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10 Attorneys for Plaintiff Phase II Chin, LLC

11 **UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF NEVADA**

13 PHASE II CHIN, LLC and LOVE &  
14 MONEY LLC (formerly dba O.P.M.L.V.,  
15 LLC),

16 Plaintiffs,

17 v.

18 FORUM SHOPS, LLC, FORUM  
19 DEVELOPERS LIMITED PARTNERSHIP,  
20 SIMON PROPERTY GROUP LIMITED  
21 PARTNERSHIP, SIMON PROPERTY  
22 GROUP, INC., CAESARS PALACE  
CORP., and CAESARS PALACE REALTY  
CORP.

23 Defendants.

24 

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FORUM SHOPS, LLC

25 Counterclaimant,

26 v.

27 CHIN LV, LLC

28 Counter-Defendant.  

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Case No. 2:08-cv-00162-JCM-GWF

**REPLY BY PLAINTIFF AND COUNTER-  
DEFENDANT PHASE II CHIN LLC TO  
COUNTERCLAIM BY FORUM SHOPS,  
LLC**

[Hon. James C. Mahan]

1 Plaintiff and Counter-Defendant Phase II Chin LLC ("Counter-Defendant"  
2 or "Chinois") hereby replies to this Counterclaim filed by Defendant and  
3 Counterclaimant Forum Shops, LLC ("Counterclaimant" or "Forum Shops") on  
4 April 1, 2009.

### 5 REPLY TO COUNTER-CLAIM

6 1. Counter-Defendant is without knowledge or information sufficient to  
7 form a belief as to the truth of the allegations of the first sentence of Paragraph 1  
8 of the Counterclaim. Counter-Defendant admits that Forum Shops is the lessor  
9 under that certain lease between Forum Development Limited Partnership and  
10 GGH Restaurant, LLC entered into on or about March 18, 1997, as amended by  
11 the Lease Amendment entered into on or about October 9, 2003 and that the  
12 property which is the subject of the lease is located in the Forum Shops Mall in  
13 Las Vegas, Nevada. Counter-Defendant denies the remaining allegations of  
14 Paragraph 1 of the Counterclaim.

15 2. Counter-Defendant admits the allegations contained in Paragraph 2 of  
16 the Counterclaim.

17 3. Counter-Defendant admits that effective October 9, 2003, the parties  
18 entered into an amendment to the lease permitting Chinois to operate OPM in part  
19 of the leased premises Wednesdays through Sundays from 10:00 p.m. until 6:00  
20 a.m. each following morning. Except as so admitted, Counter-Defendant denies  
21 the remaining allegations of Paragraph 2 of the Counterclaim.

22 4. Counter-Defendant denies the allegations of the first sentence of  
23 paragraph 4 of the Counterclaim to the extent that they inaccurately construe the  
24 Amendment which, as a written document, speaks for itself. Counter-Defendant is  
25 without knowledge or information sufficient to form a belief as to the truth of the  
26 remaining allegations of Paragraph 4 of the Counterclaim.

27 5. Counter-Defendant admits that Tom Kaplan wrote a letter to Gary  
28 Lewis on November 12, 2002 which document speaks for itself. Except as so

1 admitted, Counter-Defendant denies the remaining allegations of Paragraph 5 of  
2 the Counterclaim.

3 6. Counter-Defendant denies the allegations of Paragraph 6 of the  
4 Counterclaim.

5 7. Counter-Defendant denies the allegations of Paragraph 7 of the  
6 Counterclaim.

7 8. Counter-Defendant denies the allegations of Paragraph 8 of the  
8 Counterclaim.

9 9. Counter-Defendant admits that Forum Shops sent a letter to Chinois  
10 dated March 6, 2006 which documents speaks for itself and that more than thirty  
11 days have elapsed since that time. Except as so admitted, Counter-Defendant  
12 denies every remaining allegations of Paragraph 9 of the Counterclaim.

13 10. In response to Paragraph 10 of the Counterclaim, Counter-Defendant  
14 admits the lease contains a Section 13.1 which document speaks for itself. Except  
15 as so admitted, Counter-Defendant denies every remaining allegation of Paragraph  
16 10.

17 11. In response to Paragraph 11 of the Counterclaim, Counter-Defendant  
18 admits the lease contains a Section 13.1 which document speaks for itself. Except  
19 as so admitted, Counter-Defendant denies every remaining allegation of Paragraph  
20 11.

21 12. Counter-Defendant denies the allegations of Paragraph 12 of the  
22 Counterclaim.

23 13. In response to Paragraph 13 of the Counterclaim, Counter-Defendant  
24 admits the lease contains a Section 18.1(b) which documents speak for itself.  
25 Except as so admitted, Counter-Defendant denies every remaining allegation of  
26 Paragraph 13.

27 14. Counter-Defendant denies the allegations of Paragraph 14 of the  
28 Counterclaim.



1 **FIFTH AFFIRMATIVE DEFENSE**

2 24. The Counterclaim fails to meet the standard for issuance of a  
3 declaratory judgment under applicable law.

4 **SIXTH AFFIRMATIVE DEFENSE**

5 25. Counterclaimant is not entitled to attorney's fees under the lease.

6 **SEVENTH AFFIRMATIVE DEFENSE**

7 26. Counterclaimant's claims are barred, in whole or in part, by its own  
8 contractual breaches.

9 **EIGHTH AFFIRMATIVE DEFENSE**

10 27. Counter-Defendant did not breach any legal duty to Counterclaimant  
11 under the Lease, the Amendment or otherwise.

12 **NINTH AFFIRMATIVE DEFENSE**

13 28. Counter-Defendant currently has insufficient knowledge or  
14 information upon which to form a belief as to whether it may have other, as yet  
15 unstated affirmative defenses available and therefore reserves the right to assert  
16 additional affirmative defenses.

17 **TENTH AFFIRMATIVE DEFENSE**

18 29. Counterclaimant's claims are barred in whole or in part by the  
19 doctrine of unclean hands.

20 **ELEVENTH AFFIRMATIVE DEFENSE**

21 30. If Counterclaimant was injured and damaged as alleged, which is  
22 specifically denied, then the injury and damages were caused, in whole or part, by  
23 the acts or omissions of others, whether individual, corporate or otherwise,  
24 whether named, or unnamed for whose conduct Counter-Defendant is not  
25 responsible.

26 **TWELFTH AFFIRMATIVE DEFENSE**

27 31. If Counter-Claimant was injured and damaged as alleged, which is  
28 specifically denied, then the injuries and damages resulted from an independent,

1 intervening and/or superseding cause or causes for which Counter-Defendant is  
2 not responsible.

3 **THIRTEENTH AFFIRMATIVE DEFENSE**

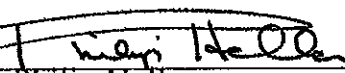
4 32. Counterclaimant claims are barred in whole or in part by  
5 Counterclaimant's failure to mitigate its damages.

6  
7 **WHEREFORE**, Counter-Defendant Chinois prays for relief as follows:

- 8 1. That Counterclaimant Forum Shops take nothing by way of  
9 its Counterclaim and that judgment be entered in favor of  
10 Counter-Defendant Chinois;  
11 2. For an award of attorney fees and costs; and  
12 3. For such other and further relief as the Court may deem just and  
13 proper.

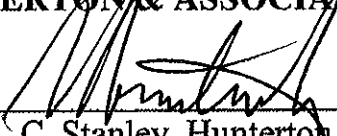
14  
15 Dated: April 16, 2009

**FAGELBAUM & HELLER LLP**

16  
17 By:   
18 Philip Heller  
19 2049 Century Park East, Suite 4250  
Los Angeles, CA 90067-3254

20  
21 Dated: April 16, 2009

and  
**HUNTERTON & ASSOCIATES**

22 By:   
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24 333 S. Sixth Street  
25 Las Vegas, NV 89101  
26 Attorneys for Phase II Chin, LLC  
27  
28

1 **CERTIFICATE OF SERVICE**

2 [US DISTRICT COURT -NEVADA  
3 CASE NO. 2:08-CV-00162 JCM (GWF)]

4 I hereby certify that on April 16, 2009 I caused a true and correct copy of the foregoing  
5 document **REPLY BY PLAINTIFF AND COUNTER-DEFENDANT PHASE II CHIN LLC  
6 TO COUNTERCLAIM BY FORUM SHOPS** to be served on counsel for all parties via electronic  
7 filing the Court's ECF System.

8 **LIONEL SAWYER & COLLINS**

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14 Attorneys for Defendants Forum Shops, LLC Forum Developers Limited Partnership, Simon  
15 Property Group Limited Partnership and Simon Property Group, Inc.

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26   
27 \_\_\_\_\_  
28 Zorina Shah-Sohl