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7 Attorneys for FORUM SHOPS, LLC, FORUM  
 8 DEVELOPERS LIMITED PARTNERSHIP,  
 SIMON PROPERTY GROUP LIMITED  
 9 PARTNERSHIP and SIMON PROPERTY  
 GROUP, INC.

10  
 11 UNITED STATES DISTRICT COURT  
 12 DISTRICT OF NEVADA

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

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

15 Plaintiffs,

16 v.

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

21 Defendants,

**SECOND AMENDED  
 COUNTERCLAIM**

22 FORUM SHOPS, LLC,

23 Counterclaimant,

24 v.

25 PHASE II CHIN, LLC; and LOVE & MONEY,  
 26 LLC (formerly dba O.P.M.L.V., LLC),

27 Counter-Defendants.  
 28

1 COMES NOW Defendant/Counterclaimant FORUM SHOPS, LLC (“Forum”), by and  
2 through its attorneys Lionel Sawyer & Collins, and, as and for its Second Amended Counterclaim  
3 against Plaintiff/Counter-Defendant PHASE II CHIN, LLC (“Chinois”) and Plaintiff/Counter-  
4 Defendant LOVE & MONEY, LLC (“L&M”; Chinois and L&M, collectively “Plaintiffs”), claims  
5 and alleges as follows:  
6

7 **GENERAL ALLEGATIONS**

8 1. Forum is a Delaware limited liability company qualified to do business in the State  
9 of Nevada with a principal place of business in Clark County, Nevada. Forum is the present day  
10 successor-in-interest to the landlord under that certain Lease dated March 18, 1997 by and between  
11 Forum Developers Limited Partnership and GGH Restaurant, LLC, a copy of which is attached to  
12 the Complaint on file herein as Exhibit A (the “Lease”). The property that is the subject of the  
13 Lease (the “Premises”) is located in The Forum Shops Mall in Las Vegas, Nevada.  
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15 2. Chinois is a Delaware limited liability company qualified to do business in the  
16 State of Nevada with a principal place of business in Clark County, Nevada. Chinois is the present  
17 day successor-in-interest to GGH Restaurant, LLC, the lessee under the Lease.  
18

19 3. L&M is a Nevada limited liability company qualified to do business in the State of  
20 Nevada with a principal place of business in Clark County, Nevada.

21 4. On October 9, 2003, Forum and Chinois executed an amendment to the Lease  
22 denominated “Lease Amendment,” a copy of which is attached to the Complaint on file herein as  
23 Exhibit B (the “Lease Amendment”). The Lease Amendment granted Chinois the right to operate  
24 an “after-hours club” in the Premises.  
25

26 **Chinois’ Failure to Operate in a First-Class Manner**

27 5. The Lease Amendment modifies Section 8.4 of the Lease to require that Chinois  
28 “operate the nightclub in a first class manner in keeping with the standards of the Center.” The

1 Forum Shops Mall is the preeminent shopping complex in the United States, with the highest sales  
2 per square foot of any mall in the nation. The mall is composed of elite retailers such as Emporio  
3 Armani, Louis Vuitton, Gianni Versace, Tiffany & Co., Dolce & Gabbana and Giuseppe Zanotti.

4  
5 6. To induce Forum to enter into the Lease Amendment, in a letter from Tom Kaplan  
6 dated November 12, 2002, Plaintiffs made the following representations:

7 Over the past year, Wolfgang Puck, Joe Essa - one of our partners, and I  
8 have been working extensively with Michael Goodwin and his associates from  
9 Albuquerque, New Mexico in creating what we believe will be an outstanding  
10 late-night lounge called "OPM Lounge at Chinois." We are confident that it will  
11 have mutually beneficial synergies and be an exciting addition to the Forum  
12 Shops at Caesars. Our intention is to open in early 2003.

#### 13 Project Overview

14 Lounges and Clubs are extremely popular in Las Vegas. While some, like  
15 Rumjungle, Rain, Babies and Drai's, cater to a younger audience, OPM Lounge  
16 is targeting a more affluent crowd, much like Light at Bellagio and the  
17 Foundation Room at Mandalay Bay. We will provide a stunning location where  
18 upscale, adult tourists, locals, celebrities and entertainers can relax in an  
19 environment that offers outstanding cuisine, lavish décor, intimacy and privacy.

20 OPM, located on the second floor of Chinois, will be designed, furnished  
21 and operated in a first-class manner.

22 7. Contrary to the foregoing representations, Chinois has permitted the nightclub to be  
23 operated in a manner that, among other things, creates an environment that results in rowdy and  
24 unruly behavior, such as public drunkenness, vomiting in mall public areas, shouting obscenities in  
25 mall public areas, urinating in mall public areas, fighting, damaging property in mall public areas,  
26 assault and battery of customers and security personnel, use of illegal or controlled substances and  
27 otherwise engaging in disorderly behavior requiring the repeated attention of security personnel  
28 and the Las Vegas Metropolitan Police Department.

8. Chinois has permitted the nightclub to be operated in a manner that violates  
Section 8.4 of the Lease which requires the nightclub to be operated in a "first class manner in  
keeping with the standards of the Center."

1           9.       In further violation of Section 8.4 of the Lease, Chinois has permitted the nightclub  
2 to be operated in a manner that constitutes a nuisance as defined in NRS 40.2514(4).

3           10.       Pursuant to Section 18.1 of the Lease, on or about March 6, 2006, Forum served  
4 written notice upon Chinois of Chinois' default under the terms of the Lease and Lease  
5 Amendment (the "Default Notice"). Chinois failed to cure its default. More than thirty (30) days  
6 have passed since the service of the Default Notice.  
7

8                           **Chinois' Failure to Obtain Forum Shop's Prior Written Consent to Sublet**

9           11.       Section 13.1 of the Lease requires that Chinois "shall not sell, assign, or in any  
10 manner transfer this Lease or any interest therein, nor shall sublet all or any part of the  
11 Premises...without Landlord's prior written consent...."

12           12.       The Lease Amendment did not modify Section 13.1 of the Lease or otherwise  
13 authorize a sublease of any part of the Premises.  
14

15           13.       On or about June 20, 2002, through a written instrument styled "Management  
16 Agreement," Chinois breached the Lease by assigning, transferring or subletting a portion of the  
17 Premises, or an interest therein, to L&M (the "Management Agreement/Sublease" or "Sublease")  
18 without the prior written consent of Forum. The Management Agreement/Sublease was never  
19 submitted to Forum to be approved as a sublease. At all relevant times, to and including the  
20 present day, Plaintiffs have asserted that "[t]he Management Agreement did not assign or transfer  
21 any of Chinois' rights or obligations under the Lease to [L&M] and did not in any respect  
22 constitute a sublease of the leased premises." This assertion is false.  
23

24           14.       Under Section 18.1(h) of the Lease, Forum has the right to terminate the Lease  
25 "without grace period, demand or notice" in the event "the Premises come into the hands of any  
26 person other than expressly permitted under [the] Lease."  
27

28           15.       Chinois' assignment, transfer, or subletting of a portion of the Premises to L&M

1 without the prior written consent of Forum in violation of Section 13.1 of the Lease is an event of  
2 default under Section 18.1(h) of the Lease allowing Forum to terminate the Lease “without grace  
3 period, demand or notice.”

4  
5 **FIRST CLAIM FOR RELIEF**  
6 **(Declaratory Judgment)**

7 16. Forum restates paragraphs 1 through 15 above.

8 17. A justiciable controversy exists between Forum and Chinois.

9 18. The interests of Forum and Chinois are adverse.

10 19. The controversy between Forum and Chinois is ripe for judicial determination  
11 because Forum has suffered and will continue to suffer harm until such determination is made.

12 20. Forum has a legally protectible interest in the controversy and is entitled to an  
13 order declaring (a) that Chinois has committed events of default under the Lease; (b) that the  
14 Lease is terminated; (c) that Chinois is required to immediately surrender possession of the  
15 Premises to Forum; (d) that Forum is entitled to damages in excess of \$10,000 according to proof;  
16 and (e) that Forum is entitled to its reasonable attorneys’ fees and costs incurred herein.

17  
18 **SECOND CLAIM FOR RELIEF**  
19 **(Breach of Contract - Chinois)**

20 21. Forum realleges paragraphs 1 through 20 above.

21 22. Section 13.1 of the Lease provides, “In the event of any assignment or subletting...  
22 there shall be paid to Landlord, in addition to the Minimum Annual Rent and other charges due  
23 Landlord pursuant to this Lease, such additional consideration as shall be attributable to the right  
24 of use and occupancy of the Premises, whenever the same is receivable by Tenant . . . as additional  
25 rent....” (the “Sublease Rental”).

26 23. Forum is informed and believes that since the inception of the Management  
27 Agreement/Sublease, L&M paid Sublease Rental to Chinois in an amount in excess of \$2.2  
28

1 million.

2 24. Forum has performed all the material conditions, covenants, and promises required  
3 of it in accordance with the terms and conditions of the Lease.

4 25. Chinois has failed and refused to honor its promises and obligations under the  
5 Lease and is in material breach thereof.

6 26. As a direct and proximate result of Chinois' breach of the Lease, Forum has been  
7 damaged in an amount at least equal to all of the Sublease Rental paid or payable to Chinois by  
8 L&M plus costs, disbursements and interest.

9 27. It has been necessary for Forum to utilize the services of attorneys to prosecute this  
10 action and Forum is entitled to an award of reasonable attorneys' fees and costs.

11  
12 **THIRD CLAIM FOR RELIEF**  
13 **(Breach of Contract - L&M)**

14 28. Forum realleges paragraphs 1 through 27 above.

15 29. The Management Agreement/Sublease specifically mentions Forum and L&M  
16 agrees therein to be bound to the terms of the Lease. Thus, Forum was an intended third-party  
17 beneficiary of the Management Agreement/Sublease.

18 30. Under the terms of the Management Agreement/Sublease and Section 13.1 of the  
19 Lease to which L&M had agreed to be bound, all Sublease Rental was required to be paid to  
20 Forum.

21 31. L&M failed and refused to pay the Sublease Rental to Forum and instead paid it to  
22 Chinois knowing that Chinois did not remit the Sublease Rental to Forum as required under the  
23 Lease. Such failure and refusal constituted a breach of the obligations in the Lease to which L&M  
24 had agreed to be bound in the Management Agreement/Sublease and to which Forum was an  
25 intended third-party beneficiary.

26 32. As a direct and proximate result of L&M's breach, Forum has been damaged in an  
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1 amount at least equal to all of the Sublease Rental paid or payable to Chinois by L&M plus costs,  
2 disbursements and interest.

3 33. It has been necessary for Forum to utilize the services of attorneys to prosecute this  
4 action and Forum is entitled to an award of reasonable attorneys' fees and costs.

5  
6 **FOURTH CLAIM FOR RELIEF**  
7 **(Fraud)**

8 34. Forum realleges paragraphs 1 through 33 above.

9 35. In addition to the representations made by Plaintiffs set forth in paragraph 6 above,  
10 Plaintiffs represented that the after-hours club would be operated by Chinois and, although it  
11 would be managed by L&M, the Premises would not be sublet to L&M. All of these  
12 representations (including the representations set forth in paragraph 6) were false and were known  
13 by Plaintiffs to be false at the time they were made. In truth, Plaintiffs did not intend to create an  
14 after-hours club "targeting a more affluent crowd, much like Light at Bellagio and the Foundation  
15 Room at Mandalay Bay." They intended to cater to a younger, less affluent and rowdier crowd.  
16 In addition, contrary to Chinois' representations, Chinois did not intend to operate the club but  
17 intended to sublease a portion of the Premises and turnover all responsibility for the club's  
18 operation to L&M.

19  
20 36. Plaintiffs' false representations were made to induce Forum to approve a change in  
21 use of the Premises to allow the operation of an after-hours club. Forum justifiably relied upon  
22 Plaintiffs' representations believing them to be true and executed the Lease Amendment amending  
23 the Lease to allow Chinois to operate an after-hours club on the Premises.

24  
25 37. As a direct and proximate result of Plaintiffs' fraud, Forum has suffered general  
26 damages in an amount at least equal to all of the Sublease Rental paid or payable to Chinois by  
27 L&M plus costs, disbursements and interest, all in excess of \$10,000.

28 38. As a further direct and proximate result of Plaintiffs' fraud, Forum has suffered

1 special and consequential damages in excess of \$10,000.

2 39. Plaintiffs' actions were intentional, willful and malicious, and Forum is entitled to  
3 punitive and exemplary damages pursuant to NRS 42.005.

4 40. It has been necessary for Forum to utilize the services of attorneys to prosecute this  
5 action and Forum is entitled to an award of reasonable attorneys' fees and costs.  
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7 **FIFTH CLAIM FOR RELIEF**  
8 **(Conspiracy)**

9 41. Forum realleges paragraphs 1 through 40 above.

10 42. Chinois and L&M, and each of them, acted in concert, directly or through  
11 common agents, to further the unlawful objective of depriving Forum of the Sublease Rental by  
12 guile, deception and fraud. In furthering their unlawful objective, Chinois and L&M knowingly  
13 attempted to conceal their true relationship and L&M's sub-tenancy in the Premises by disguising  
14 the Sublease as a "Management Agreement."

15 43. As a direct and proximate result of the concerted action of Chinois and L&M,  
16 Forum has suffered general damages in an amount at least equal to all of the Sublease Rental paid  
17 or payable to Chinois by L&M plus costs, disbursements and interest, all in excess of \$10,000.

18 44. As a further direct and proximate result of the concerted action of Chinois and  
19 L&M, Forum has suffered special and consequential damages in excess of \$10,000.

20 45. Plaintiffs' actions were intentional, willful and malicious, and Forum is entitled to  
21 punitive and exemplary damages pursuant to NRS 42.005.

22 46. It has been necessary for Forum to utilize the services of attorneys to prosecute  
23 this action and Forum is entitled to an award of reasonable attorneys' fees and costs.


24 WHEREFORE, Forum prays for Judgment against Chinois as follows:

- 25 A. For a declaration that the Lease is terminated;  
26 B. For an Order evicting Chinois and L&M from the Premises;  
27 C. For general damages against Chinois and L&M, jointly and severally, in excess of  
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- \$10,000 in the amount of all Sublease Rental paid or payable by L&M;
- D. For special and consequential damages in excess of \$10,000;
- E. For punitive damages in excess of \$10,000;
- F. For prejudgment interest;
- G. For attorneys' fees and costs; and
- H. For such other and further relief as to the Court seems just.

LIONEL SAWYER & COLLINS  
By:   
Samuel S. Lionel (NSB #1766)  
Charles H. McCrea, Jr. (NSB #104)

Attorneys for FORUM SHOPS, LLC,  
FORUM DEVELOPERS LIMITED  
PARTNERSHIP, SIMON PROPERTY  
GROUP LIMITED PARTNERSHIP and  
SIMON PROPERTY GROUP, INC.

**CERTIFICATE OF SERVICE**

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I HEREBY CERTIFY that on the 27<sup>th</sup> day of October 2009, I deposited in the United States Mail at Las Vegas, Nevada, a true and correct copy of the foregoing **SECOND AMENDED COUNTERCLAIM** enclosed in a sealed envelope upon which first class postage was paid, addressed as follows:

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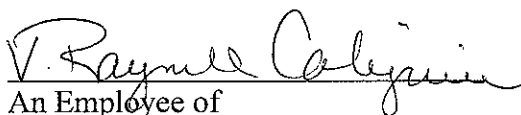
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An Employee of  
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