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DISTRICT COURT  
 CLARK COUNTY, NEVADA

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

Plaintiffs,

17 vs.

18 FORUM SHOPS, LLC, FORUM )  
 19 DEVELOPERS LIMITED )  
 20 PARTNERSHIP, SIMON )  
 21 PROPERTY GROUP LIMITED )  
 22 PARTNERSHIP, SIMON )  
 23 PROPERTY GROUP, INC., )  
 CAESARS PALACE CORP, and )  
 24 CAESARS PALACE REALTY )  
 25 CORP., )

Defendants.

CASE NO.:  
 DEPT NO.:

A 554895  
 XIII

**BUSINESS COURT REQUESTED**  
**(Arbitration Exemption Claimed**  
**Declaratory Relief and Injunctive Relief)**

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**COMPLAINT**

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For their Complaint against Forum Shops, LLC, Forum Developers Limited Partnership, Simon Property Group Limited Partnership, Simon Property Group, Inc., Caesars Palace Corp. and Caesars Palace Realty Corp., plaintiffs Phase II Chin, LLC and Love & Money, LLC (formerly dba O.P.M.L.V., LLC) allege:

**The Parties**

1. Plaintiff Phase II Chin, LLC ("Chinois") is a limited liability company organized under the laws of the State of Delaware with its principal place of business in Las Vegas, Nevada. Chinois is in the business of operating and managing a Wolfgang Puck restaurant known as "Chinois-Las Vegas" at The Forum Shops at Caesars Palace at 3500 Las Vegas Boulevard South, Las Vegas, Nevada 89109.

2. Plaintiff Love & Money, LLC (formerly d.b.a. O.P.M.L.V., LLC) ("O.P.M.L.V.") is a limited liability company organized under the laws of the State of Nevada with its principal place of business in Las Vegas, Nevada. O.P.M.L.V. is in the business of managing and operating a nightclub ("OPM"). OPM is located at Caesars' Palace in The Forum Shops at 3500 Las Vegas Boulevard South, Las Vegas, Nevada 89109.

3. Plaintiffs are informed and believe, and on that basis allege, that at all times relevant to this action, defendant Forum Shops, LLC ("Forum") was and is a limited liability company organized under the laws of the State of Delaware, qualified to do business in Nevada and doing business at 3500 Las Vegas Blvd. South, Las Vegas, Nevada 89109.

4. Plaintiffs are informed and believe, and on that basis allege, that at all times relevant to this action, defendant Forum Developers Limited Partnership ("Forum Developers") was and is a limited partnership organized under the laws of the State of Nevada acting as a member of defendant Forum, and doing business at 3500 Las Vegas Blvd. South, Las Vegas, Nevada 89109. Plaintiffs are informed and believe, and on that basis allege, that

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Forum Developers is the alter ego of Forum. Plaintiffs are informed and believe, and on that basis allege, that these defendants treated their finances as a mere shell, instrumentality and conduit through which each of them carried on business in name only, exercising control and dominance of each business to such an extent that any individuality or separateness of these defendants did not exist, and to maintain the fiction of separate business identity would promote fraud and sanction injustice, such that these defendants should be treated as the alter egos of one another.

5. Plaintiffs are informed and believe, and on that basis allege, that at all times relevant to this action, defendant Simon Property Group Limited Partnership was and is a limited partnership organized under the laws of the State of Delaware, qualified to do business in Nevada, acting as a general partner of defendant Forum Developers and doing business at 3500 Las Vegas Blvd. South, Las Vegas, Nevada 89109. Plaintiffs are informed and believe, and on that basis allege, that Simon Property Group Limited Partnership is either the sole owner of Forum, or that it owns a controlling interest in Forum. Plaintiffs are informed and believe, and on that basis allege, that Simon Property Group Limited Partnership is the alter ego of Forum. Plaintiffs are informed and believe, and on that basis allege, that these defendants treated their finances as a mere shell, instrumentality and conduit through which each of them carried on business in name only, exercising control and dominance of each business to such an extent that any individuality or separateness of these defendants did not exist, and to maintain the fiction of separate business identity would promote fraud and sanction injustice, such that these defendants should be treated as the alter egos of one another.

6. Plaintiffs are informed and believe, and on that basis allege, that at all times relevant to this action, defendant Simon Property Group, Inc. was and is a foreign corporation acting as a general partner of defendant Simon Property Group Limited Partnership and doing

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business at 3500 Las Vegas Blvd. South, Las Vegas, Nevada 89109. Plaintiffs are informed and believe, and on that basis allege, that Simon Property Group, Inc. is the alter ego of Simon Property Group Limited Partnership and Forum. Plaintiffs are informed and believe, and on that basis allege, that these defendants treated their finances as a mere shell, instrumentality and conduit through which each of them carried on business in name only, exercising control and dominance of each business to such an extent that any individuality or separateness of these defendants did not exist, and to maintain the fiction of separate business identity would promote fraud and sanction injustice, such that these defendants should be treated as the alter egos of one another. Simon Property Group Limited Partnership and Simon Property Group, Inc. are referred to herein collectively as "Simon."

7. Plaintiffs are informed and believe, and on that basis allege, that defendant Caesars Palace Corp. is a corporation organized under the laws of the State of Nevada with its principal place of business at 3570 Las Vegas Blvd. South, Las Vegas, Nevada 89109. Plaintiffs are informed and believe, and on that basis allege, that Caesars Palace Corp. is in the business, *inter alia*, of owning and/or operating the casino/hotel/entertainment complex known as Caesars Palace in Las Vegas.

8. Plaintiffs are informed and believe, and on that basis allege, that defendant Caesars Palace Realty Corp. is a corporation organized under the laws of the State of Nevada with its principal place of business at 3570 Las Vegas Blvd. South, Las Vegas, Nevada 89109. Plaintiffs are informed and believe, and on that basis allege, that Caesars Palace Realty Corp. is in the business, *inter alia*, of owning and/or operating the casino/hotel/entertainment complex known as Caesars Palace in Las Vegas. Caesars Palace Corp. and Caesars Palace Realty Corp. are sometimes referred to collectively herein as "Caesars."

9. Defendants Does 1 through 20, inclusive, are natural persons. The true names, identities or capacities, whether individual, corporate, associate or otherwise of Does 1

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1 through 20, inclusive, are presently unknown to plaintiffs, who therefore sue these defendants  
 2 by such fictitious names. Plaintiffs are informed and believe, and on that basis allege, that  
 3 each of the defendants sued herein as Doe is responsible in some manner for the events and  
 4 happenings herein referred to, which proximately caused the damages to plaintiffs alleged  
 5 herein. When the true names and capacities of such defendants become known, plaintiffs will  
 6 seek leave of this Court to amend this Complaint to insert the true names, identities and  
 7 capacities, together with proper charges and allegations.

8  
 9 10. At all times relevant hereto, defendants Roe Corporations 1 through 20,  
 10 inclusive, were and now are corporations, firms, partnerships, associations or other legal  
 11 entities involved with the facts and circumstances surrounding this action. The true names,  
 12 identities or capacities of defendants Roe Corporations 1 through 20, inclusive, are presently  
 13 unknown to plaintiffs, who therefore sue these defendants by such fictitious names. Plaintiffs  
 14 are informed and believe, and on that basis allege, that each of the defendants sued herein as  
 15 Roe Corporation is responsible in some manner for the events and happenings herein referred  
 16 to, which proximately caused the damages to plaintiffs as alleged herein. When the true names  
 17 and capacities of such defendants become known, plaintiffs will seek leave of this Court to  
 18 amend this Complaint to insert the true names, identities and capacities, together with proper  
 19 charges and allegations.  
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21 11. At all times relevant hereto, defendants and each of them were the agents,  
 22 servants, employees, employers, partners, co-owners and/or joint venturers of each other and  
 23 of their co-defendants, and were acting within the color, purpose and scope of their  
 24 employment, agency, ownership and/or joint ventures, and by reason of such relationships,  
 25 defendants and each of them are jointly and severally responsible and liable for the acts or  
 26 omissions of their co-defendants.  
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12. All facts, events and circumstances herein mentioned, alleged and described occurred in the County of Clark, State of Nevada.

The Lease

13. On or about June 1, 1990, Caesars Palace Realty Corp. and Forum Developers entered into a ground lease pursuant to which Forum Developers acquired possession of The Forum Shops.

14. On or about March 18, 1997, Forum Developers and GGH Restaurant, LLC ("GGH") entered into a lease (the "Lease") pursuant to which the latter leased from the former certain premises in The Forum Shops at Caesars Palace for the operation of a restaurant. Chinois has succeeded to GGH's rights and obligations under the Lease, and is, and at all times relevant to this action has been, the lessee, operating Chinois-Las Vegas in the leased premises. Forum has succeeded to Forum Developers' rights and obligations under the Lease, and is, and at all times relevant to this action, has been, the lessor.

15. Chinois-Las Vegas is a fine dining establishment serving Asian/Pacific Rim and American cuisine, including certain signature dishes of world-renowned chef Wolfgang Puck.

16. The Forum Shops consist of more than 160 upscale stores and restaurants in an ancient Rome-themed mall at the Caesars Palace complex. The mall is attached to the Caesars Palace casino (the "Casino") with a large archway providing access between the Casino and The Forum Shops. While most of the retail establishments in The Forum Shops close each night at or about 11 p.m. on weekdays and 12 midnight on weekends, the mall's common areas remain open to the public 24 hours per day, 7 days per week.

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The Establishment of OPM

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17. By letter of March 12, 2002, Tom Kaplan ("Kaplan"), managing member of Chinois, informed Gary Lewis ("Lewis") of Simon that Chinois was "in the process of formulating letters of intent with two potential groups with whom [Chinois] wish[ed] to jointly operate a first-class lounge on the second floor of Chinois." Kaplan added in his letter, "[b]efore we proceed with extensive legal documents and their associated expenses, I respectfully request your preliminary approval for such a use. We are not certain as to what extent this is necessary but given our strong relationship, we would like your feedback." Kaplan went on to provide an "overview of the lounge." At the time, there was no other night club of the sort Chinois was proposing in the Caesars Palace complex.

18. As of June 20, 2002, Chinois entered into a Management Agreement (the "Management Agreement") with O.P.M.L.V. pursuant to which O.P.M.L.V. would operate a night club on the second floor of Chinois.

19. Pursuant to the Management Agreement, O.P.M.L.V. would manage the after-hours club, called OPM, on the second floor of the Chinois premises. O.P.M.L.V.'s duties under the Management Agreement included hiring, training and supervision of OPM's personnel, scheduling, directing and supervising all work and the supply of materials, labor and other services necessary to the club's operation, and handling complaints, requests and inquiries regarding the club. The Management Agreement did not assign or transfer any of Chinois' rights or obligations under the Lease to O.P.M.L.V. and did not in any respect constitute a sublease of the leased premises. Pursuant to Section 32 of the Management Agreement, that agreement was to be governed by Nevada law.

20. On November 12, 2002, Kaplan wrote Lewis again, this time telling Lewis that the new club would be called OPM and would be managed by O.P.M.L.V. in conjunction with Chinois. Kaplan again described the club, including, *inter alia*, its expected clientele, its

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1 hours of operation and the fact that it would serve Wolfgang Puck food from Chinois. Kaplan  
2 also provided a description of O.P.M.L.V., its principal, Michael Goodwin ("Goodwin"), and  
3 other clubs operated by O.P.M.L.V.

4 21. In an e-mail message of December 1, 2002, Lewis informed Kaplan that the  
5 club had been approved. Lewis reiterated this approval in a letter to Kaplan of January 28,  
6 2003 on "Simon Property Group" letterhead. Forum was provided a copy of the Management  
7 Agreement with certain financial information redacted on July 10, 2002.

8 22. OPM opened for business on or about May 22, 2003. OPM is an upscale dance  
9 club that plays a range of different types of music, including hip-hop; most of its patrons are  
10 African-Americans.

11 23. Effective October 9, 2003, after OPM had been in operation for 5 months, at  
12 Simon's suggestion, the parties executed an amendment to the Lease (the "Lease  
13 Amendment") to permit Chinois to operate OPM in part of the leased premises Wednesdays  
14 through Sundays from 10 p.m. until 6 a.m. each following morning.

15 24. Simon mall management (many of whom are still employed by Simon) and  
16 many executives from Caesars Palace attended OPM's opening in 2003.

17 25. Defendants were aware at all times of the nature of OPM, and approved of the  
18 operation. For example, Caesars and Simon have both held holiday parties at OPM and both  
19 Caesars and Simon executives have been to OPM during operating hours.

20 26. By March 2006, O.P.M.L.V. and Chinois had successfully operated the  
21 nightclub for nearly three years in compliance with the terms and conditions of the Lease, the  
22 Lease Amendment and the Management Agreement and amendments thereto. During that  
23 time, OPM was the recipient of several awards, including the #1 Zagat Rated Award in 2004  
24 and 2005, the AOL Cityguide City's Best Award in 2005, and the #1 Yahoo! Readers' Poll  
25 Award in 2006.  
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**Defendants' Harassment and Other Misconduct**

27. Beginning in or about January 2005, defendants engaged in an ongoing and concerted campaign of harassment and misconduct against plaintiffs, as detailed below. Plaintiffs are informed and believe, and on that basis allege, that defendants' misconduct has been calculated to force plaintiffs out of business and has been driven by at least two motives. Plaintiffs are informed and believe, and on that basis allege, that one of these motives stems from defendants' hostility towards, and prejudice against, African-Americans, who comprise the majority of OPM's clientele. Plaintiffs are informed and believe, and on that basis allege, that defendants seek to force OPM out of business because, in defendants' view, it attracts "too many" African-Americans to The Forum Shops and the Caesars Palace complex generally.

28. Defendants have previously been criticized for their treatment of minorities. For example, in March 2007, ACORN, a self-described community organization of low and moderate income families, published a report, "Racial Discrimination at Simon Malls: A Separate and Unequal Shopping Experience for People of Color," describing racial discrimination at a "Simon Property Group" mall in Colorado. Similarly, in a December 2007 meeting before the Nevada Gaming Control Board, eleven groups representing minority communities criticized Harrah's Entertainment, Inc., Caesars' parent corporation, for its lack of transparency in its diversity efforts.

29. Plaintiffs are informed and believe, and on that basis allege, that defendants' other motive stems from the fact that the rent Chinois pays under the Lease is considerably below "market" for the type of space it occupies. Were defendants able to force Chinois out of The Forum Shops, they could then lease the premises to a new tenant at a substantially higher

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rent, which would, of course, yield for them correspondingly higher profits than they currently receive under the Lease.

30. Defendants' misconduct has taken a variety of forms. First, almost every time when there has been any sort of security problem in any way involving an African-American anywhere in the Caesars Palace complex, defendants have sought to blame plaintiffs, even, as explained below, when it can be clearly demonstrated that the persons involved were not OPM patrons, and when the problems have arisen in The Forum Shops' common areas or on Caesars property, where plaintiffs have no security obligations and, moreover, no right to provide security.

31. Second, defendants have discriminated against Chinois and OPM, and treated Chinois, and by extension OPM, differently, and less favorably, than other similarly situated tenants of The Forum Shops.

32. Third, defendants have missed no opportunity to serve Chinois with formal legal notices of purported defaults under the Lease for even the most minor perceived transgression, instead of simply bringing these issues to Chinois' attention informally, as is customarily done with other tenants of The Forum Shops.

33. Plaintiffs provide below a chronological description of defendants' harassment and misconduct. The wrongdoing described is not meant to be an exhaustive inventory of defendants' improper conduct, but rather examples of defendants' most egregious behavior.

34. On Christmas Eve 2004, roughly seven months after OPM opened, there was an incident at Caesars in the Casino involving several African-American men. Based on nothing more than its racial suppositions regarding OPM's clientele, Caesars subsequently sent an e-mail to OPM along with a video of the incident, blaming OPM and its customers for this problem. On this particular evening, however, OPM was hosting a private party for Jewish singles and not one African-American person attended this event.

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35. On or about December 31, 2004, Caesars Palace opened its own nightclub, Pure, in the Caesars Palace complex. Pure occupies approximately 40,000 square feet of space and consistently accommodates between 7,000 and 10,000 guests per evening. In addition, as many as fifty percent of the number of guests actually admitted to Pure each evening line up and are not admitted. In comparison, OPM occupies only 10,000 square feet, and is only able to accommodate 600 people at a time, and an even smaller percentage are denied entrance.

36. Prior to December 31, 2004, problems associated with the operation of OPM were no more than what might typically be expected with the operation of an after-hours nightclub. These problems were all handled in a manner satisfactory to defendants.

37. The security records of Caesars and The Forum Shops indicate that after December 31, 2004, when Pure opened, problems increased significantly on Caesars property, where Pure is located, but increased only slightly in The Forum Shops, where OPM is located. Much of the slight increase in security problems in The Forum Shops is attributable to the fact that Caesars operates a bar directly across from the entrance to OPM which used to close at 11 p.m., but since approximately January 1, 2005, has remained open until 4 a.m. This has resulted in numerous individuals who have left or not been admitted to Pure loitering, drinking and occasionally causing security problems in The Forum Shops common areas.

38. Beginning on or about December 31, 2004 to the present, O.P.M.L.V., at its sole expense, has employed Las Vegas Metropolitan Police Department officers to work inside of The Forum Shops in the courtyard near the entrance of the nightclub every Friday and Saturday night, as well as during special events, from 11 p.m. until 5 a.m. In contrast, although O.P.M.L.V. hired Las Vegas Metropolitan Police Department officers, defendants and Pure did not.

39. Despite the obvious evidence that security problems in the Caesars Palace complex are mostly attributable to Pure and the bar Caesars operates across from OPM, OPM

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1 has been wrongly blamed for essentially every security problem at the Caesars Palace  
2 complex since Pure opened. Some examples, but not by any means an exhaustive inventory,  
3 of such events are detailed below.

4 40. An altercation involving several African-American individuals occurred in the  
5 Caesars parking structure on a night in late February 2006. Without any evidence, Forum and  
6 Caesars simply assumed that those involved in the fight had been patrons of OPM (not Pure,  
7 or the Caesars bar across from OPM, or the Casino), and attempted to hold Chinois and  
8 O.P.M.L.V. responsible, despite the fact that security in the parking structure was the  
9 exclusive responsibility of Caesars.

10 41. Two or three days after the altercation, Goodwin of OPM met with Caesars'  
11 two night security directors, Brian Renner ("Renner") and Wadell Bennett ("Bennett").  
12 Renner and Bennett told Goodwin that the problem had not been caused by OPM, but was  
13 instead attributable to Caesars providing inadequate security in its parking structure. Renner  
14 and Bennett told Goodwin that Caesars employed only two security officers to cover its entire  
15 multi-level parking structure at night, and compared the Caesars garage to that at Imperial  
16 Palace, which they said was one-sixth the size of the Caesars garage, but had three times the  
17 number of night security officers on duty. Goodwin told Forum that Renner and Bennett were  
18 willing to meet with representatives of Forum to explain the security problem in the garage,  
19 and also that OPM would pay for one additional security officer, if Caesars and Pure would  
20 each do the same. Forum and Caesars ignored both of Goodwin's offers.

21 42. In February 2006, Gary Selesner ("Selesner") President of Caesars and Robert  
22 Fry, President of Pure Management Group, which operates Pure, visited OPM and spoke with  
23 Goodwin. They told Goodwin they did not have a problem with OPM, but rather, with the  
24 customers that OPM attracted.

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43. On or about March 6, 2006, after OPM had been in operation for almost three years, Forum sent Chinois a letter contending that Chinois was in breach of the Lease on several purported grounds. This letter was on "Simon" letterhead, and purported to be from "Forum Shops, LLC, By: Forum Developers Limited Partnership, its sole member, By: Simon Property Group, LP, its general partner, By: Simon Property Group, Inc., its general partner."

44. Forum asserted in the letter that Chinois "may have subleased that part of the Premises which is operated as an after-hours club commonly known as OPM . . . to a subtenant without [Forum's] prior consent. Such subletting without [Forum's] consent is a violation of Section 13.1 [of the Lease], which expressly recites that "Tenant shall not . . . sublet all or any part of the Premises, nor license concessions nor lease departments therein, without [Forum's] consent . . ."

45. In the March 6, 2006 letter, Forum also claimed that Chinois was in violation of Section 8.4 of the Lease, which requires, *inter alia*, that OPM be operated "in a first class manner in keeping with the standards of the Center . . .," and of Section 8.9 of the Lease, which states that "the Premises shall not be used except in a dignified and ethical manner consistent with the general high standards of merchandising in the Center and not in a disreputable or immoral manner . . ."

46. The March 6, 2006 letter went on to threaten that if Chinois did not cure the alleged defaults within the time provided for in the Lease, *i.e.*, thirty days, Forum would "take those steps deemed necessary to protect its interests . . . includ[ing] without limitation, termination of the Lease . . ."

47. Chinois' counsel responded to the March 6, 2006 default notice by letter of March 9, 2006. In that letter, Chinois denied that it had "sublet" part of the leased premises to O.P.M.L.V. in violation of the Lease. Counsel further wrote, "The transaction pursuant to

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1 which a portion of the premises is operated by [Chinois] as an after-hours club was fully  
 2 disclosed to and approved by Gary Lewis, Executive Vice President for Landlord. In fact, it  
 3 was after the consent to the transaction was sought from the Landlord that the October 9, 2003  
 4 Lease Amendment was prepared (which, as you are no doubt aware, was prepared by the  
 5 Landlord) and subsequently executed by the parties.”

6 48. With respect to Chinois’ purported violations of Sections 8.4 and 8.9 of the  
 7 Lease, the March 9, 2006 letter states, “Any disturbances within the Premises which may have  
 8 previously been brought to the attention of [Chinois] have been handled to the satisfaction of  
 9 the Landlord’s on-site representatives. The Lease does not contemplate a zero tolerance  
 10 expectation for issues within the Premises. Rather, it requires [Chinois] to respond to any  
 11 reasonable requests of the Landlord to address such issues. [Chinois] has complied with every  
 12 request made by the Landlord to deal with security, crowd control and other issues.”  
 13 (Emphasis in original.)

14 49. With respect to issues Forum raised concerning matters outside Chinois’  
 15 premises, the March 9, 2006 letter explained the facts alleged in paragraphs 35-37 above.  
 16

17 50. Over the next several months, the parties attempted unsuccessfully to settle  
 18 their differences, and Forum let the matter drop.  
 19

20 51. On March 12, 2006, a fight broke out inside the Casino involving African-  
 21 Americans, and, once again, defendants attempted to place the blame on plaintiffs, despite  
 22 clear evidence that they were in no way at fault. The men who initiated the fight were not  
 23 dressed in compliance with OPM’s dress code, and so could not have been OPM patrons.  
 24 They were loitering inside the Casino near the entrance to The Forum Shops, drinking alcohol  
 25 out of bottles. Prior to the altercation, Jeanene Straitz, Simon’s head of night security, asked  
 26 Caesars security three times to remove the group because they were harassing women passing  
 27 by, but nothing was done. Goodwin’s partner, Paul Martinez, noticed the group shortly before  
 28

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1 the fight occurred, and he too pointed them out to Caesars security, but, again, no action was  
 2 taken. The fight broke out when one of the loiterers accosted a woman who was with a group  
 3 that had left OPM and were entering the Casino, bothering no one. Even after the fight began,  
 4 Caesars security, which is wholly responsible for the Casino, did not respond.

5 52. The improper campaign of harassment against plaintiffs continued when  
 6 Forum sent a second purported "notice of default" letter to Chinois on February 27, 2007.  
 7 This letter was on "Simon Property Group, Inc." letterhead, and purported to be from "Forum  
 8 Shops, LLC, By: Forum Developers Limited Partnership, its sole member, By: Simon  
 9 Property Group, LP, its general partner, By: Simon Property Group, Inc., its general partner."  
 10 This letter accused Chinois of violating Sections 8.4(i), 8.4(vi) and 10(vii) of the Lease over  
 11 the February 16-17, 2007 NBA All-Star break weekend by purportedly permitting a crowd to  
 12 loiter in a common area of The Forum Shops and allegedly exceeding the maximum number  
 13 of patrons allowable in OPM pursuant to relevant fire regulations.

14 53. Chinois' counsel responded by letter of March 9, 2007. With respect to the  
 15 crowd in The Forum Shops common area, this letter pointed out that OPM had had security  
 16 meetings with Forum in preparation for the All-Star weekend, and that OPM had hired four of  
 17 eight Las Vegas Metropolitan Police Department officers working at The Forum Shops over  
 18 the weekend and had increased its usual security force by ten additional officers, "who  
 19 attended to the Common Areas as well as the area near OPM." In fact, OPM had actually  
 20 tripled its usual security force in anticipation of the All-Star weekend. The letter went on to  
 21 explain that "[w]hile it may be true that there were significant crowds in the Forum Shops'  
 22 Common Areas during the NBA All-Star break, this was true for all of Las Vegas. As has  
 23 been well publicized, a record number of visitors came to Las Vegas to participate in the NBA  
 24 All-Star festivities. There is absolutely no evidence that OPM's clients and potential clients  
 25 caused the congestion and loitering you mention. The congestion was due simply to the high  
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1 volume of visitors walking through or visiting the Forum Shops. The Forum Shops' Common  
 2 Areas are generally open after hours, as is the Caesars Palace Casino." The letter also noted  
 3 that the bar operated by Caesars Palace across from OPM was open after-hours, which  
 4 contributed to the congestion.

5 54. With respect to OPM purportedly being over-capacity, the letter stated that  
 6 "although the Fire Marshal cleared the Common Areas near OPM, they never limited access  
 7 to the Club. OPM was in compliance with its internal occupancies at all times and never broke  
 8 any occupancy regulations."

9 55. In stark contrast to defendants' complaints against plaintiffs with respect to  
 10 crowds gathering in The Forum Shops common areas, of which the February 27, 2007 notice  
 11 of default is but one example, Caesars and Simon regularly allow large, unruly crowds to  
 12 gather outside of Pure and the "Atlantis" exhibit, which runs every day on the hour from 10  
 13 a.m. to 10 p.m. in The Forum Shops. This is so even though OPM, unlike Pure or the Atlantis  
 14 exhibit, uses stanchions to maintain order, and typically hires extra security officers for  
 15 special events.  
 16

17 56. On March 9, 2007, Forum sent Chinois yet another purported "notice of  
 18 default," this time complaining that over the weekend of March 3-4, 2007, "free-standing  
 19 signs were posted in the Common Areas and/or inside the Caesars Palace casino advertising  
 20 the OPM nightclub." This letter was on "Simon Property Group, Inc." letterhead, and  
 21 purported to be from "Forum Shops, LLC, By: Forum Developers Limited Partnership, its  
 22 sole member, By: Simon Property Group, LP, its general partner, By: Simon Property  
 23 Group, Inc., its general partner." In a March 5, 2007 email message to Richard McKeown,  
 24 manager of The Forum Shops, Selesner described the sign incident, for some reason thinking  
 25 it necessary to include in his message that "surveillance coverage" revealed that the person  
 26 who placed the sign was a "BMA," *i.e.*, a "black male adult."  
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57. Chinois' counsel responded by letter of March 23, 2007. This letter pointed out that Forum had agreed to permit OPM to place the signs beginning in December 2003. It went on to state, "Rather than simply informing OPM and [Chinois] of its objection to the use of directional signs, in yet another example of the Forum Shops' and Caesars prejudicial treatment of OPM due to its largely minority and African-American clientele, [Forum] instead sent another unwarranted Notice of Default. These continuing tactics by the Forum Shops' management are unnecessary. OPM has every intention of working cooperatively with the Forum Shops' management and Caesars management, and in fact, has historically been very responsive to these entities' concerns. OPM would prefer to discuss issues cooperatively and directly, rather than engaging in an exchange of legal notices and responses."

58. Beginning on August 17 2007, approximately two weeks after a highly publicized shooting that occurred inside Caesars' Casino, with the exception of the weekend of October 19, 2007, Caesars has closed the entrance between The Forum Shops and the Casino every weekend evening, each time without justification or appropriate prior notice.

59. The first time Caesars closed the entrance between the Casino and The Forum Shops was at or about 1 a.m. on August 17, 2007, with only a phone call's notice at 11 p.m. Caesars also posted a sign next to the closed entrance that read, "Forum Shops to Reopen at 8 a.m." The sign did not provide any additional information and more importantly, did not tell customers that OPM was open for business, or how to access OPM. With only one exception, since August 17, 2007, Caesars has closed the entrance and posted the sign every weekend evening beginning at or about 1 a.m., after every other Forum Shops' tenant has closed. Every closure was without justification and, with the exception of the first closure, without any notice.

60. Caesars' closing of the entrance is timed to limit and direct its impact solely to OPM. OPM is the only Forum Shops business open after 12 a.m., and the door closures occur

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1 during OPM's peak operating hours on Friday and Saturday nights. Typically, Caesars only  
 2 closes the Casino entrance after 1 a.m., after every tenant in The Forum Shops other than  
 3 OPM has closed. Approximately 70 percent or more of OPM's customers gain entry to OPM  
 4 through the entrance door between The Forum Shops and Caesars' Casino, and a vast majority  
 5 of OPM's patrons arrive at the club after 1 a.m. When OPM's customers see the closed door,  
 6 however, along with the sign telling them that The Forum Shops will not reopen until the next  
 7 morning, many assume either that OPM is also closed, or worse, no longer in business. The  
 8 customers who have not been deterred by the sign and the closed entry, and who know or  
 9 hope that OPM is open, have been forced to use an unmarked, poorly lit and potentially  
 10 unsafe back hallway to gain entry to The Forum Shops and access OPM.  
 11

12 61. OPM is an upscale nightclub and forcing OPM's customers to use a back  
 13 service hallway (and, at one point, an outside back alley) for entrance is inconsistent with, and  
 14 damaging to, OPM's image, and insulting to OPM's customers. O.P.M.L.V. chose to locate  
 15 the nightclub in The Forum Shops to reinforce the upscale image and clientele OPM attracts.  
 16 This is contrary to having these customers walk through an unmarked and dimly lit service  
 17 hallway or an outside back alley to gain access to the property when no other tenants'  
 18 customers are forced to endure such treatment. Further, considering that the great majority of  
 19 OPM's patrons are African-Americans, forcing them to use the back hallway is particularly  
 20 degrading, and reminiscent of African-Americans historically being permitted to access  
 21 restaurants and other places of public accommodation only through "service entrances."  
 22

23 62. In addition, plaintiffs are informed and believe, and on that basis allege, that  
 24 Caesars surveys The Forum Shops prior to closing the Casino entrance to ensure that none of  
 25 The Forum Shops' *other* tenants are affected by the door closure. For example, on the  
 26 weekend of September 15, 2007, Caesars' security personnel kept the Casino entrance open at  
 27 least an additional half-hour to accommodate customers of the Cheesecake Factory, another  
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Forum Shops tenant. This practice demonstrates that the closures are intended to target OPM and its minority and African-American customers only.

63. Caesars has stated that it would be willing to keep the door open only if O.P.M.L.V. paid the entire cost of increased security near the doorway. O.P.M.L.V. is not able to pay the cost of this additional security, and so the door between the Casino and The Forum Shops remains closed during OPM's peak hours of operation.

64. This door closure has caused OPM to suffer a significant reduction in its normal average number of patrons between its peak hours of 1 a.m. and 4 a.m., with a correspondingly substantial loss of income.

65. In addition to Caesars' closing the entrance between the Casino and The Forum Shops, for the past three years on New Year's Eve, one of busiest nights of the year for OPM, Caesars has closed off access to OPM's customers at its main entrance (not the Casino entrance), thereby forcing OPM's customers to walk along outside of the Casino, on a road with no sidewalk, to access OPM.

66. On or about November 30, 2007, Simon sent Chinois yet another notice of purported default, this time claiming that Chinois was in arrears in its rent payments under the Lease. Chinois wrote back on December 13, 2007, reminding Simon of the parties' agreement that Simon would invoice Chinois for rent due, stating that no invoice for the amount referred to in the November 30, 2007 letter had been received, and assuring Simon the invoice would be paid once it was received.

67. Several other facts further demonstrate defendants' harassment and disparate treatment of plaintiffs. Defendants have repeatedly accused plaintiffs, and apparently only plaintiffs, of failing to operate a "first class" establishment in keeping with the upscale nature of The Forum Shops. Yet the first store patrons see at the primary public valet entrance to The Forum Shops sells marijuana paraphernalia and other items displaying depictions of marijuana

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leaves. In addition, several other tenants have pictures of nude women in their front window displays.

68. As another example, OPM has been required to hire Las Vegas Metropolitan Police Department officers to provide security at certain events while Pure, which attracts much larger, mostly Caucasian crowds, has not been required to do the same.

69. Section 7.2 of the Lease requires Forum to provide an adequate cool water supply to the air conditioning system for the leased premises. Since OPM's opening in 2003, plaintiffs have complained orally and in writing to Forum that the air conditioning at the club is insufficient during the summer months. OPM is operated on the second level of the Chinois premises, which is open to The Forum Shops common area. The cool air provided by the air conditioning in the club, therefore, simply escapes out into the mall, leaving the second level of Chinois at times stifling during OPM's operating hours. During the summer of 2007, several OPM patrons became ill from the excessive heat, and one had to be taken away in an ambulance.

70. Plaintiffs have brought this unsatisfactory situation to defendants' attention several times, but nothing has been done. Plaintiffs have also requested permission to install a glass wall between OPM and the mall, at plaintiffs' own expense, but defendants have refused to permit this, even though such glass walls are the standard configuration for other businesses at The Forum Shops, including the FAO Schwarz store across from Chinois, which occupies a space essentially identical Chinois' second level. FAO Schwarz also occupies a third floor, which is also glassed-in.

**FIRST CAUSE OF ACTION**  
**(Declaratory Relief)**

71. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through 70 above as if fully set forth herein.

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72. Chinois is entitled to a declaration of the respective rights and duties of the parties under the Lease.

73. A justiciable controversy exists between the parties regarding those rights and duties in that Forum is threatening to invoke remedies under the Lease, including termination of the Lease, which would cause grave damage to Chinois. This controversy involves at least the following issues: (1) whether Chinois has violated Section 13.1 of the Lease by allegedly subletting part of the leased premises to O.P.M.L.V.; (2) whether Chinois' operation of the club has violated Section 8.1 and/or Section 8.4 of the Lease; (3) whether Chinois has otherwise violated the Lease; (4) whether Forum is entitled to any remedy under the Lease; and (5) whether plaintiffs are entitled to any remedy under the Lease.

**SECOND CAUSE OF ACTION**  
(Interference with Contractual Relations)

74. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through 73 above as if fully set forth herein.

75. A valid and enforceable contract, the Management Agreement, exists between Chinois and O.P.M.L.V.

76. Forum is and at all relevant times has been aware of the existence of this contract.

77. As alleged above, Forum has acted intentionally to disrupt the contractual relationship between Chinois and O.P.M.L.V.

78. As a direct and proximate result of Forum's misconduct, that contractual relationship has been disrupted, and as a direct and proximate result of that disruption, Chinois and O.P.M.L.V. have suffered damages in an amount to be proven at trial, but far exceeding the jurisdictional threshold of ten thousand dollars.

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**THIRD CAUSE OF ACTION**  
(Interference with Prospective Business Advantage)

79. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through 78 above as if fully set forth herein.

80. A prospective business and contractual relationship exists and at all relevant times has existed between Chinois and OPM, on the one hand, and actual and prospective patrons of Chinois and OPM on the other.

81. Forum is and at all relevant times has been aware of this prospective business and contractual relationship.

82. As alleged above, Forum has acted, without right or privilege, to harm plaintiffs by interfering with and preventing this prospective business and contractual relationship.

83. As a direct and proximate result of Forum's interference, plaintiffs have suffered damages in amounts in an amount to be proven at trial, but far exceeding the jurisdictional threshold of ten thousand dollars.

**FOURTH CAUSE OF ACTION**  
(Injunctive Relief)

84. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through 83 above as if fully set forth herein.

85. As alleged above, Forum has engaged in a campaign of harassment against plaintiffs designed to close down OPM and damage Chinois. Forum has several times served Chinois with improper, unjustified notices of default and threatened to take action to terminate the Lease. Also as alleged above, Forum has undertaken to interfere with the contractual relationship between the plaintiffs, and between the plaintiffs and their actual and prospective patrons. Finally, through its racially-motivated misconduct, Forum is tainting plaintiffs'

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reputations in the minority and African-American communities to which many of plaintiffs' patrons belong, thereby further damaging plaintiffs in their business and persons.

86. Forum's history of harassment and misconduct in this regard is ongoing, and there is no reason to suspect that it will stop.

87. Forum's misconduct threatens to close both Chinois and OPM, and to damage their image, thereby causing plaintiffs irreparable injury.

88. No remedy exists at law sufficient to address this threatened irreparable injury.

**FIFTH CAUSE OF ACTION**  
(Violation of 42 U.S.C. § 1981)

89. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through 88 above as if fully set forth herein.

90. As alleged above, defendants, and each of them, separately and acting in concert, have discriminated against plaintiffs in the making, performance, and attempted termination of the Lease and the Lease Amendment, and have interfered with their enjoyment of the benefits, privileges, terms, and conditions of those contracts, because of defendants' hostility to African-Americans in general, and to plaintiffs' African-American patrons in particular.

91. Defendants conduct in this regard was intentional and done with malice and/or reckless indifference to plaintiffs' federally protected rights.

92. As a direct and proximate result of defendants' misconduct, plaintiffs have suffered damages in an amount in to be determined at trial, but far exceeding the jurisdictional threshold of ten thousand dollars.

**SIXTH CAUSE OF ACTION**  
(Breach of the Lease)

93. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through 92 above as if fully set forth herein.

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94. Forum and Simon have breached the lease by failing to provide an adequate air conditioning system for the part of the premises where OPM operates, and by breaching the Lease's covenant of quiet enjoyment through its harassment of Chinois as described herein.

95. Chinois has complied with all terms of the Lease and, to the extent it has not, its non-performance is excused as having been caused by Forum's and Simon's misconduct and failure to perform.

96. As a direct and proximate result of Forum's and Simon's breach of the Lease, plaintiffs have suffered damages in an amount to be proven at trial, but far exceeding the jurisdictional threshold of ten thousand dollars.

**SEVENTH CAUSE OF ACTION**  
(Conspiracy)

97. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through 96 above as if fully set forth herein.

98. Defendants, and each of them, acted in concert, directly or through common agents, to exert dominion and control over the other defendants, and each of them, and through such dominion and control, furthered the unlawful objectives of (i) improperly invoking remedies under the Lease, including termination of the Lease; (ii) 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.

99. The acts of defendants, and each of them, were in conflict with plaintiffs, and were designed to protect defendants and injure plaintiffs.

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**EIGHTH CAUSE OF ACTION**

(Breach of Implied Covenant of Good Faith and Fair Dealing)

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100. Plaintiffs reallege and incorporate the allegations of paragraphs 1 through 99 above as if fully set forth herein.

101. The implied covenant of good faith and fair dealing is required in every contract under Nevada law.

102. Defendants, and each of them, directly or indirectly, owed a duty of good faith and fair dealing to plaintiffs, and each of them. Defendants, and each of them, have breached that duty by failing to perform in a manner that was faithful to the purposes of the Lease, by failing to comply with the terms and conditions of the Lease, and by failing to exercise diligent and good faith efforts on plaintiffs' behalf with respect to fulfilling their obligations under the lease.

103. Plaintiffs' justified expectations were thus denied.

104. As a direct and proximate result of defendants' actions, plaintiffs have suffered damages in an amount to be proven at trial, but far exceeding the jurisdictional threshold of ten thousand dollars.

WHEREFORE, plaintiffs pray as follows:

1. On Count I, for a judgment declaring the following: (1) that Chinois has not violated Section 13.1 of the Lease; (2) that Chinois has not violated either Section 8.1 or 8.4 of the Lease; (3) that Forum is therefore entitled to no remedy against Chinois under the Lease; and (4) that Forum has breached the Lease.

2. On Counts II and III, V, VI, VII and VIII, an award of damages in an amount to be determined at trial, but far exceeding the jurisdictional threshold of ten thousand dollars.

3. On Count IV, the issuance of an injunction ordering Forum to: (1) cease and desist from interfering with the contractual relationship between the plaintiffs; (2) cease and desist from interfering with the prospective and actual business relationship between plaintiffs

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and their actual and prospective patrons; and (3) cease and desist from serving improper, baseless "notices of default;" and (4) cease and desist the racially-motivated misconduct alleged herein.

4. On Count V, in addition to the relief described above, an award of appropriate punitive damages and reasonable attorney's fees.

5. On Count VI, in addition to the relief described above, an award of reasonable attorney's fees and costs pursuant to Section 24.25 of the Lease.

6. With respect to all Counts, for an award of attorneys' fees and costs incurred in prosecuting this action and for such other relief as the Court might deem just.

DATED this 8<sup>th</sup> day of January 2008.

  
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