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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

STATION CASINOS, INC.

- ☐ Affects this Debtor
☒ Affects all Debtors
☐ Affects Northern NV Acquisitions, LLC
☐ Affects Reno Land Holdings, LLC
☐ Affects River Central, LLC
☐ Affects Tropicana Station, LLC
☐ Affects FCP Holding, Inc.
☐ Affects FCP Voteco, LLC
☐ Affects Fertitta Partners LLC
☐ Affects FCP MezzCo Parent, LLC
☐ Affects FCP MezzCo Parent Sub, LLC
☐ Affects FCP MezzCo Borrower VII, LLC
☐ Affects FCP MezzCo Borrower VI, LLC
☐ Affects FCP MezzCo Borrower V, LLC
☐ Affects FCP MezzCo Borrower IV, LLC
☐ Affects FCP MezzCo Borrower III, LLC
☐ Affects FCP MezzCo Borrower II, LLC
☐ Affects FCP MezzCo Borrower I, LLC
☐ Affects FCP PropCo, LLC

Chapter 11

Case No. BK-09-52477
Jointly Administered
BK 09-52470 through BK 09-52487

**DEBTORS' EMERGENCY MOTION FOR
A PROTECTIVE ORDER LIMITING THE
ATTENDEES TO DEPOSITIONS**

Hearing:
Time: .
Place:

1 **TO THE HONORABLE GREGG W. ZIVE, UNITED STATES BANKRUPTCY JUDGE,**
 2 **THE OFFICE OF THE U.S. TRUSTEE, AND ALL OTHER PARTIES IN INTEREST:**

3 Chapter 11 debtors Station Casinos, Inc. ("SCI" or "OpCo"), together with the other
 4 above-captioned debtors and debtors in possession (collectively the "Debtors"), hereby file this
 5 emergency motion (the "Motion for Protective Order") and respectfully request that the Court (1)
 6 limit the attendees at all depositions in connection with: (A) the Joint Motion of Station Casinos,
 7 Inc. and FCP PropCo, LLC Pursuant to 11 U.S.C. §§ 105(a), 363(b)(1), 365(d)(3) and
 8 365(d)(4)(B)(ii) and Fed. R. Bankr. Proc. 9019 for Entry of an Order Approving Second
 9 Amendment to Amended and Restated Master Lease Compromise Agreement (Docket No. 1179)
 10 ("the Master Lease Motion"; (B) the Debtors' Motion for Order Pursuant to 11 U.S.C. § 1121 (d)
 11 Further Extending the Exclusive Period Within Which Debtors May Solicit Acceptances to Joint
 12 Plan of Reorganization (Docket No. 1172) (the "Exclusivity Motion"; and (C) the Debtors'
 13 Motion for Entry of Order Establishing Bidding Procedures and Deadlines Relating to Sale
 14 Process for Substantially All of the Assets of Station Casinos, Inc. and Certain "OpCo"
 15 Subsidiaries (Docket No. 1175) (the "Bidding Procedures Motion") to counsel for:

16 (a) the Debtors,

17 (b) the Official Unsecured Creditors Committee (the "UCC"),

18 (c) FCP PropCo LLC ("PropCo") and the secured mortgage lenders to Propco (the
 19 "Mortgage Lenders"),

20 (d) the holders of approximately 10% of the "OpCo" debt (the so-called "Independent
 21 Lenders") and

22 (e) the agent for OpCo lenders; and

23 (2) exclude from attendance at all depositions counsel for and all representatives of
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1 (a) Boyd Gaming Corp. (“Boyd”)¹ and

2 (b) Fertitta Gaming LLC (“FG”).

3 This Motion is based on Fed. R. Civ. Proc. 26(c), Fed. R. Bankr. Proc. 9014, LR 4001,
4 the following points and authorities, the Declaration of Linda Dakin-Grimm (the “Dakin-Grimm
5 Declaration”), filed concurrently herewith and in support hereof, and any oral arguments the
6 Court may entertain.
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28 ¹ The term “Boyd” as used herein encompasses not only Boyd Gaming Corporation, but Boyd’s agents, attorneys, consultants, advisors and other service providers.

INTRODUCTION

The instant motion was necessitated by Boyd's insistence that it be permitted to attend all depositions in connection with the three motions to be heard on May 4, 2010, the Bidding Procedures Motion, the Master Lease Motion and the Exclusivity Motion. Boyd has filed opposition papers to each of the motions, purporting to have done so as a "creditor" of SCI in these proceedings. In reality, Boyd had sought to act as the stalking horse bidder in the auction contemplated in the Bid Procedures Motion, but was not successful in negotiating for that position. As a result, Boyd's true status is that of a disappointed bidder for the stalking horse position and a potential competing bidder in the ultimate auction. Equally important, Boyd is the Debtors' primary competitor, which means that regardless of the outcome of the auction process, Boyd has every incentive to try to disrupt the Debtors' efforts to preserve and maintain their business operations in a manner consistent with the Debtors' place at the top of the locals gaming market. Thus, Boyd's posturing has nothing to do with its holdings of insignificant amounts of out-of-the-money bonds and everything to do with Boyd's effort to try to gain access to Debtor's confidential documents and to attend the depositions in order to disrupt the bankruptcy process and the Debtors' business and obtain sensitive competitive information that it would then use to the detriment of the Debtors' estates. Boyd clearly views this as a "free shot" to harm SCI and gain a competitive advantage; such an agenda is not an appropriate use of creditor standing in these cases and should not be permitted.

Moreover, while demanding access to Debtor's confidential documents and to attend the depositions, Boyd has refused to produce in discovery its own documents, including vital information relevant to Boyd's objections to the pending Master Lease Motion and the Bidding Procedures Motion. Production of the requested documents would undoubtedly reveal Boyd's violations of the nondisclosure agreement it executed with the Debtors in January in furtherance

1 of Boyd's purported desire to pursue acquisition of the Debtors' assets. Indeed, Boyd's inability
2 to conform its conduct to the terms of its nondisclosure agreement with SCI provides an
3 independent rationale for prohibiting their participation in the upcoming depositions.

4 Finally, Boyd will suffer no prejudice if it is excluded from the depositions. Boyd does
5 not seek to participate in discovery in these proceedings as a creditor—Boyd purchased a
6 nominal amount of far out-of-the-money bonds (likely at pennies on the dollar) in order to claim
7 “creditor” status in this case, but any creditor interests it may have as a result will be fully
8 protected by counsel for the Official Committee of Unsecured Creditors, who undoubtedly will
9 be active in the pending discovery. Boyd has never acted as a creditor in these proceedings,
10 advocating positions likely to result in any recovery on its investment in the Debtors. Instead,
11 Boyd has advocated positions as the Debtors' principal competitor in the locals gaming market.
12 From the outset of these proceedings, Boyd has sought to delay, hinder, and obstruct the
13 Debtors' reorganization, obtain access to SCI's valuable trade secrets, and harass SCI's
14 management. Simply put, Boyd has acted strategically to hurt SCI's reorganization in order to
15 further its own competitive interests. And, if at all possible, Boyd would like to poison the well
16 for other potential bidders for OpCo, so that Boyd can obtain the OpCo assets at fire-sale prices.
17 As such, SCI and its *bona fide* stakeholders will be severely prejudiced if Boyd is permitted to
18 attend and participate in the scheduled depositions—particularly without fully and in good faith
19 producing its own documents on all the issues related to the pending motions.

23 **FACTUAL BACKGROUND**

24 On January 22, 2010, Boyd entered into a nondisclosure agreement with SCI (the
25 “NDA”), which provided that SCI had “designated Dan Aronson of Lazard Freres & Co., as its
26 representative (the “Company Representative”) who will arrange for appropriate contacts for
27 any meeting with the Company Parties or the Company's Representatives. All (i)
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1 **communications** regarding any meetings, and (ii) discussions or questions regarding procedures,
2 **will be submitted or directed to the Company Representative.”** Dakin-Grimm Decl. Ex. A
3 (emphasis added).

4 On January 23, 2010, *less than 24 hours after the NDA was signed*, having learned of
5 violations of the NDA (Boyd engaged in direct communications with OpCo Banks and their
6 advisors), counsel for SCI emailed counsel for Boyd regarding the violations. Dakin-Grimm
7 Decl. Ex. B. Boyd and its counsel offered no response to this communication and the allegations
8 of wrongdoing contained therein.

10 As plan negotiations took place, it became obvious that Boyd was repeatedly violating
11 the NDA, by seeking information from and having communication directly with the OpCo Banks
12 and their advisors. On repeated occasions, SCI management learned that restructuring proposals
13 offered to them by the OpCo banks had actually been prepared by Boyd, or that certain terms
14 were being dictated to the OpCo banks by Boyd. In one particularly troubling example, the
15 OpCo Banks informed SCI that Boyd, a principal competitor, was insisting on access to the
16 Primary Customer lists of the PropCo casinos—information that Boyd, which operates casinos
17 that compete directly with three of the PropCo casinos, could use to steal PropCo’s most
18 valuable customers and decimate its business. Because the OpCo casinos are generally not
19 geographically situated in locations that compete with the PropCo casinos, the PropCo customer
20 information would not necessarily be all the helpful to a future owner of the OpCo casinos. But
21 for Boyd, which, for example, operates the Sun Coast casino within approximately two miles of
22 Red Rock, that information would be highly valuable. Similarly, SCI Management learned that
23 certain terms presented by the OpCo Banks concerning what is referred to as the Texas Station
24 “put” were dictated by Boyd.
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1 OpCo was deeply concerned by Boyd's repeated violations of the NDA, as well as by
2 Boyd's refusal to engage directly with the Debtors but instead to negotiate by hiding behind the
3 OpCo banks. Nonetheless, the Debtors' forged ahead in good faith with their ongoing
4 negotiations with the OpCo Banks as the legitimate in-the-money creditor constituents.

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6 On April 7, 2010, SCI filed the Master Lease Motion and the Bidding Procedures
7 Motion. On April 13, 2010, the Official Committee of Unsecured Creditors and the Independent
8 Lenders each served discovery demands on SCI, including notices for the depositions of SCI
9 witnesses that Boyd now seeks to attend. On April 21, Boyd served lengthy oppositions to the
10 Bidding Procedures Motion, the Master Lease Motion and the Exclusivity Motion, accompanied
11 by extensive declarations from Boyd's general counsel, its chief information officer and its
12 financial advisor. These declarations contain factual misrepresentations and opinion testimony
13 concerning numerous issues in the Bid Procedures and Master Lease Motions. The Debtors
14 immediately sought depositions of these witnesses, after production of documents related to
15 Boyd's conduct and the issues raised in the Motions. The Debtors requested, among other
16 things, documents and communications between Boyd and the OpCo lenders, the Independent
17 Lenders, the Committee, or any union representatives concerning a potential Boyd acquisition of
18 assets of any of the Debtors, documents concerning Boyd's attempts to direct negotiation of the
19 Texas Station "put" issue, and other issues. Dakin-Grimm Decl. Ex. C.

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22 On April 22, 2010 Boyd served discovery requests on SCI, seeking access to all
23 documents SCI produced to other parties, and announcing its intention to attend and participate
24 in any scheduled depositions.

25 On April 23, 2010, in its response to SCI's document requests, Boyd refused to produce
26 most of the information sought by Debtors that relates to the three pending motions, agreeing
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1 only to produce “copies of the paper term sheets and offers exchanged among Boyd Gaming and
2 the OpCo lenders, along with any proposals provided to SCI.” Dakin-Grimm Decl. Ex. E.

3 Notwithstanding a telephonic meet and confer on the issue of Boyd’s refusal to produce
4 the relevant documents, Boyd reiterated its refusal to produce these relevant communications, on
5 April 24, stating that the Debtors’ requests “go far beyond the scope of the relevant issues to be
6 raised at the hearing on the Motions.” Dakin-Grimm Decl. Ex. G.

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8 Also in this letter, Boyd declared that the Debtors could not “unilaterally exclude Boyd
9 from a deposition in this contested matter. Rather, it is the Debtors’ task to seek a protective
10 order if they object to Boyd’s (predictable) presence.” *Id.*

11 Counsel for the Debtors responded by email, explaining that the Debtors’ document
12 requests were much more narrowly tailored than the discovery demanded by Boyd, and that the
13 drastic limitations Boyd proposes to place on its document productions amounted to a refusal to
14 meaningfully participate in discovery. The Debtors expressed their willingness to consider
15 entering into a confidentiality agreement with Boyd that would enable Boyd access to the
16 Debtors’ document production, with the caveat that any such confidentiality agreement would
17 need to be very strict, given Boyd’s previous non-compliance with the non disclosure agreement
18 between the Debtors and Boyd. Dakin-Grimm Decl. Ex. H.
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20 **ARGUMENT**

21 Rule 26(c) of the Federal Rules of Civil Procedure provides that a party may move the
22 Court for an order that discovery be conducted in the presence only of persons designated by the
23 court, to protect a party from annoyance, embarrassment, oppression, or undue burden or
24 expense. Fed. R. Civ. P. 26(c). Upon a showing of good cause, the Court must grant the motion.
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1 *Id.*² Rule 9014 of the Federal Rules of Bankruptcy Procedure makes the Federal Rules of Civil
 2 Procedure applicable to contested matters. Fed. R. Bankr. Proc. 9014.

3 Here, good cause exists for limiting the attendees at the depositions to counsel for the
 4 Debtors, Committee, PropCo, the Mortgage Lenders, the Independent Lenders and the agent for
 5 the OpCo lenders. To the extent that Boyd eventually proves it is a creditor in this matter,
 6 Boyd's interests are fully protected in this discovery by counsel for the Committee. Moreover,
 7 Boyd is not really seeking access to documents and to attend in their capacity as a creditor.
 8 Indeed, the legal fees attendant to their recent briefing and the threatened attendance at the
 9 depositions will well exceed the amount of money they used to acquire the bonds they allegedly
 10 own. Instead, Boyd's real motivation is strategic—it seeks access to Debtors' confidential
 11 information in order to help Boyd's existing business. This is plainly not in the interest of the
 12 estates' real stakeholders.³ Boyd seeks to exploit its purported position as a "creditor," but its
 13 real motives are clear. And as such, it should be excluded from the depositions. *See Cox v. Ford*
 14 *Motor Credit Co. (In re One Moore Ford, Inc.)*, 146 B.R. 800, 803-06 (Bankr. E.D. Ark. 1992)
 15 (forbidding employees of competitor to attend depositions).

16 Debtors are within their rights to exclude Boyd from discovery particularly in light of
 17 Boyd's violations of the NDA. In fact, Boyd's refusal to comply with Debtor's document
 18 requests appears to be, in some part, driven by its desire to avoid production of the very
 19 documents that will amply demonstrate these breaches of the NDA. *See Dakin-Grimm Decl. Ex.*

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 24 ² Rule 26(c) also requires that motions such as this Motion for Protective Order "must include a
 25 certification that the movant has in good faith conferred or attempted to confer with other affected parties
 26 in an effort to resolve the dispute without court action." Fed. R. Civ. P. 26(c). Based on the
 27 conversations and written communications described in and attached to the Dakin-Grimm Declaration, it
 28 is clear that SCI conferred with Boyd regarding Boyd's attendance at the depositions, and Boyd made it
 abundantly clear that court intervention was required. *See Dakin-Grimm Decl. Ex. G.* ("[I]t is the
 Debtors' task to seek a protective order if they object to Boyd's (predictable) presence.").

³ For the same reasons discussed here regarding Boyd's desire to gain access to competitive trade secrets,
 all representatives of the FG should also be excluded from the depositions.

1 B.

2 Boyd will not be prejudiced by exclusion from the discovery, as Boyd will be represented
3 by the Committee's counsel. On the other hand, SCI will face obvious prejudice if Boyd is
4 allowed to attend the depositions.
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6 **CONCLUSION**

7 WHEREFORE, for all the foregoing reasons, the Debtors respectfully request that the
8 Court enter an order (1) limiting the attendees at all depositions conducted in connection with the
9 Master Lease Motion, the Bidding Procedures Motion, and the Exclusivity Motion to counsel for
10 the Debtors, UCC, PropCo, Independent Lenders and the agent for the OpCo lenders and (2)
11 excluding from attendance at all depositions any and all representatives from Boyd and the FG,
12 together with such other and further relief as is just and appropriate.
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14 Dated: April 26, 2010

Respectfully submitted,

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16 By: /s/ Paul S. Aronzon
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