IN THE

SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA, LTD. Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, in and for the COUNTY OF CLARK and THE HONORABLE ELIZABETH GOFF GONZALEZ, Respondents, and STEVEN C. JACOBS, Real Party in Interest.	Supreme Case No. 58294

ANSWER OF REAL PARTY IN INTEREST STEVEN C. JACOBS TO PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION

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Pursuant to this Court's June 24, 2011 order, Real Party in Interest Steven C. Jacobs ("Jacobs") hereby files his Answer to the Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition.

INTRODUCTION AND SUMMARY OF ARGUMENT

Pending before the Court is a writ petition by Sands China Ltd. ("SCL"), a Cayman Islands corporation that conducts gaming operations in Macau, China. SCL's professed grievance concerns personal jurisdiction. Specifically, SCL is a subsidiary of Las Vegas Sands Corp. ("LVSC"), a Nevada corporation, and, according to SCL, it has wrongfully been forced to defend itself in Nevada solely because of *LVSC*'s contacts with Nevada which, as SCL's parent company, have been imputed to SCL. Both in fact and law alike, however, SCL's protest is groundless.

First of all, SCL misrepresents the issue. Jacobs never argued, and the district court did not find, that SCL is subject to personal jurisdiction in this state because of *LVSC*'s contacts with Nevada. Rather, Jacobs argued, the district court found, and the record confirms that SCL is subject to jurisdiction here because of *its own* contacts with Nevada. The supposed issue which SCL urges this Court to consider, in other words, is a mirage.

Not only is SCL's petition misleading, it is incomplete as well. Jacobs asserted two grounds for personal jurisdiction—"transient" and "general" jurisdiction—but SCL's petition addresses only the latter. By failing to address the former, SCL has abandoned any objection to jurisdiction on that basis, thus making it moot whether, in addition, SCL is also amenable to general personal jurisdiction.

In any event, SCL's challenge to general personal jurisdiction quickly collapses under the weight of adverse law and evidence. At this stage of the case, Jacobs need only make a *prima facie* showing that facts exist to support a finding of personal jurisdiction, and the record abounds

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with evidence sufficient for that purpose. SCL apparently deemed Las Vegas quite a congenial place to do business, for it routinely conducted operations from Las Vegas and repeatedly transferred tens of millions of dollars to Las Vegas. Having systematically taken advantage of Nevada's commercial opportunities and facilities, it is only fair that SCL participate in Nevada's judicial process too.

SUMMARY OF FACTS

LVSC initially retained Jacobs as a consultant in March 2009 to help restructure its operations during the global economic meltdown.[1] By May 2009, LVSC had appointed Jacobs as the head of its gaming operations in Macau, memorializing their relationship in a written agreement dated August 3, 2009.[2] LVSC ultimately spun off its Macau assets and operations into a new public company, SCL, which would be traded on the Hong Kong stock exchange. Jacobs was made President and Chief Executive Officer of SCL, leading the company through its initial public offering in November 2009 and helping return LVSC and SCL to significantly improved financial health during his time with Defendants.[3] In March 2010, Michael Leven, LVSC's Chief Operating Officer, assessed Jacobs' 2009 job performance as follows: "*there is no question as to Steve's performance[;] the Titanic hit the iceberg[,] he arrived and not only saved the passengers[,] he saved the ship.*"[4] Jacobs' tenure, however, came to an abrupt end just months later on July 23, 2010 when he was terminated at the direction of LVSC's and SCL's Chairman,

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1 *See* Complaint [**Appx. 1**] at ¶ 16.

2 *See* Complaint [**Appx. 1**] at ¶¶ 18; 21.

3 *See* Complaint [**Appx. 1**] at ¶¶ 22-24.

4 *See* Complaint [**Appx. 1**] at ¶ 25.

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Sheldon G. Adelson.[5] Jacobs thereafter sued LVSC and SCL for breach of contract related to his employment agreement with LVSC and his respective stock option agreements with LVSC and SCL, breach of the implied covenant of good faith and fair dealing, and tortious discharge in violation of public policy.[6] To the extent additional facts are pertinent to this Answer, they will be discussed in the context of the Argument that follows.

ARGUMENT

I. SCL MISSTATES THE ISSUE DECIDED BELOW.

SCL depicts the present case as involving a "coattail" assertion of personal jurisdiction on the ground that, although it has no contacts with Nevada, SCL has nonetheless been compelled to defend itself here because of LVSC's contacts with Nevada.[7] The Petition then proceeds to snip these coattails. SCL argues, at considerable length, that most courts do not impute the contacts of a domestic parent company to its foreign affiliate unless there is an alter ego relationship between the two entities, while other courts require control by the parent disproportionate to its investment; and that, since LVSC is neither an alter ego of SCL nor exercises control over SCL disproportionate to its investment, SCL is not subject to personal jurisdiction in Nevada based on its affiliation with LVSC.[8]

The foregoing issue, according to SCL, is unfinished business left over from *MGM Grand, Inc. v. Eighth Judicial Dist. Ct.*, 107 Nev. 65, 807 P.2d 201 (1991), where this Court held that the

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[5] *See* Complaint [**Appx. 1**] at ¶¶ 26-31.

[6] *See* Complaint [**Appx. 1**] at ¶¶ 34-57.

[7] *See* Petition 17:17-18 ("SCL demonstrated that it lacks any contacts with Nevada, apart from its ongoing relationship with its majority shareholder, LVSC").

[8] *See* Petition, pp. 27-37.

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Walt Disney Company was not subject to personal jurisdiction in Nevada based on its subsidiaries' Nevada contacts, but did not decide whether an alter ego relationship is necessary.[9] Moreover, SCL characterizes the issue as one of the utmost urgency. Without immediate intervention by this Court, SCL prophesizes an End-of-Western-Civilization-As-We-Know-It catastrophe, warning that foreign companies will be subject to process here for any matter whatsoever, "provided only that the foreign corporation is a subsidiary of a controlling parent corporation domiciled in Nevada"[10] and that "Nevada's courts would be at risk to be inundated with lawsuits brought by every foreign litigant who has a claim against a foreign entity that is a corporate affiliate of a Nevada company."[11] Hence, concludes SCL, "[t]he issue of whether, due to a relationship with a corporation or other affiliate in Nevada, a litigant can bring a suit in Nevada against a foreign entity . . . based on the presence of a Nevada affiliate, is vitally important to the companies based in Nevada and to their foreign subsidiaries."[12]

But the preceding melodrama—indeed, the entire professed issue—is a myth, a straw man fabricated by SCL in disregard of the actual issues argued and decided below. As Jacobs explicitly stated to the district court, he never sought to drag SCL into Nevada on LVSC's coattails. Instead, he asserted personal jurisdiction over SCL based on *SCL's own* contacts with Nevada.[13] And, as

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[9] *See* Petition, pp. 20-21.

[10] Petition 17:8-15.

[11] Petition 19:28 to 20:2.

[12] Petition 21:25-28.

[13] *See* Plaintiff's Opposition to Sands China Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Plaintiff's Failure to Join an Indispensable Party [**Appx. 3**] 17:23-24 ("Jacobs seeks to establish jurisdiction over SCL *based on its own contacts* with the forum, not just those attributable to LVSC") (emphasis added).

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the evidence discussed below in Point III demonstrates, SCL is subject to personal jurisdiction based on *its own* contacts with Nevada. For purposes of the dispute at hand, the affiliation between SCL and LVSC is the reddest of red herrings, for the outcome would be no different if they were unrelated entities.

SCL, in other words, is attempting to whet this Court's interest with a false portrayal of the controversy. Such a materially inaccurate presentation undermines the efficacy of writ review. After all, in order to determine whether a dispute has sufficient legal merit, much less the extraordinary urgency required for mandamus or prohibition, this Court obviously must have before it a fair presentation of the issues.[14] Otherwise, the Court would potentially find itself in the awkward position of discovering, after issuing a writ, that the writ was unwarranted because the issues were not as represented in the petition. In addition, it is a long-established axiom that "[a]ppellate courts do not give opinions on moot questions." *Edwards v. City of Reno*, 45 Nev. 135, 143, 198 P. 1090, 1092 (1921). This self-imposed restraint on the squandering of scarce judicial resources applies with particular force to the purely discretionary exercise of writ review. *Marquis & Aurbach v. Eighth Judicial Dist. Ct.*, 122 Nev. 1147, 1155, 146 P.3d 1130, 1135 (2006).

Whether from the standpoint of docket management, substantive justice, or basic honesty, the use of tainted bait to fish for writ review, so to speak, should be vigorously discouraged. Summarily denying such petitions is an essential first step in that direction.

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[14] *See* NRAP 21(a)(3)(B) (a writ petition must state "the issues presented").

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II. BY FAILING TO ADDRESS THE ISSUE ON APPEAL, SCL HAS ABANDONED ANY OBJECTION TO THE EXERCISE OF TRANSIENT PERSONAL JURISDICTION.

During the proceedings below, Jacobs raised two distinct grounds for the exercise of personal jurisdiction over SCL. One was so-called "transient" personal jurisdiction, *i.e.*, that a nonresident is amenable to jurisdiction in a state where he or she is physically present and personally served with process,[15] based on that fact that Michael Leven ("Leven"), SCL's Chief Executive Officer, was personally served with process in Las Vegas.[16] The other ground was "general" personal jurisdiction based on SCL's contacts with Nevada, as discussed below in Point III.[17] But SCL discusses only the latter basis for jurisdiction, ignoring the former, on the one-sentence pretext, buried in a footnote, that "SCL's Reply debunked [transient personal jurisdiction], and Jacobs did not raise this argument at the March 15, 2011 hearing on the Motion, and the District Court did not address the argument, implicitly rejecting it."[18]

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[15] *See, e.g., Burnham v. Superior Ct.*, 495 U.S. 604, 110 S.Ct. 2105, 109 L.Ed.2d 631 (1990); *Cariaga v. Eighth Judicial Dist. Ct.*, 104 Nev. 544, 762 P.2d 886 (1988).

[16] *See* Plaintiff's Opposition to Sands China Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Plaintiff's Failure to Join an Indispensable Party [**Appx. 3**], pp. 10-13 (citing, for example, *Northern Light Technology, Inc., v. Northern Lights Club*, 236 F.3d 57, 63-64 n.10 (1st Cir. 2001), *cert. denied* 533 U.S. 911, 121 S.Ct. 2263 (2001) (personal service on president of unincorporated association and foreign corporation in forum state when present as spectator in legal proceedings was sufficient to obtain personal jurisdiction over both businesses); *Oyuela v. Seacor Marine (Nigeria), Inc.*, 290 F.Supp.2d 713, 719-20 (E.D.La. 2003) (court acquired transient jurisdiction over Bahamian company by personal service on its Assistant Secretary in the forum; "*Burnham's* reassertion of the general validity of transient jurisdiction provides no indication that it should apply only to natural persons").

[17] *See* Plaintiff's Opposition to Sands China Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Plaintiff's Failure to Join an Indispensable Party [**Appx. 3**], pp. 13-21.

[18] Petition, p. 14, footnote 2.

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An appellant whose brief fails to provide substantive argument and authority regarding an issue abandons that issue on appeal. *Wyeth v. Rowatt*, 126 Nev. Adv. Op. 44, 244 P.3d 765, 779 n.9 (2010); *Mainor v. Nault*, 120 Nev. 750, 777, 101 P.3d 308, 326 (2004). This rule applies to cursory assertions in footnotes such as that offered by SCL. *Browning v. State*, 120 Nev. 347, 361, 91 P.3d 39, 50 (2004). Whatever its reasons for ignoring the alternative basis for jurisdiction over it, SCL made a deliberate tactical decision to abandon that issue, and must accept the consequences.

Furthermore, SCL's rationale for ignoring the issue is entirely unfounded. SCL's boast that its reply in the district court "debunked" transient personal jurisdiction is as dubious as it is presumptuous. Some of the precedent it cites is no longer good law,[19] and most is inapplicable. *C.S.B. Commodities, Inc. v. Urban Trend (HK) Ltd.*, for instance, collects cases which have "come to the conclusion that service of process on an agent of a foreign corporation is insufficient, *by itself* to confer personal jurisdiction." 626 F.Supp.2d 837, 850 (N.D. Ill. 2009) (emphasis added).[20] Be that as it may, transient personal jurisdiction over SCL is *not* based on service upon Leven *by itself*, without additional circumstances. Leven did not simply happen, by fortuitous accident, to be in Nevada. He was not, say, the assistant treasurer of a small Nebraska company with no connection to Nevada, who was served with process while in the security line at McCarran Airport waiting to change flights to attend his aunt's funeral in San Diego. Leven resides in Las Vegas and, as the

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[19] For example, *Synthes (U.S.A.) v. G.M. dos Reis Jr. Ind. Com. de Equip. Medico*, 2008 U.S. Dist. LEXIS 22483, 2008 WL 789925 (S.D. Cal. Mar. 21, 2008) (cited in Defendant Sands China Ltd.'s Reply in Support of Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Plaintiff's Failure to Join an Indispensable Party [**Appx. 4**] 9:13-16) was reversed in *Synthes (U.S.A.) v. G.M. Dos Reis Jr. Ind. Com de Equip. Medico*, 563 F.3d 1285 (Fed. Cir. 2009).

[20] The *C.S.B. Commodities* decision typifies the handful of authorities cited in SCL's reply. *See, e.g., Golden Scorpio Corp. v. Steel Horse Saloon I*, 2009 U.S. Dist. LEXIS 35949, 2009 WL 976598, at *3 n.4 (D. Ariz. Apr. 9, 2009) (citing *C.S.B. Commodities*).

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company's CEO, operates SCL from an office in Las Vegas.[21] As a practical matter, in other words, SCL's executive headquarters are located in Las Vegas. Moreover, Leven was served with process in that very building.[22] Do these additional facts make a difference? Probably so, but perhaps not. Either way, this much is certain: the question is at least *debatable*. Yet, by failing to provide analysis and authority addressing it, SCL has prevented this Court from considering the issue, and has thereby forfeited its right to have the issue resolved in its favor. SCL can hardly claim victory on an issue it refuses to discuss.

Nor is it an excuse that Jacobs' counsel did not raise the issue during the hearing. The scope of briefs invariably differs from that of oral argument. Briefs tend to be comprehensive, whereas oral argument, constrained by time limits and the flow of colloquy, tends to be selective and more focused.[23] If argument during hearings merely reiterated the points already addressed in writing, indeed, there would be little reason for oral argument. Consequently, a litigant who raises an issue in pre-hearing papers need not raise it again during oral argument in order for the issue to be considered on appeal. *Uhrich v. State Farm Fire & Cas. Co.*, 109 Cal.App.4th 598, 135 Cal.Rptr.2d 131, 140 (2003) (fact that liability insurer emphasized policy exclusions rather than lack of coverage during hearing on its summary judgment motion did not bar insurer from arguing lack of coverage on appeal because coverage issue was included in insurer's motion papers). This

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[21] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶¶ 8-9. The details of Leven's systematic work in Las Vegas on behalf of SCL are set forth in Part III, below.

[22] *See* Affidavit of R. David Groover [**Appx. 3, Exh. 15**].

[23] The hearing below illustrates this very point. Because it was SCL's motion, SCL's counsel argued first and, in so doing, challenged only general jurisdiction. Since Jacobs' counsel was responding to SCL's argument, he naturally directed his comments accordingly—but not, however, before stating his assumption that the district court had read, and thus was familiar with, Jacobs' more complete written opposition. *See* 3/15/11 Tr. [**Appx. 6**] 51:14-16.

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Court, therefore, can consider the issue—or, rather, *could have* considered it had SCL bothered to address it.

Equally flawed, finally, is SCL's assumption that the district court, by not finding transient personal jurisdiction, rejected it. This illogic is both factually untenable and also legally immaterial. Factually, it is a non sequitur that ignores the well-settled judicial practice of avoiding unnecessary issues: if personal jurisdiction exists on one basis, there is no need to consider whether it can also be sustained, redundantly, on another.[24] Such was the situation here. Because the district court found general personal jurisdiction over SCL, there was no need to consider transient personal jurisdiction.

But let us assume, for argument's sake, that SCL's mistaken factual premise is correct, *i.e.*, that the district court implicitly rejected transient personal jurisdiction. Even so, that does not mean the issue is no longer germane on appeal, for "it is well established that this court may affirm rulings of the district court on grounds different from those relied upon by the district court." *Milender v. Marcum*, 110 Nev. 972, 977, 879 P.2d 748, 751 (1994).[25] This is true, in particular, when the district court reaches the right result *for the wrong reasons*. *Bongiovi v. Sullivan*, 122 Nev. 556, 575 n.44, 138 P.3d 433, 447 n.44 (2006); *Hotel Riviera, Inc. v. Torres*, 97 Nev. 399, 403,

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[24] *See, e.g., Pakootas v. Teck Cominco Metals, Ltd.*, 452 F.3d 1066, 1076 n.16 (9th Cir. 2006), *cert. denied*, 552 U.S. 1095, 128 S.Ct. 858, 169 L.Ed.2d 722 (2008) (because specific personal jurisdiction existed, there was no need to decide whether general personal jurisdiction also existed); *American Gen. Life Ins. Co. v. Rasche*, 273 F.R.D. 391, 396 n.1 (S.D. Tex. 2011) (same); *Bible Way Church of Our Lord Jesus Christ World Wide, Inc. v. Showell*, 578 F.Supp.2d 164, 168 n.2 (D.D.C. 2008) (because general personal jurisdiction existed, there was no need to decide whether specific personal jurisdiction also existed).

[25] *See, e.g., City of Las Vegas v. Lawson*, 126 Nev. Adv. Op. 52, 245 P.3d 1175, 1182 (2010); *Moon v. McDonald, Carano & Wilson, LLP*, 126 Nev. Adv. Op. 47, 245 P.3d 1138, 1140 n.5 (2010); *State ex rel. State Bd. of Equalization v. Bakst*, 122 Nev. 1403, 1416 n.40, 148 P.3d 717, 726 n.40 (2006)

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632 P.2d 1155, 1158 (1981). If the record allowed (which it does not), this Court could concur with two of SCL's assertions—*i.e.*, (1) that the district court rejected transient personal jurisdiction, and (2) that no evidence exists to support general personal jurisdiction—yet conclude that, because the record supports transient personal jurisdiction despite the district court's implicit finding to the contrary, the district court correctly denied SCL's motion to dismiss, albeit for the wrong reason. Because transient personal jurisdiction is thus potentially germane to the disposition of SCL's writ petition, even under SCL's skewed view of the record, SCL had an obligation to present the issue before this Court, an obligation violated by SCL's premature declaration of victory.

III. AMPLE EVIDENCE EXISTS IN THE RECORD TO SUSTAIN A *PRIMA FACIE* FINDING THAT SCL IS SUBJECT TO GENERAL PERSONAL JURISDICTION IN NEVADA.

A. SCL Is Subject to General Personal Jurisdiction in Nevada If Its Activities in This State Were Either Substantial, or Continuous and Systematic.

To obtain personal jurisdiction over a non-resident defendant, a plaintiff must show (1) that the requirements of Nevada's long-arm statute (NRS 14.065) have been satisfied, and (2) that due process is not offended by the exercise of jurisdiction. *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Ct.*, 122 Nev. 509, 512, 134 P.3d 710, 712 (2006). However, since Nevada's long-arm statute extends to the outer reaches of due process,[26] these two tests may be collapsed into one; that is, whether the exercise of personal jurisdiction offends due process. *Trump v. Eighth Judicial Dist. Ct.*, 109 Nev. 687, 698, 857 P.2d 740, 747 (1993).

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[26] *See* NRS 14.065(1) ("[a] court of this state may exercise jurisdiction over a party to a civil action on any basis not inconsistent with the constitution of this state or the Constitution of the United States").

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A defendant's contacts with Nevada satisfy due process if either general or specific personal jurisdiction exists. *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Ct.*, *supra*, 122 Nev. at 512, 134 P.3d at 712. General personal jurisdiction exists if the nonresident's activities in Nevada are so substantial, or so continuous and systematic, that it is deemed present in and thus subject to suit in Nevada, even though the claims are unrelated to those activities. *Firouzabadi v. First Judicial Dist. Ct.*, 110 Nev. 1348, 1352, 885 P.2d 616, 619 (1994). A court must also consider whether requiring the defendant to appear in the action comports with fair play and substantial justice; that is, whether it would be reasonable. *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Ct.*, *supra*, 122 Nev. at 513, 134 P.3d at 713. But a defendant who has purposely availed himself of benefits in the forum "'must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.'" *Levinson v. Second Judicial Dist. Ct.*, 103 Nev. 404, 408, 742 P.2d 1024, 1026 (1987) (quoting *Burger King v. Rudzewicz*, 471 U.S. 462, 477, 105 S.Ct. 2174, 2184, 85 L.Ed.2d 528 (1985)).

The disjunctive test for general personal jurisdiction—whether a nonresident's local activities are "substantial *or* continuous and systematic", *Firouzabadi v. First Judicial Dist. Ct.*, *supra*, 110 Nev. at 1352, 885 P.2d at 619 (emphasis added)—is meant to distinguish, respectively, significant activities from trivial ones, and habitual from sporadic ones, based upon duration, frequency and amount. This is common sense as well as common law. After all, the more a nonresident takes advantage of local markets, the more reasonable it becomes that he or she should expect to be subject to local courts.

What constitutes substantial or continuous and systematic activity is, of course, a fact-intensive issue whose outcome varies with the circumstances of each case. Clearly, though, where *all three* components of the test are met by a pattern of repeated transactions (thus

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systematic) over many years (thus continuous) involving hundreds of thousands of dollars (thus substantial), general personal jurisdiction exists. *See, e.g., Theo. H. Davies & Co. v. Republic of Marshall Islands*, 174 F.3d 969, 974-75 (9th Cir. 1998) (defendant made repeated purchases from providers in the state over a period of roughly a decade, including three transactions in the amounts of $206,887.00, $265,800.00 and $1,187,612.00); *Michigan Nat'l Bank v. Quality Dinette, Inc.*, 888 F.2d 462, 466 (6th Cir. 1989) (defendant retained independent sales representative in state, conducted mail order solicitations of state businesses, and made more than 400 in-state sales totaling more $625,000 in 1986-87, including at least one sale each month during those two years). As will be discussed below, SCL's business activities in Nevada are systematic *and* continuous *and* substantial. Under these circumstances, there is nothing remotely unreasonable about requiring SCL to defend itself here.

B. Jacobs Introduced More Than Enough Evidence to Satisfy His *Prima Facie* Burden of Demonstrating that SCL's Activities in Nevada Are Substantial, Continuous and Systematic.

Where, as here, a pretrial motion challenging personal jurisdiction is decided without an evidentiary hearing, the plaintiff need only make a *prima facie* showing of jurisdictional facts, and the plaintiff's facts must be taken as true. *Tuxedo Int'l Inc. v. Rosenberg*, 127 Nev. Adv. Op. 2, 251 P.3d 690, 692 n.3 (2011); *Trump v. Eighth Judicial Dist. Ct.*, *supra*, 109 Nev. at 692-93, 857 P.2d at 743-44. Such, therefore, is Jacobs' minimal burden and the presumption of credibility to which his evidence is entitled in the present case.

Did Jacobs satisfy this burden? The district court so found, and the record so confirms—in abundance. For present purposes, there is no need to belabor all the evidence, for two aspects alone suffice to demonstrate, far beyond the threshold of mere *prima facie* proof, that SCL's activities in Nevada are substantial, continuous and systematic: (1) the operation of SCL's business

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from its de facto executive headquarters in Las Vegas, and (2) SCL's systematic transfer of tens of millions of dollars to Las Vegas.[27]

1. *SCL Regularly Conducts Business from its De Facto Executive Headquarters in Las Vegas.*

Sheldon G. Adelson ("Adelson") is the Chairman of SCL's Board of Directors; Leven is its Chief Executive Officer and Executive Director.[28] Adelson and Leven both reside in Las Vegas, Nevada. They also work in Las Vegas; specifically, in the executive offices of the Venetian Resort-Hotel-Casino.[29] Adelson and Leven routinely conduct SCL business from there.[30] From the Las Vegas office, they recruited and interviewed executives to work for SCL, worked on marketing strategies to increase foot traffic to the retail mall areas in SCL properties, supervised the site design and development of two SCL projects, and negotiated the potential sale of other SCL properties.[31] In addition, while Jacobs was President of SCL, Adelson instructed him to withhold SCL business from certain banks unless they agreed to exert their influence with Macau officials to obtain various advantages for SCL, directed him to have investigative reports prepared on government officials and junket representatives, and ordered that SCL use the legal services of a

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[27] Omitted from this synopsis, though undoubtedly germane to the jurisdiction question, are SCL's numerous transactions with Nevada companies, SCL board meetings in Las Vegas, and the many SCL business meetings which Jacobs, during his tenure with the company, attended in Las Vegas. *See* Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶¶ 9, 11-13.

[28] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶¶ 6-7. (Leven was appointed SCL's Chief Executive Officer on July 23, 2010, after Jacobs' termination, and Executive Director of SCL's Board on July 27, 2010. Before then, he served as special advisor to SCL's Board. *Id.*).

[29] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶ 8.

[30] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶ 9.

[31] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶ 10.

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specific Macau attorney—all of this, again, from Las Vegas.[32] By any standard, these activities were continuous and systematic.

SCL's efforts to explain away these facts are unavailing. A common refrain throughout the petition is SCL's insistence that "the *mere presence* of directors in the forum state is insufficient to establish general jurisdiction over a foreign corporation."[33] Perhaps, but that is not the situation here. Leven, first of all, was not simply a director; he also became SCL's Chief Executive Officer. More importantly, the significance of Adelson and Leven's role is not their *mere presence in* Las Vegas, but their *active and regular management of SCL from* Las Vegas.

SCL emphasizes that Adelson holds the position of a non-executive director, and that Leven was only a special advisor until after Jacobs' ouster.[34] But a court should examine the "economic reality" of a defendant's activities when determining whether a reasonable basis for general personal jurisdiction exists,[35] whereas SCL's focus upon Adelson's and Leven's *titles* promotes form over substance, a fallacy this Court has repeatedly refused to endorse.[36] In particular, this Court has wisely rejected the "artificial classification of [persons] by title" which SCL advocates.[37] It makes no difference what Adelson and Leven were *called*. What matters is what they *did*. And

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[32] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶ 10.

[33] Petition 22:18-20, 26:25-26, 37:8-9 (emphasis added).

[34] *See, e.g.*, Petition 34:10-11, 41:27-28.

[35] *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1331 (9th Cir. 1984).

[36] *See, e.g., Marcuse v. Del Webb Communities, Inc.*, 123 Nev. 278, 285, 163 P.3d 462, 467 (2007); *Brad Assocs. v. Nevada Fed. Fin. Corp.*, 109 Nev. 145, 149, 848 P.2d 1064, 1067 (1993).

[37] *See Borger v. Eighth Judicial Dist. Ct.*, 120 Nev. 1021, 1027-28, 102 P.3d 600, 605 (2004) (admissibility of expert testimony "is governed by the scope of the witness' knowledge and not the artificial classification of the witness by title") (quoting *Marshall v. Yale Podiatry Group*, 5 Conn. App. 5, 496 A.2d 529, 531 (1985)).

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what they did, insofar as the evidence shows, is to micromanage SCL: they determined whom SCL should hire and retain as counsel, whom to favor with SCL's business and how to expand it, how to design SCL properties and under what terms to sell them, etc. This was hands-on, elbow-deep management at its most intrusive, all of it from Las Vegas.

Such detailed control contradicts SCL's assertion that Adelson's and Leven's activities are consistent with LVSC's status as a majority shareholder.[38] The objection is, moreover, immaterial even if true, for it acknowledges only *half* of the evidence; namely, that Adelson and Leven are directors of LVSC. Yes, but they are also directors (and, in Leven's case, CEO) of *SCL* as well. This defect in SCL's reasoning is dramatically apparent in its non sequitur that, because *LVSC* did not have the requisite control, Adelson's and Leven's actions while acting for *SCL* cannot be considered.[39] The entire line of argument, in any event, is misplaced because, as explained earlier, it attacks a straw man (the phantom notion of "coattails" jurisdiction) which Jacobs never asserted and is not before this Court.

The final arrow in SCL's quiver regarding Adelson's and Leven's activities likewise falls far short of the mark. SCL argues that activities *in* the forum are not enough to support general personal jurisdiction, that conduct must be directed *at* the forum.[40] But the law is otherwise. SCL relies on a case which involved a claim of *specific* rather than general personal jurisdiction.[41] Furthermore, in the excerpt cited by SCL, the court held that actions directed at the forum are

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[38] *See* Petition 22:15-18.

[39] Petition 15:28 to 16:4.

[40] Petition 36:24-28.

[41] *See Kumarelas v. Kumarelas*, 16 F.Supp.2d 1249, 1253 (D. Nev. 1998) ("plaintiff is not claiming that this court has general jurisdiction over defendant but rather that this court has specific jurisdiction over defendant").

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sufficient, but not *necessary*, to support personal jurisdiction.[42] To the contrary, the remarks cited by SCL refer to the "purposeful availment" test for "minimum contacts" due process,[43] under which "a plaintiff may show *either* that a defendant purposefully availed himself of the privilege of conducting activities within the forum *or* that a defendant purposefully directed his activities toward the forum." *Pat Clark Sports, Inc. v. Champion Trailers, Inc.*, 487 F.Supp. 2d 1172, 1177 (D. Nev. 2007) (emphasis added). Note the half of this alternative test omitted by SCL: "activities *within* the forum".[44] That, of course, aptly describes SCL's de facto executive headquarters in Las Vegas.

2. *SCL Regularly Transfers Millions of Dollars to and from Las Vegas in Furtherance of Its Business.*

SCL periodically uses so-called "Affiliate Transfer Advices" to transmit its customers' funds electronically to LVSC or its affiliates in Las Vegas. The sums are significant (*e.g.*, USD $2,000,000.00; $2,080,100.00; $1,902,900.00).[45] All in all, these transfers total nearly USD *$70 million* over a three-year period.[46] During the hearing below, SCL's counsel defended these

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[42] *Kumarelas*, 16 F.Supp.2d at 1253 ("in tort cases, jurisdiction may attach if the defendant's conduct is aimed at or has an effect in the forum state").

[43] The purposeful availment prong of minimum contacts requires a qualitative evaluation of the defendant's contact with the forum state in order to determine whether "[the defendant's] conduct and connection with the forum State are such that [the defendant] should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980).

[44] *See, e.g., Gator.Com Corp. v. L.L. Bean, Inc.*, 341 F.3d 1072, 1079 (9th Cir. 2003), *dismissed on reh'g en banc*, 398 F.3d 1125 (9th Cir. 2005) (general jurisdiction existed because nonresident defendant "deliberately and purposefully availed itself, on a very large scale, of the benefits of doing business *within* the state") (emphasis added).

[45] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶ 14 & *id.* Exh. 14.

[46] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶ 14 & *id.* Exh. 14; **Appx. 5**.

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transactions as "a good business practice" for the convenience of SCL customers, thereby "facilitating somebody who wants to gamble in Las Vegas and somebody who might want to gamble in China."[47] The legitimacy of these transactions is not in question here as that issue will be reviewed and decided elsewhere. Their intent, regularity, magnitude and destination, however, *are*.

The intent of these transactions is self-evident. As SCL's counsel admitted, they are meant to promote SCL's business interests. Keeping customers and financiers happy, after all, keeps them gambling, which, in turn, keeps the profits flowing into SCL's coffers. Hence these transactions may, indeed, be "a good business practice". And, because they are a *practice*, they are, by definition, regular.[48]

Their magnitude too is manifest: millions upon millions of dollars, transfer after transfer, adds up to serious money.

The *destination* of these funds is a topic that inspires SCL's impassioned flimflammery. SCL chides Jacobs for using an outdated "moniker".[49] According to SCL, these transactions are no longer called an "Affiliate Transfer Advice". Their new label is "Inter-Company Accounting Advice" to correct the misimpression that a transfer of funds from Macau to Las Vegas occurs. Instead, funds on deposit in Macau are merely "made available" in Las Vegas through a series of

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[47] 3/15/11 Tr. [**Appx. 6**] 57:23-25, 58:11, 58:20-24.

[48] *See* Affidavit of Jason M. Anderson [**Appx. 4**] ¶ 6 (inter-affiliate accounting adjustments occur every 30 days).

[49] Petition 37:27, 40:7-8.

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debits and credits; the patron's account is debited in Macau and credited in Las Vegas.[50] Money is thus magically "available" in Las Vegas without leaving Macau.

This "moniker" rationale again exalts form over substance, but here the fallacy is aggravated by impudence on steroids. SCL's house-of-cards contrivance to mask the millions of Macau dollars "available" in Las Vegas exemplifies the verbal obfuscation denounced by courts as "antics with semantics".[51] It is an insultingly transparent charade which did not fool the district court and remains equally implausible on appeal. Its problem, in a nutshell, is that it fails the common sense "duck" test, *i.e.*, "if it walks like a duck, quacks like a duck, and swims like a duck, it's a duck."[52] Had SCL physically carted suitcases full of currency into Nevada, it presumably would not deny that a "transfer" of funds took place. Its quibble that the identical result was achieved by transmitting electronic blips rather than paper strips is a distinction without a difference, for entering electronic debits and corresponding credits is precisely how an electronic funds *transfer* occurs. *See* 15 U.S.C. § 1693a(6); *Brooke Credit Corp. v. Buckeye Ins. Ctr.*, 563 F.Supp.2d 1205, 1207 (D. Kan. 2008) (franchisor performed accounting services for franchisees, which included making "electronic funds transfers *to credit and debit various accounts*") (emphasis added). SCL's own affidavits admit that the debit-credit differentials "are settled by wire *transfer*";[53] and, during

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[50] *See* Petition 40:22-28.

[51] *Brown v. Lumbermens Mut. Cas. Co.*, 285 N.C. 313, 204 S.E.2d 829, 833 (1974).

[52] *See, e.g., Lake v. Neal*, 585 F.3d 1059, 1059 (7th Cir. 2009), *cert. denied*, __ U.S. __, 130 S.Ct. 3296, 176 L.Ed.2d 1187 (2010); *People v. Monjaras*, 164 Cal.App.4th 1432, 79 Cal.Rptr.3d 926, 929 (2008). As this Court succinctly observed in *Wolff v. Wolff*, 112 Nev. 1355, 1363, 929 P.2d 916, 921 (1996), "[c]alling a duck a horse does not change the fact it is still a duck."

[53] Affidavit of Jason M. Anderson [**Appx. 4**] ¶ 8 (emphasis added).

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oral argument, even SCL's counsel stated that the money "is transferred" to and from Las Vegas.[54] These transfers constitute a significant forum contact when considering the jurisdiction question. *See, e.g., Provident Nat. Bank v. California Federal Sav. & Loan Ass'n*, 819 F.2d 434 (3d Cir. 1987).

In *Provident*, the defendant bank was headquartered in California, maintained no Pennsylvania offices, employees, agents, mailing address, or telephone number, and it neither advertised nor paid taxes in Pennsylvania. *Id.* at 438. Notwithstanding the foregoing, the Third Circuit Court of Appeals held that Pennsylvania could exercise general jurisdiction over the California bank given that it routinely transferred funds into a Pennsylvania account maintained by a different bank. *Id.* It did not matter that these daily transfers comprised a miniscule portion of the California bank's business as they still constituted "substantial, ongoing, and systematic activity in Pennsylvania." *Id.* The same can certainly be said here as SCL's wire transfers are in substantial amounts and occur frequently enough to constitute systematic and continuous contact with the State of Nevada.

SCL also insists that *it* did not transfer the funds, but instead its subsidiary, Venetian Macau Limited ("VML") performed these actions. On its face, this upstream transfer from SCL's subsidiary to SCL's parent, which somehow conveniently leapfrogs over the intermediary (SCL itself), exhibits all the earmarks of simply another none-too-subtle subterfuge meant to disguise the substance of the transaction.[55] Furthermore, the objection mistakes the burden of proof. As

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[54] 3/15/11 Tr. [**Appx. 6**] 57:20-21.

[55] SCL explains it on the ground that VML, as the gaming subconcessionaire, is the sole entity allowed to deal with patrons' funds under Macau law. *See* Petition 40:19-20. Perhaps, but creating superficial appearances to conceal the reality of transactions, in order to circumvent government regulations while seeming to obey them, is a time-honored artifice in the corporate world.

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noted earlier, Jacobs need only make a *prima facie* showing of facts to support personal jurisdiction. *Trump v. Eighth Judicial Dist. Ct.*, *supra*, 109 Nev. at 692-93, 857 P.2d at 743-44. Having been SCL's President and CEO, Jacobs has attested that *SCL* transfers the funds to Las Vegas.[56] This, for present purposes, is dispositive, for it is more than enough to establish, *prima facie*, that SCL does, in fact, transfer these funds to Las Vegas. Hence it makes no difference that SCL's witnesses state otherwise; such a conflict merely goes to the *weight* of the evidence, an inquiry that is premature at the present stage of the case.

SCL, in short, methodically moves millions of dollars to Las Vegas to ingratiate itself with its patrons. Bear in mind, moreover, that this trans-Pacific financial current flows both ways:[57] funds are also transferred *from* Las Vegas in order to facilitate gambling in Macau.[58] In this fashion, SCL *doubly* benefits from its contacts with Las Vegas: by transferring funds *to* Las Vegas, it keeps its patrons happy; by transferring funds *from* Las Vegas, it keeps them solvent. Both streams, of course, lead to the same end, *i.e.*, lining SCL's pockets. There is nothing necessarily sinister in this. It may well be, as SCL's counsel correctly noted, simply a good business practice. But to deny, in the face of this practice, that SCL's contacts with Nevada are substantial, continuous and systematic is utter nonsense.

The cases cited by SCL do not support a contrary conclusion. One of them is no longer good law,[59] and the others are factually distinguishable. *Fields v. Ramada Inn, Inc.*, 816 F.Supp.

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[56] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶ 14.

[57] Affidavit of Jennifer Ono [**Appx. 4**] ¶ 6.

[58] 3/15/11 Tr. [**Appx. 6**] 57:24-25.

[59] *Romann v. Geissenberger Mfg. Corp.*, 865 F.Supp. 255 (E.D. Pa. 1994) (cited at Petition 38:19-21), was abrogated by the court that originally decided it. *See Eagle Traffic Control, Inc. v.*

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1033 (E.D. Pa. 1993), for example, held that merely advertising in the forum, without more, is an insufficient contact. *See Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119, 1126 (W.D. Pa. 1997) (*Fields* was inapplicable because the defendant in *Zippo* "has done more than advertise" in the forum). SCL's contacts with Nevada include connections far more entrenched and substantial than simple advertising from afar—not only its financial transactions, but also its use of Las Vegas facilities as its executive headquarters, discussed earlier, for "it is the cumulative significance of all the activities conducted in the jurisdiction rather than the isolated effect of any single activity that is determinative." *Abbott v. Second Judicial Dist. Ct.*, 90 Nev. 321, 324, 526 P.2d 75, 76 (1974).

Inapplicable for the same reason is *Arroyo v. Mountain School*, 68 A.D.3d 603, 892 N.Y.S.2d 74 (2009), which involved circumstances radically dissimilar from those in the present case. *Arroyo* was an action against a Vermont school for injuries sustained on the school premises. The plaintiff relied on the fact that the school had approximately $14 million invested with New York firms as a basis for personal jurisdiction in New York. The court disagreed. Noting New York's unique role as a global financial nerve-center, and the school's lack of other substantial contacts with New York, it held that "[t]he investment of money in New York cannot alone be considered a form of 'doing business' for the purpose of [New York's long-arm statute]; if it were, then almost every company in the country would be subject to New York's jurisdiction." 892 N.Y.S.2d at 75 (internal quotation marks omitted). The latter rationale, and the facts which engendered it, have no pertinence here.

James Julian, Inc., 933 F.Supp. 1251, 1256 (E.D. Pa. 1996).

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C. SCL Has Not Made a Plausible Showing, Much Less a Compelling One, that Other Considerations Render the Exercise of Jurisdiction Unreasonable.

SCL correctly identifies the factors considered in determining whether personal jurisdiction is reasonable: (1) the extent of a defendant's purposeful contacts with the forum, (2) the burden on the defendant in defending in the forum, (3) the extent of any conflict with the sovereignty of the defendant's state, (4) the forum's interest in adjudicating the dispute, (5) the most efficient judicial resolution of the controversy, (6) the importance of the forum to the plaintiff's interest in convenient and effective relief, and (7) the existence of an alternative forum. *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1132 (9th Cir. 2003). But there is no justifiable basis for SCL's attempts to stretch the facts in order to tilt these criteria in its favor.

The blanket assertion, regarding the first criterion, that "SCL has *no* purposeful contacts with Nevada"[60] is flagrantly false. As demonstrated above, SCL's purposeful contacts with Nevada are persistent, extensive and substantial.

Nor will SCL be unduly burdened by litigating in Nevada. Its two top executives live and work here, and it regularly operates its business from here. Nevada can hardly be a congenial place to conduct business and, at the same time, an onerous place to defend actions arising from that business.

SCL invokes the specter of a conflict with Hong Kong sovereignty because of Hong Kong's interest in governing companies whose stock is listed on the Hong Kong Stock Exchange. But this supposed conflict is illusory. The controversy here is not a securities fraud claim, but a private contract dispute. In this context, it makes no difference where SCL's stock happens to be listed.

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[60] Petition 41:22-23 (emphasis added).

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Hong Kong thus has little interest in the matter. The sovereignty argument, moreover, cuts both ways. SCL, after all, is not the sole defendant. LVSC, a *Nevada* corporation, is also a defendant. Nevada, accordingly, has at least as great an interest as Hong Kong, if not greater.

That, in turn, implicates the fourth criterion, *i.e.*, the forum's interest in deciding the dispute. Nevada has a vital interest in the conduct of its gaming licensees, of which LVSC is one. Nevada's gaming laws, moreover, and thus its interests extend to LVSC's foreign gaming operations in Macau, as SCL itself has admitted.[61] Jacobs has raised gravely serious questions regarding the conduct of LVSC, SCL and their senior management. Clearly, therefore, Nevada has a paramount interest in the adjudication of this dispute.

Nevada is also the most efficient forum to resolve this dispute, for the bulk of Jacobs' claims stem from his contractual relationships with Nevada-based LVSC. It is also the most convenient forum for Defendants since SCL has its own substantial ties to the State and LVSC is headquartered here. Although Jacobs' stock option agreement with SCL includes a Hong Kong choice-of-law provision, SCL has not identified any substantive conflict between Nevada and Hong Kong law.[62] Even if such a conflict existed, moreover, Nevada courts are perfectly capable of applying Hong Kong law. *See* NRCP 44.1. Hence there is "no connection between the parties' choice-of-law provision and the issue of reasonableness" because "a court can exercise jurisdiction, and at the

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[61] *See* SCL prospectus [**Appx. 3, Exh. 3**], p. 43.

[62] SCL's discussion of *procedural* differences, such as the absence of a jury under Hong Kong law (*see* Petition 42:24-27) misstates the scope and effect of the choice-of-law provision, which recites that *interpretation of the agreement* is to be governed by Hong Kong law. *See* **Appx. 2 (Part 2), Exh. C**] ¶ 14. It does not, and legally could not, bind the interpreting court to adopt the *judicial procedures* of Hong Kong law. To the extent SCL's Petition also takes a passing swipe at the substantive viability of Jacobs' contract claim against SCL (*see* Petition at 12:16 – 13:4), Jacobs would note that the district court denied SCL's subsequent efforts to have this claim dismissed. *See* Order Denying SCL's Motion to Dismiss Plaintiff's Second Cause of Action dated 7/6/11.

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same time, apply the law of another [jurisdiction]." *Card Player Media, LLC v. The Waat Corp.*, 2009 WL 948650, at *4 (D. Nev. Apr. 6, 2009). The district court's ability to apply choice-of-law rules, indeed, further undermines SCL's misplaced emphasis on Hong Kong sovereignty, for any conflicting sovereignty interests can be accommodated through choice-of-law rules, thus rendering that factor one of little importance in assessing reasonableness. *Allstar Marketing Group, LLC v. Your Store Online, LLC*, 666 F.Supp.2d 1109, 1125 (C.D. Cal. 2009).

Because Nevada is the most efficient forum to resolve this dispute, having the Nevada courts adjudicate it is also important to Jacobs' interest in convenient and effective relief. Otherwise, as SCL would undoubtedly prefer as a tactical coup of attrition, Jacobs would be forced to litigate his claims on the other side of the globe. Finally, SCL acknowledges that Nevada has a competent legal system with a strong interest in the controversy.[63]

On this record, SCL cannot satisfy, and has not satisfied, its burden of proving that Nevada's exercise of personal jurisdiction over it is unreasonable.

D. Jacobs Has Requested the Opportunity to Conduct Jurisdictional Discovery, If Necessary.

Courts have frequently held that the party opposing a jurisdictional challenge is entitled to conduct discovery regarding jurisdiction "where pertinent facts bearing on the question of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary." *Laub v. U.S. Dept. of Interior*, 342 F.2d 1080, 1093 (9th Cir. 2003). Jacobs obviously agrees with the district court that he has already satisfied his burden of making a *prima facie* showing of jurisdiction over SCL based on the evidence adduced to date. If, however, this Court determines that additional information on SCL's contacts with Nevada is necessary to determine whether the

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[63] *See* Petition 43:4-6.

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district court may properly assert jurisdiction over the company, Jacobs hereby renews his request that he be given the opportunity to conduct jurisdictional discovery.[64]

CONCLUSION

For the reasons set forth above, this Court should deny SCL's writ petition.

DATED this 25th day of July, 2011.

Respectfully submitted,

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[64] *See* Plaintiff's Opposition to Sands China Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Plaintiff's Failure to Join an Indispensable Party [**Appx. 3**], p. 21.

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of July, 2011, I served via hand delivery and a true and correct copy of the foregoing **Answer of Real Party in Interest Steven C. Jacobs to Petition for Writ of Mandamus, in the Alternative, Writ of Prohibition** to the following:

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