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Robert T. Eglet
Nevada Bar No. 3402
Robert M. Adams
Nevada Bar No. 6551
Angel P. Getsov
Nevada Bar No. 14525
EGLET ADAMS
400 S. Seventh St., Suite 400
Las Vegas, NV 89101
(702) 450-5400; Fax: (702) 450-5451
eservice@egletlaw.com
Attorneys for Plaintiffs

Kevin R. Boyle
(Nevada pro hac vice)
California Bar No. 192718
Rahul Ravipudi
Nevada Bar No. 14750
PANISH SHEA & BOYLE LLP
8816 Spanish Ridge Avenue
Las Vegas, NV 89148
(702) 560-5520; Fax: (702) 975-2515
boyle@psblaw.com
Attorneys for Plaintiffs

*Additional Counsel for Plaintiffs and MGM
on Signature Page*

Mark P. Robinson, Jr.
California Bar No. 54426
(Nevada pro hac vice)
Daniel S. Robinson
California Bar No. 244245
(Nevada pro hac vice)
ROBINSON CALCAGNIE, INC.
19 Corporate Plaza Drive
Newport Beach, CA 92660
(949) 720-1288; Fax (949) 720-1292
drobinson@robinsonfirm.com
Attorneys for Plaintiffs

Brad D. Brian, *pro hac vice*
Bethany W. Kristovich, *pro hac vice*
John M. Gildersleeve, *pro hac vice*
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue, Fiftieth Floor
Los Angeles, CA 90071-3426
(213) 683-9100; Fax: (213) 687-3702
Attorneys for MGM

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

RACHEL SHEPPARD, an Individual, et al.,

Plaintiffs,

vs.

MANDALAY BAY, LLC, f/k/a
MANDALAY CORP., a Nevada Domestic
Limited-Liability Company; MANDALAY
RESORT GROUP, a Nevada Corporation;
MGM RESORTS FESTIVAL GROUNDS,
LLC, a Nevada Domestic Limited-Liability
Company; MGM RESORTS VENUE
MANAGEMENT, LLC, a Nevada Domestic

CASE NO.: A-18-769752-C

Judge: Hon. Linda Bell
Dept. No.: 7

**JOINT MOTION FOR
DETERMINATION OF GOOD FAITH
SETTLEMENT ON AN ORDER
SHORTENING TIME**

Hearing Requested

1 Limited-Liability Company; MGM
2 RESORTS INTERNATIONAL, a Delaware
3 Corporation; DOES/ROES 1 through 100

[Filed Concurrently with Memorandum of
Points and Authorities]

4 Defendants.

5 Plaintiffs and Defendants, by and through their counsel of record, hereby jointly move this
6 Court for an order determining that the Settlement reached between Plaintiffs and Defendants was
7 done so in good faith, pursuant to NRS 17.245 and the related case law. Good cause exists pursuant
8 to EDCR 2.26 to hear the Motion on an Order Shortening Time as set forth in the following
9 Declaration of Robert T. Eglet, Esq.

10
11 **DECLARATION OF ROBERT T. EGLET, ESQ IN SUPPORT OF THE JOINT**
12 **MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT ON ORDER**
13 **SHORTENING TIME**

14 I, Robert T. Eglet, Esq., declare as follows:

15 1. I am duly admitted to practice law in the state of Nevada and am an attorney with the law
16 firm Eglet Adams, counsel for Plaintiffs in the above-captioned matter. I make this declaration on
17 personal, firsthand knowledge, and if called and sworn as a witness, I could and would testify
18 competently thereto. I have personal knowledge of the facts stated herein and submit this
19 declaration.

20 2. I make this declaration in support of Plaintiffs' Motion for Determination of Good Faith
21 Settlement on Order Shortening Time.

22 3. The parties desire to resolve this matter with the Court in an efficient manner.

23 4. The terms of the Settlement require the parties to obtain an order that the Settlement was
24 made in good faith pursuant to Nevada law. Defendants cannot deposit the settlement funds until
25 an order granting the Motion for Good Faith Settlement is entered by the Court and becomes final.

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1 5. The parties agree that the motion should be heard in the ordinary course so that objectors,
2 if any, can be fully heard. In light of the COVID-19 pandemic, however, it is undersigned
3 counsel's understanding that motions are being scheduled considerably farther out than they
4 ordinarily are scheduled.

5 6. Given the significance of this settlement to the community and the desire to get an Order
6 finding that the settlement was in good faith so that funds can be disbursed, the parties respectfully
7 request that the Court hear this motion on 20-days' notice.

8 7. If the timing is acceptable to the Court, the parties ask that the Court order a hearing on the
9 instant Motion for Good Faith Settlement on September 30, 2020 hearing, with Oppositions to the
10 motion due September 21, 2020, and replies, if any, due September 25, 2020.

11 8. Based on the foregoing, good cause exists to hear the motion on shortened time pursuant
12 to EDCR 2.26.

13 I declare under penalty that the foregoing is true and correct to the best of my knowledge.

14 Executed this 10th day of September 2020.

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16 _____
17 ROBERT T. EGLET, ESQ.

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ORDER SHORTENING TIME

After considering the Declaration of Robert T. Eglet, Esq., and good cause appearing, the Court, pursuant to EDCR 2.60, grants the Order Shortening Time and sets the **MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT ON ORDER SHORTENING TIME** for hearing on the 30th day of September at 10:30 a.m., 2020, at _____

_____ in Department VII, or as soon thereafter as the Court deems necessary.

Oppositions, if any, shall be due by September 21, 2020, 2020, and Replies, if any, shall be due by September 25, 2020, 2020.

The Parties shall serve this order upon the entities listed in the joint certificate of service filed herewith within 48 hours of its return to them, from this Court.

DATED this _____ day of September 2020.

Dated this 11th day of September, 2020



HONORABLE LINDA M. BELL

Respectfully Submitted By:

EGLET ADAMS



ROBERT T. EGLET, ESQ.
Nevada Bar No. 3402
ROBERT M. ADAMS, ESQ.
Nevada Bar No. 6551
ANGEL P. GETSOV, ESQ.
Nevada Bar No. 14525
400 So. Fourth Street, Sixth Floor
Las Vegas, Nevada 89101
Ph: (702) 450-5400
Fax: (702) 450-5451
Attorneys for Plaintiffs

**B1B 0BD C367 8424
Linda Marie Bell
District Court Judge**

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs represented by the law firms of Eglet Adams; Robinson Calcagnie, Inc.; and
4 Panish, Shea & Boyle LLP (“Leadership Firms”), as well as Plaintiffs’ Counsel listed herein
5 working with the Leadership Firms, reached a Settlement with Defendants Mandalay Bay, LLC
6 f/k/a Mandalay Corp., Mandalay Resort Group, MGM Resorts Festival Grounds, LLC, MGM
7 Resorts Venue Management, LLC, and MGM Resorts International (collectively, “MGM”)
8 whereby MGM agrees to pay to Plaintiffs the total sum of eight hundred million dollars
9 (\$800,000,000.00) in exchange for a release of 4,069 claims relating to the October 1, 2017
10 shooting at the Route 91 Harvest Music Festival in Las Vegas, Nevada (the “Shooting”).

11 This Settlement was reached after good faith negotiations concerning all claims arising
12 out of the Shooting. The parties entered into this Settlement to remove the burden and risk of
13 pending litigation, and the Settlement was not contrived to injure any other person, entity, or
14 party. As such, the facts support a finding that the Settlement between Plaintiffs and MGM can
15 be deemed one of “good faith” as contemplated by NRS 17.245.

16 **II. RELEVANT FACTS**

17 On October 1, 2017, a shooter committed the deadliest mass shooting in U.S. History
18 killing fifty-eight (58) people, and injuring thousands more during the Route 91 Harvest Music
19 Festival in Las Vegas, Nevada. From the Mandalay Bay Hotel, the shooter took aim at
20 concertgoers within the Las Vegas Village, a concert venue owned by MGM. Within a matter of
21 minutes, the shooter was able to unleash thousands of rounds upon the unsuspecting concertgoers.
22 Plaintiffs, consisting of such concertgoers and others who were in attendance at the Route 91
23 Harvest Music Festival at the time of the Shooting, filed a lawsuit against MGM asserting several
24 claims, including negligence in failing to carry out appropriate precautions and safety measures,
25 resulting in the October 1, 2017 shooting.

26 In the aftermath of the tragic October 1, 2017 shooting at the Route 91 Harvest Festival
27 in Las Vegas, counsel for Plaintiffs and MGM began discussions about entering into an early,
28 voluntary mediation. At the time of those discussions, the various cases arising out of the One

1 October tragedy had not yet proceeded past the pleading stage, and all parties believed they would
2 benefit from avoiding prolonged litigation if they could reach an agreeable settlement. The parties
3 enlisted as mediators the Hon. Jennifer Togliatti (Ret.), formerly of Nevada’s Eighth Judicial
4 District Court, and the Hon. Louis Meisinger (Ret.), formerly of the California Superior Court in
5 Los Angeles, in hopes of reaching a settlement that might afford the thousands of Plaintiffs some
6 measure of compensation, and bring all parties peace.

7 Mediation before Judges Togliatti and Meisinger began in February 2019 in Las Vegas.
8 In the months that followed, the parties held a cumulative three weeks of in-person mediation
9 sessions before the mediators, which took place in both Las Vegas and Southern California.
10 During those mediation sessions, the parties vigorously debated the merits of Plaintiffs’ claims
11 against Defendants, the strength of Defendants’ defenses to those claims under state and federal
12 law, the amounts of damages Plaintiffs might be able to prove in the event Defendants’ defenses
13 were unsuccessful, and the time, expense, and toll of litigating these issues. The parties also held
14 numerous discussions with LiveNation, which staged the Route 91 Harvest Music Festival, and
15 Contemporary Services Corporation (“CSC”), which provided security for the event.¹ Both
16 entities were named as defendants in some of the lawsuits filed arising out of the Shooting. After
17 roughly six months of negotiations, the parties, including LiveNation and CSC, announced in
18 October 2019 that they had agreed on a settlement.

19 The parties agreed to a global settlement in an amount between \$735,000,000 and
20 \$800,000,000. Upon request, the mediators were appointed by this Court as Claim Administrators
21 and Special Masters pursuant to Nevada Rules of Civil Procedure Rule 53, which permits them to
22 oversee the division and distribution of the Settlement proceeds. Moreover, at the Claims
23 Administrators’ recommendation, the Court appointed BrownGreer PLC as Claims Processor to
24 assist the Claims Administrators with carrying out their duties and responsibilities under the
25 Settlement Agreement.

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28 ¹ Specifically, the LiveNation entities involved in the discussions were 1) Live Nation Entertainment, Inc., 2) Live
Nation Group d/b/a One Nation Group, LLC, and 3) Country Nation, LLC (together referred to as “LiveNation”).

1 Through weeks of hard work, the Claim Administrators and Claims Processor created a
2 protocol and claim allocation methodology (“Claims Protocol” or “Protocol”), which was
3 reviewed and preliminarily approved by this Court, allowing all Plaintiffs to be adequately
4 compensated.

5 Following the Court’s preliminary approval of various aspects of the Settlement
6 Agreement—in which the Court found the Settlement Agreement to be “fair, reasonable, and
7 adequate, negotiated between the parties in good faith, and . . . in the best interest of Plaintiffs and
8 other claimants”²—potential claimants received the Claims Protocol and an Informed Consent
9 Letter, a draft of which this Court all reviewed and provided guidance on, which included an
10 approximate minimum amount that each claimant might expect to receive based on available
11 information about their injuries, as predicted by the Claims Administrators’ formula.

12 The parties are pleased to report that the response to the Settlement Agreement among
13 potential claimants has been almost unanimously positive: Out of more than 4,000 potential
14 claimants, only several dozen did not return their opt-in paperwork, and only a handful of potential
15 claimants opted to instead file a lawsuit before the statute of limitations, as extended by a tolling
16 agreement, elapsed. Because 100% of defined categories of claimants opted to participate in the
17 Settlement Agreement, the Settlement payment amount is \$800 million, with \$751 million coming
18 from MGM’s insurers—representing all of MGM’s available insurance—and the remainder
19 coming from MGM. All participating claimants have now joined this case as Plaintiffs. Because
20 the Settlement Agreement does not include certain potential joint tortfeasors—including, but not
21 limited to, the One October gunman, Stephen Paddock, and the bump stock manufacturer, Slide
22 Fire Solutions, LP—the parties now seek the Court’s determination of good faith settlement
23 pursuant to NRS 17.245.

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28 ² See Order Providing Preliminary Approval of the Settlement Allocation Methodology, Claims Protocol, Opt in
Packet, and Informed Consent Letter, and Appointing Special Masters to Preside Over the Settlement Allocation
Process and an Order Shortening Time, dated February 14, 2020.

1 **III. PROCEDURAL BACKGROUND**

2 After the tragedy of the October 1 Shooting, victims began filing lawsuits in an attempt
3 to recover damages resulting from their injuries. It became evident that there was potential for
4 voluminous litigation arising from the Shooting, which would require extensive coordination
5 among the various plaintiffs and firms to streamline discovery and reduce the burden on the
6 courts. Recognizing the need for coordination of these cases, numerous law firms joined together
7 to form a strategy as to the filing and prosecution of these cases against MGM. On February 16,
8 2018, several plaintiffs filed a Complaint against MGM (*Sheppard, et al. v. Mandalay Bay, LLC*,
9 Clark County District Court, Case No. A-18-769752). Those plaintiffs filed the First Amended
10 Complaint on June 04, 2018, alleging damages in tort, including negligence, wrongful death,
11 premises liability, negligent infliction of emotional distress, negligence per se, nuisance, negligent
12 hiring and supervision, and gross negligence. On June 22, 2018, MGM removed the suit to federal
13 court alleging federal court jurisdiction pursuant to 28 U.S.C. § 1441(a) under the Support Anti-
14 Terrorism by Fostering Effective Technologies Act of 2002 (hereinafter, the “SAFETY Act”).
15 The case was subsequently assigned to the Honorable Richard F. Boulware II of the District Court
16 of Nevada. On June 29, 2018, those Plaintiffs filed a motion to remand the case to the Eighth
17 Judicial District Court for Clark County, Nevada. On July 13, 2018, MGM began filing
18 complaints seeking declaratory judgments against victims of the Shooting stating that the
19 SAFETY Act applies thereby eliminating any MGM entity’s potential for liability. Over the
20 course of a week, MGM filed a total of nine such complaints against 1,977 victims in the
21 following nine districts: Alaska, Arizona, Central District of California, Western District of
22 California, Southern District of Florida, Nevada, Southern District of New York, Southern
23 District of Texas, and Utah. On July 19, 2018, MGM subsequently filed a motion to transfer and
24 centralize all actions relating to the Shooting pursuant to 28 U.S.C. § 1407.

25 Following this filing, MGM opposed Plaintiffs’ motion to remand on July 27, 2018, and
26 Plaintiffs filed a reply on August 1, 2018. Plaintiffs similarly opposed MGM’s motion for
27 centralization on August 14, 2018, and MGM filed its reply brief on August 21, 2018. On
28 September 21, 2018, a hearing was held in front of Judge Boulware on Plaintiffs’ motion to

1 remand where the Court ordered limited jurisdictional discovery and supplemental briefing. On
2 September 27, 2018, after the parties filed supplemental briefing before the Judicial Panel on
3 Multidistrict Litigation (“JPML”), the parties appeared before the JPML, which denied MGM’s
4 motion to centralize on October 3, 2018.

5 Following the limited discovery and the submission of supplemental briefs on Plaintiffs’
6 motion to remand, but before Judge Boulware rendered a judgment on the applicability of the
7 SAFETY Act, the parties agreed to mediation in an effort to avoid risky, prolonged, and costly
8 litigation. As a result of the parties’ agreement, Judge Boulware did not rule on Plaintiffs’ motion
9 to remand and instead stayed the case before him.

10 On February 19, 2019, the parties began mediating the suit before the Honorable Judge
11 Jennifer Togliatti (Ret.) and the Honorable Louis Meisinger (Ret.). The mediation occurred
12 during several sessions between February 2019 through September 2019. The parties had
13 separate discussions with Live Nation and CSC, the company that provided security for the
14 concert. After reaching an agreement-in-principle, the parties spent several months negotiating
15 the specific terms of the Settlement, including the Settlement Agreement, the exhibits to the
16 Settlement Agreement, and the mechanics of the settlement process. The parties ultimately
17 agreed upon a global settlement between \$735,000,000 and \$800,000,000. The final settlement
18 amount was to be determined by the participation percentages of claimants that opted into the
19 Settlement. Based on the percentage of the participating claimants, the final settlement amount
20 resulted in eight hundred million dollars (\$800,000,000). The final settlement amount includes
21 all of MGM’s applicable insurance policy limits of seven hundred fifty-one million dollars
22 (\$751,000,000) as well as an additional forty-nine million dollars (\$49,000,000) contributed by
23 MGM.

24 On October 16, 2019, the parties stipulated to remand the suit to the jurisdiction of the
25 Eighth Judicial District Court in Clark County, Nevada. The case was reassigned to this
26 honorable Court on October 30, 2019.

27 On November 4, 2019, Plaintiffs filed a motion to appoint the Honorable Judge Jennifer
28 Togliatti (Ret.) and the Honorable Louis Meisinger (Ret.) as Claim Administrators to oversee the

1 division of the settlement proceeds, and BrownGreer PLC as the Claims Processor to assist the
2 Claims Administrators with carrying out the Claims Administrators' duties and responsibilities
3 under the Settlement Agreement. On November 12, 2019, the Court appointed the Claim
4 Administrators and Claims Processor to preside over the settlement allocation process. The Claim
5 Administrators and Claims Processor developed a protocol and settlement allocation
6 methodology. On February 14, 2020, the Court preliminarily approved the protocol and
7 settlement allocation methodology and appointed the Claims Administrators as Special Masters
8 pursuant to Rule 53.

9 On September 9, 2020, Plaintiffs filed their Second Amended Complaint whereupon all
10 participating claimants have now been named as Plaintiffs in the operative Complaint. This
11 Motion is brought on behalf of all parties identified in the Second Amended Complaint.

12 **IV. THE SETTLEMENT WAS REACHED IN GOOD FAITH**

13 The Court is asked to address whether, under the facts of this case, the Settlement was
14 reached in good faith. As such, the Court must determine whether this is a "good faith settlement"
15 in accordance with NRS 17.245, which provides:

- 16 1. When a release or covenant not to sue or not to enforce judgment is given in good
17 faith to one of two or more persons liable for the same injury or the same
18 wrongful death:
 - 19 (a) It does not discharge any of the other tortfeasors from
20 liability for the injury or wrongful death unless its
21 terms so provide, but it reduces the claim against the
22 others to the extent of any amount stipulated by the
23 release or covenant, or in the amount of the
24 consideration paid for it, whichever is greater; and
 - 25 (b) It discharges the tortfeasor to whom it is given from
26 all liability for contribution and for equitable
27 indemnity to any other tortfeasor.
- 28 2. As used in this section, "equitable indemnity" means a right of indemnity that is
created by the court rather than expressly provided for in a written agreement.

26 It is well settled in Nevada that the District Court has discretion in determining whether a
27 settlement has been reached in good faith. *Velsicol Chem. Corp. v. Davidson*, 107 Nev. 356, 811
28 P.2d 561 (1991). Courts generally consider the following factors to determine whether a

1 settlement was made in good faith: 1) the amount of the settlement; 2) the allocation of the
2 settlement proceeds among plaintiffs; 3) the policy limits of available insurance and the financial
3 condition of the settling defendant; 4) whether the settlement involved any collusion, fraud or
4 tortious conduct aimed to injure the interests of the non-settling defendants; and 5) whether the
5 settlement is otherwise fair. *Doctors Company v. Vincent*, 120 Nev. 644, 98 P.3d 681 (Nev. 2004)
6 (citing *Velsicol Chemical Corp. v. Davidson*, 107 Nev. 356 (Nev. 1991); *In Re: MGM Grand*
7 *Hotel Fire Litigation*, 570 F. Supp. 913 (D. Nev. 1983)). No single factor carries more weight
8 than any other. *Velsicol*, 107 Nev. at 360, 811 P.2d at 563.

9 The purpose of the statute is “to encourage settlements by discharging all liability for
10 contribution by a settling tortfeasor to others upon a finding that the settlement was entered in
11 good faith.” See *In re MGM Grand Hotel Fire Litigation*, 570 F.Supp. 913, 926-27 (D. Nev.
12 July 12, 1983). The statute also protects non-settling parties “because the non-settling defendant
13 receives a credit in the amount contributed by the settling defendant in any subsequent verdict
14 against that defendant.” *Id.* at 927.

15 The parties’ settlement agreement bears every indication of good faith: It was
16 painstakingly negotiated at arm’s length over a period of months with the expert assistance of
17 experienced mediators; it provides a very substantial fund for the settlement of personal injury
18 claims, as befits the magnitude of Plaintiffs’ injuries; and it allocates all of MGM’s available
19 insurance to the Settlement, in addition to non-insurance money that MGM will commit to the
20 settlement fund based on participation. Accordingly, and consistent with the Court’s prior
21 finding, the parties now jointly move the Court for a determination of good faith settlement to
22 discharge the settling parties from all liability for contribution and for equitable indemnity to any
23 other tortfeasor. See NRS 17.245.

24 **A. The Amount Paid in Settlement**

25 MGM has agreed to pay Plaintiffs the total sum of eight hundred million dollars
26 (\$800,000,000.00) in complete settlement of Plaintiffs’ claims related to this litigation and the
27 facts giving rise to Plaintiffs’ alleged injuries. The Settlement will also release all of MGM’s
28 claims against Plaintiffs, specifically those relating to the declaratory actions brought by MGM.

1 This Settlement was entered into with the expressed understanding that it would be contingent
2 upon the Court issuing an order determining that this Settlement was done so in good faith
3 pursuant to NRS 17.245.³ By any measure, this is obviously a very substantial sum of money.
4 The fact that virtually all eligible claimants opted into the Settlement suggests that they viewed
5 the amount as fair and reasonable. To be clear, all parties believe the settlement amount is
6 reasonable, in light of the claims asserted, the evidence available, and the parties' assessment of
7 the strengths and weaknesses of the case. Accordingly, this factor weighs in favor of a finding of
8 good faith.

9 After a lengthy mediation, Plaintiffs and MGM agreed to settle Plaintiffs' claims for a
10 total settlement amount ranging between seven hundred thirty-five million (\$735,000,000) and
11 eight hundred million dollars (\$800,000,000). The final settlement amount was to be determined
12 by the participation percentages of claimants that opted into the Settlement. Based on the
13 percentage of the participating claimants, the final settlement amount resulted in eight hundred
14 million dollars (\$800,000,000.00). The final settlement amount includes the entire amount of
15 MGM's applicable insurance policy limits of seven hundred fifty-one million dollars
16 (\$751,000,000). As a result of the percentage of eligible claimants who opted into the Settlement,
17 MGM is also obligated to pay an additional forty-nine million dollars (\$49,000,000).

18 This Settlement (the 1 October Fund) is the first of its kind in Nevada history. The
19 Settlement amount was agreed upon after extensive arms'-length negotiations. Numerous factors
20 contributed to the parties' evaluation of the amount of the Settlement, including the types and
21 degrees of injuries sustained; the number of victims who fall within each category of injuries;
22 medical providers waiving their subrogation rights as to settlement proceeds; contribution of
23 funds from government agencies; MGM's financial status; the total amount of MGM's insurance
24 policy limits; and the extensive costs and risk of litigating the case.

25 Additionally, the case raises the issue of the SAFETY Act, a federal law created in 2002
26 that has never been interpreted by any court. The SAFETY Act added a unique set of complexities
27

28 ³ See the above Declaration of Robert T. Eglet, Esq. in Support of the Order Shortening Time ("Eglet Declaration").

1 to the litigation. Under the SAFETY Act, federal courts have exclusive jurisdiction over claims
2 arising out of, relating to, or resulting from an act of terrorism. 6 U.S.C. § 442(a)(1). Though the
3 October 1, 2017 Shooting has never been declared an act of terrorism by any federal authority,
4 the SAFETY Act’s definition of a terrorist act is broad and does not rely upon a determination of
5 terrorism. *See* 6 U.S.C. § 442(2)(A)-(B), 6 C.F.R. § 25.2, and 48 C.F.R. § 50.201. If the SAFETY
6 Act would be found to apply to the case, Plaintiffs’ potential recovery would be significantly
7 limited. Joint and several liability is not available in any case governed by the SAFETY Act and
8 the damages would arguably be limited to just \$25 million for all of the Plaintiffs. 6 U.S.C. §
9 443(c). Moreover, the parties would spend years litigating the application of the SAFETY Act
10 as it would be a matter of first impression and, likely, would result in appeals, possibly all the
11 way to the Supreme Court of the United States.

12 Further, given the complexity of the case, the number of victims expected to participate
13 in the Settlement, and the complexity of the Settlement itself, Plaintiffs and MGM elected to
14 participate in a mediation administered by two highly qualified mediators and former judges –
15 the Honorable Judge Jennifer Togliatti (Ret.) and the Honorable Louis Meisinger (Ret.). Judge
16 Togliatti is a former Nevada District Court Judge having served as a member of the judiciary
17 between 1999 and 2018. Judge Meisinger is a former Los Angeles Superior Court Judge having
18 served as a member of the judiciary between 2008 and 2013. Together, Judge Togliatti and Judge
19 Meisinger conducted the mediation between the parties. Counsel for Plaintiffs and MGM
20 exhausted significant time and effort to negotiate a fair settlement agreement and an amount to
21 adequately compensate Plaintiffs for the injuries they sustained as a result of the Shooting.

22 **B. Insurance Policy Limits and the Financial Condition of the Settling Party**

23 With this Settlement, MGM has exhausted its insurance limit of \$751 million, thus
24 supporting a finding of good faith. Furthermore, as a result of the near-unanimous participation
25 in the Settlement among potential claimants, MGM will contribute significant additional monies
26 to the settlement fund, as determined by the participation thresholds in the parties’ agreement,
27 which represents a significant sum by any measure, and particularly at present, given the impact

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1 of the COVID 19 pandemic on MGM’s business in Las Vegas and elsewhere. Accordingly,
2 these factors support a finding of good faith.

3 **C. The Allocation of Settlement Proceeds Among Plaintiffs**

4 On November 1, 2019, Plaintiffs filed a motion to appoint the Honorable Jennifer Togliatti
5 (Ret.) and the Honorable Louis Meisinger (Ret.) as Claims Administrators to facilitate an adequate
6 distribution of the settlement funds amongst Plaintiffs, which this Court granted on November 12,
7 2019. The Claims Administrators prepared an extensive Claims Protocol, which provided details
8 of the settlement allocation methodology. The Claims Protocol outlined ranges of values for injury
9 types, and administrative procedures and administrative processes supplementary to those specific
10 in the Settlement Agreement that provide further specific details about how the Settlement Funds
11 are allocated and administered. The Protocol is an extensive document that took the Claim
12 Administrators months of effort in order to fairly compensate each claimant’s injuries. The
13 Protocol details separate amounts for different types of injuries, and applies different factors, such
14 as a claimant’s bills for past medical treatment, expected bills for future medical treatment, loss of
15 income, and others, in order to fairly and appropriately compensate each claimant’s individual
16 injuries. On February 14, 2020, the Court reviewed and approved the Claims Protocol and
17 appointed the Claims Administrators as Special Masters pursuant to Rule 53. This factor weighs
18 in favor of a finding of good faith.

19 **D. The Insurance Policy Limits of the Settling Defendant**

20 The good faith character of this Settlement is demonstrated by the fact that MGM agreed
21 to contribute 100% of its insurance policy limits relative to Plaintiffs’ claims. Thus, this factor
22 weights in favor of a finding of good faith. In *In Re MGM Grand Hotel Fire Litigation*, the court
23 specifically stated, “[t]he good faith character of these settlements is readily demonstrated by the
24 extensive arms-length negotiations between each of these defendants in seeking protection because
25 of their contributions of **either all or near their policy limits.**” 570 F. Supp. 913, 929 (D. Nev.
26 1983) (emphasis added). Here, MGM’s insurance will contribute seven hundred fifty-one million
27 dollars (\$751,000,000.00), which constitutes all (100%) of available insurance proceeds. Because
28

1 MGM chose to contribute 100% of the insurance policy limits to this Settlement, this factor weighs
2 heavily in favor of finding the Settlement between the parties was entered into in good faith.

3 **E. The Absence of Collusion, Fraud, or Tortious Conduct**

4 There can be no argument that this settlement is the product of fraud or collusion. On the
5 contrary, as outlined above, this settlement is the culmination of many weeks of arm's length
6 mediation and further discussions between counsel for Plaintiffs and MGM and, later, LiveNation
7 and CSC. Those negotiations began after months of hard-fought litigation. The parties were
8 represented by sophisticated and experienced counsel—Plaintiffs, by leaders of the Nevada and
9 Southern California plaintiff's bars, and Defendants, by well-reputed Nevada and California law
10 firms. Counsel for the parties vigorously negotiated all aspects of the Settlement Agreement, with
11 the assistance of the two esteemed mediators, Judges Togliatti and Meisinger, over the course of
12 many months.

13 The parties spent considerable time evaluating their respective risks in litigating this
14 complex case. Additionally, counsel for all parties ordered and reviewed voluminous sets of
15 medical records, communicated with treating healthcare providers and experts, maintained
16 regular contact with their clients to provide them with updates as to the status of the mediation,
17 explained the mediation process, explained the terms of the Settlement, went over the settlement
18 protocols and how those protocols were likely to apply to their claims, provided their clients the
19 opportunity to opt-in to the settlement, and submitted claims on behalf of their participating
20 clients. Only one person filed an opt-out form, and he is not participating in the Settlement.

21 The presence of such vigorous, arms'-length negotiations between experienced and
22 sophisticated counsel that take into account the strengths and weaknesses of the parties' potential
23 legal arguments is a critical factor in determining whether a settlement is in good faith and
24 supports such a finding here.

25 Plaintiffs' Leadership Firms retained the services of nationally-recognized ethicist, Prof.
26 Lynn A. Baker of Austin Law and Economics Consultants, Inc., in March of 2019 to advise
27
28

1 Plaintiffs’ Counsel concerning ethical issues involved in the settlement.⁴ Specifically, Plaintiffs
2 Leadership Firms sought Professor Baker’s input and advice to ensure that the Settlement
3 Agreement and associated documents complied with all applicable ethical rules and guidelines,
4 including but not limited to the settlement’s allocation process; the content of the settlement offer
5 letter and related client-disclosure documents. Professor Baker concluded that each document
6 she reviewed and revised “complies fully with all potentially applicable rules of legal ethics,
7 including the aggregate settlement rule.”⁵ As further described in Professor Baker’s letter to
8 Leadership Firms:

9 I have been repeatedly impressed by your desire to protect the
10 welfare of each of the individual clients covered by the settlement
11 agreement. Throughout, you have shown a genuine concern to
12 comply with all applicable ethical rules and guidelines and, more
13 simply, to do what is right.

14 *Id.*

15 After the settlement was reached and after the claimants opted into the Settlement, a small
16 number of individuals questioned one aspect of the settlement’s process. Specifically, these
17 individuals made reference to the fact that Judge Togliatti’s father was employed as the Vice
18 President of Security, Surveillance and Safety at Mandalay Bay Resort and Casino at the time of
19 the shooting. Judge Togliatti’s father was no longer employed at the Mandalay Bay, or by any
20 MGM entity, at the time of the mediation. He left that post in January 2019 to work for the State
21 of Nevada as Director of the Department of Public Safety. In an abundance of caution, Plaintiffs’
22 Counsel had these concerns evaluated by experts in professional responsibility.⁶

23 As this Court is aware, mediation is a voluntary and non-binding process. No claimant
24 was required to opt-in to the Settlement.⁷ Accordingly, experts agree that choosing a mediator

25 ⁴ Defendants have no firsthand knowledge of Plaintiffs’ retention of an ethicist and related discussions; although this
26 is a joint motion, representations of fact related to Plaintiffs’ Leadership Firms’ retention of and communications
with ethicists are made only by Plaintiffs.

27 ⁵ See Eglet Decl., **Exhibit 1**, an analysis by Professor Lynn A. Baker.

28 ⁶ See Eglet Decl., **Exhibit 2**, an analysis by Dennis L. Kennedy, Esq.

⁷ Mr. Kennedy, an expert retained by Eglet Adams, states that the “decision to select a mediator is akin to a lawyer’s
authority to select an expert witness or seek recusal of a judge.” Plaintiffs’ counsel were not required to inform their
clients of the identities of the mediators selected to preside over the settlement of this case. Judge Togliatti’s father’s

1 is a tactical decision, rather than a substantive decision requiring client consent. Plaintiffs'
2 Counsel and MGM's Counsel engaged in numerous discussions related to selecting the
3 appropriate mediators for the case and, after those discussions, it was determined that Judge
4 Togliatti's extensive experience in complex matters as both a Nevada state court judge and
5 mediator far outweighed any perception of conflict based on her father's employment.⁸
6 Moreover, all of the attorneys for the Plaintiffs were involved in the decision to retain Judge
7 Togliatti's father's employment.⁹

8 The law firms representing Plaintiffs provided their clients with regular communications
9 regarding the mediation. Every plaintiff had the opportunity to opt-in to the Settlement or to
10 pursue their claims separately.¹⁰ In sum, there was no fraud, collusion, or tortious conduct that
11 led to this settlement. This Settlement is the result of hard work, investigation, substantial time,
12 thorough analysis, and a desire to resolve the case in a manner that provides compensation to the
13 Plaintiffs, while recognizing the risks all parties faced in proceeding with litigation. As such, this
14 factor weighs in favor of a finding of good faith.

15 **F. Whether the Settlement Is Otherwise Fair**

16 Finally, and importantly, the Settlement is eminently fair in all other respects. Its equitable
17 allocation of the total settlement fund among claimants ensures that those who incurred injuries
18 during the One October tragedy will receive fair compensation for their injuries without years of
19 prolonged litigation and appeals regarding whether they had valid claims against Defendants.
20 And the presence of mutual releases, both between Plaintiffs and Defendants, and among
21 Defendants and their insurers, ensures that all parties to the Settlement Agreement will find peace.
22 Nevada has a strong public policy in favor of private settlement. *Mafabon v. Garcia Mafabon*,
23 111 Nev. 793 (1995). For all the reasons described above, the parties' fair and reasonable
24

25 employment was not a material fact that was required to be disclosed to the clients, particularly because a mediator
26 does not make any decisions regarding the merits of the case. Neither mediator could force any party into a settlement.
27 Therefore, a mediator's theoretical conflicts of interests or potential (or perceived) conflicts, whether known by the
28 participating lawyers or not, has no coercive power concerning the ultimate settlement or failure to settle.

⁸ *Id.*

⁹ *Id.*

¹⁰ Only one person submitted a form electing not to opt in to the settlement.

1 Settlement Agreement vindicates that policy. Accordingly, this factor supports a finding of good
2 faith.

3 **V. CONCLUSION**

4 Upon application of the relevant factors, it is evident that this Settlement was reached in
5 good faith. The parties negotiated a fair and reasonable settlement amount to compensate the
6 victims of the October 1, 2017 shooting after extensive arms'-length discussions. MGM agreed
7 to tender 1) 100% of their seven hundred fifty-one million (\$751,000,000) insurance policy limits
8 and 2) forty-nine million dollars (\$49,000,000) of their own funds over and above the insurance
9 policy limits to achieve this Settlement. There was no fraud, collusion, or tortious conduct
10 involved in the Settlement.

11 Accordingly, the parties respectfully request that this Court enter an Order granting its
12 Motion for Determination of Good Faith Settlement pursuant to NRS 17.245 and determining that
13 (1) the settlement proposed is a good faith settlement in accordance with NRS 17.245; (2) based
14 on the finding of good faith, any and all claims or potential claims for equitable indemnity and/or
15 contribution, as well as all other claims seeking damages comparable to those recoverable in a
16 contribution or equitable indemnity action, regardless of the claims' actual title, are barred;

17 ///

21 ///

25 ///

1 (3) Defendants be dismissed with prejudice from the case upon their compliance with the
2 settlement agreement's terms; and (4) the Court award such additional and further relief as is
3 within its discretion.

4 DATED this 10th day of September 2020.

5 Respectfully Submitted By:

6 /s/ Mark. P. Robinson, Jr.

7 Mark P. Robinson, Jr.
8 California Bar No. 54426
9 (Nevada pro hac)
10 Daniel S. Robinson
11 California Bar No. 244245
12 (Nevada pro hac)
13 **ROBINSON CALCAGNIE, INC.**
14 19 Corporate Plaza Drive
15 Newport Beach, CA 92660
16 (949) 720-1288; Fax (949) 720-1292
17 mrobinson@robinsonfirm.com
18 drobinson@robinsonfirm.com

/s/ Robert T. Eglet

Robert T. Eglet
Nevada Bar No. 3402
Robert M. Adams
Nevada Bar No. 6551
Angel P. Getsov
Nevada Bar No. 14525
EGLET ADAMS
400 S. Seventh St., Suite 400
Las Vegas, NV 89101
(702) 450-5400; Fax: (702) 450-5451
eservice@egletlaw.com

15 Brian Nettles

16 Nevada Bar No. 7462
17 (Nevada local counsel)
18 **NETTLES MORRIS LAW FIRM**
19 1389 Galleria Drive, Suite 200
20 Henderson, NV 89014
21 (702) 710-9964; Fax: (702) 434-1488
22 Brian@nettlesmorris.com

/s/ Kevin R. Boyle

Kevin R. Boyle
(Nevada pro hac)
California Bar No. 192718
Rahul Ravipudi
Nevada Bar No. 14750
PANISH SHEA & BOYLE LLP
8816 Spanish Ridge Avenue
Las Vegas, NV 89148
(702) 560-5520; Fax: (702) 975-2515
boyle@psblaw.com

Attorneys for Plaintiffs

1 Respectfully submitted,

2 By:

3

4 /s/ Bethany W. Kristovich

BRAD D. BRIAN, *pro hac vice*
5 BETHANY W. KRISTOVICH, *pro hac vice*
JOHN M. GILDERSLEEVE, *pro hac vice*
6 **MUNGER, TOLLES & OLSON LLP**
350 South Grand Avenue, Fiftieth Floor
7 Los Angeles, California 90071-3426
Telephone: (213) 683-9100
8 Facsimile: (213) 687-3702

9

10 -and-

11

JAMES J. PISANELLI, State Bar No. 4027
12 JJP@pisanellibice.com
13 **PISANELLI BICE PLLC**
400 South 7th Street
14 Las Vegas, NV 89101
Telephone: (702) 214-2100

15

16 -and-

17

KAREN L. BASHOR, State Bar. No. 11913
18 Karen.Bashor@wilsonelser.com
19 **WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP**
6689 Las Vegas Blvd. South, Suite 200
20 Las Vegas, NV 89119
Telephone: (702) 727-1400
21 Facsimile: (702) 727-1401

22 Attorneys for MGM

23

24

25

26

27

28