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IN THE SUPREME COURT
OF THE STATE OF NEVADA

SANDS CHINA LTD.,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT, in and for the County of Clark,
STATE OF NEVADA, and the HONORABLE
ELIZABETH GONZALEZ, District Judge,

Respondents,

and,

STEVEN C. JACOBS,

Real Party in Interest.

Case No.: Electronically Filed
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(D.C. No.: A-10-12701-K) Lindeman

**PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE,
WRIT OF PROHIBITION**

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**PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE,
WRIT OF PROHIBITION**

Petitioner Sands China Ltd., a Cayman Islands entity, by and through its counsel of record, the law firm of GLASER WEIL FINK JACOBS HOWARD, AVCHEN & SHAPIRO, and pursuant to NRS 34.160, 34.320 and NRAP 21, respectfully petitions the Court for the issuance of a Writ of Mandamus or, in the alternative, a Writ of Prohibition, against the respondents, the Honorable Elizabeth Gonzalez, District Judge of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, directing Judge Gonzalez and the District Court to vacate and modify its Order denying SCL's Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, for Plaintiff's Failure to Join a Necessary Party pursuant to NRCP 12(b)(5)-(6) entered on April 1, 2011 and to compel said District Court to dismiss the action filed by Steven C. Jacobs against SCL in the Eighth Judicial District Court of the State of Nevada, Case No. A-10-627691-C, upon the grounds and for the reasons that the District Court lacks personal jurisdiction over SCL, and prohibiting said District Court from continuing to exercise personal jurisdiction against SCL.

I.

INTRODUCTION

Petitioner Sands China Ltd. ("Petitioner" or "SCL") is a Cayman Islands corporation that does business exclusively in Macau Special Administrative Region (SAR) of the People's Republic of China ("Macau") and Hong Kong SAR of the People's Republic of China ("Hong Kong"). It is a public company, the stock of which trades on The Stock Exchange of Hong Kong Limited ("HKEx"). SCL is not present in Nevada, and it has not done business here.

Real Party in Interest Steven C. Jacobs ("Jacobs" or "Plaintiff") is not a resident of Nevada, nor was he a Nevada resident when he commenced employment with SCL in Macau. Likewise, Jacobs was not a Nevada resident when he was terminated in Macau from his position with SCL in Macau.

Jacobs nevertheless sued SCL in Nevada, claiming that SCL breached an alleged contract with Jacobs. For his breach of contract claim against SCL, Jacobs alleged that he made a demand on SCL on September 24, 2010 to "honor his [alleged] right to exercise" an option to purchase SCL

1 stock and that SCL rejected his demand and thereby breached a July 7, 2010 letter from SCL to
2 Jacobs (the "Stock Option Grant Letter"). The Stock Option Grant Letter provides that it is
3 governed by Hong Kong law.

4 SCL moved to dismiss for lack of personal jurisdiction. In ruling that SCL must answer in
5 Nevada for a claimed breach in Macau of an alleged contract governed by Hong Kong law, the
6 District Court failed to observe the requirements for establishing either specific or general
7 jurisdiction over SCL. The District Court did not make jurisdictional findings. Instead, the District
8 Court judge merely said at the conclusion of the hearing on SCL's Motion to Dismiss for Lack of
9 Personal Jurisdiction, or in the Alternative, for Plaintiff's Failure to Join a Necessary Party (the
10 "Motion") that "there are pervasive contacts with the State of Nevada by activities done in Nevada
11 by board members of [SCL]."

12 The District Court thus accepted Jacobs' argument that actions taken in Nevada by the non-
13 executive Chairman of SCL's Board of Directors, Sheldon Adelson ("Adelson"), and by a special
14 advisor to SCL's Board of Directors, Michael Leven ("Leven"), demonstrated such control by Las
15 Vegas Sands Corp. ("LVSC") over SCL that those actions should be considered in assessing
16 whether SCL is subject to general jurisdiction in Nevada. The District Court further concluded that
17 the alleged actions of Adelson and Leven, who also are officers and directors of LVSC, a Nevada
18 corporation which is SCL's majority shareholder, were sufficient to satisfy the applicable due
19 process standards in exercising jurisdiction over SCL.

20 In so ruling, the District Court did not specify the legal standard it applied. This Court has
21 had only one occasion to address directly the issue of whether (and, if so, when) a parent company's
22 exercise of control over a subsidiary rises to such a level that the domestic entity's contacts with
23 Nevada should be considered in determining whether general personal jurisdiction exists over the
24 foreign affiliate. *See MGM Grand, Inc. v. Eighth Judicial Dist. Court*, 107 Nev. 65 (1991). Further,
25 in the *MGM Grand* case, this Court limited its discussion to two sentences, as follows:

26 In addition, our review of the record convinces us that Disney exercises no
27 more control over its subsidiaries than is appropriate for the sole shareholder of a
28 corporation. Thus, Disney's subsidiaries' contacts may not be counted for
jurisdictional purposes.

1 *Id.* at 69 (citing *Hargrave v. Fireboard Corp.*, 710 F.2d 1154, 1159-61 (5th Cir.
2 1983)).

3 This Court, in *MGM Grand*, did not expressly address or analyze the question of whether a
4 showing of alter ego is required before a corporate affiliate's contacts with Nevada properly are
5 considered for jurisdictional purposes.

6 As will be discussed below, the prevailing test is that the contacts of a domestic parent (or
7 other corporate affiliate) should not be considered (or "counted") in analyzing whether general
8 jurisdiction exists over a foreign subsidiary (or other corporate affiliate) unless a showing of alter
9 ego has been made. SCL respectfully submits that the law of Nevada should be clarified to employ
10 that test, which Jacobs did not even attempt to meet.

11 Moreover, even employing a more lenient alternative standard based on whether the control
12 exercised by the parent over the subsidiary is disproportionate to the parent's financial interest in the
13 subsidiary, the District Court was compelled by law to dismiss SCL for lack of personal jurisdiction.

14 Finally, the law of Nevada also should be clarified to hold that the mere presence of directors
15 in Nevada is insufficient to establish general jurisdiction over a foreign corporation.

16 Here, (i) an important issue of law requires clarification, (ii) considerations of sound judicial
17 economy and administration militate in favor of granting this petition, and (iii) SCL has no "plain,
18 speedy or adequate remedy" to challenge the District Court's ruling. For these reasons, SCL
19 respectfully requests that either (a) a Writ of Mandamus be issued under the seal of this Court
20 directing the Eighth Judicial District Court of the State of Nevada in and for the County of Clark
21 and the Honorable Elizabeth Gonzalez to reverse the Order entered on April 1, 2011 and dismiss the
22 action against SCL for lack of personal jurisdiction or (b) a Writ of Prohibition be issued under the
23 seal of this Court to the Eighth Judicial District Court of the State of Nevada in and for the County
24 of Clark and the Honorable Elizabeth Gonzalez prohibiting the District Court from exercising
25 personal jurisdiction over SCL.
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II.

ISSUE PRESENTED

Whether a Writ of Mandamus or Writ of Prohibition should issue against the respondent District Court and Judge prohibiting them from exercising personal jurisdiction over SCL, a foreign entity which has no substantial or continuous and systematic contacts with the State of Nevada, but which is a subsidiary – not an alter ego – of LVSC, a Nevada corporation which exercises a degree of control over SCL commensurate with LVSC’s ownership interest in SCL.

III.

RELIEF SOUGHT

1. That a Writ of Mandamus be issued under the seal of this Court directing the Eighth Judicial District Court of the State of Nevada in and for the County of Clark and the Honorable Elizabeth Gonzalez to reverse the Order entered on April 1, 2011 and dismiss the action against SCL for lack of personal jurisdiction;

2. That a Writ of Prohibition be issued under the seal of this Court to the Eighth Judicial District Court of the State of Nevada in and for the County of Clark and the Honorable Elizabeth Gonzalez prohibiting the District Court from exercising personal jurisdiction over SCL.

IV.

STATEMENT OF FACTS

1. SCL was incorporated in the Cayman Islands on July 15, 2009 and maintains its principal place of business in Macau, with additional operations in Hong Kong. *See* true and accurate copy of the Global Offering Document, pp. 75-76, attached as Exhibit A to the Motion.

2. SCL is a publically traded company, the stock of which is listed on HKEx. SCL completed its initial public offering on November 30, 2009. *Id.* at p. 1.

3. SCL subsidiaries own and operate (excluding the Four Seasons Hotel) the Sands Macao, The Venetian Macao-Resort-Hotel (“The Venetian Macao”), and the integrated resort which includes (i) the Four Seasons Hotel; (ii) the Plaza Casino; (iii) the Paiza mansions, the Shoppes at Four Seasons, restaurants and spa; and (iv) a luxury apartment-hotel tower (the “Plaza Macao”). *Id.* at 75. The gaming areas in the Sands Macao, The Venetian Macao, and the Plaza Macao are

1 operated by an SCL subsidiary, Venetian Macau Limited ("VML"), which was granted a
2 subconcession to operate casino games, as approved and authorized by the Macau government. *Id.*
3 at 75-93.

4 4. During the relevant time period, SCL's Board of Directors (the "Board") was
5 comprised of eight (8) directors, including three independent non-executive directors with no prior
6 relationship to SCL's majority shareholder; two executive (or management) directors; and three
7 non-executive (or outside) directors who also served on the board of directors of SCL's majority
8 shareholder, LVSC. *Id.* at pp. 227-232.

9 5. LVSC, a Nevada corporation, is SCL's majority shareholder by virtue of indirectly
10 owning approximately seventy percent (70%) of SCL's issued stock. *Id.* at pp. 211-216.

11 6. SCL was named as a defendant in a lawsuit brought by Jacobs.

12 7. Jacobs, who neither is nor ever was a Nevada resident, filed his complaint (the
13 "Complaint") in the Eighth Judicial District Court of Nevada, County of Clark, against SCL and
14 LVSC on October 20, 2010. A true and accurate copy of the Complaint filed by Jacobs is attached
15 hereto as **Appendix 1**.

16 8. The Complaint asserted only one cause of action against SCL, for breach of contract.
17 The Complaint alleged only one contract between Jacobs and SCL, namely, i.e., the Stock Option
18 Grant Letter, that provided for a grant to Jacobs of an option to purchase 2.5 million shares of SCL
19 stock, which grant was the subject of a May 11, 2010 "Grant of Share Options" announcement by
20 the SCL board of directors pursuant to applicable rules of the HKEx. *See* Complaint at ¶ 43. True
21 and correct copies of the Stock Option Grant Letter and the Grant of Share Options are attached to
22 the Motion as Exhibits E and F, respectively.

23 9. The Stock Option Grant Letter states that it is governed by and construed in
24 accordance with Hong Kong law. *See* Exhibit E to the Motion.

25 10. The Stock Option Grant Letter expressly conditioned Jacobs' ability to exercise the
26 option to purchase SCL stock on Jacobs' continued employment for SCL, and automatically
27 terminated any such rights if Jacobs' employment for SCL was terminated before any portion of the
28 option vested. *Id.*

11. Jacobs was terminated from his position as President and CEO of SCL on or about July 23, 2010, well before January 1, 2011, the date on which the first tranche of the option provided for by the Stock Option Grant Letter was eligible to vest. *See* Complaint at ¶¶ 30, 43; *see also* Exhibit E to the Motion.

12. SCL responded to Jacobs' Complaint on December 22, 2010 by filing the Motion¹. A true and accurate copy of the Motion, along with the supporting exhibits and affidavits, is attached hereto as **Appendix 2**.

13. In its Motion, SCL argued that the District Court lacked personal jurisdiction over SCL due to its lack of contacts with the State of Nevada. *Id.* at pp 7-12.

14. In particular, SCL argued that because Jacobs in his claim for breach of contract did not (and could not truthfully) allege that SCL had performed any actions in Nevada, or affected Nevada in any way, the District Court had no basis to assert specific personal jurisdiction over SCL. *Id.* at pp 9-11.

15. Additionally, SCL argued that because Jacobs could not demonstrate that SCL had "substantial or continuous and systematic" contacts with Nevada, Jacobs therefore could not make the required *prima facie* showing that general personal jurisdiction exists over SCL. *Id.* at 11-12.

16. In particular, SCL argued that Jacobs could not make a *prima facie* showing that SCL had sufficient "substantial or continuous and systematic" contacts with Nevada, as SCL is party to a reciprocal Non-Competition Deed (the "Deed") with LVSC which limits SCL's business activities to specific territories in Asia, is further required by The Rules Governing the Listing of Securities of the HKEx (the "HKEx Rules") to conduct its business in Macau independently and at arm's-length with LVSC, and also maintains a separate and independent Board, executive management team, and financial operations. *Id.*; *see also* Global Offering Document at pp. 213-216.

17. Thus, because SCL demonstrated that it was not the alter ego of LVSC, the District Court could not consider LVSC's actions incident to parental control or supervision over SCL to determine general jurisdiction over SCL. *Id.*

¹ LVSC also filed a Motion to Dismiss for Plaintiff's Failure to Join a Necessary Party on December 22, 2010.

1 18. Jacobs filed his opposition to the Motion (the "Opposition") on February 9, 2011. A
2 true and accurate copy of the Opposition, along with the supporting exhibits and affidavits, is
3 attached hereto as **Appendix 3**.

4 19. In his Opposition (and at the hearing on the Motion), Jacobs did not address SCL's
5 arguments regarding specific personal jurisdiction, effectively conceding that the District Court had
6 no basis to apply specific jurisdiction principles to SCL. *See gen.* Opposition.

7 20. Jacobs also did not dispute the facts set forth in SCL's Motion regarding its separate
8 business operations, and did not otherwise argue that SCL was the alter ego of LVSC. *Id.*

9 21. Instead, Jacobs argued that actions taken in Nevada by the non-executive Chairman
10 of SCL's Board, Adelson, and by a special advisor to SCL's Board, Leven, constituted "continuous
11 and systematic contacts [by SCL] in the forum." *Id.* at p. 2, lines 15-16².

12 22. Adelson also served as Chairman of the Board, Chief Executive Officer and
13 Treasurer of LVSC, and Leven also served as President and Chief Operating Officer and director of
14 LVSC. Each held his respective position as a member of, and special advisor to, SCL's Board by
15 virtue of LVSC's status as SCL's majority shareholder. *See* Global Offering Document, pp. 227-
16 232.

17 23. SCL filed its reply brief in support of the Motion (the "Reply") on February 28,
18 2011. A true and accurate copy of the Reply, along with the supporting exhibits and affidavits, is
19 attached hereto as **Appendix 4**.

20 24. SCL's Reply demonstrated that the majority of the allegations on which Jacobs relied
21 in an attempt to make the required *prima facie* showing to justify the exercise of general jurisdiction
22 over SCL were based on some aspect of SCL's subsidiary relationship with LVSC, and that the
23 actions allegedly taken in Nevada by Adelson and Leven were directed to SCL in Macau, and were
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27 ² Jacobs also argued that because he served the summons and complaint upon SCL's acting CEO in Nevada, the
28 "transient jurisdiction" principles set forth in *Burnham v. Superior Court*, 495 U.S. 604 (1990) allowed the District
Court to properly exercise personal jurisdiction over SCL without a "minimum contacts" analysis. *See* Opposition at pp.
10-13. The argument in SCL's Reply debunked this proposition, and Jacobs did not raise this argument at the March 15,
2011 hearing on the Motion, and the District Court did not address this argument, implicitly rejecting it.

1 not actions by SCL directed at Nevada (and thus not invoking the benefits and protections of the
2 state with the resulting expectation of being haled into court in Nevada). *See gen.* Reply.

3 25. In addition, in support of his general jurisdiction argument, Jacobs alleged that SCL
4 participated in an intra-corporate bookkeeping system that made casino player funds available in
5 either Macau or Las Vegas. In fact, SCL showed by way of affidavits, that SCL was not a party to
6 the process that Jacobs erroneously suggested entailed the actual transfer of funds, and that the
7 entity in Macau that was a party to the (bookkeeping) process was VML, the casino operator that
8 holds the Macau gaming subconcession. As SCL demonstrated without contradiction, the funds
9 were not funds of SCL, the funds were not even funds of VML, but were funds of customers of
10 VML, and the funds were not transferred. Instead, customer funds that remained in Macau were
11 made available to VML customers in Las Vegas by VML making an accounting entry of a payable
12 to Venetian Casino Resort, LLC ("VCR") and VCR making an accounting entry of a receivable
13 from VML. Because SCL was not a party to any of these activities, Jacobs' contention had nothing
14 to do with an assertion of jurisdiction over SCL. *Id.* at pp. 5-8; *see also* Affidavits of Jennifer Ono,
15 Patricia L. Green, and Jason M. Anderson (the "IAA Affidavits") attached to the Reply.

16 26. The hearing for SCL's Motion was held on March 15, 2011, at which counsel for
17 Jacobs and SCL presented argument regarding general jurisdiction and Jacobs' counsel proffered
18 demonstrative aids for the District Court's review (the "Hearing Exhibits"). *See* true and accurate
19 copies of Jacobs' Hearing Exhibits, attached hereto as **Appendix 5**.

20 27. After the arguments had been presented, Judge Gonzalez denied the Motion and
21 stated that "[h]ere there are pervasive contacts with the state of Nevada by activities done in Nevada
22 by board members of Sands China," thereby ruling that the District Court did have personal
23 jurisdiction over SCL. *See* a true and accurate copy of the transcript of the March 15, 2011 hearing
24 (the "Transcript"), p. 62, lines 3-5, attached hereto as **Appendix 6**.

25 28. A true and accurate copy of the Order denying the Motion is attached hereto as
26 **Appendix 7**.

27 29. However, as demonstrated herein, the respondent District Court did not have and
28 does not have jurisdiction over SCL, because the actions of Adelson and Leven, who on occasion

1 discharged their duties respectively as a member of and special advisor to SCL's Board from their
2 LVSC offices in Nevada, cannot be considered in the jurisdictional analysis because there was no
3 evidence of an "alter ego" relationship between LVSC and SCL or, alternatively, a degree and type
4 of control exercised by LVSC over SCL in excess of what would be expected from a 70% owner.
5 (Moreover, even if the actions of Adelson and Leven properly were considered in the jurisdictional
6 analysis, they were actions directed from Nevada to Macau, not actions by or for SCL directed to
7 Nevada, and therefore cannot serve as a basis for general jurisdiction).

8 30. The respondent District Court and Judge Gonzalez will proceed to try the action now
9 pending in the court below and render judgment unless prohibited and restrained by a writ of
10 mandamus and/or prohibition issued by this Court. SCL has no plain, speedy or adequate remedy
11 by appeal or otherwise for the reason that no appealable order has been entered by the District
12 Court.

13 V.

14 **POINTS AND AUTHORITIES IN SUPPORT OF PETITION**
15 **FOR WRITS OF MANDAMUS AND PROHIBITION**

16 A. **INTRODUCTION**

17 In ruling on SCL's Motion, the District Court was required to determine if its exercise of
18 personal jurisdiction satisfied the due process requirements of the Nevada Constitution and the U.S.
19 Constitution.

20 Satisfaction of the due process requirements associated with personal jurisdiction occurs
21 when the non-resident defendant has "certain minimum contacts with the forum such that the
22 maintenance of the suit does not offend traditional notions of fair play and substantial justice." *See*
23 *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *see also Helicopteros Nacionales de*
24 *Columbia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). This is a two-part test which requires evaluating
25 whether the requisite minimum contacts are present and whether the exercise of jurisdiction is fair.
26 *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985). Personal jurisdiction may be either
27 "general" or "specific," and the threshold for satisfying the requirements of general jurisdiction is
28 substantially higher than the requirements for specific jurisdiction. *See James Wm. Moore, Moore's*

1 *Federal Practice and Procedure* § 1067.5, at 517 (3d ed. 2009) (stating that the requirements to
2 establish general jurisdiction are higher and foreign defendant's contacts must be sufficiently
3 continuous and systematic to justify asserting jurisdiction over the defendant based on activities that
4 did not occur in the forum state).

5 Due process is a central principle in American constitutional jurisprudence, and establishes a
6 framework for the protection and enforcement of private rights in a manner that does not violate
7 traditional notions of fair play and substantial justice.

8 If adopted by Nevada's district courts, Judge Gonzalez's ruling that SCL is subject to
9 general jurisdiction in Nevada will allow litigants such as foreign nationals or traveling
10 businesspersons who have never set foot in the United States, let alone Nevada, to sue foreign
11 corporations in Nevada's state courts for any matter whatsoever, including for example a personal
12 injury sustained in or a dispute over a bill from a hotel operated overseas by a foreign corporation,
13 provided only that the foreign corporation is a subsidiary of a controlling parent corporation
14 domiciled in Nevada. Thus, the issues presented in this case are of critical importance to Nevada's
15 judiciary and Nevada's businesses, including the increasing number of Nevada companies, like
16 LVSC, with foreign subsidiaries.

17 In the present case, SCL demonstrated that it lacks any contacts with Nevada, apart from its
18 ongoing relationship with its majority shareholder, LVSC. Jacobs' jurisdictional allegations were
19 nothing more than actions directed at SCL in Macau taken in Las Vegas by a non-executive director
20 of and a special advisor to the SCL Board, both of whom are LVSC officers and directors who hold
21 their SCL Board and advisory positions due to LVSC's status as majority shareholder of SCL.

22 The District Court was compelled by law to dismiss SCL for lack jurisdiction, and by
23 continuing to improperly exercise personal jurisdiction over SCL it has violated the applicable due
24 process standards and exceeded the scope of its authority. For the reasons set forth below, SCL
25 therefore submits that extraordinary relief in the form of a writ of mandamus and/or prohibition
26 should be granted in this case.

1 **B. PETITIONER IS ENTITLED TO A WRIT DIRECTING THE DISTRICT COURT**
2 **TO DISMISS THE PENDING ACTION FOR LACK OF PERSONAL JURISDICTION**

3 **a. PROPRIETY OF EXTRAORDINARY RELIEF**

4 Either a writ of mandamus or prohibition may be used to challenge a denial of a motion to
5 dismiss for lack of personal jurisdiction. *See* NRS 34.160 and 34.320. SCL acknowledges that this
6 Court will not exercise its discretion to consider writ petitions that challenge district court orders
7 denying motions to dismiss except in certain circumstances, including where (i) an important issue
8 of law requires clarification, (ii) considerations of sound judicial economy and administration
9 militated in favor of granting such petitions, and (iii) there are no disputed factual issues and,
10 pursuant to clear authority under a statute or rule, the district court is obligated to dismiss an action.
11 *See Smith v. Eighth Judicial Dist. Court*, 113 Nev. 1343, 1346 (1997). The interests of judicial
12 economy, which inspired the *State ex rel. Department of Transportation v. Thompson* rule, will
13 remain the primary standard by which this Court exercises its discretion. *See* 99 Nev. 358 (1983).

14 In this case, each of these considerations (and others) weigh heavily and uniformly in favor
15 of granting the writs sought.

16 i. SCL is Entitled to a Writ of Mandamus

17 A Writ of Mandamus is proper when there is no plain, speedy, or adequate remedy in the
18 ordinary course of law or when this Court must correct an arbitrary or capricious abuse of
19 discretion. *See Barnes v. Eighth Judicial Dist. Court*, 103 Nev. 679 (1987). This Court has broad
20 discretion to decide whether to consider a petition for a writ of mandamus, and may entertain such
21 petitions “when judicial economy and sound judicial administration militate in favor of writ
22 review.” *See Scarbo v. Eighth Judicial Dist. Court*, 125 Nev. Adv. Rep. 12, 14 (2009).
23 Additionally, this Court may exercise its discretion and entertain a writ petition when an important
24 issue of law requires clarification, or to compel the lower court or tribunal to take an act that the law
25 requires. *Id.*; *see also We the People Nevada ex rel. Angle v. Miller*, 124 Nev. Adv. Rep. 75, 79
26 (2008).

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1 would be at risk to be inundated with lawsuits brought by every foreign litigant who has a claim
2 against a foreign entity that is a corporate affiliate of a Nevada company. The costs attendant to
3 processing such cases would tax an already overburdened court system and require Nevada's
4 judicial resources to be directed to resolving disputes between parties who and which are neither
5 domiciled nor do business in Nevada. The costs to Nevada's businesses that do business outside of
6 Nevada, i.e. subjecting their foreign affiliates to suit here, are likely to adversely impact the number
7 of companies that incorporate or maintain their principal places of business in Nevada.

8 SCL understands that it is entirely within this Court's discretion to consider this petition, and
9 that discretion is exercised sparingly. However, in this case, the issues are such that failure to act
10 may have deleterious effects on the State's judicial system (and economy) as a whole. Therefore,
11 judicial economy and sound judicial administration strongly support consideration of SCL's writ
12 petition.

13 3. *An important issue of law regarding personal jurisdiction requires*
14 *clarification*

15 This Court has had only one occasion to address directly the issue of whether (and, if so,
16 when) a parent company's exercise of control over a subsidiary rises to such a level that the
17 domestic entity's contacts with Nevada should be considered in determining whether general
18 personal jurisdiction exists over the foreign affiliate. *See MGM Grand*, 107 Nev. 65. Further, in the
19 *MGM Grand* case, this Court limited its discussion to two sentences, as follows:

20 In addition, our review of the record convinces us that Disney exercises no more
21 control over its subsidiaries than is appropriate for the sole shareholder of a corporation.
22 Thus, Disney's subsidiaries' contacts may not be counted for jurisdictional purposes.

23 *Id.* at 69 (citing *Hargrave*, 710 F.2d at 1159-61).

24 This Court, in *MGM Grand*, did not expressly address or analyze the question of whether a
25 showing of alter ego is required before a corporate affiliate's contacts with Nevada would be
26 "considered" for jurisdictional purposes. Although this Court did cite the 1993 *Hargrave* case in
27 support of its holding, the court in *Hargrave* discussed "applying a less stringent standard for alter
28 ego jurisdiction than for alter ego liability," but acknowledged difficulties "in articulating the type

1 and degree of control necessary to ascribe to a parent the activities of its subsidiary.” *Hargrave*, 710
2 F.2d at 1159.

3 Other jurisdictions have addressed the issue directly and definitively and have held that, only
4 when evidence is presented to show that the foreign entity can be considered an “alter ego” of the
5 domestic entity pursuant to the forum state’s law, can the domestic entity’s contacts be considered
6 in the jurisdictional analysis. *See Doe v. Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001) (“[I]f the
7 parent and subsidiary are not really separate entities, or one acts as the agent of the other, the local
8 [entity’s] contacts with the forum may be imputed to the foreign [entity]”); *see also Newman v.*
9 *Comprehensive Care Corp.*, 794 F.Supp. 1513 (D. Or. 1992); *AT&T v. Lambert*, 94 F.3d 586 (9th
10 Cir. 1996).

11 The rationale for requiring a showing of alter ego is found in perhaps the most fundamental
12 tenet of corporate law, namely, that a corporation (or other legal entity) has a legal identity separate
13 from its shareholders, officers, directors, members and affiliated entities. *See Yates v. Hendon*, 541
14 U.S. 1, 63 (2004) (recognizing that a corporation’s separate legal status must be respected and only
15 disregarded when evidence of a “unity of interest” is presented); *see also United States v. Bestfoods*,
16 524 U.S. 51, 72 (1998) (identifying “general principal of corporate law ‘deeply engrained in our
17 economic and legal systems’” that the acts of a subsidiary may not be imputed to the parent without
18 clear evidence of an alter ego relationship); 1 W. Fletcher, *Encyclopedia on the Law of Private*
19 *Corporations*, §§ 25, 28 (1990).

20 For substantially the same reasons, the law in Nevada should be clarified to provide that the
21 mere presence of directors in the forum state is insufficient to establish general jurisdiction over a
22 foreign corporation.

23 Nevada’s companies, including in particular its gaming companies, are increasingly global in
24 their scope and often operate through subsidiaries or other related entities in multiple locations
25 throughout the world. The issue of whether, due to a relationship with a corporation or other
26 affiliate in Nevada, a litigant can bring a suit in Nevada against a foreign entity (on a theory of
27 general jurisdiction) based on the presence of a Nevada affiliate, is vitally important to the
28 companies based in Nevada and to their foreign subsidiaries. In particular, the legal test to be

1 applied in Nevada to determine whether a domestic affiliate's contacts with Nevada will be
2 considered in assessing whether general jurisdiction exists over foreign affiliates is less than clear.
3 SCL respectfully submits that this Court should clarify this important issue of law, and that this
4 petition therefore should be granted.

5 4. *Alternatively, the District Court Was Compelled By Law To Dismiss*
6 *SCL for Lack of Personal Jurisdiction*

7 A writ of mandamus is proper to compel a party to exercise its judgment and render a
8 decision where a failure of justice would arise if such a decision is not properly made. *See State ex*
9 *rel. McGuire v. Watterman*, 5 Nev. 323, 326 (1869). In this case, the District Court was required as
10 a matter of law to grant SCL's Motion and dismiss the claim against it based on a lack of personal
11 jurisdiction. Jacobs did not make a *prima facie* showing of personal jurisdiction and did not present
12 any evidence that SCL has the requisite "minimum contacts" needed to satisfy the due process
13 requirements associated with the exercise of personal jurisdiction, no matter whether an alter ego or
14 lesser standard is employed.

15 However, the District Court failed to follow *MGM Grand*, because Jacobs' allegations
16 regarding actions allegedly taken in Nevada by Adelson and Leven were consistent with LVSC's
17 status as seventy percent shareholder of SCL, and should not have been considered in the
18 jurisdictional analysis. Likewise, the mere presence of directors in the forum state is insufficient to
19 establish general jurisdiction over a foreign corporation. Finally, the District Court failed to make
20 the required determination of whether the exercise of personal jurisdiction over SCL (whether based
21 solely on the activities of Adelson and Leven or some other basis) is reasonable, which it clearly is
22 not. Therefore, the District Court should be compelled to act and dismiss SCL.

23 ii. SCL is Entitled to a Writ of Prohibition

24 A writ of prohibition is the counterpart to a writ of mandamus, and functions to arrest the
25 proceedings of a tribunal when such proceedings are without or in excess of the jurisdiction of such
26 tribunal. *See NRS 34.320*. The object of a writ of prohibition is to restrain inferior courts from
27 acting without authority of law in cases where wrong, damage and injustice are likely to follow from
28 such action. *See Attorney General v. Steffen*, 112 Nev. 369, 372 (1996). The fact that an appeal is

1 available from final judgment does not preclude the issuance of a writ of prohibition, "particularly in
2 circumstances where, as here, the trial court is alleged to have exceeded its jurisdiction and the
3 challenged order is not appealable.". *See G. & M. Properties v. Second Judicial Dist. Court*, 95
4 Nev. 301, 304 (1979).

5 Generally, because a writ of prohibition seeks an extraordinary remedy, the Court will
6 exercise its discretion to consider such a petition only when (1) there is not a plain, speedy and
7 adequate remedy in the ordinary course of law; (2) there are urgent circumstances; or (3) there are
8 important legal issues that need clarification in order to promote judicial economy and
9 administration. *See Cheung v. Eighth Judicial Dist. Court*, 121 Nev. 867 (2005); *see also Silver*
10 *Peak Mines v. Second Judicial Dist. Court*, 33 Nev. 97, 99 (1910) (finding that a writ of prohibition
11 ought to issue freely whenever it is necessary for the protection of rights of a litigant and he has no
12 other plain, speedy and adequate remedy).

13 1. *SCL has established that it has no plain, speedy and adequate remedy*

14 The arguments in Section V(B)(a)(i)(1) apply to this particular factor as well. As it relates
15 specifically to writs of prohibition, this Court frequently has held that a district court's failure to
16 quash service or dismiss for lack of personal jurisdiction presents a circumstance where there is no
17 plain, speedy or adequate remedy available in the ordinary course of law due to the absence of the
18 availability of an immediate appeal. *See Budget Rent-A-Car v. Eighth Judicial Dist. Court*, 108
19 Nev. 483, 484 (1992) (finding that district court's erroneous refusal to quash service of process for
20 lack of personal jurisdiction presented a circumstance where petitioner had "no plain, speedy or
21 adequate remedy..."); *see also Gojack v. Second Judicial Dist. Court*, 95 Nev. 443 (1979);
22 *Wolzinger v. Eighth Judicial Dist. Court*, 105 Nev. 160 (1989).

23 Therefore, because SCL cannot immediately appeal the Order entered on April 1, 2011, it
24 has no plain, speedy or adequate remedy in the ordinary course of law.

25 2. *This petition presents urgent circumstances for SCL if not granted*

26 As stated above, the issue presented in this petition is significant, and this Court's decision
27 and clarification in further defining the jurisdictional guidelines related to foreign subsidiaries of
28 Nevada entities would serve both the public's interest and the interest of the judiciary.

1 SCL's petition to the Court for its clarification is particularly urgent, considering the
2 consequences that will follow if the petition is not granted. For the purposes of a writ petition,
3 urgency may be shown if a litigant has already requested relief from the lower tribunal, such as a
4 motion to dismiss for lack of personal jurisdiction, and such claimed injustice will not be cured in
5 the ordinary course of the judicial proceedings. *See Silver Peak Mines*, 33 Nev. at 99.

6 Here, SCL will be forced to continue to defend the claims made by Jacobs in a forum in
7 which it is not subject to personal jurisdiction, pursuant to procedural and substantive rules that are
8 different from those in Hong Kong. Nevertheless, SCL may otherwise gain relief only at the
9 conclusion of the entire discovery, pretrial and trial process. SCL should not be forced to wait until
10 after a judgment has been rendered to raise this issue on appeal, only to find out then that the
11 District Court did not have jurisdiction.

12 The parties to the pending litigation have recently filed a Joint Status Report, which followed
13 the early case conference held before Judge Gonzalez on April 22, 2011. *See* true and correct copy
14 of the Joint Status Report attached hereto as **Appendix 8**. According to the Joint Status Report, the
15 parties "anticipate that LVSC's and SCL's respective disclosures will consist of a high volume of
16 documents which include Electronically Stored Information (ESI)." *Id.* It further requires the
17 parties to search for and produce such documents on a rolling basis, with the production to be
18 completed on July 1, 2011. *Id.* The discovery process in this case has begun, and is expected to be
19 extremely time consuming over the coming months. SCL will be forced to expend substantial
20 resources to participate if this Court does not grant the requested relief and order the District Court
21 to dismiss SCL from this matter.

22 Further, if Jacobs is allowed to maintain his claim against SCL in the District Court, the
23 parties will likely have to identify and compensate experts in Hong Kong law, which controls the
24 Stock Option Grant Letter on which Jacobs bases his breach of contract claim against SCL. Judge
25 Gonzalez specifically anticipated this need at the March 15, 2011 hearing, and stated as follows: "At
26 some point I assume that we will have experts in Hong Kong law provide information so that an
27 appropriate decision can be made on the stock option agreement." *See* Transcript at p. 62, lines 8-
28

11. This expense also would be unnecessary if the District Court had properly dismissed SCL and required Jacobs to litigate his claim in Hong Kong.

For the foregoing reasons, SCL respectfully submits that it has demonstrated that its petition is warranted by urgent circumstances, and should be granted by this Court.

3. *An important issues of law regarding personal jurisdiction requires clarification*

As set forth above in Section V(B)(a)(i)(3), the law in Nevada requires clarification, particularly regarding the determination of personal jurisdiction over foreign entities and the effect of in-forum activities by a parent company or other related person or entity. This Court has had just one opportunity to address this issue. However, it did not determine whether it would follow the majority rule which requires a showing of “alter ego” before a parent company’s contacts with Nevada could be considered when determining personal jurisdiction over a foreign subsidiary, or if a lesser standard utilized in other jurisdictions should be adopted by Nevada’s courts. Therefore, because clarification is needed in this important area of law, this Court should grant this petition and issue the requested relief.

b. RELEVANT PRINCIPLES OF GENERAL JURISDICTION

i. Factors to Determine General Jurisdiction over Foreign Entities

To properly exercise personal jurisdiction over a non-resident defendant, the District Court must determine both that NRS 14.065 is satisfied and that due process is not offended by the exercise of jurisdiction. *See Firouzabadi v. First Judicial Dist. Ct.*, 110 Nev. 1348, 1352 (1994)(citing *Trump v. Dist. Court*, 109 Nev. 687, 698 (1993)). To make this determination, in must conclude that Jacobs had made a prima facie showing that either general or specific³ jurisdiction exists. *Id.*

³ As observed above, Jacobs did not respond to or otherwise address SCL’s argument regarding the lack of specific personal jurisdiction in his Opposition or during the March 15, 2011 hearing, effectively waiving any argument that the District Court has specific personal jurisdiction in this case. This is consistent with the nature of Jacobs’ claim against SCL, which is for breach of contract and based on rights allegedly conferred by the Stock Option Grant Letter, executed in Macau for the option to purchase SCL stock listed on the HKEx.

1 General personal jurisdiction exists “where the defendant’s activities in the forum state are
2 so substantial or continuous and systematic that it may be deemed present in the forum and hence
3 subject to suit over claims unrelated to its activities there.” *See Firouzabadi*, 110 Nev. at 1352; *see*
4 *also Gordon et al. v. Greenview Hosp., Inc.*, 300 S.W.3d 635, 648 (Tenn. 2009) (“In order to
5 warrant the exercise of general jurisdiction over a non-resident defendant, ‘the defendant must be
6 engaged in longstanding business in the forum state, such as marketing or shipping products, or
7 performing services...” (internal citation omitted).

8 Thus, general jurisdiction will only lie where the level of contact between the defendant and
9 the forum state is high. *See Trump*, 109 Nev. at 701 (declining to find general jurisdiction over a
10 defendant who did business with a Nevada resident, but owned no Nevada property, never entered
11 the state, exhibited no persistent course of conduct with Nevada, and derived no revenues from
12 goods or services provided in Nevada); *see also Helicopteros Nacionales de Columbia*, 466 U.S. at
13 416 (finding that Texas did not have general jurisdiction over a foreign corporation which sent
14 officers to Texas to negotiate contracts, directed assorted personnel to travel to Texas to train,
15 transferred funds from a Texas bank, and purchased equipment from a Texas company); *Cabbage v.*
16 *Merchant*, 744 F.2d 665, 667-68 (9th Cir. 1984) (Doctors had insufficient contacts with California
17 despite a significant number of California residents as patients, use of state health insurance and
18 regulatory systems, and California-accessible telephone listings); *Gates Learjet Corp. v. Jensen*, 743
19 F.2d 1325, 1330-31 (9th Cir. 1984) (declining to assert general jurisdiction in Arizona over company
20 which sent representatives to the state on numerous occasions, purchased materials in the state,
21 solicited an agreement in the state that included an Arizona choice of law and forum provisions and
22 engaged in continuous communications with Arizona residents).

23 Additionally, insofar as the District Court’s basis for denying SCL’s Motion was based on
24 the activities of Adelson and Leven without regard to the degree of control exercised by LVSC over
25 SCL, the mere presence of directors in the forum state is insufficient to establish general jurisdiction
26 over a foreign corporation. *See Gordon*, 300 S.W.3d at 649 (“[Appellant’s] lawyer has pointed to
27 no case holding that corporate officers or directors maintaining an office or a residence is sufficient
28 to establish general jurisdiction over the corporation. And with good reason. A corporation is a

1 distinct legal entity that exists separate from its shareholders, officers and directors.”); *see also*
2 *Transure, Inc. v. Marsh and McLennan, Inc.*, 766 F.2d 1297, 1299 (9th Cir. 1985) (in denying to
3 exercise general jurisdiction over a parent corporation due, in part, to allegations that shared
4 directors for a subsidiary reside in the forum state, finding that “[i]t is entirely appropriate for
5 directors of a parent company to serve as directors of its subsidiary, and that fact alone may not
6 serve to expose the parent corporation to liability for its subsidiary’s acts.”). As explained further
7 below, this view is consistent with the basic tenet of corporate law that recognizes a legal separation
8 between affiliated entities. If such a rule were not in place, and a court could exercise general
9 jurisdiction over a corporation in any forum where a director may reside or maintain an office, then
10 no corporation would risk appointing an outside director who may reside anywhere but the forum in
11 which the company is actually domiciled or does business.

12 Finally, this Court has held that “[w]hen a challenge to personal jurisdiction is made, the
13 plaintiff has the burden of introducing competent evidence of essential facts which establish a prima
14 facie showing that personal jurisdiction exists.” *See Abbott-Interfast v. Eighth Judicial Dist. Court*,
15 107 Nev. 871, 873 (1991). The required showing of “essential facts” is not satisfied by
16 unsubstantiated or incorrect factual conclusions or through an affidavit that fails to properly connect
17 a defendant to the forum or particular transaction. *See McDermond v. Siemens*, 99 Nev. 226, 229
18 (1980).

19 Thus, Jacobs bore the burden of establishing that this Court has personal jurisdiction over
20 SCL, a Cayman Islands company with its principal place of business in Macau.

21 Lastly, even if Jacobs were able to establish the essential facts to connect SCL to Nevada,
22 the District Court’s exercise of jurisdiction must be found to be subjectively reasonable and comport
23 with traditional notions of fair play and substantial justice. *See Doe*, 248 F.3d at 922.

24 ii. Absent a Showing of Alter Ego, the Majority of Jurisdictions Will Not Impute
25 the In-Forum Contacts of a Corporation to its Foreign Affiliate For Purposes
26 of Establishing Personal Jurisdiction

27 As observed above, this Court has had only one opportunity to address the specific issue of
28 intra-corporate activities as a basis for personal jurisdiction. *See MGM Grand, Inc.*, 107 Nev. at 68-

1 69. In the *MGM Grand* case, this Court upheld the lower court's decision to quash service of
2 process on a non-resident corporation, the Walt Disney Company ("Disney"). *Id.* This Court began
3 by finding that Disney's own contacts with Nevada, which "amount[ed] to no more than advertising
4 and promoting the company's California theme parks, are neither continuous nor systematic," and
5 were therefore insufficient to convey personal jurisdiction. *Id.* The Court added the following:

6 In addition, our review of the record convinces us that Disney exercises no more
7 control over its subsidiaries than was appropriate for the sole shareholder of a
8 corporation. Thus Disney's subsidiary's contacts may not be counted for
jurisdictional purposes.

9 *Id.* (citing *Hargrave*, 710 F.2d at 1159-61 (finding that mere existence of parent/subsidiary
10 relationship is insufficient to confer jurisdiction over foreign entity)).

11 Although this Court in *MGM Grand* declined to apply Disney's subsidiaries' forum contacts
12 to its jurisdictional analysis, it did not specify the standard that should be used to determine whether
13 (and, if so, when) a parent company's exercise of control over a subsidiary rises to such a level that
14 the domestic entity's contacts with Nevada should be considered in determining whether general
15 personal jurisdiction exists over the foreign affiliate.

16 Most jurisdictions that have addressed this issue directly, including the Ninth Circuit Court
17 of Appeals, have held that contacts between a parent and subsidiary (e.g., presence at or location of
18 board meetings, shared directors/executives, involvement in personnel decisions, shared financials
19 and investments, co-marketing efforts, etc.) cannot form the basis for personal jurisdiction over a
20 non-resident corporate defendant unless those contacts also show that there is such a unity of
21 interest and ownership that separate personalities of the parent and subsidiary no longer exist, and
22 that a failure to disregard their separate entities would result in fraud and injustice. *See Doe*, 248
23 F.3d at 926 ("Nonetheless; 'if the parent and subsidiary are not really separate entities, or one acts as
24 an agent of the other, the local subsidiary's contacts with the forum may be imputed to the foreign
25 parent corporation.' An alter ego or agency relationship is typified by parental controls of the
26 subsidiary's internal affairs or daily operations."); *see also Newman*, 794 F.Supp. at 1519 ("[t]he
27 activities of the parent corporation are irrelevant absent some indication that the formal separation
28 between parent and subsidiary is not scrupulously maintained."); *Gordon*, 300 S.W.3d at 652

1 ("[T]he actions of a parent corporation may be attributable to a subsidiary corporation...when the
2 two corporations are essentially the alter egos of each other."). In this case, neither Jacobs nor the
3 District Court even addressed this established line of case law.

4 For this Court's consideration, both the *AT&T* and *Gordon* cases are particularly relevant
5 examples of the application of this principle to a similar fact pattern.

6 In *AT&T*, the plaintiff attempted to establish personal jurisdiction over a Belgian parent
7 company due to its involvement with a U.S. subsidiary, which it contended demonstrated the
8 "[parent's] total control over [the subsidiary]" was sufficient to establish an alter ego relationship
9 and jurisdiction over the foreign entity. *AT&T*, 94 F.3d at 598. In particular, the plaintiff presented
10 evidence that the parent (1) held a majority of the seats on the subsidiary's board; (2) approved
11 proposals to terminate the employment contracts of the subsidiary's original owners; (3) directed
12 financial and business decisions for the subsidiary, including the substantial distribution of cash for
13 capital investments and development; (4) appointed one of its own board members to serve as the
14 subsidiary's chairman; and (5) eventually held all of the subsidiary's working capital. *Id.* at 590.

15 With this evidence, the plaintiff attempted to argue that the parent's "domination and control
16 over [the subsidiary], constituted contacts by which [the parent] purposefully availed itself of the
17 United States' benefits and protection." *Id.* The court disagreed, saying that in order for the parent's
18 relationship with the subsidiary to confer personal jurisdiction, there must be a *prima facie* showing
19 that (1) there is such a unity of interest and ownership that separate personalities of the parent and
20 subsidiary no longer exist, and (2) failure to disregard their separate entities would result in fraud
21 and injustice. *Id.* at 591. Further, the court found that the "domination," as alleged by the plaintiff,
22 reflected nothing more than a normal parent/subsidiary relationship, and that plaintiff had failed to
23 establish the essential facts required to convey general jurisdiction. *Id.*

24 In *Gordon*, the appellant argued that exercise of general jurisdiction over a foreign
25 subsidiary was proper because: (1) the subsidiary's directors (who also served as directors of the in-
26 forum parent company) were domiciled in the forum state and worked out of offices in the forum
27 state, (2) the subsidiary listed its principal place of business in the forum state in legal filings, and
28 (3) the subsidiary was wholly owned by the in-forum parent company. *Gordon*, 300 S.W.3d at 650.

1 The court affirmed the trial court's dismissal of the respondent for lack of personal jurisdiction,
2 finding that "[s]o long as the parent and subsidiary corporations maintain their status as separate and
3 distinct entities, the presence of one corporation in the forum cannot be attributed to the other." *Id.*
4 at 651. The court further held that a parent company's involvement with the subsidiary's corporate
5 performance, finance/budget decisions, general policies and procedures, or complete ownership of
6 the subsidiary with the same officer and directors does not "demonstrate the kind of 'complete
7 control' which renders the subsidiary nothing more than an instrumentality...of the parent
8 corporation." *Id.* at 654. Thus, the court in *Gordon* required the appellant to demonstrate that the
9 two corporations are the alter egos of each other, and declined to disregard the presumption of
10 corporate separation unless evidence was submitted of the parent's domination (not merely
11 involvement) in the day-to-day operations of the subsidiary.

12 In addition to the case law cited in SCL's briefs, the cases Jacobs cited in his Opposition
13 actually supported SCL's argument that an alter ego determination is necessary to establish personal
14 jurisdiction over SCL based on its interaction with LVSC. *See Villagomez, et al. v. Rockwood*
15 *Specialties, Inc.*, 210 S.W.3d 720, 732 (Tx.Ct.App. 2006) (finding that the subsidiaries' contacts
16 with the forum state cannot be imputed to the corporate defendant, and stating that in order to
17 ascribe such contacts, plaintiff must prove the parent is the alter ego and controls the internal
18 business operations and affairs of subsidiary); *see also Strieffer et al. v. Cabol Enter., Ltd., et al.*, 231
19 N.Y.S.2d 750, 754 (1962) (noting that, as a matter of course, corporate entities may not be subjected
20 to jurisdiction due to the activities of affiliated entities, and distinguishing case at bar by finding that
21 the corporation was the alter ego of the in-forum entity and was "merely an instrumentality or agent
22 of [the in-forum entity] through which [it] engaged in business in the State of New York," and
23 "owed its active existence solely from funds received from [the in-forum entity] and without which
24 it could not have performed any function whatsoever.").

25 The rule that, absent evidence of an "alter ego" relationship, contacts between a parent and
26 subsidiary should not be considered in a personal jurisdiction analysis, has its basis in the most
27 fundamental rule of corporate law, namely, the presumption of legal separation between an entity
28 and its affiliates, stockholders, officers and directors. *See infra Yates*, 541 U.S. at 63 (a

1 corporation's separate legal status is presumed absent a showing of a "unity of interest."); *Bestfoods*,
2 524 U.S. at 72 (recognizing legal separation of a corporation and its affiliates as a "general principal
3 of corporate law"); *Doe*, 248 F.3d at 925 (noting "well established principal of corporate law" that a
4 corporation and its subsidiary, or subsidiary's agents, are presumed to be separate for liability and
5 jurisdictional purposes).

6 This rule of law comports with the fundamental notions of substantial justice and fair play as
7 required by due process, which should be applied in Nevada and should have been applied by the
8 District Court in this case.

9 iii. Other Jurisdictions Have Declined to Impute Contacts to a Foreign Subsidiary
10 Unless the In-Forum Parent Exercises A Degree of Control That is
11 Disproportionate to Its Investment

12 Although courts in most jurisdictions, particularly the Ninth Circuit, have applied a
13 traditional "alter ego" test to determine whether a corporation's in-forum activity can be imputed to
14 a foreign affiliate for the purposes of conferring jurisdiction, a minority of courts have utilized an
15 arguably less rigorous test that examines a parent's level of control in proportion to its investment
16 level in the foreign subsidiary. This distinction was recognized in *Hargrave*, 710 F.2d at 1159-61
17 (finding that jurisdiction may be conferred if the parent exercises domination and control "greater
18 than that normally associated with common ownership and directorship" and recognizing the
19 possible application of a "less stringent standard for alter ego jurisdiction than for alter ego
20 liability..."). However, the court in *Hargrave* did find that because the subject entities did maintain
21 formal corporate separation, and the policymaking authority exercised by the parent "was no more
22 than that appropriate for a sole shareholder of a corporation," the facts presented were insufficient to
23 consider the in-forum corporation's contacts to its foreign affiliate for jurisdictional purposes. *Id.*

24 Other courts that have dealt with the issue using the "appropriate level of control" test have
25 reached the same conclusion in reference to foreign subsidiaries and in-state parent companies. In
26 *Reul v. Sahara Hotel, Inc.*, the court initially recognized that sole ownership over a subsidiary or the
27 presence of common directors generally is insufficient to confer jurisdiction, but in that case
28 evidence was presented showing that there was "more than that amount of control of one

1 corporation over another which mere common ownership and directorship would indicate.” 372
2 F.Supp 995, 998 (S.D. Tx. 1974). The court in *Reul* did not undertake a specific “alter ego” analysis
3 or discuss the maintenance of corporate form, but did examine the parental involvement in the
4 subsidiaries’ business affairs and found that the subject parent corporation controlled substantially
5 all of the subsidiaries’ corporate and business activities from the forum state and that the
6 subsidiaries “constitute[d] completely integrated subsidiaries which exist for the convenience of the
7 parent corporation, its stockholders, officers, and directors.” *Id.* at 1002; *see also Perkins v.*
8 *Benguet*, 342 U.S. 437, 447-49 (1952) (finding general jurisdiction over forum entity where in-
9 forum agent held all board meetings, kept company records, maintained employees, opened two
10 bank accounts, and performed substantially all of the foreign company’s business functions within
11 the forum state).

12 As will be discussed below, whether this Court applies an “alter ego” analysis to the present
13 facts, or examines LVSC’s degree of control as SCL’s majority shareholder, the result is the same –
14 the District Court erred when it denied SCL’s Motion and the exercise of general personal
15 jurisdiction over SCL is improper and is at odds with the applicable due process requirements.

16 **c. SCL’S STATUS AS A LVSC SUBSIDIARY AND THE ACTIONS OF AN**
17 **OUTSIDE NON-EXECUTIVE DIRECTOR AND SPECIAL ADVISOR TO**
18 **THE SCL BOARD ARE INSUFFICIENT TO CONFER GENERAL**
19 **JURISDICTION**

20 **i. The District Court’s Ruling As Stated At The March 15, 2011 Hearing**

21 After counsel for Jacobs and SCL presented their oral argument at the March 15, 2011
22 hearing on the Motion, Judge Gonzalez issued the following ruling from the bench:

23 Here there are pervasive contacts with the State of Nevada by activities done in
24 Nevada by board members of Sands China. Therefore, while Hong Kong law
25 may indeed apply to certain issues that are discussed during the progress of this
26 case, that does not control the jurisdictional issues here. At some point in time I
27 assume that we will have experts in Hong Kong law provide information so that
28 an appropriate decision can be made on the stock option agreement. So [SCL’s
Motion] is denied, and [SCL’s] request to join in [LVSC’s Motion to Dismiss]
was denied when I denied [it].

See Transcript at p. 62, lines 3-12.

1 ii. SCL Is Not the Alter Ego of LVSC

2 To establish a *prima facie* case that there is a unity of interest between two entities, i.e., that
3 one entity is the alter ego of the other, a plaintiff must include allegations such as co-mingling
4 funds, misuse of corporate assets as stockholders' own, failure to observe corporate formalities, sole
5 ownership of all stock and assets, employment of same employees, and failure to maintain an arms'
6 length relationship. *See Lorenz v. Beltio, Ltd.*, 114 Nev. 795, 808 (1998) ; *see also North Arlington*
7 *Medical Bldg., Inc. v. Sanchez Const. Co.*, 86 Nev. 515, 522 (1970); *Mosa v. Wilson-Bates*
8 *Furniture Co.*, 94 Nev. 521, 524 (1978).

9 In its briefs, SCL established uncontroverted facts in reference to its relationship with LVSC
10 that definitively demonstrated that SCL and LVSC has diligently maintained separate corporate
11 forms and are not alter egos of one another, including the following:

12 (i): SCL is a public company, the stock of which is traded on the HKEx. *See gen.* Global
13 Offering Document.

14 (ii): SCL operates its own treasury department, financial controls, independent bank
15 accounts, tax registration and auditing/accounting systems; *Id.* at pp. 211-232.

16 (iii): SCL's Board, and its Board committees, conduct separate meetings and keep separate
17 minutes from the meetings and minutes of LVSC; *Id.* at pp. 211-232.

18 (iv): SCL's eight-member Board, at the time Jacobs served as an SCL executive, included
19 three independent non-executive directors with no prior relationships with LVSC, two executive
20 management directors who oversaw SCL's corporate functions exclusively from Macau, and three
21 outside non-executive directors who also served as directors for LVSC, specifically, Adelson,
22 Jeffrey Schwartz ("Schwartz") and Irwin Siegel ("Siegel"); *Id.*

23 (v): SCL is required by the HKEx Rules to demonstrate that it operates its business
24 independently of, and at arms' length from LVSC; *see* Affidavit of Anne Salt, attached to Reply;
25 *see also* true and accurate copy of the HKEx Rules, attached as Exhibit B to the Reply; and

26 (vi): SCL is party to the Deed with LVSC which effectively limits SCL's business activities
27 to specific territories in Asia and prohibits SCL from conducting business or directing its efforts to
28 Nevada. *See* Global Offering Document, pp. 213-216.

Jacobs neither disputed the foregoing facts, nor did he argue that SCL was the alter ego of LVSC. Absent a showing of an alter ego relationship, the District Court should not have considered LVSC's contacts with Nevada in determining jurisdiction over SCL, and with the evidence presented, was compelled to grant SCL's Motion and dismiss the case against SCL for lack of personal jurisdiction. Thus, under the prevailing law – which SCL submits should be the clearly articulated law of Nevada – SCL's Motion should have been granted.

iii. The Purported Bases for the Exercise of Personal Jurisdiction

Instead of addressing the facts raised in SCL's briefs, Jacobs made the following allegations in support of his jurisdictional argument:

(i): During Jacobs' tenure as an SCL executive, Adelson and Leven, a non-executive director and special advisor to the SCL Board, respectively, worked out of LVSC's executive offices in Las Vegas, and occasionally attended to SCL business from that location, including: (1) attending a telephonic SCL Board meeting on April 14, 2010 from Las Vegas along with Jacobs, Schwartz and Siegel; (2) recruited potential candidates for SCL senior executive management positions in Macau; (3) directed Jacobs regarding SCL's business in Macau and unspecified involvement with local Macau government officials; (4) directed real estate project development in Macau and developed marketing strategies for a \$2.5 billion SCL development in Macau; and (5) negotiated a possible joint venture for the development and sale of parcels owned by SCL in Macau.

(ii). SCL allegedly participated in transferring casino patron funds from Macau to Las Vegas⁴; and allegedly utilized a system Jacobs identifies as Affiliate Transfer Advice⁵ ("ATA") to electronically transfer casino patron funds from Macau to LVSC or its affiliates in Las Vegas. *See* Complaint at ¶¶ 26; *see also* Opposition at pp. 3-9.

⁴ Although Jacobs in his Opposition alleged that SCL "had significant funds physically couriered to Nevada," his counsel did not pursue that claim at the March 15, 2011 hearing after SCL demonstrated in its Reply that this allegation was false.

⁵ As discussed herein, SCL provided extensive and uncontested evidence that it was not involved in the administration or processing of these bookkeeping transactions regarding casino patron funds, nor were any funds transferred, contrary to Jacobs' allegations.

1 At the March 15, 2011 hearing on the Motion, counsel for Jacobs and SCL discussed the
2 previous points but did not raise any additional factual issues that had not been addressed in the
3 parties' briefs.

4 iv. Even Applying the "Control Disproportionate to Investment Status" Standard,
5 Jacobs Did Not Demonstrate That LVSC's Contacts With Nevada Should Be
6 Considered in SCL's Jurisdictional Analysis

7 In the event that this Court determines that the arguably less-stringent "control
8 disproportionate to investment status" test should be used in Nevada, Jacobs allegations, even if
9 assumed accurate, were insufficient to consider (or "count") LVSC's Nevada contacts in SCL's
10 jurisdictional analysis.

11 1. *Adelson and Leven's alleged actions are consistent with LVSC's*
12 *status as majority shareholder*

13 As stated above, Jacobs made several allegations regarding Adelson's and Leven's
14 involvement with SCL's business and corporate function. Specifically, Jacobs alleged that Adelson
15 and Leven had (1) attended a telephonic SCL Board meeting from Las Vegas with two other outside
16 non-executive directors, (2) recruited senior management candidates for SCL, (3) issued directives
17 regarding SCL's involvement with local Macau government officials, (4) and gave direction
18 regarding certain large-scale SCL real estate development and possible joint venture projects in
19 Macau.

20 Neither individually nor collectively were these actions evidence of the exercise of the level
21 of control required by *Hargrave* and *Reul*, cited above. In both of the cited cases, the court
22 recognized that in situations where a parent company controls substantially all of the subsidiary's
23 day-to-day operations, including its finances and means of production or provision of services, and
24 further presents itself as a single company, it may be treated as such for the purposes of its
25 subsidiary's jurisdictional analysis. *See Reul*, 372 F.Supp. at 1001-1003 (finding that the parent
26 company's contacts could be imputed to subsidiaries where the corporate separation was only a
27 formality and "for all *operational* purposes [was] one big, albeit well organized, corporation
28 controlled at the top by [the parent company].").

1 SCL has already set forth facts that establish it is not the alter ego of LVSC, and those facts
2 are relevant to this analysis as well. Contrary to being “one big, albeit well organized, corporation,”
3 both LVSC and SCL are actually contractually prohibited by the Deed from engaging in business
4 activities in each other’s primary places of business. *See* Global Offering Document at pp. 213-216.
5 Additionally, SCL has an independent Board, maintains and controls its own finances, and is
6 required by the HKEx Rules to demonstrate its operational independence from LVSC. *Id.* at pp.
7 211-232; *see also* Exhibit B to the Reply.

8 Jacobs allegations do not provide any evidence that LVSC, through Adelson and Leven,
9 exercises “complete control” over SCL. Attendance at Board meetings, recruitment and hiring of
10 senior executives, directing general policy, including high-level financial and development
11 decisions, are all appropriate parental actions that do not indicate an excessive level of control
12 sufficient to apply a parent’s contacts to its subsidiary for jurisdictional purposes. *See Hargrave*,
13 710 F.2d at 1160 (finding that even where parent had “complete authority” over general policy and
14 financial decisions, its in-forum contacts could not be imputed to the subsidiary for jurisdictional
15 purposes); *see also Walker v. Newgent*, 583 F.2d 163, 167 (5th Cir. 1978) (noting that 100% stock
16 ownership and commonality of officers and directors is insufficient to impute contacts to establish
17 general jurisdiction, and requiring proof of control by parent over internal business operations and
18 affairs of the subsidiary).

19 Additionally, all of Jacobs’ allegations of Adelson’s and Leven’s actions regarded meetings
20 and directives issued to Jacobs himself, in his capacity as SCL’s President and CEO. *See* Complaint
21 at ¶¶ 26; *see also* Opposition at pp. 3-9. In other words, Adelson’s and Leven’s alleged actions
22 involved only high-level corporate functions, and were directed to the individual who occupied the
23 highest executive position in the company.

24 Finally, and perhaps most fundamentally, in order to satisfy the “substantial or continuous
25 and systematic” requirements, courts examine a defendant’s intentional conduct that is actually
26 directed at the forum state. *See Kumarelas v. Kumarelas*, 16 F.Supp.2d 1249, 1254 (D. Nev. 1998).
27 Here, Jacobs’ allegations concern directives or actions taken by Adelson and Leven that were
28 directed at SCL in Macau, not actions taken by SCL directed to Nevada. The alleged actions of

1 Adelson and Leven therefore cannot be used to demonstrate any “substantial or continuous and
2 systematic” contact necessary for general jurisdiction.

3 Therefore, under no circumstances do Jacobs’ allegations regarding Adelson’s and Leven’s
4 alleged activity support the District Court’s decision to apply LVSC’s Nevada contacts to SCL for
5 the determination of general personal jurisdiction.

6 2. *Jurisdiction over a foreign corporation cannot be based solely on*
7 *activities of directors in the jurisdiction*

8 The mere presence of directors in the forum state is insufficient to establish general
9 jurisdiction over a foreign corporation. *See Gordon*, 300 S.W.3d at 649 (“[Appellant’s] lawyer has
10 pointed to no case holding that corporate officers or directors maintaining an office or a residence is
11 sufficient to establish general jurisdiction over the corporation. And with good reason. A
12 corporation is a distinct legal entity that exists separate from its shareholders, officers and
13 directors.”). Were the law otherwise, corporations would be subject to jurisdiction in forums in
14 which they otherwise are not subject to jurisdiction under the applicable due process principles
15 described above. *See Firouzabadi*, 110 Nev. at 1352. In other words, there is no “director
16 exception” to the requirements of due process.

17 3. *SCL’s alleged participation in an intra-corporate bookkeeping*
18 *process is insufficient as a matter of law to establish general personal*
19 *jurisdiction*

20 In his Opposition to SCL’s Motion, and again at the March 15, 2011 hearing, Jacobs made
21 certain (false) allegations that SCL utilized a process, referred to by LVSC as Inter-Company
22 Accounting Advice⁶ (“IAA”), to “move money for customers by transferring funds electronically
23 from Asia to LVSC or affiliates in Las Vegas.” *See* Opposition at p. 8, lines 8-13. Jacobs’ counsel
24 repeated this allegation at the March 15, 2011 hearing. *See* Transcript, pp. 54-57.

25
26
27 ⁶ As explained in SCL’s Reply, LVSC and VML ceased use of the “Affiliate Transfer Advice” moniker, erroneously
28 identified by Jacobs, and currently refer to the system as “Inter-Company Accounting Advice,” which removed the
“Transfer” term because it incorrectly suggested that these bookkeeping entries result in the transfer of funds when in
fact no funds are transferred when such an entry is made. *See* Affidavit of Patricia L. Green, attached to the Reply.

1 Judge Gonzalez at the hearing apparently recognized correctly that these funds were casino
2 patron funds, not property of SCL, and recognized that the IAA process did not constitute an actual
3 transfer of funds, but rather was a bookkeeping exercise used for “marketing” purposes. *Id.* at p. 58,
4 lines 9-10. As explained below, SCL was not a party to this bookkeeping process. Nonetheless, the
5 District Court did not make an explicit finding, as supported by SCL’s proffered evidence and
6 Jacobs’ own evidence, that SCL has no involvement with the IAA process.

7 The IAA process, set forth in evidence by SCL in its Reply supported by three separate
8 affidavits and acknowledged by the District Court – accounts for funds on deposit either in Macau
9 or Las Vegas that belong to patrons and are made available to respective patrons at properties in Las
10 Vegas or Macau through bookkeeping entries. *See* IAA Affidavits. No funds are transferred when
11 an IAA entry is made, and the “receiving” entity merely makes the value of the deposited funds
12 available to the patron. *Id.*

13 However, even if Jacobs’ allegations are taken as true, they are still insufficient, either on
14 their own or analyzed within the “control commensurate with investment status” test, to establish
15 general jurisdiction over SCL.

16 The IAA process constitutes does not demonstrate that SCL “conducted a ‘continuous and
17 systematic part of its general business’ in the forum state,” as required to support a finding of
18 general jurisdiction. *See Fields v. Ramada Inn, Inc.*, 816 F. Supp. 1033, 1036 (E.D. Pa. 1993); *see*
19 *also Romann v. Geissenberger Man. Corp.*, 865 F. Supp. 255 (E.D. Pa. 1994) (no general
20 jurisdiction even though defendant made \$230,000 in direct sales to forum state and was qualified to
21 do business in the forum state); *Arroyo v. The Mountain School, et al.*, 892 N.Y.S.2d 74, 75-76
22 (2009) (holding that maintaining a business relationship with in-forum entity and even transfers of
23 funds did not support finding of general jurisdiction, even when defendant had previously invested
24 nearly \$14 million with in-forum entities and maintained an account in the forum state for the
25 purpose of receiving wire transfers).

26 Additionally, as discussed above, participation in a parent company’s accounting procedures
27 or marketing efforts is insufficient to show either alter ego or an excessive degree of control. *See*
28 *Fletcher v. Atex, Inc.*, 68 F.3d 1451, 1459-60 (2d Cir. 1995) (appropriate parental involvement

1 includes overseeing accounting procedures); *Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d
2 1175, 1177 (9th Cir. 1980) (co-marketing efforts insufficient to demonstrate unity of interest
3 between entities).

4 Thus, Jacobs' allegations are insufficient, either individually or collectively, under any test
5 that this Court decides is appropriate, to demonstrate that the District Court can properly exercise
6 general jurisdiction over SCL.

7 4. *SCL provided uncontroverted evidence that SCL had no involvement*
8 *in the IAA process, which did not involve the transfer of (player's)*
9 *funds to or from Nevada*

10 During the March 15, 2011 hearing on SCL's Motion, Jacobs' counsel repeated the
11 allegations in the Opposition regarding SCL's claimed involvement with the IAA process, and
12 further alleged that "[t]hese reflected from Sands China players \$68 million in credit deposits and
13 credits for gambling activities, not just for Sands China play, but for Las Vegas play, as well." See
14 Transcript, p. 55, lines 4-7. Jacobs' counsel also introduced an exhibit at the hearing which
15 purported to summarize the contents of a purported ledger (the "Ledger"), attached to Jacobs'
16 Opposition at Exhibit 14, that Jacobs claimed listed transactions and amounts processed by this
17 system from February 24, 2007 to March 29, 2010. The exhibit shown at the hearing consisted
18 simply of the number "\$68 Million," above the term "Sands China," with an arrow pointing to
19 "LVSC" in Las Vegas. See Jacobs' Hearing Exhibits.

20 In response to Jacobs' claim that SCL routinely transferred casino player funds from Macau
21 to Las Vegas, SCL provided the District Court with extensive evidence exposing Jacobs' allegations
22 as completely false and misleading, including three separate affidavits stating, unequivocally, that
23 (1) SCL was not a party to the IAA process, which is handled on the Macau side by the Macau
24 gaming license subconcessionaire, VML, (2) that the funds in question were patron funds, and (3)
25 that the entries described in the Ledger were bookkeeping entries and were not evidence of
26 electronic transfers. See IAA Affidavits.

27 Thus, SCL had provided the District Court with uncontested affidavits showing that no
28 funds, either belonging to SCL or gaming patrons, were ever transferred to Nevada, and that VML,

1 not SCL, handled the IAA entries from Macau. Additionally, the Ledger submitted by Jacobs
2 provided further evidence that VML was involved in the IAA process by identifying VML as the
3 originating entity, and by including IAA entries from February 4, 2007 – nearly two and a half years
4 before SCL was even formed. *See* Exhibit 14 to the Opposition; *see also* Global Offering Document
5 at p. 75.

6 As to the first point, SCL provided three separate affidavits that first noted that LVSC and its
7 affiliates ceased use of the "Affiliate Transfer Advice" moniker and now refer to the system as
8 "Inter-Company Accounting Advice ("IAA") and removed the "Transfer" term as it incorrectly
9 suggested that these transactions result in the transfer of funds when in fact no funds are transferred
10 when an IAA transaction takes place. *See* IAA Affidavits. Additionally, at the top of each page in
11 the ledger Jacobs submitted to the District Court as Exhibit 14 to his Opposition, there is a notation
12 identifying the originating and receiving entity for each IAA transaction. *See* Exhibit 14 to
13 Opposition. Specifically, the ledger submitted by Jacobs lists IAA transactions beginning on
14 February 24, 2007. *Id.* It is undisputed that SCL was not formed until July 2009. *See* Global
15 Offering Document at p. 75. Jacobs thus ascribes to SCL actions that took place more than two
16 years before SCL even came into being. Consistent with this fact, the "From" entity is not identified
17 as SCL, but as "Venetian Macau." *See* Exhibit 14 to Opposition. Again, this comports with the
18 uncontroverted fact that VML holds the Macau gaming subconcession, and is the only entity
19 authorized to deal, directly or indirectly, with gaming patron funds. *See* Global Offering Document,
20 pp. 75-93.

21 As to the second and third points, the IAA process identifies transactions where funds on
22 deposit in Macau at VML that belong to patrons are made available to patrons in Las Vegas through
23 mere bookkeeping entries. *See* IAA Affidavits. Contrary to what Jacobs alleged, an IAA
24 transaction does not constitute a transfer of funds owned by either VML or SCL, and no player
25 funds are transferred. Instead, the patron account is zeroed out at VML by a debit to the patron
26 account, and a credit entry is made by VML for an account payable to VCR, and a credit is inputted
27 to the patron account by VCR in Las Vegas and a debit is entered by VCR for a receivable from
28 VML. *Id.* Simply put, contrary to Jacobs' assertions, an IAA does not constitute a transfer of funds

1 either from or to Nevada and, as relevant to the jurisdictional analysis, do not involve funds owned
2 or controlled by SCL.

3 In the face of this clear evidence however, the District Court either ignored or misunderstood
4 the actual facts in this case and accepted Jacobs' allegations as true. To the extent that Jacobs' false
5 allegations regarding the IAA process formed the basis of the District Court's decision to deny
6 SCL's Motion, the District Court committed clear error because the uncontroverted evidence
7 showed that SCL was not a party to the IAA's, which did not entail the transfer of (player) funds, to
8 or from Nevada, and this Court should order the District Court to reverse its decision and dismiss
9 SCL from this case for lack of personal jurisdiction.

10 v. The Exercise of Personal Jurisdiction Over SCL is Unreasonable

11 In making its decision to deny SCL's Motion, the District Court made no findings regarding
12 the reasonableness of the exercise of personal jurisdiction over SCL. The due process requirements
13 associated with the determination of personal jurisdiction demand that the exercise of personal
14 jurisdiction must be "reasonable," and must comport with the notions of fair play and substantial
15 justice. *See FDIC v. British-American Ins. Co.*, 828 F.2d 1439 (9th Cir. 1987).

16 To determine whether the exercise of personal jurisdiction is "reasonable," the court must
17 examine seven factors: (1) the extent of SCL's purposeful contacts; (2) the burden on SCL of having
18 to defend an action in Nevada; (3) the extent to which jurisdiction conflicts with SCL's domiciliary
19 country; (4) Nevada's interest in adjudicating the dispute; (5) which forum is the most efficient for
20 resolving the dispute; (6) Jacobs' interest in choosing Nevada as a forum; and (7) the existence of
21 alternative forums to adjudicate Jacobs' claims. *See FDIC*, 828 F.2d at 1442.

22 As to the first factor, SCL has no purposeful contacts with Nevada. This fact therefore
23 weighs in favor of dismissal. In his Opposition, Jacobs conceded that his claims against SCL have
24 nothing to do with any actions taken in Nevada, when he failed to respond to SCL's argument that
25 the District Court could not exercise specific personal jurisdiction over SCL. As discussed above,
26 neither the presence of a controlling shareholder in Nevada, nor the actions taken in Nevada by a
27 non-executive SCL director and a special advisor to the SCL Board constitute "purposeful" contacts
28 with Nevada for jurisdictional purposes.

1 In reference to the second factor, SCL is a Cayman Islands company with its registered
2 office in Hong Kong and its principal place of business in Macau. *See* Global Offering Document at
3 pp. 75-76. It does no business in Nevada or elsewhere in North America. *Id.* The alleged contract
4 at issue in Jacobs' claim against SCL was executed in Macau and is governed by Hong Kong law.
5 *See* Stock Option Grant Letter. SCL will be forced to incur substantial costs to defend this case in
6 Nevada. Therefore, this factor also weighs heavily in favor of dismissal.

7 The third and fourth factors also show the exercise of jurisdiction over SCL to be
8 unreasonable. To start, the District Court's continued exercise of jurisdiction over SCL would
9 significantly conflict with Hong Kong's interest in protecting public companies with stock listed on
10 the HKEx. Conversely, SCL's and Jacobs' lack of connections with Nevada mean that Nevada has
11 no interest in resolving any dispute Jacobs has with SCL regarding an option to purchase SCL stock.

12 As to the fifth factor, which forum is the most efficient for resolving the dispute, the
13 overwhelming majority of evidence and witnesses will be located in Macau and Hong Kong. SCL
14 is a HKEx listed company, which means that the HKEx Rules regarding stock options, not just the
15 applicable Hong Kong civil law, will bear upon Jacobs' claim against SCL. Clearly, both Hong
16 Kong and Macau are decidedly more efficient forums for resolving Jacobs' claims against SCL.

17 Additionally, in specific reference to the fifth factor, the presence of a Hong Kong choice-of-
18 law provision in the Stock Option Grant Letter weighs strongly in favor of denying the exercise of
19 jurisdiction in Nevada and requiring Jacobs to litigate his claim against SCL in Macau or Hong
20 Kong. Courts have concluded that a court may decline to exercise jurisdiction when the chosen law
21 conflicts with, or is substantially different from that in the forum state, and may therefore be
22 difficult for the forum court to administer. *See Cubbage*, 744 F.2d at 671. The District Court has
23 acknowledged that if the case continues in Nevada, experts in Hong Kong law may be required to
24 assist the parties, and the District Court, with navigating the substantial procedural and substantive
25 differences between U.S. and Hong Kong law. In particular, Hong Kong law is based on British
26 law. As such, one fundamental difference (among others, such as the availability of a jury trial)
27 between litigating pursuant to Hong Kong law as opposed to Nevada law, is that Jacobs is free to
28 pursue his claim to have retained rights to exercise an option to purchase SCL stock following his

1 termination without fear of having to pay SCL's fees and costs when it prevails. These differences
2 are not immaterial, and the difficulty presented by implementing Hong Kong law in a Nevada
3 district court weighs strongly in favor of dismissal.

4 Lastly, Hong Kong and Macau both have an available judicial system, and both have a
5 strong interest in overseeing the conduct of those entities that list their stock (Hong Kong) and do
6 business (Macau) there.

7 In whole, each reasonableness factor that the District Court was bound to consider weighed
8 in favor of granting SCL's Motion and dismissing it from the pending action. The District Court's
9 exercise of jurisdiction over SCL is unreasonable and would offend the principles of due process if
10 allowed to continue. Therefore, SCL respectfully requests that this Court grant the requested
11 extraordinary relief.

VI.

CONCLUSION

The District Court erred in denying SCL's Motion to Dismiss for Lack of Personal Jurisdiction. General jurisdiction does not exist in this case because SCL made no personal or purposeful contacts with Nevada. Specifically, general jurisdiction over SCL cannot be based on its corporate contacts with its majority shareholder, LVSC. Moreover, the exercise of personal jurisdiction in this case would offend the principles of fair play and substantial justice, which the District Court did not consider when making its ruling.

Based upon the foregoing, SCL respectfully requests that this Court issue a Writ to the Eighth Judicial District Court to grant its Motion to Dismiss for Lack of Personal Jurisdiction and to prohibit the District Court from exercising personal jurisdiction, either general or specific, over SCL in this matter.

Dated May 5, 2011.

GLASER WEIL FINK JACOBS HOWARD,
AVCHEN & SHAPIRO LLP

By: 

Patricia L. Glaser, ESQ.
Pro Hac Vice Admitted
Mark G. Krum, ESQ.
Nevada Bar No. 10913
Andrew D. Sedlock, ESQ.
Nevada Bar No. 9183
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Las Vegas, Nevada 89169

Attorneys for Petitioner Sands China Ltd.

VERIFICATION

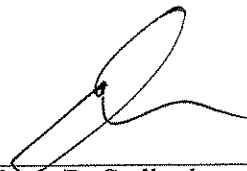
STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

I, Andrew D. Sedlock, being first duly sworn, deposes and states:

1. I am an attorney with the law firm of GLASER WEIL FINK JACOBS HOWARD, AVCHEN & SHAPIRO LLP, counsel of record for Petitioner, Sands China Ltd. named in the foregoing Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition (the "Petition") and know the contents thereof.

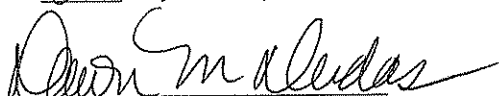
2. The facts stated in the Petition are true of my knowledge, and to those matters that are on information and belief, such matters I believe to be true.

3. I make this verification on behalf of Petitioner Sands China Ltd.

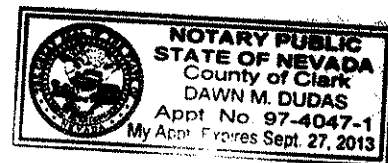


Andrew D. Sedlock

Subscribed and sworn to before me
this 5th day of May, 2011



NOTARY PUBLIC in and for
said County and State
My Commission expires 9-27-13



Glaser Weil Fink Jacobs
Howard Avchen & Shapiro LLP