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BRETT H. MILLER (NY Bar No. 2483691)
Admitted Pro Hac Vice
JORDAN A. WISHNEW (NY Bar No. 4106126)
Pro Hac Vice Pending
MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, NY 10104-0050
Telephone: (212) 468-8000
Facsimile: (212) 468-7900
BrettMiller@mofo.com; JWishnew@mofo.com

G. LARRY ENGEL (CA Bar No. 53484)
VINCENT J. NOVAK (CA Bar No. 233033)
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105-2482
Telephone: (415) 268-7000
Facsimile: (415) 268-7522
LEngel@mofo.com; VNovak@mofo.com
Admitted Pro Hac Vice

ROBERT R. KINAS (NV Bar No. 6019)
MARK E. KONRAD (NV Bar No. 4462)
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway
Suite 1100
Las Vegas, Nevada 89169
Telephone: (702) 784-5220
Facsimile: (702) 784-5252
RKinas@swlaw.com; MKonrad@swlaw.com

Attorneys for Boyd Gaming Corporation

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

STATION CASINOS, INC.,
Debtor.

Case No. BK-09-52477 (lead case)

Chapter 11

Jointly Administered
BK 09-52470 through BK 09-52487

- ☐ Affects this Debtor
☒ Affects all Debtors
☐ Affects Northern NV Acquisitions
☐ Affects Reno Land Holdings, LLC
☐ Affects River Central, LLC
☐ Affects Tropicana Station, LLC
☐ Affects FCP Holding, Inc.
☐ Affects Fertitta Partners, LLC
☐ Affects Station Casinos, Inc.
☐ 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

**OBJECTION TO DEBTORS'
MOTION FOR ORDER PURSUANT
TO 11 U.S.C. § 1121(D) FURTHER
EXTENDING THE EXCLUSIVE
PERIOD WITHIN WHICH
DEBTORS MAY SOLICIT
ACCEPTANCES TO JOINT PLAN
OF REORGANIZATION**

Date: May 4, 2010
Time: 2:00 p.m.
Place: 300 Booth Street
Reno, Nevada 89509

1 Boyd Gaming Corporation ("Boyd"), by and through its counsel, Snell & Wilmer L.L.P.,
 2 files this objection (this "Objection") to the *Debtors' Motion for Order Pursuant to*
 3 *11 U.S.C. § 1121(d) Further Extending the Exclusive Period Within Which Debtors May Solicit*
 4 *Acceptances to Joint Plan of Reorganization* (the "Second Exclusivity Motion")¹ filed with the
 5 Court on April 7, 2010.

6 Boyd has also filed objections contemporaneously herewith to the Debtors' bidding
 7 procedures motion (as revised) and motion to extend exclusivity. This objection is supported by
 8 the accompanying Memorandum of Points and Authorities, together with all pleadings and papers
 9 of record, and any oral argument the Court may entertain.

10 DATED this 21st day of April, 2010.

11 SNELL & WILMER L.L.P.

12 By: 

13
 14 Robert R. Kinas, Esq. (NV Bar No. 6019)
 15 Mark E. Konrad, Esq. (NV Bar No. 4462)
 16 SNELL & WILMER L.L.P.
 3883 Howard Hughes Parkway, Suite 1100
 Las Vegas, NV 89169

17 Brett H. Miller, Esq. (NY Bar No. 2483691)
 18 *Admitted Pro Hac Vice*
 19 Jordan A. Wishnew, Esq. (NY Bar No. 4106126)
 20 *Pro Hac Vice Pending*
 MORRISON & FOERSTER LLP
 1290 Avenue of the Americas
 New York, NY 10104-0050

21 G. Larry Engel, Esq. (CA Bar No. 53484)
 22 Vincent J. Novak, Esq. (CA Bar No. 233033)
 23 MORRISON & FOERSTER LLP
 425 Market Street
 San Francisco, CA 94105-2482
 24 *Admitted Pro Hac Vice*

25 Attorneys for Boyd Gaming Corporation

26
 27 ¹ Capitalized terms used and not defined herein have the meanings ascribed to them in the Second Exclusivity
 28 Motion, and the Debtors' amended bidding procedures, as applicable.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

Simply stated, the Debtors have been nonproductive in their use of time, despite the Court's admonishments not to expect a further extension of exclusivity. The Debtors filed an objectionable Joint Plan based upon a flawed asset sale for the benefit of the Debtors' insiders. The Debtors propound this Joint Plan in the face of attractive reorganization proposals from Boyd in February 2009 and December 2009, proposals that have been ignored by the Debtors in critical respects.² The Joint Plan does not promote the Opco creditors' best interests, but instead only benefits certain of the Debtors, the Debtors' insiders (i.e., entities controlled by the Fertitta family), their directors, officers, employees, affiliates, and agents (all of whom would benefit from comprehensive estate releases and indemnities), and the portion of the secured lenders who are satisfied by the improved insider bid.³

As described in the related Boyd declarations and in Boyd's objections to the Debtors' bidding procedures and "Second Compromise Amendment" motions, as revised or supplemented, the Debtors' bidding and sale process is flawed and disproportionately favors Propco (and the insiders at New Propco who have "locked up" Propco), because it unfairly transfers the valuable Opco Properties (e.g., Excluded Assets) to New Propco without competitive bidding and other protections for Opco creditors. The Debtors are able to engage in such delay and insider-favoring tactics, because they are still monopolizing the right to file a plan of reorganization. However, healthy competition brought by an attractive, alternative plan will improve the results in this otherwise objectionable process. A better creditor plan would (i) improve the Opco sale process, (ii) ensure competitive pricing for the Debtors' assets, (iii) prevent harmful transfers of Opco's "Excluded Assets" to Propco and its insider successor, and (iv) address the many concerns non-insider buyers will have with the current Debtor process. Among those reforms would be interim

² Nothing herein should be read as implied criticism of any Opco Lenders who have attempted to address the desirability of a more competitive process with Boyd.

³ Boyd leaves to others the debate as to what recovery by creditors is sufficient for them. Boyd's focus here is that more should be better, and the court should require the Debtors' truly to maximize the Opco creditor recovery.

1 measures to protect the non-insider buyer's purchased assets from risk of loss due to actions by
2 management of the competing insider buyers and their designees who would continue to control
3 such assets from the auction in July to the closing in January.

4 Boyd continues to be willing to participate in a fair and balanced sale process that either
5 (i) includes both the Propco Properties and the Opco Properties, or (ii) if the Propco Lenders
6 remain locked up by the insiders or otherwise decline to support a comprehensive solution, then
7 only for the Opco Properties, with the "Excluded Assets" continuing to be retained by Opco for
8 all the reasons stated in Boyd's other objections to the Debtors' bidding procedures and Second
9 Compromise Amendment motions (the "Companion Motions").⁴ Boyd believes that the
10 termination of the Exclusive Period (as defined below) is necessary to move these reorganization
11 proceedings forward in a constructive manner to better maximize value.

12 The period during which no party other than the Debtors may file a plan of reorganization
13 under the Bankruptcy Code (the "Exclusive Period") may be extended only if the Debtors show
14 "cause." As discussed in greater detail herein, the Debtors have not shown cause, because (i)
15 there exist other viable proposals that have been ignored by the Debtors, and a healthy
16 competition between such proposals dictates heavily against the further extension of exclusivity,
17 and (ii) the Debtors have not shown anything material that would satisfy the other factors that
18 courts might consider as cause for another extension.

19 The key fact is that non-insiders like Boyd would consider paying more for the Opco
20 Properties, if (a) they include the "Excluded Assets" that the Debtors propose to prematurely
21 transfer to Propco (and then to the insiders), and (b) a non-insider buyer knew that the plan of
22 reorganization would provide the buyer with assurances that the purchased Opco Properties
23 (hopefully, including the "Excluded Assets") would be properly managed and protected from the

24
25 ⁴ Boyd has been, and still remains, interested in acquiring the Opco assets and, if Propco assets become available,
26 both the Propco and Opco assets. However, as expressed in Boyd's objections to the Debtors' pending motions,
27 Boyd has concerns about the adverse impact on the value of Opco due to the proposed transfers of Excluded Assets
28 from Opco to Propco, as well as the defects in the Debtors' proposed bidding procedures. Boyd believes that the
Debtors' proposed process to acquire Opco assets will fail to meet even the Debtors' professed standard of being
competitive, open and fair. Unless the defective elements of the Debtors' proposal are resolved, Boyd may choose,
and believes that other non-insider bidders may choose, not to pursue the acquisition of the applicable assets.

1 Debtors' competing insider managers during the prolonged delay from bidding or confirmation to
2 the closing.

3 In addition, neither the Debtors nor other stakeholders will suffer any harm if the
4 Exclusive Period is not extended. To the contrary, the Debtors may continue to pursue their plan
5 as they have been doing. The key difference is that breaking the Debtors' exclusivity will foster a
6 more competitive process that will ultimately benefit the Debtors' creditors. Moreover,
7 competing plan(s) would expedite the entire reorganization process, because, in light of a better
8 alternative, the Debtors (and other stakeholders) will be required to move the superior process
9 forward. This is the same rationale for why the bidding procedures exist in the first place—to
10 obtain the best offer for the benefit of the creditors based on competition. There is no reason to
11 restrict such processes to the Opco Properties only, and not extend them to the Propco Properties,
12 especially in light of the threatened "Excluded Assets" transfers to Propco for the insiders, which
13 imperil those Opco Properties. Accordingly, the Second Exclusivity Motion must be denied.

14 II. BACKGROUND

15 On February 23, 2009, Boyd delivered a non-binding preliminary indication of interest
16 (the "Indication of Interest") to Station Casinos, Inc.'s ("SCI") board of directors expressing its
17 desire to acquire all or substantially all of the Opco Properties, including the "Excluded Assets."
18 In addition, as part of the Indication of Interest, Boyd also stated that, if SCI would consider a
19 sale transaction with respect to the Propco Properties, it would evaluate an acquisition that
20 includes those assets as well.

21 On February 24, 2009, SCI filed a Form 8-K with the Securities and Exchange
22 Commission indicating that it intended to "continue to work with its lenders and bondholders to
23 pursue the previously proposed plan of reorganization, but would evaluate the terms of the Boyd
24 proposal."

25 On March 3, 2009, SCI advised Boyd that SCI's board of directors reviewed the
26 Indication of Interest and concluded that it was in the best interests of SCI and its stakeholders to
27 proceed with SCI's contemplated restructuring plan. SCI's letter to Boyd noted that SCI's board
28 of directors did not make a determination to pursue, nor had the company taken any steps toward

1 pursuing, a sale of all or any portion of SCI's assets. Rather, SCI was in the process of soliciting
 2 consents from its lenders with respect to a pre-packaged plan of reorganization that would result
 3 in a restructuring of substantially all of SCI's debt.

4 On July 28, 2009, each of the Debtors filed a voluntary petition with the Court seeking
 5 relief under Chapter 11.

6 On December 11, 2009, the Court entered an order extending the Debtors' initial
 7 exclusive plan filing period from November 25, 2009, to March 25, 2010, and the Exclusive
 8 Period from January 24, 2010, to May 24, 2010.⁵ The Court emphasized that the first extension
 9 was the only and final extension:

10 THE COURT: As to exclusivity, I am going to extend exclusivity.
 11 There would be no reason to approve the compromise and not
 12 extend exclusivity. But this will be the last time I extend exclusivity
 13 barring extraordinary circumstances. I have been presented with a
 14 proposed order that would indicate that be extended through March
 15 25th.

14 Mot. To Ext. Excl. Tr. 263:7-13, Dec. 11, 2009.

15 THE COURT: I didn't mean to open up a whole new line of -- I'm
 16 going to make this real simple. March 25th extension of exclusivity,
 17 last extension barring unforeseen circumstances. Ninety days is not
 18 bad.

18 Mot. To Ext. Excl. Tr. 265-266:22-1, Dec. 11, 2009.

19 On December 16, 2009, Boyd delivered a non-binding proposal (the "Proposal") to SCI's
 20 board of directors, wherein Boyd reaffirmed its interest in acquiring, when permitted, all or
 21 substantially all of SCI's Opco Properties and Propco Properties free and clear of all liens, claims,
 22 and encumbrances for a total of \$2.45 billion in cash and assumed debt.

23 As noted above, the Debtors' consistent response with respect to the Indication of Interest
 24 and the Proposal has been to dismiss Boyd's proposals as too conditional or as otherwise not
 25 worthy, although such conditionality by Boyd is a function of the refusal of the Debtors to share

26
 27 ⁵ See Order Pursuant to 11 U.S.C. § 1121(d) Extending Exclusivity Periods Within Which Debtors May File a Plan of
 28 Reorganization and Solicit Acceptances Thereto (Docket No. 703).

1 with Boyd some of the most essential and customary data on which a buyer must rely to make an
2 unconditional bid.

3 On March 24, 2010, the Debtors filed the Joint Plan and the Disclosure Statement that
4 accompanies the Joint Plan.

5 On April 7, 2010, the Debtors filed the Second Exclusivity Motion, requesting that the
6 Exclusive Period be further extended from May 24, 2010, to July 15 and 16, 2010, as such date(s)
7 may be adjourned from time to time. The Debtors also filed the Companion Motions to approve
8 (i) bidding procedures and (ii) a Second Compromise Amendment to the Master Lease, as well as
9 supplements or revisions thereto and a motion for approval of a restructuring support agreement.

10 Along with this Objection, Boyd also is filing objections to the Debtors' Companion
11 Motions, as a creditor with important information on what will be important to non-insider
12 bidders in fashioning a more competitive process. Boyd expects other Opco creditors and the
13 Creditors' Committee also to file objections to the Companion Motions. Boyd's related
14 declarations explain in detail the factual basis for these objections.

15 III. ARGUMENT

16 A. Debtors Have Failed to Show "Cause" to Extend Exclusivity

17 1. Existence of Plan Alternatives Does Not Justify the Extension

18 Section 1121 of the Bankruptcy Code grants a debtor the exclusive right to file a plan of
19 reorganization during the first 120 days, and an additional sixty (60) days to solicit acceptances
20 before any competing plan may be filed. 11 U.S.C. § 1121. The Bankruptcy Court may reduce
21 or increase this exclusivity period, but only "for cause." 11 U.S.C. § 1121(d).

22 The burden of demonstrating "cause" rests with the party seeking to change the statutory
23 time period, and a "debtor must make a clear showing of 'cause' to support an extension of the
24 exclusivity period." *E.g., In re Curry Corp.*, 148 B.R. 754, 756 (Bankr. S.D.N.Y. 1992). The
25 Bankruptcy Code does not define "cause," and as such, courts have considered various non-
26 exclusive factors in determining whether cause exists, including the following:

- 27 (i) the size and complexity of the case;
- 28

- 1 (ii) the necessity for sufficient time to permit the debtor to negotiate a plan of
- 2 reorganization and prepare adequate information;
- 3 (iii) the existence of good faith progress toward reorganization;
- 4 (iv) the fact that the debtor is paying its bills as they become due;
- 5 (v) whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- 6 (vi) whether the debtor has made progress in negotiations with its creditors;
- 7 (vii) the amount of time which has elapsed in the case;
- 8 (viii) whether the debtor is seeking an extension of exclusivity in order to pressure
- 9 creditors to submit to the debtor's reorganization demands; and
- 10 (ix) whether an unresolved contingency exists.

11 *See In re Adelpia Commc'ns Corp.*, 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006). Regardless of
 12 whether a chapter 11 case is large and complex, a court may deny an extension of the debtor's
 13 exclusivity period when "a debtor is wasting its opportunity, or is incapable of formulating a
 14 plan." *In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987). The key factor a
 15 court focuses on is "whether terminating exclusivity would move the case forward materially, to a
 16 degree that wouldn't otherwise be the case." *In re Adelpia Commc'ns Corp.*, 352 B.R. at 590.

17 In numerous recent large and complex cases, courts either declined to extend or
 18 terminated a debtor's exclusivity, where a credible transaction offer with a potential for filing a
 19 competing plan had been proposed. For example, in *In re TCI2 Holdings, LLC (a/k/a Trump*
 20 *Entm't Resorts)*, No. 09-13654 (Bankr. D.N.J. Feb. 17, 2009), where outstanding indebtedness
 21 was more than \$1.7 billion as of the petition date, the court terminated the debtor's exclusivity at
 22 the request of certain noteholders to permit the filing of a plan based on the existence of an
 23 alternative offer. *See In re TCI2 Holdings, LLC (a/k/a Trump Entm't Resorts)*, No. 09-13654
 24 (Bankr. D.N.J. Aug. 31, 2009, Docket No. 613); *In re Haw. Telecom Commcn's, Inc.*, No. 08-
 25 02005 (Bankr. D. Haw. July 1, 2009, Docket No. 963) (in declining the extension of exclusivity,
 26 the court pointed out that a potential purchaser indicating interest in acquiring assets should not
 27 be denied an opportunity to see if it can present a serious alternative to the debtor's plan). *See*
 28 *also Bank of Am. v. 203 N. LaSalle Street Partnership*, 526 U.S. 434, 457 (1999) (explaining that

1 allowing competing plans tends to increase creditor recovery); *In re Sound Radio, Inc.*, 93 B.R.
 2 849 (Bankr. D.N.J. 1988) (after court authorized filing of three competing plans, confirmed plan
 3 ultimately achieved more recovery and allowed debtor to emerge as reorganized company).

4 Here, the circumstances are similar to those in the above-referenced cases where
 5 exclusivity was not extended or terminated. Boyd offered an attractive postpetition proposal to
 6 the Debtors in December 2009 (as well as a prepetition proposal in February 2009). In fact, the
 7 Debtors concede in the Second Exclusivity Motion that the reason for anticipating robust interest
 8 in the Opco Properties is based on the proposal from Boyd. *See* Second Exclusivity Motion at
 9 ¶13.

10 Notwithstanding such proposals, the Debtors have failed to demonstrate in the Second
 11 Exclusivity Motion why creditors and other stakeholders should continue to be prohibited from
 12 proposing an alternate, attractive plan that would bring these cases to a conclusion and provide
 13 added benefit to the Debtors' estates. This is especially important here, where the Debtors
 14 proposed premature transfer of Opco's "Excluded Assets" to Propco (and, then, to the New
 15 Propco insiders, who have locked up Propco) would depress the value and appeal of Opco's
 16 remaining business. *See* Boyd's oppositions to the Companion Motions, as revised, and Boyd's
 17 related declarations explaining the harms that the Debtors are proposing to Opco and to any fair
 18 process. To date, all the Debtors have done is to propose a substantially incomplete plan with
 19 numerous material details that remain undisclosed or unresolved, thereby depriving creditors and
 20 stakeholders, such as Boyd, of an opportunity to explore alternative plan structures that could
 21 provide a greater benefit to the Debtors' creditors. Accordingly, the Second Exclusivity Motion
 22 should be denied.

23 **2. Debtors Have Not Demonstrated That "Cause" Exists Based on Other** 24 **Factors**

25 Other factors that courts have considered weigh against the extension of the Debtors'
 26 exclusivity. For example, the Debtors allege that good-faith progress towards confirmation has
 27 been made. *See* Second Exclusivity Motion at ¶27. However, the Debtors have proposed a
 28 substantially incomplete and non-comprehensive plan that is replete with material omissions and

1 includes the massive and unjustified transfers of Opco's "Excluded Assets" to Propco, all without
2 competitive bidding. The objections raised by Boyd and others deserve far more disclosure by
3 the Debtors as a precondition to any consideration of Debtors' insider proposal. Ending the
4 Debtors' exclusivity will allow for alternatives that are designed to promote competition and,
5 therefore, higher pricing.

6 The Joint Plan is incomplete, and there does not appear to be any reasonable prospect that
7 it would be viable and confirmable. In order for a plan to be confirmable, it must satisfy the
8 requirements under section 1129 of the Bankruptcy Code. 11 U.S.C. § 1129. However, the Joint
9 Plan does not provide, among other things, any recovery analysis, any liquidation analysis, or an
10 explanation as to how favoring the Debtors' insiders to the detriment of creditors would be "fair
11 and equitable" and not "discriminating unfairly." Therefore, rather than permitting the Debtors to
12 delay the reorganization in pursuing a non-confirmable plan, creditors will be better served if the
13 Debtors' exclusivity is not extended and the creditors are allowed to explore plan alternatives
14 with interested bidder parties, such as Boyd.

15 Furthermore, it appears that creditors are being improperly pressured by the Debtors to
16 sign onto the Joint Plan in order to avoid the potentially burdensome costs and adverse business
17 consequences of the chapter 11 process associated with the Debtors' insiders' ongoing desire to
18 pursue their insider Joint Plan, plus Opco's "Excluded Assets" transfer to Propco (for New
19 Propco). Exclusivity should not be misused as an avenue to exhaust a creditors' desire to pursue
20 better solutions. In any event, at least some important Opco creditors and the Creditors'
21 Committee seem eager for a better alternative and appear willing to endure the costs of the
22 Debtors' stubborn insistence on their incomplete Joint Plan for the benefit of the insiders. While
23 creditors are ultimately entitled to vote and litigate against a non-confirmable plan, proceeding
24 down that path would be a wasteful use of time and resources, especially if the Debtors' pending
25 motions are defeated. Preserving Opco's "Excluded Assets" and providing meaningful plan
26 protections and fair procedures for non-insider buyers, whose purchased assets will remain in the
27 control of the competing insider managers, will also go a long way towards fostering a
28

1 competitive atmosphere among bidders for the Debtors' assets and developing an alternative plan
2 and sale process of greater benefit to the creditors.

3 The Debtors have had ample time to formulate a fair plan, but they have chosen not to
4 pursue a competitive solution, despite Boyd's interest in competing. Instead, they have filed the
5 Joint Plan that disproportionately favors the Debtors' insiders at their Opco creditors' expense.
6 Contemporaneous with this objection, Boyd filed objections to the pending bid procedures and
7 Second Compromise Amendment with respect to the Opco Properties, because these procedures
8 unfairly favor the Debtors' insiders, creating numerous barriers for outsiders to participate, as
9 discussed in detail in Boyd's objection.

10 Accordingly, rather than allowing the Debtors to retain the exclusive right to attempt to
11 confirm a woefully deficient reorganization plan, the creditors should have an opportunity to file
12 and solicit acceptances for an alternative competitive plan that may potentially give more value to
13 the Debtors' creditors.

14 **B. Denying Debtors' Exclusivity Period Will Not Harm the Debtors, But Will**
15 **Give Them Incentive to Expedite the Process**

16 While extending exclusivity would deprive the creditors and stakeholders, such as Boyd,
17 of an opportunity to file a competing Plan, the Debtors will suffer no similar harm, even if the
18 exclusivity is terminated. The termination of exclusivity does not "affect [the debtor's]
19 concurrent right to file a plan. Denying [the] motion only affords creditors their right to file a
20 plan; there is no legislative affect [sic] upon the debtor's coexisting right to file its plan." *In re*
21 *R.G. Pharmacy, Inc.*, 374 B.R. 484, 488 (Bankr. D. Conn. 2007) (citing *In re Parker Street*
22 *Florist & Garden Center, Inc.*, 31 B.R. 206, 207 (Bankr. D. Mass. 1983)); *In re All Seasons*
23 *Indus., Inc.*, 121 B.R. 1002, 1005 (Bankr. N.D. Ind. 1990) (stating that denying a motion for
24 extension of exclusivity has "no negative effect upon the debtor's co-existing right to file its
25 plan"). Even if exclusivity is terminated, the Debtors may still pursue their own plan. In fact, a
26 competing plan will provide incentive to the Debtors to make good-faith progress towards a
27 workable plan of reorganization, which would be beneficial to all parties in interest.
28

IV. CONCLUSION

For the reasons set forth in this Objection, Boyd respectfully requests that the Court deny the Second Exclusivity Motion in its entirety, and grant any other relief that the Court deems just and proper.

DATED this 21st day of April, 2010.

SNELL & WILMER L.L.P.

By: 

Robert R. Kinas, Esq. (NV Bar No. 6019)
Mark E. Konrad, Esq. (NV Bar No. 4462)
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
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