

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**        **Joseph J. Simons, Chairman**  
                                   **Noah Joshua Phillips**  
                                   **Rohit Chopra**  
                                   **Rebecca Kelly Slaughter**  
                                   **Christine S. Wilson**

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| <p><b>In the Matter of</b></p> <p><b>ELDORADO RESORTS, INC.,</b><br/>             <b>a corporation;</b></p> <p><b>and</b></p> <p><b>CAESARS ENTERTAINMENT CORPORATION</b><br/>             <b>a corporation.</b></p> | <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> | <p><b>DOCKET NO. C-4721</b></p> |
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**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 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.
- 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;
    - 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;
  - 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 sub-paragraph 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 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:
    - 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, 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 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 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.

#### **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 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.

## **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 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 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 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 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 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 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 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](mailto: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](mailto:ElectronicFilings@ftc.gov) and [bccompliance@ftc.gov](mailto: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. 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](mailto:ElectronicFilings@ftc.gov) and to the Compliance Division at [bccompliance@ftc.gov](mailto: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:

- 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:

- 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.

April J. Tabor  
Secretary

SEAL

ISSUED: June 25, 2020