

1 HAROLD P. GEWERTER, ESQ.
Nevada Bar No. 499
2 HAROLD P. GEWERTER, ESQ., LTD.
5440 West Sahara Avenue, Third Floor
3 Las Vegas, Nevada 89146
4 Telephone: (702) 382-1714
Facsimile: (702) 382-1759
5

6 C. STANLEY HUNTERTON, ESQ.
Nevada Bar No. 5044
7 HUNTERTON & ASSOCIATES
333 S. Sixth Street
8 Las Vegas, Nevada 89101
Telephone: (702) 388-0098
9 Facsimile: (702) 388-0361

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

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14 PHASE II CHIN, LLC and LOVE &
15 MONEY, LLC, formerly O.P.M.L.V.,
16 LLC,

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

17 Plaintiffs,

18 v.

19 FORUM SHOPS, LLC, FORUM
DEVELOPERS LIMITED
20 PARTNERSHIP, SIMON PROPERTY
GROUP LIMITED PARTNERSHIP,
21 SIMON PROPERTY GROUP, INC.,
CAESARS PALACE CORP, CAESARS
22 PALACE REALTY CORP., DOES 1
through 20, AND ROE CORPORATIONS
1 through 20,

23 Defendants.
24

25 **PLAINTIFFS' JOINT REQUEST TO FILE A SURREPLY TO MOTIONS TO DISMISS**
26 **FILED BY FORUM SHOPS, LLC, FORUM DEVELOPERS LIMITED PARTNERSHIP,**
27 **SIMON PROPERTY GROUP LIMITED PARTNERSHIP, SIMON PROPERTY GROUP,**
28

1 **INC., CAESARS PALACE CORP. AND CAESARS PALACE REALTY CORP.**

2 Plaintiffs Phase II Chin, LLC (“Chinois”) and Love & Money, LLC (formerly
3 O.P.M.L.V., LLC) respectfully move this Court for an order permitting them to file a Sur-Reply
4 in Further Support of their opposition to Defendants’ Motions to Dismiss, filed concurrently with
5 this motion. This motion is based on LR 7-2, the Court’s inherent authority to control its own
6 docket and proceedings, the pleadings and documents on file and the memorandum of points and
7 authorities that follows.

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 Local Rule 7.2 addresses motions. While this rule does not specifically provide for the
10 filing of sur-replies, the Court unarguably has the inherent authority to grant leave to file such
11 briefs. *See, e.g., Reva Int’l, Inc. v. MBraun, Inc.*, 2007 U.S. Dist. LEXIS 94821, *20 n. 4 (D.
12 Nev. December 28, 2007) (“Reva could have sought leave to file a sur-reply.”) Leave to file a
13 sur-reply should be granted where it would not prejudice any party and where the brief would aid
14 in the decisional process. *See Audi AG v. D’Amato*, 2007 U.S. Dist. LEXIS 16863, *4 (E.D.
15 Mich. January 3, 2007).

16 In their replies, Defendants have mischaracterized much of the law applicable to the
17 decision of their motions to dismiss, in particular the law regarding claims under 42 U.S.C. §
18 1981. These mischaracterizations are more efficiently refuted in a short written submission than
19 they could be at oral argument. Filing of Plaintiffs’ sur-reply would therefore aid in the
20 decisional process. The granting of this motion would not prejudice Defendants, as they will
21 have the opportunity to review this brief prior to the hearing on the Motions and may address it
22 at the hearing.

23 **CONCLUSION**

24 For the reasons stated above, Plaintiffs respectfully request that the Court grant its motion

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1 to file the Sur-Reply in Further Support of Its Opposition to Defendants' Motions to Dismiss,
2 submitted concurrently with this motion. A proposed order has been submitted concurrently
3 herewith.

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5 Dated: September 12, 2008

HAROLD P. GEWERTER, ESQ., LTD.

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7 /s/ Harold P. Gewerter, Esq.

HAROLD P. GEWERTER, ESQ.
Nevada Bar No. 499
5440 West Sahara Avenue, Third Floor
Las Vegas, Nevada 89146
Attorney for Plaintiff Love & Money, LLC

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10 Dated: September 12, 2008

FAGELBAUM & HELLER LLP

11
12 /s/ Philip Heller, Esq.

Philip Heller, Esq.
2049 Century Park East, Suite 4250
Los Angeles, CA 90067-3254
Counsel for Phase II Chin, LLC

13
14
15 C. STANLEY HUNTERTON, ESQ.
Nevada Bar No. 5044
333 S. Sixth Street
Las Vegas, Nevada 89101
Attorney for Plaintiff, Phase II Chin, LLC

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