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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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

Plaintiffs,

and

FORUM SHOPS, LLC, FORUM
DEVELOPERS LIMITED
PARTNERSHIP, SIMON
PROPERTY GROUP LIMITED
PARTNERSHIP, SIMON
PROPERTY GROUP, INC.,
CAESARS PLACE CORP., and
CAESARS PALACE REALTY
CORP.

Defendants

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

**PLAINTIFF PHASE II CHIN LLC'S
NOTICE OF MOTION AND
MOTION TO DISQUALIFY
ATTORNEY STEVE MORRIS AND
THE LAW FIRM OF MORRIS,
PICKERING & PETERSON (NOW
MORRIS PETERSON);
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATIONS
OF PHILIP HELLER AND JEROLD
FAGELBAUM**

**DATE: To Be Determined
TIME: To Be Determined
CTR: Hon. James C. Mahan**

1 **PLEASE TAKE NOTICE THAT** on a date to be set by, and convenient
2 to, the Court (respectfully requested to be on or before February 6, 2009), located
3 at the Lloyd D. George United States Courthouse, United States District Court,
4 333 Las Vegas Blvd.-South, Las Vegas, NV 89101, the Hon. James C. Mahan
5 presiding, Plaintiff Phase II Chin LLC ("Chinois") will, and hereby does,
6 respectfully move this Court to disqualify attorney Steve Morris and the law firm
7 of Morris Pickering & Peterson ("MP&P") (now known as Morris Peterson) from
8 continuing as counsel of record herein for Defendants Caesars Place Corp. and
9 Caesars Place Realty Corp (collectively "Caesars") due to Chinois' previous
10 consultation with Mr. Morris at which time confidential information was disclosed
11 to, and legal advice was rendered by, Mr. Morris, to Chinois' counsel of record
12 herein. This motion is made and based upon Local Rule of Practice LR IA 10-7 of
13 the United States District Court for the District of Nevada, Rule 1-9 of the Nevada
14 Rules of Professional Conduct and the Court's inherent power to regulate the
15 conduct of attorneys appearing it, the pleadings and papers on file herein, the
16 Memorandum of Points and Authorities, and the declarations of Philip Heller and
17 Jerold Fagelbaum with accompanying exhibits attached hereto, and any oral
18 argument permitted by the Court at a hearing on this Motion.

19 Dated: January 5, 2009

FAGELBAUM & HELLER LLP

20
21 By: 

Jerold Fagelbaum
2049 Century Park East, Suite 4250
Los Angeles, CA 90067-3254
Attorneys for Phase II Chin, LLC

22
23
24 Dated: January 5, 2009

HUNTERTON & ASSOCIATES

25 By: /s/

26 Stanley C. Hunterton
27 333 S. Sixth Street
28 Las Vegas, NV 89101
Attorneys for Phase II Chin, LLC .

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2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I.**

4 **PRELIMINARY STATEMENT**

5 Plaintiff Phase II Chin LLC ("Chinois") submit this Memorandum of
6 Points and Authorities in support of its Motion To Disqualify Steve Morris, Esq.
7 and the law firm of Morris, Pickering & Peterson ("MP&P"), now known as
8 Morris Peterson, as attorneys of record in this action for Defendants Caesars Place
9 Corp. and Caesars Place Relay Corp. (Collectively "Caesars"). This Motion is
10 based upon the grounds that Mr. Morris was initially consulted by counsel for
11 Chinois to act as legal counsel in this (at that time proposed) action, and that
12 confidences were disclosed to, and legal advice was given by, Steve Morris prior
13 to Mr. Morris disclosing that his firm had a professional relationship with Caesars
14 and that it might be difficult for Mr. Morris to represent Chinois in a case adverse
15 to Caesars. Accordingly, Chinois selected alternative local counsel.

16 Nevertheless, once this action was filed, naming Caesars as a defendant,
17 Mr. Morris' firm MP&P appeared on behalf of Caesars. In response to objections
18 raised by Chinois, Mr. Morris represented that he had not disclosed, and would not
19 disclose, the contents of his discussion with Chinois' counsel to anyone, including
20 others in his firm, and would not be involved in this lawsuit. Relying on Mr.
21 Morris' assurance that he had isolated himself from this case (creating a so-called
22 "ethical wall"), Chinois did not further object to Mr. Morris' wife and law partner,
23 Kris Pickering and MP&P representing Caesars in this case.

24 However, now Ms. Pickering has been elected to a seat on the Nevada
25 Supreme Court and has designated Mr. Morris to replace her as counsel of record
26 on behalf of Caesars in this case. In light of Mr. Morris' previous substantive
27 contact with Chinois about this case, Mr. Morris effectively has "switched sides"
28 breaching his twin duties of confidentiality and loyalty to Chinois. As discussed

1 below, under applicable Nevada law, and pursuant to the Court's inherent power
2 to regulate the conduct of attorneys who appear before it, both Mr. Morris and his
3 law firm MP&P must be disqualified from this action not only to protect the
4 interests of Chinois, but also, to maintain the integrity of the bar and the public
5 trust in the administration of justice.

6 II.

7 RELEVANT BACKGROUND

8 On October 3, 2007, Forum Shops LLC filed an action limited for
9 Declaratory Relief in the Superior Court of the State of Delaware, County of New
10 Castle against Chin LV, LLC, Phase II Chin , LLC and Phase II Chin-LV, LLC.
11 Phase II Chin, LLC ("Chinois") retained Philip Heller and the law firm of
12 Fagelbaum & Heller LLP ("FHLLP") to represent it in that action.

13 As a result of the Delaware State Action, it was determined that Chinois
14 would file an action of its own in Las Vegas, Nevada where Chinois and Forum
15 Shops, LLC are actually doing business, where other potential parties resided,
16 where the relevant documents and witnesses were located, and where the relevant
17 events occurred and were subject to Nevada law. To that end, Chinois' counsel,
18 Philip Heller, contacted Steve Morris of Morris Pickering & Peterson ("MP&P")
19 by telephone with the intention of retaining Mr. Morris and his firm to act as local
20 counsel for Chinois in the case it anticipated filing in Las Vegas. Mr. Morris was
21 well known to FHLLP as another of its partners previously worked along with Mr.
22 Morris on the MGM Grand Fire Litigation, when Mr. Morris was a partner in the
23 firm of Lionel Sawyer & Collins (counsel in this case for the Forum Shops
24 Defendants).

25 Mr. Heller introduced himself to Mr. Morris and explained the purpose
26 behind the call, i.e. that he was representing Chinois in Delaware and also would
27 be representing Chinois in an action to be filed in Las Vegas for which local
28 counsel was necessary. At that point, Mr. Morris did *not* invoke any conflicts

1 avoidance measures and listened as Mr. Heller discussed and disclosed Chinois'
2 confidential plan to file an action in Las Vegas, venue, possible defendants
3 (including Caesars), prospects for settlement and the selection of co-counsel. Mr.

4 Morris responded by providing legal advice to Mr. Heller, including his views on
5 parties and proposed parties, venue, claims and selection and assessment of
6 counsel and judges. The first time Mr. Morris raised a concern about being
7 retained as local counsel was when Mr. Heller discussed that among the potential
8 parties being considered as a defendant was Caesars. Mr. Morris explained his
9 firm had represented Caesars and that potentially could be a problem.

10 Chinois subsequently decided not to place Mr. Morris or itself in the middle
11 of a potential conflict and selected other attorneys, Hunterton & Associates, as
12 local counsel. At that point, Chinois anticipated that Mr. Morris would have no
13 further involvement in this matter.

14 On January 8, 2008, Chinois filed a Complaint in Nevada State Court along
15 with Love and Money LLC against Forum Shops LLC, Forum Developers
16 Limited Partnership, Simon Property Group Limited Partnership, Simon Property
17 Group Inc., Caesars Place Corp. and Caesars Place Realty Corp. containing eight
18 causes of action, and seeking damages and injunctive relief. On February 7, 2008,
19 Caesars removed the case to the United States District Court for the District of
20 Nevada. To Chinois' surprise, Caesars was represented by Mr. Morris's partner
21 Kris Pickering and MP&P.

22 Accordingly, Mr. Heller called Mr. Morris and objected to his firm's
23 representation of Caesars in the very matter upon which he previously had been
24 consulted provided with confidential information and in return offered legal
25 advice. Mr. Morris responded by stating that, although he recalled initially
26 speaking to Mr. Heller, Mr. Morris only had the faintest recollection of the call.
27 However, he said he took no notes and did not speak with anyone in the firm
28

1 about the call. He further stated he had no involvement in the case. The following
2 day he memorialized his comments in an e-mail to Mr. Heller (Ex. A)

3 Given those assurances that Mr. Morris had erected a form of "ethical wall"
4 around himself, on February 14, 2008 Mr. Heller responded that he had no
5 problem with Kris Pickering continuing to represent Caesars. (Ex. A) Later the
6 same day, Ms. Pickering confirmed that her husband had not discussed the call
7 with her and she would "keep this work separate from him." (Ex. A)

8 Since then, Mr. Morris has made no appearance in this case on behalf of
9 Caesars. However, on December 19, 2008, in connection with the continuance of a
10 hearing on two Motions to Dismiss filed by Caesars and the remaining
11 Defendants, Ms. Pickering first revealed that as a result of her election to the
12 Nevada Supreme Court she would be leaving the case and that Mr. Morris would
13 be replacing her:

14 Gentlemen,

15 Judge Mahan was not available yesterday afternoon. With
16 Charlie McCrea out from Monday through the 4th, it looks
17 as though there is no workable date before year-end that
18 will allow me to participate. *Since this takes me out, I've*
19 *asked my partner, Steve Morris, to step in (which you on*
20 *the plaintiffs' side will come to regret).* His assistant is
21 patty Ferrugia, whom I'm copying to get a new date that
22 works for him and JP. (Emphasis added)

23 Best wishes for the holidays.

24 Kris

E-mail from Kris Pickering 12/19/08 (Ex. B)

25 Upon consulting with Chinois, Mr. Heller wrote to Ms. Pickering objecting
26 to her plan to substitute Mr. Morris in her place. Mr. Heller requested that Ms.
27 Pickering comply with her prior assurance that Mr. Morris would have no
28 involvement in the case, and failing that, Chinois would have no alternative but to

1 seek the disqualification of both Mr. Morris and MP&P. (Ex. C) Ms. Pickering
2 responded by contending Chinois had waived its objections in exchange for a
3 continuance of the hearing on the Motions to Dismiss, that there was no
4 substantive basis for disqualification in any event, and that any motion to
5 disqualify would be tactically motivated. (Ex. D) Mr. Heller then advised Ms.
6 Pickering that she had her facts wrong and that Chinois would be proceeding with
7 a formal Motion to Disqualify. (Ex. E)

8 III

9 10 **UNDER NEVADA LAW AN ATTORNEY MUST BE** 11 **DISQUALIFIED WHERE HE SWITCHES SIDES IN** 12 **THE SAME CASE WITHOUT CLIENT CONSENT**

13 **A. Attorney Disqualification Under Nevada Law**

14 "Federal courts apply state law in determining whether attorney
15 disqualifications are warranted." *In-N-Out Burger v. In & Out Tire & Auto Inc.*,
16 2008 U.S. Dept. Lexis 63883 (D.Nev. 2008); *In re County of Los Angeles* 223
F.3d 990, 995 (9th Cir. 2000).

17 The Nevada Rules of Professional Conduct provide that an attorney owes a
18 duty to former clients:

19 Rule 1.9. Duties to Former Clients:

20 (a) A lawyer who had formerly represented a client in a matter
21 shall not thereafter represent another person in the same or a
22 substantially related matter in which that person's interests are
23 materially adverse to the interests for the former client unless the
former client gives informed consent, confirming in writing.

24 (b) A lawyer shall not knowingly represent a person in the same or
25 substantially related matter in which a firm with which the lawyer
formerly was associated had previously presented a client.

26 (1) Whose interest are materially adverse to that
27 person; and
28

1 (2) About whom the lawyer had acquired information
2 protected by Rules 1.6 and 1.9(c) that is material to
3 the matter;

4 (3) Unless the former client gives informed consent,
5 confirmed in writing.

6 (c) A lawyer who had formerly represented a client in a matter or
7 whose present or former firm has formerly represented a client in a
8 matter shall not thereafter:

9 (1) Use information relating to the representation to the
10 disadvantage of the former client except as these
11 Rules would permit or require with respect to a
12 client, or when the information has become
13 generally known; or

14 (2) Reveal information relating to the representation
15 except as these Rules would permit or require with
16 respect to a client.

17 This Court adheres to the standards contained in the Rules of Professional
18 Conduct adopted by the Nevada Supreme Court. *See* LR IA 10-7 of the Local
19 Rules of Practice for the United States District Court for the District of Nevada.
20 In addition, the Court has the inherent power to regulate attorneys appearing
21 before it:

22 The court has power to disqualify an attorney from
23 representing a particular client in order to preserve the
24 integrity of its judgment, maintain public confidence in the
25 integrity of the bar, eliminate conflict of interest, and
26 protect confidential communication between attorneys and
27 their clients.

28 *Coles v. Arizona Charlie's* 973 F.Supp. 971, 973 (D. Nev. 1997)

Under Nevada law:

... for a potentially disqualifying conflict to exist, the party seeking
disqualification must establish three elements: (1) that it had an
attorney-client relationship with the lawyer, (2) that this former
matter and the current matter are substantially related and (3) that

1 this current representation is adverse to the party seeking
2 disqualification.

3 *Nevada Yellow Cab Corporation v. The Eighth Judicial District Court* (2007)
4 152 P.3d 737, 741.

5 With regard to disqualification of an attorney for accepting employment
6 with a client in conflict with a former client on a substantially related matter the
7 Nevada Supreme Court has accepted the framework utilized by the Seventh
8 Circuit in *Westinghouse Elec. Corp. v. Gulf Oil Corp.* 588 F.2d 221 (7th Cir.
9 1978) requiring a trial court to:

10 (1) make a factual determination concerning the issue of the former
11 representation, (2) evaluate whether it is reasonable to infer that the
12 confidential information allegedly given would have been given to a
13 lawyer representing a client in these matters, and (3) determine
14 whether that information is relevant to the issues raised in the present
15 litigation.

16 *Waid v. Eighth Judicial Dist. Ct.* (2005) 121 Nev. 605, 610.

17 **B. The Previous Consultation**

18 In October 2007, FHLLP was retained by Chinois to represent it in an
19 action filed by Forum Shops, LLC in Delaware. FHLLP recommended to Chinois
20 that, in connection with the filing of a more comprehensive action in Nevada,
21 Steve Morris, a veteran Las Vegas attorney known to FHLLP, be consulted for the
22 purposed of retaining Mr. Morris (and his firm MP&P) to act as local counsel for
23 Chinois in association with FHLLP. Mr. Morris employed no conflict avoidance
24 measures (such as telling Mr. Heller to limit his comments to information
25 necessary to conduct a conflict check). *See Green v. Montgomery County,*
26 *Alabama*, 784 F. Supp. 841, 847 (M.D. Ala. 1992)

27 Towards that end, Philip Heller, a partner in FHLLP, telephoned Mr.
28 Morris. During the telephone conversation, Mr. Heller explained the purpose
 behind the call and discussed the Complaint which had been filed by Forum Shops

1 in Delaware and Chinois' plan to file a more comprehensive action in Nevada.
2 Among the subjects discussed were the strategy behind filing a second action in
3 Las Vegas, venue, possible defendants (including Caesars) and the selection and
4 assessment of co-counsel to represent Chinois. The two-way discussion involved
5 the disclosure of confidential information to Mr. Morris and the receipt of legal
6 advice from Mr. Morris including his candid assessment of the parties and
7 potential parties to be sued, and the selection of co-counsel.

8
9 Only towards the end of the discussion did Mr. Morris reveal he had
10 represented Caesars and, if there was a real possibility that Caesars could end up
11 as a defendant in a Nevada action, Mr. Morris expressed concern about accepting
12 a matter potentially adverse to Caesars. Accordingly, Chinois subsequently
13 retained Stan Hunterton as local counsel, anticipating that Mr. Morris would have
14 no further involvement in this matter.

15 On January 8, 2008 Chinois filed this action in Nevada State Court. Among
16 the Defendants was Caesars. On February 7, 2008, Caesars removed the Nevada
17 State Action to Federal Court. It was at that time that Chinois first learned that
18 Kris Pickering and MP&P were representing Caesars.

19 FHLLP on behalf of Chinois immediately contacted Mr. Morris to object to
20 MP&P representing Caesars adverse to Chinois in this action. Mr. Morris assured
21 FHLLP that he had not discussed the contents of his previous conversation with
22 Mr. Heller with anyone else at his firm, including his wife Kris Pickering. He
23 further assured FHLLP that he would have nothing to do with the case. Moreover,
24 Ms. Pickering also advised FHLLP that Mr. Morris had not spoken to her about
25 his conversation with Mr. Heller and that she would keep work on the case
26 separate from Mr. Morris. With those assurances, Chinois withdrew its objection
27 to Kris Pickering, but not Steve Morris, representing Caesars in this matter.

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///

1 Ms. Pickering subsequently was elected to a seat on the Nevada Supreme
2 Court. On December 19, 2008, in conjunction with a continuance of a hearing on
3 two Motions to Dismiss filed by Caesars and the other Defendants in this case, it
4 was first revealed that Ms. Pickering intended to designate Steve Morris to replace
5 her as counsel of record in this case. (Ex. G) FHLLP sent a letter to Ms. Pickering
6 reminding her of her prior assurances, upon which Chinois relied, that Steve
7 Morris would have no involvement in this case. (Ex.C) Ms. Pickering refused to
8 honor the prior promise, denied any basis for the objection and self-servingly
9 labeled it "tactically motivated". (Ex. D)

10 **C. The Formation Of An Attorney Client Relationship**

11 A duty to maintain confidences and avoid conflicts can be triggered when a
12 prospective client provides confidential information during the initial
13 determination of whether to hire the attorney:

14 The fiduciary relationship existing between lawyer and client
15 extends to preliminary consultation by a prospective client with a
16 view to retention of the lawyer, although actual employment does
not result. (Footnote omitted)

17 *Westinghouse Electric Corporation v. Kerr McGee Corporation* 580 F. 2d 1311,
18 1319 (7th Cir. 1978). *Accord, In Re Rossana*, 397 B.R. 697 (U.S.Bkry.Ct. Nev.
19 2008)

20 With reference to *Westinghouse, supra*, the California Supreme Court in
21 *People ex rel Dept. of Corporations v. Speedee Oil Change Systems, Inc.* (1999)
22 20 Cal.4th 1135, 1148 ("*Speedee Oil*") noted:

23 The primary concern is whether and to what extent the attorney
24 acquired confidential information. (see *Henriksen v. Great*
25 *American Savings & Loan* (1992) 11 Cal. App. 4th 109, 113-114
26 [14 Cal. Rptr. 2d 184]. That question is not necessarily answered
27 by the amount of time involved. "Even the briefest conversation
28 between a lawyer and a client can result in the disclosure of
confidences." (*Novo Therapeutisk, etc. v. Baxter Travenol Lab.* (7th
Cir. 1979) 607 F.2d 186,195.

1 To this end, a single telephone call has been held sufficient to trigger the
2 formation of a confidential attorney/client relationship. *See Green v. Montgomery*
3 *County, Alabama, supra*, 784 F. Supp. and 845-847.

4 A similar approach has been taken in other jurisdictions. *See e.g. Lovell v.*
5 *Winchester*, 941 S.W. 2d 466, 467-69, 44 2 Ky, L. Summary 15 (Ky. Sup. Ct.
6 1997) (private initial consultation with informal discussion of claims and some
7 type of value judgment obligated attorney to decline representation of opponent);
8 *Bays v. Theran*, 418 Mass. 685, 639 N.E. 2d 720, 722-24 (Mass. Sup. Ct. 1994)
9 (respecting potential client's belief that consultation was confidential, when
10 attorney shared basics legal considerations based on plaintiff's background
11 summary); *Burton v. Burton* 139 A.D.2d 554, 555, 527 N.Y.S. 2d 53 (NY App.
12 1988) (accepting reasonable inference that potential client revealed "confidential
13 or strategically valuable information" during initial consultation to preclude
14 attorney from representing adversary); *DCA Foods Indus. Inc. v. Tasty Foods,*
15 *Inc.*, 626 F. Supp. 54, 58-60 (W.D. Wis. 1985) (applying Seventh Circuit law to
16 patent infringement case, question is whether client submitted confidential
17 information with reasonable belief that lawyer was acting as his attorney, who
18 shared impressions of strengths and weaknesses of litigation position); *Kearns v.*
19 *Fred Lavery Porsche Audi Co.* 745 F.2d at 600, 603-05 (Fed. Cir. 1984) (in
20 patent infringement case, client, who knew that attorney represented opponent but
21 thought a waiver was possible, established attorney-client relationship during
22 initial consultation) and *Taylor v. Sheldon*, 172 Ohio St. 118, 173 N.E. 2d 892,
23 895 (Ohio Sp. Ct. 1961) ("[C]ommunications made by a person to an attorney
24 with the view of retaining the attorney to act on his behalf constitute privileged
25 communications. It might well be said that a tentative attorney-client relationship
26 exists during such period.")

27 Accordingly, here a confidential attorney client relationship was formed
28 when Chinois' counsel telephoned Mr. Morris for the purpose of discussing his

1 retention as local counsel in the case to be filed in Nevada on behalf of Chinois,
2 and client confidences were disclosed and legal advice was received.

3 **D. The Sharing Of Confidential Information**

4 To warrant disqualification, the preliminary contact must be beyond mere
5 "initial or peripheral contacts." *Trone v. Smith* 621 F.2d 994, 1000 (9th Cir. 1980).
6 Absent a formal retention, focus is shifted to whether the meeting involved the
7 sharing of confidential information. The inquiry is "not whether the attorney
8 actually reviewed confidential information, but whether the attorney potentially
9 acquired confidential information that would be harmful to the previous client in
10 the current matter." In *Re Rossana*, *supra*, 395 B.R. at 706 (quoting *Robbins v.*
11 *Gillock* (1993) 109 Nev. 1015, 1017-1018).

12 In *The Laryngeal Mask Company Ltd. v. Ambu A/S* 2008 Dist LEXIS
13 15320 (S.D. Ca. 2008), a patent infringement law suit, the Court found that an
14 attorney-client relationship had been formed as a result of preliminary meeting
15 held between plaintiff and the two attorneys from the same law firm. The Court
16 concluded that confidences had been shared following discussion of the subjects
17 of venue, claim construction in relation to the theory of the case, settlement,
18 damages, and remedies and that the attorneys offered "some legal advice" on these
19 topics. *Id.* at *19-20.

20 Similarly, in the case at bar, Mr. Morris was provided with an overview of
21 the existing litigation pending in Delaware, the prospect of filing a related action
22 in Nevada, venue, (*i.e.* this action), the addition of new parties and potential
23 claims, litigation strategy and prospects for settlement, and Mr. Morris provided
24 legal advice on these subjects as well as on other topics including current and
25 possible counsel and judges. Moreover, the fact that this was a lawyer to lawyer
26 exchange of information (not just a client to lawyer exchange) only heightened the
27 likelihood that material confidential information was discussed:

28 Moreover,[attorney] Disner did not receive the
information about Mobil's case theories, strategy , and
analyses from a layperson who might or might not be
knowledgeable about which matters were significant.

1 Instead, after receiving the background information on the
2 case, Disner participated in an extended briefing with the
3 attorneys' conducting Mobil's defense against respondents'
4 claims. *Obviously, communications of that kind are likely*
5 *to involve an efficient transfer of material confidential*
6 *information and attorney work product.* (Emphasis added)

7 *Speedee Oil, supra*, 20 Cal. 4th at 1149.

8 The likelihood that confidential information was shared is illustrated by Mr.
9 Morris conceding that the potential naming of Caesars as a defendant was
10 discussed (*i.e.* that prompted his disclosure that his firm had represented Caesars).
11 Potentially naming Caesars was not a matter of public knowledge and it was only
12 part of a broader discussion of litigation strategy discussed during the preliminary
13 consultation. Without disclosing the specifics of the discussion, Mr. Morris admits
14 the topics discussed included Caesars and Mr. Morris' assessment of Forum Shops
15 as a litigant and other counsel. While Mr. Heller's recollection of the contents of
16 the consultation provides additional detail, it is apparent that due to the nature of
17 the discussion it is likely that confidential information was disclosed to, and legal
18 advice was provided by, Mr. Morris.

19 **E. The Information Revealed Is Relevant To The Current Action**

20 Here not only did counsel for Chinois consult with Steve Morris, disclose
21 confidential information and receive legal advice, but also, this occurred in
22 connection with this very case:

23 The duties to the former client arise only if the proposed
24 representation is in the same or a substantially related matter as
25 the one in which the attorney previously represented the former
26 client. Here, it is not only substantially related, it is identical.

27 *In Re Rossana, supra*, 395 B.R. at 705.

28 Disqualification is warranted when a lawyer "switches sides" not only
because confidences may be disclosed, but in addition it undermines an attorney's
duty of loyalty to a client:

1 Perhaps the most important facet of the professional relationship
2 served by this rule of disqualification is the preservation of
3 secrets and confidences communicated to the lawyer by the
4 client. If there is a reasonable probability that confidences were
5 disclosed which could be used against the client in later, adverse
6 presentation, a substantial relation between the two cases is
presumed. Confidentiality, however, is not the only aspect of the
professional tie preserved by the disqualification rule.

7 * * *

8 Both lawyer and the client should expect that the lawyer will use
9 every skill, expended every energy, and tap every legitimate
10 resource in the exercise of independent professional judgment
11 on behalf of the client and in undertaking representation on the
12 client's behalf. That professional commitment is not furthered,
13 but endangered, if the possibility exists that the lawyer will
14 change sides later in a substantially related matter. Both the fact
15 and the appearance of total professional commitment are
16 endangered by adverse representation in related cases. From
this standpoint it matters not whether confidences were in fact
imparted to the lawyer by the client. The substantial
relationship between the two representations is itself sufficient
to disqualify.

17 *Trone, supra*, 621 F.2d at 998-999.

18 What was said in *Trone*, over 28 years ago was true then and is true now,
19 and is reflected in current Nevada law:

20 Both Rules 1.9 and 1.7 of the NEV. RULES PROF'L
21 CONDUCT are prophylactic rules whose purpose is not simply
22 to punish a lawyer who does share former client confidences or
23 does injure a former client. The purpose of Rule 1.9 of the Nev.
24 RULES PROF'L CONDUCT is also to prevent a representation
25 in which former client confidences could be shared or a former
26 client injured. The prophylactic nature of the rule discredits
Beller's arguments that no client confidences were shared and
that the Rossanas would not have been adversely affected.

27 * * *

28 The court finds that this is an egregious violation of the Nevada
Rule of Professional Conduct that fall outside all accepted

1 norms of the legal profession. Indeed, Beller's conduct
2 discredits the work of all attorneys before this court and in the
3 state of Nevada by calling into question whether attorneys will
4 faithfully and loyally serve the interests of their clients.

5 *In re: Rossana, supra*, 395 B.R. at 706-707.

6 **IV.**

7 **MORRIS PICKERING & PETERSON'S**
8 **PERFUNCTORY OBJECTIONS TO**
9 **DISQUALIFICATION ARE WITHOUT MERIT.**

10 MP&P advances three objections to disqualification: 1). that Chinois agreed
11 to waive disqualification in exchange for a motion continuance; 2). there is no
12 substantive basis for disqualification; and 3). the motion is tactically motivated.
13 None of these grounds are factually or legally supported.

14 **A. Grounds For Disqualification Were Not Waived In Exchange**
15 **For A Continuance Of A Hearing Date.**

16 Defendants currently have pending with the Court two Motions to Dismiss.
17 Counsel for both Plaintiffs and Defendants have requested several continuances of
18 the hearing date for these Motions. These stipulated continuances were handled
19 professionally and courteously among counsel without strings attached and were
20 approved by the Court.

21 Most recently, due to a rare snowstorm which closed McCarran Airport,
22 counsel for Chinois notified the Court that flights had been cancelled on
23 December 17, 2008 preventing counsel from travelling to Las Vegas for the
24 hearing schedule on December 18, 2008. The Court vacated the hearing date and
25 directed all counsel to select a new date and submit a stipulation to the Court. (The
26 Court indicated it was available as soon as December 22, 2008 to conduct the
27 hearing). (Ex. F)

28 While December 22, 2008 was acceptable to counsel for all Plaintiffs, and
Kris Pickering could have argued on behalf of Caesars, counsel for Defendants

1 Forum Shops, LLC, Forum Developers Limited Partnerships, Simon Property
2 Group Limited Partnership and Simon Property Group, Inc., Mr. McCrea,
3 indicated he was not available on December 22, 2008 due to a holiday vacation.
4 January 6, 2009 was proposed and was acceptable to all of Plaintiffs' counsel, but
5 this time Kris Pickering objected, indicating her client Caesars wanted her to
6 argue the Motion before she left the case to take a seat on the Nevada Supreme
7 Court. However, Mr. McCrea was not available before January 6, 2009.

8 Mr. McCrea then unilaterally contacted the Court and asked for a December
9 19, 2008 hearing date. However, that date was unavailable to one or more of
10 Plaintiffs' counsel. Ms. Pickering suggested Chinois' counsel participate by
11 telephone. However, not only is that not the preference of the Court, Plaintiff's
12 counsel objected to not being able to appear in person. When it was suggested
13 that the hearing be set for December 22, 2008 and Mr. McCrea could participate
14 by telephone, he declined for the very same reasons. (Ex. G)

15 Mr. McCrea again contacted the Court and as a result of the Court's own
16 calendar conflicts in January, was unable to obtain an alternate date until February
17 6, 2009. Chinois' counsel immediately consented to that date. A proposed
18 stipulation reflecting Ms. Pickering's signature block was sent to Plaintiffs'
19 counsel and Chinois' counsel agreed to the stipulation and Fagelbaum & Heller
20 LLP requested its name be added to the stipulation. (Ex. H)

21 However, Mr. McCrea did not implement Chinois' counsel's request.
22 Instead, Mr. McCrea filed a *different* stipulation with the Court which, although
23 maintaining the February 6, 2009 date, changed the signature block deleting Ms.
24 Pickering and substituting Steve Morris. In addition, Mr. McCrea did not add a
25 signature block for Fagelbaum & Heller LLP. (Ex. I)

26 Upon seeing Mr. Morris' name, and after consulting with his client,
27 Chinois' counsel contacted MP&P to object to Steve Morris appearing in the case.
28 (Ex. C) At no time, did Chinois' counsel consent to Mr. Morris appearance or
waive their objections to Mr. Morris' appearance as a *quid pro quo* for a motion

1 continuance. As reflected in the accompanying e-mails, this argument is without
2 foundation and frivolous on its face.

3 **B. The Ostensible Lack Of A Basis For Disqualification**

4 For the reasons set forth above, Mr. Morris's disqualification is warranted
5 because he personally had been consulted in this case by counsel for Chinois, he
6 received confidential information and, in return, provided legal advice. To permit
7 Mr. Morris to appear on behalf of Caesars would result in the breach of the twin
8 duties of client/attorney confidentiality and loyalty. Mr. Morris' statement that he
9 cannot now recall the details of the telephone conversation he admits took place
10 does not immunize him from disqualification. *See Fierro v. Gallucci*, 2007 U. S.
11 Dist. LEXIS 89296 (E.D. N.Y. 2007) ("Although Mr. Dollinger states that he has
12 no recollection of any conversation with Mr. Fierro or Mr. Arnold, his failure to
13 recall the conversation did not change the analysis". *Id.* at *23).

14 Both Mr. Morris and Ms. Pickering correctly understood the ethical
15 problems associated with Mr. Morris' involvement in the case when Mr. Morris
16 agreed to step aside in February 2008. Those reasons do not evaporate now
17 because Ms. Pickering is leaving the firm for the Bench. To the contrary, now
18 more than ever, with Ms. Pickering election to the Nevada Supreme Court, care
19 should be taken to avoid even the appearance of impropriety. Ethical rules
20 safeguarding client confidences cannot be sacrificed for the sake of expediency.

21 **C. Chinois' Motion To Disqualify MP&P Is Not Tactically Motivated**

22 When Steve Morris was first contacted, it was at the recommendation of
23 one of the partners at FHLLP who had worked with Mr. Morris in connection with
24 the MGM Fire Litigation in the mid-1980's. Mr. Morris had a reputation for being
25 an experienced and ethical attorney.

26 For those reasons, after Mr. Morris disclosed his firm's relationship with
27 Caesars and Chinois retained Mr. Hunterton as local counsel, Chinois reasonably
28 anticipated that Mr. Morris would not be involved on behalf of Caesars in any
litigation which was the subject of the preliminary consultation. It therefore came

1 as a surprise when Caesars appeared in the case represented by Mr. Morris' wife
2 and partner Kris Pickering and MP&P.

3 Plaintiffs counsel immediately contacted Mr. Morris and objected to Mr.
4 Morris representing Caesars in this case. Mr. Morris assured Chinois' counsel that
5 he would have no involvement in the case and had *not* discussed the contents of
6 his prior conversation with Mr. Heller, let alone the fact that it had occurred, with
7 anyone at his office, including his wife Kris Pickering. Ms. Pickering corroborated
8 those assurances and added she would make sure to keep any work away on this
9 case from Mr. Morris.

10 Based upon these assurances, Chinois' counsel did not object further to Ms.
11 Pickering's appearance on behalf of Caesars. Had this been a tactically inspired
12 "gotcha" moment, Chinois would have pursued its objections then and there.
13 Instead, Chinois' counsel relied upon the word of an attorney with whom they had
14 a prior professional relationship and with whom they expected would honor his
15 legal and ethical duties.

16 The *status quo*, however, was shattered after Ms. Pickering successfully ran
17 for a seat on the Nevada Supreme Court. Unable to practice law after January 5,
18 2009, Ms. Pickering first let it be known on December 19, 2008, in
19 communications regarding the continuance of the December 18, 2008 hearing on
20 Caesars' Motion to Dismiss, that she intended to hand over responsibility for the
21 case to Mr. Morris. (Ex. G) This decision directly contradicted the assurances and
22 promises made by both Mr. Morris and Ms. Pickering that Mr. Morris would have
23 no involvement directly or indirectly in this case.

24 When promptly reminded of these assurances, Ms. Pickering, among other
25 things, labeled Chinois objection as tactically motivated. (Exs. C and D.) Had that
26 been the case, Chinois would have objected when Ms. Pickering first appeared in
27 the action. However, so long as MP&P honored Mr. Morris' commitment not to
28 participate in the case, Chinois' counsel did not object. Nevertheless, once those
assurances as to Mr. Morris were tossed aside, Chinois not only renewed its

1 objection to Mr. Morris' participation, but also, to MP&P's participation in this
2 case. (Ex. E) Once Mr. Morris indicated he would not honor his promise to
3 Chinois counsel, Mr. Morris also rendered suspect his ongoing commitment to
4 keep confidential from MP&P (and now Morris Peterson) the confidences he
5 learned from Chinois regarding this matter. *See Laryngeal Mask Company, LTD*
6 *supra*, 2008 U.S. Dist. LEXIS 15320 at *22-23 ("When an attorney is disqualified
7 due to a relationship that amounts to prior representation on the same lawsuit, then
8 the entire firm is disqualified.")

9 Ms. Pickering's attempt to characterize Chinois' Motion as a tactic is
10 baseless. First, there was no delay. As soon as Ms. Pickering indicated that,
11 contrary to previous assurances, Mr. Morris would be appearing in this case,
12 Chinois renewed its objection. Nevertheless, even if there had been a delay (and
13 here there was none) it would not trump an otherwise properly based Motion to
14 Disqualify:

15 The court in Abel specifically stated "[d]elay in bringing an
16 application to disqualify counsel, whether tactical or
17 inadvertent, cannot defeat the motion because the basis for
18 disqualification, if it exists, would be breach of the Code of
19 Professional responsibility, a matter which implicates the
20 public interest." *Id.* at *1 (internal citations omitted). Thus,
21 undue delay was not a factor in the Court's analysis and
22 decision to deny the motion. In the instant case, the Court
23 does not believe there is any basis to conclude that
24 plaintiffs intentionally delayed bringing this motion.

25 *Fierro v. Gallucci. supra*, 2007 U.S. Dist. LEXIS 89296 at *26.

26 Second, no tactical advantage has been gained by the timing of this Motion.
27 *In Fierro, supra*, the court, noted that no tactical advantage had been achieved by
28 not raising the issue of disqualification as soon as the conflicted attorney appeared
in the case *almost a year earlier*:

The case was filed in September 2006, discovery has not
begun, and defendants have suffered no material prejudice
from any alleged delay.

* * *

Thus, the Court does not conclude there was undue delay or prejudice to the defendants from the timing of the motion. Moreover, although defendants will need to retain new counsel, that counsel will not necessarily need to duplicate the work product of the Dollinger Firm. Specifically, new counsel could adopt the motion papers already filed by the Dollinger Firm or, if necessary, the Court will allow supplemental briefing before oral argument.

Fierro, supra, at 2007 U.S. Dist. LEXIS 89296 at *27. By contrast, Ms. Pickering and MP&P were notified *within days* of Chinois' objection to Steve Morris appearing in this matter.

So too here, there has not been any discovery taken in this case. The first motions in the case, although fully briefed, are not set to be heard until February 6, 2009. Had Ms. Pickering abided by her agreement, any attorney at MP&P, other than Steve Morris, could have substituted in for her and argued Caesars' Motion to Dismiss now set for February 6, 2009.

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V.

CONCLUSION

When a lawyer switches sides in the same case, not only is the former client prejudiced, but the appearance of justice itself is called into question. This Court has an ongoing duty to protect client confidences and the legal profession's institutional need to avoid even the appearance of breach of confidence and loyalty in cases pending before it. For all the reasons set forth herein, Plaintiff Chinois' Motion to Disqualify Steve Morris and MP&P (now Morris Peterson) should be granted in its entirety.

Dated: January 5, 2009

Respectfully submitted,

FAGELBAUM & HELLER LLP

By: 

Jerold Fagelbaum

2049 Century Park East, Suite 4250

Los Angeles, CA 90067-3254

Attorneys for Phase II Chin, LLC

Dated: January 5, 2009

HUNTERTON & ASSOCIATES

By: /s/

Stanley C. Hunterton

333 S. Sixth Street

Las Vegas, NV 89101

Attorneys for Phase II Chin, LLC

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I, Philip Heller, declare:

1. I am co-counsel of record herein for Plaintiff Phase II, Chin LLC ("Chinois "). I submit this declaration based upon my own first hand personal knowledge of the facts set forth below and, if called upon as a witness herein, could and would competently testify thereto.

2. On October 2007, I was retained by Chinois to represent it in an action for Declaratory Relief filed by Forum Shops LLC in Superior Court in the State of Delaware, County of New Castle. (Forum Shops LLC hold the grand lease to restaurant space lease to Chinois located at the Forum Shops at Caesars Place in Las Vegas). As a result of the Delaware State Action, it was determined that Chinois would file a more comprehensive action of its own in Las Vegas, Nevada where both Chinois and Forum Shops LLC actually conduct business, where other potential parties resided, where the relevant documents and witnesses were located and where the relevant events occurred and were subject to Nevada law.

3. In preparation for filing an action in Las Vegas, Chinois needed to obtain local counsel. At the suggestion of my partner, Jerold Fagelbaum, I telephoned Steve Morris of the law firm of Morris Pickering & Peterson ("MP&P"). My partner previously had worked with Mr. Morris in other litigation in which he was considered to be an experienced and ethical attorney.

4. After introducing myself to Mr. Morris, I explained the purpose of my call. I disclosed to Mr. Morris that I represented Chinois in an action it had with Forum Shops LLC pending in Delaware State Court. Mr. Morris did not invoke any conflict avoidance measures (such as asking me to limit my discussion to information necessary to conduct a conflict check). Accordingly, I revealed to him Chinois' confidential plan to file an action of its own in Las Vegas, Nevada.

///

1 We discussed the pros and cons of filing in state versus federal court in Nevada,
2 potential causes of action (the action in Delaware was limited to Declaratory
3 Relief, the proposed action in Nevada would contain eight causes of action for
4 damages and injunctive relief), possible defendants, litigation strategy, prospects
5 for settlement, other counsel expected to be included in the case and potential state
6 and federal judges. In response, Mr. Morris provided legal and other advice on all
7 these subjects and his personal and professional views on counsel and judges.

8 5. After I had disclosed to Mr. Morris that Caesars was one of the
9 potential defendants, Mr. Morris revealed that his firm had represented Caesars.
10 He did not say he could not act as local counsel, but indicated it might present a
11 problem. Nevertheless, it was subsequently decided that in order not to place Mr.
12 Morris or Chinois in the middle of a potential conflict, Chinois would select other
13 attorneys (Hunterton & Associates) as local counsel. At that point, the expectation
14 was that Mr. Morris would have no further involvement in this matter.

15 6. On January 8, 2008, Chinois filed a Complaint in Nevada State
16 Court, along with Love and Money LLC, against Forum Shops, LLC, Forum
17 Developers Limited Partnership, Simon Property Group Limited Partnership,
18 Simon Property Group, Inc., Caesars Place Corp., and Caesars Palace Realty
19 Corp. containing eight causes of action and seeking damages and injunctive relief.
20 On February 7, 2008, Caesars removed the case to the United States District Court
21 for the District of Nevada. To my surprise, Caesars was represented by Mr.
22 Morris' partner Kris Pickering and MP&P.

23 7. I called Mr. Morris on February 13, 2008 to object to his firm's
24 representation of Caesars on the very same matter in which he personally had
25 consulted with me, was provided with confidential information and in response
26 provided me with legal advice. Mr. Morris responded by saying he had only a
27 vague recollection of the details of the call, that he had not taken any notes and
28

1 had not discussed the call with anyone else. He further assured me he had no
2 involvement with the case at MP&P.

3 8. The following day, Mr. Morris memorialized his comments to me in
4 an e-mail. (See Ex. A.) Based upon the assurances he had erected the equivalent to
5 an ethical wall around himself and would have no involvement in the case,
6 Chinois did not press its objections to Kris Pickering and MP&P representing
7 Caesars in this case. (Ex. A.) Ms. Pickering thanked me in an e-mail of her own
8 and assured me that Mr. Morris had never discussed with her his conversation
9 with me and that she would keep the work on this case separate from Mr. Morris.
10 (Ex. A.)

11 9. Since then, Mr. Morris made no appearances in this case on behalf of
12 Caesars or to my knowledge was involved in any of its filings made with the
13 Court. However, on December 19, 2008, in connection with the continuance of a
14 hearing on two Motions to Dismiss filed by Caesars and the remaining
15 Defendants, Ms. Pickering first revealed that as a result of her election to the
16 Nevada Supreme Court she would be leaving the case and that Mr. Morris would
17 be replacing her. (Ex. B).

18 10. After consultation with Chinois, I wrote to Ms. Pickering objecting to
19 her plan to substitute Mr. Morris in her place. I reminded her of both her and Mr.
20 Morris' assurances that Mr. Morris would have no involvement in this case,
21 assurances upon which Chinois relied when it agreed to allow Kris Pickering and
22 MP&P, but not Steve Morris, to represent Caesars in this case. I advised Ms.
23 Pickering that, unless Steve Morris remained away from this case, Chinois would
24 be forced to seek the disqualification of Mr. Morris and MP&P. (Ex. C)

25 11. Ms. Pickering responded in writing (an e-mail) that Chinois
26 ostensibly had waived its objection in exchange for a continuance of Caesars'
27 Motion to Dismiss, that there was no substantive basis for disqualification, and
28 that any motion to disqualify would be tactically motivated. (Ex. D) I wrote back

1 to Ms. Pickering advising her she had her facts wrong and that, unless Mr. Morris
2 stood down, we planned to move to disqualify Mr. Morris and MP&P. (Ex. E).

3 12. Attached herewith are true and correct copies of the following
4 documents:

5 Ex. A: An exchange of e-mails between Philip Heller,
6 Steve Morris and Kris Pickering, dated 2/14/08;

7 Ex. B: Kris Pickering's e-mail to all counsel, dated 12/19/2008;

8 Ex. C: Philip Heller's letter to Kris Pickering, dated 12/23/08;

9 Ex. D: Kris Pickering e-mail to Philip Heller, dated 12/23/08; and

10 Ex. E: Philip Heller's e-mail to Kris Pickering, dated 12/26/08.

11
12 I declare under penalty of perjury under the laws of the United States of
13 America that the foregoing is true and correct.

14 Executed this 5th day of January, 2009 at Kansas City, Missouri.

15
16 /s/ Philip Heller
17 Philip Heller
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1 **DECLARATION OF JEROLD FAGELBAUM**

2 I, Jerold Fagelbaum, declare:

3 1. I am a partner in the law firm of Fagelbaum & Heller LLP
4 ("FHLLP"), co-counsel of record herein for Plaintiff Phase II, Chin LLC
5 ("Chinois"). I submit this declaration based upon my own first hand knowledge of
6 the facts set forth below and, if called upon as a witness herein, could and would
7 competently testify thereto.

8 2. Shortly after Chinois retained FHLLP to represent it in an action
9 pending in Delaware State Court brought by Forum Shops LLC, it was decided to
10 file a more comprehensive action in Las Vegas, Nevada where both Chinois and
11 Forum Shops LLC conduct business, where other potential parties resided, where
12 the relevant documents and witnesses were located, and where the events and
13 issues occurred and were subject to Nevada law. When the subject of retention of
14 local counsel arose, I suggested to my partner Philip Heller that Chinois consider
15 Steve Morris.

16 3. I knew Steve Morris before he formed his current law firm Morris
17 Pickering & Peterson. When Mr. Morris was a partner at Lionel Sawyer & Collins
18 in the 1980's, I worked with him as co-counsel on the MGM Fire Litigation. I
19 knew Mr. Morris to be an experienced and ethical lawyer and had no hesitation in
20 recommending him to Chinois.

21 4. Following Mr. Heller's telephonic consultation with Mr. Morris, Mr.
22 Heller related to me the substance of that call, including what he had disclosed in
23 confidence to Mr. Morris and the advice received from Mr. Morris. However, in
24 an effort not to place Mr. Morris or Chinois in the middle of a potential conflict,
25 the decision was reached to seek alternative local counsel, rather than Mr. Morris.

26 5. I was chagrined to say the very least when Mr. Morris' firm MP&P
27 subsequently appeared on behalf of Caesars in this case. I had recommended Mr.
28 Morris to Chinois. Therefore, after Chinois' objections were relayed to Mr.

1 Morris, I was re-assured when Mr. Morris represented to us that he would have no
2 involvement in this matter on behalf of Caesars. He expressed how he kept his
3 consultation with Mr. Heller separate from all the other lawyers in his firm. Based
4 upon our prior relationship, I had no reason to believe that Mr. Morris was not
5 sincere and would not honor his promise or that his wife Kris Pickering would not
6 honor her commitment to keep the work on this case separate from Mr. Morris.

7 6. Since last February, as far as I know, Mr. Morris has had no
8 involvement in this case. However, on December 19, 2008, we first received word
9 that his status was about to change.

10 7. A hearing on this case on Defendants' two Motions to Dismiss was
11 scheduled for December 18, 2008. As a result of a rare snowstorm on December
12 17, 2008, Las Vegas' McCarran Airport was closed and I was unable to travel to
13 Las Vegas to attend the hearing set for the following day. As soon as the travel
14 problem arose, I contacted the Court's staff from Burbank Airport to advise them
15 of the problem and requested that at a minimum the hearing be delayed until later
16 in the day on December 18, 2008. I was advised by the Court's staff that setting
17 the hearing for later in the day on December 18 was problematic and that the
18 Court preferred to vacate the hearing date and re-set it subject to a stipulation
19 among the parties agreeing to a new date. The Court suggested December 22,
20 2008 as an available date.

21 8. Since I was at the Airport, I asked my secretary to notify all counsel
22 of record that the 12/18/2008 hearing was vacated; that the Court wanted counsel
23 for the parties to agree on a new date; and that December 22, 2008 was available.
24 (Ex. F)

25 9. Agreeing upon a new date proved to be difficult. While continuances
26 in the past had been routinely requested and agreed to by and among counsel, this
27 time was different. I was available on any date from December 22, 2008 through
28 the end of the year. However, in addition to routine calendar conflicts, other

1 counsel were confronted with pre-planned end of year holiday commitments.
2 Moreover, Kris Pickering, who had just been elected to a seat on the Nevada
3 Supreme Court, indicated her clients wanted her to attend the hearing on Caesars'
4 Motion to Dismiss. The last day for her to do that was January 5, 2009, but
5 counsel for the other Defendants, Mr. McCrea, was unavailable until January 6,
6 2009 (another date for which I was available). A flood of e-mails were sent back
7 and forth in an attempt to arrive at a compromise. (Ex. G)

8 10. Finally, on December 19, 2008, Mr. McCrea sent a proposed
9 stipulation suggesting February 6, 2009 as the new date for the hearing. I agreed
10 to the proposed stipulation and advised Mr. McCrea's office to that effect. I
11 requested that my name be added to the stipulation and I authorized him to sign on
12 my behalf and requested a copy of the stipulation (as filed) for my files. (Ex. H)

13 11. Shortly thereafter, I received a copy of the stipulation. Contrary to my
14 request, it did not contain a space for my signature and was not signed by FHLLP.
15 Moreover, the signature block for counsel for Caesars had been changed from the
16 previous version sent to me. Instead of Kris Pickering signing the stipulation,
17 Steve Morris signed the stipulation. (Ex. I)

18 12. Following Mr. Morris' appearance in the case, my partner wrote to
19 Ms. Pickering and requested that Mr. Morris stand down. Ms. Pickering refused
20 to assign anyone else in her firm, other than Mr. Morris, to the case to replace her
21 and rejected the request to have Mr. Morris honor his prior commitment not to be
22 involved in this case.

23 13. Attached hereto are true and correct copies of the following
24 documents:

25 Exhibit F: FHLLP's e-mail to all counsel, dated 12/17/08,
26 advising of vacating of 12/18/08 hearing date;
27 Exhibit G: e-mails between and among counsel, dated
28 12/18/08-12/19/08, regarding selecting a new
date to hear Defendants' Motions to Dismiss;

1 Exhibit H: Mr. McCrea's first proposed stipulation, dated
2 12/19/08;

3 Exhibit I: Mr. McCrea stipulation, as filed, substituting
4 Mr. Morris for Ms. Pickering, dated 12/19/08.
5

6 I declare under penalty of perjury under the laws of the United States of
7 America that the foregoing is true and correct.

8 Executed this 5th day of January, 2009 at Los Angeles, California
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11 Jerold Fagelbaum
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EXHIBIT “A”

Philip Heller

From: Philip Heller [ph@philpheller.com]
Sent: Thursday, February 14, 2008 8:07 PM
To: 'Kris Pickering'; 'Steve Morris'
Cc: 'Stan Hunterton'
Subject: RE: Representation of Caesar's Palace

Kris,

I really appreciate the clarification and your assurance.
It was unnecessary but very kind of you to write.
Caesars is very fortunate to have you in their corner.

Philip

This message is intended solely for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by reply email and delete all copies. Your cooperation is appreciated.

From: Kris Pickering [mailto:KP@morrislawgroup.com]
Sent: Thursday, February 14, 2008 6:18 PM
To: Philip Heller; Steve Morris
Cc: Stan Hunterton
Subject: RE: Representation of Caesar's Palace

Thank you.

In the interest of full disclosure, you should also know that Steve and I are married.

I can confirm, though, that he never discussed his conversation with you with me and, further, that I will keep this work separate from him.

Kris

Kristina Pickering
Morris Pickering & Peterson
300 S. Fourth St., Suite 900
Las Vegas, NV 89101

PRIVILEGED & CONFIDENTIAL; ATTORNEY WORK PRODUCT
kp@morrislawgroup.com
Direct Dial: (702) 474-9472
Fax: (702) 382-2620

This email message is intended solely for the named recipient(s) and may contain confidential and privileged information. If you are not the intended recipient, please contact the sender by reply email and delete the original message.

Morris Pickering & Peterson
Website: www.morrislawgroup.com

From: Philip Heller [mailto:ph@philpheller.com]
Sent: Thursday, February 14, 2008 4:41 PM

To: Steve Morris
Cc: Kris Pickering; Stan Hunterton
Subject: RE: Representation of Caesar's Palace

Dear Steve,

I good deal more about the Chinois dispute was discussed than you recall. However, in light of your very limited recollection of what was discussed, and the fact that you are personally not involved in the case, I see no problem with your partner's continued participation in the litigation. BTW, Stan Hunterton was recommend by a close friend and colleague in Los Angeles, but you recall correctly making some very favorable comments to me about Stan (all of which have proven to be true). My Partner Jerry Fagelbaum sends his warm regards. Hope we get to work together on the same side next time.

Philip

This message is intended solely for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by reply email and delete all copies. Your cooperation is appreciated.

From: Steve Morris [mailto:SM@morrislawgroup.com]
Sent: Thursday, February 14, 2008 4:08 PM
To: ph@phillpheller.com
Cc: Kris Pickering; Stan Hunterton
Subject: Representation of Caesar's Palace

Dear Phillip—I've thought about our conversation yesterday and your belief that my firm and partner Kris Pickering should not represent Caesar's in a lawsuit filed by Chinois. Notwithstanding your call and thinking about your request, I am unable to recall anything from our conversation several weeks or months ago that justifies your request. I have only the faintest recollection of our previous conversation. I recall you said you represented Chinois at the Forum Shops in some sort of dispute with another tenant or subtenant involving a nightclub. I do recall telling you that Simon is the lessor at the Forum Shops, that it would be a difficult party to litigate against, and that it leases the ground for the Forum Shops from Caesar's. I told you we represent Harrah's, which owns Caesars.

I don't recall the context in which these remarks were made, but I probably said we would not represent tenants at the Forum Shops because of the relationship between the Forum and Caesar's. In any event, I either recommended Stan Hunterton to you as local counsel or confirmed another lawyer's recommendation of him to you as a very capable and experienced litigator. I think you asked me about my knowledge of Harold Gewerter (only because you said yesterday you did). I don't remember what I told you about Harold, but it likely would have been my assessment of his skills and experience, based on my knowledge of him as a local lawyer over the years he has been in practice here.

That's about all I can recall. I took no notes when we spoke, and I did not make a record that we had spoken. I did not speak to anyone in the firm about our call, not even Kris. Frankly, I put the call completely out of mind and did not recall it from the message you left with my secretary yesterday to return your call, which, of course, I did. Until you told me yesterday that we had spoken some time ago, I did not associate you with litigation here. I did not speak to anyone in the firm about your earlier call, and I was, until you mentioned it yesterday, unaware that you have anything to do with the lawsuit in which Kris represents Caesar's. I am not familiar with the case or involved in it in any respect.

For these reasons, I do not believe you have a basis to ask that the firm discontinue representing Caesar's in the case in which you and Stan are involved. I regret that our brief conversation last year which apparently resulted in you retaining Stan prompts you to believe otherwise.

Steve Morris

From: Kris Pickering <KP@morrislawgroup.com>
To: 'Fagelbaum & Heller LLP ...snip...
<cmccrea@lionelsawyer.com>
Subject: RE: Continuance of Hearing Chin LV v. Forum Shops

Gentlemen,

Judge Mahan was not available yesterday afternoon. With Charlie McCrea out from Monday through the 4th, it looks as though there is no workable date before year-end that will allow me to participate. Since this takes me out, I've asked my partner, Steve Morris, to step in (which you on the plaintiffs' side will come to regret). His assistant is Patty Ferrugia, whom I'm copying to get a new date that works for him and JP.

Best wishes for the holidays.

Kris

From: Fagelbaum & Heller LLP [mailto:office@fhllplaw.com]
Sent: Thursday, December 18, 2008 11:08 AM
To: cmccrea@lionelsawyer.com
Cc: harold@gewerterlaw.com; slionel@lionelsawyer.com; Kris Pickering; JP Hendricks
Subject: Continuance of Hearing Chin LV v. Forum Shops

Dear Mr. McCrea: I am unavailable tomorrow December 19, 2008. However, I am available on the alternative dates you proposed for January as well as December 22, 2008 (on which I understand you are unavailable). Accordingly, by copy of this e-mail, I am requesting that all counsel determine if they are available on January 7 through 9 or 13 through 15, 2009. Once we all agree on a date, we can clear it with the court and prepare a stipulation. Thank you for the courtesy. J. Fagelbaum.

Zorina S. Sohl
Legal Assistant to
Jerold Fagelbaum, Esq., and Philip Heller PLC
FAGELBAUM & HELLER LLP
2049 Century Park East, Suite 4250
Los Angeles, CA 90067
Phone: 310.286.7666
Facsimile: 310.286.7086

EXHIBIT B

EXHIBIT “C”

**FAGELBAUM &
HELLER LLP**

**ATTORNEYS
AT LAW**

**LOS ANGELES
NEW YORK
BOSTON**

2049 Century Park East ♦ Suite 4250 ♦ Los Angeles, California 90067 ♦ USA
Telephone (310) 286-7666 ♦ Facsimile (310) 286-7086 ♦ E-mail: office@fhllplaw.com

December 23, 2008

Philip Heller
ph@fhllplaw.com

By: E-Mail and U. S. Mail

Kristina Pickering, Esq.

MORRIS, PICKERING & PETERSON

300 S. Fourth Street, Suite 900

Las Vegas, NV 89101

***Re: Phase II Chin, LLC v. Forum Shops
Case No.: 2:08-cv-162 JCM- GUF***

Dear Kris:

As a result of the flurry of e-mails generated by the continuance of the hearing on Defendants' Motions to Dismiss and your elevation to the Nevada Supreme Court, we were surprised to see that you intend to transfer responsibility for this case (on behalf of Caesars) to your partner and husband Steve Morris. You may recall that Steve's participation in this case was objected to by us last February on the basis that we previously had contacted and spoken with him regarding representation of Chinois in this case.

We believed that this conflicts issue had been contained when you represented to us that Steve would not be involved in this case, that he had not discussed his communications with us with you, and that you would keep work on this matter away from him. Your recent e-mails now suggest otherwise.

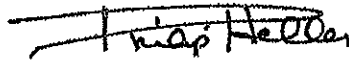
We repeat our objections to Steve's participation in this case on behalf of Caesars. Whether viewed from the Bench or from the Bar, Steve's participation in the case raises both ethical and legal problems. Accordingly, we request your written assurance that, while the law firm currently known as Morris Pickering & Peterson may continue to represent Caesars in this case, Steve Morris has had and will have no personal involvement in any aspect of the case, including talking with or supervising other lawyers in the firm on the case or advising Caesars in connection

EXHIBIT C

Kristina Pickering, Esq.
December 23, 2008
Page 2

with the case. If we cannot agree on this informally, you will leave us no alternative but to bring this matter to the Court's attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip Heller", with a horizontal line drawn through it.

Philip Heller
A Professional Law Corporation
for
FAGELBAUM & HELLER LLP

PH/zs

Subject: Fw: Phase II Chin v. Forum Shops
To: "FAGELBAUM & HELLER LLP" <office@fhllplaw.com>
From: "Philip Heller" <ph@philipheller.com>

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From: Kris Pickering
Date: Tue, 23 Dec 2008 16:58:59 -0800
To: 'Philip Heller' <ph@philipheller.com>
Subject: RE: Phase II Chin v. Forum Shops

Philip,

We will respond formally by letter but my staff is out.

I don't want the intervening holiday to suggest any acquiescence: We will not accede to your demand that Steve Morris not handle this going forward. In the first place, your partner, Jerry Fagelbaum, secured our consent to a post-12/31/08 hearing date knowing my husband and law partner, Steve, would be arguing the motion and that, by law, I could not. I relied on your partner's acceptance of Steve's involvement, even copying you on the exchange, meaning you have waived your objection. Second, as I wrote when you expressed concern about our firm, Steve has no memory of the single phone call your side says Mr. Fagelbaum made to Steve as involving any discussion of substance. More important than waiver, there is thus no substantive basis for your request. Finally, this seems on its face tactically motivated and contrary to what needs to happen: Get this case decided on the merits of the pending motions without any further delay.

I apologize for this brusque exchange on what is almost Christmas Eve. I do wish you all best for the coming holidays.

Sincerely,

Kris Pickering

From: Philip Heller [mailto:ph@philipheller.com]
Sent: Tuesday, December 23, 2008 12:47 PM
To: Kris Pickering
Subject: Phase II Chin v. Forum Shops

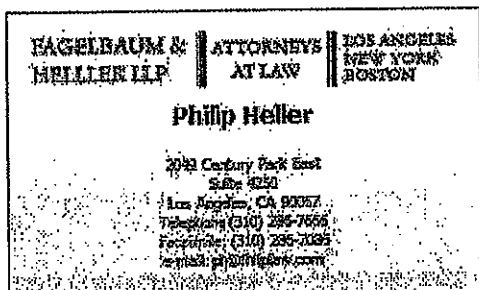
Dear Kris,

Please see my attached letter regarding the transfer of responsibilities for this case to Steve Morris.

Philip

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EXHIBIT “E”



Website: www.hllplawfirm.com

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From: Philip Heller [mailto:ph@phillpheller.com]
Sent: Friday, December 26, 2008 12:34 PM
To: 'Kris Pickering'
Cc: 'Steve Morris'
Subject: RE: Phase II Chin v. Forum Shops

Kris:

For the same reason you gave for sending us an interim e-mail on Tuesday, we do not want our waiting for your "formal" response to suggest any "acquiescence" on our part. You have your facts wrong.

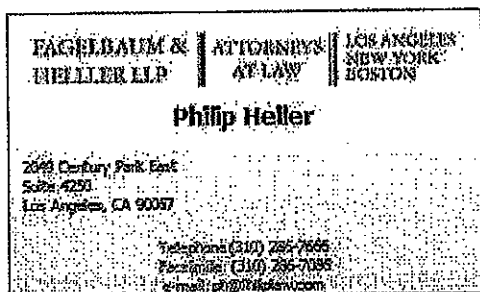
First, my partner never agreed to any *quid pro quo*. You alone are responsible for your own unavailability after January 5, 2009. We were available to argue the motion on December 22, 2008, but your co-counsel, Mr. McCrea, was not. The fact, that the motion had to be continued to February 6, 2009 was due to all counsels' and the Court's availability. We never secured your consent for that date, Mr. McCrea secured ours.

Second, the contention that Steve has no memory of any substantive telephone call with my partner may be true, but not for the lack of any substance. The call was between Steve and me. As for that call, the discussion was substantive and detailed, and involved the disclosure of confidential information by me and the provision of advice by Steve.

Third, there is no tactical motivation involved here. We relied upon Steve and your representations and quite frankly are very disappointed. We view this turn of events

seriously and unless, upon reflection, Steve stands down, we will be forced to move to disqualify Steve and your firm.

Philip



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From: Kris Pickering [mailto:KP@morrislawgroup.com]
Sent: Tuesday, December 23, 2008 4:59 PM
To: 'Philip Heller'
Cc: Steve Morris
Subject: RE: Phase II Chin v. Forum Shops

Philip,

We will respond formally by letter but my staff is out.

I don't want the intervening holiday to suggest any acquiescence: We will not accede to your demand that Steve Morris not handle this going forward. In the first place, your partner, Jerry Fagelbaum, secured our consent to a post-12/31/08 hearing date knowing my husband and law partner, Steve, would be arguing the motion and that, by law, I could not. I relied on your partner's acceptance of Steve's involvement, even copying you on the exchange, meaning you have waived your objection. Second, as I wrote when you expressed concern about our firm, Steve has no memory of the single phone call your side says Mr. Fagelbaum made to Steve as involving any discussion of substance. More important than waiver, there is thus no substantive basis for your request. Finally, this seems on its face tactically motivated and contrary to what needs to happen: Get this case decided on the merits of the pending motions without any further delay.

I apologize for this brusque exchange on what is almost Christmas Eve. I do wish you all best for the coming holidays.

Sincerely,

Kris Pickering

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Sent: Tuesday, December 23, 2008 12:47 PM
To: Kris Pickering
Subject: Phase II Chin v. Forum Shops

EXHIBIT E

Dear Kris,

Please see my attached letter regarding the transfer of responsibilities for this case to Steve Morris.

Philip

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Philip Heller28.vcf



Philip Heller29.vcf

Fagelbaum & Heller LLP

From: "Charles H. McCrea Jr." <cmccea@lionsawyer.com>
To: "Fagelbaum & Heller LLP" <office@fhllplaw.com>; <harold@gewerterlaw.com>
Cc: <shunterton@huntertonlaw.com>; <janallen@huntertonlaw.com>; <jallen@huntertonlaw.com>;
"Samuel Lionel" <slionel@lionsawyer.com>; "FEDVEGAS" <fedvegas@lionsawyer.com>;
"Raynell Caliguire" <rcaliguire@lionsawyer.com>; <kp@morrislawgroup.com>;
<pac@morrislawgroup.com>; <plawson@huntertonlaw.com>; <dawson@huntertonlaw.com>
Sent: Thursday, December 18, 2008 8:32 AM
Subject: RE: Chin LV v. Forum Shops Hearing for 12/18/08

12/22 does not work for me. I will be in Hawaii from 12/20 to 1/4/09. I am available 1/7-9,13-15/09 if any of those dates work.

From: Fagelbaum & Heller LLP [mailto:office@fhllplaw.com]
Sent: Wed 12/17/2008 5:12 PM
To: harold@gewerterlaw.com
Cc: shunterton@huntertonlaw.com; janallen@huntertonlaw.com; jallen@huntertonlaw.com; Samuel Lionel;
Charles H. McCrea Jr.; FEDVEGAS; Raynell Caliguire; kp@morrislawgroup.com; pac@morrislawgroup.com;
plawson@huntertonlaw.com; dawson@huntertonlaw.com
Subject: Chin LV v. Forum Shops Hearing for 12/18/08

Gentlemen and Ladies: The e-mail is to inform each of you that the court has cancelled the hearing set for tomorrow (12.18.08) because the airport in Las Vegas is closed. The court would like the parties to stipulate to a new date. The Court has available December 22, 2008 @ 10:00 a.m. Please confirm that this date is convenient for you. If not, could you please provide us with a date you would be available? Please note that Kristina Pickering has confirmed that the 12/22/08 date is ok with her. Thank you.

Zorlana S. Sohl
Legal Assistant to
Jerold Fagelbaum, Esq., and Philip Heller PLC
FAGELBAUM & HELLER LLP
2049 Century Park East, Suite 4250
Los Angeles, CA 90067
Phone: 310.286.7666
Facsimile: 310.286.7086

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Subject: RE: Continuance of Hearing Chin LV v. Forum Shops
From: "Charles H. McCrea Jr." <cmccrea@lionelsawyer.com>
To: "Kris Pickering" <KP ...snip... LLP" <office@fhllplaw.com>
Cc: <harold@gewerterlaw.com>,
...snip... "Stan Hunterton" <SHunterton@Huntertonlaw.com>

Counsel: Yesterday, Judge Mahan's assistant indicated that the motion could be heard on January 6, 2009 at 2:00 PM. Mr. Gewerter and Mr. Fagelbaum have indicated that this works for them. I need confirmation from Mr. Hunterton or Ms. Lawson that this will work for them as well. Attached is a stipulation and order resetting the hearing to that date. Please confirm that we are authorized to sign and e-file it on your behalf.

LIONEL SAWYER & COLLINS

CHARLES McCREA
Shareholder

1700 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101

E-Mail Web Site

Main - 702.383.8888 Direct - 702.383.8981
Fax - 702.383.8845 Mobile - 702.370.7632

From: Kris Pickering [mailto:KP@morrislawgroup.com]
Sent: Friday, December 19, 2008 10:52 AM
To: 'Fagelbaum & Heller LLP'; Charles H. McCrea Jr.
Cc: harold@gewerterlaw.com; Samuel Lionel; JP Hendricks; Patricia Ferrugia; 'Phillip Heller'; Patricia Ferrugia; Steve Morris; Stan Hunterton
Subject: RE: Continuance of Hearing Chin LV v. Forum Shops

Gentlemen,

Judge Mahan was not available yesterday afternoon. With Charlie McCrea out from Monday through the 4th, it looks as though there is no workable date before year-end that will allow me to participate. Since this takes me out, I've asked my partner, Steve Morris, to step in (which you on the plaintiffs' side will come to regret). His assistant is Patty Ferrugia, whom I'm copying to get a new date that works for him and JP.

Best wishes for the holidays.

Kris

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Cc: harold@gewerterlaw.com; slionel@lionelsawyer.com; Kris Pickering; JP Hendricks
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EXHIBIT G

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2049 Century Park East, Suite 4250
Los Angeles, CA 90067
Phone: 310.286.7666
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081219 SAO to Continue Hearing.doc

From: Patricia Ferrugia <paf@morrislawgroup.com>
To: "Charles H. McCrea Jr. ...snip... LLP <office@fhllplaw.com>
Subject: RE: Continuance of Hearing Chin LV v. Forum Shops

Steve is not available the first two weeks of January. However, he is available on the 21st, 22nd, 26th, or the 27th

From: Charles H. McCrea Jr. [mailto:cmccrea@lionsawyer.com]
Sent: Friday, December 19, 2008 11:08 AM
To: Kris Pickering; Fagelbaum & Heller LLP
Cc: harold@gewerterlaw.com; Samuel Lionel; JP Hendricks; Patricia Ferrugia; Philip Heller; Patricia Ferrugia; Steve Morris; Stan Hunterton
Subject: RE: Continuance of Hearing Chin LV v. Forum Shops

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LIONEL SAWYER & COLLINS

CHARLES McCREA

Shareholder

1700 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101

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To: 'Fagelbaum & Heller LLP'; Charles H. McCrea Jr.
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Best wishes for the holidays.

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Sent: Thursday, December 18, 2008 11:08 AM
To: cmccrea@lionelsawyer.com
Cc: harold@gewerterlaw.com; slionel@lionelsawyer.com; Kris Pickering; JP Hendricks
Subject: Continuance of Hearing Chin LV v. Forum Shops

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Zorina S. Sohl
Legal Assistant to
Jerold Fagelbaum, Esq., and Philip Heller PLC
FAGELBAUM & HELLER LLP
2049 Century Park East, Suite 4250
Los Angeles, CA 90067
Phone: 310.286.7666
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EXHIBIT G

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Cc: <harold@gewerterlaw.com>,
...snip... "Stan Hunterton" <SHunterton@Huntertonlaw.com>

Does 1/8/09 at 1:30 PM work? If not, the next date available to the Court is not until February.

LIONEL SAWYER & COLLINS

CHARLES McCREA
Shareholder

1700 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101

E-Mail Web Site

Main - 702.383.8888 Direct - 702.383.8981
Fax - 702.383.8845 Mobile - 702.370.7632

From: Kris Pickering [mailto:KP@morrislawgroup.com]
Sent: Friday, December 19, 2008 11:03 AM
To: Charles H. McCrea Jr.; Fagelbaum & Heller LLP
Cc: harold@gewerterlaw.com; Samuel Lionel; JP Hendricks; Patricia Ferrugia; Philip Heller; Patricia Ferrugia; Steve Morris; Stan Hunterton
Subject: RE: Continuance of Hearing Chin LV v. Forum Shops

That date does not work for Morris.

From: Charles H. McCrea Jr. [mailto:cmccrea@lionelsawyer.com]
Sent: Friday, December 19, 2008 11:08 AM
To: Kris Pickering; Fagelbaum & Heller LLP
Cc: harold@gewerterlaw.com; Samuel Lionel; JP Hendricks; Patricia Ferrugia; Philip Heller; Patricia Ferrugia; Steve Morris; Stan Hunterton
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LIONEL SAWYER & COLLINS

CHARLES McCREA
Shareholder

EXHIBIT G

1700 Bank of America Plaza
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Las Vegas, NV 89101

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Phone: 310.286.7666
Facsimile: 310.286.7086

EXHIBIT G

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Subject: RE: Continuance of Hearing Chin LV v. Forum Shops
From: "Charles H. McCrea Jr." <cmccrea@lionelsawyer.com>
To: "Patricia Ferrugia ...snip... LLP" <office@fhllplaw.com>
Cc: <harold@gewerterlaw.com>,
...snip... "Stan Hunterton" <SHunterton@Huntertonlaw.com>

The next date is February 6, 2009 at 10:30 AM.

LIONEL SAWYER & COLLINS

CHARLES McCREA
Shareholder

1700 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101

E-Mail Web Site

Main - 702.383.8888 Direct - 702.383.8981
Fax - 702.383.8845 Mobile - 702.370.7632

From: Patricia Ferrugia [mailto:paf@morrislawgroup.com]
Sent: Friday, December 19, 2008 11:10 AM
To: Charles H. McCrea Jr.; Kris Pickering; Fagelbaum & Heller LLP
Cc: harold@gewerterlaw.com; Samuel Lionel; JP Hendricks; Philip Heller; Steve Morris; Stan Hunterton
Subject: RE: Continuance of Hearing Chin LV v. Forum Shops

Steve is not available the first two weeks of January. However, he is available on the 21st, 22nd, 26th, or the 27th

From: Charles H. McCrea Jr. [mailto:cmccrea@lionelsawyer.com]
Sent: Friday, December 19, 2008 11:08 AM
To: Kris Pickering; Fagelbaum & Heller LLP
Cc: harold@gewerterlaw.com; Samuel Lionel; JP Hendricks; Patricia Ferrugia; Philip Heller; Patricia Ferrugia; Steve Morris; Stan Hunterton
Subject: RE: Continuance of Hearing Chin LV v. Forum Shops

Counsel: Yesterday, Judge Mahan's assistant indicated that the motion could be heard on January 6, 2009 at 2:00 PM. Mr. Gewerter and Mr. Fagelbaum have indicated that this works for them. I need confirmation from Mr. Hunterton or Ms. Lawson that this will work for them as well. Attached is a stipulation and order resetting the hearing to that date. Please confirm that we are authorized to sign and e-file it on your behalf.

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From: Kris Pickering [mailto:KP@morrislawgroup.com]
Sent: Friday, December 19, 2008 10:52 AM
To: 'Fagelbaum & Heller LLP'; Charles H. McCrea Jr.
Cc: harold@gewerterlaw.com; Samuel Lionel; JP Hendricks; Patricia Ferrugia; 'Philip Heller'; Patricia Ferrugia; Steve Morris; Stan Hunterton
Subject: RE: Continuance of Hearing Chin LV v. Forum Shops

Gentlemen,

Judge Mahan was not available yesterday afternoon. With Charlie McCrea out from Monday through the 4th, it looks as though there is no workable date before year-end that will allow me to participate. Since this takes me out, I've asked my partner, Steve Morris, to step in (which you on the plaintiffs' side will come to regret). His assistant is Patty Ferrugia, whom I'm copying to get a new date that works for him and JP.

Best wishes for the holidays.

Kris

From: Fagelbaum & Heller LLP [mailto:office@fhllplaw.com]
Sent: Thursday, December 18, 2008 11:08 AM
To: cmccrea@lionelsawyer.com
Cc: harold@gewerterlaw.com; slionel@lionelsawyer.com; Kris Pickering; JP Hendricks
Subject: Continuance of Hearing Chin LV v. Forum Shops

Dear Mr. McCrea: I am unavailable tomorrow December 19, 2008. However, I am available on the alternative dates you proposed for January as well as December 22, 2008 (on which I understand you are unavailable). Accordingly, by copy of this e-mail, I am requesting that all counsel determine if they are available on January 7 through 9 or 13 through 15, 2009. Once we all agree on a date, we can clear it with the court and prepare a stipulation. Thank you for the courtesy. J. Fagelbaum.

Zorina S. Sohl
Legal Assistant to
Jerold Fagelbaum, Esq., and Philip Heller PLC
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