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DISTRICT COURT
CLARK COUNTY, NEVADA
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STEVEN JACOBS Plaintiff vs. LAS VEGAS SANDS CORP., et al.. Defendants	CASE NO. A-627691 DEPT. NO. XI **Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTION TO STAY ORDER

THURSDAY, JUNE 27, 2013

APPEARANCES:

FOR THE PLAINTIFF:	TODD BICE, ESQ. ERIC ALDRIAN, ESQ. DEBRA SPINELLI, ESQ.
FOR THE DEFENDANTS:	J. STEPHEN PEEK, ESQ. JON RANDALL JONES, ESQ. MARK JONES, ESQ.
COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

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LAS VEGAS, NEVADA, THURSDAY, JUNE 27, 2013, 8:16 A.M.

(Court was called to order)

THE COURT: Good morning, gentlemen. Who's on the telephone?

MR. PEEK: Stephen Peek, Your Honor. Good morning.

THE COURT: Mr. Peek, good morning. Do you plan to argue today, or is Mr. Mark Jones and Mr. Randall Jones arguing?

MR. PEEK: Mr. Randall Jones will be arguing. I will certainly [inaudible] because I represent Las Vegas Sands, but I join in whatever arguments Mr. Jones makes.

THE COURT: Well, here's the issue. Since you're on the telephone up at the bench, you may not be able to hear them as well unless I make them come stand at the bench. So I'm trying to evaluate whether I make them pick up all their crap and come up here, because they've got very organized stacks today.

MR. PEEK: Your Honor, don't make them come up to the bench and interfere with their argument. I'll do my best to try and listen.

THE COURT: All right. Mr. Randall Jones, it looks like you're arguing the motion this morning.

MR. RANDALL JONES: I am, Your Honor.

THE COURT: Okay. Good morning.

MR. RANDALL JONES: I'll be honored. For the

record, Your Honor, Randall Jones and Mark Jones on behalf of Sands China Limited.

THE COURT: And did you get the opposition from Mr. Pisanelli and Mr. Bice last night?

MR. RANDALL JONES: I did, Your Honor.

THE COURT: It's rather long.

MR. RANDALL JONES: It was rather long, and I have an expert witness on the stand, so it made for some enjoyable reading after preparing my deal with my expert's cross.

THE COURT: But it's a bench trial.

MR. RANDALL JONES: But it is a bench trial. And it's Tim Morris, so it's pretty straightforward.

THE COURT: Okay.

MR. RANDALL JONES: He is a good witness, so --

Judge, you know, you've had the history of this case for its entirety, and I've only been involved for about eight months now, nine months. Having said that, the invective and ad hominem rhetoric and attacks of the plaintiff, you know, I don't think they -- and I would ask the Court for some feedback on this, because I don't know that that helps the process, Judge.

THE COURT: It interferes with the process.

MR. RANDALL JONES: Well, I appreciate you saying that, because I have been doing this --

THE COURT: In fact, I'm appointing a committee to

assist us in dealing with professionalism and collegiality in the courtroom, because many of the judges are concerned, and it's been an issue at a bench/bar meeting. So that's one of the things we've talked about, is the effectiveness to litigators of those kind of attacks. I've seen it forever. I know for some people it's part of the process. It doesn't affect me. This case has some ugly history to it, which means that the entire history of this case has been surrounded in those attacks from both sides prior to your involvement. And I am concerned with it. I tell counsel when it's used, doesn't impact me on this case. I've stopped saying it because I've said it so many times. I take everything you guys take with a grain of salt, and I just get through it. Because my job is to try and make a determination that is based on the facts and not based on the personality, not based on the personal attacks, not based on what you guys are doing, but what really needs to be done to get this case to its decision-making point. That's what I'm supposed to do.

MR. RANDALL JONES: And I appreciate that, Your Honor. The reason I bring that up before I get into the merits of this argument is because -- and I've known Mr. Bice and Mr. Pisanelli for a long time, but you cannot attack the parties the way they do and without -- they are at best indirectly attacking counsel with some of these I think very personal and inappropriate comments. And they know better

than that. And I have to tell the Court I take offense to that, and I would hope that this Court recognizes that my firm -- and I certainly believe Mr. Peek would not be a part of that, and Mayer Brown has been at least -- in everything we have done they have been as straightforward as any firm I've ever dealt with. So with that --

THE COURT: Well, but they're the fourth California firm on this case now.

MR. RANDALL JONES: And, Your Honor --

THE COURT: Third or fourth. Mr. Peek, is it third or fourth?

MR. RANDALL JONES: I think it's third.

THE COURT: Maybe it's only third.

MR. RANDALL JONES: But, Your Honor, you know, there's a long history here. But, again, Mayer Brown is involved in this case, too, because there's -- at this point the Court has ordered a lot of documents to be produced and, well, as a result of some of the orders, a lot of documents have had to be produced. So I'll put it that way. And our firm does not have the capability of doing that, and they have the expertise and the manpower to help in that process. So it's been -- it's been a critical part of the process to produce what we've been able to produce thus far. And so I want to just mention that as a backdrop, because I think that goes to ultimately the crux of this issue, where we are. I

will tell the Court --

THE COURT: Why? Why do you think that goes to the crux of this issue? Because I don't see it that way, so --

MR. RANDALL JONES: Well, because, Your Honor, there's been these issues that certainly since Mayer Brown and our firm have been involved that we have not candidly pursuant to our obligations to the Court produced the documents that are required to be produced by your orders. And I have -- I will tell you I have certainly attempted to do that to the best of my ability while zealously protecting what I believe is the most sacrosanct obligation I have in the law to protect attorney-client privilege. And so it has put us in a difficult conundrum, wanting to make sure we get you what you want us to give while making sure we do everything we believe we have to do to protect that kind of a privilege. And sometimes those things are in conflict.

THE COURT: True.

MR. RANDALL JONES: And it's certainly not any attempt, in spite of what Mr. Bice says and what Mr. Pisanelli says, to thwart the process inappropriately, obstruct the process, or frustrate what you want to get done. I understand that you want to have this hearing as soon as possible. And if you'll recall, Mr. Bice would ask the question by you at the last hearing, when would you like --

THE COURT: He said November.

MR. RANDALL JONES: He did. He said, I believe, September or November. So, you know, this Court has been the authority that has said, no, we're going to do it sooner. When you made that statement, however, there was this pending issue. And you gave -- as I recall, you gave Mr. Bice the option, do you want to go forward with the hearing on the 16th of July --

THE COURT: No, I didn't give him an option. I told him it didn't matter on his Rule 37 sanctions, because I'm not going to -- probably it is highly unlikely I would give the evidentiary sanction that he's asking for, which is you can't raise the jurisdictional issues anymore, you've waived it. I'm not going to give that one.

MR. RANDALL JONES: Actually, what I was referring to, Your Honor, was the documents, the documents that are the subject of the second writ. Do you want those documents first, you want to wait for that writ to be over, and that was my recollection.

THE COURT: Those were the Macanese documents.

MR. RANDALL JONES: Right.

THE COURT: And those relate to the Rule 37 motion.

MR. RANDALL JONES: That's true. But I understood you to be saying you want those -- you want to wait --

THE COURT: Well, that wasn't what I was saying, Mr. Jones.

MR. RANDALL JONES: Well, then I misunderstood.

In any event, Your Honor, this is a little different issue. In fact, it's a significantly different issue in the sense that these documents have been identified as privileged. The vast majority of them are attorney-client privilege. There's some work product privilege mixed in there, and there is a little bit of a privilege related to third-party litigation and a little bit of accounting-client privilege. But the vast majority of it is attorney-client privilege or work product. And so we are faced with a situation -- I will tell the Court in open court as an officer of the court that my client very much wants to proceed on July 16th. So the Hobson's choice that we have is do we proceed on that date if those documents have to be produced. And given that option, we cannot agree to that. We have to do everything in our power to protect that privilege. So that's why we're here asking for the stay.

Your Honor, I think you probably know, in fact I've been in matters where you've been involved, I'm not afraid to try a case. I'm -- actually, part of me is very anxious to get this to trial and see what Mr. Jacobs has to say. And I'm sure that --

THE COURT: But before I can get to trial I have to have the evidentiary hearing on the jurisdictional issues and issue findings of fact and conclusions of law stating the

basis for my decision following that hearing and then to stay the action as set forth in this order until after the entry of those -- oh. I'm sorry. The action's been stayed now for three years.

MR. RANDALL JONES: Your Honor, I misspoke. What I meant, I'm very anxious to get to the evidentiary hearing, because it is our belief, in spite of what the plaintiff says, that there is no jurisdiction over Las Vegas Sands -- excuse me, Sands China Limited. But my point is I'm very anxious to get to that jurisdictional hearing so we can have it resolved, as well. But I cannot do that and I cannot advise my client to do that while we have this privilege issue pending. And so, you know, when you look at the issues, I believe we meet all the factors of Hansen. I've, you know, read their brief. I know -- I know you. You're very conscientious about reading these things, so I'm sure you've read every word of theirs. We -- obviously the parties see Hansen very differently in terms of its effect.

THE COURT: Can I ask you a question.

MR. RANDALL JONES: Absolutely, Your Honor.

THE COURT: And you know there's a reason I'm asking this, and it may not be the one that's obvious to everybody in the room. Right now we have how many writs on this case? We have two. We have the Justin Jones document writ. It's been up there for how long?

MR. RANDALL JONES: A long time.

THE COURT: And we have the Macanese documents writ, which has been up there for maybe six months now.

MR. RANDALL JONES: Actually about three months, I think. It's only about three.

THE COURT: And then the writ which was Number 58294, that was issue, and so it's no long a writ --

MR. RANDALL JONES: Right.

THE COURT: -- because it's already been resolved. Are there any other writs currently pending before the Nevada Supreme Court on this case? Mr. Bice is saying yes, and I don't think there are.

MR. RANDALL JONES: Other than the one that relates to the privileged documents --

THE COURT: Justin Jones, Macanese. You haven't gone up on the privileged documents yet, have you?

MR. RANDALL JONES: We've filed a writ, because we had to file a writ before you asked for the stay.

THE COURT: Oh. So you've already filed this writ?

MR. RANDALL JONES: Yes.

THE COURT: You didn't serve me.

Oh. Did I? Oh. Apparently you did serve me and I just haven't seen it because I'm in trial.

MR. RANDALL JONES: Okay. Well, I am, too, so I was a little nervous about that myself. But that was my

understanding.

THE COURT: Hold on a second. All right. Good job. You sent it on Friday. Okay. I didn't realize I had it. I'm sorry. I was in trial.

MR. RANDALL JONES: That's okay, Your Honor. Because all I can tell you is I had a bit of a scare myself, so --

THE COURT: So we have three writs that are pending, one that's resolved.

MR. RANDALL JONES: Yes. And --

THE COURT: The longest writ that's pending, it's been a year, almost a year, nine months?

MR. RANDALL JONES: Probably, yeah.

THE COURT: Okay.

MR. RANDALL JONES: And Your Honor, let me put it this way. I understand the Court's frustration, and I say that -- by way of example, I have another case in front of Judge Scann where I'm in the opposite position of this and delay is very frustrating to my client. But the Supreme Court has seen fit to grant -- accept a writ, and it's been up there for a long time, probably over a year. And during that time period -- and I know that the judge was very reluctant to grant the stay, as well. I've had the same situation happen to me in front of Judge Denton where we had -- we were days from a trial, days from a jury trial in front of Judge Denton

when a writ was accepted. And there were -- just like this, it was a very big case, a lot of money involved. And it took over a year for that writ to be even heard, let alone decided. We ultimately had it decided in our favor, and we finally got to go to trial. But it caused a great deal of delay which was very prejudicial to my client from a standpoint of money involved. And there was property, a big piece of commercial property that was involved that was in a foreclosure state and they would have to pay for it, to maintain it. It was a very big problem. But the Supreme Court felt there was an issue that needed to be looked at.

And so, you know, I'll go back to one of my first points. We're talking about attorney-client privilege here. It is my belief that that is, you know, one of the most sacred things that lawyers have in their -- within their custody, to protect that interest. So we're simply here asking you to see if this writ's accepted. If it's not accepted, it becomes a moot point. And that may take a while. It may take 30 days to find out one way -- if it's accepted. It typically -- and you have probably more experience with this than I do, but typically you get a yes or no whether we're going to accept it or not in a relatively short period of time.

THE COURT: Usually within two weeks.

MR. RANDALL JONES: And that's been my -- that's what I say. Thirty days is --

THE COURT: But not always.

MR. RANDALL JONES: But not always. So that's why -- 30 days in my experience is sort of the outside time period, although I've had them go six weeks before they got accepted or rejected. And so --

THE COURT: It's not really they're accepted or rejected, they order a response.

MR. RANDALL JONES: That's my terminology. But if they don't order a response, then we all understand what that means, and we can proceed.

And let me just make one other point. As I said earlier, when you asked Mr. Bice, when do you want to do this, he didn't say, I want to do this in the middle of July. Now he comes back in his reply -- or his opposition and says, we will be horribly prejudiced, this is going to be further -- all the ad hominem and invective attacks that they can make on us about how badly this is going to prejudice them, where we may be out -- two to three to four weeks out before we know one way or the other if the Supreme Court thinks this is an appropriate thing to do, to accept this writ, latest writ. That's nowhere near even September, his earliest date. So it somewhat defies --

THE COURT: But just because he has those dates doesn't mean I do.

MR. RANDALL JONES: Well, Judge, I'm not

addressing --

THE COURT: In fact, I don't.

MR. RANDALL JONES: I'm not suggesting at all --

THE COURT: I didn't have those dates. I mean, I have CityCenter I've got to try, Mr. Jones. And once I start that, then you are waiting two years or, depending on what they get it down to, 18 months until I finish that. And I don't have time to do an evidentiary hearing. I have a spot. You guys are ready to do this. We have issues that have been discussed in this particular case, which is the one you're discussing now that is the subject of your latest writ, since Ms. Glaser was involved in the case, since her first appearance. This isn't a new issue. I've asked for people to brief this issue for a long time. We finally got to the point where it was framed, I reframed the issue myself because I didn't think it was framed appropriately. I issued an order. I understand you don't like my -- or your client's not happy with my order and they want to challenge it, and that's okay. That doesn't bother me. It's perfectly appropriate for you to be able to take that avenue.

The question is, given the time constraints that are placed upon a district judge and an order that I have a writ -- a writ that I have from the Nevada Supreme Court from 2011 requiring me to do certain things, how do I balance that. That's really the issue, Mr. Jones.

MR. RANDALL JONES: And I think -- I think you have -- I understand the way you've framed the issue, I can appreciate that. But you're under a directive to get this done and have this hearing. But who gave you that directive?

THE COURT: That would be the Nevada Supreme Court --

MR. RANDALL JONES: Exactly. And so --

THE COURT: In their writ of mandamus issued on August 26, 2011.

MR. RANDALL JONES: So if the Supreme Court accepts this latest writ and says this is a meritorious writ to hear, to hear, then they will be telling you, as well as the litigants, that this is an issue that they would like to have decided before the jurisdictional evidentiary hearing. So, my words, it will in effect let you off the hook from this mandate that you are otherwise feeling pressure from. And I understand that.

THE COURT: Because I've been pushing everybody in this case since this order was entered to get ready.

MR. RANDALL JONES: And I understand the pressure you feel to push us, because you want to make sure the Supreme Court knows that you're not the one that is causing the delay here. There have been from our perspective appropriate reasons why this is where it is. And we believe that the plaintiff is every much to blame for some of the delays that

has occurred -- that have occurred as are the defendants.

So, again, getting back to my point, if the Supreme Court is the one that has essentially given you the directive to have this hearing and have it as quickly as possible, then doesn't it make sense to have the Supreme Court look at this issue to -- because we've got a couple weeks, probably --

THE COURT: And by "issue," I would think that meant a motion to stay filed with them, as opposed to me making that determination. Because I'll probably deny your stay, and then if they think it's that important, then you will get an earlier answer to your issue on whether they're accepting the writ by sending the motion to stay up to them.

MR. RANDALL JONES: I understand -- I understand the point you make, Your Honor. As you -- well, not probably. As I know you are aware, we are required to ask you first.

THE COURT: I know.

MR. RANDALL JONES: And we are here to ask you, and we believe, in spite of the fact that you are under this pressure and in spite of the fact that you're, as you've expressed, concerned that you let the Supreme Court know that you're doing everything you can to make this happen as soon as possible, we believe that there are legitimate, appropriate grounds for you to issue the stay, that, irrespective of your -- the pressure you feel from the Supreme Court, which is understandable, I don't envy your position -- but, having said

that, if this is a meritorious motion, if you believe it's a meritorious motion under Hansen, then you should grant it.

And if I may, then, I would like to briefly walk through Hansen

THE COURT: Okay.

MR. RANDALL JONES: I don't need a whole lot of time. Is there irreparable harm -- well, will the object of the writ be defeated if the stay is denied? Well, of course it will. I mean -- and if you have any questions about that, I would be happy to try to respond to them. But it seems to me self evident that if the stay is denied and we go forward they get the documents, and there's -- the writ is moot. So that factor in Hansen, I don't see how it cannot be met by us in this instance. And if the Court has any disagreement with that, I'd be happy to try to respond.

The next factor, will the petitioner suffer irreparable harm if the stay is denied? If in fact these are privileged documents that the counsel for the plaintiff does not have a right to see, the caselaw is clear. They've cited some cases that are not even close to being on point with respect to privileged documents that were under a confidentiality. Those did not involved attorney-client privileged documents that the other side got access to. And where you have a confidentiality provision it says, oh, well, they can see them, but they can't disseminate them, well, then

there is no harm, no foul. That's not this case. This case is a situation where there are attorney-client privileged documents, and if they're put into the hands of opposing counsel's [sic] lawyers, then we are irreparably harmed. And the Wardlaw [phonetic], the Nevada Supreme Court case, is right on point on that subject. So we meet the Hansen Factor Number 2 on its face.

The third factor, whether the real party in interest, Mr. Jacobs, will suffer irreparable harm if the stay is granted. Well, Your Honor, he can't -- by his counsel's own statement to you in this courtroom a couple of weeks ago, he said the earliest he was willing to go or wanted to go to this hearing was September. And I understand your point about calendars, but I will say this. Having been involved in the CityCenter case a bit, for a period of time myself, interesting experience, I don't envy the Court at this point; but, having said that, that case has lots of -- how should I put this -- lots of jogs and turns and detours.

THE COURT: It has more writs than you had in this case, some of which have been pending longer than your writs in this case.

MR. RANDALL JONES: So the fact that you have set aside that time, I know that right now you were supposed to be deep into CityCenter but for some other things that happened in that case. So we all know that things can change. And so,

you know, for the Court to say, you know, I cannot do this in the near future, in September or November, I appreciate your current calendar, but things can change. And I have great faith in your ability to juggle your calendar. I have seen you do it before, so I know you can do it again.

THE COURT: Thank you, Mr. Jones.

MR. RANDALL JONES: You're welcome, Your Honor.

THE COURT: I appreciate that.

MR. RANDALL JONES: So irreparable harm? Obviously not. If they were willing to go forward with this hearing in September, then a couple of weeks to find out if the Supreme Court's going to accept the stay, in my terms, or request a response is not and cannot be by definition irreparable harm based upon counsel's own statement to this Court.

Secondly, it will cause arguably irreparable harm to the plaintiff unless the plaintiff doesn't have a problem this deep into the case getting new counsel if the writ is accepted and the Supreme Court says that those documents were privileged and should not have been given to the plaintiff's counsel, because they will be disqualified. And I have yet to hear them acknowledge in open court they would not be disqualified. And I actually would be very surprised if they did, because we have on the record Mr. Williams's emails when this issue came to the fore as far as we're concerned where he said, oh, yeah, we aren't going to look at those anymore

because we don't want to violate the attorney-client privilege. So prior counsel certainly understood the concern here. So it sort of defies logic to me that Mr. Bice and Mr. Pisanelli would say, yeah, let us have that stuff and if we lose the writ no big deal because then we've got a mistrial and a disqualification of counsel, and the harm to my client I think is incalculable.

Finally, is the petitioner likely to prevail? Again, if you look at Hansen, it's on page 12 of brief at lines 21 to 25. It talks about the likelihood of success where you have a case like this, where you have a case of first impression, this control or class of persons like you've ruled in your decision about these documents, that Mr. Jacobs fell within this class of people, therefore he not only has access to them, but then he could use them with his counsel. That --

THE COURT: He cannot waive that privilege.

MR. RANDALL JONES: And that's --

THE COURT: And I've specifically said that.

MR. RANDALL JONES: You did. And that's important, because that --

THE COURT: I know.

MR. RANDALL JONES: -- that is a issue of first impression in this state, is a very important issue that will likely affect other cases in the future and give us all

direction so you don't have to worry about this again and worry about writ petitions and what your orders should be or shouldn't they be. So we meet that factor under Hansen.

So, Judge, if we have a meritorious position -- and I understand the temptation to say, I'm going to punt this, because the Supreme Court has --

THE COURT: I'm not going to punt it. I'm going to let you ask them, because that way they'll pay attention to your writ, and if they're going to do something, they're going to do something. It's what I do on all these big ones if I can't narrowly tailor a stay. I can't narrowly tailor a stay given what you're asking me. You're asking me to stay the whole evidentiary hearing process. With the Justin Jones documents I could narrowly tailor a stay --

MR. RANDALL JONES: Well, Your Honor --

THE COURT: -- with the Macanese documents I could narrowly tailor a stay. With this evidentiary hearing I can't narrowly tailor a stay with respect to these documents, because these are what have been what has been driving the entire jurisdictional discovery issue since Ms. Glaser was in this case.

MR. RANDALL JONES: Well, let me just ask the Court a question about that, because you raise a very interesting point. We believe the Court can fashion a stay that will allow us to proceed.

THE COURT: How?

MR. RANDALL JONES: By saying, these documents will not be allowed at the evidentiary hearing, just like the Macanese documents. And, by the way, how do they know -- these are privileged documents. How do they know these have anything to do with jurisdiction? How do they know that? They cannot know that. There's 11,000 out of hundreds of thousands of documents, and they bring up an issue and say, well, hey, you're redacting the whole document when you admitted that only part of it is privileged. Well, that's because we cannot get through Advance Discovery them to partially redact a document, or we would have done it.

THE COURT: Well, there's this stuff that used to be called redacting tape that you use.

MR. RANDALL JONES: We don't get to do that, Your Honor. So we don't disagree with you. What we're telling you --

THE COURT: What do you mean?

MR. RANDALL JONES: -- we -- it's my understanding that Advance Discovery does not have the means -- and if there's a way to do this, then certainly we would be happy to look into it. But it's my understanding --

And, Mark, if you have a different understanding, or Steve Peek, if you have a different understanding, please let me know.

But it's my understanding that we cannot get Advance Discovery to partially redact any of these 11,000 documents.

THE COURT: Okay. So what they do is they print a document, a page, you take redacting tape, you redact, they scan the document in. It has a new Bates number because it's a different document than the one that was originally in their system, and then it gets produced in the redacted form.

MR. RANDALL JONES: Your Honor, I --

THE COURT: That's the way we used to do it.

MR. RANDALL JONES: I still do it that way. I'm not telling you I couldn't do it. It's my understanding they either can't or won't do it or haven't done it, that that's what the information we're getting. So, again, if Mr. Peek has different information, then I certainly don't want to misstate that to the Court. But that's my understanding.

THE COURT: Well, it's like the discussions that Mr. Mark Jones and I talked about on Tuesday about certain of the exhibits to depositions that were designated as confidential and how to work through that redaction process, and we negotiated as part of that hearing what would be redacted from those documents and treated differently than the other parts of the documents. And I assume that will be done by hand, because those are documents not in the possession of Advance Discovery. So it's not impossible to do it, it just requires manual labor.

MR. RANDALL JONES: And from what I've been told --

MR. PEEK: Your Honor, this is Steve Peek. We were not permitted to do it under the protocols, as well as by plaintiff, to print out a document and then take that document and redact it. We were not permitted to do that.

THE COURT: So how are you looking at the Advance Discovery documents?

MR. PEEK: We only looked at them electronically, Your Honor. We're not permitted to print them out.

THE COURT: So they were all delivered to you electronically, and you say, gosh, we've looked at this, we want to redact the person's personal identifying information in the second paragraph of that document. And you're telling me that the redaction then comes back as the entire document?

MR. PEEK: Your Honor, those were conversations and discussions that took place last fall as we were doing that, and plaintiffs would not permit us to go forward and to print out that type of a document and make this kind of a redaction. So we were forced into just redacting --

THE COURT: I'm not asking --

MR. PEEK: -- the entire document.

THE COURT: I'm not asking if plaintiffs allowed you to do it. I'm asking if when you tell Advance Discovery, we want to redact this personal identifying information in the second paragraph of this page, they tell you, we can't do

that.

MR. RANDALL JONES: That --

MR. PEEK: Your Honor, that's the conversation that I don't know took place, whether that's -- but certainly, you know, without asking Advance Discovery now, I can't answer whether or not we could do that. Intuitively it something that makes sense to me, that, yes, we could have said to them, you know, can you do this, and I imagine that they themselves maybe could have printed it out and put it back in. I don't know that. All I know is we were not permitted to make the kinds of redactions that you're describing to us under the protocols that we had with the Court as well as the plaintiff.

THE COURT: Well, whether it was you or Advance Discovery, the redaction could have been done in that fashion; right?

MR. PEEK: Not under the protocols, Your Honor. Actually physically possible to do it? I assume it's physically possible to do it, Your Honor. But was it permitted under the protocols? It was not. And it required the consent of both Advance Discovery and the plaintiff to be able to do that.

MR. RANDALL JONES: What I have been told, Your Honor, is that there's a -- the platform, essentially the program that Advance Discovery has under the protocol won't allow us to do that. But we have given them a privilege log

that talks about what these privileges are on those documents. So, you know, my -- getting back to my point is that there is a way to fashion a stay that relates to those documents. And there's been -- they cannot, unless they've looked at the documents, know that they have anything to do with jurisdictional discovery or that they have --

THE COURT: Well, but the only way such a stay will work, Mr. Jones, is if Mr. Jacobs doesn't testify. Because the whole point of this entire exercise, as I have said, Mr. Jacobs will not be deposed until his counsel have the opportunity to review the documents and prep him or until somebody in Carson City says he's never getting to show those to his lawyer. And you have said you don't want to take his depo anymore, but you intend to call him at the hearing. That's great. That's fine. But he's going to look at his documents, and his counsel's going to look at his documents before he has to testify.

MR. RANDALL JONES: The only point I would make in response to that, Your Honor, is that he will be under no disadvantage compared to us in terms of these documents, because we won't obviously be using any of these documents offensively against him, because we obviously would then be violating the very privilege.

THE COURT: You are absolutely able to review those documents and help formulate your strategy of examination,

because they're privileged with your client. You don't have to release the contents of them, but you are absolutely able to review those documents, formulate a plan, and then execute that plan.

MR. RANDALL JONES: I understand your point.

THE COURT: Okay. What else?

MR. RANDALL JONES: Your Honor, I don't want to belabor the issue. I think that -- I think you've made your position clear. We think that the Court can appropriately fashion a limited stay like you did with the Macanese documents that will not prejudice Mr. Jacobs. But, more importantly, by counsel's own admission a delay of some two to three, four weeks even would certainly not be any prejudice to them, since they were suggesting that the earliest they would be prepared to go forward with an evidentiary hearing was September.

THE COURT: Well, except I've got to try Bob Eisenberg and Kirk Lenhard's airport condemnation case for four weeks in September.

MR. RANDALL JONES: Your Honor, I --

THE COURT: And then I've got to try everybody else's case in November, including the Pisanelli Bice firm, which is booked for a bench trial from December 9th to the end of the year. And so that's my problem, Mr. Jones. My problem is I'm trying to do all of my cases, manage the CityCenter

case, and accomplish things that I am requested to do by the Nevada Supreme Court.

MR. RANDALL JONES: I understand that. Obviously I can't control your calendar. I know that you have limited control over it yourself.

THE COURT: I try the best I can, but thank you.

Mr. Peek, may I ask you a question before Mr. Bice gets up.

MR. PEEK: Yes, Your Honor.

THE COURT: Do you recall the approximate date on which the protocol with Advance Discovery was entered? I'm looking for the order, and I don't see it. I thought it was in the early fall.

MR. PEEK: No, Your Honor, it would not have been in the early fall. We began the discussions and then finally ended the discussions at the end of 2011. And the last hearing that we had on this was in January 2012.

THE COURT: When was the order entered on the protocol?

MR. PEEK: I don't know that, Your Honor, but it would have been probably in the late winter, early spring of 2011, 2012.

THE COURT: Now I'm going to go to Ms. Spinelli to see if she can give me any better date. Because I'm looking for it on the computer.

MS. SPINELLI: Your Honor, there is no written order. It was an agreed-upon protocol between myself and MTO, and there is letters and emails with Advance Discovery because of the court orders, because it's the Court-ordered vendor.

THE COURT: Okay. So I didn't enter a protocol, MR. Peek.

MR. PEEK: Your Honor, I beg to differ with Ms. Spinelli. I think that there was an order entered on those issues. But, you know, she certainly has the -- a good memory, too, so I -- I'm not at my computer. I'm actually driving to physical therapy, so --

THE COURT: Well, I hope you're okay, Mr. Peek.

MR. PEEK: Oh, I'm fine, Your Honor. I -- just followup to knee surgery.

THE COURT: All right.

MS. SPINELLI: Your Honor, in January of 2012 you did enter an order related to Mr. Jacobs's motion for protective order on his documents, and then after that we negotiated with MTO the protocol.

THE COURT: I found it.

MR. PEEK: Thank you. I --

THE COURT: It is extensively interlineated by me.

MR. PEEK: Yes.

THE COURT: Hold on a second, Mr. Bice. Let me --

MR. BICE: Not a problem, Your Honor.

(Pause in the proceedings)

THE COURT: I signed it on December 7th, 2011. It has no procedure for redactions in the protocol.

All right. Mr. Bice.

MR. BICE: Thank you, Your Honor. Every time we come to court anymore Las Vegas Sands and Sands China has a story about how they are the victim, they are always the victim, they are the victim of ad hominem attacks now, they are the victim of aggressive brief writing. I've never seen a litigant suffer as much as Las Vegas Sands and Sands China have at the hands of their opponent. And that's because we hear that story because it just isn't true. Look at the status of this case, and you know why this case is in the status that it is in. And the responsibility of that rests to my right.

Let's be clear about what is going on and what has been always going on in this case. Sands China came to you and said, you know, we didn't have -- we didn't have any contacts with the state of Nevada. Court rejected that. They took it up to the Supreme Court, told them the same story, and said, we need an evidentiary hearing on this. And then after that happened they have done everything, legitimate and illegitimate, to make that day not happen. And pretending like they didn't is never going to make it go away. So we can all come in and we can get on our -- we can get on this

pedestal and proclaim ourselves all victims, but that isn't true.

Let's look at what they're asking you to do yet again, grant us another stay so that we'll inevitably postpone this hearing. Mr. Jones says that I came to you -- you know, I think this is just so telling of what we hear --

THE COURT: No, you guys didn't come to me. I ordered you in here to tell me when to come, and then you negotiated another date because you didn't want to come when I told you to come.

MR. BICE: Right.

THE COURT: And then we came up with another date, and then I said, hey, we're going to set an evidentiary hearing, and somebody said, November, and I laughed.

MR. BICE: Right. I actually said that -- but, according to Mr. Jones, what I said is the earliest I was going to be available was September or November. Don't think those were my words, Your Honor. I think what we said was that we were available then. We never said that was the earliest. We know your schedule, and we know our own schedule. And because of this Court's setting of hearing I've had to cancel two trips because of that. And that's fine. I'm not complaining. We accommodate people's schedules. But then to come and represent to you, oh, well, Mr. Bice said they weren't even going to be ready before September so they

suffer no prejudice here by yet more and more delay, is utter nonsense.

Then he goes on to say, we don't get any advantage, we don't get any advantage by Mr. Jacobs's counsel not having access to 11,000 documents that Mr. Jacobs has had and, as you so rightly point out, have been at issue since Ms. Glaser was in this case. And what is it that Ms. Glaser did relative to this issue? Well, the history on that we've already discussed extensively, and it was much of nothing.

So when we come in here and we tell the Court, there's no prejudice to Mr. Jacobs, there's no harm here to him -- this case is three years old nearly, and, as we point out, evidence is being lost, memories are facing, and witnesses are going to be allowed to claim now, Your Honor, they're going to say, oh, you know, I just can't remember those events, too long ago. And they've already admitted to you on at least one occasion, and I suspect it's going to end up being more once we get into the discovery, is that they have, quote, "misplaced" certain documents, hard drives. As their IT director admitted, how conveniently Mr. Jacobs's hard drive, the one he used in Macau, was scrubbed and all they preserved of it was a ghost image, which he acknowledged will never show what might have been deleted from it shortly before the ghost image was created because a ghost image doesn't preserve that sort of data. So these investigative reports --

if it weren't for the fact that Mr. Jacobs had then, no doubt they would be claimed to have never existed.

But that takes us, Your Honor, to their actual request being made to you, and that is let's stay this case yet again and if we can't -- and if we can have a stay, well, we want to proceed with the evidentiary hearing. Well, of course they want to proceed with the evidentiary hearing under those circumstances. They can deprive Mr. Jacobs of the access to proof, and they can deprive Mr. Jacobs of fair representation because, as you aptly point out, they have no doubt studied these privileged documents in great detail.

And let me just address this issue about, well, we couldn't redact these documents and produce the nonprivileged information to Mr. Jacobs's counsel. Who -- they claim these are their documents; right? They have all these documents in their files and in their system. They know every one of these documents. They put them on a privilege log. They're telling you -- regardless of Advance Discovery's systems and protocols they're telling you they couldn't go into their own files, pull them out, redact them, and produce them? Of course they could have done that. They didn't want to do it, because the end objective isn't to produce, as has been demonstrated hearing after hearing after hearing when we have been over here.

So turning to the tests for a stay -- and I'm not

going to belabor it, because I think you've indicated what your view is on this. What I would ask this Court to do, however, is focus upon the one factor that is apparent here, and that's the prejudice to Mr. Jacobs. Mr. Jones says, well, what's the harm in letting the Supreme Court process this writ application. Well, Your Honor, the Supreme Court does the following on these writ applications. They simply look at them in a fashion where there is no opposition and they decide whether or not on the face of it there is arguable merit. That's the only criteria that one has to meet to order a responsive brief. And I can rest assured anyone uses the word "disclosure of attorney-client privileged information" and all the rhetoric that we've seen out of the Sands and Sands China, despite the passage of years while Mr. Jacobs has been in possession of this information, there is no doubt in my mind that the Nevada Supreme Court -- just like there's no doubt in Mr. Jones's mind that the Nevada Supreme Court is going to tell us to file a response. And that process is going to then drag on for month after month after month, and it will be a minimum of 12 months, more likely 18, before they get around to resolving those writ proceedings. And they know it. And to come in here and act like, oh, it's only going to be a few weeks, I don't think is being straight with the Court.

So that being the status, the question for you is basically this. Is Mr. Jacobs going to be harmed by yet

another 18-month or more delay in his case -- or 12 months? Let's be generous. Let's just say they're going to act quickly and it's only going to be 12 months. Can a litigant expect to be harmed by his case being delayed for four years after the date of filing without any merits discovery, without the preservation of evidence, all the while their executives disappear, they're firing them seemingly left and right, those that had a lot of knowledge about this, we're going to have considerable difficulty tracking them down and preserving their testimony, what they will be able to recall, and, of course, Your Honor, a lot of times witnesses don't want to get involved, and, of course, with the passage of time it becomes much easier to claim, I don't remember. Far more convenient to claim, I don't remember.

So the harm to Mr. Jacobs is not imagined, it's not speculative, it is real, and it is intolerable. No litigant should have to endure what has gone on at the hands of these defendants. If you were to grant a stay of that -- of that writ which would necessarily then delay the evidentiary hearing, there will be no end in sight for this case. Their position is, of course, well, you just grant us a stay and hold the hearing anyway and give us all of the advantages so we not only -- we not only get the stay, we actually profit from the nonproduction because we can use that information. Sure, he's -- Mr. Jones isn't going to show up in court and

he's not going to wave the documents around that he claims are privileged, but of course he's going to use them and he's going to have knowledge of the information and he's going to use it to his advantage.

They say -- Mr. Jones says, well, how could we possibly have any knowledge that any of these documents would be relevant to jurisdiction. Well, there's one really easy way to know that many of them would be relevant to jurisdiction, that's look at their privilege log. Because what it shows is Las Vegas Sands's lawyers here in Las Vegas giving an awful lot of, by appearances at least, direction and doing an awful lot of work for Sands China in Macau. That's what it certainly looks like to us to the extent one can decipher this privilege log which has now grown to I think about 6,000 pages in total.

So we are severely prejudiced. But I disagree with Mr. Jones. He comes in with the conclusory assertion that, well, it's obvious, the object of the writ is defeated if you don't grant the stay. It's certainly not obvious to us. He says that we don't cite you any authority for this proposition, and he says that the cases that we cite don't deal with attorney-client privilege. I would just point the Court to page 11 of our opposition, where we cite two specific cases on this exact issue dealing with attorney-client privilege and parties saying, well, we need a stay pending

review of that. And the Court said, no, further delay of the production would harm the respondent and potentially delay discovery in the proceedings in this action. Well, there's no doubt it's going to delay the proceedings of this action, which, I know Mr. Jones will protest, I think that is his client's end objective and has been since the inception of this case.

We then turn, Your Honor, to the issue about the harm to Sands China and to Las Vegas Sands. What's the harm to them? They say, well, this evidence might be used against us and if it's later determined that in fact we couldn't have access to it we will be harmed. Well, every case, Your Honor, there are claims that evidence was admitted that shouldn't have been admitted. That could be dealt with in the ordinary process of challenging.

And again, Your Honor, I make this point only because I think it demonstrates the harm to Jacobs relative to what is really going on here. There isn't at the end of the day going to be a serious debate about whether or not Sands China is going to be in this case or not. As we point out to you, the minute that the merits stay is lifted we are going to amend the complaint and we are going to sue them for abuse of process, and we are going to sue Sands China and Las Vegas Sands for the misconduct that they engaged in for three years in hiding evidence, destroying evidence, misrepresenting to us

the status of evidence, misrepresenting to you the status of the evidence, and just other outright deception that occurred for as long as it occurred.

So we can all pretend like this evidentiary hearing is going to be the end of this matter. Sands China is going to be in this case, and that's why I say to this Court if you were going to entertain a stay, if the Court was going to, at a minimum it must be conditioned, as we point out in our opposition, upon merits discovery being allowed to proceed so that we can preserve evidence. That is grossly unfair to have this case frozen in time as it is. I mean, Las Vegas Sands Corp., Your Honor, doesn't even dispute that it's in this case and that it will be, and yet it has been benefitting from this stay and hiding behind it now for two years. Sands China is going to be in this case, and acting like they're not is not going -- is make believe.

So if the Court were inclined to grant a stay, I would ask the Court to condition it upon merits discovery proceeding so that we can preserve evidence. That will at least mitigate some of the harm to Mr. Jacobs. And if the Court doesn't think it has that authority -- I dispute that, but if the Court was of the view it didn't, then at a minimum it should be telling the Supreme Court that that is what its view is, that this merits stay has become a tool of abuse at the hands of the defendants and Mr. Jacobs should not continue

to be unduly and unfairly prejudiced while they want to contest documents that have been in his possession since before he departed and, by the way, they knew it. You know, when they first came to us on this issue they kept secret from you and from us about all of the documents that they had transported over here and their clandestine review of them. So to say, we didn't know until July of 2011 what Mr. Jacobs had, we don't believe that that is remotely true, and I would point out to the Court you've never seen a single affidavit signed by a single executive or lawyer on behalf of these defendants saying, we didn't know what he had. Ms. Glaser's letters to us early on, as you know, long before the Jones counsel was in here, acknowledged that they had a lot of information about what he had and they were very concerned about some investigative reports. They were right to be concerned about them.

THE COURT: And those were returned long, long ago.

MR. BICE: Oh. Those -- no, the originals were returned.

THE COURT: Right. The originals of them.

MR. BICE: We have made it clear -- Mr. Jacobs and --

THE COURT: Kept a copy, right.

MR. BICE: We've made it clear they're not getting anything back from us.

THE COURT: But those originals were returned.

MR. BICE: That's right.

THE COURT: Okay.

MR. BICE: And that, Your Honor, we never heard another word from them. And this supposed severe, extreme, outrageous prejudice, the highest privilege that Mr. Jones knows of, silence month after month after month despite, Your Honor, them knowing full well what we had. Because, as we know, they had shipped it all over here and were looking at it themselves and just didn't tell you or us.

So on those grounds, Your Honor, the stay should be denied. If you were inclined to grant a stay, we would ask you -- we would implore you to condition it upon the merits stay being lifted so that we could proceed to preserve evidence. Because even Mr. Jones knows this is -- this matter isn't going to be resolved in a few weeks; it's going to be resolved in many, many months.

THE COURT: Thank you.

Mr. Peek, did you want to say anything before Mr. Randall Jones gets back up?

MR. PEEK: No, Your Honor. I'm fine with what Mr. Jones has already presented to you.

THE COURT: Thank you.

MR. RANDALL JONES: Well, Your Honor, I know Mr. Bice likes to say that I'm new to the case, I don't know what

I'm talking about; but I've tried to do my best to read the record and see what happened before we got involved, and I feel fairly confident that I have actually done that. And I categorically disagree with his continued statement that we knew all about the documents. The letters belie his statement.

THE COURT: So how can you explain the drive that was brought from Macau to the U.S. by a Sands employee, worked on by Sands employees, and everybody knew exactly what was on that drive, because they copied it off of Mr. Jacobs's computer in Macau?

MR. RANDALL JONES: Your Honor, let me -- let me just I guess ask you this question in response to your question. Why would my client think that an executive who is terminated, then goes and downloads hundreds of -- or gigabytes, 44-some-odd gigabytes of documents when he's leaving the employment -- what's going on here, Judge, is this employee -- this is the real story. We're looking forward to it coming out, too. I'm sure Las Vegas Sands is. The employee was getting fired. He knew he was getting fired, and he did what a lot of employees do when they're getting fired. He went and took a whole bunch of documents. We know what they say happened. We have a different position, Judge. And just because Mr. Bice says it doesn't make it true. We believe that Mr. Jacobs went in there and took information

that he was not entitled to, that was not something that he got in the ordinary course of his business and took it so that he could use it against his former employer. Some of that information, a small portion of it he probably did have access to and did get before he knew he was going to be terminated. But, Judge --

THE COURT: So can I ask you a question, Mr. Jones. Because, you know, Ms. Glaser sends this letter, it's the first letter she sends in the case, it's dated November 23rd 2010, and she says, "We have reason to believe based on conversations with existing and former employees and," this is the part that leads me to believe there's more to this, "consultants for the company that Mr. Jacobs has stolen company property." Well, that's been known to me a long time ago, and I've asked about this repeatedly, that somebody had done a forensic investigation of what had been taken from the computer. I then learned that -- not as part of this case, somebody tells me eventually that, well, yeah, we have a drive that we took and it was done by the people over in Macau and then we carried it back. You had a forensic consultant. You know what he downloaded. It's not that hard to come in sometime shortly after Ms. Glaser sends a letter, November 23rd, 2010, Mr. Campbell sends a response on November 30th, 2010, Ms. Glaser sends another letter December 3rd, 2010, and then Mr. Campbell sends another response January 11th, 2011.

If it was really that your forensic consultant had done an analysis and believed that Mr. Jacobs had stolen information, I would have anticipated sometime in that early time frame I would have seen a report from the forensic analysis, who would have said, gosh, look, Judge, this is all he stole. To date I still haven't seen it. This is now June 2013.

MR. RANDALL JONES: And, Your Honor, I think you -- your point makes the point, that if we would have believed at that time that Mr. Jacobs would have taken 44 gigabytes or 11 gigabytes -- I read all those letters and I've seen all the correspondence -- if we would have believed that he would have taken that, we would have taken action. What you -- and I know it's in this letter --

THE COURT: You did take action. You filed a separate lawsuit. I then told Mr. Jones I didn't think it was an appropriate second lawsuit. The reason he filed it was because of the stay the Nevada Supreme Court had issued in Case Number 58294. He then took an appeal of the dismissal of that lawsuit, and the Supreme Court -- I don't remember if it was a writ or an appeal, but the Supreme Court scolded him, and I apologized to him myself because I had thought it was an inappropriate tactic to file a separate suit in this discovery dispute about that issue. So there's a lot of history. We've been dealing with this issue for a while. But all of a sudden it comes to a head and now you're asking for a writ right

before the evidentiary hearing?

MR. RANDALL JONES: Well, Your Honor, we had to get a ruling before we could ask for a writ.

THE COURT: Well, you had to file a motion first.

MR. RANDALL JONES: That's true. But let me go back to your point. There's --

THE COURT: It's not me who was causing the delay, Mr. Jones.

MR. RANDALL JONES: There's a year time frame between when we asked for that information in the discovery and the original letters. As you pointed out, there were three documents that we were aware of. Mr. Campbell does not say -- or Mr. Williams does not say, we've got thousands and thousands of pages of documents. This Court is making an assumption, there's no evidence to support this --

THE COURT: Correct, there's no evidence. Just her letter.

MR. RANDALL JONES: -- making an assumption that we knew that he had copied 44 gigabytes or some magnitude of documents of that nature back in 2010. There's no evidence whatsoever to support that. We did say, we think you've got some information. He said, I've got three things, I'll give you back -- actually, as I recall, I'll give you back two of them. He only gave back two of the three reports. But it was only -- and a year later, that's when -- okay, we now -- looks

like we've got -- there may be more that he took. And that's when this whole thing came up. And we -- if you look at the time frame when that came up in the summer of 2011 until the ruling was done in December of 2011 you just referred to there were meet and confers, there were letters going back and forth, there were hearings. So we acted timely and appropriately when we became aware of the magnitude of the documents that we believe he took.

So, Your Honor, I could only go on the evidence that's been adduced to date. I don't want to speculate, and I would certainly ask the Court not to speculate. I know Mr. Bice is speculating all over the place about what we knew and when we knew it, but that's not evidence. So the fact of the matter is that Mr. Bice is stating things that he thinks are true. That does not make it so, certainly not in a court of law.

And I do want to address one other issue, and I should have caught this earlier. This issue about the redacted documents and that we could have done it, it's my understanding -- and I really didn't put the two and two together about this point -- we have looked at the documents that we have that have been produced otherwise to see if there's anything in there that is not privileged that we can produce or redact it. So if it was relevant to the jurisdictional discovery, it's my understanding that that

information has been provided through the productions that we've already done of duplicate documents that we do have. So that is my understanding.

So your whole point about why can't you print it out, regardless of the protocol, it's my understanding that the Mayer Brown firm has done that to the greatest extent possible and has partially redacted those documents where we have found things that relate to this jurisdictional discovery that are in the Sands China -- excuse me, in the Las Vegas Sands documents. So I apologize that I missed that point.

And, you know, the fact that -- I don't know what the relevance is. They tell the Court -- they threaten us they're going to file an abuse of process. This is just more of the same whole process of --

THE COURT: First they've got to get me to agree to let them amend.

MR. RANDALL JONES: You know, Judge, again, I don't think that has any place.

THE COURT: Or maybe not, because I don't think Sands China has ever filed an answer. So maybe not.

MR. RANDALL JONES: And what place does that have in this particular motion?

THE COURT: It has no place.

MR. RANDALL JONES: We -- you know, he is convinced --

THE COURT: I read the footnotes, so I read it --

MR. RANDALL JONES: Well, he's -- and I read it, too, Your Honor. He's convinced that they're going to win the jurisdictional argument. Well, just for the record, we're just as convinced that they're not. So, you know --

THE COURT: Okay.

MR. RANDALL JONES: -- lawyers have strong feelings about their case, and, you know, God bless him for that. I don't -- I want to make a point on the record. He said, I told you Mr. Bice said at the earliest date was September. My recollection of what I said is the earliest date he offered was in September. And if I did say that, I misspoke. The earliest time I heard that he said he -- that he offered up was September. He didn't offer -- I can say -- and I'm very confident if he wants to go look in the record, I can say, I don't remember him saying July, and I certainly --

THE COURT: None of you were happy about July.

MR. RANDALL JONES: I didn't hear him say August, Judge. I did recall him saying September, and I did recall him saying November. So if that's the case, if he was so anxious, he certainly could have -- there's nothing aware of that would have precluded him from saying, I'm ready to go, Judge, give me a week, two weeks, three weeks, I'm going to be there. He didn't do that.

THE COURT: Or pull a Steve Morris and say, I'm

ready to go, could I go tomorrow, Judge.

MR. RANDALL JONES: Well, I'm not quite as young and spry as Mr. Morris, but I try to be ready when the Court says I should be ready. In this case, Your Honor, we will be ready, but we believe that a stay is appropriate, at least a limited stay with respect to the 11,000 or so documents that are privileged. That is -- and I understand Mr. Bice disagrees with me that that's an important privilege to protect, but I believe if the shoe was on the other foot Mr. Bice would just as zealously protect that privilege for his client. And that's all we're trying to do, Judge. We think that's -- it's a critical thing to do, and we think that it's an important issue that has not been decided by the Supreme Court, and we ask you to stay it now. If they don't think the stay should be given, they could certainly ask the Supreme Court to lift it. So, you know, there's other ways to do that. But if we meet Hansen, which I believe we do, then this Court ought to grant that stay.

THE COURT: Thank you.

The motion for stay is denied. While I certainly understand the importance and sanctity of the attorney-client privilege, here the privilege is not the issue. The issue is whether Jacobs's counsel under a confidentiality order can review documents that Jacobs had possession of in the context of his position of president of Sands China.

Under the particular circumstances of this case, which has a tortured history, given the pending writ issued in the Supreme Court Case Number 58294, the lengthy delay in addressing this particular issue, the Court declines to issue a stay and will proceed with the evidentiary hearing ordered to be conducted pursuant to the writ of mandamus issued in Case Number 582984 beginning on July 16th, unless the Nevada Supreme Court tells me otherwise.

MR. RANDALL JONES: Thank you, Your Honor.

MR. BICE: Thank you, Your Honor.

THE COURT: Good luck. Have a nice day.

MR. BICE: We will get you an order today, Your Honor.

THE PROCEEDINGS CONCLUDED AT 9:21 A.M.

* * * * *

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt
FLORENCE HOYT, TRANSCRIBER

7/2/13
DATE

EXHIBIT I

EXHIBIT I

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS Plaintiff vs. LAS VEGAS SANDS CORP., et al. Defendants	CASE NO. A-627691 DEPT. NO. XI **Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON SANDS CHINA'S MOTION IN LIMINE AND MOTION FOR CLARIFICATION OF ORDER

THURSDAY, OCTOBER 13, 2011

APPEARANCES:

FOR THE PLAINTIFF:	JAMES J. PISANELLI, ESQ. TODD BICE, ESQ. DEBRA SPINELLI, ESQ.
FOR THE DEFENDANTS:	J. STEPHEN PEEK, ESQ. PATRICIA GLASER, ESQ.
COURT RECORDER: JILL HAWKINS District Court	TRANSCRIPTION BY: FLORENCE HOYT Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

She knew what your order was. She even sought clarification at the hearing. There's no confusion, there's no clarification needed here.

If she wants me to say it again, I'll say it again. If she wants to hear the different theories we have of why this company is subject to personal jurisdiction, I'll say them again. General jurisdiction based upon Sands China's contacts with Nevada. General jurisdiction based upon the agency role that LVSC played on behalf of Sands China. And I'm sure it's not lost on Ms. Glaser that agency goes along with subagency. We're not here to have a debate over form over substance, we're here to figure out whether Sands China had contacts with Nevada, its agents, that were performing services for Sands China in Nevada that Sands China otherwise would have had to perform for themselves. That's what the Ninth Circuit told us to do, that's what the Ninth Circuit says is the question to be asked, not form over substance. Doesn't say, well, was the agent from LVSC -- did it have a title in performing those agency functions. No. Neither did Your Honor. The only party that comes forward saying that agency goes hand in hand with title is Ms. Glaser.

Agency has nothing to do with title. Matter of fact, Sands China can have agents in Nevada working on its behalf which would be minimum contacts that would be taken into consideration for purposes of personal jurisdiction even

if they don't work for LVSC. It doesn't matter whether Sheldon Adelson had one or two titles. It's certainly an issue for you to consider of what his role was, but it doesn't matter whether he could or could not have been acting as an agent.

Same thing with Mr. Kay. We know what he was doing. We've already had this debate. This isn't clarification. This is reconsideration. They know what Mr. Kay does. He was in charge of the financing, financing which occurred in Nevada, financing for Sands China that was negotiated and executed here on Las Vegas Boulevard with the agent of Sands China, Mr. Kay.

Same thing with Rob Goldstein. The issues are identical. It doesn't matter if he has a title, and Ms. Glaser has never been confused about that topic. I'm certain she wasn't confused.

To somehow run from specific jurisdiction also is an odd position to take that that is off the table of whether Sands China had contacts with Nevada relating to the actual wrongful termination of Mr. Jacobs, whether Mr. Adelson, the person who by all measures from everything we've seen made the decision to terminate Mr. Jacobs, made the instruction to tell Mr. Leven to give him an ultimatum, give him a half hour to decide whether he will quit or be terminated and have him escorted to the border. That decision, she says, shouldn't

come before you despite that that decision occurred here on Las Vegas Boulevard, despite that that's where those instructions came from, that's too specific and we shouldn't have anything to do with it.

And I won't be redundant on her attempts to run from the transient jurisdiction, which really could and very well may at the end of the day be more important than all of this other stuff that we're going to debate. The bottom line is they're not confused about anything.

Now, she also claims to be confused about the dates for the discovery that you told us about, although she hasn't really touched upon it much, if at all, in oral argument. What's that confusion about? Your Honor rightly put the end date at the filing of the complaint. And a theory that I just can't understand where it comes from and what authority supports it, Ms. Glaser would have you pull the discovery back to the time of termination despite that virtually every case which talks about -- either at the United States Supreme Court or at the State Court levels, any case that talks about this issue says over and over and over that the filing of the complaint is relevant for purposes of determining contacts with the state on a jurisdictional purpose -- or basis, and she wants to tell you, no, no, no, no, let's just have it when Steve Jacobs was terminated. And why does she say that, Your Honor? Because she knows that Mike Leven took over the

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M Hoyt — 10/17/11

FLORENCE HOYT, TRANSCRIBER — DATE

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CLERK OF THE COURT

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS Plaintiffs vs. LAS VEGAS SANDS CORP., et al. Defendants And related cases and parties	.	CASE NO. A-627691 DEPT. NO. XI **Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON PLAINTIFF'S MOTION TO CONDUCT JURISDICTIONAL DISCOVERY

TUESDAY, SEPTEMBER 27, 2011

APPEARANCES:

FOR THE PLAINTIFFS:	JAMES J. PISANELLI, ESQ. DEBRA SPINELLI, ESQ.
FOR THE DEFENDANTS:	J. STEPHEN PEEK, ESQ. PATRICIA GLASER, ESQ. STEPHEN MA, ESQ.
COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

gentlemen.

We also offer a request to take the deposition of two people, who at least from what we have seen in our Internet research, it's not altogether clear whether they hold actual titles with Sands China, but we know that they perform substantial service on behalf of these entities and are involved in actions that show Sands China's reach into Nevada. Mr. Kay, who has been involved in the financing for this entity, financing that occurred, was negotiated, was executed here in Nevada. We have Mr. Goldstein, a person who was involved in the international marketing efforts for these VIPs that we've talked about before, and a substantial role in the development of these properties owned and controlled by Sands China.

So to suggest that we are being harassing or overreaching really is a stretch. We have tried to narrowly confine what it is that we want to do, knowing, Your Honor, that you have already told me, no, we're not going to continue this hearing. So my time to prepare for this hearing is valuable. I don't have any interest or even the time, for that matter, to harass Mr. Adelson or harass anyone in that company. I have to get ready for an evidentiary hearing, and that's what I plan on doing, and getting depositions of four people doesn't seem to be an overreach from our perspective, not even -- not even a close call.

The documents -- I could go through them one after another if you'd like, but they speak for themselves. They are documents intended to show that this company is reaching into this state intentionally, it is obtaining the benefit of the laws of this state, and we intend to show that, whether it be through the contracts it has, contracts with its own parent, contracts with other third parties or -- and we also want to show that its primary officers are directing the management and control of that company from the offices here on Las Vegas Boulevard. And you can see item by item, Your Honor, that's what we're doing here. Even the board meetings, we intend to show that these board meetings are being attended by more than two, possibly three, four different directors sitting here in Las Vegas. Are they on the telephone? Of course they're on the telephone. Is it videoconferenced? I don't know. But we have board meetings that doesn't really have a meeting place. but one might even fairly say once we get to the bottom of it the actual meeting is taking place with the chairman, the chairman sitting here. Who's calling who is the point, and shouldn't Your Honor take that into consideration when we determine just how far reaching Sands has been in coming into this jurisdiction.

Of course, the ATAs have been debated before, Your Honor. I was going to say ad nauseam, but we'll say comprehensively the last time we were here. I would like to

get to the heart of it. We see a new defense by Ms. Glaser coming up, trying to distance now Sands China from its own subsidiaries. Sands China indeed wants to be considered an island for all purposes to make sure that you don't hold it responsible for the agency that it offers to its subsidiaries and you don't hold it responsible for the agency it finds in the employees of Las Vegas Sands. And so we want to get to the heart of this banking system for their VIP customers to show once again that allowing these VIPs to deposit money in China and show up here and gamble with that same money is in fact reaching into this state and being afforded the protections of this state.

Now, let's take -- let me take a few minutes to talk about this opposition we received. The opening paragraph is the same stuff -- it took a lot of restraint for me to just call it "stuff," that we just heard about my propensity and willingness to violate ethical standards and on again this very fun term, hoping the press is watching, of "stolen materials." What in the world that has to do with discovery is beyond me. But these are not inexperienced people, they're -- they craftily just cram a sentence at the bottom of this paragraph after trying to taint the well with Your Honor and saying that Jacobs's violations support the denial of jurisdictional discovery. I don't follow that logical leap. It was just a way to get this stolen concept in front of you,

hoping that it's going to have an effect on you in the long term. It obviously has nothing to do with it, and it is indeed a debate that I welcome, and I just can't wait to have it with you, especially with the recklessness that we've seen with this mud slinging and these allegations that are being thrown around.

Now, equally and perhaps even more remarkable is the exercise Sands China offers this Court with what they call clear statements of law. I will correct them as being clear misstatements of law. We start off with this proposition, relying upon the AT&T case. I direct Your Honor, I'll be reading just a very quick quote from page 8 of Ms. Glaser's brief where she says, quote, "Under the established legal authority governing jurisdictional discovery none of Jacobs's proposed topics for discovery are relevant to the jurisdiction inquiry, as each seek information that in the absence of an alter ego claim is insufficient as a matter of law to the determination of general personal jurisdiction." Now, they repeat this statement throughout this brief. Alter ego, alter ego, alter ego, alter ego, alter ego. If we are not presenting and proving alter ego, than the contacts between this parent and its subsidiary are relevant, it's a matter of law, and therefore clearly frivolous discovery, we don't need to do it.

Here is the problem. AT&T does indeed address an

issue of a way to obtain personal jurisdiction of an affiliated company, parent and subsidiary, and it can go in the reverse, right, you can into the jurisdiction of the subsidiary, too, and have this debate about the parent, it doesn't have to be the manner in which we're doing it. But what AT&T does not say, it's Ms. Glaser that says it, is that is the only way. Alter ego is a -- it says in the -- she says, "In the absence of an alter ego claim," we get no discovery because this evidence is insufficient as a matter of law. Well, the Goodyear case cited by our own good Supreme Court here does the exact opposite and takes a look not at alter ego, but what we're supposed to do in all jurisdictional debates, Your Honor, and that is, let's take a look at Sands China and see what Sands China is doing in Nevada. We did not come to this courtroom and we are not going to come in November and have a debate with you to say that Sands China is owned by Las Vegas Sands Corp. and therefore subject to jurisdiction. That is not our position.

THE COURT: Because that would be a loser.

MR. PISANELLI: That would be one I'd never present to you. What I'm presenting to you is this, and this comes from the Doe versus Unical case, which I'll read a very quick quote to you, because I think it's telling, Your Honor. We are going to talk about several different ways that Sands China has knowingly subjected itself to the jurisdiction of

this Court.

Now, on this concept of the exclusive way to do so through alter ego, we see in Doe versus Unical Corp., a Ninth Circuit opinion, 248 F. 3rd 915 (2001), Your Honor, the Ninth Circuit analyzed AT&T and the alter ego theory. That was, coincidentally, Section A of the court's analysis on jurisdiction. Section B was a thing called agency theory. Agency theory, not alter ego. Alter Ego isn't the only way. Alter ego isn't a prerequisite to this type of discovery. Agency theory. The Ninth Circuit told us the agency test "is satisfied by a showing that the subsidiary functions as the parent corporation's representative in that it performs services that are sufficiently important to the foreign corporation that if it did not have a representative to perform them the corporation's own officials would undertake to perform substantially similar services."

Ninth Circuit went on and said, "As the Gallagher court articulated this rule, if a subsidiary performs functions that the parent would otherwise have to perform, the subsidiary then functions as merely the incorporated department of its parent. Consequently, the question to ask is not whether the American subsidiaries can formally accept orders for their parent, but rather whether in the truest sense the subsidiary's presence substitutes for the presence of the parent."

And so we are not saying alter ego. We don't care about alter ego yet, but we do care of whether the people in Las Vegas Sands Corp. are acting as an agent and performing functions that, had they not performed them, people in China for Sands China would have to perform them themselves. And if you look at our discovery request you see that is precisely the nature of the request that we're getting at.

Now, it doesn't end there. We're also simply looking, Your Honor, at what did Sands China do on its own. Did it contract? Did its officers come here to conduct business? Do its officers actually live here to conduct the business of Sands China? In other words, a total review of the context like the court tells us, an in toto review of all the circumstances in which this company is reaching into Nevada.

So my -- in summary at least on the general jurisdiction issue, we are looking not only for Sands China and what it did on its own, we're also looking to see what did Las Vegas Sands Corp. do as an agent for Sands China on circumstances where Sands China would have had to perform these services on their own. And you see we're asking for those type of shared-services contracts. That certainly is going to tell us something. We're looking to see what Mr. Goldstein wants to do in connection with this VIP marketing with or without a contract. Is that something that would have

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FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt — 10/4/11

FLORENCE HOYT, TRANSCRIBER — DATE

EXHIBIT G

EXHIBIT G

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CLERK OF THE COURT

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Attorneys for Plaintiff Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; DOES I through X; and ROE CORPORATIONS I through X,

Defendants.

AND RELATED CLAIMS

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

PLAINTIFF'S MOTION TO CONDUCT JURISDICTIONAL DISCOVERY

PISANELLI BICE PLLC
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Based upon writ relief sought by Defendant Sands China, Ltd. ("Sands China") contesting jurisdiction, the Nevada Supreme Court has directed this Court to hold an evidentiary hearing concerning this Court's jurisdiction over Sands China. In anticipation of that hearing, Plaintiff Steven Jacobs ("Jacobs") seeks jurisdictional discovery so as to forestall any claims by Sands China that the evidence of its pervasive contacts with the State of Nevada are somehow lacking or incomplete. Jacobs has already shown this Court that there is more than good reason to believe that Sands China is subject to general jurisdiction here. Because Sands China could not plausibly (and does not even try to) claim that Jacobs' assertion of personal jurisdiction over Sands China is

clearly frivolous, the cases are legion in holding that Jacobs is entitled to conduct expedited jurisdictional discovery in anticipation of the evidentiary hearing.

This Motion is based on the attached Memorandum of Points and Authorities and any additional argument this Court chooses to consider.

DATED this 21st day of September, 2011.

PISANELLI BICE PLLC

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NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned counsel will appear at Clark County Regional Justice Center, Eighth Judicial District Court, Las Vegas, Nevada, on the 25 day of Oct, 2011, at 9a.m., in Department XI, or as soon thereafter as counsel may be heard, to bring this **MOTION TO CONDUCT JURISDICTIONAL DISCOVERY** on for hearing.

DATED this 21st day of September, 2011.

PISANELLI BICE PLLC

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Jacobs will not burden this Court with a full recitation of the facts leading up to this Motion. It suffices to note that Sands China objects to personal jurisdiction in the State of Nevada and convinced the Nevada Supreme Court that an evidentiary hearing concerning the scope of its contacts with this State is warranted. Having fought for such an evidentiary proceeding, Sands China cannot seriously object to expedited jurisdictional discovery which will allow Jacobs to meet his burden and establish a record of Sands China's systematic and pervasive contacts within this State.

Sands China's apparent belief that Jacobs and this Court are limited to whatever evidence they presently possess concerning Sands China's contacts is plainly without merit. Court after court holds that when a defendant seeks an early dismissal on grounds of personal jurisdiction, and the assertion of jurisdiction is not clearly frivolous, then the plaintiff is entitled to conduct jurisdictional discovery prior to any consideration of the jurisdictional objection. And here, Jacobs' claim of personal jurisdiction over Sands China is anything but frivolous.

II. ANALYSIS

Under NRCP 26(a), this Court may order the taking of discovery prior to the filing of a joint case conference report. One of the most oft-cited reasons for permitting early discovery is when a defendant contests a court's personal jurisdiction. The showing needed for a plaintiff to obtain such discovery is quite minimal. All that this Court must conclude to trigger Jacobs' right to such discovery is that his claim of jurisdiction does not appear to be clearly frivolous:

> We have explained that if "the plaintiff's claim is not clearly frivolous [as to the basis for personal jurisdiction] - the district court should ordinarily allow discovery on jurisdiction in order to aid the plaintiff in discharging' [his or her] burden".

Metcalfe v. Renaissance Marine, Inc., 566 F.3d 324, 336 (3d Cir. 2009) (citations omitted) ("Furthermore, we have found jurisdictional discovery particularly appropriate where the defendant is a corporation."); *Pat Clark Sports, Inc. v. Champion Trailers, Inc.*, 487 F. Supp. 2d 1172, 1179 (D. Nev. 2007) (unless it is clearly shown that discovery will not produce evidence of

facts supporting jurisdiction, "court ordinarily should grant discovery regarding jurisdiction where the parties dispute pertinent facts varying on the question of jurisdiction or more facts are needed.").

Indeed, while he has already done so, Jacobs need not establish a *prima facie* case of personal jurisdiction in order to obtain discovery. Rather, all he need show is a "colorable basis" for jurisdiction or "some evidence" for believing that jurisdiction exists. *Calix Networks, Inc. v. Wi-LAN, Inc.*, 2010 WL 3515759 *4 (N.D. Cal. Sept. 8, 2010); *PowerStation, LLC v. Sorenson Research & Dev. Trust*, 2008 WL 5431165, at *2 (D. S.C. Dec. 31, 2008) (where plaintiff offered more than mere speculation and conclusory assertions, jurisdictional discovery warranted as it will "aid this court in determining whether personal jurisdiction exists . . . .").

Courts recognize that the failure to afford the plaintiff jurisdictional discovery when it appears that claims of jurisdiction are not clearly frivolous constitutes an abuse of discretion. *See, e.g., Nuance Cmmcn's, Inc. v. Abbyy Software House*, 626 F.3d 1222, 1237 (Fed. Cir. 2010 (reversing district court for "failure to grant plaintiff jurisdictional discovery because such discovery should ordinarily be granted where the facts bearing upon question of jurisdiction are in dispute"); *Patent Rights Protection Group v. Video Game Tech., Inc.*, 603 F.3d 1354, 1372 (Fed. Cir. 2010) (reversing because plaintiff's request for jurisdictional discovery was not based on a mere hunch and thus "discovery may unearth facts sufficient to support the exercise of personal jurisdiction over one or both of the companies."); *Laub v. U.S. Dept. of Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003) (district court abused discretion by refusing to grant jurisdictional discovery since such discovery should ordinarily be granted when the jurisdictional facts are contested); *Central States, Se & Sw Area Extension Fund v. Phencorp Reinsurance Co.*, 440 F.3d 870, 877-78 (7th Cir. 2006) (finding that district court erred in denying jurisdictional discovery for claims of general jurisdiction, explaining that "it is not surprising that [the plaintiff] can do little more than suggest" certain minimum contacts given the denial of jurisdictional discovery); *Bower v. Wurzburg*, 501 S.E.2d 479, 488 (W.Va. 1998) ("We believe that it is inequitable to require a plaintiff to come forward with 'proper evidence detailing specific facts demonstrating' personal

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jurisdiction, yet deny him or her access to reasonable jurisdiction discovery through which such evidence may be obtained, particularly in a complex case such as this one.").

Contrary to Sands China's wishes, the law overwhelmingly supports Jacobs' right to engage in jurisdictional discovery so as to rebut Sands China's attempt at an early exit from this case. Thus, consistent with these numerous authorities, Jacobs requests expedited discovery on the following categories in order to obtain evidence and prepare for this Court's scheduled evidentiary hearing:

1. The deposition of Michael A. Leven ("Leven"), a Nevada resident, who simultaneously served as President and COO of Las Vegas Sands Corp. ("LVSC") and CEO of Sands China (among other titles);

2. The deposition of Sheldon G. Adelson ("Adelson"), a Nevada resident, who simultaneously served as Chairman of the Board of Directors and CEO of LVSC and Chairman of the Board of Directors of Sands China;

3. The deposition of Kenneth J. Kay ("Kay"), upon information and belief a Nevada resident, and LVSC's Executive Vice President and CFO, who, upon information and belief, participated in the funding efforts for Sands China;

4. The deposition of Robert G. Goldstein ("Goldstein"), a Nevada resident, and LVSC's President of Global Gaming Operations, who, upon information and belief, actively participates in international marketing and development for Sands China;

5. The deposition of an NRCP 30(b)(6) deponent in the event that the above witnesses claim a lack of memory or knowledge concerning activities within their authority;

6. Documents that will establish the date, time, and location of each Sands China Board meeting (including the meeting held on April 14, 2010, at 9:00 a.m. Macau Time/April 13, 2010, at 6:00 p.m. Las Vegas time), the location of each Board member, and how they participated in the meeting;

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7. Documents that reflect the travels to and from Macau/China/Hong Kong by Adelson, Leven, Goldstein, and/or any other LVSC's executive for any Sands China related business (including, but not limited to, flight logs, travel itineraries);

8. The calendars of Adelson, Leven, Goldstein, and/or any other LVSC executive who has had meetings related to Sands China, provided services on behalf of Sands China, and/or travelled to Macau/China/Hong Kong for Sands China business;

9. Documents and/or communications related to Michael Leven's service as CEO of Sands China and/or the Executive Director of Sands China Board of Directors without payment, as reported to Hong Kong securities agencies;

10. All documents that reflect that the negotiation and execution of the agreements for the funding of Sands China occurred, in whole or in part, in Nevada;

11. All contracts/agreements that Sands China entered into with entities based in or doing business in Nevada, including, but not limited to, any agreements with BASE Entertainment and Bally Technologies, Inc.;

12. All documents that reflect global gaming and/or international player development efforts, including efforts lead by Rob Goldstein who, upon information and belief, oversees the active recruitment of VIP players to share between and among LVSC and Sands China properties, player funding, and the transfer of player funds.

13. All agreements for shared services between and among LVSC and Sands China or any of its subsidiaries, including, but not limited to, (1) procurement services agreements; (2) agreements for the sharing of private jets owned or made available by LVSC; and (3) trademark license agreements;

14. All documents that reflect the flow of money/funds from Macau to LVSC, including, but not limited to, (1) the physical couriering of money from Macau to Las Vegas; and (2) the Affiliate Transfer Advice ("ATA"), including all documents that explain the ATA system, its purpose, how it operates, and that reflect the actual transfer of funds;

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15. All documents, memoranda, emails, and/or other correspondence that reflect services performed by LVSC (including LVSC's executives) on behalf of Sands China, including, but not limited to the following areas: (1) site design and development oversight of Parcels 5 and 6; (2) recruitment and interviewing of potential Sands China executives; (3) marketing of Sands China properties, including hiring of outside consultants; (4) negotiation of a possible joint venture between Sands China and Harrah's; and/or (5) the negotiation of the sale of Sands China's interest in sites to Stanley Ho's company, SJM;

16. All documents that reflect work performed on behalf of Sands China in Nevada, including, but not limited, documents that reflect communications with BASE Entertainment, Cirque de Soleil, Bally Technologies, Inc., Harrah's, potential lenders for the underwriting of Parcels 5 and 6, located in the Cotai Strip, Macau, and site designers, developers, and specialists for Parcels 5 and 6;

17. All documents, including financial records and back-up, used to calculate any management fees and/or incorporate company transfers for services performed and/or provided by LVSC to Sands China, including who performed the services and where those services were performed and/or provided, during the time period where there existed any formal or informal shared services agreement;

18. All documents that reflect reimbursements made to any LVSC executive for work performed or services provided related to Sands China;

19. All documents that Sands China provided to Nevada gaming regulators; and

20. The telephone records for cellular telephones and landlines used by Adelson, Leven, and Goldstein that indicate telephone communications each had with or on behalf of Sands China.

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III. CONCLUSION

The law affords Jacobs the right to conduct jurisdictional discovery in order to meet his burden of establish Sands China's systematic and pervasive contacts with the State of Nevada. In seeking to obtain a hasty dismissal of this case on jurisdictional grounds, Sands China cannot be heard to protest such discovery: Sands China has placed its contacts with the State of Nevada squarely at issue.

DATED this 21st day of September, 2011.

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By: /s/ James J. Pisanelli
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 21st day of September, 2011, I caused to be sent via email and United States Mail, postage prepaid, true and correct copies of the above and foregoing **PLAINTIFF'S MOTION TO CONDUCT JURISDICTIONAL DISCOVERY** properly addressed to the following:

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EXHIBIT F

EXHIBIT F

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD.,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE ELIZABETH GOFF GONZALEZ, DISTRICT JUDGE,
Respondents,
and
STEVEN C. JACOBS,
Real Party in Interest.

No. 58294

FILED

AUG 26 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus or prohibition challenges a district court order denying petitioner's motion to dismiss for lack of personal jurisdiction.

Petitioner asserts that the district court improperly based its exercise of personal jurisdiction on petitioner's status as a subsidiary of a Nevada corporation with common officers and directors. Real party in interest contends that the district court properly determined that he had established a prima facie basis for personal jurisdiction based on the acts taken in Nevada to manage petitioner's operations in Macau.

The district court's order, however, does not state that it has reviewed the matter on a limited basis to determine whether prima facie grounds for personal jurisdiction exist; it simply denies petitioner's motion to dismiss, with no mention of a later determination after consideration of evidence, whether at a hearing before trial or at trial. While the order refers to the district court's comments at oral argument on the motion, the

transcript reflects only that the district court concluded there were "pervasive contacts" between petitioner and Nevada, without specifying any of those contacts. We have therefore found it impossible to determine the basis for the district court's order or whether the district court intended its order to be its final decision regarding jurisdiction or if it intended to consider the matter further after the admission of evidence at trial (or an evidentiary hearing before trial).

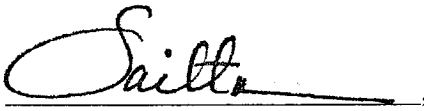
In MGM Grand, Inc. v. District Court, 107 Nev. 65, 807 P.2d 201 (1991), we held that jurisdiction over a nonresident corporation could not be premised upon that corporation's status as parent to a Nevada corporation. Similarly, the United States Supreme Court in Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846 (2011), considered whether jurisdiction over foreign subsidiaries of a U.S. parent corporation was proper by looking only to the subsidiaries' conduct; the Court suggested that including the parent's contacts with the forum would be, in effect, the same as piercing the corporate veil. Based on the record before us, it is impossible to determine if the district court in fact relied on the Nevada parent corporation's contacts in this state in exercising jurisdiction over the foreign subsidiary.

Accordingly, having reviewed the petition, answer, reply, and other documents before this court,[1] we conclude that, based on the summary nature of the district court's order and the holdings of the cases

[1]Petitioner's motion for leave to file a reply in support of its stay motion is granted, and we direct the clerk of this court to detach and file the reply attached to the August 10, 2011, motion. We note that NRAP 27(a)(4) was amended in 2009 to permit a reply in support of a motion without specific leave of this court; thus, no such motion was necessary.

cited above, the petition should be granted, in part. We therefore direct the district court to revisit the issue of personal jurisdiction over petitioner by holding an evidentiary hearing and issuing findings regarding general jurisdiction. If the district court determines that general jurisdiction is lacking, it shall consider whether the doctrine of transient jurisdiction, as set forth in Cariaga v. District Court, 104 Nev. 544, 762 P.2d 886 (1988), permits the exercise of personal jurisdiction over a corporate defendant when a corporate officer is served within the state. We further direct that the district court shall stay the underlying action, except for matters relating to a determination of personal jurisdiction, until a decision on that issue has been entered. We therefore

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to hold an evidentiary hearing on personal jurisdiction, to issue findings of fact and conclusions of law stating the basis for its decision following that hearing, and to stay the action as set forth in this order until after entry of the district court's personal jurisdiction decision.[2]



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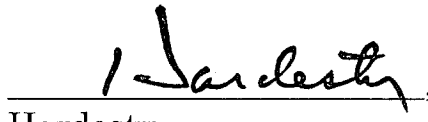

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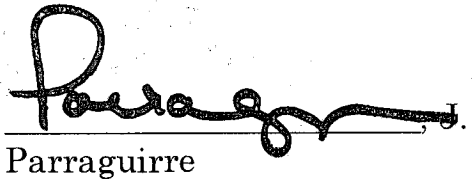

_____, J.
Parraguirre

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[2]Petitioner's motion for a stay is denied as moot in light of this order.

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Glaser, Weil, Fink, Jacobs, Howard & Shapiro, LLC
Campbell & Williams
Eighth District Court Clerk

EXHIBIT E

EXHIBIT E

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CLERK OF THE COURT

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Attorneys for Plaintiff
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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS, Plaintiff, vs. LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; DOES I through X; and ROE CORPORATIONS I through X, Defendants.	)	CASE NO. A-10-627691-C DEPT. NO. XI **ORDER DENYING DEFENDANTS' MOTIONS TO DISMISS** Hearing Date: March 15, 2011 Hearing Time: 9:00 a.m.

On March 15, 2011, the following matters came on for hearing: (1) Defendant Las Vegas Sands Corp.'s Motion to Dismiss Pursuant to NRCP 12(b)(6) and 19 for Failure to Join an Indispensable Party; and (2) Defendant Sands China, Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Failure to Join an Indispensable Party; Plaintiff Steven C. Jacobs having been represented by Donald J. Campbell, Esq. and J. Colby Williams, Esq.; Defendant Las Vegas Sands Corp. having been represented by Stephen J. Peek, Esq.; and Defendant Sands China, Ltd. having been represented by Patricia Glaser, Esq.; and the Court having considered all of the

papers and pleadings on file herein as well as the oral argument of the parties, hereby enters the following Order:

The Motions to Dismiss are DENIED for the reasons set forth more fully on the record at the time of hearing.

IT IS FURTHER ORDERED that the mandatory Rule 16 conference with the Court is continued from April 1, 2011 to April 22, 2011 at 9:00 a.m.

DATED this 1st day of ~~March~~ April, 2011.

DISTRICT COURT JUDGE

Submitted by:

CAMPBELL & WILLIAMS

By _____
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Steven C. Jacobs

Approved as to form:

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Attorney for Defendant
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GLASER, WEIL, FINK, JACOBS HOWARD & SHAPIRO, LLP

By: _____
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EXHIBIT D

EXHIBIT D

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CLERK OF THE COURT

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Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS, Plaintiff, vs. LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; DOES I through X; and ROE CORPORATIONS I through X, Defendants.	CASE NO. A-10-627691-C DEPT. NO. XI **PLAINTIFF'S OPPOSITION TO SANDS CHINA LTD.'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION, OR IN THE ALTERNATIVE, FAILURE TO JOIN AN INDISPENSABLE PARTY** Hearing Date: March 15, 2011 Hearing Time: 9:00 a.m.

Plaintiff Steven C. Jacobs ("Jacobs"), through his undersigned counsel, hereby files his Opposition to Sands China Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Failure to Join an Indispensable Party. This Opposition is based on the papers and pleadings on file herein, the exhibits attached hereto, and the Points and Authorities that follow.

POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Sands China Ltd. ("SCL"), like its parent company Defendant Las Vegas Sands Corp. ("LVSC"), asks this Court to dismiss the Complaint herein based on a woefully incomplete—

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if not misleading—characterization of the record. SCL first seeks dismissal on the basis it is not subject to personal jurisdiction in Nevada. To support this argument, SCL engages in an analysis of why it is not subject to general jurisdiction or specific jurisdiction based on a traditional "minimum contacts" analysis. What SCL fails to advise the Court is that Mr. Jacobs served Michael Leven ("Leven"), SCL's Chief Executive Officer and a member of its Board of Directors, with process at the Venetian Resort-Hotel-Casino in Las Vegas, Nevada. Given that serving a defendant with process while he is physically present in the forum state is perhaps the most historically entrenched and universally recognized method of establishing personal jurisdiction over a nonresident defendant, it is not surprising that SCL never attempted to grapple with this issue in its Motion to Dismiss. Indeed, when personal jurisdiction is based on a defendant's physical presence in the forum state, the minimum contacts standard is wholly inapplicable.

Assuming *arguendo* a general jurisdiction standard is relevant to the issue of personal jurisdiction over SCL, the evidence adduced thus far unequivocally demonstrates that SCL has continuous and systematic contacts in the forum. For starters, the company's Chairman of the Board, Sheldon G. Adelson ("Adelson"), and its Executive Director and CEO, Leven, both live in and conduct company business from Las Vegas, Nevada. Such business includes, but is not limited to, conducting meetings of SCL's Board of Directors from Las Vegas. SCL has, moreover, entered into and continues to engage in a number of ongoing commercial transactions with the Nevada-based LVSC, including agreements to share private jets, agreements to license trademarks, and agreements for SCL to use LVSC's international marketing services. Besides ongoing contracts with LVSC, SCL also has an ongoing relationship with the Nevada-based Bally Technologies, Inc. to provide it with a management system for its electronic gaming devices. During his tenure, Jacobs routinely travelled to Las Vegas to conduct business on behalf of the company, including meetings with executives from Bally as well as Harrah's. Additionally, SCL

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transfers substantial sums of money into Nevada on behalf of customers for their use in this State. Last, and by no means least, SCL's gaming operations must be compliant with Nevada's gaming laws. Simply put, this Court has more than a sufficient basis for exercising personal jurisdiction over SCL in Nevada.[1]

SCL's second basis for seeking dismissal is that Jacobs failed to join Venetian Macau Limited ("VML") as an indispensable party in this action. SCL's argument on this point is a re-tread of that advanced by LVSC in its concurrently-filed Motion to Dismiss and, thus, fails for the same reasons. Suffice to say, SCL's reliance on selective documents to support the proposition that VML is an indispensable party because it was Jacobs' "actual employer" completely unravels when Her Honor considers the multitude of evidence presented in Jacobs' Opposition to LVSC's Motion—evidence that was conspicuously omitted by LVSC and SCL even though their officers were unequivocally aware of it.[2]

II. BACKGROUND

A. Parties/Players.

1. Plaintiff Steven Jacobs began working as a consultant for LVSC in March 2009. He was appointed the President of LVSC's Macau operations in May 2009. Jacobs signed a binding Term Sheet memorializing the terms of his employment with LVSC in August 2009. Shortly thereafter, Jacobs was given the title President and Chief Executive Officer of SCL.[3]

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[1] If, however, the Court determines that additional information on SCL's contacts with Nevada is necessary to determine whether it may properly assert jurisdiction over the company, it should grant Jacobs discovery on this issue. *See infra* at 21.

[2] For the sake of brevity, Jacobs incorporates his Opposition to LVSC's Motion to Dismiss filed concurrently herewith (the "LVSC Opposition") as if it was fully set forth herein.

[3] *See* Affidavit of Steven C. Jacobs ("Jacobs Afft.") at ¶ 3, attached hereto as Exhibit 1. *See also*, LVSC Opposition at ¶¶ 7-16.

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2. LVSC is a corporation organized and existing under the laws of the State of Nevada with its principal place of business in Clark County, Nevada. LVSC is publicly traded on the New York Stock Exchange. From or about June 2002 through or about September 2009, LVSC (and/or its corporate predecessors) was the parent company of VML, the holder of a subconcession granted by the Macau government that allows Defendants to conduct gaming operations in the Macau Special Administrative Region of China.[4]

3. In or about Fall 2009, LVSC spun off its Macau holdings into a new company, Defendant Sands China, Ltd. SCL is a Cayman Islands corporation that conducted an initial public offering on the Hong Kong Stock Exchange on November 30, 2009. As a result of this corporate reorganization, LVSC remained the owner of more than 70% of SCL's outstanding shares, and SCL became the 90% owner of VML. Pursuant to Macau law, 10% of VML's shares must be held by a Macau citizen. Nevertheless, SCL—like LVSC before it—still exercises 100% of the voting and economic rights associated with VML. SCL's public filings likewise acknowledge that SCL, and thus VML, is still subject to the control of LVSC.[5]

4. At all relevant times herein, Sheldon G. Adelson has been the Chairman of the Board and Chief Executive Officer of LVSC. Adelson is likewise the Chairman of the Board of SCL.[6]

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[4] *See* Declaration of J. Colby Williams ("Williams Decl.") authenticating various exhibits, attached hereto as Exhibit 2. *See also*, Prospectus of Sands China, Ltd. at pp. 76-79, true and correct excerpts of which were obtained at www.sandschinaltd.com and are attached hereto as Exhibit 3.

[5] *See* Exhibit 3 at pp. 48, 76-80.

[6] *See* LVSC Corporate Overview obtained at www.lasvegassands.com, a true and correct copy of which is attached hereto as Exhibit 4. *See also*, SCL Corporate Governance obtained at www.sandschinaltd.com, a true and correct copy of which is attached hereto as Exhibit 5.

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5. Michael Leven has served on LVSC's Board of Directors since 2004 and became LVSC's President and Chief Operating Officer on March 11, 2009. Leven was originally a special advisor to SCL's Board. After Jacobs was terminated, Leven became SCL's Chief Executive Officer on July 23, 2010 and the Executive Director of SCL's Board of Directors on July 27, 2010. Leven holds the foregoing positions with SCL and LVSC today.[7]

B. SCL's Systematic And Continuous Contacts With Nevada.

6. SCL's top two executive officers, Adelson and Leven, live and work in Las Vegas, Nevada. Specifically, Adelson and Leven work out of LVSC's executive offices in the Venetian Resort-Hotel-Casino located at 3355 Las Vegas Boulevard South, Las Vegas, Nevada 89109.[8]

7. Adelson and Leven routinely conduct SCL business out of LVSC's executive offices at the Venetian. For instance, SCL gave notice that it would be conducting a meeting of its Board of Directors on April 14, 2010 at 9:00 a.m. Macau Time/April 13, 2010 at 6:00 p.m. Las Vegas Time. Half of SCL's eight-member Board at that time (Adelson, Jacobs, Irwin Siegel, and Jeffrey Schwartz) as well as the then-special advisor to SCL's Board (Leven) all attended the meeting in Las Vegas at the executive offices of LVSC. This was an important meeting as two of the main purposes were to approve SCL's annual report and the continuation of Price Waterhouse as auditors of SCL.[9]

8. Besides conducting SCL business at periodic board meetings from Las Vegas, Adelson and Leven performed other types of SCL business from Las Vegas as well. Such activities included, but were not limited to:

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[7] *See* Exhibits 4 and 5. *See also*, LVSC Form 8-K dated September 14, 2010 (incorporating SCL Interim Report 2010), true and correct excerpts of which are attached hereto as Exhibit 6.

[8] *See* Jacobs Afft. at ¶ 8.

[9] *See* Jacobs Afft. at ¶ 9. *See also*, SCL Agenda, a true and correct copy of which is attached hereto as Exhibit 7.

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- site design and development oversight of Parcels 5 & 6, two SCL casino-resort projects located on the Cotai Strip in Macau;[10]

- the recruitment and interviewing of potential executives to work for SCL;[11]

- Adelson's direction to Jacobs to have investigative reports prepared on Macau government officials as well as certain junket representatives reputed to have ties to Chinese gangs known as Triads;[12]

- Adelson's demands that Jacobs use improper "leverage" against senior government officials of Macau in order to obtain Strata-Title for the Four Seasons Apartments in Macau;[13]

- Adelson's demands that Jacobs threaten to withhold SCL business from prominent Chinese banks unless they agreed to use influence with newly-elected senior government officials of Macau in order to obtain Strata-Title for the Four Seasons Apartments and favorable treatment with regards to labor quotas and table limits;[14]

- Adelson's demands that SCL continue to use the legal services of Macau attorney Leonel Alves despite concerns that Mr. Alves' retention posed serious risks under the criminal provisions of the United States code commonly known as the Foreign Corrupt Practices Act ("FCPA");[15]

- Adelson's and Leven's involvement in marketing strategies to increase foot traffic to the retail mall areas in SCL properties, including the arrangement of site visits by outside consultants without informing SCL management in Macau;[16] and

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[10] *See* Jacobs Afft. at ¶ 10.

[11] *See* Jacobs Afft. at ¶ 10. *See also*, the transcript from LVSC's Q2 2010 earnings call, obtained from www.seekingalpha.com, true and correct excerpts of which are attached hereto as Exhibit 8.

[12] *See* Jacobs Afft. at ¶ 10. It cannot be genuinely disputed that SCL viewed the creation of these reports to be important company business as litigation counsel for SCL has sent a number of letters to the undersigned characterizing the reports as SCL "property" and demanding their "immediate" return. *See* correspondence exchanged between Patricia Glaser Esq. and Donald J. Campbell, Esq., true and correct copies of which are attached hereto as aggregate Exhibit 9.

[13] *See* Jacobs Afft. at ¶ 10.

[14] *See* Jacobs Afft. at ¶ 10.

[15] *See* Jacobs Afft. at ¶ 10.

[16] *See* Jacobs Afft. at ¶ 10. *See also*, Company e-mail chain dated January 6, 2010, a true and correct copy of which is attached hereto as Exhibit 10.

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- Leven and Adelson's involvement in negotiating a possible joint venture with Harrah's for Parcels 5 & 6 and/or Parcel 3 and approaching Stanley Ho's company, SJM, with regard to selling SCL interests in Sites 7 & 8 as Jacobs had correctly concluded that Sites 7 & 8 were likely not economically viable or accretive due to timing, costs, and license expiration/renewal timeframes.[17]

9. SCL has entered into and continues to engage in numerous transactions with the Nevada-based LVSC. These transactions include, but are not limited to: (i) an agreement to provide reciprocal procurement services for the acquisition of furniture, fixtures, equipment, etc., (ii) an agreement to share the use of private jets owned by or available to LVSC, (iii) an agreement to provide reciprocal administrative services, (iv) agreements to license trademarks owned by LVSC, (v) an agreement to provide reciprocal design, development and construction services, and (vi) an agreement to use LVSC's international marketing services to recruit VIP players and to assist in the management of SCL's retail malls.[18]

10. In addition to the foregoing agreements with LVSC, SCL also has an ongoing contractual relationship with the "Las Vegas-based" Bally Technologies, Inc. to provide it with management systems for its electronic gaming devices.[19]

11. During his tenure, Jacobs routinely travelled to Las Vegas to conduct business on behalf of the company, including meeting with Adelson and Leven to discuss SCL operations and business strategy; attending at least one SCL Board meeting in Las Vegas; attending meetings with Bally executives to discuss the future generation of its game management systems; meetings with representatives from Cirque du Soleil to discuss the show "Zaia" that presently appears in a

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[17] *See* Jacobs Afft. at ¶ 10. *See also*, Company e-mail chains from March 2010, true and correct copies of which are attached hereto as Exhibit 11.

[18] *See* Exhibit 3 at pp. 217 – 224.

[19] *See* Jacobs Afft. at ¶ 12. *See also*, Bally Press Release dated January 6, 2010, a true and correct copy of which is attached hereto as Exhibit 12 ("Bally Systems are now the technology solution of choice for . . . Sands China Ltd[.]").

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purpose-built theatre at the Venetian Macau; meeting with Gary Loveman from Harrah's to discuss Harrah's entrance strategy into Macau and a possible joint venture agreement to develop a project there; meeting with Base Entertainment to discuss additional entertainment options for SCL venues; conducting meetings and conference calls with lenders participating in the $1.75 billion dollar underwriting for Parcels 5 & 6; and meeting with designers and construction specialists for Parcels 5 & 6.[20]

12. SCL also purposefully and continuously injects itself into Nevada through the frequent transfer of funds to this State. Specifically, SCL (i) has had significant funds physically couriered to Nevada, and (ii) also uses what is known as an Affiliate Transfer Advice ("ATA") to move money for customers by transferring funds electronically from Asia to LVSC or its affiliates in Las Vegas. Upon information and belief, these funds total in the tens of millions of dollars and may then used for a variety of purposes, including as cash advances for customers to spend when they arrive in Nevada, to re-pay past debts incurred at LVSC's Las Vegas properties, or for the benefit of authorized persons other than the transferee.[21]

13. Though SCL tries to distance itself from any connection to Nevada when challenging personal jurisdiction in this action, SCL has previously acknowledged that Nevada's gaming laws apply to its gaming activities and associations. In this regard, SCL's gaming operations and associations must be compliant with Nevada gaming laws as they are subject to being called forward for a finding of suitability by the Nevada Gaming Commission.[22]

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[20] *See* Jacobs Afft. at ¶ 13.

[21] *See* Jacobs Afft. at ¶ 14. *See also,* Company e-mails from May and June 2010 reflecting examples of said funds transfers, true and correct copies of which are attached hereto as Exhibits 13 and 14. The Court will note, however, that the names of the originators and beneficiaries of the transferred funds have been redacted out of concern for the privacy rights of the identified customers.

[22] *See* Exhibit 3 at p. 43.

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C. Procedural Background.

14. On October 27, 2010, at the Venetian Casino-Resort-Hotel located on the Las Vegas Strip, Jacobs served SCL personally by giving a copy of the Summons and Complaint in this action to Leven, SCL's Executive Director and Chief Executive Officer.[23] NRCP 4(d)(2) permits service upon a foreign corporation by delivering a copy of the summons and complaint to an officer or director of the corporation that is located within this State. That is exactly what Jacobs did here. SCL's Motion to Dismiss does not challenge the sufficiency of service of process in this matter. Accordingly, we turn to the issue of personal jurisdiction over SCL.

III. LEGAL ARGUMENT

A. Standard of Review.

A plaintiff responding to a motion to dismiss need only make a *prima facie* showing that the defendant is subject to personal jurisdiction where the motion is resolved based on affidavits and discovery materials. *See Firouzabadi v. First Judicial District Court*, 110 Nev. 1348, 1352, 885 P.2d 616, 619 (1994); *Kumarelas v. Kumarelas*, 16 F.Supp.2d 1249, 1253 (D.Nev. 1998). A plaintiff's properly supported proffers of evidence must be taken as true, and any conflicts between the facts contained in the parties' affidavits must be resolved in the plaintiff's favor. *See Trump v. Eighth Jud. Dist. Ct.*, 109 Nev. 687, 693, 857 P.2d 740, 744 (1993); *Rio Properties, Inc. v. Rio International Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002). Additionally, the Court may consider hearsay when determining whether the plaintiff has established a *prima facie* showing of personal jurisdiction. *See, e.g., Dawson v. Pepin*, 2001 WL 822346, *1 (W.D.Mich. 2001); *Voysys Corp. v. Elk Industries, Inc.*, 1996 WL 119473, *3 (N.D.Cal. 1996). If the Court determines that the record is insufficient to justify the exercise of personal jurisdiction over the defendant, then it may afford the plaintiff an opportunity to conduct discovery into the

[23] *See* File-stamped copy of Summons and Affidavit of Service from R. David Groover dated October 28, 2010, a true and correct copy of which is attached hereto as Exhibit 15.

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defendant's contacts with the forum. *See Data Disc, Inc. v. System Tech. Assoc., Inc.*, 557 F.2d 1280, 1285 n.1 (9th Cir. 1977).

B. It Is Well Settled That Personal Jurisdiction May Be Asserted Over A Defendant That Is Served With Process While Physically Present Within The Forum State.

Courts in Nevada "may exercise jurisdiction over a party to a civil action on any basis not inconsistent with the Constitution of this state or the Constitution of the United States." NRS § 14.065(1). Nevada's long-arm statute has been interpreted "*to extend to the outer reaches of due process . . .*" *See Firouzabadi*, 110 Nev. at 1352, 885 P.2d at 619 (emphasis added). Accordingly, the relevant inquiry is whether the Court may exercise jurisdiction over SCL consistent with the requirements of the U.S. Constitution.

SCL's jurisdictional argument is grounded solely on the basis that personal jurisdiction does not exist in this case because it does not have sufficient minimum contacts with Nevada. *See* Mot. at 7:20 – 12:25. This entire argument misses the mark when the Court considers that one of "the most firmly established principles of personal jurisdiction in American tradition is that the courts of a state have jurisdiction over nonresidents who are physically present in the State." *Burnham v. Superior Court*, 495 U.S. 604, 610, 110 S.Ct. 2105, 2110 (1990) (plurality opinion). The Nevada Supreme Court has likewise recognized this principle of personal jurisdiction. *See Cariaga v. Eighth Judicial District Court*, 104 Nev. 544, 545-46, 762 P.2d 886, 887-88 (1988) (where California resident was personally served with process in Nevada, he was subject to personal jurisdiction in this State notwithstanding that action arose out of slip and fall accident in California). So, too, have courts in the Ninth Circuit. *See, e.g., Bourassa v. Desrochers*, 938 F.2d 1056, 1058 (9th Cir. 1991) (Canadian defendant); *Doe I v. Qi*, 349 F.Supp.2d 1258, 1274 (N.D.Cal. 2004) (Chinese defendants).

In *Burnham*, a New Jersey resident (Burnham) traveled to southern California on business and then went to northern California to visit his children who were living with his estranged wife.

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495 U.S. at 607-08, 110 S.Ct. at 2109. While in northern California, Burnham was served with a California court summons and his estranged wife's divorce petition. *Id.* Burnham moved to quash the service of process, arguing that the Due Process Clause of the Fourteenth Amendment prohibited California courts from exercising jurisdiction over him because he lacked minimum contact with the forum. *Id.* at 608, 110 S.Ct. at 2109. The California courts denied Burnham's requests for relief, and the United States Supreme Court granted certiorari. *Id.*

In affirming the decision of the California Court of Appeals, the *Burnham* court began by examining English and American common law ranging from the early 19th century through the late 20th century. 495 U.S. at 610-16, 110 S.Ct. at 2110-13.[24] The Court concluded its analysis of the legal authorities from this time period with the observation that "[w]e do not know of a single state or federal statute, or a single judicial decision resting upon state law, that has abandoned in-state service as a basis of jurisdiction. Many cases reaffirm it." *Id.* at 615, 110 S.Ct. at 2113 (citing, among others, *Cariaga, supra*). As for the case before it, the Court held that "jurisdiction based on physical presence alone constitutes due process because it is one of the continuing traditions of our legal system that define the due process standard of 'traditional notions of fair play and substantial justice.'" *Id.* at 619, 110 S.Ct. at 2115. The Court further instructed that the minimum contacts standard established in *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154 (1945) only applies when the defendant is not physically present in the forum. *Burnham,* 495 U.S. at 619-21, 110 S.Ct. at 2115-16.

SCL's likely argument against the application of transient jurisdiction will be that the doctrine applies only to individuals, not corporations. But multiple courts in the Ninth Circuit and elsewhere have applied *Burnham* to corporate defendants. In *Comerica Bank-California v. Sierra Sales, Inc.*, for example, a California bank sued a Montana company for breach of a

[24] Justice Scalia wrote for a plurality of the Court, joined by two Justices and one Justice in part. The remaining five Justices concurred.

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security agreement. 1994 WL 564581 (N.D.Cal. Sept. 29, 1994). The president of the Montana company traveled to San Jose, California to attend a meeting with the plaintiff bank. *Id.* at **1-2. The plaintiff served the president of the defendant company at the meeting, and the company moved to quash service and dismiss the lawsuit for lack of jurisdiction. *Id.* at *2. The court denied the motion, explaining that a state's "power to exercise judicial jurisdiction over an individual who is physically present within its territory, whether permanently or temporarily, if at the time he is served with process," (citation omitted) is "not merely old, but continuing." *Id.* (quoting *Burnham*, 495 U.S. at 615, 110 S.Ct at 2113).[25]

Courts outside the Ninth Circuit have reached the same conclusion. *See, e.g., Northern Light Technology, Inc., v. Northern Lights Club*, 236 F.3d 57, 63-64 n.10 (1st Cir. 2001), *cert. denied* 533 U.S. 911, 121 S.Ct. 2263 (2001) (personal service on president of unincorporated association and foreign corporation in forum state only as spectator in legal proceedings was sufficient to obtain personal jurisdiction over both businesses); *Oyuela v. Seacor Marine (Nigeria), Inc.*, 290 F.Supp.2d 713, 719-20 (E.D.La. 2003) (court acquired transient jurisdiction over Bahamian company by personal service on its Assistant Secretary in the forum; "*Burnham's* reassertion of the general validity of transient jurisdiction provides no indication that it should apply only to natural persons"). *Cf. First American Corp. v. Price Waterhouse LLP*, 154 F.3d 16, 19-20 (2d. Cir. 1998) (personal service of discovery subpoena upon partner while physically present in New York was sufficient to subject United Kingdom accounting partnership to

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[25] *See also, Sulit v. Slep-Tone Entertainment*, 2007 WL 4169762 (N.D.Cal. Nov. 20, 2007) (non-party Mississippi corporation with a principal place of business in Mississippi could nonetheless be properly joined in California lawsuit by personally serving its founder and vice-president who lived and worked in the forum (*i.e.*, Palo Alto, California)) (citing *Burnham*); *Chimney Safety Inst. of Am. v. Chimney King*, 2004 WL 1465699 at *2, n.1 (N.D.Cal. May 27, 2004) (court had personal jurisdiction over business entity defendant because it was personally served in the forum (citing *Burnham*)); *Conifer Securities, LLC. v. Conifer Capital, LLC*, 2003 WL 1873270 at *1, n.1 (N.D.Cal. April 2, 2003) (same).

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jurisdiction in New York under *Burnham* and New York law even though partner was a resident of Connecticut). The reasoning contained in the foregoing cases applies with equal force here.

NRCP 4(d)(2) authorizes service of process upon foreign corporations or nonresident entities by delivering a copy of the summons and the complaint to "an officer, general partner, member, manager, trustee or director within this state[.]" This is exactly what was done in the instant matter when Jacobs personally served Leven—an officer and director of SCL who resides and works in the forum. SCL has not challenged the sufficiency of service of process in this case.[26] Instead, SCL has pinned its hopes of escaping this Court's jurisdiction on the lone ground that it lacks sufficient minimum contacts with Nevada. In so doing, SCL has utterly failed to address the longstanding principle that personal jurisdiction can be sustained against a nonresident defendant solely on the basis of its presence in the forum state at the time of service of process. Given this glaring oversight, SCL's Motion must fail.

C. SCL Is Subject To Personal Jurisdiction In Nevada Even Under A "Minimum Contacts" Analysis As It Maintains Continuous And Systematic Contacts With This Forum.

Jacobs respectfully submits that SCL is subject to personal jurisdiction in Nevada by virtue of the personal service of its corporate officer and director while present in Nevada. *See Cariaga*, 104 Nev. at 546, 762 P.2d at 887-88 (United States Supreme Court "has never held that a showing of 'minimum contacts' is necessary to justify the exercise of personal jurisdiction when the defendant is personally served with process while physically present within the forum state."); *Northern Light Tech.*, 236 F.3d at 63 n.10 (where service of process is effective by serving corporate officer in forum, personal jurisdiction is also proper). To the extent SCL may contend that the efficacy of this method of establishing personal jurisdiction over a corporation

[26] Any such an objection has now been waived. *See* NRCP 12(h)(1).

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was left open in *Burnham, supra*, Jacobs will demonstrate that personal jurisdiction over SCL is still proper even under a minimum contacts analysis.

1. SCL is Subject to General Jurisdiction in Nevada.

When analyzing the issue of personal jurisdiction, "[c]onstitutional due process concerns are satisfied when a nonresident defendant has 'certain minimum contacts with the forum such that the maintenance of the suit does not offend traditional conceptions of fair play and substantial justice.'" *Doe v. Unocal Corporation*, 248 F.3d 915, 923 (9th Cir. 2001) (quoting *International Shoe v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158 (1945)); *Trump*, 109 Nev. at 698-99, 857 P.2d at 747-48. A court may exercise "general" or "specific" jurisdiction over a nonresident defendant under the foregoing "minimum contacts" test. *Id.*; *Trump*, 109 Nev. at 699, 857 P.2d at 748. General jurisdiction exists when a defendant's activities in the forum state are "substantial" or "continuous and systematic," *Panavision International, L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998), so that it may "be held to answer in a forum for causes of action unrelated to the defendant's forum activities." *Trump*, 109 Nev. at 699, 857 P.2d at 748. That is precisely the case here.

a. SCL has conducted board meetings and other business from Nevada.

SCL contends that it is party to a Non-Competition Deed that prevents it from conducting business or directing its efforts to Nevada. *See* Mot. at 4:21-26. While the Deed may prevent SCL from engaging in gaming activities that compete with LVSC in certain defined territories, that does not mean SCL has not engaged in business in Nevada. SCL's Board of Directors, for example, has conducted board meetings from Nevada. *See supra* at 5. SCL's top two executives, Adelson and Leven, both live in Nevada and have conducted other forms of SCL business from the State, including the design and development oversight of SCL projects in Macau, the recruitment of potential SCL executives, the oversight of and direction to SCL management to

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undertake a variety of actions in furtherance of SCL business, and the direct involvement in marketing strategies to increase traffic in SCL's retail malls to name just a few. *Id.* at 5-7.

Courts have not hesitated to exercise personal jurisdiction over a nonresident defendant where it has engaged in similar business activities from the forum state. *Perkins v. Benguet*, for example, involved a shareholder's suit brought in Ohio for dividends claimed due from a Philippines mining company whose president had conducted a limited part of the company's general business from Ohio during the Japanese occupation of the Philippines in World War II. 342 U.S. 437, 72 S.Ct. 413 (1952). The *Perkins* court reasoned that personal jurisdiction unrelated to a corporation's activities within the forum state may still exist where the activities within the forum were sufficiently substantial. *Id.* at 447, 72 S.Ct. at 419. Notwithstanding that the defendant company's mining operations were located solely in the Philippines and the shareholder's suit was unrelated to the company's activities in Ohio, the Court held that Ohio was free to exercise general jurisdiction over the corporation where its president maintained an office in Ohio from which he conducted his personal affairs and company business, including the maintenance of company files, the drafting of company correspondence, the distribution of three payroll checks, the maintenance of a company bank account, the supervision of policies dealing with the company's post-war rehabilitation, and the conducting of board meetings at his office or home. *Id.* at 447-48, 72 S.Ct. at 419-20.

Whether a nonresident defendant's activities in the forum are sufficient to subject it to personal jurisdiction is a fact specific inquiry. *Id.* at 445, 72 S.Ct. at 418 ("The amount and kind of activities which must be carried on by the foreign corporation in the state of the forum so as to make it reasonable and just to subject the corporation to the jurisdiction of the state are to be determined in each case."). While SCL may conduct its actual gaming operations outside of Nevada, the facts set forth above demonstrate that its officers and directors have carried on a

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systematic and continuous supervision of those operations and the company's other business activities from this forum. Under these circumstances, it does not violate due process for the Court to exercise jurisdiction over SCL in this action. *Id.* at 447-48, 72 S.Ct. at 419-20.[27] This is particularly true when the Court considers SCL's additional forum contacts discussed in the sections below. *See Trump*, 109 Nev. at 699, 857 P.2d at 749 ("[I]t is the cumulative significance of all the activities conducted in the jurisdiction rather than the isolated effect of any single activity that is determinative.") (quotation omitted).

b. *SCL engages in a number of ongoing transactions with Nevada-based entities.*

SCL has entered into and continues to engage in a number of ongoing commercial transactions with the Nevada-based LVSC, including agreements to share private jets, agreements to license trademarks, agreements for SCL to use LVSC's international marketing services, and many others. *See supra* at 7. Besides ongoing contracts with LVSC, SCL also has an ongoing relationship with the Nevada-based Bally Technologies, Inc. to provide it with a management system for its electronic gaming devices. *Id.* A foreign corporation's contractual relationships with forum residents constitute forum contacts for purposes of the jurisdictional analysis. *See, e.g., Estate of Rick v. Stevens,* 145 F.Supp.2d 1026, 1033 (N.D. Iowa 2001) (Iowa had general jurisdiction over Minnesota corporation based in part on corporation's lease contracts with Iowa

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[27] *See also, Certainteed Corp. v. Cellulose Insulation Mfrs. Assoc.*, 2003 WL 1562452 (E.D. Pa. 2003) (upholding general jurisdiction over Ohio trade association in Pennsylvania where, among other contacts, one of its members was physically located in Pennsylvania and its board of directors had held a meeting in the state); *Orefice v. Laurelview Convalescent Home*, 66 F.R.D. 136 (E.D.Pa. 1975) (New Jersey nursing home operator was subject to personal jurisdiction in Pennsylvania even though it did not conduct any nursing or treatment activities in that state, but its parent company performed bookkeeping and payroll services on its behalf from Pennsylvania); *Streifer v. Cabol Enterprises Limited*, 231 N.Y.S.2d 750, 751 (1962) (upholding personal jurisdiction in New York where, among other contacts, foreign corporation that was not qualified to do business in the state had conducted board meetings in the forum; "It must be assumed that when the defendant's board of directors was meeting in the State of New York, the directors were exercising supervision over its management and business and providing for the successful transaction of this business.").

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residents notwithstanding that said contracts were a "relatively small" percentage of the company's total leases); *Transcentral, Inc. v. Alliance Asphalt, Inc.*, 2007 WL 951545 (D.Minn. March 27, 2007) (nonresident corporation's contracts to deliver freight to customers in Minnesota subjected it to general jurisdiction in Minnesota even though said contracts constituted less than 2% of its shipments during the relevant timeframe); *Walter v. Sealift, Inc.*, 35 F.Supp.2d 532, 535 (S.D.Tex. 1999) (nonresident vessel owner could reasonably anticipate being haled into Texas court where it regularly contracted with Texas residents to provide repairs to vessels); *Villa Gomez v. Rockwood Specialties, Inc.*, 210 S.W.3d 720, 736-37 (Tex. Ct. App. 2006) (foreign corporation's contract with Texas resident who was highest official at corporation's Texas subsidiary was a proper forum contact for purposes of determining general jurisdiction).

In a preemptive effort to downplay the significance of its contracts with LVSC, SCL argues that a "parent corporation's ties to the forum state do not, standing alone, establish personal jurisdiction over a subsidiary." *See* Mot. at 11:4-7. While Jacobs has no quarrel with this general proposition, "it is nevertheless error to exclude this legitimate forum contact from consideration *in toto* with the defendant's other forum contacts in making a determination of whether the defendant has conclusively negated the propriety of exercising general jurisdiction." *Villa Gomez*, 210 S.W. at 732 (citing *Third Nat. Bank v. WEDGE Group, Inc.*, 882 F.2d 1087, 1090 n.1 (6th Cir. 1989) ("[T]he ownership of a subsidiary that conducts business in the forum is one contact or factor to be considered in assessing the existence or non-existence of the requisite minimum contacts."). Here, moreover, Jacobs seeks to establish jurisdiction over SCL based on its own contacts with the forum, not just those attributable to LVSC. *See supra* at 5-8.

SCL further argues that "[a]ny ordinary course transactions between SCL and LVS are negotiated at arm's length." *See* Mot. at 12:18-19. This statement actually underscores the propriety of personal jurisdiction in Nevada. That the SCL-LVSC transactions are negotiated at

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"arms length" necessarily suggests that SCL would be free to enter into these agreements with entities besides LVSC if it were able to obtain better contractual terms. Notwithstanding its freedom to contract with others, SCL has consciously chosen to enter into multiple transactions with the Nevada-based LVSC presumably because it was in the best interests of the corporation. Having voluntarily elected to do so, SCL cannot now claim that its contacts with Nevada are "random," "fortuitous," or "attenuated." *See Gator.com Corp. v. L.L. Bean, Inc.*, 341 F.2d 1072, 1076 (9th Cir. 2003) ("Whether dealing with specific or general jurisdiction, the touchstone remains purposeful availment to ensure that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous or attenuated contacts.").

c. ***Jacobs routinely travelled to Nevada to conduct business on behalf of SCL.***

During his tenure, Jacobs routinely travelled to Las Vegas to conduct business on behalf of the company, including meeting with Adelson and Leven to discuss SCL operations and business strategy, attending at least one SCL Board meeting in Las Vegas, and attending numerous meetings in Las Vegas with various third-parties to discuss existing business or potential business opportunities with SCL. *See supra* at 7-8. "The contacts of an agent are attributable to the principal in determining whether personal jurisdiction exists." *Trump*, 109 Nev. at 694, 857 P.2d at 745 (citing *Sher v. Johnson*, 911 F.2d 1357, 1362 (9th Cir. 1990)). It is axiomatic that a corporation's "officers are its agents." *Ex parte Rickey*, 31 Nev. 82, 100 P. 134, 140 (1909). Though Jacobs was employed by LVSC by virtue of the Term Sheet signed in August 2009, he ultimately held the position of Chief Executive Officer and President of SCL. As such, his many trips to Las Vegas to conduct company business are properly attributed to SCL as part of the jurisdictional calculus. *See, e.g., Martin v. D-Wave Sys. Inc.*, 2009 WL 4572742 (N.D.Cal. Dec. 1, 2009) (Canadian corporation with principal place of business in Canada was

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subject to general jurisdiction in California where, among other contacts, it held board meetings in the state and its executives frequently traveled there for business).

d. *SCL transfers significant amounts of money to Nevada.*

SCL further injects itself into Nevada through the frequent transfer of funds to this State. These transfers haven taken place in two forms. First, SCL has arranged to have significant funds physically delivered to Nevada by way of courier. *See* Exhibit 13. Second, SCL uses its ATA system to move money for customers by transferring funds electronically from Asia to LVSC or its affiliates in Las Vegas. These funds appear to total in the tens of millions of dollars, *see* Exhibit 14, and thus constitute a significant forum contact when considering the jurisdiction question. *See, e.g., Provident Nat. Bank v. California Federal Sav. & Loan Ass'n*, 819 F.2d 434 (3d Cir. 1987).[28]

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

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[28] The ATA transfer sheets attached hereto seemingly indicate that more than $68 million in customer funds have been electronically transferred from SCL and its affiliates in Macau to LVSC and its affiliates in Las Vegas over a three-year period. *See* Exhibit 14. *See also, Villagomez*, 210 S.W.3d at 729 ("General jurisdiction can be assessed by evaluating contacts of the defendant with the forum over a reasonable number of years, up to the date the suit was filed.").

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2. The Exercise of Personal Jurisdiction Over SCL is Reasonable.

Courts examine the following seven factors when considering the issue of reasonableness:

> (1) the extent of a defendant's purposeful interjection; (2) the burden on the defendant in defending in the forum; (3) the extent of conflict with the sovereignty of the defendant's state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum.

Kumarelas, 16 F.Supp.2d at 1255. A defendant must present a "compelling case" before jurisdiction will be found unreasonable. *Id.* SCL has made no such showing here.[29]

SCL's purposeful injection into Nevada is substantial. *See supra* at 5-8. It will not be burdened by litigating in Nevada as its top two executives live and work in the State. It has even conducted Board meetings here. SCL has not identified any conflict between Nevada law and Hong Kong law. To the extent Jacobs' stock option agreement with SCL contains a Hong Kong choice-of-law provision, this Court is perfectly capable of applying Hong Kong law on the issue if it decides that is appropriate. *See* NRCP 44.1. Moreover, the mere existence of a foreign choice-of-law provision does not *ipso facto* support a finding of unreasonableness. *See Martin, supra*, 2009 WL 4572742 at *5 (defendant did not satisfy burden of showing unreasonableness of jurisdiction in California despite existence of choice-of-law provision requiring application of Canadian law). Nevada is still the most efficient forum to resolve this dispute as the bulk of Jacobs' claims stem from his contractual relationships with the Nevada-based LVSC. It is also

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[29] Because nonresident defendants routinely attempt to avoid personal jurisdiction by "simply filing an affidavit denying all jurisdictional facts," courts refuse to "weigh the controverting assertions of the party seeking dismissal" on a Rule 12(b)(2) motion. *See Theunissen v. Matthews*, 935 F.2d 1454, 1459 (6th Cir. 1991). *Accord Data Disc, Inc.*, 557 F.2d at 1285. This principle is particularly germane here as the affidavit submitted by SCL does not even address the issue of whether it would be unreasonable for SCL to litigate in Nevada. *See* Affidavit of Anne Maree Salt. SCL's Motion on this point is comprised of nothing more than attorney argument which, of course, is not evidence. *See* Mot. at 10:15-28. To the extent SCL attempts to cure this deficiency by submitting a new affidavit as part of its Reply, the Court should disregard it. *See Eberle v. City of Anaheim*, 901 F.2d 814, 818 (9th Cir. 1990) (party may not raise new issue for the first time in their reply briefs).

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the most convenient forum for defendants as SCL has its own substantial ties to the State, and its parent company and co-defendant, LVSC, is headquartered here. Indeed, Jacobs could have opted to bring suit in Georgia where his relationship with Defendants originated or in Florida where he is a citizen. He instead chose to litigate in LVSC's backyard; defendants should not be heard to complain about this location.

Finally, SCL contends that Nevada has no interest in adjudicating this dispute because Jacobs is not a Nevada resident and was not damaged here. *See* Mot. at 10:1-28. Such a position is more than a bit myopic. Nevada unquestionably has an interest in the conduct of its gaming licensees, of which LVSC is one. Equally undeniable is the fact that this State's interests—including its gaming laws—extend to a Nevada licensee's foreign gaming operations. SCL admitted as much in its publically-filed prospectus. *See* Exhibit 3. Jacobs has raised serious questions regarding the conduct of LVSC, SCL, and certain of their senior management. Clearly, Nevada has a significant interest in the adjudication of this dispute and the facts giving rise thereto.

3. In The Event The Court Does Not Deny SCL's Motion Outright, It Should Permit Jurisdictional Discovery.

Courts have frequently held that the party opposing a jurisdictional challenge is entitled to conduct discovery regarding jurisdiction "where pertinent facts bearing on the question of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary." *Laub v. U.S. Dept. of Interior*, 342 F.2d 1080, 1093 (9th Cir. 2003); *Data Disc,* 557 F.2d at 1285, n.1. Jacobs believes he has already satisfied his burden of making a *prima facie* showing of jurisdiction over SCL based on the evidence adduced to date. If, however, the Court determines that additional information on SCL's contacts with Nevada is necessary to determine whether it may properly assert jurisdiction over the company, Jacobs respectfully requests the opportunity to conduct jurisdictional discovery.

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D. VML Is Neither A "Necessary" Party Under NRCP 19(a) Nor An "Indispensable" Party Under NRCP 19(b).

SCL alternatively seeks dismissal of the Complaint on grounds that VML is an indispensable party to this action because it was Jacobs' employer. *See* Mot. at 13:4 – 16:14. This contention should sound both familiar and hollow. It should sound familiar because it is the exact same argument advanced by LVSC in its concurrently-filed Motion to Dismiss. It should sound hollow because SCL, like LVSC before it, has failed to provide Her Honor with a number of critical documents that completely undermine the contention that Jacobs was a VML employee—not the least of which is a side-letter executed by VML and reviewed in advance by Leven that expressly disavows any binding effect of the documents upon which SCL now relies in its Motion.

Rather than burden the Court with the voluminous evidence and legal authorities that refute the assertion that VML is a necessary or indispensable party in this action, Jacobs simply refers the Court to the LVSC Opposition, which is expressly incorporated herein as if fully set forth.

IV. CONCLUSION

SCL is subject to personal jurisdiction in Nevada because its officer and director was personally served with process while physically present in the forum. Even if this were not the case, SCL has continuous and systematic contacts with Nevada that are sufficient to subject it to general jurisdiction in the forum under a "minimum contacts" analysis. Finally, VML is neither a "necessary" party under Rule 19(a) nor an "indispensable" party under Rule 19(b) for the reasons set forth more fully in the LVSC Opposition.

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In light of the foregoing, SCL's Motion must be denied in its entirety.

DATED this 9th day of February, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of February, 2011 I served by U.S. Mail, first class postage pre-paid, a true and correct copy of the foregoing **Opposition to Sands China Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Failure to Join an Indispensable Party** to the following counsel of record:

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EXHIBIT C

EXHIBIT C

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS, Plaintiff, v. LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; DOES I through X; and ROE CORPORATIONS I through X, Defendants.	Case No.: A-10-627691-C Dept. No.: XXV **AFFIDAVIT OF ANNE SALT IN SUPPORT OF DEFENDANT SANDS CHINA LTD.'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION, OR IN THE ALTERNATIVE, PLAINTIFF'S FAILURE TO JOIN A NECESSARY PARTY**

)ss:

Anne Maree Salt, being first duly sworn, deposes and states:

1. I am the Acting General Counsel and Joint Company Secretary of Sands China Ltd. ("SCL"). I have personal knowledge of the matters stated herein except those stated upon information and belief and I am competent to testify thereto.

2. I make this Affidavit in support of SCL's Motion to Dismiss for Lack of Personal Jurisdiction, or in the alternative, for Failure to Join an Indispensable Party.

3. SCL was incorporated in the Cayman Islands on July 15, 2009, at which time it was an indirect wholly owned subsidiary of Las Vegas Sands Corp. ("LVS").

4. Today, SCL is a publicly traded company, listed on the Stock Exchange of Hong Kong Limited ("HKEx") (HKEx Stock Code # 1928). The initial public offering of SCL stock (the "Global Offering") occurred in November 2009. A true and correct copy of the Global Offering Document is attached hereto as Exhibit "A." Immediately following the Global Offering, LVS owned approximately seventy percent (70%) of SCL's outstanding shares.

5. As a HKEx-listed company, SCL's Board of Directors (the "Board") is required to (and does) include three independent directors. See Exhibit "A." At the time of the Global Offering, these three individuals had no prior relationships with LVS. *Id.* At the time of the Global Offering, the remaining five Board positions consisted of two executive directors, who also served as SCL's Chief Executive Officer and Chief Development Officer, and of three non-executive directors who also sat on the board of LVS, namely, Sheldon Adelson, Jeffrey Schwartz, and Irwin Siegel. *Id.* SCL's Board, and its Board committees, conduct separate meetings and keep separate minutes. *Id.* SCL also has established its own organizational structure and financial controls, with independent bank accounts, tax registration and auditing systems. *Id.*

6. SCL has full control over its assets to operate its businesses independently of LVS. *Id.* Additionally, SCL utilizes an independent financial auditing system and has its own independent bank accounts and tax registration, and operates a separate treasury department. *Id.*

7. Venetian Macau Limited ("VML") is a Macau entity that holds a gaming subconcession issued by the Macau government, and also owns and operates the Sands Macao and operates the gaming areas in The Venetian Macao-Resort-Hotel® and the Plaza Macao. *Id.* As a subconcessionaire, VML is subject to numerous requirements imposed by the Macau government. *Id.* Specifically, VML must, among other obligations, ensure the proper management and operation of its casinos and the casino games therein, and employ the individuals who oversee those procedures. *Id.*

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8. SCL and LVS are parties to a reciprocal Non-Competition Deed (the "Deed"). Among other things, the Deed prohibits SCL from conducting business or directing its efforts in Nevada. Attached hereto as Exhibit "B" is a true and correct copy of the Deed.

9. Consistent with the Deed, SCL has not registered to do business in Nevada or attempted to do business or direct any business activities towards Nevada or its residents.

10. Steven Jacobs and VML are parties to a June 16, 2009 Letter of Appointment, which was executed by Jacobs and the Managing Director of VML. A true and accurate copy of the June 16, 2009 Letter of Appointment is attached hereto as Exhibit "C."

11. Jacobs was paid by VML by direct deposit. A true and accurate copy of one of Jacobs' deposit pay stubs is attached hereto as Exhibit "D."

12. On or about May 10, 2010, the Remuneration Committee of the SCL Board determined to grant Jacobs an option to purchase 2.5 million shares of SCL stock (the "Stock Option Grant"), as reflected by SCL Remuneration Committee minutes, a true and accurate copy of which are attached hereto as Exhibit "E."

13. A letter dated July 7, 2010, executed in Macau by SCL's Executive Vice President and Chief Financial Officer, sets forth the terms of the Stock Option Grant. A true and accurate copy of the Stock Option Grant is attached hereto as Exhibit "F." The Stock Option Grant stated that 50% of the options would vest on January 1, 2011, with the remaining 50% to vest on January 1, 2012.

14. The Stock Option Grant and SCL's Equity Award Plan (the "Plan") each conditioned Jacobs' ability to exercise the SCL options on his continued employment with SCL or its subsidiaries, and terminated any such rights if Jacobs were likewise terminated before the options vested. A true and correct copy of the Plan is attached hereto as Exhibit "G." Specifically, the Stock Option Grant stated that if Jacobs employment was terminated "for any reason other than on account of [Jacobs'] death or by [SCL] or any subsidiary due to disability or for cause, the unvested portion of the Option shall expire on the date of termination..." Additionally, both the Plan and the Stock Option Grant specify that the option grant would not create a contract of employment between Jacobs and SCL, and the Stock Option Grant specifies that it did not otherwise grant Jacobs any

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additional rights to compensation or damages in the event his employment is terminated. Lastly, consistent with the fact that the shares in SCL subject to the option were listed on the HKEx, the Stock Option Grant and the Plan each state that each shall be governed and construed in accordance with Hong Kong law.

15. Jacobs was terminated for cause by VML effective July 23, 2010.

Anne Maree Salt

CARTÓRIO DO NOTÁRIO PRIVADO
DIAMANTINO DE OLIVEIRA FERREIRA
Reconheço a assinatura supra de ANNE MAREE SALT, por confronto com a assinatura aposta no Passaporte nº E4026324, emitido em 24 de Março de 2010, pelo Governo da Austrália, cuja pública-forma me foi exibida.
Conta nº 90 $7,00
Macau, 21 de Dezembro de 2010
O Notário,

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CERTIFICATE OF MAILING

I hereby certify that I am an employee of GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP, and on the 22 day of December, 2010, I deposited a true and correct copy of the foregoing **MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION, OR IN THE ALTERNATIVE, PLAINTIFF'S FAILURE TO JOIN AN INDISPENSABLE PARTY** via U.S. Mail at Las Vegas, Nevada, in a sealed envelope upon which first class postage was prepaid and addressed to the following:

Donald J. Campbell, Esq. J. Colby Williams, Esq. CAMPBELL & WILLIAMS 700 South Seventh Street Las Vegas, NV 89101 *Attorneys for Plaintiff*	J. Stephen Peek, Esq. Justin C. Jones, Esq. HOLLAND & HART LLP 3800 Howard Hughes Parkway 10th Floor Las Vegas, NV 89169 *Attorney for Defendant Las Vegas Sands Corp.*

An Employee of GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP

LAW OFFICES
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EXHIBIT B

EXHIBIT B

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CLERK OF THE COURT

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Attorneys for Plaintiff
Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS, Plaintiff, vs. LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; DOES I through X; and ROE CORPORATIONS I through X, Defendants.	CASE NO. A-10-627691-C DEPT. NO. XXV **COMPLAINT** **Exempt from Arbitration** **Amount in Excess of $50,000**

Plaintiff, for his causes of action against Defendants, alleges and avers as follows:

PARTIES

1. Plaintiff Steven C. Jacobs ("Jacobs") is a citizen of the State of Florida who also maintains a residence in the State of Georgia.

2. Defendant Las Vegas Sands Corp. ("LVSC") is a corporation organized and existing under the laws of the State of Nevada with its principal place of business in Clark County, Nevada.

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3. Defendant Sands China Ltd. ("Sands China") is a Cayman Islands corporation and a majority-owned subsidiary of LVSC through which the latter engaged in certain of the acts and omissions alleged below. LVSC is the controlling shareholder of Sands China and, thus, has the ability to exercise control over Sands China's business policies and affairs. Sands China, through its subsidiary Venetian Macau, S.A. (also known as Venetian Macau Limited ("VML")), is the holder of a subconcession granted by the Macau government that allows Defendants to conduct gaming operations in Macau.

4. The true names and capacities, whether individual, corporate, partnership, associate or otherwise of Defendants named herein as DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, and each of them are unknown to Plaintiff at this time, and he therefore sues said Defendants and each of them by such fictitious names. Plaintiff will advise this Court and seek leave to amend this Complaint when the names and capacities of each such Defendants have been ascertained. Plaintiff alleges that each said Defendant herein designated as a DOE or ROE is responsible in some manner for the events and happenings herein referred to as hereinafter alleged.

5. Each Defendant is the agent of the other Defendants such that each Defendant is fully liable and responsible for all the acts and omissions of all of the other Defendants as set forth herein.

JURISDICTION AND VENUE

6. The Court has personal jurisdiction over the Defendants and the claims set forth herein pursuant to NRS 14.065 on grounds that such jurisdiction is not inconsistent with the Nevada Constitution or United States Constitution.

7. Venue is proper in this Court pursuant to NRS 13.010 *et seq.* because, among other reasons, LVSC operates its principal place of business in Clark County, Nevada, Sands China

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engages is a number of systematic and ongoing transactions with LVSC in Nevada, and this action arises out of agreements originating in Clark County, Nevada.

ALLEGATIONS COMMON TO ALL CLAIMS

Background

8. LVSC and its subsidiaries develop and operate large integrated resorts worldwide. The company owns properties in Las Vegas, Nevada, Macau (a Special Administrative Region of China), Singapore, and Bethlehem, Pennsylvania.

9. The company's Las Vegas properties consist of The Palazzo Resort Hotel Casino, The Venetian Resort Hotel Casino, and the Sands Expo and Convention Center.

10. Macau, which is located on the South China Sea approximately 37 miles southwest of Hong Kong and was a Portuguese colony for over 400 years, is the largest and fastest growing gaming market in the world. It is the only market in China to offer legalized gaming. In 2004, LVSC opened the Sands Macau, the first Las Vegas-style casino in Macau. Thereafter, LVSC opened the Venetian Macau and the Four Seasons Macau on the Cotai Strip section of Macau where the company has resumed development of additional casino-resort properties.

11. Beginning in or about 2008, LVSC's business (as well as that of its competitors in the gaming industry) was severely and adversely impacted by the global economic downturn. LVSC's problems due to the economy in general were exacerbated when the Chinese government imposed visa restrictions limiting the number of permitted visits by Chinese nationals to Macau. Because Chinese nationals make up more than half the patrons of Macau casinos, China's policy significantly reduced the number of visitors to Macau from mainland China, which adversely impacted tourism and the gaming industry in Macau.

12. As a result of the deteriorating economy, adverse visa developments in Macau, and related issues, LVSC faced increased cash flow needs which, in turn, threatened to trigger a

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breach of the company's maximum leverage ratio covenant in its U.S. credit facilities. The management of LVSC (which was led at the time by the company's longtime and well-respected President and Chief Operating Officer ("COO"), William Weidner) and the company's Board of Directors (which is led by the company's notoriously bellicose Chief Executive Officer and majority shareholder, Sheldon G. Adelson) engaged in serious disagreements regarding how and when to obtain liquidity in order to avoid a covenant breach. The disagreements were significant enough to force the company to form a special committee to address the serious conflicts between management and Adelson.

13. Because Adelson delayed accessing the capital markets, against Weidner's repeated advice and the advice of LVSC's investment bank, the company was forced to engage in a number of emergency transactions to raise funds in late 2008 and early 2009. These transactions included large investments in the company by Adelson through the purchase of convertible senior notes, preferred shares, and warrants. Additionally, LVSC, which was already publicly traded on the New York Stock Exchange, conducted a further public offering of the company's common stock. Finally, LVSC also took measures to preserve company funds, which included the shelving of various development projects in Las Vegas, Macau, and Pennsylvania.

14. Despite the efforts of LVSC to stop its financial hemorrhaging, the company's stock plummeted to an all-time low closing price of $1.41 per share on March 9, 2009. Less than one year earlier, in April 2008, the stock had traded at more than $80 per share. The all-time low share price coincided with LVSC's public announcement that William Weidner had left the company due to his ongoing disagreements with the mercurial Adelson about the management of the company. Weidner was replaced as President and COO by Michael Leven, a member of LVSC's Board of Directors.

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LVSC Hires Steven Jacobs To Run Its Macau Operations

15. Prior to his elevation to the post of LVSC's President and COO, Mr. Leven had reached out to Plaintiff Steven Jacobs to discuss with him the identification and evaluation of various candidates then being considered for the position by LVSC's Board of Directors. Messrs. Leven and Jacobs had known each other for many years having worked together as executives at U.S. Franchise Systems in the 1990's and in subsequent business ventures thereafter. After several outside candidates were interviewed without reaching an agreement, Leven received an offer from LVSC's board to become the company's President and COO. Leven again reached out to Jacobs to discuss the opportunity and the conditions under which he should accept the position. The conditions included but were not limited to Leven's compensation package and a commitment from Jacobs to join Leven for a period of 90-120 days to "ensure my [Leven's] success."

16. Jacobs travelled to Las Vegas in March 2009 where he met with Leven and Adelson for several days to review the company's Nevada operations. While in Las Vegas, the parties agreed to consulting contract between LVSC and Jacobs' company, Vagus Group, Inc. Jacobs then began working for LVSC restructuring its Las Vegas operations.

17. Jacobs, Leven, and Adelson subsequently travelled to Macau to conduct a review of LVSC's operations in that location. While in Macau, Leven told Jacobs that he wanted to hire him to run LVSC's Macau operations. Jacobs and Leven returned to Las Vegas after spending approximately a week in Macau. Jacobs then spent the bulk of the next 2-3 weeks working on the Las Vegas restructuring program and also negotiating with Leven regarding the latter's desire to hire him as a full-time executive with the company and the terms upon which Jacobs would agree to do so.

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18. On May 6, 2009, LVSC, through Leven, announced that Jacobs would become the interim President of Macau Operations. Jacobs was charged with restructuring the financial and operational aspects of the Macau assets. This included, among other things, lowering operating costs, developing and implementing new strategies, building new ties with local and national government officials, and eventually spinning off the Macau assets into a new company to be taken public on the Hong Kong Stock Exchange.

19. Notwithstanding that Jacobs would be spending the majority of his time in Macau focusing on LVSC's operations in that location, he was also required to perform duties in Las Vegas including, but not limited to, working with LVSC's Las Vegas staff on reducing costs within the company's Las Vegas operations, consulting on staffing and delayed opening issues related to the company's Marina Bay Sands project in Singapore, and participating in meetings of LVSC's Board of Directors.

20. On June 24, 2009, LVSC awarded Jacobs 75,000 stock options in the company to reward him for his past performance as a LVSC team member and to incentivize him to improve his future performance as well as that of the company. LVSC and Jacobs executed a written Nonqualified Stock Option Agreement memorializing the award, which is governed by Nevada law.

21. On or about August 4, 2009, Jacobs received a document from LVSC styled "Offer Terms and Conditions" (the "Term Sheet") for the position of "President and CEO Macau[.]" The Term Sheet reflected the terms and conditions of employment that had been negotiated by Leven and Jacobs while Jacobs was in Las Vegas working under the original consulting agreement with LVSC and during his subsequent trips back to Las Vegas. The Term Sheet was signed by Leven on behalf of LVSC on or about August 3, 2009 and faxed to Jacobs in Macau by Pattie Murray, an LVSC executive assistant located in the company's Las Vegas

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offices. Jacobs signed the Term Sheet accepting the offer contained therein and returned a copy to LVSC. LVSC's Compensation Committee approved Jacobs' contract on or about August 6, 2009.

Jacobs Saves the Titanic

22. The accomplishments for the four quarters over which Jacobs presided created significant value to the shareholders of LVSC. From an operational perspective, Jacobs and his team removed over $365 million of costs from LVSC's Macau operations, repaired strained relationships with local and national government officials in Macau who would no longer meet with Adelson due to his rude and obstreperous behavior, and refocused operations on core businesses to drive operating margins and profits, thereby achieving the highest EBITDA figures in the history of the company's Macau operations.

23. During Jacobs' tenure, LVSC launched major new initiatives to expand its reach into the mainland frequent and independent traveler marketplace and became the Macau market share leader in mass and direct VIP table game play. Due in large part to the success of its Macau operations under Jacobs' direction, LVSC was able to raise over $4 billion dollars from the capital markets, spin off its Macau operations into a new company—Sands China—which became publicly traded on the Hong Kong Stock Exchange in late November 2009, and restart construction on a previously stalled expansion project on the Cotai Strip known as "Parcels 5 and 6." Indeed, for the second quarter ending June 2010, net revenue from Macau operations accounted for approximately 65% of LVSC's total net revenue (*i.e.*, $1.04 billion USD of a total $1.59 billion USD).

24. To put matters in perspective, when Jacobs began performing work for the company in March 2009, LVSC shares were trading at just over $1.70 per share and its market

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cap was approximately $1.1 billion USD. At the time Jacobs left the company in July 2010, LVSC shares were over $28 per share and the market cap was in excess of $19 billion USD.

25. Simply put, Jacobs' performance as the President and Chief Executive Officer of LVSC's Macau operations was nothing short of remarkable. When members of the company's Board of Directors asked Leven in February 2010 to assess Jacobs' 2009 job performance, Leven advised as follows: *"there is no question as to Steve's performance[;] the Titanic hit the iceberg[,] he arrived and not only saved the passengers[,] he saved the ship."* The board awarded Jacobs his full bonus for 2009. Not more than three months later, in May 2010, in recognition of his ongoing contributions and outstanding performance, the board awarded Jacobs an additional 2.5 million stock options in Sands China. The options had an accelerated vesting period of less than two years. Jacobs, however, would be wrongfully terminated in just two months.

Jacobs' Conflicts with Adelson

26. Jacobs' performance was all the more remarkable given the repeated and outrageous demands made upon him by Adelson which included, but were not limited to, the following:

a. demands that Jacobs use improper "leverage" against senior government officials of Macau in order to obtain Strata-Title for the Four Seasons Apartments in Macau;

b. demands that Jacobs threaten to withhold Sands China business from prominent Chinese banks unless they agreed to use influence with newly-elected senior government officials of Macau in order to obtain Strata-Title for the Four Seasons Apartments and favorable treatment with regards to labor quotas and table limits;

c. demands that secret investigations be performed regarding the business and financial affairs of various high-ranking members of the Macau government so that any negative information obtained could be used to exert "leverage" in order to thwart government regulations/initiatives viewed as adverse to LVSC's interests;

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d. demands that Sands China continue to use the legal services of Macau attorney Leonel Alves despite concerns that Mr. Alves' retention posed serious risks under the criminal provisions of the United States code commonly known as the Foreign Corrupt Practices Act ("FCPA"); and

e. demands that Jacobs refrain from disclosing truthful and material information to the Board of Directors of Sands China so that it could decide if such information relating to material financial events, corporate governance, and corporate independence should be disclosed pursuant to regulations of the Hong Kong Stock Exchange. These issues included, but were not limited to, junkets and triads, government investigations, Leonel Alves and FCPA concerns, development issues concerning Parcels 3, 7 and 8, and the design, delays and cost overruns associated with the development of Parcels 5 and 6.

27. When Jacobs objected to and/or refused to carry out Adelson's illegal demands, Adelson repeatedly threatened to terminate Jacobs' employment. This is particularly true in reference to: (i) Jacobs' refusal to comply with Adelson's edict to terminate Sands China's General Counsel, Luis Melo, and his entire legal department and replace him/it with Leonel Alves and his team; and (ii) Adelson's refusal to allow Jacobs to present to the Sands China board information that the company's development of Parcels 5 and 6 was at least 6 months delayed and more than $300 million USD over-budget due to Adelson-mandated designs and accoutrements the Sands China management team did not believe would be successful in the local marketplace.

28. Jacobs' ongoing disagreements with Adelson came to a head when they were in Singapore to attend the grand opening of LVSC's Marina Bay Sands in late June 2010. While in Singapore, Jacobs attended several meetings of LVSC executives including Adelson, Leven, Ken Kay (LVSC's Chief Financial Officer), and others. During these meetings, Jacobs disagreed with Adelson's and Leven's desire to expand the ballrooms at Parcels 5 and 6, which would add an incremental cost of approximately $30 million to a project already significantly over budget when Sands China's existing facilities were already underutilized. In a separate meeting, Jacobs disagreed with Adelson's desire to aggressively grow the junket business within Macau as the

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margins were low, the decision carried credit risks, and Jacobs was concerned given recent investigations by Reuters and others alleging LVSC involvement with Chinese organized crime groups, known as Triads, connected to the junket business. Following these meetings, Jacobs re-raised the issue about the need to advise the Sands China board of the delays and cost overruns associated with the development of Parcels 5 and 6 in Macau so that a determination could be made of whether the information must be disclosed in compliance with Hong Kong Stock Exchange regulations. Adelson informed Jacobs that he was Chairman of the Board and the controlling shareholder of Sands China and would "do as I please."

29. Recognizing that he owed a fiduciary duty to all of the company's shareholders, not just Adelson, Jacobs placed the matter relating to the delays and cost overruns associated with Parcels 5 and 6 on the agenda for the upcoming meeting of the Sands China board. Jacobs exchanged multiple e-mails with Adelson's longtime personal assistant, Betty Yurcich, in attempts to obtain Adelson's concurrence with the agenda. Adelson finally relented and allowed the matter to remain on the agenda, but it would come at a price for Jacobs.

30. On July 23, 2010, Jacobs attended a meeting with Leven and LVSC/Sands China board member, Irwin Siegel, for the ostensible purpose of discussing the upcoming Sands China board meeting. During the meeting, Leven unceremoniously advised Jacobs that he was being terminated effective immediately. When Jacobs asked whether the termination was purportedly "for cause" or not, Leven responded that he was "not sure" but that the severance provisions of the Term Sheet would not be honored. Leven then handed Jacobs a terse letter from Adelson advising him of the termination. The letter was silent on the issue of "cause."

31. After the meeting with Leven and Siegel, Jacobs was escorted off the property by two members of security in public view of many company employees, resort guests, and casino

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patrons. Jacobs was not permitted to return to his office to collect his belongings, but was instead escorted to the border to leave Macau.

32. Nearly two weeks later and after an unsuccessful effort to dig up any real "dirt" on Jacobs, LVSC sent a second letter to Jacobs on VML letterhead which identified 12 pretextual items that allegedly support a "for cause" termination of his employment. In short, the letter contends that Jacobs exceeded his authority and—in the height of hypocrisy—failed to keep the companies' Boards of Directors informed of important business decisions. The reality is that none of the 12 items, even assuming *arguendo* that some of them are accurate, constitute "cause" as they simply reflect routine and appropriate actions of a senior executive functioning in the president and chief executive role of a publicly traded company.

33. Within approximately four weeks of Jacobs' termination, Sands China went forward with Adelson's desire to terminate its General Counsel, Luis Melo, and replace him with Leonel Alves despite acknowledged disputes within Sands China regarding Alves' employment with the company. In or about the same time frame, Sands China publicly announced a material delay in the construction of Parcels 5 and 6 and a cost increase of $100 million to the project, thereby acknowledging the correctness of Jacobs' position that such matters must be disclosed.

FIRST CAUSE OF ACTION

(Breach of Contract - LVSC)

34. Plaintiff restates all preceding and subsequent allegations as though fully set forth herein.

35. Jacobs and LVSC are parties to various contracts, including the Term Sheet and Nonqualified Stock Option Agreement identified herein.

36. The Term Sheet provides, in part, that Jacobs would have a 3-year employment term, that he would earn an annual salary of $1.3 million plus a 50% bonus upon attainment of

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certain goals, and that he would receive 500,000 LVSC stock options (in addition to the previously awarded 75,000 LVSC options) to vest in stages over three years.

37. The Term Sheet further provides that in the event Jacobs was terminated "Not For Cause," he would be entitled to one year of severance plus accelerated vesting of all his stock options with a one-year right to exercise the options post-termination.

38. Jacobs has performed all of his obligations under the contracts except where excused.

39. LVSC has breached the Term Sheet agreement by purportedly terminating Jacobs for "cause" when, in reality, the purported bases for Jacobs' termination, as identified in the belatedly-manufactured August 5, 2010 letter, are pretextual and in no way constitute "cause."

40. On September 24, 2010, Jacobs made proper demand upon LVSC to honor his right to exercise the remaining stock options he had been awarded in the company. The closing price of LVSC's stock on September 24, 2010 was $33.63 per share. At the time of filing the instant action, LVSC's stock was trading at approximately $38.50 per share. LVSC rejected Jacobs' demand and, thus, further breached the Term Sheet and the stock option agreement by failing to honor the vesting and related provisions contained therein based on the pretext that Jacobs was terminated for "cause."

41. LVSC has wrongfully characterized Jacobs' termination as one for "cause" in an effort to deprive him of contractual benefits to which he is otherwise entitled. As a direct and proximate result of LVSC's wrongful termination of Jacobs' employment and failure to honor the "Not For Cause" severance provisions contained in the Term Sheet, Jacobs has suffered damages in an amount to be proven at trial but in excess of $10,000.

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SECOND CAUSE OF ACTION

(Breach of Contract – LVSC and Sands China Ltd.)

42. Plaintiff incorporates all preceding and subsequent allegations as though fully set forth herein.

43. On or about May 11, 2010, LVSC caused Sands China to grant 2.5 million Sands China share options to Jacobs. Fifty percent of the options were to vest on January 1, 2011, and the other fifty percent was to vest on January 1, 2012. The grant is memorialized by a written agreement between Jacobs and Sands China.

44. Pursuant to the Term Sheet agreement between Jacobs and LVSC, Jacobs' stock options are subject to an accelerated vest in the event he is terminated "Not for Cause." The Term Sheet further provides Jacobs with a one-year right to exercise the options post-termination.

45. Jacobs has performed all his obligations under the contracts except where excused.

46. On September 24, 2010, Jacobs made proper demand upon LVSC and Sands China to honor his right to exercise the remaining 2.5 million stock options he had been awarded in Sands China. The closing price of Sands China's stock on September 24, 2010 was $12.86 HKD per share. At the time of filing the instant action, Sands China's stock was trading at approximately $15.00 per share. LVSC and Sands China rejected Jacobs' demand and, thus, further breached the Term Sheet and the Sands China share grant agreement by characterizing Jacobs' termination as being for "cause" when, in reality, the purported bases for Jacobs' termination, as identified in the belatedly-manufactured August 5, 2010 letter, are pretextual and in no way constitute "cause."

47. LVSC and Sands China have wrongfully characterized Jacobs' termination as one for "cause" in an effort to deprive him of contractual benefits to which he is otherwise entitled.

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As a direct and proximate result of LVSC's and Sands China's actions, Jacobs has suffered damages in an amount to be proven at trial but in excess of $10,000.

THIRD CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing - LVSC)

48. Plaintiff incorporates all preceding and subsequent allegations as though fully set forth herein.

49. All contracts in Nevada contain an implied covenant of good faith and fair dealing.

50. The conduct of LVSC described herein including, but not limited to, the improper and illegal demands made upon Jacobs by Adelson, Adelson's continual undermining of Jacobs' authority as the President and CEO of LVSC's Macau operations (and subsequently Sands China), and the wrongful characterization of Jacobs' termination as being for "cause," is unfaithful to the purpose of the agreements between Jacobs and LVSC and was not within the reasonable expectations of Jacobs.

51. As a direct and proximate result of LVSC's wrongful conduct, Jacobs has suffered damages in an amount to be proven at trial but in excess of $10,000.

FOURTH CAUSE OF ACTION

(Tortious Discharge in Violation of Public Policy – LVSC)

52. Plaintiff incorporates all preceding and subsequent allegations as though fully set forth herein.

53. As an officer of LVSC and an officer and director of Sands China, Jacobs owed a fiduciary duty to the shareholders of both companies.

54. Certain of the improper and illegal demands made upon Jacobs by Adelson as set forth above would have required Jacobs to engage in conduct that he, in good faith, believed was illegal. In other instances, the improper and illegal demands would have required Jacobs to

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refrain from engaging in conduct required by applicable law. Both forms of demands would have required Jacobs to violate his fiduciary duties to the shareholders of LVSC and Sands China.

55. LVSC retaliated against Jacobs' by terminating his employment because he (i) objected to and refused to participate in the illegal conduct requested by Adelson, and (ii) attempted to engage in conduct that was required by law and favored by public policy. In so doing, LVSC tortiously discharged Jacobs in violation of public policy.

56. As a direct and proximate result of LVSC's tortious discharge, Jacobs has suffered damages in an amount to be proven at trial but in excess of $10,000.

57. LVSC's conduct, which was carried out and/or ratified by managerial level agents and employees, was done with malice, fraud and oppression, thereby entitling Jacobs to an award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For compensatory damages in excess of Ten Thousand Dollars ($10,000.00), in an amount to be proven at trial;

2. For punitive damages in excess of Ten Thousand Dollars ($10,000.00), in an amount to be proven at trial;

3. For pre-judgment and post-judgment interest, as allowed by law;

4. For attorney fees and costs of suit incurred herein, as allowed by law, in an amount to be determined; and

....

....

....

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5. For such other and further relief as the Court may deem just and proper.

DATED this 20th day of October, 2010.

CAMPBELL & WILLIAMS

By */s/ Donald J. Campbell*
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EXHIBIT A

EXHIBIT A

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

DAIMLER AG *v.* BAUMAN ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 11–965. Argued October 15, 2013—Decided January 14, 2014

Plaintiffs (respondents here) are twenty-two residents of Argentina who filed suit in California Federal District Court, naming as a defendant DaimlerChrysler Aktiengesellschaft (Daimler), a German public stock company that is the predecessor to petitioner Daimler AG. Their complaint alleges that Mercedes-Benz Argentina (MB Argentina), an Argentinian subsidiary of Daimler, collaborated with state security forces during Argentina's 1976–1983 "Dirty War" to kidnap, detain, torture, and kill certain MB Argentina workers, among them, plaintiffs or persons closely related to plaintiffs. Based on those allegations, plaintiffs asserted claims under the Alien Tort Statute and the Torture Victim Protection Act of 1991, as well as under California and Argentina law. Personal jurisdiction over Daimler was predicated on the California contacts of Mercedes-Benz USA, LLC (MBUSA), another Daimler subsidiary, one incorporated in Delaware with its principal place of business in New Jersey. MBUSA distributes Daimler-manufactured vehicles to independent dealerships throughout the United States, including California. Daimler moved to dismiss the action for want of personal jurisdiction. Opposing that motion, plaintiffs argued that jurisdiction over Daimler could be founded on the California contacts of MBUSA. The District Court granted Daimler's motion to dismiss. Reversing the District Court's judgment, the Ninth Circuit held that MBUSA, which it assumed to fall within the California courts' all-purpose jurisdiction, was Daimler's "agent" for jurisdictional purposes, so that Daimler, too, should generally be answerable to suit in that State.

Held: Daimler is not amenable to suit in California for injuries allegedly caused by conduct of MB Argentina that took place entirely outside the United States. Pp. 6–24.

Syllabus

(a) California's long-arm statute allows the exercise of personal jurisdiction to the full extent permissible under the U. S. Constitution. Thus, the inquiry here is whether the Ninth Circuit's holding comports with the limits imposed by federal due process. See Fed. Rule Civ. Proc. 4(k)(1)(A). P. 6.

(b) For a time, this Court held that a tribunal's jurisdiction over persons was necessarily limited by the geographic bounds of the forum. See *Pennoyer* v. *Neff*, 95 U. S. 714. That rigidly territorial focus eventually yielded to a less wooden understanding, exemplified by the Court's pathmarking decision in *International Shoe Co.* v. *Washington*, 326 U. S. 310. *International Shoe* presaged the recognition of two personal jurisdiction categories: One category, today called "specific jurisdiction," see *Goodyear Dunlop Tires Operations, S. A.* v. *Brown*, 564 U. S. ___, ___, encompasses cases in which the suit "arise[s] out of or relate[s] to the defendant's contacts with the forum," *Helicopteros Nacionales de Colombia, S. A.* v. *Hall*, 466 U. S. 408, 414, n. 8. *International Shoe* distinguished exercises of specific, case-based jurisdiction from a category today known as "general jurisdiction," exercisable when a foreign corporation's "continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." 326 U. S., at 318.

Since *International Shoe*, "specific jurisdiction has become the centerpiece of modern jurisdiction theory." *Goodyear*, 564 U. S., at ___. This Court's general jurisdiction opinions, in contrast, have been few. See *Perkins* v. *Benguet Consol. Mining Co.,* 342 U. S. 437, *Helicopteros,* 466 U. S., at 416, and *Goodyear*, 564 U. S., at ___. As is evident from these post-*International Shoe* decisions, while specific jurisdiction has been cut loose from *Pennoyer*'s sway, general jurisdiction has not been stretched beyond limits traditionally recognized. Pp. 6–14.

(c) Even assuming, for purposes of this decision, that MBUSA qualifies as at home in California, Daimler's affiliations with California are not sufficient to subject it to the general jurisdiction of that State's courts. Pp. 14–23.

(1) Whatever role agency theory might play in the context of general jurisdiction, the Court of Appeals' analysis in this case cannot be sustained. The Ninth Circuit's agency determination rested primarily on its observation that MBUSA's services were "important" to Daimler, as gauged by Daimler's hypothetical readiness to perform those services itself if MBUSA did not exist. But if "importan[ce]" in this sense were sufficient to justify jurisdictional attribution, foreign corporations would be amenable to suit on any or all claims wherever they have an in-state subsidiary or affiliate, an outcome that would sweep beyond even the "sprawling view of general jurisdiction" re-

Syllabus

jected in *Goodyear*. 564 U. S., at ___. Pp. 15–17.

(2) Even assuming that MBUSA is at home in California and that MBUSA's contacts are imputable to Daimler, there would still be no basis to subject Daimler to general jurisdiction in California. The paradigm all-purpose forums for general jurisdiction are a corporation's place of incorporation and principal place of business. *Goodyear,* 564 U. S., at ___. Plaintiffs' reasoning, however, would reach well beyond these exemplar bases to approve the exercise of general jurisdiction in every State in which a corporation "engages in a substantial, continuous, and systematic course of business." Brief for Respondents 16–17, and nn. 7–8. The words "continuous and systematic," plaintiffs and the Court of Appeals overlooked, were used in *International Shoe* to describe situations in which the exercise of *specific* jurisdiction would be appropriate. See 326 U. S., at 317. With respect to all-purpose jurisdiction, *International Shoe* spoke instead of "instances in which the continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit . . . on causes of action arising from dealings entirely distinct from those activities." *Id.,* at 318. Accordingly, the proper inquiry, this Court has explained, is whether a foreign corporation's "affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State." *Goodyear,* 564 U. S., at ___.

Neither Daimler nor MBUSA is incorporated in California, nor does either entity have its principal place of business there. If Daimler's California activities sufficed to allow adjudication of this Argentina-rooted case in California, the same global reach would presumably be available in every other State in which MBUSA's sales are sizable. No decision of this Court sanctions a view of general jurisdiction so grasping. The Ninth Circuit, therefore, had no warrant to conclude that Daimler, even with MBUSA's contacts attributed to it, was at home in California, and hence subject to suit there on claims by foreign plaintiffs having nothing to do with anything that occurred or had its principal impact in California. Pp. 18–21.

(3) Finally, the transnational context of this dispute bears attention. This Court's recent precedents have rendered infirm plaintiffs' Alien Tort Statute and Torture Victim Protection Act claims. See *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U. S. ___, ___, and *Mohamad* v. *Palestinian Authority*, 566 U. S. ___, ___. The Ninth Circuit, moreover, paid little heed to the risks to international comity posed by its expansive view of general jurisdiction. Pp. 22–23.

644 F. 3d 909, reversed.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, THOMAS, BREYER, ALITO, and KAGAN, JJ., joined. SOTOMAYOR, J., filed an opinion concurring in the judgment.

SUPREME COURT OF THE UNITED STATES

No. 11–965

DAIMLER AG, PETITIONER *v.* BARBARA BAUMAN ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[January 14, 2014]

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the authority of a court in the United States to entertain a claim brought by foreign plaintiffs against a foreign defendant based on events occurring entirely outside the United States. The litigation commenced in 2004, when twenty-two Argentinian residents[1] filed a complaint in the United States District Court for the Northern District of California against DaimlerChrysler Aktiengesellschaft (Daimler),[2] a German public stock company, headquartered in Stuttgart, that manufactures Mercedes-Benz vehicles in Germany. The complaint alleged that during Argentina's 1976–1983 "Dirty War," Daimler's Argentinian subsidiary, Mercedes-Benz Argentina (MB Argentina) collaborated with state security forces to kidnap, detain, torture, and kill certain MB

[1] One plaintiff is a resident of Argentina and a citizen of Chile; all other plaintiffs are residents and citizens of Argentina.

[2] Daimler was restructured in 2007 and is now known as Daimler AG. No party contends that any postsuit corporate reorganization bears on our disposition of this case. This opinion refers to members of the Daimler corporate family by the names current at the time plaintiffs filed suit.

Argentina workers, among them, plaintiffs or persons closely related to plaintiffs. Damages for the alleged human-rights violations were sought from Daimler under the laws of the United States, California, and Argentina. Jurisdiction over the lawsuit was predicated on the California contacts of Mercedes-Benz USA, LLC (MBUSA), a subsidiary of Daimler incorporated in Delaware with its principal place of business in New Jersey. MBUSA distributes Daimler-manufactured vehicles to independent dealerships throughout the United States, including California.

The question presented is whether the Due Process Clause of the Fourteenth Amendment precludes the District Court from exercising jurisdiction over Daimler in this case, given the absence of any California connection to the atrocities, perpetrators, or victims described in the complaint. Plaintiffs invoked the court's general or all-purpose jurisdiction. California, they urge, is a place where Daimler may be sued on any and all claims against it, wherever in the world the claims may arise. For example, as plaintiffs' counsel affirmed, under the proffered jurisdictional theory, if a Daimler-manufactured vehicle overturned in Poland, injuring a Polish driver and passenger, the injured parties could maintain a design defect suit in California. See Tr. of Oral Arg. 28–29. Exercises of personal jurisdiction so exorbitant, we hold, are barred by due process constraints on the assertion of adjudicatory authority.

In *Goodyear Dunlop Tires Operations, S. A.* v. *Brown*, 564 U. S. ___ (2011), we addressed the distinction between general or all-purpose jurisdiction, and specific or conduct-linked jurisdiction. As to the former, we held that a court may assert jurisdiction over a foreign corporation "to hear any and all claims against [it]" only when the corporation's affiliations with the State in which suit is brought are so constant and pervasive "as to render [it] essentially at

home in the forum State." *Id.*, at ___ (slip op., at 2). Instructed by *Goodyear*, we conclude Daimler is not "at home" in California, and cannot be sued there for injuries plaintiffs attribute to MB Argentina's conduct in Argentina.

I

In 2004, plaintiffs (respondents here) filed suit in the United States District Court for the Northern District of California, alleging that MB Argentina collaborated with Argentinian state security forces to kidnap, detain, torture, and kill plaintiffs and their relatives during the military dictatorship in place there from 1976 through 1983, a period known as Argentina's "Dirty War." Based on those allegations, plaintiffs asserted claims under the Alien Tort Statute, 28 U. S. C. §1350, and the Torture Victim Protection Act of 1991, 106 Stat. 73, note following 28 U. S. C. §1350, as well as claims for wrongful death and intentional infliction of emotional distress under the laws of California and Argentina. The incidents recounted in the complaint center on MB Argentina's plant in Gonzalez Catan, Argentina; no part of MB Argentina's alleged collaboration with Argentinian authorities took place in California or anywhere else in the United States.

Plaintiffs' operative complaint names only one corporate defendant: Daimler, the petitioner here. Plaintiffs seek to hold Daimler vicariously liable for MB Argentina's alleged malfeasance. Daimler is a German *Aktiengesellschaft* (public stock company) that manufactures Mercedes-Benz vehicles in Germany and has its headquarters in Stuttgart. At times relevant to this case, MB Argentina was a subsidiary wholly owned by Daimler's predecessor in interest.

Daimler moved to dismiss the action for want of personal jurisdiction. Opposing the motion, plaintiffs submitted declarations and exhibits purporting to demonstrate the presence of Daimler itself in California. Alternatively,

plaintiffs maintained that jurisdiction over Daimler could be founded on the California contacts of MBUSA, a distinct corporate entity that, according to plaintiffs, should be treated as Daimler's agent for jurisdictional purposes.

MBUSA, an indirect subsidiary of Daimler, is a Delaware limited liability corporation.[3] MBUSA serves as Daimler's exclusive importer and distributor in the United States, purchasing Mercedes-Benz automobiles from Daimler in Germany, then importing those vehicles, and ultimately distributing them to independent dealerships located throughout the Nation. Although MBUSA's principal place of business is in New Jersey, MBUSA has multiple California-based facilities, including a regional office in Costa Mesa, a Vehicle Preparation Center in Carson, and a Classic Center in Irvine. According to the record developed below, MBUSA is the largest supplier of luxury vehicles to the California market. In particular, over 10% of all sales of new vehicles in the United States take place in California, and MBUSA's California sales account for 2.4% of Daimler's worldwide sales.

The relationship between Daimler and MBUSA is delineated in a General Distributor Agreement, which sets forth requirements for MBUSA's distribution of Mercedes-Benz vehicles in the United States. That agreement established MBUSA as an "independent contracto[r]" that "buy[s] and sell[s] [vehicles] . . . as an independent business for [its] own account." App. 179a. The agreement "does not make [MBUSA] . . . a general or special agent, partner, joint venturer or employee of DAIMLERCHRYSLER or any DaimlerChrysler Group Company"; MBUSA "ha[s] no authority to make binding obligations for or act on behalf of DAIMLERCHRYSLER or any DaimlerChrysler Group Company." *Ibid.*

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[3]At times relevant to this suit, MBUSA was wholly owned by DaimlerChrysler North America Holding Corporation, a Daimler subsidiary.

After allowing jurisdictional discovery on plaintiffs' agency allegations, the District Court granted Daimler's motion to dismiss. Daimler's own affiliations with California, the court first determined, were insufficient to support the exercise of all-purpose jurisdiction over the corporation. *Bauman* v. *DaimlerChrysler AG*, No. C–04–00194 RMW (ND Cal., Nov. 22, 2005), App. to Pet. for Cert. 111a–112a, 2005 WL 3157472, *9–*10. Next, the court declined to attribute MBUSA's California contacts to Daimler on an agency theory, concluding that plaintiffs failed to demonstrate that MBUSA acted as Daimler's agent. *Id.,* at 117a, 133a, 2005 WL 3157472, *12, *19; *Bauman* v. *DaimlerChrysler AG*, No. C–04–00194 RMW (ND Cal., Feb. 12, 2007), App. to Pet. for Cert. 83a–85a, 2007 WL 486389, *2.

The Ninth Circuit at first affirmed the District Court's judgment. Addressing solely the question of agency, the Court of Appeals held that plaintiffs had not shown the existence of an agency relationship of the kind that might warrant attribution of MBUSA's contacts to Daimler. *Bauman* v. *DaimlerChrysler Corp.*, 579 F. 3d 1088, 1096–1097 (2009). Judge Reinhardt dissented. In his view, the agency test was satisfied and considerations of "reasonableness" did not bar the exercise of jurisdiction. *Id.,* at 1098–1106. Granting plaintiffs' petition for rehearing, the panel withdrew its initial opinion and replaced it with one authored by Judge Reinhardt, which elaborated on reasoning he initially expressed in dissent. *Bauman* v. *DaimlerChrysler Corp.*, 644 F. 3d 909 (CA9 2011).

Daimler petitioned for rehearing and rehearing en banc, urging that the exercise of personal jurisdiction over Daimler could not be reconciled with this Court's decision in *Goodyear Dunlop Tires Operations, S. A.* v. *Brown*, 564 U. S. ___ (2011). Over the dissent of eight judges, the Ninth Circuit denied Daimler's petition. See *Bauman* v. *DaimlerChrysler Corp.*, 676 F. 3d 774 (2011) (O'Scannlain,

J., dissenting from denial of rehearing en banc).

We granted certiorari to decide whether, consistent with the Due Process Clause of the Fourteenth Amendment, Daimler is amenable to suit in California courts for claims involving only foreign plaintiffs and conduct occurring entirely abroad. 569 U. S. ___ (2013).

II

Federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons. See Fed. Rule Civ. Proc. 4(k)(1)(A) (service of process is effective to establish personal jurisdiction over a defendant "who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located"). Under California's long-arm statute, California state courts may exercise personal jurisdiction "on any basis not inconsistent with the Constitution of this state or of the United States." Cal. Civ. Proc. Code Ann. §410.10 (West 2004). California's long-arm statute allows the exercise of personal jurisdiction to the full extent permissible under the U. S. Constitution. We therefore inquire whether the Ninth Circuit's holding comports with the limits imposed by federal due process. See, *e.g., Burger King Corp.* v. *Rudzewicz*, 471 U. S. 462, 464 (1985).

III

In *Pennoyer* v. *Neff*, 95 U. S. 714 (1878), decided shortly after the enactment of the Fourteenth Amendment, the Court held that a tribunal's jurisdiction over persons reaches no farther than the geographic bounds of the forum. See *id.,* at 720 ("The authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established."). See also *Shaffer* v. *Heitner*, 433 U. S. 186, 197 (1977) (Under *Pennoyer*, "any attempt 'directly' to assert extraterritorial jurisdiction over persons or property would offend sister States and exceed the

inherent limits of the State's power."). In time, however, that strict territorial approach yielded to a less rigid understanding, spurred by "changes in the technology of transportation and communication, and the tremendous growth of interstate business activity." *Burnham* v. *Superior Court of Cal., County of Marin*, 495 U. S. 604, 617 (1990) (opinion of SCALIA, J.).

"The canonical opinion in this area remains *International Shoe [Co.* v. *Washington]*, 326 U. S. 310 [(1945)], in which we held that a State may authorize its courts to exercise personal jurisdiction over an out-of-state defendant if the defendant has 'certain minimum contacts with [the State] such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."'" *Goodyear*, 564 U. S., at ___ (slip op., at 6) (quoting *International Shoe*, 326 U. S., at 316). Following *International Shoe*, "the relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the States on which the rules of *Pennoyer* rest, became the central concern of the inquiry into personal jurisdiction." *Shaffer*, 433 U. S., at 204.

International Shoe's conception of "fair play and substantial justice" presaged the development of two categories of personal jurisdiction. The first category is represented by *International Shoe* itself, a case in which the in-state activities of the corporate defendant "ha[d] not only been continuous and systematic, but also g[a]ve rise to the liabilities sued on." 326 U. S., at 317.[4] *International Shoe* recognized, as well, that "the commission of some single or occasional acts of the corporate agent in a state" may sometimes be enough to subject the corporation to jurisdic-

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[4] *International Shoe* was an action by the State of Washington to collect payments to the State's unemployment fund. Liability for the payments rested on in-state activities of resident sales solicitors engaged by the corporation to promote its wares in Washington. See 326 U. S., at 313–314.

tion in that State's tribunals with respect to suits relating to that in-state activity. *Id.,* at 318. Adjudicatory authority of this order, in which the suit "aris[es] out of or relate[s] to the defendant's contacts with the forum," *Helicopteros Nacionales de Colombia, S. A.* v. *Hall*, 466 U. S. 408, 414, n. 8 (1984), is today called "specific jurisdiction." See *Goodyear*, 564 U. S., at ___ (slip op., at 7) (citing von Mehren & Trautman, Jurisdiction to Adjudicate: A Suggested Analysis, 79 Harv. L. Rev. 1121, 1144–1163 (1966) (hereinafter von Mehren & Trautman)).

International Shoe distinguished between, on the one hand, exercises of specific jurisdiction, as just described, and on the other, situations where a foreign corporation's "continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." 326 U. S., at 318. As we have since explained, "[a] court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Goodyear*, 564 U. S., at ___ (slip op., at 2); see *id.,* at ___ (slip op., at 7); *Helicopteros*, 466 U. S., at 414, n. 9.[5]

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[5] Colloquy at oral argument illustrated the respective provinces of general and specific jurisdiction over persons. Two hypothetical scenarios were posed: *First*, if a California plaintiff, injured in a California accident involving a Daimler-manufactured vehicle, sued Daimler in California court alleging that the vehicle was defectively designed, that court's adjudicatory authority would be premised on specific jurisdiction. See Tr. of Oral Arg. 11 (Daimler's counsel acknowledged that specific jurisdiction "may well be . . . available" in such a case, depending on whether Daimler purposefully availed itself of the forum). *Second*, if a similar accident took place in Poland and injured Polish plaintiffs sued Daimler in California court, the question would be one of general jurisdiction. See *id.,* at 29 (on plaintiffs' view, Daimler would be amenable to such a suit in California).

Since *International Shoe*, "specific jurisdiction has become the centerpiece of modern jurisdiction theory, while general jurisdiction [has played] a reduced role." *Goodyear*, 564 U. S., at ___ (slip op., at 8) (quoting Twitchell, The Myth of General Jurisdiction, 101 Harv. L. Rev. 610, 628 (1988)). *International Shoe*'s momentous departure from *Pennoyer*'s rigidly territorial focus, we have noted, unleashed a rapid expansion of tribunals' ability to hear claims against out-of-state defendants when the episode-in-suit occurred in the forum or the defendant purposefully availed itself of the forum.[6] Our subsequent decisions have continued to bear out the prediction that "specific jurisdiction will come into sharper relief and form a considerably more significant part of the scene." von Mehren & Trautman 1164.[7]

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[6] See *Shaffer* v. *Heitner*, 433 U. S. 186, 204 (1977) ("The immediate effect of [*International Shoe*'s] departure from *Pennoyer*'s conceptual apparatus was to increase the ability of the state courts to obtain personal jurisdiction over nonresident defendants."); *McGee* v. *International Life Ins. Co.*, 355 U. S. 220, 222 (1957) ("[A] trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents."). For an early codification, see Uniform Interstate and International Procedure Act §1.02 (describing jurisdiction based on "[e]nduring [r]elationship" to encompass a person's domicile or a corporation's place of incorporation or principal place of business, and providing that "any . . . claim for relief" may be brought in such a place), §1.03 (describing jurisdiction "[b]ased upon [c]onduct," limited to claims arising from the enumerated acts, *e.g.,* "transacting any business in th[e] state," "contracting to supply services or things in th[e] state," or "causing tortious injury by an act or omission in th[e] state"), 9B U. L. A. 308, 310 (1966).

[7] See, *e.g., Asahi Metal Industry Co.* v. *Superior Court of Cal., Solano Cty.*, 480 U. S. 102, 112 (1987) (opinion of O'Connor, J.) (specific jurisdiction may lie over a foreign defendant that places a product into the "stream of commerce" while also "designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State"); *World-Wide Volkswagen Corp.* v.

Our post-*International Shoe* opinions on general jurisdiction, by comparison, are few. "[The Court's] 1952 decision in *Perkins* v. *Benguet Consol. Mining Co.* remains the textbook case of general jurisdiction appropriately exercised over a foreign corporation that has not consented to suit in the forum." *Goodyear*, 564 U. S., at ___ (slip op., at 11) (internal quotation marks and brackets omitted). The defendant in *Perkins*, Benguet, was a company incorporated under the laws of the Philippines, where it operated gold and silver mines. Benguet ceased its mining operations during the Japanese occupation of the Philippines in World War II; its president moved to Ohio, where he kept an office, maintained the company's files, and oversaw the company's activities. *Perkins* v. *Benguet Consol. Mining Co.*, 342 U. S. 437, 448 (1952). The plaintiff, an Ohio resident, sued Benguet on a claim that neither arose in Ohio nor related to the corporation's activities in that State. We held that the Ohio courts could exercise general jurisdiction over Benguet without offending due process.

Woodson, 444 U. S. 286, 297 (1980) ("[I]f the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others."); *Calder* v. *Jones*, 465 U. S. 783, 789–790 (1984) (California court had specific jurisdiction to hear suit brought by California plaintiff where Florida-based publisher of a newspaper having its largest circulation in California published an article allegedly defaming the complaining Californian; under those circumstances, defendants "must 'reasonably anticipate being haled into [a California] court'"); *Keeton* v. *Hustler Magazine, Inc.*, 465 U. S. 770, 780–781 (1984) (New York resident may maintain suit for libel in New Hampshire state court against California-based magazine that sold 10,000 to 15,000 copies in New Hampshire each month; as long as the defendant "continuously and deliberately exploited the New Hampshire market," it could reasonably be expected to answer a libel suit there).

Ibid. That was so, we later noted, because "Ohio was the corporation's principal, if temporary, place of business." *Keeton* v. *Hustler Magazine, Inc.*, 465 U. S. 770, 780, n. 11 (1984).[8]

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[8] Selectively referring to the trial court record in *Perkins* (as summarized in an opinion of the intermediate appellate court), JUSTICE SOTOMAYOR posits that Benguet may have had extensive operations in places other than Ohio. See *post,* at 11–12, n. 8 (opinion concurring in judgment) ("By the time the suit [in *Perkins*] was commenced, the company had resumed its considerable operations in the Philippines," "rebuilding its properties there" and "purchasing machinery, supplies and equipment." (internal quotation marks omitted)). See also *post,* at 7–8, n. 5 (many of the corporation's "key management decisions" were made by the out-of-state purchasing agent and chief of staff). JUSTICE SOTOMAYOR's account overlooks this Court's opinion in *Perkins* and the point on which that opinion turned: All of Benguet's activities were directed by the company's president from within Ohio. See *Perkins* v. *Benguet Consol. Mining Co.*, 342 U. S. 437, 447–448 (1952) (company's Philippine mining operations "were completely halted during the occupation . . . by the Japanese"; and the company's president, from his Ohio office, "supervised policies dealing with the rehabilitation of the corporation's properties in the Philippines and . . . dispatched funds to cover purchases of machinery for such rehabilitation"). On another day, JUSTICE SOTOMAYOR joined a unanimous Court in recognizing: "To the extent that the company was conducting any business during and immediately after the Japanese occupation of the Philippines, it was doing so in Ohio . . . ." *Goodyear Dunlop Tires Operations, S. A.* v. *Brown*, 564 U. S. ___, ___ (2011) (slip op., at 11). Given the wartime circumstances, Ohio could be considered "a surrogate for the place of incorporation or head office." von Mehren & Trautman 1144. See also *ibid.* (*Perkins* "should be regarded as a decision on its exceptional facts, not as a significant reaffirmation of obsolescing notions of general jurisdiction" based on nothing more than a corporation's "doing business" in a forum).

JUSTICE SOTOMAYOR emphasizes *Perkins*' statement that Benguet's Ohio contacts, while "continuous and systematic," were but a "limited . . . part of its general business." 342 U. S., at 438. Describing the company's "wartime activities" as "necessarily limited," *id.,* at 448, however, this Court had in mind the diminution in operations resulting from the Japanese occupation and the ensuing shutdown of the company's Philippine mines. No fair reader of the full opinion in *Perkins* could conclude that the Court meant to convey anything other than

The next case on point, *Helicopteros,* 466 U. S. 408, arose from a helicopter crash in Peru. Four U. S. citizens perished in that accident; their survivors and representatives brought suit in Texas state court against the helicopter's owner and operator, a Colombian corporation. That company's contacts with Texas were confined to "sending its chief executive officer to Houston for a contract-negotiation session; accepting into its New York bank account checks drawn on a Houston bank; purchasing helicopters, equipment, and training services from [a Texas-based helicopter company] for substantial sums; and sending personnel to [Texas] for training." *Id.,* at 416. Notably, those contacts bore no apparent relationship to the accident that gave rise to the suit. We held that the company's Texas connections did not resemble the "continuous and systematic general business contacts . . . found to exist in *Perkins*." *Ibid.* "[M]ere purchases, even if occurring at regular intervals," we clarified, "are not enough to warrant a State's assertion of *in personam* jurisdiction over a nonresident corporation in a cause of action not related to those purchase transactions." *Id.,* at 418.

Most recently, in *Goodyear*, we answered the question: "Are foreign subsidiaries of a United States parent corporation amenable to suit in state court on claims unrelated to any activity of the subsidiaries in the forum State?" 564 U. S., at ___ (slip op., at 1). That case arose from a bus accident outside Paris that killed two boys from North Carolina. The boys' parents brought a wrongful-death suit in North Carolina state court alleging that the bus's tire was defectively manufactured. The complaint named as defendants not only The Goodyear Tire and Rubber Com-

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that Ohio was the center of the corporation's wartime activities. But cf. *post,* at 9 ("If anything, [*Perkins*] intimated that the defendant's Ohio contacts were *not* substantial in comparison to its contacts elsewhere.").

pany (Goodyear), an Ohio corporation, but also Goodyear's Turkish, French, and Luxembourgian subsidiaries. Those foreign subsidiaries, which manufactured tires for sale in Europe and Asia, lacked any affiliation with North Carolina. A small percentage of tires manufactured by the foreign subsidiaries were distributed in North Carolina, however, and on that ground, the North Carolina Court of Appeals held the subsidiaries amenable to the general jurisdiction of North Carolina courts.

We reversed, observing that the North Carolina court's analysis "elided the essential difference between case-specific and all-purpose (general) jurisdiction." *Id.,* at ___ (slip op., at 10). Although the placement of a product into the stream of commerce "may bolster an affiliation germane to *specific* jurisdiction," we explained, such contacts "do not warrant a determination that, based on those ties, the forum has *general* jurisdiction over a defendant." *Id.,* at ___ (slip op., at 10–11). As *International Shoe* itself teaches, a corporation's "continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity." 326 U. S., at 318. Because Goodyear's foreign subsidiaries were "in no sense at home in North Carolina," we held, those subsidiaries could not be required to submit to the general jurisdiction of that State's courts. 564 U. S., at ___ (slip op., at 13). See also *J. McIntyre Machinery, Ltd.* v. *Nicastro*, 564 U. S. ___, ___ (2011) (GINSBURG, J., dissenting) (slip op., at 7) (noting unanimous agreement that a foreign manufacturer, which engaged an independent U. S.-based distributor to sell its machines throughout the United States, could not be exposed to all-purpose jurisdiction in New Jersey courts based on those contacts).

As is evident from *Perkins*, *Helicopteros*, and *Goodyear*, general and specific jurisdiction have followed markedly different trajectories post-*International Shoe*. Specific jurisdiction has been cut loose from *Pennoyer*'s sway, but

we have declined to stretch general jurisdiction beyond limits traditionally recognized.[9] As this Court has increasingly trained on the "relationship among the defendant, the forum, and the litigation," *Shaffer*, 433 U. S., at 204, *i.e.,* specific jurisdiction,[10] general jurisdiction has come to occupy a less dominant place in the contemporary scheme.[11]

IV

With this background, we turn directly to the question

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[9] See generally von Mehren & Trautman 1177–1179. See also Twitchell, The Myth of General Jurisdiction, 101 Harv. L. Rev. 610, 676 (1988) ("[W]e do not need to justify broad exercises of dispute-blind jurisdiction unless our interpretation of the scope of specific jurisdiction unreasonably limits state authority over nonresident defendants."); Borchers, The Problem With General Jurisdiction, 2001 U. Chi. Legal Forum 119, 139 ("[G]eneral jurisdiction exists as an imperfect safety valve that sometimes allows plaintiffs access to a reasonable forum in cases when specific jurisdiction would deny it.").

[10] Remarkably, JUSTICE SOTOMAYOR treats specific jurisdiction as though it were barely there. Given the many decades in which specific jurisdiction has flourished, it would be hard to conjure up an example of the "deep injustice" JUSTICE SOTOMAYOR predicts as a consequence of our holding that California is not an all-purpose forum for suits against Daimler. *Post,* at 16. JUSTICE SOTOMAYOR identifies "the concept of reciprocal fairness" as the "touchstone principle of due process in this field." *Post,* at 10 (citing *International Shoe*, 326 U. S., at 319). She overlooks, however, that in the very passage of *International Shoe* on which she relies, the Court left no doubt that it was addressing specific—not general—jurisdiction. See *id.*, at 319 ("The exercise of th[e] privilege [of conducting corporate activities within a State] may give rise to obligations, and, *so far as those obligations arise out of or are connected with the activities within the state*, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." (emphasis added)).

[11] As the Court made plain in *Goodyear* and repeats here, general jurisdiction requires affiliations "so 'continuous and systematic' as to render [the foreign corporation] essentially at home in the forum State." 564 U. S., at ___ (slip op., at 2), *i.e.,* comparable to a domestic enterprise in that State.

whether Daimler's affiliations with California are sufficient to subject it to the general (all-purpose) personal jurisdiction of that State's courts. In the proceedings below, the parties agreed on, or failed to contest, certain points we now take as given. Plaintiffs have never attempted to fit this case into the *specific* jurisdiction category. Nor did plaintiffs challenge on appeal the District Court's holding that Daimler's own contacts with California were, by themselves, too sporadic to justify the exercise of general jurisdiction. While plaintiffs ultimately persuaded the Ninth Circuit to impute MBUSA's California contacts to Daimler on an agency theory, at no point have they maintained that MBUSA is an alter ego of Daimler.

Daimler, on the other hand, failed to object below to plaintiffs' assertion that the California courts could exercise all-purpose jurisdiction over MBUSA.[12] But see Brief for Petitioner 23, n. 4 (suggestion that in light of *Goodyear*, MBUSA may not be amenable to general jurisdiction in California); Brief for United States as *Amicus Curiae* 16, n. 5 (hereinafter U. S. Brief) (same). We will assume then, for purposes of this decision only, that MBUSA qualifies as at home in California.

A

In sustaining the exercise of general jurisdiction over Daimler, the Ninth Circuit relied on an agency theory, determining that MBUSA acted as Daimler's agent for jurisdictional purposes and then attributing MBUSA's California contacts to Daimler. The Ninth Circuit's agency analysis derived from Circuit precedent considering principally whether the subsidiary "performs services that are sufficiently important to the foreign corporation that if it did not have a representative to perform them, the

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[12] MBUSA is not a defendant in this case.

corporation's own officials would undertake to perform substantially similar services." 644 F. 3d, at 920 (quoting *Doe* v. *Unocal Corp.*, 248 F. 3d 915, 928 (CA9 2001); emphasis deleted).

This Court has not yet addressed whether a foreign corporation may be subjected to a court's general jurisdiction based on the contacts of its in-state subsidiary. Daimler argues, and several Courts of Appeals have held, that a subsidiary's jurisdictional contacts can be imputed to its parent only when the former is so dominated by the latter as to be its alter ego. The Ninth Circuit adopted a less rigorous test based on what it described as an "agency" relationship. Agencies, we note, come in many sizes and shapes: "One may be an agent for some business purposes and not others so that the fact that one may be an agent for one purpose does not make him or her an agent for every purpose." 2A C. J. S., Agency §43, p. 367 (2013) (footnote omitted).[13] A subsidiary, for example, might be

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[13] Agency relationships, we have recognized, may be relevant to the existence of *specific* jurisdiction. "[T]he corporate personality," *International Shoe Co.* v. *Washington*, 326 U. S. 310 (1945), observed, "is a fiction, although a fiction intended to be acted upon as though it were a fact." *Id.*, at 316. See generally 1 W. Fletcher, Cyclopedia of the Law of Corporations §30, p. 30 (Supp. 2012–2013) ("A corporation is a distinct legal entity that can act only through its agents."). As such, a corporation can purposefully avail itself of a forum by directing its agents or distributors to take action there. See, *e.g., Asahi*, 480 U. S., at 112 (opinion of O'Connor, J.) (defendant's act of "marketing [a] product through a distributor who has agreed to serve as the sales agent in the forum State" may amount to purposeful availment); *International Shoe*, 326 U. S., at 318 ("the commission of some single or occasional acts of the corporate agent in a state" may sometimes "be deemed sufficient to render the corporation liable to suit" on related claims). See also Brief for Petitioner 24 (acknowledging that "an agency relationship may be sufficient in some circumstances to give rise to *specific* jurisdiction"). It does not inevitably follow, however, that similar reasoning applies to *general* jurisdiction. Cf. *Goodyear*, 564 U. S., at ___ (slip op., at 10) (faulting analysis that "elided the essential difference between case-specific and all-purpose (general) jurisdiction").

its parent's agent for claims arising in the place where the subsidiary operates, yet not its agent regarding claims arising elsewhere. The Court of Appeals did not advert to that prospect. But we need not pass judgment on invocation of an agency theory in the context of general jurisdiction, for in no event can the appeals court's analysis be sustained.

The Ninth Circuit's agency finding rested primarily on its observation that MBUSA's services were "important" to Daimler, as gauged by Daimler's hypothetical readiness to perform those services itself if MBUSA did not exist. Formulated this way, the inquiry into importance stacks the deck, for it will always yield a pro-jurisdiction answer: "Anything a corporation does through an independent contractor, subsidiary, or distributor is presumably something that the corporation would do 'by other means' if the independent contractor, subsidiary, or distributor did not exist." 676 F. 3d, at 777 (O'Scannlain, J., dissenting from denial of rehearing en banc).[14] The Ninth Circuit's agency theory thus appears to subject foreign corporations to general jurisdiction whenever they have an in-state subsidiary or affiliate, an outcome that would sweep beyond even the "sprawling view of general jurisdiction" we rejected in *Goodyear*. 564 U. S., at ___ (slip op., at 12).[15]

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[14] Indeed, plaintiffs do not defend this aspect of the Ninth Circuit's analysis. See Brief for Respondents 39, n. 18 ("We do not believe that this gloss is particularly helpful.").

[15] The Ninth Circuit's agency analysis also looked to whether the parent enjoys "the right to substantially control" the subsidiary's activities. *Bauman* v. *DaimlerChrysler Corp.*, 644 F. 3d 909, 924 (2011). The Court of Appeals found the requisite "control" demonstrated by the General Distributor Agreement between Daimler and MBUSA, which gives Daimler the right to oversee certain of MBUSA's operations, even though that agreement expressly disavowed the creation of any agency relationship. Thus grounded, the separate inquiry into control hardly curtails the overbreadth of the Ninth Circuit's agency holding.

B

Even if we were to assume that MBUSA is at home in California, and further to assume MBUSA's contacts are imputable to Daimler, there would still be no basis to subject Daimler to general jurisdiction in California, for Daimler's slim contacts with the State hardly render it at home there.[16]

Goodyear made clear that only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there. "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home." 564 U. S., at ___ (slip op., at 7) (citing Brilmayer et al., A General Look at General Jurisdiction, 66 Texas L. Rev. 721, 728 (1988)). With respect to a corpora-

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[16] By addressing this point, JUSTICE SOTOMAYOR asserts, we have strayed from the question on which we granted certiorari to decide an issue not argued below. *Post,* at 5–6. That assertion is doubly flawed. First, the question on which we granted certiorari, as stated in Daimler's petition, is "whether it violates due process for a court to exercise general personal jurisdiction over a foreign corporation based solely on the fact that an indirect corporate subsidiary performs services on behalf of the defendant in the forum State." Pet. for Cert. i. That question fairly encompasses an inquiry into whether, in light of *Goodyear*, Daimler can be considered at home in California based on MBUSA's in-state activities. See also this Court's Rule 14.1(a) (a party's statement of the question presented "is deemed to comprise every subsidiary question fairly included therein"). Moreover, both in the Ninth Circuit, see, *e.g.,* Brief for Federation of German Industries et al. as *Amici Curiae* in No. 07–15386 (CA9), p. 3, and in this Court, see, *e.g.,* U. S. Brief 13–18; Brief for Chamber of Commerce of United States of America et al. as *Amici Curiae* 6–23; Brief for Lea Brilmayer as *Amica Curiae* 10–12, *amici* in support of Daimler homed in on the insufficiency of Daimler's California contacts for general jurisdiction purposes. In short, and in light of our pathmarking opinion in *Goodyear*, we perceive no unfairness in deciding today that California is not an all-purpose forum for claims against Daimler.

tion, the place of incorporation and principal place of business are "paradig[m] . . . bases for general jurisdiction." *Id.*, at 735. See also Twitchell, 101 Harv. L. Rev., at 633. Those affiliations have the virtue of being unique—that is, each ordinarily indicates only one place—as well as easily ascertainable. Cf. *Hertz Corp.* v. *Friend*, 559 U. S. 77, 94 (2010) ("Simple jurisdictional rules . . . promote greater predictability."). These bases afford plaintiffs recourse to at least one clear and certain forum in which a corporate defendant may be sued on any and all claims.

Goodyear did not hold that a corporation may be subject to general jurisdiction *only* in a forum where it is incorporated or has its principal place of business; it simply typed those places paradigm all-purpose forums. Plaintiffs would have us look beyond the exemplar bases *Goodyear* identified, and approve the exercise of general jurisdiction in every State in which a corporation "engages in a substantial, continuous, and systematic course of business." Brief for Respondents 16–17, and nn. 7–8. That formulation, we hold, is unacceptably grasping.

As noted, see *supra,* at 7–8, the words "continuous and systematic" were used in *International Shoe* to describe instances in which the exercise of *specific* jurisdiction would be appropriate. See 326 U. S., at 317 (jurisdiction can be asserted where a corporation's in-state activities are not only "continuous and systematic, but also give rise to the liabilities sued on").[17] Turning to all-purpose jurisdiction, in contrast, *International Shoe* speaks of "instances in which the continuous corporate operations within a state [are] so substantial and of such a nature as to justify

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[17] *International Shoe* also recognized, as noted above, see *supra,* at 7–8, that "some single or occasional acts of the corporate agent in a state . . . , because of their nature and quality and the circumstances of their commission, may be deemed sufficient to render the corporation liable to suit." 326 U. S., at 318.

suit . . . *on causes of action arising from dealings entirely distinct from those activities*." *Id.,* at 318 (emphasis added). See also Twitchell, Why We Keep Doing Business With Doing-Business Jurisdiction, 2001 U. Chi. Legal Forum 171, 184 (*International Shoe* "is clearly not saying that dispute-blind jurisdiction exists whenever 'continuous and systematic' contacts are found.").[18] Accordingly, the inquiry under *Goodyear* is not whether a foreign corporation's in-forum contacts can be said to be in some sense "continuous and systematic," it is whether that corporation's "affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State." 564 U. S., at ___ (slip op., at 2).[19]

Here, neither Daimler nor MBUSA is incorporated in

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[18] Plaintiffs emphasize two decisions, *Barrow S. S. Co.* v. *Kane*, 170 U. S. 100 (1898), and *Tauza* v. *Susquehanna Coal Co.*, 220 N. Y. 259, 115 N. E. 915 (1917) (Cardozo, J.), both cited in *Perkins* v. *Benguet Consol. Mining Co.*, 342 U. S. 437 (1952), just after the statement that a corporation's continuous operations in-state may suffice to establish general jurisdiction. *Id.*, at 446, and n. 6. See also *International Shoe*, 326 U. S., at 318 (citing *Tauza*). *Barrow* and *Tauza* indeed upheld the exercise of general jurisdiction based on the presence of a local office, which signaled that the corporation was "doing business" in the forum. *Perkins'* unadorned citations to these cases, both decided in the era dominated by *Pennoyer*'s territorial thinking, see *supra,* at 6–7, should not attract heavy reliance today. See generally Feder, *Goodyear*, "Home," and the Uncertain Future of Doing Business Jurisdiction, 63 S. C. L. Rev. 671 (2012) (questioning whether "doing business" should persist as a basis for general jurisdiction).

[19] We do not foreclose the possibility that in an exceptional case, see, *e.g., Perkins*, described *supra,* at 10–12, and n. 8, a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State. But this case presents no occasion to explore that question, because Daimler's activities in California plainly do not approach that level. It is one thing to hold a corporation answerable for operations in the forum State, see *infra*, at 23, quite another to expose it to suit on claims having no connection whatever to the forum State.

California, nor does either entity have its principal place of business there. If Daimler's California activities sufficed to allow adjudication of this Argentina-rooted case in California, the same global reach would presumably be available in every other State in which MBUSA's sales are sizable. Such exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants "to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Burger King Corp.*, 471 U. S., at 472 (internal quotation marks omitted).

It was therefore error for the Ninth Circuit to conclude that Daimler, even with MBUSA's contacts attributed to it, was at home in California, and hence subject to suit there on claims by foreign plaintiffs having nothing to do with anything that occurred or had its principal impact in California.[20]

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[20] To clarify in light of JUSTICE SOTOMAYOR's opinion concurring in the judgment, the general jurisdiction inquiry does not "focu[s] solely on the magnitude of the defendant's in-state contacts." *Post,* at 8. General jurisdiction instead calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide. A corporation that operates in many places can scarcely be deemed at home in all of them. Otherwise, "at home" would be synonymous with "doing business" tests framed before specific jurisdiction evolved in the United States. See von Mehren & Trautman 1142–1144. Nothing in *International Shoe* and its progeny suggests that "a particular quantum of local activity" should give a State authority over a "far larger quantum of . . . activity" having no connection to any in-state activity. Feder, *supra,* at 694.

JUSTICE SOTOMAYOR would reach the same result, but for a different reason. Rather than concluding that Daimler is not at home in California, JUSTICE SOTOMAYOR would hold that the exercise of general jurisdiction over Daimler would be unreasonable "in the unique circumstances of this case." *Post,* at 1. In other words, she favors a resolution fit for this day and case only. True, a multipronged reasonableness check was articulated in *Asahi*, 480 U. S., at 113–114, but not as a free-floating test. Instead, the check was to be essayed when *specific* jurisdiction is at issue. See also *Burger King Corp.* v. *Rudzewicz*, 471 U. S. 462, 476–478 (1985). First, a court is to determine whether the

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Finally, the transnational context of this dispute bears attention. The Court of Appeals emphasized, as supportive of the exercise of general jurisdiction, plaintiffs' assertion of claims under the Alien Tort Statute (ATS), 28 U. S. C. §1350, and the Torture Victim Protection Act of 1991 (TVPA), 106 Stat. 73, note following 28 U. S. C. §1350. See 644 F. 3d, at 927 ("American federal courts, be they in California or any other state, have a strong interest in adjudicating and redressing international human rights abuses."). Recent decisions of this Court, however, have rendered plaintiffs' ATS and TVPA claims infirm. See *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U. S. ___, ___ (2013) (slip op., at 14) (presumption against extraterritorial application controls claims under the ATS); *Mohamad* v. *Palestinian Authority*, 566 U. S. ___, ___ (2012)

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connection between the forum and the episode-in-suit could justify the exercise of specific jurisdiction. Then, in a second step, the court is to consider several additional factors to assess the reasonableness of entertaining the case. When a corporation is genuinely at home in the forum State, however, any second-step inquiry would be superfluous.

JUSTICE SOTOMAYOR fears that our holding will "lead to greater unpredictability by radically expanding the scope of jurisdictional discovery." *Post,* at 14. But it is hard to see why much in the way of discovery would be needed to determine where a corporation is at home. JUSTICE SOTOMAYOR's proposal to import *Asahi*'s "reasonableness" check into the general jurisdiction determination, on the other hand, would indeed compound the jurisdictional inquiry. The reasonableness factors identified in *Asahi* include "the burden on the defendant," "the interests of the forum State," "the plaintiff's interest in obtaining relief," "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," "the shared interest of the several States in furthering fundamental substantive social policies," and, in the international context, "the procedural and substantive policies of other *nations* whose interests are affected by the assertion of jurisdiction." 480 U. S., at 113–115 (some internal quotation marks omitted). Imposing such a checklist in cases of general jurisdiction would hardly promote the efficient disposition of an issue that should be resolved expeditiously at the outset of litigation.

(slip op., at 1) (only natural persons are subject to liability under the TVPA).

The Ninth Circuit, moreover, paid little heed to the risks to international comity its expansive view of general jurisdiction posed. Other nations do not share the uninhibited approach to personal jurisdiction advanced by the Court of Appeals in this case. In the European Union, for example, a corporation may generally be sued in the nation in which it is "domiciled," a term defined to refer only to the location of the corporation's "statutory seat," "central administration," or "principal place of business." European Parliament and Council Reg. 1215/2012, Arts. 4(1), and 63(1), 2012 O. J. (L. 351) 7, 18. See also *id.*, Art. 7(5), 2012 O. J. 7 (as to "a dispute *arising out of the operations of a branch, agency or other establishment*," a corporation may be sued "in the courts for the place where the branch, agency or other establishment is situated" (emphasis added)). The Solicitor General informs us, in this regard, that "foreign governments' objections to some domestic courts' expansive views of general jurisdiction have in the past impeded negotiations of international agreements on the reciprocal recognition and enforcement of judgments." U. S. Brief 2 (citing Juenger, The American Law of General Jurisdiction, 2001 U. Chi. Legal Forum 141, 161–162). See also U. S. Brief 2 (expressing concern that unpredictable applications of general jurisdiction based on activities of U. S.-based subsidiaries could discourage foreign investors); Brief for Respondents 35 (acknowledging that "doing business" basis for general jurisdiction has led to "international friction"). Considerations of international rapport thus reinforce our determination that subjecting Daimler to the general jurisdiction of courts in California would not accord with the "fair play and substantial justice" due process demands. *International Shoe*, 326 U. S., at 316 (quoting *Milliken* v. *Meyer*, 311 U. S. 457, 463 (1940)).

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For the reasons stated, the judgment of the United States Court of Appeals for the Ninth Circuit is

Reversed.

SUPREME COURT OF THE UNITED STATES

No. 11–965

DAIMLER AG, PETITIONER *v.* BARBARA BAUMAN ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[January 14, 2014]

JUSTICE SOTOMAYOR, concurring in the judgment.

I agree with the Court's conclusion that the Due Process Clause prohibits the exercise of personal jurisdiction over Daimler in light of the unique circumstances of this case. I concur only in the judgment, however, because I cannot agree with the path the Court takes to arrive at that result.

The Court acknowledges that Mercedes-Benz USA, LLC (MBUSA), Daimler's wholly owned subsidiary, has considerable contacts with California. It has multiple facilities in the State, including a regional headquarters. Each year, it distributes in California tens of thousands of cars, the sale of which generated billions of dollars in the year this suit was brought. And it provides service and sales support to customers throughout the State. Daimler has conceded that California courts may exercise general jurisdiction over MBUSA on the basis of these contacts, and the Court assumes that MBUSA's contacts may be attributed to Daimler for the purpose of deciding whether Daimler is also subject to general jurisdiction.

Are these contacts sufficient to permit the exercise of general jurisdiction over Daimler? The Court holds that they are not, for a reason wholly foreign to our due process jurisprudence. The problem, the Court says, is not that Daimler's contacts with California are too few, but that its

contacts with other forums are too many. In other words, the Court does not dispute that the presence of multiple offices, the direct distribution of thousands of products accounting for billions of dollars in sales, and continuous interaction with customers throughout a State would be enough to support the exercise of general jurisdiction over some businesses. Daimler is just not one of those businesses, the Court concludes, because its California contacts must be viewed in the context of its extensive "nationwide and worldwide" operations. *Ante,* at 21, n. 20. In recent years, Americans have grown accustomed to the concept of multinational corporations that are supposedly "too big to fail"; today the Court deems Daimler "too big for general jurisdiction."

The Court's conclusion is wrong as a matter of both process and substance. As to process, the Court decides this case on a ground that was neither argued nor passed on below, and that Daimler raised for the first time in a footnote to its brief. Brief for Petitioner 31–32, n. 5. As to substance, the Court's focus on Daimler's operations outside of California ignores the lodestar of our personal jurisdiction jurisprudence: A State may subject a defendant to the burden of suit if the defendant has sufficiently taken advantage of the State's laws and protections through its contacts in the State; whether the defendant has contacts elsewhere is immaterial.

Regrettably, these errors are unforced. The Court can and should decide this case on the far simpler ground that, no matter how extensive Daimler's contacts with California, that State's exercise of jurisdiction would be unreasonable given that the case involves foreign plaintiffs suing a foreign defendant based on foreign conduct, and given that a more appropriate forum is available. Because I would reverse the judgment below on this ground, I concur in the judgment only.

I

I begin with the point on which the majority and I agree: The Ninth Circuit's decision should be reversed.

Our personal jurisdiction precedents call for a two-part analysis. The contacts prong asks whether the defendant has sufficient contacts with the forum State to support personal jurisdiction; the reasonableness prong asks whether the exercise of jurisdiction would be unreasonable under the circumstances. *Burger King Corp.* v. *Rudzewicz*, 471 U. S. 462, 475–478 (1985). As the majority points out, all of the cases in which we have applied the reasonableness prong have involved specific as opposed to general jurisdiction. *Ante,* at 21, n. 20. Whether the reasonableness prong should apply in the general jurisdiction context is therefore a question we have never decided,[1] and it is one on which I can appreciate the arguments on both sides. But it would be imprudent to decide that question in this case given that respondents have failed to argue against the application of the reasonableness prong during the entire 8-year history of this litigation. See Brief for Respondents 11, 12, 13, 16 (conceding application

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[1]The Courts of Appeals have uniformly held that the reasonableness prong does in fact apply in the general jurisdiction context. See *Metropolitan Life Ins. Co.* v. *Robertson-Ceco Corp.*, 84 F. 3d 560, 573 (CA2 1996) ("[E]very circuit that has considered the question has held, implicitly or explicitly, that the reasonableness inquiry is applicable to *all* questions of personal jurisdiction, general or specific"); see also, *e.g., Lakin* v. *Prudential Securities, Inc.*, 348 F. 3d 704, 713 (CA8 2003); *Base Metal Trading, Ltd.* v. *OJSC "Novokuznetsky Aluminum Factory*," 283 F. 3d 208, 213–214 (CA4 2002); *Trierwelier* v. *Croxton & Trench Holding Corp.*, 90 F. 3d 1523, 1533 (CA10 1996); *Amoco Egypt Oil Co.* v. *Leonis Navigation Co.*, 1 F. 3d 848, 851, n. 2 (CA9 1993); *Donatelli* v. *National Hockey League*, 893 F. 2d 459, 465 (CA1 1990); *Bearry* v. *Beech Aircraft Corp.*, 818 F. 2d 370, 377 (CA5 1987). Without the benefit of a single page of briefing on the issue, the majority casually adds each of these cases to the mounting list of decisions jettisoned as a consequence of today's ruling. See *ante,* at 21, n. 20.

of the reasonableness inquiry); Plaintiffs' Opposition to Defendant's Motion to Quash Service of Process and to Dismiss for Lack of Personal Jurisdiction in No. 04–00194–RMW (ND Cal., May 16, 2005), pp. 14–23 (same). As a result, I would decide this case under the reasonableness prong without foreclosing future consideration of whether that prong should be limited to the specific jurisdiction context.[2]

We identified the factors that bear on reasonableness in *Asahi Metal Industry Co.* v. *Superior Court of Cal., Solano Cty.*, 480 U. S. 102 (1987): "the burden on the defendant, the interests of the forum State," "the plaintiff's interest in obtaining relief" in the forum State, and the interests of other sovereigns in resolving the dispute. *Id.,* at 113–114. We held in *Asahi* that it would be "unreasonable and unfair" for a California court to exercise jurisdiction over a claim between a Taiwanese plaintiff and a Japanese defendant that arose out of a transaction in Taiwan, particularly where the Taiwanese plaintiff had not shown that it would be more convenient to litigate in California than in Taiwan or Japan. *Id.,* at 114.

The same considerations resolve this case. It involves Argentine plaintiffs suing a German defendant for conduct that took place in Argentina. Like the plaintiffs in *Asahi*, respondents have failed to show that it would be more convenient to litigate in California than in Germany, a

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[2] While our decisions rejecting the exercise of personal jurisdiction have typically done so under the minimum-contacts prong, we have never required that prong to be decided first. See *Asahi Metal Industry Co.* v. *Superior Court of Cal., Solano Cty.*, 480 U. S. 102, 121 (1987) (Stevens, J., concurring in part and concurring in judgment) (rejecting personal jurisdiction under the reasonableness prong and declining to consider the minimum-contacts prong because doing so would not be "necessary"). And although the majority frets that deciding this case on the reasonableness ground would be "a resolution fit for this day and case only," *ante*, at 21, n. 20, I do not understand our constitutional duty to require otherwise.

sovereign with a far greater interest in resolving the dispute. *Asahi* thus makes clear that it would be unreasonable for a court in California to subject Daimler to its jurisdiction.

II

The majority evidently agrees that, if the reasonableness prong were to apply, it would be unreasonable for California courts to exercise jurisdiction over Daimler in this case. See *ante*, at 20–21 (noting that it would be "exorbitant" for California courts to exercise general jurisdiction over Daimler, a German defendant, in this "Argentina-rooted case" brought by "foreign plaintiffs"). But instead of resolving the case on this uncontroversial basis, the majority reaches out to decide it on a ground neither argued nor decided below.[3]

We generally do not pass on arguments that lower courts have not addressed. See, *e.g., Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7 (2005). After all, "we are a court of review, not of first view." *Ibid.* This principle carries even greater force where the argument at issue was never pressed below. See *Glover* v. *United States*, 531 U. S. 198, 205 (2001). Yet the majority disregards this principle, basing its decision on an argument raised for the first time

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[3]The majority appears to suggest that Daimler may have presented the argument in its petition for rehearing en banc before the Ninth Circuit. See *ante,* at 5 (stating that Daimler "urg[ed] that the exercise of personal jurisdiction . . . could not be reconciled with this Court's decision in *Goodyear Dunlop Tires Operations, S. A.* v. *Brown*, 564 U. S. ___ (2011)"). But Daimler's petition for rehearing did not argue what the Court holds today. The Court holds that Daimler's California contacts would be insufficient for general jurisdiction even assuming that MBUSA's contacts may be attributed to Daimler. Daimler's rehearing petition made a distinct argument—that attribution of MBUSA's contacts should not be permitted under an "'agency' theory" because doing so would "rais[e] significant constitutional concerns" under *Goodyear*. Petition for Rehearing or Rehearing En Banc in No. 07–15386 (CA9), p. 9.

in a footnote of Daimler's merits brief before this Court. Brief for Petitioner 32, n. 5 ("Even if MBUSA were a division of Daimler AG rather than a separate corporation, Daimler AG would still . . . not be 'at home' in California").

The majority's decision is troubling all the more because the parties were not asked to brief this issue. We granted certiorari on the question "whether it violates due process for a court to exercise general personal jurisdiction over a foreign corporation based solely on the fact that an indirect corporate subsidiary performs services on behalf of the defendant in the forum State." Pet. for Cert. i. At no point in Daimler's petition for certiorari did the company contend that, even if this attribution question were decided against it, its contacts in California would still be insufficient to support general jurisdiction. The parties' merits briefs accordingly focused on the attribution-of-contacts question, addressing the reasonableness inquiry (which had been litigated and decided below) in most of the space that remained. See Brief for Petitioner 17–37, 37–43; Brief for Respondents 18–47, 47–59.

In bypassing the question on which we granted certiorari to decide an issue not litigated below, the Court leaves respondents "without an unclouded opportunity to air the issue the Court today decides against them," *Comcast Corp.* v. *Behrend*, 569 U. S. ___, ___ (2013) (GINSBURG and BREYER, JJ., dissenting) (slip op., at 3). Doing so "does 'not reflect well on the processes of the Court.'" *Ibid.* (quoting *Redrup* v. *New York*, 386 U. S. 767, 772 (1967) (Harlan, J., dissenting)). "And by resolving a complex and fact-intensive question without the benefit of full briefing, the Court invites the error into which it has fallen." 569 U. S., at ___ (slip op., at 3).

The relevant facts are undeveloped because Daimler conceded at the start of this litigation that MBUSA is subject to general jurisdiction based on its California contacts. We therefore do not know the full extent of those

contacts, though what little we do know suggests that Daimler was wise to concede what it did. MBUSA imports more than 200,000 vehicles into the United States and distributes many of them to independent dealerships in California, where they are sold. Declaration of Dr. Peter Waskönig in *Bauman* v. *DaimlerChrysler Corp.*, No. 04–00194–RMW (ND Cal.), ¶ 10, p. 2. MBUSA's California sales account for 2.4% of Daimler's worldwide sales, which were $192 billion in 2004.[4] And 2.4% of $192 billion is $4.6 billion, a considerable sum by any measure. MBUSA also has multiple offices and facilities in California, including a regional headquarters.

But the record does not answer a number of other important questions. Are any of Daimler's key files maintained in MBUSA's California offices? How many employees work in those offices? Do those employees make important strategic decisions or oversee in any manner Daimler's activities? These questions could well affect whether Daimler is subject to general jurisdiction. After all, this Court upheld the exercise of general jurisdiction in *Perkins* v. *Benguet Consol. Mining Co.*, 342 U. S. 437, 447–448 (1952)—which the majority refers to as a "textbook case" of general jurisdiction, *ante*, at 10—on the basis that the foreign defendant maintained an office in Ohio, kept corporate files there, and oversaw the company's activities from the State. California-based MBUSA employees may well have done similar things on Daimler's behalf.[5] But because the Court decides the issue without a

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[4] See DaimlerChrysler, Innovations for our Customers: Annual Report 2004, p. 22, http://www.daimler.com/Projects/c2c/channel/documents/1364377_2004_DaimlerChrysler_Annual_Report.pdf (as visited on Jan. 8, 2014, and available in Clerk of Court's case file).

[5] To be sure, many of Daimler's key management decisions are undoubtedly made by employees outside California. But the same was true in *Perkins*. See *Perkins* v. *Benguet Consol. Min. Co.*, 88 Ohio App. 118, 124, 95 N. E. 2d 5, 8 (1950) (*per curiam*) (describing management

developed record, we will never know.

III

While the majority's decisional process is problematic enough, I fear that process leads it to an even more troubling result.

A

Until today, our precedents had established a straightforward test for general jurisdiction: Does the defendant have "continuous corporate operations within a state" that are "so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities"? *International Shoe Co.* v. *Washington*, 326 U. S. 310, 318 (1945); see also *Helicopteros Nacionales de Colombia, S. A.* v. *Hall*, 466 U. S. 408, 416 (1984) (asking whether defendant had "continuous and systematic general business contacts").[6] In every case where we have applied this test, we have focused solely on the magnitude of the defendant's in-state contacts, not the relative magnitude of those contacts in comparison to the defendant's contacts with other States.

In *Perkins*, for example, we found an Ohio court's exer-

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decisions made by the company's chief of staff in Manila and a purchasing agent in California); see also n. 8, *infra.*

[6] While *Helicopteros* formulated the general jurisdiction inquiry as asking whether a foreign defendant possesses "continuous and systematic general business contacts," 466 U. S., at 416, the majority correctly notes*, ante,* at 19, that *International Shoe* used the phrase "continuous and systematic" in the context of discussing specific jurisdiction, 326 U. S., at 317. But the majority recognizes that *International Shoe* separately described the type of contacts needed for general jurisdiction as "continuous corporate operations" that are "so substantial" as to justify suit on unrelated causes of action. *Id.*, at 318. It is unclear why our precedents departed from *International Shoe*'s "continuous and substantial" formulation in favor of the "continuous and systematic" formulation, but the majority does not contend—nor do I perceive—that there is a material difference between the two.

cise of general jurisdiction permissible where the president of the foreign defendant "maintained an office," "drew and distributed . . . salary checks," used "two active bank accounts," "supervised . . . the rehabilitation of the corporation's properties in the Philippines," and held "directors' meetings," in Ohio. 342 U. S., at 447–448. At no point did we attempt to catalog the company's contacts in forums other than Ohio or to compare them with its Ohio contacts. If anything, we intimated that the defendant's Ohio contacts were *not* substantial in comparison to its contacts elsewhere. See *id.*, at 438 (noting that the defendant's Ohio contacts, while "continuous and systematic," were but a "limited . . . part of its general business").[7]

We engaged in the same inquiry in *Helicopteros*. There, we held that a Colombian corporation was not subject to general jurisdiction in Texas simply because it occasionally sent its employees into the State, accepted checks drawn on a Texas bank, and purchased equipment and services from a Texas company. In no sense did our analysis turn on the extent of the company's operations beyond

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[7] The majority suggests that I misinterpret language in *Perkins* that I do not even cite. *Ante*, at 11, n. 8. The majority is quite correct that it has found a sentence in *Perkins* that does not address whether most of the Philippine corporation's activities took place outside of Ohio. See *ante*, at 11, n. 8 (noting that *Perkins* described the company's "wartime activities" as "necessarily limited," 342 U. S., at 448). That is why I did not mention it. I instead rely on a sentence in *Perkins*' opening paragraph: "The [Philippine] corporation has been carrying on in Ohio a continuous and systematic, but limited, part of its general business." *Id.*, at 438. That sentence obviously does convey that most of the corporation's activities occurred in "places other than Ohio," *ante*, at 11, n. 8. This is not surprising given that the company's Ohio contacts involved a single officer working from a home office, while its non-Ohio contacts included significant mining properties and machinery operated throughout the Philippines, Philippine employees (including a chief of staff), a purchasing agent based in California, and board of directors meetings held in Washington, New York, and San Francisco. *Perkins*, 88 Ohio App., at 123–124, 95 N. E. 2d, at 8; see also n. 8, *infra.*

Texas.

Most recently, in *Goodyear Dunlop Tires Operations, S. A.* v. *Brown*, 564 U. S. ___ (2011), our analysis again focused on the defendant's in-state contacts. *Goodyear* involved a suit against foreign tire manufacturers by North Carolina residents whose children had died in a bus accident in France. We held that North Carolina courts could not exercise general jurisdiction over the foreign defendants. Just as in *Perkins* and *Helicopteros*, our opinion in *Goodyear* did not identify the defendants' contacts outside of the forum State, but focused instead on the defendants' lack of offices, employees, direct sales, and business operations within the State.

This approach follows from the touchstone principle of due process in this field, the concept of reciprocal fairness. When a corporation chooses to invoke the benefits and protections of a State in which it operates, the State acquires the authority to subject the company to suit in its courts. See *International Shoe*, 326 U. S., at 319 ("[T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state" such that an "obligatio[n] arise[s]" to respond there to suit); *J. McIntyre Machinery, Ltd.* v. *Nicastro*, 564 U. S. ___, ___ (2011) (plurality opinion) (slip op., at 5) (same principle for general jurisdiction). The majority's focus on the extent of a corporate defendant's out-of-forum contacts is untethered from this rationale. After all, the degree to which a company intentionally benefits from a forum State depends on its interactions with that State, not its interactions elsewhere. An article on which the majority relies (and on which *Goodyear* relied as well, 564 U. S., at ___ (slip op., at 7)) expresses the point well: "We should not treat defendants as less amenable to suit merely because they carry on more substantial business in other states . . . . [T]he amount of activity elsewhere seems virtually irrele-

vant to . . . the imposition of general jurisdiction over a defendant." Brilmayer et al., A General Look at General Jurisdiction, 66 Texas L. Rev. 721, 742 (1988).

Had the majority applied our settled approach, it would have had little trouble concluding that Daimler's California contacts rise to the requisite level, given the majority's assumption that MBUSA's contacts may be attributed to Daimler and given Daimler's concession that those contacts render MBUSA "at home" in California. Our cases have long stated the rule that a defendant's contacts with a forum State must be continuous, substantial, and systematic in order for the defendant to be subject to that State's general jurisdiction. See *Perkins*, 342 U. S., at 446. We offered additional guidance in *Goodyear*, adding the phrase "essentially at home" to our prior formulation of the rule. 564 U. S., at ___ (slip op., at 2) (a State may exercise general jurisdiction where a defendant's "affiliations with the State are so 'continuous and systematic' as to render [the defendant] essentially at home in the forum State"). We used the phrase "at home" to signify that in order for an out-of-state defendant to be subject to general jurisdiction, its continuous and substantial contacts with a forum State must be akin to those of a local enterprise that actually is "at home" in the State. See Brilmayer, *supra,* at 742.[8]

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[8]The majority views the phrase "at home" as serving a different purpose—that of requiring a comparison between a defendant's in-state and out-of-state contacts. *Ante,* at 21, n. 20. That cannot be the correct understanding though, because among other things it would cast grave doubt on *Perkins*—a case that *Goodyear* pointed to as an exemplar of general jurisdiction, 564 U. S., at ___ (slip op., at 11). For if *Perkins* had applied the majority's newly minted proportionality test, it would have come out the other way.

The majority apparently thinks that the Philippine corporate defendant in *Perkins* did not have meaningful operations in places other than Ohio. See *ante*, at 10–11, and n. 8. But one cannot get past the second sentence of *Perkins* before realizing that is wrong. That sentence reads:

Under this standard, Daimler's concession that MBUSA is subject to general jurisdiction in California (a concession the Court accepts, *ante,* at 15, 17) should be dispositive. For if MBUSA's California contacts are so substantial and the resulting benefits to MBUSA so significant as to make MBUSA "at home" in California, the same must be true of Daimler when MBUSA's contacts and benefits are viewed as its own. Indeed, until a footnote in its brief before this Court, even Daimler did not dispute this conclusion for eight years of the litigation.

B

The majority today concludes otherwise. Referring to

"The corporation has been carrying on in Ohio a continuous and systematic, but limited, part of its general business." 342 U. S., at 438. Indeed, the facts of the case set forth by the Ohio Court of Appeals show just how "limited" the company's Ohio contacts—which included a single officer keeping files and managing affairs from his Ohio home office—were in comparison with its "general business" operations elsewhere. By the time the suit was commenced, the company had resumed its considerable mining operations in the Philippines, "'rebuilding its properties' " there and purchasing " 'machinery, supplies and equipment.' " 88 Ohio App., at 123–124, 95 N. E. 2d, at 8. Moreover, the company employed key managers in other forums, including a purchasing agent in San Francisco and a chief of staff in the Philippines. *Id.*, at 124, 95 N. E. 2d, at 8. The San Francisco purchasing agent negotiated the purchase of the company's machinery and supplies "'on the direction of the Company's Chief of Staff in Manila,'" *ibid.,* a fact that squarely refutes the majority's assertion that "[a]ll of Benguet's activities were directed by the company's president from within Ohio," *ante,* at 11, n. 8. And the vast majority of the company's board of directors meetings took place outside Ohio, in locations such as Washington, New York, and San Francisco. 88 Ohio App., at 125, 94 N. E. 2d, at 8.

In light of these facts, it is all but impossible to reconcile the result in *Perkins* with the proportionality test the majority announces today. *Goodyear*'s use of the phrase "at home" is thus better understood to require the same general jurisdiction inquiry that *Perkins* required: An out-of-state business must have the kind of continuous and substantial in-state presence that a parallel local company would have.

the "continuous and systematic" contacts inquiry that has been taught to generations of first-year law students as "unacceptably grasping," *ante,* at 19, the majority announces the new rule that in order for a foreign defendant to be subject to general jurisdiction, it must not only possess continuous and systematic contacts with a forum State, but those contacts must also surpass some unspecified level when viewed in comparison to the company's "nationwide and worldwide" activities. *Ante,* at 21, n. 20.[9]

Neither of the majority's two rationales for this proportionality requirement is persuasive. First, the majority suggests that its approach is necessary for the sake of predictability. Permitting general jurisdiction in every State where a corporation has continuous and substantial contacts, the majority asserts, would "scarcely permit out-of-state defendants 'to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.'" *Ante,* at 21 (quoting *Burger King Corp.*, 471 U. S., at 472). But there is nothing unpredictable about a rule that instructs multinational corporations that if they engage in continuous and substantial contacts with more than one State, they will be subject to general jurisdiction in each one. The majority may not favor that rule as a matter of policy, but such disagreement does not render an otherwise routine

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[9] I accept at face value the majority's declaration that general jurisdiction is not limited to a corporation's place of incorporation and principal place of business because "a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in the State." *Ante*, at 20, n. 19; see also *ante*, at 19. Were that not so, our analysis of the defendants' in-state contacts in *Perkins* v. *Benguet Consol. Mining Co.*, 342 U. S. 437 (1952), *Helicopteros Nacionales de Colombia, S. A.* v. *Hall*, 466 U. S. 408 (1984), and *Goodyear* would have been irrelevant, as none of the defendants in those cases was sued in its place of incorporation or principal place of business.

test unpredictable.

Nor is the majority's proportionality inquiry any more predictable than the approach it rejects. If anything, the majority's approach injects an additional layer of uncertainty because a corporate defendant must now try to foretell a court's analysis as to both the sufficiency of its contacts with the forum State itself, as well as the relative sufficiency of those contacts in light of the company's operations elsewhere. Moreover, the majority does not even try to explain just how extensive the company's in-state contacts must be in the context of its global operations in order for general jurisdiction to be proper.

The majority's approach will also lead to greater unpredictability by radically expanding the scope of jurisdictional discovery. Rather than ascertaining the extent of a corporate defendant's forum-state contacts alone, courts will now have to identify the extent of a company's contacts in every other forum where it does business in order to compare them against the company's in-state contacts. That considerable burden runs headlong into the majority's recitation of the familiar principle that "'[s]imple jurisdictional rules . . . promote greater predictability.'" *Ante,* at 18–19 (quoting *Hertz Corp.* v. *Friend*, 559 U. S. 77, 94 (2010)).

Absent the predictability rationale, the majority's sole remaining justification for its proportionality approach is its unadorned concern for the consequences. "If Daimler's California activities sufficed to allow adjudication of this Argentina-rooted case in California," the majority laments, "the same global reach would presumably be available in every other State in which MBUSA's sales are sizable." *Ante,* at 20.

The majority characterizes this result as "exorbitant," *ibid.*, but in reality it is an inevitable consequence of the rule of due process we set forth nearly 70 years ago, that there are "instances in which [a company's] continuous

corporate operations within a state" are "so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities," *International Shoe*, 326 U. S., at 318. In the era of *International Shoe*, it was rare for a corporation to have such substantial nationwide contacts that it would be subject to general jurisdiction in a large number of States. Today, that circumstance is less rare. But that is as it should be. What has changed since *International Shoe* is not the due process principle of fundamental fairness but rather the nature of the global economy. Just as it was fair to say in the 1940's that an out-of-state company could enjoy the benefits of a forum State enough to make it "essentially at home" in the State, it is fair to say today that a multinational conglomerate can enjoy such extensive benefits in multiple forum States that it is "essentially at home" in each one.

In any event, to the extent the majority is concerned with the modern-day consequences of *International Shoe*'s conception of personal jurisdiction, there remain other judicial doctrines available to mitigate any resulting unfairness to large corporate defendants. Here, for instance, the reasonableness prong may afford petitioner relief. See *supra*, at 3–4. In other cases, a defendant can assert the doctrine of *forum non conveniens* if a given State is a highly inconvenient place to litigate a dispute. See *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501, 508–509 (1947). In still other cases, the federal change of venue statute can provide protection. See 28 U. S. C. §1404(a) (permitting transfers to other districts "[f]or the convenience of parties and witnesses" and "in the interests of justice"). And to the degree that the majority worries these doctrines are not enough to protect the economic interests of multinational businesses (or that our longstanding approach to general jurisdiction poses "risks to international comity," *ante*, at 22), the task of weighing those policy concerns

belongs ultimately to legislators, who may amend state and federal long-arm statutes in accordance with the democratic process. Unfortunately, the majority short circuits that process by enshrining today's narrow rule of general jurisdiction as a matter of constitutional law.

C

The majority's concern for the consequences of its decision should have led it the other way, because the rule that it adopts will produce deep injustice in at least four respects.

First, the majority's approach unduly curtails the States' sovereign authority to adjudicate disputes against corporate defendants who have engaged in continuous and substantial business operations within their boundaries.[10] The majority does not dispute that a State can exercise general jurisdiction where a corporate defendant has its corporate headquarters, and hence its principal place of business within the State. Cf. *Hertz Corp.*, 559 U. S., at 93. Yet it never explains why the State should lose that power when, as is increasingly common, a corporation "divide[s] [its] command and coordinating functions among officers who work at several different locations." *Id.,* at 95–96. Suppose a company divides its management functions equally among three offices in different States, with one office nominally deemed the company's corporate headquarters. If the State where the headquarters is located can exercise general jurisdiction, why should the

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[10] States will of course continue to exercise specific jurisdiction in many cases, but we have never held that to be the outer limit of the States' authority under the Due Process Clause. That is because the two forms of jurisdiction address different concerns. Whereas specific jurisdiction focuses on the relationship between a defendant's challenged conduct and the forum State, general jurisdiction focuses on the defendant's substantial presence in the State irrespective of the location of the challenged conduct.

other two States be constitutionally forbidden to do the same? Indeed, under the majority's approach, the result would be unchanged even if the company has substantial operations within the latter two States (and even if the company has no sales or other business operations in the first State). Put simply, the majority's rule defines the Due Process Clause so narrowly and arbitrarily as to contravene the States' sovereign prerogative to subject to judgment defendants who have manifested an unqualified "intention to benefit from and thus an intention to submit to the[ir] laws," *J. McIntyre*, 564 U. S., at ___ (plurality opinion) (slip op., at 5).

Second, the proportionality approach will treat small businesses unfairly in comparison to national and multinational conglomerates. Whereas a larger company will often be immunized from general jurisdiction in a State on account of its extensive contacts outside the forum, a small business will not be. For instance, the majority holds today that Daimler is not subject to general jurisdiction in California despite its multiple offices, continuous operations, and billions of dollars' worth of sales there. But imagine a small business that manufactures luxury vehicles principally targeting the California market and that has substantially all of its sales and operations in the State—even though those sales and operations may amount to one-thousandth of Daimler's. Under the majority's rule, that small business will be subject to suit in California on any cause of action involving any of its activities anywhere in the world, while its far more pervasive competitor, Daimler, will not be. That will be so even if the small business incorporates and sets up its headquarters elsewhere (as Daimler does), since the small business' California sales and operations would still predominate when "apprais[ed]" in proportion to its minimal "nationwide and worldwide" operations, *ante*, at 21, n. 20.

Third, the majority's approach creates the incongruous

result that an individual defendant whose only contact with a forum State is a one-time visit will be subject to general jurisdiction if served with process during that visit, *Burnham* v. *Superior Court of Cal., County of Marin*, 495 U. S. 604 (1990), but a large corporation that owns property, employs workers, and does billions of dollars' worth of business in the State will not be, simply because the corporation has similar contacts elsewhere (though the visiting individual surely does as well).

Finally, it should be obvious that the ultimate effect of the majority's approach will be to shift the risk of loss from multinational corporations to the individuals harmed by their actions. Under the majority's rule, for example, a parent whose child is maimed due to the negligence of a foreign hotel owned by a multinational conglomerate will be unable to hold the hotel to account in a single U. S. court, even if the hotel company has a massive presence in multiple States. See, *e.g., Meier* v. *Sun Int'l Hotels, Ltd.*, 288 F. 3d 1264 (CA11 2002).[11] Similarly, a U. S. business that enters into a contract in a foreign country to sell its products to a multinational company there may be unable to seek relief in any U. S. court if the multinational company breaches the contract, even if that company has considerable operations in numerous U. S. forums. See, *e.g., Walpex Trading Co.* v. *Yacimientos Petroliferos Fiscales Bolivianos*, 712 F. Supp. 383 (SDNY 1989).[12]

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[11] See also, *e.g.*, *Woods* v. *Nova Companies Belize Ltd.*, 739 So. 2d 617, 620–621 (Fla. App. 1999) (estate of decedent killed in an overseas plane crash permitted to sue responsible Belizean corporate defendant in Florida courts, rather than Belizean courts, based on defendant's continuous and systematic business contacts in Florida).

[12] The present case and the examples posited involve foreign corporate defendants, but the principle announced by the majority would apply equally to preclude general jurisdiction over a U. S. company that is incorporated and has its principal place of business in another U. S. State. Under the majority's rule, for example, a General Motors autoworker who retires to Florida would be unable to sue GM in that State

Indeed, the majority's approach would preclude the plaintiffs in these examples from seeking recourse anywhere in the United States even if no other judicial system was available to provide relief. I cannot agree with the majority's conclusion that the Due Process Clause requires these results.

* * *

The Court rules against respondents today on a ground that no court has considered in the history of this case, that this Court did not grant certiorari to decide, and that Daimler raised only in a footnote of its brief. In doing so, the Court adopts a new rule of constitutional law that is unmoored from decades of precedent. Because I would reverse the Ninth Circuit's decision on the narrower ground that the exercise of jurisdiction over Daimler would be unreasonable in any event, I respectfully concur in the judgment only.

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for disabilities that develop from the retiree's labor at a Michigan parts plant, even though GM undertakes considerable business operations in Florida. See Twitchell, The Myth of General Jurisdiction, 101 Harv. L. Rev. 610, 670 (1988).

IN THE SUPREME COURT OF THE STATE OF NEVADA

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SANDS CHINA LTD., a Cayman Islands corporation

Petitioner,

vs.

CLARK COUNTY DISTRICT COURT, THE HONORABLE ELIZABETH GONZALEZ, DISTRICT JUDGE, DEPT. 11,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Case Number: 58294

District Court Case Number A627691-B

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In the two-and-a-half years since this Court vacated the district court's determination that it had general jurisdiction over Petitioner Sands China Limited ("SCL") and remanded for an evidentiary hearing on general jurisdiction, SCL and its parent corporation, Las Vegas Sands Corp. ("LVSC"), have spent millions of dollars responding to Plaintiff/Real Party in Interest Steven C. Jacobs' constantly escalating demands for jurisdictional discovery. SCL has repeatedly argued that those demands were excessive and unsupported by any of Jacobs' ever-changing theories as to how Nevada might have general jurisdiction over a Cayman Islands corporation that does no business in Nevada and has its principal place of business in Macau. On January 14, 2014, the United States Supreme Court issued its decision in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014) (Ex. A hereto), in which it definitively rejected Jacobs' general jurisdiction theories. As explained in greater detail below, *Bauman* destroys the district court's rationale for the far-ranging discovery it ordered—discovery that has resulted in three writ Petitions to this Court — and eliminates the need for the evidentiary hearing on general jurisdiction that this Court ordered the district court to hold.

In light of *Bauman*, SCL respectfully moves this Court to recall its August 26, 2011, mandate and to issue a new order directing the district court to dismiss SCL from the action for lack of jurisdiction. The Court can then lift the stay it imposed to enable Plaintiff to pursue whatever claims he thinks remain against LVSC.

In support of its motion, SCL states as follows:

1. Plaintiff Jacobs was formerly the CEO of SCL, which operates gaming and other ventures in Macau through its wholly-owned subsidiary,

Venetian Macau Ltd. SCL's stock is traded on the Hong Kong Stock Exchange. LVSC is SCL's majority stockholder. *See* Ex. B, Compl. ¶ 3 (SCL0003); Ex. C, Salt Affidavit, ¶¶ 3-4, 7 (SCL0035).[1]

2. Jacobs was terminated as SCL's CEO in July 2010. Three months later, he filed this lawsuit, claiming that LVSC had hired and then wrongfully terminated him. Jacobs asserts only one claim against SCL, alleging that it breached an option agreement by refusing to honor his attempt to exercise options to purchase 2.5 million shares of SCL stock. Ex. B, Compl. ¶¶ 43-47 (SCL0014). Under the plain terms of the option agreement, which is governed by Hong Kong law, Jacobs had no right to those options because he was terminated before they vested. Ex. C, Salt Aff. ¶ 14 (SCL0036-37). He alleges, however, that under his agreement with LVSC his options were supposed to vest immediately if his termination was "not for cause." Ex. B, Compl. ¶¶ 44-46 (SCL0014).

3. SCL moved to dismiss the complaint for lack of personal jurisdiction. Plaintiff resisted on the theory that SCL's relationship with LVSC subjected it to general jurisdiction in Nevada. Ex. D., Opp'n to Mot. to Dismiss at 2 (SCL0544). Alternatively, Plaintiff argued that the court had "transient jurisdiction" over SCL because Plaintiff served the summons and complaint on SCL's new acting CEO when he was physically present in Nevada. *Id.* The district court denied SCL's motion to dismiss, holding that it had general jurisdiction over SCL. Ex. E, Order (SCL0795).

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[1] Documents bates numbered with the sequence "SCL___" were filed as part of Petitioner's Appendix filed in support of its Petition for Mandamus in this case. The bates numbers are included for ease of reference.

4. SCL filed a Petition for Mandamus, and on August 26, 2011, this Court issued an Order vacating the district court's ruling and remanding for an evidentiary hearing and findings on general jurisdiction. *See* Order, Ex. F hereto. The Court noted that the district court had found "pervasive contacts" between SCL and Nevada but had not specified what any of those contacts were. *Id.* at 2. The Court therefore found it "impossible to determine the basis for the district court's ruling" and, specifically, whether the district court was relying on SCL's own contacts with the forum or on LVSC's contacts. *Id*. The Court explained that, absent veil piercing, LVSC's contacts were irrelevant to the jurisdictional analysis and that jurisdiction had to be determined "by looking only to the subsidiar[y's] conduct." *Id*.

5. This Court directed the district court on remand to "revisit the issue of personal jurisdiction over petitioner by holding an evidentiary hearing and issuing findings regarding general jurisdiction." Ex. F, Order at 3. The Court stated that if the district court found general jurisdiction lacking, it should then consider Plaintiff's transient jurisdiction theory. *Id*. The Court "further direct[ed] that the district court shall stay the underlying action, except for matters relating to a determination of personal jurisdiction, until a decision on that issue has been entered." *Id*.

6. Although it has been two-and-a-half years since this Court issued its Order, the district court has yet to hold an evidentiary hearing on jurisdiction. On remand, the district court allowed Plaintiff to take wide-ranging discovery into SCL's "contacts" with Nevada to obtain ammunition for their general jurisdiction theories — including discovery into SCL's contacts with LVSC on the theory that LVSC's presence in Nevada could be

attributed to SCL if the district court found that LVSC acted as SCL's agent.[2]

7. Plaintiffs initially told the district court that the discovery they sought would be "narrowly confine[d]." Ex. G, Mot. for Juris. Discov. (PA238); Ex. H, Hrg. Tr. at 20 (PA280).[3] But, as explained in the three petitions Defendants have filed in this Court over the course of the last year (Nos. 62489, 62944 and 63444), that discovery has mushroomed out of control, leading to numerous delays in the scheduling of the evidentiary hearing this Court ordered the district court to hold. At this point, the evidentiary hearing has been postponed indefinitely, pending this Court's decision on the last petition defendants filed (No. 63444). *See* Ex. J, Hrg. Tr. re Mot. to Stay at 26, 48-49.

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[2] On remand from this Court's August 26, 2011 Order, Plaintiff also argued for the first time that the district court had specific jurisdiction over SCL because the decision to terminate him as SCL's CEO was supposedly made in Las Vegas. *See* Ex. I, Hrg. Tr. at 54-55 (PA477-78). The district court has allowed Plaintiff to pursue that theory as well, even though Plaintiff waived any specific jurisdiction theory by relying solely on general and transient jurisdiction theories throughout the briefing on SCL's motion to dismiss in the district court and the briefing on SCL's Petition in this Court.

[3] Documents bates numbered with the sequence "PA___" were filed as part of the Appendix filed in support of Defendants' Petition for Mandamus filed on April 6, 2013 (Case No. 62944). The bates numbers are included for ease of reference.

8. The *Bauman* decision, however, has made it clear that an evidentiary hearing is wholly unnecessary because under no circumstances would Plaintiff be able to show that there is general jurisdiction over SCL in Nevada. *Bauman* expressly disapproved of the "agency" theory of jurisdiction that Plaintiff has relied upon since this case was remanded to the district court. More fundamentally, *Bauman* signals a shift away from an analysis of the defendant's "contacts" in a case like this, where general jurisdiction is claimed, to a bright-line test under which the absence of general jurisdiction is presumed if, as in this case, the defendant is incorporated and has its principal place of business in another country.

9. In support of his "agency" theory of jurisdiction, Jacobs relied on the suggestion in *Doe v. Unocal Corp.*, 248 F.3d 915, 927 (9th Cir. 2001), that the presence of a subsidiary in the forum could provide a basis for general jurisdiction over a foreign parent if the subsidiary performed "services that are sufficiently important to the foreign corporation that if it did not have a representative to perform them, the corporation's own officials would undertake to perform substantially similar services." *Id*. at 928. Plaintiff theorized that the district court would have general jurisdiction over SCL if Plaintiff could show that LVSC acted as SCL's agent and performed services for SCL in Nevada that SCL would otherwise have been required to perform for itself. Ex. H, Hrg. Tr. at 24-26 (PA284-86); Ex. I, Hrg. Tr. at 53 (PA476). In *Bauman*, the Ninth Circuit relied on the identical theory in concluding that California could exercise general jurisdiction over a German corporation (Daimler AG) because one of its U.S. subsidiaries sold Daimler automobiles in California as the German parent's agent. *See* Ex. A at 16. The Supreme Court reversed, holding that

exercising general jurisdiction over Daimler AG in California would violate due process.

10. In its opinion, the Supreme Court assumed that (i) Daimler's U.S. subsidiary was subject to general jurisdiction in California, (ii) that the subsidiary met the test set forth in *Doe v. Unocal*, performing "important" services in California on behalf of Daimler AG in California as its agent, and (iii) that the subsidiary's California contacts were therefore imputable to Daimler AG. *See* Ex. A at 15-18. Nevertheless, the Court concluded, as a matter of law, that this was not enough to provide a basis for the exercise of general jurisdiction over Daimler AG in California.

11. The Court in *Bauman* explained that "only a limited set of affiliations," such as being incorporated or having its principal place of business in the forum at issue, "will render a defendant amenable to all-purpose jurisdiction there." *Id*. at 18. Where the defendant is a foreign corporation with its principal place of business in another state or foreign country, even proof of a "substantial, continuous, and systematic course of business" in the forum —whether directly or through an agent — is not enough to assert general jurisdiction over it. *Id.* at 19. The issue, the Court explained, is not the extent of the out-of-state corporation's contacts with the forum, but rather whether its affiliations with the state are "so 'continuous and systematic' as to render [it] essentially at home in the forum State.'" *Id.* at 20, quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S.Ct. 2846, 2851 (2011).

12. *Bauman* creates a presumption that there is no general jurisdiction over a company that is incorporated in and has its principal place of business outside the forum. In a footnote, the Court declined to

"foreclose the possibility that in an exceptional case . . . a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State." Ex. A at 20 n. 19. But under that formulation a foreign company that lacks ***any*** operations in the forum cannot possibly be subject to general jurisdiction there.

13. *Bauman* makes clear that it would violate due process for Nevada courts to exercise general jurisdiction over SCL. It is undisputed that SCL is a Cayman Islands corporation whose stock is traded on the Hong Kong Stock Exchange and whose principal place of business is in Macau, where SCL's subsidiaries run a large-scale gaming and resort operation. It is also indisputable that SCL does not have ***any*** operations whatsoever in Nevada. While SCL does have certain contacts with Nevada, where its Chairman (Sheldon Adelson) and parent corporation are headquartered and some of its suppliers are located, those contacts do not come close to making this the "exceptional case" where a court could somehow conclude that SCL is "essentially at home" in Nevada.

14. *Bauman* also lays to rest Plaintiff's argument that the district court had so-called "transient jurisdiction" over SCL because he succeeded in serving the summons and complaint on SCL's Acting CEO when he was present in Nevada. In *Cariaga v. District Court*, 104 Nev. 544, 762 P.2d 886 (1988), this Court held that a non-resident individual could be sued on matters unrelated to his contacts to Nevada because he had been served with process when he was in Nevada on vacation. Two years later, the U.S. Supreme Court agreed that due process did not prohibit a state from exercising general jurisdiction over an individual based on the fact that he

or she was served with a summons while temporarily in the state. *Burnham v. Superior Court of California*, 495 U.S. 604 (1990). Neither this Court nor the U.S. Supreme Court, however, has ever held that the same theory can be applied to a corporation. Indeed, in *Burnham*, the Supreme Court strongly suggested that the theory would ***not*** work with respect to corporations because they have "never fitted comfortably in a jurisdictional regime based primarily upon 'de facto power over the defendant's person.'" *Id*. at 610 n.1.

15. The Supreme Court held in *Bauman* that it violates due process to exercise general jurisdiction over a foreign corporation based on the fact that its agent is present and doing business on behalf of the foreign corporation in the forum. That holding necessarily precludes the assertion of general jurisdiction based on the fact that a corporate agent was served with a summons while in the forum. That is true whether the agent's presence is temporary or permanent.

16. Because there is no basis for general or transient jurisdiction over SCL in Nevada, there is no reason to further prolong the years of litigation that have already been wasted on those issues. Accordingly, SCL respectfully moves this Court to recall its August 26, 2011, mandate and to issue a new order directing the district court to dismiss SCL from the action for lack of jurisdiction.[4] At the very least, SCL urges this Court to recall its

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[4] Doing so might also moot some aspects of the writ Petitions Defendants have filed to the extent that those Petitions seek to vacate discovery orders ostensibly issued in connection with jurisdictional discovery.

mandate and reopen briefing on the jurisdictional issue, so that the threshold issue of jurisdiction can be put to rest once and for all.

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CERTIFICATE OF SERVICE

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

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I further certify that I caused a copy of the aforementioned document to be hand delivered, in a sealed envelope to the addressee(s) shown below:

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DATED this 28th day of January, 2014.

By: /s/ Fiona Ingalls