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1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 PHASE II CHIN, LLC and LOVE &
4 MONEY, LLC (formerly dba O.P.M.L.V.,
5 LLC),

6 Plaintiffs,

7 v.

8 FORUM SHOPS, LLC, FORUM
9 DEVELOPERS LIMITED PARTNERSHIP,
10 SIMON PROPERTY GROUP LIMITED
11 PARTNERSHIP, SIMON PROPERTY
12 GROUP, INC., CAESARS PALACE CORP.,
13 and CAESARS PALACE REALTY CORP.

14 Defendants,

15 FORUM SHOPS, LLC,

16 Counterclaimant,

17 v.

18 CHIN LV, LLC,

19 Counter-Defendant.

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

**REPLY BY PLAINTIFFS / COUNTER-
DEFENDANTS LOVE & MONEY, LLC
AND PHASE II CHIN, LLC TO
COUNTERCLAIM BY FORUM SHOPS,
LLC**

[Hon. James C. Mahan]

20 Plaintiffs / Counter-Defendants LOVE & MONEY, LLC and PHASE II CHIN, LLC hereby
21 reply to Counterclaim by Forum Shops, LLC, as follows:

22 **REPLY TO COUNTERCLAIM**

23 **REPLY TO GENERAL ALLEGATIONS**

24 1. Plaintiffs / Counter-Defendants Love & Money, LLC and Phase II Chin, LLC
25 are without sufficient knowledge or information to form a belief as to the truth of the
26 allegations of the first sentence of Paragraph 1 of the First Amended Counterclaim. Plaintiffs /
27 Counter-Defendants admit that Forum Shops is the lessor under that certain lease between

1 Forum Development Limited Partnership and GGH Restaurant, LLC entered into on or about
2 March 18, 1997, as amended by the Lease Amendment entered into on or about October 9,
3 2003 and that the property which is the subject of the lease is located in the Forum Shops Mall
4 in Las Vegas, Nevada. Plaintiffs / Counter-Defendants deny the remaining allegations of
5 Paragraph 1 of the First Amended Counterclaim.

6
7 2. Plaintiffs / Counter-Defendants admit the allegations contained in Paragraph 2 of
8 the First Amended Counterclaim.

9 3. Plaintiffs / Counter-Defendants admit the allegations contained in Paragraph 3 of
10 the First Amended Counterclaim.

11 4. Plaintiffs / Counter-Defendants admit that effective October 9, 2003, Forum
12 Shops and Chinois entered into an amendment to the lease permitting Chinois to operate OPM
13 in part of the leased premises Wednesdays through Sundays from 10:00 p.m. until 6:00 a.m.
14 each following morning. Except as so admitted, Plaintiffs / Counter-Defendants deny the
15 remaining allegations of Paragraph 4 of the First Amended Counterclaim.

16
17 5. Plaintiffs / Counter-Defendants deny the allegations of the first sentence of
18 Paragraph 5 of the First Amended Counterclaim to the extent that they inaccurately construe the
19 Amendment which, as a written document, speaks for itself. Plaintiffs / Counter-Defendants
20 are without knowledge or information sufficient to form a belief as to the truth of the remaining
21 allegations of Paragraph 5 of the First Amended Counterclaim.

22 6. Plaintiffs / Counter-Defendants admit that Tom Kaplan wrote a letter to Gary
23 Lewis on November 12, 2002, which document speaks for itself. Except as so admitted,
24 Plaintiffs / Counter-Defendants deny the remaining allegations of Paragraph 6 of the First
25 Amended Counterclaim.
26

1 Except as so admitted, Plaintiffs / Counter-Defendants deny every remaining allegation of
2 Paragraph 22.

3 23. Plaintiffs / Counter-Defendants deny the allegations of Paragraph 23 of the First
4 Amended Counterclaim.

5 24. Plaintiffs / Counter-Defendants deny the allegations of Paragraph 24 of the First
6 Amended Counterclaim.

7 25. The allegations contained in Paragraph 25 of the First Amended Counterclaim
8 are not directed to the Plaintiff / Counter-Defendant Love & Money, LLC and, as such, no
9 response is required. To the extent that a response is required, Plaintiff / Counter-Defendant
10 Love & Money, LLC denies the allegations contained in Paragraph 25 of the First Amended
11 Counterclaim. Plaintiff / Counter-Defendant Phase II Chin, LLC denies the allegations set forth
12 in Paragraph 25.

13 26. Plaintiffs / Counter-Defendants deny the allegations of Paragraph 26 of the First
14 Amended Counterclaim.

15 27. Plaintiffs / Counter-Defendants deny the allegations of Paragraph 27 of the First
16 Amended Counterclaim and demands strict proof thereof.

17
18
19 **REPLY TO THIRD CLAIM FOR RELIEF**

20 28. Plaintiffs / Counter-Defendants incorporate by reference each and every
21 response to the foregoing paragraph as if fully set forth herein.

22 29. Plaintiffs / Counter-Defendants deny the allegations of Paragraph 29 of the First
23 Amended Counterclaim.

24 30. Plaintiffs / Counter-Defendants deny the allegations of Paragraph 30 of the First
25 Amended Counterclaim.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

41. The Counterclaim, in whole or in part, fails to state a claim for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

42. Counterclaimant’s claims are barred, in whole or in part, by the doctrine of waiver.

THIRD AFFIRMATIVE DEFENSE

43. Counterclaimant’s claims are barred, in whole or in part, by the doctrine of estoppel.

FOURTH AFFIRMATIVE DEFENSE

44. Counterclaimant’s claims are barred, in whole or in part, by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

45. The Counterclaim fails to meet the standard of issuance of a declaratory judgment under applicable law.

SIXTH AFFIRMATIVE DEFENSE

46. Counterclaimant is not entitled to attorney’s fees under the lease.

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SEVENTH AFFIRMATIVE DEFENSE

47. Counterclaimant’s claims are barred, in whole or in part, by its own contractual breaches.

EIGHTH AFFIRMATIVE DEFENSE

48. Plaintiffs / Counter-Defendants did not breach any legal duty to Counterclaimant under the Lease, the Amendment, or otherwise.

NINTH AFFIRMATIVE DEFENSE

49. Counterclaimant’s claims are served, in whole or in part, by the applicable statute of limitations.

TENTH AFFIRMATIVE DEFENSE

50. Counterclaimant’s claims are barred, in whole or in part, by the doctrine of unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

51. If Counterclaimant was injured and damaged as alleged, which is specifically denied, then the injury and damages were caused, in whole or in part, by the acts or omissions of others, whether individual, corporate or otherwise, whether named or unnamed for whose conduct Plaintiffs / Counter-Defendants are not responsible.

TWELFTH AFFIRMATIVE DEFENSE

52. If Counterclaimant was injured and damaged as alleged, which is specifically denies, then the injuries and damages resulted from an independent, intervening and/or superseding cause or causes for which Plaintiffs / Counter-Defendants are no responsible.

THIRTEENTH AFFIRMATIVE DEFENSE

53. Counterclaimant’s claims are barred, in whole or in part, by the doctrine of acquiescence.

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FOURTEENTH AFFIRMATIVE DEFENSE

54. Counterclaimant’s claims are barred, in whole or in part, by the doctrine of ratification.

FIFTEENTH AFFIRMATIVE DEFENSE

55. Plaintiffs / Counter-Defendants currently have insufficient knowledge or information upon which to form a belief as to whether it may have other, as yet unstated, affirmative defenses available and therefore reserve the right to assert additional affirmative defenses.

SIXTEENTH AFFIRMATIVE DEFENSE

56. No conduct of Plaintiffs / Counter-Defendants was either the legal cause or the cause in fact of the alleged harm for which Counterclaimant seeks relief.

WHEREFORE, Plaintiffs / Counter-Defendants pray for relief as follows:

- A. That Counterclaimant Forum Shops, LLC take nothing by way of its Counterclaim and that judgment be entered in favor of Plaintiffs / Counter-Defendants Love & Money, LLC and Phase II Chin, LLC;
- B. For an award of attorneys’ fees and costs; and
- C. For such other and further relief as the Court may deem just and proper.

DATED this 12th day of August, 2009.

Respectfully submitted,

E-Filed August 12, 2009

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17 *Attorneys for Plaintiff / Counter-Defendant Love &*

18 *Money, LLC and Plaintiff / Counter-Defendant*

19 *Phase II Chin, LLC*

20 *(Local Counsel)*

21 **CERTIFICATE OF SERVICE**

22 I HEREBY CERTIFY that on the 12th day of August, 2009, I deposited in the United
23 States Mail at Albuquerque, New Mexico, a true and correct copy of the foregoing Reply by
24 Plaintiffs / Counter-Defendants Love & Money, LLC and Phase II Chin, LLC to Counterclaim
25 by Forum Shops, LLC enclosed in a sealed envelope upon which first class postage was paid,
26 addressed as follows:

27 Samuel S. Lionel

28 Charles H. McCrea, Jr.

LIONEL SAWYER & COLLINS

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