

**OF THE STATE OF NEVADA**

SANDS CHINA LTD.,

Petitioner,

v.

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

Respondents,

and,

STEVEN C. JACOBS,

Real Party in Interest.

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Case No.: 58294

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

**PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF  
MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION**

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

The issue set forth in Sands China Ltd.'s ("SCL") Petition for Writ of Mandamus, or in the alternative, Writ of Prohibition (the "Writ Petition"), is under what circumstances can a court properly exercise general personal jurisdiction over a foreign entity with no substantial or continuous and systematic contacts with Nevada, apart from those that arise from its relationship as a subsidiary to a domestic parent company. The Writ Petition demonstrated that such contacts are plainly insufficient to establish general personal jurisdiction without a concurrent showing of an alter ego relationship between the parent and subsidiary, or an excessive degree of control by the parent corporation.

Setting aside the pejorative attacks and conclusory rhetoric contained therein, the Answer to the Writ Petition (the "Answer") is remarkable in that it demonstrates that many of the key facts and legal authority in support of the Writ Petition remain undisputed.

First, Jacobs does *not dispute* the factors set forth in the Writ Petition regarding the determination of general personal jurisdiction over foreign defendants based on shared contacts with an in-forum affiliate. Specifically, in the context of a foreign subsidiary and a domestic parent corporation, a substantial majority of jurisdictions require evidence that the two entities are alter egos of each other before general personal jurisdiction can be applied to the foreign subsidiary. *See Doe v. Unocal Corp.*, 248 F.3d 915, 916 (9th Cir. 2001) (holding that a local entity's contacts with the forum can only be imputed to the foreign entity if there is evidence of an alter ego relationship); *see also AT&T v. Lambert*, 94 F.3d 586, 596-99 (9th Cir. 1996) (declining to assert general personal jurisdiction over foreign subsidiary where in-forum parent held a majority of seats on subsidiary's board, approved subsidiary's hiring decisions, directed subsidiary's financial and business decisions, and appointed one of its own board members to serve as subsidiary's chairman).

As further described herein, this principle was recently affirmed by the U.S. Supreme Court in a decision issued shortly after the Writ Petition was filed. *See Goodyear v. Brown*, 131 S.Ct. 2846 (2011), 2011 U.S. LEXIS 4801. As with the present case, the U.S. Supreme Court in *Goodyear* declined to impute the domestic parent's activities to the foreign subsidiary defendant,

1 recognizing that merging parent and subsidiary for jurisdictional purposes requires an inquiry  
2 “comparable to the corporate law question of piercing the corporate veil.” *Id.* at 810. The U.S.  
3 Supreme Court in *Goodyear*, and in the companion case *J. McIntyre Machinery, Ltd. v. Nicastro*,  
4 rejected state court expansion of general personal jurisdiction in the context of asserting personal  
5 jurisdiction over foreign subsidiaries of United States parent companies. In these June, 2011 cases  
6 the U.S. Supreme Court reversed the Supreme Court of New Jersey, and the Court of Appeals of  
7 North Carolina, and directed them to dismiss the foreign subsidiaries. *Id.*; *see also J. McIntyre*  
8 *Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011), 2011 U.S. LEXIS 4800. Therefore, in the  
9 absence of a showing of alter ego, the actions of representatives of SCL’s parent company, Las  
10 Vegas Sands Corp. (“LVSC”) cannot be used to establish general personal jurisdiction over SCL,  
11 even if they also serve as representatives of SCL.

12 Second, it is *undisputed* that Jacobs carries the burden of proof to demonstrate a *prima facie*  
13 case for personal jurisdiction, and absent that showing, SCL should be dismissed from the  
14 underlying lawsuit. As discussed in more detail below, Jacobs’ jurisdictional allegations amount to  
15 nothing more than hyperbolic and erroneous attacks on activities carried out by the non-executive  
16 Chairman of SCL’s Board of Directors, Sheldon Adelson (“Adelson”) and, at that time, a special  
17 advisor to SCL’s Board of Directors, Michael Leven (“Leven”), both of whom also served as top-  
18 level officers and directors for LVSC. Again, Jacobs ignores the established legal authority in  
19 multiple jurisdictions which holds that without a concurrent showing of an alter ego relationship  
20 between the parent and subsidiary, or an excessive degree of control by the parent corporation, such  
21 contacts are simply irrelevant and cannot support the District Court’s finding of general jurisdiction.

22 Similarly, Jacobs tries to revive another argument that has been dismantled by the Writ  
23 Petition and SCL’s prior filings, namely that SCL is subject to general personal jurisdiction due to  
24 its participation in a process that allegedly transfers casino player funds to and from Las Vegas.  
25 However, Jacobs does not dispute the cumulative affidavits provided by SCL on this issue (and the  
26 references to his own submitted evidence) that prove SCL was not involved in this process and did  
27 not otherwise transfer any funds either to or from Las Vegas. More importantly, Jacobs does not  
28 dispute that, assuming *arguendo*, even if SCL did participate in this process (and it did not, as

1 demonstrated previously), cooperative management of an internal accounting or marketing program  
2 is insufficient to support a finding of general personal jurisdiction. *See Fletcher v. Atex, Inc.*, 68  
3 F.3d 1451, 1459-60 (2d Cir. 1995) (co-participation in accounting procedures is insufficient to  
4 establish general jurisdiction; *see also Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175,  
5 1177 (9th Cir. 1980).

6 Third, it is *undisputed* that the District Court based its decision to exercise general personal  
7 jurisdiction solely on "activities done in Nevada by board members of Sands China." (Transcript,  
8 Appendix 6 to Writ Petition, at p. 62, lines 4-5). The District Court did not provide any other basis  
9 or reasoning for its decision, and did not imply that other forms of personal jurisdiction were  
10 applicable to the present case. Unfortunately, Jacobs burdens this Court with a renewed attempt to  
11 apply the doctrine of transient personal jurisdiction to SCL, a corporate entity. As addressed in the  
12 Writ Petition and set forth in detail in the record, transient personal jurisdiction is wholly  
13 inapplicable to corporate defendants such as SCL, as further evidenced by the District Court's  
14 refusal to even acknowledge the issue during the March 15, 2011 hearing on the Motion.  
15 (Transcript, Appendix 6 to Writ Petition). To the extent the Court considers the argument, SCL has  
16 provided a summary of the applicable arguments and case law, and SCL is not precluded in any way  
17 from responding at this time to Jacobs' renewed arguments.

18 Finally, it is *undisputed* that SCL is not the alter ego of LVSC, nor does LVSC exert a  
19 disproportionate amount of control considering its status as majority shareholder. Again, the  
20 uncontested authority in the Writ Petition requires such a showing before the activities of Adelson  
21 and Leven, taken while serving as the non-executive Chairman of SCL's Board of Directors and  
22 special advisor to SCL's Board of Directors, respectively, can be considered in SCL's jurisdictional  
23 analysis. Jacobs makes no effort to dispute or even address the numerous facts that establish SCL's  
24 corporate and operational independence from LVSC and the absence of any alter ego argument.  
25 Such facts include, but are not limited to: (1) SCL's operation as a public company with stock  
26 traded on The Stock Exchange of Hong Kong Limited, which requires a demonstration of  
27 operational independence, (2) maintenance of an independent treasury department, financial  
28 controls, bank accounts and accounting system, (3) an independent Board of Directors with three



1 independent non-executive directors, and (4) the existence of a Non-Competition Deed between  
2 LVSC and SCL that prohibits SCL from conducting business or directing efforts to Nevada. (Writ  
3 Petition at p. 33).

4 By ignoring the need to make a showing of alter ego before seeking to apply Adelson and  
5 Leven's actions to SCL's jurisdictional analysis, Jacobs likewise ignores a fundamental corporate  
6 principle that a corporation and its subsidiary are distinct legal entities that exist separate from their  
7 respective shareholders, officers and directors. *See Transure v. Marsh and McLennan, Inc.*, 766  
8 F.2d 1297, 1299 (9th Cir. 1985) ("It is entirely appropriate for directors of a parent company to  
9 serve as directors of its subsidiary, and that fact alone may not serve to expose parent to liability for  
10 its subsidiary's acts.").

11 Jacobs' decision to ignore or otherwise misconstrue SCL's Writ Petition only serves to  
12 highlight the validity of SCL's positions. SCL therefore submits that the District Court was  
13 compelled by law to dismiss SCL for lack of personal jurisdiction and has continued to exceed its  
14 authority through its continued exercise of jurisdiction, and SCL is entitled to extraordinary relief in  
15 the form of a Writ of Mandamus or a Writ of Prohibition.

## 16 **II. LEGAL ARGUMENT**

### 17 **A. Jacobs' Jurisdictional Allegations are Insufficient to Establish a Prima Facie** 18 **Case for General Personal Jurisdiction**

19 As stated above, Jacobs has attempted to frame the issue in the Writ Petition, as he did at the  
20 District Court level, as one "involving a 'coattail' assertion of personal jurisdiction on the ground  
21 that, although it has no contacts with Nevada, SCL has nonetheless been compelled to defend itself  
22 here because of LVSC's contacts with Nevada." (Answer at p. 3, lines 9-11). This statement  
23 evidences Jacobs' profound misunderstanding of both fundamental jurisdictional and corporate legal  
24 principles. Jacobs also attempts to shift this Court's focus away from the actual stated issue  
25 presented in the Writ Petition, namely, whether a Nevada state court may exercise general personal  
26 jurisdiction over a foreign entity with no contacts with Nevada, other than those incident to its status  
27 as a subsidiary – not alter ego – of a Nevada corporation.  
28

1 The issue is not whether the District Court imputed LVSC's unrelated forum contacts to  
2 SCL, but whether it erred when it found that the actions of Adelson and Leven (LVSC executives  
3 who also served as the non-executive Chairman of and special advisor to the SCL Board of  
4 Directors) were sufficient to establish general jurisdiction over SCL, even when those actions were  
5 entirely consistent with a parent/subsidiary relationship. SCL's Writ Petition cited numerous cases  
6 where courts had explicitly ruled that this type of evidence was inadequate to establish general  
7 personal jurisdiction, and further demonstrated that Nevada has yet to issue a decision that comports  
8 with either the majority or minority view on this issue. In response, Jacobs merely restates his prior  
9 jurisdictional allegations and avoids distinguishing or even discussing any of these cases cited in the  
10 Writ Petition.

11 Jacobs' refusal to address this issue only underscores the inherent flaws in his argument and  
12 the need for this Court to both dismiss SCL from this lawsuit and clarify this issue for Nevada's  
13 state courts. As demonstrated in the Writ Petition and discussed further below, Jacobs'  
14 jurisdictional allegations are, in many cases, simply incorrect, and, more importantly, inadequate as  
15 a matter of law to establish general personal jurisdiction.

16 1. Determining General Personal Jurisdiction Over a Foreign Affiliated Entity

17 In the Writ Petition, SCL set forth the widely-recognized factors used by courts to determine  
18 general personal jurisdiction over a foreign entity, and further demonstrated that a majority of  
19 jurisdictions will not impute the actions taken by a parent company to its subsidiary, or a board  
20 member or executive shared by both the parent and subsidiary, absent a showing of alter ego.  
21 Critically, Jacobs does not dispute this established legal authority. (Answer at p. 4, lines 15-16).

22 At the outset, it is important to note that general personal jurisdiction will only be found  
23 where the level of contact between the foreign defendant and the forum state is so substantial that it  
24 should be deemed present in the forum and therefore subject to suit for any claim. *See Firouzabadi*  
25 *v. First Jud. Dist. Ct.*, 110 Nev. 1348, 1352 (1994). In the context of a suit involving a foreign  
26 defendant who also has a domestic affiliated entity, courts have recognized that the jurisdictional  
27 analysis must include a recognition of the distinction between "substantial or continuous and  
28 systematic" contacts and those merely associated with normal corporate governance. *See Doe v.*

1 *Unocal Corp.*, 248 F.3d 915, 925 (9th Cir. 2001) (noting the “well established principal of corporate  
2 law” that a corporation and its subsidiary, or subsidiary’s agents, are presumed to be separate for  
3 liability and jurisdictional purposes).

4 As set forth above, this past June, the U.S. Supreme Court emphasized the need to separate  
5 the in-forum actions of the domestic parent from its foreign subsidiary, and the infrequency with  
6 which the U.S. Supreme Court has justified the exercise of general personal jurisdiction over a  
7 foreign defendant. *See Goodyear v. Brown*, 131 S.Ct. 2846, 180 L. Ed. 2d 796 (2011). As with the  
8 present case, the plaintiffs’ claim in *Goodyear* arose solely due to actions that occurred outside the  
9 U.S., and were allegedly attributable to a foreign subsidiary of a domestic corporation, namely  
10 Goodyear USA, which had previously conceded personal jurisdiction in North Carolina. *Id.* at 802.  
11 Goodyear USA’s foreign subsidiaries, however, maintained that the North Carolina courts lacked  
12 personal jurisdiction. *Id.* The U.S. Supreme Court first noted that since deciding the seminal case  
13 of *Int’l Shoe Co. v. Washington*, 326 U.S. 310 (1945), it had issued just one opinion where “an out-  
14 of-state corporate defendant’s in-state contacts were sufficiently ‘continuous and systematic’ to  
15 justify the exercise of general jurisdiction over claims unrelated to those contacts.” *Id.* at 807 (citing  
16 *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952)). In its holding, the U.S. Supreme  
17 Court found that general personal jurisdiction did not exist over the foreign defendant, even though  
18 it had intentionally and repeatedly directed products to the forum state. *Id.* at 809-10. The Court  
19 went further and stated that “even regularly occurring sales of a product in a State do not justify the  
20 exercise of jurisdiction over a claim unrelated to those sales”. *Id.* at 810, n.6. The Court also  
21 rejected respondent’s “single enterprise” theory, recognizing that merging parent and subsidiary for  
22 jurisdictional purposes requires an inquiry “comparable to the corporate law question of piercing the  
23 corporate veil.” *Id.* at 810.

24 The holding in *Goodyear* reinforces the well established legal authority supporting SCL’s  
25 Writ Petition. The legal authority relied upon in the Writ Petition specifically address the issue of  
26 whether for jurisdiction purposes a court can consider the actions of a parent company  
27 representative, who also serves either as an executive or as a board member for a foreign subsidiary.  
28 (Writ Petition at pp. 28-32). In those circumstances, a substantial majority of jurisdictions require,

1 as was found in *Goodyear*, evidence that the two entities are alter egos of each other before general  
2 personal jurisdiction can attach.<sup>1</sup>

3 As demonstrated in SCL's Writ Petition, a minority of jurisdictions take a slightly different  
4 approach, examining the degree of control exercised by the parent and only finding general  
5 jurisdiction over the foreign subsidiary if the parent exercises an excessive degree of control.<sup>2</sup> (Writ  
6 Petition at pp. 31-32). However, for the reasons set forth in the Writ Petition, this minority view  
7 similarly does not allow a court to base general jurisdiction on activities commensurate with normal  
8 parental involvement or control. *See Reul v. Sahara Hotel, Inc.*, 372 F.Supp. 995, 998 (S.D. Tx.  
9 1974) (holding that sole ownership over subsidiary or common directors is insufficient to establish  
10 general jurisdiction absent a showing that the parent exerted "more than that amount of control of  
11 one corporation over another which mere common ownership and directorship would indicate").

12 It is undisputed that Jacobs submitted no evidence that SCL is the alter ego of LVSC, or that  
13 (through Adelson or Leven) LVSC exercised a level of domination and control greater than would  
14 be expected from a majority shareholder. (Writ Petition at pp. 33-34). Again, Jacobs declined to  
15 address this issue and in restating the same allegations put forth to the District Court, he asks this  
16 Court to analyze SCL's alleged contacts without any factual or legal support for any alter ego  
17 relationship between SCL and LVSC.

18  
19 2. Adelson and Leven's Alleged Actions are Insufficient to Establish General  
20 Personal Jurisdiction  
21

22  
23 <sup>1</sup> *See Doe v. Unocal Corp.*, 248 F.3d 915, 916 (9th Cir. 2001) (holding that a local entity's  
24 contacts with the forum can only be imputed to the foreign entity if there is evidence of an alter ego  
25 relationship); *see also AT&T v. Lambert*, 94 F.3d 586, 596-99 (9th Cir. 1996) (declining to assert  
26 general personal jurisdiction over foreign subsidiary where in-forum parent held a majority of seats  
27 on subsidiary's board, approved subsidiary's hiring decisions, directed subsidiary's financial and  
28 business decisions, and appointed one of its own board members to serve as subsidiary's chairman);  
*Gordon et al. v. Greenview Hosp., Inc.*, 300 S.W.3d 635, 649 (Tenn. 2009) (holding that in-forum  
presence of officers or directors of foreign entity is insufficient to establish general personal  
jurisdiction).

<sup>2</sup> *See Hargrave v. Fireboard Corp.*, 710 F.2d 1154, 1159-61 (5th Cir. 1983) (finding that the  
activities of a parent company representative can be imputed to a foreign affiliate if the parent  
exercises domination and control "greater than that normally associated with common ownership  
and directorship."); *see also Reul v. Sahara Hotel, Inc.*, 372 F.Supp. 995 (S.D. Tx. 1974).

1 In the Writ Petition, SCL demonstrated that, during Jacobs' tenure as SCL's Chief Executive  
2 Officer, Adelson served as the non-executive Chairman of SCL's Board of Directors, and Leven  
3 served as a special advisor to SCL's Board of Directors. (Writ Petition at p. 14). Jacobs  
4 disingenuously ignores that both Adelson and Leven held those positions with SCL by virtue of the  
5 high-level executive positions they also held with SCL's parent company, LVSC. As was discussed  
6 repeatedly in the cases cited in the Writ Petition (and ignored by Jacobs), the issue in this case is  
7 whether general personal jurisdiction can be based on the in-forum activities of SCL's board  
8 members, who also serve and act on behalf of SCL's domestic parent company.

9 In his Answer, Jacobs asks the Court to disregard SCL's affiliation with LVSC, and analyze  
10 Adelson and Leven's alleged actions in Nevada, without recognizing that those actions allegedly  
11 occurred in Nevada solely because of SCL's affiliation with LVSC.<sup>3</sup> Likewise, Jacobs' refusal to  
12 address the numerous cases cited in the Writ Petition becomes clear when it is readily apparent that  
13 he missed the point of those consistent holdings – without a showing of alter ego or excessive  
14 control, a court cannot exercise general personal jurisdiction over a foreign subsidiary based on in-  
15 forum activities of parent company representatives, even if they also serve as representatives of the  
16 foreign subsidiary. *See e.g. Gordon*, 300 S.W.3d at 650 (no general personal jurisdiction over  
17 wholly-owned foreign subsidiary even when subsidiary's directors, who also served as directors of  
18 in-forum parent company, were domiciled in forum state and controlled subsidiary's finance/budget  
19 decisions, policies and procedures, and general corporate performance); *see also AT&T*, 94 F.3d at  
20

21 <sup>3</sup> The Writ Petition demonstrated that all of Adelson and Leven's alleged activities were  
22 directed at Macau, not Nevada, and that an analysis of general personal jurisdiction should examine  
23 the effect of the conduct on the forum state, i.e. Nevada. *See Kumarelas v. Kumarelas*, 16  
24 F.Supp.2d 1249, 1254 (D. Nev. 1998). Jacobs responds first with an attempt to distinguish this case  
25 by claiming that the analysis only relates to claims of specific rather than general personal  
26 jurisdiction. (Answer at p. 15, lines 19-20). However, the court in *Kumarelas* discussed this factor  
27 in the context of establishing "purposeful availment," which is an element of both specific and  
28 general personal jurisdiction, and is particularly applicable to the case at hand. *Id.* at 1253-54.  
Jacobs also cites to *Gator.Com Corp. v. L.L. Bean, Inc.*, 341 F.3d 1072 (9th Cir. 2003) in an effort  
to show that SCL somehow failed to demonstrate that SCL's activities *within* Nevada were  
insufficient to establish general personal jurisdiction. However, the court in *Gator.Com* did not  
engage in such semantic distinctions, and found general personal jurisdiction because the foreign  
defendant had "serve[d] the market in the forum State" by marketing and shipping products to  
customers in the forum state and maintaining contacts with numerous vendors in the forum state.  
*Id.* at 1078. Again, Jacobs does not carry his established burden to show that Adelson or Leven's  
actions had any impact on Nevada or its residents, and the cases cited in support of his arguments  
are inapplicable here.

1 591 (holding that in order for parent's relationship to confer general personal jurisdiction, there must  
2 be a showing of an alter ego relationship).

3 Instead, Jacobs seeks to avoid the established jurisprudence on the issue and attempts to  
4 mischaracterize SCL's argument as an assertion that "the *mere presence* of directors in the forum  
5 state is insufficient to establish general jurisdiction over a foreign corporation," and repeats his  
6 claim that Adelson and Leven made high-level management decisions on behalf of SCL. (Answer  
7 at pp.14-15). Significantly, Jacobs does not (and cannot as a matter of law) allege or even imply  
8 that such actions are evidence of alter ego or an excessive degree of control. In fact, all of Adelson  
9 and Leven's alleged actions, for example, "determin[ing] whom SCL should hire and retain as  
10 counsel, whom to favor with SCL's business and how to expand it, how to design SCL properties  
11 and under what terms to sell them, etc.," are well within what would be expected from board  
12 members and advisors who also served as representatives for SCL's majority shareholder.<sup>4</sup> (Answer  
13 at p. 15, lines 1-5).

14 Jacobs also neglects to address the numerous facts that establish SCL's corporate and  
15 operational independence from LVSC. (Writ Petition at pp. 33-34). As demonstrated in the Writ  
16 Petition, such facts include, but are not limited to (1) SCL's operation as a public company with  
17 stock traded on The Stock Exchange of Hong Kong Limited, which requires a demonstration of  
18 operational independence, (2) maintenance of an independent treasury department, financial  
19 controls, bank accounts and accounting system, (3) an independent Board of Directors with three  
20 independent non-executive directors, and (4) the existence of a Non-Competition Deed between  
21 LVSC and SCL that prohibits SCL from conducting business or directing efforts to Nevada. (Writ  
22

23 <sup>4</sup> Jacobs attempts to argue that SCL has placed improper emphasis on Leven's titles, whether  
24 they be special advisor to the SCL Board of Directors, or acting CEO of SCL (which Leven has  
25 occupied since Jacobs' termination). However, it is Jacobs who creates a distinction where none  
26 actually exists, as it is irrelevant what position Leven occupies as it is held in connection with his  
27 position as a LVSC representative. The cases cited by Jacobs in support of his argument are  
28 similarly inapplicable, as none involve any jurisdictional analysis whatsoever. See *Marcuse v. Del Webb Communities, Inc.*, 123 Nev. 278, 285 (2007) (deciding standing of unnamed class members); *Brad Assocs. v. Nevada Fed. Fin. Corp.*, 109 Nev. 145, 149 (1993) (deciding applicability of NRS 602.070 to parties not named on Deed of Trust). Furthermore, Jacobs' citation to *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1331 (9th Cir. 1984), does not support Jacobs' position because the *Gates* case did not involve a general personal jurisdiction analysis in the context of a parent/subsidiary relationship, and further found that despite numerous contacts and the solicitation of business in the forum state, general personal jurisdiction could *not* be established.

1 Petition at p. 33). By ignoring these uncontested facts, Jacobs also ignores the well-established  
2 legal authority that absent a showing of an alter ego relationship between SCL and LVSC, the  
3 District Court should not have considered Adelson or Leven's contacts with Nevada in SCL's  
4 jurisdictional analysis.

5 3. SCL Demonstrated That Jacobs' Allegations Regarding Monetary Transfers  
6 Were Factually Incorrect and Legally Irrelevant

7 In both the Motion and Writ Petition, SCL demonstrated through uncontested affidavits and  
8 Jacobs' own proffered evidence, that Jacobs' allegation that SCL regularly transfers its customers'  
9 funds to and from Las Vegas was demonstrably false. (Writ Petition at pp. 37-38). In addition to  
10 demonstrating that the funds in question are not transferred at all (but instead are entered as a series  
11 of intra-company bookkeeping entries known as Inter-company Accounting Advice ("IAA")), the  
12 Court was provided with uncontroverted evidence that this process is handled in Macau not by SCL,  
13 but by its subsidiary VML. (Writ Petition at p. 38). Not surprisingly, Jacobs's own evidence  
14 identifies VML as the originating/receiving party in Macau, and also clearly demonstrates that he is  
15 attempting to attribute actions to SCL that took place more than two years before it came into  
16 existence.<sup>5</sup> (Answer at p. 16, Ex. 14 to Jacobs' Opposition to the Motion).

17 This follows logically from VML's role as the Macau gaming license subconcessionaire, and  
18 thus is the only entity authorized to deal with transactions related to patron's gaming funds. (Writ  
19 Petition at p. 12). Despite Jacobs' histrionics and conjecture, no patron funds are actually  
20 "transferred" to either location, and as set forth in the Writ Petition, the fact remains that it consists  
21 of nothing more than a series of intra-corporate bookkeeping entries to account for funds that have  
22 been deposited in either Macau or Las Vegas. (Writ Petition at p. 38). Jacobs offers no substantive  
23 response and merely lobs pejorative (and unsupported) assertions that the IAA process is an  
24 "insultingly transparent charade" and a "house-of-cards contrivance to mask the millions of Macau  
25 dollars 'available' in Las Vegas." (Answer at p. 18, lines 5-9). Jacobs offers no reasoning or

26 \_\_\_\_\_  
27 <sup>5</sup> Jacobs only other piece of evidence submitted in support of his allegation is a self-serving  
28 and conclusory affidavit which alleged that SCL "transfer[ed] funds electronically from Asia to  
LVSC or its affiliates in Las Vegas." (Ex. 1 to Opposition, ¶ 14). Jacobs' allegation is rebutted by  
both SCL's submitted evidence and Jacobs' own documents, and thus is not entitled to a  
presumption of validity.

1 evidence to support these allegations, and pursuant to his own cited case law, such arguments cannot  
2 be considered as a matter of law. *See Mainor v. Nault*, 120 Nev. 750, 777 (2004).

3 Even assuming *arguendo* that such allegations were true (and SCL has shown that they are  
4 not), Jacobs' allegations remain irrelevant as a matter of law because, as demonstrated in SCL's  
5 Writ Petition (see Writ Petition at page 38:13 – 39:6), such allegations are inadequate to establish  
6 general jurisdiction.<sup>6</sup> *See Fletcher v. Atex, Inc.*, 68 F.3d 1451, 1459-60 (2d Cir. 1995) (co-  
7 participation in accounting procedures is insufficient to establish general jurisdiction; *Kramer*  
8 *Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1177 (9th Cir. 1980) (cooperative marketing or  
9 promotional efforts inadequate to establish general personal jurisdiction); *Romann v. Geissenberger*  
10 *Mfg. Corp.*, 865 F.Supp. 255, 260-61 (E.D.Pa. 1994) (no general jurisdiction even though defendant  
11 made \$230,000 in direct sales to forum state and was qualified to do business in forum state).<sup>7</sup>

12 In sum, the IAA process cannot provide a basis for general personal jurisdiction over SCL  
13 due to its complete lack of involvement, and to its inherent lack of "substantial or continuous and  
14 systematic" contacts with Nevada.

15 **B. This Court Should Clarify This Issue of Law for Nevada's State Courts**

16 In addition to the arguments set forth in the Writ Petition, this Court need not look any  
17 further than Jacobs' Answer for a clear example of why the issue presented in the Writ Petition  
18

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19 <sup>6</sup> Jacobs cites to *Provident Nat. Bank v. California Federal Sav. & Loan Ass'n*, 819 F.2d 434  
20 (3d Cir. 1987) in an attempt to demonstrate that participation in the IAA process could subject SCL  
21 to general personal jurisdiction in Nevada. (Answer at p. 19, lines 6-16). However, as  
22 demonstrated previously in the SCL's briefs to the District Court, the Provident case is entirely  
23 distinguishable from the present action. In Provident, the 3d Circuit U.S. District Court applies  
24 general personal jurisdiction principles to the defendant primarily due to the existence of nearly one  
25 thousand (1000) of defendant's account depositors residing in the forum state. *Id.* at 436. The  
26 defendant in Provident was also involved in servicing more than Ten Million Dollars  
27 (\$10,000,000.00) in loan funds, which necessarily involved the transfer and deposit of funds into the  
28 forum state. *Id.* at 436-37. In stark contrast, SCL has already demonstrated with uncontested  
evidence that the IAA process reflects only a record of inter-company accounting transactions  
between VML and an LVSC affiliate, and does not involve any transfers of funds to or from  
Nevada. (SCL Reply in Support of Motion (the "Reply"), pp. 18-19; Affidavits of Jennifer Ono,  
Patricia Green and Jason Anderson attached in support of Reply).

<sup>7</sup> In his Answer, Jacobs contended that the *Romann* case "is no longer good law" and "was  
abrogated by the court that decided it." (Answer at p. 20, fn. 59). Jacobs' assertion is incorrect.  
*Romann* was criticized in *Eagle Traffic Control, Inc. v. James Julian, Inc.*, 933 F.Supp. 1251 (E.D.  
Pa. 1996), solely on the issue of whether merely registering to do business in the forum established  
general jurisdiction and did not otherwise criticize or abrogate the holding in *Romann*, including  
with regard to sales or transfers of funds to the forum state. *Id.* at 1256.



1 requires additional clarification for Nevada's state courts. In his Answer, Jacobs continually  
2 misapplies and misconstrues basic jurisdictional principles, and fails to recognize the difference  
3 between the actions of a foreign entity acting on their own accord, and actions taken on behalf of  
4 that entity by a representative shared with its in-forum parent.

5 This issue remains unresolved for Nevada's state courts, and while Jacobs argues that the  
6 issue itself is "a straw man fabricated by SCL in disregard of the actual issues..." (Answer at p. 4,  
7 line 15) the fact remains that a majority of other jurisdictions (including the U.S. Supreme Court)  
8 have considered this a very important issue and have consistently ruled that only when the foreign  
9 entity is considered the alter ego of the domestic entity, can the domestic entity's contacts be  
10 considered in the jurisdictional analysis of a foreign affiliate. *See Goodyear*, 180 L. Ed. 2d at 810;  
11 *Doe*, 248 F.3d at 926; *Newman v. Comprehensive Care Corp.*, 794 F.Supp. 1513, 1519 (D. Or.  
12 1992).

13 And while SCL certainly did not "prophesize an End-of-Western-Civilization-As-We-  
14 Know-It catastrophe," the expansion of Nevada's gaming companies will ensure that this issue will  
15 come before a Nevada state court again. Nevada's courts must be provided with the precedent to  
16 decide such cases, as the current test leaves the issue open to inconsistent results. SCL therefore  
17 requests that the law in Nevada should be clarified to employ the prevailing test applied in a  
18 majority of jurisdictions, which in the present case, has not been met under any interpretation of the  
19 submitted facts.

20 **C. The Exercise of Personal Jurisdiction Over SCL is Unreasonable**

21 Because the District Court did not make any findings as to the reasonableness of its exercise  
22 of personal jurisdiction over SCL, and Jacobs failed to add any significant arguments on this point  
23 that he did not previously make in his Opposition, SCL will limit its discussion of this issue to  
24 clarify a few points that were misstated in Jacobs' Answer.

25 As an initial matter, Jacobs does not dispute the established legal authority set forth in the  
26 Writ Petition regarding the finding of general personal jurisdiction over a foreign entity. (Answer at  
27 pp. 4-5). Additionally, it is important to recognize that Jacobs' claim against SCL for breach of  
28 contract is unrelated to any actions taken in Nevada, by either SCL or LVSC. Jacobs' claim relates

1 to the Stock Option Grant Letter which purportedly granted Jacobs an option to purchase SCL  
2 stock.<sup>8</sup> (Exhibit F to Motion). Whether or not SCL's "two top executives live and work [in  
3 Nevada]" has no bearing on how burdensome or efficient it will be for SCL to litigate this claim in  
4 Nevada. (Answer at p. 22, line 16). In fact, as demonstrated in SCL's Motion, Adelson and Leven  
5 did not hold executive positions with SCL during Jacobs' tenure as their positions were,  
6 respectively, Non-Executive Director and Special Advisor. (Motion at p. 5, lines 1-12). As such,  
7 Jacobs' claim against SCL does not involve SCL's "two top executives" or any LVSC  
8 representatives, and with the exception of Jacobs, nearly all of the relevant witnesses and documents  
9 are located in Macau. Therefore there is little question that Macau would provide the most suitable  
10 forum to litigate Jacobs' claim against SCL, which tips strongly against the reasonableness of the  
11 District Court's continued exercise of personal jurisdiction.

12 Jacobs argues that because Nevada "has a vital interest in the conduct of its gaming  
13 licensees, of which LVSC is one," that Nevada's interest somehow overrides Macau's interest in  
14 protecting companies such as SCL, which actually does business in Macau. (Answer at p. 23, line  
15 7). Without providing any supporting legal authority, Jacobs asserts that Nevada's gaming laws  
16 extend to its licensee's foreign operations, such as SCL in Macau, and "therefore, Nevada has a  
17 paramount interest in the adjudication of this dispute." (Answer at p. 23, lines 9-10).

18 A review of the prospectus cited in Jacobs' Answer demonstrates that this position is not  
19 grounded in fact. (Appendix 3 to Answer). SCL's prospectus provides that due to LVSC's status as  
20 SCL's "controlling shareholder," it must oversee certain SCL operations to ensure LVSC remains  
21 compliant with Nevada's gaming laws. *Id.* A review of the possible actions that may be taken in the  
22 event of a failure to comply shows that all disciplinary actions taken by the Nevada Gaming  
23 Commission would affect only LVSC, and not SCL. *Id.*

24 As noted above, the foreign gaming sections of the Nevada Gaming Control Act, NRS  
25 463.680-.720, are restrictions on LVSC to avoid unsuitable associations and practices, not entities  
26

27 <sup>8</sup> As demonstrated in the Motion, the Stock Option Grant Letter is unenforceable by its own  
28 terms as a matter of law because, among other things, Jacobs never signed the document and the  
unvested SCL options ceased to exist (as set forth in the explicit terms of the Stock Option Grant  
Letter) upon the termination of Jacobs' employment on July 23, 2010. (Exhibit F to Motion;  
Affidavit of Anne Salt in support of Motion, ¶¶ 13, 14).

1 operating outside of Nevada. Furthermore, Jacobs' argument would set a dangerous precedent,  
2 because it effectively asserts that the otherwise well-established minimum contacts jurisdictional  
3 analysis is preempted in every instance in which an entity regulated by the Nevada Gaming  
4 Commission is a "controlling" shareholder of a foreign corporation.

5 Taken with the remaining factors as set forth in the Writ Petition, this Court should find that  
6 the District Court's continued exercise of jurisdiction is unreasonable and would offend the  
7 principles of due process if allowed to continue.

8 **D. Jacobs' "Transient" Personal Jurisdiction Argument is Meritless And Was Not,**  
9 **In Any Way, Replied Upon By The District Court**

10 In his Answer, Jacobs inexplicably leads with the argument that SCL should be subject to  
11 "transient" personal jurisdiction, by virtue of the fact that a SCL corporate officer was served with  
12 the summons and complaint while present in Nevada. (Answer at p. 6, lines 5-8). Jacobs further  
13 argues that because SCL did not address this issue in its Writ Petition, it has effectively conceded  
14 the issue and should be precluded from challenging the argument in this proceeding. (Answer at pp.  
15 6-8). Neither position has merit, and as demonstrated by SCL in its Reply in Support of SCL's  
16 Motion to Dismiss (the "Reply") and by both parties at the March 15, 2011 hearing, the principle of  
17 transient personal jurisdiction is inapplicable to the issue of personal jurisdiction over SCL.

18 1. **The Principle of Transient Personal Jurisdiction is Inapplicable to Corporate**  
19 **Defendants Such As SCL and Was Not Considered by the District Court**

20 As with most of his arguments in the Answer, Jacobs' contention that SCL is subject to  
21 transient personal jurisdiction because its acting CEO was served in Nevada is recycled from his  
22 Opposition filed in response to SCL's Motion. (Opposition, attached as Appendix 3 to the Writ  
23 Petition, at pp. 10-13). In both the Answer and Opposition, Jacobs relies primarily on *Burnham v.*  
24 *Superior Court*, 495 U.S. 604 (1990) for the proposition that service upon a corporate officer in the  
25 forum state is a proper basis for asserting personal jurisdiction over the corporate entity. (Answer at  
26 p.6, fn. 16; Opposition at pp. 10-12).

27 However, as explained in detail in SCL's Reply, while the transient personal jurisdiction  
28 principle was applied to the defendant in *Burnham*, the U.S. Supreme Court limited its application

1 to individual defendants and *expressly declined to extend it to corporate entities*. See *Burnham*, 495  
2 U.S. at 610 n. 1 ("[C]orporations ... have never fitted comfortably in a jurisdictional regime based  
3 primarily upon 'de facto power over the defendant's person.' We express no views on these matters  
4 and, for simplicity's sake, omit reference to this aspect of 'contacts'-based jurisdiction in our  
5 discussion." )(internal citations omitted).

6 SCL's Reply also addressed the other cases cited by Jacobs in support of his position,  
7 namely, *Comerica Bank-California v. Sierra Sales, Inc., et al.*, 1994 U.S. Dist. LEXIS 21542 (N.D.  
8 Cal. 1994), *Northern Light Technology, Inc. v. Northern Lights Club*, 236 F.3d 57 (1<sup>st</sup> Cir. 2001),  
9 and *Oyuela v. Seacor Marine (Nigeria), Inc.*, 290 F.Supp.2d 713 (E.D. La. 2003), and noted that  
10 despite Jacobs' claims to the contrary, none actually stood for the proposition that the *Burnham*  
11 decision could be applied to corporate defendants. (Reply at pp 8-10).<sup>9</sup>

12 In short, SCL's Reply made clear that the transient personal jurisdiction principle could not  
13 be considered as part of the District Court's jurisdictional analysis, and that Jacobs' arguments were  
14 fundamentally flawed. At the March 15, 2011 hearing on the Motion, counsel for SCL briefly  
15 addressed the *Burnham* case and its inapplicability to corporate entities such as SCL. (Transcript of  
16 March 15, 2011 hearing, attached to Writ Petition as Appendix 6, at p. 48, lines 4-8). This  
17 statement prompted no response from the District Court, and Jacobs' counsel avoided the transient  
18 personal jurisdiction issue altogether during his argument.

19 It is irrelevant whether Jacobs' counsel chose not to address this issue because he was  
20 "constrained by time limits and flow of colloquy," as claimed in his Answer, or for some other

21  
22 <sup>9</sup> In citing to *Comerica*, Jacobs disingenuously ignores the fact that the court's decision in  
23 that case dealt with another individual defendant, and not the corporate defendant. See *Comerica*,  
24 1994 U.S. Dist. LEXIS at \*6-11 (N.D. Cal. 1994)(applying *Burnham* ruling to determine personal  
25 jurisdiction over individual co-defendant James Gary Pyle). *Northern Light* and *Oyuela* are  
26 similarly inapplicable, as the court's analysis of transient jurisdiction in *Northern Light* was  
27 contained in a footnote and only referenced *Burnham* by stating that due to the defendants' failure to  
28 raise it earlier, any argument that it did not apply had been waived. See *Northern Light*, 236 F.3d at  
63; see also *C.S.B. Commodities, Inc. v. Urban Trend, Ltd., et al.*, 626 F.Supp.2d 837, 849-50 (N.D.  
Ill. 2009). The *Oyuela* court had relied solely upon *Northern Light* and had also proceeded with a  
minimum contacts analysis to determine that jurisdiction was proper. See *Oyuela*, 290 F.Supp.2d at  
722; see also *C.S.B. Commodities*, 626 F.Supp.2d at 851 ("Neither [the *Northern Light* or *Oyuela*]  
case thus provides much support for the application of *Burnham* without a minimum contacts  
analysis." ).

1 strategic purpose. What is relevant, however, is that his argument was shown to be without merit or  
2 application, and the District Court neither discussed nor chose to base its ruling on transient  
3 personal jurisdiction. Critically, Jacobs offers absolutely no additional support for his argument that  
4 transient personal jurisdiction could be applied to SCL without violating established law and simple  
5 logic.

6                   2.       SCL Has Neither Conceded the Issue of Transient Personal Jurisdiction, Nor  
7                               Is It Precluded From Responding to Jacobs' Argument

8           Jacobs also argues that because SCL allegedly failed to provide additional analysis of the  
9 transient personal jurisdiction issue in the Writ Petition, it has “abandon[ed] that issue, and must  
10 accept the consequences.” (Answer at p. 7, line 7). As discussed above, SCL has repeatedly  
11 demonstrated that transient personal jurisdiction has no impact on the issues presented in this case,  
12 and as stated above, was ignored by the District Court in its decision to grant the Motion.

13           Jacobs cites to *Wyeth v. Rowatt*, 244 P.3d 765 (2010), *Mainor v. Nault*, 120 Nev. 750 (2004),  
14 and *Browning v. State*, 120 Nev. 347 (2004) in support of his argument. Upon further examination  
15 however, those cited cases do not support the blanket assertion espoused by Jacobs. In each case,  
16 the issues that were disregarded by the appellate court were those that had not been raised or  
17 addressed at the trial court level and were specifically relied upon as part of the argument in the  
18 appellate brief. See *Wyeth*, 244 P.2d at 779, fn. 9 (declining to consider argument first raised in  
19 appellate brief that trial court gave an improper jury instruction); *Mainor*, 120 Nev. 776-77 (noting  
20 that the court was entitled to reject an argument to take judicial notice of opposing counsel’s prior  
21 conduct); *Browning*, 120 Nev. at 361 (rejecting argument that trial counsel was ineffective when the  
22 particular issue had been raised for the first time in the appellate brief).

23           In the present case, the transient personal jurisdiction issue had been extensively briefed to  
24 the District Court, and subsequently shown to be inapplicable. The District Court did not address or  
25 even allude to the issue, and did not cite the transient personal jurisdiction doctrine as support for  
26 the decision at issue in the Writ Petition. (Transcript, attached as Appendix 6 to Writ Petition, at p.  
27 62, lines 3-5 (stating that the denial of SCL’s Motion was based on “ pervasive contacts with the  
28 state of Nevada by activities done in Nevada by board members of Sands China.”)). However, SCL

1 still brought the issue to this Court's attention in the Writ Petition, and provided a full record of the  
2 proceedings in the event this Court had a desire to examine it further.

3 While no additional analysis is necessary, Jacobs has nonetheless decided to waste both this  
4 Court's and SCL's time and resources by raising this issue again. SCL submits, as it did to the  
5 District Court, that Jacobs' argument has no basis in law or fact and should be summarily rejected.

6 **III. CONCLUSION**

7 The District Court erred in denying SCL's Motion to Dismiss for Lack of Personal  
8 Jurisdiction. General jurisdiction does not exist in this case because SCL made no substantial or  
9 continuous and systematic contacts with Nevada. Specifically, general jurisdiction over SCL cannot  
10 be based on its corporate contacts with its majority shareholder, LVSC, without a showing of an  
11 alter ego relationship between SCL and LVSC, or evidence of LVSC's excessive degree of control  
12 over SCL. Moreover, the exercise of personal jurisdiction in this case would offend the principles  
13 of fair play and substantial justice, which the District Court did not consider when making its ruling.

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

18  
19 Dated August 9, 2011.

20  
21 GLASER WEIL FINK JACOBS HOWARD,  
22 AVCHEN & SHAPIRO LLP

23 By: 

24 Patricia L. Glaser, ESQ.  
25 Pro Hac Vice Admitted  
26 Andrew D. Sedlock, ESQ.  
27 Nevada Bar No. 9183  
28 3763 Howard Hughes Parkway, Suite 300  
Las Vegas, Nevada 89169

*Attorneys for Petitioner Sands China Ltd.*

VERIFICATION

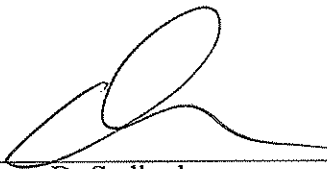
STATE OF NEVADA )  
COUNTY OF CLARK )ss:

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

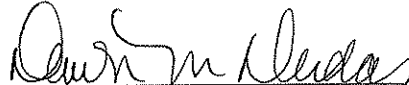
1. I am an attorney with the law firm of GLASER WEIL FINK JACOBS HOWARD, AVCHEN & SHAPIRO LLP, counsel of record for Petitioner, Sands China Ltd. named in the foregoing Petitioner's Reply In Support Of Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition and know the contents thereof.

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

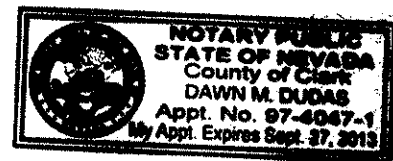
3. I make this verification on behalf of Petitioner Sands China Ltd.

  
\_\_\_\_\_  
Andrew D. Sedlock

Subscribed and sworn to before me  
this 9th day of August, 2011

  
NOTARY PUBLIC in and for  
said County and State

My Commission expires 9-27-13

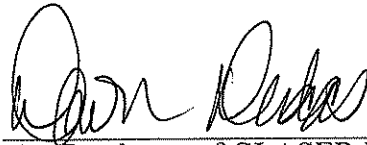


**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of GLASER WEIL FINK JACOBS HOWARD  
AVCHEN SHAPIRO LLP and on the 9th day of August, 2011, I deposited a true and correct copy  
of the foregoing **PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF  
MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION** by U.S. Mail at Las  
Vegas, Nevada, in a sealed envelope upon which first class postage was prepaid and addressed to:

J. Stephen Peek, Esq.  
Justin C. Jones, Esq.  
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