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7 Attorneys for Defendants  
 Caesars Palace Corporation and  
 8 Caesars Palace Realty Corporation

9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11 PHASE II CHIN, LLC and LOVE & ) CASE NO. 2:08-cv-162-JCM-GWF  
 12 MONEY, LLC, (formerly dba )  
 13 O.P.M.L.V., LLC, )

14 Plaintiffs, )

15 vs. )

) FINDINGS OF FACT AND  
 ) CONCLUSIONS OF LAW

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

20 Defendants. )

21  
 22 The parties in this matter having appeared for a trial to the court  
 23 beginning on March 28, 2011, and having presented documentary evidence and  
 24 testimony of witnesses in this matter, the court hereby finds as follows:

25 **FINDINGS OF FACT**

26 1. In 1990, defendants Caesars Palace Realty Corp., as lessor, and Forum  
 27 Developers Limited Partnership ("Forum developers"), as lessee, entered into a  
 28

1 ground lease on the property underlying the high-end retail mall now known as  
2 The Forum Shops at Caesar's Palace ("The Forum Shops").

3 2. On February 7, 2003 Caesars Palace Realty Corporation and Forum  
4 developers entered into a second amended and restated ground lease (the "ground  
5 lease"). The ground lease governs the rights and responsibilities of Caesars<sup>1</sup> and  
6 Forum<sup>2</sup> at all times relevant to this action. Although the management agreement  
7 and the Chinois sublease are "subject to" the ground lease, neither plaintiff is or has  
8 ever been a party to the ground lease.

9 3. On March 18, 1997, Forum developers entered into a lease (the "lease")  
10 with GGH Restaurant, LLC ("GGH") of premises in The Forum Shops to be used  
11 for the operation of a restaurant (the "premises"). Plaintiff Phase II Chin, LLC  
12 ("Chinois") succeeded to GGH's rights and obligations under the lease and, until  
13 July 2009, operated a restaurant on the premises known as "Chinois."

14 4. On June 20, 2002 Chinois entered into an agreement with plaintiff  
15 O.P.M.L.V., LLC<sup>3</sup> ("OPM/Poetry") granting OPM/Poetry the right to use a portion  
16 of the premises -- approximately 10,000 square feet on the second floor of the  
17 premises -- as an after-hours club to be operated Wednesday through Sunday from  
18 10:00 p.m. to 6:00 a.m. the following day (the "Club"). OPM/Poetry did not  
19 pay any money directly to defendants to operate in The Forum Shops Mall, it paid  
20 rent only to Chinois.

21  
22  
23  
24 <sup>1</sup> There are two "Caesars" entities named as defendants in this action: Caesars  
25 Palace Corp. and Caesars Palace Realty Corp. They are collectively referred to herein as  
the "Caesars defendants," "Caesars Palace" or simply "Caesars."

26 <sup>2</sup> There are four "Forum" entities named as defendants in this action: Forum  
27 Shops, LLC, Forum Developers Limited Partnership, Simon Property Group Limited  
Partnership and Simon Property Group, Inc. They are collectively referred to herein as  
the "Forum defendants," "Forum Shops" or simply "Forum."

28 <sup>3</sup> In September 2007, O.P.M.L.V., LLC changed its name to Love & Money, LLC.

1           5.     At no time did Chinois request that Forum approve a sublease  
2 between Chinois and OPM/Poetry.

3           6.     At no time did Forum approve a sublease between Chinois and  
4 OPM/Poetry.

5           7.     None of the defendants had any contractual relationship with  
6 OPM/Poetry which operated the club.

7           8.     OPM/Poetry began operations on May 22, 2003 as a dance nightclub.  
8 It ceased operations on July 26, 2009. During all times pertinent to this case,  
9 OPM/Poetry was known and advertised itself as a "hip-hop" club that presented  
10 rap and "gangsta-rap" music along with other musical fare, such as rhythm and  
11 blues.

12          9.     On October 9, 2003, Forum developers and Chinois executed an  
13 amendment to the lease (the "lease amendment") expanding Chinois' right to use  
14 the premises for the operation of "an after-hours club, with the sale of food and  
15 alcoholic beverages for on-premises consumption, along with live and/or  
16 pre-programmed music."

17          10.    Generally, the OPM/Poetry club was open every Thursday through  
18 Sunday night from 10:00 p.m. to 4:00 - 6:00 a.m., depending on business.

19          11.    OPM/Poetry began operations as a well run nightclub. However,  
20 that changed when defendants began to experience security incidents attributable  
21 to patrons of OPM/Poetry.

22          12.    From on or about the time OPM/Poetry opened until the Caesars  
23 defendants began closing the fire door separating Caesars Palace from The Forum  
24 Shops Mall on August 17, 2007 (known as the "Won door"), the Caesars defendants  
25 experienced an increasing number of incidents that threatened the physical  
26 security and well-being of Caesars' guests and employees, such as violent  
27 altercations, guest and employee complaints of violent or threatening behavior in  
28 its casino area immediately adjacent to The Forum Shops Mall (the "forum casino"),

1 and in its guest parking facility. Investigations by Caesars security personnel  
2 revealed that these security incidents were attributable to unruly people going to  
3 or coming from OPM/Poetry.

4 13. On June 22, 2005, then Clark County Sheriff Bill Young wrote a letter  
5 to the Nevada Gaming Control Board urging the board to hold gaming licensees  
6 responsible for any violence related to gangster-rap entertainment in nightclubs  
7 operated on property owned by a licensee.

8 14. On February 7, 2006 the Nevada Gaming Control Board issued a  
9 directive to all of its gaming licensees, including Caesars Palace, stating "the board  
10 will hold the licensee accountable for any regulatory violations that occur within or  
11 outside a nightclub located on the property of the licensee." Of particular concern  
12 to the board, among other things, were incidences of violence and excessive  
13 inebriation associated with nightclubs.

14 15. Caesars Palace executives were informed by the Gaming Control  
15 Board in connection with the February 7, 2007 letter that they would be responsible  
16 for violence emanating from Pure nightclub, located inside Caesars Palace and  
17 OPM/Poetry nightclub, located in The Forum Shops on property leased to Forum  
18 by Caesars.

19 16. Café Dela Spiga is a coffee shop and bar located outside but near to  
20 OPM/Poetry, inside The Forum Shops on property controlled by Caesars.  
21 Although Café Dela Spiga is inside The Forum Shops, it is a lessee of Caesars  
22 Palace.

23 17. Because of the efforts of the Caesars defendants, Café Dela Spiga  
24 ceased serving alcoholic beverages and began closing at or near midnight  
25 beginning on or about March 10, 2007.

26 18. Café Dela Spiga was not the cause of violent incidents inside The  
27 Forum Shops, Caesars Palace forum casino, or in the guest parking structure  
28 because those violent incidents continued unabated after March 10, 2007.

1 19. A gang-related shooting occurred on August 4, 2007 inside Caesars  
2 Palace near the guest parking structure elevators at the rear of the forum casino.  
3 The perpetrator of that shooting entered Caesars from The Forum Shops Mall after  
4 patronizing or attempting to patronize OPM/Poetry. At the time the shooter  
5 exited from The Forum Shops premises, OPM/Poetry was the only business open  
6 in the mall.

7 20. In response to the shooting and other violent breaches of the peace,  
8 the Caesars defendants closed the Won door after regular Forum Shops business  
9 hours, beginning on Friday August 17, 2007 and with the exceptions of the  
10 weekends beginning Friday October 19, 2007, when extra security was provided  
11 by OPM/Poetry, and Friday December 21, 2007, when the door malfunctioned,  
12 Caesars closed the Won door on weekend nights after 1:00 a.m. from August 17,  
13 2007 until OPM/Poetry closed on July 26, 2009. The Won door continues to be  
14 closed after The Forum Shops Mall regular business hours on weekends through  
15 today.

16 21. Caesars Palace closed the Won door because it was concerned about  
17 physical violence and other employee and guest-threatening security incidents  
18 occurring in The Forum Shops Mall, the forum casino, and the Caesars guest  
19 parking structure that were attributable to people going to or coming from  
20 OPM/Poetry nightclub. Caesars was also concerned about "Gangsta' Rap" as  
21 stated in the February 7, 2007 Gaming Control Board letter to all Nevada licensees.

22 22. The Caesars Defendants offered to, and on October 19, 2007, in fact  
23 did, keep the Won door open after hours because OPM/Poetry agreed to pay for  
24 the necessary additional security to do so.

25 23. There is no credible evidence that the defendants' actions were  
26 motivated by racism, racial animosity, or bias against African Americans or any  
27 other ethnic group, nor was there credible evidence that race was a factor in  
28

1 Caesar's decision to close the Won door on weekends to promote guest and  
2 employee safety.

3 24. Because there was no contractual relationship between defendants  
4 and OPM/Poetry, the Caesars defendants had no obligation to provide or permit  
5 access to OPM/Poetry patrons through the Won door, or to allow OPM/Poetry to  
6 advertise on Caesars Palace property.

7 25. No evidence was presented that the Caesars defendants had any  
8 control over or contractual duty to provide air conditioning or valet parking to  
9 plaintiffs.

10 26. No evidence was presented that the Forum defendants had any  
11 contractual duty to provide air conditioning, valet parking, extra security or  
12 advertising to OPM/Poetry.

13 27. When the Won door was closed, Caesars Palace allowed OPM/Poetry  
14 patrons alternate access from the forum casino area into The Forum Shops Mall  
15 through a service entrance, which patrons entered from the west end of the forum  
16 casino near the guest parking structure elevator.

17 28. The Won door was not the only entrance into The Forum Shops Mall  
18 available to OPM/Poetry customers. Forum also permitted entry into and exit  
19 from The Forum Shops Mall through other service entrances, one of which was  
20 nearly adjacent to OPM/Poetry, and two entrances to the mall offering valet  
21 parking.

22 29. The closure of the Won door had no effect on Chinois' restaurant  
23 business, nor did the evidence show that closure of the door affected  
24 OPM/Poetry's business by reducing the number of patrons attracted to  
25 OPM/Poetry.

26 30. The closure of the Won door significantly diminished the customer-  
27 and security-threatening incidents in and about The Forum Shops, the forum  
28 casino and Caesars' guest parking structure areas on and after August 17, 2007.

1           31. The defendants discussed lawful means to evict OPM/Poetry from  
2 The Forum Shops Mall, but they did not succeed in doing so. The closure of the  
3 Won door only cut off the casual strollers or unruly people who might get into an  
4 altercation on Forum Shops or Caesars Palace property. The closure of the Won  
5 door was not designed to and did not curb the hard-core patrons who wanted to  
6 go to OPM/Poetry.

7           32. OPM/Poetry operated and managed a high-end successful nightclub  
8 in Las Vegas during its years of operation from May 2003 through July 2009, when  
9 it closed because its lessor, Chinois, ceased doing business and declared  
10 bankruptcy.

11           33. There is no credible evidence that efforts of the defendants adversely  
12 affected patronage of OPM/Poetry. One Metropolitan Police Department  
13 witness testified that on the night of the first undercover operation in 2008, nearly  
14 a year after the Won door began to close at 1 a.m., the club was very busy, with  
15 75-100 people waiting in line to gain admittance. Evidence derived from  
16 OPM/Poetry's expert Bryan Bass was to the effect that OPM/Poetry was  
17 successful in Las Vegas for five years prior to closing in 2009 because of its  
18 operating efficiency in a highly competitive and challenging economic  
19 environment, even after the closure of the Won door.

20           34. Evidence was presented by the plaintiffs that OPM/Poetry won a  
21 *Nightclub & Bar* Editor's award in 2009 because it was one of the top 100 nightclubs  
22 in the country based on revenue, two years after the Won door began closing at 1  
23 a.m. on weekends.

24           35. Pure nightclub, which is located inside Caesars Palace between its  
25 sports book and main valet did not cause the violence in The Forum Shops Mall,  
26 the forum casino or Caesars guest parking garage that resulted in Caesars closing  
27 the Won door on weekend nights. Pure remained open and operating on its  
28 normal schedule after the Won door was closed on August 17, 2007. It has

1 continued to operate since OPM/Poetry closed. The evidence shows that  
2 violence in The Forum Shops, the forum casino and Caesars guest parking  
3 structure greatly abated after the Won door was closed and further decreased  
4 following OPM/Poetry's closing in July 2009.

5 36. Pure nightclub and OPM/Poetry nightclub are not similarly situated.  
6 While they both presented entertainment and alcoholic beverage service, Pure is  
7 much larger, attracts a larger audience than OPM, and is located on Caesars  
8 defendants' property, which means the Caesars Defendants control the security  
9 outside Pure nightclub. Pure, as a lessee of Caesars Palace, also generates  
10 significant income for Caesars, while OPM/Poetry did not.

11 37. Although there is evidence that the Caesars defendants and the Forum  
12 defendants worked together to seek OPM/Poetry's lawful removal from The  
13 Forum Shops Mall, there is no evidence that these actions were undertaken by  
14 unlawful means or were undertaken to further an unlawful purpose.

15 38. There is no credible evidence that plaintiffs suffered damages as a  
16 result of the defendants' actions.

17 39. The Won door was controlled by Caesars.

18 40. The Caesars defendants closed the Won door because OPM/Poetry  
19 would not pay for the additional security necessary to control pedestrian traffic to  
20 and from OPM/Poetry and thereby prevent its patrons from causing and engaging  
21 in fights and related physically-threatening incidents in the forum casino and  
22 Caesars. The door was not closed as a pretext to mask intentional racial  
23 discrimination by the defendants.

24 41. On July 26, 2009, Chinois ceased operations, closed its business and  
25 abandoned the leasehold premises.

26 42. On July 29, 2009, Chinois filed a voluntary petition under Chapter 7 of  
27 the Bankruptcy Code in the United States Bankruptcy Court for the District of  
28 Nevada.



1 43. Nowhere in Chinois' bankruptcy petition or accompanying schedules  
2 does Chinois assert that it has any claim against any of the defendants for money  
3 damages.

4 44. Chinois does not claim that any defendant was responsible in any way  
5 for its closing or its bankruptcy. The defendants had nothing to do with Chinois'  
6 decision to cease doing business and close. Chinois admits that it seeks no  
7 money damages from the defendants in this action.

8 45. The management agreement between Chinois and OPM/Poetry was  
9 terminated by Chinois, under the terms of that agreement, on July 26, 2009 when  
10 Chinois closed its business.

11 46. OPM/Poetry ceased doing business and closed because Chinois  
12 ceased doing business and abandoned the Premises. The closure of  
13 OPM/Poetry's business was not caused by any act or omission of any defendant.

14 47. OPM/Poetry did not have its own liquor or operating licenses and  
15 was operating under the licenses held by Chinois.

16 48. OPM/Poetry is not a party to the lease or the lease amendment.

17 49. None of the defendants did anything that caused OPM/Poetry to  
18 breach or sever any contractual relationship it had with Chinois. Chinois  
19 received all of the rights and benefits to which it was entitled under the  
20 management agreement.

21 50. None of the defendants did anything that caused Chinois to breach or  
22 sever any contractual relationship it had with OPM/Poetry. OPM/Poetry  
23 received all of the rights and benefits to which it was entitled under the  
24 management agreement.

25 51. None of the defendants engaged in any act or omission that was the  
26 proximate cause of any damages claimed by OPM/Poetry.

27 52. Defendant Forum Shops, LLC voluntarily dismissed its second  
28 amended counterclaim.

1 53. If any finding of fact should more properly be deemed a conclusion of  
2 law, it shall be so deemed.  
3

#### 4 CONCLUSIONS OF LAW

5 Based on the foregoing findings of fact, the court reaches the following  
6 conclusions of law:

##### 7 The Claims Asserted by Plaintiffs Against the Caesars Defendants

8 1. The Caesars defendants decision to close the Won door did not  
9 interfere with a contract or contract right of plaintiffs under the management  
10 agreement or any other contract in a manner that would support a claim for  
11 intentional racial discrimination under 42 U.S.C. § 1981 against the Caesars  
12 defendants (plaintiffs' fifth cause of action).

13 2. No other action of the Caesars defendants interfered with a contract or  
14 contract right of plaintiffs in a manner that would support a claim for intentional  
15 racial discrimination under 42 U.S.C. § 1981 against the defendants (plaintiffs'  
16 fifth cause of action).

17 3. Plaintiffs have not established a claim for breach of the implied  
18 covenant of good faith and fair dealing against Caesars defendants because  
19 Caesars is not a party to the management agreement or the Forum lease.

20 4. Plaintiffs have not produced direct evidence of discrimination  
21 sufficient to support a claim for intentional racial discrimination under 42 U.S.C.  
22 § 1981 against the Caesars defendants.

23 5. Plaintiffs have not established a *prima facie* case of discrimination  
24 sufficient to support a cause of action for intentional racial discrimination under 42  
25 U.S.C. § 1981 against the Caesars defendants.

26 6. Plaintiffs do not have a claim for breach of the duty of good faith and  
27 fair dealing against the Caesars defendants because they are not and have never  
28

1 been a party to a contract with the Caesars defendants (plaintiffs' eighth cause of  
2 action).

3 7. Pure nightclub and OPM/Poetry nightclub are not similarly situated  
4 for purposes of disparate treatment analysis under 42 U.S.C. § 1981.

5 8. Café Dela Spiga restaurant and OPM/Poetry nightclub are not  
6 similarly situated for purposes of disparate treatment analysis under 42 U.S.C. §  
7 1981.

8 9. Plaintiffs have not established "disparate treatment" by the Caesars  
9 defendants under 42 U.S.C. § 1981.

10 10. The Caesars defendants did not conspire to unlawfully remove  
11 OPM/Poetry from Chinois or to unlawfully diminish its business (plaintiffs'  
12 seventh cause of action).

13 11. Plaintiffs have not established that the Caesars defendants' concern for  
14 the safety and security of their patrons and employees was a pretext to mask  
15 intentional racial discrimination against plaintiffs or their patrons under 42 §  
16 U.S.C. 1981.

17 12. Judgment should be entered in favor of the Caesars defendants and  
18 against plaintiffs on all claims asserted by them in this action.

19 **The Claims Asserted by Chinois Against the Forum Defendants**

20 13. As a result of the closing of Chinois' business, abandonment of the  
21 premises and bankruptcy filing -- none of which had anything to do with any  
22 alleged acts or omissions by Forum -- Chinois' claims for declaratory judgment  
23 (first) and injunctive relief (fourth) are moot and should be dismissed with  
24 prejudice.

25 14. Each of Chinois' remaining causes of action require proof of damages  
26 as an essential element. Thomas Kaplan, Chinois' senior managing partner,  
27 admitted that Forum did nothing that caused Chinois any monetary injury. He  
28 also testified that Chinois is seeking no damages from Forum in this action. This

1 fact is affirmed (1) in the filings Chinois has made with the bankruptcy court  
2 which are devoid of any mention of this lawsuit or any claim Chinois may have  
3 against Forum and (2) in Chinois' responses to Forum's written discovery requests  
4 concerning damages where Chinois provided no information from which any  
5 damages to it could be calculated. Because Forum did nothing that caused  
6 Chinois to suffer any monetary damages or other legally compensable injury,  
7 Forum is entitled to judgment on all of Chinois' remaining causes of action  
8 (second, third, fifth, sixth, seventh and eighth).

9 15. When it filed for bankruptcy protection, Chinois had an affirmative  
10 duty to disclose to the bankruptcy court all assets, including all contingent and  
11 unliquidated claims. This would include the claims asserted in this action against  
12 Forum. The schedules filed by Chinois with the bankruptcy court listing all of its  
13 assets include no claims -- contingent, unliquidated or otherwise -- against Forum.  
14 Accordingly, Chinois is judicially estopped from asserting any claims against  
15 Forum in this action.

16 16. The tort of intentional interference with contract (Chinois' second  
17 cause of action) requires proof that Forum actually disrupted the contractual  
18 relationship to which Chinois was a party by inducing one of the parties to breach.  
19 Neither OPM/Poetry nor Chinois has ever asserted that the other breached the  
20 management agreement in any way and there is no evidence to suggest that Forum  
21 did anything that induced OPM/Poetry or Chinois to breach the contract in any  
22 way. As between OPM/Poetry and Chinois, the management agreement  
23 remained in full force and effect until it terminated as a matter of course when  
24 Chinois ceased doing business, abandoned the leasehold premises and declared  
25 bankruptcy.

26 17. Chinois did not establish that Forum intentionally interfered with any  
27 contract to which Chinois was a party.

28 18. No action of Forum interfered with a contract or contract right of

1 Chinois in a manner that would support a claim for intentional racial  
2 discrimination under 42 U.S.C. § 1981 against the defendants (plaintiffs' fifth  
3 cause of action).

4 19. Chinois has not produced direct evidence of discrimination sufficient  
5 to support a claim for intentional racial discrimination under 42 U.S.C. § 1981  
6 against Forum.

7 20. Chinois has not established a *prima facie* case of discrimination  
8 sufficient to support a cause of action for intentional racial discrimination under 42  
9 U.S.C. § 1981 against Forum.

10 21. Chinois has not established "disparate treatment" by Forum under 42  
11 U.S.C. § 1981.

12 22. Chinois has not established that Forum's concern for the safety and  
13 security of its patrons and employees was a pretext to mask intentional racial  
14 discrimination against Chinois or its patrons under 42 § U.S.C. 1981.

15 23. With respect to Chinois' sixth (breach of contract) and eighth (breach  
16 of implied covenant of good faith and fair dealing) claims, Chinois has failed to  
17 meet its evidentiary burden establishing that Chinois was damaged by any act or  
18 omission of Forum.

19 24. In Nevada, an actionable civil conspiracy (Chinois' seventh cause of  
20 action) consists of a combination of two or more persons who, by some concerted  
21 action, intend to accomplish an unlawful objective for the purpose of harming  
22 another. Paragraph 98 of the complaint sets forth Chinois' claim for conspiracy:

23 Defendants, and each of them, acted in concert, directly or  
24 through common agents, to exert dominion and control over the other  
25 defendants, and each of them, and through such dominion and  
26 control, furthered the unlawful objectives of (i) improperly invoking  
27 remedies under the Lease, including termination of the Lease; (ii)  
28 intentionally disrupting the contractual relationships between Chinois  
and O.P.M.L.V.; and (iii) improperly disrupting the contractual  
relationships between Chinois and O.P.M.L.V., on the one hand, and  
actual and prospective patrons of Chinois and O.P.M.L.V. on the  
other, all of which has caused and will continue to cause grave  
damage to plaintiffs.

1           25.     None of the three "unlawful objectives" that form the basis of Chinois'  
2 alleged conspiracy were accomplished.   The lease was not terminated by Forum.  
3 It was terminated by Chinois for reasons that had nothing to do with Forum.  
4 Similarly, Forum did nothing that "disrupted" the contractual relationship between  
5 Chinois and OPM/Poetry.   That relationship remained fully intact until it  
6 terminated as a matter of course when Chinois terminated the Lease with Forum,  
7 abandoned the leasehold premises and declared bankruptcy.   There was no  
8 credible evidence suggesting that Forum interfered with any prospective patrons  
9 of OPM/Poetry.

10           26.     With respect to Chinois' conspiracy claim, Chinois failed to meet its  
11 evidentiary burden to show that Forum intended to accomplish an unlawful  
12 objective for the purpose of harming Chinois.

13           27.     Forum engaged in no act or omission that was the proximate cause  
14 of any damages suffered by Chinois in this case.

15           28.     Judgment should be entered in favor of Forum and against Chinois  
16 on all claims asserted in this action by Chinois.

17           **The Claims Asserted by OPM/Poetry Against the Forum Defendants**

18           29.     OPM/Poetry's first (declaratory judgment) and fourth (injunctive  
19 relief) causes of action have been rendered moot by the closing of its business,  
20 which had nothing to do with any alleged acts or omissions by Forum.

21           30.     The tort of intentional interference with contract (OPM/Poetry's  
22 second cause of action) requires proof that Forum actually disrupted the  
23 contractual relationship to which OPM/Poetry was a party by inducing one of the  
24 parties to breach.   Neither OPM/Poetry nor Chinois has ever asserted that the  
25 other breached the management agreement in any way and there is no evidence to  
26 suggest that Forum did anything that induced OPM/Poetry or Chinois to breach  
27 the contract in any way.   As between OPM/Poetry and Chinois, the management  
28 agreement remained in full force and effect until it terminated as a matter of course

1 when Chinois ceased doing business and abandoned the leasehold premises  
2 which, in turn, caused OPM/Poetry to cease doing business.

3 31. OPM/Poetry did not establish that Forum intentionally interfered  
4 with any contract to which OPM/Poetry was a party.

5 32. No action of Forum interfered with a contract or contract right of  
6 OPM/Poetry in a manner that would support a claim for intentional racial  
7 discrimination under 42 U.S.C. § 1981 against the defendants (plaintiffs' fifth  
8 cause of action).

9 33. OPM/Poetry has not established a claim for breach of the implied  
10 covenant of good faith and fair dealing against Forum defendants because the  
11 covenant exists by virtue of the lease and OPM/Poetry is not a party to the lease.

12 34. OPM/Poetry has not produced direct evidence of discrimination  
13 sufficient to support a claim for intentional racial discrimination under 42 U.S.C.  
14 § 1981 against Forum.

15 35. OPM/Poetry has not established a *prima facie* case of discrimination  
16 sufficient to support a cause of action for intentional racial discrimination under 42  
17 U.S.C. § 1981 against Forum.

18 36. OPM/Poetry has not established "disparate treatment" by Forum  
19 under 42 U.S.C. § 1981.

20 37. OPM/Poetry has not established that Forum's concern for the safety  
21 and security of its patrons and employees was a pretext to mask intentional racial  
22 discrimination against OPM/Poetry or its patrons under 42 § U.S.C. 1981.

23 38. With respect to OPM/Poetry's sixth (breach of contract) and eighth  
24 (breach of implied covenant of good faith and fair dealing) claims, OPM/Poetry  
25 was not a party to the contract to which these claims pertain -- the lease between  
26 Forum and Chinois. OPM/Poetry and Forum are not parties to any contract with  
27 one another. There was no privity of contract between Forum and OPM/Poetry  
28 and OPM/Poetry has no standing to assert a breach of any provision in the lease

1 (including the implied covenant of good faith and fair dealing).

2 39. With respect to OPM/Poetry's sixth (breach of contract) and eighth  
3 (breach of implied covenant of good faith and fair dealing) claims, OPM/Poetry  
4 also has failed to meet its evidentiary burden establishing that it was damaged by  
5 any act or omission of Forum.

6 40. OPM/Poetry's § 1981 claim for racial discrimination (fifth) is based  
7 solely and explicitly on the "benefits or privileges" arising under the lease between  
8 Forum and Chinois. OPM/Poetry is not a party to that lease. Because  
9 OPM/Poetry is not a party to a contract with Forum, OPM/Poetry cannot assert a  
10 claim under § 1981 for racially-motivated loss of or interference with contractual  
11 rights. OPM/Poetry lacks standing to bring a § 1981 claim. Accordingly,  
12 Forum is entitled to judgment on OPM/Poetry's fifth cause of action.

13 41. Even if OPM/Poetry had standing to assert a claim under 42 U.S.C.  
14 § 1981 and could seek damages thereunder for interference with prospective  
15 business opportunities, OPM/Poetry failed to meet its evidentiary burden to show  
16 that Forum took any action against OPM/Poetry with discriminatory intent.

17 42. In Nevada, an actionable civil conspiracy consists of a combination of  
18 two or more persons who, by some concerted action, intend to accomplish an  
19 unlawful objective for the purpose of harming another. Paragraph 98 of the  
20 Complaint sets forth OPM/Poetry's claim for conspiracy and is set forth above.

21 43. As noted above, none of the three "unlawful objectives" that form the  
22 basis of OPM/Poetry's alleged conspiracy (OPM/Poetry's seventh cause of action)  
23 were accomplished. OPM/Poetry also failed to meet its evidentiary burden to  
24 show that Forum intended to accomplish an unlawful objective for the purpose of  
25 harming OPM/Poetry.

26 44. Forum engaged in no act or omission that was the proximate cause of  
27 any damages suffered by OPM/Poetry in this case.

28



1 45. Judgment should be entered in favor of Forum and against  
2 OPM/Poetry on all claims asserted against Forum in this action by OPM/Poetry.

3 46. If any conclusion of law should more properly be deemed a finding  
4 of fact, it shall be so deemed.

5 Submitted by:

6 MORRIS PETERSON

LIONEL SAWYER & COLLINS

7  
8 By: /s/Jean-Paul Hendricks  
9 Steve Morris, Bar No. 1543  
10 Jean-Paul Hendricks, Bar No. 10079  
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13 Las Vegas, Nevada 89101

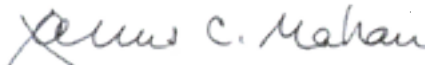
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11 Attorneys for Defendants Caesars  
12 Palace Corporation and Caesars Palace  
13 Realty Corporation

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

14  
15 Let Judgment enter accordingly.

16 DATED and DONE this 24th day of May, 2011.

17  
18   
19 U.S. DISTRICT COURT JUDGE