

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 69802

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LAS VEGAS SANDS CORP., A NEVADA CORPORATION, AND
CHINA LTD., A CAYMAN ISLANDS CORPORATION, SHELDON
G. ADELSON, IN HIS INDIVIDUAL AND REPRESENTATIVE
CAPACITY; AND VENETIAN MACAU LTD., A MACAU
COPORATION

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE
HONORABLE DAVID B. BARKER, DISTRICT JUDGE

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

**APPENDIX TO ANSWER TO PETITION FOR WRIT OF
PROHIBITION OR MANDAMUS RE ORDERS DENYING
MOTION TO DISQUALIFY JUDGE ELIZABETH GONZALEZ
WITHOUT A HEARING**

James J. Pisanelli, Esq., Bar No. 4027

JJP@pisanellibice.com

Todd L. Bice, Esq., Bar No. 4534

TLB@pisanellibice.com

Debra L. Spinelli, Esq., Bar No. 9695

DLS@pisanellibice.com

Jordan T. Smith, Esq., Bar No. 12097

JTS@pisanellibice.com

PISANELLI BICE PLLC

400 South 7th Street, Suite 300

Las Vegas, Nevada 89101

Telephone: 702.214.2100

Facsimile: 702.214.2101

Attorneys for Real Party in Interest
Steven C. Jacobs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 3rd day of March 2016, I electronically filed and served a true and correct copy of the above and foregoing **APPENDIX TO ANSWER TO PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE ORDERS DENYING MOTION TO DISQUALIFY JUDGE ELIZABETH GONZALEZ WITHOUT A HEARING VOLUME IV OF IV** properly addressed to the following:

J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

J. Randall Jones, Esq.
Mark M. Jones, Esq.
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169

Steve Morris, Esq.
Rosa Solis-Rainey, Esq.
MORRIS LAW GROUP
300 South Fourth Street, Suite 900
Las Vegas, NV 89101

The Honorable David Barker
Eighth Judicial District court, Dept. XVIII
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

The Honorable Elizabeth Gonzalez
Eighth Judicial District court, Dept. XI
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Shannon Thomas
An employee of PISANELLI BICE PLLC

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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Clerk of Supreme Court

LAS VEGAS SANDS CORP., a Nevada
corporation, SANDS CHINA LTD., a Cayman
Islands corporation, and SHELDON G.
ADELSON, an individual,

Petitioners,

vs.

CLARK COUNTY DISTRICT COURT, THE
HONORABLE ELIZABETH GONZALEZ,
DISTRICT JUDGE, DEPT. 11,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Case Number:

District Court Case Number
A627691-B

**PETITION FOR WRIT OF
PROHIBITION OR
MANDAMUS RE TRIAL-
SETTING ORDER**

MORRIS LAW GROUP
Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
Ryan M. Lower, Bar No. 9108
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

HOLLAND & HART LLP
J. Stephen Peek, Bar No. 1758
Robert J. Cassity, Bar No. 9779
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Attorneys for Petitioners

KEMP, JONES & COULTHARD, LLP
J. Randall Jones, Bar No. 1927
Mark M. Jones, Bar No. 267
3800 Howard Hughes Pkwy, 17th Fl.
Las Vegas, Nevada 89169

RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in Nev. R. App. P. 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Petitioner Sands China Ltd. ("SCL") is a Cayman Islands corporation whose stock is publicly traded on the Stock Exchange of Hong Kong Limited. Petitioner Las Vegas Sands Corp. ("LVSC") is a publicly-traded Nevada corporation which owns the majority of Petitioner's stock.

MORRIS LAW GROUP

By: /s/ STEVE MORRIS

Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
Ryan M. Lower, Bar No. 9108
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

KEMP JONES & COULTHARD, LLP
J. Randall Jones, Bar No. 1927
Mark M. Jones, Bar No. 267
3800 Howard Hughes Pkwy., 17th Fl.
Las Vegas, NV 89169

HOLLAND & HART LLP
J. Stephen Peek, Bar No. 1758
Robert J. Cassity, Bar No. 9779
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Attorneys for Petitioners

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I. INTRODUCTION

Petitioners are regrettably forced to again seek this Court's intervention to prevent another arbitrary and legally baseless ruling, but this time on an issue that the district court agrees warrants immediate review—whether Rule 41(e)'s five-year rule was tolled by this Court's stay of all proceedings except those relating to personal jurisdiction.

On August 26, 2011, this Court issued an Order Granting Petition for Writ Mandamus filed by Sands China Limited ("SCL"), APP0001–4. The Order directed the district court "to revisit the issue of personal jurisdiction" over SCL "by holding an evidentiary hearing and issuing findings regarding general jurisdiction," while staying all aspects of the underlying action "except for matters relating to a determination of personal jurisdiction." *Id.* at APP0003. The district court did not complete the required hearing until nearly four years later, in May 2015. On May 28, 2015, the court issued an order erroneously asserting jurisdiction over SCL, which is the subject of a separate writ petition filed June 19, 2015 and accepted by this Court on June 22, 2015 (No. 68265). (On June 24, 2015, this Court set a briefing schedule on that petition and *sua sponte* stayed the district court's May 28 Order).

This Petition addresses two separate orders, entered on May 27, 2015 (APP0050–56) and June 12, 2015 (APP0171–176), in which the district court ordered this case to be tried on the merits beginning October 14, 2015—*less than four months from now*—even though all merits discovery was stayed for close to four years while the parties focused solely on the question of whether the court had personal jurisdiction over SCL. (On June 12, 2015, the district court denied Defendants' Objection to the Order Setting Civil Jury Trial and Motion to Vacate and Reset Trial Based on Tolling of Five-Year Rule, APP0169–170). The only reason the district court

offered for setting that date was its purported fear, blamed on this Court, that the "five-year rule" set forth in NRCP 41(e) might require dismissal of the action if the trial did not commence before the fifth anniversary of the filing of Plaintiff's initial complaint on October 20, 2010. The court persisted in that view even when Defendants moved to vacate the trial date, APP0118–129 because of clear authority from this Court holding that a judicial stay, such as the stay entered in accordance with this Court's August 2011 Order, tolls the five-year clock so that the five-year period will not expire until July 22, 2019. *Boren v. City of North Las Vegas*, 98 Nev. 5, 638 P.2d 404 (1982). Further, to avoid any doubt, Defendants stipulated on the record to an extension of the five-year rule.

Even then, the district court refused to alter the trial date. Despite recognizing that Defendants' analysis "appears to be an appropriate calculation," the district court was unwilling to rely on Defendants' stipulation or on this Court's decision in *Boren*. The court expressed concern that "the Nevada Supreme Court is not necessarily consistent in the way that they have historically made decisions" and worried about possible "quirks that the Nevada Supreme Court has found one way or another as to Rule 41(e)." The court said it "would love to have more clarification from them" and invited this Court to "make[] a recalculation or issue[] an order" clarifying the Rule.

Apart from being unnecessary, the district court's decision in its June 12, 2015 Order to adhere to the October trial date is manifestly unfair and unjust. The stay prevented Defendants from taking discovery on the merits until now. Defendants simply cannot begin and complete written discovery, take and defend depositions, comply with all the pre-trial filing requirements, *and* prepare for trial on the merits—in a complex multi-

national case in which Plaintiff seeks tens of millions of dollars—in less than four months. The compressed timeframe is particularly harsh given the far-reaching discovery allowed the Plaintiff by the district court over the almost four years it took to have the jurisdictional hearing this Court ordered when it entered the stay.

"This court has original jurisdiction to issue writs of prohibition and mandamus" and "also all writs necessary or proper to the complete exercise of its appellate jurisdiction." Nev. Const. Art. 6, § 4. Mandamus is the appropriate, and indeed the only, avenue available to Defendants to challenge the district court's unfairly prejudicial and entirely unnecessary trial date before they are forced to try taking discovery and preparing for a complex trial in a breakneck forced march. Moreover, this Petition presents a textbook case for this Court to exercise its supervisory power. The five-year rule was tolled by this Court's 2011 stay order; the district court set the October 2015 trial date because of its expressed concerns that this Court has been unclear about the five-year rule; and the district court has invited this Court to clarify the rules.

II. ISSUE PRESENTED BY THIS WRIT PETITION

Whether the district court (a) committed legal error by concluding that NRCP 41(e)'s five-year rule might not have been tolled during the stay ordered by this Court and (b) abused its discretion by setting an October 2015 trial date that is unfairly prejudicial to Defendants based on that legal error.

III. STATEMENT OF FACTS

A. Plaintiff's Claims.

Plaintiff Steven C. Jacobs was formerly the CEO of SCL, which operates gaming, hotel, and other business ventures in Macau through its

wholly-owned subsidiary, Venetian Macau Ltd. ("VML"). SCL's stock is publicly traded on the Hong Kong Stock Exchange. Las Vegas Sands Corporation ("LVSC") is SCL's majority shareholder.

Jacobs was terminated as SCL's CEO in July 2010. On October 20, 2010, he filed this lawsuit, claiming that LVSC had hired and then wrongfully terminated him. Jacobs asserted only one claim against SCL, alleging that it breached a contractual obligation by refusing to honor Jacobs' attempt to exercise options to purchase 2.5 million shares of SCL stock. The option agreement (which was offered to Jacobs in China) provides that it is governed by Hong Kong law.

In December 2010, SCL moved to dismiss on the ground that it does business exclusively outside the United States and thus is not subject to the jurisdiction of the Nevada courts. After the district court denied the motion, on the ground that SCL was somehow subject to general jurisdiction in Nevada, SCL sought an extraordinary writ in this Court.

On August 26, 2011, this Court issued its Order Granting the Petition for Mandamus. Order Granting Petition for Writ of Mandamus, APP0001-4. This Court directed the district court "to revisit the issue of personal jurisdiction" over SCL "by holding an evidentiary hearing and issuing findings regarding general jurisdiction," while staying all aspects of the underlying action "except for matters relating to a determination of personal jurisdiction." *Id.*, APP0003.¹

¹ On March 16, 2011, Plaintiff filed a First Amended Complaint adding defamation claims against Sheldon Adelson, the Chairman of both LVSC and SCL, based on comments Mr. Adelson made about Jacobs' claims in this lawsuit. The district court dismissed those claims on June 20, 2011; after the Court entered final judgment on its dismissal, Plaintiff appealed to this Court. This Court reversed and remanded the claims against Mr. Adelson for further proceedings on May 30, 2014.

B. The District Court Allows Plaintiff to Take Jurisdictional Discovery.

On remand, the district court granted Plaintiff's motion for what was supposed to be limited jurisdictional discovery. Order re Plaintiff's Motion to Conduct Jurisdictional Discovery, APP0005–10. In particular, the court allowed Plaintiff to depose four high-ranking officers of LVSC (Sheldon Adelson, Michael Leven, Robert Goldstein, and Kenneth Kay) and to seek 11 broad categories of documents purportedly relating to his jurisdictional claims. *Id.*, APP0006.

Plaintiff then took extensive discovery. In December 2011, Plaintiff issued 24 Requests for Production of Documents ("RFPs") to SCL and LVSC, supposedly based on the 11 categories of documents authorized by the district court. LVSC and SCL produced hundreds of thousands of pages of responsive documents. Plaintiff deposed all four of the LVSC executives he had selected on multiple days. Those depositions were accompanied by motion practice concerning the limits of the stay order this Court issued and whether Plaintiff's questioning was impermissibly straying into merits discovery.

While extensive, discovery was a one-way street. The district court's order authorized only Plaintiff to take jurisdictional discovery. The court refused to permit any Defendant to depose Plaintiff even on jurisdictional issues. On March 19, 2015, just before the jurisdictional hearing, the district court relented and decided that SCL could depose Plaintiff—but only on jurisdictional issues, not on the merits of his claims. By that time, however, the court had (among other things) prohibited SCL from presenting any evidence at the jurisdictional hearing as a sanction for SCL's decision to redact personal information from documents produced from Macau in compliance with Macau's data privacy laws. In light of that

restriction, SCL chose not to proceed with Plaintiff's jurisdictional deposition.

Notwithstanding the stay of the merits entered by this Court in August 2011, the district court permitted Plaintiff to file a Second and then a Third Amended Complaint to reinstate his defamation claim against Mr. Adelson. Plaintiff's Third Amended Complaint also greatly expanded Plaintiff's allegations against SCL, claiming that it conspired with or aided and abetted LVSC's alleged wrongful termination of Jacobs and asserting that SCL and LVSC are both responsible for Mr. Adelson's alleged defamation.²

C. The District Court's Scheduling Order.

The district court did not commence the hearing on jurisdiction until April 20, 2015. The hearing concluded on May 7, 2015. On May 22, 2015, the district court entered a Decision and Order finding that SCL was subject to personal jurisdiction in Nevada. The court entered an Amended Decision and Order on May 28, 2015, to address a motion by Plaintiff to correct the order, and to implement corrections the court had made in an electronic version of the Order, but that were lost "due to what the Court's IT staff described as 'operator error.'" SCL has petitioned this Court for a writ of mandamus or prohibition to overturn the district court's finding that it has personal jurisdiction over SCL.

On May 27, 2015, just days after the district court entered its original order on jurisdiction, the court entered an Order Setting Jury Trial

² On June 2, 2015, *after* the district court had scheduled the trial for October 2015, Plaintiff sought leave to file a Fourth Amended Complaint that would have added a new defendant (VML). The district court denied leave to add VML given the scheduled trial date in October 2015. It did, however, allow Plaintiff to file a Fourth Amended Complaint, which was filed on June 22, 2015, expanding his claims against SCL yet again.

stating that the case would be tried to a jury beginning October 14, 2015—then only four and a half months away. The order also includes a series of pre-trial deadlines in paragraphs labeled B through L. At that time, SCL's motion to dismiss the Third Amended Complaint remained pending, and LVSC had yet to answer the Third Amended Complaint. 5/27/15 Order Setting Civil Jury Trial, APP0050–56; 5/22/15 Decision & Order, APP0011–49; 5/28/15 Am. Decision & Order, APP0057–95. The district court recognized that issuing a compressed schedule for trial, before the pleadings were even complete, would leave little time for discovery. 5/28/15 Hrg. Tr. at 5–6, APP0100–101. It expressed its frustration that "while we have had a lot of discovery bumps in this case, *the orders from the Nevada Supreme Court have in large part created the issues we are facing here.*" *Id.* at 21:12–16, APP0116.

Defendants promptly objected to the Order Setting Trial Date and moved to vacate and reset the trial setting. Def's Obj. and Mot. to Vacate and Reset Trial Date, APP0118–129. Defendants demonstrated that the October 2015 trial date was unnecessary because under *Boren* the five-year rule of NRC 41(e) was tolled during the stay imposed by this Court in August 2011, a stay that ended up lasting nearly four years. Defendants also showed that the trial date was unreasonable, unfair and unjust because it did not give Defendants time to adequately prepare the case for trial, given the prior stay of all merits discovery. *Id.*

On June 12, 2015, the district court held a Supplemental Conference under Rule 16.1 to address Defendants' objection and motion. At the conference, the court "recognize[d]" that Defendants' analysis "appears to be an appropriate calculation." 6/12/15 Supp. 16.1 Tr. at 4:1–2, APP0182. Further, the court acknowledged this Court's published opinion

in *Boren* (which held that the five-year rule is tolled during the pendency of a judicial stay). *Id.* at 4:6–7, APP0182. In addition, Defendants offered to stipulate that the five-year clock had been tolled during the pendency of the stay (to address Plaintiff's concern that Defendants had not expressly stipulated to tolling of the five-year rule). *Id.* at 26:7–22, APP0204. The stipulation would have extended the five-year rule until July 22, 2019 (*id.* at 26:21, APP0204), and Defendants proposed that trial be postponed only until June 2016.

Nevertheless, the district court was still unsure about whether the five-year rule might ultimately be found to apply, because "the Nevada Supreme Court is not necessarily consistent in the way they have historically made decisions" and because of "quirks" it perceived in which "the Nevada Supreme Court has found one way or the other as to Rule 41(e)." 6/12/15 Supp. 16.1 Tr. at 4:4–9, APP0182. The only specific "quirk" the court identified was "that silly *Meduka* case" (*id.* at 2:22, APP0180), a reference to this Court's unpublished disposition in *Maduka v. Eighth Jud. Dist. Ct.*, No. 57299, 2011 WL 4378796 (Nev. 2011), which is discussed below. Further, the court cited Plaintiff's refusal to accept Defendants' stipulation to tolling during the Court-imposed stay (even though this Court's decision in *Boren* held that such tolling was established without a stipulation).

The district court suggested that defendants might "go up there" (to this Court) and that the Court "might give us a hard and fast rule." 6/12/15 Supp. 16.1 Tr. at 8:10–11, APP0186. For its part, the district court said that it "would love to have more clarification from them" and "would love to see a hard and fast rule" on NRCP 41(e). *Id.* at 8:11–12 & 20–21, APP0186. The court agreed that Defendants could take its statements as

an "invitation . . . to take this to the Supreme Court." *Id.* at 8:15–18, APP0186.

However, pending clarification from this Court, the district court decided "I can't be making a judgment call as to who's right or who's wrong" on the five-year rule. 6/12/15 Supp. 16.1 Tr. at 2:18–20, APP0180. Accordingly, the court stated that its "responsibility" was to complete the trial "before the earliest possible date" on which the five-year rule might expire. *Id.* at 2:17–18, APP0180. The court then entered an order that overruled Defendants' objection and denied their motion to vacate the trial date. Order Denying Defendants' Objection to the Order Setting Civil Jury Trial and Motion to Vacate and Reset Trial Based on Tolling of Five-Year Rule, APP0169–170.

That same day, the district court entered an order setting an aggressive pre-trial discovery schedule. 6/12/15 Business Court Scheduling Order and Amended Order Setting Civil Jury Trial, APP0171–178. That schedule required the parties to make initial Rule 16.1 Disclosures in only 5 days (by June 22) and expert disclosures in a month (by July 17). *Id.*, APP0171. The order also cuts off percipient discovery on August 7, 2015, giving the parties less than 2 months to complete discovery on the merits. *Id.*

As soon as the Court set a trial date, Plaintiff launched an aggressive discovery campaign. On May 29, 2015, Plaintiff served a Request for Production of Documents on LVSC, seeking nearly 70 categories of documents. On June 1, 2015, Plaintiff served a deposition notice on SCL for the deposition of SCL's Independent Director David Turnbull, which Plaintiff scheduled to be taken in Las Vegas on June 17, 2015. On June 3, Plaintiff filed a motion for expedited discovery, asking the

Court to compress the deadlines for document production and depositions provided for in the Nevada Rules of Civil Procedure, on the theory that Plaintiff needed expedited discovery in order to prepare for the October 2015 trial. Finally, on June 15, 2015, Plaintiff served fourteen interrogatories on SCL, along with a Request for Production of Documents seeking over 30 categories of documents.

Defendants objected to Plaintiff's motion for expedited discovery, which the district court denied without prejudice as premature. Defendants also objected to Plaintiff's attempt to take Mr. Turnbull's deposition in Nevada; the district court ultimately ruled that Mr. Turnbull was required to appear for deposition in Hawaii on five days' notice. On June 22, 2015, SCL filed a separate petition for a writ of mandamus on that issue.³ Meanwhile, LVSC served Requests for Production on Plaintiff seeking over 150 categories of documents.

IV. STATEMENT OF REASONS THE WRIT SHOULD ISSUE

Extraordinary relief may be awarded where there is no plain, speedy, and adequate legal remedy. NRS 34.170; NRS 34.330. A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion. NRS 34.160; *Int'l Game Tech. v. Second Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); *see also City of Sparks v. Second Jud. Dist. Ct.*, 112 Nev. 952, 954, 920 P.2d 1014, 1015 (1996) (a writ of mandamus will lie to control

³ In response to SCL's motion, this Court stayed the district court's order regarding Mr. Turnbull's deposition; in light of this Court's June 24 order staying its jurisdictional ruling, on June 25, 2015 the district court stayed all proceedings relating to SCL. The court declined, however, to stay the proceedings as to LVSC and Mr. Adelson.

a discretionary act where the district court's "discretion is abused or is exercised arbitrarily or capriciously").

The district court's decision setting a trial date for October 2015 was manifestly an abuse of discretion. Indeed, the district court refused to exercise any discretion or "mak[e] a judgment call" based on its erroneous misapprehension of the law. 6/12/15 Supp. 16.1 Tr. at 2:18–19, APP0180. The district court's error warrants this Court's immediate review.

The district court itself invited Defendants to seek such review, as it "would love to have more clarification" from this Court. *Id.* at 8:21, APP0186. Further, an extraordinary writ is the only way to correct the district court's error before Defendants are forced to attempt the impossible task of bringing this large, complex case to trial in less than four months, where the stay had prevented them from even beginning discovery until now. This Court should accept the district court's invitation, reaffirm *Boren* to give the court the clarification it claims to need, and vacate the district court's order.

A. The District Court's Order Rests on Legal Error, Not On Any Exercise Of Discretion.

The district court's trial-setting order is not only an abuse of discretion but an abdication of discretion, founded on a clear error of law. The court acknowledged that Defendants' analysis appeared "appropriate" yet expressly refused to "mak[e] a judgment call." *Id.* at 2:18–19, APP0180, 4:1–2, APP0182. Instead, the court insisted that its sole "responsibility" was to get this matter to trial on "the earliest possible time" at which Rule 41(e) might expire. *Id.* at 2:13–18, APP0180, 73:18–21, APP0251. The district court rationalized that it had no choice but to do so, asserting that this Court's "quirks" left the law unclear. *Id.* at 4:6–9, APP0182.

The district court's perception that "the Nevada Supreme Court is not necessarily consistent in the way that they have historically made decisions" on Rule 41(e) is unfounded. *Id.* at 4:4–6, APP0182. In *Boren*, this Court clearly "adopt[ed] the following rule: *Any period during which the parties are prevented from bringing an action to trial by reason of a stay order shall not be computed in determining the five-year period of Rule 41(e).*" 98 Nev. at 5, 638 P.2d at 405 (emphasis added). Indeed, the Court explained, "[f]or a court to prohibit the parties from going to trial and then to dismiss their action for failure to bring it to trial is so obviously unfair and unjust as to be unarguable." *Id.* 98 Nev. at 5–6, 638 P.2d at 405. This Court has since consistently reaffirmed and extended *Boren*. See *Baker v. Noback*, 112 Nev. 1106, 1110-12, 922 P.2d 1201, 1203-1204 (1996) (five-year clock does not run while medical malpractice claim is pending before a screening panel); *Rickard v. Montgomery Ward & Co., Inc.*, 120 Nev. 493, 498, 96 P.3d 743, 747 (2004) (automatic stay in bankruptcy "tolled the five-year period under NRCPC 41(e)").⁴

Plainly, the parties here were "prevented from bringing [this] action to trial" by reason of this Court's August 2011 stay order. That order "stay[ed] the underlying action" in all respects "except for matters relating to a determination of personal jurisdiction." Order Granting a Petition for Mandamus, APP0001–4. The stay was in effect for nearly four years, and under the "rule" this Court adopted in *Boren*, that period "shall not be

⁴ *Rickard* separately held that upon an erroneous dismissal under NRCPC 41(e), a plaintiff would have a "reasonable period of time" to bring the case to trial after remand. In *Carstarphen v. Milsner*, 270 P.3d 1251 (Nev. 2012), the Court held that plaintiffs in that situation would have three years from the date remittitur is filed in district court.

computed in determining the five-year period of Rule 41(e)." 98 Nev. at 5, 638 P.2d at 405.

Contrary to the district court's suggestion (6/10/15 Hrg. Tr. at 8:25–9:15, APP0137–138), *Boren* does not say that tolling due to a stay requires the *entire action* to be stayed. By its express terms, the rule in *Boren* does not require the entire action to be stayed; it is enough that the stay prevent the parties "from bringing an action to trial," and this Court's August 2011 stay of all issues other than jurisdiction indisputably did that. Thus, in *Baker*, this Court held that the five-year rule was tolled for the entire action as to *all* defendants (a medical malpractice case) while the claims against some defendants were before a screening panel, even though a portion of the action (*i.e.*, claims against the non-physician defendants) was not "stayed" by the screening panel.

The district court's reference to "that silly *Meduka* [sic] case" does not alter *Boren's* command. 6/12/15 Tr. Supp. 16.1 at 2:22, APP0180. For starters, *Maduka* is unpublished; thus, it is not only non-precedential but cannot be cited as legal authority. Nev. S. Ct. R. 123. Moreover, *Maduka* did not involve any court-imposed stay, and its facts are dramatically different from those presented here. *Maduka* involved a medical malpractice case where the parties agreed in open court to extend the five-year rule to a date certain. Due to a number of reassignments (one by Judge Gonzalez), trial did not take place by the stipulated date and the defendant moved to dismiss the case for failure to bring it to trial by the agreed upon date. *Maduka*, 2011 WL 4378796 at *3. The district court denied the motion, but this Court granted the doctor's writ and agreed that the in-court stipulation extended the five-year rule only for the limited period to which the parties agreed, and did not effect a permanent waiver

of the rule. *Id.* Notably, the Court did not find that the parties' stipulation was ineffective; it simply held that the stipulation had expired according to its plain terms.

Here, by contrast, no stipulation was even necessary because of this Court's rule in *Boren*, coupled with this Court's August 26, 2011 Order staying all issues other than personal jurisdiction. Moreover, Defendants *also* offered to stipulate, on the record *and* in writing, that the five-year rule had been tolled under this Court's decision in *Boren*. Thus, Defendants offered the district court a belt in addition to *Boren*'s suspenders. And, unlike the stipulation in *Maduka*, the stipulation offered by Defendants was in no danger of expiring. Defendants' calculations, which the district court acknowledged to be correct, showed that the stipulation would not expire until July 22, 2019. 6/10/15 Def's Objection to Order Setting Civil Jury Trial at 7:17–18, APP0124. Defendants proposed to postpone the trial date to June 2016, more than comfortably within the stipulated extension.

Plaintiff's unreasonable refusal to accept Defendants' stipulation (a telling confirmation that the October 2015 trial date would unfairly prejudice Defendants) is equally irrelevant. *Boren* does not require a plaintiff's consent for a stay to toll the five-year rule. Nor does Rule 41(e). Rule 41(e) is entitled "Want of Prosecution" and is designed to prevent cases from languishing in courts without prosecution so that defendants can expect some finality. This purpose has been confirmed by the Court's prior holding that "it is the plaintiff upon whom the duty rests to use diligence at every stage of the proceeding to expedite his case to a final determination." *Thran v. First Jud. Dist. Ct.*, 79 Nev. 176, 181, 380 P.2d 297, 300 (1963) (internal quotations omitted). The only parties that have a legal interest in invoking Rule 41(e) to dismiss a case for "want of

prosecution" are defendants, and the Defendants here stipulated to toll the five-year rule. Given that the five-year clock was already tolled by this Court's stay, and that Defendants further stipulated that the tolling occurred, the district court abused its discretion when it acquiesced to Plaintiff's self-serving demand to put the trial on "premium rush" and deny Defendants the time needed to conduct discovery and put on the adequate defense that is fundamental to due process.

B. The District Court Has Invited This Court To Exercise Its Supervisory Power And Clarify Rule 41(e)'s Application.

While the district court's manifest abuse of discretion is more than sufficient reason to enter the writ, mandamus relief is also appropriate so the Court may exercise its supervisory power over this case and over district courts in general. This Court issued the August 2011 stay order that prevented the parties from bringing the case to trial. The stay order was correct, and it was necessary to protect SCL's due process rights while the district court considered the threshold issue of jurisdiction. The district court's order used that stay as an excuse for setting a patently unreasonable trial date and denying Defendants the time needed to take and complete discovery and then put on an adequate defense. In this way, the district court's trial-setting order would twist this Court's stay order, which was designed to protect SCL's due process rights, and pervert it into a tool that deprives all three Defendants of due process.

More to the point, this Court adopted the rule regarding extending Rule 41(e) in *Boren*. The district court asserts that *Boren* is unclear because of the Court's unpublished decision in "that silly *M[a]duka* case" that the district court incorrectly thought undermines *Boren*. 6/12/15 Supp. 16.1 Tr. at 2:22, APP0180. Indeed, the district court *invited* this Court's review of her ruling on the five year rule in Rule 41(e), stating that

it "would love to have more clarification from them" and "would love to see a hard and fast rule" on NRCP 41(e). *Id.* at 8:11, 21, APP0186.

As the preceding section demonstrates, this Court has stated the "hard and fast rule" the district court seeks. The court merely found inconsistencies and "quirks" in the rule where there were none. The Court should accept the district court's invitation to again reaffirm *Boren* and eliminate all doubt.

C. This Court's Intervention Is Defendants' Only Available Remedy For The Unjust And Unreasonable October 2015 Trial Date, Which Allows Defendants Less Than Four Months To Take This Complex Case To Trial.

This Court adopted the tolling rule in *Boren* because it would be "so obviously unfair and unjust as to be unarguable" if a court were "to prohibit the parties from going to trial and then to dismiss their action for failure to bring it to trial." 98 Nev. at 5–6, 638 P.2d at 405. The district court's order imposes a trial schedule that is just as "obviously unfair and unjust": after Defendants were prevented from even preparing for trial for nearly four years, they will be forced to undergo a trial in less than four months.

The Court's stay order prevented Defendants from proceeding with discovery on the merits for nearly four years. The district court's trial-setting order, entered just days after the stay expired, requires Defendants to undertake the herculean task of trying to take and complete discovery, and then prepare their defense on dozens of merits issues in less than four months. Moreover, the district court also recently gave Plaintiff leave to file a third and then fourth amended complaint asserting new claims against SCL. Defendants have not even had the time permitted by the rules to complete and file their answers.

The district court's constricted discovery schedule—less than two months—is untenable. Discovery on jurisdiction alone consumed more than three years, and it required LVSC and SCL to produce hundreds of thousands of pages of documents, defend numerous depositions, file and defend against dozens of motions, and file three more writ petitions here (two of which were granted). Further, Defendants were precluded from deposing Plaintiff. The truncated discovery schedule is especially prejudicial to Mr. Adelson, who was only recently haled back into the case by Plaintiff's third amended complaint.

To compound the already unfair prejudice, while the stay prevented Defendants from taking discovery on the merits, it allowed Plaintiff to get a massive head start. The district court allowed Plaintiff to conduct much of his merits discovery in the guise of "jurisdictional" discovery, an unfair advantage illustrated by Plaintiff repeatedly amending his complaint (with the district court's leave) to assert new allegations on the merits even while all proceedings other than jurisdiction were supposed to be stayed. To make matters even worse, the court then allowed Plaintiff to cross-examine LVSC and SCL executives on merits issues at the evidentiary hearing that was supposed to be limited to jurisdiction. The district court's rationale was that Plaintiff's new specific jurisdiction theories—which he did not present to this Court before the stay, but instead unveiled during the stay—overlapped with the merits. The district court's allowance of such abuses (over repeated objections by SCL and LVSC) was contrary to this Court's August 2011 order staying the case on all issues other than general and transient jurisdiction (the only theories Plaintiff presented to this Court before the stay was entered).

The district court has denied Defendants' objection and is locked into its manifestly unfair course. Absent intervention by this Court, Defendants will soon be forced into a trial with nothing even close to due process, in a complex multi-national case with tens of millions of dollars at stake. Mandamus is Defendants' only adequate remedy.

D. The Case Should Be Reassigned.

The district court's unjust order setting an inherently prejudicial trial date is only the most recent in a long history of rulings, comments and other events that create an "objectively reasonable basis for questioning" the court's impartiality. *In re IBM*, 45 F.3d 641, 644 (2d Cir. 1995). Defendants have been forced to seek emergency writ relief from this Court on seven separate occasions, and this Court has granted three writs (with two petitions, plus this one, still pending). In previous Petitions, Defendants have asked the Court to have the case reassigned to a new judge, and they respectfully reiterate that request here.

V. CONCLUSION

Petitioners respectfully request that this Court grant the Petition and enter an order vacating the district court's May 27 and June 12, 2015 orders setting and then refusing to vacate the trial date currently scheduled for October 14, 2015.

MORRIS LAW GROUP

By: /s/ STEVE MORRIS
Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
Ryan M. Lower, Bar No. 9108
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

KEMP JONES & COULTHARD, LLP
J. Randall Jones, Bar No. 1927
Mark M. Jones, Bar No. 267
3800 Howard Hughes Pkwy., 17th Fl.
Las Vegas, NV 89169

HOLLAND & HART LLP
J. Stephen Peek, Bar No. 1758
Robert J. Cassity, Bar No. 9779
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Attorneys for Petitioners

CERTIFICATE OF COMPLIANCE

1. I hereby certify that I have read this **PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE TRIAL-SETTING ORDER**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

2. I also certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the typestyle requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Palatino 14 point font.

3. Finally, I certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Nev. R. App. P. 28(e), which requires every section of the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied is to be found.

MORRIS LAW GROUP

By: /s/ STEVE MORRIS

Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
Ryan M. Lower, Bar No. 9108
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

KEMP JONES & COULTHARD, LLP
J. Randall Jones, Bar No. 1927
Mark M. Jones, Bar No. 267
3800 Howard Hughes Pkwy., 17th Fl.
Las Vegas, NV 89169

HOLLAND & HART LLP
J. Stephen Peek, Bar No. 1758
Robert J. Cassity, Bar No. 9779
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Attorneys for Petitioners

VERIFICATION

1. I, Steve Morris, declare:
2. I am one of the attorneys, one of the Petitioners herein;
3. I verify that I have read the foregoing **PETITION FOR**

WRIT OF PROHIBITION OR MANDAMUS RE TRIAL-SETTING ORDER; that the same is true my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury of the laws of Nevada, that the foregoing is true and correct.

/s/ STEVE MORRIS
Steve Morris

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE TRIAL-SETTING ORDER** to be hand delivered, in a sealed envelope, on the date and to the addressee(s) shown below:

Judge Elizabeth Gonzalez
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent

James J. Pisanelli
Todd L. Bice
Debra Spinelli
Pisanelli Bice
PISANELLI BICE PLLC
400 South 7th Street
Las Vegas, NV 89101

Attorneys for Steven C. Jacobs, Real Party in Interest

DATED this 26th day of June, 2015.

By: /s/ PATRICIA FERRUGIA

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS	.	
	.	
Plaintiff	.	CASE NO. A-627691
	.	
vs.	.	
	.	DEPT. NO. XI
LAS VEGAS SANDS CORP., et al..	.	
	.	Transcript of
Defendants	.	Proceedings
.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON DEFENDANT ADELSON'S MOTION TO COMPEL

THURSDAY, SEPTEMBER 3, 2015

APPEARANCES:

FOR THE PLAINTIFF:	JAMES J. PISANELLI, ESQ.
	TODD BICE, ESQ.
	JORDAN T. SMITH, ESQ.

FOR THE DEFENDANTS:	J. STEPHEN PEEK, ESQ.
	MARK JONES, ESQ.
	RYAN LOWER, ESQ.

COURT RECORDER:	TRANSCRIPTION BY:
DEBRA WINN	FLORENCE HOYT
District Court	Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

1 LAS VEGAS, NEVADA, THURSDAY, SEPTEMBER 3, 2015, 8:33 A.M.

2 (Court was called to order)

3 THE COURT: Steven Jacobs versus Las Vegas Sands.

4 I heard a rumor that Justice Hardesty said it would
5 be nice if you would all get along. Apparently he wasn't
6 speaking to Mr. Dershowitz, from what I've heard. But since
7 Mr. Dershowitz doesn't usually appear in front of me, I'll
8 echo Justice Hardesty's comments and say it would be really
9 nice if as professionals we would all get along. I understand
10 that we all have very important issues that need to be raised
11 and handled, and I appreciate the aggressive nature that
12 they're litigated and I'm not offended by it. But if we could
13 please increase our level of professionalism to the extent
14 possible, I would really appreciate it.

15 Good morning. Mr. Pisanelli, if you could start off
16 with the identification, because we don't have Dulce, she's
17 still on vacation, and I'm trying to keep these clerks up to
18 date on who's here. And Jill's apparently not here, either.

19 MR. PISANELLI: Good morning, Your Honor. James
20 Pisanelli on behalf of Steven Jacobs.

21 MR. SMITH: Jordan Smith also on behalf of Steven
22 Jacobs.

23 MR. BICE: Todd Bice for Steven Jacobs, Your Honor.

24 MR. LOWER: Ryan Lower for Sheldon Adelson.

25 MR. MARK JONES: Your Honor, Mark Jones on behalf of

1 Sands China Limited.

2 MR. PEEK: And good morning, Your Honor. Stephen
3 Peek on behalf of Las Vegas Sands Corporation and Sands China
4 Limited.

5 THE COURT: Okay. You can be seated.

6 Mr. Bice, Mr. Pisanelli, although this is their
7 motion, I have a question before you start.

8 MR. BICE: Yes.

9 THE COURT: And this is more of a -- I've had other
10 cases where defamation has been an issue, and in some
11 defamation per se cases like you've alleged the issue is
12 nominal damages, and in some cases it's in addition to nominal
13 damages. So part of what I'm going to ask you to address, and
14 you don't have to say it now, I'm just making sure you
15 understand I'm going to look at this issue, is what you're
16 going to claim as damages as we get to the end of this case.

17 MR. BICE: Yes. It will not be a nominal amount,
18 Your Honor.

19 THE COURT: All right. So I'll let -- if I'll do
20 the argument, at least you'll be able to address that issue
21 hopefully succinctly.

22 MR. BICE: All right. Thank you, Your Honor.

23 THE COURT: Mr. Lower, you're up.

24 MR. LOWER: Thank you, Your Honor. And I appreciate
25 your comments about professionalism. And I haven't done a lot

1 in this case, but I hope to increase the professionalism in
2 the case.

3 THE COURT: I wasn't scolding you.

4 MR. LOWER: I know that, Your Honor.

5 THE COURT: I wasn't scolding anybody. I was just
6 passing on a rumor I heard.

7 MR. LOWER: Thank you, Your Honor.

8 Your Honor, I think you nailed what the issue is in
9 this case. You know, a lot of these discovery requests go to
10 the damages and what kind of damages they're seeking. Some of
11 these go to punitive damages, which, of course, you have to
12 prove malice, intent, and those things. We've also asked for
13 documents and also interrogatories on Mr. Jacobs's reputation.
14 One of the allegations in the complaint is that Mr. Adelson's
15 statement damaged his good reputation. We've asked for
16 documents and communications showing his good reputation. In
17 response Mr. Jacobs has said the absence of documents shows
18 his good reputation.

19 What we're after are the documents showing he has
20 actually a good reputation which is alleged I believe on
21 page 75 of their fourth amended complaint. Each of these
22 issues -- several of their responses are simply boilerplate
23 objections. They cite their entire 16.1 disclosures. And
24 we're just asking for the Bates numbers for the material facts
25 that are -- and this is something Mr. Bice and I spoke about

1 at our meet and confer -- the material facts that deal with
2 each of these issues and specifically NRCP 6, 12, and 31. And
3 those go to the good reputation, and also they go to the issue
4 of Mr. Adelson's defense that Mr. Jacobs baited him and
5 invited him to respond to his statements and that's why he
6 made the statement.

7 The other allegations go to his performance under
8 the employment contract, and we've asked for documents that
9 show that he actually performed under the agreement.

10 As far as the interrogatories, those go to --
11 Interrogatory Number 7, they go to the intent for Mr. Adelson
12 to harm plaintiff's reputation and any facts that he did in
13 fact harm the reputation.

14 Interrogatory Number 9 goes to damages, including
15 punitive damages which are not presumed and must be proven by
16 clear and convincing evidence.

17 And Interrogatories Number 11 and 12 also go to the
18 defense of him inviting Mr. Adelson to respond and as well as
19 anything establishing Jacobs -- that he actually has a good
20 reputation.

21 Unless you have anything else, Your Honor --

22 THE COURT: I don't have any more questions. Thank
23 you.

24 MR. LOWER: Thank you.

25 MR. BICE: Good morning, Your Honor.

1 THE COURT: Good morning.

2 MR. BICE: Let me deal with these sort of in turn.
3 During the 2.34 conference that I had with Mr. Lower my point
4 was I think very straightforward. On defamation claim when
5 you issue an interrogatory or request for production and you
6 say, provide all facts or all documents that you had a good
7 reputation, Your Honor, it's all the documents that came from
8 the company that Mr. Jacobs has that show that there was no
9 criticism whatsoever of Mr. Jacobs in his job performance and
10 the job that he was doing for the company. In fact, as you
11 know, as you have seen from some of the documents, the exact
12 opposite is true. There was considerable praise for Mr.
13 Jacobs until it came time to find an excuse to fire Mr.
14 Jacobs.

15 So our point on this is, Your Honor, if Mr. -- and
16 the way I guess I would look at this is if you had a
17 defamation claim where Mr. Adelson had said that Mr. Jacobs
18 abused his children, Mr. Adelson couldn't say, well, present
19 all proof that you don't abuse your children. The fact of the
20 matter is that there's no evidence that he ever abused his
21 children is the proof in and of itself. And the fact that --

22 THE COURT: You would agree, Mr. Bice, that there
23 can be affirmative proof of good reputation or, for your
24 example, that you don't abuse your children. There can be
25 affirmative proof of that.

1 MR. BICE: There can be affirmative proof of it, but
2 there doesn't have to be affirmative proof of it for a claim
3 to proceed on defamation per se.

4 THE COURT: I understand. Absolutely. I agree with
5 you. But if you're going to argue at trial that there is
6 affirmative proof of it and you're going to seek more than
7 nominal damages, one would anticipate that you would have some
8 evidence in addition to the three documents that you've
9 identified, which are -- and those only relate to
10 communications with third parties. Otherwise you've referred
11 to the enter NRCP 16.1 disclosure of documents.

12 MR. BICE: That is correct. Because the entire
13 production -- they said, all documents that support his
14 contention that he had a good reputation. And, by the way, it
15 is every one of those documents support that premise, because
16 there's a complete lack of any criticism of him in those
17 documents until, of course, they needed and excuse to try and
18 get rid of him. So asking us to say, well, you could only
19 identify certain of the documents that support your position,
20 that's not -- we are going to rely upon every one of those
21 documents to support the fact that this story was made up
22 after the fact by Mr. Adelson in order to smear Mr. Jacobs;
23 because there is no evidence while Mr. Jacobs was there that
24 he wasn't performing, that he wasn't doing a good job, and
25 that he wasn't in fact receiving praise by personnel inside

1 the company at that point in time. Again, that's on that
2 issue about his reputation.

3 Their position seems to be, well, that's not enough.
4 Well, the law actually says it is enough. And I disagree to
5 this -- is that what the Court is saying, you can't seek
6 nominal -- more than nominal damages without independent proof
7 of good reputation?

8 THE COURT: That's not what I'm saying.

9 MR. BICE: Okay. Well, then I misunderstood, and my
10 apologies there.

11 THE COURT: Evidence doesn't include necessarily
12 documents. You can also have witnesses testify as to his good
13 reputation. We have had witnesses testify --

14 MR. BICE: Correct.

15 THE COURT: -- related to that.

16 MR. BICE: Correct.

17 THE COURT: But it's incumbent upon you to identify
18 that in interrogatory responses.

19 MR. BICE: And again, Your Honor, I don't believe
20 that we have to even put forth third-party witnesses to
21 establish Mr. Jacobs's good reputation to get more than
22 nominal damages. When you have a personal injury-type claim
23 the witness can take the stand and explain, this is the injury
24 that I suffered and this --

25 THE COURT: Absolutely. But he has to disclose it

1 in his answers to interrogatories --

2 MR. BICE: That is correct.

3 THE COURT: -- before he can take the witness stand
4 and say that.

5 MR. BICE: That is correct.

6 MR. BICE: And we have. Mr. Jacobs has disclosed
7 his reputation was smeared by Mr. Adelson, that statement was
8 false. It's up to the jury on a defamation claim to decide
9 how much compensation should one be awarded for having had
10 their reputation smeared. And that's what we have said. Mr.
11 Jacobs has laid out Mr. Adelson knew these statements were
12 untruthful -- and, by the way, Mr. Adelson, of all people, of
13 all people in the world arguably, knows more about the harm of
14 defamation to someone's reputation than anybody, because he
15 has filed so many defamation lawsuits claiming that if anybody
16 even criticizes him it harms his reputation. So to hear
17 Sheldon Adelson suggest he doesn't understand how it is his
18 telling falsehoods to The Wall Street Journal about someone
19 harmed their reputation doesn't pass the legal test. Mr.
20 Jacobs has described what the false statement was. The law
21 says issuance of such a false statement damages are presumed.
22 And, by the way, the presumed damages are not limited to
23 nominal damages.

24 THE COURT: I understand. It's in the discretion of
25 the jury is the problem. But you have to give them some fact

1 basis on which to make their determination. And if that fact
2 basis is Mr. Jacobs sitting up there and saying, Mr. Adelson
3 damaged my reputation and as a result I can't do blah, blah,
4 blah, that might give the jury some basis. But you've got to
5 say that. All you've said so far is, "Due to Adelson's deep-
6 seated animosity he knew and intended these untruths would
7 harm my reputation."

8 MR. BICE: Which is true.

9 THE COURT: I'm not contesting your -- that it may
10 be true. The problem is if that's all you're going to say it
11 doesn't give the jury much framework. I assume that when Mr.
12 Jacobs sits on the witness stand he might say something more
13 than that.

14 MR. BICE: Well, and I think that's why we cite the
15 law, Your Honor, is --

16 THE COURT: I understand what you're saying.

17 MR. BICE: The time for an interrogatory isn't a
18 substitute for taking his deposition, and it isn't a
19 substitute for trial testimony. We've identified what those
20 material facts are, and those material facts are that Mr.
21 Adelson knew the statement was false, he intended it to harm
22 his reputation, and it did harm his reputation. And the law
23 actually says it is presumed that it harmed his reputation.
24 And it's up to the jury to decide how much compensation he is
25 due for that harming of his reputation. And the jury can make

1 that determination based upon knowing the fact, including the
2 fact that Mr. Adelson himself has made the claim of defamation
3 countless number of times for far less significant statements
4 and claimed it harmed his reputation. And Mr. Jacobs is
5 entitled to present that evidence to the jury and have the
6 jury determine whether or not it in fact -- he should be
7 compensated for what Mr. Adelson did.

8 THE COURT: Okay. Anything else, Mr. Bice?

9 MR. BICE: With respect to the documents, Your
10 Honor, again, if you ask us for a document production request
11 that says, please identify all documents that support your
12 particular contention, every document in this case supports
13 our contention. And we told Mr. -- we told counsel that, Your
14 Honor.

15 THE COURT: You think the shared services agreement
16 supports your position?

17 MR. BICE: Yes.

18 THE COURT: Why?

19 MR. BICE: Because there's not a single criticism in
20 any of the documents that he did not do his --

21 THE COURT: The shared services agreement has
22 nothing to do with Mr. Jacobs --

23 MR. BICE: I disagree with you. He signed that
24 document.

25 THE COURT: -- other than he signed it.

1 MR. BICE: He signed that document.

2 THE COURT: It doesn't specifically say he's going
3 to do anything one way or the other.

4 MR. BICE: Well, Your Honor, then I guess what I
5 would have to do is I would have to go and just eliminate the
6 few documents I suppose that are just like that, then.
7 Because to suggest to us when we can't get any responses out
8 of the defendants identifying documents --

9 THE COURT: That's a different issue that I will
10 deal with. Please don't call the pot -- be the pot calling
11 the kettle black.

12 MR. BICE: I agree with you on that. I've
13 asked them, and we'll address that. But my point is we
14 cannot identify every single document short of the entire
15 16.1 production that supports the proposition that Mr. Jacobs
16 was doing his job and doing it well and that there is an
17 absence of any criticism until it came time to find an excuse
18 to fire him and then not pay him what he was owed under the
19 contract. That is -- the problem is they are the ones who
20 don't have any criticism at that point in time, Your Honor.

21 THE COURT: Thank you.

22 MR. BICE: Thank you.

23 THE COURT: The motion is granted in part. With
24 respect to all of the interrogatories, since they cross-
25 reference and go back to them -- back to each other, the

1 response will be with more specificity than "See all of our
2 16.1 disclosures." Whether you do that by exclusion or
3 inclusion is not of any moment to me, but you can't say "all."

4 To the extent that you are relying upon attorney-
5 client privilege with respect to some of the responses you
6 need to provide a privilege log. If you can do that within
7 21 days, 20 days. How long? How long for a privilege log,
8 before I go to my next issue?

9 MR. BICE: We did not withhold anything on the basis
10 of privilege. I don't believe that there's anything to
11 identify in a privilege log.

12 THE COURT: Well, my guess is that you did given
13 some of the answers here, because you said to the extent there
14 were media contacts by attorneys that there was an attorney-
15 client privilege.

16 MR. BICE: Oh. Okay.

17 THE COURT: So one would anticipate you would do a
18 privilege log.

19 MR. BICE: Okay.

20 THE COURT: How long?

21 MR. BICE: Fifteen days.

22 THE COURT: I was going to give you 20.

23 MR. BICE: That's fine. In 20 days.

24 THE COURT: And the defendants do not at this point
25 have to establish the validity of their baiting defense for

1 you to respond to those interrogatories. So if you could
2 please respond to those. If I deal with that on motion
3 practice, I'm happy to deal with it on motion practice. But
4 to the extent --

5 MR. PEEK: Your Honor, could you repeat that last
6 one. I couldn't hear. I'm sorry.

7 THE COURT: To the extent that the defendants are
8 seeking information related to their affirmative defense of
9 baiting, is what I'm calling it, it has to be responded to. I
10 will be happy to hear a motion on that, but that's a
11 substantive motion, not a discovery motion.

12 MR. BICE: Well, Your Honor, I guess my point on
13 that was I asked them to tell me which were the -- which --

14 THE COURT: They don't have to tell you.

15 MR. BICE: Then how is -- then how do I know what to
16 respond to in terms of the baiting if you can't tell me --

17 THE COURT: Who are the third parties that your
18 client talked to about this Mr. Adelson's communications? Who
19 -- you know, there were so many media reports that Mr. Adelson
20 claims he felt that he was compelled to go out there and talk.
21 If all you're going to tell me is that the media reports were
22 all obtained by watching court proceedings and/or reading
23 court records and there were no other communications, that's
24 an appropriate answer. But I don't know that that's the case
25 given the answer you've currently given me.

1 MR. BICE: Well, I think what we did in the Florida
2 proceedings is we produced phone records --

3 THE COURT: Remember, I don't know what happened in
4 the Florida proceeding --

5 MR. BICE: I understand that.

6 THE COURT: -- except to the extent I was ordered to
7 do something about depositions by some Florida judge.

8 MR. BICE: No. I understand. I understand that,
9 Your Honor. But that's what I guess I'm a little confused
10 about is -- so the baiting defense is that he was baited into
11 defaming Mr. Jacobs in The Wall Street Journal. So the --

12 THE COURT: That's it.

13 MR. BICE: So the question I have is what is the
14 statement that baited him so that I can then respond to it.
15 That's the problem. I don't know -- that's why I asked Mr.
16 Lower was, if you'll tell me which statement you claim baited
17 Mr. Adelson then I know what --

18 THE COURT: I understand that's what you asked him.

19 MR. BICE: And I got a response of, well, we'll --

20 THE COURT: And I said he doesn't have to tell you
21 yet.

22 MR. BICE: -- get back to you on that. So can I
23 file a motion, then, on the merits and just say, since there
24 is no statement that baited him the Court can just dispose of
25 this defense?

1 THE COURT: You can --

2 MR. BICE: Thank you.

3 THE COURT: -- but at this point I've granted the
4 motion to compel. So one would hope you would answer to the
5 extent possible.

6 MR. BICE: So, again, Your Honor, and I'm really not
7 trying to be argumentative, I just -- what am I responding to?
8 I don't know what the -- I don't know what the alleged bait
9 was. That's why I asked the question.

10 THE COURT: Okay. Hold on a second. Let me go to
11 that interrogatory.

12 MR. BICE: Thank you.

13 THE COURT: "Identify all communications between any
14 media and/or media employee or representative and you, your
15 agents, and/or your lawyers concerning the claims you allege
16 in that case."

17 MR. BICE: Okay. And that goes to their defense of
18 baiting?

19 THE COURT: It does. I'm going to limit it to prior
20 to the statement that was made by Mr. Adelson.

21 MR. BICE: Okay.

22 THE COURT: But to the --

23 MR. BICE: I see. Okay. Now I --

24 THE COURT: Do you understand what I'm saying?

25 MR. BICE: I understand what you're now saying.

1 Okay. That's what I didn't understand before, is how was this
2 baiting. But I understand what you're saying. Obviously I
3 don't agree that there's a defense, but I understand what
4 you're saying.

5 THE COURT: Okay. Anything else --

6 MR. BICE: Thank you, Your Honor.

7 THE COURT: -- on this motion?

8 How are you doing today, guys? Have a nice day.

9 Enjoy --

10 For your information, while I am on vacation I have
11 asked Commissioner Bulla to handle any discovery disputes that
12 occur on your case, because I will be basically unavailable.
13 So either have no discovery disputes while I'm gone, or enjoy
14 visiting with Commissioner Bulla. I had thought of appointing
15 Judge Smith. I was told I couldn't do that.

16 MR. PEEK: Can you tell me when your vacation is,
17 Your Honor, again, so that I understand that period of time
18 where I --

19 MR. JIMMERSON: We are all looking for that, Your
20 Honor.

21 THE COURT: Yeah. I think everybody in the room is
22 looking for that. I will be leaving at the close of business
23 on September 18th and returning at begin of business on
24 October 12th. And cell phones don't work in the Amazon or on
25 the Galapagos, I understand. So have fun. Don't get in any

1 fights. Commissioner Bulla. You could have had Doug Smith.

2 MR. PEEK: I've --

3 MR. LOWER: Thank you, Your Honor.

4 MR. MARK JONES: If we don't see you, have a great
5 time, Your Honor. Thank you.

6 THE COURT: No. I see you guys next week. You'll
7 be back next week. We have another motion about your 30(b)(6)
8 witness next week. I just didn't want to do these two at the
9 same time. 'Bye.

10 MR. PEEK: See you next week, Your Honor.

11 THE PROCEEDINGS CONCLUDED AT 8:53 A.M.

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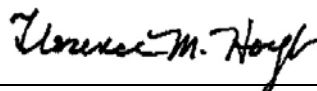
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD.,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
ELIZABETH GOFF GONZALEZ,
DISTRICT JUDGE,

Respondents,
and

STEVEN C. JACOBS,
Real Party in Interest.

No. 68265

FILED

NOV 04 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

SANDS CHINA LTD., A CAYMAN
ISLANDS CORPORATION,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
ELIZABETH GOFF GONZALEZ,
DISTRICT JUDGE,

Respondents,
and

STEVEN C. JACOBS,
Real Party in Interest.

No. 68275

LAS VEGAS SANDS CORP., A NEVADA
CORPORATION; SANDS CHINA LTD.,
A CAYMAN ISLANDS CORPORATION;
AND SHELDON G. ADELSON, AN
INDIVIDUAL,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE

No. 68309

ELIZABETH GOFF GONZALEZ,
DISTRICT JUDGE,
Respondents,
and
STEVEN C. JACOBS,
Real Party in Interest.

*ORDER GRANTING IN PART AND DENYING IN PART PETITION
FOR WRIT RELIEF (DOCKET NO. 68265), GRANTING PETITION FOR
WRIT RELIEF (DOCKET NO. 68275), AND DENYING PETITION FOR
WRIT RELIEF (DOCKET NO. 68309)*

These consolidated writ petitions challenge the following four orders: a May 28, 2015, order determining that petitioner Sands China is preliminarily subject to personal jurisdiction in Nevada and a March 6, 2015, order imposing discovery sanctions on Sands China (Docket No. 68265); a June 19, 2015, order denying Sands China's motion for a protective order (Docket No. 68275); and a June 12, 2015, order declining to vacate a trial date (Docket No. 68309). The petitions also request that the underlying matter be reassigned to a different district court judge.¹

Docket No. 68265

Personal jurisdiction order

"A writ of prohibition is available to arrest or remedy district court actions taken without or in excess of jurisdiction." *Viega GmbH v. Eighth Judicial Dist. Court*, 130 Nev., Adv. Op. 40, 328 P.3d 1152, 1156 (2014). "As no adequate and speedy legal remedy typically exists to

¹The Honorable James E. Wilson, Jr., District Judge in the First Judicial District Court, and the Honorable Steve L. Dobrescu, District Judge in the Seventh Judicial District Court, were designated by the Governor to sit in place of the Honorable Ron Parraguirre, Justice, and the Honorable Kristina Pickering, Justice, who voluntarily recused themselves from participation in the decision of this matter. Nev. Const. art. 6, § 4(2).

correct an invalid exercise of personal jurisdiction, a writ of prohibition is an appropriate method for challenging district court orders when it is alleged that the district court has exceeded its jurisdiction.” *Id.* “When reviewing a district court’s exercise of jurisdiction, we review legal issues de novo but defer to the district court’s findings of fact if they are supported by substantial evidence.” *Catholic Diocese, Green Bay v. John Doe 119*, 131 Nev., Adv. Op. 29, 349 P.3d 518, 520 (2015).

The district court determined that, under *Trump v. Eighth Judicial District Court*, 109 Nev. 687, 857 P.2d 740 (1993), real party in interest Steven Jacobs had made a preliminary showing of personal jurisdiction over Sands China based on general, transient, and specific jurisdiction theories.² Having considered the parties’ arguments and the record, we agree with the district court’s determination that Jacobs made a preliminary showing of specific jurisdiction,³ as the record supports the district court’s preliminary conclusion that Sands China purposefully availed itself of the privilege of acting in Nevada and that Jacobs’ claims arose from those actions. *Catholic Diocese*, 131 Nev., Adv. Op. 29, 349 P.3d at 520. We also agree with the district court’s rationale as to why it would be reasonable to require Sands China to appear in Nevada state court. *Id.*

²We reject Sands China’s suggestion that the district court’s May 2015 order precludes it from contesting personal jurisdiction at trial.

³We reject Sands China’s argument regarding the mandate rule, as this court’s August 26, 2011, order did not explicitly or impliedly preclude Jacobs from amending his complaint. *Nguyen v. United States*, 792 F.2d 1500, 1503 (9th Cir. 1986).

We conclude, however, that the district court's determinations regarding general and transient jurisdiction were based on an unsupported legal premise. In particular, the district court determined that Sands China was subject to general jurisdiction in Nevada because Sands China utilized the employees of its Nevada-based parent company, Las Vegas Sands Corporation, to conduct Sands China's business.⁴ We agree with Sands China's argument that Sands China, as Las Vegas Sands' subsidiary, lacked the legal authority to control the employees of its parent company. *Cf. Viega*, 130 Nev., Adv. Op. 40, 328 P.3d at 1158 (recognizing that "an agency relationship is formed when one person has the right to control the performance of another" and observing that, in the parent/subsidiary corporate relationship, it is the parent corporation that has varying degrees of control over the subsidiary). Consequently, we agree that the conduct of Las Vegas Sands' employees could not be attributed to Sands China for general jurisdiction purposes.⁵

⁴We need not separately address the district court's transient jurisdiction analysis because that analysis largely tracked the district court's general jurisdiction analysis.

⁵In light of this conclusion, we need not address the subsequent issue of whether the Nevada contacts of Las Vegas Sands' employees, if attributed to Sands China, would have rendered Sands China "essentially at home" in Nevada. *See Daimler AG v. Bauman*, 571 U.S. ___, ___, ___ n.20, 134 S. Ct. 746, 761, 762 n.20 (2014) (observing that a general jurisdiction inquiry "calls for an appraisal of a [defendant's] activities in their entirety, nationwide and worldwide").

We therefore grant Sands China's writ petition in Docket No. 68265 insofar as it seeks to vacate the district court's determination that Sands China is subject to personal jurisdiction under general and transient jurisdiction theories. Accordingly, we direct the clerk of this court to issue a writ of prohibition instructing the district court to vacate from its May 28, 2015, order the determinations that Sands China is subject to personal jurisdiction under general and transient jurisdiction theories, and further instructing the district court to prohibit Steven Jacobs from introducing evidence at trial that pertains solely to those theories.⁶

Discovery sanctions order

As acknowledged by Jacobs at oral argument, the district court's May 28, 2015, order did not intend to prohibit Sands China from introducing evidence at trial regarding personal jurisdiction. Thus, Sands China's challenge to the portion of the district court's March 16, 2015, discovery sanctions order prohibiting Sands China from introducing evidence to that effect at the preliminary evidentiary hearing is denied as moot. As for the \$250,000 monetary sanction, we conclude that the district court exceeded its authority in awarding sanctions to the Sedona Conference. *See* RPC 6.1(e) (setting forth the permissible entities to which a monetary sanction may be made payable). Accordingly, we direct the clerk of this court to issue a writ of prohibition instructing the district court to vacate from its March 16, 2015, order the sanction that was made

⁶We vacate the stay imposed by our June 23, 2015, order.

payable to the Sedona Conference and to reallocate the total \$250,000 sanction in compliance with RPC 6.1(e).⁷

Docket No. 68275

Sands China challenges the district court's June 19, 2015, order in which it declined to vacate the deposition of Sands China's Independent Director and directed the deposition to be held in Hawaii. We conclude that our intervention is warranted because the district court lacked the authority to order the Independent Director, who is neither a party nor a corporate representative under NRCP 30(b)(6), to appear for a deposition in Hawaii. *See* NRCP 30(a)(1) (providing that the attendance of a nonparty deponent may be compelled by subpoena under NRCP 45); *see also* NRCP 45(c) (affording certain protections to nonparty deponents). Accordingly, we direct the clerk of this court to issue a writ of prohibition instructing the district court to vacate its June 19, 2015, order in which it directed Sands China's Independent Director to appear for a deposition in Hawaii.⁸

Docket No. 68309

Sands China, Las Vegas Sands Corporation, and Sheldon Adelson challenge the district court's June 12, 2015, order in which it declined to vacate an October 2015 trial date. The parties agree that this challenge is moot in light of this court's July 1, 2015, order in which it vacated the trial date pending resolution of this writ petition.

⁷We vacate the stay imposed by our April 2, 2015, order in Docket No. 67576.

⁸We vacate the stay imposed by our June 23 and July 1, 2015, orders.

Accordingly, we decline to further entertain this writ petition, other than to note that the stay imposed by this court's August 26, 2011, order served to toll NRCP 41(e)'s five-year time frame because that stay prevented the parties from bringing the action to trial while the stay was in place.⁹ *Boren v. City of N. Las Vegas*, 98 Nev. 5, 6, 638 P.2d 404, 404-05 (1982). Thus, the writ petition in Docket No. 68309 is denied.

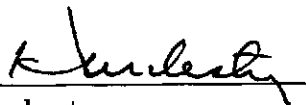
Request for reassignment

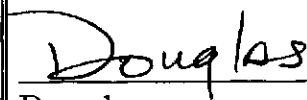
Sands China requests that this matter be reassigned to a different district court judge on the ground that the presiding district court judge harbors a bias against Sands China, Las Vegas Sands Corporation, and Sheldon Adelson. Because the district court's rulings and the district court's comment that Sands China has identified do not suggest bias, we deny the request. *See Millen v. Eighth Judicial Dist. Court*, 122 Nev. 1245, 1254-55, 148 P.3d 694, 701 (2006) (“[D]isqualification for personal bias requires an extreme showing of bias that would permit manipulation of the court and significantly impede the judicial process and the administration of justice.” (quotation and alteration omitted)). In any event, Sands China's request is procedurally improper because it did not submit in district court an affidavit and a certificate of counsel under NRS 1.235 or file a motion pursuant to NCJC Canon 2, Rule 2.11. *See Towbin Dodge, LLC v. Eighth Judicial Dist. Court*, 121 Nev. 251, 259-60, 112 P.3d 1063, 1068-69 (2005) (noting that “if


⁹It is unclear whether the district court entered its own stay order, as directed by this court in our August 2011 order, or if the district court and the parties simply treated our August 2011 order as the stay order. Regardless, we clarify that any tolling of NRCP 41(e)'s five-year time frame ended on May 28, 2015, the date when the district court entered its personal jurisdiction decision.

new grounds for a judge's disqualification are discovered after the time limits in NRS 1.235(1) have passed, then a party may file a motion to disqualify based on [current Rule 2.11] as soon as possible after becoming aware of the new information"); cf. *A Minor v. State*, 86 Nev. 691, 694, 476 P.2d 11, 13 (1970) (explaining in the context of an appeal that when a litigant fails to avail itself of the relief set forth under what is now NRS 1.235, the litigant has waived any right to seek disqualification).


It is so ORDERED.


_____, C.J.
Hardesty


_____, J.
Douglas


_____, J.
Saitta

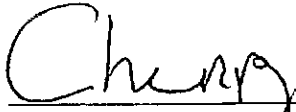

_____, D.J.
Wilson


_____, D.J.
Dobrescu

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Alan M. Dershowitz
Kemp, Jones & Coulthard, LLP
Holland & Hart LLP/Las Vegas
Morris Law Group
Pisanelli Bice, PLLC
Eighth District Court Clerk

CHERRY, J., and GIBBONS, J., concurring in part and dissenting in part:

We concur with the majority on all issues except for monetary sanctions. While we agree with the majority that the discovery sanctions the district court ordered payable to the Sedona Conference exceeded its jurisdiction, we would strike these sanctions and not order them to be reallocated. Further, we would defer the imposition of monetary sanctions until the conclusion of trial. In our view the better procedure would be to award monetary sanctions, if any, to the opposing party to offset costs and attorney fees.


_____, J.

Cherry


_____, J.

Gibbons

CLERK OF THE COURT

OPPS

James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com

Todd L. Bice, Esq., Bar No. 4534
TLB@pisanellibice.com

Debra L. Spinelli, Esq., Bar No. 9695
DLS@pisanellibice.com

Jordan T. Smith, Esq., Bar No. 12097
JTS@pisanellibice.com

PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: (702) 214-2100
Facsimile: (702) 214-2101

Attorneys for Plaintiff Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; SHELDON G. ADELSON, an individual; VENETIAN MACAU LTD., a Macau corporation; DOES I through X; and ROE CORPORATIONS I through X,

Defendants.

Case No.: A-10-627691

Dept. No.: XI

PLAINTIFF STEVEN C. JACOBS' OPPOSITION TO DEFENDANT SANDS CHINA LTD.'S MOTION TO COMPEL STEVEN JACOBS' RESPONSES TO SANDS CHINA LTD.'S INTERROGATORIES

Hearing Date: December 3, 2015

Hearing Time: 8:30 a.m.

AND RELATED CLAIMS

I. INTRODUCTION

With its revolving door of attorneys, Defendant Sands China Ltd. ("Sands China") apparently forgot (or was unaware) that its prior counsel served Plaintiff Steven C. Jacobs ("Jacobs") with 26 interrogatories. To circumvent the terms of NRCP 33(a) – because 120 interrogatories by these three defendants just won't do – Sands China asserts (with no authority from this Court or anywhere else) that interrogatories it served concerning Jacobs' electronically stored information ("ESI") do not count. Although these were interrogatories served pursuant to NRCP 33, Sands China claims that NRCP 33(a) really did not apply to them because the

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

1 interrogatories were served under the guise of being for "jurisdiction." But not only does
2 Sands China not have any authority for this position, even a cursory review of the First Set of
3 (reissued) Interrogatories demonstrates that they were directed at "merits" issues; namely, Jacobs'
4 ESI. Sands China cannot use its unfamiliarity with the procedural history of this case to obtain
5 more interrogatories with which to burden Jacobs.

6 Recognizing that it has no justification for its violation of NRCP 33(a), Sands China argues
7 that Jacobs' nonetheless waived its violation by responding to the first 14 interrogatories posed by
8 Sands China's Second Set. But Jacobs did not pick and choose which interrogatories to answer.
9 Rather, he answered them in the order presented by Sands China, just as Rule 33 provides.
10 Consequently, Jacobs has not waived any objection to the excessive number of interrogatories
11 propounded by Sands China. Jacobs fully and completely responded to the first 14 Interrogatories
12 in Sands China's Second Set and no supplementation is appropriate.

13 **II. STATEMENT OF FACTS**

14 Sands China served a First Set of 32 Interrogatories on October 24, 2011. (Ex. 1.) At a
15 November 22, 2011 status conference, the Court struck Sands China's requests in their entirety and
16 ordered Sands China to reissue requests that were more narrowly tailored because Sands China
17 claimed that it was entitled to issue them under the guise of "jurisdictional" discovery. (Order
18 Regarding Nov. 22 2011 Status Conference, p. 4, on file; Hr'g Tr. at 75:5-8, Nov. 22, 2011 on file.)
19 Subsequently, Sands China reissued 26 Interrogatories, many of which were identical or
20 substantially similar to many of the interrogatories that were included in the first set that was
21 stricken. (Ex. 2.) The "reissued" set of interrogatories were still directed at merits issues and a
22 planned "motion in limine" to exclude the documents that were in Jacobs' possession. (Hr'g Tr.
23 at 74:7-12, Nov. 22, 2011, on file.)

24 The Interrogatories were as follows:

25 **INTERROGATORY NO. 1:**

26 Did JACBOS download, transfer, and/or copy documents and/or computer
27 data files from his WORK COMPUTER to a PORTABLE HARD DRIVE on or
28 about July 23, 2010?

1 **INTERROGATORY NO. 2:**

2 Please describe in detail the reason(s) why JACOBS downloaded,
3 transferred and/or copied documents and/or computer data files from his WORK
4 COMPUTER to a PORTABLE HARD DRIVE on or about July 23, 2010.

5 **INTERROGATORY NO. 3:**

6 Please describe in detail the documents and/or computer data that JACOBS
7 downloaded, transferred and/or copied from his WORK COMPUTER to a
8 PORTABLE HARD DRIVE on or about July 23, 2010, including but not limited
9 to, the file types, nature of the documents, and the volume of data and documents
10 downloaded, transferred and/or copied.

11 **INTERROGATORY NO. 4:**

12 Did Jacobs perform an internet search on Google or any other search engine
13 on July 23, 2010 RELATING TO downloading Outlook files from JACOBS'
14 WORK COMPUTER?

15 **INTERROGATORY NO. 5:**

16 Please list each and every one of the SUBJECT DOCUMENTS that
17 JACOBS has viewed and/or reviewed since July 23, 2010.

18 **INTERROGATORY NO. 6:**

19 Please list each and every one of the SUBJECT DOCUMENTS that any
20 JACOBS' AGENT has viewed and/or reviewed since July 23, 2010, including but
21 not limited to attorneys working for JACOBS.

22 **INTERROGATORY NO. 7:**

23 Please state the name, address and telephone number of each and every
24 PERSON to whom YOU provided and/or disclosed the originals or copies of some
25 or all of the SUBJECT DOCUMENTS at any time since 8:00 a.m. (Macau time)
26 on July 23, 2010.

27 **INTERROGATORY NO. 8:**

28 For each and every PERSON identified in response to the prior
interrogatory, please set forth in detail each and every DOCUMENT and/or
computer data file provided and/or disclosed to said PERSON.

INTERROGATORY NO. 9:

Please state the name, address and telephone number of each and every
PERSON or entity that has viewed and/or reviewed some or all of the SUBJECT
DOCUMENTS, with YOUR permission or authority, at any time since 8:00 am
(Macau time) on July 23, 2010.

INTERROGATORY NO. 10:

For each and every PERSON identified in response to the prior
interrogatory, please set forth in detail each and every DOCUMENT and/or
computer data file viewed and/or reviewed by said PERSON.

INTERROGATORY NO. 11:

Please state the name, address and telephone number of each and every
PERSON or entity that has had access to and/or possessed some or all of the
SUBJECT DOCUMENTS, with YOUR permission, at any time since 8:00 a.m.
(Macau time) on July 23, 2010.

INTERROGATORY NO. 12:

For each and every PERSON identified in response to the prior
interrogatory, please set forth in detail each and every DOCUMENT and/or
computer data file to which said PERSON had access and/or possessed.

1 **INTERROGATORY NO. 13:**

2 For all WORK DUTY DOCUMENTS in YOUR possession as of July 24,
3 2010, please set forth each and every date when YOU scanned WORK DUTY
4 DOCUMENTS so as to create a PDF image of the DOCUMENT (Including
5 DOCUMENTS scanned both before and after July 24, 2010).

6 **INTERROGATORY NO. 14:**

7 For each and every date set forth in response to the preceding interrogatory,
8 please set forth in detail each and every DOCUMENT that you scanned.

9 **INTERROGATORY NO. 15:**

10 Please describe in detail all COMMUNICATIONS by and between YOU
11 and any PERSON, other than your attorneys, since July 23, 2010, RELATING TO
12 some or all of the SUBJECT DOCUMENTS.

13 **INTERROGATORY NO. 16:**

14 Please describe in detail all COMMUNICATIONS by and between YOU
15 and any officer, director, employee and/or representative of LVSC, SCL and/or
16 VML, at any time, RELATING TO YOUR intention, desire and/or right to retain
17 some or all of the SUBJECT DOCUMENTS following the termination of JACOBS'
18 employment on July 23, 2010.

19 **INTERROGATORY NO. 17:**

20 Please state the name of each and every officer, director, employee and/or
21 representative of LVSC, SCL and/or VML who told YOU that YOU may retain
22 some or all of the SUBJECT DOCUMENTS following the cessation of YOUR
23 employment.

24 **INTERROGATORY NO. 18:**

25 Please describe in detail all COMMUNICATIONS by and between YOU
26 and any officer, director, employee and/or representative of LVSC, SCL and/or
27 VML, on or before July 23, 2010, RELATING TO YOUR intention and/or right to
28 download, transfer and/or copy DOCUMENTS from YOUR WORK COMPUTER
29 on July 23, 2010.

30 **INTERROGATORY NO. 19:**

31 Please describe in detail all alterations, changes and/or modifications that
32 YOU have made to the metadata and/or computer data/files for any of the
33 SUBJECT DOCUMENTS, at any time since July 22, 2010.

34 **INTERROGATORY NO. 20:**

35 Please describe in detail all services performed by Quivx on YOUR behalf
36 RELATING TO the SUBJECT DOCUMENTS.

37 **INTERROGATORY NO. 21:**

38 Please state the name, address and telephone number of all PERSONS who
39 have, at any time since July 22, 2010, had possession of or access to the laptop
40 computer that JACOBS had with him on July 23, 2010, when he left Macau.

41 **INTERROGATORY NO. 22:**

42 Please state the name, address and phone number of all PERSONS who
43 have, at any time since July 22, 2010, had possession of or access to the thumb
44 drive and/or PORTABLE HARD DRIVE that JACOBS had with him on July 23,
45 2010, when he left Macau.

46 **INTERROGATORY NO. 23:**

47 Please describe in detail the form of the computer files and data comprising
48 the SUBJECT DOCUMENTS as they existed on July 24, 2010.

1 **INTERROGATORY NO. 24:**

2 Please describe in detail the current form of the computer files and data
3 comprising the SUBJECT DOCUMENTS as they currently exist.

4 **INTERROGATORY NO. 25:**

5 Please describe in detail every COMMUNICATION between JACOBS and
6 any officer, director, employee and/or agent of LVSC, SCL, and/or VML
7 RELATING TO VML's confidentiality policy.

8 **INTERROGATORY NO. 26:**

9 Please identify any DOCUMENTS that JACOBS currently possesses that
10 he obtained during the course of performing consulting services in connection with
11 the agreement between LVSC and Vagus Consulting Group, Inc. on or about
12 March 14, 2009.

13 (Ex. 2.)

14 Plainly, Sands China sought to burden Jacobs by issuing multiple interrogatories directed at
15 his possession of documents that had nothing to do with any jurisdictional issues. The fact that
16 Sands China chose to use up the number of interrogatories allowed by NRCP 33(a) on such an
17 exercise was a decision of its own making.

18 **III. DISCUSSION**

19 **A. Sands China Exceeded the Maximum Number of Allowable Interrogatories**

20 Nevada Rule of Civil Procedure 33(a) provides "[w]ithout leave of court or written
21 stipulation, any party may serve upon any other party written interrogatories, *not exceeding 40 in*
22 *number* including all discrete subparts" (emphasis added). A subpart is counted separately if
23 it is logically or factually distinct from the primary question or is otherwise not necessarily related
24 to the primary question. *Kendall v. GES Exposition Servs., Inc.*, 174 F.R.D. 684, 685 (D. Nev.
25 1997) (citing *Ginn v. Gemini Inc.*, 137 F.R.D. 320, 322 (D. Nev. 1991)).

26 [T]he best test of whether subsequent questions, within a single
27 interrogatory, are subsumed and related, is to examine whether the
28 first question is primary and subsequent questions are secondary to the
29 primary question. Or, can the subsequent question stand alone? Is it
30 independent of the first question? Genuine subparts should not be
31 counted as separate interrogatories. However, discrete or separate
32 questions should be counted as separate interrogatories,
33 notwithstanding they are joined by a conjunctive word and may be
34 related.

35 *Id.* at 685-86. If the first question can be answered fully and completely without answering the
36 second question, then the request counts as multiple interrogatories. *Id.* at 686. Likewise, if the

1 second question is totally independent from the primary question, then it should not count as a
2 subpart. *Id.*

3 Here, Sands China served 26 interrogatories in 2012 and its second set of interrogatories far
4 exceeds the 14 requests that it has remaining. There has been no stipulation or other order of the
5 Court allowing the parties to serve 40 "jurisdictional" interrogatories and an additional 40 "merits"
6 interrogatories. Even if there were such an order, it is clear that Sands China's first set of
7 interrogatories were focused on so-called "merits" issues and were not tied to "jurisdiction." As
8 detailed above, Sands China's first set of interrogatories were fixated on Jacobs' ESI. Sands China
9 reveals the fallacy of its argument by purporting to "reserve[] its right to dispute the sufficiency of
10 Jacobs' responses" to the jurisdictional interrogatories. (Mot. at 6 n.2.) In other words, Sands China
11 unilaterally attempts to grant itself the ability to compel responses to at least 65 interrogatories
12 without even accounting for the subparts included in its requests. This far exceeds the numerical
13 limitation imposed by NRCP 33 and is unduly burdensome and harassing. NRCP 26(b)(2).

14 In need of a fallback position, Sands China next argues that so-called Interrogatories 4
15 and 12 do not constitute multiple interrogatories. Sands China is mistaken. Interrogatory "4" states:

16 Provide a list of each and every company, public or private, for which
17 you played a role in managing or overseeing the restructuring of the
18 financial and/or operational aspects of said company. Please identify
the person to which you reported to at each company and your
immediate subordinate(s) at each company as well.

19 The second part of the question asking about the identity of supervisors or subordinates is
20 wholly independent from the first portion of the question about the names of the companies for
21 whom Jacobs worked. The first and second requests can be answered completely independently of
22 each other. Thus, this request counts as two interrogatories.

23 Interrogatory "12" is even worse. It demands that Jacobs "describe when [he] first became
24 aware of the [five separate] alleged improprieties [alleged in Paragraph 31(a)-(e) of Jacobs' Fourth
25 Amended Complaint] and what, if anything, [he] did to alert anyone either within LVSC or SCL,
26 or outside the companies of these alleged improprieties." Unsurprisingly, Sands China does not
27 disclose the subjects of each of the five improprieties discussed in Paragraph 31 of the Fourth
28 Amended Complaint. Paragraph 31 states:

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31. But a greater impediment concerned the unlawful and/or unethical business practices put in place by Adelson and/or under his watch, as well as repeated outrageous demands Adelson made to pursue illegal and illegitimate ends. The demands included, but were not limited to:

- a. Demands that Jacobs use improper "leverage" against senior government officials of Macau in order to obtain Strata-Title for the Four Seasons Apartments in Macau;
- b. Demands that Jacobs threaten to withhold Sands China business from prominent Chinese banks unless they agreed to use influence with newly-elected senior government officials of Macau in order to obtain Strata-Title for the Four Seasons Apartments and favorable treatment with regards to labor quotas and table limits;
- c. Demands that secret investigations be performed regarding the business and financial affairs of various high-ranking members of the Macau government so that any negative information obtained could be used to exert "leverage" in order to thwart government regulations/initiatives viewed as adverse to LVSC' s interests;
- d. Demands that Sands China continue to use the legal services of Macau attorney Leonel Alves despite concerns that Mr. Alves' retention posed serious risks under the criminal provisions of the United States code commonly known as the Foreign Corrupt Practices Act ("FCPA"); and
- e. Demands that Jacobs refrain from disclosing truthful and material information to the Board of Directors of Sands China so that it could decide if such information relating to material financial events, corporate governance, and corporate independence should be disclosed pursuant to regulations of the Hong Kong Stock Exchange. These issues included, but were not limited to, junkets and triads, government investigations, Leonel Alves and FCPA concerns, development issues concerning Parcels 3, 7 and 8, and the design, delays and cost overruns associated with the development of Parcels 5 and 6.

Subsections (a) through (e) are based upon distinct, unrelated sets of facts. The request purports to require Jacobs to provide (1) a date of discovery and (2) To whom he reported for each subsection of Paragraph 31. Both questions can be answered separately and independently for each of the subsections and they are not logically or factually tied together. As a consequence, Interrogatory "12" constitutes 10 separate interrogatories. However, Sands China's 40 allotted

1 interrogatories expired after Jacobs answered the two questions for subsection (a). *Superior*
2 *Communications v. Earhugger, Inc.*, 257 F.R.D. 215, 218 (C.D. Cal. 2009) (because interrogatories
3 included a number of discrete subparts, they were in excess of the number permitted.).

4 **B. Jacobs Did Not Waive His Numerical Objections**

5 Knowing that it has exceeded the permissible number of interrogatories, Sands China asserts
6 that Jacobs must answer the extra interrogatories anyway because he supposedly waived any
7 objection by answering the questions in order until reaching the 40th interrogatory. Sands China's
8 approach ignores that Rule 33(b)(1) requires a responding party to "answer to the extent the
9 interrogatory is not objectionable." (emphasis added).

10 "[C]ourts have found that . . . a party who has been propounded excessive discovery requests
11 had an obligation to respond to the 'first' [40] Interrogatories which constitute discrete questions,
12 and strike the rest." *Gautier v. Plains Bros. Pipeline, LP*, No. CIV.A. 12-1064, 2013 WL 1787559,
13 at *2 (E.D. La. Apr. 25, 2013) (citing *Lower River Marine, Inc. v. USL-497 Barge*,
14 2007 WL 4590095, at *2 (E.D. La. Dec. 21, 2007) (Roby, M.J.); *Paananen v. Cellco Partnership*,
15 2009 WL 3327227, at *5 (W.D. Wash. Oct. 8, 2009) ("The best rule . . . is that a responding party
16 must answer the first 25 interrogatories.")); *see also* 7 JAMES W. MOORE, MOORE'S FEDERAL
17 PRACTICE § 33.30 (3rd. ed. 1997) ("[T]he better rule is to require the responding party to answer
18 the first [40] interrogatories, and object to the remainder").

19 The logic behind this rule is most efficient whereas Sands China's approach "would
20 incentivize litigants to file protective orders in every case before responding to a single
21 interrogatory. While litigants argue over the number of discrete subparts in one interrogatory, the
22 entire discovery process could stall because the responding party will not respond to other
23 interrogatories for fear of waiving an objection." *Paananen*, 2009 WL 3327227, at *4.
24 Additionally, "a rule that a numerosity objection is waived after any interrogatory response fails to
25 account for situations where parties submit their interrogatories in multiple sets. If a responding
26 party answers an initial set of 15 interrogatories and is then served with 11 more, it would defy
27 logic to hold that that party has waived its objection to the numerosity of the new set." *Id.*

28

1 A party is only prohibited from "picking and choosing" which interrogatories to answer. *Id.*
2 Rule 33 does not allow a party to "selectively respond to the interrogatories and thereby
3 strategically omit the most prejudicial information." *Id.* (quoting *Herdlein Technologies, Inc. v.*
4 *Century Contractors, Inc.*, 147 F.R.D. 103, 104 (W.D.N.C. 1993)); 7 JAMES W. MOORE, MOORE'S
5 FEDERAL PRACTICE § 33.30 (3rd. ed. 1997) (noting that selecting interrogatories rather than
6 answering them in numerical order "would clearly be improper").

7 The principal case relied upon by Sands China – *Allavherdi v. Regents of the University of*
8 *New Mexico*, 228 F.R.D. 696, 698 (D. N.M. 2005) – has been roundly criticized as unsupported and
9 ignoring the plain language of Rule 33, which permits parties to object and then answer without
10 waiving the objection. *See Wilkinson v. Greater Dayton Reg'l Transit Auth.*, No. 3:11CV00247,
11 2012 WL 3527871, at *2 (S.D. Ohio Aug. 14, 2012) (explaining *Allavherdi* "contains no analysis
12 or caselaw supporting its conclusion that the responding party waived its numerical objection by
13 answering over it."); *Paananen*, 2009 WL 3327227, at *4 (rejecting *Allavherdi*). Other
14 commentators' interpretation of *Allavherdi* actually supports Jacobs. For example, Wright and
15 Miller cite *Allavherdi* for the proposition that a responding party cannot "*selectively*" answer or
16 "'pick and choose' the questions it wanted to answer." WRIGHT & MILLER, 8B FED. PRAC. & PROC.
17 CIV. § 2168.1 (3d ed.).

18 In this case, Jacobs answered the first 40 interrogatories between Sands China's first two
19 sets. Once Jacobs reached the maximum number of interrogatories, including all discrete subparts,
20 Jacobs lodged his objection to the remainder. This is the precise process provided by Rule 33.

21 C. Jacobs' Responses are Proper.

22 For a couple of interrogatories, Sands China also seeks to compel what it claims are better
23 answers. But what it again seeks to do is quarrel with Jacobs' responses because the testimony from
24 Sands China's own agents confirm Jacobs' position. To begin with, "Interrogatories should not
25 require the answering party to provide a narrative account of its case. Interrogatories may, however,
26 properly ask for the 'principal or material' facts that support an allegation or defense." *Williams v.*
27 *Sprint/United Mgmt. Co.*, 235 F.R.D. 494, 502 (D. Kan. 2006) (footnotes omitted). The purpose of
28 an interrogatories is not "to ascertain what arguments the opposing party intends to use in support

1 of his contentions." *United States v. Maryland & Virginia Milk Producers Ass'n*, 22 F.R.D. 300,
2 302 (D. D.C 1958). Additional detail and follow up can be done through other discovery devices,
3 such as depositions. *IBP, Inc. v. Mercantile Bank of Topeka*, 179 F.R.D. 316, 321 (D. Kan. 1998).

4 Jacobs provided detailed responses and explanations to Sands China's Interrogatories "6,"
5 "7," "8", "9" and "11." Sands China's 6th Interrogatory asked if Jacobs contends that he was
6 "simultaneously working for LVSC and either or both SCL and VML at any point in time." Jacobs
7 explained, amongst other things, that his "Employment Agreement is with LVSC" but "[i]f
8 rendering services or performing a role for an entity pursuant to the terms of [his] Employment
9 Agreement means that [he was] technically an 'employee' then [he] likely was an 'employee of
10 LVSC, VML and SCL, in addition to other LVSC entities." Sands China criticizes Jacobs' use of
11 the word "employee" but "employee" is consistent with "working" for an entity as used in the
12 Interrogatory. The phrase "rendering services or performing a role" is likewise consistent with
13 "working" for an entity. Sands China's complaints are its typical wordsmithing because the truthful
14 answer contradicts its manufactured defense of this case.

15 The same is true of Interrogatory "7" which asks Jacobs to state the entities that Jacobs
16 simultaneously worked for as referenced in Interrogatory "6." Jacobs referred Sands China to his
17 earlier answer which specifically identifies "LVSC, VML and SCL, in addition to other LVSC
18 entities." This response squarely addresses Sands China's 7th Interrogatory.

19 Interrogatories "8" and "9" inquire about whether Jacobs received any compensation,
20 non-stock option related employment benefits including, but not limited to, health insurance from
21 LVSC. Jacobs' answers to each Interrogatory begins with an unequivocal "Yes." As a result, it is
22 wholly disingenuous for Sands China to claim that Jacobs did not answer these questions.
23 Sands China just doesn't like the explanation provided by Jacobs after responding affirmatively.

24 Lastly, Sands China attempts to rewrite Interrogatory "11" to make it appear as though
25 Jacobs' answer is nonresponsive. Contrary to its characterization that the Interrogatory just "asks
26 Jacobs 'how' Mr. Adelson" prevented Jacobs from disclosing information, (Mot. at 14:1-2),
27 Sands China actually asked Jacobs to "explain" Adelson's refusal to allow Jacobs to disclose this
28 information. Jacobs' response explains what he was prevented from disclosing and how he was

1 prevented from disclosing it. Specifically, Jacobs mentions that Adelson "was the sole arbitrator of
2 the agenda and the topics to be shared and discussed with the Board." Jacobs highlights that
3 Adelson thought that his position as majority shareholder gave him "ultimate say over what the
4 Board of Directors did, considered and voted upon." Adelson also claimed "that as Chairman and
5 the controlling shareholder it was up to him to determine what the Board needed to know."¹ Finally,
6 Jacobs responded that he "was terminated shortly before a July 2010 SCL Board of Directors
7 meeting to prevent [him] from raising [his] concerns about Adelson's conduct." This response
8 squarely meets the actually Interrogatory.

9 **IV. CONCLUSION**

10 Defendants' attempt to excessively burden Jacobs with repetitive interrogatories provides
11 no basis for Sands China's violation of NRCP 33(a). Jacobs properly responded to the first
12 40 Interrogatories served by Sands China and properly objected to the excessive interrogatories that
13 were propounded. Jacobs did not waive his numerical objections by responding in order to the
14 permissible interrogatories that were served. Sands China's Motion is wrong on the law and the
15 facts.

16 DATED this 13th day of November, 2015.

17 PISANELLI BICE PLLC

18 By: /s/ Todd L. Bice

19 James J. Pisanelli, Esq., Bar No. 4027
20 Todd L. Bice, Esq., Bar No. 4534
21 Debra L. Spinelli, Esq., Bar No. 9695
22 Jordan T. Smith, Esq., Bar No. 12097
23 400 South 7th Street, Suite 300
24 Las Vegas, Nevada 89101

25 Attorneys for Plaintiff Steven C. Jacobs

26 _____
27 ¹ To begin with, as this Court heard first hand at the jurisdictional evidentiary hearing,
28 Adelson's spokesman, Ron Reese, confirmed Adelson's attitude and extraordinary control over all
things Sands. As Reese told this Court, no one is confused about Adelson's total control and if they
become confused, they are quickly dissuaded and educated otherwise.

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 13th day of November, 2015, I caused to be served via the Court's E-Filing system true and correct copies of the above and foregoing **PLAINTIFF STEVEN C. JACOBS' OPPOSITION TO DEFENDANT SANDS CHINA LTD.'S MOTION TO COMPEL STEVEN JACOBS' RESPONSES TO SANDS CHINA LTD.'S INTERROGATORIES** to the following:

J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
HOLLAND & HART
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134
speek@hollandhart.com
rcassity@hollandhart.com

Michael E. Lackey, Jr., Esq.
MAYER BROWN LLP
1999 K Street, N.W.
Washington, DC 20006
mlackey@mayerbrown.com

Steve Morris, Esq.
Rosa Solis-Rainey, Esq.
MORRIS LAW GROUP
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101
sm@morrislawgroup.com
rsr@morrislawgroup.com

J. Randall Jones, Esq.
Mark M. Jones, Esq.
KEMP, JONES & COULTHARD
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
r.jones@kempjones.com
m.jones@kempjones.com

James Ferguson, Esq.
MAYER BROWN LLP
71 S. Wacker Drive
Chicago, IL 60606
jferguson@mayerbrown.com

Daniel R. McNutt, Esq.
Matthew C. Wolf, Esq.
CARBAJAL & MCNUTT, LLP
625 South Eighth Street
Las Vegas, NV 89101
drm@cmlawnv.com
mcw@cmlawnv.com

/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC

EXHIBIT 1

INTG

1 Patricia Glaser, Esq. (Pro Hac Vice Admitted)
2 Stephen Ma, Esq. (Pro Hac Vice Admitted)
3 Andrew D. Sedlock, Esq. (NBN 9183)
4 GLASER WEIL FINK JACOBS
5 HOWARD AVCHEN & SHAPIRO LLP
6 3763 Howard Hughes Parkway, Suite 300
7 Las Vegas, Nevada 89169
8 Telephone: (702) 650-7900
9 Facsimile: (702) 650-7950
10 E-mail:
11 pglaser@glaserweil.com
12 sma@glaserweil.com
13 asedlock@glaserweil.com

14 *Attorneys for Sands China, Ltd.*

15 DISTRICT COURT
16 CLARK COUNTY NEVADA

17 STEVEN C. JACOBS,

18 Plaintiff,

19 v.

20 LAS VEGAS SANDS CORP., a Nevada
21 corporation; SANDS CHINA LTD., a Cayman
22 Islands corporation; DOES I-X; and ROE
23 CORPORATIONS I-X,

24 Defendants.

CASE NO.: A627691-B
DEPT NO.: XI

**DEFENDANT SANDS CHINA LTD.'S
FIRST SET OF INTERROGATORIES TO
PLAINTIFF STEVEN C. JACOBS**

25 LAS VEGAS SANDS CORP., a Nevada
26 corporation,

27 Counterclaimant,

28 v.

STEVEN C. JACOBS,

Counterdefendant.

TO: STEVEN C. JACOBS.

TO: JAMES J. PISANELLI, ESQ., OF PISANELLI BICE, Plaintiff's attorneys of record.

Pursuant to NRCP 26 and 33, Defendant Sands China Ltd. ("SCL" or "Defendant") hereby requests that Plaintiff Steven C. Jacobs ("JACOBS" or "Plaintiff") respond to the following

Glaser Weil Fink Jacobs
Howard Avchen · Shapiro

1 Interrogatories (the "Interrogatories") described in Section II. The responses are to be sent to the
2 law offices of Glaser, Weil, Fink, Jacobs, Howard, Avchen & Shapiro, LLP, 3763 Howard Hughes
3 Parkway, Suite 300, Las Vegas, Nevada 89169, not later than thirty (30) days from the date of
4 service of this request.

5 **SECTION I**

6 **DEFINITIONS**

7 For purposes of these Interrogatories, the following terms shall have the following meanings:

8 I. As used herein, the terms "or," "and," and "and/or" shall be interpreted both
9 conjunctively and disjunctively, so as to be inclusive rather than exclusive, and each term shall
10 include the other whenever such construction will serve to bring within the scope of a request
11 documents, information or tangible things which would not otherwise be within its scope, and these
12 terms shall not be interpreted to exclude any information, documents or tangible things otherwise
13 within the scope of a request.

14 2. The present tense of any verb shall include the past tense, and vice versa, whenever
15 such construction will serve to bring within the scope of a request documents, information or
16 tangible things which would not otherwise be within its scope.

17 3. The singular noun form shall include the plural, and vice versa, whenever such
18 construction will serve to bring within the scope of a request documents, information or tangible
19 things which would not otherwise be within its scope.

20 4. As used herein, the term "JACOBS" shall mean, and be defined as, Plaintiff Steven
21 C. Jacobs.

22 5. "JACOBS AGENT" means any PERSON acting under the direction, supervision, or
23 control of JACOBS.

24 6. As used herein, the terms "PERSON" and "PERSONS" shall mean, and be defined
25 as, all individuals, natural persons, entities, partnerships, corporations, business entities, joint
26 ventures, firms, associations, organizations, enterprises, institutions, trusts, estates, government
27 agencies, quasi-government agencies, regulatory agencies, foundations, committees, attorneys, law
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1 firms, health care providers, and all other legally recognized entities of any type, nature or
2 description.

3 7. As used herein, the terms "YOU," "YOUR" and "YOURS" shall mean, and be
4 defined as, JACOBS, and his agents, employees, representatives, and attorneys, and all PERSONS
5 acting on behalf of JACOBS and/or pursuant to JACOBS' direction or instruction.

6 8. As used herein, the term "SCL" shall mean, and be defined as, Sands China Ltd.

7 9. As used herein, the term "VML" shall mean, and be defined as, Venetian Macau
8 Limited.

9 10. As used herein, the term "LVSC" shall mean, and be defined as, Las Vegas Sands
10 Corp.

11 11. As used herein, the terms "RELATE TO" and "RELATING TO" shall mean, and be
12 defined as, to constitute, or to directly or indirectly refer to, pertain to, allude to, mention, address,
13 reflect, concern, describe, identify, embody, involve, evidence, comprise, discuss, show,
14 demonstrate, analyze, edify, deal with, or have some logical or factual connection to the referenced
15 subject matter.

16 12. As used herein, the terms "DOCUMENT" and "DOCUMENTS" shall mean, and be
17 defined as, all "originals" and "duplicates" of all "writings," "recordings," and "photographs," as
18 those terms are defined in Section 1001 of the Federal Rules of Evidence, and include without
19 limitation all written, printed, typed, photostatic, photographed, recorded, telecopied, photocopied,
20 or graphic materials of any kind, whether comprised of letters, words, numbers, pictures, sounds,
21 symbols, electronic data/recording, computer data/files/code, or any combination thereof. Without
22 limiting the foregoing, the terms "DOCUMENT" and "DOCUMENTS" include all writings, papers,
23 agreements, contracts, correspondence, letters, facsimile transmissions, memoranda, reports, notes,
24 telegrams, telex, envelopes, statements, studies, publications, records, messages, books, pamphlets,
25 leaflets, inter-office and intra-office communications, notebooks, instruments, transcripts, minutes,
26 agendas, indexes, cards, diaries, drafts, revisions, photocopies, calendars, appointment records,
27 disclosures, questionnaires, histories, chronologies, time-lines, medical records and reports, health
28 care records and reports, mental health records and reports, notices, investigation reports and

1 materials, declarations, accountings, evaluations, summaries, valuations, audits, verifications,
2 inventories, appraisals, studies, endorsements, powers of attorney, account statements, receipts,
3 invoices, financial statements, balance sheets, ledgers, books, income statements, expense reports,
4 bills, billing records, checks, canceled checks, check stubs, bank records, bank deposits and
5 withdrawals, wire transfer and receipt records, accounts receivable, accounts payable, tax records,
6 safe deposit records, telephone bills and records, microfilm, electronic mail, microfiches, computer
7 indices, computer printouts, records stored by means of computer or other electronic means,
8 computer files and data, contents of computer hard discs, contents of computer backup tapes and
9 discs, photographs, videotapes, films, motion pictures, video discs, audio recordings and cassettes,
10 transcriptions, drawings, surveys, plans, blueprints, specifications, charts, graphics, notes of oral or
11 telephone communications, other written transfers of information, and other data compilations. The
12 term "other data compilations" includes information stored in, or accessible through, computer or
13 other information retrieval systems, whether or not in hard copy form, together with instructions and
14 all other materials necessary to use or interpret such data compilations. If more than one copy of
15 any DOCUMENT exists, and if as a result of handwritten additions and notations, or for any other
16 reason, the copies are not identical, each non-identical copy is a separate DOCUMENT and should
17 be separately identified. Without limiting the foregoing, the terms "DOCUMENT" and
18 "DOCUMENTS" include all originals (or copies if the original is unavailable), non-identical copies,
19 drafts and revisions.

20 13. As used herein, the term "COMMUNICATIONS" shall mean, and be defined as, all
21 of the following: written communications, verbal communications, electronic communications,
22 computer communications, correspondence, notes, reports, memoranda, facsimile, electronic mail
23 (including distribution lists and acknowledgments of receipt), computer messaging, telex, telegrams,
24 wire communications, inter-office and intra-office communications, handwritten communications,
25 tape-recorded communications, filed/videotaped communications, phone messages and recordings,
26 voice mail, communications via pager, and all other forms of communications.

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1 14. As used herein, the term "PORTABLE HARD DRIVE" shall mean, and be defined
2 as, any computer hard drive, portable data storage device and/or other means of storing computer
3 data and files that is not located inside the case of a desk top computer.

4 15. As used herein, the term "WORK COMPUTER" shall mean, and be defined as, the
5 desk top computer that was in JACOBS' office in Macau as on July 22, 2010.

6 16. As used herein, the term "DOWNLOADED DOCUMENTS" shall mean, and be
7 defined as, all DOCUMENTS that JACOBS downloaded, transferred and/or copied from his
8 WORK COMPUTER to a PORTABLE HARD DRIVE on or about July 23, 2010, including but not
9 limited to computer data and files, and document images.

10 17. As used herein, the term "WORK DUTY DOCUMENTS" shall mean, and be
11 defined as, all DOCUMENTS that JACOBS acquired possession of during the course of his
12 employment and/or performance of services for the business entity that employed JACOBS as of
13 July 22, 2010 and that JACOBS had in his possession, custody or control as of July 24, 2010,
14 including but not limited to computer data and files, and document images.

15 18. As used herein, the term "REVIEW DOCUMENTS" shall mean, and be defined as,
16 all DOCUMENTS that JACOBS and/or his attorneys have, or will be, delivering to Advanced
17 Discovery (the parties' joint ESI vendor), including but not limited to computer data and files, and
18 document images.

19 19. As used herein, the term "SUBJECT DOCUMENTS" shall mean, and be defined as,
20 the DOWNLOADED DOCUMENTS, WORK DUTY DOCUMENTS and REVIEW
21 DOCUMENTS, collectively.

22 20. If the identification of any DOCUMENT called for by these interrogatories is
23 withheld under a claim of privilege, list each DOCUMENT together with the following information:
24 the date of the DOCUMENT, the name and job titles of the author and each recipient of the
25 DOCUMENT, the name and job title of all PERSONS to whom copies of the DOCUMENT were
26 furnished, the subject matter of the DOCUMENT, the grounds upon which the privilege is claimed,
27 and the number of the interrogatory to which the DOCUMENT is responsive.

28

1 about July 23, 2010, including but not limited to, the file types, nature of the documents, and the
2 volume of data and documents downloaded, transferred and/or copied.

3 **INTERROGATORY NO. 4:**

4 Did JACOBS perform an internet search on Google or any other search engine on July 23,
5 2010 RELATING TO downloading Outlook files from JACOBS' WORK COMPUTER?

6 **INTERROGATORY NO. 5:**

7 Please list each and every one of the SUBJECT DOCUMENTS that JACOBS has viewed
8 and/or reviewed since July 23, 2010.

9 **INTERROGATORY NO. 6:**

10 Please list each and every one of the SUBJECT DOCUMENTS that any JACOBS' AGENT
11 has viewed and/or reviewed since July 23, 2010, including but not limited to attorneys forking for
12 JACOBS.

13 **INTERROGATORY NO. 7:**

14 Please state the name, address and telephone number of each and every PERSON to whom
15 YOU provided and/or disclosed the originals or copies of some or all of the SUBJECT
16 DOCUMENTS at any time since 8:00 am (Macau time) on July 23, 2010.

17 **INTERROGATORY NO. 8:**

18 For each and every PERSON identified in response to the prior interrogatory, please set forth
19 in detail each and every DOCUMENT and/or computer data file provided and/or disclosed to said
20 PERSON.

21 **INTERROGATORY NO. 9:**

22 Please state the name, address and telephone number of each and every PERSON or entity
23 that has viewed and/or reviewed some or all of the SUBJECT DOCUMENTS, with YOUR
24 permission or authority, at any time since 8:00 am (Macau time) on July 23, 2010.

25 **INTERROGATORY NO. 10:**

26 For each and every PERSON identified in response to the prior interrogatory, please set forth
27 in detail each and every DOCUMENT and/or computer data file viewed and/or reviewed by said
28 PERSON.

1 **INTERROGATORY NO. 11:**

2 Please state the name, address and telephone number of each and every PERSON or entity
3 that has had access to and/or possessed some or all of the SUBJECT DOCUMENTS, with YOUR
4 permission, at any time since 8:00 am (Macau time) on July 23, 2010.

5 **INTERROGATORY NO. 12:**

6 For each and every PERSON identified in response to the prior interrogatory, please set forth
7 in detail each and every DOCUMENT and/or computer data file to which said PERSON had access
8 and/or possessed.

9 **INTERROGATORY NO. 13:**

10 For all WORK DUTY DOCUMENTS in YOUR possession as of July 24, 2010, please set
11 forth each and every date when YOU scanned WORK DUTY DOCUMENTS so as to create a PDF
12 image of the DOCUMENT (including DOCUMENTS scanned both before and after July 24, 2010).

13 **INTERROGATORY NO. 14:**

14 For each and every date set forth in response to the preceding interrogatory, please set forth
15 in detail each and every DOCUMENT that you scanned.

16 **INTERROGATORY NO. 15:**

17 Please describe in detail all COMMUNICATIONS by and between YOU and any PERSON,
18 other than your attorneys, since July 23, 2010, RELATING TO some or all of the SUBJECT
19 DOCUMENTS.

20 **INTERROGATORY NO. 16:**

21 Please describe in detail all COMMUNICATIONS by and between YOU and any officer,
22 director, employee and/or representative of LVSC, SCL and/or VML, at any time, RELATING TO
23 YOUR intention, desire and/or right to retain some or all of the SUBJECT DOCUMENTS
24 following the termination of JACOBS' employment on July 23, 2010.

25 **INTERROGATORY NO. 17:**

26 Please state the name of each and every officer, director, employee and/or representative of
27 LVSC, SCL and/or VML who told YOU that YOU may retain some or all of the SUBJECT
28 DOCUMENTS following the cessation of YOUR employment.

1 **INTERROGATORY NO. 18:**

2 Please describe in detail all COMMUNICATIONS by and between YOU and any officer,
3 director, employee and/or representative of LVSC, SCL and/or VML, on or before July 23, 2010,
4 RELATING TO YOUR intention and/or right to download, transfer and/or copy DOCUMENTS
5 from YOUR WORK COMPUTER on July 23, 2010.

6 **INTERROGATORY NO. 19:**

7 Please describe in detail all alterations, changes and/or modifications that YOU have made
8 to the metadata and/or computer data/files for any of the SUBJECT DOCUMENTS, at any time
9 since July 22, 2010.

10 **INTERROGATORY NO. 20:**

11 Please describe in detail all services performed by Quivx on YOUR behalf RELATING TO
12 the SUBJECT DOCUMENTS.

13 **INTERROGATORY NO. 21:**

14 Please state the name, address and telephone number of all PERSONS who have, at any time
15 since July 22, 2010, had possession of or access to the laptop computer that JACOBS had with him
16 on July 23, 2010, when he left Macau.

17 **INTERROGATORY NO. 22:**

18 Please state the name, address and phone number of all PERSONS who have, at any time
19 since July 22, 2010, had possession of or access to the thumb drive and/or PORTABLE HARD
20 DRIVE that JACOBS had with him on July 23, 2010, when he left Macau.

21 **INTERROGATORY NO. 23:**

22 Please state the name of each and every business entity or PERSON for whom JACOBS was
23 an employee as of July 22, 2010.

24

25 **INTERROGATORY NO. 24:**

26 Please state the name of each and every business entity or PERSON for whom JACOBS was
27 an employee between May 7, 2009 and July 22, 2010.

28 ///

1 **INTERROGATORY NO. 25:**

2 For each and every business entity and/or PERSON identified in response to the preceding
3 interrogatory, please state the dates and terms of JACOBS' employment.

4 **INTERROGATORY NO. 26:**

5 Please state the name of each and every business entity or PERSON for whom JACOBS was
6 an independent contractor as of July 22, 2010.

7 **INTERROGATORY NO. 27:**

8 Please state the name of each and every business entity or PERSON for whom JACOBS was
9 an independent contractor between January 1, 2009 and July 22, 2010.

10 **INTERROGATORY NO. 28:**

11 For each and every business entity and/or PERSON identified in response to the preceding
12 interrogatory, please state the dates and terms of JACOBS' independent contractor relationship.

13 **INTERROGATORY NO. 29:**

14 Please describe in detail the form of the computer files and data comprising the SUBJECT
15 DOCUMENTS as they existed on July 24, 2010.

16 **INTERROGATORY NO. 30:**

17 Please describe in detail the current form of the computer files and data comprising the
18 SUBJECT DOCUMENTS as they currently exist.

19 **INTERROGATORY NO. 31:**

20 Please describe in detail every COMMUNICATION between JACOBS and any officer,
21 director, employee and/or agent of LVSC, SCL, and/or VML RELATING TO VML's
22 confidentiality policy.

23 ///

24 ///

25 ///

26 ///

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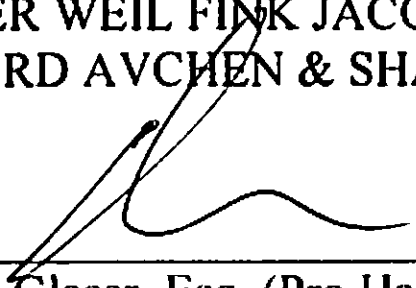
28 ///

1 **INTERROGATORY NO. 32:**

2 Please identify any DOCUMENTS that JACOBS currently possesses that he obtained during
3 the course of performing consulting services in connection with the agreement between LVSC and
4 Vagus Consulting Group, Inc. on or about March 14, 2009.

5
6 DATED this 24th day of October, 2011.

7 GLASER WEIL FINK JACOBS
8 HOWARD AVCHEN & SHAPIRO LLP

9
10 
11 Patricia Glaser, Esq. (Pro Hac Vice Admitted)
12 Stephen Ma, Esq. (Pro Hac Vice Admitted)
13 Andrew D. Sedlock, Esq. (NBN 9183)
14 3763 Howard Hughes Parkway
15 Suite 300
16 Las Vegas, Nevada 89169
17 Telephone: (702) 650-7900
18 Facsimile: (702) 650-7950

19
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21
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23
24
25
26
27
28
Attorneys for Defendant Sands China Ltd.

Glaser Weil Fink Jacobs
Howard Avchen & Shapiro

EXHIBIT 2

1 INTG

2 Patricia Glaser, Esq. (Pro Hac Vice Admitted)

3 Stephen Ma, Esq. (Pro Hac Vice Admitted)

4 Andrew D. Sedlock, Esq. (NBN 9183)

5 GLASER WEIL FINK JACOBS

6 HOWARD AVCHEN & SHAPIRO LLP

7 3763 Howard Hughes Parkway, Suite 300

8 Las Vegas, Nevada 89169

9 Telephone: (702) 650-7900

10 Facsimile: (702) 650-7950

11 E-mail:

12 pglaser@glaserweil.com

13 sma@glaserweil.com

14 asedlock@glaserweil.com

15 *Attorneys for Sands China, Ltd.*

16 DISTRICT COURT

17 CLARK COUNTY NEVADA

18 STEVEN C. JACOBS,

19 Plaintiff,

20 v.

21 LAS VEGAS SANDS CORP., a Nevada
22 corporation; SANDS CHINA LTD., a Cayman
23 islands corporation; DOES I-X; and ROE
24 CORPORATIONS I-X,

25 Defendants.

26 LAS VEGAS SANDS CORP., a Nevada
27 corporation,

28 Counterclaimant,

29 v.

30 STEVEN C. JACOBS,

31 Counterdefendant.

CASE NO.: A627691-B

DEPT NO.: XI

**DEFENDANT SANDS CHINA LTD.'S
FIRST SET OF INTERROGATORIES TO
PLAINTIFF STEVEN C. JACOBS**

32 TO: STEVEN C. JACOBS.

33 TO: JAMES J. PISANELLI, ESQ., OF PISANELLI BICE, Plaintiff's attorneys of record.

34 Pursuant to NRCP 26 and 33, Defendant Sands China Ltd. ("SCL" or "Defendant") hereby
35 requests that Plaintiff Steven C. Jacobs ("JACOBS" or "Plaintiff") respond to the following

Glaser Weil Fink Jacobs
Howard Avchen & Shapiro

1 Interrogatories (the "Interrogatories") described in Section II. The responses are to be sent to the
2 law offices of Glaser, Weil, Fink, Jacobs, Howard, Avchen & Shapiro, LLP, 3763 Howard Hughes
3 Parkway, Suite 300, Las Vegas, Nevada 89169, not later than thirty (30) days from the date of
4 service of this request.

5 **SECTION I**

6 **DEFINITIONS**

7 For purposes of these Interrogatories, the following terms shall have the following meanings:

8 1. As used herein, the terms "or," "and," and "and/or" shall be interpreted both
9 conjunctively and disjunctively, so as to be inclusive rather than exclusive, and each term shall
10 include the other whenever such construction will serve to bring within the scope of a request
11 documents, information or tangible things which would not otherwise be within its scope, and these
12 terms shall not be interpreted to exclude any information, documents or tangible things otherwise
13 within the scope of a request.

14 2. The present tense of any verb shall include the past tense, and vice versa, whenever
15 such construction will serve to bring within the scope of a request documents, information or
16 tangible things which would not otherwise be within its scope.

17 3. The singular noun form shall include the plural, and vice versa, whenever such
18 construction will serve to bring within the scope of a request documents, information or tangible
19 things which would not otherwise be within its scope.

20 4. As used herein, the term "JACOBS" shall mean, and be defined as, Plaintiff Steven
21 C. Jacobs.

22 5. "JACOBS AGENT" means any PERSON acting under the direction, supervision, or
23 control of JACOBS.

24 6. As used herein, the terms "PERSON" and "PERSONS" shall mean, and be defined
25 as, all individuals, natural persons, entities, partnerships, corporations, business entities, joint
26 ventures, firms, associations, organizations, enterprises, institutions, trusts, estates, government
27 agencies, quasi-government agencies, regulatory agencies, foundations, committees, attorneys, law
28

1 firms, health care providers, and all other legally recognized entities of any type, nature or
2 description.

3 7. As used herein, the terms "YOU," "YOUR" and "YOURS" shall mean, and be
4 defined as, JACOBS, and his agents, employees, representatives, and attorneys, and all PERSONS
5 acting on behalf of JACOBS and/or pursuant to JACOBS' direction or instruction.

6 8. As used herein, the term "SCL" shall mean, and be defined as, Sands China Ltd.

7 9. As used herein, the term "VML" shall mean, and be defined as, Venetian Macau
8 Limited.

9 10. As used herein, the term "LVSC" shall mean, and be defined as, Las Vegas Sands
10 Corp.

11 11. As used herein, the terms "RELATE TO" and "RELATING TO" shall mean, and be
12 defined as, to constitute, or to directly or indirectly refer to, pertain to, allude to, mention, address,
13 reflect, concern, describe, identify, embody, involve, evidence, comprise, discuss, show,
14 demonstrate, analyze, edify, deal with, or have some logical or factual connection to the referenced
15 subject matter.

16 12. As used herein, the terms "DOCUMENT" and "DOCUMENTS" shall mean, and be
17 defined as, all "originals" and "duplicates" of all "writings," "recordings," and "photographs," as
18 those terms are defined in Section 1001 of the Federal Rules of Evidence, and include without
19 limitation all written, printed, typed, photostatic, photographed, recorded, telecopied, photocopied,
20 or graphic materials of any kind, whether comprised of letters, words, numbers, pictures, sounds,
21 symbols, electronic data/recording, computer data/files/code, or any combination thereof. Without
22 limiting the foregoing, the terms "DOCUMENT" and "DOCUMENTS" include all writings, papers,
23 agreements, contracts, correspondence, letters, facsimile transmissions, memoranda, reports, notes,
24 telegrams, telex, envelopes, statements, studies, publications, records, messages, books, pamphlets,
25 leaflets, inter-office and intra-office communications, notebooks, instruments, transcripts, minutes,
26 agendas, indexes, cards, diaries, drafts, revisions, photocopies, calendars, appointment records,
27 disclosures, questionnaires, histories, chronologies, time-lines, medical records and reports, health
28 care records and reports, mental health records and reports, notices, investigation reports and

1 materials, declarations, accountings, evaluations, summaries, valuations, audits, verifications,
2 inventories, appraisals, studies, endorsements, powers of attorney, account statements, receipts,
3 invoices, financial statements, balance sheets, ledgers, books, income statements, expense reports,
4 bills, billing records, checks, canceled checks, check stubs, bank records, bank deposits and
5 withdrawals, wire transfer and receipt records, accounts receivable, accounts payable, tax records,
6 safe deposit records, telephone bills and records, microfilm, electronic mail, microfiches, computer
7 indices, computer printouts, records stored by means of computer or other electronic means,
8 computer files and data, contents of computer hard discs, contents of computer backup tapes and
9 discs, photographs, videotapes, films, motion pictures, video discs, audio recordings and cassettes,
10 transcriptions, drawings, surveys, plans, blueprints, specifications, charts, graphics, notes of oral or
11 telephone communications, other written transfers of information, and other data compilations. The
12 term "other data compilations" includes information stored in, or accessible through, computer or
13 other information retrieval systems, whether or not in hard copy form, together with instructions and
14 all other materials necessary to use or interpret such data compilations. If more than one copy of
15 any DOCUMENT exists, and if as a result of handwritten additions and notations, or for any other
16 reason, the copies are not identical, each non-identical copy is a separate DOCUMENT and should
17 be separately identified. Without limiting the foregoing, the terms "DOCUMENT" and
18 "DOCUMENTS" include all originals (or copies if the original is unavailable), non-identical copies,
19 drafts and revisions.

20 13. As used herein, the term "COMMUNICATIONS" shall mean, and be defined as, all
21 of the following: written communications, verbal communications, electronic communications,
22 computer communications, correspondence, notes, reports, memoranda, facsimile, electronic mail
23 (including distribution lists and acknowledgments of receipt), computer messaging, telex, telegrams,
24 wire communications, inter-office and intra-office communications, handwritten communications,
25 tape-recorded communications, filed/videotaped communications, phone messages and recordings,
26 voice mail, communications via pager, and all other forms of communications.

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1 14. As used herein, the term "PORTABLE HARD DRIVE" shall mean, and be defined
2 as, any computer hard drive, portable data storage device and/or other means of storing computer
3 data and files that is not located inside the case of a desk top computer.

4 15. As used herein, the term "WORK COMPUTER" shall mean, and be defined as, the
5 desk top computer that was in JACOBS' office in Macau as on July 22, 2010.

6 16. As used herein, the term "DOWNLOADED DOCUMENTS" shall mean, and be
7 defined as, all DOCUMENTS that JACOBS downloaded, transferred and/or copied from his
8 WORK COMPUTER to a PORTABLE HARD DRIVE on or about July 23, 2010, including but not
9 limited to computer data and files, and document images.

10 17. As used herein, the term "WORK DUTY DOCUMENTS" shall mean, and be
11 defined as, all DOCUMENTS that JACOBS acquired possession of during the course of his
12 employment and/or performance of services for the business entity that employed JACOBS as of
13 July 22, 2010 and that JACOBS had in his possession, custody or control as of July 24, 2010,
14 including but not limited to computer data and files, and document images.

15 18. As used herein, the term "REVIEW DOCUMENTS" shall mean, and be defined as,
16 all DOCUMENTS that JACOBS and/or his attorneys have, or will be, delivering to Advanced
17 Discovery (the parties' joint ESI vendor), including but not limited to computer data and files, and
18 document images.

19 19. As used herein, the term "SUBJECT DOCUMENTS" shall mean, and be defined as,
20 the DOWNLOADED DOCUMENTS, WORK DUTY DOCUMENTS and REVIEW
21 DOCUMENTS, collectively.

22 20. If the identification of any DOCUMENT called for by these interrogatories is
23 withheld under a claim of privilege, list each DOCUMENT together with the following information:
24 the date of the DOCUMENT, the name and job titles of the author and each recipient of the
25 DOCUMENT, the name and job title of all PERSONS to whom copies of the DOCUMENT were
26 furnished, the subject matter of the DOCUMENT, the grounds upon which the privilege is claimed,
27 and the number of the interrogatory to which the DOCUMENT is responsive.
28

1 about July 23, 2010, including but not limited to, the file types, nature of the documents, and the
2 volume of data and documents downloaded, transferred and/or copied.

3 **INTERROGATORY NO. 4:**

4 Did JACOBS perform an internet search on Google or any other search engine on July 23,
5 2010 RELATING TO downloading Outlook files from JACOBS' WORK COMPUTER?

6 **INTERROGATORY NO. 5:**

7 Please list each and every one of the SUBJECT DOCUMENTS that JACOBS has viewed
8 and/or reviewed since July 23, 2010.

9 **INTERROGATORY NO. 6:**

10 Please list each and every one of the SUBJECT DOCUMENTS that any JACOBS' AGENT
11 has viewed and/or reviewed since July 23, 2010, including but not limited to attorneys working for
12 JACOBS.

13 **INTERROGATORY NO. 7:**

14 Please state the name, address and telephone number of each and every PERSON to whom
15 YOU provided and/or disclosed the originals or copies of some or all of the SUBJECT
16 DOCUMENTS at any time since 8:00 am (Macau time) on July 23, 2010.

17 **INTERROGATORY NO. 8:**

18 For each and every PERSON identified in response to the prior interrogatory, please set forth
19 in detail each and every DOCUMENT and/or computer data file provided and/or disclosed to said
20 PERSON.

21 **INTERROGATORY NO. 9:**

22 Please state the name, address and telephone number of each and every PERSON or entity
23 that has viewed and/or reviewed some or all of the SUBJECT DOCUMENTS, with YOUR
24 permission or authority, at any time since 8:00 am (Macau time) on July 23, 2010.

25 **INTERROGATORY NO. 10:**

26 For each and every PERSON identified in response to the prior interrogatory, please set forth
27 in detail each and every DOCUMENT and/or computer data file viewed and/or reviewed by said
28 PERSON.

1 **INTERROGATORY NO. 11:**

2 Please state the name, address and telephone number of each and every PERSON or entity
3 that has had access to and/or possessed some or all of the SUBJECT DOCUMENTS, with YOUR
4 permission, at any time since 8:00 am (Macau time) on July 23, 2010.

5 **INTERROGATORY NO. 12:**

6 For each and every PERSON identified in response to the prior interrogatory, please set forth
7 in detail each and every DOCUMENT and/or computer data file to which said PERSON had access
8 and/or possessed.

9 **INTERROGATORY NO. 13:**

10 For all WORK DUTY DOCUMENTS in YOUR possession as of July 24, 2010, please set
11 forth each and every date when YOU scanned WORK DUTY DOCUMENTS so as to create a PDF
12 image of the DOCUMENT (including DOCUMENTS scanned both before and after July 24, 2010).

13 **INTERROGATORY NO. 14:**

14 For each and every date set forth in response to the preceding interrogatory, please set forth
15 in detail each and every DOCUMENT that you scanned.

16 **INTERROGATORY NO. 15:**

17 Please describe in detail all COMMUNICATIONS by and between YOU and any PERSON,
18 other than your attorneys, since July 23, 2010, RELATING TO some or all of the SUBJECT
19 DOCUMENTS.

20 **INTERROGATORY NO. 16:**

21 Please describe in detail all COMMUNICATIONS by and between YOU and any officer,
22 director, employee and/or representative of LVSC, SCL and/or VML, at any time, RELATING TO
23 YOUR intention, desire and/or right to retain some or all of the SUBJECT DOCUMENTS
24 following the termination of JACOBS' employment on July 23, 2010.

25 **INTERROGATORY NO. 17:**

26 Please state the name of each and every officer, director, employee and/or representative of
27 LVSC, SCL and/or VML who told YOU that YOU may retain some or all of the SUBJECT
28 DOCUMENTS following the cessation of YOUR employment.

1 **INTERROGATORY NO. 18:**

2 Please describe in detail all COMMUNICATIONS by and between YOU and any officer,
3 director, employee and/or representative of LVSC, SCL and/or VML, on or before July 23, 2010.
4 RELATING TO YOUR intention and/or right to download, transfer and/or copy DOCUMENTS
5 from YOUR WORK COMPUTER on July 23, 2010.

6 **INTERROGATORY NO. 19:**

7 Please describe in detail all alterations, changes and/or modifications that YOU have made
8 to the metadata and/or computer data/files for any of the SUBJECT DOCUMENTS, at any time
9 since July 22, 2010.

10 **INTERROGATORY NO. 20:**

11 Please describe in detail all services performed by Quivx on YOUR behalf RELATING TO
12 the SUBJECT DOCUMENTS.

13 **INTERROGATORY NO. 21:**

14 Please state the name, address and telephone number of all PERSONS who have, at any time
15 since July 22, 2010, had possession of or access to the laptop computer that JACOBS had with him
16 on July 23, 2010, when he left Macau.

17 **INTERROGATORY NO. 22:**

18 Please state the name, address and phone number of all PERSONS who have, at any time
19 since July 22, 2010, had possession of or access to the PORTABLE HARD DRIVE or other
20 electronic storage devices that JACOBS had with him on July 23, 2010, when he left Macau.

21 **INTERROGATORY NO. 23:**

22 Please describe in detail the form of the computer files and data comprising the SUBJECT
23 DOCUMENTS as they existed on July 24, 2010.

24 **INTERROGATORY NO. 24:**

25 Please describe in detail the current form of the computer files and data comprising the
26 SUBJECT DOCUMENTS as they currently exist.

27
28

Glaser Weil Fink Jacobs
Howard Avchen & Shapiro

1 **INTERROGATORY NO. 25:**

2 Please describe in detail every COMMUNICATION between JACOBS and any officer,
3 director, employee and/or agent of LVSC, SCL, and/or VML RELATING TO VML's
4 confidentiality policy.

5 **INTERROGATORY NO. 26:**

6 Please identify any DOCUMENTS that JACOBS currently possesses that he obtained during
7 the course of performing consulting services in connection with the agreement between LVSC and
8 Vagus Consulting Group, Inc. on or about March 14, 2009.

9

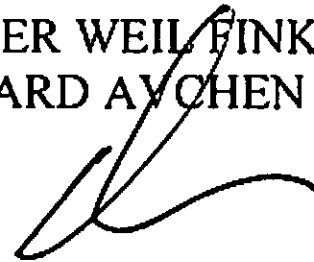
10 DATED this 25th day of January, 2012.

11

GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP

12

13



14

Patricia Glaser, Esq. (Pro Hac Vice Admitted)
Stephen Ma, Esq. (Pro Hac Vice Admitted)
Andrew D. Sedlock, Esq. (NBN 9183)
3763 Howard Hughes Parkway
Suite 300
Las Vegas, Nevada 89169
Telephone: (702) 650-7900
Facsimile: (702) 650-7950

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Attorneys for Defendant Sands China Ltd.

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1 **ROC**
Patricia L. Glaser, (Pro Hac Vice Admitted)
2 Stephen Ma, (Pro Hac Vice Admitted)
Craig Marcus, (Pro Hac Vice Admitted)
3 Andrew D. Sedlock, State Bar No. 9183
GLASER WEIL FINK JACOBS
4 HOWARD AVCHEN & SHAPIRO LLP
3763 Howard Hughes Parkway, Suite 300
5 Las Vegas, Nevada 89169
Telephone: (702) 650-7900
6 Facsimile: (702) 650-7950
7 *Attorneys for Defendant*
Sands China Ltd.

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DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN C. JACOBS.)
)
) Plaintiff,)
)
) v.)
)
) LAS VEGAS SANDS CORP., a Nevada)
) corporation; SANDS CHINA LTD., a Cayman)
) Island corporation; DOES I through X; and)
) ROE CORPORATIONS I through X,)
)
) Defendants.)

Case No.: A-10-627691-B
Dept. No.: XI

RECEIPT OF COPY

I hereby acknowledge that on the 25th day of January, 2012, I received true and correct copy of Defendant Sands China Ltd.'s First Set of Interrogatories To Plaintiff Steven C. Jacobs.

PISANELLI BICE PLLC

By: James J. Pisanelli / mas 4:21p.
James J. Pisanelli, Esq.
Todd L. Bice, Esq.
Debra L. Spinelli, Esq.
3883 Howard Hughes Parkway, Suite 800
Las Vegas, NV 89169

Attorneys for Plaintiff Steven C. Jacobs

Glaser Weil Fink Jacobs
Howard Avchen Shapiro

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS	.	
	.	
Plaintiff	.	CASE NO. A-627691
	.	
vs.	.	
	.	DEPT. NO. XI
LAS VEGAS SANDS CORP., et al..	.	
	.	Transcript of
Defendants	.	Proceedings
.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS TO COMPEL

THURSDAY, DECEMBER 3, 2015

APPEARANCES:

FOR THE PLAINTIFF:	JAMES J. PISANELLI, ESQ.
	TODD BICE, ESQ.
	JORDAN T. SMITH, ESQ.

FOR THE DEFENDANTS:	J. STEPHEN PEEK, ESQ.
	JON RANDALL JONES, ESQ.
	STEVE L. MORRIS, ESQ.

COURT RECORDER:	TRANSCRIPTION BY:
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1 LAS VEGAS, NEVADA, THURSDAY, DECEMBER 3, 2015, 8:46 A.M.

2 (Court was called to order)

3 THE COURT: If I could go to Jacobs versus Sands.

4 Good morning. Thank you for being here.

5 Do you need anybody to identify themselves, or do
6 you know everybody? Isn't that nice you know everybody.

7 Okay. Where do you want to start, interrogatories,
8 or requests for production, or status report?

9 MR. RANDALL JONES: Doesn't matter to me, Your
10 Honor. Randall Jones on behalf of Sands China Ltd.

11 MR. PEEK: And, Your Honor, good morning. Stephen
12 Peek on behalf of the Las Vegas Sands and Sands China Ltd.

13 MR. MORRIS: Good morning, Your Honor. Steve Morris
14 for Sheldon Adelson.

15 MR. BICE: Todd Bice on behalf of Steven Jacobs,
16 Your Honor.

17 MR. SMITH: Jordan Smith also on behalf of Steven
18 Jacobs.

19 MR. PISANELLI: And James Pisanelli on behalf of
20 Steven Jacobs.

21 THE COURT: All right. Which one do you want start
22 with?

23 MR. RANDALL JONES: I guess since I sat in this
24 chair, Mr. Peek is going to make me go first. The Sands China
25 interrogatories.

1 THE COURT: Okay.

2 MR. RANDALL JONES: 'Morning, Your Honor.

3 THE COURT: Good morning.

4 MR. RANDALL JONES: And I take it I have 10 minutes
5 with Mr. Peek.

6 THE COURT: You have to share.

7 MR. RANDALL JONES: We have to share, okay.

8 THE COURT: Although technically, if you really ask
9 me for more time, since -- is it Mr. Pisanelli who's here for
10 a preliminary injunction, or somebody else who's here for a
11 preliminary injunction case? You're here tomorrow. Somebody
12 else is here today. So if you want a little more time, you
13 can negotiate more time with me, but then they get more time,
14 too.

15 MR. RANDALL JONES: Okay. Well, I'll try to go with
16 it about five minutes anyway. I know you actually read these
17 briefs, and so --

18 THE COURT: And I have the interrogatories with the
19 funny numbering on them.

20 MR. RANDALL JONES: Your Honor, I'll tell you
21 candidly -- I guess I would start with the 6, 7, 9 and -- 6,
22 7, 8, 9, and 11 first even though that's not how we organized
23 the brief. And the reason I would do that is because I think
24 it best illustrates what to me -- and I would say this
25 actually with respect to Mr. Bice -- that Mr. Bice knows

1 better. And Mr. Bice has come in here and hammered the
2 defendants for what he claims to be bad-faith responses to
3 discovery. These discovery responses from somebody like Mr.
4 Bice demonstrate the -- I guess first of all the irony of the
5 positions he's taken in this case with respect to the
6 defendants and I think the patent bad-faith responses to his
7 answers.

8 You can -- I mean, a novice lawyer would understand
9 that you're not giving answers, for example, to Number 6,
10 where it says -- it asks Mr. Jacobs if he was simultaneously
11 contending he was working for Las Vegas Sands on one hand and
12 then the other entities. And he doesn't respond to that. He
13 basically poses a hypothetical and says, "If rendering
14 services or performing a role for one entity pursuant to the
15 terms of the employment agreement means that I am technically
16 an employee, then I likely was an employee of all these
17 different entities." That's not the question. And what it
18 also demonstrates is -- the bad-faith nature of this is he
19 apparently doesn't know if he was an employee of any of these
20 entities, because he says, well, I guess maybe if you pose
21 this hypothetical it could mean this, it could mean that.

22 THE COURT: Well, we know he's not an employee of
23 Mr. Adelson.

24 MR. RANDALL JONES: Well, he -- at least he's not
25 saying he was an employee of Mr. Adelson.

1 THE COURT: We had that discussion about a year ago.

2 MR. RANDALL JONES: Yes. So that's just one
3 example.

4 8 and 9 ask him whether he received compensation
5 from Las Vegas Sands in 8. "Yes. All compensation I received
6 came from the obligations of Las Vegas Sands." That's not the
7 question, and he knows it. We want to know who his paycheck
8 came from, because we know it didn't come from Las Vegas
9 Sands, and so does he. He doesn't want to answer that
10 question, so he gives us some what I think is just a bad-faith
11 answer. And he always wants to come and sanction our clients.
12 In fact, he's asked this Court for many sanctions, the Court
13 has given many sanctions. We're entitled to fees for this
14 kind of outrageous nonresponse to straightforward, simple
15 questions.

16 Number 11, "How did Mr. Adelson refuse to allow Mr.
17 Jacobs or otherwise prevent him from disclosing information to
18 the board?" He doesn't respond to that. He says, well, Mr.
19 Adelson prevented him from disclosing. Doesn't say how.
20 Because we know he didn't prevent him from disclosing. But
21 that's an allegation. But he doesn't want to answer when he
22 finally gets the opportunity, actually has the requirement to
23 answer the allegations he's made in his complaint and tell us
24 what's the basis for them. He won't do it.

25 We are entitled to actual answers, and we're

1 entitled to fees and costs for obviously disingenuous
2 responses.

3 With respect to the other issues he incorrectly
4 counted the interrogatories. First thing, Your Honor, is he
5 only asserted an objection to six of the old interrogatories
6 based on merits discovery. But what he doesn't tell you is he
7 didn't answer any of them. He didn't answer one of them. But
8 then he says, well, you already gave me all this -- which he
9 didn't answer --

10 THE COURT: Let's not talk about counting. I have
11 counting under control. Let's go to substantive answers.

12 MR. RANDALL JONES: Okay.

13 THE COURT: Counting I've got -- I know what I'm
14 going to do on counting.

15 MR. RANDALL JONES: Well, can I answer any questions
16 you have about the counting issue that you think --

17 THE COURT: No. I know how we count
18 interrogatories. And if there's a difference between
19 jurisdictional and merits, which I think there is in this
20 case, then we're going to talk about how you start from the
21 number that is listed in the interrogatory and don't add your
22 own numbers to them.

23 MR. RANDALL JONES: Fair enough. Then in order not
24 to impose too much on Mr. Peek's time, I'm going to go to the
25 other real substantive issue in our brief, which is

1 Interrogatories Number 4 and 12.

2 Number 4 is not a separate interrogatory, because
3 the -- and this is basically just taking the same argument
4 they made, is because those subquestions, if you will, are
5 logically and factually related to the question itself. So, I
6 mean, that to me is a real straightforward issue.

7 Same thing with Number 12. Number 12 is I guess a
8 little bit different take on this issue of subcategories,
9 because there's five or six different subcategories that are
10 listed in Interrogatory Number 12. But they all come straight
11 out of paragraph 31 of Mr. Jacobs's complaint, fourth amended
12 complaint, where he logically and factually relates all of
13 those allegations to the alleged improprieties of Mr. Adelson.
14 So he logically and factually relates all of those items in
15 subparagraph 31 to that paragraph. And so how could he stand
16 up here with a straight face and argue that they are not
17 logically and factually related to each other when in fact
18 that's the way he lists them in his own complaint?

19 Do you have any questions?

20 THE COURT: Nope.

21 MR. RANDALL JONES: Thank you, Your Honor.

22 THE COURT: Thank you.

23 Mr. Bice.

24 MR. BICE: Yes, Your Honor. I'll deal with them in
25 the order in which Mr. Jones presented them, Your Honor.

1 Mr. Jones says, well, we didn't answer the questions
2 about for whom Mr. Jacobs was working. That's interesting;
3 because, as the Court will recall, neither Mr. Adelson nor Mr.
4 Goldstein nor even Mr. Leven could identify all of the various
5 entities for which they were working even though they had an
6 employment contract with LVSC. And that has been our point
7 all along. But this is an attempt to now quarrel with their
8 own witnesses and their own corporate structure and how they
9 operated the entity. And they don't like the fact that Mr.
10 Adelson, Mr. Goldstein, and Mr. Leven made those admissions.
11 We all recall from the jurisdictional hearing all of the
12 shouting and screaming about how you shouldn't allow them to
13 answer, or, if you're going to allow them to answer, they
14 shouldn't be bound to the testimony that they were providing
15 to the Court, that somehow the truth would change at some
16 later point in time. And that's all that this is about today.
17 They don't like the fact that this is how they set up their
18 company, this is how they run it, and that Mr. Jacobs was no
19 doubt working for a number of different entities pursuant to
20 that employment agreement with LVSC?

21 THE COURT: Well, but isn't "working for" and "being
22 employed by" different?

23 MR. BICE: No. I do not believe that those are
24 different.

25 THE COURT: Okay.

1 MR. BICE: They are working for those entities. He
2 was being compensated by LVSC pursuant to that term sheet
3 which, by the way, they have admitted when they filed it with
4 the Securities and Exchange Commission that that is the basis
5 for his compensation. The notion that somehow, well, because
6 we had a subsidiary of ours paying some of the amounts but not
7 all of the amounts and we had other subsidiaries paying
8 certain amounts and we had the parent corporation paying
9 certain amounts that somehow means that, no, he wasn't really
10 being compensated by LVSC, when in fact, as Mr. Leven admitted
11 to the Court, VML, who they like to point out was cutting the
12 checks, VML wasn't a real entity by Mike Leven's own
13 acknowledgement to the Court. VML, the board didn't do
14 anything but just rubber-stamp whatever LVSC said.

15 That is our point and that is the truth of how he
16 was being compensated and the truth of who he was working for.
17 He was working for parent, rendering services for all of those
18 entities, and they know it, just like Mr. Leven was doing and
19 just like Mr. Adelson was doing and Mr. Goldstein and every
20 other key executive in the company. And those answers are
21 accurate, and those answers are the truth. And the fact that
22 they don't like the answers is not grounds for a motion.

23 Let me turn next, Your Honor, then to the counting
24 question. Let's remember something about these
25 interrogatories, Your Honor. The first set that they sent

1 that they are now characterizing as, well, these were
2 jurisdictional. Let's remember what these really were. This
3 was when the defendant LVSC and Sands China were trying to
4 mislead us and the Court as to where the documents were
5 located. Look at all 26 of these interrogatories that Ms.
6 Glaser sent, Your Honor. These are all about Mr. Jacobs's
7 ESI, when the story, which we later learned was false, when
8 the story was that the only data in the United States that was
9 accessible for jurisdictional discovery was Mr. Jacobs's data.
10 Those were the representations that were being made to the
11 Court. So Ms. Glaser, to try and give the phony appearance of
12 how significant all this data was, inundated us with
13 interrogatories about the ESI. This was all part and parcel
14 of the whole deception of the Court and of us about where the
15 documents were located. And now they come to you and they
16 say, well, we need -- Ms. Glaser made this tactical decision
17 on this whole little deception of the Court and deception of
18 us and not telling the Court actually where the data really
19 was and, well, we now want to be relieved of that, don't count
20 those interrogatories against us, she made that tactical
21 decision but now just relieve us of that and let's just start
22 over as though that didn't happen. Well, that's not the way
23 it works, and that isn't the law, and there's no rule that the
24 Court has said, okay, well, these 26 interrogatories that you
25 sent, they just don't count, we'll just pretend like they

1 didn't exist.

2 They are the ones that asserted jurisdictional
3 defense, Your Honor. These were not -- there was no order
4 that said that you can deviate from the rules. And they know
5 it. That's why when they sent them they tried to pretend like
6 well, the second set were just new interrogatories, were a --
7 the first set of interrogatories, when in fact they were not.
8 And that is the point that we are making.

9 Counting, Your Honor, it's very simple. They
10 know the rule on counting. They well exceeded the 40.
11 Your Honor, there are three defendants here, which means
12 there are 120 interrogatories, and 120 interrogatories just
13 isn't enough, even though the Nevada Supreme Court has imposed
14 for more than 20 years a limitation on 40, because
15 interrogatories are often abused. And that's all that's going
16 on here, let's just see if we can't inundate Mr. Jacobs with
17 discovery requests because LVSC, as the Court has
18 acknowledged, has got lots of resources and they will try and
19 spend anyone into oblivion.

20 Mr. Jones's point that somehow, well, if I just say
21 paragraph whatever of your complaint, whether or not your
22 paragraph covers multiple topics, therefore it's all somehow
23 interrelated. That's like saying that, well, I'm just an
24 interrogatory about page 5 of the complaint, the fact that
25 you've got seven allegations on that page 5 of the complaint,

1 I'm only asking about page 5 so it's a single interrogatory.
2 That is nonsense, and he knows that it's nonsense. If
3 somebody here is being -- wordsmithing, I would submit that
4 it's Sands China, just like they were wordsmithing on where
5 the documents were at, which was the whole basis for the first
6 set of interrogatories, Your Honor.

7 If you have any questions for me, Your Honor, I'll
8 be happy to answer them.

9 THE COURT: No.

10 Anything else?

11 MR. RANDALL JONES: Your Honor, question is -- I
12 don't want to impose on Mr. Peek's time.

13 THE COURT: You've already used more than five
14 minutes, but I'll give you a little slack, because there's
15 nobody else in the room.

16 MR. RANDALL JONES: Your Honor, I appreciate that.
17 You have no idea how much I appreciate that.

18 THE COURT: Which means I'm also going to have cut
19 Mr. Peek slack.

20 MR. RANDALL JONES: Which I think is a fair thing to
21 do.

22 MR. PEEK: That's unusual, Your Honor.

23 THE COURT: Not much.

24 So wrap up quickly, and I won't impinge upon Mr.
25 Peek's time. How's that?

1 MR. RANDALL JONES: Thank you, Your Honor.

2 You know, look, the best offense seems to be go on
3 the -- or, excuse me, best defense seems to go on the offense.
4 The fact the -- we disagree with the idea that these other
5 witnesses, Mr. Adelson said he didn't know he was employed by.
6 That's just ridiculous. But that's not the issue. Mr.
7 Adelson is not suing anybody for an employ breach. Mr. Jacobs
8 is, and he has to respond to that.

9 THE COURT: But you recognize you can have multiple
10 employers?

11 MR. RANDALL JONES: I certainly do. But that's
12 not --

13 THE COURT: But there's sort of factual issues that
14 go into that, which is why you're sending him interrogatories;
15 right?

16 MR. RANDALL JONES: That's right.

17 THE COURT: Okay.

18 MR. RANDALL JONES: That's exactly right. And we
19 want to know who actually just paid him. He doesn't even want
20 to tell us who paid him. And, by the way, there's no --

21 THE COURT: But I've ordered the production of the
22 wage information from the tax returns, so hopefully someday
23 you're going to get a W-2.

24 MR. RANDALL JONES: We have an order to show cause
25 we're happy to bring, because we can't seem to get that out of

1 Mr. Bice.

2 THE COURT: No. That's in the next motion. We're
3 going to talk about it again --

4 MR. RANDALL JONES: Well, anyway, in any event --

5 THE COURT: -- because, while they are unhappy with
6 my ruling, I'm not changing it.

7 MR. RANDALL JONES: -- we don't have an alter ego
8 theory here, Judge. So that's one of the problems that he's
9 got. He keeps trying to argue alter ego, and he doesn't have
10 an alter ego theory, because he knows he can't make it. The
11 Supreme Court order stayed the merits discovery. And if he
12 really thought there was an objection to those first
13 interrogatories as merits based, he would have objected to
14 more than six.

15 So the rest of the points I think stand on their
16 own.

17 THE COURT: Okay. Thank you.

18 The motion is granted in part. The number of
19 interrogatories started anew when merits discovery opened.
20 Merits discovery is open, so we can't change the numbers of
21 the interrogatories that were served.

22 In looking at the interrogatories that were
23 submitted, as they relate to the claims made in the complaint,
24 I am not going to count any of the interrogatories as more
25 than one. For that reason all of the interrogatories need to

1 be responded to regardless of how many there are in this
2 package. I do not see more than 40 that were submitted. I
3 only get up to 31. So answer these. Respond to them.

4 Now let me go to Item Number 2, which is the
5 supplementation of answers. With respect to the interrogatory
6 that was originally numbered as 4 the interrogatory is
7 appropriately answered.

8 As respects to Number 9 -- these are ones I had
9 notes I wanted to talk to you about -- 9 needs to be answered.
10 The receipt of benefits is different than the answer that is
11 given in Number 8, so 9 is seeking additional information
12 related to other types of employee benefits. So that needs to
13 be responded to.

14 And with respect to Number 12, needs to be responded
15 to because there was an objection from (b) through (e) that
16 says that it's too many. So okay.

17 MR. BICE: Let me make sure I understand, Your
18 Honor. Number 9.

19 THE COURT: 9 you need to explain what other
20 employee benefits, if any, you've received from any other
21 entity. You said, "See Answer Number 8." And I read Answer
22 Number 8, and it doesn't really respond to "other employee
23 benefits." It only talks about the bonus pool and things.

24 MR. BICE: All right, Your Honor. We --

25 THE COURT: Okay. So you can't rely on the you

1 asked more than 40. So any of those where that reliance is
2 you're going to answer. With respect to Number 9 you're going
3 to supplement.

4 MR. BICE: I understand that, Your Honor. But I
5 don't understand the Court's counting. I just need to
6 understand it so that when I issue interrogatories -- because
7 we have the same objection from the defendants on some of our
8 interrogatories.

9 THE COURT: I know you do.

10 MR. BICE: With respect to Number 12, Your Honor,
11 you've got five different events. And you're saying that
12 those are not five interrogatories even though --

13 THE COURT: Five different events that are described
14 in your complaint, in your allegation.

15 MR. BICE: Right.

16 THE COURT: Okay. That's one.

17 MR. BICE: Okay. If that's the rule, then --

18 THE COURT: That's how I count. I understand that
19 Commissioner Biggar used to go through and he used to count
20 each subpart as a separate interrogatory. And I don't think
21 that's the case. I understand that if they're not related
22 issues that you may want to count differently. But where the
23 issues are all related I'm going to count them as one.

24 MR. BICE: Well, Your Honor, then -- okay.

25 THE COURT: So perhaps someone in your meet and

1 confers will be instructed by that comment that I've made.

2 MR. BICE: I would --

3 THE COURT: But I doubt it.

4 MR. BICE: I doubt it, too. So we'll see.

5 THE COURT: Okay. So let's go --

6 MR. RANDALL JONES: Just a question, too.

7 THE COURT: I'm not going to make -- given the
8 testimony I had at the evidentiary hearing, I'm not going to
9 say who paid him. Eventually you're going to get a W-2, and
10 then you're going to have arguments, and then we're going to
11 listen.

12 MR. RANDALL JONES: All right. What I do want to
13 say, though, just so it's clear, he said we've done the same
14 thing. We didn't. We actually did make that objection --

15 THE COURT: I don't -- I'm not -- I'm not fighting
16 with you today.

17 MR. RANDALL JONES: Well, the only reason I say
18 that, Judge, is because you said, I know. And it's not true.
19 We'd made that objection, and then he called us on it. You
20 know what we did? We looked at it again and we withdrew it
21 because we didn't think it appropriate objection. Just so --

22 THE COURT: Nice. Isn't that nice.

23 MR. RANDALL JONES: I want to be clear about that.

24 THE COURT: So let's go to the requests for
25 production motion. How many contention requests for

1 production did you serve? Because I tried to count, and I
2 stopped because I got a headache.

3 MR. PEEK: Is there a rule on the number of
4 contentions requests, Your Honor?

5 THE COURT: No, there's not a rule. There's not a
6 rule. You know requests for productions don't have a rule.
7 Which was why when I was in the 130s and my head was aching I
8 just stopped counting.

9 MR. PEEK: Well, certainly, Your Honor, I can't
10 remember the number of affirmative defenses, but there is one
11 at least for each of the affirmative defenses. There's no
12 question about that. But --

13 THE COURT: Yes. Your requests for production
14 number 151. It's a lot.

15 MR. PEEK: I'm trying to sort of read tea leaves
16 here about why the comment about the number, because certainly
17 in a case of this complexity, with the dollars that are
18 involved, the issues that have been raised, the number of
19 amended complaints that we've had, the changes over the course
20 of the last five years in the theories of the plaintiff, they
21 have been a moving target for us. We want to nail them down
22 on each and every one of those claims that he makes, and we
23 want to be able to have documents that support it.

24 THE COURT: So why do you need to go back 15 years
25 for some of these things?

1 MR. PEEK: Your Honor, frankly, I'm going to
2 withdraw the 15 years. I think what's more than adequate is
3 the same rule that the Court made with respect to the temporal
4 limitation on Las Vegas Sands to go back at least five years
5 from the date of employment in, excuse me, March of 2009. So
6 it'd go back to at least five years before that I think is
7 probably appropriate, because it's consistent with what the
8 Court's ruling has been with respect to Las Vegas Sands. And
9 so I'm not going to fight that fight with the Court on that
10 issue.

11 THE COURT: Okay.

12 MR. PEEK: Your Honor, it's -- I'm --

13 THE COURT: Where do you want to start? Because
14 I've got 151 requests for production.

15 MR. PEEK: What I tried to do, Your Honor, was to
16 try to categorize them, as opposed to try to go through each
17 and every one of them. But, you know, I think had we really
18 met and conferred we might have been able to narrow much of
19 the issues and not have to burden the Court with this. But we
20 didn't have that opportunity to meet and confer.

21 So what we have is the responses generally where
22 Jacobs refers to all of his 16.1 disclosures. And I certainly
23 don't have all of those by number. I know that at least -- I
24 think we have counted up to at least 28 of those where he just
25 refers universally to "all of my 16.1 disclosures," which is

1 some 200,000-some-odd pages of documents that he produced from
2 the collection that the Court ordered him to produce back in I
3 believe March of this year without making any effort
4 whatsoever to go through each and every one of those documents
5 that he produced and specify with particularity which of those
6 documents are in fact responsive to each of the requests that
7 are made.

8 So -- and I think that's something that the Court
9 has already ruled on with respect to Mr. Adelson's motion to
10 compel. These are each discrete topics, they're each discrete
11 categories, and they require compliance in a discrete manner
12 with a reference to a document that is in fact responsive to
13 that inquiry, to that request that has been made, as opposed
14 to a general statement. So when we have a general statement
15 we need to get specificity.

16 There are a number of responses, Your Honor, where
17 Jacobs just refused to produce any documents. And, as the
18 Court has stated, I think there are two where he says "None."
19 But even when he just says "none" it's not clear, because the
20 Court has told us at least that the party must state
21 affirmatively after a diligent search --

22 THE COURT: We've made our best efforts to --

23 MR. PEEK: -- and it's that diligent search that is
24 part of that affirmation by that lawyer, as well as his
25 client, as to whether he possesses responsive documents.

1 Now, what we do know is that in a lot of those
2 objections he says, "I reasonably believe that documents
3 exist." Well --

4 THE COURT: It says, "Plaintiffs reasonably believe
5 there are additional documents relating to his wrongful
6 termination which are or were in the possession, custody,
7 and/or control of the defendants."

8 MR. PEEK: That's what he says. That's what he
9 says. But you recall --

10 THE COURT: And we see that in other cases, too;
11 right?

12 MR. PEEK: Your Honor, recall three and a half years
13 ago when we got an affidavit from Mr. Jacobs. And you
14 remember in that affidavit he talked there about knowing of
15 the existence of certain documents with respect to a
16 prostitution strategy. Do you recall that?

17 THE COURT: No.

18 MR. PEEK: I know you say that facetiously, Your
19 Honor. But that's the point, is that when it served his
20 purpose in July of 2012 to smear Chairman Adelson --

21 THE COURT: You have a few more minutes.

22 MR. PEEK: Thank you. When it served his purpose
23 at that time to smear Chairman Adelson about documents that he
24 says exists -- and it wasn't just the documents with respect
25 to prostitution strategy; there were other documents within

1 that affidavit that he identified that he knew exists. He
2 should be required to do the same thing here. He took a
3 collection of documents when he left Macau. We know it to be
4 at least 220,000, we know it to be those in which he was
5 involved in the communications with the company here in Las
6 Vegas, with the chairman of Sands China Ltd., and with the
7 special advisor to the company, as well, Mr. Leven. So, Your
8 Honor, we think that those objections are inappropriate.
9 They're just designed to smear the company and say, well,
10 you've destroyed all these documents so I don't have to -- I
11 reasonably believe they exist, but without identifying those
12 documents that exist.

13 He talks, Your Honor, for example, about the
14 Outrageous file. He says, well, you destroyed my Outrageous
15 file, without identifying what it was that was in that
16 Outrageous file. Now, one would think that when you go to
17 work for a company you don't start out by keeping a, quote,
18 unquote, "outrageous file." Because what that shows is the
19 intent to set the company up. But what we asked for, as well,
20 Your Honor, is what documents do you have that demonstrate
21 that you called to the attention of either Mr. Leven or Mr.
22 Adelson or anybody else in the company, Mr. Gonzalez, where
23 you complained about certain actions, what were you told you
24 could not report to the board, what documents do you have that
25 would demonstrate that you were going to report to the board

1 certain activities that you found to be improper. We don't
2 even have that. We don't have any of those documents. And
3 why? Because most likely they don't exist. But if he has
4 them, he needs to produce them to us or at least identify to
5 the Court, I reasonably believe that I wrote an email and
6 identified and I said this in this period of time. You can't
7 just say it's unduly burdensome and the company has destroyed
8 all these documents. Because that's what he says.

9 We don't have to talk about tax returns and mental
10 health records, because those have already been asserted -- or
11 ordered by the Court to be produced, although they still have
12 yet to be produced.

13 You know, you've talked about at least the fifteen
14 years versus five years with respect to termination by other
15 companies. We talked about bonus compensation. You know, has
16 he mitigated his damages, consulting agreements that he had
17 with Vagus, you know, do those have anything to do with
18 mitigation of any damages.

19 The burglary of his home in Florida is very
20 important to this case, as well.

21 THE COURT: So why on earth do you need phone
22 records when you already have the police report?

23 MR. PEEK: Here's why, Your Honor. I want to know,
24 one, where the call -- from where the call was made, whether
25 there were earlier calls, or whether the first call was just

1 to the FBI, his handler, Sam Mayfield, as referred to in the
2 police report. And he talks about, well, my home was entered
3 into in mid December, then again on December 27th I saw the
4 door ajar, and then finally it was entered I think on
5 January 3rd, which, coincidentally, Your Honor, is the same
6 day that this Court ordered him to deposit all of his media
7 devices with Advance Discovery. I was here at that hearing
8 when the last objection that Mr. Pisanelli was making was
9 overruled by this Court and he was at that time ordered to
10 produce all of his media devices. And, lo and behold, one of
11 those media devices was suddenly removed. So I want to know
12 about the phone calls that he made, Your Honor. I think
13 that's important to know what -- who he was calling, when he
14 was calling them, and from where he was calling them, as well,
15 because that all shows on your records, not only the number
16 you called, but from where you were calling.

17 And so that goes, Your Honor, to where he was --
18 what his residency was, whether he was in --

19 THE COURT: It doesn't show where you were, Mr.
20 Peek, in most cases.

21 MR. PEEK: A lot of the phone records do, Your
22 Honor. They show from where the call was being made.

23 THE COURT: Not on the phone records --

24 MR. PEEK: On cell phone records.

25 THE COURT: Not on the phone records you receive.

1 You have to have a special subpoena that goes to the carriers,
2 and they only keep the records for a certain period. I know
3 this from my criminal judge life. So going back four years it
4 is unlikely, depending upon the carrier, they will be
5 available. And he won't have them. You've got to go to the
6 carrier.

7 MR. PEEK: Well, I want to at least see what he has,
8 and then we can at least determine whether or not those would
9 be relevant to what we actually believe occurred here as to
10 where he was during this what we believe to be a contrived
11 burglary, a contrived report of something that didn't happen.
12 Very contrived. Because it happened simultaneous with the
13 Court ordering him to turn over those media devices.

14 I've already gone over his failure to identify the
15 documents that he says are in our possession. We know that he
16 has the capability to do that, because he did that certainly
17 in July of 2012. He can certainly do that again, as opposed
18 to relying on this, I reasonably believe that documents are in
19 the possession and I reasonably believe that they've destroyed
20 them, without saying any factual basis, without providing any
21 affidavit from his client, any declaration from his client as
22 to why that client, why Jacobs reasonably believes. All we
23 have is the assertion by his counsel, but we don't have a
24 declaration from Mr. Jacobs like we saw in July 2012. Because
25 you remember in July 2012 he submitted that affidavit saying

1 that we weren't meeting our discover obligations because a
2 number of documents had not yet been produced by Las Vegas
3 Sands, more particularly the so-called prostitution strategy.
4 So he knows those documents that would exist, and he has the
5 obligation to tell you what they are.

6 We don't have any documents on the so-called refusal
7 by Mr. Adelson to present information to the SCL board, we
8 don't have documents related to the refusal to terminate
9 general counsel Luis Melo and replace him with Leonel Alves.
10 We don't have documents with respect to the so-called carry
11 out alleged illegal demands by Mr. Adelson. He just objects
12 to them. Doesn't say, don't have any documents. He says, I
13 object to them. He doesn't have any documents regarding the
14 reported improprieties -- the improprieties to Mr. Leven and
15 Mr. Gonzalez. We don't have any documents. That's 108, 109
16 and 110 and 111 through 113.

17 And then there's the assertion that Mr. Adelson
18 informed plaintiff that he controlled the Nevada gaming
19 regulators. Where are those documents? He just objects to
20 them. That's 115.

21 Your Honor, I guess I could go on, but I know I'm
22 running out of time here, and I won't --

23 THE COURT: I gave you extra time because we have a
24 little extra today.

25 MR. PEEK: I understand that, Your Honor. But I

1 also know that there are other people in the courtroom.

2 THE COURT: Okay.

3 MR. PEEK: But we know that boilerplate objections
4 are improper, and that's all we see. And the caselaw is
5 certainly replete with overruling those boilerplate
6 objections. You must in fact submit a declaration as to how
7 they are unduly burdensome and how they're not reasonably
8 calculated.

9 THE COURT: Okay. Thanks.

10 Mr. Bice.

11 MR. BICE: There is no such requirement, and you
12 will note they didn't cite you any about the submission of a
13 declaration when you are objecting to discovery requests or
14 pointing out that documents haven't been produced by them.

15 THE COURT: Well, I do -- and you know this. I do
16 sometimes require that an affirmation of diligence be provided
17 when you say there are none that are available and you have
18 tried and you can't find any.

19 MR. BICE: Right. Let's remember how we --

20 THE COURT: But I'm not there today.

21 MR. BICE: Yeah. But let's remember how we got to
22 where we're at today, Your Honor. We, unlike them, were
23 required to give them everything that was at Advance
24 Discovery. Everything.

25 THE COURT: Well, no --

1 MR. BICE: Within a single discovery request.

2 THE COURT: You were -- well, that's because of Rule
3 16.1. But you were able to withdraw certain information that
4 was privileged or otherwise private.

5 MR. BICE: That's right.

6 THE COURT: Okay.

7 MR. BICE: So no discovery request. And this was
8 right before the jurisdictional hearing, and we were given
9 this short window in which to produce everything to them. So
10 now what we get is we get a different -- now we're sending out
11 discovery requests and pretending like we don't have the
12 documents when they do have the documents. And what this is
13 really about now -- first of all, do you know which requests
14 we're talking about? Because I --

15 THE COURT: No, I don't.

16 MR. BICE: That's the principal objection that I
17 have to this on we come into the court, we don't identify
18 which requests we're actually moving on. I heard actually
19 about three numbers, and I'll address those specifically. And
20 the Court just -- you're supposed to just -- apparently just
21 grant our motion because we've made it, we haven't actually
22 moved on anything in particular, we're just going to throw
23 everything out there and say you said just grant this because
24 that's what we would like you to do. So number one my
25 objection is I don't even know which requests we're talking

1 about.

2 Number two, with respect to Number 108 through 113
3 that he just listed, that is a fascinating assertion, since
4 these are the parties who have claimed privilege over any
5 communications that Mr. Jacobs made in reporting to Mr.
6 Gonzalez any improprieties that were going on or reporting
7 them to outside lawyers at -- what was the name of the firm,
8 Your Honor? I don't recall. I think that the Court has seen
9 some of these documents. Allen & Overy. They have made
10 claims of privilege that they are now telling you, well, Mr.
11 Jacobs isn't identifying the privileged documents. That
12 proves our point, Your Honor, about this waiver issue long
13 ago. So they want to continue to say that Mr. Jacobs has some
14 obligation to be identifying privileged documents for them,
15 that proves our point about waiver and that those documents
16 are at issue. And they admit that they are at issue, because
17 they're claiming, oh, there are no documents that exist, and
18 Mr. Jacobs in fact reported some of this stuff to Mr.
19 Gonzalez, as he has previously alerted the Court, and I
20 believe that the Court has seen some of those documents in its
21 in-camera inspection.

22 So, Your Honor, you can ask me about any of the
23 particular requests, and I will be happy to address them.

24 THE COURT: So can I ask you not about particular
25 requests, but I want to ask you about the responses to several

1 that are a general response that appear repetitively, okay.

2 MR. BICE: Okay.

3 THE COURT: So I have one that appears in several
4 locations that says, "Subject to and without waiving said
5 objections, plaintiff responds as he understands the request
6 as follows. Due to the breadth of this request, it includes
7 plaintiff's entire NRCP 16.1 disclosure of documents and
8 supplements thereto."

9 MR. BICE: Yes.

10 THE COURT: Now, one of those relates to why your
11 contract was transferred to VML.

12 MR. BICE: Right.

13 THE COURT: And while I certainly understand that
14 you may not have known that until Mr. Leven took the stand in
15 the evidentiary hearing, how on earth can you support the
16 response that says, everything produced ever supports this?

17 MR. BICE: Your Honor, this is our point about this,
18 number one. When you --

19 THE COURT: I don't even remember which response it
20 is. Sorry.

21 MR. BICE: Well, I don't, either.

22 THE COURT: Okay. Good.

23 MR. BICE: But here's my point. When you ask
24 requests that say, identify the documents that support a
25 particular proposition or evidence a particular proposition,

1 number one, we have objected to those because what you're
2 really asking us to do is identify which documents you're
3 going to use as exhibits to support a particular contention.

4 THE COURT: We're not there yet.

5 MR. BICE: Well, that's what they're doing. We've
6 already produced the documents, but that's what they're doing.
7 They're trying to get you to tell us, please give them a road
8 map, you've already rejected that on multiple occasions,
9 please tell them what documents you're going to use to prove
10 certain things. But here is why, Your Honor, Mr. Jacobs's
11 position and our position is clear on this issue, I think.
12 The issue about whether or not who Mr. Jacobs was working for
13 or providing services for are completely backed up by all of
14 the documents that show the entire history of how this
15 happened, of how the term sheet came into existence, who was
16 paying the money, who he was actually rendering services for,
17 who he got the stock from and who were all the communications
18 coming from and direction coming from. The entirety of that
19 entire relationship, which spanned from, as you know, the
20 beginning -- or -- yeah, I think May 1 or May 5 of '09 until
21 the date he was terminated in 2010, July 23 of 2010, his
22 entire work product supports that proposition, just like it
23 supports every one of his contentions when they say tell us
24 everything that supports what you claim about this or you
25 claim about that. We were the ones who were forced to produce

1 everything to them without a single request being made of us.
2 That was a decision they asked you to make, and now what
3 they're saying is, okay, well, now that you've made them do
4 that, Judge, now we're going to issue different requests and
5 we want them to be forced to go through that exact same
6 exercise all over again for our benefit so that they can
7 identify for us how are you going to prove this, how are you
8 going to prove that, which documents are you going to
9 introduce as evidence for this. And that is all that this
10 exercise is about. This isn't about obtaining documents.
11 This is about burdening us. Because you already made us give
12 them the documents that he has.

13 What's going on here is that once again they don't
14 want to -- they don't want to produce documents, which they
15 haven't been doing. And Mr. Jacobs is making the point he
16 knows other documents because he knows the nature of the
17 business, he knows how the business was operated, and he knows
18 the types of communications that he saw other people engaged
19 in at that time. And you'll notice none of that is being
20 produced by either SCL or Sands China [sic]. And he is
21 reserving his rights over that fact that those documents
22 aren't being produced by them. And they're not. And you saw
23 that -- on Tuesday you saw that. No searches were being done,
24 and what searches were being done were a joke and they weren't
25 even complying with the Court's ruling on the time frame.

1 These requests where we object, Your Honor, about
2 this whole support and evidence thing is they are asking us
3 and Mr. Jacobs to use our mental impressions of how we're
4 going to prove particular propositions. And we think that
5 that's inappropriate. They are the ones who made us produce
6 every document wholesale before the evidentiary hearing and
7 telling us, well, now you should just redo it again because
8 we've now given specific requests. You didn't give us that
9 luxury. You didn't make them give us every document
10 concerning the case, and you've allowed them to do searches
11 and produce what they claim is responsive. And we've seen how
12 that worked out in the jurisdictional discovery. So that's
13 why we have given that objection, and that's why, because you
14 have asked these broad requests, we intend to rely upon every
15 document produced in this case to support that proposition.

16 THE COURT: Okay. Understanding that -- and I'm not
17 going to limit you from that, because I certainly understand
18 the issues that have occurred in this case -- for certain of
19 these requests you have specifically identified documents that
20 you believe are responsive.

21 MR. BICE: Yes.

22 THE COURT: And you've done that for a number of
23 these requests, and I compliment you and the people on the
24 work that that requires.

25 However, to the extent that you're only saying it

1 includes everything related to your 16.1, does that mean that
2 it's too voluminous, or you can't do a search to locate the
3 documents, or what does that mean to me when I see that
4 response?

5 MR. BICE: What that means, Your Honor, is because
6 of the nature of the request -- the nature of request triggers
7 -- it asks us, for example --

8 THE COURT: Okay. Hold on. Let's go to Request
9 Number 12, because that's an easy one for us to look at, and
10 if there was a search ability we would be able to hopefully do
11 this.

12 MR. BICE: Yes.

13 THE COURT: "Identify and produce all documents
14 and/or communications that concern, reference, or relate to
15 Sheldon G. Adelson from July 23, 2010, to June 30, 2011."

16 MR. BICE: Yes.

17 THE COURT: If there was search capability, that
18 should be a pretty easy one to run a computer search on;
19 right?

20 MR. BICE: Yes and no.

21 THE COURT: Okay. Tell me why.

22 MR. BICE: This, number one, I don't think is a good
23 one to use as an example on this, because it talks about a
24 more limited time frame.

25 THE COURT: Yes.

1 MR. BICE: But let me give you --

2 THE COURT: That's why I'm using it, because I think
3 it's easier.

4 MR. BICE: Okay. I see your point now. I was
5 looking at it from the other -- flip side of the coin.

6 THE COURT: No. I'm looking at it as this is an
7 easy one.

8 MR. BICE: This is an easy one because it is a
9 limited time frame.

10 THE COURT: Yes.

11 MR. BICE: Our point on this, Your Honor, is Mr.
12 Jacobs's position, and I think it is backed up by the
13 evidence, is everything about this company relates to,
14 concerns Sheldon G. Adelson; because, as Mr. Goldstein has
15 admitted, Mr. Leven has admitted, and Mr. Reese admitted front
16 and center of everybody, no one is confused about who's really
17 in charge of every decision. Mr. Leven was a little more
18 politically correct when he said, well, Mr. Adelson has a vote
19 but it's a very weighty vote. He was more politically correct
20 about the admission than was Mr. Reese, who said, no one is
21 confused about who's in charge and if someone gets confused
22 they get dissuaded about that in relatively short order, as
23 Mr. Jacobs, of course, found out. He was dissuaded about that
24 in very short order, which is why we're here. Because no one
25 is really confused about the fact that Sheldon G. Adelson

1 controls everything and directs everything and is in charge of
2 everything.

3 So when you ask us, "documents and/or communications
4 that concern, reference, or relate to Sheldon G. Adelson,"
5 everything about this case, with all due respect to the
6 defendants, relates to Sheldon Adelson, because Sheldon
7 Adelson is the one who made this termination happen and was
8 the guiding, controlling hand in everything that happened
9 about it. And that's confirmed by his own executives. Anyone
10 who gets confused, Your Honor -- Bill Wiedner got confused
11 about who was in charge. We all know what happened to Mr.
12 Wiedner. As Mr. Leven's own internal emails admit, Steve
13 Jacobs got confused about who was in charge. And we all see
14 what happened to him, as well. That's the basis for our
15 position on this, Your Honor. If you're telling us, well, you
16 disagree with that and that we have to limit it to Sheldon G.
17 -- run the name Sheldon G. Adelson for that window and pull
18 those documents out even though they can, of course, do the
19 same thing, then I guess that's what you're telling us we need
20 to do, then we will do that. But we don't think that making
21 us jump through these circles -- or jump through these hoops
22 is appropriate. We think that that's exactly what it is.

23 THE COURT: Okay. Anything else, Mr. Peek?

24 Thank you, Mr. Bice. And thank you for engaging in
25 the discussion with me.

1 Briefly, Mr. Peek. Because I do have one case still
2 out in the hallway.

3 MR. PEEK: No, I understand, Your Honor.

4 And I did identify a number of the documents --
5 document requests in the motion. So to say that we didn't
6 identify, he doesn't know what they are, there are a number of
7 them, Your Honor, that are identified both specifically --

8 THE COURT: This is the most superficial motion to
9 compel I've ever seen, because it says, force Mr. Jacobs to
10 supplement his responses to, one, identify specific responsive
11 documents by Bates numbers, or, two, state he possesses no
12 responsive documents to the relevant request, further please
13 have him reproduce, and then you give four specific documents
14 that had a legibility issue which they say they're going to
15 look and see.

16 MR. PEEK: Right. And, Your Honor, but then if you
17 look at the body of the motion itself, it then does refer to
18 specific documents in these categories that we just defined to
19 you.

20 THE COURT: I understand, Mr. Peek. But you asked a
21 131 or so --

22 MR. PEEK: I understand how many we asked. And if
23 need to refine this, I'll refine this.

24 THE COURT: Well, we'll see. I'm going to go with
25 your steps you asked for first.

1 MR. PEEK: Okay. Your Honor, there are a couple of
2 things that I think are troubling to me. I remember here on
3 Tuesday that there were mighty complaints by Mr. Bice on the
4 so-called failures of Sands China Ltd. to identify by category
5 those documents that were responsive. He complained mightily
6 about that and said, they haven't identified them. If he's
7 now saying to you that when you do that you're invading
8 work product, you're invading attorney-client opinion or
9 attorney-client fact and that only comes up later when we
10 identify exhibits sometime just before trial, then is that the
11 rule? Because that's not what I understand the rule to be in
12 this court. That's what discovery is about, is trying to find
13 out what documents you say exist that support this claim or
14 support these facts.

15 THE COURT: Big universe of documents, as opposed to
16 documents you may use at trial to support your --

17 MR. PEEK: I understand. I'm not asking for those
18 documents --

19 THE COURT: They're different --

20 MR. PEEK: -- that you propose to use at trial, Your
21 Honor. What I'm asking for is those documents that evidence
22 or support or relate to --

23 THE COURT: Keep going.

24 MR. PEEK: Well, I guess I've got to go back to the
25 motion, Your Honor, and actually --

1 THE COURT: You don't want to go back to the motion,
2 because it's really -- and I'm in the actual responses is
3 where I am, because that's where all the questions are. And
4 it was easier for me to go the ones with responses, because
5 then I could cross-reference back to the responses that
6 appeared to be general and you were complaining about.

7 MR. PEEK: Well, if you want me to go through --

8 THE COURT: No, I don't want you to go through
9 151 requests.

10 MR. PEEK: Reference or relate to any file you've
11 created, concern, reference, or relate to your claims, I think
12 those are proper requests for production, Your Honor. And if
13 you're saying -- because those are the same kinds of requests
14 for production we received from the plaintiff, all documents
15 that reference Sheldon Adelson or Steve Jacobs. I didn't say,
16 my 440,000 documents that I have produced to date are all
17 responsive to all of these things that you have said or you've
18 asked me to give you. But that's what they do. They think
19 it's appropriate to do that. And I don't believe that that's
20 the rule this court to allow them or any party to come in here
21 and say, this is my entire 16.1 production, a production that
22 you compelled me to produce back in March of this year, of all
23 the documents that I stole from Macau, and say, those are the
24 only documents that I have, I have no others, I have no other
25 documents other than those I stole from Macau that you ordered

1 me to produce in March of 2012 -- or, excuse me, March of
2 2015.

3 We do discovery, Your Honor, for purposes of trying
4 to find what documents are that you claim exist that
5 reference, relate to, or concern a specific category. And to
6 now say that you can do that by the 16.1 --

7 Here's another one, Your Honor. He comes up here
8 and says, well, I don't know who my employer was, I don't
9 know. Well, he knows that from the first he began to do work
10 in Macau his paycheck came from VML. His paycheck continued
11 to come from VML throughout the entire period of time, from
12 May of 2009 all the way through and including July 23rd of
13 2010. So to say, oh, I only discovered that I was perhaps an
14 employee because of this so-called assignment of the contract,
15 well, who paid you, who paid you from the beginning. I'm not
16 going to go back and revisit the issue of objection to having
17 VML as a party. But you can't say that documents exist, which
18 is what he's saying, that documents exist and that that in and
19 of itself proves that they do exist. Because that's what he's
20 saying to you, I reasonably believe that such documents exist.
21 Well, tell me what it is that you -- what documents you
22 reasonably believe exist. You stole all these documents,
23 you're the author of a lot of these documents, you're the ones
24 that made the complaints to Allen & Overy, you're the one that
25 made the complaints to Gonzalez that you now say you did. You

1 have a privilege log. You can look through that privilege log
2 and identify those documents if you think that they're ones
3 that now have privilege.

4 THE COURT: So are you asking him to disclose to you
5 something that you have claimed a privilege on?

6 MR. PEEK: No, I'm not, Your Honor.

7 THE COURT: Okay.

8 MR. PEEK: But I am -- but I do think --

9 THE COURT: Because that's -- that's an important
10 issue that he's raised, because he is not the holder of that
11 privilege.

12 MR. PEEK: He is not the holder. We all know that.

13 THE COURT: The Nevada Supreme Court has told us
14 that he is not a holder of that privilege.

15 MR. PEEK: But there is a privilege log.

16 THE COURT: And there is.

17 MR. PEEK: And he knows when he makes such a
18 request --

19 THE COURT: So are you asking him to refer to those
20 privileged communications --

21 MR. PEEK: I think he should -- I think should be
22 obligated to do it. But I'm not -- I'm not, Your Honor --

23 THE COURT: Wait. Wait. Let me finish.

24 MR. PEEK: Sorry.

25 THE COURT: Are you asking him to refer to those

1 privileged communications for purposes of supporting his
2 claims?

3 MR. PEEK: Yes.

4 THE COURT: Okay.

5 MR. PEEK: I think he has to refer to those, Your
6 Honor. But that doesn't mean that waives the privilege,
7 doesn't mean that those now are implicated. I just need to
8 know.

9 THE COURT: That's a different -- I'm not at that
10 motion yet.

11 MR. PEEK: I know. But I --

12 THE COURT: I'm just asking you a question --

13 MR. PEEK: Right.

14 THE COURT: -- so that Mr. Bice now has direction as
15 to including those in his responses.

16 MR. PEEK: Right.

17 THE COURT: Okay.

18 MR. PEEK: So I'm asking him, if you say that you
19 made that, then I can evaluate whether or not that did in fact
20 occur, because we did say within the body of our requests for
21 production, those communications made to Mr. Gonzalez, who was
22 the general counsel; those communications made to Mr. Leven;
23 those communications made to others. We don't have any
24 response as to those that were made to Mr. Leven. That's a
25 specific request. It's a specific category. You can't now

1 say that, all of my documents relate to my complaint about
2 improprieties. You can't say that, all of the documents
3 relate to the fact that Mr. Adelson wouldn't allow me to put
4 matters on the board. We've pointed out all of those
5 deficiencies in our complaint -- or, excuse me, in our motion,
6 Your Honor. But, no, I'm not waiving privilege, and I'm not
7 in any way, shape, or form suggesting that there be a waiver
8 of privilege here. Because if that's what you're -- if that's
9 where you're pointing me, Your Honor --

10 THE COURT: I'm not pointing you.

11 MR. PEEK: -- I don't want --

12 THE COURT: I'm asking you a question. That's all
13 I'm asking you. I am not prejudging anything. I am asking
14 you, because I heard it in your argument a couple of times
15 today, do you want Mr. Jacobs as part of these responses to
16 identify items you have previously claimed as privilege in
17 support of his claims. And you told me yes. And that's fine.
18 I just needed you to say that so that Mr. Bice then will do
19 what he's going to do. And then if there is an issue later,
20 you will brief it, not on an order shortening time, and I will
21 then make a determination. But I need the issue teed up that
22 you're asking him to include those items.

23 MR. PEEK: He certainly would know what those items
24 are, Your Honor. And then I can evaluate whether or not those
25 are in fact, as he suggests that they are, a complaint about

1 improprieties and what those improprieties are, whether or not
2 that is in fact something over which we will be claiming
3 privilege. We will claim privilege. We have claimed
4 privilege, and we're going to continue to claim privilege.
5 But at least I need to know, Your Honor --

6 THE COURT: Okay.

7 MR. PEEK: -- where to go down this road of, I
8 complained about improprieties. I need to know what that is.

9 THE COURT: Okay. I understand what you're saying.
10 Whether I have to address it further in briefing after you get
11 the responses from Mr. Bice on those issues, we will deal with
12 it. But I'm not making a ruling on any waiver of a privilege
13 simply what happened here in the courtroom today.

14 MR. PEEK: And I hope the Court is not inviting me
15 to waive privilege here, either, because that's not what I'm
16 -- I'm not here looking to be invited to waive privilege,
17 either.

18 THE COURT: Mr. Peek, I am certainly not inviting
19 anybody to waive a privilege. My concern is that the issue as
20 it has been presented here creates potential issues. Which is
21 why I asked you the direct question.

22 MR. PEEK: I understand. So, Your Honor, I want
23 to --

24 THE COURT: Okay. Go talk to your team.

25 MR. PEEK: I want to go talk to my two colleagues --

1 THE COURT: Go talk to your team.

2 MR. PEEK: -- before I get -- I don't want to get
3 myself in trouble here.

4 THE COURT: All right. I'm going to talk to Galoub
5 while you're sitting there.

6 (Court recessed at 9:42 a.m., until 9:47 a.m.)

7 THE COURT: Next? Mr. Peek, you wanted to say
8 something else?

9 MR. PEEK: Your Honor, just because this is a very
10 sensitive area to all of us with respect to privilege, I want
11 to make, you know, some clarity here; because I don't want to
12 be invited to waive, nor am I suggesting a waiver at all.

13 What I see from his responses is a statement that, I
14 reasonably believe that documents exist that are withheld or
15 for whatever -- or don't exist or have been destroyed. That's
16 what he says without any context or without any statement of
17 what those documents are. He can look at the privilege log.
18 If he has this reasonable belief that documents exist that
19 have been withheld, he can identify from that privilege log a
20 document that has been withheld on privilege. It's our
21 privilege. We are not waiving the privilege. That privilege
22 is protected by the Nevada Supreme Court. If I have to brief
23 this down the road as to whether that does or does not
24 constitute a waiver, I will certainly address that at that
25 time. But I want the Court to know clearly that I am not

1 waiving nor being invited to waive privilege. But I do
2 believe when someone says, I reasonably believe that they
3 exist and they're being withheld from me, look at that
4 privilege log and identify those documents that you believe
5 are being withheld from you on the grounds of privilege.

6 THE COURT: Are you only asking for him to identify
7 items that you have listed on the privilege log --

8 MR. PEEK: Yes.

9 THE COURT: -- or you asking him to identify other
10 items that may be privileged? Because, remember, he had other
11 -- the way he's answered the question there may be other
12 privileged communications that are not within his custody and
13 control but which he believes to be in existence at Las Vegas
14 Sands or VML which are not contained on the privilege log.

15 MR. PEEK: If he says that those exist, I want to
16 know what documents are that you reasonably believe have been
17 withheld from you that have been destroyed and that did exist
18 at one time. Because we all know that there's 220,000 pages
19 of documents that the Court ordered him to produce, and he
20 produced them.

21 But the Court should also require him to go through
22 those and tell us what documents -- just stay with this
23 example of improprieties. There are -- there has to be a
24 specific document that he knows that exists within that
25 collection, whether it's from his review and identification of

1 a -- by Bate number of an item on a privilege log or actually
2 that he has a document where it was specifically addressed to
3 Mr. Leven and did not include counsel. Those are the things
4 that we want to know about, Your Honor.

5 THE COURT: Okay. Thank you, Mr. Peek.

6 MR. PEEK: Thank you.

7 MR. BICE: Your Honor, I need to be heard on this,
8 because this --

9 THE COURT: Hold on a second.

10 MR. BICE: -- this winging it at these hearings with
11 new arguments, which is what we've heard --

12 Mr. Jacobs is entitled to have legal counsel review
13 documents to determine whether they're responsive and what
14 they relate to. Mr. Peek says that Mr. Jacobs has to identify
15 documents that he claims are privileged. It is a waiver of
16 the privilege, and I am entitled to look at them to evaluate
17 with Mr. Jacobs --

18 THE COURT: Then you need to file that motion now,
19 because, remember, previously you have not been permitted to
20 review those documents.

21 MR. BICE: That's right.

22 THE COURT: And if you think that in order to do
23 what Mr. Peek has now requested you do to respond to the
24 discovery requests you have to do something else, I need that
25 to be in writing. Because this issue has already been

1 addressed once by the Nevada Supreme Court on these particular
2 documents.

3 MR. PEEK: Your Honor, he --

4 MR. BICE: They're asking you to deprive Mr. Jacobs
5 of --

6 MR. PEEK: He need not file that --

7 MR. BICE: -- his rightful counsel is what he's
8 asking you to do by saying --

9 THE COURT: Mr. Bice --

10 MR. BICE: -- Mr. Jacobs should go through the --

11 THE COURT: -- I'm not making that ruling now.

12 MR. BICE: I understand that.

13 MR. PEEK: Your Honor, I can tell you right now that
14 I'm not -- that I'm going to oppose that motion.

15 THE COURT: Fine.

16 MR. PEEK: So if he wants to make that motion, if
17 it's even an oral motion today, I'm not going to allow him to
18 look at the documents. But he can, because his client says, I
19 have this reasonable belief -- that reasonable belief has to
20 be based upon something. That reasonable belief can be
21 supported by the subject matter contained within and the
22 communication to a lawyer where he claims statements about
23 improprieties were made.

24 THE COURT: Mr. Peek, I think that this is going to
25 require further briefing. And so I may not be making the

1 order I was going to make 10 minutes ago.

2 MR. RANDALL JONES: I just have a question, Your
3 Honor.

4 THE COURT: Sure.

5 MR. RANDALL JONES: With respect to a privilege log,
6 when we create one -- and this is just trying to get some
7 idea, because this implicates, obviously, Sands China Ltd, and
8 I want to make sure that I -- the concern I would have is that
9 this -- even this discussion somehow would result in a waiver
10 of the privilege. And I don't want to have that happen,
11 because I don't want to be in a situation where essentially as
12 a result of what's said here today results in the barn door
13 having been opened and there's no way to close it. And I
14 don't want to be in that position. So here's my question to
15 you. And so I'm just trying to get clarification. If there's
16 a privilege log -- let's just say I'm in Mr. Bice's position
17 and I've been provided a privilege log by my opposing party
18 and I look at that privilege log and I go through that and I
19 say, well, wait a minute, I don't think this thing -- the way
20 they've described this document, I don't think that's
21 privileged. And then I can apply to the Court and say, Your
22 Honor, I don't think that's privileged. We've gone through
23 that exercise, as you know, with some of the privilege logs,
24 and you've ruled some things were privileged and some things
25 were not. And the Supreme Court, as you've said, has weighed

1 in on the bigger issue about the documents that were stolen by
2 Mr. Jacobs and who had the privilege there.

3 So from my perspective I just want to make it -- I
4 guess I want to get some clarity from you -- is if counsel is
5 asked to look at a privilege log --

6 THE COURT: Counsel who?

7 MR. RANDALL JONES: Meaning in this case Mr. Bice.

8 THE COURT: Okay.

9 MR. RANDALL JONES: -- Mr. Bice is asked to look at
10 the privilege log with his client and say, okay, is there
11 anything based on this log that appears to be something that
12 you are basing your allegations on --

13 THE COURT: Then Mr. Jacobs has to answer his
14 questions, may reveal privileged communications and may then
15 create a waiver of the privilege.

16 MR. RANDALL JONES: That's what I wanted to get
17 clarity from you on.

18 THE COURT: Which is why I think that the answer to
19 my question was going to send us down a road and I said we're
20 not doing this on an OST, and I'm certainly not doing it
21 orally today. But it is a huge issue --

22 MR. RANDALL JONES: So --

23 THE COURT: -- and that's why I have tried to frame
24 the issue, and I'm now going to change part of what I was
25 going to order, because Mr. Bice is going to do a brief.

1 MR. PEEK: Well, Your Honor --

2 MR. RANDALL JONES: Well, wait. I'm not quite
3 finished. Just so it's clear, my position with respect to
4 Sands China -- based on what you just said, Your Honor, I --
5 my position for Sands China is that I do not want Mr. Bice or
6 Mr. Jacobs to look at the privilege log to make that
7 determination at this point in time. I think that's an issue
8 I need to discuss with my client.

9 THE COURT: Okay. Well, here's the problem. If Las
10 Vegas Sands and Sands China are ones requesting Mr. Jacobs to
11 now do that, you are essentially asking him to waive the
12 privilege to consult with his counsel in responding to the
13 discovery requests.

14 MR. PEEK: We're not -- then, Your Honor --

15 MR. RANDALL JONES: That's why I wanted clarity.

16 THE COURT: And that's the problem issue. Because
17 the counsel are the ones who are preparing the document
18 requests, and they have to assist Mr. Jacobs in doing that,
19 which is why I asked the question the way I did.

20 MR. RANDALL JONES: So, just so it's clear on the
21 record, based upon your comments here, the clarification we
22 just got from you --

23 THE COURT: It's a supposition by me.

24 MR. RANDALL JONES: Well, I -- based on your
25 supposition and the implications of the supposition and the

1 potential implications of where this could go, Sands China is
2 not -- does not want the Court to order that the privilege log
3 be reviewed.

4 THE COURT: Okay. But these are not your requests.
5 These are Las Vegas Sands'.

6 MR. PEEK: I'm going to address that, Your Honor.

7 MR. RANDALL JONES: I just want to make sure that
8 Sands China's position is clear. We are not asking for that,
9 and we do not want -- and there may be further briefing
10 related to this issue, but as it stands right now with your
11 clarification, Sands China does not want Mr. Bice to look at
12 the privilege log with respect to any issues related to Sands
13 China Ltd.

14 THE COURT: So you don't want Mr. Bice -- you don't
15 want the plaintiffs to supplement their responses to requests
16 for production that -- because in large part and in many of
17 these Mr. Bice correctly notes, "This request also seeks to
18 invade the attorney-client privilege and work product
19 protection. Finally, this request seeks documents that are
20 outside the permissible discovery time frame. Additionally,
21 this request seeks documents over which defendants have made
22 claims of privilege, thus confirming the documents are at
23 issue and thus any claim of privilege must --" and it's not
24 like he didn't put you on notice of the issue.

25 MR. RANDALL JONES: So with respect to Sands China

1 on this limited issue based on what I'm hearing from the Court
2 today, at this point in time my client is not -- and this is
3 not my motion to compel, I agree. But based on what you just
4 said, at this point in time Sands China is not requesting that
5 supplementation related to that particular issue.

6 THE COURT: Okay.

7 MR. PEEK: May I respond, then, Your Honor?

8 THE COURT: Sure, Mr. Peek.

9 MR. PEEK: Because the question was addressed to me.

10 THE COURT: It was. Because you're up here.

11 MR. PEEK: Okay. And I echo the remarks of Mr.
12 Jones. If, as Mr. Bice suggests, it requires him and his
13 client to actually state what the communication was, as
14 opposed to just look at the log, then, no, I don't want him to
15 look at the log and identify documents off of the log.

16 THE COURT: Okay.

17 MR. PEEK: That's a very simple answer now to a very
18 long argued inquiry.

19 THE COURT: And Mr. --

20 MR. PEEK: No, I do not.

21 THE COURT: And Mr. Bice, if he still thinks a
22 motion is appropriate, will make a motion, and I will rule on
23 it.

24 So anything else?

25 So, to the extent, Mr. Bice, that on any of these

1 responses to requests for production you have responded to --
2 as follows, "Due to the breadth of this request it includes
3 plaintiff's entire NRC 16.1 disclosure of documents and any
4 supplement thereto," and you did not follow that with specific
5 documents that were identified, I am going to ask your client
6 or your staff to run a search with terms related to that to
7 see if there are any responsive documents that return. If no
8 responsive documents return, you will need to include the
9 search terms that were run and say, no responsive documents
10 were run -- were returned on these search terms, period. And
11 then you can continue that, we are continuing and reserve the
12 right to supplement the response; because there may be other
13 search terms that you didn't search that would have included
14 the results. And I certainly understand the breadth of some
15 of these, but in many cases you've already done that. And I
16 don't know if that's because those documents were easier to
17 find than the one we talked about on Number 12, which was the
18 Mr. Adelson with the short time frame, or something else.

19 With respect to the other generic response that
20 you've provided, which was, "Plaintiff reasonably believes
21 there are additional documents relating to his wrongful
22 termination which are or were in the possession, custody, and
23 control of the defendants," I need you to specifically
24 identify any documents that Mr. Jacobs is claiming have not
25 been produced by the defendants in this case for which he is

1 making a claim of spoliation or other discovery sanctions that
2 you will be seeking, since you reference that in this
3 paragraph.

4 So if there is this -- I'm going to use a report
5 that hopefully will not exist -- there is a report related to
6 an investigation of a dragon that is occurring on Macau that
7 is interfering with the operations and for some reason Mr.
8 Adelson blamed that on Mr. Jacobs and is terminating or
9 including that in his list of terminations and nobody's been
10 able to find that report about the dragon, I would expect you
11 to use that generic subject matter of the internal
12 investigation related to the dragon. And hopefully there is
13 nothing like that in the record.

14 MR. BICE: Your Honor, to the extent --

15 MR. PEEK: Your Honor, are you done with the ruling?
16 I know that's one, but --

17 MR. BICE: I understand --

18 THE COURT: No. I'm listening.

19 MR. BICE: I understand what you're saying in that.
20 But let's be clear about something. Mr. Jacobs knows how the
21 company works, because he was there. He knows the types of
22 communications that would be ongoing amongst -- that he might
23 not even be privy to, right, but because other employees would
24 be.

25 THE COURT: Absolutely.

1 MR. BICE: And, of course, Mr. Jacobs can't identify
2 specific documents on all topics.

3 THE COURT: But he can include categories of those
4 documents that you believe have not been produced. You
5 understand what I'm saying?

6 MR. BICE: I do. I do.

7 THE COURT: Just telling them, hey, guys, you've
8 been bad and we're going to bring another motion for sanctions
9 because we think there's more documents -- I need you to give
10 me something more.

11 MR. BICE: Well, when we get those search terms that
12 we got on Tuesday --

13 THE COURT: Yes.

14 MR. BICE: -- or Monday afternoon is when we got
15 those, I think it's pretty obvious that we all know that there
16 are a lot of documents that aren't being produced. But -- all
17 right.

18 THE COURT: Okay. Now, you wanted to say something
19 else.

20 MR. PEEK: There were other categories, Your Honor,
21 where --

22 THE COURT: No. That's all you asked for in your
23 motion. Anything else?

24 MR. PEEK: No. I did ask Your Honor for employment
25 records --

1 THE COURT: Let me read it to you again.

2 MR. PEEK: -- I asked for employment records --

3 THE COURT: What you asked for in your motion, Mr.
4 Peek, was --

5 MR. PEEK: Your Honor --

6 THE COURT: -- "identify specific responsive
7 documents by Bates numbers or state he possesses no responsive
8 documents to the relevant requests." I asked you on the
9 15 years. You limited it, and that's going to be an
10 amendment, because you've now limited it to five years prior
11 to the start of his employment. So that's a modification
12 you've given, and they're now going to respond to that
13 modified --

14 MR. PEEK: Well, Your Honor, with respect to the
15 termination --

16 THE COURT: Mr. Peek.

17 MR. PEEK: -- I asked for those documents. I asked
18 identify those documents.

19 THE COURT: Do you see your motion? We're going to
20 do it in --

21 MR. PEEK: I see what the motion says, Your Honor.

22 THE COURT: -- two steps. We're going to do what
23 I've asked to be done, we're going to see if that generates
24 any more information. If after you get that supplemental
25 response that I've ordered based upon the motion you filed,

1 then if you still think there is problematic responses, you
2 will, of course, be able to seek that after having a real
3 2.34 conference.

4 MR. PEEK: Well, I would like to have a real
5 2.34 conference, Your Honor. I made the effort to have a
6 real 2.34 conference.

7 THE COURT: Okay.

8 MR. PEEK: And you saw the affidavit. But I'm
9 troubled by the --

10 THE COURT: I saw both affidavits.

11 MR. PEEK: I understand you saw both affidavits, and
12 the disingenuousness, frankly, of Mr. Bice's affidavit when
13 Mr. Cassity attempted on four different occasions to have a
14 meet and confer and then, oh, oh, by the way, I'm having one
15 with Mark Jones on another topic regarding the Vagus
16 deposition and where it's going to occur. That's not the same
17 thing as responding to Mr. Cassity's email that says, join us
18 in that 2.34 conference and we'll talk about it at that time
19 on November 10th. He didn't say that. He never responded
20 once to Mr. Cassity's emails. Never responded. He responded
21 to Mr. Jones's emails with respect to the Vagus conferences.

22 THE COURT: Anything else?

23 MR. PEEK: Yes, Your Honor. I'm still a little bit
24 concerned, because we've asked for identification of documents
25 with respect to personnel files.

1 THE COURT: You have.

2 MR. PEEK: He's objected to that.

3 THE COURT: You've asked 151 requests for
4 production. Without going through specifically, I have
5 handled the general issues, which were what you specifically
6 asked me to do in this motion. You're going to get responses
7 with the direction that I have given to Mr. Bice. He is going
8 to provide you with additional information. He's probably
9 still not going to give you the litigation about his dad's
10 stuff.

11 MR. PEEK: I get that.

12 THE COURT: He's probably still not going to give
13 you litigation that occurred 20 years ago with somebody else.

14 MR. PEEK: I -- Your Honor --

15 THE COURT: Because, you know what, Mr. Peek, these
16 requests for production are overbroad. But I'm going to let
17 Mr. Bice go back, I'm going to have him do what you've
18 requested, which is to supplement in the categories that I
19 have given him, somebody's going to brief the waiver of
20 attorney-client privilege issues soon, hopefully, and then
21 after the --

22 MR. PEEK: Why do you we need to brief it, Your
23 Honor? Respectfully, why do we need to brief it?

24 MR. BICE: We're going to brief it.

25 THE COURT: They're going to brief it, Mr. Peek.

1 Trust me, they're going to brief it.

2 MR. PEEK: Well, no. I understand that, Your Honor.

3 THE COURT: They're going to brief it. Whether
4 something changes or not between what the Nevada Supreme Court
5 has already ruled or not will, of course, determine whether
6 they have to provide additional information. But it's clear
7 from what's happening today they're now going to brief it
8 because of what's occurred, if you were in the courtroom. I
9 understand you've all reserved your rights and everybody's
10 done that, and then I'm going to --

11 MR. PEEK: Well, what I've said is -- what I've
12 said, Your Honor, is, no, you don't have to go back and look
13 at the privilege log. That's what I've said. How does that
14 then create an issue to be briefed? How does that create?

15 THE COURT: It doesn't matter whether I think it's
16 an issue to be briefed or not. I spend how many hours a week
17 with you guys?

18 MR. PEEK: Way too many, Your Honor.

19 THE COURT: It doesn't matter whether I think it
20 needs to be briefed or not. It matters whether you as counsel
21 believe it needs to be briefed and resolved. I'm not the one
22 who's driving the train. I am the one who, when items are
23 presented to me, is trying to call balls and strikes based
24 upon the information you give me at the time. Some of the
25 things we are getting are a little more superficial than

1 others because I've been overly lenient in granting orders to
2 show -- orders shortening time with you guys.

3 MR. RANDALL JONES: Your Honor, I have a question,
4 and just because of this issue that's come up. With respect
5 to this issue of the privilege log we have now -- both Sands
6 China and Las Vegas Sands have said we are not asking them to
7 look at the privilege log, either Mr. Jacobs or counsel, in
8 connection with these requests to produce. And so I would
9 just make sure our position is clear. If they've now been
10 told that in open court and the Court has not ordered them to
11 do that --

12 THE COURT: I have not ordered them to do that.

13 MR. RANDALL JONES: -- then if they -- they cannot
14 create a waiver by then having been told not to do it, then
15 go and do it and say, well, we went and did it now and we had
16 to talk to our client about it so we could answer these
17 requests to produce and therefore you've created a waiver.
18 You cannot --

19 THE COURT: I am not telling them to go do it. I
20 have told Mr. Bice there is an order that doesn't permit him
21 to do it and if he wants a change to that order, he has to
22 file a motion.

23 MR. RANDALL JONES: That's fine.

24 THE COURT: And he said, I'm going to file a motion.
25 Which is why I think I'm going to see briefing on it.

1 MR. RANDALL JONES: If he -- just I want to be sure
2 it's on our position. If he does go and do it, in light of
3 the current Supreme Court order --

4 THE COURT: Mr. Bice, don't look at the documents.

5 MR. RANDALL JONES: -- we are going to have a motion
6 for severe sanctions and a motion to --

7 MR. PEEK: Well, not only don't look at the
8 documents, don't talk to your client about it.

9 MR. RANDALL JONES: -- disqualify counsel. We'll
10 have a motion to disqualify counsel if that occurs.

11 MR. PISANELLI: If Counsel doesn't -- we've been met
12 with that threat for five years now. We know what the rules
13 are.

14 MR. BICE: Exactly. We know the rules.

15 THE COURT: Guys. I don't care. I don't care that
16 you guys can't get along. Justice Hardesty told you all get
17 along. That's not going to make any difference to you guys.
18 I know. It's okay.

19 MR. RANDALL JONES: Get along fine, Your Honor.
20 Just want to --

21 THE COURT: But to this particular extent, Mr. Bice,
22 remember you're not allowed to look at the documents right
23 now. Don't look at them.

24 MR. BICE: We know -- we know the rule, Your Honor.
25 We also know --

1 MR. PEEK: Your Honor, the additional admonition --

2 MR. BICE: -- we also know the issues that are
3 presented by their discovery requests, and we know the issues
4 that are presented by their alleged defenses. We will brief
5 that issue with you, because they want --

6 THE COURT: And then you're going to back up and see
7 if the Supreme Court changes their mind based upon the
8 additional information you give them.

9 MR. PEEK: Why would they need to go back up, Your
10 Honor?

11 THE COURT: Because everything you guys do goes back
12 up, so when somebody cites to me a case from the Las Vegas
13 Sands writ I have to ask which one.

14 MR. PEEK: No. I get that, Your Honor.

15 But the other admonition I would --

16 THE COURT: That was Mr. Witt yesterday morning at
17 10 till 9:00.

18 MR. PEEK: The other admonition I would ask you to
19 give to them is they don't talk to their client about the
20 attorney-client communications, not just look at the
21 documents, but even talk to their client to even make this
22 reasonable belief.

23 MR. PISANELLI: And we'd ask you to have an
24 admonition to have the defendants read the rule books and
25 follow them. There we go. We're all on the same page now.

1 MR. PEEK: Oh, wow.

2 THE COURT: Will you guys stop. Okay.

3 MR. PISANELLI: We know the rules.

4 THE COURT: Everybody's going to do what they're
5 going to do. Hopefully nobody's going to violate any rules.
6 I would hate to be faced with a motion for disqualification
7 four years into a case, six months before a trial.

8 Anything else?

9 MR. RANDALL JONES: Yes, Your Honor.

10 THE COURT: Yes, Mr. Jones.

11 MR. RANDALL JONES: I would -- I have -- I've asked
12 for and I would repeat my request for attorneys' fees, since
13 they have certainly been awarded attorneys' fees on many
14 occasions. I think some of these responses to the
15 interrogatories were clearly in bad faith, and we should be --

16 THE COURT: On yours? No. How many did I tell them
17 to supplement? Two.

18 MR. RANDALL JONES: Well, not to mention that --

19 THE COURT: Two.

20 MR. RANDALL JONES: -- their argument about 40
21 interrogatories in the jurisdictional interrogatories you
22 found to be it sounds like patently inappropriate. That means
23 we had to bring a motion we shouldn't have had to bring. And
24 we ask for four specific, and you found two out of the four.
25 So means our motion was meritorious in that regard. So can we

1 ever get attorneys' fees for things that --

2 THE COURT: I've given you attorneys' fees before.

3 MR. RANDALL JONES: I don't recall that.

4 THE COURT: But they were like balanced.

5 MR. RANDALL JONES: Well, in this case there's no
6 balance. This is not Fox News. So we need to --

7 MR. BICE: Your Honor, we --

8 MR. RANDALL JONES: -- at this point --

9 MR. BICE: I'm sorry.

10 MR. RANDALL JONES: -- fair and balanced, Your
11 Honor.

12 MR. BICE: Mr. Jones's approach, Your Honor, seems
13 to be is that no matter what they do and no matter what they
14 get caught doing that means that by definition they --

15 THE COURT: Guys. Hey. Guys. I'm not awarding
16 attorneys' fees on either of the motions this morning.
17 Neither of them were brought in bad faith. But there are
18 valid issues that were addressed by each side, and, as a
19 result, on these two motions I'm not granting fees. That
20 doesn't mean if I don't have more significant issues I might
21 not grant fees.

22 MR. BICE: Like on Tuesday. We didn't ask you for
23 fees even though you granted I think almost every aspect of
24 our motion against Mr. Jones.

25 THE COURT: Will you guys just leave.

1 MR. RANDALL JONES: Thank you, Your Honor.

2 THE COURT: Mr. Morris, it was a pleasure seeing
3 you. I wish you could have had some input into our exciting
4 discussion.

5 MR. BICE: Your Honor, this is our status check. We
6 have I think two issues.

7 MR. MORRIS: My time is coming.

8 MR. BICE: Your Honor, we have two issues, one on
9 the expert deadlines. We've now exchanged dates. I had
10 proposed January the 15th, they had proposed February the
11 15th. Why don't you just set it as February 1 and tell us to
12 move forward.

13 THE COURT: How does February 1 sound?

14 MR. PEEK: Not good, Your Honor. We'd prefer
15 February 15th.

16 MR. MORRIS: Not as good as February 18th.

17 MR. PEEK: We prefer February -- well, the 18th --

18 THE COURT: 18th's a Thursday, 15th is a holiday.

19 MR. MORRIS: Make it 19th.

20 THE COURT: How about the 12th?

21 MR. PEEK: That's that Friday before the holiday.

22 MR. RANDALL JONES: That's fine, Your Honor.

23 THE COURT: February 12th.

24 MR. MORRIS: That's good.

25 MR. PEEK: And then the rebuttals, Your Honor, would

1 come 30 days thereafter.

2 THE COURT: March 18th. It's a little more than
3 30 days. That work?

4 MR. BICE: that's fine.

5 THE COURT: Okay. Anything else?

6 MR. BICE: I mean, it's longer than I --

7 THE COURT: I now.

8 MR. BICE: But I understand your ruling.

9 THE COURT: You're going to be fighting about
10 documents for a while.

11 MR. BICE: One other issue, Your Honor, and again
12 this is just to get some guidance from you on how you want us
13 to proceed. I think yesterday you entered the order on the
14 medical records issue --

15 THE COURT: Yes.

16 MR. BICE: -- the medical release, okay.

17 THE COURT: Correct.

18 MR. BICE: Mr. Jones has given me a draft. Now that
19 I've got the order, we are going to challenge that order with
20 you and then ultimately we may challenge it, since it's a
21 privilege question, at the Supreme Court. So I have a motion
22 to put in front of you. I present it on an OST, but you just
23 sort of warned me about --

24 THE COURT: No. That one I'll do on an OST.

25 MR. BICE: Okay.

1 THE COURT: But I want attached to your motion
2 whatever the consent is that is being requested and the draft
3 letter to the providers so that I have all of the information
4 before any of you ask me to do anything so when you go up to
5 Carson City you not only have the framed request, but you also
6 have the actual consent and communications that were intended
7 to go.

8 MR. RANDALL JONES: Your Honor, I guess -- I've got
9 an issue. I guess he's going to move for reconsideration.

10 THE COURT: Probably.

11 MR. RANDALL JONES: But we've actually had a motion
12 to compel, you've ruled on it. I can't imagine what
13 circumstances have changed.

14 THE COURT: I didn't say I was going to change my
15 mind. I said I wanted the record to be complete before you go
16 to Carson City.

17 MR. RANDALL JONES: So just so it's clear, since
18 he's told you he's going to file a motion, I'm filing a motion
19 for an order to show cause, because --

20 THE COURT: Do you want me to hear them at the same
21 time?

22 MR. RANDALL JONES: Well, I think I would ask that
23 we would.

24 MR. BICE: The order was entered yesterday.

25 MR. RANDALL JONES: It was. But you --

1 MR. BICE: So I'm not sure what the order to show
2 cause is on, Your Honor, since I think the order was entered
3 yesterday.

4 THE COURT: Okay.

5 MR. RANDALL JONES: But the --

6 MR. MORRIS: It was not entered yesterday.

7 MR. RANDALL JONES: -- Court's ordered that he give
8 us this information about three weeks ago, sign the release
9 about three weeks ago as part of what you said in open court.
10 And I've repeatedly asked him that information, and he's
11 refused to give it to me irrespective of the signed order in
12 addition to the fact that he's never given us the tax returns
13 which you told him to give us a long time ago.

14 MR. BICE: That's --

15 THE COURT: Redacted versions of the tax returns.
16 He can redact non-wage information.

17 MR. RANDALL JONES: Redacted version. I understand.

18 THE COURT: Okay.

19 MR. BICE: The order actually wasn't -- I don't even
20 think there's been a notice of entry of the order. I think we
21 got the order yesterday from the Court. So my point is this.
22 My point is this, Your Honor. Is they can file I guess
23 whatever they would like to file, but --

24 THE COURT: Absolutely. That's what you guys do.

25 MR. BICE: -- the order was -- we will file our

1 motion, and we'll try and submit it to you this afternoon on
2 our motion upon this issue.

3 THE COURT: Okay.

4 MR. BICE: And the Court can --

5 THE COURT: And then I can set it for next Thursday,
6 if you'd like to have it then, or I can set it for the week of
7 Christmas, if you'd like to come in and visit that week.

8 MR. BICE: Either one of those are fine with me.

9 MR. MORRIS: Can we come in costume?

10 THE COURT: For Christmas?

11 MR. PEEK: Your Honor, we don't have to come
12 Christmas week, because next week -- Thursday of next week --
13 today is the 3rd, Thursday next week will be the 10th, the
14 following Thursday after that would be the 15th or 17th. So
15 it wouldn't be Christmas week. But I'll let Mr. Jones decide
16 as to whether he wants to come the week of the 14th.

17 THE COURT: I'll let you guys handle whatever you
18 doing. If you send them over and they're both here, I'm going
19 to try and set the two similar issues at the same time.

20 MR. RANDALL JONES: Great.

21 THE COURT: And then if there is a request for a
22 stay because somebody's going to seek a writ, then I am going
23 to talk about timing issues with you.

24 MR. RANDALL JONES: Right. Your Honor, I just want
25 to make clear for the record that somebody is intentionally

1 delaying this case. And I've heard that over and over again,
2 I can't remember who made that comment, but --

3 MR. BICE: I know he is.

4 MR. RANDALL JONES: -- here somebody's slow-playing
5 this case.

6 MR. PISANELLI: I've got a mirror, if you need it.

7 THE COURT: Guys. Will you stop and go away. Go
8 away.

9 MR. BICE: The 17th I can't do, and nor can Mr.
10 Peek.

11 MR. PEEK: We're going to do the 10th.

12 MR. BICE: Okay. I thought you said the 17th.

13 THE COURT: Good-bye. Good-bye. Please leave.

14 MR. MORRIS: Thank you, Your Honor.

15 THE PROCEEDINGS CONCLUDED AT 10:13 A.M.

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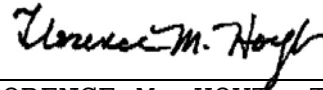
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

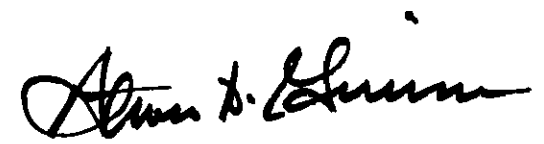
FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

12/3/15

DATE



CLERK OF THE COURT

OPPS

James J. Pisanelli, Esq., Bar No. 4027

JJP@pisanellibice.com

Todd L. Bice, Esq., Bar No. 4534

TLB@pisanellibice.com

Debra L. Spinelli, Esq., Bar No. 9695

DLS@pisanellibice.com

Jordan T. Smith, Esq., Bar No. 12097

JTS@pisanellibice.com

PISANELLI BICE PLLC

400 South 7th Street, Suite 300

Las Vegas, Nevada 89101

Telephone: (702) 214-2100

Facsimile: (702) 214-2101

Attorneys for Plaintiff Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; SHELDON G. ADELSON, an individual; VENETIAN MACAU LTD., a Macau corporation; DOES I through X; and ROE CORPORATIONS I through X,

Defendants.

Case No.: A-10-627691

Dept. No.: XI

PLAINTIFF STEVEN C. JACOBS' OPPOSITION TO DEFENDANTS' MOTION TO EXCEED ONE-DAY LIMIT FOR DEPOSITION OF PLAINTIFF STEVEN JACOBS

Hearing Date: February 9, 2016

Hearing Time: 8:30 a.m.

AND RELATED CLAIMS

I. INTRODUCTION

Defendants' Motion is another classic example of overreaching. One of their own attorneys is on record claiming that seeking to depose any individual witness, even one that is a named party for five days – the equivalent of ten days for a non-English speaker – is "extraordinary and entirely unreasonable." Yet, Defendants demand the same amount of time to depose Plaintiff Steven C. Jacobs ("Jacobs") who does not require a translator or have a history of rambling, argumentative, and evasive answers to questioning like Defendant Sheldon G. Adelson ("Adelson").

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

1 Defendants engage in their tried and true tactic yet again: they knowingly overreach and
2 then propose to "negotiate" with the Court for 50%. They then claim that it must be reasonable
3 since it is only half of what they asked. This Court has rejected that tactic in the past and must do
4 so yet again. Defendants have made no showing that they need five days to "fairly examine" Jacobs.
5 Defendants do not even pretend that they have or can make such a showing. Instead, they prove
6 that their real agenda is to make Jacobs sit for weeks of deposition because, by comparison, the
7 Defendants' many different executives have to sit for depositions. Defendants theorize that when
8 they are all added together, the total hours of depositions should correspond to each other. Of
9 course, that is not the law or even logic. It is simply about soothing the egos of high level
10 executives, and a particular one at that.

11 But as this Court knows, Adelson personally, as well as his highest ranking executives, are
12 all intimately involved in the facts and circumstances of this case. Indeed, Adelson — not Jacobs
13 — organized the scheme to wrongfully terminate Jacobs and personally oversaw the fabricated list
14 of 35 purported bases "for cause." The vast majority of the supposed reasons for Jacobs' terminate
15 relate to alleged failures to inform Adelson or receive Adelson's approval for certain actions.
16 Therefore, *a greater* amount of time will be needed to depose Adelson and the Court should reject
17 Defendants' desperate pleas to appease the Chairman.

18 **II. DISCUSSION**

19 Nevada Rule of Civil Procedure 30(d)(1) allows a court to grant additional time to depose a
20 witness "if needed to *fairly examine the deponent* or if the deponent, another person, or any other
21 circumstance impedes or delays the examination." (emphasis added.) The rule focuses upon the
22 time needed to "fairly examine" the actual witness. It does not concern itself with massaging the
23 egos of high ranking corporate executives who claim that any individual plaintiff that dares to sue
24 large corporations should have to sit for days upon days of deposition as a "trade-off" for taking the
25 depositions of the corporate executives and employees involved in the wrongdoing which gives rise
26 to the case. The Defendants and their tit-for-tat tactics simply disregard the purpose of the rule.
27 Inevitably, any corporation that has a large number of executives and employees which gives rise
28

1 to the conduct in the litigation is going to face a far greater obligation to appear for deposition than
2 an individual plaintiff.

3 NRCP 26(b)(2) provides three general factors for the Court to consider when determining
4 whether a deposition should exceed NRCP 30(d)(1)'s presumptive one-day time frame:

5
6 (1) whether the discovery being "sought is unreasonably cumulative or duplicative,
7 or is obtainable from some other source that is more convenient, less burdensome,
8 or less expensive"; (2) whether the party seeking the discovery has already had an
9 "ample opportunity ... to obtain the information sought"; and (3) whether the
discovery being sought "is unduly burdensome or expensive, taking into account
the needs of the case, the amount in controversy, limitations on the parties'
resources, and the importance of the issues at stake in the litigation."

10 *Okada v. Eighth Jud. Dist. Ct.*, 131 Nev. Adv. Op. 83, 359 P.3d 1106, 1113 (2015) (quoting NRCP
11 26(b)(2)).

12 The Court may also consider "(1) 'the witness needs an interpreter,' (2) 'the examination will
13 cover events occurring over a long period of time,' (3) 'the witness will be questioned about
14 numerous or lengthy documents,' and (4) 'the need for each party [in a multiparty case] to examine
15 the witness.'" *Id.* (quoting 8A Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, Federal
16 Practice and Procedure § 2104.1 (3d ed. 2010)).

17 But attorneys must conduct depositions efficiently. "[T]he seven-hour limit encourages
18 efficiency; it has been said that a writer's best friends are a deadline and a page limitation. The same
19 may be said of lawyers conducting depositions." *Roberson v. Bair*, 242 F.R.D. 130, 138 (D.D.C.
20 2007). "In every deposition, choices have to be made about the subject matter to be covered. The 7-
21 hour rule necessitates, especially in complex cases, that almost all depositions will be under-
22 inclusive. The examiner therefore, must be selective and carefully decide how to apportion her
23 time." *In re Sulfuric Acid Antitrust Litig.*, 230 F.R.D. 527, 532 (N.D. Ill. 2005). All defendants must
24 make a tactical decision about the topics to cover with the time they have available. *See id.*

25 Even in multiple party cases where, as here, all defendants have virtually identical interests
26 and defenses, time can be conserved if one lawyer is designated to inquire about certain topics so
27 duplicative questioning can be avoided. *See Fed. R. Civ. P. 30 Adv. Comm. Note* (2000) ("In multi-
28 party cases, the need for each party to examine the witness may warrant additional time, although

1 duplicative questioning should be avoided and parties with similar interests should strive to
2 designate one lawyer to question about areas of common interest.").

3 Jacobs acknowledges that more than one day is likely needed to conduct a fair deposition.
4 However, like Defense counsel has admitted elsewhere, "[u]ndersigned counsel is not aware of any
5 court ordering an individual to be deposed for [10 days]." Jacobs is not the equivalent of a 30(b)(6)
6 witness. Jacobs did not involve multiple people in the plot to terminate him or take constantly
7 shifting litigation positions which require a 30(b)(6) deposition to unearth the corporate "story."

8 Defendants' reference to the fact that four executives were deposed during jurisdictional
9 discovery is particularly misleading. Those executives were ordered by this Court to reappear more
10 than once because they refused to answer a number of relevant questions and the Defendants also
11 failed to timely produce documents. And, in the face of this Court ordering them to reappear for
12 deposition because of that misconduct, they made a deal so as to avoid having to reappear at those
13 depositions. Defendants had every opportunity to depose Jacobs during jurisdictional discovery but
14 chose not to do so.

15 Their latest attempt at re-trading – now complaining that they did not take the deposition so
16 as to get their own executives out of having to reappear – only highlights how they will argue
17 anything, no matter how contradictory. Nor is it of any import that Jacobs will have to take multiple
18 depositions of the Defendants' executives. It is the Defendants that had multiple personnel engaged
19 in the scheme to terminate him. It is these same Defendants that have routinely given contradictory
20 testimony, with their own Chairman swearing that all the witnesses will change their tune – despite
21 what the contemporaneous documents show – when they show up in court and testify. (Hr'g Tr. at
22 45-47, May 1, 2015, Ex. 1.) Obviously, Jacobs is not obligated to wait for that ambush at the time
23 of trial when Adelson seeks to bully anyone who dares acknowledge the outstanding job which
24 Jacobs did at helping to save Adelson from financial ruin.

25 In the face of Adelson's threats and tactics, Jacobs is entitled to "fairly examine" every
26 witness that is involved in this action. That is particularly so of these corporate entities, which goes
27 so far as to deny the existence of Jacobs' employment agreement when they have specifically
28 admitted to the United States Securities and Exchange Commission that Jacobs had an employment

1 agreement just like Adelson, Leven and other leading executives. And they also admitted to the
2 Securities and Exchange Commission that Jacobs' employment agreement entitled to him to
3 compensation if he was fired without proper cause. (2010 Proxy Statement, Ex. 2.)

4 The Defendants have made no showing that five days are needed to "fairly examine" Jacobs.
5 They confirm that fact when they insist that only three days should be needed to "fairly examine"
6 Adelson. But of course, the Defendants know Adelson's history. He does not answer questions, he
7 is evasive, stubborn, and argumentative. He is also the individual who fabricated the purported
8 thirty-five reasons for Jacobs' termination, all of which are in conflict with the numerous
9 contemporaneous documents that exist.¹ Adelson is also responsible for the contrived story as to
10 the supposed non-existence of Jacobs' employment agreement. If counsel for the Defendants is
11 suggesting to the Court that they maintain in good faith that Adelson's deposition can be fairly
12 completed in three days in light of the record he already establishes, then they cannot credibly
13 suggest to this Court that they need more than three days to "fairly examine" Jacobs. If anything,
14 the fair examination of Adelson will likely take double the amount of anyone else, considering his
15 argumentative and non-responsive diatribes.

16 **III. CONCLUSION**

17 The Defendants have made no showing that even five days are necessary to fairly depose
18 Jacobs. The requirements of NRCPC 30(d)(1) are not satisfied by simply pointing out that an
19 individual plaintiff who is suing a large multi-national corporation will take numerous depositions
20 in order to unearth and pin down the ever changing and contradictory story. Nor is Jacobs a
21 corporate representative. Any issues encountered by the Defendants concerning the need for
22 extensive depositions about their contradictory witnesses is the product of their own making,
23 principally that of Adelson himself. He is the one who has thrown down the gauntlet that no
24 witnesses will dare come into Court and testify consistently with what the documents show. The

25 _____
26 ¹ This includes documents that have not yet been produced. Jacobs notes that he will object
27 to the Defendants' tactics of trying to produce documents shortly before or for the first time at
28 deposition. This Court has ordered the Defendants to produce documents, including ordering Sands
China to do so at the beginning of December, 2015. Yet, no such compliance has occurred. Jacobs
will object to any deposition where documents have not been produced or are attempted to be
dumped on him and his counsel shortly before the deposition date.

1 tactics that he and his companies employ provides no support for burdening an individual plaintiff
2 who dares to sue them. They have made no showing that five days are needed and their motion
3 should be denied.

4 DATED this 8th day of February, 2016.

5 PISANELLI BICE PLLC

6
7 By: /s/ Todd L. Bice
8 James J. Pisanelli, Esq., Bar No. 4027
9 Todd L. Bice, Esq., Bar No. 4534
10 Debra L. Spinelli, Esq., Bar No. 9695
11 Jordan T. Smith, Esq., Bar No. 12097
12 400 South 7th Street, Suite 300
13 Las Vegas, Nevada 89101

14 Attorneys for Plaintiff Steven C. Jacobs

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 8th day of February, 2016, I caused to be served via the Court's E-Filing system true and correct copies of the above and foregoing **PLAINTIFF STEVEN C. JACOBS' OPPOSITION TO DEFENDANTS' MOTION TO EXCEED ONE-DAY LIMIT FOR DEPOSITION OF PLAINTIFF STEVEN JACOBS** to the following:

J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
HOLLAND & HART
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134
speek@hollandhart.com
rcassity@hollandhart.com

J. Randall Jones, Esq.
Mark M. Jones, Esq.
KEMP, JONES & COULTHARD
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
r.jones@kempjones.com
m.jones@kempjones.com

Michael E. Lackey, Jr., Esq.
MAYER BROWN LLP
1999 K Street, N.W.
Washington, DC 20006
mlackey@mayerbrown.com

James Ferguson, Esq.
MAYER BROWN LLP
71 S. Wacker Drive
Chicago, IL 60606
jferguson@mayerbrown.com

Steve Morris, Esq.
Rosa Solis-Rainey, Esq.
MORRIS LAW GROUP
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101
sm@morrislawgroup.com
rsr@morrislawgroup.com

Daniel R. McNutt, Esq.
Matthew C. Wolf, Esq.
CARBAJAL & MCNUTT, LLP
625 South Eighth Street
Las Vegas, NV 89101
drm@cmlawnv.com
mcw@cmlawnv.com

/s/ Shannon Thomas
An employee of PISANELLI BICE PLLC

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

EXHIBIT 1

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants

.....

CASE NO. A-627691

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING RE JURISDICTION - DAY 6

FRIDAY, MAY 1, 2015

APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.
TODD BICE, ESQ.
JORDAN T. SMITH, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
JON RANDALL JONES, ESQ.
MARK JONES, ESQ.
IAN P. MCGINN, ESQ.
STEVE L. MORRIS, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 Q And if there was an explanation, that would have
2 governed the terms of his employment. Is that your point?

3 A Yes.

4 Q Okay. You understand --

5 A Well, hold on. Hold on. Hold on. I must point out
6 to you that he didn't sign -- the purpose of a term sheet is
7 for both parties to say this is the framework from which we
8 will craft a contract. And if one person, like Mike, signed
9 that to say I agree this is the framework and he didn't agree,
10 there's no basis upon which to enter into the crafting or the
11 drafting of a contract. So there's no meeting of the minds.
12 One of the requirements of bringing contracts to maturity is a
13 meeting of the minds. There was no meeting of the minds. He
14 didn't sign it.

15 Q You're aware, Mr. Adelson, that again, Mr. Leven
16 testified in this courtroom in these proceedings that had Mr.
17 Jacobs been fired without cause, then those 2.5 million shares
18 we've been talking about vested immediately? Are you aware of
19 that?

20 MR. RANDALL JONES: Object to the form of the
21 question. Standard objection. Also mischaracterizes the
22 testimony with respect to the characterization. Object to the
23 form.

24 THE COURT: Overruled.

25 THE WITNESS: Mr. Jacobs did not acquiesce to the

1 terms proposed by Mr. Leven, and I did not have access to Mr.
2 Leven's testimony yesterday, nor did I discuss that testimony
3 with him since he testified. But he was on for like three
4 days, I think, and I didn't know what he said.

5 BY MR. PISANELLI:

6 Q Let me read it to you. Page 89, Day 2, line 13.
7 Mr. Bice asked him --

8 MR. PEEK: Wait a moment, please, counsel.

9 (Pause in the proceedings)

10 MR. RANDALL JONES: I've got it. But I would also
11 add, Your Honor, incomplete hypothetical in the way the
12 question was posed.

13 THE COURT: Overruled.

14 BY MR. PISANELLI:

15 Q Mr. Bice asked Mr. Leven, he said:
16 "Let's deal with the 2.5 million shares, Mr. Leven.
17 2.5 million shares vested immediately, under the
18 term sheet would vest immediately if Mr. Adelson and
19 his wife lost control of LVSC; correct?"

20 Answer, "Correct."

21 "And just like the 2.5 million shares vest
22 immediately if Mr. Jacobs is fired without cause;
23 correct?"

24 Answer, "Yes."

25 So let me ask you this. Is Mr. Leven wrong again?

1 MR. PEEK: Objection, Your Honor. This goes to the
2 merits. Standard objection.

3 Sorry. Standard objection.

4 MR. RANDALL JONES: I will join that objection. I
5 also believe that -- well, that's my objection.

6 THE COURT: Overruled.

7 THE WITNESS: You are taking his answers out of
8 context.

9 BY MR. PISANELLI:

10 Q No, I'm not.

11 A Yes, you are. You're giving me one --

12 Q My question to you is whether he was wrong.

13 A -- sentence out of five days of questioning. And I
14 just think it's wrong for me to answer a question taken out of
15 context.

16 Q All right. So let me phrase it this way. You
17 cannot say, as you sit here right now, whether the number two
18 man in your company's testimony was inaccurate?

19 MR. RANDALL JONES: I'll object to the form of the
20 question.

21 THE WITNESS: I cannot say that it was accurate.
22 Mike Leven made the biggest mistake of his life in bringing
23 Jacobs on. He will come into Court and say that. He made a
24 big mistake.

25 //

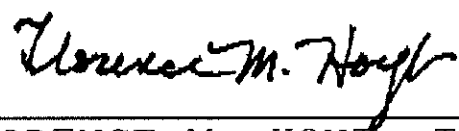
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

EXHIBIT 2
(To be filed Under Seal)

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS	.	
	.	
Plaintiff	.	CASE NO. A-627691
	.	
vs.	.	
	.	DEPT. NO. XI
LAS VEGAS SANDS CORP., et al..	.	
	.	Transcript of
Defendants	.	Proceedings
.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON DEFENDANTS' MOTION TO EXCEED ONE-DAY
LIMIT RE JACOBS DEPOSITION**

TUESDAY, FEBRUARY 9, 2016

APPEARANCES:

FOR THE PLAINTIFF:	JAMES J. PISANELLI, ESQ.
	TODD L. BICE, ESQ.
	JORDAN T. SMITH, ESQ.

FOR THE DEFENDANTS:	J. STEPHEN PEEK, ESQ.
	JON RANDALL JONES, ESQ.
	STEVE L. MORRIS, ESQ.
	RYAN M. LOWER, ESQ.

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS	FLORENCE HOYT
District Court	Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

1 LAS VEGAS, TUESDAY, FEBRUARY 9, 2016, 8:30 A.M.

2 (Court was called to order)

3 THE COURT: Why don't we start with Jacobs versus
4 Sands.

5 Mr. Jones, it's so nice to see you.

6 MR. RANDALL JONES: Good morning, Your Honor.

7 THE COURT: Good morning. Haven't talked to you
8 guys since what, yesterday?

9 MR. PEEK: Twenty-four hours ago, Your Honor.

10 THE COURT: Well, no. Less.

11 MR. BICE: Less.

12 THE COURT: Some of them I spoke to yesterday after
13 you were gone.

14 Is it okay with all of you that Mr. Morris's motion
15 to associate counsel is advanced to today?

16 MR. BICE: No, it won't be, Your Honor.

17 THE COURT: Okay. So it'll be heard on Thursday at
18 8:30.

19 MR. PEEK: Thank you, Your Honor.

20 THE COURT: We signed the OST and set it for
21 Thursday.

22 MR. BICE: We're going to oppose that motion.

23 THE COURT: That's okay. That's why I asked if it
24 was okay for it to be heard. If it's not, it's okay.

25 MR. BICE: I don't know that I can -- we don't

1 finish this deposition until --

2 THE COURT: You're never going to finish this
3 deposition --

4 MR. BICE: -- Wednesday.

5 THE COURT: -- at the rate you're going. If you
6 have to ask, did you not discuss this, did you not discuss
7 that, did you not discuss this, it may take longer. Mr. Jones
8 and I had that conversation yesterday. And I understand his
9 position, and I respect it. It's just means it takes longer.

10 MR. BICE: My only point on this, Your Honor, is
11 there are some depo transcripts from another related action
12 that we want to submit, including some video. And I'm not
13 sure I can get that to you by Thursday. But we will endeavor.

14 THE COURT: If Mr. Morris were here, I would ask
15 some more questions. But since he's not, I'm not going to.

16 MR. BICE: Understood.

17 THE COURT: So I'll wait till Thursday, and then
18 we'll have that discussion.

19 MR. BICE: Understood.

20 THE COURT: Okay. Mr. Jones, it's your motion on
21 Mr. Jacobs's deposition.

22 MR. RANDALL JONES: Thank you, Your Honor.

23 Before I forget, I don't -- there's sort of a
24 housekeeping issue, but I don't want to forget it, because it
25 has a -- well, it's a concern. I have a trial in a case

1 involving the Palms. I represent the Palms in construction
2 litigation.

3 THE COURT: Okay.

4 MR. RANDALL JONES: It's got a five year rule that's
5 set for May 23rd.

6 THE COURT: Okay.

7 MR. RANDALL JONES: I think probably at most it will
8 go four weeks, which means it'll be done presumably before we
9 start this case. But I at least want to bring that to the
10 Court's attention.

11 THE COURT: Can you guys come up here and I'll tell
12 you something secret.

13 MR. RANDALL JONES: Sure.

14 (Off-record bench conference)

15 THE COURT: So we're going to all work with our
16 schedules, and we're going to all work productively and
17 cooperatively so that Mr. Jones can make his trial and I can
18 make my family obligation.

19 MR. RANDALL JONES: Yes, Your Honor. I just didn't
20 want to bring that up at the last minute in case the case does
21 not settle, which as of this morning is looking less likely.
22 So that's why I wanted to bring that up.

23 THE COURT: Okay.

24 MR. RANDALL JONES: Your Honor, I -- this issue is
25 no different other than the parties -- the rule is the same,

1 26(b)(2). The Court has been reading lots of motions about
2 these factors. Not to say that you already weren't well aware
3 of them anyway. You know, I hesitate to ever ask for 10 days
4 in a deposition. I know that's a lot of days. Obviously it
5 was something that you felt appropriate in the Okada case.
6 And I understand in the Okada case you had different
7 challenges than you have in this case.

8 THE COURT: We had interpreters, which is different
9 than here.

10 MR. RANDALL JONES: And I have been in those type of
11 depositions myself on many occasions, and it certainly makes
12 it a lot slower process. And, candidly, I felt I needed to
13 make a record because I think we do have a need for 10 days in
14 this case for the reasons outlined in our brief. But I also
15 would say candidly that I was not really optimistic that you
16 were going to give us that many days. But I felt I needed to
17 make a record because of the issues we've raised in our
18 complaint. You know, the events themselves, in terms of --
19 well, you know the three factors, cumulative, duplicative,
20 whether the party seeking discovery has made -- has had ample
21 opportunity to obtain the information sought, whether the
22 discovery being sought is truly unduly burdensome or
23 expensive, taking into account the needs of the case and the
24 amount in controversy. With those factors just generally
25 stated, Mr. Jacobs has essentially said, I want to go back

1 10 years before I was terminated, and he now has brought this
2 up to essentially the present date in terms of the scope of
3 the -- the temporal scope of what he is asking questions about
4 and looking into.

5 So we're having to deal with a very large period of
6 time, which, by the way, is one of the three factors --
7 additional three factors elicited or defined in the Okada
8 case. The other factor in the Okada case mentioned was the
9 witness -- whether the witness is going to be questioned about
10 numerous and lengthy documents. Mr. Jacobs himself just in
11 the jurisdictional hearing had marked over a thousand
12 documents of thousands and thousands of pages. In the
13 30(b)(6) depositions we're going over thousands of pages of
14 documents. So there are an inordinate amount of documents to
15 be addressed that they've made relevant.

16 Mr. Bice -- I can hear it now, because I've heard it
17 before. He's going to get up and say it's all our fault
18 because of the 34 reasons. We've got -- there were 34
19 reasons. Well, first of all, there were 12 reasons. Mr.
20 Adelson said he'd seen 34 reasons. But that's not the reasons
21 that were officially given to Mr. Jacobs. But, be that as it
22 may, that's 34 reasons. We have a 98-paragraph complaint,
23 over 21 pages, with eight different counts, six different
24 iterations of that complaint and three parties, which is, by
25 the way, the third factor referenced in the Okada litigation,

1 the need for each party in a multiparty case to examine the
2 witness.

3 So it's not cumulative, because we've never got to
4 talk to Mr. Jacobs before. It's not duplicative. We don't
5 have the opportunity to obtain this information elsewhere. He
6 is the guy. He's the plaintiff. And I know about that kind
7 of an issue, because I'm typically representing the plaintiff
8 party. And it is the normal case when I'm representing the
9 plaintiff that my client has essentially all of the
10 information about my client's case, where if I represent a
11 company or I'm suing a company, the company has multiple
12 witnesses, they usually have all the documents. So in this
13 case Mr. Jacobs is that person. So we have no opportunity to
14 get this information, because this is all personally driven.
15 This is fact-driven claims by Mr. Jacobs's allegations. He
16 chose to bring a 98-paragraph complaint, he chose to amend it
17 six different times, one of which, by the way, he never filed,
18 but he did get the amendment approved, the most recent of
19 which was just last -- not that late last year. So we've
20 never had a chance to talk to him about any of these issues.

21 As you know, he has taken days and days and days of
22 deposition of the witnesses in this case on jurisdiction and
23 now on merits. And so we still have to ask him questions on
24 jurisdiction. So when you factor in the fact that we have to
25 also discuss jurisdiction, as well as merits, we certainly

1 believe that we need more than five days, but at a minimum we
2 were asking the Court to at least give us the five days. I
3 think honestly, Your Honor, we can't get -- with all three
4 parties we can't get it done in five days. But if you don't
5 give us any more than that, we get what we get from you. But
6 I'm telling you I'm trying to do the best I can to move it
7 along, and I can tell you I also don't want to be stuck in
8 depositions in a windowless room for days on end any more than
9 I already have been.

10 So I would also make the final point that -- and I'm
11 quoting here. We quoted on page 8 of our motion that you
12 acknowledged Mr. Jacobs's own responses to written discovery
13 appear -- quote, "appear facially to be inconsistent," end
14 quote. And you said also, quote, "If you want to have an
15 inconsistent response, that goes to a credibility issue on
16 cross-examination," end quote, addressing that to Mr. Bice,
17 that if his client -- and that was the point he made to you.

18 THE COURT: And I told you you could follow up at
19 deposition.

20 MR. RANDALL JONES: That's right.

21 THE COURT: And I told Mr. Bice it may take longer
22 if we are dealing with those kind of issues.

23 MR. RANDALL JONES: You did, Judge.

24 THE COURT: Because both of you have the same issue.
25 It's not just a one-sided issue. Both of you are in the same

1 position.

2 MR. RANDALL JONES: And you have --

3 THE COURT: But that's Thursday.

4 MR. RANDALL JONES: And you have made that comment
5 to us, as well. While for the record I certainly think our
6 responses were not as inconsistent as Mr. Jacobs's, the point
7 is taken that you've made the comment to both sides. The
8 point here, though, is now the shoe is on the other foot and
9 Mr. Jacobs has to live with his inconsistent responses, which
10 would have obviated the need to take his deposition for longer
11 if he would have given honest, straightforward, and complete
12 answers or consistent answers.

13 So with that said, I think that the 10 days is
14 realistic to get it all done, but anything less than that I
15 would ask you to just take into account all the factors I've
16 just mentioned and give us as many days as we can get, because
17 I know the three of us, the three different defendants are
18 going to need those days. Thank you, Your Honor.

19 THE COURT: Thank you.

20 Mr. Bice.

21 MR. BICE: Yes, Your Honor. There is no basis to
22 depose Mr. Jacobs as an individual plaintiff for 10 days. And
23 I think that they know that. This is once again seems to be
24 the approach of, well, we'll try and negotiate with the Court,
25 if you give us half of what we're asking for it must be

1 reasonable because it's only half. And I would submit that's
2 just simply not the law and not appropriate.

3 I'm reminded yesterday about Mr. Leven. And I just
4 want to use this as an example to the Court. Mr. Peek told
5 the Court that as far as they are concerned we had a fair
6 opportunity to examine Mr. Leven. And Mr. Leven is -- and Mr.
7 Adelson are probably the two most critical witnesses in this
8 dispute, because the alleged 34 or 35, whichever number we're
9 talking about any given time, is allegedly failure of them to
10 be informed of certain things.

11 I went back and looked at the deposition transcript
12 of Mr. Leven, Your Honor. I believe that we actually were
13 allowed to depose him so far for between 10 and 11 hours.
14 That's it because of timing, breaks that they were taking, and
15 his needing to depart. They took the position that that's a
16 reasonable amount of time to depose Mr. Leven and that we
17 should have accomplished everything we need to accomplish in
18 those 11 hours of deposition time. I actually think it's
19 under 11, but it's around that number. That's their position
20 on critical witnesses of the case.

21 They then come to you and say for Mr. Jacobs it
22 needs to be -- I could just do the math, 70 hours -- actually
23 -- yeah, I guess if it were 10, 35 if it's five. Whatever the
24 number is. The point being here, Your Honor, is they're the
25 ones who have given us all these reasons. Mr. Jacobs's

1 allegations on the actual facts are fairly limited to what was
2 going on while he was there and what he knew about while he
3 was there, and that includes stuff, of course, that predates
4 him that he was dealing with. This is -- the depositions of
5 their witnesses are largely the product of their own doing
6 this with us all the time. And this has happened yet again
7 with this 30(b)(6) deposition. Now, after telling you at the
8 jurisdictional hearing how those SEC filings -- well, those,
9 you know, those aren't related to LVSC, Your Honor, those are
10 consolidated statements. So the fact that they filed that
11 agreement with the Securities and Exchange Commission, that's
12 not evidence regarding LVSC, that's on some other entity.

13 Now, yesterday the story became with the SEC
14 filings, well, that's just LVSC, that's not Sands China or VML
15 or any of the other entities. So this is what we get with
16 every witness. We get this routine, that the documents mean
17 something different, depending on who the witness is, et
18 cetera.

19 So if they are -- and, again, Your Honor, they're
20 telling us with Mr. Adelson, well, Mr. Adelson, you know,
21 three days ought to be more than adequate to depose Mr.
22 Adelson in light of what we all know about Mr. Adelson's
23 testimony and responsiveness to questions that are posed. If
24 that's -- if they're being honest with the Court that that is
25 a reasonable amount of time they believe for Mr. Adelson,

1 considering what we know, less than that is a fair estimate of
2 a reasonable amount of time to depose Mr. Jacobs. Mr. Jacobs
3 isn't the one who's had to have special masters appointed to
4 sit in his deposition like happened in Florida because it had
5 to be extended due to conduct. Mr. Jacobs isn't the one who
6 we have a published federal order about deposition conduct.
7 And that -- we have a history here.

8 So I'm asking the Court to hold the defendants to
9 their own characterization of what is a reasonable amount of
10 time. If three days is reasonable for Sheldon Adelson,
11 certainly less than that is going to be reasonable and fair
12 from Mr. Jacobs. And if three days is going to be reasonable
13 for Mr. Leven, which they claim actually only 10 hours or
14 11 hours is reasonable for Mr. Leven, we certainly dispute
15 that, then they should have to live with the similar criteria
16 for Mr. Jacobs, Your Honor. That is our point here.

17 Lastly, Your Honor, let me address this issue,
18 because they claim, well, they didn't have a chance to depose
19 Mr. Jacobs on jurisdiction. That's just not true. They made
20 a deal not to do it because -- to get their own witnesses out
21 of their depositions. Remember you had ordered those
22 witnesses to appear for deposition because they didn't produce
23 a bunch of documents to us. We have had a chance to examine
24 them on those issues. But they made an agreement to avoid
25 getting those four witnesses out of their continued

1 jurisdictional discovery to not depose Mr. Jacobs. And now
2 we're just -- well, let's just -- we now want the benefit of
3 the deal, but we don't want the burdens of the deal, we want
4 to say Mr. Jacobs got to depose witnesses on discovery but we
5 didn't and so therefore we should now get more time with Mr.
6 Jacobs. That's not the agreement that they struck to get
7 their own executives out of the depositions, Your Honor.

8 And so I would ask the Court -- I'm not disputing
9 that one day -- I'm not saying one day is adequate. I know
10 that it's not. But 10 days and five days are excessive.

11 THE COURT: Mr. Jones.

12 MR. RANDALL JONES: Yes, Your Honor. I guess I
13 would start by saying that I have a sneaking feeling that this
14 Court has decided what it thinks is reasonable long before
15 counsel got up here to start making their argument and that
16 you're going to shortly tell us what you think is reasonable
17 in spite of arguments of counsel one way or the other.

18 But, having said that, I appreciate the opportunity
19 to make a record, because some judges don't allow the
20 opportunity to make a record. So with that said, I appreciate
21 the fact that you at least give me an opportunity to respond
22 to Mr. Bice's hyperbole.

23 I would just remind the Court Mr. Jacobs brought
24 this claim. He's the plaintiff. And his comment about Mr.
25 Adelson saying that we only want to have three days for Mr.

1 Adelson is -- that it's tit for tat, I could point to one of
2 the Okada factors alone that makes that just an incorrect
3 proposition, the fact that we have three parties that have an
4 absolute right, a due process right to inquire of the witness.
5 They each have different perspectives. We talked about this
6 just yesterday with respect to the 30(b)(6) witnesses and the
7 fact that there are going to be some parallels between Las
8 Vegas Sands and Sands China with respect to the inordinate and
9 I think oppressive and burdensome number of topics which this
10 Court even acknowledged yesterday were more in the form of
11 contention interrogatories than they really were in 30(b)(6)
12 topics.

13 So we have I believe a due process right to respond
14 by asking questions on behalf of each party. That point alone
15 would justify a significant difference between any time
16 allotted for one witness on the defense side and Mr. Jacobs as
17 the sole plaintiff witness in the case. He is their case.
18 And I know they want to point fingers back at my client and
19 Mr. Adelson and the Las Vegas Sands. He's his case. And to
20 suggest, to suggest that his 98-paragraph complaint --
21 paragraphs 32 and 35 alone have 20 distinct factual issues
22 which he goes over in great length in the 30(b)(6) deposition.
23 And he wants to deprive the defendants the opportunity to
24 inquire into those things is just not fair, it doesn't give us
25 our opportunity under due process to examine the witness

1 fairly prior to the trial.

2 So -- and the final point I would make is this whole
3 idea that we didn't take Mr. Jacobs's deposition for a
4 strategic reason, it was strategic. By the time we were given
5 the opportunity to take his deposition we were so close to the
6 hearing date that I did make a strategic decision that I
7 needed to get prepared for the hearing and didn't have the
8 time in terms of all the other things I was trying to do to
9 take those depositions and have the other depositions -- I
10 couldn't do it. So that's why I made the decision. It had
11 nothing to do with not wanting to take the deposition. I was
12 itching to take Mr. Jacobs's deposition on that occasion. And
13 it would have put us in a better position. But under the
14 circumstances we were having to deal with we just couldn't do
15 it. So thank you, Your Honor. We would ask for the number of
16 days.

17 THE COURT: Thank you.

18 Given the prior discovery responses, the complexity
19 of the allegations raised in the complaint, and the large
20 number of documents that have been produced by all sides in
21 this case, the Court is granting the request and allowing
22 seven days of seven hours of questioning time. That doesn't
23 mean arguing time amongst yourselves; that means actual
24 questions to the witness.

25 You may extend the time if you make a showing that

1 the witness is evasive or nonresponsive, or you may shorten
2 the time if you show that the questioning is cumulative or
3 harassing. And I will keep these notes for Thursday.

4 Anything else?

5 MR. PEEK: What all is on the calendar for Thursday,
6 Your Honor? What --

7 THE COURT: Mr. Adelson's deposition.

8 MR. PEEK: I know that. And then --

9 THE COURT: And then the motion --

10 MR. PEEK: The Linwood application -- aren't there a
11 couple other things on, sealing motions and --

12 MR. RANDALL JONES: Your Honor, is the 887A motion
13 on?

14 THE COURT: What?

15 MR. RANDALL JONES: 887A, Exhibit 887A.

16 THE COURT: Oh. Yes, that is. It says status check
17 887A. And it's also on again on February 18th. It's on both.

18 MR. RANDALL JONES: The tax return issue is still
19 on, but Mr. Bice just informed me for reasons I can't imagine
20 he hasn't had time otherwise to do it. And I say that
21 facetiously, because I have had no time, so suspect he hasn't.
22 So --

23 THE COURT: So did somebody file a motion on Mr.
24 Adelson's depo yet?

25 MR. BICE: No.

1 THE COURT: Laura says you haven't submitted it.

2 MR. PEEK: No. It's not been filed. So that's --

3 THE COURT: I thought we were hearing it on
4 Thursday.

5 THE LAW CLERK: That's the motion to associate.

6 MR. BICE: That's the motion to associate.

7 MR. PEEK: I don't know when Mr. Jacobs is going to
8 file his motion.

9 THE COURT: Okay. So here's what is -- here's
10 what's on the calendar so far for Thursday. Motion for an
11 order maintaining confidentiality designations of pretrial
12 discovery, Las Vegas Sands' second motion for an order to
13 maintain confidentiality designations of pretrial discovery, a
14 status check on 887A, and a status conference.

15 And then we also signed an order to associate
16 counsel. I know I signed it yesterday.

17 There was for the chambers calendar a motion for an
18 order permitting filing under seal of a large number of
19 things. On the 18th I have motion for transfer of issue,
20 motion to compel plaintiff to sign consent for personal data
21 otherwise protected by the MDPDA, Steven Jacobs's motion to
22 temporarily redact, and a motion to strike Exhibit 887A.

23 MR. RANDALL JONES: So the motion for -- because I
24 was under -- a little confused about the motion on consent.
25 So that --

1 THE COURT: You want me to move some of these
2 around?

3 MR. RANDALL JONES: If we could move that to
4 Thursday, Your Honor, the motion for consent. The reason I
5 say that is because Mr. Jacobs's deposition is starting next
6 week, and I would at least like to know whether or not he is
7 going to be ordered to give us a consent so we can get his
8 documents from Macau.

9 THE COURT: I think he's said numerous times that he
10 didn't think he had the consent.

11 MR. RANDALL JONES: He did. But he won't sign a
12 consent, so we filed a motion. And that motion is pending.
13 And we filed on an order shortening time.

14 THE COURT: Is it okay with you if I move it to
15 Thursday?

16 MR. BICE: To this Thursday?

17 THE COURT: Motion to compel plaintiff to sign
18 consent to transfer personal data.

19 MR. BICE: Sure.

20 MR. PEEK: Yeah. They've opposed -- they filed the
21 opposition. It's just a matter of us filing a reply.

22 THE COURT: So we moved it to Thursday.

23 Anything else from next week you want moved up to
24 this week?

25 MR. PEEK: Your Honor, just as a heads up to the

1 Court, we'll be filing a motion for reconsideration of the
2 disqualification. That should be filed today.

3 THE COURT: That doesn't go to me. That goes to
4 Barker.

5 MR. PEEK: I understand that. But I just wanted to
6 at least advise the Court of that.

7 THE COURT: Well, I will tell you procedurally what
8 happens if you do that. I then am not allowed to do anything
9 while Judge Barker goes through this process. So any dates
10 I'm moving around would then be ineffective.

11 MR. PEEK: That's why --

12 THE COURT: So if you guys want to do that, that's
13 fine. I recognize your right to do that. But the concern
14 that I have is that, you know, I'm trying to handle scheduling
15 right now on a very intense and aggressive schedule given some
16 of the issues you've had historically. And every time we have
17 a bump in the road it throws us off further.

18 MR. PEEK: I appreciate that, Your Honor. And --
19 but I wanted to at least be candid with the Court --

20 THE COURT: I appreciate that, Mr. Peek.

21 MR. PEEK: -- and letting the Court know.

22 MR. BICE: Your Honor, we have -- we need to respond
23 to what the Court just observed. The filing of the motion for
24 reconsideration does not -- first of all their motion does not
25 divest the Court of jurisdiction to proceed under the Supreme

1 Court's own rules. But, nonetheless, the motion for --

2 THE COURT: It's the statute. It's not the Supreme
3 Court's rule.

4 MR. BICE: Right. The statute, as the Nevada
5 Supreme Court says, however, doesn't apply after the judge has
6 entered pretrial rulings on any contested matter. But the
7 more fundamental point, Your Honor, is that a motion for
8 reconsideration certainly does not do that. And that is again
9 procedural maneuvering to try and deprive us of proceeding
10 with Mr. Adelson's deposition and motions relating thereto.

11 So we absolutely will object, and we will not
12 consent to proceeding moving stuff up to Thursday so that they
13 can then file their motion after they get what they want from
14 the Court and then try and take the position we can't obtain
15 any relief because of this maneuvering relative to a motion
16 for reconsideration which cannot deprive a Court of
17 jurisdiction. Because if it did, then it would just be an
18 endless cycle of obstruction, which is, I would submit, the
19 agenda here.

20 THE COURT: I understand your position. My reading
21 of the statute is different. So if something gets filed, I
22 will do what I think I have to do under the statute until
23 Judge Barker rules on anything. Because he's the chief judge,
24 so he's the one who has to handle those issue.

25 MR. BICE: All right, Your Honor. So then I would

1 object to moving up these items to Thursday.

2 THE COURT: Okay. So we're not going to move it.
3 So let me ask you, then, your next question. You have a
4 status check on 887A. The motion on 887A is on February 18th.
5 Can I move the status check to the same time as that motion?

6 MR. BICE: Sure, Your Honor.

7 THE COURT: Is that okay? Not moving it back.

8 MR. PEEK: That's fine with us, Your Honor.

9 MR. BICE: I'm sorry?

10 THE COURT: 887A, remember that really large exhibit
11 that I went through --

12 MR. BICE: Yes.

13 THE COURT: -- as part of the evidentiary hearing?
14 They've moved to strike it. I gave them a period of to review
15 that document to make a determination as to what items in it
16 really needed to be sealed or redacted. They still haven't
17 finished.

18 MR. BICE: Okay.

19 THE COURT: Now they -- and I've been having a
20 status check on that so I can nag them. Now they've filed a
21 motion to strike that exhibit. I think the status check and
22 the motion to strike should happen at the same time.

23 MR. BICE: Okay. I understand that.

24 THE COURT: So I'm going to move the status check
25 from Thursday to the 18th. So I moved that back.

1 MR. BICE: All right.

2 THE COURT: What else?

3 MR. BICE: Well, we will submit -- but it sounds
4 like they're filing their motion today.

5 THE COURT: Mr. Bice, don't assume they're going to
6 do anything. Do what you've got to do.

7 MR. BICE: So I'm going to submit our motion on Mr.
8 Adelson today, and we will submit that on an OST so that we
9 can get that issue addressed. Obviously if they file a motion
10 to try and disrupt the Court's jurisdiction over that, then I
11 guess we -- and the Court takes the position that it can't
12 address it, we will proceed with Mr. Adelson, then, on the
13 22nd and have to come back to the Court thereafter. But we
14 will proceed in that fashion.

15 THE COURT: Okay. So send over your OST. I will
16 sign it and set it. As I talked to about last Thursday, my
17 intention was to set it for this Thursday. I thought I would
18 set the Jacobs and Adelson motions together. It didn't
19 happen. So if you send it over, I'll get it set for Thursday.
20 But I need to have it before the close of today so you can
21 have the one day's notice.

22 MR. BICE: We will. Thank you, Your Honor.

23 THE COURT: Okay?

24 MR. PEEK: That's fine, Your Honor. Thank you.

25 THE COURT: All right. Anything else?

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MR. PEEK: No, Your Honor.

THE COURT: Have a nice day.

MR. RANDALL JONES: You too, Your Honor.

THE PROCEEDINGS CONCLUDED AT 8:59 A.M.

* * * * *

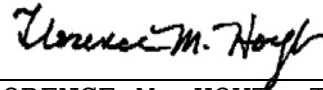
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**FLORENCE HOYT
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

2/9/16

DATE