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NOTE: CHANGES MADE BY THE COURT

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 23 SBE Hotel Licensing, LLC, SBE Hotel Group, LLC,
 24 SBEEG Holdings, LLC, Sam Nazarian, and Las Vegas
 25 Resort Holdings, LLC

26 **UNITED STATES DISTRICT COURT**
 27 **CENTRAL DISTRICT OF CALIFORNIA**

28 Luxe Hospitality Company, LLC,
 Plaintiff,

Case No. 2:15-cv-07115-JAK (JPRx)

**STIPULATED PROTECTIVE
 ORDER**

v.

SBE Entertainment Group, LLC, SBE
 Hotel Licensing, LLC, SBE Hotel
 Group, LLC, SBEEG Holdings, LLC,
 Las Vegas Resort Holdings, LLC,
 Sam Nazarian, and Las Vegas Resort
 Holdings, LLC

Defendants.

1 **2. DESIGNATING PROTECTED MATERIAL**

2 **2.1 Over-Designation Prohibited.** Any party or non-party who
3 designates information or items for protection under this Order as
4 “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEY EYES
5 ONLY” (a “designator”) must only designate specific material that qualifies under
6 the appropriate standards. To the extent practicable, only those parts of documents,
7 items, or oral or written communications that require protection shall be designated.
8 Designations with a higher confidentiality level when a lower level would suffice
9 are prohibited. Mass, indiscriminate, or routinized designations are prohibited.
10 Designation under this Order is allowed only if the designation is necessary to
11 protect material that, if disclosed to persons not authorized to view it, would cause
12 competitive or other recognized harm. Material may not be designated if it has
13 been made public, or if designation is otherwise unnecessary to protect a secrecy
14 interest. If a designator learns that information or items that it designated for
15 protection do not qualify for protection at all or do not qualify for the level of
16 protection initially asserted, that designator must promptly notify all parties that it
17 is withdrawing the mistaken designation.

18 **2.2 Manner and Timing of Designations.** Designation under this Order
19 requires the designator to affix the applicable legend (“CONFIDENTIAL” or
20 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY”) to each page that
21 contains protected material. For testimony given in deposition or other proceeding,
22 the designator shall specify all protected testimony and the level of protection being
23 asserted. It may make that designation during the deposition or proceeding, or may
24 invoke, on the record or by written notice to all parties on or before the next
25 business day, a right to have up to 21 days from the deposition or proceeding to
26 make its designation.

1 2.2.1 A party or non-party that makes original documents or materials
2 available for inspection need not designate them for protection until after the
3 inspecting party has identified which material it would like copied and
4 produced. During the inspection and before the designation, all material
5 shall be treated as HIGHLY CONFIDENTIAL – ATTORNEY EYES
6 ONLY. After the inspecting party has identified the documents it wants
7 copied and produced, the producing party must designate the documents, or
8 portions thereof, that qualify for protection under this Order.

9 2.2.2 Parties shall give advance notice if they expect a deposition or
10 other proceeding to include HIGHLY CONFIDENTIAL - ATTORNEY
11 EYES ONLY material so that the other parties can ensure that only
12 authorized individuals are present at those proceedings when such material is
13 disclosed or used. The use of a document as an exhibit at a deposition shall
14 not in any way affect its designation. Transcripts containing designated
15 material shall have a legend on the title page noting the presence of
16 designated material, and the title page shall be followed by a list of all pages
17 (including line numbers as appropriate) that have been designated, and the
18 level of protection being asserted. The designator shall inform the court
19 reporter of these requirements. Any transcript that is prepared before the
20 expiration of the 21-day period for designation shall be treated during that
21 period as if it had been designated HIGHLY CONFIDENTIAL –
22 ATTORNEY EYES ONLY unless otherwise agreed. After the expiration of
23 the 21-day period, the transcript shall be treated only as actually designated.

24 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to
25 designate does not, standing alone, waive protection under this Order. Upon timely
26 assertion or correction of a designation, all recipients bound by this protective order
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1 must make reasonable efforts to ensure that the material is treated according to this
2 Order.

3 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 All challenges to confidentiality designations shall proceed under L.R. 37-1
5 through L.R. 37-4.

6 **4. ACCESS TO DESIGNATED MATERIAL**

7 4.1 **Basic Principles.** A receiving party may use designated material only
8 for this litigation. Designated material may be disclosed only to the categories of
9 persons and under the conditions described in this Order.

10 4.2 **Disclosure of CONFIDENTIAL Material Without Further**

11 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the
12 designator, a receiving party may disclose any material designated
13 CONFIDENTIAL only to:

14 4.2.1 The receiving party's outside counsel of record in this action
15 and employees of outside counsel of record to whom disclosure is reasonably
16 necessary;

17 4.2.2 The officers, directors, and employees of the receiving party to
18 whom disclosure is reasonably necessary, and who have signed the
19 Agreement to Be Bound (Exhibit A);

20 4.2.3 Experts retained by the receiving party's outside counsel of
21 record to whom disclosure is reasonably necessary, and who have signed the
22 Agreement to Be Bound (Exhibit A);

23 4.2.4 The Court and its personnel;

24 4.2.5 Outside court reporters and their staff, professional jury or trial
25 consultants, and professional vendors to whom disclosure is reasonably
26 necessary, and who have signed the Agreement to Be Bound (Exhibit A);

1 4.2.6 During their depositions, witnesses in the action to whom
2 disclosure is reasonably necessary and who have signed the Agreement to Be
3 Bound (Exhibit A); and

4 4.2.7 The author or recipient of a document containing the material, or
5 a custodian or other person who otherwise possessed or knew the
6 information.

7 **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**
8 **ONLY Material Without Further Approval.** Unless permitted in writing by the
9 designator, a receiving party may disclose material designated HIGHLY
10 CONFIDENTIAL – ATTORNEY EYES ONLY without further approval only to:

11 4.3.1 The receiving party’s outside counsel of record in this action
12 and employees of outside counsel of record to whom it is reasonably
13 necessary to disclose the information;

14 4.3.2 The Court and its personnel;

15 4.3.3 Outside court reporters and their staff, professional jury or trial
16 consultants, and professional vendors to whom disclosure is reasonably
17 necessary, and who have signed the Agreement to Be Bound (Exhibit A); and

18 4.3.4 The author or recipient of a document containing the material, or
19 a custodian or other person who otherwise possessed or knew the
20 information;

21 4.3.5 Experts retained by the receiving party’s outside counsel of
22 record to whom disclosure is reasonably necessary, and who have signed the
23 Agreement to Be Bound (Exhibit A).

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25 **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**
26 **CONFIDENTIAL – ATTORNEY EYES ONLY Material to In-House Counsel.**
27 Unless agreed to in writing by the designator:
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1 4.4.1 A party seeking to disclose to in-house counsel any material
2 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must
3 first make a written request to the designator providing the full name of the
4 in-house counsel, the city and state of such counsel’s residence, and such
5 counsel’s current and reasonably foreseeable future primary job duties and
6 responsibilities in sufficient detail to determine present or potential
7 involvement in any competitive decision-making.

8 4.4.2 A party that makes a request and provides the information
9 specified in paragraphs 4.4.1 may disclose the designated material to the
10 identified in-house counsel unless, within seven days of delivering the
11 request, the party receives a written objection from the designator providing
12 detailed grounds for the objection.

13 4.4.3 All challenges to objections from the designator shall proceed
14 under L.R. 37-1 through L.R. 37-4.

15 **5. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
16 **PRODUCED IN OTHER LITIGATION**

17 5.1 **Subpoenas and Court Orders.** This Order in no way excuses non-
18 compliance with a lawful subpoena or court order. The purpose of the duties
19 described in this section is to alert the interested parties to the existence of this
20 Order and to give the designator an opportunity to protect its confidentiality
21 interests in the court where the subpoena or order issued.

22 5.2 **Notification Requirement.** If a party is served with a subpoena or a
23 court order issued in other litigation that compels disclosure of any information or
24 items designated in this action as CONFIDENTIAL or HIGHLY CONFIDENTIAL
25 – ATTORNEY EYES ONLY, that party must:

26 5.2.1 Promptly notify the designator in writing. Such notification
27 shall include a copy of the subpoena or court order;
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1 5.2.2 Promptly notify in writing the party who caused the subpoena or
2 order to issue in the other litigation that some or all of the material covered
3 by the subpoena or order is subject to this Order. Such notification shall
4 include a copy of this Order; and

5 5.2.3 Cooperate with all reasonable procedures sought by the
6 designator whose material may be affected.

7 **5.3 Wait For Resolution of Protective Order.** If the designator timely
8 seeks a protective order, the party served with the subpoena or court order shall not
9 produce any information designated in this action as CONFIDENTIAL or HIGHLY
10 CONFIDENTIAL –ATTORNEY EYES ONLY before a determination by the court
11 where the subpoena or order issued, unless the party has obtained the designator’s
12 permission or a court so orders. The designator shall bear the burden and expense
13 of seeking protection of its confidential material in that court.

14 **6. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

15 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
16 designated material to any person or in any circumstance not authorized under this
17 Order, it must immediately (1) notify in writing the designator of the unauthorized
18 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the
19 designated material, (3) inform the person or persons to whom unauthorized
20 disclosures were made of all the terms of this Order, and (4) use reasonable efforts
21 to have such person or persons execute the Agreement to Be Bound (Exhibit A).

22 **7. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
23 **PROTECTED MATERIAL**

24 When a producing party gives notice that certain inadvertently produced
25 material is subject to a claim of privilege or other protection, the obligations of the
26 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
27 This provision is not intended to modify whatever procedure may be established in
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1 an e-discovery order that provides for production without prior privilege review
2 pursuant to Federal Rule of Evidence 502(d) and 26(e).

3 **8. FILING UNDER SEAL**

4 Without written permission from the designator or a Court order, a party may
5 not file in the public record in this action any designated material. A party seeking
6 to file under seal any designated material must comply with L.R. 79-5. Filings may
7 be made under seal only pursuant to a court order authorizing the sealing of the
8 specific material at issue. The fact that a document has been designated under this
9 Order is insufficient to justify filing under seal. Instead, parties must explain the
10 basis for confidentiality of each document sought to be filed under seal. Because a
11 party other than the designator will often be seeking to file designated material,
12 cooperation between the parties in preparing, and in reducing the number and extent
13 of, requests for under seal filing is essential. If a receiving party's request to file
14 designated material under seal pursuant to L.R. 79-5.1 is denied by the Court, then
15 the receiving party may file the material in the public record unless (1) the
16 designator seeks reconsideration within four days of the denial, or (2) as otherwise
17 instructed by the Court.

18 **9. FINAL DISPOSITION**

19 Within 60 days after the final disposition of this action, each party shall
20 return all designated material to the designator or destroy such material, including
21 all copies, abstracts, compilations, summaries, and any other format reproducing or
22 capturing any designated material. The receiving party must submit a written
23 certification to the designator by the 60-day deadline that (1) identifies (by
24 category, where appropriate) all the designated material that was returned or
25 destroyed, and (2) affirms that the receiving party has not retained any copies,
26 abstracts, compilations, summaries, or any other format reproducing or capturing
27 any of the designated material. This provision shall not prevent counsel from
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1 retaining an archival copy of all pleadings, motion papers, trial, deposition, and
2 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
3 expert reports, attorney work product, and consultant and expert work product, even
4 if such materials contain designated material. Any such archival copies remain
5 subject to this Order.

6
7 Dated: June 8, 2016

Respectfully submitted,

8 BRETON BOCCHIERI
9 ROBINS KAPLAN LLP

10 By: /s/ Breton Bocchieri
Breton Bocchieri
11 Attorneys for
12 Luxe Hospitality Company, LLC

13 Dated: June 8, 2016

Respectfully submitted,

14 DANIEL M. PETROCELLI
15 DAVID MARROSO
16 DREW E. BREUDER
MEGAN KELLER SMITH
O'MELVENY & MYERS LLP

17
18 By: /s/ David Marroso
David Marroso
19 Attorneys for SBE Entertainment Group,
20 LLC, SBE Hotel Group, LLC, SBE
Hotel Licensing, LLC, SBEEG
21 Holdings, LLC, Sam Nazarian, and Las
Vegas Resort Holdings, LLC

22 **SIGNATURE ATTESTATION**

23 The filing attorney attests that he has obtained concurrence regarding the
24 filing of this document from each of the other signatories hereto.

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Dated: June 8, 2016

By: /s/ David Marroso
David Marroso
Attorneys for SBE Entertainment Group,
LLC, SBE Hotel Group, LLC, SBE
Hotel Licensing, LLC, SBEEG
Holdings, LLC, Sam Nazarian, and Las
Vegas Resort Holdings, LLC

Based on the stipulation of the parties and for good cause shown, IT IS SO
ORDERED.

Dated: June 13, 2016



Hon. Jean P. Rosenbluth
U.S. Magistrate Judge

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____, declare under penalty of perjury
4 under the laws of the United States that:

- 5 1. My present employer is _____.
- 6 2. My present occupation or job description is _____
- 7 _____
- 8 _____

9 3. **I HEREBY CERTIFY AND AGREE** that I am about to receive
10 Confidential Materials in connection with the federal civil case entitled, *Luxe*
11 *Hospitality Company, LLC v. SBE Entertainment Group, LLC et al.*, United States
12 District Court for the Central District of California, Case No. 2:15-CV-07115-JAK
13 (JPRx).

14 4. I understand that these Confidential Materials are being provided to
15 me subject to the terms and restrictions of the Protective Order that has been
16 entered in this case. I have been given a copy of the Protective Order, I have read
17 it, I understand it and I agree to be bound by its terms.

18 5. I understand that Confidential Materials, as defined in the Protective
19 Order, include any notes, summaries, abstracts, or reports made from any such
20 Confidential Materials. I further understand that all Confidential Materials I receive
21 or may generate shall not be disclosed to anyone except as expressly permitted by
22 the Protective Order. I will copy or use any Confidential Materials received
23 pursuant to the Protective Order only for purposes relating to this case, and only as
24 permitted by the terms of the Protective Order, unless otherwise ordered by the
25 Court.

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