

1 **AFFIDAVIT OF ANDREW D. SEDLOCK IN SUPPORT OF PETITIONER SANDS CHINA**
2 **LTD'S MOTION TO STAY PROCEEDINGS PENDING WRIT PETITION**

3 STATE OF NEVADA)
4 COUNTY OF CLARK)ss:
)

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

6 1. I am an attorney with the law firm of GLASER WEIL FINK JACOBS HOWARD,
7 AVCHEN & SHAPIRO LLP, counsel of record for Petitioner Sands China Ltd's Motion To Stay
8 Proceedings Pending Writ Petition ("Motion") and know the contents thereof.

9 2. I have personal knowledge of the matters stated herein and competent to testify
10 thereto and make this affidavit in support of this Motion.

11 3. Attached hereto as Exhibit A to Petitioner Sands China Ltd's Motion To Stay
12 Proceedings Pending Writ Petition is a true and accurate copy of the Petition For Writ of
13 Mandamus, Or In The Alternative, Writ of Prohibition ("Writ") filed on May 6, 2011.

14 4. Attached hereto as Exhibit B to Petitioner Sands China Ltd's Motion To Stay
15 Proceedings Pending Writ Petition is a true and accurate copy of Appendices 1 through 8 to the Writ
16 filed on May 6, 2011.

17 5. Attached hereto as Exhibit C to Petitioner Sands China Ltd's Motion To Stay
18 Proceedings Pending Writ Petition is a true and accurate copy the First Amended Complaint filed
19 on March 16, 2011.

20 6. Attached hereto as Exhibit D to Petitioner Sands China Ltd's Motion To Stay
21 Proceedings Pending Writ Petition is a true and accurate copy of the Order Granting Motion To
22 Dismiss and Directing Entry of Final Judgment In Favor of Sheldon G. Adelson [NRCP54(b)] filed
23 on June 20, 2011.

24 7. Attached hereto as Exhibit E to Petitioner Sands China Ltd's Motion To Stay
25 Proceedings Pending Writ Petition is a true and accurate copy of Steven C. Jacobs' Notice of
26 Appeal.

Glaser Weil Fink Jacobs
Howard Avchen & Shapiro LLP

1 8. Attached hereto as Exhibit F to Petitioner Sands China Ltd's Motion To Stay
2 Proceedings Pending Writ Petition is a true and accurate copy of the Supreme Court's Order
3 Directing Answer filed on June 24, 2011.

4 9. Attached hereto as Exhibit G to Petitioner Sands China Ltd's Motion To Stay
5 Proceedings Pending Writ Petition is a true and accurate copy of Answer of Real Party In Interest
6 Steven C. Jacobs To Petition For Writ Of Mandamus, Or In The Alternative, Writ Of Prohibition.

7 10. Attached hereto as Exhibit H to Petitioner Sands China Ltd's Motion To Stay
8 Proceedings Pending Writ Petition is a true and accurate copy of Defendant Sands China Ltd's
9 Motion To Stay Proceedings Pending Writ Petition On Order Shortening Time filed on May 17,
10 2011.

11 11. Attached hereto as Exhibit I to Petitioner Sands China Ltd's Motion To Stay
12 Proceedings Pending Writ Petition is a true and accurate copy of the Transcript from the Hearing on
13 Defendant Sands China, Ltd's Motion To Stay Proceedings held on May 6, 2011.

14 12. Attached hereto as Exhibit J to Petitioner Sands China Ltd's Motion To Stay
15 Proceedings Pending Writ Petition is a true and accurate copy of Defendant Sands China Ltd's
16 Motion To Stay Proceedings Pending Writ Petition On Order Shortening Time filed on July 14,
17 2011.

18 13. Attached hereto as Exhibit K to Petitioner Sands China Ltd's Motion To Stay
19 Proceedings Pending Writ Petition is a true and accurate copy of Plaintiff's Opposition To Sands
20 China Ltd's Renewed Motion To Stay Proceedings Pending Writ Petition On Order Shortening
21 Time.

22 14. Attached hereto as Exhibit L to Petitioner Sands China Ltd's Motion To Stay
23 Proceedings Pending Writ Petition is a true and accurate copy of the Transcript of the Hearing On
24 Defendant 'Sands China's Motion To Stay Proceedings Pending Writ Petition held on July 20,
25 2011.

26 ///

27 ///

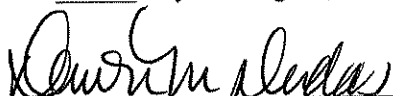
28

1 15. Attached hereto as Exhibit M to Petitioner Sands China Ltd's Motion To Stay
2 Proceedings Pending Writ Petition is a true and accurate copy of the opinion issued in the case of
3 *Good year v. Brown*, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (2001).

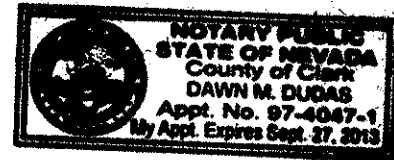
4 16. The facts stated in the Motion are true of my knowledge, and to those matters that are
5 on information and belief, such matters I believe to be true.

6
7
8 
Andrew D. Sedlock

8 Subscribed and sworn to before me
9 this 3rd day of August, 2011

10 
11 NOTARY PUBLIC in and for
said County and State

12 My Commission expires 9-27-13



IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD,

Petitioner,

v.

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest

Electronically Filed
Aug 03 2011 04:33 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

Case No.: 58294

(D.C. No.: A-10-627691-C)

**PETITIONER SANDS CHINA LTD.'S MOTION
TO STAY PROCEEDINGS PENDING WRIT PETITION**

GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP

CAMPBELL & WILLIAMS

Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)
Stephen Ma, Esq. (Pro Hac Pending)
Andrew D. Sedlock, Esq. NBN 9183
3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169

Donald J. Campbell, Esq. NBN 1216
J. Colby Williams, Esq. NBN 5549
700 South Seventh Street
Las Vegas, Nevada 89101

Attorneys for Petitioner

Attorneys for Real Party in Interest

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On May 4, 2011, Sands China Ltd. ("SCL") filed its Petition for a Writ of Mandamus, or in the Alternative, Writ of Prohibition (the "Writ Petition"), seeking to enforce its constitutional due process rights and prohibit any further exercise of personal jurisdiction over SCL by the District Court. This Court has decided to consider the Writ Petition, and Real Party in Interest, Steven C. Jacobs ("Jacobs") filed his Answer with this Court on July 25, 2011. While this Court considers the Writ Petition and the parties' briefs, the District Court and the Nevada Rules of Civil Procedure are requiring SCL to expend over One Million Dollars (US\$1,000,000.00) to review documents stored in Macau Special Administrative Region of the People's Republic of China ("Macau"), while also seeking compliance with Macanese laws concerning the transfer of private data out of Macau. The District Court has denied SCL's requests to stay this action, and SCL has therefore exhausted its trial court remedies and seeks the protection of this Court by requesting an order staying the underlying proceedings pending final disposition of the Writ Petition.

II. FACTUAL AND PROCEDURAL HISTORY

A. Jacobs' Initial and First Amended Complaint

On October 20, 2010, Jacobs initiated the underlying lawsuit by filing a Complaint against SCL and Las Vegas Sands Corp. ("LVSC") in the Eighth Judicial District Court of Nevada, County of Clark, Case No. A-10-627691-C. See Jacob's Complaint included as Appendix 1 in **Exhibit B**.¹ The Complaint asserted only one cause of action against SCL (a Cayman Islands company with its primary place of business in Macau), for breach of contract. See Complaint at ¶¶ 42-47 (Ex. B, Appendix 1). Jacobs' Complaint alleged that the contract at issue, the Stock Option Grant Letter, purportedly granted Jacobs an option to purchase 2.5 million shares of SCL stock, listed in the Stock Exchange of Hong Kong Limited ("HKEx"). *Id.* at ¶ 43.

¹ Appendices 1 through 8 to the Writ Petition are attached to the Affidavit of Andrew Sedlock (the "Sedlock Aff'd") as Exhibit B.

1 SCL responded to Jacobs' Complaint on December 22, 2010 by filing a Motion to Dismiss
2 for Lack of Personal Jurisdiction, and in the alternative, for Plaintiff's Failure to Join a Necessary
3 Party (the "First Motion to Dismiss"). See First Motion to Dismiss, included as Appendix 2 in Ex.
4 B. The First Motion to Dismiss argued that because Jacobs could not allege that SCL had
5 performed any actions in Nevada related to his breach of contract claim, or could demonstrate that
6 SCL had any "substantial or continuous or systematic" contacts with Nevada, personal jurisdiction
7 over a foreign entity, SCL, did not exist and SCL must be dismissed from the lawsuit². *Id.*

8 The District Court denied the First Motion to Dismiss after finding that the District Court
9 had general jurisdiction over SCL, stating that "[h]ere there are pervasive contacts with the state of
10 Nevada by activities done in Nevada by board members of [SCL]."³ See Transcript of March 15,
11 2011 hearing, included as Appendix 6 in Ex. B.

12 **B. SCL files a Writ Petition challenging the District Court's finding of general**
13 **personal jurisdiction over SCL**

14 On May 5, 2011, SCL filed its Writ Petition with the Nevada Supreme Court, challenging
15 the District Court's finding that activities taken in Nevada by the Chairman of SCL's Board of
16 Directors and a special advisor to SCL's Board of Directors was sufficient, in and of themselves, to
17 establish general personal jurisdiction over a foreign company with no independent contacts with
18 Nevada. See Writ Petition, attached to Sedlock Affidavit as **Exhibit A**. Specifically, the Writ
19 Petition demonstrated that the allegations on which Jacobs, and the District Court, relied upon to
20 justify the exercise of general personal jurisdiction were based on SCL's subsidiary relationship
21

22 ² The First Motion to Dismiss also argued that Jacobs failed to join a necessary party, Venetian Macau Limited
23 ("VML"), which employed Jacobs during the relevant time periods and was indispensable regarding Jacobs'
24 employment related claims against LVSC. See First Motion to Dismiss at pp 13-16 (Ex. B, Appendix 2).

25 ³ Subsequently, Jacobs filed his First Amended Complaint (the "FAC"), which added a claim for defamation against
26 SCL and LVSC, as well as against a new defendant, Sheldon A. Adelson ("Adelson"). See Jacobs' FAC, attached to the
27 Sedlock Aff'd as **Exhibit C**. On June 9, 2011, the Court granted in part SCL's Motion to Dismiss for Failure to State a
28 Claim (the "Second Motion to Dismiss"), thereby dismissing Jacobs' claim for defamation, and thus dismissing Adelson
from the lawsuit. See June 9, 2011 Order, attached to the Sedlock Aff'd as **Exhibit D**. Jacobs has recently challenged
the District Court's ruling, and filed a Notice of Appeal to the Nevada Supreme Court on June 20, 2011 ("Jacobs'
Appeal"). See true and accurate copy of Notice of Appeal, attached as **Exhibit E**.

1 with LVSC, a Nevada corporation, and that the actions of SCL's representatives allegedly taken in
2 Nevada were directed solely to SCL in Macau, with no effect felt in Nevada⁴. *Id.*

3 After reviewing the Writ Petition, this Court issued an Order Directing Answer on June 24,
4 2011, which stated that "[SCL] has set forth issues of arguable merit and that an answer to the
5 petition is warranted." *See* Order Directing Answer, attached to the Sedlock Aff'd as **Exhibit F**.
6 Pursuant to the Order Directing Answer, Jacobs filed his Answer on July 25, 2011. *See* Jacobs'
7 Answer to Writ Petition, attached to the Sedlock Aff'd as **Exhibit G**.

8 **C. SCL's First Motion to Stay to the District Court**

9 On April 22, 2011, the parties filed a Joint Status Report stating that the parties "anticipate
10 that LVSC's and SCL's respective disclosures will consist of a high volume of documents which
11 include Electronically Stored Information (ESI)." *See* SCL's First Motion to Stay, attached to the
12 Sedlock Aff'd as **Exhibit H**, at p. 14, lines 3-5 (citing Affidavit of Mark G. Krum (the "Krum
13 Aff'd." at ¶ 3).

14 On May 2, 2011, Jacobs' counsel served his "Initial Identification of ESI Search Terms and
15 Date Ranges" (the "Search Terms") which identified nearly two hundred (200) different proposed
16 search terms to be run through SCL's entire electronic database, including the email accounts of
17 more than eighty (80) different employees and representatives. *See* Ex. H at p. 14 at lines 6-8
18 (citing Krum Aff'd at ¶ 5). Jacobs' counsel was subsequently advised that a Macau statute referred
19 to as the Macau Personal Data Protection Act (the "Macau Act") could be a substantial impediment,
20 if not a total bar, to SCL's ability to retrieve, review or produce certain information and documents,
21 including ESI, that may otherwise be subject to NRCP 16.1 requirements. *See* Ex. H. at p. 14, lines
22 13-16 (citing Krum Aff'd at ¶ 6).

23 Jacobs' counsel took the position that Nevada law would control SCL's discovery
24 obligations, arguing that SCL must comply with any order or requirement pursuant to NRCP 16,
25

26
27 ⁴ The Writ Petition also clarified several erroneous factual assertions put forth by Jacobs and further demonstrated that
28 SCL had not, and could not have directed any activity to Nevada, let alone such activity that would constitute "pervasive
contacts" as incorrectly stated by the District Court. *See* Ex. A.

1 even if doing so gives rise to a violation of the Macau Act resulting in civil and criminal penalties.
2 *See* Ex H. at p. 14 lines 16-23 (citing Krum Aff'd at ¶ 6).

3 In response, SCL filed the First Motion to Stay with the District Court on May 17, 2011. *See*
4 Ex. H. In addition to arguing that SCL's Writ Petition was likely to succeed, the First Motion to
5 Stay argued that the object of the Writ Petition would be defeated and SCL would be irreparably
6 harmed if the discovery process was allowed to proceed before the Nevada Supreme Court made an
7 adjudication as to whether Nevada courts had personal jurisdiction over SCL. *Id.* at pp. 11-15. On
8 May 26, 2011, the District Court denied the First Motion to Stay as premature as SCL was not yet
9 subject to a court order that would require it to violate the Macau Act or other Macau laws, yet it
10 still must incur the substantial fees and expenses to review documents and ensure compliance with
11 the Macau Act. *See* Transcript of May 26, 2011 hearing, attached to the Sedlock Aff'd as **Exhibit I**
12 at pp. 18-19.

13 **D. SCL's continued attempts to comply with the Macau Act and Second Motion to**
14 **Stay**

15 Following the District Court's denial of SCL's First Motion to Stay as premature, the parties
16 continued to meet and confer regarding the scope of SCL and LVSC's initial production of
17 documents, and have tentatively agreed that SCL and LVSC shall complete their respective initial
18 production of documents on or before August 31, 2011, with Jacobs scheduled to complete his
19 production on or before August 15, 2011. *See* SCL's Second Motion to Stay, attached to the
20 Sedlock Aff'd as **Exhibit J**. In anticipation of reviewing and producing documents located in
21 Macau, SCL's General Counsel and Company Secretary, David Fleming, met with the Macau
22 Office for Personal Data Protection ("OPDP") to confirm the proper procedure required by the
23 Macau Act and enforced by the Macau government. *See* Affidavit of David Fleming (the "Fleming
24 Aff'd") attached as supporting affidavit to SCL's Second Motion to Stay (Ex. J).⁵
25

26
27 ⁵ The OPDP was established in 2007 as an independent institution operating under supervision of Macau's Chief
28 Executive. The Macau Act was passed in August 2005, and establishes the legal system for processing and protecting
personal data stored or used by individuals and entities in Macau. The Macau Act applies to the collection, storage,
retrieval, disclosure by transmission and dissemination of "personal data," which is defined broadly as any type of

As confirmed by Fleming's meeting with the OPDP, production of SCL's ESI and other documents stored in Macau will require strict compliance with relevant Macau law, specifically including the Macau Act. *See* Fleming Aff'd. at ¶ 4 (Ex. J). The OPDP stated that SCL's Macau subsidiaries will be required to review a vast amount of documents and ESI in order to (i) identify and obtain consent from relevant data subjects before transferring any personal data outside of Macau, and/or (ii) obtain consent from the OPDP before transferring such personal data outside of Macau, depending on the sensitivity of the personal data at issue.⁶ *Id.* at ¶ 5. In the event consent is given by the data subjects, which is not guaranteed by any means, SCL's Macau subsidiaries must still provide notice to the OPDP that consent has been received before the transfer of data outside of Macau. *Id.* at ¶ 6.

In order to perform this amount of work before the August 31, 2011 deadline, SCL's Macau subsidiaries must bring a large team of its outside counsel and contract lawyers to Macau to review and analyze this information after hiring vendors to process between approximately 2 to 13 terabytes of information, or possibly more. *Id.* at ¶ 7. Strict protocols must be adhered to in order to ensure that no personal data leaves Macau in breach of the Macau Act. *Id.* at ¶ 8. For the Court's perspective, the lowest estimate of 2 terabytes (2000 gigabytes) is equivalent to nearly ten percent (10%) of all of the information currently catalogued by the U.S. Library of Congress. *See* U.S. Library of Congress Web Archive FAQ page, attached as Exhibit D to SCL's Second Motion to Stay. It is currently estimated that this preliminary process will cost in excess of One Million Dollars (\$1,000,000.00) to complete. *See* Fleming Aff'd. at ¶ 7 (Ex. J). Again, SCL has been informed that the Macau Act and its requirements will be strictly enforced, and failure to comply may result in civil and criminal penalties. *Id.* at ¶¶ 8, 9.

information relating to an identified or identifiable natural person ("data subject"), and subjects those who fail to comply to both civil and criminal penalties. *See* Macau Act at Articles 4, 8. www.gdpd.gov.mo

⁶ Pursuant to the Macau Act and related Macau law, SCL cannot independently grant consent on behalf of its employees, former employees, or third parties to disclose documents that contain personal data. *See* Macau Act at Article 6; *see also* Fleming Aff'd. at ¶¶ 5, 6 (Ex. J).

At the July 19, 2011 hearing on the Second Motion to Stay, while the District Court acknowledged the hardship caused by SCL's required compliance with the Macau Act, the Second Motion to Stay was denied. *See* Transcript of July 19, 2011 hearing, attached to the Sedlock Aff'd as **Exhibit L**. The District Court held that the Second Motion to Stay continued to be premature because SCL was not immediately subject to civil or criminal sanctions or under a court order to produce documents that would lead to civil or criminal sanctions under the Macau Act. *See* Ex. L at p. 12, lines 16-25.

Having exhausted its remedies with the District Court, SCL now files the present Motion to Stay with this Court and submits that this case should be stayed as to SCL in order to preserve SCL's due process rights and prevent the irreparable harm that will occur if SCL is forced to continue with the discovery process.

A. The Legal Standard.

In ruling on a motion to stay proceedings pending the review of a writ petition, the Court should consider the following factors under Nevada law:

- (1) Whether the object of the appeal or writ petition will be defeated if the stay is denied;
- (2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied;
- (3) Whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and
- (4) Whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

1 See NRAP 8(c); see also *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251 (2004) (granting a
2 stay pending Nevada Supreme Court review and noting that no single factor controls or carries more
3 weight than the other factors in the court's analysis).

4 As demonstrated below, the foregoing factors provide the Court with good cause to stay the
5 proceedings in this case pending the disposition of the Writ Petition.

6 **B. The Object of the Petition Will be Defeated Unless A Stay is Granted in the**
7 **Underlying Proceedings.**

8 As stated above, the Nevada Supreme Court issued the Order Directing Answer on June 24,
9 2011 which confirmed that, after its review of the Writ Petition, SCL had "set forth issues of
10 arguable merit and that an answer to the petition is warranted." See Ex. F. The Order Directing
11 Answer further required Jacobs to file an Answer within thirty (30) days of the filing of the Order
12 (or July 25, 2011), with SCL's Reply due fifteen (15) days after service of the Answer. *Id.*

13 The willingness of this Court to consider SCL's Writ Petition regarding personal jurisdiction
14 issues reflects that matters concerning the determination of personal jurisdiction necessarily involve
15 threshold, fundamental due process considerations. See *Int'l Shoe Co. v. Washington*, 326 U.S. 310,
16 316 (1945); see also *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 (1984).
17 As stated in the Writ Petition and in SCL's First Motion to Stay, the due process protections at issue
18 in a challenge to personal jurisdiction are recognized as "fundamental rights and liberties which are,
19 objectively, 'deeply rooted in this Nation's history and tradition,'" and are "implicit in the concept
20 of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed." See
21 *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934).⁷

22 The object of the Writ Petition is to receive a clarification of an important issue of law in
23 Nevada and to prevent any further erosion of SCL's due process rights by obtaining an order

24
25 ⁷ SCL acknowledges that the Nevada Supreme Court has denied requests for stay in certain circumstances where the
26 requesting party has filed a petition challenging personal jurisdiction. See *Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev.
27 650 (2000). However, the holding in that case only noted that the stay would be unnecessary for that particular party as
28 recent changes to NRCP 12(b) eliminated the doctrine of special/general appearances, thereby preserving defenses of
lack of personal jurisdiction asserted in responsive pleadings. The *Hansen* case did not hold that a stay would always be
denied if sought to halt trial court proceedings pending disposition of a petition to challenge jurisdiction, particularly if
petitioner could establish the stay requirements in NRCP 8(c).

1 dismissing SCL for lack of personal jurisdiction. In the absence of a stay, the object of the Writ
2 Petition will be defeated as SCL will continue to be subject to the Court's jurisdiction and any
3 further orders or obligations imposed by the NRCP.

4 While reserving its respective rights as set forth in the Writ Petition, the discovery process
5 has commenced and the parties have already exchanged initial lists of witnesses, and have continued
6 the formidable task of identifying and producing relevant documents. A stay is now warranted and
7 indeed required to avoid any further exercise of personal jurisdiction over SCL before that very
8 issue is decided by this Court.

9 Therefore, to avoid defeating the purpose of the Writ Petition and interfering with this
10 Court's consideration of the arguments set forth in the Writ Petition, this Court should stay these
11 proceedings against SCL.

12 **C. SCL Will Suffer Irreparable Harm Unless the Stay is Granted.**

13 The Nevada Supreme Court has stated that when a party can demonstrate that it will face
14 irreparable or serious harm if a stay is denied, that should be considered in the stay analysis. *See*
15 *Mikohn*, 120 Nev. at 253. With the recent filing of the Order Directing Answer and this Court's
16 decision to consider the Writ Petition's meritorious arguments, the possibility of significant and
17 irreparable harm has now become timely and more tangible.

- 18 i. The District Court must consider the limitations imposed by the Macau Act,
19 which prevents SCL from fully complying with NRCP discovery
20 requirements

21 Courts have imposed certain limitations on courts to order a party to produce records located
22 in a jurisdiction which proscribes their disclosure. *See e.g. United States v. Davis*, 767 F.2d 1025,
23 1033-1034 (2d Cir. N.Y. 1985). These limitations have been engendered both by a concern for the
24 hardship imposed on the subject of the order and a respect for the national interests of the state
25 where the records are located. *Id.* The Second Circuit, as well as several others, has used an
26 analysis derived from § 40 of the Restatement (Second) of the Foreign Relations Law of the United
27 States (1965) in evaluating the propriety of a trial court order requiring the production of
28

1 information or documents located abroad where such production would violate the law of the state
2 in which the documents are located.

3 The *Shcherbakovskiy v. Da Capo Al Fine, Ltd.*, 490 F.3d 130 (2d Cir. N.Y. 2007) case is
4 particularly instructive. In *Da Capo Al Fine* a minority shareholder of a foreign entity claimed that
5 he was unable to produce documents due to lack of board approval of documents' production and
6 that he could not produce the documents because producing the documents would subject him to
7 criminal sanctions under Russian law. *Id.* at 139. In rejecting the lower court's decision that
8 Russian law was irrelevant, the Court held that "[i]f Russian law prohibits appellant from obtaining
9 and producing the documents even with the agreement of [the party who had possession of the
10 documents] and an appropriate protective order in the district court, then the matter is at an end."⁸

11 In this case, SCL has analyzed the relevant portions of the Macau Act and has met with
12 representatives of the Macau government office tasked with enforcing its provisions. Compliance
13 with the discovery obligations set forth in NRCP 16 and Jacobs' discovery requests will
14 undoubtedly require SCL to subject itself to penalties for failing to abide by the Macau Act.
15 However, without an order to stay this case, SCL will be forced into a precarious position where it
16 must choose either to violate either Macau or Nevada law. SCL should not be required to make
17 such a choice where it is clear that Nevada's courts lack the jurisdiction to enforce its discovery
18 requirements or orders against SCL.

19 ii. SCL will be irreparably harmed if it is forced to comply with NRCP 16
20 discovery obligations
21

22 ⁸ In his oppositions to SCL's First and Second Motion to Stay, as it is expected he will include in his opposition to this
23 motion, Jacobs curiously cites to the *Societe Internationale v. Rogers*, 357 U.S. 197 (1958) case for the proposition that
24 a party cannot rely on foreign law to withhold or prevent the production of documents. See Jacobs' opposition at pp. 10-
25 12 (Ex. K). Jacobs has consistently misapplied the *Societe* case (decided just after World War II), which is
26 distinguishable for at least two reasons. First, the U.S. Supreme Court in *Societe* ruled that plaintiff could not rely on
27 Swiss banking law to prevent the disclosure of documents solely because the plaintiff had explicitly recognized that it
28 was subject to the jurisdiction and procedural rules of the U.S. courts, and also due to the expanded powers granted to
the court by the Trading With the Enemy Act (which was specifically designed to assist the U.S. Government with
locating and seizing assets in foreign countries). See *Societe*, 357 U.S. at 202-205. Second, the Court in *Societe* did not
state that this holding applied universally, and explicitly recognized that a party may refuse to produce documents and
information if such actions would violate foreign laws. *Id.* at 212 ("It is hardly debatable that fear of criminal
prosecution constitutes a weighty excuse for nonproduction, and this excuse is not weakened because the laws
preventing compliance are those of a foreign sovereign.").

1 In the absence of a stay, SCL must continue with the ongoing costly and time-consuming
2 discovery process and will be under an obligation to produce documents and information pursuant
3 to NRCP 16 (which can only be enforced against a party over which the court has proper personal
4 jurisdiction). However, if this Court grants the relief requested in the Writ Petition and issues an
5 order dismissing SCL from the lawsuit at some future date, this process simply cannot be undone.
6 Assuming SCL is able to otherwise comply with the Macau Act and produce documents, Jacobs will
7 be in possession of information of which he may otherwise not be entitled to receive, with no
8 mechanism in place to “un-ring the bell.” This affects not only SCL, but the other defendant in this
9 case, LVSC (and possibly Adelson if this Court grants Jacobs’ appeal of the Court’s Order
10 dismissing the defamation cause of action against Adelson).⁹ Simply put, the harm potentially
11 caused by a failure to grant a stay has no remedy, and the impact of that harm strongly supports the
12 imposition of a stay as to SCL.

13 In addition to the irreparable harm directly caused by SCL’s production of documents and
14 information in this case is the heavy burden of reviewing and producing the information currently
15 stored and controlled by SCL’s subsidiaries in Macau (which makes up a significant portion of all
16 information in SCL’s possession). As explained above, this herculean task will necessarily involve
17 the processing of an overwhelming amount of information, after which consent must be given by
18 each subject or user of the relevant document or ESI and/or representatives of the Macau
19 government before any personal data can be transferred out of Macau. *See Fleming Aff’d at ¶¶ 5,*
20 *6.* As explained above, there is no guarantee that such consent will be forthcoming, and SCL is
21 unable to grant consent on behalf of any data subject, including employees of SCL’s Macau
22 subsidiaries. *See Macau Act at Article 6.* The sheer cost, in terms of time and resources, of
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24
25 ⁹ Jacobs’ recent Notice of Appeal further complicates this matter because if the Nevada Supreme Court subsequently
26 grants Jacobs’ appeal to overturn the Court’s dismissal of the defamation claim against Adelson, SCL may be forced to
27 revisit and perhaps repeat its work to gather, process and review documents and ESI in order to include discovery
28 regarding the defamation cause of action, that is currently not part of this litigation. Additionally, the scope of discovery
and discovery obligations of SCL’s Chairman of the Board of Directors (Adelson) will also change depending on
whether Mr. Adelson is a non-party to this litigation (as he is now), or becomes a party (if the Nevada Supreme Court
grants Jacobs’ appeal).

engaging in this process would severely prejudice SCL, particularly considering the Nevada Supreme Court's possible subsequent ruling that this Court cannot exercise personal jurisdiction over SCL in this case. Given the due process issues addressed in the Writ Petition, SCL respectfully requests that this Court stay the proceedings to avoid causing irreparable harm and further violating SCL's due process rights.

D. Jacobs Will Suffer No Harm Through A Stay of These Proceedings.

Jacobs will suffer no harm by waiting for the Nevada Supreme Court to decide whether to consider the Writ Petition. Jacobs' only claimed "harm" that could be caused by the stay would be a delay in the proceedings, and "a mere delay in pursuing discovery and litigation normally does not constitute irreparable harm." *See Mikohn*, 120 Nev. at 253. This factor therefore weighs in favor of granting SCL's Motion to Stay.

Additionally, given Jacobs' recent filing of an appeal challenging the Court's decision to dismiss his defamation claim and Adelson from this case, Jacobs would benefit from a stay while the Nevada Supreme Court considers Jacobs' appeal.

Therefore, as Jacobs will suffer no harm as a result of a stay, SCL's request is warranted and the Court should issue an order staying this case as to SCL.

E. SCL is Likely to Prevail on the Merits of Their Petition.

The Order Directing Answer filed by the Nevada Supreme Court made clear that it has reviewed the Writ Petition and found it to be arguably meritorious. *See Ex. F.* Jacobs filed his Answer to the Writ Petition on July 25, 2011, and made several factually and legally erroneous arguments that served only to underscore the merit of the Writ Petition's position. Jacobs' arguments, which are summarized below, should be rejected as the Writ Petition is meritorious and is likely to be granted.

First, Jacobs attempts to recycle an argument that was included in his opposition to SCL's First Motion to Dismiss, namely, that "transient" jurisdiction should be applied to SCL solely on the

1 basis that SCL's acting CEO was served while in Nevada¹⁰. See Jacobs' Answer to Writ Petition at
2 pp. 6-10 (Ex. G). In support of this spurious assertion, Jacobs relies upon *Burnham v. Superior Ct.*,
3 495 U.S. 604 (1990) for the proposition that a nonresident defendant is amenable to jurisdiction in a
4 state where they are located when served with process. See Ex. G at fn. 16.

5 However, SCL previously addressed this argument in its Reply Brief in support of its First
6 Motion to Dismiss, which demonstrated that application of transient jurisdiction to SCL in this case
7 was contrary to both established law and basic common sense. See SCL's Reply in Support of First
8 Motion to Dismiss, included as Appendix 4 to Ex. B. As demonstrated by SCL previously, courts
9 routinely refuse to allow litigants to extend the *Burnham* ruling to corporate entities. Courts have
10 gone so far as to address any such attempt as "puzzling [as] *Burnham* did not involve a corporation
11 and did not decide any jurisdiction issues pertaining to corporations." See *Siemer v. Learjet*
12 *Acquisition Corp.*, 966 F.2d 179, 182 (5th Cir. 1992). In fact, contrary to what Jacobs asserts, the
13 *Burnham* court expressly declined to address whether its holding applied to corporate entities, and
14 mentioned the issue only once in a footnote by Justice Scalia. See *Burnham*, 495 U.S. at 610 n. 1
15 ("[C]orporations ... have never fitted comfortably in a jurisdictional regime based primarily upon
16 'de facto power over the defendant's person.')(internal citations omitted).¹¹

17
18 ¹⁰ Jacobs also argues that because SCL's Writ Petition "fails to provide substantive argument and authority" on the
19 transient jurisdiction issue, it has thus abandoned that issue on appellate review. See Jacobs' Answer to Writ Petition at
20 p. 7, lines 1-2 (Ex. G). Despite the fact that SCL addressed this issue in its briefs to the District Court, which clearly
21 dismantled any legal basis for Jacobs' argument, his argument that SCL has now "abandoned" this issue and thus
22 acquiesced to its validity is similarly unfounded. The cases cited in Jacobs' Answer in support of such an argument,
23 such as *Wyeth v. Rowatt*, 244 P.3d 765 (Nev. 2010) and *Mainor v. Nault*, 120 Nev. 750 (2004) do not support Jacobs'
24 contention and merely state that where an appellant presents an argument with no supporting case law or authority, the
25 Nevada Supreme Court is not bound to consider that argument on appeal. See *Mainor*, 120 Nev. at 777. In this case, the
26 transient jurisdiction argument is a meritless argument that was not considered by the District Court, or argued by
27 Jacobs at the hearing. See Appendix 6 in Ex. B.

28 ¹¹ Jacobs reliance on other related authority is similarly misplaced and has since been rejected as a means to apply the
transient jurisdiction doctrine to corporate defendants. See *C.S.B. Commodities, Inc. v. Urban Trend, Ltd., et al.*, 626
F.Supp.2d 837, 849-50 (N.D. Ill. 2009)(granting motion to dismiss corporate defendant, denying application of
Burnham ruling to corporations and explicitly rejecting the rulings of *Northern Light Technology, Inc. v. Northern*
Lights Club, 236 F.3d 57 (1st Cir. 2001), and *Oyuela v. Seacor Marine (Nigeria), Inc.*, 290 F.Supp.2d 713 (E.D. La.
2003)). Jacobs' renewed attempt to argue for the application of transient jurisdiction is puzzling, given his failure to
address it (either explicitly or implicitly) at the March 15, 2011 hearing, and the District Court's failure to consider it or
include it as a basis for its ruling. The argument should be dismissed – again – and cannot be used as a basis to reject
SCL's Writ Petition.

1 **Second**, Jacobs argues that he did not base his jurisdictional allegations on any actions
2 LVSC took in Nevada on SCL's behalf, but on SCL's own actions (albeit performed only by two
3 LVSC representatives) taken by its Chairman of the Board of Directors and Special Advisor to the
4 Board of Directors while in Nevada. *See Jacobs' Answer to Writ Petition* at pp. 13-16 (Ex. G). On
5 this point, Jacobs' failure to grasp the distinction between the two positions underscores his failure
6 to understand the fundamental premise of the Writ Petition itself. As demonstrated in the Writ
7 Petition, a court cannot base a finding of general jurisdiction on actions taken by a parent
8 corporation's representatives, even if they also serve as representatives for the subsidiary
9 corporation, if those actions are consistent with a normal parent/subsidiary relationship.
10 Furthermore, Nevada must clarify this position in its case law so Nevada's courts can fall in line
11 with jurisdictions which have already come to this conclusion. *See Transure, Inc. v. Marsh and*
12 *McLennan, Inc.*, 766 F.2d 1297, 1299 (9th Cir. 1985)(holding that the mere presence of directors or
13 officers in the Nevada, and the corresponding performance of their duties, cannot (without a
14 showing of alter ego or excessive control by the in-forum entity) be used to confer general personal
15 jurisdiction over a foreign entity in Nevada); *see also Doe v. Unocal Corp.*, 248 F.3d 915, 926 (9th
16 Cir. 2001); *Newman v. Comprehensive Care Corp.*, 794 F.Supp. 1513 (D. Or. 1992); *AT&T v.*
17 *Lambert*, 94 F.3d 586 (9th Cir. 1996).

18 Subsequent to the filing of SCL's Writ Petition, the U.S. Supreme Court issued an opinion in
19 *Goodyear v. Brown*, 131 S.Ct. 2846, 180 L. Ed. 2d 796 (2011) which directly supports SCL's
20 argument. *See Goodyear v. Brown* U.S. Supreme Court decision, attached to the Sedlock Aff'd as
21 **Exhibit M**. In a unanimous decision, the Court in *Goodyear* held that general personal jurisdiction
22 could not be applied to a foreign subsidiary based on its interactions with, or actions by, a domestic
23 parent corporation. *See Goodyear*, 180 L. Ed. 2d at 806-809. The Court noted that there was only
24 one prior case where it had found that a foreign corporation would be subject to general personal
25 jurisdiction for actions (unrelated to the claims in the lawsuit) taken in the U.S. by its corporate
26 representative. *Id.* at 807 (citing *Perkins v. Benguet Consol. Mining Corp.*, 342 U.S. 437 (1952)).
27 The Court rejected the argument that the parent and the subsidiary could be treated as a "single
28 enterprise" simply because they participated in standard parent/subsidiary interactions, holding that

1 such a finding would require the Court to pierce the corporate veil, on which it had no evidence. *Id.*
2 at 810.

3 However, even assuming that a court should consider both Adelson's and Leven's actions in
4 the jurisdictional analysis, Jacobs only allegations relate to such actions directed to Macau, not
5 Nevada. Jacobs makes no effort to address the fact that courts must examine a defendant's
6 intentional conduct that is actually directed at the forum state. *See Kumarelas v. Kumarelas*, 16
7 F.Supp.2d 1249, 1254 (D. Nev. 1998). Therefore, as a matter of law, the alleged actions of Adelson
8 and Leven cannot be used to demonstrate any "substantial or continuous and systematic" contact
9 necessary for general jurisdiction.¹²

10 **Lastly**, in support of his assertion that SCL had "substantial or continuous and systematic"
11 contact in Nevada, Jacobs repeats his erroneous claim that SCL participated in an internal
12 accounting practice with LVSC that managed a system to provide gaming funds to and between
13 players in Macau and Las Vegas. *See Jacobs Answer to Writ Petition* at pp. 16-21 (Ex. G). As
14 demonstrated previously, this is an internal accounting process called "Inter-Company Accounting
15 Advice" ("IAA"). *See Writ Petition* at pp. 39-40; *see also* Affidavits of Jennifer Ono, Patricia
16 Green and Jason Anderson (the "IAA Affidavits"), attached as exhibits to Appendix 4 in Ex. B. No
17 funds are transferred, and more importantly, SCL is not involved in this process at all. *See Writ*
18 *Petition* at p. 40. VML, SCL's subsidiary and the Macau gaming license subconcessionaire, is the
19 only entity authorized to deal with player funds and is the only entity that administers the IAA's in
20 Macau. *Id.* Jacobs makes no attempt to address or counter this fact. In not doing so, Jacobs
21 continues to blithely ignore both the personal jurisdiction requirements and established corporate
22

23 ¹² Furthermore, the presence of directors in the forum state and the discharge of their duties from the forum state is
24 inadequate to confer general personal jurisdiction. *See Gordon et al. v. Greenview Hosp., Inc.*, 300 S.W.3d 635, 648
25 (Tenn. 2009) (noting that a corporation is separate and distinct from its officers and directors, and declining to find
26 personal jurisdiction based on resulting actions taken by directors in forum state). Evidence of SCL's interaction with
27 LVSC or participation in shared services cannot form the basis of general jurisdiction, as such participation or oversight
28 by a parent corporation does not denote alter ego or an "excessive degree of control" as required to apply general
personal jurisdiction over a foreign subsidiary. *See Fletcher v. Atex, Inc.*, 68 F.3d 1451, 1459-60 (2d Cir. 1995)
(appropriate parental involvement includes overseeing accounting procedures and other corporate functions); *Kramer*
Motors, Inc. v. British Leyland, Ltd., 628 F.2d 1175, 1177 (9th Cir. 1980) (co-marketing efforts insufficient to
demonstrate unity of interest between entities).

1 law which holds that a parent cannot be held liable for its subsidiary's actions absent a showing of
2 alter ego. *See AT&T*, 94 F.3d at 590.

3 In sum, SCL's Writ Petition presented ample support for its position that (1) the District
4 Court erred when it ruled that it SCL was subject to general personal jurisdiction in Nevada, and (2)
5 the law in Nevada should be clarified to avoid any future infringement on the due process rights of
6 foreign litigants. Because SCL is likely to prevail on the merits of its Writ Petition, this Motion to
7 Stay should be granted.

8 IV. CONCLUSION

9 For the reasons set forth above, SCL respectfully requests that the Court grant this Motion to
10 Stay pending disposition by the Nevada Supreme Court of SCL's Writ Petition.

11 Dated August 3, 2011.

12 GLASER WEIL FINK JACOBS
13 HOWARD AVCHEN & SHAPIRO LLP

14 By: 

15 Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)
16 Stephen Ma, Esq. (Pro Hac Vice Pending)
17 Andrew D. Sedlock, Esq. (NBN: 91893)
18 3763 Howard Hughes Pkwy., Ste. 300
19 Las Vegas, Nevada 89169
20 Telephone: (702) 650-7900
21 Facsimile: (702) 650-7950

22 *Attorneys for Defendant Sands China Ltd.*