

Complaint

IN THE MATTER OF

**ELDORADO RESORTS, INC.,
AND
CAESARS ENTERTAINMENT CORPORATION**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT AND SECTION 7 OF THE CLAYTON ACT

*Docket No. C-4721; File No. 191 0158
Complaint, June 25, 2020 – Decision, August 25, 2020*

This consent order addresses the \$17.3 billion acquisition by Eldorado Resorts, Inc. of certain assets of Caesars Entertainment Corporation. The complaint alleges that the acquisition would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by eliminating meaningful and substantial competition between Eldorado and Caesars for casino services in the South Lake Tahoe, Bossier City-Shreveport and Kansas City areas. The consent order requires the divestiture of the MontBleu and Eldorado Shreveport casinos to Twin River Worldwide Holdings, Inc.

Participants

For the *Commission*: Michelle Fetterman, Jacob Hamburger and Joshua Smith.

For the *Respondents*: Fiona Schaeffer, Milbank LLP; and Ken Schwartz, Skadden, Arps, Slate, Meagher & Flom LLP.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Eldorado Resorts, Inc. (“Eldorado”), a corporation subject to the jurisdiction of the Commission, agreed to acquire Respondent Caesars Entertainment Corporation (“Caesars”), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Eldorado is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nevada with its headquarters and principal place of business located at 100 West Liberty Street, Suite 1150, Reno, Nevada 89501.

2. Respondent Caesars is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its headquarters and principal place of business located at One Caesars Palace Drive, Las Vegas, Nevada 89109.

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II. JURISDICTION

3. Respondents, and each of their relevant operating subsidiaries and parent entities, are, and at all times relevant herein have been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, 15 U.S.C. § 44.

III. THE ACQUISITION

4. Pursuant to an Agreement and Plan of Merger dated June 24, 2019, Eldorado proposes to acquire Caesars in a cash and stock transaction valued at approximately \$17.3 billion (“the Acquisition”).

IV. THE RELEVANT MARKETS

5. The relevant line of commerce in which to analyze the effects of the Acquisition is casino services. Casino services include a combination of slot machine, video poker machine, and table gaming (*i.e.*, gambling) services, and associated amenities that are used to drive gaming revenue, which typically include some combination of hotel accommodations, food and beverages, entertainment, and other amenities.

6. The three relevant geographic markets in which to analyze the effects of the Acquisition are: (1) the South Lake Tahoe area, which approximately corresponds to, the area in and around the cities of Stateline, Nevada, and South Lake Tahoe, California; (2) the Bossier City- Shreveport, Louisiana area, which approximately corresponds to the Bossier City-Shreveport, Louisiana MSA; and (3) the Kansas City area, which approximately corresponds to the Kansas City, Missouri MSA.

V. THE STRUCTURE OF THE MARKETS**A.****Casino Services in the South Lake Tahoe Area**

7. Casino services in the South Lake Tahoe area is a relevant market. The Acquisition will reduce the number of providers of casino services in the South Lake Tahoe area from three to two and result in a highly concentrated market.

B.**Casino Services in the Bossier City-Shreveport Area**

8. Casino services in the Bossier City-Shreveport area is a relevant market. The Acquisition will reduce the number of providers of casino services in the Bossier City-Shreveport area from five to four and result in a highly concentrated market.

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C.

Casino Services in Kansas City Area

10. Casino services in the Kansas City Area is a relevant market. The Acquisition will reduce the number of providers of casino services in the Kansas City area from five to four and result in a highly concentrated market.

VI. ENTRY CONDITIONS

A.

Entry Conditions in the South Lake Tahoe Area

11. Entry into the South Lake Tahoe area market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition. The entry of any additional casino in the South Lake Tahoe area to deter or counteract the anticompetitive effects described in Paragraphs 13-14 is unlikely to occur in a timely manner because of, among other things, the time and cost associated with acquiring the necessary state, county, and city approvals.

B.

Entry Conditions in the Bossier City-Shreveport Area

12. Entry into the Bossier City-Shreveport area market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition. The state of Louisiana allows for the licensing of 15 riverboat casinos across the state, only six of which may be located on the same designated waterway. All 15 licenses in the state have been awarded and six casinos currently operate along the Red River in Bossier City-Shreveport. The relocation of any existing riverboat casino in Louisiana to a designated waterway near Bossier City-Shreveport to deter or counteract the anticompetitive effects described in Paragraphs 13-14 is unlikely to occur in a timely manner because of, among other things, the time and cost associated with acquiring the necessary state, county, and city approvals.

C.

Entry Conditions in the Kansas City Area

13. Entry into the Kansas City area market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition. The state of Missouri allows for the licensing of 13 riverboat casinos across the state, and all 13 licenses have been awarded. The state of Kansas limits the number of permitted casinos in the state to four, and all four licenses have been awarded. The relocation of any existing Missouri riverboat casino to the Missouri side of the Kansas City area to deter or counteract the anticompetitive effects described in Paragraphs 13-14 is unlikely to occur in a timely manner because of, among other things, the time and cost associated with acquiring the necessary state, county, and city approvals.

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VII. EFFECTS OF THE ACQUISITION

14. The Acquisition, if consummated, is likely to substantially lessen competition in the relevant line of commerce in the following ways, among others:

- a. by eliminating direct and substantial competition between Respondents Eldorado and Caesars; and
- b. by increasing the likelihood that Respondent Eldorado will unilaterally exercise market power.

15. The ultimate effect of the Acquisition would be to increase the likelihood that prices of casino services will increase, and that the quality associated with casino services will decrease, in the relevant geographic markets.

VIII. VIOLATIONS CHARGED

16. The agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on the twenty-fifth day of June, 2020, issues its Complaint against said Respondents.

By the Commission, Commissioner Chopra dissenting, Commissioner Slaughter not participating.

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission initiated an investigation of the proposed acquisition by Respondent Eldorado Resorts, Inc. of Respondent Caesars Entertainment Corporation. The Commission's Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondents and the Bureau of Competition executed an Agreement Containing Consent Orders ("Consent Agreement") containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said

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agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission's Rules, and (4) a proposed Decision and Order and Order to Hold Separate and Maintain Assets.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. Now, in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission issues its complaint, makes the following jurisdictional findings and issues the following Order to Hold Separate and Maintain Assets ("Hold Separate Order"):

1. Respondent Eldorado Resorts, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nevada, with its headquarters and principal place of business located at 100 West Liberty Street, Suite 1150, Reno, Nevada 89501.
2. Respondent Caesars Entertainment Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at One Caesars Palace Drive, Las Vegas, Nevada 89109.
3. The Commission has jurisdiction over the subject matter of this proceeding and over Respondent, and the proceeding is in the public interest.

ORDER**I. Definitions**

IT IS HEREBY ORDERED that, as used in this Hold Separate Order, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, shall apply:

- A. "Decision and Order" means:
 1. The proposed Decision and Order contained in the Consent Agreement in this matter, until issuance of a final Decision and Order by the Commission; and
 2. The final Decision and Order, once it is issued by the Commission in this matter.
- B. "Hold Separate Businesses" means the Casino Assets and Casino Business relating to each of the Divested Casinos during the Hold Separate Period.

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- C. “Hold Separate Managers” means the persons designated by Paragraph II.B of this Order to manage each of the Hold Separate Businesses.
- D. “Hold Separate Period” means the period during which each of the Hold Separate Businesses are to be held separate from Respondent Eldorado’s other businesses pursuant to this Hold Separate Order, which shall begin on the Acquisition Date and terminate on the Divestiture Date.
- E. “Orders” means the Decision and Order and this Hold Separate Order.

II. Hold Separate and Asset Maintenance**IT IS FURTHER ORDERED** that:

- A. Until the Casino Assets have been fully transferred to the Acquirer, Respondent Eldorado shall ensure that the Casino Assets and Casino Business are operated and maintained in the ordinary course of business consistent with past practices, and shall:
 - 1. Take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Casino Assets and Casino Business, to minimize any risk of loss of competitive potential of the Casino Assets and Casino Business, to operate the Casino Assets and Casino Business in a manner consistent with applicable laws and regulations, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Casino Assets and Casino Business, except for ordinary wear and tear. Respondent Eldorado shall not sell, transfer, encumber, or otherwise impair the Casino Assets and Casino Business (other than in the manner prescribed in this Order and the Hold Separate Order), nor take any action that lessens the full economic viability, marketability, or competitiveness of the Casino Assets and Casino Business; and
 - 2. Not terminate the operations of the Casino Assets and Casino Business, and shall use best efforts to preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, and others having business relationships with the Casino Assets and Casino Business. Included in the above obligations, Respondent Eldorado shall, without limitation:
 - a. Maintain all operations of the Casino Business in the regular course of business and in accordance with past practices (including regular repair and maintenance efforts), keep the organization and properties of the Casino Business intact, and not reduce operating hours, marketing and promotional efforts, customer programs, entertainment offerings, or other services, amenities, or offerings;

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- b. Make any payment required to be paid under any contract or lease when due, and otherwise satisfy all liabilities and obligations associated with the Casino Business;
- c. Provide the Casino Business with sufficient funds to operate in the ordinary course of business, to meet all capital calls, to perform routine or necessary maintenance, to repair or replace facilities and equipment (including gaming equipment), and to carry on at least at their scheduled pace all capital projects, business plans, development projects, promotional activities, and marketing activities;
- d. Provide such other resources as may be necessary to respond to competition against the Casino Business, prevent diminution in sales of the Casino Business, and maintain the competitive strength of the Casino Business;
- e. Provide support services at levels customarily provided by Respondent Eldorado, and as otherwise may be required;
- f. Maintain all licenses, permits, approvals, authorizations, or certifications related to or necessary for the operation of the Casino Business, and operate the Casino Business in accordance and compliance with all laws and regulatory obligations and requirements (including compliance with requirements or requests of state gaming commissions, compliance with policies and standards concerning safety, health, and environmental regulations, and compliance with obligations regarding the integrity of financial controls);
- g. Maintain the books and records of the Casino Business, including all customer databases, loyalty program databases, records relating to regulatory compliance, and financial records;
- h. Maintain working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with the Casino Business, including:
 - i. Providing employees with reasonable financial incentives to continue in their positions, including a continuation of all employee compensation and benefits offered by Respondent Eldorado, including regularly scheduled or merit raises and bonuses, regularly scheduled vesting of pension benefits, and additional incentives as may be necessary;

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- ii. When vacancies occur, replacing the employees in the regular and ordinary course of business, in accordance with past practice; and
 - iii. Not transferring any employees from the Casino Business to any of Respondent Eldorado's assets or businesses that Respondent Eldorado will not divest;
 - i. Not display any signs or conduct any advertising or promotions (e.g., direct mailing, emails, social media postings) or do anything else visible to the public to indicate that Respondent Eldorado is moving its operations to another location or that indicates any Casino Business will close;
 - j. Not reduce, change, or modify in any material respect the level of marketing, promotional, pricing, or advertising practices, programs, and policies for the Casino Business (including Respondent Eldorado's customer loyalty programs), other than changes in the ordinary course of business consistent with changes made at Respondent Eldorado's other casino businesses that Respondent Eldorado will not divest; and
 - k. Not target, encourage, or convert customers of the Casino Business to become customers of Respondent Eldorado's other casino businesses in the same geographic area that will not be divested, or otherwise take actions to change the composition or makeup of the Casino Customer Database Records or the Retained Customer Database Records; *provided, however*, that nothing in this subparagraph shall prevent Respondent Eldorado from engaging in advertising, marketing, and promotion activities: (i) constituting general marketing and general advertising efforts to Respondent Eldorado's customer loyalty programs in effect at the Divested Casinos, or (ii) in the ordinary course of business and in accordance with past practice.
- B. During the Hold Separate Period, Respondent Eldorado shall operate the Hold Separate Businesses as independent, ongoing, economically viable businesses, and shall:
- 1. Hold the Hold Separate Businesses separate, apart, and independent of Respondent Eldorado's other businesses and assets, and vest the Hold Separate Businesses with all rights, powers, and authority necessary to conduct business in a manner consistent with this Hold Separate Order;
 - 2. Not exercise direction or control over, or influence directly or indirectly, the Hold Separate Businesses or any of their operations, or the Hold

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Separate Managers, except to the extent that Respondent Eldorado must exercise direction and control over the Hold Separate Businesses to assure compliance with the Orders and applicable laws and regulations (including compliance with requirements or requests of state gaming commissions). Respondent Eldorado shall have the right, in consultation with the Monitor and Hold Separate Managers, to defend any legal claims, investigations, or enforcement actions threatened or brought against the Hold Separate Businesses;

3. Provide the Hold Separate Businesses with sufficient financial resources and other resources to carry on operations in the ordinary course of business and to meet Respondent Eldorado's obligations as required by this Hold Separate Order, and continue to offer and provide any and all support services and goods (directly or through third-party contracts) as historically provided in the ordinary course of business, or as may be reasonably requested by the Hold Separate Managers;
4. Not permit:
 - a. Any of its employees, officers, agents, or directors, other than: (i) the Hold Separate Managers; (ii) the Casino Employees; and (iii) Respondent Eldorado's employees providing support services to the Hold Separate Businesses, to be involved in the operations of the Hold Separate Businesses, except to the extent otherwise provided or allowed by this Hold Separate Order; or
 - b. The Hold Separate Managers or any Casino Employees to be involved, in any way, in the operations of Respondent Eldorado's businesses other than the Hold Separate Businesses;
5. Prior to the commencement of the Hold Separate Period, appoint Hold Separate Managers to oversee the operations of the Hold Separate Businesses in a manner consistent with the requirements of this Hold Separate Order. Further to this obligation:
 - a. James Bunyard shall serve as the Hold Separate Manager for Eldorado Shreveport and Timothy K. Tretton shall serve as the Hold Separate Manager for MontBleu;
 - b. Respondent Eldorado shall enter into manager agreements with the Hold Separate Managers that shall become effective prior to the Acquisition Date and that, subject to the approval of the Monitor in consultation with the Commission staff, transfer all rights, powers, and authority necessary to permit the Hold Separate Managers to perform his or her duties and responsibilities pursuant to this Hold Separate Order. The manager agreements shall provide that:

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- i. Each Hold Separate Manager shall be responsible for managing the operations of the respective Hold Separate Business during the Hold Separate Period and shall manage the Hold Separate Business independently of the management of Respondent Eldorado and its other businesses; *provided, however,* the Hold Separate Managers will have the option to continue, consistent with past practices, receiving any support or shared services from Respondent Eldorado, including participating in marketing programs (including player's club programs, promotions and events), and may request, in his/her discretion, additional support services from Respondent Eldorado relating to the operation or marketing of the Hold Separate Businesses;
- ii. The Hold Separate Managers shall make no material changes in the ongoing operations of the Hold Separate Businesses and shall continue the management and operation of the Hold Separate Businesses in the ordinary course of business and consistent with the obligations of Paragraph II.A of this Hold Separate Order;
- iii. Respondent Eldorado shall continue to provide the Hold Separate Managers with all employee benefits, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by law), and shall provide the Hold Separate Managers with additional financial incentives as may be necessary to undertake these positions and to assure the continued viability, marketability, and competitiveness of the Hold Separate Businesses and achieve the purposes of this Hold Separate Order;
- iv. The Hold Separate Managers shall serve, without bond or other security, at the cost and expense of Respondent Eldorado, on such reasonable and customary terms as the Commission may set, and commensurate with the person's experience and responsibilities. The Hold Separate Managers shall have the authority to employ, at Respondent Eldorado's expense, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Manager's duties and responsibilities;
- v. Respondent Eldorado shall indemnify the Hold Separate Managers and hold them harmless against any losses,

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claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Managers' duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct;

- vi. The Hold Separate Managers shall be in regular contact with the Monitor. Nothing shall preclude the Hold Separate Managers from contacting or communicating directly with the Monitor or the staff of the Commission, either at the request of the staff of the Commission or the Monitor, or in the discretion of the Hold Separate Managers;
- vii. The Hold Separate Managers shall have the authority to staff the Hold Separate Businesses with sufficient employees to maintain the viability and competitiveness of the Hold Separate Businesses, including:
 - a) Replacing any departing or departed employee with a person who has similar experience and expertise, or determining not to replace such departing or departed employee;
 - b) Removing any employee who ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order and replacing such employee with another person of similar experience or skills;
 - c) Ensuring that Casino Employees are not involved in the operations of Respondent Eldorado's other businesses and that Respondent Eldorado's other employees are not involved in the operation of the Hold Separate Businesses, unless allowed or required under the Orders;
 - d) Ensuring that the Casino Employees are provided with reasonable financial incentives to continue in their positions, including a continuation of all employee compensation and benefits offered by Respondent Eldorado, including regularly scheduled or merit raises and bonuses, regularly

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scheduled vesting of pension benefits, and additional incentives as may be necessary;

- viii. Respondent Eldorado shall cooperate with the Hold Separate Managers and take no action to interfere with or impede the ability of the Hold Separate Managers to perform his or her duties and responsibilities consistent with the terms of this Hold Separate Order; and
 - ix. If a Hold Separate Manager resigns, or if the Monitor, in consultation with Commission staff, determines that a Hold Separate Manager has ceased to act or failed to act diligently, then a substitute Hold Separate Manager shall be appointed. Respondent Eldorado shall, in consultation with the Monitor and Commission staff, select and appoint a substitute Hold Separate Manager as soon as is practicable, and enter into an agreement with the substitute Hold Separate Manager on similar terms, and grant the substitute Hold Separate Manager the same authority and responsibilities of the original Hold Separate Manager pursuant to this Paragraph; and
6. Prior to the Acquisition Date, implement written procedures, subject to the approval of the Monitor, regarding the operational independence of the Hold Separate Businesses, the independent management of the Hold Separate Businesses by the Hold Separate Managers, and restrictions on access and use of Confidential Business Information, consistent with the provisions of the Orders. Respondent Eldorado shall provide notice of those procedures to the Casino Employees, Respondent Eldorado's employees that may provide support services to the Hold Separate Businesses, and to Respondent Eldorado's employees who have responsibilities associated with businesses that compete with the Hold Separate Businesses.

Provided, however, that Respondent Eldorado and the Hold Separate Managers may operate the Casino Assets and Casino Business subject to restrictions imposed or recommended by any federal, state, or local governmental agency having jurisdiction over the property (including the Centers for Disease Control and Prevention) or otherwise as reasonable or necessary to respond to or mitigate any pandemic or public health emergency caused by COVID-19 and shall operate the Casino Assets and Casino Business in a manner consistent with Respondent Eldorado's efforts at its casino properties located in the same jurisdictions that are not being divested.

Provided further, however, that Respondent Eldorado and the Hold Separate Managers may take actions that the Acquirer has requested or agreed-to in writing and that has been approved in advance by the Monitor (in consultation with Commission staff), in all cases

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to facilitate the Acquirer's acquisition of the Casino Assets and consistent with the purposes of this Order and the Hold Separate Order.

III. Transition Assistance**IT IS FURTHER ORDERED** that:

- A. Until Respondent Eldorado has transferred all Business Information (including the Casino Customer Database Records) included in the Casino Assets, Respondent Eldorado shall ensure that the Business Information is maintained and updated in the ordinary course of business, and shall provide the Acquirer with access to records and information (wherever located and however stored) that Respondent Eldorado has not yet transferred to the Acquirer, and to employees who possess the records and information.
- B. Respondent Eldorado shall provide the Acquirer with Transition Assistance sufficient to (i) efficiently transfer the Casino Assets to the Acquirer and (ii) assist the Acquirer in operating the Casino Assets and Casino Business in all material respects to the manner in which Respondent Eldorado did so prior to the Acquisition, and shall:
 - 1. Provide Transition Assistance:
 - a. As set forth in a Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the Divestiture Date); and
 - b. At the price set forth in a Divestiture Agreement, or if no price is set forth, at Direct Cost; and
 - c. For a period sufficient to meet the requirements of this Paragraph IV.B, which shall be, at the option of the Acquirer, for up to 12 months after the Divestiture Date; and
 - 2. Allow the Acquirer to terminate, in whole or part, any Transition Assistance provisions of the Divestiture Agreements upon commercially reasonable notice and without cost or penalty.
 - 3. Not cease providing Transition Assistance due to a breach by the Acquirer of a Divestiture Agreement, and shall not limit any damages (including indirect, special, and consequential damages) that the Acquirer would be entitled to receive in the event of Respondent Eldorado's breach of a Divestiture Agreement.

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IV. Employees**IT IS FURTHER ORDERED** that:

- A. Until 1 year after the Divestiture Date, Respondent Eldorado shall cooperate with and assist the Acquirer of the Casino Assets to identify, evaluate independently, offer employment to, and hire the Casino Employees, with such cooperation and assistance including at least the following:
1. Not later than 5 business days after a request from the Acquirer, Respondent Eldorado shall, to the extent permitted by applicable law:
 - a. Provide to the Acquirer a list of all Casino Employees, and provide Employee Information for each; and
 - b. Allow the Acquirer a reasonable opportunity to interview any Casino Employees;
 2. Within 10 days after a request from the Acquirer, Respondent Eldorado shall provide an opportunity for the Acquirer to:
 - a. Meet, outside the presence or hearing of any employee or agent of Respondent Eldorado, with any of the Casino Employees; and
 - b. Make offers of employment to any of the Casino Employees;
 3. Respondent Eldorado shall not directly or indirectly interfere with the Acquirer's offer of employment to any one or more of the Casino Employees, not offer any incentive to Casino Employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any Casino Employees by a proposed Acquirer;
 4. Respondent Eldorado shall remove any impediments within its control that may deter any Casino Employees from accepting employment with the Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondent Eldorado that may affect the ability or incentive of those individuals to be employed by the Acquirer, and shall not make any counteroffer to any Casino Employees who receive an offer of employment from the Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondent Eldorado to terminate the employment of any employee or prevent Respondent Eldorado from continuing the employment of any employee;
 5. Respondent Eldorado shall continue to provide Casinos Employees with all employee compensation and benefits offered by Respondent Eldorado

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in the ordinary course of business, including regularly scheduled or merit raises and bonuses, and regularly scheduled vesting of pension benefits;

6. Respondent Eldorado shall provide reasonable financial incentives for Casino Employees to continue in their positions and, as may be necessary, to facilitate the employment of such Casino Employees by the Acquirer; and
7. For a period of 1 year from the Divestiture Date, Respondent Eldorado shall allow the Acquirer to identify additional employees that should be designated as Key Employees and subject to the provisions of this Paragraph ("Additional Key Employees"); *provided, however*, that the number of Additional Key Employees so designated may be limited to 35 employees.

B. Respondent Eldorado Shall:

1. For a period of 1 year from the Divestiture Date, not directly or indirectly solicit or induce, or attempt to solicit or induce, any Casino Employee who has accepted an offer of employment with, or who is employed by, an Acquirer to terminate his or her employment relationship with the Acquirer; and
2. For a period of 2 years from the Divestiture Date, not directly or indirectly solicit or induce, or attempt to solicit or induce, any Key Employee who has accepted an offer of employment with, or who is employed by, the Acquirer to terminate his or her employment relationship with the Acquirer.

Provided, however, Respondent Eldorado may:

1. Hire an employee whose employment has been terminated by the Acquirer;
2. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at one or more of the Casino Employees; or
3. Hire an employee who has applied for employment with Respondent Eldorado, as long as such application was not solicited or induced in violation of this Paragraph.

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V. Additional Obligations**IT IS FURTHER ORDERED** that:

- A. Respondent, in consultation with the Acquirer, and for the purposes of ensuring an orderly transition, shall:
1. Develop and implement a detailed transition plan to ensure that the commencement of the operation of the Casino Assets and Casino Business by the Acquirer is not delayed or impaired;
 2. Designate employees of Respondent Eldorado knowledgeable about the operation of the Casino Assets and Casino Business, who will be responsible for communicating directly with the Acquirer and the Monitor (if one has been appointed) for the purposes of assisting in the transfer to the Acquirer of the Casino Assets and Casino Business;
 3. Allow the Acquirer reasonable access to all Business Information related to the Casino Assets and Casino Business, and to employees who possess or are able to locate such information; and
 4. Establish projected timelines for accomplishing all tasks necessary to effect the transition to the Acquirer in an efficient and timely manner.
- B. Respondent Eldorado shall:
1. Not provide, disclose, or otherwise make available any Confidential Business Information to any person, except as required or permitted by the Orders or a Divestiture Agreement;
 2. Not use any Confidential Business Information for any reason or purpose, other than as required or permitted by the Orders a Divestiture Agreement;
 3. To the extent practicable, maintain Confidential Business Information separate and apart from other data or information of Respondent Eldorado; and
 4. Following the Acquisition Date, ensure that Confidential Business Information is not shared with Respondent Eldorado's employees working at or supporting any of Respondent Eldorado's retained casino business, other than employees who had access to the information prior to the Acquisition Date in the normal course of business and subject to the provisions of Paragraphs V.B.1 and V.B.2 above.

Provided, however, that nothing in this Paragraph V.B shall prevent Respondent Eldorado from retaining and using any tangible or intangible property (including

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Retained Customer Database Records) that Respondent Eldorado retains the right to use pursuant to the Orders, provided further that to the extent that the use of such property involves disclosure of Confidential Business Information to another person, Respondent Eldorado shall require such person to maintain the confidentiality of such Confidential Business Information under terms no less restrictive than Respondent Eldorado's obligations under the Orders.

- C. Respondent Eldorado shall implement measures to protect against the storage, distribution, and use of Confidential Business Information that is not permitted by this Order, the Hold Separate Order, or any Divestiture Agreement. These measures shall include, but not be limited to, restrictions placed on access by persons to information available or stored on any of Respondent Eldorado's computers or computer networks.
- D. Not later than 10 days after the Acquisition Date, and no less than annually for 3 years after each Divestiture Date, Respondent Eldorado shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information by Respondent Eldorado's personnel to all of its officers, directors, employees, or agents who may have possession or access to the Confidential Business Information. Respondent Eldorado shall require such personnel to acknowledge in writing or electronically their receipt and understanding of these written instructions, and shall maintain custody of these written instructions and acknowledgments for inspection upon request by the Commission.
- E. Notwithstanding this paragraph, Respondent Eldorado may use Confidential Business Information:
 - 1. For the purpose of performing its obligations under the Orders or the Divestiture Agreements; and
 - 2. To ensure compliance with legal and regulatory requirements, or as necessary to defend against legal claims.

VI. Monitor**IT IS FURTHER ORDERED** that:

- A. Jeffrey L. Gilbert shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondent Eldorado, and attached as Appendix IV ("Monitor Agreement") and Non-Public Appendix IV-1 ("Monitor Compensation"). The Monitor is appointed to monitor Respondent Eldorado's compliance with the terms of Orders and the Divestiture Agreements.
- B. No later than 1 day after this Hold Separate Order is issued by the Commission, Respondent Eldorado shall, pursuant to the Monitor Agreement, confer on the

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Monitor all rights, powers, and authorities necessary to permit the Monitor to monitor Respondent Eldorado's compliance with the terms of the Orders and the Divestiture Agreements, in a manner consistent with the purposes of the Orders.

- C. Respondent Eldorado shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
1. The Monitor shall have the power and authority to monitor Respondent Eldorado's compliance with the divestiture and other requirements of the Orders and the Divestiture Agreements, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Orders;
 2. The Monitor shall act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of Respondent Eldorado or of the Commission;
 3. The Monitor shall serve until 30 days after Respondent Eldorado has satisfied all obligations under Paragraphs II and IV of the Decision and Order or until such other time as may be determined by the Commission or its staff; and
 4. The Monitor shall report in writing to the Commission concerning Respondent Eldorado's compliance with the Orders: (i) 30 days after this Hold Separate Order is issued, and every 30 days thereafter until Respondent Eldorado has satisfied all of its obligations under Paragraphs II and IV of the Decision and Order; and (ii) at any other time requested by the staff of the Commission.
- D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent Eldorado's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondent Eldorado's compliance with its obligations under the Orders and the Divestiture Agreements.
- E. Respondent Eldorado shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent Eldorado's compliance with the Orders and the Divestiture Agreements.
- F. The Monitor shall serve, without bond or other security, at the Respondent Eldorado's expense, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the Respondent Eldorado's expense, such consultants, accountants, attorneys, and

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other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.

- G. Respondent Eldorado shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph VI.G, the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph VI.F of this Hold Separate Order.
- H. Respondent Eldorado shall report to the Monitor in accordance with the requirements of the Orders, and as otherwise provided in the Monitor Agreement approved by the Commission. The Monitor shall evaluate the reports submitted by Respondent Eldorado with respect to the performance of Respondent Eldorado's obligations under the Orders.
- I. Respondent Eldorado may require the Monitor and each of the Monitor's consultants, accountants, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- J. The Commission may require, among other things, the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor who will have the same authority and responsibilities as the original Monitor pursuant to this Paragraph VI:
 - 1. The Commission shall select the substitute Monitor, subject to Respondent Eldorado's consent, which consent shall not be unreasonably withheld. If Respondent Eldorado has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within 10 days after the notice by the staff of the Commission to Respondent Eldorado of the identity of any proposed Monitor, Respondent Eldorado shall be deemed to have consented to the selection of the proposed Monitor.
 - 2. Not later than 10 days after the appointment of the substitute Monitor, Respondent Eldorado shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all rights and powers

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necessary to permit the Monitor to monitor Respondent Eldorado's compliance with the relevant terms of the Orders and the Divestiture Agreements in a manner consistent with the purposes of the Orders and in consultation with the Commission.

- L. The Commission may, on its own initiative or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to ensure compliance with the requirements of the Orders.
- M. The Monitor appointed pursuant to this Hold Separate Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

VII. Divestiture Trustee**IT IS FURTHER ORDERED** that:

- A. If Respondent Eldorado has not fully complied with the divestiture and other obligations as required by Paragraphs II.A and II.B of the Decision and Order, the Commission may appoint one or more Divestiture Trustees to divest any or all of the Casino Assets, enter agreements for Transition Assistance, and perform Respondent Eldorado's other obligations in a manner that satisfies the requirements of the Decision and Order. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent Eldorado shall consent to the appointment of a Divestiture Trustee in such action to divest the required assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph VII shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including one or more court-appointed Divestiture Trustees, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent Eldorado to comply with the Orders.
- B. The Commission may select one or more Divestiture Trustees, subject to Respondent Eldorado's consent, which consent shall not be unreasonably withheld. The Commission may appoint one Divestiture Trustee or separate Divestiture Trustees to divest one or more of the Casino Assets, enter agreements for Transition Assistance, and perform Respondent Eldorado's other obligations in a manner that satisfies the requirements of the Decision and Order. Any Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent Eldorado has not opposed, in writing, and stated in writing its reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondent Eldorado of the identity of any proposed Divestiture Trustee, Respondent

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Eldorado shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

1. Not later than 10 days after the appointment of a Divestiture Trustee, Respondent Eldorado shall execute a trust agreement for any divestitures required by this Order that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effectuate the divestitures required by, and satisfy the additional obligations imposed by the Decision and Order. Any failure by Respondent Eldorado to comply with a trust agreement approved by the Commission shall be a violation of the Orders.
2. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph VII.B, Respondent Eldorado shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - a. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effectuate the divestitures required by, and satisfy the additional obligations (including obligations to provide Transition Assistance) imposed by, the Decision and Order.
 - b. The Divestiture Trustee shall have 1 year after the date the Commission approves each trust agreement described herein to accomplish the divestitures required by this Order, which shall be subject to the prior approval of the Commission. If, however, at the end of the 1 year period, the Divestiture Trustee has submitted a plan to satisfy the divestiture obligations of the Decision and Order or believes that such obligations can be achieved within a reasonable time, the period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, that the Commission may extend the period only 2 times.
 - c. Subject to any demonstrated legally recognized privilege, any Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be divested by the Decision and Order and to any other relevant information, as the Divestiture Trustee may request. Respondent Eldorado shall develop such financial or other information as any Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent Eldorado shall take no action to interfere with or impede any Divestiture Trustee's accomplishment of the divestiture. Any delays caused by

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Respondent Eldorado shall extend the time under this Paragraph VII for a time period equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

- d. Any Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent Eldorado's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestitures shall be made in the manner that receives the prior approval of the Commission and to an Acquirer that receives the prior approval of the Commission as required by the Decision and Order; *provided, however*, if any Divestiture Trustee receives bona fide offers for any asset to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent Eldorado from among those approved by the Commission; *provided further, however*, that Respondent Eldorado shall select such entity within 5 days after receiving notification of the Commission's approval.
- e. Any Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent Eldorado, on such reasonable and customary terms and conditions as the Commission or a court may set. Any Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent Eldorado, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. Any Divestiture Trustee shall account for all monies derived from the divestitures and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent Eldorado, and the Divestiture Trustee's power shall be terminated. The compensation of any Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by the Decision and Order.
- f. Respondent Eldorado shall indemnify any Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including

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all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

- g. Any Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by the Decision and Order.
 - h. Any Divestiture Trustee shall report in writing to Respondent Eldorado and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestitures.
 - i. Respondent Eldorado may require any Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- C. If the Commission determines that any Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph VII, and who will have the same authority and responsibilities of the original Divestiture Trustee pursuant to this Paragraph VII.
- D. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of any Divestiture Trustee, issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by the Decision and Order.

VIII. Compliance Reports

- A. Respondent Eldorado shall:
 - 1. Notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date and the Divestiture Date no later than 5 days after the occurrence of each; and
 - 2. Submit the complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the Divestiture Date.

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- B. Respondent Eldorado shall file verified written reports (“compliance reports”) in accordance with the following:
1. Within 30 days after this Hold Separate Order is issued, and every 30 days thereafter until this Hold Separate Order terminates, and otherwise as the Commission or its staff may request, Respondent Eldorado shall submit to the Commission interim compliance reports;
 2. Each compliance report shall set forth in detail the manner and form in which Respondent Eldorado intends to comply, is complying, and has complied with each provision of the Orders. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondent Eldorado is in compliance with the Orders. Conclusory statements that Respondent Eldorado has complied with its obligations under the Orders are insufficient. Respondent Eldorado shall include in its reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondent Eldorado has implemented or plans to implement to ensure that it has complied or will comply with each paragraph of the Orders, a description of all substantive contacts or negotiations for the divestitures and the identities of all parties contacted, and such supporting materials shall be retained and produced later if needed.
 3. Respondent Eldorado shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondent Eldorado shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov. In addition, Respondent Eldorado shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

Provided, however, that, after the Decision and Order in this matter is issued as final, the reports due under this Hold Separate Order may be consolidated with, and submitted to the Commission on the same timing as, the compliance reports required to be submitted by Respondent Eldorado pursuant to the Decision and Order.

IX. Change in Respondent

IT IS FURTHER ORDERED that Respondent Eldorado shall notify the Commission at least 30 days prior to:

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- A. The dissolution of Eldorado Resorts, Inc.;
- B. The acquisition, merger, or consolidation of Eldorado Resorts, Inc.; or
- C. Any other change in Respondent Eldorado, including assignment and the creation, sale, or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order

X. Access

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with the Orders, and subject to any legally recognized privilege, upon written request and 5 days' notice to Respondent Eldorado, made to its principal place of business as identified in the Orders, registered office of its United States subsidiary, or its headquarters office, Respondent Eldorado shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Respondent Eldorado and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of Respondent Eldorado related to compliance with the Orders, which copying services shall be provided by Respondent Eldorado at the request of the authorized representative of the Commission and at the expense of Respondent Eldorado; and
- B. To interview officers, directors, or employees of Respondent Eldorado, who may have counsel present, regarding such matters.

XI. Purpose

IT IS FURTHER ORDERED that the purpose of this Hold Separate Order is to: (1) maintain and preserve the Casino Assets and Casino Business as independent, viable, marketable, competitive, and ongoing businesses until the divestitures required by the Decision and Order are achieved; (2) prevent interim harm to competition pending the divestitures and other relief required by the Decision and Order; and (3) remedy the harm to competition the Commission alleged in its Complaint and ensure the Acquirer can operate the Casino Assets and Casino Business in a manner equivalent in all material respects to the manner in which Respondent Eldorado operated the Casino Assets and Casino Business prior to the Acquisition.

XII. Term

IT IS FURTHER ORDERED that this Hold Separate Order shall terminate at the earlier of:

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- A. 3 business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. With respect to each of the Divested Casinos, the day after Respondent Eldorado (or a Divestiture Trustee) completes the divestiture of the Casino Assets required by Paragraph II of the Decision and Order;

Provided, however, that if at the time such divestitures have been completed, the Decision and Order in this matter is not yet final, then this Hold Separate Order shall terminate three business days after the Decision and Order becomes final;

Provided, further, however, that if the Commission, pursuant to Paragraph II.B of the Decision and Order, requires the Respondent to rescind any of the divestitures to Twin River, then, upon rescission, the requirements of this Hold Separate Order shall again be in effect until the day after Respondent Eldorado's (or a Divestiture Trustee's) completion of the divestiture of the assets required by the Decision and Order.

By the Commission, Commissioner Chopra dissenting, Commissioner Slaughter not participating.

DECISION

The Federal Trade Commission initiated an investigation of the proposed acquisition by Respondent Eldorado Resorts, Inc. of Respondent Caesars Entertainment Corporation. The Commission's Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondents and the Bureau of Competition executed an Agreement Containing Consent Orders ("Consent Agreement") containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission's Rules, and (4) a proposed Decision and Order and Order to Hold Separate and Maintain Assets.

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The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Hold Separate and Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings, and issues the following Decision and Order (“Order”):

1. Respondent Eldorado Resorts, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nevada, with its headquarters and principal place of business located at 100 West Liberty Street, Suite 1150, Reno, Nevada 89501.
2. Respondent Caesars Entertainment Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business located at One Caesars Palace Drive, Las Vegas, Nevada 89109.
3. The Commission has jurisdiction over the subject matter of this proceeding and over Respondents, and the proceeding is in the public interest.

ORDER**I. Definitions**

IT IS HEREBY ORDERED that, as used in this Order, the following definitions apply:

- A. “Eldorado” means Eldorado Resorts, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Eldorado Resorts, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Eldorado includes Caesars after the Acquisition Date.
- B. “Caesars” means Caesars Entertainment Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Caesars Entertainment Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Twin River” means Twin River Worldwide Holdings, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 100

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Twin River Road, Lincoln, Rhode Island 02865, and including subsidiaries and affiliates controlled by Twin River Worldwide Holdings, Inc.

- D. “Commission” means the Federal Trade Commission.
- E. “Acquirer(s)” means Twin River or any other person that the Commission approves to acquire the Casino Assets pursuant to this Decision and Order.
- F. “Acquisition” means the proposed acquisition described in the Agreement and Plan of Merger dated as of June 24, 2019, by and among Caesars Entertainment Corporation, Eldorado Resorts, Inc., and Colt Merger Sub, Inc.
- G. “Acquisition Date” means the date Respondents consummate the Acquisition.
- H. “Business Information” means books, records, data, and information, wherever located and however stored, including documents, written information, graphic materials, and data and information in electronic format, along with the knowledge of employees, contractors, and representatives. Business Information includes records and information relating to sales, marketing, advertising, personnel, accounting, business strategy, information technology systems, customers (including player databases, customer lists, win/loss data, spending data, player reinvestment information, and the Casino Customer Database Records), suppliers, research and development, and operations. For clarity, Business Information includes Respondents’ rights and control over information and material provided to any other person.
- I. “Casino Assets” means all of Respondent Eldorado’s rights, title, and interests in and to all tangible and intangible assets relating to each of the Divested Casinos and the Casino Business, including but not limited to the following:
 - 1. Real property interests, whether owned or leased, together with all easements, rights of way, buildings, improvements, facilities, parking lots, and appurtenances thereto, and including any options to acquire or lease additional properties for future use or development;
 - 2. Tangible personal property, including but not limited to fixtures and equipment (including gaming equipment), machinery, vehicles, supplies, and inventories;
 - 3. Intellectual Property;
 - 4. Contracts and Governmental Authorizations;
 - 5. Business Information;
 - 6. Casino Customer Database Records;

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7. All issued and outstanding equity interests in and to Eldorado Casino Shreveport Joint Venture and Columbia Properties Tahoe, LLC;
8. Trademarks and brand names used at MontBleu; and
9. All other assets available to, or reserved for use by, each Divested Casino, wherever located, including but not limited to off-site properties, facilities, or assets used or available to each Divested Casino for event hosting, parking, storage, office space, billboards, advertising, and employee training or administration.
10. *Provided, however*, the Casino Assets need not include:
 - a. Retained Intellectual Property;
 - b. Trademarks and brand names used at the Eldorado Shreveport;
 - c. Respondent Corporate Contracts;
 - d. Retained Customer Database Records;
 - e. Enterprise software that Respondent Eldorado also uses to manage and account for businesses other than the Divested Casinos;
 - f. Respondent Eldorado's corporate headquarters;
 - g. The portion of any books and records that contains information about any other business that Respondent Eldorado is not required to divest and from which Confidential Business Information has been redacted; and
 - h. Any original record that Respondent Eldorado has a legal, contractual, or fiduciary obligation to retain so long as Respondent Eldorado provides the Acquirer with a copy of the record and access to the original materials if a copy is insufficient for regulatory or evidentiary purposes.
- J. "Casino Business" means the business of marketing, selling, and providing casino gaming and related amenity services to customers at the Divested Casinos, including gaming services such as slots, table gaming, poker, video poker, pari-mutuel wagering, video gaming terminals, sports betting, online gaming, and all other gaming services lawfully permitted in the jurisdiction where the casino is located (whether actually offered or which could be offered there), and amenities services such as hotel, restaurant, spa, retail, food, beverage, alcohol, entertainment, meetings and conferences, and other services typically provided by Respondent Eldorado at its casino facilities.

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- K. “Casino Customer Database Records” means Respondent Eldorado’s data and information, wherever located and however stored, provided to the Acquirer in a format and in a manner acceptable to that Acquirer, relating to customers that visit a Divested Casino or activities by customers at a Divested Casino, including:
1. Each person’s personal and demographic information;
 2. Each person’s transactional history at a Divested Casino and/or each person’s patronage, purchase, and use of casino or amenity services during visits to a Divested Casino, including the dates, game types, average wager, times, length of visits, and hotel room reservation details (*i.e.*, room types, dates, booked rates for future reservations, payment method);
 3. All data and information relating to the value spent or lost by a customer during his/her visits to a Divested Casino or value as a consumer of casino services at a Divested Casino, including information such as each customer’s total actual win or loss, total theoretical win or loss value, average daily worth (ADW), average daily theoretical value (ADT or THEO), or other metrics related to customer’s transaction history or purchases of casino or amenity services at a Divested Casino;
 4. Each person’s tier status in Respondent Eldorado’s customer loyalty programs in effect at the Divested Casino and total point balance on or immediately prior to the Divestiture Date, based on each person’s visits to all of Respondent Eldorado’s casinos participating in the shared customer loyalty program in the aggregate (including both Divested Casinos and any other casino participating in the same shared customer loyalty program as of the Divestiture Date);
 5. The identity of excluded or disassociated customers, along with any related information (including whether the exclusion or disassociation is voluntary or involuntary);
 6. Incentives or offers extended (whether or not redeemed) to customers of any Divested Casino, including special event invitations, gaming incentives (including downloadable slot credits, table games match play, free bet offers and other similar incentives); and
 7. Any other data and information customarily used by Respondent Eldorado at, or on behalf of, a Divested Casino to market or sell casino or amenity services to customers, including, but not limited to, survey data, Twitter accounts, and Facebook accounts.

Provided, however, Casino Customer Database Records does not include a copy of the Retained Customer Database Records.

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- L. “Casino Employees” means:
1. With respect to each Divested Casino, each of Respondent Eldorado’s employees, agents, and contractors who were employed at, or under contract with, the Divested Casino at any time between June 24, 2019 and the Divestiture Date; and
 2. Key Employees.
- M. “Confidential Business Information” means any non-public Business Information relating to the Casino Assets and:
1. Obtained by Respondent Eldorado prior to the Divestiture Date; or
 2. Obtained by Respondent Eldorado after the Divestiture Date, in the course of performing Respondent’s obligations under this Order or any Divestiture Agreement (including any agreement to provide Transition Assistance).
- Provided, however,* that Confidential Business Information shall not include:
1. Information that is in the public domain when received by Respondent Eldorado;
 2. Information that is not in the public domain when received by Respondent Eldorado and thereafter becomes public through no act or failure to act by Respondent Eldorado;
 3. Information that Respondent Eldorado develops or obtains independently, without violating any applicable law or this Order, and without breaching any confidentiality obligation with respect to the information; and
 4. Information that becomes known to Respondent Eldorado from a third party not in breach of applicable law or a confidentiality obligation with respect to the information.
- N. “Contract” means a contract, lease, sub-lease, license, and other agreement or obligation of any kind.
- O. “Direct Costs” means cost not to exceed the cost of labor, material, travel, and other expenditures to the extent the costs are directly incurred to provide Transition Assistance. “Direct Cost” to a Commission-approved Acquirer for its use of any of Respondent’s employees’ labor shall not exceed the then-current average wage rate for such employee, including benefits.

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- P. “Divested Casino(s)” means, collectively or individually, Eldorado Shreveport and MontBleu.
- Q. “Divestiture Agreement(s)” means:
1. The Equity Purchase Agreement by and among Respondent Eldorado and Twin River, dated as of April 24, 2020, and all amendments, exhibits, attachments, ancillary agreements (including agreements to provide Transition Assistance), and schedules thereto, attached to this Order as Non-Public Appendix I; or
 2. Any agreement between Respondent Eldorado (or a Divestiture Trustee appointed pursuant to Paragraph IX of this Order) and an Acquirer to purchase some or all of the Casino Assets, and all amendments, exhibits, attachments, ancillary agreements (including any agreements to provide Transition Assistance), and schedules thereto.
- R. “Divestiture Date” means the date on which Respondent Eldorado (or a Divestiture Trustee appointed pursuant to Paragraph IX of this Order) consummates the divestitures required by Paragraph II of this Order.
- S. “Eldorado Shreveport” means Respondent Eldorado’s Resort Casino Shreveport located at 451 Clyde Fant Parkway, Shreveport, Louisiana, and including all casino, hotel, restaurants, alcoholic beverage services, retail space, and other businesses, operations, properties, and services related thereto.
- T. “Employee Information” means, for each Casino Employee, information prepared by Respondent Eldorado summarizing the employment history of each employee and including, as requested by the Acquirer and to the extent permitted by applicable law:
1. Name, job title or position, date of hire, and effective service date;
 2. Specific description of the employee’s responsibilities;
 3. The base salary or current wages;
 4. Most recent bonus paid, aggregate annual compensation for Respondent Eldorado’s last fiscal year, and current target or guaranteed bonus, if any;
 5. Employment status (*i.e.*, active or on leave or disability; full-time or part-time);
 6. Written performance reviews for the past three years, if any;

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7. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 8. At the Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee.
- U. "Governmental Authorization" means any license, registration, approval, or permit issued, granted, given or otherwise made available by or under the authority of any governmental agency or pursuant to any legal requirement, and all applications and documents related thereto, related to or necessary for the operation of the Casino Business (and any other lawful business) at each of the Divested Casinos.
- V. "Hold Separate Order" means the Order to Hold Separate and Maintain Assets issued by the Commission in this matter.
- W. "Intellectual Property" means intellectual property of any kind including patents, patent applications, mask works, trademarks, service marks, copyrights, trade dress, commercial names, internet websites, internet domain names, inventions, discoveries, written and unwritten know-how, trade secrets and proprietary information.
- X. "Isle of Capri Casino" means Respondent Eldorado's Isle of Capri Casino Kansas City located at 1800 East Front Street, Kansas City, Missouri, and including all casino, restaurants, alcoholic beverage services, retail space, and other businesses, operations, properties, and services related thereto.
- Y. "Key Employees" means:
1. The individuals listed on Non-Public Appendix II to this Order; and
 2. Any additional employees designated by the Acquirer pursuant to Paragraph V.A.7 of this Order.
- Z. "Monitor" means the person approved by the Commission to serve as a monitor pursuant to this Order and the Hold Separate Order issued by the Commission.
- AA. "MontBleu" means Respondent Eldorado's MontBleu Resort Casino & Spa, located at 55 Highway 50, Stateline, Nevada, and including all casino, hotel, restaurants, alcoholic beverage services, retail space, and other businesses, operations, properties, and services related thereto.

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BB. “Respondent Corporate Contracts” means:

1. Contracts that are used solely by, or relate exclusively to, assets owned by Respondent Eldorado other than the Divested Casinos; or
2. Contracts that are used by or relate to multiple casinos owned by Respondent Eldorado, including but not limited to the Divested Casinos, and identified on Non-Public Appendix III to this Order.

CC. “Retained Customer Database Records” means the data and information, wherever located and however stored, relating to customers that visit Respondent Eldorado’s properties other than the Divested Casinos or activities by customers at properties other than the Divested Casinos, including:

1. Each person’s personal and demographic information;
2. Each person’s transactional history at Respondent Eldorado’s casinos or hotels other than a Divested Casino and/or each person’s patronage, purchase, and use of casino or amenity services during visits to Respondent Eldorado’s casinos or hotels other than a Divested Casino, including the dates, game types, average wager, times, length of visits, and hotel room reservation details (*i.e.*, room types, dates, booked rates for future reservations, payment method);
3. All data and information relating to the value spent or lost by customers during their visits to Respondent Eldorado’s casinos or hotels other than a Divested Casino or value as a consumer of casino services at Respondent Eldorado’s casinos or hotels other than a Divested Casino, including information such as each customer’s total actual win or loss, total theoretical win or loss value, average daily worth (ADW), average daily theoretical value (ADT or THEO), or other metrics related to customer’s transaction history or purchases of casino and amenity services at Respondent Eldorado’s properties other than a Divested Casino;
4. With respect to customer loyalty programs that are shared between a Divested Casino and Respondent Eldorado’s other casinos, each person’s tier status and total point balance in the shared program on or immediately prior to the Divestiture Date based on each person’s visits to all of Respondent Eldorado’s casinos participating in the shared customer loyalty program in the aggregate (including the Divested Casino and any other casino participating in the shared customer loyalty program as of the Divestiture Date);
5. The identity of excluded and disassociated customers, along with any related information (including whether the exclusion or disassociation is voluntary or involuntary);

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6. Incentives or offers from casinos other than the Divested Casinos (whether or not redeemed) extended to customers, including special event invitations, gaming incentives (including downloadable slot credits, table games match play, free bet offers and other similar incentives); and
 7. Any other data and information customarily used by Respondent Eldorado at, or on behalf of, a casino or hotel other than a Divested Casino to market or sell casino or amenity services to customers, including, but not limited to, survey data, Twitter accounts, and Facebook accounts.
- DD. “Retained Intellectual Property” means Intellectual Property owned or licensed by Respondent Eldorado that, prior to the Acquisition, was used by Respondent Eldorado solely or primarily for purposes other than the Divested Casinos.
- EE. “Transition Assistance” means services, assistance, cooperation, training and access to personnel regarding the transfer and operation of the Casino Assets and Casino Business, including, but not limited to, accounting and finance; audits; human resources (employee benefits, payroll, etc.); information technology and systems; databases; technology transfer; operating permits and licenses; regulatory compliance; maintenance and repair of facilities and equipment; supply chain; maintaining or establishing relationships with vendors or other third-parties having business relations with the Divested Casinos; room reservation systems; food services; sales, marketing, and promotion (including customer service and customer transfer logistics); use of Retained Intellectual Property (including brand names and trademarks) for transitional purposes; and other logistical, operational, and administrative support.

II. Divestiture

IT IS FURTHER ORDERED that:

- A. By the earlier of (i) 12 months from the Acquisition Date, or (ii) 30 days from the date Twin River receives all necessary Governmental Authorizations to acquire the Casino Assets, Respondent Eldorado shall divest, absolutely and in good faith, the Casino Assets to Twin River pursuant to the Divestiture Agreements.
- B. If Respondent Eldorado has divested the Casino Assets pursuant to Paragraph II.A before the Commission issues this Order, and the Commission subsequently notifies Respondent Eldorado that:
 1. Twin River is not an acceptable Acquirer of any of the Casino Assets, then Respondent Eldorado shall, within 5 days of notification by the Commission, rescind the respective Divestiture Agreements, and shall instead divest the respective Casino Assets as an ongoing business, absolutely and in good faith, at no minimum price, to an Acquirer and in a manner that receives the prior approval of the Commission, within 12

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months of the date the Commission notifies Respondent Eldorado that Twin River is not an acceptable Acquirer; or

2. The manner of a divestiture was not acceptable, then the Commission may direct Respondent Eldorado (or appoint a Divestiture Trustee pursuant to Paragraph IX of this Order) to modify the divestiture in the manner the Commission determines is necessary to satisfy the requirements of this Order, which may include entering into additional agreements or arrangements, or modifying a Divestiture Agreement.
- C. No later than the Divestiture Date, Respondent Eldorado shall obtain at its sole expense all Governmental Authorizations and third-party consents necessary to divest the Casino Assets and for the Acquirer to operate the Divested Casinos in a manner that achieves the purposes of this Order. Respondent Eldorado shall assist the Acquirer in obtaining the transfer from Respondent Eldorado, or issuance to the Acquirer, of any Governmental Authorization, permit, license, asset, or right that Respondent Eldorado has no legal right to divest or transfer to the Acquirer.
 - D. Respondent Eldorado shall deliver the Business Information (including the Casino Customer Database Records) to the Acquirer as soon as practicable in a manner that ensures its completeness, accuracy, and usefulness and meets the reasonable requirements of the Acquirer.
 - E. Respondent Eldorado shall cooperate with and assist any person with whom Respondent Eldorado engages in negotiations to acquire the Casino Assets in a due diligence investigation, including by providing sufficient and timely access to all information customarily provided as part of a due diligence process.
 - F. If Respondent Eldorado has not consummated the sale of the Isle of Capri Casino to Twin River by 60 days after the Acquisition Date, then the Commission may, at any time thereafter and in its sole discretion, require Respondent Eldorado to divest the Casino Assets relating to the Isle of Capri Casino as an ongoing business, absolutely and in good faith, and at no minimum price, to an Acquirer and in a manner that receives the prior approval of the Commission. If the Commission notifies Respondent Eldorado of the requirement to divest the Casino Assets relating to the Isle of Capri Casino, the Isle of Capri Casino shall become a Divested Casino for purposes of this Order and the Hold Separate Order as of that date (“the Isle of Capri Casino Notification Date”), and Respondent Eldorado shall complete the divestiture of the relevant Casino Assets within 12 months of the Isle of Capri Casino Notification Date.

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III. Divestiture Agreements

IT IS FURTHER ORDERED that:

- A. The Divestiture Agreements shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondent Eldorado to comply with the terms of the Divestiture Agreements shall constitute a violation of this Order; *provided, however*, that the Divestiture Agreements shall not limit, or be construed to limit, the terms of this Order. To the extent any provision in the Divestiture Agreements varies from or conflicts with any provision in this Order such that Respondent Eldorado cannot fully comply with both, Respondent Eldorado shall comply with this Order.
- B. Respondent Eldorado shall not modify or amend the terms of the Divestiture Agreements after the Commission issues this Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

IV. Transition Assistance

IT IS FURTHER ORDERED that:

- A. Until Respondent Eldorado has transferred all Business Information (including the Casino Customer Database Records) included in the Casino Assets, Respondent Eldorado shall ensure that the Business Information is maintained and updated in the ordinary course of business and shall provide the Acquirer with access to records and information (wherever located and however stored) that Respondent Eldorado has not yet transferred to the Acquirer, and to employees who possess the records and information.
- B. Respondent Eldorado shall provide the Acquirer with Transition Assistance sufficient to (i) efficiently transfer the Casino Assets to the Acquirer and (ii) assist the Acquirer in operating the Casino Assets and Casino Business in all material respects to the manner in which Respondent Eldorado did so prior to the Acquisition, and shall:
 - 1. Provide Transition Assistance:
 - a. As set forth in a Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the Divestiture Date); and
 - b. At the price set forth in a Divestiture Agreement, or if no price is set forth, at Direct Cost; and

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- c. For a period sufficient to meet the requirements of this Paragraph IV.B, which shall be, at the option of the Acquirer, for up to 12 months after the Divestiture Date; and
2. Allow the Acquirer to terminate, in whole or part, any Transition Assistance provisions of the Divestiture Agreements upon commercially reasonable notice and without cost or penalty.
3. Not cease providing Transition Assistance due to a breach by the Acquirer of a Divestiture Agreement, and shall not limit any damages (including indirect, special, and consequential damages) that the Acquirer would be entitled to receive in the event of Respondent Eldorado's breach of a Divestiture Agreement.

V. Employees**IT IS FURTHER ORDERED** that:

- A. Until 1 year after the Divestiture Date, Respondent Eldorado shall cooperate with and assist the Acquirer of the Casino Assets to identify, evaluate independently, offer employment to, and hire the Casino Employees, with such cooperation and assistance including at least the following:
 1. Not later than 5 business days after a request from the Acquirer, Respondent Eldorado shall, to the extent permitted by applicable law:
 - a. Provide to the Acquirer a list of all Casino Employees, and provide Employee Information for each; and
 - b. Allow the Acquirer a reasonable opportunity to interview any Casino Employees;
 2. Within 10 days after a request from the Acquirer, Respondent Eldorado shall provide an opportunity for the Acquirer to:
 - a. Meet, outside the presence or hearing of any employee or agent of Respondent Eldorado, with any of the Casino Employees; and
 - b. Make offers of employment to any of the Casino Employees;
 3. Respondent Eldorado shall not directly or indirectly interfere with the Acquirer's offer of employment to any one or more of the Casino Employees, not offer any incentive to Casino Employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any Casino Employees by the Acquirer;

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4. Respondent Eldorado shall remove any impediments within its control that may deter any Casino Employees from accepting employment with the Acquirer including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondent Eldorado that may affect the ability or incentive of those individuals to be employed by the Acquirer, and shall not make any counteroffer to any Casino Employees who receive an offer of employment from the Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondent Eldorado to terminate the employment of any employee or prevent Respondent Eldorado from continuing the employment of any employee;
5. Respondent Eldorado shall continue to provide Casino Employees with all employee compensation and benefits offered by Respondent Eldorado in the ordinary course of business, including regularly scheduled or merit raises and bonuses, and regularly scheduled vesting of pension benefits;
6. Respondent Eldorado shall provide reasonable financial incentives for Casino Employees to continue in their positions and, as may be necessary, to facilitate the employment of such Casino Employees by the Acquirer; and
7. For a period of 1 year from the Divestiture Date, Respondent Eldorado shall allow the Acquirer to identify additional employees that should be designated as Key Employees and subject to the provisions of this Paragraph ("Additional Key Employees"); *provided, however*, that the number of Additional Key Employees so designated may be limited to 35 employees.

B. Respondent Eldorado shall:

1. For a period of 1 year from the Divestiture Date, not directly or indirectly solicit or induce, or attempt to solicit or induce, any Casino Employee who has accepted an offer of employment with, or who is employed by, the Acquirer to terminate his or her employment relationship with the Acquirer; and
2. For a period of 2 years from the Divestiture Date, not directly or indirectly solicit or induce, or attempt to solicit or induce, any Key Employee who has accepted an offer of employment with, or who is employed by, the Acquirer to terminate his or her employment relationship with the Acquirer.

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Provided, however, Respondent Eldorado may:

1. Hire a Casino Employee or Key Employee whose employment has ceased or been terminated by the Acquirer;
2. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at one or more of the Casino Employees; or
3. Hire an employee who has applied for employment with Respondent Eldorado, as long as such application was not solicited or induced in violation of this Paragraph.

VI. Asset Maintenance

IT IS FURTHER ORDERED that until the Casino Assets have been fully transferred to the Acquirer, Respondent Eldorado shall, subject to its obligations under the Hold Separate Order, ensure that the Casino Assets and Casino Business are operated and maintained in the ordinary course of business consistent with past practices, and shall:

- A. Take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Casino Assets and Casino Business, to minimize any risk of loss of competitive potential of the Casino Assets and Casino Business, to operate the Casino Assets and Casino Business in a manner consistent with applicable laws and regulations, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Casino Assets and Casino Business, except for ordinary wear and tear. Respondent Eldorado shall not sell, transfer, encumber, or otherwise impair the Casino Assets and Casino Business (other than in the manner prescribed in this Order and the Hold Separate Order), nor take any action that lessens the full economic viability, marketability, or competitiveness of the Casino Assets and Casino Business; and
- B. Not terminate the operations of the Casino Assets and Casino Business, and shall use best efforts to preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, and others having business relationships with the Casino Assets and Casino Business.

Provided, however, that Respondent Eldorado may operate the Casino Assets and Casino Business subject to restrictions imposed or recommended by any federal, state, or local governmental agency having jurisdiction over the property (including the Centers for Disease Control and Prevention) or otherwise as reasonable or necessary to respond to or mitigate any pandemic or public health emergency caused by COVID-19 and shall operate the Casino Assets and Casino Business in a manner consistent with Respondent Eldorado's efforts at its casino properties located in the same jurisdictions that are not being divested.

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Provided further, however, that Respondent Eldorado may take actions that the Acquirer has requested or agreed-to in writing and that has been approved in advance by the Monitor (in consultation with Commission staff), in all cases to facilitate the Acquirer's acquisition of the Casino Assets and consistent with the purposes of this Order and the Hold Separate Order.

VII. Additional Obligations**IT IS FURTHER ORDERED** that:

- A. Respondent Eldorado, in consultation with the Acquirer, and for the purposes of ensuring an orderly transition, shall:
 - 1. Develop and implement a detailed transition plan to ensure that the commencement of the operation of the Casino Assets and Casino Business by the Acquirer is not delayed or impaired;
 - 2. Designate employees of Respondent Eldorado knowledgeable about the operation of the Casino Assets and Casino Business, who will be responsible for communicating directly with the Acquirer and the Monitor (if one has been appointed) for the purposes of assisting in the transfer to the Acquirer of the Casino Assets and Casino Business;
 - 3. Allow the Acquirer reasonable access to all Business Information related to the Casino Assets and Casino Business, and to employees who possess or are able to locate such information; and
 - 4. Establish projected timelines for accomplishing all tasks necessary to effect the transition to the Acquirer in an efficient and timely manner.
- B. Respondent Eldorado shall:
 - 1. Not provide, disclose, or otherwise make available any Confidential Business Information to any person, except as required or permitted by this Order, the Hold Separate Order, or a Divestiture Agreement;
 - 2. Not use any Confidential Business Information for any reason or purpose, other than as required or permitted by this Order, the Hold Separate Order, or a Divestiture Agreement;
 - 3. To the extent practicable, maintain Confidential Business Information separate and apart from other data or information of Respondent Eldorado; and
 - 4. Following the Acquisition Date, ensure that Confidential Business Information is not shared with Respondent Eldorado's employees working at or supporting any of Respondent Eldorado's retained casino business,

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other than employees who had access to the information prior to the Acquisition Date in the normal course of business and subject to the provisions of Paragraphs VII.B.1 and VII.B.2 above.

Provided, however, that nothing in this Paragraph VII.B shall prevent Respondent Eldorado from retaining and using any tangible or intangible property (including Retained Customer Database Records) that Respondent Eldorado retains the right to use pursuant to this Order and the Hold Separate Order, provided further that to the extent that the use of such property involves disclosure of Confidential Business Information to another person, Respondent Eldorado shall require such person to maintain the confidentiality of such Confidential Business Information under terms no less restrictive than Respondent Eldorado's obligations under this Order and the Hold Separate Order.

- C. Respondent Eldorado shall implement measures to protect against the storage, distribution, and use of Confidential Business Information that is not permitted by this Order, the Hold Separate Order, or any Divestiture Agreement. These measures shall include, but not be limited to, restrictions placed on access by persons to information available or stored on any of Respondent Eldorado's computers or computer networks.
- D. Not later than 10 days after the Acquisition Date, and no less than annually for 3 years after each Divestiture Date, Respondent Eldorado shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information by Respondent Eldorado's personnel to all of its officers, directors, employees, or agents who may have possession or access to the Confidential Business Information. Respondent Eldorado shall require such personnel to acknowledge in writing or electronically their receipt and understanding of these written instructions, and shall maintain custody of these written instructions and acknowledgments for inspection upon request by the Commission.
- E. Notwithstanding this paragraph, Respondent Eldorado may use Confidential Business Information:
 - 1. For the purpose of performing its obligations under this Order, the Hold Separate Order, or the Divestiture Agreements; and
 - 2. To ensure compliance with legal and regulatory requirements, or as necessary to defend against legal claims.

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VIII. Monitor**IT IS FURTHER ORDERED** that:

- A. Jeffrey L. Gilbert shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondent Eldorado, and attached as Appendix IV (“Monitor Agreement”) and Non-Public Appendix IV-1 (“Monitor Compensation”). The Monitor is appointed to monitor Respondent Eldorado’s compliance with the terms of this Order, the Hold Separate Order, and the Divestiture Agreements.
- B. No later than 1 day after the Hold Separate Order is issued by the Commission, Respondent Eldorado shall, pursuant to the Monitor Agreement, confer on the Monitor all rights, powers, and authorities necessary to permit the Monitor to monitor Respondent Eldorado’s compliance with the terms of this Order, the Hold Separate Order, and the Divestiture Agreements, in a manner consistent with the purposes of the orders.
- C. Respondent Eldorado shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall have the power and authority to monitor Respondent Eldorado’s compliance with the divestiture and other requirements of this Order, the Hold Separate Order, and the Divestiture Agreements, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the orders;
 - 2. The Monitor shall act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of Respondent Eldorado or of the Commission;
 - 3. The Monitor shall serve until 30 days after Respondent Eldorado has satisfied all obligations under Paragraphs II and IV of this Order or until such other time as may be determined by the Commission or its staff; and
 - 4. The Monitor shall report in writing to the Commission concerning Respondent Eldorado’s compliance with this Order and the Hold Separate Order: (i) 30 days after the Hold Separate Order is issued, and every 30 days thereafter until Respondent Eldorado has satisfied all of its obligations under Paragraphs II and IV of this Order; and (ii) at any other time requested by the staff of the Commission.
- D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent Eldorado’s personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably

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request, related to Respondent Eldorado's compliance with its obligations under this Order, the Hold Separate Order, and the Divestiture Agreements.

- E. Respondent Eldorado shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent Eldorado's compliance with this Order, the Hold Separate Order, and the Divestiture Agreements.
- F. The Monitor shall serve, without bond or other security, at Respondent Eldorado's expense, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at Respondent Eldorado's expense, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
- G. Respondent Eldorado shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph VIII.G, the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph VIII.F of this Order.
- H. Respondent Eldorado shall report to the Monitor in accordance with the requirements of this Order and the Hold Separate Order, and as otherwise provided in the Monitor Agreement approved by the Commission. The Monitor shall evaluate the reports submitted by Respondent Eldorado with respect to the performance of its obligations under this Order and the Hold Separate Order.
- I. Respondent Eldorado may require the Monitor and each of the Monitor's consultants, accountants, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- J. The Commission may require, among other things, the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor, who will have the same authority and responsibilities as the original Monitor pursuant to this Paragraph VIII:

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1. The Commission shall select the substitute Monitor, subject to Respondent Eldorado's consent, which consent shall not be unreasonably withheld. If Respondent Eldorado has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within 10 days after the notice by the staff of the Commission to Respondent Eldorado of the identity of any proposed Monitor, Respondent Eldorado shall be deemed to have consented to the selection of the proposed Monitor.
 2. Not later than 10 days after the appointment of the substitute Monitor, Respondent Eldorado shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all rights and powers necessary to permit the Monitor to monitor Respondent Eldorado's compliance with the relevant terms of this Order, the Hold Separate Order, and the Divestiture Agreements in a manner consistent with the purposes of the orders and in consultation with the Commission.
- L. The Commission may, on its own initiative or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to ensure compliance with the requirements of this Order.
- M. The Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

IX. Divestiture Trustee**IT IS FURTHER ORDERED** that:

- A. If Respondent Eldorado has not fully complied with the divestiture and other obligations as required by Paragraphs II.A and II.B of this Order, the Commission may appoint one or more Divestiture Trustees to divest any or all of the Casino Assets, enter agreements for Transition Assistance, and perform Respondent's other obligations in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent Eldorado shall consent to the appointment of a Divestiture Trustee in such action to divest the required assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph IX shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including one or more court-appointed Divestiture Trustees, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent Eldorado to comply with this Order.
- B. The Commission may select one or more Divestiture Trustees, subject to Respondent Eldorado's consent, which consent shall not be unreasonably withheld. The Commission may appoint one Divestiture Trustee or separate

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Divestiture Trustees to divest one or more of the Casino Assets, enter agreements for Transition Assistance, and perform Respondent Eldorado's other obligations in a manner that satisfies the requirements of this Order. Any Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent Eldorado has not opposed, in writing, and stated in writing its reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondent Eldorado of the identity of any proposed Divestiture Trustee, Respondent Eldorado shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

1. Not later than 10 days after the appointment of a Divestiture Trustee, Respondent Eldorado shall execute a trust agreement for any divestitures required by this Order that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effectuate the divestitures required by, and satisfy the additional obligations imposed by this Order. Any failure by Respondent Eldorado to comply with a trust agreement approved by the Commission shall be a violation of this Order.
2. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph IX.B, Respondent Eldorado shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - a. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effectuate the divestitures required by, and satisfy the additional obligations (including obligations to provide Transition Assistance) imposed by, this Order.
 - b. The Divestiture Trustee shall have 1 year after the date the Commission approves each trust agreement described herein to accomplish the divestitures required by this Order, which shall be subject to the prior approval of the Commission. If, however, at the end of the 1 year period, the Divestiture Trustee has submitted a plan to satisfy the divestiture obligations of this Order or believes that such obligations can be achieved within a reasonable time, the period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, that the Commission may extend the period only 2 times.
 - c. Subject to any demonstrated legally recognized privilege, any Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the Divestiture Trustee may request.

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Respondent Eldorado shall develop such financial or other information as any Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent Eldorado shall take no action to interfere with or impede any Divestiture Trustee's accomplishment of the divestiture. Any delays caused by Respondent shall extend the time under this Paragraph IX for a time period equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

- d. Any Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent Eldorado's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestitures shall be made in the manner that receives the prior approval of the Commission and to an Acquirer that receives the prior approval of the Commission as required by this Order; *provided, however*, if any Divestiture Trustee receives bona fide offers for any asset to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent Eldorado from among those approved by the Commission; *provided further, however*, that Respondent Eldorado shall select such entity within 5 days after receiving notification of the Commission's approval.
- e. Any Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent Eldorado, on such reasonable and customary terms and conditions as the Commission or a court may set. Any Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent Eldorado, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. Any Divestiture Trustee shall account for all monies derived from the divestitures and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent Eldorado, and the Divestiture Trustee's power shall be terminated. The compensation of any Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

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- f. Respondent Eldorado shall indemnify any Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
 - g. Any Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 - h. Any Divestiture Trustee shall report in writing to Respondent Eldorado and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestitures.
 - i. Respondent Eldorado may require any Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- C. If the Commission determines that any Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph IX, and who will have the same authority and responsibilities of the original Divestiture Trustee pursuant to this Paragraph IX.
- D. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of any Divestiture Trustee, issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.

X. Compliance Reports**IT IS FURTHER ORDERED** that:

- A. Respondent Eldorado shall:
- 1. Notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date and the Divestiture Date no later than 5 days after the occurrence of each; and

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2. Submit the complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the Divestiture Date.
- B. Respondent Eldorado shall file verified written reports (“compliance reports”) in accordance with the following:
1. Respondent Eldorado shall submit interim compliance reports 30 days after this Order is issued, and every 30 days thereafter until Respondent Eldorado has fully complied with the provisions of Paragraph II; annual compliance reports 1 year after the date this Order is issued, and annually for the next 2 years on the anniversary of that date; and additional compliance reports as the Commission or its staff may request;
 2. Each compliance report shall set forth in detail the manner and form in which Respondent Eldorado intends to comply, is complying, and has complied with this Order and the Hold Separate Order. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondent Eldorado is in compliance with this Order and the Hold Separate Order. Conclusory statements that Respondent Eldorado has complied with its obligations under this Order and the Hold Separate Order are insufficient. Respondent Eldorado shall include in its reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondent Eldorado has implemented or plans to implement to ensure that it has complied or will comply with each paragraph of this Order and the Hold Separate Order, a description of all substantive contacts or negotiations for the divestitures and the identities of all parties contacted, and such supporting materials shall be retained and produced later if needed.
 3. Respondent Eldorado shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondent Eldorado shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov. In addition, Respondent Eldorado shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

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XI. Change in Respondent

IT IS FURTHER ORDERED that Respondent Eldorado shall notify the Commission at least 30 days prior to:

- A. The dissolution of Eldorado Resorts, Inc.;
- B. The acquisition, merger, or consolidation of Eldorado Resorts, Inc.; or
- C. Any other change in Respondent Eldorado, including assignment and the creation, sale, or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

XII. Access

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days' notice to Respondent Eldorado, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, Respondent Eldorado shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Respondent Eldorado and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of Respondent Eldorado related to compliance with this Order, which copying services shall be provided by Respondent Eldorado at the request of the authorized representative of the Commission and at the expense of Respondent Eldorado; and
- B. To interview officers, directors, or employees of Respondent Eldorado, who may have counsel present, regarding such matters.

XIII. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint and ensure the Acquirer can operate the Casino Assets and Casino Business in a manner equivalent in all material respects to the manner in which Respondent Eldorado operated the Casino Assets and Casino Business prior to the Acquisition.

XIV. Term

IT IS FURTHER ORDERED that this Order shall terminate on August 25, 2030.

Decision and Order

By the Commission, Commissioner Chopra dissenting, Commissioner Slaughter not participating.

NON-PUBLIC APPENDIX I

Divestiture Agreements

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX II

Key Employees

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX III

Respondent Corporate Contracts

[Redacted From the Public Record Version, But Incorporated By Reference]

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APPENDIX IV**MONITOR AGREEMENT**

This Monitor Agreement (this “Agreement”), entered into this 21st day of May, 2020, by and between Jeffrey L. Gilbert, who has been chosen to act as Monitor, and Eldorado Resorts, Inc. (“ERI” or “Respondent”) (Monitor and Respondent are each individually referred to herein as a “Party” and collectively referred to herein as the “Parties”), provides as follows:

WHEREAS the Federal Trade Commission (the “Commission”), in the Matter of Eldorado Resorts, Inc. and Caesars Entertainment Corporation, FTC File No. 191-0158, has accepted or will shortly accept for public comment an Agreement Containing Consent Orders incorporating a Decision and Order and an Order to Maintain Assets (collectively, the “Orders”), which, among other things, requires Respondent to divest certain casinos and casino hotel properties, as defined in the Orders, and contemplates the appointment of a Monitor to monitor Respondent’s compliance with its obligations under the Orders;

WHEREAS, the Commission is expected to accept the Agreement Containing Consent Orders and appoint Monitor pursuant to the Orders to monitor Respondent’s compliance with the terms of the Orders, and Monitor has consented to such appointment;

WHEREAS, the Orders further provide that Respondent shall execute an agreement, subject to the prior approval of the Commission, conferring all the rights and powers necessary to permit Monitor to carry out its duties and responsibilities pursuant to the Orders;

WHEREAS, this Agreement, although executed by Monitor and Respondent, is not effective for any purpose, including but not limited to imposing rights and responsibilities on Respondent or Monitor under the Orders, except for those obligations under the confidentiality provisions herein, until it has been approved by the Commission; and

WHEREAS, the Parties to this Agreement intend to be legally bound, subject only to the Commission’s approval of this Agreement.

NOW, THEREFORE, the Parties agree as follows:

All capitalized terms used in this Agreement and not specifically defined herein shall have the respective definitions given to them in the Orders.

ARTICLE I

1.1 Powers of the Monitor. Monitor shall have all of the powers and responsibilities conferred upon Monitor by the Orders, including but not limited to monitoring Respondent’s compliance with the divestiture, asset maintenance obligations, and other related requirements of the Orders. The Monitor shall serve as an independent third party and not as an employee or agent of Respondent or the Commission.

1.2 Access to Relevant Information and Facilities. Subject to any demonstrated legally recognized privilege, Monitor shall have full and complete access to Respondent’s personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as Monitor may reasonably request,

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related to Respondent's compliance with the obligations of Respondent under the Orders in this matter. Documents, records and other relevant information are to be provided in an electronic format if they exist in that form. Respondent shall cooperate with any reasonable request of Monitor. Monitor shall give Respondent reasonable notice of any request for such access or such information and shall attempt to schedule any access or requests for information in such a manner as will not unreasonably interfere with Respondent's operations. At the request of the Monitor, Respondent shall promptly arrange meetings and discussions, including tours of relevant facilities, at reasonable times and locations between the Monitor and employees of Respondent who have knowledge relevant to the proper discharge of its responsibilities under the Orders.

1.3 Compliance Reports. Respondent shall provide Monitor with copies of all compliance reports filed with the Commission in a timely manner, but in any event, no later than five (5) business days after the date on which Respondent files such report with the Commission.

1.4 Confidentiality. Monitor shall:

1.5 maintain the confidentiality of all confidential information provided to the Monitor by Respondent, the acquirer of the assets to be divested, any supplier or customer of Respondent, or the Commission ("Confidential Information"), and shall use such information only for the purpose of discharging its obligations as Monitor and not for any other purpose, including, without limitation, any other business, scientific, technological, or personal purpose. Monitor may disclose Confidential Information only to (i) persons employed by or working with Monitor pursuant to the Orders or (ii) persons employed at the Commission;

(a) require any consultants, accountants, attorneys, and any other representatives and/or assistants retained by Monitor to assist in carrying out the duties and responsibilities of Monitor to execute a confidentiality agreement, which Respondent will provide if requested, that requires such third parties to treat Confidential Information with the same standards of care and obligations of confidentiality to which the Monitor must adhere under this Agreement;

(b) maintain a record and inform the Commission of all persons (other than representatives of the Commission) to whom Confidential Information has been disclosed;

(c) for a period of ten (10) years after the termination of this Agreement, maintain the confidentiality of all other aspects of the performance of its duties under this Agreement and not disclose any Confidential Information relating thereto; and

(d) upon the termination of the Monitor's duties under this Agreement, the Monitor shall consult with the Commission's staff regarding disposition of any written and electronic materials (including materials that Respondent provided to the Monitor) in the possession or control of the Monitor that relate to the Monitor's duties, and the Monitor shall dispose of such materials, which may include sending such materials to the Commission's staff, as directed by the staff. In response to a request by Respondent to return or destroy materials that Respondent provided to the Monitor, the Monitor shall inform the Commission's staff of

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such request and, if the Commission's staff do not object, shall comply with Respondent's request.

(e) For the purpose of this Agreement, information shall not be considered confidential or proprietary to the extent that it is or becomes part of the public domain (other than as the result of any action by the Monitor or by any employee, agent, affiliate or consultant of the Monitor), or to the extent that the recipient of such information can demonstrate that such information was already known to the recipient at the time of receipt from a source other than the Monitor, Respondent, or any director, officer, employee, agent, consultant or affiliate of the Monitor or Respondent, when such source was not known to recipient after due inquiry to be restricted from making such disclosure to such recipient.

ARTICLE II

2.1 Retention and Payment of Counsel, Consultants, and other Assistants. Monitor shall have the authority to employ, at the cost and expense of the Respondent, such attorneys, consultants, accountants, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities pursuant to the Orders. Prior to engaging any such parties and prior to commissioning additional work to be performed by a party who has already been so engaged, Monitor shall notify Respondent of its intention to do so, and provide an estimate of the anticipated costs.

2.2 Monitor Compensation. Respondent shall pay Monitor in accordance with the fee schedule and procedure attached as Confidential Appendix A for all reasonable time spent in the performance of the Monitor's duties, including all monitoring activities related to the efforts of the acquirer of the assets to be divested, all work in connection with the negotiation and preparation of this Agreement, and all reasonable and necessary travel time.

(a) In addition, Respondent shall pay: (i) all out-of-pocket expenses reasonably incurred by Monitor in the performance of its duties under the Orders; and (ii) all reasonable fees of, and disbursements reasonably incurred by, any advisor appointed by Monitor pursuant to the first paragraph in Article II.

(b) The Monitor shall have full and direct responsibility for compliance with all applicable laws, regulations and requirements pertaining to work permits, income and social security taxes, unemployment insurance, worker's compensation, disability insurance, and the like.

2.3 Monitor's Indemnification. Respondent shall indemnify and hold harmless Monitor and its employees and agents against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from Monitor's gross negligence or willful misconduct.

2.4 Disputes. In the event of a disagreement or dispute between Respondent and Monitor concerning Respondent's obligations under the Orders, and, in the event that such

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disagreement or dispute cannot be resolved by the Parties, either party may seek the assistance of the individual in charge of the Commission's Compliance Division.

2.5 Conflicts of Interest. In the event that, during the term of this Agreement, Monitor becomes aware it has or may have a conflict of interest that may affect, or could have the appearance of affecting, performance by Monitor or persons employed by, or working with, Monitor, of any of its duties under this Agreement, Monitor shall promptly inform Respondent and the Commission of any such conflict or potential conflict.

ARTICLE III

3.1 Termination. This Agreement shall terminate the earlier of: (a) the expiration or termination of the Orders; (b) Respondent's receipt of written notice from the Commission that the Commission has determined that Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve as Monitor; (c) with at least thirty (30) days advance notice to be provided by Monitor to Respondent and to the Commission, upon resignation of the Monitor; or (d) until 30 days after Respondent has satisfied all obligations under Paragraph II (Divestiture) and IV (Transition Assistance) of the Commission's Decision and Order; provided, however, that the Commission may require that Respondent extend this Agreement as may be necessary or appropriate to accomplish the purposes of the Orders. If this Agreement is terminated for any reason, the confidentiality obligations set forth in this Agreement will remain in force, as will the provisions of Articles 2.2 and 2.3 of this Agreement.

3.2 Monitor's Removal. If the Commission determines that Monitor ceases to act or fails to act diligently and consistent with the purpose of the Orders, Respondent shall, upon written request of the Commission, terminate this Agreement and appoint a substitute Monitor, subject to Commission approval and consistent with the Orders.

3.3 Governing Law. This Agreement and the rights and obligations of the Parties hereunder shall in all respects be governed by the substantive laws of Nevada, including all matters of construction, validity and performance. The Orders shall govern this Agreement and any provisions herein which conflict or are inconsistent with the Orders may be declared null and void by the Commission and any provision not in conflict shall survive and remain a part of this Agreement.

3.4 Disclosure of Information. Nothing in this Agreement shall require Respondent to disclose any material or information that is subject to a legally recognized privilege or that Respondent are prohibited from disclosing by reason of law or an agreement with a third party.

3.5 Assignment. This Agreement may not be assigned or otherwise transferred by Respondent or Monitor without the consent of Respondent and Monitor and the approval of the Commission. Any such assignment or transfer shall be consistent with the terms of the Orders.

3.6 Modification. No amendment, modification, termination, or waiver of any provision of this Agreement shall be effective unless made in writing, signed by all Parties, and approved by the Commission. Any such amendment, modification, termination, or waiver shall be consistent with the terms of the Orders.

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3.7 Approval by the Commission. This Agreement shall have no force or effect until approved by the Commission, other than the Parties' obligations under the confidentiality provisions herein.

3.8 Entire Agreement. This Agreement, and those portions of the Orders incorporated herein by reference, constitute the entire agreement of the Parties and supersede any and all prior agreements and understandings between the Parties, written or oral, with respect to the subject matter hereof.

3.9 Duplicate Originals. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

3.10 Section Headings. Any heading of the sections is for convenience only and is to be assigned no significance whatsoever as to its interpretation and intent.

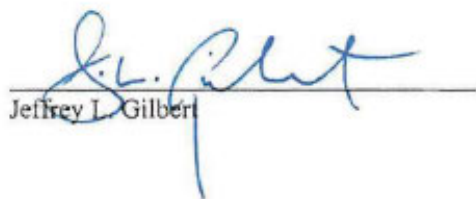
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

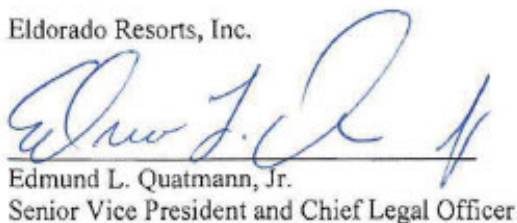
Monitor

Respondent

Jeffrey L. Gilbert

Eldorado Resorts, Inc.


Jeffrey L. Gilbert


Edmund L. Quatmann, Jr.
Senior Vice President and Chief Legal Officer

Dissenting Statement

NON-PUBLIC APPENDIX IV-1

Monitor Compensation

[Redacted From the Public Record Version, But Incorporated By Reference]

DISSENTING STATEMENT OF COMMISSIONER ROHIT CHOPRA

Summary

- The Commission should not agree to merger settlements unless divestitures are completed promptly to a qualified buyer ready and willing to compete on day one.
- It is risky and makes little sense to propose a complex settlement with a prolonged divestiture period and unorthodox terms to justify a merger that has no meaningful benefits, particularly given the financial uncertainties stemming from the COVID-19 crisis.
- I am concerned that the Commission's standard process for vetting divestiture buyers minimizes or ignores major financial red flags. We should revamp our approach.

Caesars Entertainment (NASDAQ: CZR) is selling itself to one of its smaller competitors, Eldorado Resorts (NASDAQ: ERI). The transaction has no noteworthy benefits to customers, workers, suppliers, or competition. If anything, the transaction is risky for everyone involved.

The enormous amount of debt financing could materially increase the likelihood of financial distress of the combined casino conglomerate, and rating agencies have already started to downgrade Eldorado's debt.¹ Given the major financial uncertainties looming over the gaming industry stemming from the pandemic, as well as the industry's past experiences with leveraged buyouts, the proposed transaction might make conditions even more fragile and precarious.

The agreement is subject to review by state gaming regulators and the Federal Trade Commission. In comparison to state regulators, who must weigh a number of public interest factors, the Federal Trade Commission's mandate is more specific: to determine whether the transaction violates U.S. antitrust laws. Based on the Commission's investigation, I agree that the transaction is illegal and I support the complaint.

¹ See e.g., *Moody's downgrades Eldorado Resorts CFR to B2, rates new debt for Caesars acquisition; outlook*, MOODY'S INVESTOR SERVICE (June 17, 2020), <https://www.moodys.com/research/Moodys-downgrades-Eldorado-Resorts-CFR-to-B2-rates-new-debt--PR426702?cid=7QFRKQSZ021>.

Dissenting Statement

However, I have serious reservations about the terms of the settlement. As a policy matter, I disagree that the Commission should enter into risky, complicated settlements with delayed divestitures - like the resolution proposed here.

The Proposed Buyer Will Not Immediately Restore Competitive Intensity

To remedy an illegal transaction, the FTC should only agree to settlements when divestitures will quickly restore the competitive intensity killed off from a merger. It is not enough to have some of the competition restored; it must be fully restored. A new competitor should be able to step in on day one to compete.

For example, in 2015, the FTC prevailed in its challenge of the merger of Sysco and US Foods, the nation's two largest food distributors, when divestitures could not cure the harmful merger on "day one." The companies proposed to divest a lengthy list of US Foods' assets to an entity controlled by the Blackstone Group. The FTC argued this was insufficient, and the court agreed that the new competitor could not replicate the same level of competitive intensity of US Foods.²

The Commission's proposed remedy will definitely not cure this harmful casino merger on day one. Under the terms of the Commission's proposed settlement, Eldorado is required to divest one property in Nevada and another in Louisiana to Twin River Worldwide Holdings (NYSE: TRWH) - but after a prolonged period of time.³ Allowing a lengthy divestiture only compounds the problems with this settlement, as it necessitates the addition of other risky settlement provisions.

To mitigate the anticompetitive harm from the prolonged divestiture schedule, the FTC's proposed settlement sets up a complex arrangement where some casinos will be operated separately by Commission-appointed casino property managers until a buyer is ready to take over the assets. I do not believe that the Commission should be in the business of appointing casino property managers here.⁴

The Commission will also appoint a monitor. It is particularly unclear how the Commission and the appointed monitor can remove or discipline the casino property managers. In addition, the casino property managers will operate under a similar compensation and bonus plan as provided by the prior owner, which could easily lead to anticompetitive distortions. The anticompetitive harms could grow if Twin River is rejected as a suitable buyer by state regulators.

2 *Fed. Trade Comm'n v. Sysco Corp.*, 113 F. Supp. 3d 1, 73 (D.D.C. 2015).

3 The divestitures must be complete by the earlier of 12 months from the closing of the merger or within 30 days of state regulatory approval. In theory, the divestitures may be completed before 12 months. However, past experience suggests that the approval process requires significant due diligence over an extended period of time.

4 If the state gaming regulators had already approved the transaction (as well as the corresponding divestitures) and selected casino property managers, this would raise fewer concerns.

Dissenting Statement

There may be rare circumstances where unusual settlement terms are warranted, but this isn't one of them. The proposed remedy is also a gamble on several other fronts.

First, the Commission's due diligence on Twin River did not adequately analyze the role of new investors exerting enormous control. The FTC must always consider the incentives and plans for those in control of a divestiture buyer. Sometimes, new investors can help a stagnant company change strategic direction. But too often, new investors find ways to buy, strip, and flip, rather than create a strong, long-term competitor. This is particularly true for certain private equity and hedge fund investors, so careful due diligence is critical.

In 2019, a Wall Street hedge fund, Standard General, accumulated a major ownership stake in Twin River. Standard General now has significant control over the company and is, by far, its largest shareholder. Its stake is roughly equivalent to the maximum amount allowable under state law.⁵ Another hedge fund, HG Vora, has also emerged as a major holder of Twin River.⁶ Standard General and similar funds often seek to accumulate board seats to implement their desired investment strategy. Indeed, just a few months ago, Twin River's longtime chairman "reluctantly" stepped down and was replaced by Standard General's managing partner, Soohyung Kim.⁷

By approving Twin River as the divestiture buyer, I am concerned that the Commission is relying on Twin River's past track record, rather than analyzing how changes in ownership and control of the company will impact their future business strategy.

Second, buyers of divested assets need to prioritize competing on day one, but they cannot if other high-priority mergers and acquisitions distract them. In this matter, Twin River is in the midst of a string of other takeovers.

In 2019, it completed an acquisition of Dover Downs Hotel and Casino in Delaware,⁸ and then in January of this year, Twin River acquired three casinos in Colorado.⁹ Several other

⁵ In a recent Schedule 13D securities filing, Standard General revealed that it was managing its holdings of Twin River, given Twin River's share repurchase plan that could lead to Standard General violating the Rhode Island casino ownership cap of 39%. *See* Twin River Worldwide Holdings, Inc., Amendment No. 6 to Schedule 13D at 4 (Feb. 20, 2020).

⁶ Recent securities filings reveal significant ownership of Twin River by HG Vora Capital Management. *See* HG Vora Capital Management, LLC, Form 13F Information Table (Form 13F) (Aug. 8, 2019). Standard General and HG Vora are currently on the same side of a major battle in another public company. *See* Svea Herbst-Bayliss, *EXCLUSIVE-Hedge fund HG Vora wants Tegna to consider a sale or merger - sources*, REUTERS (Jan. 21, 2020), <https://www.reuters.com/article/teгна-hgvora/exclusive-hedge-fund-hg-vora-wants-teгна-to-consider-a-sale-or-merger-sources-idUKLIN29Q0KT>.

⁷ Ted Nesi, John Taylor out at Twin River, 12 WPRI.COM (Dec. 9, 2019), <https://www.wpri.com/business-news/john-taylor-out-at-twin-river/>.

⁸ Press Release, Twin River Worldwide Holdings, Inc., Dover Downs Stockholders Approve Merger with Twin River; Merger Set to Close on March 28, 2019 (Mar. 26, 2019), <https://investors.twintriverwwholdings.com/news/news-details/2019/Dover-Downs-Stockholders-Approve-Merger-with-Twin-River-Merger-Set-to-Close-on-March-28-2019/default.aspx>.

Dissenting Statement

acquisitions are pending: in the last twelve months, it has inked deals to purchase casinos in Missouri and Mississippi.¹⁰ Outside of this settlement, it has also struck a deal to purchase Bally's, its first foray into the large Atlantic City market.¹¹ These acquisitions will require significant management attention, and I did not find any compelling evidence that Twin River will prioritize the divested assets to fully restore competitive intensity in the markets that the Commission believes would suffer from killed-off competition.

Finally, the Commission should avoid acting without the benefit of a full review by the state gaming regulators. State regulatory agencies have unique insights and expertise into the industries they regulate; their findings inform the issues the Commission takes into consideration, and not just relating to the appointment of casino managers. Some states have a specific mandate to look at the ownership and financial conditions of the transacting firms, and we would benefit from that expertise. Their analysis is particularly important during this period of uncertainty, as the industry is roiling from closures due to the current COVID-19 pandemic. It is important that we consider all of the information and work across government bodies to protect competition. While the Commission does work with some of these authorities, I am not convinced that acting before state regulators have completed their analysis is the right approach.

Conclusion

The proposed resolution in this transaction offers a unique window into the assumptions and philosophy of the Federal Trade Commission. The merger is clearly anticompetitive in the markets where the Commission alleged a violation, and offers no meaningful benefits to the public. Since the Commission would not need to go to trial to block the transaction because the state regulators have yet to act, there is no immediate concern about limiting FTC resources or weighing the litigation risk. Given these facts, why would the Commission put the public at risk with delayed divestitures to a questionable buyer that has no guarantee of obtaining a license?

I am concerned that the Commission is rolling the dice with this complex settlement that will clearly not lead to an immediate restoration of lost competition. It is also clear that we must revamp our approach when it comes to vetting proposed divestiture buyers, particularly when a new financial investor is in charge in the boardroom.

9 Press Release, Twin River Worldwide Holdings, Inc., Twin River Worldwide Holdings Completes Acquisition of Three Colorado Casinos (Jan. 24, 2020), <https://investors.twinriverwwholdings.com/news/news-details/2020/Twin-River-Worldwide-Holdings-Completes-Acquisition-of-Three-Colorado-Casinos/default.aspx>.

10 Press Release, Twin River Worldwide Holdings, Inc., Twin River Worldwide Holdings Signs Definitive Agreement To Acquire Two Casinos From Eldorado Resorts (July 11, 2019), <https://investors.twinriverwwholdings.com/news/news-details/2019/Twin-River-Worldwide-Holdings-Signs-Definitive-Agreement-To-Acquire-Two-Casinos-From-Eldorado-Resorts/default.aspx>.

11 Press Release, Twin River Worldwide Holdings, Inc., Twin River Worldwide Holdings to Acquire Three Casinos from Eldorado and Caesars (Apr. 24, 2020), <https://investors.twinriverwwholdings.com/news/news-details/2020/Twin-River-Worldwide-Holdings-to-Acquire-Three-Casinos-from-Eldorado-and-Caesars/default.aspx>.

Analysis to Aid Public Comment

Our state partners will obviously need to scrutinize the financial aspects of the proposed transaction between Caesars and Eldorado, given the harms inflicted on the public and regional economies from past leveraged buyouts - and resulting bankruptcies - in the industry.¹² They will also need to carefully assess whether the restoration of competition will come too late, and whether Twin River can guarantee that it will actually accomplish this goal. The stakes are high right now. For these reasons, I dissent.

ANALYSIS OF CONSENT ORDERS TO AID PUBLIC COMMENT

I. INTRODUCTION AND BACKGROUND

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Eldorado Resorts, Inc. ("Eldorado") and Caesars Entertainment Corporation ("Caesars"). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that would likely result from Eldorado's acquisition of Caesars ("the Acquisition"). Under the terms of the proposed Decision and Order ("Order") contained in the Consent Agreement, Eldorado is required to divest to Twin River Worldwide Holdings, Inc. ("Twin River"): (1) Eldorado's only casino in the South Lake Tahoe area, the MontBleu Resort Casino and Spa ("MontBleu") in Stateline, Nevada; and (2) Eldorado's only casino in the Bossier City-Shreveport, Louisiana, area, the Eldorado Casino Resort ("Eldorado Shreveport"). The divestitures must be completed by the earlier of (i) 12 months from the closing of the Acquisition; or (ii) 30 days from the date that Twin River receives all regulatory approvals. Additionally, if Eldorado does not consummate its sale of the Isle of Capri casino ("Isle of Capri") in Kansas City, Missouri, within 60 days from the closing of the Acquisition, the proposed Consent Agreement provides the Commission with the option (at its discretion) to require Eldorado to divest the Isle of Capri casino to a Commission-approved acquirer within 12 months. The Isle of Capri sale is independent from the Acquisition.

The proposed Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the comments received and decide whether it should withdraw, modify, or make the Consent Agreement final.

On June 24, 2019, Eldorado agreed to acquire Caesars for approximately \$17.3 billion.

¹² See, e.g., Sujeet Indap, *What happens in Vegas...the messy bankruptcy of Caesars Entertainment*, THE FIN. TIMES (Sept. 16, 2017), <https://www.ft.com/content/a0ed27c6-a2d4-11e7-b797-b61809486fe2>.

Analysis to Aid Public Comment

By a vote of 3-1-1 on June 20, 2020, the Commission issued an administrative complaint alleging that the Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by eliminating meaningful and substantial competition between Eldorado and Caesars for casino services in the South Lake Tahoe, Bossier City-Shreveport, and Kansas City area markets. The elimination of this competition would likely have caused significant competitive harm, specifically higher prices and diminished quality and service levels in each of these markets. The proposed Consent Agreement would remedy the alleged violations by requiring a divestiture in the affected markets. The divestitures will establish a new independent competitor to Eldorado in each relevant area, replacing the competition that otherwise would be lost as a result of the Acquisition.

II. THE PARTIES

Eldorado is a publicly traded casino entertainment and hospitality services provider headquartered in Reno, Nevada. Founded in 1973, Eldorado operates 23 casino gaming properties in 11 states. Eldorado operates casinos under several brands, including Eldorado, Isle of Capri, and Tropicana. In the aggregate, Eldorado's properties feature approximately 23,900 slot machines, 660 table games, and more than 11,300 hotel rooms. In the South Lake Tahoe area market, Eldorado operates the MontBleu casino in Stateline, Nevada. In the Bossier City-Shreveport area market, Eldorado operates the Eldorado Shreveport casino in Shreveport, Louisiana. In the Kansas City area market, Eldorado operates the Isle of Capri casino in Kansas City, Missouri. Eldorado had approximately \$2.5 billion in revenue in 2019.

Caesars is a publicly traded casino entertainment and hospitality services provider headquartered in Las Vegas, Nevada. It operates 53 properties in 14 states and five countries outside of the United States. Caesars' properties offer approximately 38,000 slot machines, 2,700 table games, and more than 36,000 hotel rooms. Caesars' gaming properties operate primarily under the Harrah's, Caesars, and Horseshoe brand names. In the South Lake Tahoe area, Caesars operates two facilities offering casino services: Harrah's Lake Tahoe Hotel and Casino, and Harveys Lake Tahoe Hotel and Casino, both in Stateline, Nevada. In the Bossier City-Shreveport area, Caesars operates two facilities offering casino services: Horseshoe Bossier City Hotel and Casino in Bossier City, Louisiana, and Harrah's Louisiana Downs, a gaming and racetrack facility located eight miles east in Shreveport, Louisiana. In the Kansas City area market, Caesars operates Harrah's Kansas City Hotel and Casino in Kansas City, Missouri.

Caesars had approximately \$8.7 billion in revenue in 2019.

Twin River is a publicly traded casino entertainment and hospitality services provider headquartered in Providence, Rhode Island. It operates eight properties in four states, including the Twin River Casino Hotel in Lincoln, Rhode Island. Twin River's properties feature approximately 9,130 slot machines, 267 table games, and 1,200 hotel rooms. The company had approximately \$524 million in revenue in 2019.

Analysis to Aid Public Comment

III. CASINO SERVICES IN SOUTH LAKE TAHOE, BOSSIER CITY-SHREVEPORT, AND KANSAS CITY

Eldorado's proposed acquisition of Caesars would likely result in substantial competitive harm in the markets for casino services in South Lake Tahoe, Bossier City-Shreveport and Kansas City. The relevant product market in which to assess the competitive effects of the proposed Acquisition is casino services. The casino services market consists of casino-based gaming services (e.g., slots and table games), as well as other amenities such as lodging, entertainment, and food and beverage services. Casino operators typically generate the vast majority of their revenues from gaming. Casino services differ significantly from other entertainment and leisure activities in a number of respects. For example, casinos are highly regulated, with a limited number of casinos licensed to operate in any given state and age restrictions on who can gamble. Consistent with prior Commission precedent, the evidence here supports a distinct relevant market consisting of casino services.

Local geographic markets are appropriate to assess the competitive effects of the proposed Acquisition. There are three relevant geographic markets in which to analyze the merger's effects: (1) the South Lake Tahoe area, which approximately corresponds to the area in and around the cities of Stateline, Nevada, and South Lake Tahoe, California; (2) the Bossier City-Shreveport, Louisiana area, which approximately corresponds to the Bossier City-Shreveport, Louisiana metropolitan statistical area; and (3) the Kansas City area, which approximately corresponds to the Kansas City, Missouri metropolitan statistical area.

Absent relief, the Acquisition would result in significant increases in concentration and lead to highly concentrated markets in all three markets, resulting in a presumption of the enhancement of market power under the Horizontal Merger Guidelines. Further, Eldorado and Caesars are close and vigorous competitors in the South Lake Tahoe, Bossier City-Shreveport, and Kansas City area markets. Absent relief, the Acquisition would substantially lessen the significant head-to-head competition between Eldorado and Caesars and would likely increase Eldorado's ability and incentive to raise prices post-Acquisition in the form of hold rates, rake rates, and table game rules and odds that are less favorable to customers, and lower player reinvestments. The proposed Acquisition also would likely diminish Eldorado's incentive to maintain or improve the quality of services and amenities to the detriment of casino customers in each of these markets.

New entry or expansion is unlikely to deter or counteract the likely anticompetitive effects of the Acquisition in the South Lake Tahoe, Bossier City-Shreveport, and Kansas City area markets. The affected markets are insulated from new entry or expansion by significant regulatory barriers, including limitations on the number of casino licenses available and the ability to expand existing gaming operations. In the South Lake Tahoe area market, entry or expansion is unlikely to occur in a timely manner because of, among other things, the time and cost associated with acquiring the necessary state, county, and city approvals. In the Bossier City-Shreveport area market, Louisiana law limits the number of casino licenses and it has already issued all available licenses. Louisiana also has statutory restrictions that make significant expansion by current market participants unlikely absent legislative action. Similarly,

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in the Kansas City area market, Missouri and Kansas law limit the total number of casino licenses available and both states have already issued all available licenses. Expansion in Missouri is unlikely and only limited expansion in Kansas is possible. Entry or repositioning would be unlikely to be sufficient to deter or counteract the anticompetitive effects of the Acquisition.

IV. THE PROPOSED CONSENT AGREEMENT

The proposed Consent Agreement remedies the likely anticompetitive effects in the South Lake Tahoe and Bossier City-Shreveport area markets by requiring divestitures of the MontBleu and Eldorado Shreveport casinos to Twin River by the earlier of (i) 12 months from the closing of the Acquisition; or (ii) 30 days from the date Twin River receives all regulatory approvals. Until the completion of each divestiture, the parties are required to abide by the Order to Hold Separate and Maintain Assets, which requires them to maintain the viability, marketability, and competitiveness of the divestiture assets until the divestitures are completed. The proposed Consent Agreement appoints a Monitor to ensure the parties' compliance with the Order to Hold Separate and Maintain Assets, Consent Agreement, and divestiture agreements between Eldorado and Twin River following the divestiture. The proposed Consent Agreement also remedies the likely anticompetitive effects in the Kansas City area market in the event that Eldorado's independent sale of the Isle of Capri casino does not close within 60 days from the closing of the Acquisition. In the event the Isle of Capri sale does not timely close as required, the proposed Consent Agreement provides the Commission with the option (at its discretion) to require Eldorado to divest the Isle of Capri casino to a Commission-approved acquirer within 12 months. Although these divestiture deadlines are longer than typically ordered by the Commission, they are appropriate in this matter to accommodate the lengthy state regulatory approval process, which may be subject to continued disruption from the COVID-19 pandemic.

Additionally, the proposed Consent Agreement requires the parties to provide transitional services to the approved acquirer for up to 12 months after the divestiture, as needed, to assist the acquirer with the transfer and operation of the divested assets. Finally, the proposed Consent Agreement contains standard terms regarding the acquirer's access to employees, protection of material confidential information, and compliance reporting requirements, among other things, to ensure the viability of the divested business.

A. South Lake Tahoe

The proposed Consent Agreement remedies the likely anticompetitive effects of the proposed Acquisition in the South Lake Tahoe area market by requiring the divestiture of Eldorado's MontBleu. This remedy would preserve the status quo in the South Lake Tahoe area casino services market, maintaining three independent casino operators and resulting in no change in market concentration.

B. Bossier City-Shreveport

The proposed Consent Agreement remedies the likely anticompetitive effects of the proposed Acquisition in the Bossier City-Shreveport area market by requiring Eldorado to divest

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the Eldorado Shreveport. This remedy would preserve four independent casino operators and result in no change in market concentration.

C. Kansas City

In the Kansas City area market, the proposed Consent Agreement provides the Commission with the option (at its discretion) to require Eldorado to divest its Isle of Capri casino to a Commission-approved buyer within 12 months if its independent sale of the Isle of Capri fails to consummate within 60 days of closing the Acquisition. If a divestiture is required, the proposed Consent Agreement remedies the likely anticompetitive effects of the Acquisition by requiring Eldorado to divest the Isle of Capri. The proposed Consent Agreement would preserve four independent casino operators and result in no change in market concentration.

* * *

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement to aid the Commission in determining whether it should make the proposed Consent Agreement final. This analysis is not an official interpretation of the proposed Consent Agreement and does not modify its terms in any way.

Complaint

IN THE MATTER OF

**ELANCO ANIMAL HEALTH, INCORPORATED,
AND
BAYER AKTIENGESELLSCHAFT**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT AND SECTION 7 OF THE CLAYTON ACT

*Docket No. C-4725; File No. 191 0198
Complaint, July 14, 2020 – Decision, September 1, 2020*

This consent order addresses the \$7.6 billion acquisition by Elanco Animal Health, Inc. of certain assets of Bayer Animal Health, GmbH. The complaint alleges that the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by lessening competition in the U.S. market for low-dose prescription treatments for canine otitis externa, fast-acting oral treatments that kill adult fleas on canines, and brand name cattle pour-on insecticides. Under the order respondent must divest its canine otitis externa treatment product, Osumnia, to Dechra Pharmaceuticals PLC, its fast-acting oral treatment that kills adult fleas on canines, Capstar, to PetIQ, Inc., and its brand name cattle pour-on product, StandGuard, to Neogen Corporation.

Participants

For the *Commission*: *Stuart Hirschfeld, Joe Lipinsky, and Connor Shively.*

For the *Respondents*: *Rick Rule, Paul, Weiss, Rifkind, Wharton & Garrison; Tom McGrath, Linklaters LLP.*

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Elanco Animal Health, Inc. (“Elanco”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire all of the assets of Bayer Animal Health, GmbH, a division of Bayer AG (“Bayer”), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the FTC Act, as amended, 15 U.S.C § 45, that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating it charges as follows:

I. RESPONDENTS

1. Respondent Elanco is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana with its principal executive offices located at 2500 Innovation Way, Greenfield, Indiana 46140.