

EXHIBIT I

EXHIBIT I

1 **NOTC**
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8 Attorneys for Plaintiff Steven C. Jacobs

9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 STEVEN C. JACOBS,
13
14 Plaintiff,
15 v.
16 LAS VEGAS SANDS CORP., a Nevada
corporation; SANDS CHINA LTD., a
17 Cayman Islands corporation; SHELDON
ADELSON, an individual; VENETIAN
MACAU LTD., a Macau corporation; DOES
I through X; and ROE
CORPORATIONS I through X,
18 Defendants.

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

**NOTICE OF VIDEOTAPED
DEPOSITION OF CHARLES
KOPPELMAN**

Date of Deposition: March 30, 2016
Time of Deposition: 9:00 a.m.

19
20 **AND RELATED CLAIMS**

21
22 PLEASE TAKE NOTICE that at 9:00 a.m. on March 30, 2016, at the law office of
23 PISANELLI BICE PLLC, located at 400 South 7th Street, Suite 300, Las Vegas, Nevada 89101,
24 Plaintiff Steven C. Jacobs ("Jacobs"), by and through his undersigned counsel of record, will take
25 the **videotaped deposition of Charles Koppelman** upon oral examination, pursuant to Rules 26
26 and 30 of the Nevada Rules of Civil Procedure, before a Notary Public or before some other
27 officer authorized by law to administer oaths.
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PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

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Oral examination will continue from day to day until completed. You are invited to attend and cross examine.

DATED this 11th day of March, 2016.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice
James J. Pisanelli, Esq., Bar No. 4027
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EXHIBIT H

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8 Attorneys for Plaintiff Steven C. Jacobs

9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 STEVEN C. JACOBS,
13
14 Plaintiff,
15
16 v.
17 LAS VEGAS SANDS CORP., a Nevada
corporation; SANDS CHINA LTD., a
18 Cayman Islands corporation; SHELDON
ADELSON, an individual; VENETIAN
19 MACAU LTD., a Macau corporation; DOES
I through X; and ROE
20 CORPORATIONS I through X,
21
22 Defendants.

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

**NOTICE OF VIDEOTAPED
DEPOSITION OF IRWIN CHAFETZ**

Date of Deposition: March 28, 2016
Time of Deposition: 9:00 a.m.

23 **AND RELATED CLAIMS**

24 PLEASE TAKE NOTICE that at 9:00 a.m. on March 28, 2016, at the law office of
25 PISANELLI BICE PLLC, located at 400 South 7th Street, Suite 300, Las Vegas, Nevada 89101,
26 Plaintiff Steven C. Jacobs ("Jacobs"), by and through his undersigned counsel of record, will take
27 the **videotaped deposition of Irwin Chafetz** upon oral examination, pursuant to Rules 26 and 30
28 of the Nevada Rules of Civil Procedure, before a Notary Public or before some other officer
authorized by law to administer oaths.

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Oral examination will continue from day to day until completed. You are invited to attend and cross examine.

DATED this 11th day of March, 2016.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice
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EXHIBIT G

EXHIBIT G

1 **NOTC**
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10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 STEVEN C. JACOBS,
13
14 Plaintiff,
15 v.
16 LAS VEGAS SANDS CORP., a Nevada
corporation; SANDS CHINA LTD., a
17 Cayman Islands corporation; SHELDON
ADELSON, an individual; VENETIAN
MACAU LTD., a Macau corporation; DOES
I through X; and ROE
CORPORATIONS I through X,
18 Defendants.

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

**NOTICE OF VIDEOTAPED
DEPOSITION OF JASON ADER**

Date of Deposition: March 29, 2016
Time of Deposition: 9:00 a.m.

19
20 **AND RELATED CLAIMS**

21
22 PLEASE TAKE NOTICE that at 9:00 a.m. on March 29, 2016, at the law office of
23 PISANELLI BICE PLLC, located at 400 South 7th Street, Suite 300, Las Vegas, Nevada 89101,
24 Plaintiff Steven C. Jacobs ("Jacobs"), by and through his undersigned counsel of record, will take
25 the **videotaped deposition of Jason Ader** upon oral examination, pursuant to Rules 26 and 30 of
26 the Nevada Rules of Civil Procedure, before a Notary Public or before some other officer
27 authorized by law to administer oaths.
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DATED this 11th day of March, 2016.

PISANELLI BICE PLLC

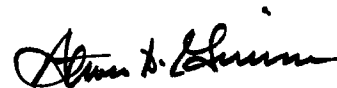
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EXHIBIT F

EXHIBIT F



CLERK OF THE COURT

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

HEARING ON MOTIONS

THURSDAY, MARCH 3, 2016

APPEARANCES:

FOR THE PLAINTIFF:

TODD L. BICE, ESQ.
JAMES J. PISANELLI, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
JON RANDALL JONES, ESQ.
STEVE L. MORRIS, ESQ.
L. LIN WOOD, 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 the process that is described in the protective order has been
2 followed, you may seek to have those documents unsealed. But
3 I've got to let the protective order process follow through.

4 MR. BICE: Understood.

5 THE COURT: Okay. So I also have a motion to seal
6 Sands Corp.'s memorandum in support of its highly confidential
7 privilege log and accompanying exhibits.

8 MR. PEEK: Yes, Your Honor. That is my motion.

9 THE COURT: Is there any objection to advancing --
10 or to ruling on that now before I hit the motion?

11 MR. BICE: No.

12 THE COURT: Okay. It's granted.

13 So let's go to the next issue, which deals with the
14 privilege issues which we talked about the other day. These
15 are the briefs I have. I have the brief that Mr. Peek gave me
16 when he submitted the privilege log, which is the February 3rd
17 brief; I have the brief that Mr. Bice gave me, I don't know
18 the date, let's see if I can -- looks like it might have been
19 on February 18th --

20 MR. BICE: Yes, Your Honor.

21 THE COURT: -- I have a brief from Mr. Peek on
22 February 10th; and another brief on February 26th. Does
23 everybody have the same briefs?

24 MR. BICE: Yes, Your Honor. But I would note we
25 believe that this is really a continuation of our motion -- of

1 our second motion to compel, which was filed back in October.
2 So I would just want that --

3 THE COURT: Absolutely.

4 MR. BICE: -- to be clear. Okay.

5 THE COURT: And I've been asking for briefing on
6 this issue since we did the evidentiary hearing and talked
7 about the meetings long, long ago.

8 MR. BICE: Right.

9 THE COURT: And we're finally getting to the
10 briefing on that.

11 One of the issues that I have concern about is the
12 letter that is filed under seal which is Exhibit A to the
13 February -- I believe it's February 29th --

14 MR. PEEK: That is the reply, yes, Your Honor.

15 THE COURT: Okay. Can I ask you questions about
16 that.

17 MR. PEEK: Yes, Your Honor.

18 THE COURT: Okay. It seems like -- and remember,
19 all I'm trying to do right now is decide whether I'm going to
20 do an in-camera review to make the determination on privilege,
21 or whether I'm going to rule one way or the other on the
22 privilege.

23 My understanding -- and remember, it only comes from
24 being a judge and listening to litigants and people from
25 Gaming Control talk about these issues over the years, as well

1 as reading the briefing and the statutes and the cases -- is
2 that Gaming Control expects their licensees to provide them
3 with whatever information they reasonably request regardless
4 of whether they can get it from other sources and that their
5 interpretation is that information they have is not subject to
6 discovery and that that's their interpretation of the statute.

7 MR. PEEK: That is correct.

8 THE COURT: That seems to be consistent with what
9 the letter is from February 22nd, which is the Exhibit A to
10 the February 29th brief.

11 MR. PEEK: Yes, Your Honor.

12 THE COURT: The contrast to that is that that
13 doesn't mean that the documents in the possession of the
14 licensee are privileged. You only can't get them from Gaming
15 Control.

16 Now, what I need you to help me with, Mr. Peek,
17 because in reading the briefings I am -- there's a lack of
18 clarity in the position that is being taken. And so I need
19 you to give me a little more information than that.

20 MR. PEEK: Before I get into the argument, Your
21 Honor, let me see if I can answer that question for you.
22 Investigations, as we know, were undertaken in spring and
23 early summer -- or late -- early spring, late spring by both
24 SEC and DOJ, along with the NGCB.

25 THE COURT: No. Let's deal with my question. Let's

1 not go to that issue, Mr. Peek. That's a different --

2 MR. PEEK: Okay. Well, then maybe I'm not
3 understanding the question. And I apologize.

4 THE COURT: Okay. This is a general issue. This is
5 you may represent a licensee, the licensee is served a request
6 for information by Gaming Control and they're doing an
7 investigation independently on their own. Your client is
8 required to give them the information because it's part of
9 their privilege that they have in being a licensee; right?

10 MR. PEEK: Yes.

11 THE COURT: Okay. That protects the information
12 that Gaming Control has from discovery. It cannot be
13 discovered by anybody else, because Gaming Control has a
14 specific privilege under the statute. My understanding has
15 always been and remains after reading the brief you've
16 submitted that doesn't mean your client's information is
17 privileged.

18 MR. PEEK: Yeah. Let me --

19 THE COURT: That's what I'm trying to get the answer
20 out of you.

21 MR. PEEK: Let me see if I -- I think I understand
22 the question better now, Your Honor. Because what you have
23 is you have documents that may have existed, factual
24 information --

25 THE COURT: Absolutely.

1 MR. PEEK: -- in the possession of the company. You
2 have within that universe of factual information attorney-
3 client privileged communications submitted to the NGCB.
4 That's covered by 3407(2). Then there's the third category
5 that is addressed in the briefing, which are the PowerPoint
6 slides, Your Honor, that are the subject of the claim of
7 privilege, which are under Upjohn internal investigations,
8 attorney-client work product that was also submitted. So I
9 submit to you, Your Honor, that within that -- within that
10 inquiry that you direct to me the fact information -- let's
11 say there's, you know, an email that is submitted to the
12 Board. It doesn't create a certain level of confidentiality
13 -- I mean doesn't create a certain level of protection as to
14 that fact. The privileged communications are protected --

15 THE COURT: If it was privileged to begin with.

16 MR. PEEK: -- if it was privileged to begin with, as
17 are the work product presentations made to the Board in the
18 form of the PowerPoint slides --

19 THE COURT: Okay.

20 MR. PEEK: -- are given that protection.

21 THE COURT: All right. So thank you. Would you
22 like to say anything else?

23 MR. PEEK: I would, Your Honor. And I may run over
24 my time, and I'd ask the Court's indulgence.

25 THE COURT: Well, then I'm going to trail you to the

1 end if you're going to run over your time. Because, if you
2 notice, I have a number of other people waiting in the
3 courtroom. And if you're going run overtime, I'll do you
4 last.

5 MR. PEEK: I'm just concerned that I might run
6 overtime.

7 THE COURT: Going to run overtime, I'm going to do
8 you last.

9 MR. PEEK: Would you go ahead and do at least their
10 motion to compel or something?

11 THE COURT: No. You run overtime, I'm going to do
12 you last. So I'll take you guys last.

13 Cotter.

14 MR. BICE: We have a deposition, Your Honor.

15 THE COURT: I know. I have a motion on the
16 deposition.

17 MR. MORRIS: Your Honor, this appears to be the
18 second time in four years.

19 (The proceedings recessed at 9:28 a.m., until 10:02 a.m.)

20 THE COURT: Is there anybody else here who is not
21 Jacobs versus Sands? Then let me do Jacobs versus Sands
22 again.

23 (Pause in the proceedings)

24 THE COURT: I am turning the timer off. And while I
25 understand you have a deposition you're supposed to be in,

1 some of the issues that we have to talk about are important.
2 MR. PEEK: May I approach?
3 THE COURT: You may.
4 MR. PEEK: This is attorneys' eyes only.
5 THE COURT: Oh. Yeah, you don't want that. This --
6 you don't know who Mom is, do you?
7 MR. PEEK: When it said attorneys' eyes only and I'm
8 not -- it didn't look like anything I --
9 THE COURT: Yeah, you don't want that one.
10 MR. PEEK: Okay.
11 THE COURT: Although I don't think you would try and
12 go in the competing firearms business.
13 MR. PEEK: No. I have been here I think for many of
14 those very same hearings and observed the proceedings.
15 MR. BICE: Your Honor, we're a little unclear on
16 what the Court is proposing or seeking. This is our motion.
17 THE COURT: Oh, absolutely it's your motion. I was
18 asking Mr. Peek a question --
19 MR. BICE: Okay.
20 THE COURT: -- because I am trying to understand
21 after reading briefs that in my opinion may leave some holes
22 in issues that may have needed to be addressed before it goes
23 to the Nevada Supreme Court, because everybody in the room
24 knows that the next stop after I issue the order will be a
25 visit to the Nevada Supreme Court by one side or the other.

1 So I noticed what appeared to me to be a hole in the
2 briefing. I asked the question for a reason. Mr. Bice, you
3 and I have had this discussion in other cases --

4 MR. BICE: We have.

5 THE COURT: -- which is why I'm giving Mr. Peek the
6 opportunity to respond, because I know that you and I don't
7 always agree on this issue, but you've told me that I've
8 previously ruled and you expect me to be consistent, and I
9 intend to be consistent.

10 MR. BICE: All right, Your Honor.

11 MR. PEEK: I don't know what your previous rulings
12 were, Your Honor, so I --

13 THE COURT: It had to do with -- what's the name of
14 the case, Mr. Bice?

15 MR. BICE: There's actually two different ones, Your
16 Honor, Golden Gaming --

17 MR. PEEK: I figured it was Golden Gaming, because
18 I --

19 MR. BICE: That was one of them.

20 MR. PEEK: And, Your Honor, I'll step back. I
21 certainly have some additional comments on your question,
22 because I don't think your question included some of the
23 documents that are part of the --

24 THE COURT: My question did not deal at all with the
25 collaborative investigation issue, it did not deal with the

1 Department of Justice settlement negotiations, or the SEC
2 issue. It dealt strictly with the Nevada Gaming Control
3 privilege, which my interpretation is a protection for the
4 Nevada Gaming Control entities, not for the licensee. And it
5 does, however, preserve any privilege that you may have of a
6 document once you give it to Gaming Control. So if you give
7 an attorney-client-privileged document to Gaming Control, it
8 likely maintains its privilege, and you don't waive it by
9 giving it to them because you're required to cooperate with
10 them. But if it would otherwise be a nonprivileged document,
11 it would not become privileged simply because you gave it to
12 Gaming Control.

13 MR. PEEK: Okay. I --

14 THE COURT: But they wouldn't have to produce it
15 regardless of whether it's privileged or not.

16 MR. PEEK: Correct. One category that wasn't
17 included in that question, but I just wanted to make sure that
18 I understood the question and answered it correctly and
19 concisely, is if there is just correspondence in response to
20 an inquiry from the Nevada Gaming Control Board, a letter --
21 because we have many of those letters that are part of the
22 privilege log.

23 THE COURT: They aren't privileged.

24 MR. PEEK: Well, Your Honor, that's where you and I
25 may disagree, because that's --

1 THE COURT: Mr. Bice and I have disagreed in the
2 past.

3 MR. PEEK: If I send a letter to the Nevada Gaming
4 Control Board in response to an inquiry, it would have the
5 privilege. But perhaps the Court disagrees with me on that.
6 But certainly there is attached to -- there is as part of the
7 log correspondence between the NGCB making requests and
8 responses to that correspondence we would maintain, Your
9 Honor, is privileged. But we'll address that as part of the
10 argument. But I -- because I --

11 THE COURT: I just wanted you -- because I thought
12 there was a hole in the briefing, I'm trying to fill the hole
13 before you guys go to Carson City, whatever. I haven't even
14 done the in-camera review yet, so I have no idea what my
15 rulings are going to be after doing the in-camera review, but
16 I'm trying to make sure that issue is at least addressed by
17 your side, because I know that Mr. Bice has a position related
18 to that issue and I'm trying to make sure that we've covered
19 it before you go. So I gave you that opportunity. I wanted
20 you to do that before I went to Mr. Bice, because it is his
21 motion. And you've had a chance now to answer it, and I will,
22 of course, hear from you on all the other issues you think are
23 important --

24 MR. PEEK: But I wanted to make sure that I
25 understood and answered correctly and concisely, because, as I

1 said, I thought you were talking about just if we submit a
2 document from our -- you know, hard copy or electronic to the
3 Nevada Gaming Control Board, that document doesn't all of a
4 sudden get privileged. But if there is a letter from us, that
5 is privileged and confidential.

6 THE COURT: I understand what you're saying, Mr.
7 Peek. I'll give you a chance to talk about that in a little
8 bit.

9 MR. PEEK: Thank you.

10 THE COURT: Mr. Bice, you were correct. This was
11 your motion that has previously had a number of discussions
12 associated with it. It is a longstanding issue we've been
13 addressing since we learned of this during Mr. Raphaelson's
14 testimony at one of the evidentiary hearings a long time ago.

15 MR. BICE: Yes. And, as the Court -- I would just
16 remind the Court that not only did we know about it then, we
17 had actually noticed the deposition -- this really all stems
18 from the notice of deposition of the 30(b)(6) of LVSC that we
19 -- was supposed to have happened beginning in July of last
20 year. And we had to file a motion to compel, and then we had
21 to file a second motion to compel, and then they needed time
22 to create this privilege log, which turned into I'm not sure
23 how long, and then they needed time to do an extra brief,
24 which I don't remember how long that was, and ultimately
25 brings us here. We're now at the beginning of March of the

1 following year. And the 30(b)(6) deposition, Your Honor, we
2 had suspended it so that we could try and get this issue
3 resolved. And here we are, I don't know -- again, I've lost
4 track of how much time has passed.

5 Your Honor, there's really -- I want to break down
6 the issue, because I think there's -- LVSC has used this
7 process to try and cloud issues and thus use it as a tool of
8 delaying our rights to obtain this information.

9 There's two categories of information here, the
10 documents that they gave to the government, the United States
11 Government in the ordinary course of -- documents that had
12 been created in the ordinary course of business, and then
13 there's a group of documents that they say they gave to the
14 United States Government that they specifically created in
15 response to the government's subpoena that had been issued to
16 them.

17 First of all, Your Honor, lets actually set -- let's
18 set forth what the rule is that LVSC is asking this Court to
19 adopt that no court certainly in this state has ever accepted,
20 and let's make sure that we all understand the consequences of
21 the rule that LVSC is proposing. Sands' position is that when
22 someone receives a subpoena from the Department of Justice
23 that they give documents and they give information to the
24 Department of Justice in an attempt to either avoid a
25 prosecution or negotiate a reduced deal with the government

1 everything that they have shared with the United States
2 becomes privileged.

3 So let's apply that rule, make sure that we
4 understand what LVSC is arguing. All the tobacco companies,
5 Your Honor, that were accused of poisoning their customers and
6 killing many of them, when they received the subpoenas from
7 the Department of Justice everything that they gave to the
8 Department of Justice attempting to exonerate themselves and
9 avoid prison sentences for their executives became privileged,
10 and the victims of their wrongdoing were somehow now left
11 without being -- out obtaining that information.

12 Any automobile manufacturer, common example right
13 now is GM, subject to a huge criminal investigation by the
14 Department of Justice over whether or not they knew -- well,
15 it's pretty clear that they did know about the airbags. Now,
16 according to Las Vegas Sands, because the Department of
17 Justice issued a subpoena and seized records, everything now
18 becomes privileged and whatever we gave to the Department of
19 Justice the victims of their wrongdoing do not get to know
20 about it and whatever they told the government in trying to
21 avoid a criminal prosecution, the victims don't get to know
22 about that, either.

23 Your Honor, I could go on and on and on of the
24 circumstances of the absurdity of the rule that LVSC is
25 proposing, and that's -- so let's be clear. That's the rule

1 that they are proposing. And there is good reason that the
2 Ninth Circuit has said that argument doesn't pass legal
3 muster, and it hasn't passed legal muster in 25 years of any
4 appellate court that has considered it. They cling to that
5 Eighth Circuit decision from 1978 that even the Eighth Circuit
6 has effectively repudiated itself with the assertion that
7 somehow because you gave documents to the government that made
8 them either privileged -- or even if they weren't privileged,
9 you somehow preserved your privilege. And, of course, under
10 Nevada law we start with the statute, which you will not see
11 mentioned in any of their briefs. And it is not an accident
12 that it is not mentioned in their briefs, because it is fatal
13 to the entire premise.

14 The Nevada Legislature, Your Honor, has said in
15 Chapter 40 that there are no privileges in Nevada against the
16 production of evidence or documents except those that are
17 expressly set forth in the Nevada Revised Statutes. They do
18 not exist. There is no common-law privileges in the state of
19 Nevada. They, of course, tell you, all right, well, we claim
20 attorney-client privilege and then we claim some Gaming
21 privileges. Let's set this Gaming issue aside for a moment,
22 because I think it's academic. I don't need the information
23 that they gave to Gaming. I want the information that they
24 gave to the United States. And that's what they really don't
25 want to show us, because the suggestion -- remember they sold

1 you on this story that this was a, quote, "collaborative
2 investigation," this was really headed up by Gaming and the
3 SEC and the DOJ were just sort of tag-alongs so they became
4 sort of the de facto agents of the Gaming Control Board and
5 hence the State privilege somehow now attached and resulted in
6 a nonwaiver when we gave Uncle Sam the information.

7 Well, of course, once the Court forced the
8 production of the log to begin with, not the privilege log,
9 but the log of the meetings that they had, it became rather
10 obvious that the opposite was true. This was actually an
11 investigation by the Department of Justice in which the Gaming
12 Control Board had tagged along at a few of the meetings.
13 Because even at the beginning it was all DOJ-SEC. There's an
14 agent or two from the Gaming Control Board that attended some
15 of those meetings sporadically, as the Court will recall. And
16 then all the end meetings are purely with the Department of
17 Justice and the Securities and Exchange Commission. The
18 Gaming Control Board is not even there.

19 Interestingly, this Exhibit A that they now attach
20 to their reply brief essentially confirms it. We've been --
21 essentially it confirms they've been negotiating with the SEC
22 and the DOJ and Gaming hasn't even been involved in it,
23 because Gaming's asking to apparently see some sort of
24 document. That only confirms what we had always suspected,
25 Your Honor. This was not some so-called collaborative

1 government investigation that allowed them to make this claim
2 behind the State statute involving matters going to the Gaming
3 Control Board. Then the proof became all the more obvious
4 when we received Mr. Raphaelson's declaration and Mr.
5 Lipparelli's declaration. Notice, Your Honor, no statements
6 from anybody in the government that this was a collaborative
7 investigation, that there were any privileges that were
8 applicable to them.

9 Your Honor, you and I have had this issue on at
10 least two occasions, and you've had it in an additional case,
11 in the Okada matter. Remember what happened, Your Honor, in
12 those other cases when either the Gaming Control Board or the
13 United States Government thought that there was privileges
14 that needed to be preserved or matters that could not be
15 delved into? They came into your courtroom. They filed
16 motions, and they informed the Court, here is our position on
17 these matters. Gaming has done it in the past, the United
18 States Government has done it in the past. Notice who's not
19 involved in this, notice who has not come into this courtroom
20 and claimed that there is some government privilege here or
21 government issue here that's implicated that requires the
22 Court to protect this information. Neither the United States
23 nor the Gaming Control Board has come in here in support of
24 what LVSC is trying to get the Court to do. That right there
25 should tell the Court an awful lot.

1 But beyond that, we then turn, Your Honor, to the --
2 back to my fundamental point. Number one, whatever documents
3 they gave to the United States in the ordinary course of their
4 investigation, i.e., business records and the like, those
5 cannot plausibly be privileged. And here's why, of course, we
6 know that that's highly relevant, Your Honor, because of the
7 stories that they have been telling us throughout this case
8 for the last five years -- or six years. They've given us a
9 number of different stories about how people couldn't be in
10 Macau looking at documents, they couldn't produce documents in
11 an unredacted form. But, of course, we're willing to bet that
12 that's not what they told the government and that they gave
13 the government documents in an unredacted form and that the
14 lawyers for the company, LVSC, were allowed to look at those
15 documents in Macau. And that's going to be borne out by --
16 once we obtain the documents. They're ordinary business
17 records, Your Honor, that they gave the government. So that
18 argument -- they have stalled this process on just those
19 documents for well over six months, Your Honor, with
20 absolutely no legal authority whatsoever. None. They
21 conceded they're not privileged, but they instructed their
22 witness not to -- they concede it now, but they instructed
23 their witness not to answer any of those questions, and they
24 didn't prepare their witness on that because they wanted to
25 use this claim of privilege that doesn't exist in order to

1 conceal what business records were provided to the United
2 States.

3 We then turn to the issue, Your Honor, about the
4 last point, which is these PowerPoint presentations that they
5 claim that they gave to the United States and the other
6 exchanges and correspondence that they have given to the
7 United States. They claim, well, those should be privileged.
8 How? How is a -- let's just deal, Your Honor, with the
9 presentation. You're making a PowerPoint presentation to the
10 United States in an attempt to convince the United States not
11 to criminally prosecute you or to cut you a deal. That is not
12 -- if that information was ever privileged to begin with, you
13 as the client made the decision to waive that privilege by
14 using the information affirmatively. And, as the Nevada
15 Supreme Court has said, you can't -- the privilege cannot be
16 used selectively to garble the truth. You can't invoke
17 privilege in one context and then turn around on the same
18 information and claim that it's not privileged when it suits
19 your ends and you're trying to use it for your advantage. And
20 that is what -- they have admitted that to you. That is what
21 they are doing. They are telling the United States a version
22 of the facts because there is potential criminal liability
23 that might attach to a version of the facts, but they don't
24 want -- they're telling the Court that Mr. Jacobs shouldn't be
25 allowed to know that version of the facts that they are

1 telling people under one set of rules, he should have to live
2 with the version of the facts that they prefer to tell in this
3 courtroom. And we already know it's been contradictory. The
4 Court saw that firsthand during the jurisdictional discovery,
5 that the version of what they are telling the different bodies
6 are different. That right there, Your Honor, is why we are
7 entitled to that information, as well.

8 We have cited to the Court case after case, and the
9 Nevada Revised Statutes say if you provide the information to
10 third parties it is deemed waived. It doesn't matter whether
11 or not you say, well, we also gave it to the Gaming Control
12 Board. That's great. The Gaming Control Board can invoke
13 that statute and refuse to produce information. But that
14 doesn't protect you as the client who decided to share that
15 information with the United States in trying to negotiate your
16 way out of a -- either a prosecution or a standstill agreement
17 or whatever their ongoing negotiations are.

18 And let's not forget Mr. Adelson sat right here on
19 the witness stand and tried to invoke that ongoing proceeding
20 for his advantage, telling the Court -- and this was in April
21 of last year, Your Honor -- telling the Court how Mr. Jacobs
22 was going to be sorely disappointed very shortly when the
23 government finds out that there was no wrongdoing, none
24 whatsoever. Well, isn't that interesting. He wants to -- he
25 wants to use this information affirmatively to try and

1 exonerate himself in open court, but then hide behind a false
2 claim of privilege of anything that of course will expose
3 that, well, perhaps what he was telling us wasn't exactly the
4 truth and perhaps -- or, if it is the truth, perhaps it's
5 because he's been telling Uncle Sam one version of the facts
6 that isn't going to square up with what some of the sworn
7 testimony has been in this case. Whatever version they want
8 to stick with, whatever version they are telling the
9 government, we are entitled to know that, because it's going
10 to contradict what they have been saying in this court,
11 whether it's the lawyers' argument or even Mr. Adelson's
12 testimony on the witness stand.

13 And then finally, Your Honor, the only other point I
14 would make is they don't even claim that there's a privilege
15 between their ongoing correspondence with the United States,
16 draft agreements with the United States where they're trying
17 to basically sell a particular version of facts. They don't
18 -- how could they plausibly claim that that was privileged?
19 They're negotiating back and forth with their adversary.
20 That's not a privileged communication under anyone's
21 definition. And they concede it. Essentially what they argue
22 is, well, we don't think that that information will be
23 admissible at the time of trial. That is what their entire
24 argument comes down to. That's not a question of privilege.
25 That is a question of what they're claiming is it won't be --

1 ultimately be proven relevant. Well, we won't know that until
2 we see the information and the Court sees the information and
3 the Court can make a judgment at that point in time. Which is
4 why this Court and every other court that addresses these
5 issues recognizes that questions of admissibility and
6 discoverability are two different things.

7 THE COURT: Thank you, Mr. Bice.

8 MR. BICE: Thank you.

9 THE COURT: Mr. Peek.

10 MR. PEEK: Your Honor, this, of course, seems to be
11 two ships passing in the night. Because let's remember that
12 this is about a 30(b)(6) Topic 25 and a 30(b)(6) Topic 59, not
13 the documents themselves. Let's put this into that context
14 and let's understand what the log itself does provide to the
15 Court, what it does say to the Court.

16 The log does not concern documents about plaintiff's
17 wrongful termination claim. Instead, the log concerns
18 documents provided to government officials in a government
19 investigation which is simply not relevant to whether
20 plaintiff was terminated for cause, not for cause, or
21 wrongfully. The agency's investigation was not undertaken to
22 determine whether Jacobs was terminated for cause or not. The
23 discovery of this privileged information to determine whether
24 something in it in these investigations could be used to, as
25 Mr. Bice argues, impeach the defendants on whether Jacobs was

1 fired for cause or not would elevate this fishing expedition
2 to a level above privilege and allow a private litigant to
3 intrude into and interfere with legitimate government
4 regulation and investigation of regulated entities with no
5 attendant benefit to the public interest. Plaintiff does not
6 argue, nor can he, that the topics themselves are relevant to
7 his termination. He just argues to you without any supporting
8 authority that, I believe that there are contradictory
9 statements.

10 On November 19th you asked us to submit a privilege
11 log -- you ordered us -- related to documents that were
12 provided to the government as part of the government's
13 investigation. You did so because plaintiff had requested the
14 information within the documents to be provided by a Las Vegas
15 Sands Corporation witness pursuant to a 30(b)(6) deposition
16 Topic 25, communications to U.S. Government officials that
17 relate to or concern the plaintiff. A general broad topic.
18 Nothing to do with termination, nothing to do with contracts.
19 Or Topic 59, communications to government officials regarding
20 15 individuals and entities not related to wrongful
21 termination, not related to contractual issues that are in
22 dispute here. We submitted that privilege log to you on
23 February 2nd. We submitted the memorandum which the Court has
24 referenced in support of the privilege claims that we make.
25 We submitted a supplement because of the inquiry of the Court

1 as to are you claiming privilege on certain newspaper articles
2 and why are you doing that. We gave you that information.

3 Because the privilege log and the accompanying
4 memorandum and our reply in support of the privilege log were
5 submitted under seal, I'm not going to really get too much
6 into the actual information within the log, but I am going to
7 have do it in general terms.

8 THE COURT: Well, there's nobody else in the
9 courtroom.

10 MR. PEEK: I think we have a court reporter here, we
11 have a representative of the Gaming Control Board.

12 THE COURT: Okay.

13 MR. PEEK: I don't know who the young lady is.

14 THE COURT: She's a court clerk trainee.

15 MR. PEEK: Okay.

16 THE COURT: She's trying to figure out how she's
17 going to manage if she could get stuck in here.

18 MR. PEEK: Okay. I didn't know. I apologize.

19 But we also have a transcript, and certainly
20 transcripts can be --

21 THE COURT: I can always -- I can seal transcripts.

22 But my concern, Mr. Peek, is -- and I know this from
23 some other things that are happening in the Supreme Court, and
24 I can't remember what it is, that they have granted requests
25 by litigants in other cases to seal portions of information

1 that is submitted to them that appear to be confidential, just
2 like the rest of us are required under the rules.

3 MR. PEEK: They've done that in this case and in
4 other cases in which I've been involved, Your Honor.

5 THE COURT: Right. But the problem is I have to
6 have the issue vetted in some way or another in this court
7 before you go up there and say, Judge Gonzalez made a mistake,
8 whichever one of you say it. You have to at least give me a
9 chance. And so it either has to be in your brief, or it has
10 to be in your argument. And there are issues missing from the
11 briefing. Which is one of the reasons I started with the
12 question to you, because it was an issue I needed, in my
13 opinion, to fill in that hole. If you think there are other
14 issues that you may not have covered in the briefing that I
15 identified at the beginning of the hearing, we need to make
16 sure those get covered, because we all know that one side or
17 the other will be taking this issue on privilege up because
18 privilege issues are ones that need to be addressed. And I
19 understand that. But I want to make sure that you give me all
20 the information that you want me to have to make a decision,
21 rather than telling the Supreme Court that I made a mistake
22 and then you didn't give me all the information you give them.

23 MR. PEEK: And I appreciate that, Your Honor. And I
24 certainly would ask that any transcript of this proceeding and
25 the arguments made be sealed.

1 THE COURT: Well, on this issue is there something
2 you're going to talk about that needs to be sealed?

3 MR. PEEK: Well, and that's where I'm -- if I come
4 to that, Your Honor, based on a question or an inquiry from
5 the Court, yes. Because I'm going to still -- I'm going to
6 still try not to get into that --

7 THE COURT: Then you signal me. You signal me. I'm
8 going to leave it on you that if we come to an issue that you
9 believe is entitled to sealing and confidential information
10 and is highly confidential that I can then make a
11 determination as to whether to clear the courtroom, do an
12 additional little bit of hearing on that issue, seal that
13 portion of the record after I give a chance for Mr. Bice and
14 others to respond, and then resume the hearing in a public
15 fashion. And I will do that if you think it is important.
16 But I'm not going to know when you get there. You have to
17 tell me.

18 MR. PEEK: Your Honor, I'm highly sensitive to what
19 has already been made public from documents that we have, you
20 know, made efforts to seal. And so I will be very circumspect
21 in that inquiry from the Court. But I do want the record to
22 be clear. I want the Supreme Court, as you say, to the extent
23 that there's a necessity on our part to go to the Supreme
24 Court either to defend ourselves or to discuss whatever ruling
25 you make here. But let me -- let me go on. Because I --

1 within the body of my argument I've made an effort to not get
2 into detail.

3 THE COURT: Mr. Morris.

4 MR. MORRIS: Excuse me. I'm sorry to interrupt.
5 Could I ask a question for clarification based on some remarks
6 you just made?

7 THE COURT: Sure.

8 MR. MORRIS: We started this when you called Mr.
9 Peek up -- and I'm not arguing this point -- you just said
10 there's a hole in the briefing at least on this one point.

11 THE COURT: From what -- from the briefs I
12 identified this morning that I've reviewed --

13 MR. MORRIS: Correct.

14 THE COURT: -- there appeared to me to be a hole in
15 a part that I wanted a discussion on that was not addressed in
16 the briefs. I wanted to make sure that I gave your side an
17 opportunity to address that issue, because Mr. Bice and I have
18 addressed it in other cases and I know what his position is
19 even though it wasn't originally consistent with what he's got
20 now, because his position used to be different before I ruled
21 against him every time he made the argument.

22 MR. MORRIS: Wasn't it Emerson that said consistency
23 is one of the rarest of human virtues?

24 THE COURT: Well, and I strive to be consistent, Mr.
25 Morris.

1 MR. MORRIS: I know you do. I'm talking about Mr.
2 Bice.

3 THE COURT: Well, but he's stuck with what I've told
4 him before, because he keeps trying, you know -- never mind.

5 MR. MORRIS: I'll cut to the chase here. I'm being
6 a little perhaps unclear on my reasons for requesting. Your
7 Honor, you have identified and I agree with you that the
8 discussion you had with Mr. Peek a little earlier identified a
9 hole in the briefing. You have at least by your comments
10 suggested to me that there may be others and you wish to
11 consider all points and be inclusive when you rule.

12 THE COURT: Absolutely.

13 MR. MORRIS: Okay. Well, all I'm asking you is are
14 you suggesting to us that we should submit supplemental
15 briefing on these holes?

16 THE COURT: I'm suggesting to you there were two
17 significant holes to me, the one I've asked Mr. Peek about
18 already --

19 MR. MORRIS: Yes.

20 THE COURT: -- and the one I'm going to ask him
21 about, if he doesn't address it, at the end of his argument.

22 MR. MORRIS: Okay.

23 THE COURT: The reason I asked him the question
24 first about the Gaming Control statutory privilege is I
25 already knew what Mr. Bice was going to say, because he said,

1 well, but, Judge, you ruled against me in blah blah blah case.
2 He's said that a couple of times over the years to me, and so
3 I already know what he's going to say, because he's been in
4 here over the years enough times, just like you guys have.
5 But he's been in here on the same issue. So I wanted to give
6 Mr. Peek a chance to address that before I heard from Mr. Bice
7 the second time.

8 Mr. Peek may well address my other issue in his
9 argument. I have it written down to ask him if he doesn't,
10 which was one of the reasons when he said it was going to take
11 him more time that I took you to the end even though I am
12 disrupting a deposition that has a time limit in it. Because
13 these issues are important, I want to make sure that I've had
14 a chance to get a response from all sides on the issues before
15 I begin my in-camera review and then make a ruling, because
16 that is going to be where I think we're going. But I want to
17 make sure I've given you the chance to address the issues I
18 think are weak in the brief.

19 MR. MORRIS: Okay. So my question is will you
20 allows us to on those points, the two that you've just
21 referred to, one you've identified, the one you're going to
22 ask about if he doesn't cover --

23 THE COURT: If you ask me. You know, at the end if
24 you --

25 MR. MORRIS: Can we submit a supplemental brief on

1 those?

2 THE COURT: If you guys tell me you want to do
3 supplemental blind briefing and you do it on a short time
4 frame, I'm probably going to give you that request, because
5 I'll get a brief from each of you on the same issue, and I
6 won't give you very long, because I'm going to start the
7 in-camera review. I'm probably going to do that gun case, the
8 gun -- the people who were here earlier with the really good
9 log, going to do theirs first, because they're going to get me
10 the documents today or tomorrow, and so I'm probably not going
11 to be able to start your review until after I finish theirs,
12 which will give you a few days to do a brief if you ask me for
13 it. You may decide that the response Mr. Peek gives me is
14 wonderful and that there is no additional briefing that needs
15 to occur. But I won't know that till I hear what he says,
16 because Mr. Peek over the years has surprised me at hearings
17 by having a different spin on an issue that was raised in the
18 brief that I just hadn't picked up on when I'd read it, which
19 is one of the reasons I have oral argument on my hearings most
20 of the time. But that's just me. Not everybody thinks the
21 way I do.

22 So your short answer is if you ask me at the end of
23 the hearing before I start the in-camera review if you can
24 give me another brief, I may say yes, but I won't let you have
25 any more argument, because I think we're to the point where

1 I'm going to clarify everything through looking at the
2 documents, at least certain categories of the documents.

3 MR. MORRIS: Very good. I'm satisfied with that
4 answer. You've answered my question.

5 THE COURT: I try. And I'm sorry it took so long.

6 MR. MORRIS: Now, I do, though -- I don't want to
7 take issue with this, I just want to say I disagree that Mr.
8 Peek comes to court, as you said, for spin.

9 THE COURT: I know. You don't like that word. I
10 don't mean it in a derogatory fashion. You and I have talked
11 about that over the years. I think in the CityCenter case we
12 talked about that. It's a different interpretation of the
13 words he used in the brief than I would have otherwise have
14 attributed to them. I used "spin" as shorthand. Sorry.

15 MR. MORRIS: Okay.

16 MR. PEEK: I think of it as in intellectual
17 disagreement.

18 THE COURT: An intellectual exercise in expanding my
19 knowledge.

20 MR. PEEK: That's the way I would look at it, Your
21 Honor. Thank you for that.

22 THE COURT: That's good, Mr. Peek. And I truly
23 appreciate the opportunity to have these kind of intellectual
24 discussions with you, because it is better than what I was
25 doing earlier on the week on the fraudulent deeds. And it was

1 your partner who was here.

2 MR. PEEK: I know, Your Honor. I've talked to him
3 about that case, and I gave him some guidance on that, as
4 well, Your Honor.

5 THE COURT: I'm glad.

6 MR. PEEK: Your Honor, the log itself provides
7 sufficient information to determine that the listed documents
8 are privileged. As with other logs, required, this log shows
9 the document's author, the recipients, the subject matter, and
10 the date. And I appreciate the Court's comments I think a
11 couple of weeks ago when it complimented Las Vegas Sands for
12 the privilege log. The plaintiff has not cited any
13 deficiencies in the log. None whatsoever. Which in turn
14 supports that the log itself is sufficient. Plaintiff argues
15 more the fact that waiver, not protected. He makes other
16 arguments, but he does not attack the sufficiency of the log
17 itself. He makes only blanket allegations that our claimed
18 privileges do not exist. But that is wrong. The log provides
19 the sufficient detail for you to determine that Las Vegas
20 Sands has valid privilege claims over the subject documents,
21 and nothing more is needed.

22 We broke down our arguments, Your Honor, into four
23 categories. And maybe when I go over this it may answer the
24 Court's inquiry. The first category, which I actually
25 addressed earlier, is the NGCB correspondence. We see that

1 there is correspondence between Las Vegas Sands and the Nevada
2 Gaming Control Board. We know from NRS 463.3407(1) that our
3 statutory scheme protects, quote, "any communication or
4 document provided to the Board" as being absolutely
5 privileged.

6 THE COURT: Now, Mr. Peek, I'm going to stop you.
7 And I know you don't like being interrupted, because it throws
8 you off.

9 MR. PEEK: That's fine. That's why I did this in a
10 narrative.

11 THE COURT: My reading of that statute and my prior
12 interpretations have been consistent that the absolute
13 privilege referred to in 463.3407 is an absolute privilege in
14 the context of a defense for defamation claims for the
15 information provided to the Board, as opposed to the type of
16 privileges discussed in Chapter -- NRS Chapter 49.

17 MR. PEEK: I understand.

18 THE COURT: Can you comment on that.

19 MR. PEEK: I do, Your Honor, because I've read that
20 subpart, as well, and I know that that exists in there, and it
21 was dealt with in the In re Smith case, as well. And in the
22 In re Smith case it talked about the court has to conduct a
23 balancing test, as well.

24 Let me go on, Your Honor, then.

25 THE COURT: Okay. Thank you.

1 MR. PEEK: Because I appreciate the Court's inquiry
2 as to whether or not that correspondence is, as I argue to
3 you, protected and privileged.

4 The second part of 463, which is the subpart (2),
5 the .3407(2), states that to the extent that we provide to the
6 Gaming Control Board attorney-client privileged or work
7 product privileged document that that document maintains its
8 privilege. And I don't think there's any dispute -- I would
9 hope there's no dispute with the Court on that interpretation.

10 THE COURT: That's essentially a nonwaiver provision
11 by providing it to the Board.

12 MR. PEEK: That is correct. So when you take those
13 two statutes together, and I read them together, as opposed to
14 separate and discrete provisions, it is my view that those
15 read together protect the material that we provided to the
16 Board, not only that correspondence that may not be privileged
17 -- attorney-client privileged documents, but just that
18 correspondence is privileged.

19 I don't know if the Supreme Court has addressed that
20 issue. I haven't seen it addressed, so I don't know what the
21 rulings are that you have made here as to whether that has or
22 has not been --

23 THE COURT: Mr. Bice always gets the cases settled.
24 Sometimes they don't stay settled, but he always gets them --

25 MR. PEEK: As in Golden Gaming?

1 So, Your Honor, while some of the material provided
2 to the Board may not be considered attorney-client privileged
3 and a submission of attorney-client privileged communication,
4 the information contained within those remain confidential
5 under a separate section, NRS 436.120(4). And that's the In
6 re Smith, as well, Your Honor. The Court can only require
7 disclosures after applying a rigorous balancing test, which I
8 think is required by subpart (1) of .3407, as well as .120(4),
9 that includes the relevance of the confidential data against
10 the need for a frank and independent discussion with the
11 Nevada Gaming Control Board.

12 If I understand what the Court's saying is any
13 communication, a letter to the Board describing events,
14 describing activities, describing what's -- you know,
15 responding to an inquiry, saying, you know, we were on your
16 premises and we saw X, tell us about that, you're saying that
17 that response to that inquiry is not protected.

18 THE COURT: That's correct.

19 MR. PEEK: And I would disagree with the Court.

20 And we have, of course, that disagreement brought
21 out in Mr. LaBadie's letter, which is our Exhibit A to our
22 reply, which --

23 THE COURT: That's the February 22, 2016, letter.

24 MR. PEEK: That's the February 22 letter. That
25 confirms our interpretation of these statutes.

1 Thus, in our view, Your Honor, under our first
2 category Las Vegas Sands correspondence with the NGCB is
3 protected by this unique statutory privilege, 463 --

4 THE COURT: Doesn't his letter just say the Nevada
5 Gaming Control Board will not be forced to produce this
6 information in discovery?

7 MR. PEEK: It says a lot more, Your Honor, than
8 that. And maybe this is where -- well, I'm hesitant, Your
9 Honor, even to --

10 THE COURT: Okay. I understand what you're saying.

11 MR. PEEK: -- to go into that just because I know
12 I'll probably get some opposition to it, I may or may not get
13 a ruling that's favorable, so I'm going to be reluctant. I
14 think a reading of that letter in full and in part if you read
15 the first paragraph as well as the second paragraph, it comes
16 to perhaps a different conclusion than you have.

17 THE COURT: Okay.

18 MR. PEEK: So the second category, Your Honor, are
19 the presentations by O'Melveny Myers to the NGCB, the SEC, and
20 the DOJ. We know from Upjohn, Your Honor, and it's progeny
21 that materials created, created during a company's internal
22 investigation enjoy protection under attorney-client and work
23 product privilege doctrines.

24 We've seen the caselaw that we have cited, in In re
25 Steinhardt Partners and other cases that we cited in our brief

1 -- those show -- those cases show that disclosure of these
2 privileged materials created during an internal investigation
3 that arise out of that internal investigation and then given
4 to government officials does not result in a per se waiver,
5 which is the argument that Counsel makes.

6 We prepared, as you know, Your Honor, and you see
7 they're referred to as PowerPoints and slides, that is the
8 Upjohn protection available to us. Instead, the courts
9 conduct inquiry into the nature, purpose, and circumstances
10 giving rise to the disclosure. We've given you much evidence
11 on the purpose, nature, and circumstances giving rise to the
12 disclosure in multiple briefing and multiple presentations.
13 So the presentations the government -- that were made to the
14 government were made in a non-public setting, a non-public
15 setting where frank and open discussion is encouraged. To
16 foster the frank and open discussion Las Vegas Sands obtained
17 the nonwaiver letters from the DOJ and the SEC, which we have
18 identified to you. And those have been part of the record.
19 Those letters confirm that the audit committee and the company
20 had no intention to waive any of their privileges. The facts
21 in the context of supporting caselaw point to nonwaiver. The
22 PowerPoint slides, Your Honor, were prepared by O'Melveny &
23 Myers at the direction of the audit committee, and contain the
24 thought processes and interpretations that were presented to
25 the SEC, DOJ, and the NGCB.

1 Documents are also protected under .3407 and --
2 well, 463.3407 and NRS 463.120, because these statutes apply
3 to the presentations made both to the Board and federal
4 officials which the evidence now supports, Your Honor, were
5 conducted in a collaborative investigation. Mr. Lipparelli's
6 affidavit --

7 THE COURT: Okay. Let me stop you.

8 MR. PEEK: Okay.

9 THE COURT: Can you tell me -- because that was my
10 second question. Can you tell me what evidence you believe
11 shows there is a collaborative investigation, as opposed to a
12 concurrent investigation.

13 MR. PEEK: I don't think -- well, I understand and
14 appreciate the Court's inquiry and separating between
15 collaborative and concurrent. I don't make the distinction
16 that the Court does, and I don't think that any -- that any
17 distinction should exist with respect to the protection of the
18 privilege under Nevada Revised Statutes, whether it's
19 concurrent or collaborative.

20 THE COURT: Okay. The only evidence in your
21 briefing related to this issue besides the declaration from
22 Mr. Lipparelli is the article from The Wall Street Journal
23 that says, "The Nevada Gaming Control Board has also initiated
24 an investigation into the same matter, Chairman Mark
25 Lipparelli said. He declined to comment further." His

1 declaration simply says that statement is accurate to the best
2 of his recollection.

3 MR. PEEK: Understood, Your Honor. Let me -- let me
4 address that question to you, because I think that that has
5 been something that has troubled the Court from the time that
6 I came before you back in -- I don't know which date, but --

7 THE COURT: It's been a long time.

8 MR. PEEK: -- we've had -- we had a lot of them.
9 But we know from that newspaper article, confirmed by the
10 affidavit, that the Board and the federal agencies were
11 investigating the same subject matter at the same time. Thus
12 your inquiry about concurrent versus collaborative. So let me
13 get to the question of collaborative.

14 The federal agencies, we know, used the NGCB's
15 offices for their investigation. They conducted interviews
16 there. They attended at least two presentations. That
17 doesn't necessarily lend itself to an inference of concurrent
18 versus collaborative. It is a collaborative.

19 Likewise, we know from the logs that NGCB
20 representatives attended additional presentations, there were
21 at least seven, at the SEC's offices in D.C. That to me, Your
22 Honor, is again a reasonable inference of collaborative, as
23 opposed to concurrent. Certainly they have different issues
24 as part of their investigation. NGCB's investigation relates
25 to their authority under the Nevada Revised Statutes over

1 licensees within the jurisdiction of the State of Nevada. The
2 SEC, DOJ has --

3 THE COURT: So if they're collaborative, why do you
4 receive a letter, which is Exhibit A to the February 29th
5 supplement, that asks you for the information you provided to
6 the people you now say Gaming Control is collaborating with?

7 MR. PEEK: A fair question, Your Honor. And that
8 goes I think to the subsequent activities of the company,
9 which will get into Category 3 of the presentations made with
10 respect to resolution of the dispute. That's the way I read
11 -- understand the letter, although I didn't author the letter,
12 I didn't have the conversation that is referred to in the
13 letter.

14 But let's look at some of again the inferences that
15 you draw from that. So a reasonable inference I think can be
16 drawn and should be drawn from the affidavit and the newspaper
17 article that this repeated pattern, this repeated pattern of
18 joint participation is that the agencies were collaborative --
19 collaborating and sharing material at least up through that
20 period till we get to 2014. The answer, then, is that the --
21 we also know, as you do, Your Honor, as you've said to me,
22 well, why doesn't the agency come in here and tell us that
23 it's a collaborative investigation, why don't we see the SEC
24 and the DOJ coming in and saying that. Well, we all know that
25 investigative agencies do not disclose the nature and purpose

1 of their investigations. They don't come in here and tell you
2 that.

3 THE COURT: You were in Wynn-Okada when they came
4 in.

5 MR. PEEK: That was a different -- certainly. Your
6 Honor, that was a -- what was that? That was a request, Your
7 Honor, to stay the discovery for purposes of what they said to
8 you in in-camera, ex parte communications to the Court that,
9 we have concerns over the safety of some of the witnesses. So
10 the existence of that investigation certainly -- I don't know
11 what they told the Court, because I wasn't part of those
12 ex parte --

13 THE COURT: That's why I kept giving them back their
14 ex parte stuff and said I wasn't going to have it. So --

15 MR. PEEK: But you also granted a stay.

16 THE COURT: I did grant a stay --

17 MR. PEEK: You granted a stay.

18 THE COURT: -- because of their -- in that case they
19 said they had serious concerns about the safety of witnesses,
20 and I didn't want to put anybody in physical danger as a
21 result of an ongoing discovery issue.

22 MR. PEEK: I understand that, Your Honor. But in
23 terms of what they said to you about the nature of their
24 investigation was presented to the Court in an ex parte, in-
25 camera proceeding, not here in open court.

1 THE COURT: Mr. Peek, I don't know if you remember,
2 but I kept giving them back their stuff, saying I didn't
3 review it.

4 MR. PEEK: Yeah. But my point is, Your Honor, that
5 they don't always come into court and tell you what the nature
6 of their investigation is. In that case the government did it
7 ex parte. You refused to receive them, and you told them and
8 you told -- I wasn't in the case at the time, as you know.

9 THE COURT: Oh. Was it before your time?

10 MR. PEEK: It was before my time. I only came in
11 when they requested an extension of the stay, and you gave
12 them a very, very limited relief in that request in I think
13 May of 2014 when I came into the case.

14 THE COURT: I'm sorry. For some reason I thought
15 you were involved in the case at that early stage.

16 MR. PEEK: I was not, Your Honor. Mr. McCrea was.

17 But the fact that the same information was disclosed
18 to the SEC and DOJ under nonwaiver letters and in a
19 collaborative investigation with NGCB does not result in the
20 waiver as they have argued. We know from NRS 49.3852(a) that
21 disclosure is itself a privileged communication, disclosure
22 under .3407(1), the disclosure under .3407(2), and the
23 disclosures under 463.120. Those were made to comply with the
24 law and assist the Board in the performance of its duties.
25 .120(4) applies to those O'Melveny presentations, as well,

1 Your Honor, to protect those, the confidentiality of those
2 presentations. Under that statute, .120(4), the
3 communications to the Board and agencies can be disclosed only
4 if the Court finds that their relevance outweighs the interest
5 in promoting open communications between the Board and its
6 licensees.

7 Notably, plaintiff's opposition makes no attempt to
8 explain whether allegedly, allegedly inconsistent remarks were
9 even made. He comes before you and just trumpets that --
10 you've heard this. I haven't seen a citation yet, Your Honor,
11 to the record which supports these contradictory statements
12 that he says he will find in presentations made to the
13 government and, if any were made, whether those remarks
14 themselves would support his claim for breach of an alleged
15 employment contract in Macau. Remember, this is not -- the
16 government's investigations are not investigating Jacobs's
17 claimed injury, claimed wrongful termination, claimed breach
18 of contract.

19 The third category, Your Honor, is those categories
20 which I identified to you beginning in 2014 that were made by
21 LVSC's counsel to the SEC and the DOJ. Upjohn we know
22 protects those documents. It's an investigation internally.
23 These presentations were made in the context of still ongoing
24 settlement negotiations with the federal agencies and are
25 protected under 408 and 410 of the Federal Rules of Evidence.

1 THE COURT: And those are admissibility rules.

2 MR. PEEK: I understand that they're admissibility
3 rules, but I think, Your Honor, that when you look at
4 discovery rules, as well, and you know that that communication
5 is not going to be admissible at trial -- and I know Counsel
6 cites cases where settlement negotiations have been allowed to
7 be discovered, but how does that get to the wrongful
8 termination claim? How does that get to these alleged
9 inconsistent statements made in the context of settlement
10 negotiations?

11 So I'd suggest to the Court that the Court in
12 weighing and balancing under NRCP 26 whether it's, one,
13 relevant -- we know it's not, because it's not admissible or
14 reasonably calculated to the lead to the discovery of
15 admissible evidence. We have nothing that would support a
16 showing that they would be discoverable, and certainly when
17 they're not admissible they have a heavy burden. And they
18 haven't met that burden.

19 The last category that we described in our briefing,
20 Your Honor, were the presentations made by Kirkland Ellis to
21 the U.S. Attorney's Office in Los Angeles. These
22 presentations were made in furtherance of resolving issues
23 under investigation by a federal agency that did not implicate
24 Macau and temporally occurred in 2006 and 2007. And we had a
25 lot of discussion, the Court may recall, when Mr. Bice

1 attempted to produce -- or, excuse me, to enter into evidence
2 the nonprosecution agreement with the government. And the
3 Court ruled that the circumstances which arose out of those
4 claims under the anti-money laundering rules and resulted in a
5 nonprosecution agreement were not relevant to the proceedings.

6 THE COURT: Those proceedings.

7 MR. PEEK: Those proceedings, Your Honor, as well as
8 even these proceedings. How is it that something that
9 happened in 2006 and 2007 is relevant to a wrongful
10 termination claim? This again is the fishing expedition that
11 I've described to the Court. And I know that this Court has
12 over the years a very liberal interpretation of discovery. I
13 know that. I've practiced before this Court, and I have
14 practiced with the Court when the Court was a lawyer. But
15 this is entirely designed to harass, embarrass the company and
16 its chairman in a vindictive manner. It's not about anything
17 at all relevant to this proceeding of how is it that an anti-
18 money laundering and nonprosecution agreement can have any
19 relevancy whatsoever or reasonably calculated to lead to the
20 discovery of admissible evidence into for proceedings. They
21 say, well, you told the government one thing and you told this
22 Court something. I haven't told the Court anything about the
23 anti-money laundering. I haven't even mentioned anti-money
24 laundering at all in this court. So how could that be, as he
25 said, a contradiction, as he suggests is his reasons for

1 discovery?

2 Let me conclude, as I've stood before you way too
3 long, Your Honor. The log sets forth all the information
4 necessary for the Court to determine the privilege issues,
5 particularly where Jacobs does not dispute any of the factual
6 representations contained in the log; he only contests whether
7 they're privileged. And plaintiff's only relevance claim that
8 he has made to you to overcome the important public policy of
9 protecting the integrity of the Board and the agencies'
10 investigative processes. Thank you.

11 THE COURT: Thank you, Mr. --

12 MR. PEEK: I hope I've answered all your questions,
13 Your Honor.

14 THE COURT: You have, I think.

15 Before you get up, Mr. Bice --

16 MR. BICE: Yes.

17 THE COURT: Do any of the others sitting at the
18 defense long tables want to say anything, understanding this
19 is really Las Vegas Sands' issue.

20 MR. PEEK: If you guys want to say something, please
21 do.

22 MR. MORRIS: Just confirming. The second hole I
23 assume was the question you addressed with Mr. Peek about the
24 evidence of collaborative investigation.

25 THE COURT: It was.

1 MR. MORRIS: Okay.

2 THE COURT: You were able to pick up on that by the
3 way I asked the question, huh?

4 MR. MORRIS: There are a few minutes a day when I'm
5 awake.

6 MR. WOOD: You've given me an opportunity, so I'll
7 take it. I want to re-introduce myself to you. I'm Lin Wood
8 from Atlanta. It's about 10 or 11 years since I was last
9 before Your Honor, and here today I don't know whether I'll
10 have a speaking role or not, but --

11 THE COURT: You will. But we're not to that motion
12 yet.

13 MR. WOOD: But I wanted to introduce myself to you.

14 THE COURT: All right. Thank you.

15 Mr. Randall Jones, anything you want to add? No.

16 Okay.

17 Mr. Bice, you're up.

18 MR. BICE: Your Honor, thank you.

19 Your Honor, let me deal with the big picture issue
20 first, the assertion that these government investigations
21 don't have anything to do with Mr. Jacobs. Well, that's not
22 what they've been telling the world. When I say they, Las
23 Vegas Sands Corporation. They have publicly disclosed that it
24 is Mr. Jacobs that triggered these government investigations
25 of the company, that triggered the subpoenas to them. And one

1 of the first witnesses that the government interviewed was, of
2 course, Mr. Jacobs. They have -- and Mr. Adelson has publicly
3 decreed, not only to the news media, right here in open court,
4 how they were going to be exonerated. And he told the news
5 media, although he's now backed away from it -- he told them
6 that he would bet anybody a thousand -- was it a thousand to
7 one or a million to one? His bet was is that you put up a
8 million dollars you could win a billion, because there would
9 be no violations, no hint of it. He now won't stand behind
10 that bet, he has acknowledged. And I will tell you why he
11 won't stand behind that bet, and I'm going to go in reverse
12 order.

13 The Kirkland presentations that they made, they
14 claim this is from 2006 and 2007. Nice try is all I can say
15 to that. That's what they agreed to pay the government for,
16 was some events in 2006 and 2007. Your Honor, FinCEN, which
17 is what this was an investigation on, was concerned about
18 money transfers. And just so that the Court knows, it is June
19 17 -- and there's an email on this -- June 17 of 2010, I want
20 the Court to remember that date, is when Mr. Jacobs raised
21 questions internally about those documents, about those
22 transfers known as the ATAs. He raised questions about it and
23 he was provided a form. We've heard from Mr. Leven, well, we
24 decided to fire Mr. Jacobs, we didn't get around to it for a
25 month, but we decided to fire him on the June the 22nd. Well,

1 you want to know what was one of the first government agencies
2 to come and speak to Mr. Jacobs, Your Honor? And what did
3 they want to talk about with Mr. Jacobs as he has testified in
4 his deposition? Those ATAs. And it was FinCEN, this very
5 same investigation that they're now telling the Court, oh,
6 that had nothing to do with Mr. Jacobs, that has nothing to do
7 with what Mr. Jacobs was complaining about was going on inside
8 that company. That is just flat false, because they know that
9 it was.

10 And, of course, Your Honor, what happened after
11 FinCEN launched its investigation of this company on this
12 issue? Well, they stopped those money transfers, they stopped
13 that policy, and then they entered into that agreement where
14 they paid the federal government nearly 48 million U.S.
15 dollars and entered into all of these things that they agreed
16 they would not do into the future. And guess what of course
17 one of those is. The very transfers of funds that Mr. Jacobs
18 had raised questions about and received an email about on June
19 17 of 2010, just a week before Mr. Leven says, we decided we
20 were going to terminate him. So let's -- so that issue is
21 just wrong, this story, this false story that somehow that
22 just concerns events back in 2006 and 2007. That's what they
23 paid -- the fine amount was allocated for that event.

24 Next, resolution with the DOJ and SEC. They claim,
25 well, that's ongoing. They concede that's not privileged.

1 But under 408, the Federal Rules of Evidence, it wouldn't be
2 admissible ultimately. The Court -- we don't know that.
3 We're entitled to see that information, we're entitled to the
4 production of that information so that we can test the
5 veracity of these representations. Because, remember, we have
6 Mr. Adelson on the witness stand telling the world about a
7 year ago, don't worry, we're going to be fully exonerated and
8 Mr. Jacobs is going to be very disappointed when they come out
9 and say that we did nothing wrong and that everything that Mr.
10 Jacobs is saying is false. And he not only told that on the
11 courtroom, he has said it in investor conferences.

12 Now what they're here telling you is, allow Mr.
13 Jacobs to make that -- or Mr. Adelson to make such sworn
14 statements on the witness stand, allow him to go out into the
15 news media and spread that but please protect him from any
16 documents that will expose him as perhaps not being quite
17 forthright. That's what the argument is. And the law doesn't
18 allow that.

19 Third point that they say, okay, now -- and this is
20 where, of course, the facts get very, very fuzzy, to say the
21 least, is the -- what they call Number 2, presentations by
22 O'Melveny to the SEC, DOJ, and some of those were also made to
23 the Gaming Control Board. So now the argument becomes, well,
24 it's all really part of the Gaming Control Board's
25 investigation and since we gave that to the Gaming Control

1 Board and it would be privileged the State statute applies
2 even if we gave the same information to other people which the
3 State statute doesn't allow us to share it with in order to
4 preserve our claims of privilege. That, of course, is the
5 fiction.

6 Isn't it interesting, Your Honor, is that Mr.
7 Lipparelli -- they get a declaration from Mr. Lipparelli.
8 Surely Mr. Lipparelli would have signed a declaration that
9 says it's -- that this was being led by the Gaming Control
10 Board and that all this information was being given to the
11 Gaming Control Board pursuant to its authority, not the SEC
12 and the DOJ. But, of course, he couldn't do that. The best
13 Mr. Lipparelli could offer to the Court -- in being candid
14 with the Court, which I'm sure he was, the best Mr. Lipparelli
15 could say is, yeah, the newspaper quoted me correctly when I
16 said that we had -- we had also opened our own investigation
17 into this matter. That proves the point. It's their --

18 By the way, let's remember who had the burden of
19 both proof and persuasion on this issue of privilege. That's
20 the party asserting it. Mr. Peek tries to shift the burden
21 and say, well, you know, one can infer and, you know, one can
22 speculate that what Mr. Lipparelli really meant there was that
23 it was some sort of a Gaming Control Board investigation that
24 the DOJ and the SEC were somehow tagging along, so -- and, of
25 course, the evidence shows the Court it's the exact opposite.

1 If anyone was tagging along on this investigation, it was the
2 Gaming Control Board. And I'm not saying that as a criticism
3 to them. I understand that they have limited resources, but
4 let's not pretend that somehow they weren't dealing with the
5 DOJ and the SEC as the principal investigative agencies and
6 that they shared information with them and thereby waived the
7 privilege. They know that they did, and they're just --

8 THE COURT: And "they" being Las Vegas Sands?

9 MR. BICE: Yes.

10 THE COURT: Okay.

11 MR. BICE: "They" being Las Vegas Sands. And they
12 were giving the government that information -- because they
13 admit -- they've admitted it -- to try and negotiate their way
14 out of that investigation. They are sharing information with
15 their adversary to try and negotiate either a reduced penalty,
16 no penalty if Mr. Adelson's telling the truth, or some bargain
17 with the government to resolve that investigation. That's no
18 different than Philip Morris or any of the big tobacco
19 companies that had to sit with the Department of Justice and
20 try and negotiate their way out. That doesn't mean that, oh,
21 okay, well, we now don't want however all of the victims of
22 our nonsense to get access to what we were telling the
23 government in an attempt to negotiate our way out and keep our
24 executives either out of prison or other consequences. That
25 information is highly relevant. And to pretend -- and it is

1 the -- you cannot pretend that that does not pertain to Mr.
2 Jacobs.

3 Mr. Peek says, well, Topic 59 of the 30(b)(6) is a
4 whole list of individuals, that has nothing to do with this
5 case. It has everything to do with this case. And in fact
6 one would think that it would be so simple for them to respond
7 and say the Department of Justice wasn't interested in any of
8 those people, including Mr. Jacobs, so we didn't provide them
9 any information. I would bet the Court that we wouldn't have
10 spent the last however many, six, eight, nine months arguing
11 about this if that were true; they would have just come in and
12 told you there are no documents, we gave the government no
13 information about any of those individuals or about Mr.
14 Jacobs. That's because they did, and they know it, and Mr.
15 Jacobs has already testified, Your Honor, in his deposition, I
16 don't recall how many interviews he had with the United
17 States, it was multiple and for multiple days. And they
18 showed him documents during his interviews, and those
19 documents Mr. Jacobs believes came right out of Macau. And,
20 of course, this is all going on while someone was in this
21 courtroom telling the Court that those documents couldn't have
22 been brought out of Macau. So that is again -- Mr. Peek says,
23 well, we don't have any evidence of inconsistencies with the
24 Court. We have a lot of evidence of inconsistencies with the
25 Court.

1 And then finally, Your Honor, I'll just turn to the
2 last one, they say, well, our Nevada Gaming Control Board
3 communications and the documents we provided just to the
4 Gaming Control Board. Your Honor, that is sort of a red
5 herring. And I know you and I have argued about this in the
6 past, and it is a red herring; because it doesn't matter in
7 this case. Because in this case they gave the documents to
8 the federal government. If they also sent a version on to the
9 Gaming Control Board, it's not going to save them; because
10 they gave those documents to the federal government. And how
11 did they somehow become privileged when they responded to the
12 Feds' subpoena? They didn't. That didn't convert them into
13 any privilege. And that's, of course, a fundamental flaw in
14 this entire story. They don't want to address that because
15 there are documents that they aren't producing in the case
16 that we of course have good reason to think they gave to the
17 government in no small part because Mr. Jacobs was shown some
18 of them during his interviews with the Feds.

19 So -- and this is the other problem Mr. Peek doesn't
20 address, these Gaming Control Board documents. Who else did
21 they give them to? Well, we know they gave them to the SEC
22 and the DOJ. That right there is the end of the debate. You
23 don't have to say, well, I'm ordering you to give Mr. Jacobs
24 what you gave the Gaming Control Board. That's an academic
25 issue. We're entitled to see what they gave the Department of

1 Justice and the Securities and Exchange Commission.

2 And then just on the legal point, Your Honor, the
3 statute can't mean what Mr. Peek argues, because he says that,
4 well, 463.3047(1) [sic] isn't liability, it's a privilege
5 against production. If that were true, then .30407(2) [sic]
6 wouldn't even need to exist, because NRS Chapter 49 already
7 provides that if the communication is privileged you can share
8 it in another privileged communication. The statute wouldn't
9 even be written the way that they are proposing if in fact
10 they were right on this.

11 So our point at the end of the day, Your Honor, is
12 we have been stymied for I don't know how -- it's eight months
13 on this issue at least all with this argument about waiting
14 the time to prepare a log, and then when we got the log it
15 became obvious these are not -- there is no actual privilege.
16 And to the extent a few of those documents ever were
17 privileged they waived them by trying to use them
18 affirmatively. A privilege exists to maintain confidences.
19 And we have cited to you every circuit court. Every circuit
20 in the United States has looked at this and said it's a
21 waiver, you cannot use documents affirmatively with the
22 government and then try and preclude them in civil litigation
23 amongst other parties involving the same circumstances.
24 Because if you're allowed to do that, you're using the
25 privilege to garble the truth; and the law doesn't allow you

1 to do that. I thank the Court.

2 THE COURT: Thank you.

3 Mr. Peek, anything else on your side?

4 MR. PEEK: There's certainly, Your Honor, an
5 argument that Mr. Bice makes, and, frankly, this is not as
6 significant as the PowerPoints that O'Melveny made and Las
7 Vegas Sands' counsel made, but the presentations in Los
8 Angeles he argues to you were in connection with so-called
9 ATAs from Macau. Nothing could be farther from the truth, and
10 he knows better. And for him to stand before you and say that
11 it involves ATAs from Macau is frankly disingenuous. So to
12 stand here and argue facts that he knows are not consistent is
13 troubling to me.

14 But, Your Honor, where we stand is that we believe
15 we have made an adequate log and that nothing more is needed
16 to rule on whether or not testimony has to be provided on
17 Topics 25 and 59. Thank you.

18 THE COURT: All right. I am going to do an in-
19 camera review, because I need to make a determination as to
20 whether any of the information to which you have asserted a
21 claim of privilege may lead to the discovery of admissible
22 evidence.

23 The privilege claims that you've made do not appear
24 to me to be well supported. However, I am inclined to accept
25 the supplemental brief, if you'd like to submit it, on the two

1 issues that I identified that I thought the briefing was weak
2 on, but I need those fairly quickly, because I plan to start
3 your in-camera review next week, mid week, after I finish the
4 guns.

5 MR. MORRIS: When would you -- when would you --

6 THE COURT: Can you get it to me Wednesday?

7 MR. MORRIS: Pardon me?

8 THE COURT: Can you get it to me Wednesday
9 afternoon?

10 MR. MORRIS: This coming Wednesday afternoon, this
11 week?

12 THE COURT: A week from yesterday.

13 MR. MORRIS: I'm sorry?

14 THE COURT: Next Wednesday afternoon.

15 MR. MORRIS: For the supplemental brief? Yes.

16 THE COURT: Would you like to do one? Because if
17 they're going to be done, they're simultaneous, because I'm
18 not going to keep waiting and I'm not going to take any more
19 argument. Mr. Bice, do you want to do another one, or not?

20 MR. BICE: No, I don't want to do another one.

21 THE COURT: Okay. Great.

22 MR. BICE: But if they raise something new -- I
23 mean, this is the fourth or the fifth round of briefing out of
24 these parties.

25 THE COURT: Maybe more than that. It may be more

1 than that.

2 MR. BICE: I mean, when does it end, Your Honor?

3 THE COURT: Well, I'm going to start the in-camera
4 review next week and make a ruling. So if you want to file
5 another brief, you can. If you don't want to file another
6 brief, you don't. If there's something you think that is --
7 requires something else from you and you really think it's
8 important, then I will stop the in-camera review and have a
9 hearing for you to tell me. But this all started because I
10 don't do -- I don't review briefs in connection with my
11 privilege review. I got a brief with the privilege log. I
12 identified the fact that I don't accept briefs with my
13 privilege logs, I expect the privilege log to be fully
14 explanatory. Somebody thought I needed more information, so
15 then you all wanted briefing again. And it's been, what,
16 another month? So next Wednesday either I'll get simultaneous
17 briefs, or I won't.

18 MR. BICE: Thank you, Your Honor.

19 THE COURT: If you think there's something critical
20 that's been raised that is highly new and nobody's ever
21 thought of before that you need to respond to, tell me, and
22 I'll talk to you about it.

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

24 THE COURT: Mr. Peek.

25 MR. PEEK: Your Honor, the only request I would make

1 is, as the Court has anticipated, there may be further
2 proceedings --

3 THE COURT: No, really?

4 MR. PEEK: -- and in order --

5 THE COURT: I'm sorry. That was sarcastic.

6 MR. PEEK: That's okay, Your Honor. I appreciate
7 that. I'm full of sarcasm, as well, myself.

8 THE COURT: It doesn't appear well on the record is
9 the problem.

10 MR. PEEK: I understand, Your Honor.

11 -- but in order to evaluate what those proceedings
12 might be is we would need a written order.

13 THE COURT: Here's what we've done before, and I
14 can't remember if it was this case or another case where I did
15 it. I go ahead and issue my order on a document-by-document
16 basis on the logs, I then, if there are items -- because there
17 are sometimes items I need additional information on because I
18 don't know the code words that are being used or there's
19 something in it that doesn't make sense, I don't -- the
20 identity's not properly explained. I will give an opportunity
21 for an additional submission related to that that is provided
22 to everyone, and I will give you time before that becomes
23 effective for you to then ask for some relief from the order
24 prior to going someplace else or evaluating it.

25 MR. PEEK: And I --

1 THE COURT: The order doesn't become effective until
2 the written order is actually entered, which is following my
3 minute order. If I require you to give me supplemental
4 information, it follows that deadline. So it's not a quick
5 process.

6 MR. PEEK: Well, even the Court's order today, Your
7 Honor, is something we would need to evaluate. So I'm just
8 asking.

9 THE COURT: The one where I'm asking you to give me
10 the documents?

11 MR. PEEK: Just the whole process of, you know,
12 whether or not we have satisfied the burden for the Court.

13 THE COURT: Okay. I must be dense today, Mr. Peek.
14 Ask me again.

15 MR. PEEK: Well, the Court has preliminarily -- or
16 as part of its ruling has said, well, I don't believe I have
17 sufficient information and I want you to give me more
18 information, forget the supplemental brief, I'm just giving
19 more information by submitting me the documents so I can give
20 further review to that.

21 THE COURT: If you want, I'll tell you you'd lose
22 based on the privilege log for all documents except the
23 documents provided to Gaming Control to which I would do a
24 review. If you'd rather me do an in-camera review, I'll do
25 the in-camera review to make a decision as to whether any of

1 the documents would lead to the discovery of admissible
2 evidence, which is a second part of the analysis that I have
3 to go.

4 MR. PEEK: I see -- I see the distinction.

5 THE COURT: That was why I said it that way.

6 MR. PEEK: Okay. So let me -- let consult with Mr.
7 Morris, because he's my --

8 THE COURT: No, I understand.

9 MR. PEEK: -- he's my appellate guy, Your Honor.

10 THE COURT: He's your appellate guy.

11 MR. PEEK: I don't, you know -- may I have just a
12 moment to consult with him?

13 THE COURT: You can have five. I'll take a short
14 break --

15 MR. PEEK: Thank you, Your Honor.

16 THE COURT: -- refill my coffee.

17 MR. MORRIS: Thank you, Your Honor.

18 MR. PEEK: Thank you, Your Honor, for --

19 THE COURT: And then please remember our next agenda
20 item is the motion related to Mr. Adelson's deposition. And
21 since I was given a DVD which I reviewed, I am giving it to
22 Dulce. She's marking it as a Court's exhibit and sealing it,
23 since I don't know how it's otherwise part of your record.

24 MR. PEEK: Thank you. It's sealed. That's the
25 important part of it. Thank you, Your Honor, for the time.

1 (Court recessed at 11:20 a.m., until 11:28 a.m.)

2 THE COURT: Are we ready?

3 MR. PEEK: We are, Your Honor.

4 THE COURT: I'm going to sit down.

5 MR. PEEK: Thank you for --

6 THE COURT: No, Mr. Peek, it's --

7 MR. PEEK: -- indulging us with a little bit of
8 time.

9 THE COURT: Absolutely.

10 MR. PEEK: You asked me what kind of an order I
11 want. I guess I'm -- it's -- I know that in order to review
12 anything in the Supreme Court a written order is required.

13 THE COURT: That's true.

14 MR. PEEK: And I heard some of the Court's remarks
15 about, well, do you want me to say that I'm doing this for
16 this reason and I want you to submit this for this reason. If
17 that's the Court's order, then that's the Court's order.
18 Whatever the Court's order is in terms of producing the
19 documents and why the documents need to produce for in-camera
20 inspection, whatever that order is I just want to understand
21 what it is so that I can evaluate and --

22 THE COURT: Okay.

23 MR. PEEK: -- and make decisions on that. So --

24 THE COURT: Let me go through it in a step-by-step
25 process. Since I've told Mr. Morris he can submit a

1 supplemental brief on some of the issues, I may change my
2 mind, which means this isn't final yet until I look at what he
3 may submit. Because he may change my mind.

4 MR. PEEK: I would hope he would, Your Honor.

5 THE COURT: Well, he might.

6 MR. PEEK: He might.

7 THE COURT: There has not been any evidence of a
8 collaborative investigation between the Nevada Gaming Control
9 Board and the SEC, DOJ, or U.S. Attorney's Office. So that is
10 one of the things I would put in my written order if I was
11 entering it today. Some investigation may have been
12 concurrent, but an investigation that is concurrent is not
13 necessarily collaborative. NRS 463.3407 provides an absolute
14 privilege related to potential liability of a person
15 responding to a request by the Nevada Gaming Control Board for
16 defamation claims, and it maintains a privilege that otherwise
17 exists under Chapter 49. So to the extent you submitted
18 information that was otherwise privileged to the Nevada Gaming
19 Control Board, it is unlikely I would require you to provide
20 that information, because it's not a waiver of the privilege.

21 However, to the extent you provided it to the SEC,
22 DOJ, or U.S. Attorney's Office it's not entitled to the same
23 treatment. Settlement discussions are not privileged under
24 Chapter 49; but since they may not be admissible in evidence,
25 I would need to do an in-camera review to make a determination

1 as to whether the information contained in the presentations
2 or communications with the SEC, DOJ, U.S. Attorney's Office
3 may lead to the discovery of admissible evidence or otherwise
4 were relevant.

5 So if I was going to make an order today, that would
6 be what it was. If Mr. Morris tells me based on that he
7 doesn't want to give me the supplemental brief he asked me
8 for, that's okay. I'll tell you that's the ruling, and I am
9 happy to do an in-camera review if you don't want me to order
10 you to produce all of the communications that were made to the
11 SEC, DOJ, and U.S. Attorney's Office.

12 MR. PEEK: I think what I would prefer, Your Honor,
13 is to give Mr. Morris the opportunity to persuade you
14 otherwise before you enter -- because I think that's -- what I
15 hear you're saying is that, I may change my mind so don't ask
16 me to do an order today.

17 THE COURT: That is what I said. That is what I
18 said, Mr. Peek.

19 MR. PEEK: Yeah. So I --

20 THE COURT: He asked me if he could do another
21 brief. I said yes. I said I'd read it, I'd consider it.

22 MR. PEEK: So I would ask the Court before it enters
23 any kind of an order that it wait until after that briefing is
24 submitted, assuming Mr. Morris still wants to do that, and I
25 think he does.

1 MR. MORRIS: Yes, I do. I'm happy to do that on
2 those two points.

3 THE COURT: Yep.

4 MR. PEEK: And so --

5 MR. MORRIS: So you'll take -- you'll take a look at
6 those briefs and --

7 THE COURT: Always.

8 MR. MORRIS: I know. Of course you will. I know
9 that.

10 MR. PEEK: We know you read briefs, Your Honor.

11 MR. MORRIS: And I didn't mean to suggest you're not
12 going to read what was in that or have done so in the past.
13 So I'm taking it your order that -- your order that you're
14 going to do on this in-camera inspection is going to be
15 entered after you look -- once you see the supplemental
16 briefs.

17 THE COURT: Correct. And then if you haven't
18 convinced me it is a collaborative investigation between the
19 NGC, SEC, DOJ, and U.S. Attorney's Office, then I would go to
20 step two, which is settlement discussions are not privileged
21 under Chapter 49, but since they may not be admissible, I
22 would go through and do an analysis on a document-by-document
23 basis as to whether they should produce because they might
24 otherwise lead to the admission of -- or the discovery of
25 admissible evidence.

1 MR. PEEK: We understand. We'll submit the briefs
2 and await your written order, Your Honor, to evaluate it at
3 that time.

4 THE COURT: Well, what you will probably get after I
5 review the briefs -- because, remember, it's a brief with no
6 additional argument -- is, okay, I've looked at the brief, now
7 you need to give me the documents if you want me to review
8 them.

9 MR. PEEK: But I think you would also have included
10 in that perhaps those findings that you just recited to us
11 today.

12 THE COURT: I'm not writing the order. I gave you
13 the order. I just told you what it is. Mr. Bice, if he wants
14 to prepare the order and send it over, I'll sign it. But I
15 don't think it should be sent over until I get a chance to
16 read Mr. Morris's brief. And my response to Mr. Morris's
17 brief after I read it is likely to be, I read Mr. Morris's
18 brief, I didn't change my mind, so send me the documents, or
19 it might be, gosh, Mr. Morris came up with something I hadn't
20 thought of, I really don't think I want to do this, let me
21 talk to you guys one more time.

22 MR. PEEK: Okay. I appreciate that, Your Honor.

23 MR. BICE: Your Honor, I have an issue, then. I
24 mean, the whole predicate of they needed time to submit yet I
25 don't know whatever round of briefing this is going to be, you

1 weren't going to do your review until then. That's --

2 THE COURT: That is true. Because I have another
3 case in front of you that I've got to do an in-camera review
4 on.

5 MR. BICE: Well, I can see what's happened. Now the
6 brief will come in on Wednesday, and then they'll say, okay,
7 we need an order, we're going to debate whether we even want
8 to submit the documents in camera.

9 THE COURT: Well, no. What the order is going to
10 say is -- and it's a minute order from me -- I looked at the
11 additional briefing, submit the documents for in-camera
12 review. If they decide they want a written order from that
13 because they want to seek review of my decision to do an in-
14 camera review, then we're going to have to get a written order
15 so that they can do that.

16 MR. BICE: All right. But if they don't submit the
17 documents for in-camera review, that's the choice that they
18 make, the documents are ordered produced; correct?

19 THE COURT: Unless they ask me for a stay.

20 MR. BICE: Exactly. That's what I want to be clear.

21 Because --

22 MR. PEEK: Your Honor, this isn't a production
23 issue, this is a testimonial issue.

24 THE COURT: No. It's both, Mr. Peek.

25 MR. PEEK: This is a Topic 25 and 59 motion.

1 MR. PEEK: It's both.

2 THE COURT: It's been -- this issue has dealt with
3 not only documents, but also meetings.

4 MR. BICE: Exactly.

5 THE COURT: So it's not just this document from the
6 -- this issue from the time it started when Mr. -- the first
7 time I learned of it was when Mr. Raphaelson --

8 Am I saying his name right?

9 MR. PEEK: Raphaelson.

10 THE COURT: -- Raphaelson testified at the
11 evidentiary hearing related to that issue. It was new to me
12 then. It may not have been new to you guys, but it was new to
13 me then. And I go, huh, that's interesting, maybe somebody's
14 going to brief that issue. And then I said to Mr. Bice, hey,
15 Mr. Bice, are you going to brief that issue; he goes, yeah.
16 And then later I say, so are you guys going to brief that
17 issue; sure, Judge, we're going to brief that issue. And then
18 I said something to you about it, are you going to brief that
19 issue; and you go, yeah, Judge, we're going to brief that
20 issue. And then all of a sudden we get it in the PMK. And
21 the issue is not just the PMK. That's when you filed the
22 briefing. The issue came up long before, and it's not just a
23 testimonial issue, it's a document issue. It involves the
24 PowerPoints that were presented during those meetings.

25 MR. PEEK: Understood, Your Honor.

1 THE COURT: So I understand what you guys are
2 saying. I am happy to get any more additional information
3 that Mr. Morris has, but he will tell you from what happened
4 in CityCenter that when CityCenter decided not to let me do
5 the in-camera review and they took a writ saying, Judge, no,
6 we're not going to give you the documents for the in-camera
7 review, the Supreme Court sent it back and ordered me to do
8 the in-camera review in less than 30 days, and I took
9 exception to that.

10 MR. PEEK: Because there were probably thousands.

11 THE COURT: There were a lot. And I was in the
12 middle of trying to do another trial --

13 MR. PEEK: Understood, Your Honor.

14 THE COURT: -- which I took a break from to do the
15 -- to comply with the order from the Supreme Court. So I
16 understand. But I will tell you that, you know, if you want
17 to ask me for a stay before you submit the documents, I'm
18 unlikely to give it to you given what happened when Mr. Morris
19 and I on the Citric and Bunting records --

20 Is that when it was?

21 MR. MORRIS: I think it was.

22 THE COURT: Yeah. I think that was the issue in
23 CityCenter that it was on, because they took a writ, saying,
24 we're not going to give you the in-camera documents, and the
25 Supreme Court sent it back and said, you're ordered to do an

1 in-camera review. And I didn't even have the stuff yet.

2 MR. PEEK: We understand, Your Honor. We'll submit
3 the supplemental briefing and await a proposed order.

4 THE COURT: I have outlined to you what I think the
5 proposed order should say, and I think I've hit all of the
6 issues that we've talked about. If I've missed one, I'm happy
7 to talk to you about it, but I tried to cover it all based
8 upon the briefing you gave me, and I asked the questions where
9 I thought there were holes in the briefs --

10 MR. PEEK: We understand. Thank you, Your Honor.

11 THE COURT: -- and I'm giving Mr. Morris an
12 opportunity to look at it again.

13 So anything else on this issue before we go to the
14 issue related to Mr. Adelson's deposition that was supposed to
15 start earlier today -- or resume earlier today?

16 All right. Who wants to start? I looked at the
17 video.

18 MR. PISANELLI: I will, Your Honor.

19 So on a motion for protective order, Your Honor,
20 it's based on the very unremarkable proposition that every
21 party is entitled to conduct a fair deposition, fair as to
22 time, fair as to scope, and a fair opportunity to conduct an
23 unobstructed examination. This is particularly so when you're
24 dealing with a witness who I will characterize here in Mr.
25 Adelson as challenging. And so we bring this motion to you

1 actually file it yesterday. The logistics of getting
2 declarations from Macau is very difficult, so hopefully they'd
3 be today or tomorrow. But we may be doing that. Obviously we
4 understand the time limits we were dealing with here. The
5 10th is coming up quickly, and we're working on that as
6 quickly as we can. So that's just something that's, again,
7 I've been working on the last couple days, but logistic --
8 have logistic issues.

9 THE COURT: Okay.

10 MR. RANDALL JONES: Thank you.

11 THE COURT: All right. So the next step I'm going
12 to see, Mr. Morris, is I'm going to see a brief from you by
13 Wednesday afternoon.

14 MR. MORRIS: Yes.

15 THE COURT: I'm going to review that. If I decide
16 after reviewing that brief probably Wednesday evening or
17 Thursday morning that I am then ready to do the in-camera
18 review, I will do a minute order that says, I reviewed that
19 brief, send the documents over. If you decide you don't want
20 to send the documents over and instead you want to ask for a
21 stay of my decision, I will then tell Mr. Bice -- my law clerk
22 will tell Mr. Bice, Mr. Bice, get your order over here, they
23 want to move to stay. And then we'll do whatever it is, okay.
24 Can that be our process we use?

25 MR. MORRIS: Yes.

1 THE COURT: Okay. Because I just want to make sure
2 you have an opportunity to ask for a stay if that's what you
3 want to do, but I also have a mechanism to get a written order
4 in place. Because I went through and gave my reasons for why
5 I'm doing it and why I think the in-camera review is
6 important, but I recognize that you may want to do something
7 different.

8 MR. MORRIS: All right.

9 THE COURT: Anything else?

10 MR. WOOD: If I might just, Your Honor, please.
11 This may sound a little petty, but I value my reputation --

12 THE COURT: I didn't find you were bad.

13 MR. WOOD: -- of 38 years. No. And I appreciate
14 that. But what I did want to correct on the record is any
15 misconception from what Mr. Pisanelli just said. The
16 deposition in Florida that I attended, I was not the lawyer in
17 the first day of that deposition, which had occurred many days
18 or weeks earlier. That that was Kendall Coffee. I don't want
19 there to be any misconception --

20 THE COURT: I don't think you were -- I don't think
21 you remember --

22 MR. WOOD: -- that I did something that required a
23 special magistrate to be there.

24 THE COURT: I don't think you remember, but for some
25 reason I got sucked into that dispute, and I can't remember if

EXHIBIT E

EXHIBIT E

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15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 STEVEN C. JACOBS,
18
19 Plaintiff,

20 v.

21 LAS VEGAS SANDS CORP., a Nevada
22 corporation; SANDS CHINA LTD., a Cayman
23 Islands corporation; SHELDON G. ADELSON,
24 in his individual and representative capacity;
25 VENETIAN MACAU LTD., a Macau
26 corporation; DOES I-X; and ROE
27 CORPORATIONS I-X,
28

Defendants.

AND ALL RELATED MATTERS.

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

**LAS VEGAS SANDS CORP.'S
SUPPLEMENTAL BRIEF IN SUPPORT
OF ITS PRIVILEGE LOG**

On December 28, 2015, this Court issued an order directing Defendant Las Vegas Sands Corp. ("LVSC") to provide a privilege log.¹ See Order Granting in Part and Denying in Part

¹ As a reminder, on November 19, 2015, this Court held a hearing regarding Plaintiff's Second Motion to Compel Actual Compliance with Topics 25 and 59 of NRCP 30(b)(6) Deposition of LVSC; on Order Shortening Time. Hr'g Tr. (Nov. 19, 2015) (on file). The Court issued an

1 Plaintiff's Second Motion to Compel Actual Compliance with Topics 25 and 59 NRCP 30(b)(6)
2 Deposition of LVSC; on Order Shortening Time (filed Dec. 28, 2015) (on file) (hereinafter,
3 "Plaintiff's Second Motion to Compel"). The log would identify all documents provided to
4 government agencies, including the Nevada Gaming Control Board ("NGCB"), Securities and
5 Exchange Commission ("SEC"), and Department of Justice ("DOJ") (collectively, the
6 "Government Agencies"), relating to Topics 25 and 59 of the Rule 30(b)(6) Notice served on
7 LVSC ("Privilege Log"). *Id.* at 3. On February 2, 2016, LVSC submitted the Privilege Log to
8 this Court. LVSC also submitted a memorandum to provide the factual and legal basis for the
9 privilege claims set forth in the Privilege Log. *See* Defendant Las Vegas Sands Corp.'s
10 Memorandum in Support of Its Privilege Log (filed Feb. 3, 2016) (on file) (hereinafter, the
11 "Memorandum").

12 On March 3, 2016, the Court held a hearing regarding the Privilege Log. During the
13 course of the oral argument, the Court identified two issues the Court believed had not been
14 adequately addressed in the briefing. The Court stated that it was "inclined to accept the
15 supplemental brief" from LVSC "on the two issues identified." Hr'g Tr. (Mar. 3, 2016) (on file),
16 at 57:24-58:1 ("However, I am inclined to accept the supplemental brief, if you'd like to submit
17 it, on the two issues identified...").

18 The first issue is whether information provided to the NGCB is protected against
19 disclosure because of the protections afforded to gaming licensees² under NRS 463.3407 and
20 NRS 463.120(4).³ Hr'g Tr. (Mar. 3, 2016), at 11:10-12 ("But if [a document] would otherwise

21 order granting in part and denying in part Plaintiff's Motion, and the Notice of Entry of the order
22 was filed on December 30, 2015. *See* Notice of Entry of Order (filed Dec. 30, 2015) (on file).

23 ² A "licensee" is defined as "any person to whom a valid gaming license, manufacturer's or
24 distributor's license, license for the operation of an off-track pari-mutuel system or license for
dissemination of information concerning racing has been issued." NRS 463.0171.

25 ³ To clarify, LVSC will generally refer to NRS 463.3407 and NRS 463.120(4) as providing
26 different levels of *protection* over information provided to the NGCB. Under NRS 463.3407(1),
27 the protection is "absolute privilege." Under NRS 463.120(4), the protection is "confidentiality."
28 Based on the plain language of the statutes, the former cannot be overcome and thus is
"absolute." The latter is overcome *only* upon "the lawful order of a court of competent
jurisdiction." NRS 463.120(4).

1 be a nonprivileged document, it would not become privileged simply because you gave it to [the]
2 Gaming Board.”); *id.* at 36:12-19 (Mr. Peek asked whether the Court’s view is that if a licensee
3 responds to an inquiry from the NGCB, the “response to that inquiry is not protected. THE
4 COURT: That’s correct. Mr. PEEK: And I would disagree with the Court.”).

5 The second issue the Court raised was whether the Government Agencies’ investigation
6 of LVSC have been and are “collaborative” or “concurrent” in nature, and within the context of
7 the two investigations, whether there is any substantive difference between “collaborative” and
8 “concurrent.” Hr’g Tr. (Mar. 3, 2016), at 39:10-12 (“Can you tell me what evidence you believe
9 shows there is a collaborative investigation, as opposed to a concurrent investigation.”).

10 LVSC, by and through its undersigned counsel, hereby submits this Supplemental Brief
11 in Support of the Privilege Log to address these two issues.

12 DATED March 9, 2016.

13 /s/ J. Stephen Peek

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21 **MEMORANDUM OF POINTS AND AUTHORITIES**
22 **IN SUPPORT OF PRIVILEGE LOG**

23 **I. INTRODUCTION**

24 During the hearing on March 3, 2016, the Court indicated that it believed non-privileged
25 information provided to the NGCB to comply with the law or to aid the Board in the
26 performance of its functions is not entitled to protection under NRS 463.3407(1). Hr’g Tr. (Mar.
27 3, 2016), at 39:10-12. Respectfully, the issue of the production of the documents provided to the
28 Government Agencies is not before the court at this time. The issue in the Motion before the
court and identified in footnote 1 above is the communications with the Governmental Agencies
on Topics 25 and 59 of the 30(b)(6) Notice to LVSC and LVSC’s work product protection

1 afforded to the communications and not the documents.⁴ LVSC maintains that the statute more
2 broadly protects information submitted to the NGCB under an “absolute privilege,” because: (1)
3 NRS 463.3407(1) by its terms does not distinguish between privileged and non-privileged
4 information; (2) the statute is interrelated with NRS 49.025(1), which provides a party with a
5 privilege “to refuse to disclose and to prevent any other person from disclosing” a “report
6 required by law to be made. . . .”; and (3) *Hampe v. Foote* supports LVSC’s interpretation of the
7 statute. *See Hampe*, 118 Nev. 405, 47 P.3d 438 (2002), *abrogated on other grounds by Buzz*
8 *Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008) (concluding that the
9 absolute privilege of NRS 463.3407(1) applied to respondent’s letter of complaint to the Nevada
10 Gaming Commissions, which was not otherwise privileged).⁵ The *Hampe* decision on this point
11 is recognition by the Nevada Supreme Court that the judiciary should rarely, if at all, insert itself
12 into communications between a licensee and its Nevada gaming regulators that are unrelated to
13 claims being made in civil litigation by a litigant who is not involved in the regulatory process.
14 In this case, the communications between the NGCB and LVSC were not made to explain to the
15 Board the reasons for Jacobs’s termination. If the Court takes the position that those
16 communications must nevertheless be produced for examination, that decision would inhibit

17 ⁴ If the court insists on *sua sponte* ordering the production of the documents identified in the
18 privilege log independent of the sought after communications with the Governmental Agencies,
19 we respectfully request the opportunity to fully brief this issue which was not the subject of the
20 Plaintiff’s Motion.

21 ⁵ LVSC’s interpretation is supported by two material items of evidence: first, Mr. Labadie’s
22 letter confirms LVSC’s interpretation of the statutes. *See* Exhibit A to LVSC’s Reply in Support
23 of Its Privilege Log (filed Feb. 29, 2016) (on file) (stating that if LVSC’s produces a requested
24 document to the NGCB, the document is subject to “the confidentiality and privilege provisions
25 of NRS 463.3407 and NRS 463.120(4) and will not be discoverable as to the NGCB...”).
26 Second, in the case *In re Smith*, 397 B.R. 124 (2008), the NGCB argued that NRS 463.3407(1)
27 provides a “statutory guarantee that any and all information [gaming licensees] provide to or is
28 obtained by the BOARD will maintain the confidentiality and privileged status which was
intended by the Nevada legislature.” 397 B.R., at 128. Both the letter and case law demonstrate
that the NGCB and LVSC share the same viewpoint on the statutes, supporting the view that the
statute should apply to LVSC’s submissions to the NGCB.

Consequently, the following communications to the NGCB enjoy “absolute privilege”
under NRS 463.3407: Privilege Log Doc Nos. 1-2, 5-6, 9-10, 14-19, 24, 27-28, 32, 35, and 37-
38.

1 what the Legislature wished to encourage and protect: frank and open discussion with its
2 regulated licensees.

3 If the Court does not conclude that documents submitted to the NGCB are “absolutely
4 privileged” under NRS 463.3407(1), the communications and the documents are protected as
5 confidential pursuant to the provision of NRS 463.120(4). The statute says “all information and
6 data” that is “[p]repared or obtained by an agent or employee of the Board or Commission
7 pursuant to an ... investigation, ... or hearing, are confidential...” NRS 463.120(4), (4)(e)
8 (emphasis added).⁶ It is only in extremely limited circumstances, not present here, that the
9 “confidential” documents should ever be “revealed in whole or in part... upon the lawful order
10 of a court of competent jurisdiction.” NRS 463.120(4). Courts in *In re Smith*, 397 B.R. 124
11 (2008) and *Laxalt v. McClatchy*, 116 F.R.D. 455, 459 (D.Nev.1996) (*Laxalt II*) provide a four-
12 part rigorous balancing test that must be conducted by the court before documents may be
13 disclosed. See Section II, *infra*. It is apparent from the hearing transcript of March 3 that the
14 Court did not apply the balancing test required before deciding to do an in camera review.⁷ Hr’g
15 Tr. (Mar. 3, 2016), at 57:18-22 (“I am going to do an in-camera review, because I need to make
16 a determination as to whether any of the information to which you have asserted a claim of
17 privilege may lead to the discovery of admissible evidence.”).⁸ With regard to the other
18

19 ⁶ Accordingly, the same documents protected under NRS 463.3407 should be protected under
20 NRS 463.120(4), including Privilege Log Doc Nos. 1-2, 5-6, 9-10, 14-19, 24, 27-28, 32, 35, and
37-38.

21 ⁷ As this Court may know, the Nevada Supreme Court recently issued a notice for oral argument
22 regarding LVSC’s motion for disqualification. See Issued Notice Scheduling Oral Argument for
23 April 5, 2016 regarding *Las Vegas Sands Corp. vs. Dist. Ct.*, Docket No. 69802 (**Exhibit A**).
24 Because the rule for disqualification requires the presiding judge to “proceed no further with the
25 matter” when a motion for disqualification has been filed, see NRS 1.235(5), it is inappropriate
26 for this Court to order a critical and intrusive *in camera* review prior to the writ being resolved.
27 This Court should not take on the role of arbiter under the balancing test in the face of the
28 disqualification challenge before the Nevada Supreme Court.

26 ⁸ It is indisputable based on the information in the privilege log that the presentations made to the
27 DOJ/SEC were for the purpose of securing a settlement and are not admissible pursuant to FRE
28 408 and FRE 410 and should be protected from disclosure. These power point presentations
cannot constitute admissible evidence. Therefore no need for an *in camera* review exists.

1 presentations made to the Governmental Agencies, the privilege log submitted provides the
2 Court with sufficient information to apply the required balancing test and conclude that the
3 documents provided to the NGCB are confidential. The confidentiality should be upheld.

4 The second issue the Court raised is whether the Government Agencies' investigation is
5 "collaborative" or "concurrent." As the Memorandum, its exhibits, and additional information
6 below shows, the evidence reasonably shows that the investigation is collaborative. A strong
7 inference should be made that the NGCB shared and/or discussed submitted materials to the DOJ
8 and SEC, and vice versa. The communications to the SEC and DOJ thus should presumptively
9 enjoy the same protection under NRS 463.120(4) as the materials provided to the NGCB.⁹

10 II. NON-WAIVER PROTECTION UNDER NEVADA STATUTES

11 A. The "Absolute Privilege" Under NRS 463.3407(1) Applies to LVSC's 12 Disclosures to the NGCB

13 As noted above, LVSC maintains that NRS 463.3407(1) protects information submitted
14 to the NGCB under the statute's "absolute privilege,"¹⁰ because of the statute's interrelatedness
15 to NRS 49.025, the plain language of NRS 364.3407(1), and the Nevada Supreme Court's
16 interpretation of the statute in *Hampe v. Foote*.

17 "A person making a . . . *report required by law to be made* has a privilege *to refuse to*
18 *disclose and to prevent any other person from disclosing* the return or report, if the law
19 requiring it to be made so provides." NRS 49.025 (emphasis added). The statute was taken from
20

21 ⁹ These communications include two instances in which federal representatives attended
22 O'Melveny & Myers ("OMM") presentations at the NGCB offices. Likewise, NGCB
23 representatives attended at least seven OMM presentations at the SEC offices in Washington,
24 D.C. See Mem. at 13; Privilege Log Doc. No. 14, 16, 17-19, 27, 32, 35, and 37.

24 ¹⁰ The Court appears to have agreed with LVSC that under NRS 463.3407(2), LVSC's disclosure
25 of privileged information to the NGCB does not waive that privilege. Hr'g Tr. (Mar. 3, 2016), at
26 64:17-20 ("So to the extent you submitted information that was otherwise privileged to the
27 Nevada Gaming Control Board, it is unlikely I would require you to provide that information,
28 because it's not a waiver of the privilege."). Accordingly, the Court should not overlook the
documents protected by the attorney-client privilege, all of which are also protected under the
work product doctrine, including Privilege Log Doc Nos. 5, 10, 14, 16-19, 24, 27-28, 32, 35, and
37-38.

1 Rule 5-02, which was in the 1969 preliminary draft of a proposed Federal Evidence Rule 502.
2 See 24 CHARLES ALAN WRIGHT & KENNETH W. GRAHAM, FEDERAL PRACTICE
3 AND PROCEDURE: EVIDENCE § 5451 at 4 n.1 (1989) ("WRIGHT & GRAHAM"). One of
4 the purposes of the proposed rule was "encouraging the furnishing of the required information by
5 assuring privacy." WRIGHT & GRAHAM § 5451 at 3. The term "report" includes an oral
6 report. *Id.* at 14.

7 The annotated version of NRS 49.025 specifically includes a cross reference to NRS
8 463.3407 and *vice versa*. Under NRS 463.3407 (1), "[a]ny communication or document of a[. . .]
9 .licensee . . . which is made or transmitted to the Board . . . to: (a) [c]omply with any law or the
10 regulations of the Board or Commission . . . or (c) [a]ssist the Board or Commission in the
11 performance of their respective duties, is absolutely privileged and [i] does not impose liability
12 for defamation or [2] constitute a ground for recovery in any civil action." NRS 463.3407 (1)
13 (emphasis added).¹¹

14 There is nothing in the language of NRS 463.3407 (1) that limits the absolute privilege
15 protection to *privileged* communications and documents provided to the NGCB or Commission.
16 See also WRIGHT & GRAHAM, *supra*, at 32, 18 (recognizing that the information itself does
17 not even have to be privileged to come under the absolute privilege, but noting that facts that
18 form the basis of the communications and documents cannot be withheld). The legislature
19 expressly intended this broad application of the provision. See SB527, 61st Sess., at 49 (Nev.
20 1981) (showing Minutes of the Joint Meeting of the Senate and Assembly Committees on
21 Judiciary discussing proposed provision and stating that amendment to gaming law "would make

22 _____
23 ¹¹ Thus, as the plain language of the statute indicates and the Nevada Supreme Court confirmed,
24 the absolute privilege of NRS 463.3407 is not limited to defamation claims but "bars any civil
25 litigation based on the underlying communication." *Hampe*, 118 Nev. at 409, 47 P. 3d at 440
26 (emphasis added); see also *id.* ("The statute further provides that such communications cannot be
27 a ground for liability in any civil action"); *id.* at 407 ("the privilege applies to letters of complaint
28 submitted to the Nevada Gaming Commission or the State Gaming Control Board, thus barring
any civil action arising from such communications"); *id.* at 410 ("The absolute privilege under
NRS 463.3407 bars any civil cause of action grounded on communications by a holder of, or
applicant for, a gaming license to the Gaming Control Board or Gaming Commission to assist
the entity in its functions") (emphasis added).

1 [the law] general and broad and make it an *absolute privilege* for *any* communications as to the
2 innocence of the gaming authorities. This is expanded into *all* communications of which the
3 commission or board has made ... *the licensee to reveal.*") (emphasis added).

4 Indeed, in *Hampe*, at issue was a letter of complaint sent to the NGCB, which was not
5 otherwise privileged but still fell under the protection of NRS 463.3407(1). *Hampe*, 118 Nev. at
6 409 (holding that the absolute privilege of NRS 463.3407 applied to Foote's letter of complaint
7 and precluded all of Hampe's tort claims based thereon). Because NRS 463.3407(1) provides for
8 an absolute privilege and forecloses *any* civil liability for oral and written communications to the
9 NGCB made to comply with any law or to aid the NGCB or Commission in their functions, the
10 Company has a "*privilege* to refuse to disclose and to prevent any other person from disclosing"
11 the reports it provided to the NGCB. NRS 49.025(1) (emphasis added); *see also* NRS
12 463.3407(3)(a) (providing that the Board shall not release without licensee's consent or lawful
13 court order any documents or information provided by the licensee that are privileged under NRS
14 Chapter 49).

15 Accordingly, the Court is urged to reconsider the plain language of both NRS
16 463.3407(1) and NRS 49.025. These statutes provide the basis for LVSC, as the Company, to
17 invoke the legislatively-granted protection, and make clear that the absolute privilege is an
18 "immunity, which protects against even the threat that a court or jury will inquire into a
19 communication." *Hampe*, 47 P.3d at 440. During the hearing, the Court appears to have focused
20 only on NRS 463.120(4)(e), which the Court incorrectly viewed as providing only the NGCB
21 with the right to withhold documents as confidential. *See* Hr'g Tr. (Mar. 3, 2016), at 6:5-20
22 ("the licensee is served a request for information by Gaming Control and they're doing an
23 investigation independently on their own ... *Gaming Control has a specific privilege* under the
24 statute"); *id.* at 11: 1-12 ("*my interpretation is a protection for the Nevada Gaming Control*
25 *entities, not for the licensee*") (emphasis added). But such a restrictive interpretation would
26 frustrate the legislature's policy to promote open and frank discussion between gaming licensees
27 and Nevada regulators. That policy will be materially undermined if LVSC is required to
28

1 disclose its communications in this case with the NGCB unless they are expressly protected by
2 NRS 463.3407(1) or NRS 463.3407(2). *See Hampe*, 47 P.3d at 440 ("the policy behind absolute
3 privileges" is that "[i]n certain situations it is in the public interest that a person speak freely").

4 **B. Under NRS 463.120(4), the Documents Provided by LVSC to the NGCB are**
5 **Confidential**

6 Assuming the Court does not revisit the question of whether NRS 463.3407(1) applies to
7 LVSC's submissions to the NGCB, and for purposes of this supplemental brief *only*, we ask the
8 Court to consider NRS 463.120(4), (*see* Memorandum at 8, 15-17), which provides:

9 4. Except as otherwise provided in this section, *all information*
10 *and data*:

11 (a) Required by the Board or Commission to be furnished to it
12 under chapters 462 to 466, inclusive, of NRS or any regulations
13 adopted pursuant thereto or which may be otherwise obtained
14 relative to the finances, earnings or revenue of any applicant or
15 licensee;

16 (b) Pertaining to an applicant's or natural person's criminal
17 record, antecedents and background which have been furnished to
18 or obtained by the Board or Commission from any source;

19 (c) *Provided to the members, agents or employees of the*
20 *Board or Commission by a governmental agency* or an informer
21 or on the assurance that the information *will be held in confidence*
22 *and treated as confidential*;

23 (d) Obtained by the Board from a manufacturer, distributor or
24 operator, or from an operator of an inter-casino linked system,
25 relating to the manufacturing of gaming devices or the operation of
26 an inter-casino linked system; or

27 (e) *Prepared or obtained by an agent or employee of the*
28 *Board or Commission pursuant to an audit, investigation,*
determination or hearing,

are confidential and may be revealed in whole or in part only in
the course of the necessary administration of this chapter or upon
the lawful order of a court of competent jurisdiction. The Board
and Commission may reveal such information and data to an
authorized agent of any agency of the United States Government,
any state or any political subdivision of a state or the government
of any foreign country. Notwithstanding any other provision of

1 state law, such information may not be otherwise revealed without
2 specific authorization by the Board or Commission.

3 NRS 463.120(4) (emphasis added).

4 This statute casts a wide net: it protects “*all* information and data” provided to the
5 NGCB. Like NRS 463.4307(1), the statute does not distinguish between information that is
6 “privileged” or is “non-privileged.” NRS 463.120(4) “**all information and data.**” Because
7 there is no question that the documents LVSC provided to the NGCB were turned over “pursuant
8 to an... investigation,” those documents (whether considered privileged or non-privileged) are
9 unquestionably “confidential” under the statute.

10 **C. There Are No Grounds to Overcome the Absolute Privilege of NRS 463.3407**
11 **or the “Confidentiality” Provided Under NRS 463.120(4)**

12 The Nevada Supreme Court has not yet addressed whether and under what
13 circumstances, if ever, a court may order the production of documents or information protected
14 by the absolute privilege of NRS 463.3407 or order produced documents deemed confidential
15 under NRS 463.120. In *In re Smith*, 397 B.R. 124 (2008), however, the bankruptcy court held
16 that confidential documents provided to the Board under NRS 463.120(4) could be ordered
17 produced only “in *certain limited circumstances.*” 397 B.R. at 126 (emphasis added). The court
18 set out a four-part balancing test that courts must apply and satisfy before the confidentiality
19 conferred by the statute may be disregarded. *Id.* at 130. In *Smith*, a plaintiff subpoenaed records
20 from the NGCB regarding a 1989 licensing proceeding. *Id.* at 127. The court ordered an in
21 camera inspection of the NGCB’s documents and ordered several to be produced. *Id.* Upon
22 reviewing the order, the *Smith* court stated that it must “balance the public interest in avoiding
23 harm from disclosure against the benefits of providing relevant evidence in civil litigation.” *Id.*
24 at 129. The court then discussed “the proper test to decide what could and should be disclosed”
25 under the statute:

26 Initially, the relevance of the evidence must be taken into account.
27 Further, the availability of other evidence and the government's
28 role in the litigation must be considered. Finally, the court noted
that the extent to which disclosure would hinder frank and

1 independent discussion regarding the agencies contemplated
2 decisions and policies would factor into the court's decision.

3 *In re Smith*, 397 B.R. at 130 (quoting *Laxalt v. McClatchy*, 116 F.R.D. 455, 459 (D.Nev.1996)
4 (*Laxalt II*)). Other courts have used a similar, if not the same, test when considering whether to
5 order disclosure of otherwise confidential information. See *Berst v. Chipman*, 232 Kan. 180, 653
6 P.2d 107 (1982); *Arce v. Cotton Club of Greenville, Inc.*, 1995 WL 1945567 (N.D.Miss. June 23,
7 1995).

8 In the present case, the *Smith* analysis should be applied to at least three categories of
9 documents LVSC provided to the NGCB: (1) the correspondence between LVSC and the
10 NGCB; (2) the two presentations prepared and made by OMM to the NGCB and attended by the
11 SEC and DOJ; and (3) the seven presentations prepared by OMM and presented to the SEC/DOJ
12 that the NGCB attended because of the concurrent and collaborative investigation.¹² The

13 ¹² As stated in the Memorandum, see Mem. at 18-19, the issues arising from LVSC's Privilege
14 Log present questions of law that turn largely on the legal scope of the claimed privileges, as
15 opposed to any factual dispute about the contents of the documents themselves. This Court has
16 indicated that it may want to do an in-camera review, but LVSC respectfully urges the Court to
17 reconsider given the Supreme Court's guidance in *U.S. v. Zolin*, 491 U.S. 554, 570-71 (1989).
18 The U.S. Supreme Court made clear that "[t]here is no reason to permit opponents of the
19 privilege to engage in groundless fishing expeditions, with the district court as their unwitting
20 and perhaps unwilling) agents." 491 U.S., at 571. Instead, before engaging in an in camera
21 review, "the judge should require a showing of a factual basis adequate to support a good faith
22 belief by a reasonable person ... that in camera review of the materials may reveal evidence to
23 establish the claim" that an exception applies. *Zolin*, 491 U.S., at 572 (discussing the showing in
24 the context of crime-fraud exception to attorney-client privilege) (internal quotation omitted);
25 see, e.g., *In re Grand Jury Investigation*, 974 F.2d 1068, 1074 (9th Cir. 1992) ("...we find that
26 the standard established in *Zolin* for crime-fraud in camera review applies equally well when a
27 party seeks in camera review to contest assertions of the privilege. The balance achieved in *Zolin*
28 between the intrusion on the privilege and the likelihood that the privilege may not apply
justifies a similar minimal threshold for in camera review when a party believes that the
materials are not privileged for reasons other than the crime-fraud exception."). After the
showing, the court should make that decision to conduct an in camera review "in light of the
facts and circumstances of the particular case, including ... the volume of materials the district
court has been asked to review, the relative importance to the case of the alleged privileged
information, and the likelihood that the evidence produced through in camera review, together
with other available evidence then before the court, will establish that the" exception to the
privilege applies. *Id.* at 572.

27 These principles apply here, where Jacobs is urging the court to overcome a privilege,
28 and the court is considering whether to conduct an in camera review. Jacobs is asking for

1 remaining presentations to the SEC and DOJ that the NGCB did not attend should also be
2 protected by NRS 463.120(4) as part of the overall collaborative investigation. As the analysis
3 below shows, the evidence presented by the Privilege Log, Memorandum, and the lack of any
4 substantive opposition to the Privilege Log compels the conclusion under the four-part balancing
5 test that the documents LVSC provided to the Government Agencies are confidential and must
6 remain so under NRS 463.120(4).

7 **1. Balancing Test - Part One: Relevance of the Evidence**

8 The first factor requires the court to evaluate the **relevance** of the sought-after
9 “evidence.” *In re Smith*, 397 B.R. at 130. In *Smith*, the relevance of the gaming records was
10 “potentially high,” because Smith’s alleged defamatory statements—*i.e.*, that Mr. Sheldon G.
11 Adelson had “sailed through” the Gaming Control Board Review—appeared to relate “directly to
12 the 1989 licensing proceeding.” *Id.* at 131.

13 No such direct connection is alleged here. The core of Jacobs’ lawsuit against LVSC,
14 Sands China Ltd. (“SCL”), and Mr. Adelson (collectively, “Defendants”) concerns Jacobs’
15 termination and alleged breaches of contract in Macau—not what LVSC communicated to
16 Government Agencies in separate proceedings.¹³ Jacobs’ only claim is that LVSC’s

17 communications made to the U.S. Government – a large set of PowerPoint presentations and
18 correspondence – for no other reason than Jacobs suspects those communications *may* be
19 inconsistent with statements made to this Court. Hr’g Tr. (Mar. 3, 2016), at 20:21-25; *id.* at
20 22:8-10. The privilege log shows that only a small number of slides and documents discuss
21 Jacobs or persons listed in Topics 25 and 59. The relative importance of the materials are slim to
22 none in comparison to the importance of protecting the integrity of the Government Agencies’
investigation. Finally, it is not clear that the evidence produced in the in camera review, along
with other available evidence, will establish that any exception to NRS 463.120(4) applies.
Thus, in camera review is neither warranted nor appropriate.

23 ¹³ Jacobs does not argue that the materials LVSC submitted to the NGCB are relevant to his
24 substantive claims, which include defamation *per se* by Mr. Adelson, LVSC, and Sands China
25 Ltd. Fifth Am. Com. ¶¶ 73-79. Jacobs alleges the three Defendants have “waged a public
26 relations campaign,” but focuses on an article published in the Wall Street Journal. *Id.* at ¶¶ 74-
27 75. If Jacobs did claim relevance based on the defamation *per se* cause of action, both *In re*
28 *Smith* and this Court agree that NRS 463.3407(1) provides “absolute privilege” with respect to
defamation liability. *See* 397 B.R., at 129 (“Here, given the reference to the law of defamation,
it is probable that the Nevada legislature intended to make a policy statement that
communications to the Board, given as part of its investigative process, are immune from later
defamation suits by ensuring that they would be deemed to be privileged communications.”)

1 presentations to the Government Agencies *may* be inconsistent with representations LVSC has
2 made to this Court. Hr’g Tr. (Mar. 3, 2016), at 20:21-25 (Mr. BICE: ...“They are telling the
3 United States a version of the facts... but they don’t want – they’re telling the Court that Mr.
4 Jacobs shouldn’t be allowed to know that version of the facts...”); *id.* at 22:8-10 (Mr. BICE:
5 “...whatever version they are telling the government, we are entitled to know that, because it’s
6 going to contradict what they have been saying in this court...”). But why should Jacobs be
7 *entitled* to know anything LVSC disclosed to the government? The government is not
8 investigating whether he was discharged for cause or not.

9 *In re Smith* does not stand for the proposition that a party in civil litigation has a *right* to
10 confidential investigation records merely to “impeach a person for telling the Board one thing
11 and telling another in litigation.” *Id.* at 129. Instead, the *Smith* court declared that a party
12 seeking confidential documents must meet the four-factor test. *Id.* (observing that *Laxalt II* “set
13 forth the proper test to decide what could and should be disclosed”). Other than mimicking the
14 language in *Smith* and speculating about inconsistencies,¹⁴ Jacobs has not made a showing that
15 he needs and expects to find anything in the gaming records that is relevant to Jacobs' claims in
16 this case and would justify overriding "Nevada's strong interest in conducting confidential
17 investigations" *In Re Smith*, 397 B.R. at 126.

18 Moreover, Jacobs has no evidence that suggests inconsistencies exist. Even if he had
19 such evidence, Jacobs could not credibly maintain that the inconsistencies “go to the heart of
20 material factual issues” in his case. *In re Smith*, 397 B.R. at 129. If the imaginary evidence
21

22 (emphasis added); *see also* Hr’g Tr. (Mar. 3, 2016), at 64:13-17 (“NRS 463.3407 provides an
23 absolute privilege related to potential liability of a person responding to a request by the Nevada
24 Gaming Control Board *for defamation claims*, and it maintains a privilege that otherwise exists
under Chapter 49.”) (emphasis added).

25 ¹⁴ Compare *In re Smith*, 397 B.R. at 129 (suggesting the Nevada Legislature did not intend to
26 preempt "the ability to impeach a person for telling the Board one thing and telling another in
27 litigation"), *with* Hr’g Tr. (Mar. 3, 2016), at 20:21-25 (Mr. Bice: ". . . They are telling the United
28 States a version of the facts because there is potential criminal liability that might attach to a
version of the facts, but they don't want they're telling the Court that Mr. Jacobs shouldn't be
allowed to know that version of the facts").

1 existed and was essential, Jacobs would have already attempted to obtain it from the NGCB,
2 SEC, or DOJ. The fact that he has not done so proves that the rumored evidence is of minimal
3 relevance, if that. Finally, even if Jacobs obtained the subject communications, and even if he
4 found an alleged inconsistency, Jacobs has not explained how *any* inconsistency would advance
5 his wrongful termination and breach of contract claims.

6 Jacobs has not made a showing of relevance sufficient to override the confidentiality
7 provided by NRS 463.120(4). His claim is de minimis at best, because he has not presented the
8 Court with any understandable evidence that the subject matter of the Privilege Log
9 demonstrates that the work-product and attorney client privilege documents within the
10 PowerPoint slides contain relevant documents or documents reasonably calculated to lead to the
11 discovery of admissible evidence that would assist him in establishing his breach of contract
12 claims. Any potential relevance is far outweighed by the substantial interest in protecting
13 communications to the NGCB that are confidential under NRS 463.120(4). Consequently, this
14 factor weighs in favor of maintaining the confidentiality of LVSC's submissions to the NGCB.

15 2. Balancing Test - Part Two: Availability of Other Evidence

16 The second part of the balancing test is whether there is other evidence that would
17 obviate the need to produce confidential information. See *Laxalt II*, 116 F.R.D. at 459
18 (discussing *Federal Trade Commission v. Warner Communications, Inc.*, 742 F.2d 1156 (9th Cir.
19 1984)). In *F.T.C.*, the defendants requested and the district court ordered that the "[Federal
20 Trade] Commission produce two memoranda prepared by members of the Commission's Bureau
21 of Economics." *Id.* at 1159. The FTC objected to the order based on the governmental
22 deliberative process privilege. *Id.* at 1161. The Ninth Circuit reversed. 742 F.2d at 1160-61. In
23 applying the second factor of the four-part balancing test, the Ninth Circuit noted that although
24 the memoranda were relevant, the defendants sought information that was already "available to
25 the defendants," who "were able to obtain and introduce evidence on these issues and therefore
26 had "little need for the memoranda." *Id.*, at 1161-62. Because this factor and the others weighed

1 in favor of the agency, the Ninth Circuit held that the district court abused its discretion in
2 ordering the production of the Bureau's memoranda. *Id.*, at 1162.

3 Similarly here, Jacobs has other evidence relative to his termination that he can introduce
4 at trial. In addition to his own testimony and his own documents, Jacobs has examined the
5 defendants for hours and days in this case on the reasons for Jacobs's discharge in July 2010.
6 Thus, he has "little need for the memoranda," as the Ninth Circuit concluded in *F.T.C.*

7 Jacobs' only reason for seeking "evidence" of communications to the NGCB (and the
8 DOJ and SEC) is to determine whether the attorneys' statements (OMM's mental impressions
9 and opinions about the documents) contained in the PowerPoint slides are inconsistent with
10 statements made to this Court. Hr'g Tr. (Mar. 3, 2016), at 20:21-25; *id.* at 22:8-10. On facts
11 similar to the instant case, a New Jersey court upheld a magistrate's ruling that impeachment was
12 insufficient reason to override the confidentiality of affidavits submitted to New Jersey's gaming
13 enforcement agency. *Canadian Imperial Bank of Commerce v. Boardwalk Regency Corp.*, 108
14 F.R.D. 737, (D. N.J. 1986). In *Canadian*, plaintiffs filed a motion to compel defendant licensee
15 to produce several affidavits which it had submitted to the New Jersey Department of Gaming
16 Enforcement. 108 F.R.D. at 738. The magistrate interpreted the New Jersey equivalent of NRS
17 463.120 and ruled that the disputed statements were "confidential" and protected. *Id.* at 739.
18 Using a similar balancing test, the magistrate noted that the "greatest potential for unfairness lay
19 in the possibility of inconsistent testimony which could not be impeached by the disputed
20 statements." *Id.* However, the Magistrate ruled that "the plaintiff would not be deprived of a fair
21 opportunity to prepare for trial without the statements" and found that "this risk of inconsistency
22 was not substantial enough to render the second factor a heavy one in favor of disclosure." *Id.*
23 The court upheld the Magistrate's ruling. *Id.* Likewise, Jacobs' speculative alleged need for
24 confidential documents is not "substantial enough" to warrant their production, nor does
25 speculative alleged impeachment "evidence" justify the Court overriding a privilege to rummage
26 through the documents submitted to the government.

1 In sum, Jacobs is not seeking substantive evidence regarding his termination. He only
2 seeks the attorneys' work product and attorney-client privileged documents within the
3 PowerPoint slides and does not explain how OMM's statements to the Government Agencies
4 create relevant evidence in this wrongful termination flap. Jacobs has the facts; he simply does
5 not like that they do not match his disingenuous narrative. For these reasons, this second factor
6 weighs in favor of protecting the confidentiality under NRS 463.120(4).

7 **3. Balancing Test - Part Three: Government's Role in the Litigation**

8 The third factor in the balancing test is the government's role in the litigation. *In re*
9 *Smith*, 397 B.R. at 130. There, the court analyzed this factor by noting that the NGCB was not a
10 party to the litigation, and that the NGCB "strongly and assertively maintained that absolute
11 confidence in its ability to keep its files confidential was essential to its mission." 397 B.R., at
12 131. In *F.T.C.*, the Ninth Circuit analyzed this factor by stating that although the Bureau of
13 Economics' memoranda took positions that conflicted with the FTC's litigation position, the
14 appeals court did not find evidence of "bad faith or misconduct on the part of the Commission."
15 *F.T.C.*, 742 F.2d at 1162. Other courts have suggested that the government's role in an *ongoing*
16 investigation increases its interest in secrecy versus a completed investigation. *See, e.g., U.S. v*
17 *Leggett & Platt, Inc.*, 542 F.2d 655, 659 (6th Cir. 1976) ("Often courts have recognized that
18 there is less government interest in secrecy in completed, than in ongoing, investigations.").

19 Here, the NGCB is not a party, but it regulates one of the defendants. The agency has a
20 strong and undeniable interest in maintaining the confidentiality of its communications with its
21 licensees communications. The government's role is conducting an *ongoing* investigation of its
22 licensee's gaming operations, not Jacobs' wrongful termination allegation, increasing the need
23 for *government* secrecy. Accordingly, this factor weighs in favor of maintaining the
24 confidentiality of LVSC's disclosures to the Government Agencies.

1 **4. Balancing Test – Part Four: Extent to Which Disclosure Would**
2 **Hinder Frank and Independent Discussion Regarding the Agencies’ Contemplated**
3 **Decisions**

4 The fourth and final balancing test concerns the extent to which disclosure would hinder
5 frank and independent discussion with the government. *In re Smith*, 397 B.R. at 130. In *Laxalt*
6 *II*, the court reviewed a magistrate’s order that required certain NGCB documents to be
7 produced, others redacted, and others withheld. The court upheld the magistrate’s findings
8 where the magistrate found that “the governmental operations [would] be significantly harmed
9 by disclosure of the documentary evidence.” *Laxalt II*, 116 F.R.D., at 459. Similarly, and as
10 highlighted above in this supplement, the court in *In re Smith* recognized the strong public policy
11 interest in protecting confidentiality. 397 B.R., at 131-32. The Ninth Circuit in the *F.T.C.*
12 confirmed that compelled disclosure of the memoranda at issue “almost certainly injures the
13 quality of agency decisions. It chills frank discussion and deliberation in the future among those
14 responsible for making governmental decisions.” 742 F.2d, at 1162.

15 Here, the NGCB began its investigation at approximately the same time as did the DOJ
16 and SEC. *See* Privilege Log Doc Nos. 1-7. The NGCB attended numerous SEC/DOJ
17 presentations, both by phone and in person. *See id.* at 16, 14, 17-19, 27, 32, 35, and 37. The
18 NGCB hosted key interviews of investigation witnesses in its offices. Exhibit F to the
19 Memorandum, at 10-11. Clearly, the agency has an important interest in upholding the integrity
20 of its investigation, and that interest is supported by the understanding that LVSC’s
21 communications to the NGCB are privileged and/or confidential. Undoubtedly, overruling
22 confidentiality in this case, especially when the “relevance” of the confidential information being
23 pursued in this fishing expedition is highly tenuous at best, would certainly discourage licensees
24 from full and frank disclosure to the NGCB.

25 When, as here, the investigation is not about Jacobs and whether he was terminated for
26 cause or not, the relevance of the confidential communications virtually disappears. Because the
27 communications made to the NGCB are confidential under NRS 463.120(4), and because the
28 balancing test applicable to cases like this favors protecting those communications, LVSC

1 respectfully urges the Court that it need not review the PowerPoint presentations made to the
2 Governmental Agencies and not to disclose them.

3 **III. THE INVESTIGATION CONDUCTED BY THE GOVERNMENT AGENCIES IS**
4 **COLLABORATIVE**

5 The Court's second "issue" was whether the Government Agencies' investigation is
6 collaborative or concurrent. "Concurrent" is defined as "operating at the same time; covering the
7 same matters. *Having authority on the same matters.*" Black's Law Dict. (10th ed. 2014)
8 (emphasis added). "Collaborative" is defined as "to cooperate with an agency or instrumentality
9 with which one is not immediately connected." Merriam-Webster.com. 2016.
10 <http://www.merriam-webster.com/>. (Mar. 7, 2016). The evidence shows that the NGCB, DOJ,
11 and SEC have had "authority over the same matters," or *collaborated*, over several years:

- 12 1. The NGCB "initiated an investigation into the same subject matter" as the SEC
13 and DOJ (Exhibits B and C to the Memorandum (Lipparelli Decl.));
- 14 2. The SEC and DOJ interviewed LVSC Chairman Sheldon Adelson at the NGCB's
15 offices (Exhibit F to the Memorandum, at 10-11);
- 16 3. Federal representatives attended at least two OMM presentations at the NGCB
17 offices (Privilege Log, Doc. Nos. 16, 32);
- 18 4. NGCB representatives attended at least seven OMM presentations at the SEC
19 offices in Washington D.C. (Privilege Log, Doc. Nos. 14, 17-19, 27, 35 and 37);
20 and
- 21 5. The NGCB attended **23** additional meetings with the SEC and DOJ, either in
22 person or using video or teleconferences (Exhibit 6 to Plaintiff's Second Motion
23 to Compel (on file)).¹⁵

24 The facts reveal that the NGCB and the federal agencies communicated with one another
25 to coordinate their investigation into the "same subject" during the same time frame for at least
26

27 ¹⁵ Because no documents were provided to the Government Agencies during these meetings, the
28 meetings were not included in the updated Privilege Log.

1 32 meetings. Further, the NGCB shared information with each federal agency, and vice versa,
2 *including the OMM presentations. See Privilege Log, Doc. Nos. 14, 16-19, 27, 32, 35, and 37).*
3 It is difficult to posit a plausible explanation for joint participation of both NGCB and federal
4 officials on so many occasions that the investigation was anything but collaborative. This is
5 particularly true where the state and federal authorities were in at least nine meetings at which
6 OMM presents its findings.¹⁶ *Id.* And any ambiguity over whether government agencies'
7 investigations are joint or not should be resolved in favor of protecting the privilege and/or
8 confidentiality. *See SB527, 61st Sess., at 49 (Nev. 1981) (stating that amendment to gaming law*
9 *“would make [the law] general and broad and make it an absolute privilege for any*
10 *communications ...”*) (emphasis added); *see also State ex rel. Tidvall v. Eight Jud. Dist. Court,*
11 *in and For Clark County, 91 Nev. 520, 25, 539 P.2d 456, 459 (1975) (stating that “a statutory*
12 *privilege... is a pronouncement of public policy.”).*

13 Because the evidence suggests that the investigation is collaborative, a reasonable
14 inference should be made that the agencies have shared information with each other.
15 Consequently, NRS 463.120(4) should extend to LVSC's communications to the DOJ and SEC.

16 IV. CONCLUSION

17 Under NRS 463.120(4), non-privileged information that LVSC provided to the NGCB is
18 confidential and should not be revealed unless the four-part balancing test indicates otherwise.
19 In this case, the balancing test favors protection, not disclosure. And because the evidence
20 indicates that the Government Agencies' investigation is collaborative, submissions to the DOJ
21 and SEC should likewise be treated as confidential because they were presumptively shared or
22 discussed with the NGCB.

23 For these reasons, LVSC requests that the Court determine that the Privilege Log is
24 sufficient to support the asserted privilege claims, that the privilege claims extend to
25

26 ¹⁶ Further, NRS 463.120(4) contemplates that the NGCB will collaborate with the U.S.
27 government from time to time. The provision expressly states that “[t]he Board and Commission
28 may reveal such information and data to an authorized agent of *any agency of the United States Government.*” NRS 463.120(4) (emphasis added).

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

1 communications made to the NGCB, DOJ, and SEC, and deny Plaintiff's Second Motion to
2 Compel Actual Compliance with Topics 25 and 59 of NRCP 30(b)(6) Deposition of LVSC; on
3 Order Shortening Time (filed Oct. 29, 2015) (on file).

4 In the event the Court disagrees with the defendants and wishes to go ahead with an in
5 camera inspection, they respectfully request, for immediate appellate review purposes, that the
6 Court enter a written order identifying the documents or categories of documents on the privilege
7 log it wishes to inspect and the basis/bases for the inspection(s). The defendants also ask the
8 Court to state whether its order will stayed for a reasonable time to enable the defendants to file a
9 writ petition with the Nevada Supreme Court and request a stay pending disposition of their
10 petition.

11 DATED March 9, 2016.

12
13 /s/ J. Stephen Peek
14 J. Stephen Peek, Esq.
15 Nevada Bar No. 1759
16 Robert J. Cassity, Esq.
17 Nevada Bar No. 9779
18 HOLLAND & HART LLP
19 9555 Hillwood Drive, 2nd Floor
20 Las Vegas, Nevada 89134
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Las Vegas, NV 89134

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on March 9, 2016, I served a true and correct copy of the foregoing **LAS VEGAS SANDS CORP.'S SUPPLEMENTAL BRIEF IN SUPPORT OF ITS PRIVILEGE LOG** via e-mail and/or by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

James J. Pisanelli, Esq.
Debra L. Spinelli, Esq.
Todd L. Bice, Esq.
Pisanelli & Bice
400 S. 7th Street Suite 300
Las Vegas, Nevada 89101

Attorney for Plaintiff

J. Randall Jones, Esq.
Mark M. Jones, Esq.
Kemp Jones & Coulthard, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

Attorneys for Sands China, Ltd

Steve Morris, Esq.
Rosa Solis-Rainey, Esq.
Morris Law Group
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101

Attorneys for Sheldon Adelson

/s/ Valerie Larsen
An Employee of Holland & Hart LLP

EXHIBIT A

EXHIBIT A

CLERK OF THE SUPREME COURT
201 SOUTH CARSON STREET
CARSON CITY, NEVADA 89701-4702
(775) 684-1600

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

vs.

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.

Supreme Court No. 69802

District Court Case No. A627691

NOTICE OF ORAL ARGUMENT SETTING

DATE: March 07, 2016

TO: Kemp, Jones & Coulthard, LLP \ J. Randall Jones, Mark M. Jones
Duane Morris LLP/Las Vegas \ Dominica C. Cortum-Anderson
Morris Law Group \ Ryan M. Lower, Steve L. Morris, Rosa Solis-Rainey
Holland & Hart LLP/Las Vegas \ Robert J. Cassity, J. Stephen Peek
Pisanelli Bice, PLLC \ Todd L. Bice, James J. Pisanelli, Debra L. Spinelli
Duane Morris LLC/New Jersey \ Paul P. Josephson, Hersh Koslov
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas \ Daniel B. Heidtke

Pursuant to **NRAP 34**, the above-referenced matter is set for oral argument as follows:

Date: April 05, 2016

Time: 2:00 PM

Length: 30 minutes

Location: Regional Justice Center

16-07142

EXHIBIT D

EXHIBIT D

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

vs.

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.

No. 69802

FILED

FEB 26 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

*ORDER DIRECTING ANSWER TO WRIT PETITION
AND RESOLVING MOTIONS*

This is an original petition for a writ of prohibition or mandamus challenging district court orders denying motions to disqualify Judge Elizabeth Gonzalez. Having considered the petition and appendix, it appears that an answer to the petition will assist this court in resolving the matter. *See Ivey v. Eighth Judicial Dist. Ct.*, 129 Nev., Adv. Op. 16, 299 P.3d 354 (2013); *Towbin Dodge, LLC v. Eighth Judicial Dist. Ct.*, 121 Nev. 251, 112 P.3d 1063 (2005). Therefore, real party in interest, on behalf of respondents, shall have until March 3, 2016, to file an answer, including authorities, against issuance of the requested writ. Petitioners

16-06249

shall have until March 7, 2016, to file and serve a reply in support of the petition.¹

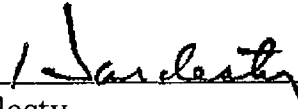
In addition to the petition, petitioners have filed (1) a motion to submit portions of the appendix under seal or in alternate form and (2) a motion to stay all proceedings in the district court pending this court's decision on the writ petition. Cause appearing, we grant the motion to submit portions of the appendix under seal or in alternate form. The clerk shall file the DVD recording received on February 25, 2016, and shall file under seal Volume 13 of the appendix received on February 25, 2016.

In their motion for stay, petitioners state that they seek expedited resolution of the motion because of an imminent deposition. We note that the writ petition here does not concern the reasonableness of such a deposition and, even if it did, discovery orders are generally not subject to review by way of a petition for an extraordinary writ except in limited situations not applicable here. *Las Vegas Sands Corp. v. Eighth Judicial Dist. Court*, 130 Nev., Adv. Op. 61, 331 P.3d 876, 878 (2014) (citing *Aspen Fin. Servs., Inc. v. Eighth Judicial Dist. Court*, 128 Nev., Adv. Op. 57, 289 P.3d 201, 204 (2012); *Valley Health Sys., LLC v. Eighth Judicial Dist. Court*, 127 Nev. 167, 171, 252 P.3d 676, 679 (2011)). Having considered the motion for stay and opposition thereto in light of the foregoing, as well as the factors generally governing stays in this court, see NRAP 8(c); *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650,

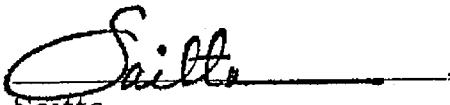
¹All documents submitted in response to this order shall be filed and served personally, electronically, or by facsimile transmission with the clerk of this court in Carson City, see NRAP 2; NRAP 25(a)(2)(B)(i); NRAP 25(a)(4), and we suspend application of NRAP 25(a)(2)(B)(ii)-(iv) and NRAP 26(b)(1)(B) with respect to them.

657, 6 P.3d 982, 986 (2000), we conclude that a stay is not warranted, and we therefore deny the motion to stay all proceedings in the district court pending this court's decision on the writ petition.

It is so ORDERED.

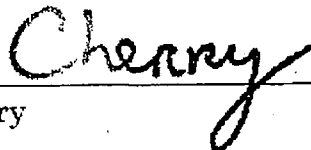
 J.
Hardesty

 J.
Douglas

 J.
Saitta

CHERRY, J., with whom GIBBONS, J., agrees, dissenting, in part:

While I agree with ordering an answer, as I believe the petition presents issues of arguable merit, and with granting petitioners' motion regarding its appendix, I respectfully disagree with denying the motion for stay. Sheldon Adelson has already provided 48 hours of testimony in this and a related case—the scheduled additional 49 hours appears unreasonably burdensome, especially with the issues presented in the writ proceeding pending. I would grant the motion to stay, and therefore dissent from the portion of the order denying it.

 J.
Cherry

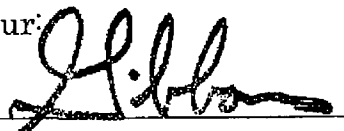
I concur:
 J.
Gibbons

EXHIBIT C

EXHIBIT C

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and
3 that, on this 24th day of February, 2016, I electronically filed and served a true and
4 correct copy of the above and foregoing **OPPOSITION TO EMERGENCY**
5 **MOTION UNDER NRAP 27(e) TO STAY ALL PROCEEDINGS IN THE**
6 **DISTRICT COURT PENDING DECISION ON WRIT PETITION RE**
7 **ORDERS DENYING MOTION TO DISQUALIFY JUDGE ELIZABETH**
8 **GONZALEZ WITHOUT A HEARING –RELIEF NEED ON OR BEFORE**
9 **FEBRUARY 24, 2016** properly addressed to the following:

10 J. Stephen Peek, Esq.
11 Robert J. Cassity, Esq.
12 HOLLAND & HART LLP
13 9555 Hillwood Drive, 2nd Floor
14 Las Vegas, NV 89134

15 J. Randall Jones, Esq.
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20 Steve Morris, Esq.
21 Rosa Solis-Rainey, Esq.
22 MORRIS LAW GROUP
23 300 South Fourth Street, Suite 900
24 Las Vegas, NV 89101

25 *Attorneys for Petitioners*

26 **SERVED VIA HAND-DELIERY ON 02/24/16**
27 The Honorable David Barker
28 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

27 /s/ Shannon Thomas
28 An employee of PISANELLI BICE PLLC

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

EXHIBIT B

EXHIBIT B

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 **EMERGENCY MOTION UNDER NRAP27(e) TO STAY ALL PROCEEDINGS IN THE DISTRICT COURT PENDING DECISION ON WRIT PETITION RE ORDERS DENYING MOTION TO DISQUALIFY JUDGE ELIZABETH GONZALEZ WITHOUT A HEARING** to be delivered, in a sealed envelope, on the date and to the addressee(s) shown below:

VIA HAND DELIVERY
Hon. David Barker
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

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

Respondent

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

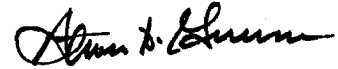
**Attorneys for Steven C. Jacobs,
Real Party in Interest**

DATED this 22nd day of February, 2016.

By: /s/ Patricia Ferrugia

EXHIBIT A

EXHIBIT A



CLERK OF THE COURT

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 RE SUPPLEMENTAL BRIEF
IN SUPPORT OF PRIVILEGE LOG**

THURSDAY, MARCH 10, 2016

APPEARANCES:

FOR THE PLAINTIFF:	TODD L. BICE, ESQ.
	JAMES J. PISANELLI, ESQ.
	DUSTUN HOLMES, ESQ.

FOR THE DEFENDANTS:	J. STEPHEN PEEK, ESQ.
	JON RANDALL JONES, ESQ.
	STEVE L. MORRIS, 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, NEVADA, THURSDAY, MARCH 10, 2016, 8:32 A.M.

2 (Court was called to order)

3 THE COURT: The only other thing besides North Grand
4 Canyon is Sands-Jacobs. So if we could go there now. Do I
5 have everybody?

6 MR. MORRIS: No. We don't have --

7 MR. PISANELLI: I saw them both out there.

8 MR. MORRIS: We don't have Mr. Peek or Mr. Jones.

9 THE COURT: Okay. Would you like some coffee, Mr.
10 Morris?

11 MR. MORRIS: What I'd like is a shot.

12 THE COURT: I don't have that here.

13 MR. MORRIS: Thank you, Your Honor. I will accept
14 that offer.

15 THE COURT: Dan -- thanks, Kevin.

16 Okay. The first thing I need to start with is in
17 reading the supplemental brief in support of the privilege log
18 that I received yesterday I learned for the first time that
19 the Nevada Supreme Court has set a hearing on Judge Barker's
20 decision on the disqualification. Mr. Peek in Footnote 7 has
21 raised some issues about that. So I would sort of like you
22 guys to address that before I do anything else.

23 Mr. Peek, you're up.

24 MR. PEEK: Your Honor, I think my position is pretty
25 clear as set forth in the brief given the Court's prior

1 recusal -- I don't know if that's the right word, or at least
2 withdrawing until this issue is decided, first when we filed
3 the motion some time ago and then later when we did a motion
4 for rehearing, even at that time. And this is very similar, I
5 think, to that same issue in the motion for rehearing. And,
6 as I -- I don't remember which canon I cited to Your Honor. I
7 don't have it handy. I didn't bring that brief with me. It's
8 1 point something.

9 THE COURT: You mean the statute?

10 MR. PEEK: Statute, I'm sorry. The statute, yeah.

11 THE COURT: Yeah. The statute requires when the
12 motion is filed --

13 MR. PEEK: Statute requires, yeah.

14 THE COURT: -- to not do anything else.

15 MR. PEEK: Yeah. And I think this is very similar.
16 Just like you did on the motion for rehearing, this is now a
17 writ issue. The court has first ordered briefing. That has
18 been fully briefed, and the court has set it for hearing. So
19 I think that very same issue is extant.

20 THE COURT: When is it set for hearing?

21 MR. PEEK: April 5th, Your Honor.

22 THE COURT: Okay. Mr. Bice.

23 MR. BICE: Your Honor, omitted from any of their
24 presentation to you was is that they sought a stay, which was
25 denied.

1 THE COURT: Well, they said an emergency stay.

2 MR. BICE: Well, it's been denied. But it's not --
3 it's completely inappropriate to now come in to the Court,
4 when they're trying -- they've been delaying us on this issue
5 about these privileged documents. To now then throw in a
6 footnote that -- they did file this writ before. To now throw
7 in a footnote and suggest that the Court now should somehow
8 not proceed with the case after the Nevada Supreme Court
9 specifically denied the very relief that they now try and pass
10 off by way of a footnote --

11 THE COURT: Well, but if -- don't you think in
12 emergency motion for stay is different than a motion for stay?

13 MR. BICE: No.

14 THE COURT: Okay.

15 MR. BICE: They sought a stay from Judge Barker, and
16 it was denied. That wasn't an emergency motion for stay.
17 They sought a stay from Judge Barker. Judge Barker denied
18 that. They then went up to the Nevada Supreme Court, sought a
19 stay from the Nevada Supreme Court, and that was denied, as
20 well. To come in to this Court now and say, well, we want a
21 stay anyway, notwithstanding that two -- both courts have
22 denied that relief, so that we can continue to stall on this
23 issue is inappropriate. They're -- interestingly, they're
24 seeking affirmative relief from you on matters that they think
25 are beneficial to them --

1 THE COURT: Well, that's why I'm starting with this
2 issue, Mr. Bice.

3 MR. BICE: -- but then -- right -- but then turning
4 around and taking the position that you shouldn't proceed on
5 matters that have been pending for nine months.

6 THE COURT: So --

7 MR. BICE: That's completely -- that's completely
8 inappropriate. That argument is -- that argument is
9 disingenuous in the least to suggest that the Court should not
10 proceed with this matter because they now are going to hold
11 oral argument in a month.

12 THE COURT: You would agree that the Nevada Supreme
13 Court must have thought there was arguable merit to the
14 petition or they wouldn't have set it for hearing; right?

15 MR. BICE: I actually don't agree with that.

16 THE COURT: Okay.

17 MR. BICE: The Supreme Court sets matters for
18 hearing. They have other matters involved LVSC on the
19 April 5th stack concerning a defamation claim that grew out of
20 the Florida case that was up in the Second Circuit in New
21 York. There was already hearings set on LVSC matters
22 tangentially related to this case on April 5th in any event.

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

24 Anything?

25 Mr. Morris.

1 MR. MORRIS: Your Honor, that emergency motion was
2 presented to the Supreme Court before the Supreme Court
3 ordered an answer to the petition, and it was following the
4 ruling on ordering an answer on the petition that oral -- that
5 we filed -- we filed a -- they filed a response, we filed a
6 reply, and then they set oral argument. So I don't think the
7 denial of the emergency motion before anything was considered
8 with respect to that writ should be controlling here.

9 THE COURT: Anything else?

10 MR. BICE: Your Honor, the order denying their stay
11 was the order telling us to answer. So to claim that the
12 court didn't consider anything -- the court considered their
13 petition, considered their motion to stay, and denied it.

14 THE COURT: Okay. Anything else?

15 MR. MORRIS: And that was before they had their
16 answer and ordered an oral argument on the case.

17 THE COURT: Okay. Since it appears to me that the
18 Nevada Supreme Court's setting of this matter for oral
19 argument means they must believe there is something of
20 arguable merit, I find it to be similar to the motion for
21 reconsideration that was presented to Judge Barker, and I'm
22 going to take the same action that I did when that matter was
23 under reconsideration for Judge Barker.

24 I am going to stay the case pending a decision by
25 the Nevada Supreme Court on those issues -- or at least stay

1 my actions on the case.

2 MR. PEEK: Thank you, Your Honor.

3 THE COURT: Goodbye.

4 MR. BICE: Your Honor, I need to be heard on this.

5 THE COURT: That's why I asked you to be here, Mr.
6 Bice, because I was concerned -- I was unaware that it had
7 been set for oral argument until this morning when I was
8 reading the brief that was sent last night.

9 MR. BICE: So then the denial of a stay from the
10 Supreme Court means nothing. Essentially the Court -- Judge
11 Barker's denial of the stay means nothing, The Nevada Supreme
12 Court's denial of the stay means nothing, and so now, without
13 a motion for a stay even being filed by these parties, they
14 can throw in a footnote and then obtain a stay indirectly of
15 my client's rights for how many years, Your Honor? That is --
16 with all due respect to the Court, that is simply outrageous.

17 THE COURT: I understand your position, Mr. Bice,
18 but I am taking the same action that I believe I took when the
19 motion for reconsideration was pending. It doesn't matter
20 whether you agree with me. I'm the one who has to make that
21 evaluation as to whether I am taking the same action under
22 NRS 1.230, and that's the concern that I have, is I need to be
23 consistent. When Judge Barker was entertaining the motion for
24 reconsideration I also did the same stand-down. Doesn't stay
25 you guys from doing discovery, it stays me from making

1 rulings.

2 MR. BICE: Your Honor, you have essentially granted
3 them an indirect stay of the case by doing that. There is no
4 legal authority for that, there's no motion pending before the
5 Court. How is my client supposed to proceed to trial when
6 these -- when these -- and I just have to use the word,
7 because these stunts seem to work, and there's really nothing
8 one can call this other than a sort of a last-minute stunt.

9 THE COURT: Well --

10 MR. BICE: The Supreme Court denied the stay and
11 said the case was to proceed in front of you notwithstanding
12 the fact that they had filed their writ proceeding. That has
13 legal effect. That stay just doesn't -- the Supreme Court's
14 ruling just doesn't magically disappear because they throw into
15 a footnote a brief that they submitted yesterday saying it's
16 been set for oral argument. It simply isn't the law. And
17 it's prejudicial to my client that now we're going to have
18 this de facto stay, no motion, no hearing, no nothing.

19 THE COURT: Well, that's why I asked you your
20 position, because I wasn't going to do something without
21 asking you. Because technically the rule says, "The judge
22 against whom an affidavit alleging bias or prejudice is filed
23 shall proceed no further."

24 MR. BICE: Until that -- until the motion is
25 resolved.

1 THE COURT: And it has been resolved.

2 MR. BICE: Exactly.

3 THE COURT: And then we did a motion for
4 reconsideration. And, as you recall, while that motion for
5 reconsideration was pending I did the same thing. I took no
6 further action during the pendency of that decision-making
7 process. While I certainly understand your frustration, the
8 fact that they have set it for argument is a significant issue
9 to me. So -- it may not be significant to you, but it is a
10 significant issue to me, and I'm taking the same action that I
11 did when the motion for reconsideration was pending before
12 Judge Barker.

13 MR. BICE: Well, Your Honor, if that was the case,
14 then why wouldn't the mere filing of the writ be a sufficient
15 basis to freeze the Court?

16 THE COURT: Because --

17 MR. BICE: And if the Court allows that sort of
18 conduct, think about the consequences that you're imposing on
19 litigants. The mere filing of a writ now challenging an order
20 paralyzes the District Court proceedings.

21 THE COURT: I didn't take action based on the filing
22 of the writ, I didn't take action based upon ordering an
23 answer to the writ. I took action based upon the Nevada
24 Supreme Court issuing an order setting it for oral argument.

25 MR. BICE: I'm sorry, but the Nevada Supreme Court

1 didn't issue an order that said that it had arguable merit. W
2 the Nevada Supreme Court said is that, an answer would assist
3 us in resolving the question.

4 THE COURT: What it says in the document, which I
5 had not seen until this morning, which is Exhibit A to the
6 supplemental brief in support of the privilege log, is a
7 notice of oral argument setting dated March 7th setting it for
8 April 5th at 2:00 p.m.

9 MR. BICE: Right. And there's an order from the
10 Supreme Court that wasn't attached directing --

11 THE COURT: I don't get mail from the Supreme Court.

12 MR. BICE: -- directing us to file an answer. It
13 doesn't say that this appears to have arguable merit. What it
14 says is that, answer will assist us in resolving the matter.
15 That is different than suggesting that the Supreme Court has
16 determined that it has arguable merit when in fact their order
17 doesn't say that. And this is again not -- Your Honor, all I
18 can say to the Court is the Court is rewarding parties for
19 what I would submit is misconduct. And the Court is rewarding
20 that. And all I can tell the Court is that when you reward
21 that you're going to get more of it.

22 THE COURT: I understand your position, Mr. Bice.
23 If it had not been set for oral argument by the Nevada Supreme
24 Court, I would not be taking this action. Merely filing a
25 writ, in my opinion, on a motion for reconsideration would not

1 have put me in the position that I was in before. But by the
2 Supreme Court setting it for argument I am at this point, I
3 believe to be consistent with my prior actions while the
4 motion for reconsideration is pending, standing down pending a
5 determination on the writ.

6 MR. BICE: So, in other words --

7 MR. PEEK: Thank you, Your Honor.

8 MR. BICE: So, in other words, the case is now
9 stayed until the Supreme Court enters an order? That's what
10 you're --

11 THE COURT: Mr. Bice, 1.235(5) does not stay the
12 case. It does not prevent you from doing discovery, it does
13 not prevent you from doing meet and confers, it does not
14 prevent you from doing motion practice. It prevents me from
15 taking further action.

16 MR. PISANELLI: Is Judge Barker going to rule on
17 pending motions?

18 THE COURT: I'm not -- I can't assign anyone to do
19 that.

20 MR. PISANELLI: Well, that's what you did earlier in
21 the case when they were claiming that you shouldn't be ruling
22 on the Dumont deposition.

23 THE COURT: Well, but that was not under this
24 statute. That was because --

25 MR. PISANELLI: Wasn't it?

1 THE COURT: No. That was before they filed those
2 motions. I set that process before they filed those motions.

3 MR. BICE: Well, then we'll see Mr. Long at his
4 deposition, since there is no protective order.

5 THE COURT: So I'm not making any rulings on
6 anything.

7 MR. BICE: Thank you, Your Honor.

8 THE COURT: 'Bye.

9 MR. PEEK: 'Bye, Your Honor. Thank you.

10 MR. MORRIS: Thank you, Your Honor. Thanks for the
11 coffee, too.

12 THE COURT: Absolutely, Mr. Morris.

13 THE PROCEEDINGS CONCLUDED AT 8:45 A.M.

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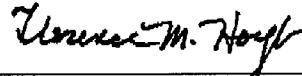
CERTIFICATION

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

3/10/16

DATE

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Mar 15 2016 09:15 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; SHELDON G. ADELSON, in his individual and representative capacity; VENETIAN MACAU, LTD., a Macau corporation, DOES I-X; and ROE CORPORATIONS I-X,

Petitioners,

vs.

CLARK COUNTY DISTRICT COURT,
THE HONORABLE DAVID BARKER,
DISTRICT JUDGE, DEPT. 18,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Case Number: 69802

District Court Case Number
A627691-B

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S EMERGENCY
MOTION UNDER NRAP 27(e)**

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INTRODUCTION

Although he does not say so, Jacobs's "emergency" motion challenges a discretionary decision Judge Elizabeth Gonzalez made on March 10, 2016 to refrain from issuing any further rulings until this Court decides defendants'/petitioners' writ petition to disqualify her. That ruling is not properly before the Court. Nor does it require this Court to clarify its February 26 Order denying defendants'/petitioners' request to stay *all* proceedings pending a decision on petitioners' writ petition to disqualify Judge Elizabeth Gonzalez. Judge Gonzalez did not stay *all* proceedings, nor did LVSC ask her to do so. Instead, she simply elected to stand-down "pending a determination on the writ," which is fully briefed and scheduled for oral argument before the Court in three weeks, on April 5. Ex. A, Mar. 10, 2016 Hr'g Tr. at 10–11.

Speaking to Jacobs's counsel, the district court said, Since it appears to me that the Nevada Supreme Court's setting of this matter for oral argument means they must believe there is something of arguable merit, I find it to be similar to the motion for reconsideration that was presented to Judge Barker, and I'm going to take the same action that I did when that matter was under reconsideration for Judge Barker

I am going to stay the case pending a decision by the Nevada Supreme Court on those issues – *or at least stay my actions in the case.*

Ex. A, Mar. 10, 2016 Hr'g Tr. at 6:17–7:1 (emphasis added).

She went on to say to counsel, [t]he fact that they have set it for argument is a significant issue to me. So – it may not be significant to you, but it is a significant issue to me, and I am taking the same action that I

did when the motion for reconsideration [now before this Court in the pending writ petition] was pending before Judge Barker.

Ex. A, Mar. 10, 2016 Hr'g Tr. at 9:7–12. The judge then restated and summarized her decision in a colloquy with Jacobs's counsel.

Merely filing a writ, in my opinion, on a motion for reconsideration would not have put me in the position that I was in before. But by the Supreme Court setting it for argument I am at this point, I believe to be consistent with my prior actions while the motion for reconsideration is pending, standing down pending a determination on the writ.

....

Mr. Bice, [NRS] 1.235(5) does not stay the case. It does not prevent you from doing discovery, it does not prevent you from doing meet and confers, it does not prevent you from motion practice. It prevents me from taking further action.

Ex. A, Mar. 10, 2016 Hr'g Tr. at 10:22–11:15.

This *sua sponte* exercise of discretion by the district court does not create an "emergency" under NRAP 27(e)¹ that requires "immediate" relief, nor any other form of "relief" while the Court considers and decides the pending writ petition. The case has not been stayed. On the contrary, Jacobs continues to actively conduct deposition discovery. *See, e.g.*, the March 11 notices of three depositions served on Defendants for depositions later this month. Exs. G, H, and I, in addition to two others noticed earlier. No harm will result from the district court's *sua sponte* decision to refrain from issuing further rulings until the disqualification issue has been resolved.

¹ Jacobs failed to identify a "date or event by which action is necessary," as required by NRAP 27(e)(2).

POINTS AND AUTHORITIES

II. MORE CONTEXT FOR THIS OPPOSITION

A. LVSC Did Not Ask the District Court to Stand Down on All Pending Matters.

Pending before the Court in this writ proceeding (Case No. 69802) is a challenge to Chief Judge Barker's Order Denying LVSC's Motion to Disqualify Judge Elizabeth Gonzalez. On March 7, the Court set oral argument on that petition for April 5, 2016. On March 9, 2016, LVSC submitted supplemental briefing in the district court on a pending matter involving an in camera inspection of privileged documents.² In a footnote LVSC suggested that the district court should refrain from addressing the privilege issues addressed in the briefing until this Court decides this writ petition. *See* Ex. E. at 5, n.7. Contrary to Jacobs's mistaken assertion, LVSC did not ask or suggest that the district court "should not address pending motions." Pl.'s Em. Mot. at 2.

Nor is it fair to say that the district court was somehow paralyzed by LVSC's suggestion that the court defer consideration of a discrete privilege issue until its petition is resolved. As is evident in the record before the Court in this proceeding, Judge Gonzalez does not hesitate to reject defendants' arguments, based on her extra-judicial understanding of the facts and law, or make decisions before briefing

² Also pending before the Court is a petition in Case No 69090, which challenges Judge Denton's Order Denying Venetian Macau Limited's Peremptory Challenge. Briefing on both writ proceedings is closed; Defendants have provided Judge Gonzalez courtesy copies of their briefs and motions to stay in this case, No. 69802, and in No. 69090.

and/or arguments are concluded. *See, e.g.*, Case No. 69802, PA2706:9–16 (rejecting Sands China's counsel's understanding of the Macau government's requirements for Personal Data Consents despite absence of any evidence in the record to contradict counsel's understanding); Case No. 68265, PA43983:7–12; PA44104 ¶ 5 (pre-judging SCL's motion to dismiss 7th Claim, which had yet to be heard); Case No. 68265, PA43570:5–8 (announcing in the middle of closing arguments that "I'm trying to get information so that I can make a better decision [about sanctions], rather than a worse decision, because none of them are going to be good.").

In any event, Jacobs's contention that he could not obtain the relief he seeks here from the district court "because Petitioners have claimed that the District Court is precluded from ruling on any contested matters under NRS 1.235(5) . . ." is altogether disingenuous because the Petitioners made no such argument. Pl.'s Em. Mot. at 5, ¶ 4. Furthermore, the district court did not refuse to hear Jacobs on the issue. In fact, she specifically asked Jacobs's counsel for his position, "because I wasn't going to do something without asking you." Ex. A, Mar. 10, 2015 Hr'g Tr. at 8:19–21. The district court provided Jacobs every opportunity to be heard. Ultimately, the district court made a discretionary decision to stand-down pending a decision by the Court, reiterating at least three times that she was taking the action *she believed was necessary* to remain consistent with her prior decisions while her status is under review. *Id.* at 7:17–8:1; 9:9–12; 11:3–5. This is the discretionary decision Jacobs challenges by way of this

"emergency motion," which has nothing to do with this Court's unrelated February 26 Order and thus does not require any "clarification" of that Order.

B. Jacobs Has Misrepresented Facts to the Courts.

Jacobs falsely contends that "Petitioners omitted [to tell the district court] that they had sought and been denied a stay," Pl.'s Em. Mot. at 1:26. In fact, Petitioners not only sent Judge Gonzalez a courtesy copy of their motion to stay, Ex. B, but she also received a courtesy copy of Jacobs's own opposition, Ex. C, *and* the Court's decision denying the emergency stay. Ex. D. The district court was fully informed and understood when she decided to defer further rulings that this Court had declined to grant the stay defendants/petitioners had requested. Indeed, Jacobs's counsel himself specifically *told* Judge Gonzalez *before* she ruled about this Court's February 26 Order. Ex. A, Mar. 10, 2016 Hr'g Tr. at 3:23–24 (mistakenly saying that the defendants/petitioners "omitted from any of their presentation to you . . . "); *id.* at 4:1 and 4:11–12). Thus, the district court was not laboring under any misapprehension about the procedural posture of the case.

III. ARGUMENT

A. Putting Aside his Ad Hominem Attacks on Petitioners, Jacobs's Emergency Motion is an Impermissible Challenge of the District Court's Discretionary Oral Decision.

While captioned as an emergency motion "for enforcement of order denying stay and clarification of setting oral argument," Jacobs's

intemperate motion is nothing more than his expression of pique with Judge Gonzalez's discretionary decision to stand down from considering pending motions pending resolution of the disqualification issue before the Court. *See generally* Ex. A. LVSC merely suggested that the district court defer deciding a novel but controversial privilege issue (not even scheduled for hearing on March 10, 2016) until the question of her status has been resolved. Ex. E at 5, n.7; *see Div. of Child & Family Servs. v. Eighth Judicial Dist. Court*, 120 Nev. 445, 453, 92 P.3d 1239, 1244 (2004) ("District courts have wide discretion to control the conduct of proceedings pending before them"). Jacobs's motion is nothing more than an attack on the district court's *sua sponte* decision to stay her hand until the pending disqualification petition is decided. *See generally* Pl.'s Em. Mot. A NRAP Rule 27(e) motion, however, is not the appropriate vehicle to seek relief from a district court order not before the Court. *See City of Las Vegas Downtown Redevelopment Agency v. Eighth Judicial Dist. Court*, 116 Nev. 640, 642, 5 P.3d 1059, 1060 (2000) (mandamus is the appropriate vehicle to challenge a district court's recusal).

Both NRS 34.170 and 34.330 provide an avenue for parties to seek relief where there is no plain, speedy, and adequate remedy at law." NRS 34.170 (addressing when a writ of mandamus is available); NRS 34.330 (addressing when a writ of prohibition is available). Jacobs points to no authority, because there is none, that allows him to seek review of a district court's decision, which has not been memorialized in

writing, by way of a motion in an existing writ proceeding to "enforce" an order of this Court which did not direct the district court to do anything. There is no emergency before the Court, nor is there any basis for the Court to grant relief.

B. Judge Gonzalez's Sua Sponte Decision to Stand Down Confirms the Importance of the Issues Before the Court.

Petitioners filed their writ petition on February 23, 2016. They concurrently asked for an emergency stay of *all proceedings* because they believed if the writ petition was subsequently granted, having the challenged judge continue to preside while the proceeding was pending would call into question the fairness of any decisions made during the interim. The Court denied the requested stay of all proceedings, leaving petitioners no choice but to continue with the challenged judge. The denial of the stay, however, did not strip petitioners of their right to make a record on the privilege issues presented to the district court or to ask the district court to exercise her discretion to defer a particularly contentious and controversial privilege issue until the disqualification petition was resolved. *Div. of Child & Family Servs.*, 120 Nev. at 453, 92 P.3d at 1244 (recognizing the wide discretion courts have to manage proceedings before them).

This Court's February 26, 2016 Order set a very expedited briefing schedule, requiring petitioners' reply just two business days after receipt of Jacobs's response. Before the reply was filed, but two days after Jacobs filed his answer, the Court set oral argument. Mar. 7, 2016 Notice of

Oral Argument Setting. On March 4—*before* oral argument had been scheduled—the district held a hearing on issues concerning the defendants'/petitioners' privilege log she had previously acknowledged involved novel and important questions concerning the relationship of various statutory and common law privileges, and announced she believed there were two notable "holes" in the briefing on this subject. *See* Ex. F, Mar. 3, 2016 Hr'g Tr. at 29:16–21. Because of the importance of this particular matter, she announced that supplemental simultaneous briefing would be accepted from both sides on March 9, 2016. *Id.* at 57:24–58:17. Jacobs *rejected* the invitation to submit a supplemental brief. *Id.* at 58:16–20; LVSC accepted it.

On March 9, 2016, LVSC briefed the two issues to fill the "holes" in the previous briefing, and suggested to the district court that it might be prudent to defer a decision on the critical privilege issues until the Court's decision on the writ regarding her disqualification. Ex. E at 5, n.7. At a hearing the following day on *other* pending motions, the district court confirmed she had just learned that oral argument on the pending petition had been set, which she found to be significant. She raised that subject on her own before considering the matters on calendar. Ex. A at 7:6–8. Rather than defer consideration of the privilege issues as LVSC had suggested, which were not scheduled for hearing, the district court *sua sponte* elected to defer consideration of *any matters* before her until after the April 5, 2016 oral argument. *Id.* at 6:17–25. She said:

Since it appears to me the Nevada Supreme Court's setting of this matter for oral argument means they must believe there is something of arguable merit, I find it to be similar to the motion for reconsideration that was presented to Judge Barker, and I'm going to take the same action that I did when that matter was under reconsideration for Judge Barker.

Jacobs suggests that *Millen v. Eighth Judicial District Court*, 122 Nev. 1245, 148 P3d 694 (2006), imposes on a judge an absolute duty to sit. Pl.'s Em. Mot. at 2. The case does not, however, address a judge temporarily standing down while the Court deliberates a writ petition to remove the judge, similar to the judge stepping down while a challenge under NRS 1.235 is being decided. Moreover, the Court in *Millen* recognized that then-NCJC Canon 3E(1) (now Rule 2.11) "provides a subjective basis for disqualification." 122 Nev. at 1254, 148 P3d at 700.

The district court's discretionary decision to briefly step down is consistent with the goal of NRS 1.235 and the Nevada Code of Judicial Conduct, which is to protect litigants' rights to an impartial tribunal by avoiding conduct that lends support to the appearance of bias. The Legislature has decreed that questions of judicial disqualification be made by a judge other than the one being challenged. The challenged judge must stand-down while the disqualification issues are being considered. NRS 1.235. Disqualification is being pursued by writ in this Court under both the Nevada Code of Judicial Conduct and NRS 1.235, and the district court's election to view the petition as subject to NRS 1.235 and temporarily step aside should not be disturbed.

There is no good reason in law or policy to "enforce" the Court's February 26 Order by forcing the challenged judge to continue presiding while her ability to do so impartially is under review. Denying Jacobs's procedurally infirm and meritless "emergency" motion would be correct under NRAP 27(e) and consistent with the purpose of the Nevada Code of Judicial Conduct, which is to "maintain and enhance confidence in the legal system." NCJC Preamble [1].

IV. CONCLUSION

For the foregoing reasons, defendants respectfully ask that Jacobs's motion be denied.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25(b) and NEFR 9(f), I hereby certify that I am an employee of Morris Law Group; that on this date I electronically filed the foregoing **DEFENDANTS' RESPONSE TO PLAINTIFF'S EMERGENCY MOTION UNDER NRAP 27(e)** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex). Participants in the case who are registered with Eflex as users will be served by the Eflex system as follows:

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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 **DEFENDANTS' RESPONSE TO PLAINTIFF'S EMERGENCY MOTION UNDER NRAP 27(e)** to be delivered, in a sealed envelope, on the date and to the addressee(s) shown below **(as indicated below)**:

VIA HAND DELIVERY (on 3/15/16)
Hon. David Barker
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155
Respondent

Courtesy Copy To (on 3/15/16):
Judge Elizabeth Gonzalez
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
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DATED this 14th day of March, 2016.

By: /s/ Patricia Ferrugia