



FILED

JUN 16 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

EIGHTH JUDICIAL DISTRICT COURT

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE
LAS VEGAS, NEVADA 89155-2371

ELIZABETH GONZALEZ
DISTRICT JUDGE

DEPARTMENT ELEVEN
(702) 671-4378
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June 11, 2015

Tracie Lindeman
Clerk of Court
Supreme Court of Nevada
201 South Carson Street, #300
Carson City, NV 89701

Re: Sands China LTD. v. Eighth Judicial District Court, No. 58294
District Court Case No. A-10-627691-C

Dear Ms. Lindeman:

In compliance with the Writ of Mandamus and Order Granting Petition for Writ of Mandamus, entered on August 26, 2011, please find the Decision and Order filed on May 22, 2015; and the Amended Decision and Order filed on May 28, 2015.

Copies of the writ, Decision and Order, Amended Decision and Order are enclosed for your files.

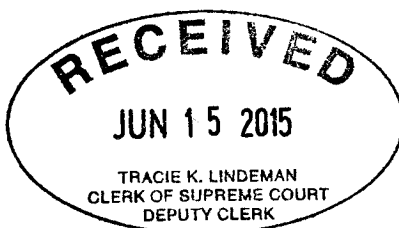
Sincerely,

[Signature]
Elizabeth Gonzalez
District Court Judge

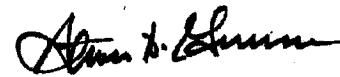
Enclosures

Cc w/enclosures:

Pisanelli Bice, PLLC
Kemp, Jones & Coulthard, LLP
Holland & Hart LLP
Morris Law Group



15-18299



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN JACOBS,

Plaintiff(s),

vs

LAS VEGAS SANDS CORP, ET AL,

Defendants.

Case No. 10 A 627691

Dept. No. XI

Date of Hearing: 04/20-22/2015,
04/27-30/2015, 05/04-05/2015 and
05/07/2015

DECISION AND ORDER

This matter having come on for an evidentiary hearing related to the Defendant Sands China Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Plaintiff's Failure to Join an Indispensable Party and the Nevada Supreme Court's Order Granting Petition for Writ of Mandamus¹ and the Writ of Mandamus issued by the Nevada Supreme Court to this Court on August 26, 2011 (collectively "Writ") beginning on April 20, 2015 and continuing, based upon the availability of the Court and Counsel, until its completion on May 7, 2015; Plaintiff Steven Jacobs ("Jacobs") being present in court and appearing by and through his attorney of record, James J. Pisanelli, Esq., Todd L. Bice, Esq., Debra L. Spinelli, Esq., and Jordan T. Smith, Esq., of the law firm Pisanelli Bice PLLC; Sands China Ltd. ("SCL") appearing by and through its attorney of record J. Stephen Peek, Esq. of the law

¹ The Nevada Supreme Court directed this 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 [this Court's] personal jurisdiction decision." Sands China Ltd. v. Eighth Judicial Dist. Court of State ex rel. Cnty. of Clark, No. 58294, 2011 WL 3840329, at *2 (Nev. Aug. 26, 2011). Since then, the parties have engaged in jurisdictional discovery. The decisions in Daimler AG v. Bauman, 134 S.Ct. 746, 761 (2014), and the Nevada Supreme Court's decision in Viega GmbH v. Eighth Judicial Dist., 130 Nev. Adv. Rep. 40, 328 P.3d 1152 (2014) were made subsequent to that decision and have been considered by the Court in evaluating the propriety of the exercise of general, specific and/or transient jurisdiction over SCL.

CLERK OF THE COURT

MAY 22 2015

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1 firm Holland & Hart LLP and Randall Jones, Esq., Mark M. Jones, Esq., and Ian P. McGinn,
2 Esq. of the law firm Kemp, Jones & Coulthard, LLP; Defendants Las Vegas Sands Corp.
3 ("LVS") appearing by and through its attorney of record J. Stephen Peek, Esq. of the law firm
4 Holland & Hart LLP; and Defendant Sheldon G. Adelson ("Adelson") appearing as a witness
5 and by and through his attorney of record, Steve Morris, Esq. and Rosa Solis Rainey, Esq. of
6 the Morris Law Group; the Court having read and considered the pleadings filed by the parties;
7 having reviewed the evidence admitted during the evidentiary hearing;² and having heard and
8 carefully considered the testimony of the witnesses called to testify; the Court having
9 considered the oral and written arguments of counsel, and with the intent of deciding the
10 limited issues before the Court related to jurisdiction over SCL,³ makes the following findings
11 of fact⁴ and conclusions of law:⁵

12
13 **I.**
PROCEDURAL POSTURE

14 Jacobs filed this suit on October 20, 2010 against SCL claiming that SCL breached
15 contractual obligations it allegedly owed him by refusing to honor his demand to exercise certain
16

17
18 ² As a result of an *in camera* review conducted by this Court related to discovery disputes,
19 additional documents not admitted in evidence have been previously reviewed. For purposes of
20 this decision, the Court relies upon the evidence admitted during this hearing and the two prior
evidentiary hearings conducted.

21 ³ The Court notes, as the Nevada Supreme Court noted in Trump v. District Court, 109
22 Nev. 687, 693, note 2 (1993), that given the intertwined factual issues present between the facts
23 supporting the claims made by Plaintiff and the facts relating to the jurisdictional issues the
procedure undertaken in this case is not an efficient use of judicial resources.

24 ⁴ The findings made in this Order are preliminary in nature based upon the limited
25 evidence presented after very limited jurisdictional discovery and may be modified based upon
additional evidence presented to the Court and/or jury at the ultimate trial of this matter.

26 ⁵ The Writ of Mandamus issued to this Court on August 26, 2011 states:

27 NOW, THEREFORE, you are instructed to hold an evidentiary hearing on personal
28 jurisdiction, to issue findings of act (sic) and conclusions of law stating the basis for your
decision following that hearing. . . .

1 stock options following his termination. On December 22, 2010, SCL moved to dismiss the
2 complaint for (among other things) lack of jurisdiction. Jacobs opposed the motion on February
3 9, 2011, arguing that the Court had jurisdiction over SCL and that it also had transient
4 jurisdiction because the complaint was served in Nevada on Michael A. Leven ("Leven"), who
5 was then the Acting Chief Executive Officer of SCL.
6

7 On March 15, 2011, this Court denied the SCL motion stating:

8 Here there are pervasive contacts with the State of Nevada by activities done in Nevada
9 by board members of Sands China. Therefore, while Hong Kong law may indeed apply
10 to certain issues that are discussed during the progress of this case, that does not control
11 the jurisdictional issue here.

12 March 15, 2011 Transcript p. 62, lines 3 to 7. The Nevada Supreme Court issued an Order
13 Granting Petition for Mandamus on August 26, 2011.

14 On August 26, 2011, the Nevada Supreme Court issued a stay of certain proceedings in
15 this matter pending the conduct of an evidentiary hearing and decision on jurisdictional issues
16 related to SCL. The Court granted Jacobs request to conduct jurisdictional discovery prior to
17 the evidentiary hearing. The order granting the jurisdictional discovery was entered on March
18 8, 2012. Due to numerous discovery disputes⁶ and stays⁷ relating to petitions for extraordinary
19 relief, the evidentiary hearing on jurisdiction was delayed.
20
21

22 ⁶ Certain evidentiary sanctions were imposed upon SCL in the Order entered March 6,
23 2015.

24 a. For purposes of jurisdictional discovery and the evidentiary hearing related to
25 jurisdiction, SCL will be precluded from raising the MDPA as an objection or as a defense to
26 use, admission, disclosure or production of any documents.

27 b. For purposes of jurisdictional discovery and the evidentiary hearing related to
28 jurisdiction, SCL is precluded from contesting that Jacobs's electronically stored information
(approx. 40 gigabytes) is rightfully in his possession.

c. For purposes of the evidentiary hearing related to jurisdiction, SCL is precluded
from calling any witnesses on its own behalf or introducing any evidence on its own behalf.
SCL may object to the admission of evidence, arguments of counsel, and to testimony of
witnesses during the evidentiary hearing related to jurisdiction; cross-examine witnesses during

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II. BURDEN OF PROOF

There are significant issues related to the appropriate burden of proof to be utilized in this case that have been well briefed by counsel. The typical standard on a motion to dismiss for lack of jurisdiction is a *prima facie* standard. In Trump, the Nevada Supreme Court noted that a preponderance of the evidence standard may be the appropriate standard in a "full evidentiary hearing".⁸ The Nevada Supreme Court also made mention of a case in the Trump decision which suggested a third standard -- "likelihood of the existence of each fact necessary to support personal jurisdiction"⁹ -- may be appropriate.¹⁰

the evidentiary hearing related to jurisdiction; and, argue the application of the evidence to the law during the opening and closing arguments of the evidentiary hearing related to jurisdiction.

d. During the evidentiary hearing related to jurisdiction, the Court will adversely infer, subject to SCL's ability to rebut that inference (within the evidentiary constraints set forth in the paragraph above), that all documents not produced in conformity with this Court's September 2012 Order are adverse to SCL, would contradict SCL's denials as to personal jurisdiction, and would support Jacobs' assertion of personal jurisdiction over SCL.

7 The parties have not agreed that any stays issued act as a tolling or extension of the period under NRCP Rule 41(e). As such, the Court has informed the parties that, immediately upon the entry of this order, the trial of this matter will be set prior to the earliest expiration of the period under NRCP Rule 41(e), October 19, 2015.

8 109 Nev. at 693.

9 This third standard and the circumstances in which it may be appropriate to utilize was explained as:

If, however, the court finds that determining a motion on the *prima facie* standard (thereby deferring the final jurisdictional determination until trial) imposes on a defendant a significant expense and burden of trial on the merits in the foreign forum that it is unfair in the circumstances, the court may steer a third course that avoids both this unfair burden and (especially when the jurisdictional facts are enmeshed with the merits) the morass of unsettled questions of law regarding "issue preclusion" and "law of the case". This third method is to apply an intermediate standard between requiring only a *prima facie* showing and requiring proof by a preponderance of the evidence. Thus, even though allowing an evidentiary hearing and weighing evidence to make findings, the

1 A traditional preponderance of the evidence standard is inappropriate for this case
2 because of the limited discovery done to date due to the stay and the inextricably intertwined
3 facts between jurisdiction and merits. These limitations impact the ability of the parties to
4 conduct a "full evidentiary hearing". A jury demand has been filed; Jacobs has a right to a jury
5 trial on the jurisdictional defense raised by SCL. Given the inextricably intertwined issues
6 between the conduct of representatives of LVS and SCL, the Court shares the concerns
7 expressed by counsel for LVS regarding the potential impact of these findings and conclusions
8 upon LVS. Despite these concerns, the Court makes findings and reaches conclusions related
9 to jurisdiction, *solely to comply with the Writ*, upon a preponderance of the evidence standard
10 *based solely on the evidence presented*. The findings and conclusions are preliminary in nature
11 and may not be used by the parties or their counsel for any purpose other than this Court's
12 compliance with the Writ.¹¹
13
14
15

16 III. 17 FINDINGS OF FACT

18 1. Jacobs filed this suit on October 20, 2010 against SCL claiming that SCL

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20 court may merely find whether the plaintiff has shown a likelihood of the existence of
21 each fact necessary to support personal jurisdiction.

22 Boit. v. Gar-Tec Products, Inc., 967 F. 2d 671 at 677 (1st Cir. 1992).

23 ¹⁰ Another standard which might be appropriate for consideration, but which was not raised
24 by the parties, is the standard of substantial evidence used for judgment on partial findings made
25 under NRCP 52c.

26 ¹¹ Given the inextricably intertwined issues of jurisdiction with the facts surrounding the
27 merits issues, i.e. the termination of Plaintiff's employment and associated stock option(s), the
28 evidentiary hearing and the jurisdictional discovery necessary prior to the hearing have not been
a wise use of judicial resources. Unfortunately, as a result of the process imposed upon this
Court because of the Writ, the parties will have only a few months to conduct the merits
discovery and be ready for trial.

1 breached contractual obligations it allegedly owed him by refusing to honor his demand to
2 exercise certain stock options following his termination.

3 2. On December 22, 2014, Jacobs filed a Third Amended Complaint, alleging three
4 new claims against SCL: conspiracy, aiding and abetting his alleged wrongful termination by
5 LVS, and defamation as a result of statements made during the course of the litigation by LVS's
6 and SCL's chairman, Adelson. Jacobs contends that there is specific jurisdiction over SCL on all
7 three claims.
8

9 3. LVS is a Nevada corporation with its principle place of business in Las Vegas,
10 Nevada. It is headed by Adelson who serves as LVS's Chairman of the Board of Directors.
11 LVSC is a publicly-traded company in the United States. Through subsidiaries, LVSC operates
12 casinos in Nevada, Pennsylvania, Macau, and Singapore.
13

14 4. In early 2009, Leven became Chief Operating Officer ("COO") of LVSC.

15 5. Leven had previously served on the LVSC Board.

16 6. Leven asked Jacobs to assist him as a consultant.

17 7. Jacobs became a consultant to LVSC through Vagus Group, Inc., an entity Jacobs
18 owned. In that role, Jacobs began assisting with the restructuring of LVS's Nevada operations.
19 In doing so, Jacobs, Leven and Adelson met extensively in Nevada. They also traveled to Macau
20 to review LVSC's operations there.
21
22

23 8. While Jacobs was assisting LVSC as a consultant, all of its Macau operations and
24 assets were held through wholly-owned subsidiaries, one of which was Venetian Macau Limited
25 ("VML").

26 9. Leven discussed bringing Jacobs on directly, on a temporary basis, to help
27 oversee and restructure LVS's Macau operations. Jacobs and Leven discussed the terms of this
28

1 temporary engagement. These discussions principally occurred while both Jacobs and Leven
2 were in Las Vegas working on the LVS restructuring.

3 10. One of the tasks that Jacobs was assigned was restructuring Macau operations for
4 the potential of spinning the Macau assets off into a yet-to-be-formed publicly-traded subsidiary
5 for LVS. This would serve as a financing means by which LVS could raise additional capital to
6 recommence construction on certain existing, but delayed, projects in Macau.
7

8 11. On April 30, 2009, Leven advised that effective May 5, 2009, LVS gave Jacobs
9 the title of "Interim President" overseeing its Macau operations. In that role, Jacobs reported
10 directly to Leven in his capacity as COO of LVS. Leven was the operational boss over all of
11 LVS's assets.
12

13 12. Leven began negotiating with Jacobs for a more permanent position. Through
14 June and July of 2009, Leven and Jacobs exchanged drafts of what became known as the "Term
15 Sheet" which would become Jacobs' employment agreement.¹² Many of those negotiations
16 occurred between Jacobs and Leven at LVS's headquarters in Nevada.
17

18 13. These negotiations also involved the exchange of correspondence and telephone
19 communications into, and out of, Nevada.
20

21 14. In emails in late June and July 2009, LVS executives and Jacobs had multiple
22 communications concerning the terms and conditions of his employment.

23 15. By late July 2009, Jacobs indicated that if they could not come to an agreement as
24 to his full-time position, he needed to make commitments for his family back in Atlanta,
25 Georgia. Jacobs was in and out of Macau on only a temporary basis, and Jacobs indicated that
26 he would not be moving his family unless he and LVS came to an agreement.
27

28 ¹² The "Term Sheet" was filed as an exhibit to LVS's 10Q for the quarter ending March 31, 2010.

1 16. On or about August 2, 2009, Leven emailed Goldstein, copying Charles Forman –
2 one of the members of LVS's compensation committee – explaining that tomorrow would be the
3 "last chance" to try and close out the terms and conditions of Jacobs' employment with Adelson.
4 If they could not do so, Leven indicated that they would have to do a nine-month deal with
5 Jacobs so as to get through a planned initial public offering ("IPO") for the spinoff of LVS's
6 Macau operations.
7

8 17. The next day, August 3, 2009, Leven testified Adelson and he expressly approved
9 the "Terms and Conditions" of Jacobs' employment. Although Adelson claims he does not
10 remember doing so, Leven confirmed that Adelson approved those terms and conditions in
11 Nevada pursuant to his role as Chairman and CEO of LVS. Leven negotiated and signed the
12 deal in Nevada pursuant to his role as LVS's COO. Adelson claims that he did not consider the
13 Term Sheet to be binding.
14

15 18. Pursuant to the Term Sheet, LVS agreed to employ Jacobs as the "President and
16 CEO Macau, listed company (ListCo)." The subsidiary, which would serve as the vehicle for the
17 IPO, had not yet been determined. LVS agreed to pay Jacobs a base salary of \$1.3 Million, with
18 a 50% bonus. It also awarded Jacobs 500,000 options in LVS. Of the 500,000 options, 250,000
19 options were to vest on January 1, 2010, 125,000 were to vest on January 1, 2011, and 125, 000
20 were to vest on January 1, 2012. LVS agreed to pay a housing allowance and Jacobs was
21 entitled to participate "in any established plan(s) for senior executives."
22

23 19. The Term Sheet incorporated the standard "for cause" termination language of
24 other LVS employment agreements. In the event Jacobs terminated not for cause, the Term Sheet
25 provided a "1 year severance, accelerated vest [of the options], and the Right to exercise [the
26 options] for 1 year post termination."
27
28

1 20. Leven signed the Term Sheet on or about August 3, 2009, and had his assistant,
2 Patty Murray, email it to Jacobs.

3 21. Prior to the formation of SCL, the proposed entity was referred to in certain
4 documents as "Listco".

5 22. SCL is a corporation organized under the law of the Cayman Islands. It was
6 formed as a legal entity on or about July 15, 2009.

7 23. Adelson named himself as Chairman of the Board prior to the identification of
8 other board members. An initial board was formed which dealt solely with governance issues.

9 24. SCL became the vehicle through which LVSC would ultimately spin off its
10 Macau assets as part of the IPO process.

11 25. SCL went public on the Hong Kong Stock Exchange ("HKSE") through an IPO
12 on November 30, 2009.

13 26. LVS owns approximately 70% of SCL's stock and includes SCL as part of its
14 consolidated filings with the US Securities and Exchange Commission.

15 27. SCL is the indirect owner and operator of the majority of LVS's Macau
16 operations.

17 28. SCL includes the Sands Macau, The Venetian Macau, Four Seasons Macau and
18 other ancillary operations that support these properties.

19 29. SCL is a holding company.

20 30. SCL has no employees.¹³

21 31. One of SCL's primary assets is VML. VML is the holder of a subconcession

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27 ¹³ Conflicting evidence on this point was presented throughout the evidentiary hearing.
28 Counsel confirmed during closing the SCL had no direct employees and that the reference to
 employees related to VML.

1 authorized by the Macau Government that allows it to operate casinos and gaming areas in
2 Macau.

3 32. Prior to the fall of 2009, decisions related to the operations of the Macau entities
4 were made by Adelson and Leven.
5

6 33. Neither SCL nor any of its subsidiaries has any bank accounts or owns any
7 property in Nevada.

8 34. SCL has separate bank accounts from LVS.

9 35. SCL does not conduct any gaming operations in Nevada, nor does it derive any
10 revenue from operations in Nevada. All of the revenues that SCL annually reports in its public
11 filings derive from operations in Macau.
12

13 36. SCL has never owned, controlled, or operated any business in Nevada. SCL has a
14 non-competition agreement with LVSC.
15

16 37. It was not uncommon for the executives of subsidiaries that LVS controlled to
17 fulfill that role pursuant to an employment agreement with the parent, LVS. When it was
18 determined that Leven would become the interim CEO for SCL, he did so pursuant to an
19 employment agreement with LVSC. As interim CEO for SCL, Leven had no employment
20 agreement with SCL and fulfilled that role as an LVSC employee.¹⁴
21

22 38. In having its leading executives serve in those roles pursuant to employment
23 agreements with LVS and delegating tasks to LVS employees in Nevada, SCL reasonably would
24 foresee that it would be subject to suit in Nevada over any dispute concerning the services of its
25

26 ¹⁴ Adelson is now the CEO of SCL and serves in that capacity pursuant to an employment
27 agreement with LVS. He has no separate employment agreement with SCL. The interim COO
28 of SCL is Goldstein. Goldstein acknowledged that he serves as SCL's COO pursuant to his
employment agreement with the Nevada parent company, LVS.

1 executives.

2 39. Leven testified, that upon the closing of the IPO, Jacobs' employment pursuant to
3 the Term Sheet was transferred to SCL and assumed by it. As Leven testified, the obligations
4 under the Term Sheet were assumed by SCL in conjunction with the closing of the IPO. The
5 assignment and assumption of the Term Sheet from LVS to SCL does not appear to have been
6 documented in any formal fashion. However, as Leven acknowledged, SCL and its Board
7 understood that Jacobs was serving as CEO pursuant to the terms and conditions of the Term
8 Sheet that had been negotiated and approved in Nevada with the Nevada parent.
9

10 40. Jacobs' duties as SCL's CEO provided under the Term Sheet required frequent
11 trips to Las Vegas, Nevada and involved countless emails and phone calls into the forum. Jacobs
12 frequently conducted internal operations and business with third parties while physically present
13 in Nevada.
14

15 41. While SCL had its own Board of Directors, kept minutes of the meetings of its
16 Board and Board Committees, and maintained its own separate and independent corporate
17 records, direction came from LVS.
18

19 42. At the time of its IPO, the SCL Board consisted of (1) three Independent Non-
20 Executive Directors (Ian Bruce, Yun Chiang and David Turnbull¹⁵), all of whom resided in Hong
21 Kong, (2) two Executive Directors (Jacobs, who was SCL's Chief Executive Officer and
22 President, and Stephen Weaver ("Weaver"), who was Chief Development Officer), both of
23 whom were based in Macau; and (3) the Chairman and Non-Executive Director (Adelson) and
24
25

26 ¹⁵ During his testimony at the evidentiary hearing, when questioned about board member
27 Turnbull, Adelson stated, "not for long". It is this type of control of SCL, that leads the Court to
28 believe that the activities of Adelson in Las Vegas as Chairman of SCL are significant for
determination of specific jurisdiction.

1 two Non-Executive Directors (Jeffrey Schwartz and Irwin Siegel), who were also members of
2 the LVS Board and who were based in the United States. Leven served as a Special Adviser to
3 the SCL Board.

4
5 43. During the relevant period, all of the in-person SCL Board meetings were held in
6 either Hong Kong or Macau. The Board did not meet in Nevada. While certain board members
7 attended board meetings remotely, the meetings were hosted in Hong Kong.

8
9 44. SCL listed Macau in its public filings as its principal place of business and head
10 office. It also had an office in Hong Kong. SCL never described Nevada as its principal place
11 of business and, prior to Jacobs termination, never had an office in Nevada.¹⁶

12 45. Prior to Jacobs termination, senior management of SCL: Jacobs, Weaver, the
13 Chief Financial Officer (Toh Hup Hock, also known as Ben Toh), and the General Counsel and
14 Corporate Secretary (Luis Melo) -- were all headquartered in Macau.

15
16 46. Although SCL insists that everything changed in terms of corporate control after
17 the closing of the IPO -- with Leven going so far as to claim that before the IPO he was the boss,
18 and after the IPO he ceased being the boss -- the evidence indicates otherwise.

19 47. This was not an ordinary parent/subsidiary relationship. On paper, neither
20 Adelson nor Leven were supposed to be serving as "management" of SCL. Adelson's role was
21 that of SCL's Board Chairman. Leven's role was, on paper, supposed to be that of "special
22 advisor" to the SCL Board.

23
24 48. Internal emails and communications confirmed that Adelson's and Leven's roles
25 of management largely continued unchanged after the IPO. Even SCL's other Board members

26
27 ¹⁶ Leven's business card as Special Adviser to SCL indicated his address was a Las Vegas
28 address. Following Jacobs termination, Leven became interim CEO of SCL. He retained his
office location in Las Vegas and all contact information at LVS during the entire duration of his
term as Interim CEO.

1 internally referred to Leven as constituting SCL's "management." As Leven would confirm in
2 one internal candid email, one of Jacobs' supposed problems is that he actually "thought" he was
3 the CEO of SCL, when in fact, Adelson was filling that role just as he had before the IPO. Other
4 internal communications confirm that Jacobs was criticized for attempting to run SCL
5 independently because for LVS, "it doesn't work that way."
6

7 49. As Reese would acknowledge, one of the supposed problems with Jacobs was that
8 he thought he was the real CEO of SCL when in fact there is, and only has been, one CEO of the
9 entire organization, and that is, and always has been, Adelson.
10

11 50. After the IPO, Adelson, Leven and LVS continued to dictate large and small-scale
12 decisions.
13

14 51. As internal documents show, even compensation for senior executives, including
15 Jacobs, were ultimately dictated by Adelson.
16

17 52. Even though disagreements with Adelson had begun to surface, Jacobs was
18 awarded 2,500,000 options in SCL on May 10, 2010 "in recognition of his contribution and to
19 encourage continuing dedication." These options were granted by SCL under a Share Option
20 Grant as one of the plans to which Jacobs was eligible. Consistent with its ultimate control and
21 direction, it was up to Leven and Adelson to approve the 2.5 million SCL options for Jacobs in
22 SCL, which they did on May 4, 2010.
23

24 53. Jacobs was entitled to participate in any company "plans" that were available for
25 senior executives. This included any stock option plans. If the IPO had not occurred, Jacobs
26 would have participated in the LVS stock option plan. However, Leven explained that since the
27 IPO was successful and Jacobs was overseeing the Macau operations, Section 7 of the Term
28 Sheet was fulfilled by Jacobs' participation in the stock option plan for SCL. According to

1 Leven, Jacobs participated in the SCL option plan because SCL had assumed the obligations to
2 fulfill the terms of Jacobs' employment under the Term Sheet.

3 54. On or about July 7, 2010, when Jacobs was still SCL's CEO, Toh Hup Hock, in
4 his capacity as SCL's CFO, sent Jacobs a letter from Macau regarding the stock option grant¹⁷
5 the Remuneration Committee of the SCL Board made to Jacobs.
6

7 55. The Option Terms and Conditions provided to Jacobs stated that the stock option
8 agreement would be governed by Hong Kong law.

9 56. The stock option award to Jacobs of 2.5 million options in SCL are tied to and
10 intertwined with the terms and conditions of the Term Sheet that the parties negotiated and
11 agreed to in Nevada.
12

13 57. As Leven confirmed, the vesting of those 2.5 million options in SCL were
14 expressly accelerated under the terms of the Term Sheet should Adelson and/or his wife lose
15 control of LVS or should Jacobs be terminated without proper cause. SCL reasonably foresaw
16 being subject to suit in Nevada having awarded Jacobs 2.5 million in stock options where the
17 vesting was controlled by the Term Sheet with LVS and that SCL, according to Leven, assumed.
18

19 58. Prior to the IPO, on November 8, 2009, LVS entered into a Shared Services
20 Agreement with SCL through which LVS agreed to provide certain services and products to
21 SCL.
22

23 59. LVS and SCL entered into a Shared Services Agreement pursuant to which each
24 company agreed to provide the other with certain services at competitive rates. The services
25 performed related to compensation and continued employment do not appear to fall within the
26 scope of that agreement.
27

28 ¹⁷ There is conflicting evidence as to whether Jacobs could elect stock options in LVS
rather than in SCL.

60. The Shared Services Agreement was signed by Jacobs, and was disclosed in SCL's IPO documents.

61. The services to be provided under the Shared Services Agreement are defined as Scheduled Products and Services. The agreement defines those as:

... any product or service set out in the Schedule hereto the same as may from time to time be amended by written agreement between the Parties and subject to compliance with the requirement of the Listing Rules applicable to any amendment of this Agreement.

62. The Schedule attached to the Shared Services Agreement provided the following types of services were available to be shared (excerpted are relevant portions) and identified the method of compensation for those services:

Service/Product	Provider	Recipient	Pricing	Payment Terms	2009 US\$\$	2010 US\$\$	2011 US\$\$
Certain administrative and logistics services such as legal and regulatory services, back office accounting and handling of telephone calls relating to hotel reservations, tax and internal audit services, limited treasury functions and accounting and compliance services.	Members of Parent Group	Members of Listco Group	Actual costs incurred in providing services calculated as the estimated salary and benefits for the employees of the Parent Group and the hours worked by such employees providing such services to the Listco Group	Invoice to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute, within 30 days of resolution of dispute.	4.7 million	5.0 million	8.3 million
Certain administrative and logistics services such as legal and regulatory services, back office accounting and handling of telephone calls	Members of Listco Group	Members of Parent Group	Actual costs incurred in providing services calculated as the estimated salary and benefits for	Invoice to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence	3.0 million	3.0 million	3.0 million

1 relating to hotel 2 reservations, tax 3 and internal audit 4 services, limited 5 treasury functions 6 and accounting 7 and compliance 8 services.			9 the 10 employees 11 of the Listco 12 Group and 13 the hours 14 worked by 15 such 16 employees 17 providing 18 such 19 services to 20 the Parent 21 Group	22 of dispute 23 within 45 days 24 of receipt of 25 invoice, or in 26 the event of 27 dispute, within 28 30 days of resolution of dispute.			
--	--	--	--	--	--	--	--

63. Shared services agreements are a common method by which affiliated companies achieve economies of scale.

64. Here, although SCL asserts that all of the services provided by LVSC employees were rendered for SCL pursuant to the Shared Services Agreement, there is no evidence that the parties' observed any formalities,¹⁸ which would permit the Court to determine, which, if any, services were provided pursuant to the Shared Services Agreement.¹⁹

65. SCL advised HKSE that implementation agreements would be used in conjunction with the Shared Services Agreement.²⁰

¹⁸ SCL 00193427, a redacted email dated February 10, 2010, evidences the adoption of a procedure for payment of vendor expenses for certain Parcel 5/6 construction related vendors from Macau. The email anecdotally indicates the invoices would be sent to Macau with a copy to Las Vegas, reviewed in Las Vegas, approved for payment in Las Vegas, and then sent to Macau for payment. This policy was apparently adopted after the threshold for intercompany billings in the SCL IPO was exceeded. SCL00199830.

¹⁹ SCL00171443, redacted minutes of VML Compliance Committee dated February 22, 2010, reflect that because of the Shared Services Agreement a tracking system had been established to record the execution of each individual agreement and that individual implementation agreements would have to be drawn up for each service category. The Court has been unable to locate any further references in the evidence admitted at the hearing regarding the actual implementation and utilization of services pursuant to the Shared Services Agreement.

²⁰ The letter states in pertinent part:

66. When questioned during the evidentiary hearing about the mechanism for requesting or paying for service under the Shared Services Agreement, Adelson was unable to provide any evidence of the processes used to obtain services under that agreement.²¹

67. The facts and circumstances giving rise to Jacobs' ultimate termination were directed and controlled from Las Vegas. Despite internal praise from the Board members of SCL (except Adelson) for Jacobs, Leven claims that in June of 2009 he had had enough of Jacobs and wanted him fired. Adelson and Leven began undertaking what one email labeled as the "exorcism strategy" to terminate Jacobs. The actions to effectuate Jacobs' termination were carried out from Las Vegas,²² including the ultimate decision to terminate Jacobs, the creation of fictitious SCL stationary to draft a termination notice, the preparation of press-releases regarding Jacobs' termination, and the handling of legal leg-work to effectuate the termination.

It is envisaged that from time to time, and as required, an implementation agreement for a particular type of product or service will be entered into between LVS Group and members of the Group under which the LVS Group provides the relevant products or services to the group or *vice versa*. Each implementation agreement shall set out the details of the material terms and conditions which shall include:

a) the relevant Scheduled Products and Services to be provided;

c) the time(s) at which, or duration during which, the relevant Scheduled Products and Services are to be provided;

d) the pricing for the Scheduled Products and Services to be provided, determined in accordance with the provisions of the Shared Services Agreement; and,

e) payment terms (including where applicable, terms providing for deducting or withholding taxes).

SCL00106303.

²¹ The Court reviewed the redacted documents contained in Exhibit 887A to determine if there was any support for SCL's position that the Shared Services Agreement was the method by which LVS employees were utilized by SCL rather than the agency analysis performed by the Court.

²² This effort was described by Leven as an effort to “put ducks in a row”.

1 68. According to Adelson and Leven, they were acting on behalf of SCL in Nevada
2 when undertaking these activities, and they were doing so with SCL's knowledge and consent.
3 They coordinated with legal and non-legal personnel – including Gayle Hyman (LVS's general
4 counsel) and Ron Reese (LVS's VP of public relations) – in LVS to carry out the plan to
5 terminate Jacobs. Other LVS personnel were involved and acted in Nevada, including under the
6 Shared Services Agreement between SCL and LVS.
7

8 69. Adelson and Leven made the determination to terminate Jacobs subject to
9 approval of the SCL board at the next scheduled meeting.
10

11 70. From Nevada, Leven and Adelson informed the SCL Board of Adelson's decision
12 to terminate Jacobs after the decision was already made. An emergency telephone conference
13 was held regarding the termination of Jacobs and to have the SCL Board ratify the decision.
14

15 71. Jacobs was not and is not a resident of Nevada. When he served as SCL's CEO,
16 he was headquartered in Macau and lived in Hong Kong.
17

18 72. Subsequently, Leven, Kenneth Kay (LVS's CFO), Irwin Siegel (LVS/SCL Board
19 member), Hyman, Daniel Briggs (LVS's VP of investor relations), Reese, Brian Nagel (LVS's
20 chief of security), Patrick Dumont (LVS's VP of corporate strategy), and Rom Hendler (LVS's
21 VP of strategic marketing) – left Las Vegas and went to Macau to effectuate Jacobs' termination.
22 Before they even left Las Vegas, Jacobs' fate had been determined.
23

24 73. On July 23, 2010, Leven met with Jacobs in Macau. At that meeting, Leven
25 advised Jacobs he was terminated. Jacobs was given the option of resigning which he refused.
26 Jacobs inquired whether the termination was "for cause" and Leven responded that he was "not
27 sure," but he indicated that the Term Sheet would not be honored.
28

 74. Jacobs was SCL's CEO until he was terminated on or about July 23, 2010.

1 75. When Jacobs was terminated, he was in Macau.

2 76. Adelson named Leven Acting CEO and an Executive Director subject to approval
3 of the SCL board at the next scheduled meeting and pending the appointment of a permanent
4 replacement.
5

6 77. The SCL Board approved the termination and Leven's interim appointment.

7 78. The SCL Board appointed two new officers to serve as SCL's President and Chief
8 Operating Officer (Edward M. Tracy) and Executive Vice President and Chief Casino Officer
9 (David R. Sisk); both based in Macau. At the same time, an SCL Non-Executive Director, Irwin
10 A. Siegel, was appointed the Chairman of two newly formed committees (the Transitional
11 Advisory Committee and the CEO Search Committee) and spent the majority of his time in
12 Macau to carry out his duties.
13

14 79. After Jacobs' termination, Adelson and LVS began crafting a letter outlining
15 Jacobs' supposed offenses for his "for cause" termination. The participants in this endeavor
16 were Adelson himself, Leven and perhaps, Irwin Siegel, another joint SCL/LVS Board member.
17 These actions were again carried out and coordinated in Nevada.
18

19 80. A number of the alleged 12 reasons for Jacobs' termination involve actions Jacobs
20 carried out representing SCL while in Nevada.
21

22 81. After Jacobs was terminated, Leven replaced Jacobs as CEO of SCL. Leven did
23 not enter into any employment agreement with SCL. He served in that capacity under the
24 employment agreement that he had with LVS. While in Las Vegas, Leven served as the acting
25 SCL CEO from his LVS headquarters in Las Vegas. SCL authorized and approved of Leven
26 serving as its CEO from Las Vegas. As CEO, Leven was responsible for SCL's day-to-day
27 operations.
28

1 82. After becoming Acting CEO, Leven, on documents with a Las Vegas Sands Corp.
2 heading, issued an "Approval and Authorization Policy" for the Operations of "Sands China
3 Limited."

4 83. Here, there is no evidence that the Shared Services Agreement was the basis for
5 the activities of Leven, Adelson, Hyman, Reese and Foreman.
6

7 84. SCL's activities through LVS employees in Nevada are substantial, have been
8 continuous since the IPO, and are systematic.

9 85. In October 2010, the SCL Board had the same composition, except that the two
10 Executive Directors were Toh Hup Hock, SCL's CFO (who had previously replaced Stephen
11 Weaver as an Executive Director), and Michael Leven. Toh Hup Hock resided in Macau; Mr.
12 Leven continued to be based in Las Vegas, but traveled to Macau as necessary.
13

14 86. Jacobs filed his initial Complaint against SCL and LVS on October 20, 2010.
15

16 87. On October 27, 2010, Leven was personally served with a copy of the Summons
17 and Complaint while acting as SCL's CEO and physically present in Nevada.

18 88. Reese, an LVSC employee, began a public relations campaign regarding Jacobs'
19 lawsuit on behalf of LVS and SCL from Nevada.

20 89. On March 15, 2011, Adelson, through Reese, issued a statement to a reporter for
21 the Wall Street Journal that Jacobs' alleges to be defamatory. The statement is as follows:
22

23 "While I have largely stayed silent on the matter to this point, the recycling of his
24 allegations must be addressed," he said "We have a substantial list of reasons why Steve
25 Jacobs was fired for cause and interestingly he has not refuted a single one of them.
26 Instead, he has attempted to explain his termination by using outright lies and fabrications
27 which seem to have their origins in delusion."
28

1 90. Adelson acknowledges that he made this statement on behalf of himself, LVS and
2 SCL. SCL published a statement to the media from Nevada that gives rise to the claim for
3 defamation.

4 91. Based upon the evidence, Adelson's statement can be attributed to SCL because it
5 claims that it is responsible for Jacobs' termination. The statement was made and issued in
6 Nevada. If proven defamatory, this would be an additional basis for jurisdiction in Nevada.

7 92. Any finding of fact stated hereinabove that is more appropriately deemed a
8 conclusion of law shall be so deemed.
9

10
11 **III.**
12 **CONCLUSIONS OF LAW**

13 93. The Court is faced with allegations of general jurisdiction, specific jurisdiction
14 and transitory jurisdiction over SCL.²³

15 A. GENERAL JURISDICTION

16 94. The Court has to evaluate the contacts by SCL and make determinations as to
17 whether SCL is at home in Nevada for the general jurisdiction analysis. Little guidance has been
18 provided to the Court to assist in the determination of the appropriate factors to consider in
19 determining whether SCL is at home in Nevada.
20

21 95. General or "all-purpose" jurisdiction gives a court the power "to hear any and all
22 claims against" a defendant "regardless of where the claim arose." Goodyear Dunlop Tires
23 Operations, S.A. v. Brown, 131 S.Ct. 2846, 2851 (2011).
24

25 96. A court has general jurisdiction over a foreign corporation only if it is "essentially
26 at home" in the forum. *See id.*; Daimler AG v. Bauman, 134 S.Ct. 746, 758 n.11 (2014).
27

28 ²³ The Court has made separate findings and conclusions on each type of jurisdiction
alleged by Jacobs to enable the parties to seek a more full appellate review if they choose.

1 97. "A court may exercise general jurisdiction over a foreign company when its
2 contacts with the forum state are so continuous and systematic as to render [it] essentially at
3 home in the forum State." Viega GmbH v. Eighth Jud. Dist. Ct., 130 Nev. Adv. Op. 40, 328 P.3d
4 1152, 1156-57 (2014).

5
6 98. "Typically, a corporation is 'at home' only where it is incorporated or has its
7 principal place of business." 328 P.3d 1152, 1158 (2014).

8 99. The Supreme Court in Daimler AG did not rule out that "a corporation's
9 operations in a forum other than its formal place of incorporation or principal place of business
10 may be so substantial and of such a nature as to render the corporation at home in that State."
11 134 S. Ct. at 761 n.19.

12 100. "The test for general jurisdiction, depends on an analysis of the Due Process
13 Clause and its requirement that a foreign corporation's "continuous *corporate operations* within
14 a state [be] so substantial and of such a nature as to justify suit against it on causes of action
15 arising from dealings entirely distinct from those activities." Daimler AG, 134 S.Ct. at 754

16
17 101. In Daimler AG, the U.S. Supreme Court held that corporations may be sued under
18 a general jurisdiction theory if their affiliations with the forum are so "continuous and
19 systematic as to render them essentially at home in the forum State." 134 S.Ct. at 754.
20

21 102. Here, SCL has designated Macau as its principal place of business. All of SCL's
22 holdings are located in Macau. SCL's executive officers, including Jacobs, were based in Macau
23 until July 2010 when Jacobs was terminated.

24 103. The SCL Board, which included three independent directors who reside in Hong
25 Kong, met in either Macau or Hong Kong.
26
27
28

1 104. SCL is not incorporated in Nevada and does not hold its board meetings in
2 Nevada.

3 105. While a significant amount of direction over the activities of SCL comes from its
4 Chairman in Las Vegas, as well as others employed with LVSI, for purposes of general
5 jurisdiction these pervasive contacts appear to be irrelevant following Daimler.²⁴
6

7 106. The Nevada Supreme Court, after Daimler, has indicated that an agency theory of
8 general jurisdiction is still viable. In Viega, the Court cited a California case that found that the
9 agency theory "supports a finding of general jurisdiction" and noted that "the [United States]
10 Supreme Court has recognized that agency *typically is more useful* to a specific jurisdiction
11 analysis." 328 P.3d at 1163 n.3 The Court did not indicate that the agency theory of general
12 jurisdiction is no longer available.²⁵
13

14 107. SCL made extensive use of agents -- employees of LVS -- in conducting its
15 business. Under Viega, the analysis of the contacts and actual activities of these agents are
16
17
18

19 ²⁴ At the time of the Court's original decision denying the motion to dismiss, Daimler had
20 not been decided. This has resulted in a substantial change in the evaluation of jurisdiction over
21 foreign companies. While the Court recognizes that there are pervasive contacts, these contacts
22 alone are insufficient to exercise general jurisdiction over a foreign company.

23 ²⁵ In trying to reconcile the concepts of alter ego and agency for general jurisdictional
24 inquiries, the Nevada Supreme Court wrote:

25 But corporate entities are presumed separate, and thus the mere "existence of a
26 relationship between a parent company and its subsidiaries is not sufficient to establish
27 personal jurisdiction over the on the basis of the subsidiaries minimum contacts with the
28 forum. . . . Unlike with the alter-ego theory, the corporate identity of the parent company
is preserved under the agency theory; the parent nevertheless" is held for the acts of the
[subsidiary] agent" because the subsidiary was acting on the parent's behalf.

Viega, at 1157 (internal citations omitted.)

1 relevant both for an evaluation of whether general jurisdiction is appropriate and, if not, whether
2 specific jurisdiction over SCL is appropriate.

3 108. Jacobs' operative Third Amended Complaint asserts causes of action against SCL
4 for Breach of Contract, Aiding and Abetting Tortious Discharge in Violation of Public Policy,
5 Civil Conspiracy related to Tortious Discharge in Violation of Public Policy, and Defamation.²⁶
6

7
8 ²⁶ The jurisdictional allegations related to SCL in the Third Amended Complaint are:

9 3. Defendant Sands China Ltd. ("Sands China") is a Cayman Islands corporation and is 70%
10 owned by LVSC. Sands China is publicly traded on the Hong Kong Stock Exchange. While
11 Sands China publicly holds itself out as being headquartered in Macau, its true headquarters are
12 in Las Vegas, where all principle decisions are made and direction is given by executives acting
for Sands China.

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

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

17 8. Venue is proper in this Court pursuant to NRS 13.010 *et seq.* because the material events
giving rise to the claims asserted herein occurred in Clark County, Nevada.
18

19 38. In or about July 2010, Adelson directed executives from LVSC in Las Vegas, Nevada to
begin the process of terminating Jacobs. This process which would be referred to as the
20 "exorcism strategy," was planned and carried out from Las Vegas and included (1) the creation
of fictitious Sands China letterhead upon which a notice of termination was prepared, (2)
21 preparation of the draft press releases with which to publicly announce the termination, and (3)
the handling of all legal-related matters for the termination. Again, all of these events took place
22 in Las Vegas, ostensibly by agents acting for both LVSC and Sands China.

23 39. Indeed it was LVSC in-house attorneys, claiming to be acting on behalf of Sands China,
who informed the Sands China Board on or about July 21, 2010, about Adelson's decision to
24 terminate Jacobs, and directed the Board members to sign the corporate documents necessary to
effectuate Jacobs termination. These same attorneys promised to explain the basis for the
25 termination to the Board members during the following week's board meeting (after the
26 termination took place). Predictably, as Adelson is all-controlling, he took action first and then
decreed how the Board thereafter reacted.

27 40. Promptly thereafter, the team Adelson had placed in charge of overseeing the sham
28 termination – Leven, Kenneth Kay (LVSC's CFO), Irwin Siegel (LVSC/Sands China Board
member), Gayle Hyman (LVSC's general counsel), Daniel Briggs (LVSC's VP of investor
relations), Ron Reese (LVSC's VP of public relations), Brian Nagel (LVSC's chief of security),

1 The location of activities related to these allegations is important to the Court's analysis of
2 jurisdiction.

3 109. LVS operates SCL the same way as it operated its Macau operations before the
4 IPO. Despite the appointment of a Board, any change in the location of ultimate decision-making
5 authority, direction, or control was not material after the IPO.
6

7 110. Here, Adelson and LVS assert an extraordinary amount of control over SCL. The
8 parties do not dispute that LVS is subject to general jurisdiction in Nevada, has systematic and
9 continuous contacts with Nevada, and is at home in Nevada. Adelson and LVS's control over
10 SCL goes far beyond the ordinary relationship of parent to subsidiary.²⁷
11

12
13 Patrick Dumont (LVSC's VP of corporate strategy) and Ron Hendler (LVSC's VP of strategic
14 marketing) – left Las Vegas and went to Macau in furtherance of the scheme.

15 44. Because Leven had not been able to persuade Jacobs to resign, the next play from the
16 Adelson playbook went into effect – fabricating purported cause for the termination. Once again,
17 this aspect of the plan was also carried out in Las Vegas by executives professing to act for both
18 LVSC and Sands China. Indeed, this time they prepared a false letter in Las Vegas and put it on
19 Venetian Macau, Ltd. Letterhead and identified twelve manufactured “for cause” reasons for
20 Jacobs termination. Transparently, one of the purported reasons is an attempt to mask one of
21 Adelson's personal transgressions: The letter absurdly claimed that Jacobs exceeded his
22 authority and failed to keep the companies' Boards of Directors informed of important business
23 decisions. Not surprisingly, not only are the after-the-fact excuses a fabrication, they would not
24 constitute “cause” for Jacobs termination even if they were true, which they are not.
25

26 71. In an attempt to cover their tracks and distract from their improper activities Adelson,
27 LVSC and Sands China have waged a public relations campaign to smear and spread lies about
28 Jacobs. . . .

29 The Court has not considered these allegations as true but weighs the evidence related to these
30 allegations for purposes of this decision.

31 ²⁷ Based upon the limited evidence currently before it, the Court is faced with two potential
32 conclusions, first that SCL is so dominated by LVS and its Chairman that it's independent
33 existence is a sham or, alternatively, that the Board of SCL has made a conscious decision to
34 allow its agents in Las Vegas significant control over SCL's operations and governance. Given
35 the presumption of separateness, the Court finds the better course in this situation, based upon
36 the evidence currently before it, is the latter conclusion.

1 111. The Court refuses to adopt a test under which a company that properly obtains
2 available services from an affiliate through a shared services agreement, without further contacts,
3 becomes subject to jurisdiction in the affiliate's home state.

4
5 112. Even though Jacobs and others at SCL were permitted to provide
6 recommendations, the decisions — large and small — were ultimately made by Adelson and
7 LVS in Las Vegas.

8
9 113. The attitude of Adelson and other LVS executives towards Jacobs' efforts to
10 maintain independent entities could be construed as a "purposeful disregard of the subsidiary's
11 independent corporate existence." Sonora Diamond Corp., 83 Cal. App. 4th at 542.

12 114. SCL's own operations in Nevada through agents (separate and apart from those
13 agreed to under the Shared Services Agreement) are so substantial and of such a nature as to
14 render it essentially at home in Nevada even though it is not incorporated in Nevada and does not
15 have casino operations in Nevada. Jacobs and other SCL executives routinely conduct business
16 in Nevada. All major decisions were made in Nevada on behalf of SCL, including contracts for
17 the purchase of good and services.

18
19 115. The activities of LVS employees — as SCL's agents outside of the Shared Services
20 Agreement were continuous and significant enough to render SCL "at home" in Nevada.

21
22 116. Jacobs argues that LVS exercised control over SCL from Las Vegas. While the
23 separate corporate identities of LVS and SCL cannot be ignored, the actions of those on behalf of
24 SCL in Nevada are important to the jurisdictional analysis.

25 117. The evidence demonstrates that Adelson, in his capacity as SCL's Chairman, and
26 Leven, as Acting CEO, controlled SCL from Las Vegas. Both were in Las Vegas transacting
27 business for SCL with the knowledge and apparent consent of the Board of SCL. While Leven
28

1 was special advisor and acting CEO his SCL business cards showed Nevada as his contact
2 location for SCL. The same was true of Mr. Adelson.

3 118. In Daimler AG, the Court explained that the general jurisdiction test the Due
4 Process Clause requires—which limits all-purpose jurisdiction to the forums where the
5 corporation is “at home”—raises a simple question that can be “resolved expeditiously at the
6 outset of the litigation” without the need for “much in the way of discovery.” 134 S.Ct. at 762
7 n.20. The complicated and intensely fact-specific arguments demonstrate the uniqueness of this
8 case.
9

10 119. This is the “exceptional case” where “a corporation’s operations in a forum other
11 than its formal place of incorporation or principal place of business [are] so substantial and of
12 such a nature as to render the corporation at home in that State.” Daimler AG, 134 S.Ct. at 761
13 n.19. In deciding whether this test is met, the “inquiry does not ‘focu[s] solely on the magnitude
14 of the defendant’s in-state contacts.’” *Id.* at 762 n.20. “General jurisdiction instead calls for an
15 appraisal of a corporation’s activities in their entirety, nationwide and worldwide.” *Id.*
16

17 120. Taken alone SCL’s purchases of goods and services from entities headquartered
18 in Nevada, including LVS, for use in Macau do not provide a basis for concluding that SCL was
19 “at home” in Nevada.
20

21 121. SCL had the right to control how LVS employees performed the services on
22 SCL’s behalf; the Board apparently did not exercise that right to control, but deferred to the
23 Chairman and Special Adviser.
24

25 122. The actions LVS employees undertook in Nevada as SCL’s agent, when
26 compared to SCL’s activities in their entirety, were “so substantial and of such a nature” that
27 SCL should be deemed to be “at home” in Nevada.
28

1 123. Based upon the governing law, and all of the evidence presented in the record, the
2 Court finds that based upon the conduct of LVS acting as SCL's agent, SCL is subject to general
3 jurisdiction in Nevada. The evidence is sufficient to support this finding by a preponderance of
4 the evidence without considering the adverse evidentiary inference imposed by the Court's
5 March 6, 2015 Order.
6

7 124. The activities of LVS employees – as SCL agents outside of the Shared Services
8 Agreement – were continuous and significant enough to render SCL "at home" in Nevada.
9

10 125. A review of Exhibit 887A and the adverse inference imposed by the Court's
11 March 6, 2015 Order, the Court finds that SCL has failed to rebut the inference that each of the
12 documents improperly redacted²⁸ under the MPDPA contradict SCL's denials of personal
13 jurisdiction and support Jacobs' assertion of personal jurisdiction over SCL.²⁹ These inferences
14 simply provide additional evidentiary support for the Court's conclusions.
15
16

17
18 ²⁸ The redactions made to the documents – eliminating all names and other identifying
19 information about identities – casts doubt as to fairness and thoroughness of the entire search,
20 vetting and production process. Because many of the search terms were in fact names, the
21 veracity and completeness of the search cannot be tested against the documents that were flagged
22 for production as SCL has made it impossible for Jacobs to know the identity of any of the
23 names in the redacted documents. Thus, because several of the search terms are in fact names of
24 people, the search terms themselves are redacted. Such a process is ripe for abuse and fails to
25 meet the standards of fairness for discovery in a Nevada court. Because in many instances the
26 actual search terms are redacted, Jacobs cannot himself even run searches against the redacted
27 documents. Adelson himself confirmed that redacted documents are effectively useless in terms
28 of evidentiary value, particularly emails since those contain the identity of the sender, recipient
and other names, all of which SCL has redacted and made inaccessible.

29 ²⁹ Exhibit 887A contains the remaining redacted documents for which replacement copies
30 have not been produced. A review of those documents demonstrates that the activities of SCL
31 and LVS were assisted by use of a Macau shared drive, "the M drive", hosted in Las Vegas.
32 While the degree of redactions prevents the Court from identifying the individuals involved in
33 the discussions, (SCL00182755) the existence of that shared drive is additional evidence of the
34 level of activity in Nevada and control of its agent that SCL could, if it chose, exercise.

1 SPECIFIC JURISDICTION

2 126. A court will find a defendant subject to specific jurisdiction where:

3 (1) the defendant purposefully avails himself of the privilege of serving the market in the
4 forum or of enjoying the protection of the laws of the forum, or where the defendant
5 purposefully establishes contacts with the forum state and affirmatively directs conduct
6 toward the forum state, and (2) the cause of action arises from that purposeful contact
 with the forum or conduct targeting the forum.

7 Arbella Mut. Ins. Co., 122 Nev. at 513, 134 P.3d at 712-13.

8 127. "[A] plaintiff may establish personal jurisdiction over a nonresident defendant "by
9 attributing the contacts of the defendant's agent with the forum to the defendant". Trump, 109
10 Nev. 687 at 694 (1993).

11 128. "Corporate entities are presumed separate. And thus, indicia of mere ownership
12 are not alone sufficient to subject a parent company to jurisdiction based upon its subsidiary's
13 contacts." Viega at 1158.

14 129. "[T]he control at issue must not only be of a degree 'more pervasive than . . .
15 common features' of ownership, '[i]t must veer into management by the exercise of control over
16 the internal affairs of the subsidiary and the determination of how the company will be operated
17 on a day-to-day basis,' such that the parent has 'moved beyond the establishment of general
18 policy and direction for the subsidiary and in effect taken over performance of the subsidiary's
19 day-to-day operations in carrying out that policy." Viega at 1159.

20 130. Specific jurisdiction is proper only "where the cause of action arises from the
21 defendant's contacts with the forum." Dogra v. Liles, 129 Nev. Adv. Rep. 100, 314 P.3d 952, 955
22 (2013). "Nevada may exercise specific jurisdiction over a nonresident defendant if the defendant
23 'purposefully avails' himself or herself of the protections of Nevada's laws, or purposefully directs
24 25
26 27
28

1 her conduct towards Nevada, and the plaintiff's claim actually arises out from that purposeful
2 conduct." *Id.*

3 131. Where "separate claims are pled, specific personal jurisdiction must
4 independently exist for each claim and the existence of personal jurisdiction for one claim will
5 not provide the basis for another claim." Wright & Miller, 5B Fed. Prac. & Proc. Civ. § 1351, at
6 46 n.30. Jacobs has met his burden of showing specific jurisdiction with respect to each of his
7 claims against SCL.
8

9 *Breach of Contract*

10 132. Jacobs claims that he performed the services of SCL's CEO pursuant to an
11 employment agreement with the parent, LVS. Evidence adduced at the evidentiary hearing
12 appears to support a claim that the Term Sheet was later assigned and assumed by SCL as part of
13 the IPO. The assignment and assumption of a contract from a Nevada company subjects SCL to
14 jurisdiction for a dispute stemming from that contract and the services provided under it. Since
15 Jacobs would be subject to suit in Nevada pursuant to that agreement, SCL is similarly subject to
16 suit in Nevada by having assumed the obligations that flow from that agreement.
17

18 133. The fact that the Term Sheet was negotiated and agreed to in Nevada would
19 further subject SCL to personal jurisdiction here due to the conduct of SCL's incorporator, LVS.
20 Newly-formed legal entities are subject to personal jurisdiction in the forum where the entity's
21 promoter enters into contracts, which the legal entity later ratifies and accepts.
22

23 134. Jacobs failed to show specific jurisdiction over his breach of contract claim
24 against SCL. In a breach of contract case, the factors courts typically consider in deciding
25 whether there is specific jurisdiction include the degree to which the defendant does business in
26 the state, whether the contract chooses the law of the forum state, and whether contract duties
27
28

1 were to be performed in the forum. See Consulting Engineers Corp. v. Geometric Ltd., 561 F.3d
2 273, 278 (4th Cir. 2009).

3 135. In Burger King, the U.S. Supreme Court emphasized the “need for a highly
4 realistic approach that recognizes that a contract is ordinarily but an intermediate step serving to
5 tie up prior business negotiations with future consequences which themselves are the real object
6 of the business transaction.” 471 U.S. at 479. “It is these factors—prior negotiations and
7 contemplated future consequences, along with the terms of the contract and the parties’ actual
8 course of dealing—that must be evaluated in determining whether the defendant purposefully
9 established minimum contacts within the forum. “*Id.*”

10 136. Here, all of these factors demonstrate that there is specific jurisdiction over
11 Jacobs’s breach of contract claim. The negotiations, consequences, terms, and parties’ course of
12 dealing arising from the option grant are all primarily connected to Nevada. The facts related to
13 the termination are intimately related to the breach of the option grant.

14 137. A nonresident company may subject itself to jurisdiction by accepting the benefits
15 of an employment agreement.

16 138. The use of correspondence and telephone calls to forum-based offices during
17 contract negotiations are examples of the sort of contact that can give rise to jurisdiction.

18 139. Jacobs has sued SCL for failure to honor the award of options to him, a claim that
19 grows directly out of his services provided to SCL pursuant to the Term Sheet with LVS. SCL
20 purposefully availed itself of the laws of Nevada by accepting the services of Jacobs’ pursuant to
21 the Nevada-based Term Sheet. When accepting the benefits that Jacobs was providing pursuant
22 to a Nevada contract, SCL could reasonably foresee being hailed into a Nevada court should a
23 dispute arise related to terms of his employment under the Nevada contract.

1 140. The Share Option Agreement was offered to Jacobs for the services he provided
2 to SCL pursuant to the Term Sheet.

3 141. The Share Option Grant and the Term Sheet are intertwined and interrelated. The
4 Share Option Grant was made in fulfillment of the terms and conditions of the Term Sheet.
5

6 142. Adelson, Leven, and other LVSC executives participated in the decision to extend
7 the Share Option Grant. This process involved a number of emails and calls to and from Nevada
8 to resolve the terms of the options and SCL's executive stock option plan.

9 143. Jacobs alleges that the decision to breach the Share Option Grant was made by
10 Adelson and LVS executives from Nevada. Jacobs' breach of contract cause of action arises
11 from this action within the forum.
12

13 144. The parties' disputes as to whether Jacobs engaged in certain activities outside of
14 Nevada, and whether he then reported those activities to the Chairman in Nevada – disputes that
15 also go to the merits of the case – affect the basic conclusion that Jacobs claim arose in Nevada.
16

17 145. The acts of employees of LVS as agent of SCL related to compensation and
18 termination of Jacobs and SCL's assumption of the Nevada negotiated Term Sheet support the
19 conclusion that specific jurisdiction is appropriate over the breach of contract claim.
20

21 146. Where the Court has personal jurisdiction over one contract, the court may
22 exercise jurisdiction over intimately related contracts even though the parties are not identical.

23 *Conspiracy and Aiding and Abetting*

24 147. The jurisdictional analysis for aiding and abetting is similar to the jurisdictional
25 assessment for conspiracy claims.

26 148. The elements of jurisdiction for either conspiracy or aiding and abetting are:

- 27 (1) a conspiracy . . . existed;
28 (2) the defendant was a member of that conspiracy;

1 (3) a substantial act or substantial effect in furtherance of the conspiracy occurred in the
2 forum state;

3 (4) the defendant knew or had reason to know of the act in the forum state or that acts
4 outside the forum state would have an effect in the forum state; and

5 (5) the act in, or effect on, the forum state was a direct and foreseeable result of the
6 conduct in furtherance of the conspiracy.

7 Carsanaro v. Bloodhound Techs., Inc., 65 A.3d 618, 636 (Del. Ch. 2013) .

8 149. Jacobs has presented sufficient evidence to show jurisdiction over SCL on his
9 conspiracy and aiding and abetting claims.

10 150. While wearing their SCL "hats," Adelson and Leven formulated the strategy to
11 terminate Jacobs. Many of their own acts, purportedly done on behalf of SCL, were undertaken
12 within Nevada.

13 151. To carry out the plan, they utilized the services of LVS employees within Nevada
14 to draft press releases, obtain the SCL Board's "approval" after the decision had been made, and
15 handle other legal matters related to the termination so that Jacobs would not discover his
16 looming termination.

17 152. These were substantial acts in furtherance of Jacobs' firing and would give rise to
18 jurisdiction over SCL had SCL taken these acts within the forum. SCL knew of LVS's acts in
19 the forum to complete Jacobs' termination and assented to them.

20 153. The acts in Nevada, and the effects felt therein, were directly foreseeable and
21 attributable to the alleged conspiracy.

22 154. Jacobs' causes of action for conspiracy and aiding and abetting arise directly out
23 of SCL's and its co-conspirators' purposeful contact with the forum and conduct targeting the
24 forum.

25 155. The evidence has shown that SCL purposefully directed its conduct towards
26 Nevada.
27
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1 156. The acts of LVS and SCL related to Jacobs alleged wrongful termination support
2 the conclusion that specific jurisdiction is appropriate over the Aiding and Abetting Tortious
3 Discharge in Violation of Public Policy and Civil Conspiracy related to Tortious Discharge in
4 Violation of Public Policy claims.
5

6 *Defamation*

7 157. A corporation can be liable for the defamatory statements of its executives acting
8 within the scope of their authority.
9

10 158. Jacobs has presented sufficient evidence that Adelson's statements are attributable
11 not only to himself, but also SCL.

12 159. Jacobs' cause of action arises out of Adelson's statement that he made and
13 published in Nevada concerning Jacobs' claims in Nevada.

14 160. "In judging minimum contacts, a court properly focuses on 'the relationship
15 among the defendant, the forum, and the litigation.'" Keeton v. Hustler Magazine, Inc., 465 U.S.
16 770, 775 (1984). "The victim of a libel, like the victim of any other tort, may choose to bring suit
17 in any forum with which the defendant has certain minimum contacts . . . such that the
18 maintenance of the suit does not offend traditional notions of fair play and substantial justice."
19 Id. at 780-81. The reputation of a libel victim may suffer harm outside of his or her home state.
20 Id. at 777. Defamatory statements hurt the target of the statement and the readers of the
21 statement. Id. at 776.
22

23 161. Specific jurisdiction over SCL on Jacobs defamation claim hinges on his assertion
24 that Adelson was speaking not only for himself and LVS, but also for SCL, when he made the
25 allegedly defamatory statement. Adelson's inconsistent testimony on this issue during the
26 evidentiary hearing provides substantial evidentiary support for Jacobs allegations.
27
28

1 162. The fact that Mr. Adelson's statement was published in Nevada through *The Wall*
2 *Street Journal* is enough to support specific jurisdiction over SCL.

3 *Reasonableness*

4 163. "Whether general or specific, the exercise of personal jurisdiction must also be
5 reasonable." Emeterio v. Clint Hurt and Associates, Inc., 967 P.2d 432, 436 (Nev. 1998)

6 164. Once the first two prongs of specific jurisdiction have been established,
7 (purposeful availment/direction and that the cause of action arises from that purposeful
8 contact/targeting the forum) "the forum's exercise of jurisdiction is *presumptively reasonable*. To
9 rebut that presumption, a defendant 'must present a *compelling case*' that the exercise of
10 jurisdiction would, in fact, be unreasonable." Roth v. Garcia Marquez, 942 F.2d 617, 625 (9th
11 Cir. 1991).

12 165. Courts look at a number of factors to analyze whether exercising jurisdiction
13 would be reasonable, including:

- 14 (1) the burden on the defendant of defending an action in the foreign forum,
15 (2) the forum state's interest in adjudicating the dispute,
16 (3) the plaintiff's interest in obtaining convenient and effective relief,
17 (4) the interstate judicial system's interest in obtaining the most efficient resolution of
18 controversies, and
19 (5) the shared interest of the several States in furthering fundamental substantive social
20 policies.

21 967 P.2d 432, 436 (1998).

22 166. Application of these factors confirms that it is reasonable to require the SCL to
23 litigate this contract dispute in Nevada.

24 167. SCL will not suffer any burden defending this action in Nevada. The evidence
25 indicates that SCL utilized LVS for substantial activities related to the issues involved in the
26 allegations related to the merits of this matter. SCL's executives routinely travel to Nevada and
27
28

1 conduct business in Nevada on a systematic and continuous bases. Continuing contacts with the
2 forum indicate that litigating in Nevada do not constitute a burden. Roth, 942 F.2d at 623.

3 “[U]nless such inconvenience is so great as to constitute a deprivation of due process, it will not
4 overcome clear justifications for the exercise of jurisdiction.” *Id.*

5
6 168. Nevada has an interest in resolving disputes over contracts and torts that center
7 upon Nevada and relate to activities in the forum. Although a non-resident, Jacobs has an
8 interest in obtaining convenient and effective relief. SCL cannot plausibly argue that it would be
9 more convenient for Jacobs to litigate outside of the United States. *See id.* at 624.

10
11 169. The interstate – and global – judicial systems’ interest in efficient resolution
12 weighs in favor of exercising jurisdiction. This matter has been pending in Nevada courts for
13 almost five years. Judicial economy would be served by continuing this litigation in Nevada.
14 Significant time and judicial resources of the Court and the parties will have been wasted if
15 Jacobs is required to reinstate this litigation in another forum. The social policies implicated by
16 claims of wrongful termination in violation of public policy militate in favor of retaining
17 jurisdiction.
18

19 170. SCL has not made a compelling case that exercising jurisdiction over it would be
20 unreasonable.

21
22 171. While Nevada civil litigation rules are likely to impose obligations on SCL that
23 are in tension with SCL’s obligations under the foreign law of the jurisdiction where it operates,
24 including its obligations under the Macau Personal Data Privacy Act, the free flow of
25 information that occurred between SCL and LVS prior to the litigation ameliorate that concern.
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1 *Adverse Inference*

2 172. Without taking into consideration the adverse evidentiary inferences imposed by
3 the Court's March 6, 2015 Order, Jacobs has established specific personal jurisdiction over each
4 of his claims against SCL by a preponderance of the evidence.
5

6 173. If the Court were to consider the adverse evidentiary inference imposed by the
7 Court's March 6, 2015, the case for exercising specific jurisdiction is even stronger. ??????

8 C. TRANSIENT JURISDICTION

9 174. In Burnham v. Superior Court of California, 495 U.S. 604, 619 (1990), the
10 United States Supreme Court reaffirmed the principle that "jurisdiction based on physical
11 presence alone constitutes due process" and that it is "fair" for a forum to exercise jurisdiction
12 over anyone who is properly served within the state.
13

14 175. Nevada has adopted the in-state service rule for non-resident defendants. *See*
15 NRS 14.065(2). The Nevada Supreme Court has held that "[i]t is well-settled that personal
16 jurisdiction may be asserted over an individual who is served with process while present within
17 the forum state." Cariaga v. Eighth Judicial Dist. Court of State, 104 Nev. 544, 762 P.2d 886,
18 887 (1988). It also noted that "[t]he doctrine of 'minimum contacts' evolved to extend the
19 personal jurisdiction of state courts over non-resident defendants; it was never intended to limit
20 the jurisdiction of state courts over persons found within the borders of the forum state." *Id.*
21

22 176. Leven was served with process while in Nevada acting as SCL's CEO and while
23 carrying out SCL's business from the office identified on his SCL business card. He was not
24 served with process during a temporary or isolated trip. To the contrary, he was served with
25 process in the state where SCL had duly authorized him to serve as CEO. Accordingly, due
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1 process is satisfied and even if other basis for jurisdiction did not exist, this Court may exercise
2 jurisdiction over SCL on the basis of transient jurisdiction.

3 177. The Nevada Supreme Court instructed this Court to consider whether there was
4 transient jurisdiction over SCL if it concluded that there was no general jurisdiction. It is
5 undisputed that Jacobs served his complaint on Leven, who was then SCL's Acting CEO, while
6 he was in Nevada.
7

8 178. Serving a complaint on a senior officer of a corporation in the forum without
9 more does not confer jurisdiction over the corporation.
10

11 179. While the U.S. Supreme Court held in Daimler AG that it violates due process to
12 exercise general jurisdiction over a foreign corporation based solely on the fact that its agent is
13 present and doing business on behalf of the foreign corporation in the forum, the significant
14 business being done on behalf of SCL by Leven with SCL's knowledge and consent supports
15 transient jurisdiction.
16

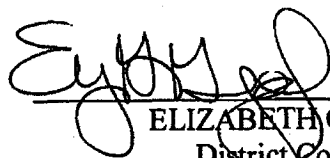
17 180. Any conclusion of law stated hereinabove that is more appropriately deemed a
18 finding of fact shall be so deemed.
19

20 IV.

21 ORDER

22 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:
23 Defendant Sands China Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, or in the
24 Alternative, Plaintiff's Failure to Join an Indispensable Party is denied.
25

26 Dated this 22nd day of May, 2015

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ELIZABETH GONZALEZ
District Court Judge

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Certificate of Service

I hereby certify, that on the date filed, this Order was served on the parties indentified
on Wiznet's e-service list.

- J. Stephen Peek, Esq. (Holland & Hart)
- Randall Jones (Kemp Jones Coulthard)
- Steve Morris (Morris Law)
- James J. Pisanelli, Esq. (Pisanelli Bice)


Dan Kutinac

FFCL

STEVEN JACOBS,

Plaintiff(s),

VS

LAS VEGAS SANDS CORP, ET AL,

Defendants.

Case No. 10 A 627691

Dept. No. XI

Date of Hearing: 04/20-22/2015,
04/27-30/2015, 05/04-05/2015 and
05/07/2015

This matter having come on for an evidentiary hearing related to the Defendant Sands China Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Plaintiff's Failure to Join an Indispensable Party, the Nevada Supreme Court's Order Granting Petition for Writ of Mandamus,² and the Writ of Mandamus issued by the Nevada Supreme Court to this Court on August 26, 2011 (collectively "Writ") beginning on April 20, 2015 and continuing, based upon the availability of the Court and Counsel, until its completion on May

On May 28, 2015, this Court granted Plaintiff's Motion to Modify/Correct Decision and Order. Based upon the issues related to the loss of the electronic file the Court has taken the opportunity to not only make the corrections requested in the Motion but also those other corrections that had been made in the prior electronic version prior to its unfortunate and inadvertent loss due to what the Court's IT staff described as "operator error".

RECEIVED
MAY 28 2015
CLERK OF THE COURT

1 7, 2015; Plaintiff Steven Jacobs ("Jacobs") being present in court and appearing by and
2 through his attorney of record, James J. Pisanelli, Esq., Todd L. Bice, Esq., Debra L. Spinelli,
3 Esq., and Jordan T. Smith, Esq., of the law firm Pisanelli Bice PLLC; Sands China Ltd.
4 ("SCL") appearing by and through its attorney of record J. Stephen Peek, Esq. of the law firm
5 Holland & Hart LLP and Randall Jones, Esq., Mark M. Jones, Esq., and Ian P. McGinn, Esq.,
6 of the law firm Kemp, Jones & Coulthard, LLP; Defendants Las Vegas Sands Corp. ("LVS")
7 appearing by and through its attorney of record J. Stephen Peek, Esq. of the law firm Holland
8 & Hart LLP; and Defendant Sheldon G. Adelson ("Adelson") appearing as a witness and by
9 and through his attorney of record, Steve Morris, Esq. and Rosa Solis Rainey, Esq. of the
10 Morris Law Group; the Court having read and considered the pleadings filed by the parties;
11 having reviewed the evidence admitted during the evidentiary hearing,³ and having heard and
12 carefully considered the testimony of the witnesses called to testify; the Court having
13 considered the oral and written arguments of counsel, and with the intent of deciding the
14 limited issues before the Court related to jurisdiction over SCL,⁴ makes the following findings
15 of fact⁵ and conclusions of law:⁶

16
17
18 ³ As a result, of an *in camera* review conducted by this Court related to discovery disputes,
19 additional documents not admitted in evidence have been previously reviewed. For purposes of
20 this decision, the Court relies upon the evidence admitted during this hearing and the two prior
evidentiary hearings conducted.

21 ⁴ The Court notes, as the Nevada Supreme Court noted in Trump v. District Court, 109
22 Nev. 687, 693, n.2 (1993), given the intertwined factual issues present between the facts
23 supporting the claims made by Plaintiff and the facts relating to the jurisdictional issues the
procedure undertaken in this case, is not an efficient use of judicial resources.

24 ⁵ The findings made in this Order are preliminary in nature based upon the limited
25 evidence presented after very limited jurisdictional discovery and may be modified based upon
additional evidence presented to the Court and/or jury at the ultimate trial of this matter.

26 ⁶ The Writ of Mandamus issued to this Court on August 26, 2011 states:

27
28 NOW, THEREFORE, you are instructed to hold an evidentiary hearing on personal
jurisdiction, to issue findings of act (sic) and conclusions of law stating the basis for your
decision following that hearing, . . .

I.
PROCEDURAL POSTURE

Jacobs filed this suit on October 20, 2010, against SCL claiming that SCL breached contractual obligations it allegedly owed him by refusing to honor his demand to exercise certain stock options following his termination. On December 22, 2010, SCL moved to dismiss the complaint for (among other things) lack of jurisdiction. Jacobs opposed the motion on February 9, 2011, arguing that the Court had jurisdiction over SCL and that it also had transient jurisdiction because the complaint was served in Nevada on Michael A. Leven ("Leven"), who was then the Acting Chief Executive Officer of SCL.

On March 15, 2011, this Court denied the SCL motion stating:

Here there are pervasive contacts with the State of Nevada by activities done in Nevada by board members of Sands China. Therefore, while Hong Kong law may indeed apply to certain issues that are discussed during the progress of this case, that does not control the jurisdictional issue here.

March 15, 2011 Transcript p. 62, lines 3 to 7. The Nevada Supreme Court issued an Order Granting Petition for Mandamus on August 26, 2011.

On August 26, 2011, the Nevada Supreme Court issued a stay of certain proceedings in this matter pending the conduct of an evidentiary hearing and decision on jurisdictional issues related to SCL. The Court granted Jacobs request to conduct jurisdictional discovery prior to the evidentiary hearing. The order granting the jurisdictional discovery was entered on March 8, 2012. Due to numerous discovery disputes⁷ and stays⁸ relating to petitions for extraordinary relief, the evidentiary hearing on jurisdiction was delayed.

⁷ Certain evidentiary sanctions were imposed upon SCL in the Order entered March 6, 2015.

a. For purposes of jurisdictional discovery and the evidentiary hearing related to jurisdiction, SCL will be precluded from raising the MDPA as an objection or as a defense to use, admission, disclosure or production of any documents.

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II.
BURDEN OF PROOF

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There are significant issues related to the appropriate burden of proof to be utilized in this case that have been well briefed by counsel. The typical standard on a motion to dismiss for lack of jurisdiction is a *prima facie* standard. In Trump, the Nevada Supreme Court noted that a preponderance of the evidence standard may be the appropriate standard in a "full evidentiary hearing".⁹ The Nevada Supreme Court also made mention of a case in the Trump decision which suggested a third standard -- "likelihood of the existence of each fact necessary to support personal jurisdiction"¹⁰ -- may be appropriate.¹¹

b. For purposes of jurisdictional discovery and the evidentiary hearing related to jurisdiction, SCL is precluded from contesting that Jacobs's electronically stored information (approx. 40 gigabytes) is rightfully in his possession.

c. For purposes of the evidentiary hearing related to jurisdiction, SCL is precluded from calling any witnesses on its own behalf or introducing any evidence on its own behalf. SCL may object to the admission of evidence, arguments of counsel, and to testimony of witnesses during the evidentiary hearing related to jurisdiction; cross-examine witnesses during the evidentiary hearing related to jurisdiction; and, argue the application of the evidence to the law during the opening and closing arguments of the evidentiary hearing related to jurisdiction.

d. During the evidentiary hearing related to jurisdiction, the Court will adversely infer, subject to SCL's ability to rebut that inference (within the evidentiary constraints set forth in the paragraph above), that all documents not produced in conformity with this Court's September 2012 Order are adverse to SCL, would contradict SCL's denials as to personal jurisdiction, and would support Jacobs' assertion of personal jurisdiction over SCL.

⁸ The parties have not agreed that any stays issued act as a tolling or extension of the period under NRCP Rule 41(e). As such, the trial of this matter was set by Order entered on May 27, 2015 to commence on October 14, 2015, prior to the earliest expiration of the period under NRCP Rule 41(e), October 19, 2015.

⁹ 109 Nev. at 693.

¹⁰ This third standard and the circumstances in which it may be appropriate to utilize was explained as:

If, however, the court finds that determining a motion on the *prima facie* standard (thereby deferring the final jurisdictional determination until trial) imposes on a defendant a significant expense and burden of trial on the merits in the foreign forum that

1 A traditional preponderance of the evidence standard is inappropriate for this case
2 because of the limited discovery done to date due to the stay and the inextricably intertwined
3 facts between jurisdiction and merits. These limitations impact the ability of the parties to
4 conduct a "full evidentiary hearing". A jury demand has been filed; Jacobs has a right to a jury
5 trial on the jurisdictional defense raised by SCL. Given the inextricably intertwined issues
6 between the conduct of representatives of LVS and SCL, the Court shares the concerns
7 expressed by counsel for LVS regarding the potential impact of these findings and conclusions
8 upon LVS. Despite these concerns, the Court makes findings and reaches conclusions related
9 to jurisdiction, *solely to comply with the Writ*, upon a preponderance of the evidence standard
10 based solely on the evidence presented. The findings and conclusions are preliminary in nature
11 and may not be used by the parties or their counsel for any purpose other than this Court's
12 compliance with the Writ.¹²
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16
17 it is unfair in the circumstances, the court may steer a third course that avoids both this
18 unfair burden and (especially when the jurisdictional facts are enmeshed with the merits)
19 the morass of unsettled questions of law regarding "issue preclusion" and "law of the
20 case". This third method is to apply an intermediate standard between requiring only a
21 *prima facie* showing and requiring proof by a preponderance of the evidence. Thus, even
22 though allowing an evidentiary hearing and weighing evidence to make findings, the
23 court may merely find whether the plaintiff has shown a likelihood of the existence of
24 each fact necessary to support personal jurisdiction.

25 Boit. v. Gar-Tec Products, Inc., 967 F. 2d 671 at 677 (1st Cir. 1992).

26 ¹¹ Another standard which might be appropriate for consideration, but which was not raised
27 by the parties, is the standard of substantial evidence used for judgment on partial findings made
28 under NRCP 52(c).

¹² Given the inextricably intertwined issues of jurisdiction with the facts surrounding the
merits issues, i.e. the termination of Plaintiff's employment and associated stock option(s), the
evidentiary hearing and the jurisdictional discovery necessary prior to the hearing have not been
a wise use of judicial resources. Unfortunately, as a result of the process imposed upon this
Court because of the Writ, the parties will have only a few months to conduct the merits
discovery and be ready for trial.

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III.
FINDINGS OF FACT

1. Jacobs filed this suit on October 20, 2010 against SCL claiming that SCL breached contractual obligations it allegedly owed him by refusing to honor his demand to exercise certain stock options following his termination.

2. On December 22, 2014, Jacobs filed a Third Amended Complaint, alleging three new claims against SCL: conspiracy, aiding and abetting his alleged wrongful termination by LVS, and defamation as a result of statements made during the course of the litigation by LVS's and SCL's chairman, Adelson. Jacobs contends that there is specific jurisdiction over SCL on all three claims.

3. LVS is a Nevada corporation with its principle place of business in Las Vegas, Nevada. LVS is headed by Adelson who serves as LVS's Chairman of the Board of Directors. LVS is a publicly-traded company in the United States. Through subsidiaries, LVS operates casinos in Nevada, Pennsylvania, Macau, and Singapore.

4. In early 2009, Leven became Chief Operating Officer ("COO") of LVS.

5. Leven had previously served on the LVS Board.

6. Leven asked Jacobs to assist him as a consultant.

7. Jacobs became a consultant to LVS through Vagus Group, Inc., an entity Jacobs owned. In that role, Jacobs began assisting with the restructuring of LVS's Nevada operations. In doing so, Jacobs, Leven and Adelson met extensively in Nevada. They also traveled to Macau to review LVS's operations there.

8. While Jacobs was assisting LVS as a consultant, all of its Macau operations and assets were held through wholly-owned subsidiaries, one of which was Venetian Macau Limited ("VML").

1 9. Leven discussed bringing Jacobs on directly, on a temporary basis, to help
2 oversee and restructure LVS's Macau operations. Jacobs and Leven discussed the terms of this
3 temporary engagement. These discussions principally occurred while both Jacobs and Leven
4 were in Las Vegas working on the LVS restructuring.
5

6 10. One of the tasks that Jacobs was assigned was restructuring Macau operations for
7 the potential of spinning the Macau assets off into a yet-to-be-formed publicly-traded subsidiary
8 for LVS. This would serve as a financing means by which LVS could raise additional capital to
9 recommence construction on certain existing, but delayed, projects in Macau.
10

11 11. On April 30, 2009, Leven advised that effective May 5, 2009, LVS gave Jacobs
12 the title of "Interim President" overseeing its Macau operations. In that role, Jacobs reported
13 directly to Leven in his capacity as COO of LVS. Leven was the operational boss over all of
14 LVS's assets.
15

16 12. Leven began negotiating with Jacobs for a more permanent position. Through
17 June and July of 2009, Leven and Jacobs exchanged drafts of what became known as the "Term
18 Sheet" which would become Jacobs' employment agreement.¹³ Many of those negotiations
19 occurred between Jacobs and Leven at LVS's headquarters in Nevada.
20

21 13. These negotiations also involved the exchange of correspondence and telephone
22 communications into, and out of, Nevada.
23

24 14. In emails in late June and July 2009, LVS executives and Jacobs had multiple
25 communications concerning the terms and conditions of his employment.
26

27 15. By late July 2009, Jacobs indicated that if they could not come to an agreement as
28 to his full-time position, he needed to make commitments for his family back in Atlanta,
29

¹³ The "Term Sheet" was an exhibit to LVS's 10Q for the quarter ending March 31, 2010.

1 Georgia. Jacobs was in and out of Macau on only a temporary basis, and Jacobs indicated that
2 he would not be moving his family unless he and LVS came to an agreement.

3 16. On or about August 2, 2009, Leven emailed Robert Goldstein ("Goldstein"),
4 copying Charles Forman – one of the members of LVS's compensation committee – explaining
5 that tomorrow would be the "last chance" to try and close out the terms and conditions of Jacobs'
6 employment with Adelson. If they could not do so, Leven indicated that they would have to do a
7 nine-month deal with Jacobs so as to get through a planned initial public offering ("IPO") for the
8 spinoff of LVS's Macau operations.
9

10 17. The next day, August 3, 2009, Leven testified Adelson and he expressly approved
11 the "Terms and Conditions" of Jacobs' employment. Although Adelson claims he does not
12 remember doing so, Leven confirmed that Adelson approved those terms and conditions in
13 Nevada pursuant to his role as Chairman and CEO of LVS. Leven negotiated and signed the
14 deal in Nevada pursuant to his role as LVS's COO. Adelson claims that he did not consider the
15 Term Sheet to be binding.
16

17 18. Pursuant to the Term Sheet, LVS agreed to employ Jacobs as the "President and
18 CEO Macau, listed company (ListCo)." The subsidiary, which would serve as the vehicle for the
19 IPO, had not yet been determined. LVS agreed to pay Jacobs a base salary of \$1.3 Million, with
20 a 50% bonus. It also awarded Jacobs 500,000 options in LVS. Of the 500,000 options, 250,000
21 options were to vest on January 1, 2010, 125,000 were to vest on January 1, 2011, and 125,000
22 were to vest on January 1, 2012. LVS agreed to pay a housing allowance and Jacobs was
23 entitled to participate "in any established plan(s) for senior executives."
24

25 19. The Term Sheet incorporated the standard "for cause" termination language of
26 other LVS employment agreements. In the event Jacobs terminated not for cause, the Term Sheet
27
28

1 provided a "1 year severance, accelerated vest [of the options], and the Right to exercise [the
2 options] for 1 year post termination."

3 20. Leven signed the Term Sheet on or about August 3, 2009, and had his assistant,
4 Patty Murray, email it to Jacobs.
5

6 21. Prior to the formation of SCL, the proposed entity was referred to in certain
7 documents as "Listco".
8

9 22. SCL is a corporation organized under the law of the Cayman Islands. SCL was
10 formed as a legal entity on or about July 15, 2009.

11 23. Adelson named himself as Chairman of the Board prior to the identification of
12 other board members. An initial board was formed which dealt solely with governance issues.

13 24. SCL became the vehicle through which LVS would ultimately spin off its Macau
14 assets as part of the IPO process.
15

16 25. SCL went public on the Hong Kong Stock Exchange ("HKSE") through an IPO
17 on November 30, 2009.

18 26. LVS owns approximately 70% of SCL's stock and includes SCL as part of its
19 consolidated filings with the US Securities and Exchange Commission.
20

21 27. SCL is the indirect owner and operator of the majority of LVS's Macau
22 operations.

23 28. SCL includes the Sands Macau, The Venetian Macau, Four Seasons Macau, and
24 other ancillary operations that support these properties.

25 29. SCL is a holding company.
26
27
28

1 30. SCL has no employees.¹⁴

2 31. One of SCL's primary assets is VML. VML is the holder of a subconcession
3 authorized by the Macau Government that allows it to operate casinos and gaming areas in
4 Macau.
5

6 32. Prior to the Fall of 2009, decisions related to the operations of the Macau entities
7 were made by Adelson and Leven.

8 33. Neither SCL nor any of its subsidiaries has any bank accounts or owns any
9 property in Nevada.
10

11 34. SCL has separate bank accounts from LVS.

12 35. SCL does not conduct any gaming operations in Nevada, nor does it derive any
13 revenue from operations in Nevada. All of the revenues that SCL annually reports in its public
14 filings derive from operations in Macau.

15 36. SCL has never owned, controlled, or operated any business in Nevada. SCL has a
16 non-competition agreement with LVS.
17

18 37. It was not uncommon for the executives of subsidiaries that LVS controlled to
19 fulfill that role pursuant to an employment agreement with the parent, LVS. When it was
20 determined that Leven would become the interim CEO for SCL, he did so pursuant to an
21 employment agreement with LVS. As interim CEO for SCL, Leven had no employment
22 agreement with SCL and fulfilled that role as an LVS employee.¹⁵
23
24

25 _____
26 ¹⁴ Conflicting evidence on this point was presented throughout the evidentiary hearing.
27 Counsel confirmed during closing that SCL had no direct employees and the reference to
28 employees related to VML.

¹⁵ Adelson is now the CEO of SCL and serves in that capacity pursuant to an employment
agreement with LVS. Adelson has no separate employment agreement with SCL. The interim

1 38. In having its leading executives serve in those roles pursuant to employment
2 agreements with LVS and delegating tasks to LVS employees in Nevada, SCL reasonably would
3 foresee that it would be subject to suit in Nevada over any dispute concerning the services of its
4 executives.
5

6 39. Leven testified, that upon the closing of the IPO, Jacobs' employment pursuant to
7 the Term Sheet was transferred to SCL and assumed by it. As Leven testified, the obligations
8 under the Term Sheet were assumed by SCL in conjunction with the closing of the IPO. The
9 assignment and assumption of the Term Sheet from LVS to SCL does not appear to have been
10 documented in any formal fashion. However, as Leven acknowledged, SCL and its Board
11 understood that Jacobs was serving as CEO pursuant to the terms and conditions of the Term
12 Sheet that had been negotiated and approved in Nevada with the Nevada parent.
13

14 40. Jacobs' duties as SCL's CEO provided under the Term Sheet required frequent
15 trips to Las Vegas, Nevada and involved countless emails and phone calls into the forum. Jacobs
16 frequently conducted internal operations and business with third parties while physically present
17 in Nevada.
18

19 41. While SCL had its own Board of Directors, kept minutes of the meetings of its
20 Board and Board Committees, and maintained its own separate and independent corporate
21 records, direction came from LVS.
22

23 42. At the time of its IPO, the SCL Board consisted of (1) three Independent Non-
24 Executive Directors (Ian Bruce, Yun Chiang and David Turnbull¹⁶), all of whom resided in Hong
25

26 COO of SCL is Goldstein. Goldstein acknowledged that he serves as SCL's COO pursuant to his
27 employment agreement with the Nevada parent company, LVS.

28 ¹⁶ During his testimony at the evidentiary hearing, when questioned about board member
Turnbull, Adelson stated, "not for long". It is this type of control of SCL, that leads the Court to

1 Kong; (2) two Executive Directors (Jacobs, who was SCL's Chief Executive Officer and
2 President, and Stephen Weaver ("Weaver"), who was Chief Development Officer), both of
3 whom were based in Macau; and (3) the Chairman and Non-Executive Director (Adelson) and
4 two Non-Executive Directors (Jeffrey Schwartz and Irwin Siegel ("Siegel")), who were also
5 members of the LVS Board and who were based in the United States. Leven served as a Special
6 Adviser to the SCL Board.
7

8 43. During the relevant period, all of the in-person SCL Board meetings were held in
9 either Hong Kong or Macau. The Board did not meet in Nevada. While certain board members
10 attended board meetings remotely, the meetings were hosted in Hong Kong.
11

12 44. SCL listed Macau in its public filings as its principal place of business and head
13 office. It also had an office in Hong Kong. SCL never described Nevada as its principal place
14 of business and, prior to Jacobs termination, never had an office in Nevada.¹⁷
15

16 45. Prior to Jacobs termination, senior management of SCL: Jacobs, Weaver, the
17 Chief Financial Officer (Toh Hup Hock, also known as Ben Toh), and the General Counsel and
18 Corporate Secretary (Luis Melo) -- were all headquartered in Macau.
19

20 46. Although SCL insists that everything changed in terms of corporate control after
21 the closing of the IPO -- with Leven going so far as to claim that before the IPO he was the boss,
22 and after the IPO he ceased being the boss -- the evidence indicates otherwise.
23
24

25 believe that the activities of Adelson in Las Vegas as Chairman of SCL are significant for
26 determination of specific jurisdiction.

27 ¹⁷ Leven's business card as Special Adviser to SCL indicated his address was a Las Vegas
28 address. Following Jacobs termination, Leven became interim CEO of SCL. He retained his
office location in Las Vegas and all contact information at LVS during the entire duration of his
term as Interim CEO.

1 47. This was not an ordinary parent/subsidiary relationship. On paper, neither
2 Adelson nor Leven were supposed to be serving as "management" of SCL. Adelson's role was
3 that of SCL's Board Chairman. Leven's role was, on paper, supposed to be that of "special
4 advisor" to the SCL Board.
5

6 48. Internal emails and communications confirmed that Adelson's and Leven's roles
7 of management largely continued unchanged after the IPO. Even SCL's other Board members
8 internally referred to Leven as constituting SCL's "management." As Leven would confirm in
9 one internal candid email, one of Jacobs' supposed problems is that he actually "thought" he was
10 the CEO of SCL, when in fact, Adelson was filling that role just as he had before the IPO. Other
11 internal communications confirm that Jacobs was criticized for attempting to run SCL
12 independently because for LVS, "it doesn't work that way."
13

14 49. As Ron Reese ("Reese") (LVS's VP of public relations) would acknowledge, one
15 of the supposed problems with Jacobs was that he thought he was the real CEO of SCL when in
16 fact there is, and only has been, one CEO of the entire organization, and that is, and always has
17 been, Adelson.
18

19 50. After the IPO, Adelson, Leven, and LVS continued to dictate large and small-
20 scale decisions.
21

22 51. As internal documents show, even compensation for senior executives, including
23 Jacobs, were ultimately dictated by Adelson.

24 52. Even though disagreements with Adelson had begun to surface, Jacobs was
25 awarded 2,500,000 options in SCL on May 10, 2010 "in recognition of his contribution and to
26 encourage continuing dedication." These options were granted by SCL under a Share Option
27 Grant as one of the plans to which Jacobs was eligible. Consistent with its ultimate control and
28

1 direction, it was up to Leven and Adelson to approve the 2.5 million SCL options for Jacobs in
2 SCL, which they did on May 4, 2010.

3 53. Jacobs was entitled to participate in any company "plans" that were available for
4 senior executives. This included any stock option plans. If the IPO had not occurred, Jacobs
5 would have participated in the LVS stock option plan. However, Leven explained that since the
6 IPO was successful and Jacobs was overseeing the Macau operations, Section 7 of the Term
7 Sheet was fulfilled by Jacobs' participation in the stock option plan for SCL. According to
8 Leven, Jacobs participated in the SCL option plan because SCL had assumed the obligations to
9 fulfill the terms of Jacobs' employment under the Term Sheet.
10

11 54. On or about July 7, 2010, when Jacobs was still SCL's CEO, Toh Hup Hock, in
12 his capacity as SCL's CFO, sent Jacobs a letter from Macau regarding the stock option grant¹⁸
13 that the Remuneration Committee of the SCL Board made to Jacobs.
14

15 55. The Option Terms and Conditions provided to Jacobs stated that the stock option
16 agreement would be governed by Hong Kong law.
17

18 56. The stock option award to Jacobs of 2.5 million options in SCL are tied to and
19 intertwined with the terms and conditions of the Term Sheet that the parties negotiated and
20 agreed to in Nevada.
21

22 57. As Leven confirmed, the vesting of those 2.5 million options in SCL were
23 expressly accelerated under the terms of the Term Sheet should Adelson and/or his wife lose
24 control of LVS or should Jacobs be terminated without proper cause. SCL reasonably foresaw
25 being subject to suit in Nevada having awarded Jacobs 2.5 million in stock options where the
26 vesting was controlled by the Term Sheet with LVS and that SCL, according to Leven, assumed.
27

28 ¹⁸ There is conflicting evidence as to whether Jacobs could elect stock options in LVS
rather than in SCL.

1 58. Prior to the IPO, on November 8, 2009, LVS entered into a Shared Services
2 Agreement with SCL through which LVS agreed to provide certain services and products to
3 SCL.
4

5 59. LVS and SCL entered into a Shared Services Agreement pursuant to which each
6 company agreed to provide the other with certain services at competitive rates. The services
7 performed related to compensation and continued employment do not appear to fall within the
8 scope of that agreement.
9

10 60. The Shared Services Agreement was signed by Jacobs, and was disclosed in
11 SCL's IPO documents.

12 61. The services to be provided under the Shared Services Agreement are defined as
13 Scheduled Products and Services. The agreement defines those as:

14 . . . any product or service set out in the Schedule hereto the same as may from time to
15 time be amended by written agreement between the Parties and subject to compliance
16 with the requirement of the Listing Rules applicable to any amendment of this
17 Agreement.

18 62. The Schedule attached to the Shared Services Agreement provided the following
19 types of services were available to be shared (excerpted are relevant portions) and identified the
20 method of compensation for those services:

Service/Product	Provider	Recipient	Pricing	Payment Terms	2009 US\$\$	2010 US\$\$	2011 US\$\$
Certain administrative and logistics services such as legal and regulatory services, back office accounting and handling of telephone calls relating to hotel reservations, tax and internal audit services, limited treasury functions	Members of Parent Group	Members of Listco Group	Actual costs incurred in providing services calculated as the estimated salary and benefits for the employees of the Parent Group and the hours	Invoice to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of	4.7 million	5.0 million	8.3 million

and accounting and compliance services.			worked by such employees providing such services to the Listco Group	dispute, within 30 days of resolution of dispute.			
Certain administrative and logistics services such as legal and regulatory services, back office accounting and handling of telephone calls relating to hotel reservations, tax and internal audit services, limited treasury functions and accounting and compliance services.	Members of Listco Group	Members of Parent Group	Actual costs incurred in providing services calculated as the estimated salary and benefits for the employees of the Listco Group and the hours worked by such employees providing such services to the Parent Group	Invoice to be provided, together with documentary support, no earlier than the date incurred and to be paid in the absence of dispute within 45 days of receipt of invoice, or in the event of dispute, within 30 days of resolution of dispute.	3.0 million	3.0 million	3.0 million

63. Shared services agreements are a common method by which affiliated companies achieve economies of scale.

64. Here, although SCL asserts that all of the services provided by LVS employees were rendered for SCL pursuant to the Shared Services Agreement, there is no evidence that the parties' observed any formalities,¹⁹ which would permit the Court to determine which, if any, services were provided pursuant to the Shared Services Agreement.²⁰

¹⁹ SCL 00193427, a redacted email dated February 10, 2010, evidences the adoption of a procedure for payment of vendor expenses for certain Parcel 5/6 construction related vendors from Macau. The email anecdotally indicates the invoices would be sent to Macau with a copy to Las Vegas, reviewed in Las Vegas, approved for payment in Las Vegas, and then sent to Macau for payment. This policy was apparently adopted after the threshold for intercompany billings in the SCL IPO was exceeded. SCL00199830.

65. SCL advised HKSE that implementation agreements would be used in conjunction with the Shared Services Agreement.²¹

66. When questioned during the evidentiary hearing about the mechanism for requesting or paying for service under the Shared Services Agreement, Adelson was unable to provide any evidence of the processes used to obtain services under that agreement.²²

67. The facts and circumstances giving rise to Jacobs' ultimate termination were directed and controlled from Las Vegas. Despite internal praise from the Board members of

20 SCL00171443, redacted minutes of VML Compliance Committee dated February 22, 2010, reflect that because of the Shared Services Agreement a tracking system had been established to record the execution of each individual agreement and that individual implementation agreements would have to be drawn up for each service category. The Court has been unable to locate any further references in the evidence admitted at the hearing regarding the actual implementation and utilization of services pursuant to the Shared Services Agreement.

²¹ The letter states in pertinent part:

It is envisaged that from time to time, and as required, an implementation agreement for a particular type of product or service will be entered into between LVS Group and members of the Group under which the LVS Group provides the relevant products or services to the group or *vice versa*. Each implementation agreement shall set out the details of the material terms and conditions which shall include:

a) the relevant Scheduled Products and Services to be provided;

* * *

c) the time(s) at which, or duration during which, the relevant Scheduled Products and Services are to be provided;

d) the pricing for the Scheduled Products and Services to be provided, determined in accordance with the provisions of the Shared Services Agreement; and,

e) payment terms (including where applicable, terms providing for deducting or withholding taxes).

SCL00106303.

22 The Court reviewed the redacted documents contained in Exhibit 887A to determine if there was any support for SCL's position that the Shared Services Agreement was the method by which LVS employees were utilized by SCL rather than the agency analysis performed by the Court.

1 SCL (except Adelson) for Jacobs, Leven claims that in June of 2009 he had had enough of
2 Jacobs and wanted him fired. Adelson and Leven began undertaking what one email labeled as
3 the "exorcism strategy" to terminate Jacobs. The actions to effectuate Jacobs' termination were
4 carried out from Las Vegas,²³ including the ultimate decision to terminate Jacobs, the creation of
5 fictitious SCL stationery to draft a termination notice, the preparation of press-releases regarding
6 Jacobs' termination, and the handling of legal leg-work to effectuate the termination.
7

8 68. According to Adelson and Leven, they were acting on behalf of SCL in Nevada
9 when undertaking these activities, and they were doing so with SCL's knowledge and consent.
10 They coordinated with legal and non-legal personnel – including Gayle Hyman (LVS's general
11 counsel) and Reese – in LVS to carry out the plan to terminate Jacobs. Other LVS personnel
12 were involved and acted in Nevada, including under the Shared Services Agreement between
13 SCL and LVS.
14

15 69. Adelson and Leven made the determination to terminate Jacobs subject to
16 approval of the SCL board at the next scheduled meeting.
17

18 70. From Nevada, Leven and Adelson informed the SCL Board of Adelson's decision
19 to terminate Jacobs after the decision was already made. An emergency telephone conference
20 was held regarding the termination of Jacobs and to have the SCL Board ratify the decision.
21

22 71. Jacobs was not and is not a resident of Nevada. When he served as SCL's CEO,
23 he was headquartered in Macau and lived in Hong Kong.

24 72. Subsequently, Leven, Kenneth Kay (LVS's CFO), Siegel, Hyman, Daniel Briggs
25 (LVS's VP of investor relations), Reese, Brian Nagel (LVS's chief of security), Patrick Dumont
26 (LVS's VP of corporate strategy), and Rom Hendler (LVS's VP of strategic marketing) – left Las
27

28 ²³ This effort was described by Leven as an effort to "put ducks in a row".

1 Vegas and went to Macau to effectuate Jacobs' termination. Before they even left Las Vegas,
2 Jacobs' fate had been determined.

3 73. On July 23, 2010, Leven met with Jacobs in Macau. At that meeting, Leven
4 advised Jacobs he was terminated. Jacobs was given the option of resigning, which he refused.
5 Jacobs inquired whether the termination was "for cause" and Leven responded that he was "not
6 sure," but he indicated that the Term Sheet would not be honored.

7
8 74. Jacobs was SCL's CEO until he was terminated on or about July 23, 2010.

9 75. When Jacobs was terminated, he was in Macau.

10 76. Adelson named Leven Acting CEO and an Executive Director subject to approval
11 of the SCL board at the next scheduled meeting and pending the appointment of a permanent
12 replacement.

13
14 77. The SCL Board approved the termination and Leven's interim appointment.

15 78. The SCL Board appointed two new officers to serve as SCL's President and Chief
16 Operating Officer (Edward M. Tracy) and Executive Vice President and Chief Casino Officer
17 (David R. Sisk); both based in Macau. At the same time, Siegel, was appointed the Chairman of
18 two newly formed committees (the Transitional Advisory Committee and the CEO Search
19 Committee) and spent the majority of his time in Macau to carry out his duties.
20

21 79. After Jacobs' termination, Adelson and LVS began crafting a letter outlining
22 Jacobs' supposed offenses for his "for cause" termination. The participants in this endeavor
23 were Adelson himself, Leven and perhaps, Siegel. These actions were again carried out and
24 coordinated in Nevada.
25

26 80. A number of the alleged 12 reasons for Jacobs' termination involve actions Jacobs
27 carried out representing SCL while in Nevada.
28

1 81. After Jacobs was terminated, Leven replaced Jacobs as CEO of SCL. Leven did
2 not enter into any employment agreement with SCL. He served in that capacity under the
3 employment agreement that he had with LVS. While in Las Vegas, Leven served as the acting
4 SCL CEO from his LVS headquarters in Las Vegas. SCL authorized and approved of Leven
5 serving as its CEO from Las Vegas. As CEO, Leven was responsible for SCL's day-to-day
6 operations.
7

8 82. After becoming Acting CEO, Leven, on documents with a Las Vegas Sands Corp.
9 heading, issued an "Approval and Authorization Policy" for the Operations of "Sands China
10 Limited."
11

12 83. Here, there is no evidence that the Shared Services Agreement was the basis for
13 the activities of Leven, Adelson, Hyman, Reese, and Foreman.
14

15 84. SCL's activities through LVS employees in Nevada are substantial, have been
16 continuous since the IPO, and are systematic.
17

18 85. In October 2010, the SCL Board had the same composition, except that the two
19 Executive Directors were Toh Hup Hock, SCL's CFO (who had previously replaced Weaver as
20 an Executive Director) and Leven. Toh Hup Hock resided in Macau; Leven continued to be
21 based in Las Vegas, but traveled to Macau as necessary.
22

23 86. Jacobs filed his initial Complaint against SCL and LVS on October 20, 2010.
24

25 87. On October 27, 2010, Leven was personally served with a copy of the Summons
26 and Complaint while acting as SCL's CEO and physically present in Nevada.
27

28 88. Reese, an LVS employee, began a public relations campaign regarding Jacobs'
lawsuit on behalf of LVS and SCL from Nevada.

1 89. On March 15, 2011, Adelson, through Reese, issued a statement to a reporter for
2 the Wall Street Journal that Jacobs' alleges to be defamatory. The statement is as follows:

3 "While I have largely stayed silent on the matter to this point, the recycling of his
4 allegations must be addressed," he said "We have a substantial list of reasons why Steve
5 Jacobs was fired for cause and interestingly he has not refuted a single one of them.
6 Instead, he has attempted to explain his termination by using outright lies and fabrications
which seem to have their origins in delusion."

7 90. Adelson acknowledges that he made this statement on behalf of himself, LVS,
8 and SCL. SCL published a statement to the media from Nevada that gives rise to the claim for
9 defamation.

10 91. Based upon the evidence, Adelson's statement can be attributed to SCL because it
11 claims that it is responsible for Jacobs' termination. The statement was made and issued in
12 Nevada. If proven defamatory, this would be an additional basis for jurisdiction in Nevada.
13

14 92. Any finding of fact stated hereinabove that is more appropriately deemed a
15 conclusion of law shall be so deemed.
16

17 **III.**
18 **CONCLUSIONS OF LAW**

19 93. The Court is faced with allegations of general jurisdiction, specific jurisdiction
20 and transitory jurisdiction over SCL.²⁴
21

22 A. GENERAL JURISDICTION

23 94. The Court has to evaluate the contacts by SCL and make determinations as to
24 whether SCL is at home in Nevada for the general jurisdiction analysis. Little guidance has been
25 provided to the Court to assist in the determination of the appropriate factors to consider in
26 determining whether SCL is at home in Nevada.
27

28 ²⁴ The Court has made separate findings and conclusions on each type of jurisdiction
alleged by Jacobs to enable the parties to seek a more full appellate review if they choose.

1 95. General or “all-purpose” jurisdiction gives a court the power “to hear any and all
2 claims against” a defendant “regardless of where the claim arose.” Goodyear Dunlop Tires
3 Operations, S.A. v. Brown, 131 S.Ct. 2846, 2851 (2011).

4 96. A court has general jurisdiction over a foreign corporation only if it is “essentially
5 at home” in the forum. *See id.*; 134 S.Ct. at 758 n.11.

6 97. “A court may exercise general jurisdiction over a foreign company when its
7 contacts with the forum state are so continuous and systematic as to render [it] essentially at
8 home in the forum State.” 328 P.3d at 1156-57.

9 98. “Typically, a corporation is ‘at home’ only where it is incorporated or has its
10 principal place of business.” 328 P.3d at 1158.

11 99. The Supreme Court in Daimler AG did not rule out that “a corporation’s
12 operations in a forum other than its formal place of incorporation or principal place of business
13 may be so substantial and of such a nature as to render the corporation at home in that State.”
14 134 S. Ct. at 761 n.19.

15 100. “The test for general jurisdiction, depends on an analysis of the Due Process
16 Clause and its requirement that a foreign corporation’s “continuous *corporate operations* within
17 a state [be] so substantial and of such a nature as to justify suit against it on causes of action
18 arising from dealings entirely distinct from those activities.” 134 S.Ct. at 754.

19 101. In Daimler AG, the U.S. Supreme Court held that corporations may be sued under
20 a general jurisdiction theory if their affiliations with the forum are so ““continuous and
21 systematic as to render them essentially at home in the forum State.” 134 S.Ct. at 754.
22
23
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28

1 102. Here, SCL has designated Macau as its principal place of business. All of SCL's
2 holdings are located in Macau. SCL's executive officers, including Jacobs, were based in Macau
3 until July 2010 when Jacobs was terminated.

4 103. The SCL Board, which included three independent directors who reside in Hong
5 Kong, met in either Macau or Hong Kong.

6 104. SCL is not incorporated in Nevada and does not hold its board meetings in
7 Nevada.

8 105. While a significant amount of direction over the activities of SCL comes from its
9 Chairman in Las Vegas, as well as others employed with LVS, for purposes of general
10 jurisdiction these pervasive contacts appear to be irrelevant following Daimler.²⁵

11 106. The Nevada Supreme Court, after Daimler, has indicated that an agency theory of
12 general jurisdiction is still viable. In Viega, the Court cited a California case that found that the
13 agency theory "supports a finding of general jurisdiction" and noted that "the [United States]
14 Supreme Court has recognized that agency *typically* is *more useful* to a specific jurisdiction
15 analysis." 328 P.3d at 1163 n.3 The Court did not indicate that the agency theory of general
16 jurisdiction is no longer available.²⁶

17
18
19
20
21
22 ²⁵ At the time of the Court's original decision denying the motion to dismiss, Daimler had
23 not been decided. This has resulted in a substantial change in the evaluation of jurisdiction over
24 foreign companies. While the Court recognizes that there are pervasive contacts, these contacts
25 alone are insufficient to exercise general jurisdiction over a foreign company.

26 ²⁶ In trying to reconcile the concepts of alter ego and agency for general jurisdictional
27 inquiries, the Nevada Supreme Court wrote:

28 But corporate entities are presumed separate, and thus the mere "existence of a
relationship between a parent company and its subsidiaries is not sufficient to establish
personal jurisdiction over the on the basis of the subsidiaries minimum contacts with the
forum. . . . Unlike with the alter-ego theory, the corporate identity of the parent company

1 107. SCL made extensive use of agents -- employees of LVS -- in conducting its
2 business. Under Viega, the analysis of the contacts and actual activities of these agents are
3 relevant both for an evaluation of whether general jurisdiction is appropriate and, if not, whether
4 specific jurisdiction over SCL is appropriate.
5

6 108. Jacobs' operative Third Amended Complaint asserts causes of action against SCL
7 for Breach of Contract; Aiding and Abetting Tortious Discharge in Violation of Public Policy;
8 Civil Conspiracy related to Tortious Discharge in Violation of Public Policy; and Defamation.²⁷
9

10
11 is preserved under the agency theory; the parent nevertheless" is held for the acts of the
12 [subsidiary] agent" because the subsidiary was acting on the parent's behalf.

13 328 P.3d at 1157 (internal citations omitted).

14 ²⁷ The jurisdictional allegations related to SCL in the Third Amended Complaint are:

15 3. Defendant Sands China Ltd. ("Sands China") is a Cayman Islands corporation and is 70%
16 owned by LVSC. Sands China is publicly traded on the Hong Kong Stock Exchange. While
17 Sands China publicly holds itself out as being headquartered in Macau, its true headquarters are
18 in Las Vegas, where all principle decisions are made and direction is given by executives acting
19 for Sands China.

18 * * *

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

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

25 8. Venue is proper in this Court pursuant to NRS 13.010 *et seq.* because the material events
26 giving rise to the claims asserted herein occurred in Clark County, Nevada.

26 * * *

27 38. In or about July 2010, Adelson directed executives from LVSC in Las Vegas, Nevada to
28 begin the process of terminating Jacobs. This process which would be referred to as the
"exorcism strategy," was planned and carried out from Las Vegas and included (1) the creation
of fictitious Sands China letterhead upon which a notice of termination was prepared, (2)
preparation of the draft press releases with which to publicly announce the termination, and (3)
the handling of all legal-related matters for the termination. Again, all of these events took place
in Las Vegas, ostensibly by agents acting for both LVSC and Sands China.

39. Indeed it was LVSC in-house attorneys, claiming to be acting on behalf of Sands China,
who informed the Sands China Board on or about July 21, 2010, about Adelson's decision to

1 The location of activities related to these allegations is important to the Court's analysis of
2 jurisdiction.

3 109. LVS operates SCL the same way as it operated its Macau operations before the
4 IPO. Despite the appointment of a Board, any change in the location of ultimate decision-making
5 authority, direction, or control was not material after the IPO.
6

7 110. Here, Adelson and LVS assert an extraordinary amount of control over SCL. The
8 parties do not dispute that LVS is subject to general jurisdiction in Nevada, has systematic and
9

10
11 terminate Jacobs, and directed the Board members to sign the corporate documents necessary to
12 effectuate Jacobs termination. These same attorneys promised to explain the basis for the
13 termination to the Board members during the following week's board meeting (after the
14 termination took place). Predictably, as Adelson is all-controlling, he took action first and then
decreed how the Board thereafter reacted.

15 40. Promptly thereafter, the team Adelson had placed in charge of overseeing the sham
16 termination – Leven, Kenneth Kay (LVSC's CFO), Irwin Siegel (LVSC/Sands China Board
17 member), Gayle Hyman (LVSC's general counsel), Daniel Briggs (LVSC's VP of investor
18 relations), Ron Reese (LVSC's VP of public relations), Brian Nagel (LVSC's chief of security),
Patrick Dumont (LVSC's VP of corporate strategy) and Ron Hendler (LVSC's VP of strategic
marketing) – left Las Vegas and went to Macau in furtherance of the scheme.

19 44. Because Leven had not been able to persuade Jacobs to resign, the next play from the
20 Adelson playbook went into effect – fabricating purported cause for the termination. Once again,
21 this aspect of the plan was also carried out in Las Vegas by executives professing to act for both
22 LVSC and Sands China. Indeed, this time they prepared a false letter in Las Vegas and put it on
23 Venetian Macau, Ltd. Letterhead and identified twelve manufactured “for cause” reasons for
24 Jacobs termination. Transparently, one of the purported reasons is an attempt to mask one of
Adelson's personal transgressions: The letter absurdly claimed that Jacobs exceeded his
25 authority and failed to keep the companies' Boards of Directors informed of important business
26 decisions. Not surprisingly, not only are the after-the-fact excuses a fabrication, they would not
27 constitute “cause” for Jacobs termination even if they were true, which they are not.

28 71. In an attempt to cover their tracks and distract from their improper activities Adelson,
LVSC and Sands China have waged a public relations campaign to smear and spread lies about
Jacobs. . . .

The Court has not considered these allegations as true, but weighs the evidence related to these
allegations for purposes of this decision.

1 continuous contacts with Nevada, and is at home in Nevada. Adelson and LVS's control over
2 SCL goes far beyond the ordinary relationship of parent to subsidiary.²⁸

3 111. The Court refuses to adopt a test under which a company that properly obtains
4 available services from an affiliate through a shared services agreement, without further contacts,
5 becomes subject to jurisdiction in the affiliate's home state.
6

7 112. Even though Jacobs and others at SCL were permitted to provide
8 recommendations, the decisions — large and small — were ultimately made by Adelson and
9 LVS in Las Vegas.
10

11 113. The attitude of Adelson and other LVS executives towards Jacobs' efforts to
12 maintain independent entities could be construed as a "purposeful disregard of the subsidiary's
13 independent corporate existence." Sonora Diamond Corp. v. Superior Court, 83 Cal. App. 4th
14 523, 542, 99 Cal. Rptr. 2d 824, 838 (2000).
15

16 114. SCL's own operations in Nevada through agents (separate and apart from those
17 agreed to under the Shared Services Agreement) are so substantial and of such a nature as to
18 render it essentially at home in Nevada even though it is not incorporated in Nevada and does not
19 have casino operations in Nevada. Jacobs and other SCL executives routinely conduct business
20 in Nevada. All major decisions were made in Nevada on behalf of SCL, including contracts for
21 the purchase of goods and services.
22

23 115. The activities of LVS employees — as SCL's agents outside of the Shared Services
24 Agreement — were continuous and significant enough to render SCL "at home" in Nevada.
25

26 ²⁸ Based upon the limited evidence currently before it, the Court is faced with two potential
27 conclusions: either, that SCL is so dominated by LVS and its Chairman that it's independent
28 existence is a sham or alternatively, that the Board of SCL has made a conscious decision to
allow its agents in Las Vegas significant control over SCL's operations and governance. Given
the presumption of separateness, the Court finds the better course in this situation, based upon
the evidence currently before it, is the latter conclusion.

1 116. Jacobs argues that LVS exercised control over SCL from Las Vegas. While the
2 separate corporate identities of LVS and SCL cannot be ignored, the actions of those on behalf of
3 SCL in Nevada are important to the jurisdictional analysis.
4

5 117. The evidence demonstrates that Adelson, in his capacity as SCL's Chairman, and
6 Leven, as Acting CEO, controlled SCL from Las Vegas. Both were in Las Vegas transacting
7 business for SCL with the knowledge and apparent consent of the Board of SCL. While Leven
8 was special advisor and acting CEO, his SCL business cards showed Nevada as his contact
9 location for SCL. The same was true of Mr. Adelson.
10

11 118. In Daimler AG, the Court explained that the general jurisdiction test the Due
12 Process Clause requires—which limits all-purpose jurisdiction to the forums where the
13 corporation is “at home”—raises a simple question that can be “resolved expeditiously at the
14 outset of the litigation” without the need for “much in the way of discovery.” 134 S.Ct. at 762
15 n.20. The complicated and intensely fact-specific arguments demonstrate the uniqueness of this
16 case.
17

18 119. This is the “exceptional case” where “a corporation’s operations in a forum other
19 than its formal place of incorporation or principal place of business [are] so substantial and of
20 such a nature as to render the corporation at home in that State.” 134 S.Ct. at 761 n.19. In
21 deciding whether this test is met, the “inquiry does not ‘focu[s] solely on the magnitude of the
22 defendant’s in-state contacts.’” *Id.* at 762 n.20. “General jurisdiction instead calls for an
23 appraisal of a corporation’s activities in their entirety, nationwide and worldwide.” *Id.*
24

25 120. Taken alone SCL’s purchases of goods and services from entities headquartered
26 in Nevada, including LVS, for use in Macau do not provide a basis for concluding that SCL was
27 “at home” in Nevada.
28

1 121. SCL had the right to control how LVS employees performed the services on
2 SCL's behalf; the Board apparently did not exercise that right to control, but deferred to the
3 Chairman and Special Adviser.

4 122. The actions LVS employees undertook in Nevada as SCL's agent, when
5 compared to SCL's activities in their entirety, were "so substantial and of such a nature" that
6 SCL should be deemed to be "at home" in Nevada.

7 123. Based upon the governing law, and all of the evidence presented in the record, the
8 Court finds that based upon the conduct of LVS acting as SCL's agent, SCL is subject to general
9 jurisdiction in Nevada. The evidence is sufficient to support this finding by a preponderance of
10 the evidence without considering the adverse evidentiary inference imposed by the Court's
11 March 6, 2015 Order.

12 124. The activities of LVS employees – as SCL agents outside of the Shared Services
13 Agreement – were continuous and significant enough to render SCL "at home" in Nevada.

14 125. A review of Exhibit 887A and the adverse inference imposed by the Court's
15 March 6, 2015 Order, the Court finds that SCL has failed to rebut the inference that each of the
16 documents improperly redacted²⁹ under the MDPA contradict SCL's denials of personal
17

18 ²⁹ The redactions made to the documents – eliminating all names and other identifying
19 information about identities – casts doubt as to fairness and thoroughness of the entire search,
20 vetting and production process. Because many of the search terms were in fact names, the
21 veracity and completeness of the search cannot be tested against the documents that were flagged
22 for production as SCL has made it impossible for Jacobs to know the identity of any of the
23 names in the redacted documents. Thus, because several of the search terms are in fact names of
24 people, the search terms themselves are redacted. Such a process is ripe for abuse and fails to
25 meet the standards of fairness for discovery in a Nevada court. Because in many instances the
26 actual search terms are redacted, Jacobs cannot himself even run searches against the redacted
27 documents. Adelson himself confirmed that redacted documents are effectively useless in terms
28 of evidentiary value, particularly emails since those contain the identity of the sender, recipient
and other names, all of which SCL has redacted and made inaccessible.

1 jurisdiction and support Jacobs' assertion of personal jurisdiction over SCL.³⁰ These inferences
2 simply provide additional evidentiary support for the Court's conclusions.

3 B. SPECIFIC JURISDICTION

4 126. A court will find a defendant subject to specific jurisdiction where:

5
6 (1) the defendant purposefully avails himself of the privilege of serving the market in the
7 forum or of enjoying the protection of the laws of the forum, or where the defendant
8 purposefully establishes contacts with the forum state and affirmatively directs conduct
9 toward the forum state, and (2) the cause of action arises from that purposeful contact
10 with the forum or conduct targeting the forum.

11 Arbella Mut. Ins. Co., 122 Nev. 509, 513, 134 P.3d 710, 712-13 (2006).

12 127. "[A] plaintiff may establish personal jurisdiction over a nonresident defendant "by
13 attributing the contacts of the defendant's agent with the forum to the defendant". 109 Nev. at
14 694.

15 128. "Corporate entities are presumed separate. And thus, indicia of mere ownership
16 are not alone sufficient to subject a parent company to jurisdiction based upon its subsidiary's
17 contacts." 328 P.3d at 1158.

18 129. "[T]he control at issue must not only be of a degree 'more pervasive than . . .
19 common features' of ownership, '[i]t must veer into management by the exercise of control over
20 the internal affairs of the subsidiary and the determination of how the company will be operated
21 on a day-to-day basis,' such that the parent has 'moved beyond the establishment of general
22

23
24
25 ³⁰ Exhibit 887A contains the remaining redacted documents for which replacement copies
26 have not been produced. A review of those documents demonstrates that the activities of SCL
27 and LVS were assisted by use of a Macau shared drive, "the M drive", hosted in Las Vegas.
28 While the degree of redactions prevents the Court from identifying the individuals involved in
the discussions, (SCL00182755) the existence of that shared drive is additional evidence of the
level of activity in Nevada and control of its agent that SCL could, if it chose, exercise.

1 policy and direction for the subsidiary and in effect taken over performance of the subsidiary's
2 day-to-day operations in carrying out that policy." 328 P.3d at 1159.

3
4 130. Specific jurisdiction is proper only "where the cause of action arises from the
5 defendant's contacts with the forum." Dogra v. Liles, 129 Nev. Adv. Rep. 100, 314 P.3d 952, 955
6 (2013). "Nevada may exercise specific jurisdiction over a nonresident defendant if the defendant
7 'purposefully avails' himself or herself of the protections of Nevada's laws, or purposefully directs
8 her conduct towards Nevada, and the plaintiff's claim actually arises out from that purposeful
9 conduct." *Id.*

10
11 131. Where "separate claims are pled, specific personal jurisdiction must
12 independently exist for each claim and the existence of personal jurisdiction for one claim will
13 not provide the basis for another claim." Wright & Miller, 5B Fed. Prac. & Proc. Civ. § 1351, at
14 46 n.30. Jacobs has met his burden of showing specific jurisdiction with respect to each of his
15 claims against SCL.

16
17 *Breach of Contract*

18 132. Jacobs claims that he performed the services of SCL's CEO pursuant to an
19 employment agreement with the parent, LVS. Evidence adduced at the evidentiary hearing
20 appears to support a claim that the Term Sheet was later assigned and assumed by SCL as part of
21 the IPO. The assignment and assumption of a contract from a Nevada company subjects SCL to
22 jurisdiction for a dispute stemming from that contract and the services provided under it. Since
23 Jacobs would be subject to suit in Nevada pursuant to that agreement, SCL is similarly subject to
24 suit in Nevada by having assumed the obligations that flow from that agreement.

25
26 133. Newly-formed legal entities are subject to personal jurisdiction in the forum
27 where the entity's promoter enters into contracts, which the legal entity later ratifies and accepts.
28

1 134. The fact that the Term Sheet was negotiated and agreed to in Nevada would
2 further subject SCL to personal jurisdiction due to the conduct of SCL's incorporator, LVS.

3 135. In Burger King Corp. v. Rudzewicz, 471 U.S. 462, 479, 105 S. Ct. 2174, 2185,
4 (1985) the U.S. Supreme Court emphasized the "need for a highly realistic approach that
5 recognizes that a contract is ordinarily but an intermediate step serving to tie up prior business
6 negotiations with future consequences which themselves are the real object of the business
7 transaction." 471 U.S. at 479. "It is these factors—prior negotiations and contemplated future
8 consequences, along with the terms of the contract and the parties' actual course of dealing—that
9 must be evaluated in determining whether the defendant purposefully established minimum
10 contacts within the forum. "*Id.*"

11 136. Here, all of these factors demonstrate that there is specific jurisdiction over
12 Jacobs's breach of contract claim. The negotiations, consequences, terms, and parties' course of
13 dealing arising from the option grant are all primarily connected to Nevada. The facts related to
14 the termination are intimately related to the breach of the option grant.

15 137. A nonresident company may subject itself to jurisdiction by accepting the benefits
16 of an employment agreement.

17 138. The use of correspondence and telephone calls to forum-based offices during
18 contract negotiations are examples of the sort of contact that can give rise to jurisdiction.

19 139. Jacobs has sued SCL for failure to honor the award of options to him, a claim that
20 grows directly out of his services provided to SCL pursuant to the Term Sheet with LVS. SCL
21 purposefully availed itself of the laws of Nevada by accepting the services of Jacobs' pursuant to
22 the Nevada-based Term Sheet. When accepting the benefits that Jacobs was providing pursuant
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1 to a Nevada contract, SCL could reasonably foresee being hailed into a Nevada court should a
2 dispute arise related to terms of his employment under the Nevada contract.

3 140. The Share Option Agreement was offered to Jacobs for the services he provided
4 to SCL pursuant to the Term Sheet.

5
6 141. The Share Option Grant and the Term Sheet are intertwined and interrelated. The
7 Share Option Grant was made in fulfillment of the terms and conditions of the Term Sheet.

8 142. Adelson, Leven, and other LVS executives participated in the decision to extend
9 the Share Option Grant. This process involved a number of emails and calls to and from Nevada
10 to resolve the terms of the options and SCL's executive stock option plan.

11
12 143. Jacobs alleges that the decision to breach the Share Option Grant was made by
13 Adelson and LVS executives from Nevada. Jacobs' breach of contract cause of action arises
14 from this action within the forum.

15 144. The parties' disputes as to whether Jacobs engaged in certain activities outside of
16 Nevada, and whether he then reported those activities to the Chairman in Nevada – disputes that
17 also go to the merits of the case – affect the basic conclusion that Jacobs claim arose in Nevada.

18 145. The acts of employees of LVS, as agent of SCL, related to compensation and
19 termination of Jacobs and SCL's assumption of the Nevada negotiated Term Sheet support the
20 conclusion that specific jurisdiction is appropriate over the breach of contract claim.

21
22 146. Where the Court has personal jurisdiction over one contract, the Court may
23 exercise jurisdiction over intimately related contracts even though the parties are not identical.

24
25 *Conspiracy and Aiding and Abetting*

26 147. The jurisdictional analysis for aiding and abetting is similar to the jurisdictional
27 assessment for conspiracy claims.
28

1 148. The elements of jurisdiction for either conspiracy or aiding and abetting are:

- 2 (1) a conspiracy . . . existed;
3 (2) the defendant was a member of that conspiracy;
4 (3) a substantial act or substantial effect in furtherance of the conspiracy occurred in the
5 forum state;
6 (4) the defendant knew or had reason to know of the act in the forum state or that acts
7 outside the forum state would have an effect in the forum state; and
8 (5) the act in, or effect on, the forum state was a direct and foreseeable result of the
9 conduct in furtherance of the conspiracy.

10 Carsanaro v. Bloodhound Techs., Inc., 65 A.3d 618, 636 (Del. Ch. 2013) .

11 149. Jacobs has presented sufficient evidence to show jurisdiction over SCL on his
12 conspiracy and aiding and abetting claims.

13 150. While wearing their SCL "hats," Adelson and Leven formulated the strategy to
14 terminate Jacobs. Many of their own acts, purportedly done on behalf of SCL, were undertaken
15 within Nevada.

16 151. To carry out the plan, they utilized the services of LVS employees within Nevada
17 to draft press releases, obtain the SCL Board's "approval" after the decision had been made, and
18 handled other legal matters related to the termination so that Jacobs would not discover his
19 looming termination.

20 152. These were substantial acts in furtherance of Jacobs' firing and would give rise to
21 jurisdiction over SCL had SCL taken these acts within the forum. SCL knew of LVS's acts in
22 the forum to complete Jacobs' termination and assented to them.

23 153. The acts in Nevada, and the effects felt therein, were directly foreseeable and
24 attributable to the alleged conspiracy.

25 154. Jacobs' causes of action for conspiracy and aiding and abetting arise directly out
26 of SCL's and its co-conspirators' purposeful contact with the forum and conduct targeting the
27 forum.
28

1 155. The evidence has shown that SCL purposefully directed its conduct towards
2 Nevada.

3 156. The acts of LVS and SCL related to Jacobs alleged wrongful termination support
4 the conclusion that specific jurisdiction is appropriate over the Aiding and Abetting Tortious
5 Discharge in Violation of Public Policy and Civil Conspiracy related to Tortious Discharge in
6 Violation of Public Policy claims.

7
8 *Defamation*

9 157. A corporation can be liable for the defamatory statements of its executives acting
10 within the scope of their authority.

11 158. Jacobs has presented sufficient evidence that Adelson's statements are attributable
12 not only to himself, but also SCL.

13 159. Jacobs' cause of action arises out of Adelson's statement that he made and
14 published in Nevada concerning Jacobs' claims in Nevada.

15 160. "In judging minimum contacts, a court properly focuses on 'the relationship
16 among the defendant, the forum, and the litigation.'" Keeton v. Hustler Magazine, Inc., 465 U.S.
17 770, 775 (1984). "The victim of a libel, like the victim of any other tort, may choose to bring suit
18 in any forum with which the defendant has certain minimum contacts . . . such that the
19 maintenance of the suit does not offend traditional notions of fair play and substantial justice."
20 Id. at 780-81. The reputation of a libel victim may suffer harm outside of his or her home state.
21 Id. at 777. Defamatory statements hurt the target of the statement and the readers of the
22 statement. Id. at 776.

23 161. Specific jurisdiction over SCL on Jacobs defamation claim hinges on his assertion
24 that Adelson was speaking not only for himself and LVS, but also for SCL, when he made the
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1 allegedly defamatory statement. Adelson's inconsistent testimony on this issue during the
2 evidentiary hearing provides substantial evidentiary support for Jacobs allegations.

3 162. The fact that Mr. Adelson's statement was published in Nevada through *The Wall*
4 *Street Journal* is enough to support specific jurisdiction over SCL.
5

6 *Reasonableness*

7 163. "Whether general or specific, the exercise of personal jurisdiction must also be
8 reasonable." Emeterio v. Clint Hurt and Associates, Inc., 114 Nev. 1031, 1036, 967 P.2d 432,
9 436 (1998).
10

11 164. Once the first two prongs of specific jurisdiction have been established,
12 (purposeful availment/direction and that the cause of action arises from that purposeful
13 contact/targeting the forum) "the forum's exercise of jurisdiction is *presumptively reasonable*. To
14 rebut that presumption, a defendant 'must present a *compelling case*' that the exercise of
15 jurisdiction would, in fact, be unreasonable." Roth v. Garcia Marquez, 942 F.2d 617, 625 (9th
16 Cir. 1991).
17

18 165. Courts look at a number of factors to analyze whether exercising jurisdiction
19 would be reasonable, including:

- 20 (1) the burden on the defendant of defending an action in the foreign forum,
21 (2) the forum state's interest in adjudicating the dispute,
22 (3) the plaintiff's interest in obtaining convenient and effective relief,
23 (4) the interstate judicial system's interest in obtaining the most efficient resolution of
24 controversies, and
25 (5) the shared interest of the several States in furthering fundamental substantive social
26 policies.

27 967 P.2d at 436.

28 166. Application of these factors confirms that it is reasonable to require SCL to
litigate this contract dispute in Nevada.

1 167. SCL will not suffer any burden defending this action in Nevada. The evidence
2 indicates that SCL utilized LVS for substantial activities related to the issues involved in the
3 allegations related to the merits of this matter. SCL's executives routinely travel to Nevada and
4 conduct business in Nevada on a systematic and continuous bases. Continuing contacts with the
5 forum indicate that litigating in Nevada do not constitute a burden. 942 F.2d at 623. "[U]nless
6 such inconvenience is so great as to constitute a deprivation of due process, it will not overcome
7 clear justifications for the exercise of jurisdiction." *Id.*

8
9 168. Nevada has an interest in resolving disputes over contracts and torts that center
10 upon Nevada and relate to activities in the forum. Although a non-resident, Jacobs has an
11 interest in obtaining convenient and effective relief. SCL cannot plausibly argue that it would be
12 more convenient for Jacobs to litigate outside of the United States. *See id.* at 624.

13
14 169. The interstate – and global – judicial systems' interest in efficient resolution
15 weighs in favor of exercising jurisdiction. This matter has been pending in Nevada courts for
16 almost five years. Judicial economy would be served by continuing this litigation in Nevada.
17 Significant time and judicial resources of the Court and the parties will have been wasted if
18 Jacobs is required to reinstate this litigation in another forum. The social policies implicated by
19 claims of wrongful termination in violation of public policy militate in favor of retaining
20 jurisdiction.
21

22
23 170. SCL has not made a compelling case that exercising jurisdiction over it would be
24 unreasonable.

25 171. While Nevada civil litigation rules are likely to impose obligations on SCL that
26 are in tension with SCL's obligations under the foreign law of the jurisdiction where it operates,
27
28

1 including its obligations under the MDPA, the free flow of information that occurred between
2 SCL and LVS prior to the litigation ameliorate that concern.

3 *Adverse Inference*

4
5 172. Without taking into consideration the adverse evidentiary inferences imposed by
6 the Court's March 6, 2015 Order, Jacobs has established specific personal jurisdiction over each
7 of his claims against SCL by a preponderance of the evidence.

8 173. If the Court were to consider the adverse evidentiary inference imposed by the
9 Court's March 6, 2015 Order, the case for exercising specific jurisdiction is even stronger.

10
11 C. TRANSIENT JURISDICTION

12 174. In Burnham v. Superior Court of California, 495 U.S. 604, 619 (1990), the
13 United States Supreme Court reaffirmed the principle that "jurisdiction based on physical
14 presence alone constitutes due process" and that it is "fair" for a forum to exercise jurisdiction
15 over anyone who is properly served within the state.

16
17 175. Nevada has adopted the in-state service rule for non-resident defendants. *See*
18 NRS 14.065(2). The Nevada Supreme Court has held that "[i]t is well-settled that personal
19 jurisdiction may be asserted over an individual who is served with process while present within
20 the forum state." Cariaga v. Eighth Judicial Dist. Court of State, 104 Nev. 544, 762 P.2d 886,
21 887 (1988). It also noted that "[t]he doctrine of 'minimum contacts' evolved to extend the
22 personal jurisdiction of state courts over non-resident defendants; it was never intended to limit
23 the jurisdiction of state courts over persons found within the borders of the forum state." *Id.*

24
25 176. Leven was served with process while in Nevada acting as SCL's CEO and while
26 carrying out SCL's business from the office identified on his SCL business card. Leven was not
27 served with process during a temporary or isolated trip. To the contrary, Leven was served with
28

1 process in the state where SCL had duly authorized him to serve as CEO. Accordingly, due
2 process is satisfied and, even if other basis for jurisdiction did not exist, this Court may exercise
3 jurisdiction over SCL on the basis of transient jurisdiction.
4

5 177. The Nevada Supreme Court instructed this Court to consider whether there was
6 transient jurisdiction over SCL if it concluded that there was no general jurisdiction. It is
7 undisputed that Jacobs served his complaint on Leven, who was then SCL's Acting CEO, while
8 he was in Nevada.

9 178. Serving a complaint on a senior officer of a corporation in the forum without
10 more does not confer jurisdiction over the corporation.
11

12 179. While the U.S. Supreme Court held in Daimler AG that it violates due process to
13 exercise general jurisdiction over a foreign corporation based solely on the fact that its agent is
14 present and doing business on behalf of the foreign corporation in the forum, the significant
15 business being done on behalf of SCL by Leven with SCL's knowledge and consent supports
16 transient jurisdiction.
17

18 180. Any conclusion of law stated hereinabove that is more appropriately deemed a
19 finding of fact shall be so deemed.
20

21 IV.

22 ORDER

23 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:
24 Defendant Sands China Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, or in the
25 Alternative, Plaintiff's Failure to Join an Indispensable Party is denied.
26

27 Dated this 28th day of May, 2015.

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ELIZABETH GONZALEZ
District Court Judge

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Certificate of Service


I hereby certify, that on the date filed, this Order was served on the parties identified on
Wiznet's e-service list.

J. Stephen Peek, Esq. (Holland & Hart)

Randall Jones (Kemp Jones Coulthard)

Steve Morris (Morris Law)

James J. Pisanelli, Esq. (Pisanelli Bice)



Dan Kutinac