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8 **IN THE UNITED STATES DISTRICT COURT**
9 **IN AND FOR THE DISTRICT COURT OF ARIZONA**

10 MARVIN SAPIRO and GLORIA
11 SAPIRO, his wife,

12 Plaintiffs,

13 v.

14 SUNSTONE HOTELS INVESTORS,
L.L.C., SUNSTONE HOTEL
15 INVESTORS, L.P.

16 Defendant.

No. CIV03-1555 PHX SRB

**DEFENDANTS' MOTION IN
LIMINE NO. 7**

**REGARDING EVIDENCE OF
DEFENDANTS' FINANCIAL
ABILITY**

(Oral Argument Requested)

17 Defendants ("Sunstone") move this Court for its Order in Limine excluding any
18 statement, argument, testimony, or evidence of Sunstone's financial ability and prohibiting any
19 jury instruction regarding Sunstone's financial ability.

20 Plaintiffs may wish to present evidence of 1) the profitability of Sunstone's business and
21 the subsequent sale price of the San Marcos hotel; 2) other businesses owned by Sunstone; and
22 3) general information regarding assets and revenues of Sunstone despite the fact that Plaintiff
23 has not forwarded a punitive damage claim. Rules 402 and 403 of the *Federal Rules of*
24
25

1 Evidence prevent the admissibility of any such evidence. The attached Memorandum of Points
2 and Authorities and the Court's entire file supports this Motion.
3

4 MEMORANDUM OF POINTS AND AUTHORITIES

5 Only relevant evidence is admissible. *Fed. R. Evid.* 402. Evidence is relevant only if it
6 makes the existence of any fact of consequence more or less probable. *Fed. R. Evid.* 401.
7 Relevant evidence, however, is inadmissible if its probative value is substantially outweighed by
8 the danger of unfair prejudice, confusion of the issues, or misleading the jury. *Fed. R. Evid.*
9 403.

10 Generally, the financial status of a defendant is inadmissible as evidence. *Marvin*
11 *Johnson, P.C. v. Shoen, M.D.*, 888 F.Supp. 1009, 1013 (D. Ariz. 1995). In the limited instances
12 where a defendant's wealth may relate to a substantive issue at trial, such evidence is
13 admissible. *Id.* A defendant's financial standing, however, is inadmissible as evidence to
14 determine the amount of compensatory damages, because "the ability of a defendant to pay the
15 necessary damages injects into the damage determination a foreign, diverting and distracting
16 issue which may effectuate a prejudicial result." *Geddes v. United Fin. Group*, 559 F.2d 557,
17 560 (9th Cir. 1977).

18 In this case, there is no claim for punitive damages. (*See* R. at 116, Order Denying
19 Plaintiff's Motion to Extend Pretrial Deadlines And To Amend Complaint To Seek Punitive
20 Damages). Additionally, Sunstone's financials play no role in its standard of care at issue in this
21 action for alleged negligence. As such Sunstone's wealth is not relevant to any issue in this
22 case. Moreover, the potential distracting nature Sunstone's financial status may interject
23 substantially outweighs any potential probative value this evidence may possess. *See Geddes*,
24 559 F.2d at 560; *Fed. R. Evid.* 403.

1 Consequently, Sunstone requests this Court instruct Plaintiffs and Plaintiffs' counsel to
2 not make any reference to, or provide any evidence regarding, Sunstone's financial condition.

3 DATED this 5th day of December, 2005.
4

5 **KUNZ PLITT HYLAND**
6 **DEMLONG & KLEIFIELD**
7 A Professional Corporation

8 By s/Chad Baker
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13 COPY of the foregoing e-filed
14 this 5th day of December, 2005, with:

15 United States District Court
16 Clerk of the Court
17 401 West Washington
18 Phoenix, Arizona 85003

19 COPIES of the foregoing mailed
20 this 5th day of December, 2005, to:

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