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**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

12 In re:  
 13 STATION CASINOS, INC., *et. al.*,  
 14 Debtors.

Chapter 11  
 Case Nos. BK-N-09-52470-GWZ  
 through BK-N-09-52487-GWZ  
 Jointly Administered Under  
 BK-N-09-52477-GWZ

16 THE OFFICIAL COMMITTEE OF  
 17 UNSECURED CREDITORS OF STATION  
 18 CASINOS INC., AND AFFILIATED  
 19 DEBTORS AND DEBTORS IN  
 POSSESSION, for and on behalf of Station  
 Casinos, Inc.,

Adv. Pro. No. [\_\_\_\_\_]

**[PROPOSED] COMPLAINT**

20 Plaintiff,  
 21 vs.  
 22 FCP PropCo, LLC,  
 23 Defendant.

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1 Plaintiff, the Official Committee of Unsecured Creditors (the "Committee") of Station Casinos,  
2 Inc. ("SCI") and affiliated debtors and debtors in possession (collectively, "Debtors"),<sup>1</sup> by and through  
3 its conflicts counsel Quinn Emanuel Urquhart Oliver & Hedges, LLP ("Quinn Emanuel"), based on  
4 information and belief and as a result of its investigation to date, brings this action on behalf of SCI's  
5 estate against Defendant FCP PropCo, LLC ("PropCo"). Plaintiff respectfully alleges as follows:

6 **PRELIMINARY STATEMENT**

7 1. This Complaint concerns the characterization of that certain "Master Lease Agreement,"  
8 dated November 7, 2007, between PropCo, as the purported landlord, and SCI, as the purported tenant  
9 (the "Master Lease Agreement"). The Master Lease Agreement was executed as part of a leveraged  
10 buy-out involving SCI, which also closed on November 7, 2007 (the "LBO Transaction").

11 2. The LBO Transaction caused SCI to transfer billions of dollars, including hundreds of  
12 millions to insiders. The LBO Transaction had a devastating effect on the financial condition of SCI's  
13 business – the Debtors incurred an additional \$1.7 billion in interest-bearing debt, but received virtually  
14 no value as a result of the LBO Transaction. The LBO Transaction closed at a time when it was  
15 obvious that SCI's business – operation of "locals" casinos in the Las Vegas market – was suffering,  
16 SCI's undeveloped land holdings were declining in value, and the Las Vegas market as a whole faced  
17 tremendous economic pressure. As a result of the LBO Transaction, SCI was rendered insolvent.  
18 Further, the LBO Transaction left SCI with unreasonably small capital.

19 3. A critical and integral component of the LBO Transaction was for SCI to borrow billions  
20 of dollars pursuant to a purported sale/leaseback transaction (the "Master Lease Transaction") by  
21 manufacturing newly created subsidiaries that would facilitate debt financing. The Master Lease  
22 Transaction was done to facilitate the LBO Transaction by permitting SCI to tap into the collateralized  
23

24  
25 <sup>1</sup> The Debtors in these chapter 11 cases are Northern NV Acquisitions, LLC, Reno Land Holdings, LLC,  
26 River Central, LLC, Tropicana Station, LLC, FCP Holding, Inc., FCP Voteco, LLC, Fertitta Partners LLC,  
27 Station Casinos, Inc., FCP MezzCo Parent, LLC, FCP MezzCo Parent Sub, LLC, FCP MezzCo Borrower VII,  
28 LLC, FCP MezzCo Borrower VI, LLC, FCP MezzCo Borrower V, LLC, FCP MezzCo Borrower IV, LLC, FCP  
MezzCoBorrower III, LLC, FCP MezzCo Borrower II, LLC, FCP MezzCo Borrower I, LLC, and FCP PropCo,  
LLC.

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1 mortgage-backed securities (“CMBS”) market to provide a source of secured debt financing for SCI. It  
2 had nothing to do with establishing a landlord-tenant relationship between SCI and PropCo.

3 4. Specifically, SCI caused the formation of PropCo less than one month prior to the  
4 closing of the LBO Transaction. On the LBO Transaction closing date, PropCo entered into a  
5 \$2,050,000,000 Loan And Security Agreement (the “PropCo Loan”), dated November 7, 2007, with  
6 German American Capital Corporation (“German American”) and JP Morgan Chase Bank, N.A.  
7 (“JPMC” and, with German American, the “PropCo Lenders”).

8 5. In addition, SCI also caused the creation of several wholly-owned indirect  
9 subsidiaries of SCI (the “MezzCo Entities”), which collectively owned the equity interests in  
10 PropCo. Three of the MezzCo Entities entered into three mezzanine loans totaling \$425 million  
11 (the “MezzCo Loans”) with German American and JPMC and JP Securities, Inc. (collectively, “JP  
12 Morgan”). The proceeds of the MezzCo Loans were downstreamed to PropCo.

13 6. PropCo used the proceeds from the PropCo Loan and the MezzCo Loans to  
14 “purchase” property owned by certain of SCI’s subsidiaries (the “Real Property”), consisting of four  
15 parcels of real property and buildings that contained four operating casinos: Boulder Station, Palace  
16 Station, Sunset Station, and Red Rock Hotel & Casino (the “Four Casinos”). PropCo in turn  
17 purportedly leased back to SCI the Real Property pursuant to the Master Lease Agreement, and SCI  
18 entered into four subleases with its subsidiaries that operated each of the Four Casinos.

19 7. Notwithstanding the labels ascribed to the relevant documents, the Master Lease  
20 Transaction was intended to enable SCI to borrow money for the LBO Transaction while purporting  
21 to remain in technical compliance with certain negative covenants in SCI’s Indentures (defined  
22 below). Specifically, SCI believed that structuring the Master Lease Transaction as a  
23 “sale/leaseback” would avoid violating the Indentures’ prohibition against the incurrence of  
24 additional secured debt, even though the economic effect was effectively the same as if SCI was the  
25 borrower under the PropCo Loan and the MezzCo Loans. The Master Lease Transaction was  
26 nothing more than a disguised financing between SCI, as borrower, and PropCo, as the lender or as  
27 a lending vehicle for the loans provided by German American and JP Morgan.

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1 8. By this Complaint, the Plaintiff seeks a declaration that the Master Lease Agreement  
2 is not a true lease, but rather is a disguised financing arrangement between SCI and PropCo, and, as  
3 such, the Real Property constitutes property of SCI's estate. SCI also seeks to avoid the Master  
4 Lease Transaction.

5 **JURISDICTION AND VENUE**

6 9. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and  
7 1334 because this is a civil proceeding arising in or relating to Plaintiff's case under chapter 11 of  
8 title 11 of the United States Code (the "Bankruptcy Code"). This is a core proceeding pursuant to  
9 28 U.S.C. § 157(b).

10 10. Venue is proper in this Court under 28 U.S.C. § 1409(a).

11 11. This proceeding is initiated pursuant to Rules 7001(2) and 7001(9) of the Federal  
12 Rules of Bankruptcy Procedure.

13 **PARTIES**

14 12. On July 28, 2009 (the "Petition Date"), the Debtors filed voluntary petitions for relief  
15 (the "Bankruptcy Cases") under chapter 11 of the Bankruptcy Code. The Debtors have continued in  
16 the management and operation of their businesses and properties as debtors in possession pursuant  
17 to Bankruptcy Code sections 1107(a) and 1108.

18 13. Debtor SCI is a Nevada corporation with its principal place of business in Las Vegas,  
19 Nevada.<sup>2</sup>

20 ///

21  
22 <sup>2</sup> Debtor FCP VoteCo, LLC is a Nevada limited liability company. Debtor FCP Mezzco Parent, LLC is  
23 a Delaware limited liability company. Debtor FCP Mezzco Parent Sub, LLC is a Delaware limited liability  
24 company. Debtor FCP Mezzco Borrower VII, LLC is a Delaware limited liability company. Debtor FCP  
25 Mezzco Borrower VI, LLC is a Delaware limited liability company. Debtor FCP Mezzco Borrower V, LLC is a  
26 Delaware limited liability company. Debtor FCP Mezzco Borrower IV, LLC is a Delaware limited liability  
27 company. Debtor FCP Mezzco Borrower III, LLC is a Delaware limited liability company. Debtor FCP Mezzco  
28 Borrower II, LLC is a Delaware limited liability company. Debtor FCP Mezzco Borrower I, LLC is a Delaware  
limited liability company. Debtor Fertitta Partners, LLC is a Nevada limited liability company. Debtor Northern  
NV Acquisitions, LLC is a Nevada limited liability company. Debtor Reno Land Holdings, LLC is a Nevada  
limited liability company. Debtor River Central, LLC is a Nevada limited liability company. Debtor Tropicana  
Station, LLC is a Nevada limited liability company. Debtor FCP Holding, Inc. is a Nevada corporation.

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1 14. Plaintiff Committee was appointed by the Office of the United States Trustee for the  
2 District of Nevada pursuant to 11 U.S.C. § 1102 on August 13, 2009.

3 15. Defendant PropCo, which is a debtor whose chapter 11 case is jointly administered with  
4 the other Debtors, is a Delaware limited liability company with its principal place of business in Las  
5 Vegas, Nevada. PropCo is the borrower under the PropCo Loan; it is the entity that allegedly “paid” all  
6 of the proceeds of the PropCo Loan and MezzCo Loans to subsidiaries of SCI; and it is the purported  
7 landlord under the Master Lease Agreement.

8 **STATEMENT OF FACTS SUPPORTING RELIEF**

9 16. SCI began operations as a privately held hotel and casino in 1976. SCI became a  
10 publicly traded company in 1993 with its initial public offering. SCI remained public until the LBO  
11 Transaction, at which time SCI delisted from the New York Stock Exchange. It is no longer traded on  
12 any exchange or market.

13 17. Prior to the LBO Transaction, SCI, through its subsidiaries, owned, operated, and/or  
14 managed numerous casinos. SCI and/or its subsidiaries usually owned the underlying real estate  
15 associated with the casinos, though they also would lease real property underlying casinos.

16 18. SCI, among others, wholly-owned four subsidiaries: Boulder Station, Inc.; Palace  
17 Station Hotel & Casino, Inc.; Sunset Station, Inc.; and Charleston Station, Inc. (collectively, the  
18 “Operating Subsidiaries”). Prior to the LBO Transaction, the Operating Subsidiaries owned the Real  
19 Property and owned and operated the Four Casinos.

20 ***Unsecured Note Indentures Entered into Prior to the LBO Transaction***

21 19. Prior to the closing of the LBO Transaction, SCI issued unsecured notes (the “Notes”)  
22 with an aggregate principal amount of \$2.3 billion pursuant to five indentures (“Indentures”). The  
23 Indentures, some of which were issued in 2006 within months prior to the first announcement of the  
24 LBO Transaction, are:

- 25 • \$400 million in 7-3/4% Senior Notes due 2016;
- 26 • \$450 million in 6-1/2% Senior Subordinated Notes due 2014;
- 27 • \$450 million in 6% Senior Notes due 2012;

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- \$700 million in 6-7/8% Senior Subordinated Notes due 2016; and
- \$300 million in 6-5/8% Senior Subordinated Notes due 2018.

20. The Indentures contain negative covenants, including certain covenants that restrict the ability of SCI to incur additional debt and to grant liens.<sup>3</sup> The debt limitation covenants are subject to the definition of “Indebtedness” as used in each Indenture. The definition of “Indebtedness” generally excludes “operating leases.”

***The LBO Transaction***

21. In 2006, Frank and Lorenzo Fertitta, who were directors, officers, and shareholders of SCI, began discussions to initiate a buy-out of the common stock of SCI. On or about October 12, 2006, the Fertittas met with representatives of Colony Capital, LLC (“Colony”). Colony expressed interest in the possibility of becoming an equity partner in SCI through a leveraged buyout.

22. In order to finance such a buy-out, the Fertittas understood that, under any circumstances, they would need to arrange for debt financing.

23. [REDACTED]

keep the Notes in place with SCI borrowing \$3.525 billion (the “Note Non-Payoff Option”). Deutsche Bank approved both proposals.

<sup>3</sup> One Indenture does not contain such negative covenants.  
<sup>4</sup> Reference to Deutsche Bank includes the entities, DBSI, German American and Deutsche Bank Trust Company Americas, Inc. (“DBTCA”).

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1 25. The LBO Transaction closed on November 7, 2007. On that date, PropCo used the  
2 proceeds from the PropCo Loan and the MezzCo Loans to “purchase” the Real Property. The proceeds  
3 “paid” over to SCI were immediately used to fund transfers under the LBO Transaction. SCI also  
4 entered into the Master Lease Transaction, obligating itself to pay extraordinarily high purported “rents”  
5 to PropCo even though SCI lost virtually all of the benefits of the “sale” of the Real Property to PropCo.

6 *The Master Lease Transaction*

7 26. The Master Lease Transaction had several steps, but nonetheless it was a single,  
8 integrated transaction designed to funnel loan proceeds to SCI so that such loan proceeds could be used  
9 to fund transfers in connection with the LBO Transaction.

10 27. Pursuant to the Master Lease Transaction, SCI caused the creation of PropCo and the  
11 MezzCo Entities, which, respectively, are the borrowers under the PropCo Loan and the MezzCo  
12 Loans. PropCo was not created until October 12, 2007. The MezzCo Entities were incorporated on  
13 October 12, 2007.

14 28. SCI also caused the Operating Subsidiaries to each form a new, wholly-owned limited  
15 liability company (the “Facilitating Subsidiaries”). The Operating Subsidiaries then contributed to the  
16 Facilitating Subsidiaries the Four Casinos.

17 29. PropCo entered into the PropCo Loan, whereby it granted liens and security interests in  
18 certain of its assets to German American, as agent. The MezzCo Entities similarly entered into the  
19 MezzCo Loans, whereby certain of the MezzCo Entities also granted liens, security interests, and stock  
20 pledges on certain of their assets to German American, as agent.

21 30. PropCo, using virtually all of the funds obtained under the PropCo Loan and the MezzCo  
22 Loans, would then acquire all of the equity interests in the Facilitating Subsidiaries. This was the “sale”  
23 portion of the Master Lease Transaction. Simultaneously with the “sale,” the Facilitating Subsidiaries  
24 would be merged with and into PropCo. As a result, PropCo would become the owner of the Real  
25 Property. The proceeds of the “sale” were used to fund transfers under the LBO Transaction.

26 ///

27 31. Once PropCo had acquired the Real Property, SCI and PropCo entered into the Master  
28 Lease Agreement, whereby PropCo purportedly leased back to SCI the Real Property. SCI then



1 subleased the Real Property to the Operating Subsidiaries, so that the Operating Subsidiaries could  
2 continue to operate the Four Casinos.

3 32. At all relevant times, German American and JPMC, as lenders under the PropCo Loan  
4 and MezzCo Loans, understood that the vast majority of such loan proceeds would not be retained by  
5 the Operating Subsidiaries or by SCI, but would be used to pay secured debt existing prior to the LBO  
6 Transaction, to pay former shareholders, and to pay other LBO Transaction fees and costs.

7 33. The LBO Transaction and the Master Lease Transaction, was intended to be, and did in  
8 fact operate as, an integrated transaction.

9 34. The Master Lease Transaction, as executed on November 7, 2007, was not the original  
10 structure. The original structure of the Master Lease Transaction (the "Original Structure"), proposed  
11 by no later than February 2007, had SCI's subsidiaries "selling" six casinos – Boulder Station, Fiesta  
12 Station Henderson, Fiesta Station Rancho, Palace Station, Santa Fe Station, and Sunset Station. The  
13 Original Structure was changed in early October 2007 – before PropCo was formed – to swap the Red  
14 Rock Casino for the Fiesta Station Henderson, Fiesta Station Rancho, and Santa Fe Station casinos.  
15 PropCo, because it had not yet been formed, had no participation in the negotiation over the Original  
16 Structure or the final structure of the Master Lease Transaction.

17 35. On information and belief, the Master Lease Transaction was structured to enable SCI to  
18 borrow money that could fund the LBO Transaction but in a manner that would not purportedly violate  
19 any negative covenants in the Indentures. Specifically, by structuring the Master Lease Transaction as a  
20 "sale/leaseback," SCI could claim that it was entering into an operating lease, which would arguably not  
21 qualify as "Indebtedness" under the Indentures.

22 36. However, the economic effect was essentially the same as if SCI was the borrower. The  
23 corporate separation between SCI and PropCo is a mere formality, and SCI's "rent" payments to  
24 PropCo fund interest payments on account of the PropCo Loan and the MezzCo Loans.

25 37. On information and belief, the lenders demanded, and SCI obtained, fairness opinions  
26 and opinions of counsel concerning the Master Lease Transaction. These fairness opinions and  
27 opinions of counsel were obtained because, on information and belief, SCI and the lenders were  
28 concerned that the Master Lease Transaction was structured in a questionable manner.

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1 38. One opinion of counsel was rendered by SCI's outside legal counsel, Milbank, Tweed,  
2 Hadley & McCloy, LLP ("Milbank"), which had served as SCI's counsel throughout the inception,  
3 negotiation, and execution of the LBO Transaction. The Milbank opinion letter, dated November 7,  
4 2007, addressed the issue whether the Master Lease Transaction between SCI and PropCo constituted a  
5 disposition of substantially all of the assets of SCI, which is one, but not all, of the means to trigger the  
6 change of control provisions in the Indentures.

7 39. Milbank and another law firm located in Nevada each provided additional opinion  
8 letters, also dated November 7, 2007, opining that the Master Lease Agreement was a "true" lease and  
9 not a debt financing. However, each of these opinion letters was subject to numerous qualifications and  
10 limitations indicating that a court could conclude that the Master Lease Agreement was subject to  
11 recharacterization.

12 40. Milbank also provided an opinion that the "sale" aspect of the Master Lease Transaction  
13 was a "true" sale. That opinion, like the "true" lease opinions, was qualified.

14 41. SCI also was required to obtain a fairness opinion. On February 9, 2007, SCI engaged  
15 Houlihan Lokey Howard & Zukin ("HLHZ") to render an opinion that the "sale" and the "lease" under  
16 the Master Lease Transaction under the Original Structure were fair to SCI and to the operating  
17 subsidiaries selling the casinos. Less than three weeks later, on February 23, 2007, HLHZ opined that  
18 the Original Structure was fair. In its February 23, 2007 opinion, HLHZ disclosed, among other things,  
19 that it had reviewed six draft appraisals dated December 1, 2006, prepared by an appraiser engaged by  
20 Deutsche Bank. HLHZ also disclosed that it did not consider whether the amounts to be paid by SCI  
21 constituted the actual fair market value of the Real Property to be sold under the Original Structure or  
22 whether the Master Lease Transaction reflected actual fair market value. HLHZ further disclosed that it  
23 was providing the opinion in order to assist SCI in satisfying exceptions to negative covenants in the  
24 Indentures, but that it did not opine as to whether the Master Lease Transaction was fair to creditors of  
25 SCI or whether the Master Lease Transaction provided reasonably equivalent value to SCI.

26 42. On October 2, 2007, SCI and HLHZ entered into a new engagement letter, which  
27 expressly disclosed that HLHZ had been asked to render a second opinion due to the fact that the  
28 Master Lease Transaction was swapping out three casinos in exchange for the Red Rock casino. A little

1 over one month later, on November 7, 2007, HLHZ issued its second opinion letter. The second  
2 opinion contained virtually identical disclosures as contained in the first opinion letter, except that  
3 HLHZ reviewed draft appraisals dated October 1, 2007 and reviewed projections for fiscal years ending  
4 December 31, 2007 through 2012, as provided by SCI's management.

5 ***The Material Terms of the Master Lease Agreement***

6 43. The initial term of the Master Lease Agreement is 15 years (the "Initial Term").  
7 Provided that no Event of Default<sup>5</sup> has occurred and is continuing, SCI has the right and option, in its  
8 sole discretion, to extend and renew the lease upon the same terms and conditions (unless expressly  
9 stated otherwise) for up to two additional terms of five years each (each a "Renewal Term").

10 44. The base rent (the "Base Rent") under the Master Lease Agreement is as follows:

- 11 • Years 1-5: \$249,450,019
- 12 • Years 6-10: \$324,385,025
- 13 • Years 11-15: \$372,927,778
- 14 • At the commencement of each Renewal Term, if any, the Base Rent  
15 will be reset to equal the greater of (i) the annual Fair Market Rental<sup>6</sup>  
16 for the leased property, and (ii) one hundred ten percent (110%) of the  
annual aggregate interest payments payable on the PropCo Loan and  
the MezzCo Loans.

17 45. SCI remains bound by the Master Lease Agreement, and the respective obligations of  
18 PropCo and SCI cannot be otherwise affected by reason of (i) any damage to, or destruction of, the  
19 leased property from whatever cause, (ii) the interruption or discontinuance of any service or utility  
20 servicing the leased property, (iii) any claim SCI has or might have against PropCo or by reason of any  
21 default or breach of any warranty by PropCo under the Master Lease Agreement, (iv) the bankruptcy,  
22 insolvency, dissolution, winding up or other proceeding affecting PropCo or any assignee or transferee

23  
24 <sup>5</sup> As defined in Article XII of the Master Lease Agreement.

25 <sup>6</sup> "Fair Market Rent" is defined in the Master Lease Agreement as the rent that a willing tenant,  
26 not compelled to rent, would pay a willing landlord not compelled to let for such casino property  
27 ("Facility"), excluding all capital improvements (as distinguished from necessary repairs and  
28 replacements) paid for by SCI, determined in accordance with the appraisal procedures set forth in  
Article XXIII of the Master Lease Agreement or in such other manner as shall be mutually  
acceptable to PropCo and SCI.

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1 of PropCo, or (v) for any other cause other than a discharge of SCI from any such obligation as a matter  
2 of law.

3 46. Further, pursuant to the Master Lease Agreement, SCI specifically waived its rights as  
4 conferred upon it by law to (i) modify, surrender, or terminate the Master Lease Agreement or quit or  
5 surrender the leased property, or (ii) entitle SCI to abatement, reduction, suspension, or deferment of  
6 rent. SCI does have the right to request the termination of the lease with respect to one or more portions  
7 of the leased property on which no improvements used in connection with the intended primary use of  
8 the property are situated and which are not materially required for such intended primary use. The lease  
9 shall terminate with respect to such land areas at no cost to SCI and with no adjustment in rent under the  
10 lease.

11 47. The Master Lease Agreement is a triple-net lease. As such, SCI must deliver to PropCo  
12 payment for all taxes, maintenance charges, and other charges that are assessed or imposed against the  
13 leased property ("Taxes and Other Charges") prior to the date on which such sums become delinquent.

14 48. In addition, SCI must keep the leased property insured at all times at SCI's sole cost and  
15 expense. Specifically, SCI must pay, or cause to be paid, on each rent payment date one-twelfth (1/12)  
16 of the annual amount of all premiums for the insurance coverage required to be maintained pursuant to  
17 the terms of the Master Lease Agreement (the "Required Insurance Coverage"). SCI must renew or  
18 obtain a replacement policy prior to the expiration, termination, or cancellation of any insurance policy.  
19 The insurance policies must contain a loss payable endorsement of PropCo naming PropCo as the entity  
20 to which all payments would be made.

21 49. SCI, at its sole cost and expense, must keep the leased property in good order and repair  
22 and must promptly make all necessary and appropriate repairs and replacements thereto, of every kind  
23 and nature, whether interior or exterior, ordinary or extraordinary, foreseen or unforeseen, arising by  
24 reason of condition occurring either subsequent or prior to the commencement date of the lease (the  
25 "Commencement Date"), including all deferred maintenance work described in a schedule to the Master  
26 Lease Agreement, which work was to be completed within one (1) year of the Commencement Date,  
27 and capital repairs and replacements. Except as otherwise expressly provided in the Master Lease  
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1 Agreement, PropCo is not required to build or rebuild any improvements on the leased property, or to  
2 make any repairs, replacements, alterations, restorations or renewal of any kind.

3 50. If the leased property is damaged or destroyed, in whole or in part, by fire or other  
4 casualty (a "Casualty"), SCI must use any insurance proceeds and other amounts made available to SCI  
5 for restoration to promptly restore, repair, replace, or rebuild the affected portion of the leased property.  
6 If SCI defaulted upon its obligation to maintain insurance in the amounts and types required under the  
7 Master Lease Agreement, SCI must fund, at its own expense, the amount of any such insufficiency.  
8 Notwithstanding the foregoing, SCI is required to restore, repair, replace, or rebuild the leased property  
9 if PropCo is obligated to do so under its loan documents, and SCI is not required to do so if PropCo is  
10 not so obligated. In no event shall the lease terminate by reason of Casualty unless and only to the  
11 extent that the leased property has been released from the lien under the PropCo's Loan Document. If a  
12 Casualty renders a facility unusable for the primary intended use, the Base Rent in respect of such  
13 facility (in an amount equal to the Fair Market Rental of such facility) and the additional charges in  
14 respect of such facility shall abate, but only if and to the extent that PropCo received business  
15 interruption insurance proceeds for the applicable rental period in an amount equal to the Fair Market  
16 Rental of such facility. Finally, any surplus which may remain out of proceeds received pursuant to a  
17 Casualty shall be paid to PropCo after payment of restoration costs.

18 51. As security for payment and performance of SCI's obligations under the lease, SCI has  
19 pledged, assigned, and granted a security interest to PropCo in and to: (i) all fixtures, furnishings, and  
20 equipment ("FF&E"); and (ii) with respect to each Facility a reserve ("FF&E Reserve") for capital and  
21 FF&E expenditures in an amount of 2.5% of gross revenues derived from the operations of such  
22 Facility. The FF&E Reserve and all funds, cash, wires, and the like, made to the FF&E Reserve, and all  
23 proceeds, interest, and dividends thereof serve as additional security for the SCI's obligations under the  
24 Master Lease Agreement (the "FF&E Reserve Collateral"). PropCo has control over the FF&E Reserve  
25 Collateral at all times, subject to the terms of certain account deposit and control agreements.

26 ///  
27 ///  
28 ///

1 ***The Terms of and Negotiations Regarding the Master Lease Agreement Reveal that it is a***  
2 ***Disguised Secured Financing.***

3 52. Despite the parties' bald assertion that their intent was to enter into a true lease, the very  
4 terms of the Master Lease Agreement belie such contention.

5 53. First, PropCo allegedly "purchased" the Real Property for SCI's specific use. PropCo  
6 and the PropCo Lenders entered into the PropCo Loan expressly contemplating the execution of the  
7 Master Lease Agreement with SCI. Indeed, the execution of the Master Lease Agreement was a  
8 condition precedent to the PropCo Lenders' assent to enter into the PropCo Loan.

9 54. Moreover, PropCo was not formed until October 12, 2007, less than one month prior to  
10 the execution of these agreements, but long after the Original Structure was proposed. PropCo had no  
11 participation in any negotiations regarding the terms of the Master Lease Agreement; the terms were  
12 primarily negotiated between SCI and the PropCo Lenders. Therefore PropCo's existence, let alone its  
13 acquisition of the leased property, was in contemplation of leasing the property to SCI specifically.

14 55. Second, PropCo and SCI are under common control and management. PropCo is a  
15 wholly-owned subsidiary of SCI, and the two entities share common officers.

16 56. Third, the Master Lease Agreement contains a "hell or high water" provision. Pursuant  
17 to this provision, SCI cannot terminate the lease even where, *inter alia*, the leased property is damaged  
18 or destroyed, by whatever cause, or if PropCo defaults or breaches any warranty under the Master Lease  
19 Agreement. In addition, pursuant to the Master Lease Agreement, SCI waived any rights as may be  
20 conferred upon it by law to terminate the Master Lease Agreement or abate, reduce, suspend, or defer  
21 rent. SCI can only *request* termination of the lease with respect to portions of the leased property on  
22 which no improvements used in connection with the intended primary use of the property are situated,  
23 and which are not materially required for such intended primary use. Even then, however, there will be  
24 no adjustment in rent under the Master Lease Agreement.

25 57. Fourth, the "rents" SCI pays to PropCo are actually calculated to pay in full all of the  
26 interest payments due under the PropCo Loan and the MezzCo Loans, with a small amount that can  
27 "flow back" to SCI; however, the Master Lease Agreement permits PropCo to "trap" the "flow back" if  
28 certain financial tests are not met. This trap denies SCI access to cash derived from operations of the  
Four Casinos even though SCI has in no way breached the Master Lease Agreement, and acts as

1 additional collateral for the PropCo Lenders to secure the PropCo Loans. Further, on information and  
2 belief, the present value of total rent payments is greater than the original cost of the Real Property.

3 58. Fifth, pursuant to the triple-net nature, SCI has retained many of the obligations  
4 associated with property ownership, including the responsibility for paying taxes and insurance. In  
5 addition, SCI is also obligated keep the leased property in good order and repair, and must make all  
6 necessary and appropriate repairs and replacements, of every kind and nature, whether foreseen or  
7 unforeseen, ordinary or extraordinary, arising by any reason or condition, even those arising prior to the  
8 Commencement Date. Additionally, SCI is required to undertake deferred maintenance work described  
9 in a schedule to the Master Lease Agreement. These obligations and requirements are those normally  
10 associated with outright ownership.

11 59. Sixth, the term of the Master Lease Agreement arguably is for the useful life of the  
12 property. The lease term may be extended, at SCI's sole discretion, from 15 to a total of 25 years.  
13 Although this purported lease involves real property rather than equipment or other personalty, and  
14 therefore, the life of the property is not as easily quantifiable, there are nevertheless benchmarks by  
15 which to calculate the depreciation of the property. The Internal Revenue Service has determined that  
16 non-residential real property depreciates over the course of 39 years. More specifically, the useful life  
17 of decorative facades (which includes decorative exterior wall coverings) of a hotel/casino complex is  
18 also 39 years. Boulder Station, for example, which opened in August 1994, will be have been open for  
19 over 38 years after the Initial Term and the two possible Renewal Terms have expired.

20 60. Seventh, PropCo does not truly acquire the residual risks and benefits associated with  
21 ownership. SCI directly or indirectly owns one hundred percent (100%) of the equity interests of  
22 PropCo. Practically, therefore, PropCo does not retain the residual risks and benefits associated with  
23 ownership of property. Any excess cash flow that is not used to pay interest to the PropCo Lenders on  
24 account of the loans to PropCo and to the MezzCo Entities flows back to SCI (unless "trapped" for the  
25 benefit of the PropCo Lenders). This means that PropCo effectively has no interest in making profit by  
26 owning the Real Property.

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1 61. Moreover, as discussed above, if the term of the lease in fact is determined to extend for  
2 the useful life of the property, then PropCo does not retain the benefit of a reversionary interest in the  
3 property.


4 ***The LBO Transaction Rendered SCI Insolvent And With Unreasonably Small Capital.***

5 62. According to SCI's Form 10-Q for the quarter ending September 30, 2007, SCI's  
6 financial statements indicated that SCI's assets totaled approximately \$3.93 billion and its liabilities  
7 totaled approximately \$4.22 billion. These financial statements indicate that SCI was insolvent on a  
8 balance sheet basis by approximately \$291 million because its liabilities exceeded its assets.

9 63. Further, the financial statements disclosed that, for the 9-month period ending  
10 September 30, 2006, net income was \$87.14 million, but for the same period in 2007, net income  
11 was only \$41.83 million. The dramatic decline in net income between 2006 and 2007 was even  
12 worse during the three month period ending September 30; in 2007, net income was only \$3.71  
13 million, but in 2006, it was \$19.23 million. This indicates that SCI's operations were declining  
14 through 2007 prior to the LBO Transaction closing, and the decline accelerated in the last few  
15 months prior to the LBO Transaction closing.

16 64. The Form 10-Q for the quarter ending September 30, 2007, was publicly filed on  
17 November 9, 2007, just two days after the LBO Transaction closed. However, on information and  
18 belief, the financial results disclosed in the Form 10-Q were known to SCI on or before November  
19 7, 2007, including on November 5, 2007 – the last Board meeting prior to the closing of the LBO  
20 Transaction.

21 65. Prior to the closing of the LBO Transaction, SCI's management was well aware that  
22 the Las Vegas "locals" gaming market faced economic problems in 2007, and was on notice of  
23 concerns as early as May 2006:

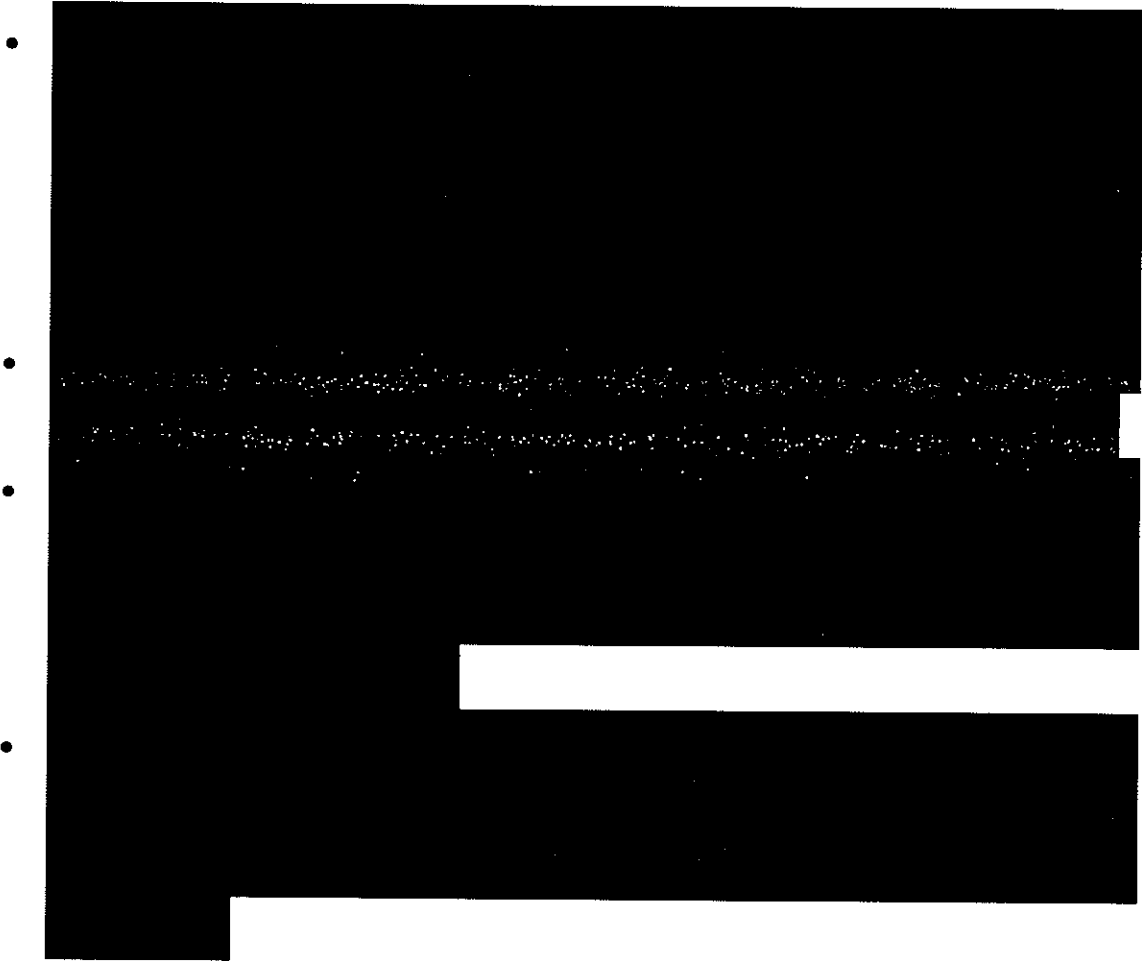
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66. SCI was not immune from these declines. In keeping with the struggling market, SCI began to experience declines in performance in the second half of 2006.



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71. Indeed, contrary to the belief among management of SCI that this downward trend was temporary, SCI's performance continued to worsen in 2007 leading up to the LBO transaction, and continued thereafter. For the 10 months preceding the closing of the LBO Transaction, SCI's actual financial performance fell well short of projected performance for 2007.<sup>7</sup>

72.

[Redacted]

Moreover, SCI's management receives financial reports from individual casinos every seven days. On information and belief, SCI's management would have been, or at least should have been, well aware of SCI's declining economic performance in 2007.

<sup>7</sup> SCI also placed itself in a precarious financial position in 2007 because, after borrowing hundreds of millions of dollars in 2006 through the issuance of certain of the Notes, SCI purchased in the open market shares of SCI common stock worth hundreds of millions of dollars. On information and belief, SCI management who also owned a large block of SCI common stock wanted to boost the trading price of SCI common stock in planning for the LBO Transaction.

1 73. On July 5, 2007, Moody's Investor Service indicated that it would likely downgrade the  
2 Notes when the LBO Transaction closed. On July 10, 2007, Standard & Poor's Ratings Services stated  
3 that SCI's credit rating remained on credit watch with negative implications, and that ratings on the  
4 unsecured notes would be lowered. On information and belief, these announcements, and possibly  
5 other acts of ratings agencies, resulted in the Notes not having the "Required Ratings" as set forth in the  
6 Indentures.

7 74.

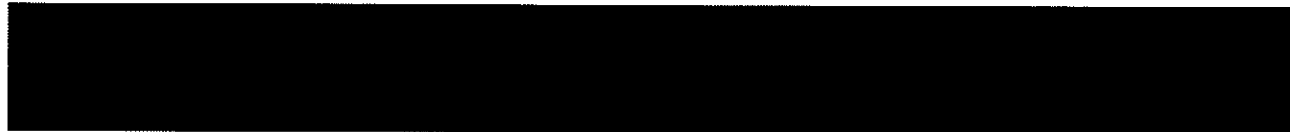
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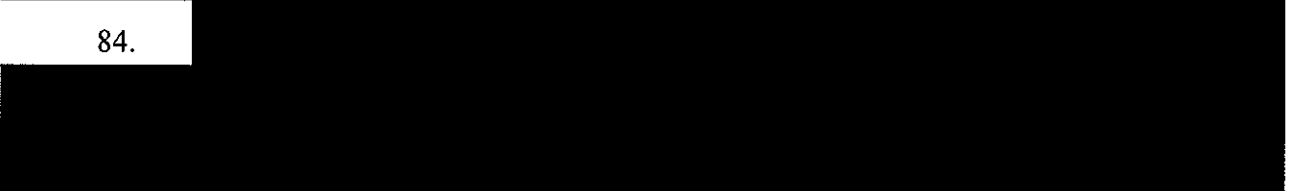
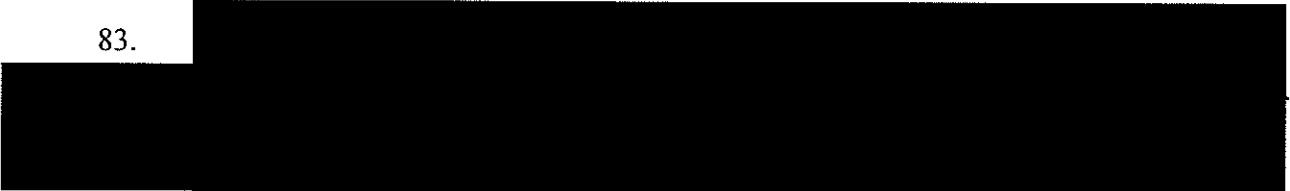
78. Further, SCI's undeveloped land holdings were declining in value in 2007. On information and belief, SCI took advantage of declining undeveloped land values by acquiring additional land in October 2007 at a significant discount.

79. SCI's publicly traded unsecured bonds also dropped in value between the announcement of the LBO Transaction and its closing in November 2007. For example, the market price of the 6.625% Senior Subordinated Notes due 2018 dropped approximately 15.8% between the day immediately prior to the announcement of the LBO Transaction in December 2006 and the closing of the LBO Transaction in 2007.

80. In October 2007, one month before the LBO Transaction was to close, Deutsche Bank revised downward by approximately \$80 million the financial projections SCI had earlier relied upon to structure the LBO Transaction in light of SCI's underperformance in the first three quarters of 2007. This was nearly a 12% decline in projected EBITDA for 2007.



82. On information and belief, the final projections that supported the LBO Transaction were prepared by SCI on October 31, 2007 ("Final Projections").



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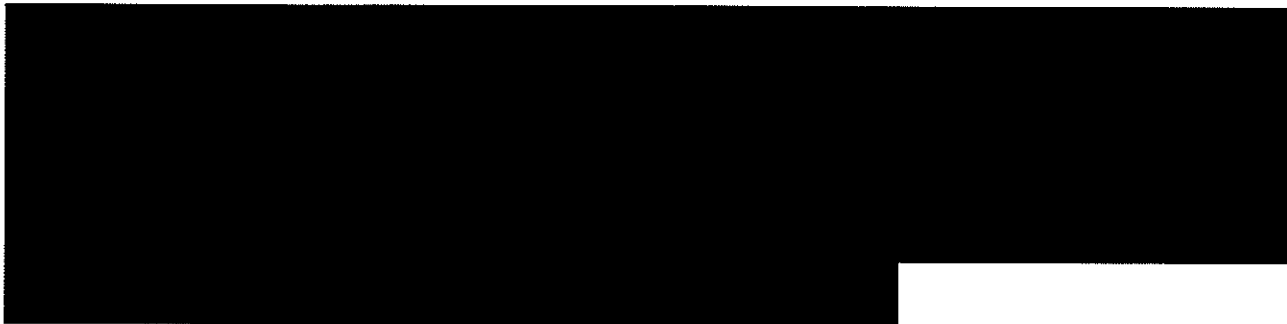
86. Specifically, the Final Projections contained material flaws including the following, which if adjusted, would have shown that SCI would be insolvent as a result of the planned LBO, and would be left with unreasonably small capital:

- [Redacted]
- [Redacted]

87. These flaws should have been reasonably anticipated in November 2007. Las Vegas home prices dropped substantially throughout 2007 from a peak in 2006, and that drop in home prices reasonably should have presaged a negative impact on local gaming revenue. For example, a 10% decline in home prices could cause up to a 1.3% decrease in gambling spending for Las Vegas homeowners. Thus, for example, in October 2007, the median existing home price in Las Vegas decreased by approximately 11.4%. Median existing home prices were projected to continue to decline in 2008, by up to 10.3%. As a result gaming revenue should have been predicted to decrease by over 2.5%. Yet the Final Projections unreasonably assumed substantial growth in 2008-2012 over 2007 figures.

88. [Redacted]

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89. The housing price decline that began in the last quarter of 2006, continued through 2007, and was projected to continue in 2008, unsurprisingly had a similar effect in the decline of gaming revenue. The Final Projection ignored the signs of the decline, instead relying on the 2004/05 growth trajectory for its numbers.

90. Further, the Final Projections relied on valuations of undeveloped land that were unreasonable at the time because they were based on stale data that did not account for the substantial declines in real estate in Las Vegas through 2007.

91. On information and belief, no independent professional ever reviewed the reasonableness of the Final Projections at or before the closing of the LBO Transaction.

92. While numerous opinions of counsel and other professionals and appraisals were obtained in connection with the LBO Transaction, no solvency opinion – an opinion of an independent professional indicating that the LBO Transaction would not render SCI insolvent, was ever obtained. Given the sophisticated nature of the parties and professionals involved, it was highly unusual for there to be no requirement to obtain a solvency opinion.

93. As a result of the LBO Transaction, SCI was rendered insolvent and with unreasonably small capital.

94. Even if viewed in isolation, the Master Lease Transaction rendered SCI insolvent and with unreasonably small capital.

**COUNT ONE**

**Declaratory Judgment**

**(Recharacterization of the Master Lease Transaction)**

95. Plaintiff repeats and re-alleges each and every allegation contained in the preceding paragraphs 1-94.

1 96. An actual controversy has arisen between the Committee and PropCo regarding whether  
2 the Master Lease Transaction is a “true” lease or a disguised debt financing.

3 97. Notwithstanding the label ascribed to the Master Lease Transaction, the economic  
4 substance, and the facts and circumstances surrounding the execution of the Master Lease Agreement  
5 alleged herein, demonstrate that the Master Lease Transaction is a disguised debt financing.

6 98. Pursuant to 11 U.S.C. §§ 105 and 365 and 28 U.S.C. §§ 2201 and 2202, the Committee  
7 is entitled to a declaration that the Master Lease Transaction is not an “unexpired lease” within the  
8 meaning of 11 U.S.C. § 365, but instead constitutes a loan between SCI, as borrower, and PropCo, as  
9 the lender or as a pass-through lending vehicle for the PropCo Lenders, the amount and terms of which  
10 loan involve same amount and on the same terms as the PropCo Loan.

11 **COUNT TWO**

12 **Constructive Fraudulent Transfer under 11 U.S.C. §§ 548(a)(1)(B)(ii)(I), 548(a)(1)(B)(ii)(II)**

13 99. Plaintiff repeats and re-alleges each and every allegation contained in the preceding  
14 paragraphs 1-98.

15 100. The Master Lease Agreement was entered into within two years of the Petition Date.

16 101. SCI received less than reasonably equivalent value in exchange for incurring the  
17 obligations due under the Master Lease Agreement.

18 102. As a result of the LBO Transaction, of which the Master Lease Transaction was an  
19 integral component, SCI became insolvent and was about to engage in a business or a transaction for  
20 which any property remaining with SCI was unreasonably small.

21 103. The Master Lease Transaction should be avoided pursuant to 11 U.S.C. § 548(a)(1)(B).

22 **COUNT THREE**

23 **Actual Fraudulent Transfer under §§ 548(a)(1)(A)**

24 104. Plaintiff repeats and re-alleges each and every allegation contained in the preceding  
25 paragraphs 1-103.

26 105. During the two-year period immediately preceding the Petition Date, SCI entered  
27 into the Master Lease Agreement.

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1 110. Pursuant to 11 U.S.C. § 544(b), Plaintiff has the rights of an existing unsecured creditor  
2 of SCI. Section 544(b) permits Plaintiff to assert claims and causes of action that such creditor could  
3 assert under applicable state law.

4 111. Under Nev. Rev. Stat. 112.180(b)(1), an obligation is fraudulent as to a creditor, whether  
5 such creditor's claim arose before or after the obligations was incurred, if the debtor incurred the  
6 obligation without receiving reasonably equivalent value and was engaged or was about to engage in a  
7 business or a transaction for which the remaining assets of the debtor were unreasonably small in  
8 relation to the business or transaction.

9 112. Under Nev. Rev. Stat. 112.190, an obligation is fraudulent as to a creditor whose claim  
10 arose before the obligation was incurred if the debtor incurred the obligation without receiving  
11 reasonably equivalent value and was insolvent at the time or the debtor became insolvent as a result of  
12 the incurrence of the obligation.

13 113. At all relevant times hereto, there were actual creditors of SCI holding unsecured claims.

14 114. The Master Lease Transaction occurred within four years of the Petition Date.

15 115. SCI received less than reasonably equivalent value in exchange for entering into the  
16 Master Lease Agreement.

17 116. As a result of the Master Lease Transaction, SCI became insolvent and was about to  
18 engage in a business or a transaction for which any property remaining with SCI was unreasonably  
19 small.

20 117. The Master Lease Transaction should be avoided pursuant to 11 U.S.C. § 544(b) and  
21 Nev. Rev. Stat. 112.210 and 112.220.

22 **COUNT FIVE**

23 **Actual Fraudulent Transfer under 11 U.S.C. §§ 544(b) and Nev. Rev. Stat. 112.180**

24 118. Plaintiff repeats and re-alleges each and every allegation contained in the preceding  
25 paragraphs 1-117.

26 119. Pursuant to 11 U.S.C. § 544(b), Plaintiff has the rights of an existing unsecured  
27 creditor of each of the Debtors. Section 544(b) permits Plaintiff to assert claims and causes of  
28 action that such creditor could assert under applicable state law.


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1           120. Under Nev. Rev. Stat. 112.180(a), a transfer is fraudulent as to a creditor, whether such  
2 creditor's claim arose before or after the transfer was made, if the debtor made the transfer with the  
3 actual intent to hinder, delay, or defraud any creditor.

4           121. As of the Master Lease Transaction, there were actual creditors of some or all of the  
5 Debtors, including SCI, holding unsecured claims.

6           122. The Master Lease Transaction occurred within four years of the Petition Date.

7           123. The Debtors entered in the Master Lease Agreement with the actual intent to hinder,  
8 delay, or defraud the Debtors' creditors. As previously set forth in this Complaint, and other things:

- 9                   a) The LBO Transaction resulted in transfers to insiders of the Debtors  
10                   worth hundreds of millions of dollars;
- 11                   b) SCI received less than reasonably equivalent value in exchange for the  
12                   transfers;
- 13                   c) The terms of the LBO Transaction changed in October 2007 in a manner  
14                   that placed more economic pressure on SCI, which was known to  
15                   management, yet SCI proceeded with the LBO Transaction;
- 16                   d) SCI became insolvent as a result of the LBO Transaction;
- 17                   e) 

18                   f) The Master Lease Transaction was an integral component of the LBO  
19                   Transaction. The fraudulent conduct could not have been accomplished  
20                   without entering into the Master Lease Transaction.

21           124. At all relevant times hereto, PropCo had actual or constructive knowledge that the  
22 Master Lease Transaction was fraudulent.

23           125. The Master Lease Transaction should be avoided and recovered pursuant to 11 U.S.C. §  
24 544(b) and Nev. Rev. Stat. 112.210 and 112.220.

**RESERVATION OF RIGHTS**

25           126. Plaintiff believes that additional claims in favor of one or more of the Debtors' estates  
26 against the Defendant and/or other parties may exist. The Plaintiff continues to investigate the  
27 existence and validity of such claims. The Plaintiff reserves any and all rights to bring such claims to  
28 the extent authorized by the Court and/or applicable law.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of SCI's chapter 11 estate, respectfully requests that this Court enter a Judgment:

- a. Declaring and adjudging that the Master Lease Agreement is a disguised financing arrangement in the same amount and on terms as the PropCo Loan, and that 11 U.S.C. § 365 is not applicable to the Master Lease Agreement;
- b. Declaring and adjudging that the Master Lease Transaction is avoidable; and
- c. Awarding Plaintiff such other and further relief which this Court deems just and proper.

DATED this \_\_\_ day of \_\_\_\_\_, 2010.

**QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP**

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