

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	
	)	Chapter 11
)	
CAESARS ENTERTAINMENT OPERATING	)	Case No. 15-01145 (ABG)
COMPANY, INC., <u>et al.</u> , ¹)	
)	
Debtors.	)	(Joint Administration Requested)

**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL
ORDERS (I) AUTHORIZING PAYMENT OF (A) PREPETITION
CLAIMS OF CERTAIN LIEN CLAIMANTS, (B) SECTION 503(B)(9)
CLAIMS, AND (C) FOREIGN VENDOR CLAIMS, (II) APPROVING
PROCEDURES RELATED THERETO, AND (III) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) file this motion (this “Motion”) for entry of interim and final orders (the “Interim Order” and the “Final Order,” respectively), substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, (I) authorizing the Debtors to pay (a) the prepetition claims of certain domestic and foreign common carriers, movers, shippers, truckers, and logistics management companies (“Shippers”), certain warehousemen related thereto (“Warehousemen”), and third-party contractors, repairmen, and manufacturers who may assert mechanics’ and other possessory liens against the Debtors’ property (“Third-Party Contractors,” and together with Shippers and Warehousemen, “Lien Claimants”), (b) claims entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code (the “503(b)(9) Claims” and, the holders of such claims, “503(b)(9) Claimants”), and (c) prepetition claims held by foreign vendors against the

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 chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://cases.primeclerk.com/CEOC>.

Debtors' estates (the "Foreign Vendor Claims" and the "Foreign Vendors," respectively), in each case on the terms described herein, (II) approving and authorizing procedures to address any Lien Claimants, 503(b)(9) Claimants, or Foreign Vendors that repudiate or otherwise refuse to honor contractual obligations to the Debtors, and (III) granting related relief. In support of this Motion, the Debtors respectfully state as follows.

Jurisdiction

1. The United States Bankruptcy Court for the Northern District of Illinois (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105(a), 363, 503(b)(9), 507(a)(8), 1107(a), 1108, and 1129(b)(2)(A) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rule 5005-3(D) of the Local Rules for the United States Bankruptcy Court for the Northern District (the "Local Rules").

Relief Requested

4. The Debtors seek entry of an Interim Order and a Final Order (a) authorizing, but not directing, the Debtors to pay (i) certain prepetition claims of the Lien Claimants (the "Lien Claims") on an interim basis in an amount not to exceed \$8,000,000, and an aggregate amount not to exceed \$10,000,000, (ii) the 503(b)(9) Claims on an interim basis in an amount not to exceed \$20,700,000, and an aggregate amount not to exceed \$30,000,000, and (iii) the Foreign Vendor Claims in an amount not to exceed \$110,000, in each case on the terms described herein, (b) approving and authorizing procedures to address any Lien Claimants, 503(b)(9) Claimants, or Foreign Vendors that repudiate or otherwise refuse to honor contractual

obligations to the Debtors, and (c) granting related relief. In addition, the Debtors request that the Court schedule a final hearing within approximately 25 days of the Petition Date to consider approval of this Motion on a final basis.

Background²

5. Caesars Entertainment Operating Company, Inc. (“CEOC”), together with its Debtor and non-Debtor subsidiaries, provides casino entertainment services and owns, operates, or manages 38 gaming and resort properties in 14 states and five countries, operating primarily under the Caesars[®], Harrahs[®], and Horseshoe[®] brand names. The Debtors represent the largest, majority-owned operating subsidiary of Caesars Entertainment Corporation (“CEC”), a publicly traded company that is the world’s most diversified casino-entertainment provider. CEC, through its ownership and economic interests in CEOC, Caesars Entertainment Resort Properties (“CERP”), and Caesars Growth Partners (“CGP”), owns, operates, or manages 50 casinos in 14 U.S. states and 5 countries, covering 3 million square feet of gaming space, 42,000 hotel rooms, 45 million customer loyalty program participants, and 68,000 employees.

6. The Debtors employ approximately 32,000 people through geographically diverse operations throughout the United States, including seven regional casino properties located in the Midwest (across Illinois, Indiana, Iowa, and Missouri); six regional casino properties located in the Southeast (throughout Louisiana, Mississippi, and North Carolina); four casinos located in Arizona, California, Maryland, and Pennsylvania; four casinos located in Nevada, including the world famous Caesars Palace at the heart of the Las Vegas Strip; and two casinos located in Atlantic City, New Jersey. On a consolidated basis, CEOC and its subsidiaries reported

² The facts and circumstances supporting this Motion are set forth in the *Declaration of Randall S. Eisenberg, Chief Restructuring Officer of Caesars Entertainment Operating Company, Inc., in Support of First Day Pleadings* (the “First Day Declaration”), filed contemporaneously herewith.

approximately \$993 million of Adjusted EBITDA on net revenues of approximately \$5.4 billion for the twelve months ending September 30, 2014.

7. On the date hereof (the “Petition Date”), each of the Debtors filed a petition with this Court under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors requested procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these chapter 11 cases, and no committees have been appointed or designated.

I. Lien Claims.

8. The Debtors derive their operating revenues primarily from owning and operating or managing casinos. The Debtors’ ability to continue operating and managing casinos depends on their prompt receipt of and continued access to certain goods and services used in connection therewith. To that end, the Debtors heavily rely upon Shippers to ship, transport, and deliver equipment and other goods, and Warehousemen to hold temporarily such goods. Further, the Debtors depend upon Third-Party Contractors to repair, maintain, and improve their property and efficiently operate their businesses.

A. Shippers and Warehousemen.

9. Certain of the Debtors contract with Shippers to ship, transport, and deliver equipment, parts, components, and other goods to the Debtors through established national and international distribution networks, as well as a network of third-party warehouses maintained by Warehousemen to store such goods while in transit or otherwise. The services provided by Shippers and Warehousemen are critical to the Debtors’ day-to-day operations. At any given time, there are countless shipments en route to and from various locations. Certain Shippers and

Warehousemen currently possess goods that are vital to the Debtors' operations. For example, the Debtors use certain Shippers and Warehousemen to deliver essential amenities like shampoo and linens, marketing and promotional goods for the benefit of customers, equipment parts and tools, and perishable food items like lobster, shrimp, and king crab. Absent access to these essential items, the Debtors cannot operate their hotels and casinos in the ordinary course. The Debtors carefully monitor their inventory of such goods, move and repurpose supplies within the hotels and casinos where appropriate on a daily basis, and rely upon immediate and uninterrupted access to certain amenities, all of which requires replacement parts, supplies, calibration devices, and other goods critical to continue operating. Any disruption to the Debtors' acquisition of these goods from Shippers or Warehousemen could result in a slow-down or shut-down of certain operations at the Debtors' various facilities adversely impacting the customer experience to the detriment of all parties in interest.

10. The Debtors estimate that approximately \$160,000 on account of claims held by Shippers and/or Warehousemen have accrued as of the Petition Date, approximately \$110,000 of which will become due and owing within the first 21 days of these chapter 11 cases.

11. In light of these circumstances, Shippers and Warehousemen likely will argue that they have possessory liens for transportation or storage costs, and may refuse to deliver or release those goods in their possession until their invoices are paid and their liens redeemed.³ In addition, pursuant to section 363(e) of the Bankruptcy Code, Shippers and Warehousemen, as

³ Under certain state laws, a Shipper or Warehousemen may have a lien on the goods in its possession, which secures the charges or expenses incurred in connection with the transportation or storage of the goods. For example, section 7-307 of the Uniform Commercial Code provides, in pertinent part, that a "carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law." U.C.C. § 7-307 (2013); see also 810 ILCS § 5/7-307 (2014); NEV. REV. STAT. § 104.7307 (same).

bailees, may be entitled to adequate protection for any valid possessory lien. Shippers and Warehousemen may be unwilling to release the goods in their possession to which they may be entitled to liens, thereby releasing alleged security for prepetition claims. Moreover, a Shipper or Warehousemen simply refusing to deliver the Debtors' goods and supplies could severely disrupt the Debtors' operations and impair the customer experience potentially causing a substantial amount of lost revenue and future business. Additionally, the Debtors typically do not operate under long-term contracts with any of their Shippers or Warehousemen, and instead pay daily spot prices for their shipping needs. This practice allows the Debtors to take advantage of the best rates available to ship and store goods; however, it also means that the Shippers and Warehousemen may not have a long-term interest in doing business with the Debtors and may therefore look to exercise their liens for short-term benefit. Accordingly, to maintain access to equipment, parts, components, and other goods that are critical to the continued viability of the Debtors' business operations, the Debtors seek authority to honor accrued and outstanding claims related to prepetition services provided by Shippers and Warehousemen.

B. Third-Party Contractors.

12. The Debtors routinely transact business with a number of Third-Party Contractors that can assert a variety of statutory, common law, or possessory liens against the Debtors and their property if the Debtors fail to pay for certain goods delivered or services rendered. These Third-Party Contractors perform various services for the Debtors, including the installation and repair of certain equipment in the casinos and hotel buildings, maintenance and improvement of the Debtors' real property and facilities, manufacturing component parts necessary for the Debtors' operating equipment, and other repair, renovation, or construction of the facilities and property therein.

13. The Debtors' staffing model places a great deal of importance on the services provided by third-party equipment maintenance providers. The Debtors' hotels and casinos are operated with minimal in-house staffing capable of performing routine maintenance and are supplemented by specialized maintenance and repair services provided by third parties on a regular or ad hoc basis. For example, in the ordinary course of business, the Debtors frequently engage a third-party servicer to perform essential maintenance and repairs to the Debtors' elevators, HVAC and fire protection systems, boilers and chillers, plumbing, and other infrastructure items, all important to the normal operations of properties. Such specialized maintenance and repair ensures the uninterrupted operations of the Debtors' facilities to the benefit of all parties in interest.

14. Additionally, the Debtors regularly evaluate expansion, development, and renovation opportunities. Such projects typically involve the use of carpenters, mechanics, electricians, and other skilled labor. Non-payment of Third-Party Contractors hired in connection therewith could lead to shortages of skilled labor, labor disputes, work stoppages, and disputes with contractors or subcontractors. Any of these contingencies would affect the Debtors' anticipated costs and timetables for such improvement projects. As a result, the cost of a project may vary significantly from initial expectations and the Debtors may have a limited amount of capital resources to fund cost overruns which, in turn, will delay the completion of the project until adequate funding is available.

15. The availability of Third-Party Contractors likewise can present challenges since certain manufacturers and jurisdictions in which the Debtors operate require the Debtors to utilize certain services from particular vendors. If the Debtors do not have continued access to the services from these manufacturer- or government-directed vendors, the Debtors could be

unable to maintain their equipment. For example, certain manufacturers of the Debtors' fire protection systems require that the Debtors use specified specialists to maintain and repair their proprietary equipment. Similarly, only those technicians with the necessary certifications are able to repair the Debtors' elevators in accordance with certain state and local rules and regulations. Failure to utilize such Third-Party Contractors would result in the Debtors either risking non-compliance with local regulations, breaching their contracts, or being unable to maintain certain essential equipment and systems, without which the Debtors would simply be unable to operate their hotels and casinos in the ordinary course. For these reasons, replacing certain Third-Party Contractors would not only be especially difficult in the current market, but also could potentially disrupt or suspend operations at the Debtors' facilities.

16. Although the Debtors generally make timely payments to their vendors, as of the Petition Date, a substantial number of vendors may not have been paid for certain prepetition goods or services. The Debtors estimate that approximately \$9,840,000 on account of claims held by Third-Party Contractors have accrued as of the Petition Date, approximately \$7,890,000 of which will become due and owing within the first 21 days of these chapter 11 cases. Many Third-Party Contractors may have a right to assert and perfect certain liens on account of such unpaid goods or services, including mechanics' or artisans' liens, against the Debtors' relevant equipment or goods, notwithstanding the automatic stay under section 362 of the Bankruptcy Code. In fact, pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting such liens, to the extent consistent with section 546(b) of the Bankruptcy Code, or to the extent the act is accomplished within the 30-day period set forth in section 547(e)(2)(A) of the Bankruptcy Code, is expressly excluded from the automatic stay.⁴ These statutory liens often allow such

⁴ Under section 546(b) of the Bankruptcy Code, a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires

parties to retain possession of the tools or impair title to the tools by filing a security interest until the debtor satisfies the outstanding amounts owed. Arguably, acts to perfect these statutory liens are not subject to the automatic stay under section 362 of the Bankruptcy Code. And unless they are paid for outstanding prepetition amounts, the Debtors believe that Third-Party Contractors may refuse to provide services for, and/or honor obligations under their existing agreements with, the Debtors on a going-forward basis, including essential installation, maintenance, and warranty obligations, or may refuse to release certain goods in their possession.

C. Proposed Treatment of the Lien Claims.

17. The Debtors seek authority to pay and discharge the claims of all Lien Claimants that have given or could give rise to a lien against the materials, goods, and equipment of the Debtors, regardless of whether such Lien Claimants have already perfected their interests. Operationally speaking, the relief requested will prevent the breakdown of the Debtors' supply and maintenance network that the Debtors determine are necessary and appropriate to: (a) obtain release of critical or valuable goods, equipment, or other property that may be subject to liens; (b) maintain a reliable, efficient, and smooth distribution system; and (c) induce critical Lien Claimants to continue to provide and service goods and equipment consistent with historical practices. Notwithstanding the authority requested, the Debtors will not pay a Lien Claim unless the Lien Claimant has perfected or, in the Debtors' judgment, is or may be capable of perfecting one or more liens in respect of such claim irrespective of the automatic stay. Nor shall payment of a Lien Claim be deemed to be a waiver of rights regarding the extent, validity, perfection, or possible avoidance of such liens. The Debtors expect that they will pay only Lien Claims when

rights in such property before the date of perfection." 11 U.S.C. § 546(b)(1)(A). Under section 547(e)(2)(A), a transfer for preference analysis purposes takes place "at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 30 days after, such time."

they believe, in their business judgment, that the benefits to making such payments would exceed the costs, delays, and disruption associated with bringing an action to compel the turnover of such goods. The Debtors' payments on account of the Lien Claims are not expected to exceed \$10,000,000 in the aggregate.

II. 503(b)(9) Claims.

18. Due to the nature of their businesses, the Debtors received a significant amount of goods or other materials in the ordinary course from various vendors—namely, 503(b)(9) Claimants—within the 20 days before the Petition Date. Many of the Debtors' relationships with 503(b)(9) Claimants are not governed by long-term contracts. Rather, the Debtors often obtain essential supplies on an order-by-order basis. As a result, a 503(b)(9) Claimant may refuse to supply new orders without payment of its prepetition claims. The Debtors also believe certain 503(b)(9) Claimants could restrict the Debtors' existing trade terms—or demand payment in cash on delivery—further impairing the Debtors' operations. The Debtors estimate that approximately \$30,000,000 on account of 503(b)(9) Claims have accrued as of the Petition Date, \$20,700,000 of which will become due and owing within the first 21 days of these chapter 11 cases. Accordingly, the Debtors request that they be authorized to pay—in an amount not to exceed \$20,700,000 on an interim basis, and \$30,000,000 on a final basis—undisputed 503(b)(9) Claims.⁵ The Debtors do not seek to accelerate or modify existing payment terms with respect to the 503(b)(9) Claims. Rather, the Debtors will pay 503(b)(9) Claims as they come due and in the ordinary course of business.⁶

⁵ The Debtors do not concede that any claims described in this Motion are conclusively entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code, and the Debtors expressly reserve the right to contest the extent or validity of all such claims.

⁶ Contemporaneously herewith, the Debtors have also sought authority to pay certain prepetition trade claims pursuant to the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Payment of Prepetition Claims of Certain Vendors, (II) Approving and Authorizing Procedures Related Thereto, and (III) Granting*

III. Foreign Vendor Claims.

19. The Debtors rely upon certain Foreign Vendors to supply goods in connection with their business operations. For example, certain Chinese vendors manufacture customized cups, glassware, bags, and other retail items that are used or sold in the Debtors' domestic casinos. Most, if not all, of the Foreign Vendors have little to no connection to the United States, and the Debtors believe that such vendors may discontinue providing goods and/or services absent payment of their Foreign Vendor Claims. The Debtors estimate that, as of the Petition Date, they owe only a *de minimis* amount to Foreign Vendors on account of prepetition claims held against the Debtors' estates—i.e., approximately \$110,000. Accordingly, the Debtors request that they be authorized to pay Foreign Vendor Claims as they come due and in the ordinary course of business.

IV. Vendor Procedures.

20. The Debtors propose conditioning payment of the Lien Claims, 503(b)(9) Claims, and Foreign Vendor Claims upon the applicable vendor's agreement to continue supplying goods and/or services to the Debtors postpetition on normal and customary trade terms, practices and programs that were most favorable to the Debtors and that were in effect within 12 months before the Petition Date, or such other trade terms that are acceptable to the Debtors (the "Customary Trade Terms"). The Debtors reserve the right to adjust normal trade terms with any such vendors on a case-by-case basis in their sole and absolute discretion.

21. The Debtors also request flexibility to deal with Lien Claimants, 503(b)(9) Claimants, or Foreign Vendors that refuse or threaten to refuse performance of their obligations under valid and enforceable contracts absent payment of a claim arising before the Petition Date

Related Relief (the "Critical Vendor Motion"). By this Motion, the Debtors do not seek authority to pay prepetition claims that may be paid pursuant to the Critical Vendor Motion.

(collectively, the “Non-Conforming Vendors”). The Debtors believe that such refusals on the part of Non-Conforming Vendors would violate section 362 of the Bankruptcy Code.⁷ Due to the Debtors’ sensitive operational needs, it is possible that a Lien Claimant, 503(b)(9) Claimant, or Foreign Vendor may attempt to exert leverage against the Debtors by threatening (notwithstanding its existing legal obligations) either to retain or repossess goods belonging to or in the possession of the Debtors or to modify substantially the terms of existing contractual arrangements unless prepetition claims are paid.

22. To respond to such threats on an expedited and provisional basis, and to avoid any disruptions in their operations, the Debtors respectfully request the authority to waive the conditions set forth in this Motion for payment of a Lien Claim, 503(b)(9) Claim, or Foreign Vendor Claim (such action, the “Waiver”) and to conditionally pay the claim of such Non-Conforming Vendor. In the event that the Debtors elect to grant a Waiver to a Non-Conforming Vendor, the Debtors seek the authority to file a notice with the Court, in substantially the form attached hereto as **Exhibit C** (the “Notice of Waiver”), and a proposed Order to Show Cause, in substantially the form attached hereto as **Exhibit D** (the “Order to

⁷ The Bankruptcy Code prohibits a non-debtor counterparty to an executory contract with a debtor, such as a Lien Claimant, from ceasing performance or altering the terms of its obligations. See 11 U.S.C. § 362; see also NLRB v. Bildisco & Bildisco, 465 U.S. 513, 531 (1984) (holding contracts are enforceable against non-debtor, but not debtor); In re FBI Distrib. Corp., 330 F.3d 36, 43 (1st Cir. 2003) (“[A] prepetition executory contract remains in effect and enforceable against the non-debtor party to the contract.”). In re Whitcomb & Keller Mortg. Co., Inc., 715 F.2d 375, 378 (7th Cir. 1983) (holding that data service provider with outstanding prepetition claim could not refuse to perform under terms of enforceable service contract pending assumption or rejection); United States Postal Serv. v. Dewey Freight Sys., Inc., 31 F.3d 620, 624 (8th Cir. 1994) (“[B]efore executory contracts are assumed or rejected under § 365(a), those contracts remain in existence, enforceable by the debtor but not against the debtor.”); In re Nat’l Steel Corp., 316 B.R. 287, 305 (Bankr. N.D. Ill. 2004) (“The non-debtor party must continue to perform under the contract prior to assumption or rejection.”); In re Pittsburgh-Canfield Corp., 283 B.R. 231, 238 (Bankr. N.D. Ohio 2002) (holding that non-debtor party cannot unilaterally elect to withhold performance and must continue to perform upon executory contract prior to its assumption or rejection by debtor); In re El Paso Refinery, L.P., 196 B.R. 58, 71-72 (Bankr. W.D. Tex. 1996) (holding that non-debtor is bound by contract’s terms, and thus, until court has affirmatively authorized rejection, non-debtor party is not free to ignore terms of contract and must continue to perform pursuant to those terms).

Show Cause”), within three (3) business days of payment pursuant to the Waiver. The Debtors further propose to serve any such Notice of Waiver and Order to Show Cause on: (a) the Non-Conforming Vendor; (b) the Office of the United States Trustee for the Northern District of Illinois; (c) counsel for any official committee of unsecured creditors appointed in these cases pursuant to section 1102 of the Bankruptcy Code; (d) counsel to the First Lien Note Group, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Kenneth H. Eckstein, Esq. and Daniel M. Eggermann, Esq.; and (e) those persons who have formally appeared and requested service in this proceeding pursuant to Bankruptcy Rule 2002.

23. At the first regularly-scheduled hearing occurring at least five (5) business days following entry of the Order to Show Cause, the Debtors propose that the Non-Conforming Vendor be required to appear before the Court and demonstrate why it should not be held in violation of sections 362 and/or 365 of the Bankruptcy Code and required to return payments made by the Debtors pursuant to any order approving this Motion. Should the Court determine that, by its conduct, the Non-Conforming Vendor has violated sections 362 and/or 365 of the Bankruptcy Code, the Debtors respectfully request that the Court require the Non-Conforming Vendor to disgorge the payments made by the Debtors pursuant to the Waiver, plus attorneys’ fees and costs, within three (3) business days of entry of the order holding such Non-Conforming Vendor in violation. Furthermore, the Debtors expressly reserve their right to file any motions, adversary complaints, or other pleadings that they determine in their sole and absolute discretion are necessary or appropriate to pursue other remedies, including, without limitation, injunctive relief.

24. Additionally, the Debtors propose to file an Order to Show Cause for any Lien Claimant, 503(b)(9) Claimant, or Foreign Vendor that, despite receiving payment for its respective prepetition claim threatens to withhold performance of its obligations or refuses to perform under one or more executory contracts with the Debtors. As with Non-Conforming Vendors, the Debtors request that any such Lien Claimant, 503(b)(9) Claimant, or Foreign Vendor be required to appear before the Court and demonstrate why such vendor should not be held in violation of sections 362 and 365 of the Bankruptcy Code and required to return payments made by the Debtors pursuant to any order approving this Motion.

Basis for Relief

I. The Court Should Authorize the Payment of Lien Claims.

A. Sections 363(b), 1107(a), and 1108 of the Bankruptcy Code Permit the Payment of Lien Claims.

25. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries “holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners.” In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Consistent with a debtor’s fiduciary duties, courts have authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. Section 363(b)(1) provides that, after notice and a hearing, the trustee “may use, sell, or lease, other than in the ordinary course of business, property of the estate.”

26. The authorization of payment of prepetition obligations under section 363(b) of the Bankruptcy Code should be granted where a sound business purpose exists for doing so. See, e.g., In re Kmart Corp., 359 F.3d 866, 872 (7th Cir. 2004) (recognizing that payment of prepetition claims may be permitted under section 363, but holding that the debtor’s evidentiary

record did not support paying the prepetition claims of vendors); In re UAL Corp., No. 02-48191 (ERW) (Bankr. N.D. Ill. Dec. 11, 2002) (essential trade motion relying upon section 363 is “completely consistent with the Bankruptcy Code” and payments to critical trade vendors have further support when debtor seeks “the extension of credit under section 364 on different than usual terms, terms that might include the payment of a prepetition obligation”); see also In re Tropical Sportswear Int’l Corp., 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) (“[B]ankruptcy courts recognize that section 363 is a source of authority to pay critical trade vendor payments, and section 105 is used to fill in the gaps.”); In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of prepetition wages); Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.), 29 B.R. 391, 397–98 (S.D.N.Y. 1983) (allowing contractor to pay prepetition claims of suppliers who were potential lien claimants under section 363 because the payments were necessary for general contractors to release funds owed to debtors).

27. In In re Kmart Corp., 359 F.3d 866 (7th Cir. 2004), the Seventh Circuit stated that a debtor may be able to use section 363(b)(1) of the Bankruptcy Code to pay prepetition claims “in order to keep ‘critical’ supplies flowing.” Id. at 872. The Seventh Circuit held, however, that such prepetition payments were not proper there because the debtor had not shown that “but for immediate full payment, vendors *would* cease dealing; and that the business will gain enough from continued transactions with the favored vendors to provide some residual benefit to the remaining disfavored creditors, or at least leave them no worse off.” Id. at 868. In analogizing to “cram down” analysis, the Seventh Circuit looked to the benefit or enhancement of the estate that will result from the payment of a prepetition claim, stating that “if the impaired class does at

least as well as it would have under a Chapter 7 liquidation, then it has no legitimate objection and cannot block the reorganization.” Id. at 872–73.

28. Additionally, changes made to the Bankruptcy Rules following the Kmart decision confirm that the Court may authorize the postpetition satisfaction of prepetition claims by reference to these standards. The power is specifically provided for in the exception contained in Bankruptcy Rule 6003(b) which provides, in relevant part, that “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding . . . a motion to pay all or part of a claim that arose before the filing of the petition.” Thus, where the failure to grant any such requested relief would result in immediate and irreparable harm to the Debtor’s estate, the Court may allow the Debtor to pay (prior to the twenty-first day following the Petition Date) all or part of a prepetition claim. See In re Frontier Airlines Holdings, Inc., No. 08-11298 (RDD) (Bankr. S.D.N.Y. Apr. 14, 2008) (finding that the debtor had satisfied the standard of Bankruptcy Rule 6003(b) where “immediate relief [was] necessary to avoid irreparable harm” and ordering that the debtor could make expenditures related to certain prepetition customer obligations). Accordingly, Bankruptcy Rule 6003(b), in addition to providing independent grounds for the authorization of payment of prepetition claims, serves to complement this line of reasoning.

29. Thus, following the Kmart decision, courts in the Seventh Circuit have authorized the payment (or other special treatment) of prepetition obligations to lien claimants in appropriate circumstances. Indeed, where debtors have shown that the payment of prepetition lien claims is critical to the success of their chapter 11 cases, courts in this district and others have authorized payments to lien claimants under similar circumstances. See, e.g., In re Edison Mission Energy, No. 12-49219 (JPC) (Bankr. N.D. Ill. Jan. 17, 2013) (order authorizing debtors

to pay prepetition claims of certain lienholders in an amount not to exceed \$400,000.00 in the aggregate); In re XMH Corp. 1 (f/k/a Hartmarx Corp.), No. 09-02046 (BWB) (Bankr. N.D. Ill. Jan. 26, 2009) (same but in an amount not to exceed \$22.1 million in the aggregate); In re Kimball Hill, Inc., No. 08-10095 (SPS) (Bankr. N.D. Ill. Apr. 25, 2008) (same but in an amount not to exceed \$27.5 million in the aggregate); see also In re Old Carco LLC (f/k/a Chrysler LLC), No. 09-50002 (AJG) (Bankr. S.D.N.Y. May 6, 2009) (same but in an amount not to exceed \$227 million); In re Aleris Int'l, Inc., No. 09-10478 (BLS) (Bankr. D. Del. Mar. 13, 2009) (order authorizing the debtors to pay \$11.3 million in prepetition claims of possessory lienholders, common carrier fees, and administrative fees); In re Pliant Corp., No. 09-10443 (MFW) (Bankr. D. Del. Feb. 12, 2009) (order authorizing the debtors to pay \$4.7 million in prepetition claims of shipping vendors and warehousemen and \$2.4 million in prepetition claims of third-party lien claimants).⁸ In authorizing such payments, those courts generally rely on one of several legal theories rooted in sections 1107(a), 1108, 363(b), and 105(a) of the Bankruptcy Code. Here, the Court should follow the precedent in this district and others and authorize the Debtors to pay the Lien Claims as set forth herein.

30. The Debtors have sound business reasons for seeking authority to pay the Lien Claims. Failure to pay the Lien Claims—or at least some portion of them—will jeopardize the Debtors' operations and reliability. If the Lien Claimants are unwilling to provide the Debtors with goods or services postpetition because of their outstanding prepetition claims, the Debtors' operations would suffer, compromising the value of the Debtors' estates to the detriment of all parties in interest. For example, a lack of essential hotel amenities like linens or inoperable elevator or HVAC systems would substantially impair the Debtors' hotel operations. Similarly,

⁸ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

a lack of key supplies, parts, or service professionals to maintain the Debtors' gaming systems would similarly force an abrupt interruption to the Debtors' casino operations. To avoid these disastrous consequences, the Debtors request authority to exercise their business judgment and pay the Lien Claims in their discretion on the terms and conditions set forth herein.

B. Payment of Lien Claims Merely Alters the Timing of Such Payments.

31. To the extent any Lien Claimants have perfected liens in the Debtors' property, their claims are secured and, prior to obtaining confirmation of a chapter 11 plan, the Debtors are required to pay such claims in cash or allow the claimants to retain the liens securing such property. See 11 U.S.C. § 1129(b)(2)(A). The Debtors do not seek to alter the priority of these claims—much less do so in a manner that prejudices the rights of the Debtors' other creditors. Instead, the Debtors merely seek to alter the timing of undisputed payments that Lien Claimants already are entitled to receive as a matter of law. Rather than satisfying the Lien Claims after confirmation of a plan of reorganization (at which time such payments may be too late to benefit the Debtors' estates), the Debtors seek to pay these claims, in the ordinary course of business, while such payments can still induce the individual Lien Claimant to adhere to favorable trade terms and do business with the Debtors on a going-forward basis.

II. The Court Should Authorize the Payment of 503(b)(9) Claims.

32. Section 503(b)(9) of the Bankruptcy Code provides that “there shall be allowed administrative expenses . . . including . . . the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.” These claims must be paid in full for the Debtors to confirm a chapter 11 plan. See 11 U.S.C. § 1129(a)(9)(A). Consequently, payment of such claims now only provides such parties with what they would be

entitled to receive under a chapter 11 plan. Additionally, all creditors will benefit from the seamless transition of the Debtors' operations into bankruptcy.

33. The Bankruptcy Code does not prohibit a debtor from paying such claims prior to confirmation. As administrative claims incurred in the ordinary course of business, the Debtors believe they may pay such claims in accordance with their business judgment pursuant to section 363(c)(1) of the Bankruptcy Code. See, e.g., In re Dura Auto. Sys. Inc., No. 06-11202 (KJC) (Bankr. D. Del. Oct. 31, 2006) Hr'g Tr. 49:21-23 ("I think arguably the [D]ebtor could pay its 503(b)(9) claimants without court approval."). The timing of such payments also lies squarely within the Court's discretion. See In re Global Home Prods., LLC, No. 06-10340 (KG), 2006 WL 3791955, at *3 (Bankr. D. Del. Dec. 21, 2006) (agreeing with parties that "the timing of the payment of that administrative expense claim is left to the discretion of the Court").

34. The Debtors' ongoing ability to obtain goods as provided herein is key to their restructuring efforts and necessary to preserve the value of their estates. Absent payment of the 503(b)(9) Claims at the outset of these chapter 11 cases—which merely accelerates the timing of payment and not the ultimate treatment of such claims—the Debtors could be denied access to the equipment, parts, and other goods necessary to maintain the Debtors' business operations. Instead of satisfying 503(b)(9) Claims after confirmation of a plan of reorganization (at which time such payments may be too late to benefit the Debtors' estates), the Debtors seek authority to pay some of these claims in the ordinary course of business, while such payments can still induce 503(b)(9) Claimants to adhere to favorable trade terms and do business with the Debtors on a go-forward basis. Failure to honor these claims in the ordinary course of business may also cause the Debtors' vendor base to withhold support for the Debtors during the chapter 11 process. Such vendors could accelerate or eliminate favorable trade terms. The payment of

certain 503(b)(9) Claims is in the best interests of the Debtors' estates because favorable trade terms will prevent foreseeable disruptions to the Debtors' operations, and the Court's time and resources will not be burdened with numerous motions from individual vendors requesting payment on account of their administrative priority expense claims. Needless to say, such costs and distractions could impair the Debtors' ability to stabilize their operations at this critical juncture to the detriment of all stakeholders.

35. Courts in this district have authorized the payment of 503(b)(9) Claims during a chapter 11 case. See, e.g., In re Edison Mission Energy, No. 12-49219 (JPC) (Bankr. N.D. Ill. Jan. 17, 2013) (authorizing payments to 503(b)(9) claimants); In re GEI-RP (f/k/a Giordano's Enters., Inc.), No. 11-06098 (ERW) (Bankr. N.D. Ill. Feb. 17, 2011) (same); In re XMH Corp. 1 (f/k/a Hartmarx Corp.), No. 09-02046 (BWB) (Bankr. N.D. Ill. Jan. 26, 2009) (same); In re Kimball Hill, Inc., No. 08-10095 (SPS) (Bankr. N.D. Ill. Apr. 25, 2008) (same).

III. The Court Should Authorize the Payment of Foreign Vendor Claims.

36. As set forth above, the Court has authority pursuant to sections 363(b), 1107(a), and 1108 of the Bankruptcy Code to authorize the payment of prepetition claims to certain foreign vendors where there is a sound business reason to do so. Courts have properly relied on section 363(b) of the Bankruptcy Code to authorize debtors in possession to pay prepetition claims of foreign creditors in circumstances where, as here, the estate will obtain more value for all parties in interests or avoid more harm by making the prepetition payments. See, e.g., In re Tropical Sportswear Int'l Corp., 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) (authorizing payment of prepetition claims held by foreign creditors where such payments were necessary and appropriate).

37. Here, the Debtors seek authority to pay a *de minimis* amount of Foreign Vendor Claims. Although the scope of the automatic stay set forth in section 362 of the Bankruptcy

Code is universal, the Court is well aware of the difficulty (if not the impossibility in some cases) of enforcing the stay in foreign jurisdictions if a Foreign Vendor against which enforcement is sought has no presence in the United States. Consequently, notwithstanding the commencement of these chapter 11 cases and the imposition of the automatic stay, Foreign Vendors likely would be able to exercise remedies, restrict trade terms, or exert other leverage against the Debtors in an attempt to collect the *de minimis* amount of Foreign Vendor Claims owed to them. The benefits of paying *de minimis* Foreign Vendor Claims substantially outweigh the potential burdens and known risks associated with nonpayment. And to mitigate the risks of going-forward issues with certain Foreign Vendors, the Debtors have proposed to condition payment of the Foreign Vendor Claims on the Foreign Vendor's acceptance of the Customary Trade Terms, as set forth herein.

38. Courts in this district and others have authorized the payment of Foreign Vendor Claims in comparable chapter 11 cases for similar reasons. See, e.g., In re UAL Corp., No. 02-48191 (ERW) (Bankr. N.D. Ill. Dec. 11, 2002) (authorizing payment of prepetition claims held by certain foreign vendors); In re Conexant Sys., Inc., No. 13-10367 (MFW) (Bankr. D. Del. Apr. 18, 2013) (same); In re AMR Corp., No. 11-15463 (SHL) (Bankr. S.D.N.Y. Dec. 22, 2011) (same); In re Lear Corp., No. 09-14326 (ALG) (Bankr. S.D.N.Y. July 31, 2009).

IV. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers.

39. The Debtors have sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the relief requested hereunder. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments,

will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize and direct all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

The Requirements of Bankruptcy Rule 6003 Are Satisfied

40. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” For reasons discussed above, authorizing the payment of certain prepetition Lien Claims and granting the other relief requested herein is integral to the Debtors’ ability to transition their operations into these chapter 11 cases. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. For the reasons discussed herein, the relief requested is necessary in order for the Debtors to operate their business in the ordinary course and preserve the ongoing value of the Debtors’ operations and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

Reservation of Rights

41. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors’ rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their right to contest any claim related to the relief sought herein. Likewise, if the Court grants the relief sought herein, any payment made pursuant to an order of the Court is not intended to be nor should it be construed as an admission

as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

42. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

43. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the Northern District of Illinois; (b) the entities listed on the Consolidated List of Creditors Holding the 50 Largest Unsecured Claims; (c) the administrative agent for the Debtors' credit facility; (d) the indenture trustees for each of the Debtors' secured and unsecured notes; (e) counsel to certain holders of claims against the Debtors regarding each of the foregoing referenced in clauses (c) and (d); (f) the state attorneys general for states in which the Debtors conduct business; (g) the Office of the United States Attorney for the Northern District of Illinois; (h) the Internal Revenue Service; (i) the Securities and Exchange Commission; (j) the gaming commissions for each of the states in which the Debtors operate or manage a casino; (k) counsel to CEC; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

Waiver of Page Limit Restrictions

44. Given the complexity of issues addressed herein, the Debtors respectfully requests that the fifteen page limit established by Local Rule 5005-3(D) be waived for this Motion.

No Prior Request

45. No prior request for the relief sought in this Motion has been made to this or any other court.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WHEREFORE, the Debtors respectfully request entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, granting the relief requested herein and granting such other relief as is just and proper.

Dated: January 15, 2015
Chicago, Illinois

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

James H.M. Sprayregen, P.C.

David R. Seligman, P.C.

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*Proposed Counsel to the Debtors
and Debtors in Possession*

EXHIBIT A

Proposed Interim Order

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	
	)	Chapter 11
)	
CAESARS ENTERTAINMENT OPERATING	)	Case No. 15-01145 (ABG)
COMPANY, INC., <u>et al.</u> , ¹)	
)	
Debtors.	)	(Joint Administration Requested)
)	
	)	Re: Docket No. ___

INTERIM ORDER (I) AUTHORIZING PAYMENT OF (A) PREPETITION CLAIMS OF CERTAIN LIEN CLAIMANTS, (B) SECTION 503(B)(9) CLAIMS, AND (C) FOREIGN VENDOR CLAIMS, (II) APPROVING PROCEDURES RELATED THERETO, AND (III) GRANTING RELATED RELIEF

Upon the motion (the "Motion") of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an interim order (this "Interim Order") (I) authorizing the Debtors to pay (a) certain prepetition claims of the Lien Claimants, (b) the 503(b)(9) Claims, and (c) claims held by Foreign Vendors, (II) approving and authorizing procedures related thereto, (III) granting related relief, and (IV) scheduling a hearing to consider approval of the Motion on a final basis, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having found that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates,

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 chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://cases.primeclerk.com/CEOC>.

their creditors, and other parties in interest; and the Court having found that the Debtors provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2015, at ___:___ [a/p].m., prevailing Central Time. Any objections or responses to entry of the final order must be filed on or before _____, 2015, at 4:00 p.m., prevailing Central Time, and served on the following parties: (a) the Debtors, One Caesars Palace Drive, Las Vegas, Nevada 89109, Attn: Timothy J. Lambert; (b) proposed counsel for the Debtors, Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn: David R. Seligman, P.C. and Jeffrey D. Pawlitz, Esq.; and Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Nicole L. Greenblatt, Esq.; (c) counsel to Caesars Entertainment Corp., Inc., Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Jeffrey D. Saferstein, Esq. and Samuel E. Lovett, Esq.; (d) counsel for the First Lien Note Group, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Kenneth H. Eckstein, Esq. and Daniel M. Eggermann, Esq.; (e) counsel for the First Lien Credit Agreement Group, Stroock & Stroock &

Lavan LLP, 180 Maiden Lane, New York, New York 10038, Attn: Kristopher M. Hansen, Esq. and Jonathan D. Canfield, Esq.; (f) counsel for the indenture trustee under the First Lien Notes Indenture, Katten Muchin Rosenman LLP, 575 Madison Avenue, New York, New York 10022, Attn: Craig A. Barbarosh, Esq. and Karen B. Dine, Esq.; (g) the Office of the United States Trustee for the Northern District of Illinois, 219 South Dearborn Street, Suite 873, Chicago, Illinois 60604; (h) counsel to any statutory committee appointed in these chapter 11 cases; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

3. The Debtors are authorized, but not directed, to pay Lien Claims in the ordinary course of business without further Court order; provided, that with respect to each Lien Claimant's prepetition claim, the Debtors are not authorized to pay a Lien Claimant's prepetition claim unless the Lien Claimant has perfected or, in the Debtors' judgment, is capable of perfecting or may be capable of perfecting in the future, one or more liens in respect of such claim; provided further, that such payment shall not be deemed to be a waiver of rights regarding the extent, validity, perfection, or possible avoidance of the related liens.

4. The Debtors' payment of Lien Claims shall not exceed, in the aggregate, \$8,000,000 during the period from the date of this Interim Order until the date that the Final Order is entered in this matter, unless otherwise ordered by the Court.

5. The Debtors are authorized, but not directed, to pay 503(b)(9) Claims; provided, that such payments shall not exceed, in the aggregate, \$20,700,000 during the period from the date of this Interim Order until the date that the Final Order is entered in this matter, unless otherwise ordered by the Court.

6. The Debtors are authorized, but not directed, to pay Foreign Vendor Claims; provided, that such payments shall not exceed, in the aggregate, \$110,000 during the period from the date of this Interim Order until the date that the Final Order is entered in this matter, unless otherwise ordered by the Court.

7. The Debtors are authorized to condition payment of the Lien Claims, 503(b)(9) Claims, and Foreign Vendor Claims upon the vendor's agreement to continue supplying goods and services to the Debtors postpetition on normal and customary trade terms, practices and programs that were most favorable to the Debtors and that were in effect within 12 months before the Petition Date, or such other trade terms that are acceptable to the Debtors (the "Customary Trade Terms"); provided, that the Debtors reserve the right to adjust normal trade terms with any such Lien Claimant, 503(b)(9) Claimant, or Foreign Vendor according to the facts and circumstances.

8. The Debtors are authorized to waive the conditions of this Interim Order for payment of a claim (the "Waiver") and to conditionally pay the claim of a threatening or non-conforming Lien Claimant, 503(b)(9) Claimant, and/or Foreign Vendor (the "Non-Conforming Vendor"), that, despite receiving payment for its respective prepetition trade claim, threatens to withhold performance of its obligations or refuses to perform under one or more executory contracts with the Debtors. If the Debtors grant a Waiver, the Debtors may file a Notice of Waiver and a proposed Order to Show Cause with the Court within three (3) business days of payment pursuant to the Waiver. The Debtors will serve any Notice of Waiver and Order to Show Cause on: (a) the Non-Conforming Vendor; (b) the Office of the United States Trustee for the Northern District of Illinois; (c) counsel for any official committee of unsecured creditors appointed in these cases pursuant to section 1102 of the Bankruptcy Code; (d) counsel

for the First Lien Note Group, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Kenneth H. Eckstein, Esq. and Daniel M. Eggermann, Esq.; and (e) those persons who have formally appeared and requested service in this proceeding pursuant to Bankruptcy Rule 2002. At the first regularly scheduled hearing occurring at least five (5) business days following entry of the Order to Show Cause by the Court, the Non-Conforming Vendor is required to appear before the Court and should the Court determine that the Non-Conforming Vendor has violated sections 362 and/or 365 of the Bankruptcy Code, the Court will require the Non-Conforming Vendor to disgorge the payments made by the Debtors pursuant to the Waiver, plus attorneys' fees and costs, within three (3) business days of entry of the order holding such Non-Conforming Vendor in violation.

9. The form of Notice of Waiver attached to the Motion as **Exhibit C** and the form of Order to Show Cause attached to the Motion as **Exhibit D** are hereby approved by the Court in all respects for use in accordance with the provisions of the foregoing paragraph.

10. If a Lien Claimant, 503(b)(9) Claimant, or Foreign Vendor that has received a payment pursuant to this Interim Order refuses to perform its postpetition obligations pursuant to an executory contract with one or more of the Debtors in violation of the Bankruptcy Code, the Debtors may file an Order to Show Cause, substantially in the form attached to the Motion as **Exhibit D**, setting forth the Debtors' belief that the applicable Lien Claimant, 503(b)(9) Claimant, or Foreign Vendor is in violation of the Bankruptcy Code through its failure to perform under a prepetition agreement, identifying the name of the applicable Lien Claimant, 503(b)(9) Claimant, or Foreign Vendor, and the identity of the agreement in question, and seeking entry of such Order to Show Cause, which shall require the applicable Lien Claimant, 503(b)(9) Claimant, or Foreign Vendor to appear before the Court to show why it should not be

(a) found to have willfully violated sections 362 and/or 365 of the Bankruptcy Code and (b) required to return any payment made by the Debtors to the applicable Lien Claimant, 503(b)(9) Claimant, or Foreign Vendor pursuant to this Interim Order, plus attorneys' fees and costs.

11. Nothing herein shall prejudice the Debtors' rights to request authority to make additional payments to Lien Claimants, 503(b)(9) Claimants, or Foreign Vendors.

12. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

13. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

14. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored

as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Lien Claims, 503(b)(9) Claims, or Foreign Vendor Claims.

15. Notwithstanding anything to the contrary contained herein, the relief granted in this Interim Order and any payment to be made hereunder shall be subject to the terms of any orders granting the use of cash collateral approved by this Court in these chapter 11 cases (including with respect to any budgets governing or relating to such use), and to the extent there is any inconsistency between the terms of such cash collateral orders and any action taken or proposed to be taken hereunder, the terms of such cash collateral orders shall control.

16. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

17. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

18. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

19. Notwithstanding Local Rule 5005-3(D), the Debtors are authorized to file the Motion in an amount exceeding 15 pages without filing a separate motion for relief.

20. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

21. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Dated: _____, 2015
Chicago, Illinois

United States Bankruptcy Judge

EXHIBIT B

Proposed Final Order

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	
	)	Chapter 11
)	
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., <u>et al.</u> , ¹	)	Case No. 15-01145 (ABG)
)	
Debtors.	)	(Joint Administration Requested)
)	
	)	Re: Docket No. ___

**FINAL ORDER (I) AUTHORIZING PAYMENT OF (A) PREPETITION
CLAIMS OF CERTAIN LIEN CLAIMANTS, (B) SECTION 503(B)(9)
CLAIMS, AND (C) FOREIGN VENDOR CLAIMS, (II) APPROVING
PROCEDURES RELATED THERETO, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the "Motion") of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of a final order (this "Final Order") (I) authorizing the Debtors to pay (a) certain prepetition claims of the Lien Claimants, (b) the 503(b)(9) Claims, and (c) claims held by Foreign Vendors, (II) approving and authorizing procedures related thereto, and (III) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having found that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and the Court having

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 chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://cases.primeclerk.com/CEOC>.

found that the Debtors provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

2. The Debtors are authorized, but not directed, to pay in the ordinary course of business prepetition claims of Lien Claimants without further Court order; provided, that with respect to each Lien Claimant's prepetition claim, the Debtors are not authorized to pay a Lien Claimant's prepetition claim unless the Lien Claimant has perfected or, in the Debtors' judgment, is capable of perfecting or may be capable of perfecting in the future, one or more liens in respect of such claim; provided further, that such payment shall not be deemed to be a waiver of rights regarding the extent, validity, perfection, or possible avoidance of the related liens. The Debtors' payment of Lien Claims shall not exceed, in the aggregate, \$10,000,000 unless otherwise ordered by the Court.

3. The Debtors are authorized, but not directed, to pay 503(b)(9) Claims; provided, that such payments shall not exceed, in the aggregate, \$30,000,000 unless otherwise ordered by the Court.

4. The Debtors are authorized, but not directed, to pay Foreign Vendor Claims; provided, that such payments shall not exceed, in the aggregate, \$110,000 unless otherwise ordered by the Court.

5. The Debtors are authorized to condition payment of the Lien Claims, 503(b)(9) Claims, and Foreign Vendor Claims upon the vendor's agreement to continue supplying goods and services to the Debtors postpetition on normal and customary trade terms, practices and programs that were most favorable to the Debtors and that were in effect within 12 months before the Petition Date, or such other trade terms that are acceptable to the Debtors (the "Customary Trade Terms"); provided, that the Debtors reserve the right to adjust normal trade terms with any such Lien Claimant, 503(b)(9) Claimant, or Foreign Vendor according to the facts and circumstances.

6. The Debtors are authorized to waive the conditions of this Final Order for payment of a claim (the "Waiver") and to conditionally pay the claim of a threatening or non-conforming Lien Claimant, 503(b)(9) Claimant, or Foreign Vendor (the "Non-Conforming Vendor") that, despite receiving payment for its respective prepetition trade claim, threatens to withhold performance of its obligations or refuses to perform under one or more executory contracts with the Debtors. If the Debtors grant a Waiver, the Debtors may file a Notice of Waiver and a proposed Order to Show Cause with the Court within three (3) business days of payment pursuant to the Waiver. The Debtors will serve any Notice of Waiver and Order to Show Cause on: (a) the Non-Conforming Vendor; (b) the Office of the United States Trustee for the Northern District of Illinois; (c) counsel for any official committee of unsecured creditors appointed in these cases pursuant to section 1102 of the Bankruptcy Code; (d) counsel for the First Lien Note Group, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas,

New York, New York 10036, Attn: Kenneth H. Eckstein, Esq. and Daniel M. Eggermann, Esq.; and (e) those persons who have formally appeared and requested service in this proceeding pursuant to Bankruptcy Rule 2002. At the first regularly scheduled hearing occurring at least five (5) business days following entry of the Order to Show Cause by the Court, the Non-Conforming Vendor is required to appear before the Court and should the Court determine that the Non-Conforming Vendor has violated sections 362 and/or 365 of the Bankruptcy Code, the Court will require the Non-Conforming Vendor to disgorge the payments made by the Debtors pursuant to the Waiver, plus attorneys' fees and costs, within three (3) business days of entry of the order holding such Non-Conforming Vendor in violation.

7. The form of Notice of Waiver attached to the Motion as **Exhibit C** and the form of Order to Show Cause attached to the Motion as **Exhibit D** are hereby approved by the Court in all respects for use in accordance with the provisions of the foregoing paragraph.

8. If a Lien Claimant, 503(b)(9) Claimant, or Foreign Vendor that has received a payment pursuant to this Final Order refuses to perform its postpetition obligations pursuant to an executory contract with one or more of the Debtors in violation of the Bankruptcy Code, the Debtors may file an Order to Show Cause, substantially in the form attached to the Motion as **Exhibit D**, setting forth the Debtors' belief that the applicable Lien Claimant, 503(b)(9) Claimant, or Foreign Vendor is in violation of the Bankruptcy Code through its failure to perform under a prepetition agreement, identifying the name of the applicable Lien Claimant, 503(b)(9) Claimant, or Foreign Vendor, and the identity of the agreement in question, and seeking entry of such Order to Show Cause, which shall require the applicable Lien Claimant, 503(b)(9) Claimant, or Foreign Vendor to appear before the Court to show why it should not be (a) found to have willfully violated sections 362 and/or 365 of the Bankruptcy Code and

(b) required to return any payment made by the Debtors to the applicable Lien Claimant, 503(b)(9) Claimant, or Foreign Vendor pursuant to this Final Order, plus attorneys' fees and costs.

9. Nothing herein shall prejudice the Debtors' rights to request authority to make additional payments to Lien Claimants, 503(b)(9) Claimants, or Foreign Vendor.

10. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

11. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

12. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Lien Claims, 503(b)(9) Claims, or Foreign Vendor Claims.

13. Notwithstanding anything to the contrary contained herein, the relief granted in this Final Order and any payment to be made hereunder shall be subject to the terms of any orders granting the use of cash collateral approved by this Court in these chapter 11 cases (including with respect to any budgets governing or relating to such use), and to the extent there is any inconsistency between the terms of such cash collateral orders and any action taken or proposed to be taken hereunder, the terms of such cash collateral orders shall control.

14. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

15. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

16. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

17. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

Dated: _____, 2015
Chicago, Illinois

United States Bankruptcy Judge

EXHIBIT C

Form of Notice of Waiver

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:	)	Chapter 11
)	
CAESARS ENTERTAINMENT OPERATING COMPANY, INC., <u>et al.</u> , ¹	)	Case No. 15-01145 (ABG)
)	
Debtors.	)	(Joint Administration Requested)
)	
	)	Re: Docket No. ___

NOTICE OF WAIVER

PLEASE TAKE NOTICE that on [•], the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing Payment of (A) Prepetition Claims of Certain Lien Claimants, (B) Section 503(b)(9) Claims, and (C) Foreign Vendor Claims, (II) Approving Procedures Related Thereto, and (III) Granting Related Relief* (the “Motion”).²

PLEASE TAKE FURTHER NOTICE that on [•], 2015, the United States Bankruptcy Court for the Northern District of Illinois (the “Bankruptcy Court”) entered an order granting the relief requested in the Motion (the “Order”).

PLEASE TAKE FURTHER NOTICE that, pursuant to the authority granted to the Debtors pursuant to paragraph [•] of the Order, the Debtors have determined to waive the conditions for payment of a prepetition claim (as defined in the Motion) with respect to [•]

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 chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://cases.primeclerk.com/CEOC>.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

(“Non-Conforming Vendor”) and conditionally paid prepetition claims of Non-Conforming Vendor in the amount of \$[•] on [•].

PLEASE TAKE FURTHER NOTICE that contemporaneously herewith, the Debtors are filing a proposed Order to Show Cause requesting that the Bankruptcy Court order Non-Conforming Vendor to appear before the Bankruptcy Court at a hearing to be held at __:__ .m., prevailing Central Time, on [•], before the Honorable [•], United States Bankruptcy Judge, in the Bankruptcy Court, Courtroom [•],[_____] [_____]],[_____]],[_____] (the “Hearing”) and demonstrate why Non-Conforming Vendor should not be held in violation of the automatic stay provisions of 11 U.S.C. § 362.

Dated: _____, 2015
Chicago, Illinois

/s/

James H.M. Sprayregen, P.C.
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- and -

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*Proposed Counsel to the Debtors
and Debtors in Possession*

EXHIBIT D

Form of Order to Show Cause

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	
	)	Chapter 11
)	
CAESARS ENTERTAINMENT OPERATING	)	Case No. 15-01145 (ABG)
COMPANY, INC., <u>et al.</u> , ¹)	
)	
Debtors.	)	(Joint Administration Requested)

ORDER TO SHOW CAUSE

Upon the motion (the "Motion")² of the above-captioned debtors (collectively, the "Debtors") for the entry of an order (this "Order"): (a) authorizing payment in the ordinary course of the Debtors' businesses and in the Debtors' sole discretion of Lien Claims, 503(b)(9) Claims, and Foreign Vendor Claims; and (b) approving a procedure to address those Lien Claimants, 503(b)(9) Claimants, and Foreign Vendors that repudiate or refuse to honor their postpetition contractual obligations to the Debtors [Docket No. [•]]; and upon the Debtors' notice of waiver, dated [•], with respect to [•] ("Claimant"); and it appearing that proper and adequate notice of the Debtors' request for entry of this Order to Show Cause (the "Order to Show Cause") has been given; and upon the First Day Declaration; it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors and other parties in interest; the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Motion and the relief requested therein being a

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 chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://cases.primeclerk.com/CEOC>.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Debtors have complied with the procedures provided in paragraph [•] of the Order in determining to waive the conditions for payment of a prepetition claim (as defined in the Motion) with respect to Claimant and conditionally paying prepetition claims of Claimant in the amount of \$[•] on [•].

2. Claimant is hereby ordered to show cause before the Court at a hearing to be held at [•], before the Honorable [•], United States Bankruptcy Judge, in the Bankruptcy Court, Courtroom [•],[_____] [_____],[_____],[_____] (the “Hearing”) why the Claimant should not be (a) held in violation of sections 362 and/or 365 of the Bankruptcy Code for willfully threatening to withhold essential goods from the Debtors or refusing to perform under one or more contracts between the Debtors and Claimant and (b) required to return any payment made by the Debtors to Claimant pursuant to the Order, plus attorneys’ fees and costs.

3. Service of this Order to Show Cause is to be made by service upon: (a) Claimant; (b) counsel to the Debtors; (c) the Office of the United States Trustee for the Northern District of Illinois; (d) counsel for any official committee of unsecured creditors appointed in these cases pursuant to section 1102 of the Bankruptcy Code; (e) counsel to [•]; and (f) those persons who have formally appeared and requested service in this proceeding pursuant to Bankruptcy Rule 2002. No further notice of the Hearing or of the entry of this Order to Show Cause need be served by the Debtors.

4. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2015
Chicago, Illinois

United States Bankruptcy Judge