtor-in-possession and (2) is beneficial to the debtor-in-possession in the operation of the business." *In re Jartran, Inc.*, 732 F.2d 584, 587 (7th Cir. 1984) (citation and alteration omitted).

D. Rejection of Contract

12. In *National Labor Relations Board v. Bildisco*, the Supreme Court ruled:

> If the debtor-in-possession elects to continue to receive benefits from the other party to an executory contract pending a decision to reject or assume the contract, the debtor-in-possession is obligated to pay for the reasonable value of those services, which, depending on the circumstances of a particular contract, may be what is specified in the contract.

465 U.S. 513, 531 (1984) (citations omitted).

13. The reasoning for applying the contract rate as a baseline presumption is intuitive. As one court observed:

> Presumptively, the value of consideration received under an executory contract is the amount set forth in such contract. The basis for such a presumption is that the parties are in the best position to negotiate the terms and value of the consideration. It logically follows that if a debtor makes full use of the services provided under a contract, the benefit to the debtor is the entire bargained for value pursuant to such agreement.

In re Beverage Canners Int'l Corp., 255 B.R. 89, 93 (Bankr. S.D. Fla. 2000) (citation omitted).

14. The Seventh Circuit has ruled that continued use of services by the debtor post-petition does not elevate a prepetition claim to priority status, but the post-petition claim for services is entitled to administrative priority. *Data-Link Sys. v. Whitcomb & Keller Mortg. Co (In re Whitcomb & Keller Mortg. Co.)*, 715 F.2d 375, 379-380 & n.5 (7th Cir. 1983). Simply put, "during the period prior to assumption or rejection of an executory contract or unexpired lease, the estate must pay the reasonable value of any contractual benefits the estate receives during that period, as an administrative expense." *In re Res. Tech. Corp.*, 254 B.R. 215, 221 (Bankr. N.D. Ill. 2000).

E. Integrated Agreements and One Transaction – Bankruptcy

15. Under section 365(f) of the Bankruptcy Code, a debtor's assumption of a contract is subject to the benefits and burdens thereunder. If the debtor "accepts the contract he accepts it *cum onere*. If he receives the benefits he must adopt the burdens. He cannot accept one and reject the other." *In re Fleming Cos.*, 499 F.3d 300, 308 (3d Cir. 2007) (citation omitted).

16. "The *cum onere* rule 'prevents the [bankruptcy] estate from avoiding obligations that are an integral part of an assumed agreement.'" *Id.* (alteration in original) (quoting *United Air Lines, Inc. v. U.S. Bank Trust Nat'l Ass'n (In re UAL Corp.)*, 346 B.R. 456, 468 n.11 (Bankr. N.D. Ill. 2006); *see also In re Physiotherapy Holdings, Inc.*, 538 B.R. 225, 233 (D. Del. 2015) (holdings that debtors could not assume software licensing agreement without also assuming the master agreement signed on same date), *appeal dismissed*, __ Fed. App'x __ (3d Cir. Dec. 17,

2015); *In re Teligent, Inc.*, 268 B.R. 723, 729 (Bankr. S.D.N.Y. 2001) (concluding, for purposes of assumption, that two documents constituted a single agreement where both documents were executed on the same day and as part of the same transaction, and neither side would have signed one unless the other side signed the second).

17. Similarly, for purposes of rejection, this Court must examine whether the Pub Agreements are integrated with the Original Ramsay Agreements, and whether the agreements are part of a single transaction to operate the Ramsay Pubs. "Where multiple contracts are intended to comprise one agreement or transaction, a party may not sever them for purposes of assumption or rejection." *In re Trinity Coal Corp.*, 514 B.R. 526, 530 (Bank. E.D. Ky. 2014); *see also Kopel v. Campanile (In re Kopel)*, 232 B.R. 57, 65 n.4 (Bankr. E.D.N.Y. 1999) ("Where several documents are construed as one contract, the debtor must assume or reject them together.").

18. In other words, a "debtor in possession may not reject, and thereby breach, one contract and still enjoy the benefits of a related contract if that breach is also a breach of the related contract." *In re Comdisco, Inc.*, 270 B.R. 909, 911 (Bankr. N.D. Ill. 2001).

19. As a preliminary matter, to determine whether the Pub Agreements and/or the Original Ramsay Agreements are executory, the Court must first identify what constitutes the agreement at issue. And, as one court of appeals has stated:

> The general rule is that in the absence of a contrary intention, where two or more instruments are executed by the same contracting parties in the course of the same transaction, the instruments will be considered together . . . because they are, in the eyes of the law, one contract. A contract should be treated as entire when, by a consideration of its terms, nature, and purposes, each and all of the parts appear to be interdependent and common to one another and to the consideration.

Lewis Bros. Bakeries Inc. v. Interstate Brands Corp. (In re Interstate Bakeries Corp.), 751 F.3d 955, 961 (8th Cir. 2014) (alteration in original) (citations omitted).

20. This analysis, in turn, requires an examination of state law. *Empire State Bldg. Co. v. N.Y. Skyline, Inc. (In re N.Y. Skyline, Inc.)*, 432 B.R. 66, 77 (Bankr. S.D.N.Y. 2010) ("It is well-settled that state law governs whether the agreements are separate or indivisible for purposes of § 365."); *see also In re AbitibiBowater Inc.*, 418 B.R. 815, 823 (Bankr. D. Del. 2009).

F. Integrated Agreements Constitute One Transaction Under Applicable State Law

21. Contract law generally provides that terms of one agreement can be expressed in more than one document, and that writings executed at the same time and relating to the same transaction are construed together as a single contract. *See Martin Marietta Materials, Inc. v. Vulcan Materials Co.*, 56 A.3d 1072, 1120 n.192 (Del. Ch. 2012) (citing 17A C.J.S. *Contracts* § 315, at 337 (1999)), *aff'd*, 45 A.3d 148 (Del. 2012); 11 *Williston on Contracts* § 30:26 (4th ed. 1999).

1. Nevada State Law

22. The LLTQ Agreement and Ramsay LV Agreement are both subject to and governed by Nevada law. LLTQ Agmt. § 13.10; Ramsay LV Agmt. § 14.10. Under Nevada law, two independently executed agreements can form one contract. *Whitemaine v. Aniskovich*, 183 P.3d 137, 141-42 (Nev. 2008).

23. Nevada state courts take a relatively permissive approach to the integration of related contracts. In *Collins v. Union Federal Savings & Loan Ass'n*, the Supreme Court of Nevada stated, "[t]he general presumption is that where two or more written instruments are executed contemporaneously the documents evidence but a single contract if they relate to the same subject matter and one of the two refers to the other." 662 P.2d 610, 615 (Nev. 1983).

24. Later, in *Whitemaine*, the Supreme Court of Nevada articulated this standard as a three-part test, holding that multiple contracts are integrated when "(1) they are contemporaneously executed, (2) they concern the same subject matter, and (3) one of the instruments refers to the other." 183 P.3d at 141. The court applied the three-part test to conclude that two employment agreements among three parties constituted one agreement, even though one of the agreements contained an integration clause. *Id.* (citing *Collins*, 662 P.2d at 615).

25. The *Whitemaine* court looked to a decision of the California Court of Appeal for guidance and adopted the rule that several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together. *Id.* at 143-44 (citing *Brookwood v. Bank of Am.*, 53 Cal. Rptr. 2d 515, 520 (Cal. Ct. App. 1996) and Cal. Civ. Code § 1642).

26. In *Whitemaine*, one individual entered into two employment agreements with two corporations, a parent and subsidiary. The court ruled that an arbitration clause found in one of the contracts but not the other applied to both, because the two contracts constituted a single agreement. *Id.* at 144.

27. Similarly, the instant proceeding involves one debtor entity that entered in two contracts for each of the Ramsay Pubs. For the Las Vegas Pub, Caesars entered into the LLTQ Agreement and the Ramsay LV Agreement, both of which expressly (a) require Caesars to be "solely responsible for managing the operations, business, finances and Employees" of the pub, Stmt. ¶ 43; and (b) stated Caesars' desire to "design, develop, construct and operate" the pub, LLTQ Agmt., Recital B; Ramsay LV Agmt., Recital C.

28. In the recent case of *WuMac, Inc. v. Eagle Canyon Leasing, Inc.*, a district court applying Nevada law concluded that the *Whitemaine* test applied to disputes involving multiple integration clauses. No. 2:12-CV-0926-LRH-VCF, 2015 WL 995095, at *5 (D. Nev. Mar. 5, 2015). The court held that two contracts could not be read as a single contract because: (i) both contained integration clauses, **and** (ii) neither substantively referenced the other. As detailed below, while the LLTQ Agreement and the Ramsay LV Agreement both contain integration clauses, the LLTQ Agreement and the Ramsay LV Agreement reference one another in multiple, substantive, and material provisions.

2. New Jersey State Law

29. The FERG Agreement and Ramsay AC Agreement are both subject to New Jersey law. FERG Agmt. § 14.10; Ramsay AC Agmt. § 14.10.

30. Under New Jersey law, "the determination of whether a transaction constitutes one or several contracts is primarily based upon the intentions of the parties," which is "to be gathered from the language and subject matter of the agreement[,] . . . . from all the circumstances surrounding the agreement and from the face of the contract." *In re T & H Diner, Inc.*, 108 B.R. 448, 453-454 (D.N.J. 1989) (citations omitted); *see also Studzinski v. Travelers Ins. Co.*, 434 A.2d 1160, 1161-62 (N.J. Super. Ct. Law Div. 1981) (holding that determination of whether contract is entire depends on intentions of the parties, to be ascertained from the circumstances surrounding the agreement and contract itself).

31. In determining the parties' intent as to a contract, several interpretative tools are available which "include consideration of the particular contractual provision, an overview of all the terms, the circumstances leading up to the formation of the contract, custom, usage, and the

interpretation placed on the disputed provision by the parties' conduct." *Kearny PBA Local No. 21 v. Town of Kearny*, 405 A.2d 393, 400 (N.J. 1979).

32. Further, New Jersey courts allow a

> broad use of extrinsic evidence to achieve the ultimate goal of discovering the intent of the parties. Extrinsic evidence may be used to uncover the true meaning of contractual terms. It is only after the meaning of the contract is discerned that the parol evidence rule comes into play to prohibit the introduction of extrinsic evidence to vary the terms of the contract.

Conway ex rel. Conway v. 287 Corporate Ctr. Assocs., 901 A.2d 341, 347 (N.J. 2006).

33. Even when the meaning of an agreement is seemingly apparent on its face, New Jersey courts permit an inquiry into the agreement's "surrounding and antecedent circumstances and negotiations." *Garden State Plaza Corp. v. S.S. Kresge Co.*, 189 A.2d 448, 496 (N.J. Super. Ct. App. Div. 1963). As one court explained:

> [D]ebatability of meaning is not always discernable at the first reading of a contract by a new mind. More often it becomes manifest upon exposure of the specific disputed interpretations in the light of the attendant circumstances.
>
> . . . .
>
> Repeatedly have our highest courts used negotiations antecedent to integration in arriving at and effectuating the specific intent of the parties, subject only to the caution that the construction adjudicated be compatible with the contractual language.

Id. at 499 (citations omitted).

34. As detailed below, the parties' interactions and dialogue during the year-long negotiation of the contracts demonstrate their intent that one transaction –development and operation of the Atlantic City Pub– would be (and had to be) governed by two contracts, *i.e.* the Ramsay AC Agreement and the FERG Agreement. The intent of the parties in this regard is definitively evidenced in the terms of those contracts. Among other things, the FERG Agreement and the Ramsay AC Agreement **both** expressly (a) require CAC to manage the "operations,

business, finances and employees" of the Atlantic City Pub, Stmt. ¶ 70; and (b) state CAC's desire to "design, develop, construct and operate" the Atlantic City Pub, FERG Agmt., Recital B; Ramsay AC Agmt., Recital C.

G. Substance Over Form

35. Regardless of labels and the Debtors' description in their pleadings, the Pub Agreements are not simple "consulting agreements." Among other distinguishing characteristics, so-called consultants do not make $1 million capital contributions (as LLTQ did for the Las Vegas Pub), and consulting agreements do not *require* the non-consulting party to operate a venture (as the Debtors are obligated to do under the Pub Agreements).

36. When applying section 365 of the Bankruptcy Code, courts look to the substance of the transaction rather than its form. *U.S. Bank Nat'l Ass'n v. United Air Lines, Inc. (In re United Air Lines, Inc.)*, 447 F.3d 504, 506 (7th Cir. 2006) ("[Section] 365 mandates that the substance of the transaction trumps the form of the transaction. . . . [A]s a matter of federal law, the genuine nature of a transaction will prevail over the titles and terms used.") (citing *United Airlines, Inc. v. HSBC Bank USA, N.A.*, 416 F.3d 609, 612-14 (7th Cir. 2005)); *see also Liona Corp., N.V. v. PCH Assocs. (In re PCH Assocs.)*, 804 F.2d 193, 199 (2d Cir.1986) (noting that a court must look to the "economic substance" to determine the true nature of a transaction).

III. ARGUMENT

A. The Pub Agreements and Original Ramsay Agreements are Integrated

37. The Court can find the contracts are integrated, as a matter of law, based solely on their language. The Pub Agreements contain numerous, substantive references to the Original Ramsay Agreements, and both sets of agreements provide nearly identical obligations for the Debtors with respect to the Ramsay Pub ventures.

38. The Debtors' responses to the various Requests for Admission only strengthen the integration arguments; in their responses the Debtors admit, among other things, that the agreements were negotiated around the same time, that all three parties discussed the terms of the respective agreements, and that they were executed at the same time. Finally, since the inception of the Ramsay Pub concept, the Debtors viewed and treated both LLTQ and Gordon Ramsay (or their affiliates) as necessary parties to open and operate any Ramsay Pub venture, as evidenced by multiple party admissions discussed below. Indeed, after opening the Las Vegas Pub, the Debtors affirmatively stated on numerous occasions that they would not (and believed they could not) move forward with a Ramsay Pub in Atlantic City unless both Rowen Seibel (representing LLTQ) and Gordon Ramsay were involved. Statement, ¶52.

1. *LLTQ Agreement and Ramsay LV Agreement*

39. Nevada's three-prong test, announced in *Whitemaine*, is easily satisfied in connection with the Las Vegas Pub venture. *See Whitemaine*, 183 P.3d at 141. Both the LLTQ Agreement and the Ramsay LV Agreement were (a) executed and effective as of the same day, (b) concern the same subject matter, and (c) refer to each other. Further, Caesars is a party to both contracts, which contain the same choice of law, dispute resolution, and other provisions.

40. The Debtors' internal communications reflect that the Las Vegas Pub venture would be evidenced and governed by both the LLTQ Agreement and the Ramsay LV Agreement. Stmt. ¶¶ 28, 29, 51. In fact Caesars was not prepared to proceed with the development of the Las Vegas Pub until it had "fully consummated agreements with [Mr. Seibel] and Gordon [Ramsay]." *Id.* ¶ 29.

41. Representatives of Caesars, Gordon Ramsay and LLTQ engaged in multiple meetings to negotiate and discuss the terms of the design, development and operation of the Las

Vegas Pub, the sharing of profits therefrom, the terms of the LLTQ Agreement and the Ramsay LV Agreement, all around the same time. *Id*. ¶¶ 30, 33, 34, 35.

42. Rowen Seibel was one of the primary participants in the negotiations of the LLTQ Agreement on behalf of LLTQ and the negotiations of the Ramsay LV Agreement on behalf of Gordon Ramsay. *Id.* ¶ 32. The same three representatives of the Debtors were primary participants in the negotiations of both agreements. *Id.* at ¶ 31.

43. Not only did Caesars execute and deliver its signature pages to both agreements on the same day, it stated that it would not deliver any of its signature pages until it received signatures from both LLTQ and the Ramsay parties. *Id.* ¶¶ 36-38.

44. Based on the history of the negotiation and execution of these agreements, it is clear the parties intended that the two agreements apply as one integrated agreement governing the Las Vegas Pub venture. The integrated nature of these agreements is further evidenced by the fact that the two agreements expressly concern the same subject matter (*i.e.* the development and operation of the Las Vegas Pub) and that they repeatedly refer to each other.

45. The LLTQ Agreement and Ramsay LV Agreement contain many identical and nearly identical provisions, including the following:

a. Both contracts state Caesars' "desire[] to design, develop, construct and operate a [] restaurant featuring primarily pub-style food and beverages known as 'Gordon Ramsay Pub' (collectively, the 'Restaurant') in those certain premises within the Caesars Las Vegas." LLTQ Agmt., Recital B; Ramsay LV Agmt., Recital C;

b. Both contracts state Caesars' "desire" for LLTQ and Gordon Ramsay to perform services and fulfill obligations "with respect to consultation concerning the design, development, construction and operation of the Restaurant." LLTQ Agmt., Recital C; Ramsay LV Agmt., Recital D;

c. Under both contracts, Caesars is obligated to manage and maintain the operation, business, finances, and employees of the Las Vegas Pub, develop marketing plans and training procedures, and oversee

management of the food and beverage menus. LLTQ Agmt. §3.4; Ramsay LV Agmt. § 3.3;

d. In section 5.1 of both agreements, Caesars is obligated to hire general employees for the Las Vegas Pub;

e. In section 5.2 of both agreements, Caesars is obligated to hire senior management employees for the Las Vegas Pub;

f. In section 5.4 of both agreements, Caesars is required to conduct both pre-opening and refresher training for Las Vegas Pub employees;

g. In section 5.5 of both agreements, Caesars is required to conduct employee evaluations;

h. In section 5.6 of both agreements, Caesars is required to apply for a secure employee authorization for Las Vegas Pub employees who require it; and

i. In section 9.1 of the Ramsay LV Agreement and section 8.1 of the LLTQ Agreement, Caesars is responsible for executing the marketing plan as **developed by Caesars, LLTQ, and Gordon Ramsay**.

46. The terms of the LLTQ Agreement and the Ramsay LV Agreement directly impact each other in at least seven significant ways:

a. Termination of the Ramsay LV Agreement that is the result of LLTQ breaching the LLTQ Agreement triggers the exclusivity provisions outlined in section 2.3 of the Ramsay LV Agreement;

b. The Ramsay LV Agreement **requires Gordon Ramsay and GRHL to coordinate with LLTQ to make recommendations to Caesars regarding the operation of Las Vegas Pub**. Ramsay LV Agmt. § 14.11. Such recommendations must be submitted as "**one combined communication or notice**," meaning that LLTQ and Gordon Ramsay/GRHL are required to work together and come to a consensus on their recommendations in order to complete their contractual duties to Caesars. *Id*.;

c. LLTQ agreed to "defend, indemnify and save and hold harmless Caesars and its affiliates. . .from any Third-Party Claim. . . to the extent covered by the insurance coverage required to be maintained by LLTQ pursuant to this Agreement, Gordon Ramsay's performance of his obligations under or in connection with the GR agreement." LLTQ Agmt. § 13.15.2;

d. Both agreements require that **LLTQ and Gordon Ramsay** consent to changes in promotions and discounts at the Las Vegas Pub if the related sales are to be included in the definition of "Gross Restaurant Sales." LLTQ Agmt § 1; Ramsay LV Agmt. § 1;

e. The LLTQ Agreement includes a warranty that to LLTQ's best knowledge, Gordon Ramsay is not in breach of the Ramsay LV Agreement in any respect. LLTQ Agmt. § 9.2(g);

f. The Ramsay LV Agreement requires payment of a fixed percentage of "Gross Restaurant Sales" as consideration, which impacts the compensation LLTQ receives under the LLTQ Agreement. Ramsay LV Agmt § 8.1; LLTQ Agmt. § 7.1.1; and

g. Termination of the Ramsay LV Agreement triggers termination of the LLTQ Agreement within 90 days. LLTQ Agmt. § 4.2.3.

47. The requirement under section 14.11 of the Ramsay LV Agreement for a jointly-submitted recommendation among Gordon Ramsay, GRHL, Rowen Seibel and LLTQ impacts numerous provisions under both agreements, including sections 5.1 and 5.2 of both agreements (recommendations regarding hiring certain employees); section 5.4 of both agreements (recommendations for pre-opening training and refresher training); section 5.5. of both agreements (recommendations regarding employee evaluation); section 9.1 of the Ramsay LV Agreement and section 8.1 of the LLTQ Agreement (recommendations regarding marketing and publicity for the Las Vegas Pub); and section 9.2 of the Ramsay LV Agreement and section 8.2 of the LLTQ Agreement (recommendations for operational efficiencies, including the Las Vegas Pub's food and beverage menus, quality standards, operations, efficiency and profitability).

48. Through a series of related provisions, the LLTQ Agreement and the Ramsay LV Agreement collectively bind LLTQ, Gordon Ramsay, Caesars, and the parties' respective affiliates, with respect to the future development of certain Ramsay-branded ventures. Such provisions include the following:

a. LLTQ Agreement:

i. Section 2.3 LLTQ Exclusivity—limits LLTQ and its affiliates' ability to become engaged or associated with business activities utilizing the GR Marks or GR Materials (as defined the Ramsay LV Agreement) in connection with any establishment similar to the Las Vegas Pub, "except as contemplated by this Agreement."

ii. Section 2.4 Right of First Refusal—broadens the scope of restrictions in section 2.3 to apply to any venture involving Gordon Ramsay, the GR Marks or GR Materials without first providing Caesars and its affiliates a right of first refusal to participate in such venture.

iii. Section 13.22 Additional Restaurant Projects—requires Caesars and its affiliates to enter into an agreement with LLTQ or its affiliates, similar to the LLTQ Agreement, in the event Caesars elects to pursue "any venture similar to (i) the [Las Vegas Pub] (i.e. any venture generally in the nature of a pub, bar, café, or tavern). Section 13.22 survives expiration and termination of the LLTQ Agreement. Stmt. ¶ 49; LLTQ Agmt. § 4.3.1.

b. Ramsay LV Agreement

i. Section 2.3 LLTQ Exclusivity—limits Gordon Ramsay, GRHL and their affiliates from licensing the GR Marks and GR Materials for restaurants similar to the Las Vegas Pub and various other "Competing Concepts," except "as contemplated by this Agreement."

ii. Section 2.4 Right of First Refusal—broadens the scope of restrictions in section 2.3 to apply to any restaurant or bar venture without first providing Caesars and its affiliates a right of first refusal to participate in such venture.

iii. Section 2.5 Caesars Exclusivity—prevents Caesars and its affiliates from opening a "similar 'gastro pub' or similar restaurant" without entering in an agreement with Gordon Ramsay or his affiliates.

49. The LLTQ Agreement incorporates language from the Ramsay LV Agreement by reference, including the following:

a. In defining "Operating Expenses," the LLTQ Agreement incorporates the terms "License Fee," "Service Fee," and "Operating Expenses" as defined in the Ramsay LV Agreement. LLTQ Agmt. at 4.

b. In its definition of "Project Costs" the LLTQ Agreement incorporates the "Project Budget" as set forth in the Ramsay LV Agreement. LLTQ Agmt. at 4.

c. In its provisions for exclusivity and rights of first refusal, the LLTQ Agreement incorporates the definitions of "GR Marks," "GR Materials," and ""General GR Materials" from the Ramsay LV Agreement. LLTQ Agmt. §§ 2.3(a), 2.4(a).

d. In setting forth the parties rights after termination, the LLTQ Agreement incorporates the definition of "Caesars Marks and Materials" from the Ramsay LV Agreement. LLTQ Agmt. § 4.3.2(c); and

e. The LLTQ Agreement incorporates section 9.1 of the Ramsay Agreement, which outlines Caesars' marketing responsibilities for the Las Vegas Pub. LLTQ Agmt. § 8.1.

50. Both contracts contain the exact same language requiring Caesars to operate the Las Vegas Pub: "[u]nless expressly provided herein to the contrary, Caesars shall be solely responsible for managing the operations, business, finances, and Employees of the Restaurant on a day-to-day basis." Stmt. ¶ 43. Since the filing of these cases to the present, Caesars has voluntarily continued to manage the operations, business, finances and employees of the Las Vegas Pub, and has not entered into any other agreement for the operation of the pub. *Id.* ¶¶ 42, 44. Further, since filing the Original Rejection Motion, neither the operation of the Las Vegas Pub, nor the benefits received by the Debtors and their estates from such operations, have changed in any material respect. *Id.* ¶¶ 46, 47.

51. Because the LLTQ Agreement and the Ramsay LV Agreement refer to each other in numerous, substantive ways, the third factor of the *Whitemaine* test is met notwithstanding the existence of integration clauses in the agreements. In *WuMac*, the court found that two contracts with different parties met the first two prongs of the *Whitemaine* test, but could not be read as a

single contract because "both contain integration clauses, **and** neither contract directly references the other." *WuMac*, 2015 WL 995095, at *5 (emphasis added). Conversely, the LLTQ Agreement and Ramsay LV Agreement must be read as a single contract, where both agreements have several direct and substantive references to one another.

52. In addition, the *WuMac* court noted that the "subject matter requirement dictates that the contracts must concern the **same underlying parties or objects**. For the reference requirement, 'while one of the instruments must reference the other, **both instruments are not required to reference each other**.'" *Id.* (quoting *Whitemaine*, 183 P.3d at 142-143) (emphasis added). Thus, Ramsay and LLTQ need not be parties to both contracts so long as they both concern the same subject matter; and only one of the two contracts must reference the other.

53. The LLTQ Agreement and the Ramsay LV Agreement easily satisfy the standards under Nevada law established in *Collins* and its progeny, *Whitemaine* and *WuMac*, as the contracts were executed and effective at the same time; Caesars is party to both contracts and has the same obligations to manage and operate the Las Vegas Pub under both; the contracts involve the exact same subject matter and require LLTQ and Ramsay to provide recommendations as one voice; and both contracts expressly reference one another.

54. *Madison Foods, Inc. v. Fleming Cos. (In re Fleming Cos.)* is instructive as well. 325 B.R. 687 (Bankr. D. Del. 2005). There, the court found that an arbitration clause in one agreement is applicable to numerous agreements where

> all the documents were executed at the same time between the same parties in connection with [a business venture] by the Plaintiffs. This is unlike situations where integration is lacking because the documents are supported by separate consideration, cover different subject matters, involve different parties, and as a whole have different objects.

Id. at 691.

55. Therefore, the Debtors cannot defeat payment of an administrative priority claim to Movants by relying on provisions contained in the Original Ramsay Agreements that are not in the Pub Agreements. For example, the Debtors' Preliminary Objection cites to the "license to use Gordon Ramsay's name and likeness in the Debtors' operation of the Ramsay Pubs" contained in the Original Ramsay Agreements as evidence that the Debtors are not operating the Ramsay Pubs under the Pub Agreements with Movants. Stmt. ¶ 20. Because the agreements are integrated, this argument has no merit.

2. *FERG Agreement and Ramsay AC Agreement*

56. The Atlantic City Pub venture is also governed by two integrated contracts, the FERG Agreement and the Ramsay AC Agreement. New Jersey courts apply a more flexible test than Nevada to determine whether contracts are integrated, allowing the factfinder to review the surrounding circumstances, language of the contracts and subject matter thereof. While the *Whitemaine* test does not apply, it should be noted, the same general underlying facts apply to the Atlantic City Pub venture, because the FERG Agreement and the Ramsay AC Agreement were (a) executed, dated and effective as of the same day, and (b) concern the same subject matter, and (c) the FERG Agreement references the Ramsay AC Agreement in numerous, substantive provisions. CAC is a party to both contracts, which contain the same choice of law, dispute resolution, and multiple other provisions.

57. As part of the broad fact analysis, a court may consider the circumstances leading up to the contract formation. *Kearny PBA*, 405 A.2d at 400. Significantly, prior to executing the underlying agreements or opening the Atlantic City Pub, the Debtors believed that they must have a contract with both Gordon Ramsay and with LLTQ (or its affiliate) to proceed with the venture. Stmt. ¶ 52.

58. In December 2013, about five months before the effective date of both the FERG Agreement and the Ramsay AC Agreement, the Debtors made clear to Rowen Seibel and Gordon Ramsay that the Debtors required both of them to proceed with the Atlantic City Pub Venture. In an email to Rowen Seibel, Gordon Ramsay, Stuart Gillies and Tom Jenkin, Jeffrey Frederick (the Debtors' Regional Vice President Food & Beverage and one of the Debtors' representatives who was a primary participant in the negotiations of the LLTQ Agreement and the Ramsay LV Agreement), stated that "we are not able to proceed" with a Ramsay Pub without both Rowen Seibel and Gordon Ramsay "agreeing to do so." *Id.* ¶¶ 31, 52; *see also* Letter from Jeffrey Frederick to Rowen Seibel *et al*. (Dec. 13, 2013), Group Exhibit AA. Mr. Frederick's statement was unambiguous and definitive— "I want to be clear. I've confirmed with Tom [Jenkin] and our legal counsel we are not able to proceed with GR Steak or GR P&G without both you and Rowen agreeing to do so, nor a concept similar in the Steakhouse, Chophouse, Bar & Grill, Pub or Tavern Categories." Frederick Letter (Dec. 13, 2013).

59. Stuart Gillies, one of the primary participants in the negotiations of the Ramsay AC Agreement on behalf of Gordon Ramsay and GRHL, requested that Rowen Seibel, one of the primary participants in the negotiations of the FERG Agreement, LLTQ Agreement and the Ramsay LV Agreement, negotiate with the Debtors the terms of the Atlantic City Pub venture. Stmt. ¶¶ 56, 57.

60. CAC, Gordon Ramsay and FERG discussed the terms of the FERG Agreement and the terms of the Ramsay AC Agreement among each other prior to the execution of the contracts. *Id.* ¶ 58. At the parties' request, the Debtors provided Gordon Ramsay and FERG drafts of the FERG Agreement and the Ramsay AC Agreement to ensure transparency for the Atlantic City Pub transaction. *Id.* ¶ 64.

61. The FERG Agreement and the Ramsay AC Agreement were negotiated around the same time. *Id.* ¶ 54. During the negotiations, which lasted over one year before the agreements were executed, Caesars proposed that FERG and Gordon Ramsay split a license fee for compensation for the Atlantic City Pub venture. *Id.* ¶¶ 59, 62. Throughout the negotiations spanning 2013, CAC sent several different drafts of a proposed agreement for the Atlantic City Pub venture, which was in the form of one contract among CAC, Gordon Ramsay and his affiliates and an entity affiliated with Rowen Seibel. *Id.* ¶¶ 60, 61, 62.

62. Eventually these drafts were divided into two agreements, which would become the FERG Agreement and the Ramsay AC Agreement. CAC was not concerned about the title of the FERG Agreement, whether it would be called a "Development and Operation Agreement," a "Development, Operation and Consulting Agreement," or a "Consulting Agreement." *Id.* ¶ 63.

63. The FERG Agreement and the Ramsay AC Agreement became effective on the same day. *Id.* ¶ 65. Not only did CAC execute and deliver its signature pages to both agreements on the same day, it did not deliver any of its signature pages until it received signatures from **both** FERG and the Ramsay parties. *Id.* ¶¶ 65, 66.

64. Based on the history of the negotiation and execution of these agreements, it is clear the parties intended that the two agreements apply as one integrated agreement governing the Atlantic City Pub venture. The terms of the two agreements further reflect their integrated nature, evidenced by, among other things, the fact that the two agreements expressly concern the same subject matter (*i.e.* the development and operation of the Atlantic City Pub), CAC's overlapping obligations in each contract, and the numerous substantive references to Gordon Ramsay and the Ramsay AC Agreement in the FERG Agreement.

65. Section 1 of the FERG Agreement contains definitions for the Ramsay AC Agreement (called the "GR Agreement"), the "GR Marks" (including trademarks owned by Gordon Ramsay and GRHL and used for the Atlantic City Pub), and "General GR Materials." The General GR Materials include the "concept, system, menus and designed for us in connection with the [Atlantic City Pub] that are (a) created by or for Gordon Ramsay . . . and (b) as are provided from time to time by Gordon Ramsay to CAC **for the purposes of [the FERG Agreement]**." FERG Agmt. at 3(emphasis added).

66. The FERG Agreement (sections 2.3 and 2.4) has nearly identical exclusivity and right of first refusal provisions as set forth in the LLTQ Agreement (sections 2.3 and 2.4); and the Ramsay AC Agreement (sections 2.3, 2.4 and 2.5) has nearly identical exclusivity and right of first refusal provisions as set forth in the Ramsay LV Agreement (sections 2.3, 2.4 and 2.5); all such provisions vary only with respect to the applicable Debtor (CAC instead of Caesars) and location.

67. The FERG Agreement and the Ramsay AC Agreement contain many identical or nearly identical provisions specific to the Atlantic City Pub and its operation, including the following:

a. Both contracts state CAC's "desire[] to design, develop, construct and operate a restaurant featuring primarily pub-style food and beverages known as 'Gordon Ramsay Pub and Grill' (collectively, the 'Restaurant') in those certain premises within [Caesars Atlantic City]. . ." FERG Agmt., Recital B; Ramsay AC Agmt., Recital C;

b. Both contracts state CAC's "desire" for LLTQ and Gordon Ramsay to respectively perform services and fulfill obligations "with respect to consultation concerning the design, development, construction and operation of the Restaurant. . . ." FERG Agmt., Recital C; Ramsay AC Agmt., Recital D;

c. Under both contracts, CAC is obligated to manage and maintain the operation, business, finances and employees of the Atlantic City Pub,

develop marketing plans and training procedures, and oversee management of the food and beverage menus. FERG Agmt. § 3.5; Ramsay AC Agmt. § 3.5;

d. In section 5.1 of both agreements, CAC is obligated to hire general employees for the Atlantic City Pub, with input from FERG and GRHL, respectively;

e. In section 5.2 of both agreements, CAC is obligated to hire senior management employees for the Atlantic City Pub, with input from FERG and GRHL, respectively;

f. Pursuant to section 5.4 of both agreements, CAC is required to conduct both pre-opening and refresher training for Atlantic City Pub employees, with input from FERG and GRHL, respectively;

g. Pursuant to section 5.5 of both agreements, CAC is required to conduct employee evaluations, with input from FERG and GRHL, respectively;

h. Pursuant to section 5.6 of both agreements, CAC is required to apply for a secure employee authorization for Atlantic City Pub employees who require it; and

i. Pursuant to section 9.1 of both agreements, CAC is responsible for executing the marketing plan as developed by CAC and GRHL, with the advice of FERG as reasonably required by CAC from time to time.

68. Perhaps most probative of the two agreements' integrated nature is section 4.1, which provides: "In the event a new agreement is executed between CAC and/or its Affiliate and Gordon Ramsay and/or his Affiliate relative to the [Atlantic City Pub] or the Restaurant Premises, [the FERG Agreement] shall be in effect and binding on the parties during the term thereof." FERG Agmt. § 4.1. A related provision allows either party to terminate the FERG Agreement if the Ramsay AC Agreement is terminated "and no different or amended agreement is entered into with Gordon Ramsay and/or his Affiliate(s) relative to the [Atlantic City Pub] or Restaurant Premises." *Id*. § 4.2(c).

69. In addition to those listed above, the FERG Agreement contains numerous references to Gordon Ramsay, GRHL and/or the Ramsay AC Agreement, including the following:

a. Section 3.5(d), referencing the menus developed by Ramsay under the Ramsay AC Agreement;

b. Section 5.3(a), requiring CAC to advise Ramsay and FERG with respect to union agreements;

c. Section 9.1, requiring CAC to market and advertise the Atlantic City Pub "reasonably consistent with how other partnered, first class, gourmet restaurants are marketed by CAC and subject to compliance with Section 9.1 of the [Ramsay AC Agreement]";

d. Section 12.1, addressing the rights of CAC, Ramsay and FERG with respect to potential eminent domain actions;

e. Section 12.2(a), addressing the rights CAC, Ramsay and FERG with respect to physical damage to the Atlantic City Pub; and

f. Sections 13.1 and 13.2, with respect to dispute resolution and arbitration rights for CAC, Ramsay and FERG.

70. Thus, as provided under New Jersey law, there is ample evidence in the language and construction of the contracts themselves to evidence the parties' intent that the Atlantic City Pub operation is one transaction governed by two integrated agreements, the FERG Agreement and the Ramsay AC Agreement.

B. Administrative Priority Claim through September 2, 2016

71. Based on the above undisputed facts and application of state and federal bankruptcy law, the Court should determine that: (i) the LLTQ Agreement is integrated with the Ramsay LV Agreement with respect to the operation of the Las Vegas Pub; and (ii) the FERG Agreement is integrated with the Ramsay AC Agreement with respect to the operation of Atlantic City Pub. Such determination in turn requires an award of an administrative priority

claim for the amounts due but unpaid to the Movants under the Pub Agreements through at least September 2, 2016.

72. The Debtors have admitted that they are operating the Ramsay Pubs post-petition pursuant to the Ramsay LV Agreement and the Ramsay AC Agreements (*i.e.* the Original Ramsay Agreements). Stmt. ¶ 20.

73. Both of the Ramsay Pubs are open and operating profitably, managed by the Debtors to date. *Id.* ¶¶ 42-46, 69-71, 73. The operations of the Ramsay Pubs have not changed in any material respect since the Debtors filed the Original Rejection Motion in June 2015, and such operations have continued to benefit the Debtors and their estates. *Id.* ¶¶ 46, 72.

74. As part of the New Rejection Motion, the Debtors confirmed that they will not enter into the New Ramsay Agreements for the operation of the Ramsay Pubs unless the Court authorizes rejection of the Original Ramsay Agreements, which has not occurred to date. *Id.* ¶ 21.

75. Because of the integration of the Pub Agreements and the Original Ramsay Agreements, so long as the Debtors continue to operate the Ramsay Pubs under the Original Ramsay Agreements post-petition, LLTQ and FERG are entitled to compensation as provided by the Pub Agreements. Such compensation is entitled to an administrative priority–just as any compensation due to Ramsay and GRHL for post-petition operation of the Ramsay Pubs under the Original Ramsay Agreements is entitled to an administrative priority.

76. Similar to the situation in *Whitemaine*, the license granted under the Original Ramsay Agreements for the operation of the Ramsay Pubs is inextricably a part of the Pub Agreements, where the two contracts equate to one agreement. *Whitemaine*, 183 P.3d at 144.

77. The Debtors have attempted to terminate the Pub Agreements in a letter dated September 2, 2016, with such purported termination to be "effective immediately." *Id.* ¶ 12. The Movants reject and deny that the termination is appropriate, and reserve all rights, defenses and claims with respect thereto. In light of this dispute, however, summary judgment is appropriate to award an administrative claim, at a minimum, through and including September 2, 2016.

IV. CONCLUSION

Under sections 365 and 503 of the Bankruptcy Code, controlling Seventh Circuit and Supreme Court case law, applicable state law, and the undisputed material facts set forth in the Statement, the Movants respectfully request the entry of an order granting partial summary judgment and (a) determining that the LLTQ Agreement is integrated with the Ramsay LV Agreement with respect to the Las Vegas Pub venture, (b) determining that the FERG Agreement is integrated with the Ramsay AC Agreement with respect to the Atlantic City Pub venture, and (c) awarding an administrative priority claim in favor of the Movants for all amounts due and unpaid under the Pub Agreements through and including September 2, 2016.

Respectfully submitted,

FERG, LLC, and
LLTQ ENTERPRISES, LLC

By: /s/ Nathan Q. Rugg
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Exhibit M

term "Caesars" means all of Caesars' affiliates in the remaining appearances in Section 13.22.

26. The term "Caesars" in Section 13.22 of the LLTQ Agreement does not refer to all of Caesars' affiliates.

ANSWER: LLTQ objects to this RFA as the term "refer to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the first time the term "Caesars" appears in Section 13.22 of the LLTQ Agreement means Desert Palace, Inc. and all of its "Affiliates" (as defined in the LLTQ Agreement). LLTQ denies that the term "Caesars" means all of Caesars' affiliates in the remaining appearances in Section 13.22.

27. The phrase "any venture similar to the Restaurant" in Section 13.22 of the LLTQ Agreement includes the Restaurant (as defined in the LLTQ Agreement).

ANSWER: LLTQ admits that the phrase "any venture similar to (i) the Restaurant" in Section 13.22 of the LLTQ Agreement includes the Restaurant (as defined in the LLTQ Agreement).

28. The phrase "any venture similar to the Restaurant" in Section 13.22 of the LLTQ Agreement does not include the Restaurant (as defined in the LLTQ Agreement).

ANSWER: Denied.

29. The term "Restaurant" in clause (i) of Section 13.22 of the Agreement refers to the Gordon Ramsay Pub & Grill in Caesars Palace.

ANSWER: LLTQ objects to this RFA as the term "refers to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the term "Restaurant" in clause (i) of Section 13.22 means the Gordon Ramsay Pub & Grill in Caesars Palace.

30. The term "Restaurant" in clause (i) of Section 13.22 of the Agreement does not refer to the Gordon Ramsay Pub & Grill in Caesars Palace.

ANSWER: LLTQ objects to this RFA as the term "refer to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the term "Restaurant" in clause (i) of Section 13.22 means the Gordon Ramsay Pub & Grill in Caesars Palace.

31. Section 13.22 of the LLTQ Agreement applies when Caesars (as defined in the LLTQ Agreement) elects to pursue a restaurant venture similar to the Restaurant (as defined in the LLTQ Agreement and the Paris Agreement).

ANSWER: Admitted. Admitted further that Section 13.22 of the LLTQ Agreement applies when Caesars' Affiliates (as defined in the LLTQ Agreement) pursue a restaurant venture similar to the Restaurant (as defined in the LLTQ Agreement and the Paris Agreement, as applicable).

32. Section 13.22 of the LLTQ Agreement does not apply when an entity other than Caesars (as defined in the LLTQ Agreement) elects to pursue a restaurant venture similar to the Restaurant (as defined in the LLTQ Agreement and the Paris Agreement).

ANSWER: Denied.

33. Section 13.22 of the LLTQ Agreement does not set forth the terms of any new development and operation agreement.

ANSWER: Denied. LLTQ admits that Section 13.22 of the LLTQ Agreement provides that Caesars and LLTQ shall, or shall cause an Affiliate (as defined in the LLTQ Agreement) to, execute a development and operation agreement on the same terms and conditions as the LLTQ Agreement, subject only to revisions proposed by Caesars or its Affiliate as are necessary to reflect the difference in location between the Restaurant and such other venture (including the Baseline Amount, permitted Operating Expenses and necessary Project Costs (as such terms are defined in the LLTQ Agreement)).

34. Section 13.22 of the LLTQ Agreement sets forth the terms of a new development and operation agreement.

ANSWER: Denied. LLTQ admits that Section 13.22 of the LLTQ Agreement provides that Caesars and LLTQ shall, or shall cause an Affiliate (as defined in the LLTQ Agreement) to, execute a development and operation agreement on the same terms and conditions as the LLTQ Agreement, subject only to revisions proposed by Caesars or its Affiliate as are necessary to reflect the difference in location between the Restaurant and such other venture (including the Baseline Amount, permitted Operating Expenses and necessary Project Costs (as such terms are defined in the LLTQ Agreement)).

35. Section 13.22 of the LLTQ Agreement requires the parties to negotiate the terms and conditions of any new development and operation agreement.

ANSWER: Denied.

36. Section 13.22 of the LLTQ Agreement applies to ventures located anywhere in the world.

ANSWER: Admitted.

37. Section 13.22 of the LLTQ Agreement is limited to ventures located in the United States.

ANSWER: Denied.

38. Section 13.22 of the LLTQ is limited to limited to ventures located in Las Vegas.

ANSWER: Denied.

39. The LLTQ Agreement is a consulting agreement.

ANSWER: Denied. LLTQ admits that consulting services are part of the LLTQ Agreement.

40. The LLTQ Agreement is not a consulting agreement.

ANSWER: Admitted. LLTQ further admits that consulting services are part of the LLTQ Agreement.

41. The FERG Agreement is a consulting agreement.

ANSWER: Denied. LLTQ admits that the FERG Agreement is titled a "Consulting Agreement" and that CAC may request consulting services under the FERG Agreement.

42. The FERG Agreement is not a consulting agreement.

ANSWER: Admitted. LLTQ admits further that CAC may request consulting services under the FERG Agreement.

43. As part of discussions between You and Gordon Ramsay, you proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" that the GR Agreement and the LLTQ Agreement were negotiated together.

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that the GR Agreement and the LLTQ Agreement were negotiated together relative to the Restaurant.

44. As part of discussions between You and Gordon Ramsay, you proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" that the GR Agreement and the LLTQ Agreement were signed at the same time.

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that the GR Agreement and the LLTQ Agreement were signed at the same time.

45. As part of discussions between You and Gordon Ramsay, you proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" that the GR Agreement and the LLTQ Agreement are wholly dependent on one another.

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that, relative to the Restaurant, the GR Agreement and the LLTQ Agreement are wholly dependent on one another.

46. As part of discussions between You and Gordon Ramsay, You proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" that Caesars recognized that the GR Agreement would not become effective until both the GR Agreement and the LLTQ Agreement were executed.

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that Caesars recognized that the GR Agreement would not become effective until both the GR Agreement and the LLTQ Agreement were executed.

47. As part of discussions between You and Gordon Ramsay, You proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" once executed, both the GR Agreement and the LLTQ Agreement were to exist and remain effective together.

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that once executed both the GR Agreement and the LLTQ Agreement were to exist and remain effective together.

48. As part of discussions between You and Gordon Ramsay, You proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" that Rowen Seibel "brought the original deal together, introducing Caesars to GR and spearheading the discussion of business terms for all parties."

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that Rowen Seibel "brought the original deal together, introducing Caesars to GR and spearheading the discussion of business terms for all parties."

49. As part of discussions between You and Gordon Ramsay, You proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" that neither Gordon Ramsay nor Caesars intended for Rowen Seibel to provide consultation services for the Restaurant after opening.

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that neither Gordon Ramsay nor Caesars intended for Rowen Seibel to provide consultation services for the Restaurant after opening.

50. As part of discussions between You and Gordon Ramsay, You proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" that Gordon Ramsay is not aware that any consultation services were provided.

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that Gordon Ramsay is not aware that any consultation services were provided after opening of the Restaurants.

51. As part of discussions between You and Gordon Ramsay, You proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" that Gordon Ramsay understood that Rowen Seibel was providing a capital investment for the Restaurant.

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that Gordon Ramsay understood that Rowen Seibel was providing a capital investment for the Restaurant.

52. As part of discussions between You and Gordon Ramsay, You proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" that Gordon Ramsay was advised by Caesars at the time of the discussions relating to the Gordon Ramsay Pub & Grill in Atlantic City that Caesars could not "do a GR Pub" without Rowen Seibel's involvement.

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that Gordon Ramsay was advised by Caesars at the time of the discussions relating to the Gordon Ramsay Pub & Grill in Atlantic City that Caesars could not "do a GR Pub" without Rowen Seibel's involvement.

53. As part of discussions between You and Gordon Ramsay, you proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" that Caesars initially provided one agreement for Rowen Seibel and Gordon Ramsay for the Gordon Ramsay Pub & Grill in Atlantic City.

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that Caesars initially provided one agreement for Rowen Seibel and Gordon Ramsay for the Gordon Ramsay Pub & Grill in Atlantic City.

54. As part of discussions between You and Gordon Ramsay, You proposed, as part of a settlement of the Fat Cow litigation, that Gordon Ramsay provide an affidavit "confirming" that Gordon Ramsay requested that the agreement for the Gordon Ramsay Pub & Grill in Atlantic City be "put into 2, but one could not be entered or carried out without the other."

ANSWER: Admit that as part of settlement discussions of the Fat Cow litigation, LLTQ or Rowen Seibel sought to have Gordon Ramsay provide an affidavit confirming certain facts, if true, including that Gordon Ramsay requested that the agreement for the Gordon Ramsay Pub & Grill in Atlantic City be "put into 2, but one could not be entered or carried out without the other."

55. On December 12, 2012, Rowen Seibel accused the valet team at Caesars of losing his car.

ANSWER: Admit that in December 2012 Rowen Seibel accused the valet team at Caesars of losing his car. LLTQ lacks sufficient information to admit or deny whether Mr. Seibel accused the valet team at Caesars of losing his car on December 12, 2012. LLTQ has made a reasonable inquiry and the information it knows or can readily obtain is insufficient to enable it to admit or deny this request.

56. On December 12, 2012, Rowen Seibel yelled at the Caesars valet team.

ANSWER: Admit that in December 2012 Rowen Seibel expressed frustration with the Caesars valet team. LLTQ lacks sufficient information to admit or deny whether Mr. Seibel yelled at the Caesars valet team. LLTQ has made a reasonable inquiry and the information it knows or can readily obtain is insufficient to enable it to admit or deny this request.

57. On December 12, 2012, Rowen Seibel used profanity in front of customers at Augustus/Octavius.

ANSWER: LLTQ lacks sufficient information to admit or deny this request. LLTQ has made a reasonable inquiry and the information it knows or can readily obtain is insufficient to enable it to admit or deny this request.

58. On December 13, 2012, Rowen Seibel was contacted by Caesars employees about his treatment of the valet team at Augustus/Octavius.

ANSWER: LLTQ lacks sufficient information to admit or deny this request. LLTQ has made a reasonable inquiry and the information it knows or can readily obtain is insufficient to enable it to admit or deny this request.

59. On December 13, 2012, Rowen Seibel was asked to give a valet at Caesars an apology.

ANSWER: LLTQ lacks sufficient information to admit or deny this request. LLTQ has made a reasonable inquiry and the information it knows or can readily obtain is insufficient to enable it to admit or deny this request.

Respectfully submitted,

LLTQ ENTERPRISES, LLC

By:_____
One of its Attorneys

NATHAN Q. RUGG, ESQ.
STEVEN B. CHAIKEN, ESQ.
ADELMAN & GETTLEMAN, LTD.
53 West Jackson Blvd., Suite 1050
Chicago, Illinois 60604
312-435-1050

VERIFICATION

I, Rowen Seibel, as the manager of LLTQ ENTERPRISES, LLC, made a reasonable inquiry and the information LLTQ knows or can readily obtain is insufficient to enable LLTQ to admit or deny Requests For Admission Numbers 55 through 59 as provided in the responses thereto. Under penalties as provided by law pursuant to 28 U.S.C. § 1746, I hereby certify that the responses to Requests For Admission Numbers 55 through 59 are true and correct to the best of my knowledge, information and belief.

LLTQ ENTERPRISES, LLC

By: Rowen Seibel
Rowen Seibel, its manager

Executed on: 3/29/16

CERTIFICATE OF SERVICE

I certify that a true and complete copy of the **RESPONSE TO DEBTORS' FIRST REQUEST FOR ADMISSION TO LLTQ ENTERPRISES, LLC,** was made by electronic mail delivery, this 29th day of March, 2016, upon the following party:

Desert Palace, Inc.
c/o:

Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654
Attn: William Arnault, Esq., Lally Gartel, Esq., and Joe Graham, Esq.
warnault@kirkland.com
lally.gartel@kirkland.com
joe.graham@kirkland.com

- and -

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attn: Christopher T. Greco, Esq.
christopher.greco@kirkland.com

Steven B. Chaiken, Esq.

NATHAN Q. RUGG, ESQ.
STEVEN B. CHAIKEN, ESQ.
ADELMAN & GETTLEMAN, LTD.
53 West Jackson Blvd., Suite 1050
Chicago, Illinois 60604
(312) 435-1050

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROWEN SEIBEL; LLTQ ENTERPRISES, LLC; LLTQ ENTERPRISES 16, LLC; FERG, LLC; FERG 16, LLC; MOTI PARTNERS, LLC; MOTI PARTNERS 16, LLC; TPOV ENTERPRISES, LLC; TPOV 16 ENTERPRISES, LLC; DNT ACQUISITION, LLC, appearing derivatively by one of its two members, R Squared Global Solutions, LLC,

Petitioners

vs.

CLARK COUNTY DISTRICT COURT, THE HONORABLE JOSEPH HARDY, DEPARTMENT 15,

Respondent,

DESERT PALACE, INC.; PARIS LAS VEGAS OPERATING COMPANY, LLC; PHWLV, LLC; and BOARDWALK REGENCY CORPORATION d/b/a CAESARS ATLANTIC CITY,

Real Parties in Interest.

Case Number:

Eighth Judicial District Court
Case No. A-17-760537-B
Dept. 15, Honorable Joseph Hardy

APPENDIX TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

VOLUME 9 OF 15

(APP. 2001 – 2250)

MCNUTT LAW FIRM
DANIEL R. MCNUTT (SBN 7815)
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NATHAN Q. RUGG
Admitted Pro Hac Vice
200 W. Madison Street, Suite 3900
Chicago, IL 60606
Attorneys for Petitioners

CERTIFICATE OF SERVICE

Pursuant to NEV. R. APP. P. 25, I certify that I am an employee of MCNUTT LAW FIRM. On June 18, 2018, I caused a copy of the **APPENDIX TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION** to be hand delivered, in a sealed envelope, on the date and to the addressee(s) shown below:

Honorable Joseph Hardy
District Court Judge, Dept. 15
Regional Justice Center
200 Lewis Ave., Las Vegas, NV 89155
Respondent

James J. Pisanelli, Esq.
Pisanelli Bice, PLLC
400 S. 7th Street, Suite 300
Las Vegas, NV 89101
Attorney for Real Parties in Interest

/s/ Lisa Heller
Employee of McNutt Law Firm, P.C.

APPENDIX TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

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12.14.17	Order Granting Motion to Transfer	1	App. 246 - 249
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02.22.18	Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against Defendant DNT Acquisition, LLC	2	App. 254 - 272
02.22.18	Appendix of Exhibits in support of Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against Defendant DNT Acquisition, LLC – Volume I	2/3	App. 273 - 525
02.22.18	Appendix of Exhibits in support of Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against Defendant DNT Acquisition, LLC – Volume II	3	App. 526 - 609
02.22.18	Defendant Rowen Seibel's Motion to Dismiss Plaintiffs' Claims	3	App. 610 - 666

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02.22.18	Appendix of Exhibits in support of Amended Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against MOTI Defendants – Volume I	4/5	App. 794 - 1046
02.22.18	Appendix of Exhibits in support of Amended Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against MOTI Defendants – Volume II	5/6	App. 1047 - 1299
02.22.18	Appendix of Exhibits in support of Amended Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against MOTI Defendants – Volume III	6	App. 1300 - 1385
02.22.18	Amended Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against LLTQ/FERG Defendants	6	App. 1386 - 1413
02.22.18	Appendix of Exhibits in support of Amended Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against LLTQ/FERG Defendants – Volume I	6/7	App. 1414 - 1666
02.22.18	Appendix of Exhibits in support of Amended Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against LLTQ/FERG Defendants – Volume II	7/8	App. 1667 - 1919
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03.12.18	Appendix of Exhibits in support of Plaintiffs' Combined Opposition to Certain Defendants' Motions to Dismiss	10/11/12/13	App. 2406 - 3246
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03.28.18	Reply in support of Amended Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against LLTQ/FERG and MOTI Defendants	14	App. 3303 - 3320
03.28.18	Appendix of Exhibits in support of Reply in support of Amended Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against LLTQ/FERG and MOTI Defendants	14	App. 3321 - 3463
03.28.18	Defendant Rowen Seibel's Reply in further support of his Motion to Dismiss Plaintiffs' Claims	14	App. 3464 - 3470
03.28.18	Defendants TPOV Enterprises and TPOV Enterprises 16, LLC Reply Memorandum of Law in further support of Motion to Dismiss or, in the alternative, to Stay	14	App. 3471 - 3481
05.01.18	Transcript of Proceedings: Motions to Dismiss	14/15	App. 3482 - 3533
06.01.18	Order Denying, without prejudice, (1) Defendant Rowen Seibel's Motion to Dismiss Plaintiffs' Claims; (2) Defendants TPOV Enterprises and	15	App. 3534 - 3573

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	TPOV Enterprises 16's Motion to Dismiss Plaintiffs' Claims; (3) Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against DNT Acquisition, LLC; (4) Amended Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against LLTQ/FERG Defendants; and (5) Amended Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against MOTI Defendants		
06.04.18	Notice of Entry of Order Denying, without prejudice, (1) Defendant Rowen Seibel's Motion to Dismiss Plaintiffs' Claims; (2) Defendants TPOV Enterprises and TPOV Enterprises 16's Motion to Dismiss Plaintiffs' Claims; (3) Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against DNT Acquisition, LLC; (4) Amended Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against LLTQ/FERG Defendants; and (5) Amended Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against MOTI Defendants	15	App. 3574 - 3617

APPENDIX TO PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

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02.22.18	Appendix of Exhibits in support of Amended Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against MOTI Defendants – Volume III	6	App. 1300 - 1385
02.22.18	Appendix of Exhibits in support of Amended Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against LLTQ/FERG Defendants – Volume I	6/7	App. 1414 - 1666
02.22.18	Appendix of Exhibits in support of Amended Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against LLTQ/FERG Defendants – Volume II	7/8	App. 1667 - 1919
02.22.18	Appendix of Exhibits in support of Amended Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against LLTQ/FERG Defendants – Volume III	8/9	App. 1920 - 2156
02.22.18	Appendix of Exhibits in support of Amended Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against LLTQ/FERG Defendants – Volume IV	9/10	App. 2157 - 2382
02.22.18	Appendix of Exhibits in support of Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against Defendant DNT Acquisition, LLC –	2/3	App. 273 - 525

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03.12.18	Appendix of Exhibits in support of Plaintiffs' Combined Opposition to Certain Defendants' Motions to Dismiss	10/11/12/13	App. 2406 – 3246
03.28.18	Appendix of Exhibits in support of Reply in support of Amended Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against LLTQ/FERG and MOTI Defendants	14	App. 3321 - 3463
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03.28.18	Defendant DNT Acquisition, LLC's Reply Memorandum of Law in further support of Motion to Dismiss or, in the alternative, to Stay	13/14	App. 3247 – 3302
02.22.18	Defendant Rowen Seibel's Motion to Dismiss Plaintiffs' Claims	3	App. 610 – 666
03.28.18	Defendant Rowen Seibel's Reply in further support of his Motion to Dismiss Plaintiffs' Claims	14	App. 3464 - 3470
02.22.18	Defendants TPOV Enterprises and TPOV Enterprises 16's Motion to Dismiss Plaintiffs' Claims	3/4	App. 667 - 776
03.28.18	Defendants TPOV Enterprises and TPOV Enterprises 16, LLC Reply Memorandum of Law in further support of Motion to Dismiss or, in the alternative, to Stay	14	App. 3471 – 3481
12.14.17	Findings of Fact and Conclusions of Law	1	App. 201 – 216
12.14.17	Findings of Fact and Conclusions of Law	1	App. 225 – 241
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Date	Description	Vol.	Page Nos.
	to Stay Claims Asserted Against Defendant DNT Acquisition, LLC		
06.04.18	Notice of Entry of Order Denying, without prejudice, (1) Defendant Rowen Seibel's Motion to Dismiss Plaintiffs' Claims; (2) Defendants TPOV Enterprises and TPOV Enterprises 16's Motion to Dismiss Plaintiffs' Claims; (3) Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against DNT Acquisition, LLC; (4) Amended Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against LLTQ/FERG Defendants; and (5) Amended Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against MOTI Defendants	15	App. 3574 - 3617
09.27.17	Notice of Removal of Counts II and III of Lawsuit Pending in Nevada State Court to Bankruptcy Court	1	App. 120 - 200
09.27.17	Notice of Removal of Lawsuit Pending in Nevada State Court to Bankruptcy Court	1	App. 41 - 119
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12.14.17	Order Granting Motion to Remand	1	App. 221 - 224
12.14.17	Order Denying Motion to Remand	1	App. 242 - 245
06.01.18	Order Denying, without prejudice, (1) Defendant Rowen Seibel's Motion to Dismiss Plaintiffs' Claims; (2) Defendants TPOV Enterprises and TPOV Enterprises 16's Motion to Dismiss Plaintiffs' Claims; (3) Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against DNT Acquisition, LLC; (4) Amended Motion to Dismiss or, in the alternative,	15	App. 3534 - 3573

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	to Stay Claims Asserted Against LLTQ/FERG Defendants; and (5) Amended Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against MOTI Defendants		
03.12.18	Plaintiffs' Combined Opposition to Certain Defendants' Motions to Dismiss	10	App. 2383 - 2405
03.28.18	Reply in support of Amended Motion to Dismiss or, in the alternative, to Stay Claims Asserted Against LLTQ/FERG and MOTI Defendants	14	App. 3303 - 3320
02.09.18	Stipulation and Order to Consolidate Case No. A-17-760537-B with and into Case No. A-751759-B	2	App. 250 - 253
05.01.18	Transcript of Proceedings: Motions to Dismiss	14/15	App. 3482 - 3533

6600-100-CREDIT CARD CHARGEBACKS	0
7920-000-PROFESSIONAL SERVICES	94,843
7920-400-PROF SVCS-CONSULTING	723
7930-000-SUPPLIES	12,857
7930-470-SUPPLIES-PRINTED FORMS/STATION	533
8008-000-CASH OVER/SHORT	(419)
8010-000-CHINA/GLASS/SILVER	8,137
8021-000-DUES/MEMBERSHIP/SUBSCRIPTIONS	6,885
8029-000-LAUNDRY	6,239
8066-000-UNIFORMS	1,836
7998-200-ALLOCATION IN	9,838
Total OpEx	1,088,280
Operating Income	139,325

Exhibit I

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
	)	
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., *et al.*,[1]	)	Case No. 15-01145
	)	
	)	(Jointly Administered)
Debtors.	)	
	)	Honorable A. Benjamin Goldgar
	)	
	)	**Hearing Date: August 17, 2016**
	)	**Hearing Time: 1:30 p.m.**

NOTICE OF MOTION

PLEASE TAKE NOTICE that on **August 17, 2016**, at the hour of **1:30 p.m.** (prevailing Central Time), or as soon thereafter as counsel may be heard, the undersigned shall appear before the Honorable A. Benjamin Goldgar, United States Bankruptcy Judge for the Northern District of Illinois, in Courtroom No. 2525 of the Everett McKinley Dirksen Federal Building at 219 South Dearborn Street, Chicago, Illinois, 60604 and at that time and place we shall present the attached **Motion to Compel Debtors to Respond to Specific Interrogatories and Related Requests for Production of Documents** (the "**Motion**").

PLEASE TAKE FURTHER NOTICE that any objection to the Motion must be filed with the Court and served upon the undersigned counsel and those entities in accordance with the notice, case management, and administrative procedures established in the above-captioned cases (the "**Case Management Procedures**") by **August 10, 2016 at 4:00 p.m. (prevailing Central Time)**. If no objection is timely filed and served in accordance with the Case Management Procedures, the relief requested in the Motion may be granted without a hearing.

PLEASE TAKE FURTHER NOTICE that copies of the Motion as well as copies of all documents filed in these chapter 11 cases are available free of charge by visiting https://cases.primeclerk.com/CEOC or by calling (855) 842-4123 within the United States or Canada or, outside of the United States or Canada, by calling +1 (646) 795-6969. You may also obtain copies of any pleadings by visiting the Court's website at www.ilnb.uscourts.gov in accordance with the procedures and fees set forth therein.

[1] The last four digits of Caesars Entertainment Operating Company, Inc.'s tax identification number are 1623. Due to the large number of Debtors in these jointly-administrated chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtor's claims and noticing agent at http://cases.primeclerk.com/CEOC.

DATED this 3rd day of August, 2016

ADELMAN & GETTLEMAN, LTD.

/s/ Nathan Q. Rugg

NATHAN Q. RUGG, ESQ. (ARDC #6272969)
STEVEN B. CHAIKEN, ESQ. (ARDC #6272045)
ALEXANDER F. BROUGHAM, ESQ. (ARDC #6301515)
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Attorneys for FERG, LLC and LLTQ Enterprises, LLC
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schaiken@ag-ltd.com
abrougham@ag-ltd.com

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
	)	
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., *et al.*,[1]	)	Case No. 15-01145 (ABG)
	)	
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	**Hearing Date: August 17, 2016**
	)	**Hearing Time: 1:30 p.m.**

MOTION TO COMPEL DEBTORS TO RESPOND TO SPECIFIC INTERROGATORIES AND RELATED REQUESTS FOR PRODUCTION OF DOCUMENTS

NOW COME FERG, LLC, a Delaware limited liability company ("FERG") and LLTQ ENTERPRISES, LLC, a Delaware limited liability company ("LLTQ," and together with FERG, the "Movants"), by and through their undersigned counsel, and, pursuant to Rules 26, 33, 34 and 37 of the Federal Rules of Civil Procedure (made applicable by Fed. R. Bankr. P. 7026-7037 and 9014) and Local Rule 7037-1, hereby request the entry of an order compelling the Debtors to provide complete responses to specific interrogatories and the corresponding requests for production of documents issued by the Movants (the "Motion") in connection with the *Debtors' Motion for the Entry of an Order Authorizing the Debtors to (A) Reject Certain Existing Restaurant Agreements and (B) Enter into New Restaurant Agreements* [Docket No. 3000] (the "GR Rejection Motion"). In support of the Motion, the Movants respectfully state as follows:

[1] The last four digits of Caesars Entertainment Operating Company, Inc.'s tax identification number are 1623. Due to the large number of Debtors in these jointly-administrated chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors' claims and noticing agent at http://cases.primeclerk.com/CEOC.

I. INTRODUCTION

Prior to the filing of this bankruptcy case, the Debtors, the Movants, and chef Gordon Ramsay collaborated to develop and operate certain Ramsay-branded pubs ("Ramsay Pubs") in Las Vegas and Atlantic City. This collaboration, which included a $1 million capital contribution by the Movants, is governed by agreements containing restrictive covenants which bar the Debtors from developing or operating Ramsay Pubs without involving the Movants.

The Debtors have sought to reject the agreements governing the Ramsay Pubs while simultaneously entering into new agreements containing some, but not all, of the provisions they currently contain—a *sub rosa* means of excising the burdens (including the restrictive covenants) from the agreements while retaining their benefits. By this strategy, the Debtors intend to continue to operate the current Ramsay Pubs and open new Ramsay Pubs without compensating the Movants. The Movants have objected to this maneuver, arguing in part that the restrictive covenants in the operative documents will remain enforceable notwithstanding rejection, thereby precluding operation of the Ramsay Pubs without the Movants' continued involvement. The Movants have also sought allowance of an administrative claim for debts incurred post-petition under their agreements with the Debtors as they continue to operate the Ramsay Pubs consistent with their obligations under the operative agreements.

Under Seventh Circuit precedent, restrictive covenants remain enforceable against debtors post-rejection if their breach cannot be remedied by money damages. To determine whether money damages are available, in turn, requires an inquiry into what breaches are likely to occur in the future. Assuming *arguendo* that such money damages could be calculated in the first instance, certain information is required to even begin the appropriate analysis, *i.e.*, the extent to which the Debtors intend to open new Ramsay Pubs in violation of the agreements, and on what terms.

While the Debtors admit to having post-petition discussions with Mr. Ramsay regarding the development of new Ramsay Pubs, they nonetheless refuse to respond to interrogatories and requests for production of documents concerning such ventures, objecting on grounds of relevance and proportionality. After good-faith efforts among the parties to resolve this dispute, the Movants now seek an order compelling the Debtors to respond.

II. BACKGROUND

A. The Ramsay Pubs, underlying contracts, and restrictive covenants[2]

1. A former principal of LLTQ introduced Mr. Ramsay and the Ramsay Pub concept to the Debtors for the purpose of entering into a business venture among the three parties. In 2012, after months of negotiations, the three parties entered into a transaction providing for the design, development, and operation of a Ramsay Pub at Caesars Palace in Las Vegas (the "Las Vegas Pub"), and the sharing of the resulting profits.

2. This transaction among three parties comprised two parts, whereby: (a) LLTQ and Caesars each contributed $1 million in capital and entered into that certain Development and Operation Agreement (the "LLTQ Agreement"); and (b) Caesars entered into that certain Development, Operation and License Agreement (the "Ramsay LV Agreement") with Mr. Ramsay and his affiliated business Gordon Ramsay Holdings Limited (together with Mr. Ramsay, "Ramsay"). The LLTQ Agreement and Ramsay LV Agreement were negotiated and entered into contemporaneously, and together constitute a single integrated transaction (the "Las Vegas Pub Transaction").

3. To ensure LLTQ would not leverage better terms for future Ramsay Pub ventures, Caesars agreed that it and its affiliates would not pursue a venture similar to the Las Vegas Pub

[2] A diagram illustrating the Ramsay Pub transactions and their respective underlying contracts is attached hereto as Exhibit A.

without entering into an agreement with LLTQ (or its affiliate) on substantially the same terms as the LLTQ Agreement. Specifically, section 13.22 of the LLTQ Agreement provides:

> If Caesars elects under this Agreement to pursue any venture similar to (i) the [Las Vegas Pub] (i.e., any venture generally in the nature of a pub, bar, café or tavern) . . . . Caesars and LLTQ shall, or shall cause an Affiliate to, execute a development and operation agreement on the same terms and conditions as this Agreement, subject only to revisions proposed by Caesars or its Affiliate as are necessary to reflect the difference in location between the [Las Vegas Pub] and such other venue . . . .

LLTQ Agmt. § 13.22.

4. Section 4.3 expressly provides that upon expiration or termination of the LLTQ Agreement, section 13.22 survives and that Caesars may only operate "a restaurant" (and thus not the Las Vegas Pub) at the restaurant premises in Caesars Palace.

5. Since its opening, the Las Vegas Pub has been one of the Debtors' most profitable restaurant ventures. Caesars subsequently approached LLTQ about developing additional restaurants in various locations, including Atlantic City, Baltimore, and Boston. Ramsay attempted to pursue the Atlantic City venture without LLTQ or an affiliate, but Caesars refused to proceed without LLTQ due to the restrictive covenants set forth in the LLTQ Agreement.

6. Protracted negotiations among Caesars Atlantic City ("CAC"), Ramsay, and FERG (an affiliate of LLTQ) ensued, resulting in a 2014 transaction providing for the design, development, and operation of a Ramsay Pub at the Debtors' location in Atlantic City (the "Atlantic City Pub"), and the sharing of the resulting revenues.

7. This transaction comprised two parts, whereby: (a) FERG and CAC entered into a so-called "Consulting Agreement" (the "FERG Agreement" and together with the LLTQ Agreement, the "LLTQ/FERG Agreements"); and (b) CAC entered into that certain Development, Operation and License Agreement (the "Ramsay AC Agreement," and together

with the Ramsay LV Agreement, the "Ramsay Agreements"). The FERG Agreement and Ramsay AC Agreement were negotiated and entered into contemporaneously, and together constitute a single integrated transaction (the "Atlantic City Pub Transaction").

8. In the Atlantic City Pub Transaction, CAC agreed to split between Ramsay and FERG a set royalty based on gross revenues from the Atlantic City Pub,[3] with little future involvement required from FERG. In fact, the FERG Agreement expressly provides that that neither FERG nor any members of its team are required to visit the Atlantic City Pub at any time. Similar to, and in furtherance of, the section 13.22 protections under the LLTQ Agreement, section 4.1 of the FERG Agreement contains the following restrictive covenant: "In the event a new agreement is executed between CAC and/or its Affiliate and Ramsay and/or his Affiliate relative to the [Atlantic City Pub] or Restaurant Premises, this Agreement shall be in effect and binding on the parties during the term thereof." FERG Agmt. § 4.1.

9. Since its opening, the Atlantic City Pub has been one of the most profitable restaurants for CAC at its Atlantic City location.

10. Under the LLTQ/FERG Agreements and the Ramsay Agreements, the Debtors are obligated to manage the operations, business, finances, and employees of the Ramsay Pubs; to maintain the Ramsay Pubs; to develop employment and training procedures, marketing plans, pricing policies, and quality standards for the Ramsay Pubs; and to supervise the use of the food and beverage menus and recipes developed by Ramsay. See LLTQ Agmt. § 3.4; Ramsay LV Agmt. § 3.3; FERG Agmt. § 3.4; and Ramsay AC Agmt. § 3.5.

[3] Unlike the Las Vegas Pub, state financing was available to fund the development of the Atlantic City Pub. Because no capital contribution was required from FERG, the parties' negotiations resulted in FERG accepting a reduced payment structure, as compared to the Las Vegas Pub Transaction.

B. Rejection Motions, Administrative Expense Motion, and the Debtors' continued operation of the Ramsay Pubs

11. On January 15, 2015 (the "Petition Date"), each of the Debtors filed a voluntary petition with this Court under chapter 11 of the Bankruptcy Code.

12. On June 8, 2015, the Debtors filed that certain *Fourth Omnibus Motion for the Entry of an Order Authorizing the Debtors to Reject Certain Executory Contracts Nunc Pro Tunc to June 11, 2015* [Docket No. 1755] (the "Original Rejection Motion") to reject the LLTQ/FERG Agreements. The Movants filed a preliminary objection to the Original Rejection Motion. [Docket No. 1774]. In their preliminary objection, the Movants asserted that the LLTQ/FERG Agreements are integrated with the Ramsay Agreements and thus cannot be rejected separately. [Id. at 5].

13. The Movants subsequently filed that certain *Request for Payment of Administrative Expense* [Docket No. 2531] (the "Administrative Expense Motion"). The Movants argued that the Debtors continue to operate the Ramsay Pubs under the LLTQ/FERG Agreements and realize a benefit therefrom, and have consequently incurred a debt to LLTQ and FERG entitled to administrative priority. The Debtors filed a preliminary objection to the Administrative Expense Motion. [Docket No. 2555].

14. The Debtors later filed the GR Rejection Motion, seeking to reject the Ramsay Agreements and simultaneously enter into new agreements for the continued operation of the Ramsay Pubs. [Docket No. 3000]. By now seeking to reject the Ramsay Agreements, the Debtors have tacitly admitted that the LLTQ/FERG Agreements and Ramsay Agreements were integrated, precluding the rejection of one and the assumption of the other.

15. In response to the GR Rejection Motion, the Movants filed a preliminary objection opposing rejection, in part, because of the protections of the restrictive covenants in the LLTQ/FERG Agreements. [Docket No. 3209]. Specifically, the Movants argued:

> In the [LLTQ/FERG] Agreements the parties expressly provided what will happen with the Las Vegas Pub and the Atlantic City Pub after a breach of the contracts. Specifically, under section 4.3 in each of the [LLTQ/FERG] Agreements, the Debtors are prohibited from operating the [Ramsay Pubs] at the existing restaurant premises after the termination of the agreements. The parties also agreed per section 13.22 that no similar restaurant venture can be pursued unless LLTQ and Caesars agree to similar terms as under the LLTQ Agreement.
>
> Even if the Original Rejection Motion is successful, the [LLTQ/FERG] Agreements are not thereby cancelled or repudiated. *See In re Pre-Press Graphics Co., Inc.*, 300 B.R. 902, 909 (Bankr. N.D. Ill. 2003). Further, a post-rejection violation of the restrictive covenants in the [LLTQ/FERG] Agreements does not create a "claim" under the Bankruptcy Code and the covenants thus remain enforceable post-rejection. *See In re Udell*, 18 F.3d 403, 408-409 (7th Cir.1994) (holding that employer's right to an injunction to prevent a violation of a non-compete clause did not give rise to a claim dischargeable in bankruptcy).

[Preliminary Objection, Docket No. 3209, ¶¶ 10, 11].

C. Discovery at issue

16. The Debtors and the Movants agreed that any and all discovery will be available for use in the consolidated proceeding on the Original Rejection Motion, the Administrative Expense Motion and the GR Rejection Motion. [See *Agreed Order Extending Discovery Schedule*, Docket No. 3393, at 3].

17. On March 29, 2016, the Debtors provided responses to the First Set of Interrogatories (the "Interrogatories"), First Requests for the Production of Documents (the "RFPs"), and First Requests for Admission issued by the Movants in connection with the GR Rejection Motion (collectively, the "Discovery").

18. In responding to certain requests for admission related to the GR Rejection Motion (Nos. 33 and 35) the Debtors admit to having had post-petition discussions with Gordon Ramsay regarding new ventures similar to the Las Vegas Pub and similar to the Atlantic City Pub.

19. The Movants and the Debtors engaged in a series of "meet and confer" discussions pursuant to Rule 37 of the Federal Rules of Civil Procedure, both through telephone conversations and by exchanging letters, in order to address numerous objections the parties raised to the Discovery and the Debtors' responses thereto. Through these discussions, the parties resolved many of the initial objections raised and the Debtors provided supplemental answers to certain parts of the Discovery.

20. Counsel for the Movants issued three separate letters addressing their objections to the Discovery responses, respectively dated May 6, 2016, June 28, 2016, and July 20, 2016. A copy of each letter is attached hereto as Group Exhibit B.

21. After providing some supplemental answers, the Debtors have limited their responses and/or maintained objections to the following Interrogatories:

> INTERROGATORY NO. 11: Identify and explain in detail and with specificity each and every restaurant venture which the Debtors contemplated pursuing with Gordon Ramsay since January 1, 2010, including, without limitation, the anticipated location of each such venture (e.g., Atlantic City, Baltimore, Boston).
>
> INTERROGATORY NO. 13: For each restaurant venture identified in response to Interrogatory Number 11 herein, Identify any and all Communications the Debtors had with Gordon Ramsay regarding such venture.
>
> INTERROGATORY NO. 15: For each restaurant venture identified in response to Interrogatory Number 11 herein, Identify any and all such ventures which the Debtors are currently contemplating pursuing.

22. With respect to Interrogatory No. 11, the Debtors refuse to disclose any Ramsay Pub ventures that the Debtors have discussed with Ramsay after the Petition Date. Other than

objecting to breadth, burden and relevance, the Debtors have provided no substantive answer to Interrogatories Nos. 13 or 15.

23. Likewise, the Debtors refused to provide any documents requested in response to the following RFPs:

> RFP NO. 11: All Documents and Communications which Relate to Your answer or to the information or allegations contained in Your answer to Interrogatory Number 11 above.
>
> RFP NO. 13: All Documents and Communications which Relate to Your answer or to the information or allegations contained in Your answer to Interrogatory No. 13 above.
>
> RFP NO. 15: All Documents and Communications which Relate to Your answer or to the information or allegations contained in Your answer to Interrogatory No. 15 above.
>
> RFP NO. 23: All Documents and Communications which Relate in any respect to the negotiations concerning any restaurants or ventures with Gordon Ramsay, including, but not limited to, restaurants to be located in Atlantic City, Baltimore, or Boston.

24. In a letter dated July 15, 2016 (attached hereto as Exhibit C), counsel for the Debtors reiterated his position (previously stated during phone calls with the Movants' counsel) that the Debtors would not supplement their responses to the Interrogatories and RFPs identified above (collectively, the "Disputed Discovery"), because "information and communications regarding potential ventures with Gordon Ramsay not consummated by Caesars. . . . is [sic] not relevant to any of the parties [sic] claims or defenses nor proportional to the needs of the case."

III. ARGUMENT AND REQUEST FOR RELIEF

25. Pursuant to Federal Rule of Civil Procedure 26(b)(1), "parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1).

26. On a motion to compel discovery under Federal Rule 37, the burden of persuasion "rests on the objecting party to show why a particular discovery request is improper." Meyer v. S. Pac. Lines, 199 F.R.D. 610, 611(N.D. Ill. 2001). "Bare assertions that the discovery requested is overly broad, burdensome, oppressive or irrelevant are ordinarily insufficient, standing alone, to bar production." Design Basics LLC v. Best Built Inc., No. 14-CV-597, 2016 WL 1060253, at *3 (E.D. Wis. Mar. 15, 2016) (internal quotation omitted).

27. The Disputed Discovery is within the scope contemplated by Rule 26. It is relevant because it pertains to the damages likely to be suffered by the Movants in the future, and consequently to the survival of the restrictive covenants in the LLTQ/FERG Agreements. And it is proportionate because its demands on the Debtors—answers to three interrogatories and a focused search for readily accessible documents—is relatively minor in light of the multi-million-dollar claim at stake. Moreover, the Debtors have failed to provide any reasoning or support for their objections to production.

A. Information regarding potential future Ramsay Pubs is directly relevant to calculation of damages and survival of the restrictive covenants

28. "Requests for discovery are relevant if there is any possibility that the information sought may be relevant to the subject matter of the action." Kodish v. Oakbrook Terrace Fire Protection Dist., 235 F.R.D. 447, 450 (N.D. Ill. 2006). Relevance is interpreted broadly "in order to aid in the search for truth." Id.

29. In its July 20 correspondence (see Group Exhibit B), the Movants' counsel explained why the information requested in the Disputed Discovery is relevant; namely, that the information sought is necessary "to determine whether [Ramsay Pub ventures in violation of the LLTQ/FERG Agreements] were not pursued," and to the extent they were pursued or will be

pursued in the future, "whether monetary damages are calculable and whether the restrictive covenants survive."

30. The LLTQ/FERG Agreements contain restrictive covenants requiring the Debtors to include the Movants if the Debtors develop future Ramsay Pubs. These restrictive covenants will survive rejection if money damages are insufficient to compensate for their breach. See Udell, 18 F.3d at 408-409. The availability of money damages, in turn, depends on the nature and extent of a potential breach. Because negotiations between the Debtors and Ramsay concerning future Ramsay Pubs are likely to shed light on the nature and extent of future breaches of the LLTQ/FERG Agreements, such negotiations are highly relevant to this contested matter.

B. Proportionality weighs in favor of production

31. Under Rule 26, the parties and the court are directed to consider "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b).

32. The proportionality requirement is not "intended to permit the opposing party to refuse discovery simply by making a boilerplate objection that it is not proportional." Fed. R. Civ. P. 26 advisory committee note (2015). More is required of the party seeking to resist discovery. Here the Debtors bear "the burden of making a specific objection and showing that the discovery [is disproportionate] by coming forward with specific information" to address each of the factors identified by Rule 26(b). Carr v. State Farm Mut. Auto. Ins. Co., 312 F.R.D. 459, 468 (N.D. Tex. 2015).

33. There can be no serious dispute that the Debtors' "resources" are extensive, and that the amount in controversy, running into the millions of dollars, is substantial. But even if the dollars involved were considerably smaller, the Debtors would be hard-pressed to argue that the Disputed Discovery constituted a burdensome request. The Movants' demands comprise, in their entirety, three simple interrogatories and a highly focused request (*i.e.*, communications between two distinct groups, over a finite period of time, concerning a very particular kind of business venture) for production of documents.

34. There is no good reason why this request should be disobeyed, and the Debtors offer none. Instead, they recite the threadbare objection that the Disputed Discovery is "not relevant to any of the parties [sic] claims or defenses nor proportional to the needs of the case," without further factual detail or legal argument.

35. Given both the insignificant burden posed by the discovery sought and also the lack of a meaningful objection, the Debtors are not entitled to withhold the Disputed Discovery.

C. <u>The parties have attempted to resolve their differences in good faith</u>

36. The parties have engaged in numerous Rule 37 consultations as part of their good-faith efforts to resolve their differences with respect to all disputes related to the Discovery. The Disputed Discovery received particularly robust efforts for a resolution without involving the Court. The Movants addressed the Disputed Discovery in each of the three letters sent to counsel for the Debtors, respectively dated May 6, 2016, June 28, 2016 and July 20, 2016. In the most recent phone call on the matter, held on July 5, 2016, counsel for the Debtors (William Arnault, author of the July 15 correspondence) indicated that these last issues (*i.e.*, the Disputed Discovery) would have to be resolved by a motion to compel. Further, the undersigned counsel

discussed this matter with Mr. Arnault in court prior to the last omnibus hearing on July 20, 2016, at which time counsel agreed that there would be no resolution absent a motion to compel.

37. Accordingly, the parties have met their obligations under Rule 37 and Local Rule 7037-1.

38. At approximately 9:00 p.m. on August 2, 2016, Mr. Arnault sent a correspondence to Movants' counsel addressing certain outstanding Discovery disputes, including the Disputed Discovery. A copy of the letter is attached hereto as Exhibit D. Movants do not believe the proposed additional document searches proposed by counsel squarely address the issue presented herein, as they do not, among other things, address the new Ramsay Pub ventures discussed post-petition. Nonetheless, counsel for Movants indicated to Mr. Arnault they would continue to review and discuss the matter to see if the parties can resolve the present Motion prior to presentation of same.

IV. CONCLUSION

WHEREFORE, FERG, LLC and LLTQ ENTERPRISES, LLC respectfully request that the Court enter an order compelling the Debtors to provide responses to the Disputed Discovery, and granting such further relief as is appropriate under the circumstances.

Respectfully submitted,

FERG, LLC, and
LLTQ ENTERPRISES, LLC

By: /s/ Nathan Q. Rugg
One of Their Attorneys

NATHAN Q. RUGG, ESQ. (ARDC #6272969)
STEVEN B. CHAIKEN, ESQ. (ARDC #6272045)
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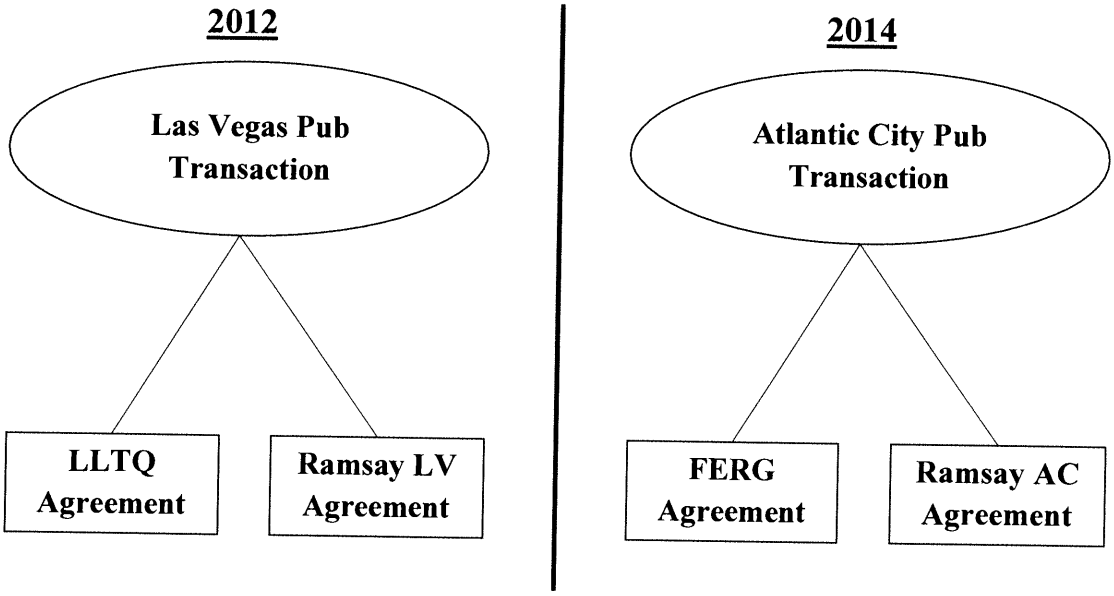
ADELMAN & GETTLEMAN, LTD.
53 West Jackson Boulevard, Suite 1050
Chicago, Illinois 60604
(312) 435-1050

EXHIBIT A

The Ramsay Pubs Transactions



The LLTQ Agreement and the FERG Agreement are collectively the "LLTQ/FERG Agreements." The Ramsay LV Agreement and the Ramsay AC Agreement are collectively the "Ramsay Agreements."

GROUP EXHIBIT B

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NATHAN Q. RUGG
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May 6, 2016

VIA EMAIL
William E. Arnault, Esq. (warnault@kirkland.com)
Kirkland & Ellis LLP
300 N. LaSalle
Chicago, Illinois 60654

Re: *In re Caesars Entertainment Operating Company, et al.* (Case No. 15-01145) Objections to Debtors' responses to discovery issued by FERG and by LLTQ in connection with Motion to Reject [Docket No. 3000] ("Motion")

Dear Bill:

On March 29, 2016, the debtors in the above referenced bankruptcy case (collectively, the "Debtors") submitted responses and objections to the First Set of Interrogatories ("Interrogatories"), First Requests for the Production of Documents ("RFPs"), and First Requests for Admission ("RFAs") issued by FERG, LLC ("FERG") and issued by LLTQ Enterprises, LLC ("LLTQ") in connection with the Motion. The Debtors' responses and objections to the Interrogatories, RFAs and RFPs shall collectively be referred to as the "Discovery Responses." We have identified several of the Discovery Responses that are inadequate under the Federal Rules of Civil Procedure, made applicable to this matter pursuant to Federal Rules of Bankruptcy Procedure 7026, 7033, 7034 and 9014 (collectively, the "Rules of Procedure"), as further detailed below.

As an initial matter, we reject the assertion of general objections that the Debtors have issued in responding to the Interrogatories, RFPs and RFAs. The use of such general or boilerplate objections are inappropriate and ineffective, and are simply not recognized under the Rules of Procedure; objections must be specific. Accordingly, to the extent the Debtors are relying on the general objections (whether stated initially or incorporated wholesale into specific responses) to limit or otherwise not produce documents, answers or information in the Discovery Responses, FERG and LLTQ hereby demand complete production. In the same vein, we note that the Debtors often indicate that they will respond to particular Interrogatories through production of documents pursuant to Rule of Procedure 33(d), but then object to the corresponding RFP by generically asserting the RFP is vague, ambiguous and/or overly burdensome. In the first instance, FERG and LLTQ assert that such objections to RFPs are deficient and expressly prohibited by Rule of Procedure 34(b)(2). Secondly, even if valid, such objection could invalidate the response to the Interrogatory. Accordingly, FERG and LLTQ

demand the appropriate production consistent with the requirements of Rule 33(d) and other applicable Rules of Procedure.

RFAs issued by LLTQ

RFA nos. 5, 6, 14, 15, 16, 17, 18, 19, 43, 44, 45 and 46 – These RFAs are factual in nature, premised on the respective terms of the LLTQ Agreement and the FERG Agreement, and do not seek a legal conclusion (contrary to the Debtors' asserted objection).

RFA nos. 22, 25, 28, 29 and 42 – LLTQ objects to the Debtors' response to the extent it does not address the specific RFA posed, and does not specifically admit or deny. LLTQ rejects the assertion that the RFA is vague or ambiguous.

RFA nos. 26 and 30 – LLTQ rejects the Debtors' characterization of the RFA. The Debtors do not raise such objections to RFA no. 27, which is substantively similar.

RFA no. 32 – LLTQ rejects the Debtors' characterization of the RFA, which seeks information related to the Debtors' intent and the terms of the FERG Agreement and LLTQ Agreement.

RFA nos. 33, 34, 35, 36, 37, 38 and 39 – LLTQ rejects the Debtors' characterization of these RFAs. The RFAs are relevant for discovery purposes because, among other things, each relate to the effect of section 13.22 and the parties' intent with respect thereto.

RFAs issued by FERG

RFA nos. 5, 6, 15, 16, 17, 18, 19, 33, 46, 48 and 49– These RFAs are factual in nature, premised on the respective terms of the LLTQ Agreement and the FERG Agreement, and do not seek a legal conclusion (contrary to the Debtors' asserted objection).

RFA nos. 24, 27, 28, 29, 30, 31, 32, 35, 45– FERG objects to the Debtors' response to the extent it does not address the specific RFA posed, and does not specifically admit or deny. FERG rejects the assertion that the RFA is vague or ambiguous.

RFA nos. 37, 38, 39, 40, 41, 42 – FERG rejects the Debtors' characterization of these RFAs. The RFAs are relevant for discovery purposes because, among other things, each relates to the effect of section 13.22 and the parties' intent with respect thereto.

RFA no. 44 – The Debtors' response is inconsistent, stating both an absolute "admitted" and "denied," and further objecting to the RFA.

Interrogatories issued by FERG and by LLTQ

Interrogatory nos. 9, 10, 11, 12, 13 and 15 – FERG and LLTQ reject the Debtors'

characterization of the Interrogatories and assertion that they are not relevant to the Motion. All Interrogatories relate to a critical dispute related to the Motion and the effect of section 13.22 of the LLTQ Agreement with respect to both the Debtors' ability to operate the Atlantic City Pub and to proceed with other Ramsay ventures without involving LLTQ or its Affiliates.

Further, with respect to Interrogatory nos. 11 and 12, the Debtors' answers are non-responsive. The response to no. 11 is significantly restricted to ventures the Debtors actually realized and completed, whereas the question is broader and relates to all ventures the parties contemplated. The answer to no. 12 inappropriately asserts that the Debtors generally took into account "business considerations" and the "best interests of the Debtors or their affiliates" with respect to the decision to proceed with specific ventures. Such answer also fails to respond entirely to the question posed as to which ventures the Debtors did not proceed with.

The response to Interrogatory no. 15 is deficient as the Debtors did not provide a responsive answer to no. 11 (to which the Debtors claim no. 15 is duplicative).

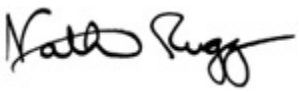
RFPs issued by FERG and by LLTQ

RFP nos. 9, 10, 11, 12, 13, 14, 15 and 23 – FERG and LLTQ reject the Debtors' characterization of the RFPs and assertion that they are not relevant to the Motion. All RFPs relate to a critical dispute and objection to the Motion and the effect of section 13.22 of the LLTQ Agreement with respect to both the Debtors' ability to operate the Atlantic City Pub and to proceed with other Ramsay ventures without involving LLTQ or its Affiliates. In addition, the Debtors cannot generally assert that a RFP is overly broad and unduly burdensome as a basis not to respond to a RFP at all.

Further, the Debtors' response to RFP no. 14 is inconsistent with the fact that the Debtors actually provided a response to Interrogatory no. 14.

LLTQ and FERG require full and complete responses consistent with the Rules of Procedure. Please advise as to whether complete production and responses will be forthcoming, and if not, as to your availability to meet and confer to discuss the aforementioned deficient responses. LLTQ and FERG will provide a separate letter addressing the subsequent discovery issued in the pending contested matters.

Sincerely,



Nathan Q. Rugg

cc: Steven B. Chaiken Esq.
Brian K. Ziegler, Esq.

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June 28, 2016

VIA EMAIL
William E. Arnault, Esq. (warnault@kirkland.com)
Kirkland & Ellis LLP
300 N. LaSalle
Chicago, Illinois 60654

Re: *In re Caesars Entertainment Operating Company, et al.* (Case No. 15-01145)
Objections to Debtors' responses to discovery issued by FERG and by LLTQ

Dear Bill:

The debtors in the above referenced bankruptcy case (collectively, the "Debtors") submitted supplemental responses to the Interrogatories ("Interrogatories"), Requests for the Production of Documents ("RFPs"), and Requests for Admission ("RFAs") issued by FERG, LLC ("FERG") and by LLTQ Enterprises, LLC ("LLTQ") in connection with: (i) that certain motion to reject [Docket No. 1755] ("LLTQ Rejection Motion"); (ii) that certain application for payment of administrative expense [Docket No. 2531] (the "Admin Motion"); and (iii) that certain motion to reject certain Gordon Ramsay agreements [Docket No. 3000] (the "GR Rejection Motion"). The Debtors' responses and objections to the Interrogatories, RFAs and RFPs shall collectively be referred to as the "Discovery Responses." Notwithstanding the supplemental responses several of the Discovery Responses remain inadequate under the Federal Rules of Civil Procedure, made applicable to this matter pursuant to Federal Rules of Bankruptcy Procedure 7026, 7033, 7034 and 9014 (collectively, the "Rules of Procedure"), as further detailed below.

As a general matter, based on our prior "meet and confer" conferences, LLTQ and FERG understand that: (i) the Debtors did not limit the answers to any Interrogatories based on any general objections or on specific objections that precede the Debtors' substantive answers; (ii) the Debtors will not be withholding any non-privileged responsive documents to the RFPS based on any general objections; and (iii) except as expressly provided in the substantive responses to the RFPs setting forth what categories of documents will be produced, the Debtors will not be withholding any non-privileged responsive documents to the RFPS based on any specific objections. If this misstates or misconstrues the Debtors' agreement in any way, please let us know and clarify, as may be appropriate.

I. LLTQ Rejection Motion

A. Interrogatories Issued by LLTQ and FERG

Interrogatory No. 20 – Debtors originally responded to this Interrogatory by indicating that the Debtors could proceed based on the language of the LLTQ Agreement and section 13.22. The Debtors now assert, without providing any support or basis for the assertion, that section 13.22 is "not enforceable." Without further explanation or detail, the answer is deficient. LLTQ and FERG are entitled to know the Debtors' position with respect to application of section 13.22, including what it is the Debtors' are relying on for the assertion that section 13.22 is not enforceable.

B. RFPs Issued by LLTQ and FERG

LLTQ and FERG RFP No. 20; FERG RFP No. 24 – The Debtors did not amend the original answers in which the Debtors agreed to only provide the LLTQ and FERG Agreements. A complete and full response requires production of all responsive Documents and Communications to these RFPs, not just the LLTQ and FERG Agreements.

II. Admin Motion

A. Interrogatories

Interrogatory Nos. 2, 3, 4, 15, 16, 19, 20 and 21 – The Debtors continue to object to these Interrogatories "to the extent" the Debtors are asked to "identify certain provisions" in the respective agreements. As plainly stated in the original Interrogatories, LLTQ and FERG do not ask the Debtors to simply identify the relevant contract provisions. Rather, these Interrogatories request that the Debtors "explain in detail and specificity" how (a) the Debtors' obligations to operate the Pubs, and (b) the Debtors' actual operations of the Pubs, differ under the respective contracts, if at all. As mentioned in our initial "meet and confer," LLTQ and FERG are trying to determine if, with respect to either Pub, the Debtors differentiate among their obligations to operate and manage between the respective contracts. If the Debtors are willing to stipulate that there are no material differences in the Debtors' obligations to manage and operate the Pubs under the respective agreements, a detailed explanation will not be required. If on the other hand, the Debtors contend their obligations to manage and operate the Pubs under the respective agreements are materially different, then further responses must be provided.

B. RFPs

RFP Nos. 2, 3, 4, 15, 16, 19, 20 and 21 – Complete production of all responsive Documents and Communications should be provided notwithstanding the Debtors' outstanding objections to the corresponding Interrogatories.

III. GR Rejection Motion

A. Interrogatories

Interrogatory No. 10 – The supplemental response to Interrogatory No. 10 repeats the (new) answer to Interrogatory No. 9. The Debtors should provide a separate and complete response to Interrogatory No. 10, which seeks different information than the information sought by Interrogatory No. 9.

Interrogatory No. 11 – In the responses to RFA Nos. 33 and 35 the Debtors admit having discussed pursuing additional ventures with Gordon Ramsay similar to the Las Vegas Pub and similar to the Atlantic City Pub. To the extent not already identified, the Debtors response to Interrogatory No. 11 should include any such ventures discussed with Gordon Ramsay.

Interrogatory No. 13 – The Debtors did not supplement their answer to Interrogatory No. 13. In addition to the original objections to this deficient response (as set forth in our letter dated May 6, 2016), LLTQ and FERG assert that the information sought is appropriate to determine whether such ventures were not pursued based on the restrictions contained in section 13.22, in addition to the summary business reasons stated by the Debtors.

Interrogatory No. 15 — In the responses to RFA Nos. 33 and 35 the Debtors admit having discussed pursuing additional ventures with Gordon Ramsay similar to the Las Vegas Pub and similar to the Atlantic City Pub. To the extent not already identified, the Debtors response to Interrogatory No. 15 should include any such ventures discussed with Gordon Ramsay.

B. RFPs

RFP Nos. 10,11, 13 and 15 – Complete production of all responsive Documents and Communications should be provided notwithstanding the Debtors' outstanding objections to the corresponding Interrogatories.

RFP No. 14 – As stated in our May 6, 2016 correspondence, responsive Documents and Communications should be provided in support of the Debtors response to the corresponding Interrogatory No. 14.

RFP Nos. 12 and 23 – LLTQ and FERG continue to assert the objections to these deficient responses as stated in our May 6, 2016 correspondence. LLTQ and FERG further assert that the information sought is appropriate to determine whether the ventures at issue were not pursued based on the restrictions contained in section 13.22, in addition to the summary business reasons stated by the Debtors.

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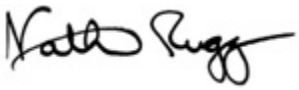
We can schedule a meet and confer with respect to the above objections at your earliest convenience. Please advise.

Sincerely,



Nathan Q. Rugg

cc: Steven B. Chaiken Esq.
Brian K. Ziegler, Esq.

#579013v1

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NATHAN Q. RUGG
nrugg@ag-ltd.com

July 20, 2016

VIA EMAIL
William E. Arnault, Esq. (warnault@kirkland.com)
Kirkland & Ellis LLP
300 N. LaSalle
Chicago, Illinois 60654

Re: *In re Caesars Entertainment Operating Company, et al.* (Case No. 15-01145)
Objections to Debtors' responses to discovery issued by FERG and by LLTQ

Dear Bill:

I am writing in response to your July 15, 2016 correspondence in a final attempt to reach a resolution of outstanding disputes to the Discovery Responses issued by the Debtors.

I. LLTQ Rejection Motion

A. Interrogatories Issued by LLTQ and FERG

Interrogatory No. 20 – The Debtors' current position that section 13.22 is simply not enforceable is contrary to the legal position they took prior to the filing of the chapter 11 cases. For this reason alone, LLTQ and FERG assert that the answer is deficient without further explanation or detail. In addition, as previously stated, LLTQ and FERG are entitled to additional detail to understand what the Debtors' are relying on to support this blanket assertion. This issue ties into the related RFPs, discussed below.

Also, please note, if the Debtors are amending their answer it should be through a supplemental response to the Interrogatory verified by the Debtors, and not correspondence from counsel. This issue applies to all supplemental answers provided to date.

B. RFPs Issued by LLTQ and FERG

LLTQ and FERG RFP No. 20; FERG RFP No. 24 – These RFPs relate directly to issue presented above, *i.e.*, what documents are the Debtors relying on to support their blanket assertion that section 13.22 is not enforceable. LLTQ and FERG continue to assert that a complete response requires production of all responsive Documents and Communications to

explain or support the Debtors' position, which necessarily requires documents beyond just the LLTQ and FERG Agreements.

II. Admin Motion

A. Interrogatories

Interrogatory Nos. 2, 3, 4, 15, 16, 19, 20 and 21 – While LLTQ and FERG do not agree that the Debtors' provided complete responses, we now understand that the Debtors will rely solely on the language of the underlying agreements to explain how (a) the Debtors' obligations to operate the Pubs, and (b) the Debtors' actual operations of the Pubs, differ under the respective contracts, if at all. We requested that the Debtors explain whether they contend their obligations to manage and operate the Pubs under the respective agreements are materially different. Consistent with the Debtors' supplemental responses and your July 15 response, we understand that the Debtors will not take the opportunity to differentiate among the relevant contracts' requirements other than to agree to admissibility of the contracts and rely on the language therein.

B. RFPs

RFP Nos. 2, 3, 4, 15, 16, 19, 20 and 21 – Please confirm the Debtors will be providing any Documents and Communications --other than the underlying contracts-- that relate to the answers to the respective Interrogatories.

III. GR Rejection Motion

A. Interrogatories and RFPS

Interrogatories and RFPs related to new Ramsay ventures– In responding to RFA Nos. 33 and 35 the Debtors admit to having had post-petition discussions with Gordon Ramsay regarding new ventures similar to the Las Vegas Pub and similar to the Atlantic City Pub. The Debtors are, however, refusing to identify any such ventures discussed with Gordon Ramsay or provide any additional information as requested by these Interrogatories. As set forth in our letters dated May 6, 2016 and June 28, 2016, LLTQ and FERG assert, among other things, that the information sought is appropriate to determine whether such ventures were not pursued based on the restrictions contained in section 13.22.

Moreover, as set forth in LLTQ and FERG's preliminary objection to the GR Rejection Motion [Docket No. 3209], we assert that section 13.22 of the LLTQ Agreement and sections 4.1 and 4.2 of the FERG Agreement, as restrictive covenants, survive rejection, do not create "claims" under the Bankruptcy Code, and thus remain enforceable. This is an absolute defense to the GR Rejection Motion as the Debtors propose to continue to operate the Pubs post-rejection. The pursuit of additional ventures between the Debtors and Ramsay relates directly to whether monetary damages are calculable and whether the restrictive covenants survive.

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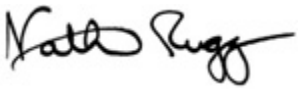
Accordingly, LLTQ and FERG maintain these Interrogatories, and the related RFPs are relevant and must be answered.

Please advise if any additional production and responses will be forthcoming so that FERG and LLTQ may determine whether intervention by the Court is required.

Sincerely,



Nathan Q. Rugg

cc: Steven B. Chaiken Esq.
Brian K. Ziegler, Esq.

#703708v2

EXHIBIT C

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

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Chicago, Illinois 60654

Bill Arnault
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July 15, 2016

Steven B. Chaiken
Nathan Q. Rugg
Adelman & Gettleman Ltd.
53 W. Jackson Blvd.
Suite 1050
Chicago, IL 60604

Re: *In re Caesars Entertainment Operating Company, et al.* (Case No. 15-01145)

Dear Steve and Nate:

I write to memorialize our July 5, 2016 meet and confer regarding the Debtors' supplemental discovery responses.

Interrogatory No. 20 (LLTQ Rejection). You indicated your objection to the Debtors' responses that section 13.22 is not enforceable. We indicated that 13.22 is not enforceable given the terms of that provision are not an enforceable as a restrictive covenant.

Contract provisions (RFP LLTQ 20 and FERG 24). You indicated that you continued to object to our reference to the production of the LLTQ and FERG Agreements. The Debtors continue to stand on their response that they will produce the LLTQ and FERG Agreements.

Contract provisions (Admin). You indicated that you required a further response from the Debtors on interrogatories concerning the Debtors' respective obligations under the different restaurant agreements. We explained that the contractual provisions contain all the information regarding the Debtors' obligations and will not be supplementing our responses further.

Communications regarding ventures. You explained that you continued to require more information and communications regarding potential ventures with Gordon Ramsay not consummated by Caesars to understand whether section 13.22 played a role in the decision-making with respect to the venture(s). This information is not relevant to any of the parties claims or defenses nor proportional to the needs of the case. You also indicated, in connection with this request, that you were requesting the searches of additional custodians. We agreed that

we would investigate the issue further, and though we would not search all the custodians you suggested, we will consider running certain limited searches of certain custodians regarding this issue. We will let you know what additional documents, if any, will be produced.

Custodians. You proposed a substantial additional list of custodians for us to search. Though we will not search all of these custodians, we will consider searching certain of these custodians as indicated above.

Additionally, regarding your email of today, the Debtors do not require production of the Avero reports, and they may be removed from the production.

Sincerely,

/s/ Bill Arnault

Bill Arnault

EXHIBIT D

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August 2, 2016

Nathan G. Rugg
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Chicago, IL 60604

Re: *In re Caesars Entertainment Operating Company, et al.* (Case No. 15-01145) Objections to LLTQ and FERG's Responses to Discovery Issued by the Debtors

Dear Nate:

I write to respond to Steve Chaiken's email of July 19, 2016 and your letter of July 20, 2016.

E-Discovery

Text Messages - The Debtors believes text messages from the phones of Mr. Seibel and Mr. Green contain responsive communications relevant to the issues in this case. FERG and LLTQ could conduct searches of these communications to narrow down potentially relevant communications related to the requests served on FERG and LLTQ in this case.

Protocols - The Debtors have collected additional emails from John Payne, Tom Jenkin, Kevin Ortzman, and Michael Grey for the time period January 1, 2013 to the present to address outstanding requests for additional communications and custodians, including RFPs 20 and 24. We ran the following searches:

- "Rowen Seibel" AND Gordon
- (pub OR "Gordon Ramsay" OR "Rowen Seibel" OR LLTQ OR FERG) AND Boston
- (pub OR "Gordon Ramsay" OR "Rowen Seibel" OR LLTQ OR FERG) AND Baltimore

- (pub OR "Gordon Ramsay" OR "Rowen Seibel" OR LLTQ OR FERG) AND "New Orleans"

This collection has led to the loading of approximately 9,897 additional documents that Debtors will review. Debtors believe that this search is not proportional to the needs of the case but are willing to review these documents if LLTQ and FERG agree that no additional searches are required.

Depositions

The Debtors believe no more than 10 depositions will be necessary in this matter, and do not expect to take any more than 10 depositions. The Debtors anticipate taking the depositions of, at the very least, Rowen Seibel, Craig Green, and Jeffrey Frederick. The Debtors will object to any depositions in excess of the limits imposed by the Federal Rules of Civil Procedure made applicable by Rule 9014 of the Federal Rules of Bankruptcy Procedure.

LLTQ Rejection Motion Requests

Interrogatory 20 - The Debtors will supplement their current response to interrogatory No. 20 to state that the LLTQ Agreement is not enforceable because it is an unenforceable restrictive covenant.

LLTQ and FERG RFP No. 20; FERG RFP No. 24 - The additional searches Debtors have agreed to run should be sufficient.

Admin Motion

Interrogatory Nos. 2, 3, 4, 15, 16, 19, 20 and 21 - The Debtors confirm that they will agree to the admissibility of the LLTQ, FERG, GR LV and GR AC Agreements and rely on the language in the agreements to articulate their respective obligations under the agreements.

RFP Nos. 2, 3, 4, 15, 16, 19, 20 and 21 - The Debtors will provide the underlying agreements in relation to these RFPs and their corresponding interrogatories. For the same reasons that the parties have discussed in the context of the corresponding interrogatories, it is not clear what documents you seek. Read literally, these requests would require production of all day-to-day operational communications, and the parties have previously agreed that such documents need not be produced.

GR Rejection Motion

New Ramsay Ventures - The Debtors have identified certain ventures discussed with Gordon Ramsay and have agreed to run certain additional searches and conduct additional review to identify potential communications relating to these ventures and/or their relationship to section 13.22 of the LLTQ Agreement as articulated *supra* regarding e-Discovery. The Debtors believe this will fulfill their obligations with respect to the Interrogatories and Requests for Production related to the new Ramsay ventures.

The Debtors can also confirm that we were able to load your production, thank you for providing it.

Sincerely,

/s/ Bill Arnault

Bill Arnault

Exhibit J

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al.,[1]	)	Case No. 15-01145 (ABG)
	)	(Jointly Administered)
Debtors.	)	**Re: Docket No. 4579**

DEBTORS' OBJECTION TO MOTION TO COMPEL DEBTORS TO RESPOND TO SPECIFIC INTERROGATORIES AND RELATED REQUESTS FOR PRODUCTION OF DOCUMENTS

The above-captioned debtors and debtors in possession (collectively, the "Debtors") object to the *Motion to Compel Debtors to Respond to Specific Interrogatories and Related Requests for Production of Documents* [Dkt. No. 4579] (the "Motion to Compel"). In support thereof, the Debtors state as follows:

INTRODUCTION

1. The instant dispute arises out of the Debtors' attempts to reject certain contracts relating to two Gordon Ramsay-branded pubs (the "Ramsay Pubs") located in Las Vegas and Atlantic City. (*See* [Dkt. Nos. 1755, 3000]) These contracts include (a) a consulting agreement between Debtor Desert Palace, Inc. ("Caesars Palace") and LLTQ (the "LLTQ Agreement") and a consulting agreement between Debtor Boardwalk Regency Corporation dba Caesars Atlantic City ("Caesars AC") and FERG (the "FERG Agreement"), which respectively provide LLTQ or FERG, as applicable, with a share of the revenues of the applicable Ramsay Pub; and (b) a licensing agreement between Caesars Palace and Gordon Ramsay and certain of his affiliates

[1] A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at https://cases.primeclerk.com/CEOC.

("Ramsay," and such agreement, the "CPLV Ramsay Agreement") and a licensing agreement between Caesars AC and Ramsay (the "Caesars AC Ramsay Agreement," and together with the CPLV Ramsay Agreement, the "Ramsay Agreements"). In connection with the rejection of the Ramsay Agreements, the Debtors are also seeking to enter into two new contracts with Ramsay that include substantially better terms for the Debtors. (*See* [Dkt. No. 3000] (the "Ramsay Motion").)

2. LLTQ and FERG have objected to the Debtors' rejection motions. In support thereof, LLTQ and FERG rely on a restrictive covenant in the LLTQ Agreement that purportedly requires the Debtors to enter into a new agreement with LLTQ "on the same terms and conditions as [the LLTQ Agreement]" if any of the Debtors pursue any other pubs, bars, cafes, taverns, or steak restaurants with Ramsay. According to LLTQ and FERG, a post-rejection breach of that restrictive covenant does not create a "claim" under the Bankruptcy Code because such a breach cannot be remedied by money damages.

3. LLTQ and FERG have since requested information and documents relating to any ventures that the Debtors intend to pursue with Gordon Ramsay in the future. They assert that this information will reveal the Debtors' intentions to pursue new ventures with Ramsay and the terms of those ventures—information they claim is necessary to determine whether money damages are available. LLTQ's and FERG's analysis is incorrect.

4. *First*, the restrictive covenant is not enforceable. Under well-established Nevada law, a restrictive covenant is enforceable only if it contains reasonable temporal and geographic limitations. As LLTQ and FERG concede, however, the restrictive covenant at issue is unbounded by time and geography. As a result, the restrictive covenant is unenforceable as a matter of law and LLTQ and FERG cannot rely upon it for purposes of opposing the Debtors'

rejection motions. Nor can they use it as means to obtain discovery to which they are not otherwise entitled.

5. *Second*, the contours of the Debtors' discussions with Ramsay regarding potential new ventures have no bearing on the availability of money damages. Though LLTQ and FERG claim that information relating to these discussions is necessary to determine "what breaches are likely to occur in the future," as a practical matter the only possible breach would be the Debtors' decision to enter into a new agreement with Ramsay. Similarly, additional discovery is not necessary to determine the terms of any new agreement between the Debtors and Ramsay. If LLTQ and FERG are correct that the restrictive covenant is enforceable, the Debtors must enter into a new agreement with LLTQ "on the same terms and conditions as [the LLTQ Agreement]." In other words, the nature of any preliminary discussions between the Debtors and Ramsay regarding new ventures will have no bearing on the nature of any breach or the availability of money damages. Accordingly, the Debtors should not be required to collect and review additional documents from additional custodians regarding new ventures that have not yet been consummated and may never materialize.

6. For the foregoing reasons, the Debtors respectfully request that the Court deny the Motion to Compel.

BACKGROUND

7. In 2012, the Debtors entered into two separate agreements relating to the development and operation of a Gordon Ramsay-branded pub in Las Vegas: (a) the LLTQ Agreement, which is a development and operation agreement with LLTQ; and (b) the CPLV Ramsay Agreement, which is a development, operation, and licensing agreement with Ramsay. The CPLV Ramsay Agreement provides the Debtors with, *inter alia*, the right to use certain trademarks associated with Gordon Ramsay, and requires Gordon Ramsay to make personal

appearances at the Ramsay Restaurants and to provide ongoing services related to menu development and the operation of the Ramsay Restaurants. The LLTQ Agreement provides LLTQ with a share of the revenue of the Ramsay Pub at Caesars Palace Las Vegas in exchange for certain services in connection with the Debtors' design, development, construction, and operation of that pub. The LLTQ Agreement also contains a restrictive covenant relating to future ventures between the Debtors and Gordon Ramsay:

> Additional Restaurant Projects. If Caesars [i.e., Debtor Caesars Palace] elects under [the LLTQ Agreement] to pursue any venture similar to (i) the Restaurant (i.e., any venture generally in the nature of a pub, bar, café or tavern) or (ii) the "Restaurant" as defined in the development and operation agreement entered into December 5, 2011 between TPOV Enterprises, LLC (an affiliate of LLTQ), on the one hand, and Paris Las Vegas on the other hand (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), Caesars and LLTQ shall, or shall cause an affiliate to, execute a development and operation agreement on the same terms and conditions as this Agreement, subject only to revisions proposed by Caesars or its Affiliates as are necessary to reflect the difference in location between the Restaurant and such other venture (including, for the avoidance of doubt, the Baseline Amount, permitted Operating Expenses and necessary Project Costs).

LLTQ Agmt. § 13.22.

8. In response to certain requests for admission, LLTQ and FERG have admitted that the restrictive covenant in the LLTQ Agreement (a) does not expire at any point (except as may be provided under applicable law); (b) applies to any future venture between the Debtors and Ramsay that is similar to any venture generally in the nature of a pub, bar, café, tavern, or steak restaurant; (c) applies to all Caesars' affiliates that pursue a new venture with Ramsay; and (d) applies to ventures located anywhere in the world. (LLTQ Resp. to Debtors' First Requests for Admission Nos. 1, 2, 36, 37, 38, attached hereto as **Exhibit 1**.)

9. In 2014, the Debtors entered into two separate agreements relating to the development and operation of a Gordon Ramsay-branded pub in Atlantic City (a) the FERG

Agreement, which is a consulting agreement with FERG; and (b) the Caesars AC Ramsay Agreement, which is a development, operation, and licensing agreement with Ramsay. The Caesars AC Ramsay Agreement provides the Debtors with, *inter alia*, the right to use certain trademarks associated with Gordon Ramsay, and requires Gordon Ramsay to make personal appearances at the Ramsay Restaurants and to provide ongoing services related to menu development and the operation of the Ramsay Restaurants. The FERG Agreement provides FERG with a share of the revenue of the Ramsay Pub at Caesars Atlantic City in exchange for certain services in connection with the Debtors' design, development, construction, and operation of that pub.

10. As part of their restructuring efforts following the filing of voluntary petitions on January 15, 2015, the Debtors evaluated a number of their executory contracts to determine whether their rejection or assumption would benefit the estates. In the course of this evaluation, the Debtors determined that the rejection of the LLTQ and FERG Agreements (and the entry into new agreements with Ramsay on better terms) was of substantial benefit to the estates. In particular, the Debtors determined that the restaurants could operate successfully without the services provided by LLTQ and FERG and on a more cost-effective basis. Rejection of the LLTQ Agreement will save the Debtors approximately $1.7 million annually, and rejection of the FERG Agreement will save the Debtors approximately $222,000 annually.

11. In addition, the Debtors determined that their relationship with Rowen Seibel, the former principal of LLTQ and FERG, was harming the Debtors' business in other ways. In the past, Mr. Seibel had, for example, used profanity in front of Caesars' customers and yelled at the Caesars Palace valet team. (*See* Email thread between Ashcraft and Jorcin and Kripitz, December 12, 2012, attached hereto as **Exhibit 2.**) The Debtors determined that this behavior

had a negative effect on their operations and was yet another reason why rejecting the LLTQ and FERG Agreements—thereby limiting Mr. Seibel's presence on the premises—was an appropriate exercise of their business judgment.

12. The Debtors also saw the potential for cost savings with respect to the Ramsay Agreements. In addition to rejecting the GR Agreements, the Debtors moved to enter into two new agreements ("New GR Agreements") with Gordon Ramsay that improved the terms of the agreements for the applicable Debtor. The benefits of the New Agreements are two-fold: (a) they provide the applicable Debtor with significant savings in terms of the payments owed to Ramsay from a reduced licensing fee; and (b) they allow for the continued operation of the profitable Ramsay Pubs. The New GR Agreements will provide the Debtors with aggregate annual cost savings of approximately $144,000. Moreover, because the New GR Agreements replaced the existing Ramsay Agreements in their entirety, the New GR Agreements completely mitigated the rejection damages that Ramsay may have otherwise asserted against the Debtors.

13. LLTQ and FERG objected to the Debtors' rejection of the LLTQ and FERG Agreements and their request for authority to enter into the New GR Agreements. In connection with their objections, LLTQ and FERG have served 629 separate discovery requests on the Debtors. These requests have included 356 requests for admission, 111 interrogatories, and 162 document requests. Though the Debtors have repeatedly informed LLTQ and FERG that such extensive discovery efforts are not proportional to the needs of the case, request irrelevant information, contain complex and indirect requests, fail to narrow the issues for trial, and constitute an abuse of the discovery process, the Debtors have endeavored in good faith to satisfy LLTQ and FERG's many requests. In addition, the Debtors have produced approximately

10,000 pages of documents and, at the request of LLTQ and FERG, agreed to collect and search another 10,000 documents.

14. Despite these efforts, the parties have reached an impasse relating to several requests. These requests ask the Debtors to identify any ventures the Debtors are currently "contemplating" pursuing with Ramsay and any corresponding communications relating to these ventures. In response to these requests, the Debtors identified several ventures they had previously discussed with Ramsay and described why they were not consummated. But the Debtors objected to identifying any ventures they are currently contemplating and any communications relating to those ventures. As the Debtors stated in their responses, such requests sought irrelevant information, and were overly broad, unduly burdensome, and ambiguous, particularly to the extent they asked the Debtors to identify every restaurant venture that the Debtors were "contemplating."

ARGUMENT

15. Federal Rule of Civil Procedure 26, which is made applicable here through Federal Rule of Bankruptcy Procedure 7026, limits the scope of discovery to "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1); Fed. R. Bankr. P. 7026. In other words, parties only can obtain discovery that is both relevant and proportional to the issues raised in a matter. The discovery requested by LLTQ and FERG relating to the Debtors' "contemplated" ventures with Ramsay is neither relevant nor proportional to the needs of this case.

16. *First*, the restrictive covenant in the LLTQ Agreement is not enforceable as a matter of law. Thus, LLTQ's and FERG's requested discovery—which goes to whether the restrictive covenant remains enforceable post-rejection—is irrelevant. *Second*, even if the Debtors have engaged in postpetition discussions with Ramsay regarding future ventures, any

such discussions have no bearing on the availability of money damages. Any future breach that may occur can only be a breach of the restrictive covenant, and the occurrence (or, as the case may be, non-occurrence) of such discussions will not impact that analysis. There is thus no reason to subject the Debtors to further expense when discovery in this contested matter has already gone on for far too long.

A. THE RESTRICTIVE COVENANT IN THE LLTQ AGREEMENT IS UNENFORCEABLE AS A MATTER OF LAW AND CANNOT FORM THE BASIS FOR LLTQ'S AND FERG'S DISCOVERY REQUESTS.

17. LLTQ's and FERG's Motion to Compel rests on the premise that "restrictive covenants remain enforceable against debtors post-rejection if their breach cannot be remedied by money." (Mot. 2.) This argument suggests, however, that the enforceability of a restrictive covenant depends solely on establishing that money damages are insufficient to compensate for a breach. (Mot. ¶ 30 ("These restrictive covenants will survive rejection if money damages are insufficient to compensate for their breach.") To the contrary, a restrictive covenant cannot survive rejection if its terms are not enforceable in the first instance. *Cf. In re Bedford Square Associates, L.P.*, 247 B.R. 140, 145 (Bankr. E.D. Pa. 2000) ("It is true that restrictive covenants enforceable under applicable non-bankruptcy law survive a § 365(h) rejection") (emphasis added). Here, the restrictive covenant at issue is not enforceable under well-established Nevada law.[2]

18. In Nevada, a restrictive covenant constitutes an unreasonable restraint—and is rendered unenforceable—when it is unlimited in duration and geography:

> A restraint of trade is unreasonable, in the absence of statutory authorization or dominant social or economic justification, if it is greater than is required for the protection of the person for whose benefit the restraint is imposed or imposes undue hardship upon the person restricted. The period of time during which the

[2] The LLTQ Agreement has a Nevada choice of law provision. (LLTQ Agmt. § 13.10)

> restraint is to last and the territory that is included are important factors to be considered in determining the reasonableness of the agreement.

Hansen v. Edwards, 83 Nev. 189, 191-92 (1967). *See also Camco, Inc. v. Baker,* 113 Nev. 512, 520 (1997) ("[T]he covenant at issue is overly broad as to future territory for possible expansion."); *Jones v. Deeter*, 112 Nev. 291, 296 (1996) ("The amount of time the covenant lasts, the territory it covers, and the hardship imposed upon the person restricted are factors for the court to consider in determining whether such a covenant is reasonable."); *Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev. Adv. Op. 49 (2016) ("We have been especially cognizant of the care that must be taken in drafting contracts that are in restraint of trade.").

19. As LLTQ and FERG concede, the restrictive covenant in the LLTQ Agreement contains no such limitations. According to LLTQ and FERG, that covenant applies to all of the Debtors *and* the Debtors' non-debtor affiliates—*i.e.*, more than 200 are purportedly covered by this covenant. It is unlimited in terms of geographical scope and applies to any ventures between the Debtors and Gordon Ramsay throughout the word. It contains no limitations on duration and survives the termination of the LLTQ Agreement. And it applies to a broad range of ventures between the Debtors and LLTQ. Put simply, the restrictive covenant in the LLTQ Agreement is the very type of overly broad covenant that Nevada courts routinely deem to be unenforceable.

20. Because the restrictive covenant in the LLTQ Agreement is unenforceable as a matter of law, LLTQ and FERG's attempts to obtain discovery designed to inquire into the adequacy of money damages is wholly irrelevant.

B. ANY DISCUSSIONS BETWEEN THE DEBTORS AND RAMSAY REGARDING VENTURES THEY ARE CONTEMPLATING DO NOT INFORM THE NATURE OF THE BREACH OR THE TERMS OF ANY NEW AGREEMENT BETWEEN LLTQ/FERG AND THE DEBTORS.

21. LLTQ and FERG also argue that the only means to determine whether a post-rejection breach can be remedied by money damages requires an inquiry into what breaches

are likely to occur in the future. In other words, LLTQ and FERG claim that they need discovery into discussion between the Debtors and Ramsay regarding potential new ventures to determine how the Debtors could breach the LLTQ Agreement. Such an argument defies common sense and the very arguments LLTQ and FERG assert in their objections.

22. Of course, any "breach" of the LLTQ Agreement that arises out of discussions between the Debtors and Ramsay will necessarily be a breach of the restrictive covenant. LLTQ and FERG have identified no other potential breaches and, as a result, focus almost exclusively on the breach of the restrictive covenant in their objections. Moreover, the Debtors have admitted that they have had postpetition discussions with Ramsay regarding possible new ventures. As a result, LLTQ and FERG know exactly how the Debtors could breach the LLTQ Agreement, and no additional discovery is necessary to determine "what breaches are likely to occur in the future."

23. Pushing this argument a step further, LLTQ and FERG also argue that, "[a]ssuming *arguendo* that such money damages could be calculated in the first instance, certain information is required to even begin the appropriate analysis, *i.e.*, the extent to which the Debtors intend to open new Ramsay Pubs in violation of the agreements, and on what terms." Again though, LLTQ and FERG fail to establish how the requested discovery could be relevant to the "appropriate analysis."

24. *First*, the requested discovery would reveal only the potential terms of any agreement between the Debtors and Ramsay. But those are not the terms that would be relevant for purposes of establishing LLTQ's and FERG's money damages. Instead, the relevant terms are those of the agreement that the Debtors would need to enter into with LLTQ because of the purported restrictive covenant. And the LLTQ Agreement specifically provides that the Debtors

must execute an agreement with LLTQ "on the same terms and conditions as [the LLTQ Agreement]."

25. *Second*, LLTQ and FERG suggest that the "extent to which the Debtors intend to open new Ramsay Pubs" has some bearing on determining the adequacy of money damages. By this logic, whether money damages are adequate would depend on how many new ventures the Debtors intend to open with Ramsay. Conversely, if the Debtors do not currently intend to pursue any new ventures with Ramsay, LLTQ's and FERG's logic would dictate that money damages are sufficient. If that were the case, the availability of money damages would constantly fluctuate based on the state of negotiations between the Debtors and Ramsay. Of course, it does not. Instead, all that should be relevant for LLTQ's and FERG's purposes is the fact that the Debtors *could* enter into a new agreement with Ramsay without entering into a corresponding agreement with LLTQ—and discovery is not necessary to establish that.

C. DISCOVERY REGARDING THE DISCUSSIONS BETWEEN THE DEBTORS AND RAMSAY REGARDING POTENTIAL NEW VENTURES IS NOT PROPORTIONAL TO THE NEEDS OF THE CASE.

26. Rule 26 requires balancing of relevance against burden of providing information and provides that:

> Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit . . . .

Fed. R. Civ. Proc. 26(b)(1). The language of the 2015 amendments to Rule 26 emphasizes the importance of proportionality and relevance in assessing the appropriateness of discovery requests.

27. As discussed above, the information requested by LLTQ and FERG is not relevant to any claim or defense in this matter. Moreover, even if it were relevant, the burden of providing this information far outweighs its potential relevance.

28. To obtain the information they seek, LLTQ and FERG have requested that the Debtors collect electronically stored information from at least 10 additional custodians and run additional searches to attempt to capture "potential future ventures" contemplated by the parties. Though the Debtors have added two additional custodians and run searches resulting in approximately 10,000 additional documents they have agreed to review, LLTQ and FERG appear nevertheless to request even more custodians and searches than the Debtors have proposed in their letter of August 2, 2016. (Mot. § 38). This would almost certainly result in tens of thousands of additional documents based on the searches the Debtors have run to date on the limited number of additional custodians.

29. To date, the Debtors already have produced approximately 10,000 pages of documents and are prepared to produce further documents as set forth in their August 2 letter. But now, a full 14 months after the Debtors' filed their initial rejection motion seeking to reject the LLTQ and FERG Agreements, is not the time to expand this already broad discovery process. Indeed, other more complex issues have already been fully developed in these cases since the Debtors filed their contract rejection motion. The parties must move on to depositions, and then briefing, and then, if necessary, to present evidence to this Court about the Debtors' request to reject the FERG, LLTQ, and Ramsay Agreements and to enter into the New GR Agreements.

30. In sum, discovery above and beyond that to which the Debtors have agreed to attempt to resolve this dispute is not proportional when viewed through the lens of relevance and weighed against what the Debtors have already produced.

CONCLUSION

31. For the foregoing reasons, the Debtors respectfully request that the Court deny LLTQ's and FERG's Motion to Compel.

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Respectfully submitted,

Dated: August 10, 2016
Chicago, Illinois

/s/ Stephen C. Hackney

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Counsel to the Debtors and Debtors in Possession

Exhibit 1

LLTQ Responses and Objections to First Set of Requests for Admission

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., et al.,	)	Case No. 15-01145 (ABG) (Jointly Administered)
Debtors.	)	Hon. A. Benjamin Goldgar

RESPONSE TO DEBTORS' FIRST REQUESTS FOR ADMISSION TO LLTQ ENTERPRISES, LLC

LLTQ ENTERPRISES, LLC ("**LLTQ**"), by and through its undersigned attorneys and pursuant to Federal Rules of Civil Procedure 26 and 36, made applicable to this proceeding by Federal Rules of Bankruptcy Procedure 7026, 7036, and 9014, hereby responds to the First Requests for Admission to LLTQ ENTERPRISES, LLC (the "**RFAs**") propounded by Desert Palace, Inc. ("**Caesars**") and the other above-captioned debtors and debtors-in-possession (collectively along with Caesars, the "**Debtors**") and for its response states as follows.

RESPONSES AND OBUECTIONS TO REQUESTS FOR ADMISSION

1. Section 13.22 of the LLTQ Agreement does not expire at any point.

ANSWER: Admitted, except as may be provided under any applicable law.

2. Section 13.22 of the LLTQ Agreement has an expiration.

ANSWER: Denied, except as may be provided under any applicable law.

3. Section 13.22 of the LLTQ Agreement is ambiguous.

ANSWER: LLTQ objects to this request because it does not seek facts, application of law to its facts, or opinions about either.

4. Section 13.22 of the LLTQ Agreement is not ambiguous.

ANSWER: LLTQ objects to this request because it does not seek facts, application of law to its facts, or opinions about either.

5. Section 13.22 of the LLTQ Agreement applies to all future ventures between Gordon Ramsay and his affiliates and any Caesars entity.

ANSWER: Denied. LLTQ admits that Section 13.22 of the LLTQ Agreement applies to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house).

6. Section 13.22 of the LLTQ Agreement does not apply to all future ventures between Gordon Ramsay and his affiliates and any Caesars entity.

ANSWER: Admitted.

7. Section 13.22 of the LLTQ Agreement is a restrictive covenant.

ANSWER: LLTQ admits that section 13.22 of the LLTQ Agreement contains a restrictive covenant.

8. Section 13.22 of the LLTQ Agreement is not a restrictive covenant.

ANSWER: Denied. LLTQ admits that section 13.22 of the LLTQ Agreement contains a restrictive covenant.

9. The term "Agreement" in Section 13.22 of the LLTQ Agreement refers to the LLTQ Agreement.

ANSWER: LLTQ objects to this RFA as the term "refers to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the second time the term "Agreement" appears in Section 13.22 of the LLTQ Agreement it means the LLTQ Agreement. LLTQ further admits that the parties intended Section 13.22 of the LLTQ Agreement to apply to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), as evidenced and

confirmed by, among other things, the negotiations surrounding the Gordon Ramsay Pub and Grill in Atlantic City, the entry into the FERG Agreement and section 4.2 of the FERG Agreement.

10. The term "Agreement" in Section 13.22 of the LLTQ Agreement does not refer to the LLTQ Agreement.

ANSWER: LLTQ objects to this RFA as the term "refer to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the second time the term "Agreement" appears in Section 13.22 of the LLTQ Agreement it means the LLTQ Agreement. LLTQ further admits that the parties intended that Section 13.22 of the LLTQ Agreement to apply to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), as evidenced and confirmed by, among other things, the negotiations surrounding the Gordon Ramsay Pub and Grill in Atlantic City, the entry into the FERG Agreement and section 4.2 of the FERG Agreement.

11. The term "Agreement" in Section 13.22 of the LLTQ Agreement does not refer to the GR Agreement.

ANSWER: LLTQ objects to this RFA as the term "refer to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the second time the term "Agreement" appears in Section 13.22 of the LLTQ Agreement it does not mean the GR Agreement. LLTQ further admits that the parties intended that Section 13.22 of the LLTQ Agreement to apply to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), as evidenced and confirmed by, among other things, the negotiations surrounding the Gordon Ramsay Pub and Grill in Atlantic City, the entry into the FERG Agreement and section 4.2 of the FERG Agreement.

12. The term "Agreement" in Section 13.22 of the LLTQ Agreement refers to the GR Agreement.

ANSWER: LLTQ objects to this RFA as the term "refers to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the second time the term "Agreement" appears in Section 13.22 of the LLTQ Agreement it does not mean the GR Agreement. LLTQ further admits that the parties intended that Section 13.22 of the LLTQ Agreement to apply to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or

tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), as evidenced and confirmed by, among other things, the negotiations surrounding the Gordon Ramsay Pub and Grill in Atlantic City, the entry into the FERG Agreement and section 4.2 of the FERG Agreement.

13. The term "Agreement" in Section 13.22 of the LLTQ Agreement refers to both the LLTQ Agreement and the GR Agreement.

ANSWER: LLTQ objects to this RFA as the term "refers to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the second time the term "Agreement" appears in Section 13.22 of the LLTQ Agreement it does not mean both the LLTQ Agreement and the GR Agreement. LLTQ further admits that the parties intended that Section 13.22 of the LLTQ Agreement to apply to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), as evidenced and confirmed by, among other things, the negotiations surrounding the Gordon Ramsay Pub and Grill in Atlantic City, the entry into the FERG Agreement and section 4.2 of the FERG Agreement.

14. The term "Agreement" in Section 13.22 of the LLTQ Agreement does not refer to both the LLTQ Agreement and the GR Agreement.

ANSWER: LLTQ objects to this RFA as the term "refer to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the second time the term "Agreement" appears in Section 13.22 of the LLTQ Agreement it does not mean both the LLTQ Agreement and the GR Agreement. LLTQ further admits that the parties intended that Section 13.22 of the LLTQ Agreement to apply to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), as evidenced and confirmed by, among other things, the negotiations surrounding the Gordon Ramsay Pub and Grill in Atlantic City, the entry into the FERG Agreement and section 4.2 of the FERG Agreement.

15. The term "Agreement" in Section 13.22 of the LLTQ Agreement refers to the FERG Agreement.

ANSWER: LLTQ objects to this RFA as the term "refers to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the second time the term "Agreement" appears in Section 13.22 of the LLTQ Agreement it does not mean

the FERG Agreement. LLTQ further admits that the parties intended that Section 13.22 of the LLTQ Agreement to apply to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), as evidenced and confirmed by, among other things, the negotiations surrounding the Gordon Ramsay Pub and Grill in Atlantic City, the entry into the FERG Agreement and section 4.2 of the FERG Agreement.

16. The term "Agreement" in Section 13.22 of the LLTQ Agreement does not refer to the FERG Agreement.

ANSWER: LLTQ objects to this RFA as the term "refer to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the second time the term "Agreement" appears in Section 13.22 of the LLTQ Agreement it does not mean the FERG Agreement. LLTQ further admits that the parties intended that Section 13.22 of the LLTQ Agreement to apply to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), as evidenced and confirmed by, among other things, the negotiations surrounding the Gordon Ramsay Pub and Grill in Atlantic City, the entry into the FERG Agreement and section 4.2 of the FERG Agreement.

17. The term "Agreement" in Section 13.22 of the LLTQ Agreement does not refer to any and all agreements between Caesars and Gordon Ramsay and any of his affiliates.

ANSWER: LLTQ objects to this RFA as the term "refer to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the second time the term "Agreement" appears in Section 13.22 of the LLTQ Agreement it does not mean any and all agreements between Caesars and Gordon Ramsay and any of his affiliates. LLTQ further admits that the parties intended that Section 13.22 of the LLTQ Agreement to apply to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), as evidenced and confirmed by, among other things, the negotiations surrounding the Gordon Ramsay Pub and Grill in Atlantic City, the entry into the FERG Agreement and section 4.2 of the FERG Agreement.

18. The term "Agreement" in Section 13.22 of the LLTQ Agreement refers to all agreements between Caesars and Gordon Ramsay and any of his affiliates.

ANSWER: LLTQ objects to this RFA as the term "refers to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the second time the term "Agreement" appears in Section 13.22 of the LLTQ Agreement it does not mean any and all agreements between Caesars and Gordon Ramsay and any of his affiliates. LLTQ further admits that the parties intended that Section 13.22 of the LLTQ Agreement to apply to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), as evidenced and confirmed by, among other things, the negotiations surrounding the Gordon Ramsay Pub and Grill in Atlantic City, the entry into the FERG Agreement and section 4.2 of the FERG Agreement.

19. The term "Agreement" in Section 13.22 of the LLTQ Agreement refers to all agreements between Caesars and Rowen Seibel and any of his affiliates.

ANSWER: LLTQ objects to this RFA as the term "refers to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the second time the term "Agreement" appears in Section 13.22 of the LLTQ Agreement it does not mean all agreements between Caesars and Rowen Seibel and any of his affiliates. LLTQ further admits that the parties intended that Section 13.22 of the LLTQ Agreement to apply to any venture Caesars or its affiliates pursues with Gordon Ramsay and/or his affiliates which is similar to: (i) the "Restaurant" as defined in the LLTQ Agreement (i.e., any venture generally in the nature of a pub, bar, café or tavern); or (ii) the "Restaurant" as defined in the Paris Agreement (i.e., any venture generally in the nature of a steak restaurant, fine dining steakhouse or chop house), as evidenced and confirmed by, among other things, the negotiations surrounding the Gordon Ramsay Pub and Grill in Atlantic City, the entry into the FERG Agreement and section 4.2 of the FERG Agreement.

20. "Caesars" is defined in the LLTQ Agreement as Desert Palace, Inc.

ANSWER: Admit that in the opening paragraph of the LLTQ Agreement, "Caesars" is defined as Desert Palace, Inc.

21. "Caesars" as defined in the LLTQ Agreement does not refer to all of Caesars' affiliates.

ANSWER: LLTQ objects to this RFA as the term "refer to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that in the opening paragraph of the LLTQ Agreement, "Caesars" is defined as Desert Palace, Inc. but denies that "Caesars" means only Desert Palace, Inc. in each instance the term "Caesars" is used in the LLTQ Agreement.

22. "Caesars" as defined in the LLTQ Agreement refers to all of Caesars' affiliates.

ANSWER: LLTQ objects to this RFA as the term "refers to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that in the opening paragraph of the LLTQ Agreement, "Caesars" is defined as Desert Palace, Inc. but denies that "Caesars" means only Desert Palace, Inc. in each instance the term "Caesars" is used in the LLTQ Agreement.

23. The term "Caesars" in Section 13.22 of the LLTQ Agreement refers to Desert Palace, Inc.

ANSWER: LLTQ objects to this RFA as the term "refers to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the term "Caesars" in Section 13.22 of the LLTQ Agreement includes Desert Palace, Inc. Admit further that the first time the term "Caesars" appears in Section 13.22 of the LLTQ Agreement means Desert Palace, Inc. as well as its "Affiliates" (as defined in the LLTQ Agreement).

24. The term "Caesars" in Section 13.22 of the LLTQ Agreement does not refer to Desert Palace, Inc.

ANSWER: LLTQ objects to this RFA as the term "refer to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the term "Caesars" in Section 13.22 of the LLTQ Agreement includes Desert Palace, Inc. Admit further that the first time the term "Caesars" appears in Section 13.22 of the LLTQ Agreement means Desert Palace, Inc. as well as its "Affiliates" (as defined in the LLTQ Agreement).

25. The term "Caesars" in Section 13.22 if the LLTQ Agreement refers to all of the Caesars' affiliates.

ANSWER: LLTQ objects to this RFA as the term "refers to" is vague and ambiguous. Subject to and without waiving this objection, LLTQ admits that the first time the term "Caesars" appears in Section 13.22 of the LLTQ Agreement means Desert Palace, Inc. and all of its "Affiliates" (as defined in the LLTQ Agreement). LLTQ denies that the