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16 *Attorneys for Defendant Las Vegas Sands Corp.*

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 **STEVEN C. JACOBS,**

20 **Plaintiff,**

21 **v.**

22 **LAS VEGAS SANDS CORP., a Nevada**  
23 **corporation; SANDS CHINA LTD., a Cayman**  
24 **Islands corporation; SHELDON G. ADELSON,**  
25 **in his individual and representative capacity;**  
26 **DOES I-X; and ROE CORPORATIONS I-X,**

27 **Defendants.**

CASE NO.: A627691-B

DEPT NO.: XI

Date:

Time:

**LAS VEGAS SANDS CORP.'S MOTION  
TO DISMISS PURSUANT TO NRCP  
12(B)(5)**

28 Defendant Las Vegas Sands Corp. ("LVSC"), by and through its undersigned counsel,  
the law firm of Holland & Hart LLP, hereby moves this Court to dismiss Plaintiff Steven C.  
Jacobs' ("Jacobs") Fifth Cause of Action for Defamation Per Se pursuant to NRCP 12(b)(5).

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Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

1 This Motion is based on the following Memorandum of Points and Authorities and any oral  
2 argument the Court may allow.

3 DATED April 20, 2011.

4 

5 J. Stephen Peek, Esq.  
6 Justin C. Jones, Esq.  
7 Brian G. Anderson, Esq.  
8 Holland & Hart LLP  
3800 Howard Hughes Parkway, 10th Floor  
Las Vegas, Nevada 89169

9 *Attorneys for Defendant Las Vegas Sands Corp.*

10 **NOTICE OF MOTION**

11 TO: ALL INTERESTED PARTIES; and

12 TO: COUNSEL OF RECORD

13 PLEASE TAKE NOTICE that Defendant LAS VEGAS SANDS CORP. will bring the  
14 above and foregoing **LAS VEGAS SANDS CORP.'S MOTION TO DISMISS PURSUANT**  
15 **TO NRCP 12(B)(5)** for hearing on the 24 day of May, 2011, at 9 : 00 a.m./p.m., in  
16 Department XI of the above entitled Court.

17 DATED April 20, 2011.

18 

19 J. Stephen Peek, Esq.  
20 Justin C. Jones, Esq.  
21 Brian G. Anderson, Esq.  
22 Holland & Hart LLP  
3800 Howard Hughes Parkway, 10th Floor  
Las Vegas, Nevada 89169

23 *Attorneys for Defendant Las Vegas Sands Corp.*

1                   **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
2                   **MOTION TO DISMISS PURSUANT TO NRCP 12(B)(5)**

3                   **I.**

4                   **INTRODUCTION**

5           This case concerns a dispute as to whether Plaintiff Steven C. Jacobs (“Jacobs”) was  
6 terminated from his employment for cause. Jacobs claims he was wrongfully terminated by  
7 LVSC. LVSC steadfastly maintain that Jacobs was not an employee of LVSC and that,  
8 regardless, Jacobs was fired for cause by LVSC’s indirect subsidiaries, Sands China Ltd. (“Sands  
9 China”) and Venetian Macau Limited (“VML”). In retaliation for his termination, Jacobs  
10 immediately engaged in a crusade to extort millions of dollars from Defendants. Following a  
11 recent court hearing attended by Jacobs, Jacobs addressed members of the press. Sheldon  
12 Adelson (“Adelson”), Chairman and CEO of LVSC, thereafter responded to a reporter’s  
13 questions about the case with a short email response reiterating Defendants’ position that Jacobs  
14 was terminated for cause. Jacobs then reacted by filing a First Amended Complaint (“FAC”)   
15 alleging a defamation *per se* claim against Adelson, LVSC and Sands China. Specifically,  
16 Jacobs alleges that Adelson’s statement “to the effect that 1) Jacobs was justifiably fired ‘for  
17 cause’ and 2) Jacobs had resorted to ‘outright lies and fabrications’ in seeking legal redress...”  
18 were defamatory. FAC ¶ 62.

19           To prevail on a claim for defamation, the alleged defamatory statement must be an  
20 ***unprivileged*** publication to a third person. However, the statements allegedly made by Adelson  
21 are subject to (i) the unconditional litigation privilege and (ii) the conditional privilege of reply,  
22 and therefore are not actionable. The statements allegedly made by Adelson simply reiterate and  
23 reply to statements made in the course of this lawsuit. In particular, Jacobs’ original complaint  
24 (the “Complaint”), which predated the statements allegedly made by Adelson, repeatedly alleged  
25 that Sands China has wrongfully taken the position that Jacobs was terminated for cause, and  
26 further alleged that Jacobs actually was terminated for objecting to or failing to carry out  
27 “outrageous” and “illegal” demands allegedly made by Adelson, which alleged demands were  
28 detailed in Jacobs’ Complaint (and have been repeated widely in the press). Thus, Adelson’s

1 statement to the effect that Jacobs was terminated for cause simply republishes what has been  
2 alleged in this action, including by Jacobs himself, and replies to Jacobs' allegations that he was  
3 not terminated for cause but instead for objecting to or refusing to carry out demands allegedly  
4 made by Adelson.

5 Likewise, Adelson's statement that Jacobs, in this litigation, had resorted to "outright lies  
6 and fabrications" simply responds to Jacobs' allegations that Adelson has made "outrageous"  
7 and "illegal" demands of Jacobs and to Jacobs' February 9, 2011 affidavit. In both respects,  
8 counsel for Sands China at a March 15, 2011 hearing in this case, which was attended and  
9 videotaped by members of the press, asserted in unequivocal terms that Jacobs had lied to the  
10 Court. Thus, Adelson's statement that Jacobs in this litigation had resorted to "outright lies and  
11 fabrications" merely republished what was stated by counsel in Court earlier that day and replied  
12 to allegations made by Jacobs is his Complaint and motion papers.

13 For the foregoing reasons, Adelson's statements are subject to the unconditional litigation  
14 privilege and, independently, the conditional privilege of reply. The Fifth Cause of Action for  
15 defamation against LVSC therefore is deficient as a matter of law. Accordingly, Jacobs' Fifth  
16 Cause of Action should be dismissed with prejudice.

## 17 II.

### 18 STATEMENT OF FACTS

19 On March 16, 2011, Jacobs filed the FAC. The FAC added Adelson as a defendant and  
20 added a claim for defamation against Adelson, LVSC, and Sands China. *See* FAC at ¶¶ 59-66.  
21 In support of that claim, Jacobs alleges that Adelson (in both his personal capacity as well as his  
22 representative capacity as Chairman of the Board of LVSC (and Sands China), made a statement  
23 to a newspaper reporter following the March 15, 2011 hearing. *Id.* at ¶ 62. In this regard, the  
24 FAC alleges as follows:

25 Following the [March 15, 2011] hearing, the Wall Street Journal®  
26 published an article in its online edition styled "Setback for Sands in  
27 Macau Suit." That article, which was authored by Ms. Berzon,  
28 reported that Adelson had, via e-mail, made the following statements:  
"While I have largely stayed silent on the matter to this point, the  
recycling of his allegations must be addressed," he said. "We have a

1 substantial list of reasons why Steve Jacobs was fired for cause and  
2 interestingly he has not refuted a single one of them. Instead he has  
3 attempted to explain his termination by using outright lies and  
4 fabrications which seem to have their origins in delusion.

5 Adelson's comments to the effect that 1) Jacobs was justifiably fired  
6 for "for cause" and 2) Jacobs had resorted to "outright lies and  
7 fabrications" in seeking legal redress constituted defamation per se.

8 FAC, ¶ 62.

9 Adelson's reported remarks address matters squarely and unequivocally raised in the  
10 pleadings in this case. For example, Jacobs' (original) Complaint repeatedly alleges that LVSC  
11 and Sands China have "wrongly characterized Jacobs' termination as one for cause in an effort to  
12 deprive him of contractual benefits to which [he claims] he is otherwise entitled" (Complaint,  
13 ¶ 42), including as follows:

14 "Nearly two weeks later and after an unsuccessful effort to dig up  
15 any real "dirt" on Jacobs, LVSC sent a second letter to Jacobs on  
16 VML letterhead which identified 12 pretextual items that allegedly  
17 support a "for cause" termination of his employment... The reality  
18 is that none of the 12 items, even assuming arguendo that some of  
19 them are accurate, constitute cause..."

20 Complaint, ¶ 32.

21 "LVSC has wrongfully characterized Jacobs' termination as one  
22 for "cause" in an effort to deprive him of contractual benefits to  
23 which he is otherwise entitled. As a direct and proximate result of  
24 LVSC's wrongful termination of Jacobs' employment and failure  
25 to honor the "Not For Cause" severance provisions contained in  
26 the Term Sheet, Jacobs has suffered damages in an amount to be  
27 proven at trial but in excess of \$10,000.00."

28 Complaint, ¶ 41.

"LVSC and Sands China rejected Jacobs' demand and, thus,  
further breached the Term Sheet and the Sands China share grant  
agreement by characterizing Jacobs' termination as being for  
"cause" when, in reality, the purported bases for Jacobs'  
termination, as identified in the belatedly-manufactured August 5,  
2010 letter, are pretextual and in no way constitute cause."

Complaint, ¶ 46.

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

1 Complaint, ¶ 47.

2 “The conduct of LVSC described herein including ...the wrongful  
3 characterization of Jacobs’ termination as being for cause, is  
4 unfaithful to the purpose of the agreements between Jacobs and  
LVSC and was not within the reasonable expectations of Jacobs.”

5 Complaint, ¶ 50.

6 Jacobs’ allegations are correct only insofar as they claim that it is the position of LVSC  
7 that Jacobs was terminated for cause. Indeed, as set forth in his Complaint, Jacobs has always  
8 understood that Defendants assert that he was terminated for cause. While Jacobs is apparently  
9 unable to accept that his performance fell below the expected standard, his version of “truth” is  
10 clearly inconsistent with Defendants’ stated position from the time of his termination.  
11 Additionally, Jacobs’ veracity was challenged at the March 15, 2011 hearing wherein Sands  
12 China’s counsel challenged the sworn testimony in Jacobs’ February 9, 2011 affidavit, and  
13 directly denied the truth and accuracy of allegations made in this case by Jacobs:

14 “MS. GLASER: I am. And it’s sort of funny, but it’s sort of not,  
15 because this man, Mr. Jacobs, lied to the Court and said money  
16 was couriered into this country. He lied to the Court, and he’s not  
telling the truth in a lot of other respects as well...”

17 See March 15, 2011 Hearing Transcript at 57:11-16, attached hereto as **Exhibit “A.”**

### 18 III.

### 19 LEGAL ARGUMENT

#### 20 A. *Standard of Review*

21 NCRP 12(b)(5) specifically provides that the defense of the “failure to state a claim upon  
22 which relief can be granted” may be made by motion. *Gull v. Hoalst*, 77 Nev. 54, 359 P.2d 383  
23 (1961). Nevada is a notice-pleading state; therefore, the courts generously construe pleadings to  
24 “place into issue matters which are fairly noticed to the adverse party.” *Western States Const.,*  
25 *Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992) (*citing Hay v. Hay*, 100 Nev.  
26 196, 198, 678 P.2d 672, 674 (1984)). “The standard of review for a dismissal under NRCP  
27 12(b)(5) is rigorous as this court must construe the pleading liberally;” however, the court must  
28 accept only “fair” inferences arising from the pleading. *Simpson v. Mars Inc.*, 113 Nev. 188,

1 190, 929 P.2d 966, 967 (1997) (*citing Vacation Village v. Hitachi America*, 110 Nev. 481, 484,  
2 874 P.2d 744, 746 (1994)). In addition, the court need *not* accept as true conclusory allegations  
3 or legal characterizations of counsel. *See Western Mining Council v. Watt*, 643 F.2d 618, 624  
4 (9th Cir. 1981) (interpreting substantively identical Fed. R. Civ. P. 12(b)(6)). Dismissal is  
5 appropriate where the allegations in the complaint, “‘taken at face value, ... [and] construed  
6 favorably in the [plaintiff’s] behalf,’ fail to state a cognizable claim for relief.” *Morris v. Bank*  
7 *of America Nevada*, 110 Nev. 1274, 1276, 886 P.2d 454, 456 (1994) (*quoting Edgar v. Wagner*,  
8 101 Nev. 226, 227-28, 699 P.2d 110, 111-12 (1985)). As detailed below, dismissal of Jacobs’  
9 defamation per se claim is warranted because the statements upon which the claim is made are  
10 privileged.

11 ***B. Jacobs’ Claim for Defamation Fails as a Matter of Law***

12 In order to properly plead a claim for defamation, a plaintiff must allege facts sufficient  
13 to establish the following four elements: (1) a false and defamatory statement; (2) an  
14 unprivileged publication to a third person; (3) fault, amounting to at least negligence, and (4)  
15 actual or presumed damages. *See Lubin v. Kunin*, 117 Nev. 107, 111 (2001). As demonstrated  
16 below, Adelson’s statements are subject to both (i) the absolute litigation privilege and (ii) the  
17 conditional privilege of reply, each of which renders Jacobs’ claim deficient as a matter of law.

18 ***1. Adelson’s Statements Are Unconditionally Privileged as Communications Made***  
19 ***in the Course of Judicial Proceedings.***

20 In reference to the “unprivileged publication” element of a defamation claim, it is a “long  
21 standing common law rule that communications [made] in the course of judicial proceedings  
22 [even if known to be false] are absolutely privileged.” *See Circus Circus Hotels v.*  
23 *Witherspoon*, 99 Nev. 56, 60 (1983). Questions of privilege are questions of law appropriately  
24 decided by the court on a motion to dismiss. *Id.* at 62 (“Absolute privilege and relevance are  
25 questions of law for the court to decide.”) “The scope of the absolute privilege is quite broad.”  
26 *Fink v. Oshins*, 118 Nev. 428, 433 (2002). “[C]ourts should apply the absolute privilege  
27 liberally, resolving any doubt “in favor of its relevancy or pertinency.” *Id.* at 433-34.  
28 Furthermore, “the test of relevancy is very broad. The defamatory material need not be relevant

1 in the traditional evidentiary sense, but need have only “some relation” to the proceeding; so  
2 long as the material has some bearing on the subject matter of the proceeding, it is absolutely  
3 privileged.” *Circus Circus Hotels*, 99 Nev. at 61.

4 The Nevada Supreme Court recently affirmed that the litigation privilege extends to the  
5 parties as well as their attorneys, stating, “where a judicial proceeding has commenced or is, in  
6 good faith, under serious consideration, we determine no need to limit the absolute privilege to  
7 communications made by attorneys.” *Clark County School Dist. v. Virtual Educ. Software,*  
8 *Inc.*, 213 P.3d 496 (Nev. 2009) (citing *Hall v. Smith*, 214 Ariz. 309, 152 P.3d 1192, 1195-96  
9 (App. 2007) (“The privilege applies to both attorneys and parties to litigation.”)). Therefore, the  
10 “*absolute privilege affords parties the same protection from liability as those protections*  
11 *afforded to an attorney for defamatory statements made during, or in anticipation of, judicial*  
12 *proceedings.*” *Id.* at 502 (emphasis added).

13 Such privileged statements are not limited to those made within the courtroom, and  
14 Nevada courts have applied the absolute bar to liability in reference to statements made verbally  
15 and in writing to third parties. *See id.* at 503 (finding letter sent by petitioner’s representative to  
16 respondent was absolutely privileged); *Fink*, 118 Nev. at 434 (holding that oral statements  
17 accusing petitioner of hiding money and defrauding respondent’s trust account were absolutely  
18 privileged). This privilege also has been extended to the news media and individuals to report or  
19 republish judicial proceedings. *See Sahara Gaming Corp. v. Culinary Workers Union Local*  
20 *226, et al.*, 115 Nev. 212, 218 (1999). The privilege is not limited to those specifically engaged  
21 in reporting news to the public, but extends to any person who makes a republication of a judicial  
22 proceeding or material that is available to the general public. *Id.*

23 Here, even taking Jacobs’ allegations as true, Jacobs’ statements are subject to the  
24 absolute litigation privilege. According to Jacobs, Adelson made the allegedly defamatory  
25 statements in his individual capacity *and* as a representative of Sands China and LVSC. FAC,  
26 ¶ 63. Without admitting that Adelson’s statements may be imputed to Sands China or LVSC,  
27 both Sands China and LVSC are defendants in this action, and were so at the time the statements  
28 were allegedly made by Adelson. The substance of the statements, as stated by Jacobs in his



1 FAC, are that (i) Jacobs had been terminated from his position as President and CEO of Sands  
2 China “for cause,” and (ii) Jacobs in this litigation had made statements that were false. FAC,  
3 ¶ 62.

4 As a preliminary note, the relevancy test is easily met because Jacobs does not allege that  
5 Adelson made any statements regarding matters outside the scope of the litigation. *Circus*  
6 *Circus Hotels*, 99 Nev. at 61. Indeed, the allegations in the Fifth Cause of Action are replete  
7 with references to this proceeding. FAC ¶¶ 60 (“On Tuesday March 15, 2011, oral arguments by  
8 the respective counsel of Jacobs, LVSC, and Sands China were presented to the Honorable  
9 Elizabeth Gonzalez, Eighth Judicial District Court Judge.”); 61 (“Following the 90-minute  
10 hearing, the Court denied each of the Defendants’ motions to dismiss the action. The hearing  
11 received widespread attention...”); 62 (“Following the hearing, the Wall Street Journal®  
12 published an article in its online edition styled ‘Setback for Sands in Macau Suit.’”). In addition,  
13 the context of Adelson’s statement, namely, to a newspaper reporter following the March 15,  
14 2011 hearing, is within the scope of the broad privilege as it is not limited to statements made  
15 only in pleadings or within the courtroom. *See Clark County School Dist.*, 213 P.3d at 503  
16 (letter sent by petitioner’s representative was privileged); *Fink*, 118 Nev. at 434 (allegedly  
17 defamatory oral statement made in respondent’s office was privileged).

18 Turning to the substance of the allegations, it is clear that the alleged statements by  
19 Adelson were absolutely privileged. As demonstrated above, Jacobs’ Complaint repeatedly  
20 alleged that Sands China and LVSC “wrongfully characterized Jacobs’ termination as one for  
21 ‘cause’” (Complaint, ¶ 46), and further alleged that Jacobs was terminated for objecting to and/or  
22 refusing to carry out “outrageous” if not “illegal” demands allegedly made upon him by Adelson  
23 (Complaint, ¶¶ 26 and 27). As also demonstrated above, counsel for Sands China at the March  
24 15, 2011 hearing--which was attended and recorded by press and media representatives--likewise  
25 observed that Jacobs had been terminated for cause and that Jacobs had lied to the Court. *See*  
26 Exhibit A. Adelson’s statements followed (i) the Complaint, (ii) Jacobs’ February 9, 2011  
27 affidavits in support of his Oppositions to LVSC’s and Sands China’s respective Motions to  
28 Dismiss and (iii) the March 15, 2011 hearing at which Jacobs’ lawyer repeated and emphasized

1 the false statements from Jacobs' affidavit regarding Sands China allegedly courtering  
2 significant funds into this country. Thus, Adelson's statements merely republished what  
3 previously had been stated in this action by Jacobs, by Sands China's counsel, or both.  
4 Therefore, Jacobs' claim for defamation fails as a matter of law and should be dismissed because  
5 the alleged statements on which it is based are subject to the absolute litigation privilege.

6 2. Adelson's Statements Are Further Covered by the Conditional Privilege of Reply.

7 In addition to Adelson's statements falling within the absolute privilege afforded to  
8 parties in an ongoing litigation, the statements are further protected by the conditional "privilege  
9 of reply," which has been recognized and adopted by Nevada courts. *See Nevada Office of*  
10 *Attorney General, v. Eighth Judicial Dist. Court*, 118 Nev. 140, 149, 42 P.3d 233, 239 (2002).  
11 The common law privilege of reply grants those which are attacked with defamatory statements a  
12 limited right to reply. *Id.* The court in *Office of Attorney General* explained how the privilege  
13 would work - "[i]f I am attacked in a newspaper, I may write to that paper to rebut the charges,  
14 and I may at the same time retort upon my assailant, when such retort is a necessary part of my  
15 defense, or fairly arises out of the charges he has made against me." *Id.* The privilege is  
16 conditional and may be lost, however, if the reply includes substantial defamatory matter that is  
17 irrelevant or non-responsive to the initial statement, includes substantial defamatory material that  
18 is disproportionate to the initial statement, is excessively publicized, or is made with malice in  
19 the sense of actual spite or ill will. *Id.* at 150.

20 In this case, Jacobs in his Complaint repeatedly alleged that LVSC and Sands China had  
21 wrongfully taken the position that he had been terminated for cause (Complaint, ¶¶ 41, 46, 47  
22 and 50), and further alleged that (according to Jacobs) he was terminated because he "objected to  
23 and/or refused to carry out" allegedly "outrageous" and "illegal" demands allegedly made upon  
24 him by Adelson. In fact, Jacobs asserts that all of the stated reasons for his termination for cause  
25 were "pretextual." Complaint, ¶ 33. Jacobs' allegations, including about what allegedly resulted  
26 in his termination, have been reported in the press and media, which were present for the March  
27 15, 2011 hearing in this matter. Adelson's assertion that Jacobs was fired for cause is privileged  
28 because it was made in reply to Jacobs' denial of the same.

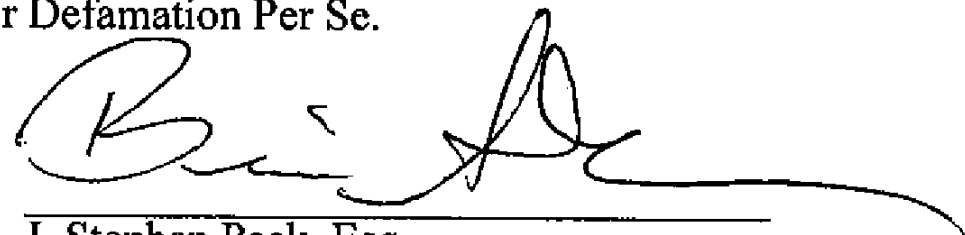
1 Likewise, Adelson's statement that in this case Jacobs had resorted to "outright lies and  
2 fabrications" is nothing more than a refutation of Jacobs' allegations. Adelson was certainly  
3 entitled to reply and dispute the assertion made by Jacobs in the litigation, and did so in response  
4 to a reporter's question after Jacobs had spoken to the press. *See Office of Attorney General*,  
5 118 Nev. at 149, 42 P.3d at 239. Therefore, Adelson's statements are protected by the  
6 conditional privilege of reply, and Jacobs' defamation claim fails as a matter of law.

7 IV.

8 CONCLUSION

9 Based on the foregoing, LVSC respectfully requests that the Court grant its Motion to  
10 Dismiss Plaintiff's Fifth Cause of Action for Defamation Per Se.

11 DATED April 20, 2011.



12  
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15 Brian G. Anderson, Esq.  
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19  
20 *Attorneys for Defendant Las Vegas Sands Corp.*  
21  
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28

**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b), I certify that on April 20, 2011, I served a true and correct copy of the foregoing **LAS VEGAS SANDS CORP.'S MOTION TO DISMISS PURSUANT TO NRCP 12(B)(5)** via e-mail and by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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*Attorneys for Defendant Sands China Ltd.*

  
An Employee of Holland & Hart LLP

## **Dineen Bergsing**

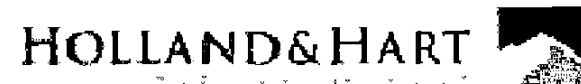
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**From:** Dineen Bergsing  
**Sent:** Wednesday, April 20, 2011 5:54 PM  
**To:** Donald Campbell; 'jcw@campbellandwilliams.com'; 'Mark Krum'; Andrew Sedlock; 'Steve Morris'  
**Subject:** LV Sands/Jacobs - LV Sands' Motion to Dismiss Pursuant to NRCP 12(B)(5)  
**Attachments:** Las Vegas Ikon - 04-20-11 - 2WNTA9C.pdf; image001.gif

Please see attached LV Sands' Motion to Dismiss Pursuant to NRCP 12(B)(5). A copy to follow by mail.

### **Dineen M. Bergsing**

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Justin C. Jones and David J. Freeman*  
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# EXHIBIT A

ORIGINAL

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*Alvin D. Shuman*

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

CLERK OF THE COURT

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al.

Defendants  
.....

CASE NO. A-627691

DEPT. NO. XI

Transcript of  
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON DEFENDANTS' MOTIONS TO DISMISS

TUESDAY, MARCH 15, 2011

APPEARANCES:

FOR THE PLAINTIFF:

DONALD JUDE CAMPBELL, ESQ.  
COLBY WILLIAMS, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
JUSTIN C. JONES, ESQ.  
PATRICIA GLASER, ESQ.

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

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

(58)

CLERK OF THE COURT

MAR 18 2011

RECEIVED

1 LAS VEGAS, NEVADA, TUESDAY, MARCH 15, 2011, 9:01 A.M.

2 (Court was called to order)

3 THE COURT: Could I have the Jacobs versus Las Vegas  
4 Sands Corp. case come up for a minute. No, up to your tables.  
5 I have to do something, because I thought you were going to be  
6 here a couple weeks ago. I know it'll be a minute, because  
7 Mr. Campbell's in the back corner.

8 MS. GLASER: Good Morning, Your Honor.

9 THE COURT: Good morning. How are you?

10 MR. CAMPBELL: Good morning, Your Honor.

11 MR. PEEK: Good morning, Your Honor.

12 THE COURT: In my past life, when I was lawyer at a  
13 point in time when Don Prunty and Shelly Berkeley were still  
14 with the Las Vegas Sands, I represented them primarily in  
15 personal injury matters. I make that disclosure to you  
16 because it's important for the record for me to make the  
17 disclosure. I also at one point in time, before they opened a  
18 shopping mall, whenever that was, because it was a long time  
19 ago, participated in training a security staff on how to  
20 properly document personal injuries in case we had to litigate  
21 those. That was the -- my best recollection of the extent of  
22 my involvement. But I make that disclosure to you so you can  
23 have a moment to think about it, decide if you want to consult  
24 with your clients outside my presence before we get to your  
25 matter, which is near the end of the calendar.



1 MR. CAMPBELL: Thank you, Your Honor.  
2 MR. PEEK: Thank you, Your Honor.  
3 (Proceedings recessed at 9:02 a.m., until 10:25 a.m.)  
4 THE COURT: Okay. Jacobs.  
5 And if everyone could please identify yourself for  
6 the record again for the clerk.  
7 MS. GLASER: Good morning, Your Honor. Patricia  
8 Glaser for Sands China.  
9 MR. PEEK: Good morning, Your Honor. Stephen Peek  
10 on behalf of Las Vegas Sands Corp.  
11 MR. CAMPBELL: Good morning, Your Honor. Donald  
12 Jude Campbell, Campbell & Williams, on behalf of Mr. Jacobs,  
13 the plaintiff in the action.  
14 MR. WILLIAMS: Colby Williams on behalf of the  
15 plaintiff, Your Honor. That's Steve Jacobs, the plaintiff.  
16 THE COURT: Good morning.  
17 MR. JACOBS: Good morning.  
18 THE COURT: Which motion would you like to take  
19 first?  
20 MR. PEEK: It matters not to us, Your Honor.  
21 Whatever is the pleasure of the Court.  
22 THE COURT: Mr. Peek, your motion is shorter.  
23 MR. PEEK: Thank you, Your Honor.  
24 THE COURT: Not by much.  
25 MR. PEEK: Well, my papers certainly. I see the

1 opposition's a little bit lengthier.

2           Although mine is shorter, Your Honor, it is a little  
3 bit more fact specific, because the analysis that you have to  
4 make under Rule 19(a) and Rule 19(b) is more fact specific for  
5 the purposes of the motion to dismiss for failure to join an  
6 indispensable party under Rule 19(a) and Rule 19(b).

7           As you know, this is a case brought by a Georgia  
8 resident against Las Vegas Sands Corp. and Sands China  
9 Limited, a Macau entity. This case started with Mr. Jacobs in  
10 the spring of 2009, when Mr. Jacobs first was retained through  
11 his company, Vagus, to be a consultant to Las Vegas Sands  
12 Corp. I emphasize it was Vagus who had the consulting  
13 agreement with Las Vegas Sands Corp., Your Honor. It then, of  
14 course, changed in the spring of -- later in the spring of  
15 2009. So in May of 2009 an agreement for services between  
16 Jacobs and Venetian Macau Limited, which is our Exhibit B, was  
17 entered into on behalf of Venetian Macau Limited on the one  
18 side and Jacobs on the other. We've set forth and Your Honor  
19 can see what the terms and conditions were of that agreement  
20 for services, but, importantly, it is an agreement for  
21 services between Venetian Macau Limited and Mr. Jacobs.

22           That then moved and transitioned in the latter part  
23 of May and the first part of June 2009 into a letter of  
24 appointment by Venetian Macau Limited. That's Exhibit C to  
25 our motion. And in that letter of appointment Mr. Jacobs was

1 appointed as president of Venetian Macau Limited. He was to  
2 be paid a salary of \$1.3 million per year, he was to serve for  
3 two years, could be terminated without cause. There are other  
4 terms and conditions. And Mr. Jacobs proceeded to begin work  
5 on behalf Venetian Macau Limited under the terms and  
6 conditions of that agreement of a letter of appointment for  
7 executive.

8 Now, certainly, as Mr. Campbell's papers point out,  
9 it was something that was needed for purposes of Mr. Jacobs to  
10 get a blue card. But though it was for purposes of getting a  
11 blue card, it was also for purposes of his employment as the  
12 president and chief executive officer of Venetian Macau  
13 Limited.

14 So he started work in June 2009 on behalf of the  
15 Venetian Macau Limited as president and chief executive  
16 officer of Venetian Macau Limited in the Macau Special  
17 Administrative Region of China, Macau SAR. You've seen that.  
18 We also know, Your Honor, that beginning in that same period  
19 of time he began working as Venetian Macau's president/CEO,  
20 and moved and began to operate out of Hong Kong and Macau.

21 Certainly there was, as we know a -- a he calls a  
22 side letter, which is Exhibit 10 to their motion, which was  
23 preceded by an Exhibit 11 email. And the Exhibit 11 email I  
24 think is important because it's characterized one way in his  
25 email and another way by his counsel. In the email, written

1 contemporaneously on July 1st, Mr. Jacobs, writing from an  
2 email address, Your Honor -- and you see that on Exhibit 11,  
3 what his email address is, it's steve.jacobs@venetian.com.mo,  
4 which is Macau. He's writing from the Macau -- Venetian Macau  
5 email address as president and CEO.

6           So he writes in the second paragraph, "Attached you  
7 will find a two-page side letter that Luis has suggested we  
8 sign locally. It was not, as Mr. Jacobs attempts to  
9 characterize it in his opposition, something that he thought  
10 was necessary because he wanted to have a not Nevada or United  
11 States corporation held liable. It was something that Luis  
12 suggested, it was not something that Mr. Jacobs suggested, as  
13 they write and as he says in his affidavit, because it's  
14 contradicted by his own email.

15           But what do we have in that so-called side letter  
16 that I think is important for all of us to understand and  
17 characterize? We know from that so-called side letter that he  
18 acknowledges that Venetian Macau Limited understands that Mr.  
19 Jacobs is having discussions with the Las Vegas Sands Corp.  
20 for purposes of his employment contractual terms and  
21 conditions. Now, he's talking to the parent company because  
22 he's talking to a parent company who's going to hire a  
23 president and CEO for a subsidiary, indirect subsidiary of it,  
24 so there's nobody there other than -- when you're talking  
25 about hiring a president, the vice president doesn't hire him,

1 the CFO doesn't hire him, somebody has to hire him, somebody  
2 has to be in a position to hire him. And that's the parent.  
3 So that's why he's in discussions with Las Vegas Sands Corp.

4 But what is even more important to them? And this  
5 is, I thought, an interesting portion of not only the  
6 contract, but also the way that counsel characterized it. And  
7 I'm reading now, Your Honor, from Exhibit 10. "First of all,  
8 if you and the Company --" company is defined as VML "-- do  
9 not reach agreement on your employment terms and conditions  
10 and a valid employment contract (including the supplemental  
11 employment terms) is executed on or before October 31st, the  
12 interim agreements will expire." Those are the interim  
13 agreements of the consulting and the June 16th agreement.

14 But here's the paragraph that I thought interesting,  
15 Your Honor, that a misquote in their brief. Again, it says,  
16 "The Company and you," and again, "company" here is  
17 capitalized and stands for VML, "hereby agree that your  
18 employment relationship with the Company," again capitalized  
19 C, meaning VML, "will be ruled exclusively by the terms and  
20 conditions forming part of an employment agreement being  
21 currently negotiated and to be agreed upon and executed in due  
22 time, which agreement shall replace and supersede in its  
23 entirety the interim agreements." This is in July of 2009.

24 Now, they want to characterize this side letter as  
25 something that says in their minds that there's no enforceable

1 agreement and that they're discussing their contractual  
2 relationship with Las Vegas Sands Corp. so therefore, under  
3 that syllogism that they argue, the contract must be with Las  
4 Vegas Sands Corp. But that's not what the letter says, and  
5 that's not what Mr. Jacobs signed. He signed that the  
6 company, VML, and he agree that his employment relationship  
7 well be with the company, VML.

8           Now, you'll note in their opposition that they make  
9 a little small C. They try to make it in their opposition  
10 appear to the Court as though "company" means somebody other  
11 than VML. But it means VML. There certainly were, no  
12 question, in that period of time negotiations between Jacobs  
13 and the parent corporation as to what he would be paid, what  
14 all the terms and conditions of his contract of employment  
15 with VML would be.

16           So what do we have, then? We have, of course,  
17 a terms sheet. That terms sheet came out of a series of  
18 emails and negotiations, and it starts -- and we'll look at  
19 Exhibit 12, Your Honor, because it's that -- it's that terms  
20 sheet upon which they focus to say it's Las Vegas Sands Corp.  
21 who is the employer and not VML. And they say to you and you  
22 know that the Court has to interpret that contract as to  
23 determine who the obligors are under that contract.

24           So let's start with at least Exhibit 12, which is  
25 the email. We note first of all that that address -- that

1 email address is like the other one. It's sent from the Macau  
2 Limited email address. Mr. Jacobs is already over there doing  
3 the work for VML as the president and CEO under the letter of  
4 appointment of June 16th, 2009. He talks there about the fact  
5 that he has been paid the 75 shares of stock options for LVSC  
6 for work performed by Vagus as a consultant to LVSC, so he  
7 acknowledges that. He got those options for the work that he  
8 had done. He acknowledges that in his email, Exhibit 12. He  
9 also says that it's a -- now a no go or a go, no go situation  
10 for him.

11           Why is it a go, no go situation for him? Because he  
12 talks about having to move his family to Hong Kong, and for  
13 his child to be enrolled in a school in Hong Kong he needs to  
14 be able to make a decision, because he's already lost the  
15 opportunity with at least three schools in Hong Kong to enroll  
16 his child. So he needs to be able to get a decision now from  
17 Mr. Levin as to whether or not I'm going to have a contract.  
18 So that's his go, no go.

19           He also says, my wife needs to be able to get over  
20 there quickly enough in order for her to get a green card to  
21 stay there in Hong Kong. He's going to move to Hong Kong to  
22 perform work on behalf of VML as its president and CEO. You  
23 don't go to Hong Kong to do work for Las Vegas Sands Corp.,  
24 which is what he attempts to have you believe.

25           He also says that, I need to be able to have this

1 determined right away because I have to be able to ship my  
2 furniture and my belongings over to Hong Kong in order to have  
3 them there so that I can start my work. Start his work for  
4 what? President and CEO of VML.

5           So we do get the terms sheet that he prepares, and  
6 he sends it to Mr. Levin, and that terms sheet, as you know,  
7 is Exhibit 13 to their motion. And what does he say about  
8 that terms sheet? He says in his Footnote 16 that that  
9 Exhibit 13 which is attached is a true and correct copy of the  
10 terms sheet. He says it's the true and correct copy, and yet  
11 -- so whose signature do we see on there? Do we see Mr.  
12 Jacobs's signature on that? No, we don't. And that's an  
13 interesting part of this case both from the complaint  
14 standpoint as well as from the motion practice. He keeps  
15 saying, this is my agreement, this is what I signed; but he  
16 doesn't present you with a signed copy of the terms sheet.

17           THE COURT: But Mr. Levin signed it.

18           MR. PEEK: I agree Mr. Levin signed it, Your Honor,  
19 and I'm not arguing that. But I think it's interesting that  
20 he continues to argue that, this is my contract but I didn't  
21 sign it. So is only VML to be bound by that and not Mr.  
22 Jacobs to be bound by it? Is there something else that Mr.  
23 Jacobs has?

24           But what do we see in that terms sheet which is  
25 Exhibit --



1 THE COURT: 13.

2 MR. PEEK: -- 13? We see the following. A  
3 \$1.3 million salary, same as what the letter of appointment  
4 is of June 16th. It's a 50 percent bonus. And what's the  
5 50 percent bonus based on? It's the -- 25 percent of it will  
6 be based upon him achieving a certain level of EBIT DAR  
7 performance as submitted and approved by the board for Macau.  
8 So it's based upon the performance of VML, Venetian Macau  
9 Limited and the casino in Macau. That's what his bonus is  
10 based on, not something he's doing for Las Vegas Sands Corp.  
11 And then there's another one where 25 percent of that  
12 50 percent bonus is based upon individual objectives to be  
13 mutually agreed upon on an annual basis. We don't have any  
14 follow up to that, Your Honor.

15 Then what do we have? We have an equity portion.  
16 And what does it say in the equity portion, again, that is  
17 critical as to who the contracting parties are and who's going  
18 to perform? Because at this time there is no Sands China  
19 Limited, and it's clearly reflected that there's no Sands  
20 China Limited, because it says that the contract will be him  
21 as president and CEO Macau, a listed company (ListCo), not  
22 president and CEO Las Vegas Sands Corp., not executive vice  
23 president, nothing, really, for Sands Corp. He's going to be  
24 a position as president and CEO Macau, a listed company.

25 So let's talk now about the options. The options

1 are -- the Court knows they're 500,000 shares of Las Vegas  
2 Sands Corp. But what does it then go on and say to be  
3 consistent with who the employer is and what his role will be,  
4 is that those options will be converted into ListCo, which we  
5 know was Sands China Limited. We know it from his papers, we  
6 know it from our papers. So that doesn't make him again an  
7 employee of Las Vegas Sands Corp. It's just that's all that  
8 there was that was available at that time in negotiating with  
9 him to work on behalf of the subsidiary. A parent was  
10 granting him options, knowing that there was going to be a  
11 publicly traded company at some time. If it worked out, those  
12 would be converted into that company for whom you're going to  
13 be performing services, who was going to be your employer.  
14 "Convert it at IPO into sufficient number of ListCo options."  
15 So again that's evidence of the fact that his employment  
16 relationship was not with Las Vegas Sands Corp., but was in  
17 fact with VML and/or Sands China Limited.

18 So there are no joint obligors or no co-obligors  
19 under this terms sheet. The obligors were the -- the obligor,  
20 not plural, was VML and/or ListCo, not Las Vegas Sands Corp.  
21 We know, because we presented evidence from June 2009 all the  
22 way up until the termination in July 2010, he was paid from  
23 VML. We also know that he received stock options from Sands  
24 China Limited. We now that he moved to Hong Kong, he took his  
25 family, he enrolled his child in school, he negotiated for, as

1 we know from the terms sheet, repatriation, an exit package, a  
2 one-time fee to cover moving expenses, a housing allowance of  
3 12,000 a month, a repatriation, meaning when I come back -- my  
4 business affair for employee independence. We know that all  
5 of his vacation, holidays, and employment benefits were paid  
6 from VML. Certainly he did report to either the president and  
7 CEO Macau -- excuse me, president and CEO of LVS, COO of LVS  
8 or CEO/chairman LVS, because at that time Venetian Macau  
9 Limited didn't have its own CEO or its own chairman to whom he  
10 could report. So you're going to report up to the parent.

11 We also know, Your Honor, from papers that have been  
12 filed subsequently, that Mr. Adelson became the chairman of  
13 Sands China Limited, the parent company of VML. So it's  
14 logical that he was going to be reporting to the chairman of  
15 the board of the entity that became Sands China Limited and  
16 became ListCo here.

17 So what do we know later? Again, Your Honor, trying  
18 to interpret this contract and interpret the circumstances  
19 here factually as to whether or not VML should be a necessary  
20 party and whether in the absence of having jurisdiction over  
21 them in equity and good conscience this case should be kept  
22 or dismissed. So we have certainly Plaintiff's Exhibit 15,  
23 the comp committee. No other comp committee was available  
24 to approve other than the Las Vegas. We have Plaintiff's  
25 Exhibit 16, an email from Gail Hyman to Jacobs. "Once you've

1 signed the employment agreement you will become an executive  
2 officer of LVSC," not an executive -- not -- excuse me, not an  
3 employment agreement with LVSC, but an employment agreement  
4 for your position as president and CEO of Macau, you will  
5 become an executive.

6 THE COURT: Of LVS.

7 MR. PEEK: Of LVS. That doesn't make him an  
8 employee of LVS, Your Honor. But for purposes of SEC  
9 reporting you become an executive officer of that.

10 You have Exhibit 17, which is a similar email from  
11 Ms. Hyman to Mr. Jacobs. It's Plaintiff's Exhibit 17 in which  
12 Ms. Hyman reports to Mr. Jacobs that Mr. Adelson and Mr. Levin  
13 have decided to make the CEOs of the company's significant  
14 subsidiaries executive officers of LVSC for SEC reporting  
15 purposes. It doesn't say, because you're an employee of LVSC,  
16 it says, because you are a CEO of the company's significant  
17 subsidiaries, in this case VML. And she asks him to sign the  
18 attach form.

19 And then if we look at Exhibit 18 attached to  
20 plaintiff's opposition -- and I thank, actually, plaintiff  
21 for attaching all these, because they're very helpful. In  
22 Exhibit 18, which Mr. Jacobs signed and submitted on  
23 September 14th, 2009, what does he say he is under his  
24 signature -- or above his signature? He says -- in the block  
25 numbered 4 it says, "Relationship of reporting person to

1 issuer, President and CEO Venetian Macau Limited." President  
2 and CEO of Venetian Macau Limited. He doesn't say, I'm  
3 executive VP of Las Vegas Sands Corp., he doesn't say, I'm  
4 some kind of an employee of Las Vegas Sands Corp. He says, my  
5 position and relationship to the issuer is not as an employee  
6 of it, but it's as a president and CEO of this indirect  
7 subsidiary, Venetian Macau Limited. That's what he said he  
8 was. He doesn't say, I'm an employee of LVSC. So clearly,  
9 Your Honor, he is the employee [sic].

10           And now what do we have that they also are kind  
11 enough to attach? They have something called an Exhibit 19,  
12 which is our 8-K in which we are reporting to the world that  
13 we are engaged in any IPO of Sands China Limited and that  
14 there is this Web-proof information pack available to people  
15 to review, the WPIP, which is a new term for me, Your Honor,  
16 that I learned today. And in that Exhibit 19 attached to that  
17 8-K plaintiff was kind enough to attach that Web-proof  
18 information pack in which on page 201 or the last page of the  
19 exhibit, Your Honor, it describes who the directors and senior  
20 management of Sands China Limited, this now to be traded -- or  
21 this now initial public offering entity to be traded on the  
22 Hong Kong Stock Exchange --

23           THE COURT: Well, it's created in the Cayman  
24 Islands.

25           MR. PEEK: Pardon?

1 THE COURT: But it's created in the Cayman Islands.

2 MR. PEEK: Yes. But it's going to be traded on the  
3 Hong Kong Stock Exchange, Your Honor.

4 THE COURT: I got that.

5 MR. PEEK: What does it say Mr. Jacobs is? He is  
6 the chief executive officer, president Macau, and executive  
7 director. That's who Sands China describes as its directors  
8 and senior management.

9 And then they make much of this sentence, which  
10 begins with who the executive directors are. The first one  
11 is, "Steven Craig Jacobs, age 46, is our chief executive  
12 officer," okay, "our" meaning SCL, "is the president Macau and  
13 executive director," again, that's what he does, he's  
14 president, executive director, CEO of Macau. "Mr. Jacobs has  
15 been president Macau of LVS," again, that's what he's been,  
16 VML, "from May 2009," and here's a sentence that they think is  
17 really important -- or phrase, "has worked with LVS since  
18 March 2009." It's interesting that it says "worked with," not  
19 "worked for," because, yes, he had a contract with -- as  
20 Vagus, V-A-G-U-S, Your Honor, as a consultant which was  
21 entered into in March of 2009. So, yes, he's worked with LVS  
22 under that consulting agreement with Vagus, his entity.

23 We know, of course, that there were termination  
24 letters, first from Sands China Limited, which is their  
25 Exhibit 22, signed by Mr. Adelson, whom we know from Exhibit

1 -- from this exhibit we just reviewed, Exhibit 19, 8-K, that  
2 Mr. Adelson was the chairman of the board of SCL. So that's  
3 one termination letter on the letterhead of Sands China  
4 Limited, not on behalf of LVSC. We know that Exhibit G to  
5 their -- to our motion, Your Honor, is the termination letter  
6 from VML, Venetian Macau Limited.

7           So when you look at, Your Honor, all of those facts,  
8 all of those circumstances, you take them all together, you  
9 can only come to one inescapable conclusion, is my belief,  
10 Your Honor -- certainly you may disagree with me, but I don't  
11 think you will -- that he was an employee of VML, not an  
12 employee of Las Vegas Sands Corp.

13           So where do we go from there? Then we look at the  
14 analysis under Rule 19 for the Court to determine based on  
15 these facts, based on what I had been presented --

16           THE COURT: So can I ask you the question that  
17 controls sort of this.

18           MR. PEEK: Certainly.

19           THE COURT: Is VML subject to service of process and  
20 whose joinder will not deprive the Court of jurisdiction over  
21 the subject matter of the action?

22           MR. PEEK: I would say, Your Honor, that more than  
23 likely not. They are not. I would be -- it would be silly  
24 for me to argue otherwise, Your Honor. They are an entity  
25 doing business in Macau.

1           THE COURT: In the Republic -- Special  
2 Administrative Republic --

3           MR. PEEK: Special Administrative Region of Macau.  
4 And he has -- contractually he agreed, Your Honor, in the  
5 letter of appointment to Venetian -- excuse me, to Macau's  
6 jurisdiction, Macau venue, and to be doing everything in  
7 Macau. But just because this Court may be deprived of  
8 jurisdiction, you have to make that first determination of  
9 whether or not they are a necessary party under 19(a).

10           First of all, Your Honor, you have to look at, you  
11 know, is it a necessary party. I say it's an easy one,  
12 because there is a contract with VML. It will impede the  
13 ability of the parties to protect their interests, because VML  
14 won't be there. It won't be there to protect its interests  
15 under the contracts and the contract upon which it terminated  
16 Mr. Jacobs. It's the only one who has the right and the  
17 authority to terminate Mr. Jacobs. It is not Las Vegas Sands  
18 Corp. who has that right, it is Venetian Macau Limited. They  
19 have to be there in order for him to make that case of a  
20 contractual relationship that he had with Venetian Macau and  
21 for them to say, I terminated him because he failed to fulfill  
22 his obligations. That's who terminated him, Your Honor, not  
23 Las Vegas Sands Corp., not Sands China Limited. It was --  
24 well, excuse me. Sands China Limited also terminated him  
25 under the July as president and CEO of that entity, but the



1 contractual relationship and the obligation for his payments  
2 were termed by VML.

3           You can't say VML doesn't have to be here, although  
4 they argue that they're co-obligors. They are not co-  
5 obligors, Your Honor. There's no contractual obligation that  
6 Las Vegas Sands Corp. made with Mr. Jacobs to pay his salary,  
7 to pay his benefits. They cite to the Janie case as being  
8 controlling. If you look at the Janie case, the reason the  
9 Janie case created co-obligors is because they specifically  
10 agreed that Underwood and its subsidiaries would be liable.  
11 We don't have that here, Your Honor. You can't keep him --  
12 you have to decide that he is a necessary party, Your Honor,  
13 because his contract is then with VML.

14           So what do you look at next? You look at the four  
15 factors under 19(b), whether under equity and good conscience  
16 -- equity and good conscience applies not only to Mr. Jacobs,  
17 but it also applies to VML and also applies to LVSC. So it's  
18 not just something you look about, oh, poor Mr. Jacobs, the  
19 Georgia resident who's coming to Nevada to sue a Nevada  
20 corporation, you look at what the impact and the effect is  
21 upon those who are not parties, VML, and those who are a  
22 party, Las Vegas Sands Corp., under current framing of their  
23 pleadings. You have to look at both. You don't just look at  
24 Jacobs and say, oh, my gosh, what can you do about poor Mr.  
25 Jacobs, the Georgia resident.

1           And one factor, judgment might be prejudicial. It  
2 will be prejudicial to the absent party, VML, who won't be  
3 here to defend its actions in terminating Mr. Jacobs under its  
4 contract with Mr. Jacobs.

5           THE COURT: Mr. Peek, can you tell me what court in  
6 whatever jurisdiction in the world would have jurisdiction  
7 over all of the parties in this case --

8           MR. PEEK: Venetian Macau --

9           THE COURT: -- including VML.

10          MR. PEEK: Macau would, Your Honor.

11          THE COURT: Macau's not going to have jurisdiction  
12 over all the parties in this case.

13          MR. PEEK: They're going to have jurisdiction over  
14 Mr. Jacobs, they're going to have jurisdiction over Sands  
15 China Limited, they're going to have jurisdiction over VML.

16          THE COURT: And LVSI?

17          MR. PEEK: LVSI, Your Honor, in the way it does  
18 business there through its subconcessions I think is going to  
19 be -- have jurisdiction over LVSI.

20          THE COURT: Okay. Thank you.

21          MR. PEEK: I'm certainly not a Macau lawyer, Your  
22 Honor --

23          THE COURT: I know.

24          MR. PEEK: -- so I don't want to be able to say that  
25 to you. But I believe that, given the fact that it is the

1 entity which certainly as the parent and as the one who sought  
2 and achieved subconcessions through indirect subsidiaries, it  
3 may likely be subject to service of process in Macau. Okay.

4 THE COURT: Okay. Thanks.

5 MR. PEEK: Okay. So in equity and good conscience  
6 let's look at that, okay. So here we don't have the  
7 jurisdiction over Venetian Macau Limited, so you're saying --  
8 you're suggesting that, okay, it's okay to proceed against  
9 LVSC because perhaps in Macau Mr. Jacobs may not have  
10 jurisdiction over LVSC. But let's look at the equity and good  
11 conscience. Who's the contract with? The contract's with  
12 VML, not Las Vegas Sands.

13 So even if you don't have jurisdiction over Las  
14 Vegas Sands Corp. in Macau, how is he to be harmed? Because  
15 he has the obligor, the obligor is there. The one who signed  
16 that contract and paid his wages and paid his benefits and  
17 gave him stock options, they're there in Macau. So you don't  
18 even need to have Las Vegas Sands Corp. So when you ask me  
19 that question, it's really not a question, though I can answer  
20 the way I did, that is necessary to your decision, because in  
21 equity and good conscience does he have complete relief? Does  
22 he have an adequate remedy if this case is dismissed against  
23 him? Yes, he does. That's what you have to look at, is does  
24 he have an adequate remedy, does he have a remedy at all. He  
25 does. Macau, Sands China Limited, VML.

1           Your Honor, I could go through the other four  
2 factors, but I think I've gone through them. But, you know,  
3 one, I don't think you can fashion relief here to avoid or  
4 lessen prejudice to VML, to avoid or lessen the prejudice to  
5 Las Vegas Sands Corp. of having the possibility of multiple or  
6 duplicate or inconsistent judgments rendered against it or  
7 against VML. That party who termed him is not here. That  
8 part who wrote those letters is not here.

9           THE COURT: Well, but Sands China Limited is.

10          MR. PEEK: Certainly, Your Honor. And you'll  
11 address that with Ms. Glaser. You'll have to address that  
12 question with Ms. Glaser as to whether or not it is the entity  
13 who paid his salary, an entity who certainly gave him options  
14 and the entity who paid his benefits and whether or not it was  
15 the one directing him. But that's a different -- different  
16 issue, Your Honor. But as far as Las Vegas Sands Corp. is  
17 concerned, it must have that entity which entered into the  
18 contract and gave its obligations or agreed to its obligations  
19 to Mr. Jacobs here when he moved to Hong Kong, took his family  
20 with him, and set up shop in Hong Kong as the president and  
21 CEO of Macau. Thank you.

22          THE COURT: Thank you.

23          Mr. Campbell, Mr. Williams.

24          MR. CAMPBELL: If I could have the Court's  
25 indulgence for about 30 seconds.

1 THE COURT: Sure.

2 (Pause in the proceedings)

3 THE COURT: And, counsel, as always, if you need to  
4 get up to be able to move to see a board, please feel free to  
5 get up.

6 I truly appreciate, Mr. Peek, you and Mr. Campbell  
7 being so civil and complimentary to each other today.

8 MR. CAMPBELL: Oh, absolutely, Your Honor.

9 MR. PEEK: Thank you, Your Honor.

10 MR. CAMPBELL: Mr. Peek and I go back a long while.

11 Your Honor, I'd like to try to take you through some  
12 of the documents themselves to point out what we believe are  
13 the critical factors and elements of each of these documents  
14 and why it eviscerates the argument that has just been made by  
15 Las Vegas Sands.

16 I'd like to start first of all with the consulting  
17 agreement. Throughout both the original moving papers and the  
18 rebuttal Las Vegas Sands has repeatedly said that these are  
19 two employment agreements, time and time again. Irrespective  
20 of what we demonstrated in our opposition, they nevertheless  
21 cling to that dogma. And that is absolutely not true. But  
22 there are a few important features of each of these documents  
23 that we believe are going to have a bearing on the decision  
24 that the Court makes here today. And let's talk about the  
25 first one.

1           As you can see, Your Honor, from the consulting  
2 agreement -- and that consulting agreement is our Exhibit  
3 Number -- that's our Exhibit Number 8, Your Honor.

4           THE COURT: 8.

5           MR. CAMPBELL: This consulting agreement was with  
6 Mr. Jacobs's company, Vagus Consulting. And, contrary to what  
7 has been said over and over in both the moving papers of Las  
8 Vegas Sands, as well as their reply, this was not an  
9 employment agreement. This was a consulting agreement. And  
10 in fact it specifically excluded him as being an employee of  
11 VML. That's not my argument, that's not my hyperbole, that is  
12 what the agreement says. He was an independent contractor, he  
13 was not an employee. So this really is a canard, except for  
14 one very important feature. And this is going to become  
15 important as we go along in this argument. And the feature of  
16 this is this was a consulting agreement that was indeed with  
17 VML, and it was signed, Your Honor, if you'll look at it, by  
18 Antonio Ferraria. Mr. Ferraria -- and, by the way, you never  
19 got an affidavit from him. Mr. Ferraria was the executive  
20 director for VML. I'd like you to keep that in mind as we go  
21 along, the executive director signed and bound VML to this  
22 consulting agreement.

23           Now let's move to the side agreement, which is  
24 Exhibit 10, the side letter. This side letter completely  
25 eviscerates the employment agreement. If you would take a

1 look at the so-called employment agreement -- just put that up  
2 here for a second, if you would --

3 THE COURT: And you're on Exhibit 10 now?

4 MR. CAMPBELL: Yes, Your Honor. If you'll take a  
5 look at this, this, too, is on Venetian Macau Limited. Now,  
6 the contract that -- the purported contract that employed him  
7 that they spent a good deal of time talking about was with  
8 VML. That's what they talked about, that employment contract.  
9 Now, this says -- and, by the way, that's the employment  
10 contract that they say controls, that's the employment  
11 contract that they say dominates with respect to what the  
12 application of the law, and likewise compels this to be  
13 brought in that forum. That is the employment agreement  
14 they're talking about. And that employment agreement, too,  
15 was signed by VML through, once again, Antonio Ferraria, its  
16 executive director.

17 Now, this side agreement, which was never, ever  
18 brought up by either Las Vegas Sands nor by Sands China at any  
19 point in their moving papers -- and the Court should ask  
20 itself why. We suggest for this reason, because this side  
21 agreement says as follows, that the relationship is going to  
22 be, quote, "ruled exclusively by the terms and conditions  
23 forming a part of an employment agreement currently being  
24 negotiated, agreed upon, and executed in due time, which  
25 agreement," that is, what is going to follow, that agreement

1 that will follow, "shall replace and supersede." Those are  
2 not words of equivocation. They are direct and dogmatic.  
3 They will replace and supersede in its entirety the interim  
4 agreements that were signed by VML and by Mr. Ferrara on  
5 behalf of VML. So once that's done, these no longer exist.  
6 They're meaningless.

7 Let's go to the exchanged email. Those terms are  
8 hammered out, and they're hammered out with Mr. Levin. And  
9 Mr. Levin ultimately agrees to those terms with respect to  
10 what has been agreed upon in an email in which he on behalf of  
11 the Las Vegas Sands, not on behalf of VML or any other entity,  
12 but on behalf of Las Vegas Sands, agrees to it and says, this  
13 will protect you.

14 It then goes to the terms sheet, Your Honor. This  
15 terms sheet, all right, is the ultimate agreement which we  
16 contend replaces in its entirety any other agreements that may  
17 have existed with VML.

18 THE COURT: And that's Exhibit 13?

19 MR. CAMPBELL: Yes, Your Honor. And, Your Honor,  
20 that is the agreement that Mr. Peek so forcefully argued was  
21 somehow ineffectual or likely ineffectual because it was not  
22 signed and agreed upon by both of the parties because it only  
23 bears the signature of Mr. Levin. But I'll get to that in a  
24 moment.

25 This terms sheet, which was agreed and signed on



1 August the 3rd of '09, Your Honor, makes no mention whatsoever  
2 of VML. You will see, likewise, that the signature on it is  
3 not of any officer or director of VML. You don't see Antonio  
4 Ferrara's signature on it on behalf of VML. For good reason,  
5 Your Honor. Because this is not with Venetian Macau Limited,  
6 this is not like the consulting agreement with VML or the --  
7 or any of the other agreements. That's why Ferrara is not  
8 signing it. This is with Las Vegas Sands. And in fact and  
9 indeed you will see that it is identifying Las Vegas Sands  
10 senior executives as those individuals that he will report to.  
11 It does not say that he is going to be reporting to VML's  
12 executive director, Mr. Ferrara, but rather to the president  
13 and chief operating officer of Las Vegas Sands and to the Las  
14 Vegas Sands chief executive officer, and he's also chairman of  
15 the board of Las Vegas Sands, Mr. Sheldon Adelson.

16           So we have no mention whatsoever of VML, we have no  
17 signatory of VML's executive director, Mr. Antonio Ferrara,  
18 it differs dramatically in other ways, showing that in fact  
19 there were other terms and conditions included in this that  
20 we're replacing and not supplementing, but superseding. For  
21 example, you will look in vain, Your Honor, for any such forum  
22 clause that Mr. Peek so adamantly contended required this to  
23 be brought to the courts of Macau.

24           Your Honor, there is also a significant increase in  
25 the term of the employment contract. The term is at least one

1 full year longer. Rather than two, it's now three. It also  
2 provides one of the most significant and important financial  
3 considerations, and that is the remuneration that is going to  
4 be received by my client, Mr. Jacobs, of half a million  
5 dollars of stock in Las Vegas Sands. That had increased it  
6 substantially by the earlier 75,000 shares that he had  
7 previously received. In addition, Your Honor, you will look  
8 at that stock agreement. That stock agreement specifically  
9 says that that agreement with him by Las Vegas Sands is  
10 controlled exclusively by, not the law of Macau, but rather,  
11 Your Honor, by the law of the state of Nevada.

12           Next, this terms sheet, who was it actually  
13 negotiated with? Again, it was negotiated with Mr. Levin and  
14 to some degree Mr. Adelson, both of whom have no role in any  
15 sort of executive, board, or officer fashion with VML. Zero.  
16 That's who he negotiated this with, Your Honor.

17           Who approved his compensation of -- as detailed in  
18 all of this? It wasn't anybody but Las Vegas Sands  
19 compensation committee approved it. And that makes perfect  
20 sense, because they are the party to the agreement. It's  
21 their chief operating officer who's signing off, and it's  
22 their chief executive officer who's also agreed to all of  
23 this. It only makes sense that the compensation committee of  
24 the board of Las Vegas Sands has agreed to this.

25           What happens upon this agreement being signed and

1 executed? What happens is that Mr. Jacobs is thereafter  
2 forever designated as an executive of Las Vegas Sands. And  
3 this is not window dressing. This is exceedingly important.  
4 It's exceedingly important because if he is such an executive  
5 of Las Vegas Sands, Las Vegas Sands must do certain things  
6 with respect to him. The Securities and Exchange Commission  
7 demands that certain protocols be followed, and those  
8 protocols are substantive in nature. Once signed, he is  
9 identified by Ms. Hyman, who says that he is now an executive  
10 officer. That's something that flows immediately thereafter.  
11 He is now an executive officer of Las Vegas Sands. She  
12 identifies him as such, and says, you now have attendant  
13 responsibilities.

14 SEC Form 3, that is Exhibit 18, Your Honor,  
15 identifies Jacobs as an officer of Las Vegas Sands  
16 Corporation. Form 8-K identifies Jacobs as president of Macau  
17 for Las Vegas Sands Corporation. And indeed Levin -- Mr.  
18 Levin and Mr. Adelson in particular are known to exercise a  
19 high degree of control. In public filings it has been stated,  
20 you'll look at Exhibit 3, that, "Las Vegas Sands exercises  
21 control of its business policies and affairs, including the  
22 selection of executives including Sands China Limited's senior  
23 management." They have full and complete control. Moreover,  
24 they are exercising that control -- and I'll save it for the  
25 time that you have allotted to us in response to Sands China

1 and Ms. Glaser's argument that will come, but you will see  
2 where that control is exercised from.

3           So if I could, I'd just like to -- if I could have  
4 that one, please. Let's see if we can just summarize who Mr.  
5 Jacobs was dealing with. Specifically, chief executive  
6 officer, Mr. Adelson, and its chief operating officer of Las  
7 Vegas Sands. He is dealing directly with him. Mr. Ferrara  
8 is nowhere around. Nowhere. There's no mention of Venetian  
9 Macau Limited at all. He negotiates with, not Venetian Macau  
10 Limited, but with Las Vegas Sands Corp. Who is he reporting  
11 to? He is reporting directly to Las Vegas Sands Corp., Levin  
12 and Adelson. Who is this approved by? Las Vegas Sands  
13 Corp.'s compensation committee. Upon this agreement, which  
14 supersedes the other agreements and becomes the final  
15 agreement, he becomes an officer of Las Vegas Sands Corp. He  
16 then receives stock options in Las Vegas Sands Corp. He gets  
17 the approval from the GC of Las Vegas Sands Corp., and is  
18 advised that he is now responsible for filing important forms  
19 with the United States of America, specifically the Securities  
20 and Exchange Commission, and, more specific yet, Form 3 and  
21 Form 8-K, which identify him as Las Vegas Sands Corp.  
22 executive officer.

23           All right. Now, Mr. Peek at -- give me a second,  
24 Your Honor, if I could -- at 10:22 today in his argument said  
25 as follows: is there something else that Mr. Jacobs has that

1 suggests that he is in fact an employee of Las Vegas Sands,  
2 after he started talking about the consulting agreement and  
3 then he talked about the actual agreement that was superseded  
4 by this particular agreement. And my answer to that is, you  
5 bet.

6 Your Honor, this is -- okay. What you're seeing  
7 here is Exhibit 21. This is a Las Vegas Sands Corporation  
8 Second Quarter 2010 Earnings Call. And this took place  
9 July 28th, 2010. And remember, he was terminated on the 23rd.  
10 This is five days later. This is right on the heels of his  
11 termination, within the week. And he's asked by a J.P. Morgan  
12 analyst the following question -- that is, Mr. Levin, the  
13 chief operating officer of Las Vegas Sands says, Mr. Greff  
14 from J.P. Morgan asks the following question, "Query --"

15 THE COURT: And you're on page 6 of the document?

16 MR. CAMPBELL: Yes, Your Honor. Page 6 of that  
17 20-page document.

18 Mr. Greff asks the following question. "Maybe I'll  
19 follow up offline with you guys just on the topic of Steve  
20 Jacobs's departure. I'm presuming he has a noncompete. Can  
21 you confirm that? And how long does that noncompete last?"  
22 Mr. Levin says, "I don't believe he has a noncompete.  
23 Actually, he does not have an actual employment contract."

24 Let's stop right there. He doesn't say he has an  
25 employment contract and it's with VML. He doesn't say

1 anything about anything with VML. They're saying that he has  
2 an employment contract with VML. Well, that's not what Mr.  
3 Levin is telling the public in this quarterly report on the  
4 earnings. He's saying something else. He's saying what  
5 actually controls and what actually exists. He does not have  
6 an actual employment contract. He's right. He knows, because  
7 he negotiated the darn thing. He's the one that said, listen,  
8 Steve, if we get the lawyers involved we're never getting this  
9 thing done, okay, this is good enough for me, it should be  
10 good enough for you, all right, we're in action and we're  
11 moving.

12 "He does not have an actual employment contract. He  
13 had a signed terms sheet." Absolutely correctly. That's  
14 exactly what it was termed. It was a signed terms sheet.  
15 He's not saying, I only signed it, he's not saying that,  
16 lookit, you know, it may not apply. He's saying he did have a  
17 signed terms sheet and he did sign it, Your Honor.

18 You have to understand the circumstances, and I  
19 think that Mr. Jacobs outlined it in his affidavit. What  
20 happens to him is he's literally removed without any notice  
21 whatsoever from the casino floor, taken and brought to the  
22 border, and kicked out and he's told he's fired. That's what  
23 happens to him. So he didn't have a lot of time to go back in  
24 and try to get all of his documents, because they didn't allow  
25 him that common courtesy. They just had him escorted right

1 out of the casino right away and brought to the border and  
2 said, so long, pal.

3           What else did Mr. Levin say? "We never got to  
4 contract with him." He's right. Just as he said, I don't  
5 want to go to contract with this thing with all the lawyers  
6 involved with it. "And I don't believe he has a noncompete in  
7 that terms sheet." Absolutely true. Absolutely true. So we  
8 have from Mr. Levin, the chief operating officer of Las Vegas  
9 Sands Corp. saying, this is what controls, this is who it's  
10 with, and he doesn't mention anything else about any other  
11 agreements, that this is in some way affected by some other  
12 agreement. If there was an actual contract with VML, as Mr.  
13 Peek alleges there was, then he would be talking about it.  
14 But this is just five days later. And Mr. Levin knows what we  
15 know and what we believe the Court now knows, that this is  
16 what controls, not what is now being relied upon in hindsight  
17 by Las Vegas Sands as saying, oh, something else controls.

18           But there's something else. This continuing mantra  
19 that, you know, this really does not control, that there  
20 really is something else is totally and completely eviscerated  
21 by something else. Could I have the next.

22                       (Pause in the proceedings)

23           MR. CAMPBELL: Okay. Your Honor, you'll see  
24 down here something else here. See this SEC filing as to  
25 Form 10-Q. Even in the reply they kept harping on the fact

1 that no, no, no, no, no, no, this was never -- this was never  
2 the document that controlled the relationship. And we dug and  
3 we dug and we dug, and what we found is this. And we have  
4 copies of this. I'm sure they're probably aware of it, since  
5 they filed it. This is a 10-Q. This is filed, again, in  
6 Washington, D.C., with the Securities and Exchange Commission  
7 by Las Vegas Sands Corp., all right. And what does the 10-Q  
8 say? What the 10-Q says is that, there was an employment  
9 offer and terms and conditions that were agreed upon by the  
10 company, Las Vegas Sands, on August 3rd, 2009. They're  
11 absolutely correct. I agree wholeheartedly with Las Vegas  
12 Sands. There it is. If they didn't agree with it, if there  
13 was something else, then they wouldn't be filing this. This  
14 is the employment offer and terms and conditions agreed upon  
15 August 3rd, 2009, and they say, not just agreed upon by our  
16 chief operating officer, Mr. Levin, but they say by Steve  
17 Jacobs and the company.

18 And, by the way, there is a signed copy of it  
19 somewhere. They'll be producing that at some point, I'm sure.

20 This is by Las Vegas Sands Corp., signed by Mr.  
21 Sheldon Adelson, the chief executive officer and chairman of  
22 the board. And what does it say about the offer and terms?  
23 It says two important things, that he's reporting to the  
24 president and chief operating officer of Las Vegas Sands and  
25 that his options are with Las Vegas Sands and they were



1 granted on the day of hire. The day of hire is with Las Vegas  
2 Sands, Your Honor. That's what they're talking about there.  
3 So I think we can now put aside that notion that there's not  
4 anything else out there that says that.

5 One more thing that Mr. Jacobs, who came to court  
6 this morning, flew in for this hearing because, of course, it  
7 has a great impact on him, and he just received something.  
8 I'll proffer this to the Court, and I'm sure that they may or  
9 may not know. I don't know. But he gets a W-2. And he's got  
10 it in his pocket. And that W-2 is from Las Vegas Sands. And  
11 do you know how it identifies him? As an employee of Las  
12 Vegas Sands.

13 Now, it's certainly clear that under all of the  
14 important criteria --

15 THE COURT: Mr. Peek, do you want to see the W-2?  
16 I'll be happy to have a copy --

17 MR. PEEK: I don't think it adds anything, Your  
18 Honor. I'd --

19 THE COURT: I'd be happy to have a copy made of it,  
20 if you want.

21 MR. PEEK: I -- I don't think it adds anything. I  
22 don't think it even should be part of this argument. But if  
23 the Court's going to consider it, it's just representations of  
24 Mr. Campbell and statements of counsel, as opposed to  
25 evidence.

1           THE COURT: That's why I'm making the offer.

2           MR. CAMPBELL: Your Honor, Las Vegas Sands, it is  
3 clear, controlled Mr. Jacobs's employment in every material  
4 matter. And control is, according to just about every single  
5 case that has grappled with this issue, the singular and most  
6 important particular element. I mean, clearly he is reporting  
7 to the chief executive officer, the COO. Mr. Jacobs, you will  
8 note, filed a very detailed affidavit with the Court, and in  
9 that affidavit --

10          THE COURT: And that's Exhibit 1 in the book you've  
11 given --

12          MR. CAMPBELL: Yes, Your Honor, with respect to Las  
13 Vegas Sands I believe it is Exhibit 1. And you will see in  
14 there that he detailed what that control was, and it was  
15 virtually all encompassing and affected virtually every aspect  
16 of his job.

17               There's something else that I think is very, very  
18 important. Certainly while VML may have been designated as  
19 the entity that was paying his monthly or weekly or biweekly  
20 salary or whatever it may have been, that obligation is  
21 absolutely dwarfed by the real compensation at issue in the  
22 case. And that's about I think a gross value of about \$10  
23 million worth of stock, all right. Absolutely dwarfed by  
24 that. And that, of course, is with Las Vegas Sands.

25               So at best, at best -- and we don't even think you

1 can even say it, but at best what we're dealing with insofar  
2 as VML is that they would be a joint obligor. There is  
3 abundant caselaw on that. I know the Court's read it. Unless  
4 you really want me to go in and tell you something you already  
5 know, I'm not going to really argue that. But the suggestion  
6 that somehow Mr. Jacobs should just get on a plane and go on  
7 over to Macau and grapple with all of this over in Macau when  
8 in fact all of this is based out of Las Vegas, Nevada,  
9 borders, most respectfully, on the ludicrous. This is where  
10 Las Vegas Sands has its home. They shouldn't be objecting to  
11 being tried in the courts of where it has its home and where  
12 it has exercised all of this control and where it has executed  
13 and agreed to the seminal documents in this particular case.

14 So, Your Honor, I don't know if you have any  
15 questions of me at this time. If not, I'll sit down and --

16 THE COURT: Thank you, Mr. Campbell.

17 MR. CAMPBELL: Thank you, Your Honor.

18 THE COURT: Mr. Peek.

19 MR. PEEK: Mr. Campbell tells you that the phrase in  
20 Exhibit 10, which is the -- what he characterizes as the side  
21 letter, I characterize it as a supplement to the work permit.  
22 He says that the phrase at the end which refers to a "replace  
23 and supersede in its entirety the interim agreement," he  
24 focuses on that. But what is the antecedent of which  
25 agreement? Because you have to focus on what the antecedent

1 is in order to know whether or not there has been a  
2 replacement and a supersecession. Starts out, "The Company  
3 and you here by agree that your employment relationship," with  
4 VML, I'm using VML because it really is the Company, "will be  
5 ruled exclusively by the terms and conditions forming part of  
6 an employment agreement being currently negotiated and to be  
7 agreed upon and executed in due time, which agreement shall  
8 replace and supersede in its entirety the interim agreement."  
9 So there's still -- when he says which agreement that's going  
10 to be able to supersede it, there has to be one between the  
11 employee and VML. So by his own reference to that section  
12 within the body he is admitting to you and to his client and  
13 to me that that terms sheet is a contract with VML, because  
14 the only thing that can replace and supersede the interim  
15 agreements is a contract between VML and Jacobs. So I agree  
16 with his argument.

17 THE COURT: So you don't think the terms sheet's a  
18 contract, Mr. Peek?

19 MR. PEEK: No, Your Honor, that's not what I'm  
20 saying.

21 THE COURT: Okay.

22 MR. PEEK: What I'm saying, Your Honor -- let me  
23 focus again. By what Mr. Campbell is telling you is that that  
24 terms sheet is a contract with Las Vegas Sands Corp. and it  
25 therefore supersedes. What I'm saying to the Court is if that

1 does -- if it is, as he suggests, a followup to this side  
2 letter and therefore a replacement, it can only be a  
3 replacement to the June 16th agreement if it is between VML  
4 and Jacobs, Your Honor. Because it says that the only thing  
5 that will replace and supersede the interim agreement is an  
6 agreement between Jacobs and VML.

7 Maybe I'm confusing the Court. You have that look  
8 of perhaps puzzlement.

9 THE COURT: No. I have the documents in front of  
10 me, and I'm looking at them.

11 MR. PEEK: Okay. I apologize, Your Honor. But it  
12 does say --

13 THE COURT: I'm not puzzled.

14 MR. PEEK: Yeah. Because it does say "which  
15 agreement." "Which agreement" means the agreement between the  
16 Company and VML. So, as I said -- so that's my argument  
17 there.

18 THE COURT: So that's why Mr. Levin says on  
19 August 4th, after he signs the terms sheet, hey, this is okay,  
20 I forwarded it to the comp committee, they already knows the  
21 details, and if we get the lawyers involved we'll never get  
22 this done?

23 MR. PEEK: Your Honor, I don't disagree that the  
24 terms sheet under this argument that he makes is an agreement.  
25 I'm not trying to say it's not an agreement. What I'm saying

1 to the Court is it's an agreement if -- whatever kind of  
2 agreement it is, it's an agreement with an entity in Macau.  
3 It's not an agreement with Las Vegas Sands Corp. That is the  
4 focus of their argument, is that the terms sheet is an  
5 agreement with an entity, Las Vegas Sands Corp., for him to  
6 perform services for Las Vegas Sands Corp. It's not. It's an  
7 agreement, Your Honor, for him to be president and CEO of a  
8 Macau entity, ListCo. It's an agreement whereby he will be  
9 paid by that company in Macau under the terms sheet. It's an  
10 agreement where he will receive stock options to be converted  
11 into that Macau entity. It's an agreement where he gets  
12 housing and allowances for moving expenses and he gets  
13 repatriation, all of which focuses on the fact that he is an  
14 employee of a Macau entity to perform services in Macau.

15 Now, the fact that there may be individuals like Mr.  
16 Adelson and Mr. Levin who have control over the -- their  
17 indirect subsidiary Venetian Macau Limited, Sands China  
18 Limited later, after it became an IPO -- after it became an  
19 entity and then went through its IPO, may somehow -- it  
20 doesn't create a contract. That's why I keep getting puzzled.  
21 He's focusing on Levin's in control, Adelson's in control,  
22 ergo contract with LVSC. No. They are the 90 percent owner  
23 of a indirect subsidiary, VML. It's logical that that parent  
24 would have some type of say in the operations of its  
25 90 percent controlled subsidiary. But that doesn't -- and you

1 cannot ignore the existence of that subsidiary by saying,  
2 well, they have control over it.

3           Mr. Adelson was the chief executive officer. You  
4 notice he also said that the management under that terms sheet  
5 was Levin and Adelson. Again, Mr. Campbell wants to make the  
6 -- rewrite things, because it doesn't say "and," it says "or."  
7 Now, it may be a little bit of a nit, but it's just like the  
8 nit when he doesn't say Company capitalized under the side  
9 letter.

10           I don't ignore, Your Honor, the fact that there is a  
11 terms sheet, that there is a contract, that we refer to it as  
12 a contract with Mr. Jacobs in all of our stuff. But when we  
13 refer to it in our 10-Q, which he gave to you, that there is a  
14 terms sheet with an indirect subsidiary which we have to  
15 report to the SEC of what Sands China, our 70 percent  
16 subsidiary, is doing and what its 90 percent subsidiary is  
17 doing with Mr. Levin, we report that. All we did was recount  
18 within the body of the 10-Q the terms and conditions of the  
19 terms sheet. I'm not trying to walk away from that, Your  
20 Honor, and say it doesn't exist. But it's not a contract with  
21 Las Vegas Sands Corp. It is a contract between Jacobs and  
22 ListCo. ListCo became Sands China Limited, which became the  
23 parent of VML, Your Honor.

24           So am I looking not at a contract case now, but at  
25 something other than that which he argues of control? Because

1 a control doesn't create a contract. The instrument itself  
2 creates the contract. The terms sheet itself creates a  
3 contract, not the parties who negotiated it. It's what those  
4 terms and conditions contained within the body of the contract  
5 are that control who the employer is. Just because it was  
6 negotiated by Mr. Levin doesn't make it a contract with LVSC,  
7 it makes it a contract with ListCo, Sands China Limited. He  
8 says that, well, there's the IPO disclosures that -- in  
9 Exhibit 3 that LVSC is in control of its subsidiary.  
10 Absolutely. It would be remiss to not report to those who are  
11 going to buy stock in Sands China Limited that Sands China  
12 Limited at the conclusion of the initial public offering is  
13 going to be owned by LVSC up to 70 percent. The last I looked  
14 under corporate governance, 70 percent gives one control. So  
15 they're telling the public, and that's what the Exhibit 3 IPO  
16 does, is tell the public that, we're going to be owned by LVSC  
17 up to 70 percent and that will create control so you should  
18 know that as potential investors, that this entity will own  
19 70 percent and it will be in control. Majority rules.  
20 Corporate governance, not a very difficult concept, but one  
21 that is necessary to report to those who are going to buy the  
22 stock. So again, it doesn't say there's a contract, it just  
23 says, going to be in control.

24 He focuses on the earnings call, Exhibit 21, and I  
25 certainly don't disagree with what Mr. Levin says. But what



1 he doesn't tell you when it's -- when Mr. Levin is being asked  
2 the question about the noncompete and about the employment  
3 contract, it's in the context of the earlier disclosure on  
4 page 3 of the earnings call, Exhibit 21, where Mr. Levin is  
5 reporting to those on the phone, as he should be, "Thanks,  
6 Sheldon. I'll just add a couple of thoughts. First let me  
7 cover our leadership change in Macau. The board of Sands  
8 China made the decision that a leadership change was in the  
9 best interests of the company, its employees, and  
10 shareholders. I will be serving as acting chief executive  
11 officer for Sands China while the committee of the board of  
12 directors of Sands China conducts the new search for the chief  
13 -- new chief executive officer." He's telling everybody about  
14 what just occurred.

15           So when Mr. Campbell argues to that when he is asked  
16 the question he doesn't say, employment contract with VML, or,  
17 employment contract with SCL, well, no, he doesn't need to,  
18 because he's already said it. He's already said it five  
19 minutes earlier when he reports to those on the earnings call  
20 that Mr. Jacobs has been replaced as the president of Sands  
21 China and that that decision was made by the board of Sands  
22 China and that he's now going to be the new executive -- chief  
23 executive officer.

24           He argues to you, Your Honor, that, well, the grant  
25 of the 500,000 shares of Las Vegas Sands Corp. stock in the

1 terms sheet is controlling and therefore makes Sands -- Las  
2 Vegas Sands Corp. the employer and therefore a co-obligor.  
3 But what do we do? If we look and focus on what that terms  
4 sheet says, it talks about a conversion into this ListCo, this  
5 company that is going to be formed and organized under  
6 whatever law that is. As we know, it became an IPO. But it's  
7 going to be converted. Again, why is it going to be  
8 converted? Because Mr. Jacobs is going to be the employee,  
9 going to move to Hong Kong, going to take his family to Hong  
10 Kong, and going to run the casino in Macau owned by the  
11 indirect subsidiary, Venetian Macau Limited, that party who  
12 should be here and present and part of this proceeding because  
13 it's the one who termed him. And without them, complete  
14 relief cannot be afforded to us, and it would impair and  
15 impede, and in equity and good conscience it wouldn't be fair  
16 to Las Vegas Sands Corp. and VML to come here, not be present  
17 to defend its actions in terminating him which gave rise to  
18 the fact that as long as you're not an employee of VML or some  
19 entity, Sands China Limited or VML, that ListCo, you don't get  
20 your stock options. Somebody needs to come here and defend  
21 them, and it shouldn't just be Las Vegas Sands, who doesn't  
22 have a contract with Mr. Levin [sic]. Thank you.

23 THE COURT: Thank you, Mr. Peek.

24 Despite the extensive briefing and arguments that  
25 have been presented here today, the Court is only hearing a

1 joinder motion at this time, not a summary judgment motion.  
2 While it would certainly be easier for all of us if VML was a  
3 party to this litigation, the motion is denied because of the  
4 Court's concerns regarding jurisdiction over VML.

5 Would you like to go to the Sands China motion now?

6 MS. GLASER: Would Your Honor care to take a break,  
7 or would you like us just to --

8 THE COURT: Anybody need a break?

9 They don't need a break.

10 MS. GLASER: In every respect you're tougher than in  
11 Los Angeles, Your Honor. Thank you. Your Honor --

12 THE COURT: I always tell them if they need a break  
13 they have to tell me. And they're pretty good about it.

14 MS. GLASER: Not a problem. All right. Your Honor,  
15 Patricia Glaser for Sands China.

16 Your Honor, this is not about the lack of honor of  
17 Mr. Jacobs in carrying out his responsibilities or the honor  
18 of Mr. Levin and Mr. Adelson, who terminated this gentleman  
19 for good cause. It's not on the merits. This is just about  
20 whether Your Honor should be here to discuss and rule on Sands  
21 China being a party to this action, key points. And I know,  
22 Your Honor, we've filed extensive papers, and I apologize in  
23 advance for that. Very thick.

24 THE COURT: No, it's fine. Gives me stuff to read.

25 MS. GLASER: Plaintiff's burden of proof is on this

1 motion, not the other one, but on this motion, and that's the  
2 -- I'm going to mispronounce this, F-I-R-O-U-Z-A-B-A-D-I, the  
3 Firouzabadi case. It's a '94 Nevada Supreme Court case.  
4 Their burden, not ours. I want to point out key issues that  
5 they do not grapple with, in our view, in a satisfactory --  
6 remotely satisfactory fashion.

7           Plaintiff is not now or has ever been a Nevada  
8 resident. The Sands -- and you will appreciate this, Your  
9 Honor. The second cause of action is the only one alleged  
10 against Sands China. In that second cause of action there's a  
11 reference to a stock option agreement. That stock option  
12 agreement, as we have demonstrated to the Court, says  
13 specifically Hong Kong law is to apply. It's page 33 of  
14 Exhibit G of the Salt declaration.

15           What does that mean, and why is that so significant?  
16 Well, first of all, it's not Nevada law. And what's the  
17 difference in this case, what are some of the key differences  
18 between Hong Kong law that is by contract supposed to apply?  
19 And Mr. Jacobs signed that contract. There's no question  
20 about that. This isn't a missing contract. This is a signed  
21 contract. You get no jury under Hong Kong law, there is a  
22 recovery to the winner of that dispute of attorneys' fees and  
23 costs, and, third, if there is a termination for cause or not  
24 cause, as long as the stock hasn't vested, he doesn't get  
25 anything. If we got up in the morning and decided we didn't

1 like the way he parted his hair and the stock had not vested,  
2 which it had not when he was terminated, Your Honor, he gets  
3 nothing. That's why you don't hear any discussion about that  
4 agreement, because that agreement gives him nothing. Which is  
5 another reason why Sands China should not be a part of this  
6 lawsuit.

7           Something else that's not discussed at any length in  
8 the opposing papers, Hong Kong Stock Exchange rules. It's  
9 Exhibit B to the second Salt declaration. That's in the reply  
10 papers, Your Honor. In order for Sands China to be registered  
11 on that stock exchange they are required to carry on the  
12 business independent of and at arm's length with its parent,  
13 Las Vegas Sands Corp. There is no dispute that Las Vegas  
14 Sands Corp. is indeed the parent, 70 percent, slightly more  
15 than 70 percent owner.

16           And, Your Honor, the section I'm referring to in the  
17 Hong Kong Stock Exchange rules is 8.10(1)(a)(iii), and also we  
18 gave the Court 27(a). Both of those sections specifically  
19 provide that this is not a proper place for the rules of the  
20 Exchange for Sands China to be a defendant.

21           Now, Sands China businesses operate completely  
22 separately from Las Vegas Sands. They have independent  
23 financial auditing, they have independent bank accounts, they  
24 have independent tax registration, they have independent  
25 Treasury Department, and Sands China, appropriately, is not

1 registered to do business in Nevada. It doesn't do business  
2 or direct any business of any sort, any activities towards  
3 Nevada or its residents.

4 Now, Your Honor, there's sort of a bunch of legalese  
5 that is being thrown at you on these jurisdictional issues.  
6 One is talking about transient jurisdiction. And the Burnham  
7 case -- we've provided Your Honor plenty of authority --  
8 doesn't apply to corporations, it applies to individuals.

9 There's then the second argument, is specific  
10 jurisdiction. And there you need a cause of action that  
11 arises from Mr. Jacobs's contacts here, and he doesn't even  
12 argue specific jurisdiction in his opposition brief.

13 Where we do have an argument is general  
14 jurisdiction. And on general jurisdiction there has to be  
15 minimum contacts under anybody's theory, and they have to be  
16 substantive, substantial, and continuous. And while that  
17 sounds like a bunch of legalese and gobbledegook, there's --  
18 one of the cases that we cite, the Gator versus L.L. Bean  
19 case, it's a 2003 Ninth Circuit case, talks about how that's a  
20 high standard requiring extensive contacts between the  
21 defendant and the forum.

22 Now, it's not enough -- and we point this out to  
23 Your Honor, it is not enough to have a parent/sub  
24 relationship. Parent/sub relationships involve consistent  
25 involvement here, nothing more or less than consistent with

1 the entities' investment status. That's not enough. And how  
2 do we know that? Because the Ninth Circuit has told us that,  
3 among other circuits and other states. That's the AT&T  
4 Lambert case, Your Honor. It's a 1996 Ninth Circuit case.  
5 And the response that we hear back is, well, you've got to  
6 look at this Perkins case. Perkins case is totally  
7 inapplicable. It's a 1952 case where that's a guy who has  
8 some mining interests in the Philippines and the war has  
9 broken out, so he's required to come back to Ohio and conduct  
10 all his business, except for the actual mining operations  
11 themselves, everything takes place in Ohio. That case is  
12 distinguishable completely on its facts as it relates to this  
13 case. That's not what happened here.

14           If you look at the FDIC versus British American  
15 Insurance case, that is, again -- keep harping on the Ninth  
16 Circuit, but it is a Ninth Circuit case, and they have a  
17 seven-factor -- seven factors. They talk about the extent of  
18 Sands China's purposeful contacts; the burden on Sands China  
19 of having to defend an action in Nevada; the extent to which  
20 jurisdiction conflicts with domiciliary country, which  
21 demonstrated to you and told you about; Nevada's interest in  
22 adjudicating the dispute; which forum's the most efficient for  
23 resolving the dispute; Mr. Jacobs's interest in choosing  
24 Nevada as a forum; and the existence of alternative forums to  
25 adjudicate Mr. Jacobs's claims. If Mr. Jacobs has a beef with

1 Sands China, it belongs in either Hong Kong or Macau, Your  
2 Honor, because that's the only agreement with Sands China, and  
3 that's a stock option agreement that says Hong Kong law, not  
4 Nevada, not California, not anyplace in the United States law  
5 is to apply.

6 Now, interestingly, there's a Cubbage case,  
7 C-U-B-B-A-G-E, which is a Ninth Circuit, again, 1984 case.  
8 And there the presence of a choice of law provision was  
9 specifically found to weigh strongly in favor of denying the  
10 exercise of jurisdiction when the chosen law conflicts or is  
11 substantially different from that in the forum state. That's  
12 the chosen law. Mr. Jacobs chose Hong Kong law. He can't get  
13 around that.

14 I saw a lot of these boards. Can I pull one of them  
15 out, Your Honor?

16 THE COURT: You certainly may. You just cannot  
17 deface Mr. Campbell's boards.

18 MS. GLASER: I will not deface Mr. Campbell's -- I  
19 wouldn't dream of that.

20 I wanted to point out to Your Honor -- here's a big  
21 fancy board that was provided to Your Honor. It says,  
22 "Jacobs's Employment With LVSC." If you look at the board  
23 provided by Mr. Campbell, I looked, and I didn't see Sands  
24 China one place on this board. Because it doesn't belong  
25 there. The beef, the second cause of action with Sands China



1 is pursuant, Your Honor, specifically to a stock option  
2 agreement that says Hong Kong law is to apply. It was signed  
3 over there, it was negotiated over there, and we don't belong  
4 here.

5 Your Honor, if you have any questions at all, I'll  
6 be glad to answer them, either now or at the time of my reply.

7 THE COURT: Thank you.

8 MS. GLASER: Thank you.

9 THE COURT: Mr. Campbell.

10 MR. CAMPBELL: Your Honor, the reason why you don't  
11 see anything on Sands China on this particular board, because  
12 this particular board was reserved for my argument with  
13 respect to Las Vegas Sands. So let me address those  
14 particular points. And while they are not on a board, I know  
15 that the Court has carefully read our responsive pleadings  
16 now, and I think you'll recognize many of these same points.

17 So let's go first of all to the fact that we have a  
18 very extensive affidavit, that is, a separate affidavit that  
19 has been presented to Her Honor in this portion of the case in  
20 opposition to the motion of Las Vegas -- or Sands China. That  
21 affidavit by Mr. Jacobs, which has been signed under oath, has  
22 received absolutely no responsive affidavit of any kind.  
23 None. Zero. They certainly had the opportunity to do that.  
24 They certainly had the opportunity to present something. If  
25 it was untrue in any way, shape, or form, they could have said

1 that. All they had to do was get one from Mr. Levin or get  
2 one from Mr. Adelson. They could clearly have done that, and  
3 they did not do that. And why? Well, Your Honor, you have to  
4 accept that they didn't do that because they couldn't do that.  
5 They're available. There's no reason why they couldn't have.

6 And while Ms. Glaser is absolutely correct that the  
7 burden is on us, let's reflect upon what that burden is. That  
8 burden is not the heavy burden that was on Mr. Peek with  
9 respect to his motion. Rather, it is only to establish by a  
10 prima facie case. That's it. It's not even preponderance of  
11 the evidence. It's a prima facie case. And we've done it.  
12 We've submitted you the only evidence that you have, and it's  
13 all under oath. It's all under oath, Your Honor. And this is  
14 what he says.

15 "Mr. Adelson --" point one, "Mr. Adelson and Mr.  
16 Levin routinely conducted business on behalf of Sands China  
17 Limited out of Las Vegas office." He even goes into some of  
18 the particular events that demonstrate that, number one, a  
19 board meeting, a board meeting. "A board meeting was noticed  
20 from Macau, was noticed on both Macau and Las Vegas time."  
21 The chairman of that board -- the chairman of the board wasn't  
22 in Macau, he was here. Mr. Adelson was here and conducted  
23 that board meeting from Las Vegas, Nevada, along with three  
24 other members. They had four members of the board that were  
25 here conducting the meeting.

1           Mr. Jacobs has said time and time again he flew over  
2 here to meet with them with respect to Sands China site  
3 design. Indeed, the development over Sites 5 and 6 took place  
4 -- took place on a consistent and ongoing basis for 5 and 6  
5 here in Las Vegas, Nevada.

6           They recruited and interviewed executives for Sands  
7 China Limited here in Las Vegas, Nevada. Indeed, I think Mr.  
8 Tracy, who's been recently appointed for Sands China, came out  
9 of here along with his co-executive, and I forget that  
10 gentleman's name right now.

11           In any event, Adelson issued the directives with  
12 respect to those that are present in our complaint as to the  
13 threats, improper leverage, et cetera, from Las Vegas, Nevada.

14           Mr. Adelson and Mr. Levin's involvement was  
15 extensive in marketing strategies. Similarly, Mr. Levin and  
16 Mr. Adelson's involvement in the negotiation of possible joint  
17 ventures took place here, including with Harrah's, Mr. Lubman,  
18 if you recall that. Again, one more point.

19           Ms. Glaser's talked about arm's-length transactions.  
20 She's absolutely correct, Your Honor. Sands China Limited  
21 does engage in arm's-length transactions. And they have  
22 engaged in those arm's-length transactions, presumably in good  
23 faith, in accordance with their fiduciary duty. Now, who have  
24 they dealt with? They have dealt with Las Vegas Sands here in  
25 Las Vegas, Nevada. They don't have to deal with Las Vegas

1 Sands. Indeed, it's Sands China's commitment that a will  
2 exercise their fiduciary duty to get the best deal. So  
3 presumably in those arm's-length transactions that they talked  
4 about they presumably resolved that issue, and they've said to  
5 themselves, this is the best deal we can get among the third  
6 parties out there and we're going to go ahead and we're going  
7 to contract with Las Vegas Sands because they provide that,  
8 and we've done that in good faith and at arm's-length.

9 Let's talk a little bit about that. Reciprocal  
10 administrative services are provided. They share the use of  
11 jets. They have engaged in reciprocal design, development,  
12 and construction. They have an agreement to use International  
13 Marketing Services to recruit VIP players for all of the  
14 casinos, both Sands China Limited, as well as Las Vegas Sands  
15 Asian players, as well. They have the Bally Tech deal, a Las  
16 Vegas deal. Jacobs routinely travelled to Las Vegas, Nevada,  
17 for meetings with Adelson and Levin with regard to Cirque du  
18 Soleil here in Las Vegas, Nevada, as well as Base  
19 Entertainment. And if all of that wasn't enough, you have  
20 this.

21 THE COURT: See, Ms. Glaser, you do have your own  
22 board.

23 MR. CAMPBELL: I saved the best for last, Ms.  
24 Glaser.

25 You have this, Your Honor. You have a \$68 million

1 fund associated with affiliate transfer advices. Now, I know  
2 that since the time that we've responded they changed the name  
3 of these, but let's choose to call it what they choose to call  
4 it and what truly it is. These reflected from Sands China  
5 players \$68 million in credit deposits and credits for  
6 gambling activities, not just for Sands China Las Vegas play  
7 -- or Sands China play, but for Las Vegas play, as well. Now,  
8 they now say, well, they weren't actually -- you know, we  
9 didn't actually courier them, what we did is we had entries,  
10 we had journal entries.

11           Let's stop. What they did say was that, we have  
12 these journal entries because we wanted to save our customers  
13 that were playing in both venues the time and trouble of going  
14 to a bank and going ahead and having these transferred by the  
15 bank by a wire transfer service, we went ahead and handled it  
16 for them. I get it. I understand why they did it. But this  
17 is not some guy sitting with that little green shade, okay,  
18 making a little entry in a book someplace. What this is is  
19 this is a combined, integrated, electronic transfer advice,  
20 which basically makes all this money equally available to both  
21 venues. And it's not de minimis. This is \$68 million. You  
22 know what this type of enterprise is. You have engaged in it  
23 every single year that you've probably been earning money.  
24 You walk into a bank, and this is what a bank does for you.  
25 Sands is acting as a bank for its customers, both in Macau and

1 in Las Vegas, Nevada, to the tune of \$68 million.

2 Now, I was on the other side of this argument to a  
3 much lesser degree when about 15 years ago I was arguing to  
4 the court, please don't let them sue Donald Trump personally  
5 here, please don't, don't, don't.

6 THE COURT: You didn't win that one, did you, Mr.  
7 Campbell?

8 MR. CAMPBELL: I didn't win that argument. For the  
9 same reason why I hope Ms. Glaser doesn't win this one. And  
10 that is that the Supreme Court said, Mr. Campbell, did Mr.  
11 Trump engage in a financial transaction here; and I had to  
12 candidly admit yes, he did, he engaged in a sole, very limited  
13 transaction in which he actually didn't do it, what he really  
14 did was he guaranteed it.

15 THE COURT: I'm not worried about that transaction.

16 MR. CAMPBELL: He guaranteed it. So --

17 THE COURT: Doesn't matter to me.

18 MR. CAMPBELL: I mean, that's -- it mattered to me  
19 at the time. Believe me, it mattered to Mr. Trump.

20 Irrespective of that, this is real money we're  
21 talking about here. \$68 million is real money in anybody's  
22 ledger. And one final point on this. This wasn't just one  
23 transfer. These transfers took place over a period of three  
24 years. By any definition I believe that constitutes  
25 consistent ongoing behavior of a significant nature here in

1 Las Vegas, Nevada.

2 THE COURT: I'd call it pervasive.

3 MR. CAMPBELL: I call it pervasive.

4 Then I'm not even going to argue the last point.

5 The last point was even if you didn't believe all that, we

6 still get to take discovery. I'll sit down, Your Honor.

7 THE COURT: Okay.

8 MS. GLASER: May I be heard briefly?

9 THE COURT: You may. Aren't you glad you've got

10 your own board now?

11 MS. GLASER: I am. And it's sort of funny, but it's

12 sort of not, because this man, Mr. Jacobs, lied to the Court

13 and said money was couriered into this country. He lied to

14 the Court, and he's not telling the truth in a lot of other

15 respects, as well. This is not Sands China money, this is not

16 Las Vegas Sands money.

17 THE COURT: It's players' money.

18 MS. GLASER: It's players' money, correct.

19 THE COURT: Yes. I understand that.

20 MS. GLASER: But it's not couriered. It is

21 transferred for the convenience periodically, and it's --

22 every month it's reported honestly and forthrightly and has

23 nothing to other than facilitating somebody who wants to

24 gamble in Las Vegas and somebody who might want to gamble in

25 China. And let me say, Your Honor, that is something that is

1 done between subsidiaries and parents all the time. There's  
2 nothing nefarious about it. There's nothing that -- and we  
3 admit it. So -- and there's nothing improper about it. And,  
4 most importantly, it doesn't provide a basis for jurisdiction.  
5 Your Honor, said jokingly that it was -- or perhaps  
6 not jokingly -- that it was pervasive. We don't run away from  
7 this. But this doesn't establish jurisdiction, and the  
8 caselaw doesn't say it does, period.  
9 THE COURT: But it's a good business practice,  
10 right, for your marketing for both properties?  
11 MS. GLASER: It is a good business practice. Not  
12 marketing. Actually not. It doesn't have much to do with  
13 marketing, honestly.  
14 THE COURT: Okay.  
15 MS. GLASER: But it is -- and it is a good,  
16 honorable business practice, but it's certainly not couriering  
17 cash --  
18 THE COURT: Making your customers' lives easier.  
19 MS. GLASER: -- as was suggested by --  
20 THE COURT: Well, you're making your customers'  
21 lives easier; right?  
22 MS. GLASER: It does.  
23 THE COURT: Isn't that the goal?  
24 MS. GLASER: It is the goal.  
25 Now, there is another wills, Your Honor. There's a



1 lie about how there are board meetings. And Mr. Campbell,  
2 surprisingly, repeated it here. There has never been a board  
3 of directors meeting in Las Vegas ever, in the state of Nevada  
4 ever in connection with Sands China. Mr. Campbell knows it  
5 and -- perhaps I can't blame him, but certainly his client  
6 knows it. That's just not telling the truth to the Court.

7 THE COURT: So how many people would be here in Las  
8 Vegas during a board meeting for Sands China?

9 MS. GLASER: Depends.

10 THE COURT: But they'd be participating in a board  
11 meeting from there?

12 MS. GLASER: Telephonically.

13 THE COURT: Yes.

14 MS. GLASER: Because --

15 THE COURT: Or even by Web cam.

16 MS. GLASER: I'm sorry?

17 THE COURT: Or even by video conferencing.

18 MS. GLASER: They haven't done that yet, to my  
19 knowledge.

20 THE COURT: You're saying telephone conference.  
21 Okay.

22 MS. GLASER: For example, Mr. Adelson is -- happens  
23 to be the chairman of the board of Sands China. Nobody  
24 disputes that. I stipulate to that. Mr. Levin is now -- not  
25 at the time Mr. Jacobs was employed -- the acting, the acting

1 CEO of Sands China. There are three independent directors who  
2 have no prior affiliation with any Sands entity who are in the  
3 Far East and only in the Far East, and they don't come here  
4 ever. And they have three votes. The board is made up I  
5 believe of eight people. There's no question, and we don't  
6 dispute this, that Sands Las Vegas controls Sands China. But,  
7 Your Honor, not one case was provided to Your Honor where  
8 interaction between a 70 percent or 51 percent or 40 percent  
9 subsidiary/parent -- there isn't one case that you have been  
10 provided that says normal interaction facilitating, for  
11 example, customers from one to the other, none of that, there  
12 isn't one case that stands for the proposition therefore you  
13 have jurisdiction in this court over Sands China.

14           The irony, I guess, of a lot of this, a lot of the  
15 facts that were presented to Your Honor, the irony is,  
16 frankly, Your Honor, that all of the things that have been  
17 alleged, except for frankly their blatant lies, and I -- Mr.  
18 Campbell I think just made a mistake. He said there was no  
19 declaration on our side. Well, Ann Salt is not nothing, and  
20 she is a significant player in Sands China. She's a counsel  
21 over there, and she provided two, not one, not zero, two  
22 declarations.

23           THE COURT: Well, one's attached to the reply, and  
24 one's attached to the motion.

25           MS. GLASER: I'm sorry?

1           THE COURT: There are two affidavits or declarations  
2 that are in different places; right?  
3           MS. GLASER: In ours.  
4           THE COURT: Yeah.  
5           MS. GLASER: Absolutely.  
6           THE COURT: I read them.  
7           MS. GLASER: One was in the original paper, one was  
8 in the reply paper.  
9           THE COURT: I saw them.  
10          MS. GLASER: Okay. The only comment I'm making is  
11 it was represented to Your Honor that nothing refuted Mr.  
12 Jacobs, and there was plenty to refute Mr. Jacobs's -- what we  
13 believe to be many of the misrepresentations, complete  
14 untruths, and some of them don't matter. And that's the point  
15 I want to focus on.  
16          Put aside the untruths. We dealt with all of the  
17 untruths. Everything that wasn't refuted doesn't matter to  
18 the jurisdictional issue of whether Sands China should be  
19 before Your Honor in this court. The only -- and I sound like  
20 a broken record, and I apologize to Your Honor. The only  
21 document -- the only cause of action is the second cause of  
22 action, and the only document that is before Your Honor giving  
23 Mr. Jacobs options involving Sands China is a document that is  
24 required for Your Honor to apply Hong Kong law, which is -- as  
25 we have said to you before, is substantially different than

1 the law in this state. Thank you very much, Your Honor.

2 THE COURT: Thank you.

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

8 At some point in time I assume that we well have  
9 experts in Hong Kong law provide information so that an  
10 appropriate decision can be made on the stock option  
11 agreement. So the motion's denied, and your request to join  
12 in Mr. Peek's motion was denied when I denied his.

13 MS. GLASER: Understood.

14 THE COURT: Anything else?

15 MS. GLASER: Yes, Your Honor, I have one other --

16 MR. CAMPBELL: Just one housekeeping matter, Your  
17 Honor. Could we -- could we form --

18 THE COURT: Well, I've got a couple things for you  
19 if you want to --

20 MR. CAMPBELL: Yes, Your Honor. Your Honor, may we  
21 form -- may we file -- I'm drying up -- Form 10-Q with the  
22 Court --

23 THE COURT: No.

24 MR. CAMPBELL: -- as our Exhibit 24?

25 THE COURT: Not today. You can file a supplemental

1 briefly electronically.

2 MR. CAMPBELL: Okay. That's fine.

3 THE COURT: And I would also ask you to --

4 MR. CAMPBELL: Because we referred to it, that's

5 all.

6 THE COURT: -- print out your boards and file those

7 with your supplement so they are part of our record --

8 MR. CAMPBELL: Oh. I'd be happy to.

9 THE COURT: -- in case somebody decides to go to

10 Carson City.

11 MR. CAMPBELL: Your Honor, there's one -- a second

12 matter, and I was just going to ask -- maybe the Court's going

13 to already do that. And generally --

14 THE COURT: Are you on our April Fool's Day meeting?

15 MR. CAMPBELL: I'm going to try.

16 MS. GLASER: Your Honor, I had -- I wanted to

17 address that.

18 THE COURT: Well, it's on my list to check off

19 before you leave.

20 Mr. Campbell.

21 MR. CAMPBELL: With respect to generally they're

22 required to answer the complaint within 10 days after the time

23 that the order was entered. If they would like more time -- I

24 know that Ms. Glaser is from Los Angeles. She's probably

25 going to be currying back and forth. If she needs more time,

1 we're happy to give it to her.

2 MS. GLASER: That doesn't mean I'm dumber or slower,  
3 Your Honor, just because I'm from Los Angeles.

4 MR. CAMPBELL: No, Your Honor. I did not mean to  
5 suggest that. I think Ms. Glaser is a little too sensitive.  
6 I was simply trying to extend her a professional courtesy.

7 THE COURT: All right. Wait. No. I'm going to  
8 start this case off like we didn't start off the Palms case.

9 MR. CAMPBELL: I think that's probably something  
10 unusual for her to experience coming from Los Angeles.

11 THE COURT: Okay. Remember in the Palms case how I  
12 said we were going to behave ourselves?

13 MR. PEEK: I haven't said a word, Your Honor.

14 THE COURT: I waited two months to say that. I'm  
15 just going to say it today. We're going to behave  
16 appropriately and nicely and respectfully to each other at all  
17 times.

18 Okay. So if you need an extension, Mr. Campbell  
19 just told you he'd be happy to give you an extension, just let  
20 him know.

21 MR. PEEK: Your Honor --

22 THE COURT: Do you have anything else before I go to  
23 the other side, Mr. Campbell?

24 MR. CAMPBELL: No, Your Honor.

25 THE COURT: Mr. Peek.

1 MR. PEEK: Your Honor, just with respect to that  
2 April 1st date, April Fool's Day, as the Court referred to  
3 it --

4 THE COURT: That's what day it is.

5 MR. PEEK: Yeah. Given the fact that these were  
6 denied, I think there's a whole lot more that we need to do to  
7 try to get ready for that Business Court conference.

8 THE COURT: Well, then let me tell Ms. Glaser --

9 MR. PEEK: And I would really --

10 THE COURT: -- what we do with those so she can then  
11 tell me, since she's not been here for those before --

12 MR. PEEK: Right.

13 THE COURT: -- how long she thinks.

14 Ms. Glaser, it's not a fun thing in Business Court,  
15 but in Business Court one of the things I try and do is I find  
16 ways to expedite getting the parties to a decision point,  
17 where they have enough information to make good decisions  
18 about resolving their case where they actually have control.  
19 Frequently at those conferences I ask questions of the clients  
20 who are present. In your case it may be general counsel or  
21 somebody from the company who come and provide answers as to  
22 document storage techniques, email availability, financial  
23 information, so that I can try and get an early exchange of  
24 information so that I can get you to a settlement conference  
25 that will actually be productive where the business people

1 have a chance to make decisions instead of spending a lot of  
2 money on lawyers and a lot of time in the courthouse, which  
3 does not help them run their businesses. So those conferences  
4 are not a -- very short -- they're usually a half hour or so  
5 conference, and we try and do substantive things at that  
6 conference. But I do require people from the company with  
7 information in their head to be here. Sometimes people bring  
8 more than one person. It's up to you guys. But, you know,  
9 sometimes it's a scheduling issue. So that's why before you  
10 left today and since you've not been here for one of those,  
11 although other people from your firm have, that I wanted to  
12 make sure you understood that you actually have to bring a  
13 real person from the company.

14 MS. GLASER: May I address that?

15 THE COURT: Yes.

16 MS. GLASER: Two things. One, I am going to be out  
17 of the country from March 29 to April 8, so I would very much  
18 appreciate it --

19 THE COURT: So we're going to reschedule the  
20 April 1st date.

21 MS. GLASER: That would be great. If we could do it  
22 the third week of April, that would be great, Your Honor, if  
23 that's satisfactory with Your Honor.

24 THE COURT: Is everybody free on April 15th? That's  
25 the third Friday.



1           MR. PEEK: Your Honor, as the Court knows -- I don't  
2 know what Clark County schools are like, but I know for my  
3 children --

4           THE COURT: Our County schools are out April 15  
5 through April 22.

6           MR. PEEK: Yeah. See, my children are out 11th  
7 through the 15th. And that's -- this is --

8           THE COURT: So do you guys want to go to the 22nd?

9           MR. PEEK: This is, thankfully, Your Honor, my year  
10 to have my children for spring break.

11          THE COURT: So is everybody --

12          MR. PEEK: So the next week would --

13          THE COURT: -- free on the 22nd of April?

14          MS. GLASER: That's fine with us, Your Honor.

15          MR. CAMPBELL: Court's indulgence for about  
16 15 seconds.

17          THE COURT: I'm waiting. I'm waiting. Somebody  
18 turn on your calendar.

19          MR. CAMPBELL: He's doing it, Your Honor.

20          MR. WILLIAMS: I had to turn my [inaudible] on, Your  
21 Honor.

22          MR. PEEK: John has to give him permission to turn  
23 on his --

24          THE COURT: John gave him permission.

25          MR. WILLIAMS: 22nd, Your Honor?

1 THE COURT: Yes.

2 MR. WILLIAMS: We're fine.

3 THE COURT: Okay. I'll see you the 22nd at  
4 9:00 a.m. You --

5 MS. GLASER: Your Honor, may I ask a question?

6 THE COURT: Yes. But hold on a second.

7 You do not have to bring people with settlement  
8 authority. When you read the order it will say, if you want  
9 to discuss settlement you can. You don't have to. It would  
10 be one of my things that I do at the end of the conference to  
11 set you for a settlement conference, as well as give you a  
12 discovery schedule and a trial date.

13 Now you had a question.

14 MS. GLASER: Just one. Your Honor -- and I'm -- is  
15 it possible for, for example, Ms. Salt, who is the most  
16 knowledgeable person about documents, et cetera, at Sands  
17 China -- she's in Hong Kong and Macau. May she participate by  
18 telephone?

19 THE COURT: No. But she can participate probably by  
20 video conference.

21 MS. GLASER: No problem at all.

22 THE COURT: Mr. Campbell, any problem with that?

23 MR. CAMPBELL: Your Honor, I would have no problem  
24 with that at all.

25 THE COURT: I just don't do telephone. It's really

1 hard to do the communication by telephone. By video  
2 conference it's much easier. It's not that hard to do. Mr.  
3 Peek's done it with people in Australia before.

4 MR. PEEK: And, Your Honor, because you know the  
5 time difference is -- can we try to find -- I don't remember  
6 exactly what the time differences are, but I know it might be  
7 the middle of the night for Ms. Salt if we start at 9:00  
8 o'clock in the morning.

9 THE COURT: Well, no. On the board meeting agenda  
10 it was a 9:00 a.m./6:00 p.m. thing. Right? 9:00 a.m. in  
11 Vegas is 6:00 p.m. there.

12 MS. GLASER: I think that is right.

13 THE COURT: I've got some people nodding at me that  
14 I guessed right from looking at the agenda.

15 MS. GLASER: It's the other way. It's actually --  
16 when it's 6:00 p.m. -- because we've done conference calls.  
17 When we did 6:00 p.m. here, it's 9:00 a.m. the next morning.

18 UNIDENTIFIED SPEAKER: 9:00 a.m. is midnight.

19 THE COURT: Well, I made Mr. Peek's guy do it at  
20 3:00 in the morning.

21 MR. PEEK: She actually -- I remember that, Your  
22 Honor.

23 THE COURT: I told him he could not wear his  
24 pajamas, he had to put a suit on. And he came.

25 MS. GLASER: Your Honor, is it possible for us to

1 meet and confer with --

2 MR. PEEK: Your Honor, like at 4:00 o'clock in the  
3 afternoon?

4 THE COURT: The problem I have is my trial schedule,  
5 Mr. Peek. As you know, that is difficult.

6 MR. PEEK: 3:00 o'clock?

7 MS. GLASER: We'll do it as late as Your Honor --

8 THE COURT: Why don't you guys see if you can come  
9 up with a time. I would prefer to do it around 1:00 o'clock  
10 so I can have my trial come back a little later, if that's  
11 possible.

12 MS. GLASER: I understand.

13 THE COURT: If that would work, the later I go in  
14 the afternoon, the more disruptive it is to my trial.

15 MS. GLASER: Understood.

16 THE COURT: Okay. Anything else on your case today?

17 MR. PEEK: Just a moment, Your Honor.

18 (Pause in the proceedings)

19 THE COURT: 11:00 at night, Mr. Jones?

20 MR. JONES: No. 8:00 a.m. here.

21 MS. GLASER: He's saying 11:00 at night in Hong  
22 Kong.

23 THE COURT: I don't do 8:00 very well, Mr. Jones.  
24 You know that.

25 MR. JONES: Apologies, Your Honor.

1 MS. GLASER: I think we'll --  
2 THE COURT: I do it sometimes, but not well.  
3 (Pause in the proceedings)  
4 MS. GLASER: Your Honor, 9:00 o'clock in the morning  
5 is midnight there, and we'll do it.  
6 THE COURT: All right.  
7 MR. PEEK: I'm good, Your Honor. 9:00 o'clock.  
8 THE COURT: Okay. Ms. Glaser, Mr. Peek and Mr.  
9 Jones can probably tell you who to talk to here about  
10 arranging the video conference so they have the right firewall  
11 issues under control.  
12 MS. GLASER: Thank you, Your Honor.  
13 THE COURT: Okay.  
14 MR. CAMPBELL: Thank you, Your Honor.  
15 THE COURT: Have a nice day.  
16 MR. PEEK: Thank you, Your Honor.  
17 THE PROCEEDINGS CONCLUDED AT 12:15 A.M.  
18 \* \* \* \* \*  
19  
20  
21  
22  
23  
24  
25

CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT  
Las Vegas, Nevada 89146

*Florence M. Hoyt*

\_\_\_\_\_  
FLORENCE HOYT, TRANSCRIBER

3/17/11

\_\_\_\_\_  
DATE

  
CLERK OF THE COURT

1 **MTD**  
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13 *Attorneys for Defendant*  
14 *Sands China Ltd.*

15  
16 **DISTRICT COURT**  
17 **CLARK COUNTY, NEVADA**

18 STEVEN C. JACOBS,  
19  
20 Plaintiff,  
21  
22 v.

23 LAS VEGAS SANDS CORP., a Nevada  
24 corporation; SANDS CHINA LTD., a Cayman  
25 Islands corporation; DOES I through X; and  
26 ROE CORPORATIONS I through X,  
27  
28 Defendants.

Case No.: A-10-627691-C

Dept. No.: XI

**DEFENDANT SANDS CHINA LTD.'S  
MOTION TO DISMISS FOR FAILURE TO  
STATE A CLAIM**

DATE OF HEARING:  
TIME OF HEARING:

29 Defendant Sands China Ltd., ("SCL"), by and through its undersigned counsel of record, of  
30 the law firm of GLASER WEIL FINK JACOBS HOWARD AVCHEN & SHAPIRO, hereby brings  
31 this Motion to Dismiss for Failure to State a Claim (the "Motion").

32 ///

33 ///

34 ///

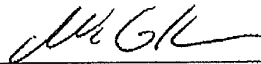
35 ///

Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

1 This Motion is made pursuant to Nevada Rules of Civil Procedure 12(b)(5), and is based on  
2 the papers and pleadings on file with this Court, the Memorandum of Points and Authorities and  
3 exhibits attached hereto, and any and all oral arguments this Court may entertain on the matter.

4 Dated April 20, 2011.

5  
6 GLASER WEIL FINK JACOBS & SHAPIRO LLP

7 By:   
8 Patricia L. Glaser, ESQ.  
9 Pro Hac Vice Admitted  
10 Mark G. Krum, ESQ.  
11 Nevada Bar No. 10913  
12 Andrew D. Sedlock, ESQ.  
13 Nevada Bar No. 9183  
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16 *Attorneys for Defendant Sands China Ltd.*

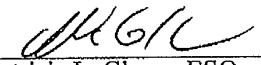
17 **NOTICE OF MOTION**

18 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

19 YOU, and each of you, will please take notice that the undersigned will bring the above and  
20 foregoing **DEFENDANT SANDS CHINA LTD.'S MOTION TO DISMISS FOR FAILURE TO**  
21 **STATE A CLAIM** on for hearing before the above-entitled Court on the 24 day of  
22 May, 2011, at 9:00 a.m. / p.m. of said day in Department XI of said Court.

23 Dated April 20, 2011.

24 GLASER WEIL FINK JACOBS & SHAPIRO LLP

25 By:   
26 Patricia L. Glaser, ESQ.  
27 Pro Hac Vice Admitted  
28 Mark G. Krum, ESQ.  
Nevada Bar No. 10913  
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Las Vegas, Nevada 89169

*Attorneys for Defendant Sands China Ltd.*



**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

According to the complaints filed by plaintiff Steven C. Jacobs ("Jacobs" or "Plaintiff"), this action arises from the termination of his employment as President and Chief Executive Officer of defendant Sands China Ltd. ("SCL") on or about July 23, 2010. As to SCL, Jacobs in his recently filed First Amended Complaint ("FAC") asserts two claims, one for breach of contract and one for defamation.

As to his breach of contract claim, Jacobs claims that he made a demand on SCL on September 24, 2010 to "honor his right to exercise" an option to purchase SCL stock and that SCL rejected his demand and thereby breached a July 7, 2010 letter from SCL to Jacobs (The "Stock Option Grant Letter"). Jacobs makes this claim notwithstanding the fact that the Stock Option Grant Letter provides that (i) fifty percent (50%) of the option was first eligible to vest on January 1, 2011 and the remaining fifty percent (50%) first eligible to vest on January 1, 2012, (ii) the unvested portion of the stock option "shall expire on the date of termination" of Jacobs' employment, and (iii) "if [Jacobs'] employment with [SCL] is terminated for any reason other than on account of [Jacobs'] death or by [SCL] due to disability or for cause, the unvested portion of the Option shall expire on the date of termination..." Thus, by its plain terms, the alleged contract between Jacobs and SCL does not provide for the right Jacobs seeks to enforce, namely, the right to exercise an option to purchase SCL stock after Jacobs' employment with SCL terminated. Jacobs' (second) cause of action against SCL for breach of contract therefore is deficient as a matter of law.

As to Jacobs' other cause of action against SCL, for defamation, it is based on a statement allegedly made to the Wall Street Journal by Sheldon Adelson ("Adelson"), the chairman of SCL's Board of Directors, "to the effect that 1) Jacobs was justifiably fired 'for cause' and 2) Jacobs had resorted to 'outright lies and fabrications' in seeking legal redress..." ("FAC", ¶ 62.) One element of a claim for defamation is that the alleged defamatory statement was an unprivileged publication to a third person. Jacobs' FAC does not allege that the statements made by Adelson were unprivileged. More fundamentally, the statements allegedly made by Adelson are subject to (i) the

1 unconditional litigation privilege and (ii) the conditional privilege of reply, and therefore are not  
2 actionable.

3 As demonstrated below, the statements allegedly made by Adelson simply reiterate and reply  
4 to statements made in the course of this lawsuit. In particular, Jacobs' original complaint (the  
5 "Complaint"), which predated the statements allegedly made by Adelson, repeatedly alleged that  
6 SCL has wrongfully taken the position that Jacobs was terminated for cause, and further alleged that  
7 Jacobs actually was terminated for objecting to or failing to carry out "outrageous" and "illegal"  
8 demands allegedly made by Adelson, which alleged demands were detailed in Jacobs' Complaint  
9 (and have been repeated widely in the press). Thus, Adelson's statement to the effect that Jacobs  
10 was terminated for cause simply republishes what has been alleged in this action, including by  
11 Jacobs himself, and replies to Jacobs' allegations that he was not terminated for cause but instead  
12 for objecting to or refusing to carry out demands allegedly made by Adelson.

13 Likewise, Adelson's statement that Jacobs in this litigation had resorted to "outright lies and  
14 fabrications" simply responds to Jacobs' allegations that Adelson has made "outrageous" and  
15 "illegal" demands of Jacobs and to Jacobs' February 9, 2011 affidavit. In both respects, counsel for  
16 SCL at a March 15, 2011 hearing in this case asserted in unequivocal terms that Jacobs had lied to  
17 the Court. Thus, Adelson's statement that Jacobs in this litigation had resorted to "outright lies and  
18 fabrications" republished what was stated by counsel for SCL during the course of proceedings in  
19 this case and replied to allegations made by Jacobs in his Complaint and affidavit.

20 For the foregoing reasons, Adelson's statements are subject to the unconditional litigation  
21 privilege and, independently, the conditional privilege of reply. The (fifth) cause of action for  
22 defamation against SCL therefore is deficient as a matter of law.

23 Because the second and fifth causes of action are the only claims made by Jacobs against SCL,  
24 this action should be dismissed as against SCL, with prejudice.<sup>1</sup>

25  
26  
27 <sup>1</sup> SCL will file a writ with the Nevada Supreme Court with respect to the denial of its Motion to Dismiss for Lack of  
28 Personal Jurisdiction, and will seek a stay of this action as to it during the pendency of the writ, in view of the threshold  
nature of the jurisdictional question. This motion in no respect waives any rights pursued by the writ or the motion to  
stay, all of which are expressly preserved.

1       **II. FACTUAL AND PROCEDURAL SUMMARY**

2           **A.     Jacobs' Initial Complaint**

3           On October 20, 2010, Jacobs filed his Complaint<sup>2</sup> against SCL and Las Vegas Sands Corp.  
4 ("LVSC"), asserting claims for breach of contract, breach of the implied covenant of good faith and  
5 fair dealing and tortious discharge in violation of public policy. In particular, Jacobs alleged that he  
6 was employed pursuant to an "Offer of Terms and Conditions" (the "Term Sheet") with LVSC.  
7 (Complaint, ¶ 21) (The FAC makes the same allegation, (FAC, ¶ 22)). Jacobs did not allege that  
8 SCL executed the Term Sheet or was a party to it. In opposing motions to dismiss on procedural  
9 grounds, Jacobs confirmed what his Complaint alleges, namely, that he claims that the Term Sheet  
10 is with LVSC, not SCL.

11           Jacobs' Complaint alleged only one contract between Jacobs and SCL, namely, a July 7,  
12 2010 letter (i.e., the Stock Option Grant Letter) that provided for a grant to Jacobs of an option to  
13 purchase 2.5 million shares of SCL stock, which grant was the subject of a May 11, 2010 "Grant of  
14 Share Options" announcement by the SCL board of directors pursuant to applicable rules of The  
15 Stock Exchange of Hong Kong Limited. (Complaint, ¶ 43) (The FAC makes the same allegation.  
16 (FAC, ¶ 44)). True and accurate copies of the Stock Option Grant Letter and Grant of Share  
17 Options are attached to SCL's Request for Judicial Notice as Exhibits B & C. The Stock Option  
18 Grant Letter states that fifty percent (50%) of the option was eligible to vest on January 1, 2011,  
19 with the remaining fifty percent (50%) eligible to vest on January 1, 2012. *Id.*; *see also* Stock  
20 Option Grant Letter attached to SCL's Motion as Exhibit F. The Stock Option Grant Letter  
21 conditioned Jacobs' ability to exercise the SCL option on Jacobs' continued employment with SCL,  
22 and automatically terminated any such rights if Jacobs' employment was terminated before any  
23 portion of the option vested. *Id.* Specifically, the Stock Option Grant Letter states that if Jacobs'  
24 employment was terminated "for any reason other than on account of [Jacobs'] death or by [SCL] or  
25  
26

27  
28       <sup>2</sup> Jacobs' Complaint is attached as Exhibit A to the concurrently filed Request for Judicial Notice in Support of SCL's  
Motion to Dismiss for Failure to State a Claim (the "Request for Judicial Notice"), along with the remaining documents  
referenced in this motion.

1 any subsidiary due to disability or for cause, the unvested portion of the Option shall expire on the  
2 date of termination..." *Id.*<sup>3</sup>

3 Jacobs claims that he was wrongly terminated from his position as President and CEO of  
4 SCL due to alleged conflicts with Adelson, the Chairman of the SCL Board of Directors. Among  
5 other particularly inflammatory claims, Jacobs alleged that Adelson demanded that Jacobs take  
6 certain actions that Jacobs alleges were "outrageous" and "illegal." (Complaint, ¶¶ 26, 27) (The  
7 FAC makes the same allegations. (FAC, ¶¶ 27, 28)). Jacobs further alleged that SCL and LVSC  
8 have taken the position that he was terminated for cause "in an effort to deprive him of contractual  
9 benefits to which he is otherwise entitled." (Complaint, ¶ 47) (The FAC makes the same allegation.  
10

11 <sup>3</sup> In particular, paragraph 3 of the Stock Option Grant Letter provides that the option to subscribe for shares in SCL "is  
12 exercisable in accordance with the following vesting scale [which specifies that fifty percent are eligible to vest on  
13 January 1, 2011 and the remaining fifty percent are eligible to vest on January 1, 2012], subject to the Option Terms  
14 And Conditions appended to this letter...." See Exhibit F to SCL's Motion.

15 The "Option Terms And Conditions" appended to and incorporated in the Stock Option Grant Letter provide with  
16 respect to the effect of termination of Jacobs' employment on his ability to exercise the option as follows:

17 **"2. Effect Of Termination Of Employment On The Options**

18 2.1 Subject as hereinafter provided in the Equity Award Plan, the Option  
19 may be exercised by [Jacobs] any time or times during the Option Period subject to  
20 such vesting scale as set out in the Grant Letter above) provided that:

21 \*\*\*

22 (ii) **Termination Other Than Due To Death/Disability Or For Cause:** If  
23 [Jacobs'] employment with [SCL] is terminated for any reason other than on  
24 account of [Jacobs'] death or by [SCL] due to disability or for cause, the unvested  
25 portion of the Option shall expire on the date of termination...

26 (iii) **Termination For Cause:** If [Jacobs'] employment with [SCL] is terminated by  
27 [SCL] for cause, both the unvested and the vested portions of the Option shall  
28 terminate on the date of such termination..."

29 The Option Terms and Conditions appended to and incorporated in the Stock Option Grant Letter further provides as  
30 follows:

31 **8.1 No Rights To Employment:** The grant of Options and these Terms And  
32 Conditions shall not form part of any contract of employment between [SCL] and  
33 any employee and the rights and obligations of any employee under the terms of his  
34 office or employment shall not be affected thereby. No Grantee shall have any  
35 additional rights to compensation or damages in consequence of the termination of  
36 such office or employment for any reason as a result of the grant of an Option to  
37 him."

1 (FAC, ¶ 48)). Jacobs also alleged that he was sent a letter of termination “which identified 12  
2 pretextual items that allegedly support a ‘for cause’ termination of his employment.” (Complaint, ¶  
3 32) (The FAC makes the same allegation. (FAC, ¶ 33)).

4 The Complaint included one cause of action against SCL, for breach of contract. In  
5 particular, Jacobs claimed that SCL breached the Stock Option Grant Letter by refusing to allow  
6 him to exercise an option to purchase SCL stock pursuant to a demand he allegedly made on  
7 September 24, 2010. (*Id.* at ¶ 46) (The FAC makes the same allegation. (FAC, ¶ 47)).

8 **B. Jacobs’ First Amended Complaint**

9 On March 16, 2011, Jacobs filed his FAC. Jacobs’ FAC is attached as **Exhibit E** to SCL’s  
10 Request for Judicial Notice. The FAC added Adelson as a defendant and added a claim for  
11 defamation against Adelson, LVSC, and SCL. *See* FAC at ¶¶ 59-66 (In all other respects, the  
12 allegations of the FAC are identical to the allegations of the Complaint.). In support of that claim,  
13 Jacobs alleged that Adelson (in both his personal capacity as well as his representative capacity as  
14 Chairman of the Board of LVSC and SCL), made a statement to a newspaper reporter following the  
15 March 15, 2011 hearing. *Id.* at ¶ 62. In this regard, the FAC alleges as follows:

16 Following the [March 15, 2011] hearing, the Wall Street Journal®  
17 published an article in its online edition styled “Setback for Sands in  
18 Macau Suit.” That article, which was authored by Ms. Berzon, reported  
19 that Adelson had, via e-mail, made the following statements:  
20 “While I have largely stayed silent on the matter to this point, the  
21 recycling of his allegations must be addressed,” he said. “We have a  
22 substantial list of reasons why Steve Jacobs was fired for cause and  
23 interestingly he has not refuted a single one of them. Instead he has  
24 attempted to explain his termination by using outright lies and fabrications  
25 which seem to have their origins in delusion.”

26 Adelson’s comments to the effect that 1) Jacobs was justifiably fired for  
27 “for cause” and 2) Jacobs had resorted to “outright lies and fabrications”  
28 in seeking legal redress constituted defamation per se.

(FAC, ¶ 62.)

Adelson’s reported remarks address matters squarely and unequivocally raised in the  
pleadings in this case.

1 For example, Jacobs' (original) Complaint repeatedly alleges that LVSC and SCL have  
2 "wrongly characterized Jacobs' termination as one for cause in an effort to deprive him of  
3 contractual benefits to which [he claims] he is otherwise entitled" (Complaint, ¶ 42), including as  
4 follows:

5 "Nearly two weeks later and after an unsuccessful effort to dig up any  
6 real "dirt" on Jacobs, LVSC sent a second letter to Jacobs on VML  
7 letterhead which identified 12 pretextual items that allegedly support a  
8 "for cause" termination of his employment... The reality is that none  
9 of the 12 items, even assuming arguendo that some of them are  
10 accurate, constitute cause..."

11 (Complaint, ¶ 32).

12 "LVSC has wrongfully characterized Jacobs' termination as one for  
13 "cause" in an effort to deprive him of contractual benefits to which he  
14 is otherwise entitled. As a direct and proximate result of LVSC's  
15 wrongful termination of Jacobs' employment and failure to honor the  
16 "Not For Cause" severance provisions contained in the Term Sheet,  
17 Jacobs has suffered damages in an amount to be proven at trial but in  
18 excess of \$10,000.00."

19 (Complaint, ¶ 41).

20 "LVSC and Sands China rejected Jacobs' demand and, thus, further  
21 breached the Term Sheet and the Sands China share grant agreement  
22 by characterizing Jacobs' termination as being for "cause" when, in  
23 reality, the purported bases for Jacobs' termination, as identified in the  
24 belatedly-manufactured August 5, 2010 letter, are pretextual and in no  
25 way constitute cause."

26 (Complaint, ¶ 46).

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

(Complaint, ¶ 47).

"The conduct of LVSC described herein including ... the wrongful  
characterization of Jacobs' termination as being for cause, is  
unfaithful to the purpose of the agreements between Jacobs and LVSC  
and was not within the reasonable expectations of Jacobs."

(Complaint, ¶ 50).

Jacobs' allegations are correct (only) insofar as they claim that it is the position of SCL (and  
LVSC) that Jacobs was terminated for cause. This was confirmed by counsel for SCL at the March  
15, 2011 hearing in this matter, as follows:

1 "MS. GLASER: Not a problem. All right. Your Honor, Patricia  
2 Glaser for Sands China. Your Honor, this is not about the lack of  
3 honor of Mr. Jacobs in carrying out his responsibilities or the honor of  
4 Mr. Levin and Mr. Adelson, who terminated this gentleman for good  
5 cause. ..."

6 (March 15, 2011 hearing transcript at 45:14-19). A copy of the March 15, 2011 hearing transcript  
7 is attached to SCL's Request for Judicial Notice as **Exhibit F**.

8 Likewise, Jacobs' allegation that Adelson's comment was "to the effect that ... Jacobs had  
9 resorted to 'outright lies and fabrications' in seeking legal redress" also refers to matters raised  
10 squarely and unequivocally in this litigation. The comments of SCL's counsel directed at Jacobs  
11 (and Jacobs' February 9, 2011 affidavit), at the March 15, 2011 hearing was equally direct in  
12 denying the truth and accuracy of allegations made in this case by Jacobs:

13 "MS. GLASER: I am. And it's sort of funny, but it's sort of not,  
14 because this man, Mr. Jacobs, lied to the Court and said money was  
15 couriered into this country. He lied to the Court, and he's not telling  
16 the truth in a lot of other respects as well..."

17 (March 15, 2011 hearing transcript at 57:11-16).

18 Jacobs' FAC alleges that the Wall Street Journal reporter who authored the article which  
19 includes Adelson's allegedly defamatory statements "attended [the March 15, 2011] hearing on  
20 behalf of her employer, the Wall Street Journal." (FAC, ¶¶ 61, 62).

### 21 **III. LEGAL ARGUMENT**

#### 22 **A. The Motion to Dismiss Standard**

23 In determining the sufficiency of a NRCP 12(b)(5) motion to dismiss, "the sole issue  
24 presented is whether a complaint states a claim for relief." *See Merluzzi v. Larson*, 96 Nev. 409,  
25 411 (1980). In other words, the court's task is to determine whether the challenged pleading sets  
26 forth allegations sufficient to make out the elements of a right to relief. *See Edgar v. Wagner*, 101  
27 Nev. 226, 227 (1985).

28 In ruling on a motion to dismiss for failure to state a claim, the court may take into account  
any matters in the court record, public record, and any documents attached to the complaint or  
incorporated by reference into the complaint. *See Brelliant v. Preferred Equities Corp.*, 109 Nev.  
842, 847 (1993).

1 In this case, considering the matters in the Court's record and evidence incorporated in  
2 Jacobs' Complaint and First Amended Complaint, both claims are subject to dismissal for failure to  
3 state a claim.

4 **B. Jacobs's Claim for Breach of Contract is Subject to Dismissal**

5 For his claim for breach of contract to survive a motion to dismiss, Jacobs must properly  
6 plead and demonstrate all of the elements for that cause of action. To assert liability for that claim,  
7 Jacobs must establish (1) the existence of a contract; (2) his performance or excuse for non-  
8 performance; (3) SCL's breach, and (4) resulting damages. *See McDonald v. John P. Scripps*  
9 *Newspaper*, 210 Cal.App.3d 100, 104 (1989).

10 Taking Jacobs' allegations as true, he only identifies one contract with SCL, namely, the  
11 Stock Option Grant Letter. The FAC does not allege that SCL was a party to the Term Sheet, and  
12 Jacobs has consistently taken the position that the Term Sheet was between himself and LVSC, not  
13 SCL. *See generally* Jacobs' Opposition to LVSC's Motion to Dismiss for Failure to Join a  
14 Necessary Party, attached as **Exhibit G** to SCL's Request for Judicial Notice. Therefore, the Court  
15 must determine the validity of Jacobs' claim based only on the terms in the Stock Option Grant  
16 Letter.

17 The terms of that alleged contract are uncontroverted and clear. Pursuant to the  
18 "Termination Other than due to Death/Disability or for Cause" term:

19 [I]f [Jacobs'] employment with [SCL] and its subsidiaries is  
20 terminated for any reason other than on account of [Jacobs'] death or  
21 by [SCL] or any subsidiary due to disability or for cause, the unvested  
22 portion of the Option shall expire on the date of termination...

23 *See* Stock Option Grant Letter.

24 The effect of this term is that if Jacobs was terminated, for any reason other than by death,  
25 disability, or for cause, his option terminates if not previously vested. Jacobs was terminated on  
26 July 23, 2010, more than five months before the first option installment was eligible to vest, as  
27 acknowledged in the FAC. (FAC, ¶ 44 ("Fifty percent of the options were to vest on January 1,  
28 2011, and the other fifty percent was to vest on January 1, 2012").) Although Jacobs goes on to  
allege that "LVSC and [SCL] have wrongfully characterized Jacobs' termination as one for 'cause'  
in an effort to deprive him of contractual benefits to which he was otherwise entitled," it is entirely



1 irrelevant to Jacobs' claim against SCL for breach of the Stock Option Grant Letter whether Jacobs  
2 was or was not terminated for cause.

3 In summary, Jacobs cannot identify any contractual obligation that SCL did not fulfill, or  
4 any damages resulting from its alleged breach.<sup>4</sup> SCL was contractually entitled to deny Jacobs'  
5 demand to exercise the option because he was terminated prior to the date the first installment was  
6 eligible to vest pursuant to the plain terms of the Stock Option Grant Letter. It is entirely immaterial  
7 whether or not he was terminated for cause, or simply terminated for any other reason. Pursuant to  
8 the Stock Option Grant Letter, Jacobs' option terminated in either case.

9 Thus, Jacobs has not plead a *prima facie* case for breach of contract against SCL, even  
10 assuming every allegation in his FAC is true. Therefore, this claim against SCL is deficient as a  
11 matter of law and should be dismissed.

12 **C. Jacobs' Claim for Defamation Fails as a Matter of Law**

13 In order to properly plead a claim for defamation, a plaintiff must allege facts sufficient to  
14 establish the following four elements: (1) a false and defamatory statement; (2) an unprivileged  
15 publication to a third person; (3) fault, amounting to at least negligence, and (4) actual or presumed  
16 damages. See *Lubin v. Kunin*, 117 Nev. 107, 111 (2001).

17  
18  
19 <sup>4</sup> Although Jacobs alleges that he "has performed all of his obligations under the contracts except where excused" (FAC,  
20 ¶ 46), Jacobs has not alleged that he took the actions that the Stock Option Grant Letter specifies must be taken by him  
in order to accept the offer it conveys and create an agreement. In this regard, the Stock Option Grant Letter provides as  
follows:

21 **5. Acceptance Of The Option**

22 "If you wish to accept this offer of Option, please sign a duplicate copy of this  
23 notice and return it (together with remittance of HK \$1.00) to Joey Cheong...within  
24 28 days of the date of this letter. If Joey Cheong does not receive the letter and  
amount (in accordance with this paragraph) within 28 days, you shall be deemed to  
have declined the grant of the Option."

25 Neither in the second cause of action nor elsewhere in the FAC does Jacobs allege that he took the  
26 actions required by the Stock Option Grant Letter to accept the option it offered. For this reason as  
well, the second cause of action is deficient as a matter of law.

1 Although Jacobs alleges that Adelson's statements regarding Jacobs' termination "for cause"  
2 and Jacobs' "outright lies and fabrications" in this litigation were false and defamatory, Jacobs fails  
3 to allege that these statements were unprivileged, a necessary element to establish a *prima facie*  
4 claim for defamation. Jacobs' FAC therefore is deficient on its face. Moreover, and as  
5 demonstrated below, Adelson's statements are subject to both (i) the absolute litigation privilege  
6 and (ii) the conditional privilege of reply, each of which renders Jacobs' claim deficient as a matter  
7 of law.

8 i. Adelson's Statements Are Subject to an Absolute Privilege

9 1. Litigation Privilege Summary

10 In reference to the "unprivileged publication" requirement, it is a "long standing common  
11 law rule that communications [made] in the course of judicial proceedings [even if known to be  
12 false] are absolutely privileged." See *Circus Circus Hotels v. Witherspoon*, 99 Nev. 56, 60 (1983).

13 Questions of privilege are questions of law appropriately decided by the court on a motion to  
14 dismiss. *Circus Circus Hotels*, 99 Nev. at 62 ("Absolute privilege and relevance are questions of  
15 law for the court to decide."). The scope of the absolute privilege is broad, and a court determining  
16 whether the privilege applies should resolve any doubt in favor of removing liability for statements  
17 made related to ongoing litigation. See *Fink v. Oshins*, 118 Nev. 428, 433-34 (2002)(finding that  
18 courts should apply the absolute privilege liberally, resolving any doubt in favor of its relevancy or  
19 pertinency). The test of relevancy is very broad, and the defamatory material need not be relevant in  
20 the traditional evidentiary sense, but need have only some relationship to the subject matter of the  
21 proceeding in order to be absolutely privileged. See *Circus Circus Hotels*, 99 Nev. at 61.

22 Nevada courts have relied on the *Restatement (Second) of Torts* § 587 for the proposition  
23 that this privilege is not limited to attorney communications and extends to the individual litigants as  
24 well. *Fink*, 118 Nev. at 433 n.13. The purpose of this absolute privilege is to afford all parties  
25 freedom to access the courts and freedom from liability for defamation where civil or criminal  
26 proceedings have commenced. See *Restatement (Second) of Torts* § 587 cmts. a, e (1977).

27 Such privileged statements are not limited to those made within the courtroom, and Nevada  
28 courts have applied the absolute bar to liability in reference to statements made verbally and in

1 writing to third parties. See *Clark County School Dist. v. Virtual Education Software, Inc.*, 213 P.3d  
2 496, 503 (Nev. 2009) (finding letter sent by petitioner's representative to respondent was absolutely  
3 privileged); *Fink*, 118 Nev. at 434 (holding that oral statements accusing petitioner of hiding money  
4 and defrauding respondent's trust account were absolutely privileged).

5 This privilege also has been extended to the news media and individuals to report or  
6 republish judicial proceedings. See *Sahara Gaming Corp. v. Culinary Workers Union Local 226, et*  
7 *al.*, 115 Nev. 212, 218 (1999). This is not limited to those specifically engaged in reporting news to  
8 the public, but extends to any person who makes a republication of a judicial proceeding or material  
9 that is available to the general public. *Id.*

10 The absolute privilege has been recognized in other jurisdiction as well, which protect a  
11 litigant's statements to the news media as communications to a "public journal" of a "judicial  
12 proceeding...or anything said in the course thereof" as privileged, unless they violate a court order.  
13 See Cal. Civil Code § 47(d). This privilege extends to all matters in the court record and repeated in  
14 the courtroom, as long as they are made "in the course" of the lawsuit, meaning after the litigation  
15 has commenced. See *Rothman v. Jackson*, 49 Cal.App.4th 1134, 1143 (1996).

16 The Nevada Supreme Court further explained the rule as follows: "The policy underlying the  
17 privilege is that in certain situations the public interest in having people speak freely outweighs the  
18 risk that individuals will occasionally abuse the privilege by making false and malicious  
19 statements." See *Circus Circus Hotels*, 99 Nev. at 61.

20 2. Adelson's statements are unconditionally privileged

21 Taking Jacobs' allegations as true, Adelson made the allegedly defamatory statements in his  
22 individual capacity and as a representative of SCL and LVSC (FAC, ¶ 63), both of which were  
23 defendants in this action at the time the statements were made. The substance of the statements, as  
24 alleged by Jacobs in his FAC, are that (i) Jacobs had been terminated from his position as President  
25 and CEO of SCL "for cause," and (ii) Jacobs in this litigation had made statements that were false.  
26 That's it.

1 Jacobs does not allege that Adelson made any statements regarding matters outside the scope  
2 of the litigation. Thus, the test of relevancy is easily met because Adelson's complained of  
3 statements squarely and directly address matters raised in this litigation, including by Jacobs.

4 The context of Adelson's statement, namely, to a newspaper reporter following the March  
5 15, 2011 hearing, is irrelevant when applying the privilege as it is not limited to statements made  
6 only in pleadings or within the courtroom. *See Clark County School Dist.*, 213 P.3d at 503 (letter  
7 sent by petitioner's representative was privileged; *Fink*, 118 Nev. at 434 (allegedly defamatory oral  
8 statement made in respondent's office was privileged). However, even if Jacobs argues that  
9 Adelson's statements were not made "during the course" of the present litigation, the statements  
10 nevertheless are covered by the privilege afforded to all persons who republish material found in  
11 public records such as court filings and proceedings.

12 As demonstrated above, Jacobs' Complaint repeatedly alleged that SCL and LVSC  
13 "wrongfully characterized Jacobs' termination as one for 'cause'" (Complaint, ¶ 46), and further  
14 alleged that Jacobs was terminated for objecting to and/or refusing to carry out "outrageous" if not  
15 "illegal" demands allegedly made upon him by Adelson (Complaint, ¶¶ 26 and 27). As also  
16 demonstrated above, counsel for SCL at the March 15, 2011 hearing--which was attended and  
17 recorded by press and media representatives--likewise observed that Jacobs had been terminated for  
18 cause and further observed that Jacobs had lied to the Court. In the latter regard, Adelson's  
19 statements followed (i) the Complaint, (ii) Jacobs' February 9, 2011 affidavit and (iii) the March 15,  
20 2011 hearing at which Jacobs' lawyer repeated and emphasized the false statements from Jacobs'  
21 affidavit regarding SCL allegedly couriering significant funds in to this country. Thus, Adelson's  
22 statements republished what previously had been stated in this action, by Jacobs, by SCL's counsel,  
23 or both.

24 Jacobs' Complaint and statements of SCL's counsel are public record. Adelson's  
25 statements, even if not made "during the course" of litigation, conveyed nothing more than what has  
26 been asserted in the pleadings and transcripts associated with this case. The privilege which extends  
27 to news media or other individuals that republish court proceedings also applies to Adelson's  
28

1 statements. In short, Adelson cannot be held liable for restating what has already been made part of  
2 the record in this case, including at a hearing widely attended and reported by the press and media.

3 Lastly, allowing Jacobs to maintain his defamation claim would be contrary to the intended  
4 effect of Nevada's broad interpretation of the litigation privilege. If Jacobs is able to assert liability  
5 in this case, it would have an immediate chilling effect on every litigant's ability to present even the  
6 most general defense outside the courtroom, and effectively limit the only acceptable statement  
7 made to media outlets to "we respectfully disagree with the other side's allegations." This is plainly  
8 contrary to established law and policy in Nevada.

9 Jacobs' claim for defamation fails as a matter of law and should be dismissed because the  
10 alleged statements on which it is based are subject to the absolute litigation privilege.

11 ii. Adelson's Statements are further covered by the conditional privilege of reply

12 In the event that the Court determines that Adelson's statements are not covered by the  
13 absolute privilege afforded to parties in an ongoing litigation, the statements nonetheless are  
14 protected by the conditional "privilege of reply," which has been recognized and adopted by Nevada  
15 courts. *See Nevada Office of Attorney General, et al. v. Eighth Judicial Dist. Court, et al.*, 118 Nev.  
16 140, 149 (2002). The common law privilege of reply grants those which are attacked with  
17 defamatory statements a limited right to reply. *Id.* The court in *Office of Attorney General* cited, by  
18 example, how the privilege would work - "[i]f I am attacked in a newspaper, I may write to that  
19 paper to rebut the charges, and I may at the same time retort upon my assailant, when such retort is a  
20 necessary part of my defense, or fairly arises out of the charges he has made against me." *Id.* The  
21 privilege is conditional and may be lost, however, if the reply includes substantial defamatory  
22 matter that is irrelevant or non-responsive to the initial statement, includes substantial defamatory  
23 material that is disproportionate to the initial statement, is excessively publicized, or is made with  
24 malice in the sense of actual spite or ill will. *Id.* at 150.

25 In this case, Jacobs in his Complaint repeatedly alleged that LVSC and SCL had wrongfully  
26 taken the position that he had been terminated for cause (Complaint, ¶¶ 41, 46, 47 and 50), and  
27 further alleged that (according to Jacobs) he was terminated because he "objected to and/or refused  
28 to carry out" allegedly "outrageous" and "illegal" demands allegedly made upon him by Adelson.

1 Jacobs' allegations, including about what allegedly resulted in his termination, have been reported in  
2 the press and media, which were present the March 15, 2011 hearing in this matter. *See* true and  
3 accurate copies of John L. Smith's February 13, 2011 article and February 22, 2011 correction,  
4 published by the Las Vegas Review Journal, attached to SCL's Request for Judicial Notice as  
5 **Exhibit H.**

6 Because Adelson's statement to the effect that Jacobs was terminated for cause was made in  
7 response to Jacobs' allegations that SCL and LVSC had wrongfully characterized Jacobs'  
8 termination as for cause when in fact, according to Jacobs' allegations, he was terminated for  
9 objecting to and/or refusing to carry out "outrageous demands [allegedly] made upon him by  
10 Adelson," Adelson's statement is subject to the conditional privilege of reply.

11 Likewise, Adelson's statement that Jacobs in this case had resorted to "outright lies and  
12 fabrications" is nothing more than a refutation of Jacobs' allegations in substantially the same  
13 manner as SCL's attorney did at the March 15, 2011 hearing. Adelson's statements merely replied  
14 to and refuted the accuracy and veracity of Jacobs' claims.

15 The *Office of Attorney General* case is instructive on a number of points bearing upon  
16 whether Adelson's statements are covered by the reply privilege. In that case, a former employee of  
17 the Attorney General's office was forced to resign due to his refusal to comply with an allegedly  
18 illegal investigation. *Id.* at 146. The former employee sued the Attorney General's office, and  
19 raised in his complaint several claims related to his termination. Those allegations were republished  
20 in the Las Vegas Sun. *Id.* at 148. A representative for the Attorney General's Office wrote a letter  
21 to the Las Vegas Sun which first denied the allegations made in the complaint, and then revealed  
22 several of the former employee's prior disciplinary issues unrelated to the investigation and accused  
23 him of not being candid and distorting the facts. *Id.* at 149.

24 The court in the *Office of Attorney General* case applied the reply privilege to the Attorney  
25 General office's letter to the Las Vegas Sun, even assuming its content was false and defamatory.  
26 *Id.* The court noted that it was "clear that [the Attorney General's office's] response did not exceed  
27 the privilege," and was not excessively publicized even though the subject letter has been sent to the  
28 Governor and the Nevada Gaming Commission in addition to the Las Vegas Sun. *Id.* at 150.

1 Here, Jacobs alleges that SCL and LVSC have erroneously asserted that he was terminated  
2 for cause, and further alleges that he was improperly terminated due to his refusal to comply with  
3 certain "outrageous" and "illegal" demands allegedly made upon him by Adelson. Jacobs in his  
4 February 9, 2011 affidavit claimed that SCL couriered "significant funds" into this country (which  
5 Jacobs' counsel claimed to quantify at the March 15, 2011 hearing). Adelson responded with a  
6 statement that Jacobs was terminated for cause and that Jacobs in litigation had resorted to outright  
7 lies and fabrications. Adelson's response was limited to matters raised in this case, and was  
8 published in the same manner as news articles that have repeated the false and inflammatory  
9 allegations contained in Jacobs' pleadings. See Exhibit H to SCL's Request for Judicial Notice.

10 Lastly, taking the *Office of Attorney General* case as a guide one last time, it is clear that  
11 neither disagreeing with the opposing party nor stating that your accuser is not being truthful rises  
12 to the level of "actual spite or ill will."

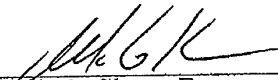
13 Therefore, Adelson's statements are protected by the conditional privilege of reply, and  
14 Jacobs' defamation claim therefore fails as a matter of law.

15 **CONCLUSION**

16 For the foregoing reasons, Defendant Sands China, Ltd. respectfully requests that this Court  
17 grant its Motion to Dismiss for Failure to State a Claim and dismiss this case against Sands China,  
18 Ltd., with prejudice.

19 Dated April 20, 2011.

20 GLASER WEIL FINK JACOBS HOWARD  
21 AVCHEN & SHAPIRO LLP

22 By:   
23 Patricia L. Glaser, Esq.  
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*Attorneys for Defendant Sands China Ltd.*

Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

**CERTIFICATE OF MAILING**


I hereby certify that I am an employee of GLASER WEIL FINK JACOBS HOWARD  
AVCHEN & SHAPIRO LLP, and on the 20<sup>th</sup> day of April, 2011, I deposited a true and correct  
copy of the foregoing **DEFENDANT SANDS CHINA LTD.'S MOTION TO DISMISS FOR  
FAILURE TO STATE A CLAIM** via U.S. Mail at Las Vegas, Nevada, in a sealed envelope upon  
which first class postage was prepaid and addressed to the following:

Donald J. Campbell, Esq.  
J. Colby Williams, Esq.  
CAMPBELL & WILLIAMS  
700 South Seventh Street  
Las Vegas, NV 89101

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An Employee of GLASER WEIL FINK JACOBS  
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CLERK OF THE COURT

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11 Attorneys for Defendant  
12 Sheldon Adelson

13 DISTRICT COURT  
14 CLARK COUNTY, NEVADA

15 STEVEN C. JACOBS,

16 Plaintiff,

17 v.

18 LAS VEGAS SANDS CORP., a Nevada  
19 corporation, SANDS CHINA LTD., a  
20 Cayman Islands corporation; SHELDON  
21 G. ADELSON, in his individual and  
22 representative capacity, DOES I through  
23 X; and ROE CORPORATIONS I through  
24 X,

25 Defendants.

) CASE NO: A-10-627691-C  
) DEPT NO: XI

) MOTION TO DISMISS ON  
) BEHALF OF  
) SHELDON ADELSON

) DATE: June 9, 2011  
) TIME: 9:00 a.m.

26 This motion is based on Rule 12(b)(5) of the Nevada Rules of Civil  
27 Procedure, the attached exhibits, the pleadings on file and the points and  
28 authorities that follow.

29 MORRIS PETERSON

30 By: 

31 Steve Morris, Bar No. 1543  
32 Ryan M. Lower, Bar No. 9108  
33 900 Bank of America Plaza  
34 300 South Fourth Street  
35 Las Vegas, Nevada 89101

36 Attorneys for Defendant Sheldon Adelson

1 **NOTICE OF MOTION**

2 TO: Steven C. Jacobs, Plaintiff

3 TO: Donald J. Campbell, J. Colby Williams, CAMPBELL & WILLIAMS, his  
4 counsel of record,

5 PLEASE TAKE NOTICE that the undersigned will bring the  
6 foregoing motion to dismiss on before the above Court on the 9th day of June,  
7 2011 at the hour of 9:00 a.m., as set by order of the Court on April 22, 2011.

8 MORRIS PETERSON

9  
10 By:   
11 Steve Morris, Bar No. 1543  
12 Ryan M. Lower, Bar No. 9108  
13 900 Bank of America Plaza  
14 300 South Fourth Street  
15 Las Vegas, Nevada 89101

16 Attorneys for Defendant  
17 Sheldon Adelson

18 **POINTS AND AUTHORITIES**

19 **I. INTRODUCTION AND STATEMENT OF FACTS TO SUPPORT**  
20 **DISMISSAL OF THE FIFTH CAUSE OF ACTION (DEFAMATION**  
21 **PER SE) AGAINST SHELDON ADELSON**

22 Steven Jacobs filed this lawsuit to recover damages for breach of  
23 contract. He alleges he served as President and CEO of Sands China Ltd. ("Sands  
24 China") for almost a year under a "Term Sheet." <sup>1</sup> FAC at 6-7, ¶ 22. According to  
25 Jacobs, he was terminated on July 23, 2010, without "cause," "in an effort to  
26 deprive him of contractual benefits to which he [says he] is otherwise entitled."  
27 FAC at 10, ¶ 31; FAC at 12, ¶ 42. On October 20, 2010, Jacobs sued Las Vegas  
28 Sands Corp. and Sands China for wrongful termination. In doing so, he alleged  
he was wrongfully fired for his "conflicts" with Sands China's Chairman of the

---

<sup>1</sup> Jacobs tries to obfuscate his status to diminish the jurisdictional issue with Sands China by referring to himself as the President and CEO of LVSC's Macau operations, FAC at 8, ¶ 26, while describing himself elsewhere in his pleading as "an officer and director of Sands China." FAC at 14, ¶ 54 (Fourth Cause of Action).

1 Board Sheldon Adelson, who Jacobs says demanded that he engage in criminal  
2 activities as he (Jacobs) pursued "saving the Titanic" as the CEO of Sands China.  
3 FAC at 7, l. 9; FAC at 8-9, ¶¶ 27-28.

4 In pleading his case Jacobs went well beyond making "a short and  
5 plain statement of . . . [his claims] showing that . . . [he] is entitled to relief." Nev.  
6 R. Civ. P. 8(a). Relying on the litigation privilege to shield him from liability for  
7 defamation, Jacobs ornamented his claims with sensational libelous statements  
8 about Adelson that he knew would attract the interest of the media and  
9 regulatory authorities and antagonize Adelson, whom he described in his  
10 complaint as "notoriously bellicose" (FAC at 4, l. 10), "mercurial" (FAC at 5, l. 3),  
11 and "rude and obstreperous" (FAC at 7, l. 15) as a warm-up for the libels to follow.

12 Thus, in pleading the "facts" of his garden-variety claim for breach of  
13 contract against his corporate employer, Jacobs accused Adelson of making  
14 "outrageous demands" on him to engage in unlawful and criminal conduct, such  
15 as:

- 16 • employing "improper 'leverage' " against senior government  
17 officials of Macau;
- 18 • threatening to withhold business from Chinese banks unless  
19 the banks exercised influence with senior government officials  
20 to achieve favorable government treatment of Sands China;
- 21 • conduct "secret investigations" of Macau government officials  
22 to gather "negative information" to use as leverage to obtain  
23 exemptions from government regulations for Sands China;
- 24 • use the services of a Macau attorney that Jacobs says he was  
25 concerned would be an offense under the Foreign Corrupt  
26 Practices Act;
- 27 • withhold material information from the board of Sands China  
28 so that the board could not disclose the information to the

1 Hong Kong Stock Exchange, as the company was required to  
2 do.

3 FAC at 8-9, ¶ 27. When and after Jacobs "objected to and/or refused to carry out  
4 Adelson's illegal demands," FAC at 9, ¶ 28, he was fired. FAC at 10 ¶ 31.<sup>2</sup>

5 Notwithstanding the sensational personal direct libels against him in  
6 the complaint, Adelson said nothing in response. The media, however, picked up  
7 these sensational and wholly unnecessary, defamatory allegations made by Jacobs  
8 and published them extensively, worldwide. *See, e.g.,* Ex. A, *Wall Street Journal*  
9 report, October 22, 2010 (international byline and circulation) ("former chief  
10 executive of Sands China Ltd. says he was wrongfully fired after refusing to carry  
11 out Las Vegas Sands Corp. Chairman Sheldon Adelson's illegal demands"); Ex. B,  
12 compiled stories in the *Las Vegas Sun* and the *Las Vegas Review-Journal*,  
13 October 22, 2010 (Jacobs fired for resisting "improper and illegal demands" by  
14 Adelson; Jacobs saved the Titanic, which had been sinking as a result of Adelson's  
15 "rude and obstreperous behavior"; etc.). These examples, which are online, are  
16 but a few of the thousands of the publications of Jacobs's defamatory allegations.  
17 Many more are available online, and they are accessible from anywhere in the  
18 world where the internet is available, just as Jacobs and his counsel knew and  
19 intended when the defamatory allegations were first made public. *See, e.g.,* Ex. C  
20 (printout of 1 page of 90,000 results using search term "Sheldon Adelson" Jacobs.)

21 As the case moved into this Court on initial motion practice in March,  
22 Adelson had not replied to the defamatory allegations first made against him. He  
23 did not attend the hearing on March 15, but the media did in force, which Jacobs  
24 supported. *See* his Response to Defendants' Objection to Media Request,  
25 March 11, 2011, on file herein. The hearing was televised nationally and attended  
26

---

27 <sup>2</sup> The several claims of the FAC continue the personal attack on Adelson, *e.g.,*  
28 Jacobs was fired in retaliation for refusing "to participate in the illegal conduct  
requested by Adelson." FAC at 15, ¶ 56, Fourth Cause of Action.

1 by members of the press, including a reporter from the *Wall Street Journal*,  
2 Alexandra Berzon. FAC at 16, ¶ 61. Immediately following the televised hearing,  
3 the press, including the *Wall Street Journal*, began reporting the Court's decision  
4 denying the defendants' motions to dismiss. In doing so, the press revived and  
5 repeated Jacobs's defamatory allegations of criminal misconduct by Adelson that  
6 Jacobs said led to his firing in July 2009, just as he knew and intended the press to  
7 do. *See, e.g.*, Ex. D, compiled stories in the *Las Vegas Sun* and the *Las Vegas*  
8 *Review-Journal* beginning at noon March 15, 2011; Ex. E, compiled stories by  
9 Bloomberg (at 3:16 p.m.) and Associated Press (at 7:25 p.m.).

10 In this context of worldwide media dissemination of Jacobs's  
11 defamatory statements occasioned by the hearing on March 15, Adelson  
12 responded to the press' inquiries and replied to Jacobs's criminal accusations the  
13 same day. He sent an email to reporter Alexandra Berzon that evening:

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

18 This statement of Mr. Adelson in reply to Jacobs's continuing  
19 defamation of him was made during the course of judicial proceedings in this  
20 Court. It became the basis for the fifth claim in Jacobs's First Amended  
21 Complaint, filed the next day. The statement, however, pertains to the subject

22  
23 <sup>3</sup> These responsive remarks could be viewed as an expression of opinion  
24 contrary to Jacobs's opinion of why he lost his job. Remember that Jacobs *initiated*  
25 this public debate over his termination by attacking Adelson. Under these  
26 circumstances, Adelson's statement — his opinion that Jacobs was wrong — would  
27 not be actionable. *See State of Nevada v. Eighth Judicial Dist. Ct.*, 118 Nev. 140, 150-51,  
28 42 P.3d 233, 240 (2002) (only assertions of fact, not of opinion, can sustain a  
defamation claim. If a reasonable person would understand the statement as an  
expression of opinion, it is not actionable as defamation. *Cf. Mast v. Overson*, 971  
P.2d 928 (Utah App. 1998) *cert. denied*, 982 P.2d 88 (statements at a press conference  
that one was telling "bare-faced lies" uttered during a heated public debate in  
response to public attacks *were not defamatory*)).

1 matter of this proceeding; it was made to a reporter who was present at and  
2 interested in the hearing on March 15 and wrote about it and Jacobs's defamatory  
3 allegations that gave rise to the hearing and to Ms. Berzon's story about the  
4 lawsuit, the hearing and Sheldon Adelson. Under these circumstances, the law of  
5 Nevada and the law declared elsewhere in cases like this one render this reply  
6 statement of Sheldon Adelson to Jacobs's defamatory allegations absolutely  
7 privileged. *See, e.g., Libco Corp. v. Adams*, 426 N.E.2d, 1130, 1132 (Ill. App. 1981)  
8 (for an out of court statement by an attorney [or in Nevada, a witness or a party]  
9 to be privileged, "the only requirement is that the communication pertain to  
10 proposed or pending litigation"). It cannot, as a matter of law, be the subject of a  
11 claim against him. For this reason, the opportunistic but legally infirm fifth cause  
12 of action for defamation per se, must be dismissed, as the following discussion of  
13 the law will confirm.

## 14 II. ARGUMENT

### 15 A. A Statement That Is Alleged to Be Defamatory Is Not Actionable If Made 16 in the Course of a Judicial Proceeding, as Adelson's Statement Was on March 15, 2011.

17 The statement Adelson made to reporter Berzon of the *Wall Street*  
18 *Journal* that Jacobs says defamed him was made during the course of this lawsuit  
19 in this Court, in response to Jacobs's defamatory allegations against Adelson that  
20 were carried by the same publication. Irrespective of Adelson's state of mind  
21 when he made the statement, it was and is clothed in privilege; the statement may  
22 not serve as a basis for liability:

23 [T]he long-standing common law rule [is] that  
24 communications uttered or published in the course of  
25 judicial proceedings are absolutely privileged so long as  
26 they are in some way pertinent to the subject of the  
27 controversy. [Citations omitted.] The absolute privilege  
precludes liability even where the defamatory statements  
are published with knowledge of their falsity and  
personal ill will toward the plaintiff. [Citations omitted.]

28

1 *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983).  
2 *Accord, Fink v. Oshins*, 118 Nev. 428, 432-33, 49 P.3d 640, 644 (2002) ("Courts should  
3 *apply the absolute privilege liberally*, resolving any doubt 'in favor of its relevancy or  
4 pertinency' ") (citations omitted; emphasis added); Dan B. Dobbs, *The Law of Torts*  
5 (*Defamation*) § 412 at 1153-54 (2000) ("the privilege protects statements that bear on  
6 the case even if they would not be admissible in evidence or would be counted as  
7 improper argument").

8 This salutary privilege applies to Adelson, whether he is considered a  
9 party at the time he communicated to Ms. Berzon at the *Wall Street Journal* or a  
10 witness, as the Nevada Supreme Court held in *Clark County School District v.*  
11 *Virtual Educ. Software, Inc.*, 125 Nev. Adv. Op. 31 at 5, 213 P.3d 496, 502 (2009):

12 *The absolute privilege applies to communications made by non-*  
13 *lawyers where judicial proceedings have commenced or are*  
*under serious consideration. [Italics in original.]*

14 As long as the communication is made in the course of a judicial proceeding and  
15 is "related to the litigation," as Adelson's statement was, the absolute privilege  
16 protects him from liability, just as it protected Sands China's counsel in Court on  
17 March 15, when she called Jacobs a liar. Tr. March 15, 2011, at 57, ll. 11-16  
18 (appended to Sand's China's Motion to Dismiss as Exhibit F). *CCSD v. Virtual*  
19 *Educ. Software*, 125 Nev. Ad. Op. 31 at 7, 213 P.3d at 501-03. Adelson and she are  
20 immune from liability for statements made in this lawsuit in response to Jacobs's  
21 libelous allegations against Adelson and the corporate defendants. *Id.*<sup>4</sup>

22

23

24 <sup>4</sup> It is not necessary to qualify for absolute privilege that the statements be  
25 made in court: The litigation privilege is not limited to statements in a courtroom  
26 during a trial; "it extends to all statements or communications in connection with  
27 the judicial proceedings." *Hawkins v. Harris*, 661 A.2d 284, 289 (N.J. 1995) (citation  
28 omitted); *see also Digerati Holdings, LLC v. Young Money Entm't*, \_\_\_ Cal. Rptr. 3d  
\_\_\_, Civil Case B218639 (Cal Ct. App. April 26, 2011) (litigation privilege applies to  
"any communication." "The privilege 'is not limited to statements made during a  
trial or other proceedings, but may extend to steps taken prior thereto, or  
afterwards.' "). Slip Op. at 19. A copy of *Digerati Holdings* is attached as Ex. F.

1 **B. The Absolute Privilege Applies to Statements Made to the Same Press**  
2 **that Attended the March 15 Hearing and Republished Jacobs's**  
3 **Defamatory Allegations Against Adelson.**

4 Adelson's statement to the *Wall Street Journal* in response to Jacobs's  
5 defamatory personal attacks characterizing Adelson as a criminal invited Adelson  
6 to reply. This is known as "invited defamation," and it is not actionable. Self-  
7 defense never is, whether delivered to the press or otherwise, as the court in  
8 *Litman v. Massachusetts Mut. Life Ins. Co.*, 739 F.2d 1549, 1560 (11th Cir. 1984),  
9 observed:

10 It is axiomatic that 'invited defamation,' or the issuance  
11 of a defamatory statement wherein the injured party  
12 precipitated the statement's release, is not actionable.

13 Unnecessarily accusing a person of crimes merely to advance and  
14 add "color" to a claim for breach of an alleged employment contract, as Jacobs  
15 does here, challenges the defamed victim to respond.

16 By issuing his defamatory invitation to the "bellicose," "mercurial,"  
17 "rude and obstreperous" Adelson in his complaint, Jacobs also can be said to have  
18 consented to Adelson's response. Consent is an absolute bar to an action for  
19 defamation. *See* Restatement of Torts (Second) § 583 (Absolute Privileges:  
20 Consent) cmt. c (1977) ("conduct that gives apparent consent is sufficient to bar  
21 recovery" for the alleged defamation); cmt. f ("the privilege conferred by the  
22 consent of the person about whom the defamatory matter is published is  
23 absolute"); *Williams v. Springfield School Dist.*, 447 S.W.2d 256, 269 (Mo. 1969) ("one  
24 who has invited *or instigated* the publication of defamatory words cannot be heard  
25 to complain of the resulting damage to his reputation").<sup>5</sup> Because Jacobs

---

26 <sup>5</sup> An unrelated point of law involved in the *Williams* case — that a plaintiff  
27 must sustain a traumatic physical injury to recover for emotional distress ("the  
28 impact rule") — was abrogated in *Bass v. Nooney Co.*, 646 S.W.2d 765, 772 (Mo.  
1983). The point of law for which *Williams* is cited here — Jacobs instigated  
publication of the defamation alleged and, therefore, cannot recover for it —  
remains untouched by contrary authority.



1 instigated and invited Adelson's statement to the *Wall Street Journal*, he cannot  
2 now hold Adelson or his co-defendants liable for the email to Alexandra Berzon  
3 that he (Jacobs) prompted on March 15, as the court in *Green Acres Trust v. London*,  
4 688 P.2d 658, 671 (Ariz. App. 1983), teaches:

5           We hold that defamatory communications concerning  
6           impending litigation are absolutely privileged, whether  
7           made to the news media or to a prospective participant  
8           in the litigation, provided it has some relation to the  
9           proceeding.

10          *Accord*, Restatement of Torts (Second) § 586 (1977) (an attorney [and in Nevada, a  
11          party or a witness] is absolutely privileged to publish defamatory matter  
12          concerning another during the course of a judicial proceeding).

13          Even if Adelson's statement to the press was not absolutely  
14          privileged, it would nevertheless be privileged and not actionable as a reply to  
15          Jacobs's privileged defamation of him in the same press. *State of Nevada v. Eighth*  
16          *Judicial Dist. Ct.*, 118 Nev. 140, 149, 42 P.3d 233, 239-40 (2002) (Reply by the  
17          Attorney General to attack published in a newspaper — that the plaintiff, like  
18          Jacobs, had been forced to resign "because he refused to perform an illegal act" —  
19          was privileged: The defendant's reply to the attack was published by the same  
20          newspaper that published the attack, just as Adelson did here. The reply was  
21          "protected under the conditional privilege of reply").

### 22          III. CONCLUSION <sup>6</sup>

23          Jacobs's claim of defamation against Sheldon Adelson is not  
24          actionable. The statement Jacobs complains of is a mere expression of opinion  
25          that differs from his own as to the reason he was fired. By attacking Sheldon  
26          Adelson personally, by accusing Adelson of illegal conduct, Jacobs invited and  
27          consented to the response he provoked: Adelson's contrary opinion. This infirm

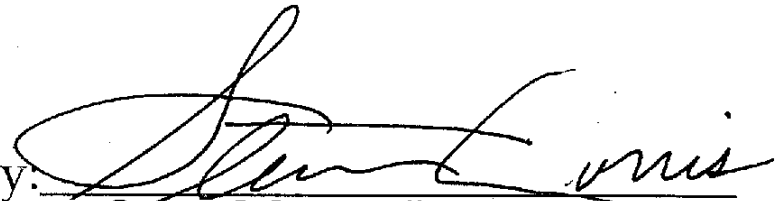
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28          <sup>6</sup> Adelson joins in the motions to dismiss the Fifth Cause of Action filed by  
his co-defendants, Las Vegas Sands Corp. and Sands China Ltd. He will not  
burden the Court with repeating all that is in those motions.

1 and opportunistic "defamation" claim illustrates the adage that one should be  
2 circumspect in what he asks for because he may get it.

3 Even if Jacobs had not provoked Adelson's contrary opinion, it  
4 would still not be actionable. He merely replied to the same media employed by  
5 Jacobs to publicize his libels of Adelson *during the course of this judicial proceeding*.  
6 Under Nevada law, Adelson's statement to the *Wall Street Journal* was and will  
7 forever be absolutely privileged, *CCSD v. Virtual Educ. Software, supra*, which  
8 means the Fifth Cause of Action for defamation should be dismissed, with  
9 prejudice now.

10 MORRIS PETERSON

11  
12 By: 

13 Steve Morris, Bar No. 1543  
14 Ryan M. Lower, Bar No. 9108  
15 900 Bank of America Plaza  
300 South Fourth Street  
Las Vegas, Nevada 89101

16 Attorneys for Defendant  
17 Sheldon G. Adelson  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of MORRIS PETERSON, and I am familiar with the firm's practice of collection and processing documents for mailing; that in accordance therewith, I caused the following to be deposited with the U.S. Postal Service at Las Vegas, Nevada, in a sealed envelope, with first class postage prepaid, on the date and to the addressee(s) shown below: **MOTION TO DISMISS**

TO:

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J. Colby Williams  
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Las Vegas, Nevada 89101  
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Sands China Ltd.

DATED this 3rd day of May, 2011.

By J. Peterson

# EXHIBIT A

# EXHIBIT A

# THE WALL STREET JOURNAL.

WSJ.com

OCTOBER 22, 2010

## Ex-Sands China CEO Sues Casino Operator

HONG KONG—The former chief executive of Sands China Ltd. says in a lawsuit that he was wrongfully fired after refusing to carry out Las Vegas Sands Corp. Chairman Sheldon Adelson's illegal demands, allegations that were promptly denied by the U.S. company.

A copy of the suit, filed Wednesday in a Clark County court in Nevada, was seen by The Wall Street Journal on Friday.



European Pressphoto Agency

Steve Jacobs (right), former CEO of Las Vegas Sands' Macau unit, is battling Chairman Sheldon Adelson.

The allegations come as Las Vegas Sands is in the process of expanding its presence in Asia as revenues from its Las Vegas operations remain stagnant. Earlier this year, Las Vegas Sands, which

has three casinos in Macau, opened its first casino in Singapore. It is also eyeing potentially lucrative markets in Asia such as Japan.

Sands China, the Macau unit of Las Vegas Sands, in July removed Steve Jacobs as chief executive, without publicly giving a reason for his departure. He was named to head the business just a year earlier and oversaw the unit's US\$2.5 billion initial public offering in November 2009.

Mr. Jacobs claimed in the lawsuit that his performance was vital in turning around the Macau unit and its parent, whose shares plummeted at the height of the global financial crisis, but later recovered as the Macau business thrived.

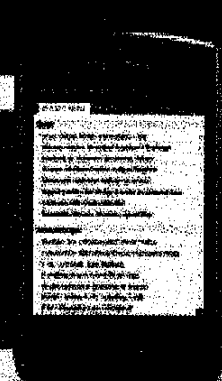
Mr. Jacobs on Friday declined to comment on the wrongful termination suit, which seeks millions of dollars in unpaid salaries, bonuses and stock options from Las Vegas Sands and its Hong Kong-listed unit.

Las Vegas Sands spokesman Ron Reese said Friday: "While Las Vegas Sands does not typically comment on legal matters, we categorically deny these baseless and inflammatory allegations." He added that Mr. Adelson had no additional comment on the suit.

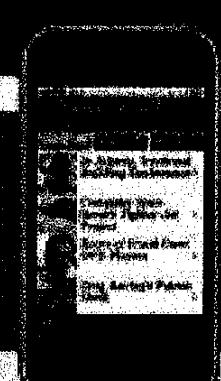
Among its allegations, the suit accuses Mr. Adelson of ordering Mr. Jacobs to use "improper leverage" against senior Macau government

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WSJ.com

officials to help the company secure rights to sell apartments at its Four Seasons property. Mr. Jacobs was asked to arrange "secret investigations" on the officials so that any negative information obtained could be used against them, the filing said.

Write to Kate O'Keeffe at Kathryn.  
OKeeffe@dowjones.com

According to the document, Mr. Adelson also ordered Mr. Jacobs to threaten to withhold business from major Chinese banks "unless they agreed to use influence with newly elected senior government officials of Macau" to get "favorable treatment" on government-imposed labor quotas and table limits that could derail its expansion projects.

Macau overtook the Las Vegas Strip as the biggest gambling market in the world in 2006 and this year it is on track to rake in around four times the Strip's revenue. However, the breakneck pace of growth has raised concerns of a bubble forming in the casino industry.

To cool the market, Macau's government earlier this year announced a tight cap on the number of gambling tables as well as heavy restrictions on foreign workers, essential for large construction projects in the city's labor-starved market. The regulations have posed serious challenges for Sands China's expansion projects.

Further, the suit accuses Mr. Adelson of insisting Mr. Jacobs withhold information from Sands China's board about "material financial events, corporate governance and corporate independence," preventing it from having a chance to rule on whether such information should be disclosed to the Hong Kong Stock Exchange.

The Hong Kong Stock Exchange and the Securities and Futures Commission declined to comment Friday.

Las Vegas Sands terminated Mr. Jacobs on July 23 and he was told he wouldn't receive severance, the suit said. About two weeks later, Sands sent Mr. Jacobs a letter saying his termination was because he exceeded his authority and failed to keep the companies' board of directors informed of important business decisions, according to the complaint.

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# EXHIBIT B

# EXHIBIT B

Las Vegas Sun

# Former Sands Macau executive alleges he was wrongly fired

**By Steve Green (contact)**

Friday, Oct. 22, 2010 | 12:06 a.m.

Steve Jacobs, former point man for Las Vegas Sands Corp. in the fast-growing Chinese gambling district of Macau, claims in a lawsuit he was fired over disputes, including his resistance to demands that he engage in improper and illegal activity.

In a complaint filed this week in Clark County District Court in Las Vegas, Jacobs says he was improperly terminated as CEO of Sands China Ltd. after conflicts erupted with Las Vegas Sands CEO and Chairman Sheldon Adelson.

Jacobs was hired to run Sands' Macau gambling and hotel operations in May 2009 at an annual salary of \$1.3 million plus bonuses under a three-year contract, the suit says.

The lawsuit says Jacobs received a positive performance review by Sands Chief Operating Officer Michael Leven for 2009 and that he had repaired relationships in Macau, where officials had stopped meeting with Adelson because of his "rude and obstreperous behavior."

But the lawsuit says that in July, Jacobs was terminated and "escorted off the property by two members of security in public view of many company employees, resort guests and casino patrons" and was escorted to the border to leave Macau.

Some of the conflicts with Adelson were over issues such as demands that Jacobs use improper "leverage" in working with Macau government officials and prominent Chinese banks on a Four Seasons Apartment project, the lawsuit said.

Jacobs also claims Adelson ordered him to arrange investigations of Macau government officials so that "negative information" could be used to thwart government regulations and initiatives adverse to the interests of Las Vegas Sands.

The suit said he was pressured to use a Macau attorney, despite concerns this could risk violations of the Foreign Corrupt Practices Act, and that he was told not to disclose "material information," such as cost overruns to the Sands China Board of Directors.

The suit also claims Jacobs disagreed with Adelson's desire to aggressively grow the Macau junket business because of its low margins, credit risks and investigations alleging connections between Las Vegas Sands, triad organized crime groups and the junket business.

Jacobs says in the lawsuit that while Las Vegas Sands said he was fired for cause, including exceeding his authority and failing to keep the board of directors informed, these reasons were "manufactured" and "pretextual."

Because Las Vegas Sands claims he was fired "for cause," Jacobs says, he's been deprived of the right to exercise stock options he had been awarded as well as at least one year of severance pay.



The lawsuit alleges breach of contract, tortuous discharge in violation of public policy and other counts and seeks unspecified compensatory and punitive damages.

The tortuous discharge count alleges: "Certain of the improper and illegal demands made upon Jacobs by Adelson would have required Jacobs to engage in conduct that he, in good faith, believed was illegal."

Las Vegas Sands typically doesn't comment on lawsuits and hasn't yet responded to Jacobs' lawsuit, which was filed by Las Vegas attorneys Donald Campbell and J. Colby Williams of the law firm Campbell & Williams.

But Jacqueline Wu, a spokeswoman for Sands China, told Bloomberg, "We deny the allegations."

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## **Jacobs' litigation heats up Las Vegas Sands Corp. Macau**

Posted by **John L. Smith**

Sunday, Feb. 13, 2011 at 09:58 AM

**Correction, 2/22/11** - In a column and an online blog item, columnist John L. Smith, while writing about documents filed in a lawsuit against Las Vegas Sands Corp. by a former company executive, mistakenly stated that cash was couriered between the company's Las Vegas and Macau operations. Court documents do not say cash was shipped, and the company says no cash was ever transferred.

While attorneys for former Las Vegas Sands Corp. Macau president Steve Jacobs and the powerful gaming giant continue to skirmish over jurisdiction in court filings, facts and allegations are emerging in documents that are bound to keep Nevada's Gaming Control Board intrigued.

Jacobs was hired as a consultant for LVSC in March 2009. He was appointed president of Sands Macau operations that May and signed paperwork "memorializing the terms of his employment with LVSC in August 2009," according to the plaintiff's motion in opposition of Sands China Ltd.'s motion to dismiss for lack of personal jurisdiction filed Feb. 9 in District Court. Jacobs was then awarded the title "President and Chief Executive Officer of SCL."

A trial judge will decide the jurisdictional issues in the case, and so far reporters seem more interested in the potentially embarrassing email of Sands executives about company founder Sheldon Adelson, which I found pretty uninteresting.

But other issues are popping up like brushfire for Las Vegas Sands Corp. Among them, according to Jacobs' affidavit:

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

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

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

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

The Jacobs litigation is also revealing the massive cash courier service quietly provided by SCL and LVSC. Some \$68 million in player cash, according to the company's own documents, has been flown from Asia to Las Vegas.

Writes Jacobs, "Upon information and belief, these funds total tens of millions of dollars and may then (be) used for a variety of purposes, including as cash advances for customers to spend when they arrive in Nevada, to re-pay past debts incurred at LVSC's Las Vegas properties, or for the benefit of authorized persons other than the transferee."

"Authorized persons other than the transferee?"

Casino customers with heavy cash must fill out the appropriate federal tax documentation or risk running afoul of this country's money laundering statutes. The state also has strict guidelines every casino is well schooled in.

Executives using gaming licensee jets to bring millions from Macau or Singapore into the country would surely know the laws and follow them to the letter, wouldn't they?

Exhibit 9 in the submission of Jacobs' attorneys Donald Campbell and Colby Williams is a spicy exchange of letters from Campbell and Sands China Ltd. Attorney Patricia Glaser of the Los Angeles firm Glaser, Weil, Fink, Jacobs, Howard & Shapiro.

Glaser wrote a letter dated Nov. 23, 2010 demanding the immediate return of reports authored by Steve Vickers of International Risk Ltd.

Who is Steve Vickers?

He's the chairman of FTI-International Risk, a company he created in 2000 at a time Macau was completing its transition from Portuguese to Chinese control.

According to his biography, "During the past 18 years, he has conducted numerous sensitive business intelligence projects, major financial investigations, international asset searches and risk management assessments. He has also led a number of crisis management teams faced with financial or other significant threats to multi-national corporations."

And when they talk of "crisis management" in that part of Asia, they do mean crisis.

To say the least, Vickers didn't gain his experience in an academic setting. He spent 18 years with the Royal Hong Kong Police Force and was the commander of its Criminal Intelligence Bureau before retiring with the rank of Senior Superintendent of Police.

What kept the CIB busy during Vickers' tenure?

Keeping tabs on the Chinese triads and other organized crime groups that held a grip on Hong Kong and Macau. In addition to taking down a long lineup of triad hoodlums, Vickers handled 28 kidnappings, some of them stretching from Hong Kong to halfway around the world.

Vickers' expertise would be invaluable in several areas, but most certainly he would be the man to see if you were a casino tycoon navigating through shark-infested waters in Macau.

In addition to the entertaining joust and parry between Glaser and Campbell, one important element emerges in their exchange: Glaser is extremely motivated to have returned from Jacobs the original and all copies of Vickers' background reports on "certain Macau government officials, as well as the two reports relating to the background investigations of Cheung Chi Tai and Heung Wah Kong."

The identities of the Macau government officials aren't revealed in the letters. And Vickers' investigative reports aren't included among the lengthy list of exhibits.

But it's not difficult to obtain the identity of Cheung Chi Tai and Heung Wah Kong. Thanks to a **groundbreaking article** by Matt Isaacs and Reuters reporters, Cheung not only has been identified as a leader of the Wo Hop To triad clan, but also as "the person in charge" of one of the VIP rooms at the Sands Macau. Cheung was convicted in Hong Kong in 2009 in a case involving a conspiracy to commit bodily harm and solicitation of murder. Men were ordered to break the arms and legs of a Sands Macau dealer suspected of participating in a multimillion-dollar casino-cheating scheme.

"The murder-for-hire case sheds light on the links between China's secretive triad societies and Macau's booming gambling industry," the article states. "It also raises potentially troubling questions about one of the world's largest gaming companies, Las Vegas Sands, which plans to open a \$5.5 billion Singapore casino resort in late April."

In Nevada, the Gaming Control Board has acknowledged that it attempts to monitor, when appropriate, the activity of Nevada casino licensees who do business there.

Documents showed Cheung received a share of the profits from the casino VIP room he controlled, according to Reuters.

Meanwhile, Heung Wah Keung (not Kong) ranks as one of the most colorful characters ever to be associated with the Chinese triads. He is better known as Charles Heung, international high roller and actor-turned-film producer and director. Heung plays for millions at Asian casinos and in Las Vegas, where his historical triad associations have never prevented him from being treated like a king on the Strip. He often arrives in Las Vegas in time for Chinese New Year festivities on the Strip.

The content of the Vickers investigative reports would surely provided compelling reading for Gaming Control Board investigators and curious columnists as well.

**Find this article at:**

[http://www.lvrj.com/blogs/smith/Jacobs\\_litigation\\_heats\\_up\\_Las\\_Vegas\\_Sands\\_Corp\\_Macau.html?ref=024](http://www.lvrj.com/blogs/smith/Jacobs_litigation_heats_up_Las_Vegas_Sands_Corp_Macau.html?ref=024)

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Friday April 29, 2011

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## Las Vegas Sands Faces SEC Subpoena, Justice Probe of Macau Unit

March 01, 2011, 8:50 PM EST

By Beth Jinks

March 2 (Bloomberg) -- Las Vegas Sands Corp. said it received a subpoena from the U.S. Securities and Exchange Commission to produce documents relating to its Macau operations' compliance with the Foreign Corrupt Practices Act.

The U.S. Justice Department is conducting a similar investigation, the Las Vegas-based company said yesterday in a regulatory filing. Las Vegas Sands, which owns casinos in Macau, China, said it "intends to cooperate with the investigations."

The FCPA prohibits U.S. companies and their intermediaries from making improper payments to foreign officials to win or retain business. Sands China Ltd., the Hong Kong-listed unit of Las Vegas Sands, said in July that Chief Executive Officer Steven Jacobs was fired by the board, without specifying reasons. Jacobs sued his former employer in October in a Nevada state court, alleging breach of contract.

"It is the company's belief that the subpoena emanated from allegations contained in the lawsuit filed by Steven C. Jacobs," Sands said in the filing, its annual report. The SEC subpoena arrived Feb. 9.

Jacobs's complaint alleges, among other things, that Las Vegas Sands demanded that he use improper "leverage" to win government concessions, that he retain a lawyer who was part of the Macau government and that he mislead the board.

### 'Fact-Finding'

"The authorities said they were making fact-finding inquiries," Ron Reese, a Las Vegas Sands spokesman, said in a phone interview. "We believe these inquiries came from the Jacobs' lawsuit allegations, which the company once again strongly denies."

Donald Campbell, Jacobs's lawyer, declined to comment beyond saying a hearing on defense motions to dismiss is scheduled for March 15.

Las Vegas Sands fell \$2.94, or 6.3 percent, to \$43.70 at 4:03 p.m. in New York Stock Exchange composite trading. Sands China rose 2.9 percent to HK\$19.04 in Hong Kong trading before the announcement.

The case is Jacobs v. Las Vegas Sands Corp., A-10-627691, Nevada District Court, Clark County (Las Vegas)

--Editors: Andrew Dunn, Charles Carter

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# SEC Investigating Las Vegas Sands

**YAHOO!** CONTRIBUTOR NETWORK

Todd Jacobs

Wed Mar 2, 1:23 pm ET

The U.S. Securities and Exchange Commission has opened an investigation of the Las Vegas Sands Corp. and they have revealed they have requested documents Tuesday. The SEC is looking for documents from the Las Vegas Sands Corp. that relate to their compliance to the Foreign Corrupt Practices Act.

The Las Vegas Sands Corp operates The Venetian in Las Vegas and several casinos overseas including Macau and Singapore. Sheldon Adelson is the CEO of Las Vegas Sands. He acquired the original Sands Hotel and Casino on the Las Vegas Strip in 1988 with a company known at the time as Interface. Adelson quickly revealed his plans to eventually build a new resort in 1989 but the Venetian did not open until May 3, 1999.

The complaint the SEC is investigating stems from a breach of contract lawsuit filing by former Las Vegas Sands Corp. employee Steven Jacobs according to a report by Bloomberg Businessweek.

Steven Jacobs worked for Las Vegas Sands Corp in March 2009 as a consultant and then became a full-time employee in August 2009. Jacobs brought home \$1.4 million in salary in 2009. This included \$870,400 in salary and a bonus of \$433,000. At the time of a Las Vegas Review Journal article detailing the salaries of Las Vegas Sands executives, Jacobs' total compensation was \$5.6 million for 2009.

Jacobs was terminated by Las Vegas Sands Corp. in July with no reason given publicly. Once Jacobs was terminated as the Chief Executive Officer he filed the lawsuit in Nevada District Court.

Jacobs' allegations in the impending lawsuit range from being ordered to exert improper leverage to win government concessions. Jacobs also alleges he was asked to hire a lawyer with ties to the Macau government and he says he was told to mislead the Las Vegas Sands Corp. board of directors.

In an Oct. 22, 2010 story by the Las Vegas Review Journal there were more details revealed regarding the lawsuit. Among the additional details: Steven Jacobs was given a positive review by Sands Chief Operating Officer Michael Levin and Jacobs was credited with repairing relationships with the Macau government after owner Sheldon Adelson was rude with Macau officials and they suspended their meetings with Las Vegas Sands Corp.

The Las Vegas Sands Corp. has denied any wrongdoing related to their Macau casinos. Ron Reese, a Las Vegas Sands spokesman told Bloomberg, "The authorities said they were making fact-finding inquiries. We believe these inquiries came from the Jacobs' lawsuit allegations, which the company once again strongly denies."

A counter suit against Jacobs was filed by the Las Vegas Sands Corp. in January in the Macau courts. The counter suit claimed extortion by Jacobs.

Las Vegas Sands stock dropped 2.94 to 43.70 as a result of the SEC investigation and the resulting black eye. The investigation overshadowed good news just released Monday regarding the Macau Sands property. The Macau property is the best performing casino overseas for the Las Vegas Sands Corp. Gaming revenues shot up 48 percent in February.

The SEC investigation outweighed the Las Vegas Sands Corp. extraordinary gains in China and the rumors of the impending SEC filings caused the stock to underperform since the initial lawsuit was filed in October.

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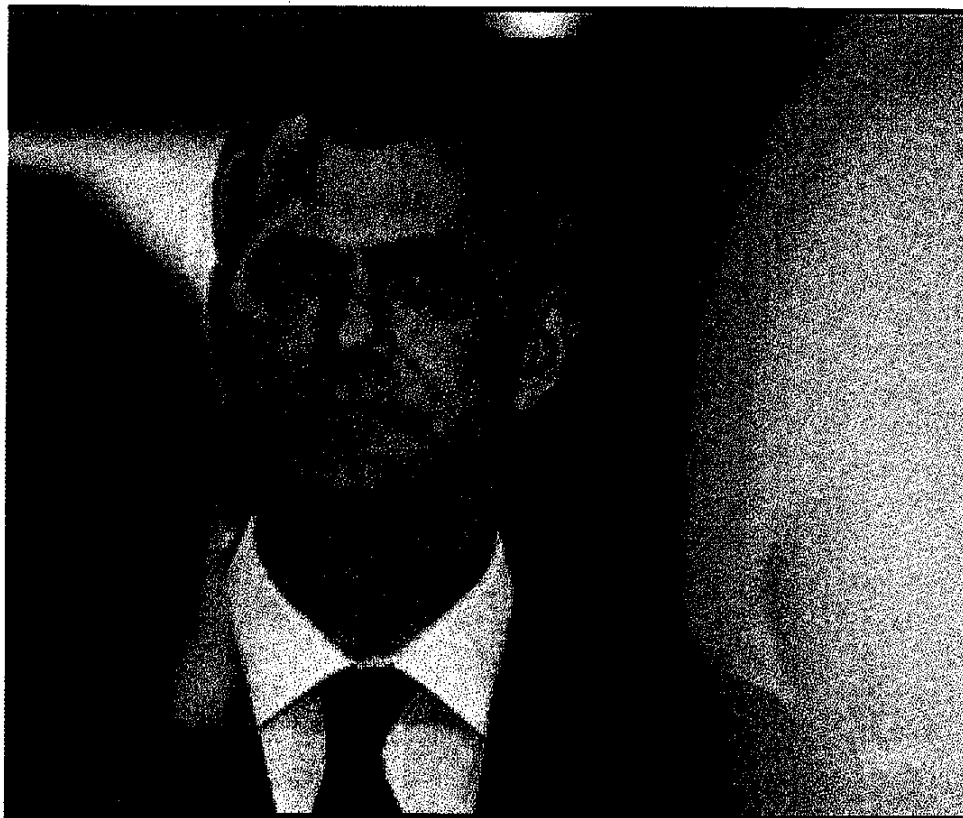
- Just Anti-Corruption - <http://www.mainjustice.com/justanticorruption> -

## Sands FCPA Probe Sheds Light on Macau's Murky Gaming Industry

opher M. Matthews On March 4, 2011 @ 4:37 pm In [Asia](#), [China](#), [Uncategorized](#) | [No Comments](#)

<sup>[1]</sup> Monday by Las Vegas Sands Corp. that it is under investigation for potential violations of a U.S. foreign bribe law, the murky, and often risky, nature of doing business in Macau's booming gaming industry.

When it was handed over to China in 1999, Macau has emerged as one of the largest gambling centers in the world. It has also become a money laundering center for Chinese government officials, with a reputation as a bastion of organized crime and a place where all kinds of things go on.



The U.S. government investigation into potential violations of the Foreign Corrupt Practices Act by Las Vegas Sands stems from allegations made by the former head of the company's Macau operations <sup>[3]</sup>, **Steve Jacobs**. In a private breach of confidentiality, Jacobs claimed that Las Vegas Sands chief executive **Sheldon Adelson** pushed him to illegally retain the services of an electrical engineer and use "improper leverage" against senior government officials in Macau, among other things.

Adelson, who is worth over \$9 billion, is a major Republican financier <sup>[4]</sup>. A spokesman for Las Vegas Sands told Reuters that Jacobs' allegations were "baseless and unfounded."

A March 2010 report <sup>[5]</sup> by Reuters and the Investigative Reporting Program at the University of California, Berkeley sheds light on the links between Macau's gambling industry and China's organized crime groups, known as triads. The report found that Las Vegas Sands' reliance on triad-affiliated so-called "junkies" to fill its Macau casinos with high rollers, the majority of whom are from mainland China.

At a 2009 ceremony at the Hong Kong Stock Exchange to mark the day of trading of Sands China Ltd.

In addition to bringing in VIP gamers, Macau's high-roller rooms and companies are often used by the casinos to collect gambling taxes which are not collectible under Chinese law. According to a report <sup>[6]</sup> by the U.S. State Department, the VIP rooms have become a haven for clients seeking anonymity and minimal official scrutiny. The industry provided an avenue for the laundering of illicit funds and served as a conduit for the unmonitored transfer of money.

**John Bergman** <sup>[7]</sup>, who heads Berkeley's Investigative Reporting Program, said that Nevada-headquartered casinos operate in a state that has laws prohibiting "unsuitable" associations that "discredit" the gaming industry. Macau has similar rules, but enforcement of them is not very strict.

"On the ground are that you need some kind of interaction with the junket companies to fill up the VIP rooms, which is a problem in a publicly traded country," Bergman said.

Macau's gaming industry brought in four times <sup>[8]</sup> more revenue than Las Vegas. Las Vegas Sands has three casinos in Macau, which account for more than half of the company's revenue over the past two years. Sands' major competitor, Wynn Resorts, also has a large presence in Macau.

Sands said in its annual report Monday that the U.S. Securities and Exchange Commission and the Department of Justice are investigating the company for potential violations of the FCPA, which prohibits bribes to foreign officials to obtain or retain business. The company also received a subpoena on Feb. 9 from the SEC and that it was advised the DOJ is also conducting an investigation.

The Wall Street Journal reported <sup>[10]</sup> that the Nevada Gaming Control Board has initiated an investigation into the same matter.



gislature recently passed an amendment making it a crime to bribe government officials who are not with the P  
ficials of international organizations. It remains unclear how vigorously the law will be enforced.

disclosing the FCPA investigation, Las Vegas Sands shares have lost <sup>[11]</sup> nearly 7 percent over the last three da  
decline of more than \$2.1 billion.

e state suit in Nevada in October, alleging that he was fired after refusing to carry out illegal demands made by  
nakes one FCPA-specific allegation, but some of his other accusations could also run afoul of the law:

's demands that (Sand China Ltd.) continue to use the legal services of Macau attorney **Leonel Alves** despite  
Alves' retention posed serious risks under the criminal provisions of the United States code commonly known a  
Corrupt Practices Act ("FCPA")."

s direction to Jacobs to have investigative reports prepared on Macau government officials as well as certain ju  
itatives reputed to have ties to Chinese gangs known as Triads;

s demands that Jacobs use improper "leverage" against senior government officials of Macau in order to obtain  
the Four Seasons Apartments in Macau;

s demands that Jacobs threaten to withhold (Sand China Ltd.) business from prominent Chinese banks unless t  
fluence with the newly-elected senior government officials of Macau in order to obtain Strata-Title for the Four  
nts and favorable treatment with regards to labor quotas and table limits."

s, **Donald Campbell** <sup>[12]</sup> and **Colby Williams** <sup>[13]</sup>, declined to comment. Campbell previously represented thre  
ds over payment for their assistance in helping the company acquire a Macau gaming license in 2002. The com  
million to settle a lawsuit in 2009.

**Mr.** <sup>[15]</sup>, a partner at Glaser, Weil, Fink, Jacobs, Howard, Avchen & Shapiro LLP who is representing the Las Vega  
o a company spokesman.

he situation in Macau is not dissimilar to the 1960s and 70's in Las Vegas, when the mafia held sway over the  
ases in Nevada to change the climate there, Bergman said.

hat the federal government and the Nevada regulators will have to confront at some point, is that doing busine  
ss is not the same as doing it in the United States or anywhere there is some kind of real regulatory oversight,'

'S:

ogs Round-Up: Raising the Titanic? <sup>[16]</sup>

Operator Targeted in Foreign Bribery Investigation <sup>[17]</sup>

Filing Sheds Light on Corruption Probe of Ghana Oil Adviser <sup>[18]</sup>

ducting Sweeping Probe of Arms Supply Industry Bribes <sup>[19]</sup>

Manufacturer Discloses FCPA Probe <sup>[20]</sup>

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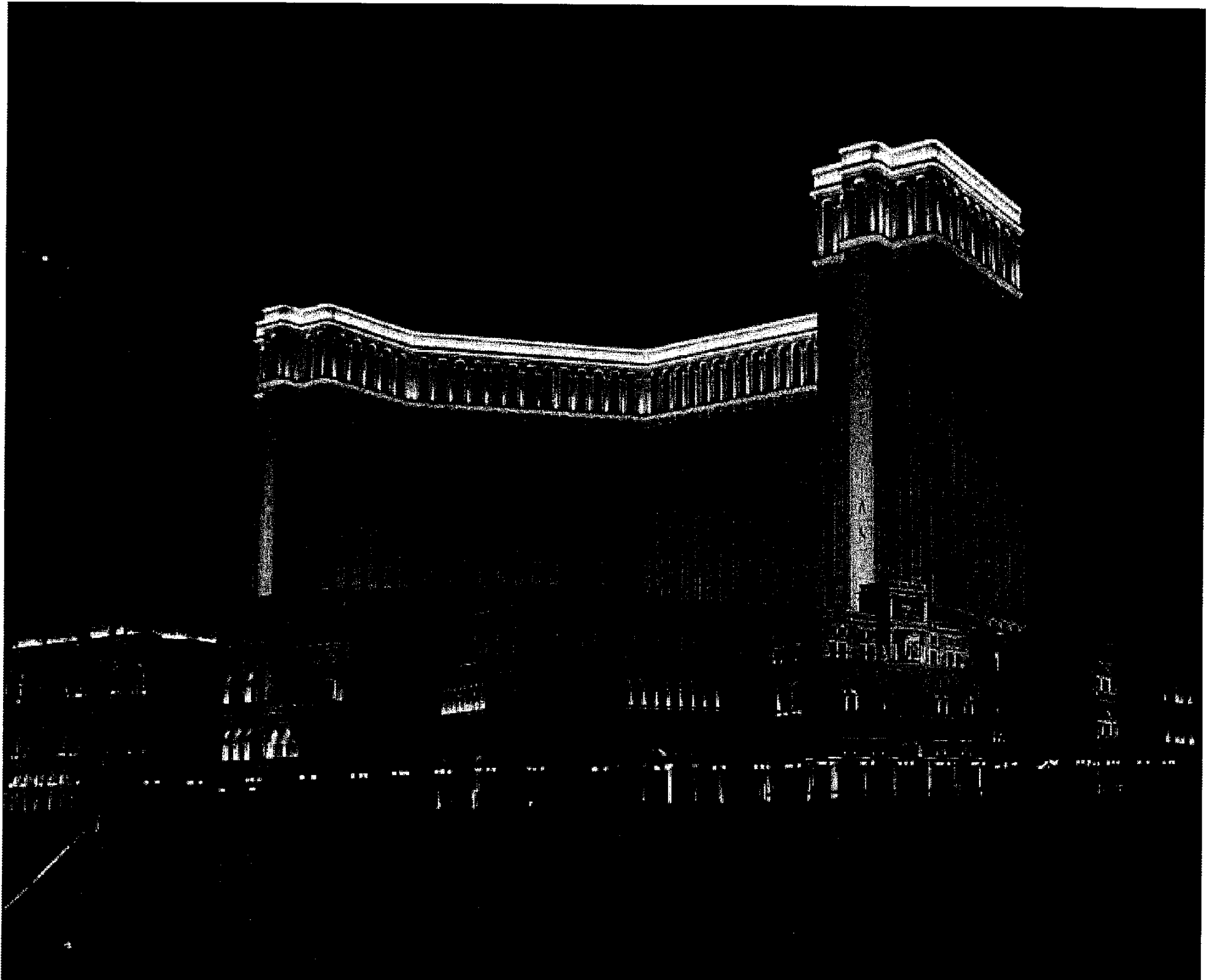
<http://www.mainjustice.com/justanticorruption/2011/03/04/las-vegas-sands-fcpa-probe-sheds-li>

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SPECIAL REPORT

# THE MACAU CONNECTION

Las Vegas Sands faces a criminal investigation into  
alleged unsavory business practices



REUTERS/BOBBY YIP

**BY MATT ISAACS**  
BERKELEY, CALIF, MARCH 10

**W**HEN STEVE JACOBS joined Las Vegas Sands in 2009, the company was sinking.

The Sands, which owns the Venetian resort, saw its stock price hit an alarming

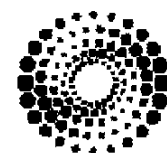
low, below \$2 a share, around the time Jacobs, a 47-year-old Harvard graduate with a boyish face and close-cropped silver hair, took a job heading Sands China, which runs the company's Macau operations.

But over the course of the next year, Sands mounted a remarkable recovery, thanks in large part to Jacobs' leadership in Macau, a

gambling boomtown bigger than Las Vegas and 16 time zones ahead of the Strip.

"There is no question as to Steve's performance," Sands COO Michael Leven told the company's board of directors in early 2010, according to court records. "The Titanic hit the iceberg. (Jacobs) arrived and not only saved the passengers, he saved the ship."

MARCH 2011



**REUTERS**

JA0168



**FIRED:** Sands China's then Chief Executive Steve Jacobs attends a media briefing in Hong Kong May 11, 2010. **REUTERS/BOBBY YIP**

The feel-good story, however, was not to last.

Within months, Jacobs was clashing with the company's CEO Sheldon Adelson over several issues, according to a legal complaint, including whether to hire more so-called junket operators who bring in high rollers. Jacobs says he objected, citing their corrupt reputation -- and last July, the company unexpectedly fired him effective immediately. Two security guards escorted him out of the casino without allowing him to gather his belongings, and then unceremoniously escorted him out of town, Jacobs alleges.

Today, Jacobs is firing on the ship he once saved. The former chief of Macau operations is suing Sands, and his description of unsavory business dealings in the lawsuit has touched off a criminal investigation.

Earlier this month, the company acknowledged it had received a subpoena for documents pertaining to possible violations of the U.S. Foreign Corrupt Practices Act, which bars U.S. corporations from bribing foreign officials. Not only are the Securities and Exchange Commission and Justice Department looking at Sands' actions, but the FBI has joined in.

A Reuters investigation in collaboration

## "CASINO OPERATORS REGRET THE GROWING POWER OF 'JUNKET' OPERATORS IN MAINLAND CHINA THAT ACCOUNT FOR MOST OF THE MACAU CASINOS' EARNINGS."

with the Investigative Reporting Program at U.C. Berkeley has learned that casino executives, U.S. diplomats and the Chinese government share the concerns raised by Jacobs about Macau's booming junkets industry, which they describe as rife with organized crime.

An extensive review of court records, interviews with high-level federal officials, and State Department cables obtained by WikiLeaks and released to Reuters through a third party, reveal widespread corruption in a region that resembles a Chinese version of the early years of Las Vegas.

Among the Reuters-IRP investigation's findings:

- \* The FBI has joined the federal investigation of Sands, prompted by the Jacobs allegations.

- \* Sands has an internal background report on an alleged criminal figure who had financial links to the company.

- \* Mainland China restricted visas to Macau based on its distress about the growing power of criminal groups, known as triads, in the region.

- \* U.S. casino executives have discussed with U.S. diplomats the pervasive influence of the triads in the junkets for years -- yet nothing has changed.

Sands says that it has denied all allegations in the Jacobs lawsuit from the outset and on January 21 a subsidiary filed documents seeking to initiate a criminal complaint against Jacobs. It declined to provide a copy of the complaint.

The SEC and Department of Justice inquiries appeared to be a result of Jacobs' allegations in his wrongful termination lawsuit, Sands said by email to Reuters.

"Neither the SEC nor the Department of Justice has accused the company of any wrongdoing. The subpoena is described as a fact-finding inquiry and does not mean the SEC has concluded anyone has broken the law," it said.

### BIGGER THAN LAS VEGAS

MACAU, A FORMER Portuguese colony located less than 40 miles (64 km) west of Hong Kong, for centuries served as a center for trading and piracy in the South China Sea, a base for vice, gold smuggling and

espionage.

But the brazen town on the tip of a Chinese peninsula has evolved into much more than a backwater den of iniquity.

Today Macau is a super-charged conduit for cash on the lip of the world's fast-growing major economy. The once worn casinos huddled near the ferry docks have gone upscale. And in the last ten years, it has become a major source of cash for America's largest casino operators.

Since 2001, when China opened its doors to U.S. casinos, annual revenues have increased more than tenfold to reach \$23.5 billion today -- more than two and half times the revenues of the Las Vegas Strip and Atlantic City combined. The enclave provides two-thirds of Sands' revenue worldwide, according to securities filings.

Behind the gaudy numbers, however, public records suggest the region is becoming a growing geopolitical concern.

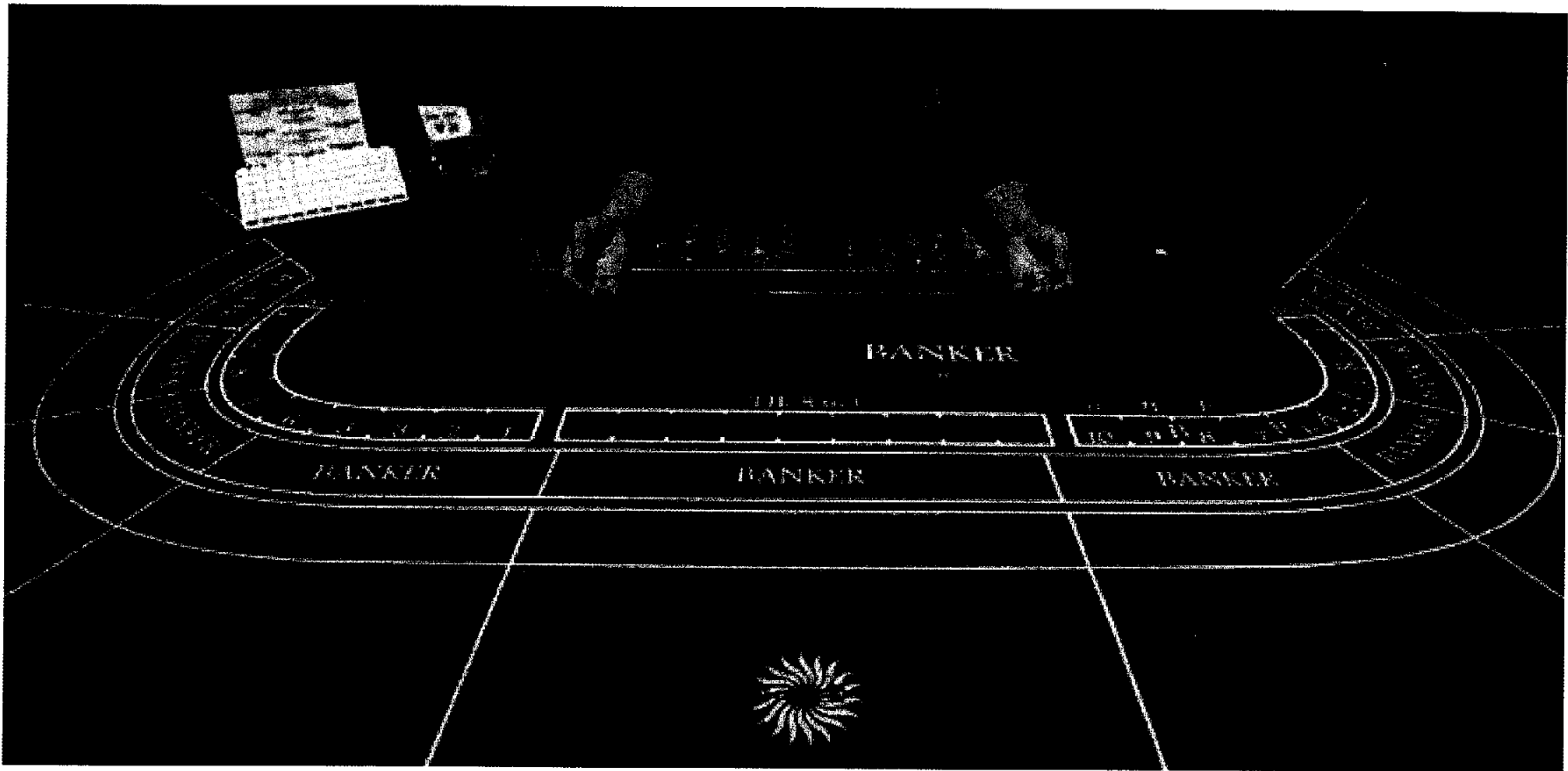
The U.S. Department of State, in its 2011 International Narcotics Control Strategy Report, said Macau is "vulnerable to becoming a hub for the laundering of criminal proceeds."

Beyond the casinos, the report says, the "close proximity border with PRC (China) and Macau's open economy, including lack of controls on cross border physical movement of cash, are factors that create a risk of money laundering and terrorist financing activities."

And the triads, according to diplomatic cables, are expanding. A trusted academic told diplomats that China had clamped down on Macau visas, "at least in part to stem the rise of organized crime in the mainland."

The source of this criminal expansion is Macau's unique junket system, which whisks VIPs into casinos, stakes them, and offers legally suspect services to avoid China's strict currency and debt collection laws. The junket companies -- widely linked to the triads, according to diplomatic cables -- generated an incredible 72 percent of the region's gaming revenues last year.

"Casino operators regret the growing power of 'junket' operators in mainland China that account for most of the Macau casinos' earnings," one U.S. consulate official reported in a cable. "They believe the operators are directly or indirectly involved



**HIGH STAKES:** A croupier prepares to greet visitors inside the VIP room of Sands Macao in Macau May 18, 2004. REUTERS/BOBBY YIP

with organized crime in Macau and the mainland."

The U.S. casinos operating in Macau are bound by Nevada laws that prohibit them from bringing "disrepute" upon the state. But they have immersed themselves in the junkets -- while privately, according to cables, confiding their concerns about the criminality of the industry to diplomats.

Another cable quoted a senior U.S. executive saying the growth of the triads was leading to expanding corruption in China. Provincial officials were providing "sweetheart" land sales, business licenses, and government contracts to junket operators, in exchange for bank deposits or cash sums paid to the officials upon arrival in Macau.

#### SANDS' COMBATIVE STYLE

NO U.S. CASINO has more aggressively pursued the Macau dream than Las Vegas Sands.

Sands was the first U.S. casino to plant roots in Macau in 2004, and has since grown into the largest American company in the region, dwarfing the operations of competitors like Wynn Resorts and MGM Resorts International.

Sands raised the stakes for the entire territory. From a swath of reclaimed land, it created a new gambling resort called the "Cotai Strip," an Eastern rendition of Las Vegas with plans for shopping, restaurants and fancy hotels. The Chinese government

## BLOG

Find more Reuters special reports at our blog The Deep End here:

<http://link.reuters.com/heq72q>

planners wanted a diverse assortment of properties, and Sands has delivered, building the Venetian Arena, the Grand Canal Shoppes and the Four Seasons apartments.

But where Las Vegas rivals went in softly, working with local businesses and regulators, Jacobs' suit and diplomatic cables suggest Sands wasn't there to make friends.

One diplomat in a cable referred to the casino's "combative" style. Others describe how Sands executives have gone over the heads of Macau politicians to lobby ranking members of China's politburo, much to the chagrin of the locals.

Jacobs says in court filings that one of his primary tasks involved repairing "strained relationships with local and national government officials in Macau who would no longer meet with Adelson due to his rude and obstreperous behavior."

Adelson, Jacobs charged, instructed him to secretly investigate senior Macau government officials. "Any negative information could be used to exert 'leverage' in order to thwart government regulations/initiatives," the lawsuit claims.

Jacobs in his suit also notes that he was repeatedly threatened with termination if he "objected to and/or refused to carry out Adelson's illegal demands."

In particular, Adelson insisted Jacobs hire a local lawmaker named Leonel Alves, he says in his lawsuit. For more than a year, Alves, a public official in a position to help the corporation, was also listed as its counsel -- a potential conflict of interest central to the U.S. federal bribery investigation.

A Sands senior executive acknowledged a potential conflict in an interview with the Macau Daily Times last fall. "When we deal with an individual that is a government official, we have to follow the rules of the United States," said Chief Operating Officer Leven. "So we are working our way through that."

Jacobs, meanwhile, says Adelson was pushing to "aggressively grow the junket business." In his lawsuit, he says that he himself objected to expanding the VIP segment, citing low profit margins and "given recent investigations by Reuters and others alleging (Sands') involvement with Chinese organized crime groups" connected to the industry.

Now, the FBI has joined the probe into Sands and is exploring the full range of Jacobs' allegations, "getting into all of it," a source familiar with the probe said.

Leven, the COO, told the Macau Daily Times last week that there were some "mentions"

in the federal subpoena about "triads and things like that," adding vaguely, "but we think that's cover."

### RETURN OR DESTROY DOCUMENTS

ACCORDING TO THE JACOBS suit, Sands has already done its own poking around within Macau's criminal underworld. The casino commissioned background checks on local officials as well as two alleged criminals.

Sands has given at least one report to Nevada, a casino regulatory source said, but it has gone out of its way to stop the reports from reaching the public eye.

Last year, Reuters published a report on a man named Cheung Chi-tai, described in court testimony as the mastermind behind a plot to murder a dealer suspected of cheating.

At trial a witness identified Cheung as a leader of the Wo Hop To -- one of the largest triads in Hong Kong.

Cheung was also, according to witness testimony, "the person in charge" of a VIP room at the Sands Macao, and Hong Kong stock exchange filings showed him to be a "substantial shareholder" in a junket company with ties to the cloistered room.

The allegations emerged in a routine trial, barely noted beyond the crime pages of Hong Kong newspapers. Yet the revelations were

historic: this was one of the first documented examples of an alleged criminal figure financially linked to a U.S.-based, publicly traded casino.

The article led to an ongoing Nevada investigation. The company then commissioned its own private background report on Cheung, said a person involved in the Sands effort who requested anonymity.

The company also ordered a report, according to documents in the Jacobs case, on another figure who was identified as a member of a triad in a 1992 U.S. Senate Subcommittee probe. Charles Heung was described in a Subcommittee chart of organized crime as an officer of the Sun Yee On triad.

In a 2007 public hearing, the former chair of the Nevada Gaming Control Board, Randy Sayre, also said he had seen three public documents identifying Heung as "a high-ranking member of the triads," according to a transcript.

*"ALL OF THE JUNKET  
OPERATORS ARE  
DIRECTLY OR  
INDIRECTLY INVOLVED  
WITH THE TRIADS."*

Heung has repeatedly denied any participation in organized crime.

The Sands background reports on Cheung and Heung are the subject of a series of letters in the Jacobs case. Documents show the former executive still holds copies of at least one of the reports based on the investigations commissioned by the casino.

Sands' displeasure is reflected in its legal team's demand for the "immediate" return of the internal inquiries.

"All copies," the attorneys insisted, should "be returned to us or destroyed."

### COMMON KNOWLEDGE

NEVADA SPENT DECADES cleansing itself of criminal elements. By the 1980s, as casinos largely assumed corporate control, gambling was widely considered one of the most heavily regulated industries in the United States. Nevada's oversight became the gold standard.

And from the moment Sands landed in Macau, the industry and state regulators insisted the same rules that apply at home apply there. Casinos can lose their licenses if they consort with the wrong characters.

Nevada has no office in Macau and largely depends on local oversight, which casinos executives quoted in cables describe as lax.

Diplomats relay widespread concern about Macau's police and gambling regulator.

The Macau police force is "afraid of triad groups," a diplomat quoted the academic who was a trusted source as saying. Organized crime leaders in Macau "know the identity of each police force member and where they live," the diplomat continued.

Macau's Gaming Inspection and Coordination Bureau, which goes by DICJ for its Portuguese acronym, barely enforces its own rules, according to accounts in the cables.

Sands executives approached diplomats with particular frustration about the agency's oversight. "They alleged that junket operators are routinely licensed after cursory DICJ investigations," a diplomat wrote in a cable, "while the DICJ does not enforce its own reporting requirements."

A senior executive at MGM told the consulate that "there are some good people at DICJ, but if they're not directed to take enforcement action by Macau's political leadership, they won't."

One Macau casino executive, quoted in a U.S. State Department cable, reported that "all of the junket operators are directly or indirectly involved with the triads."

## GAMBLING REVENUES

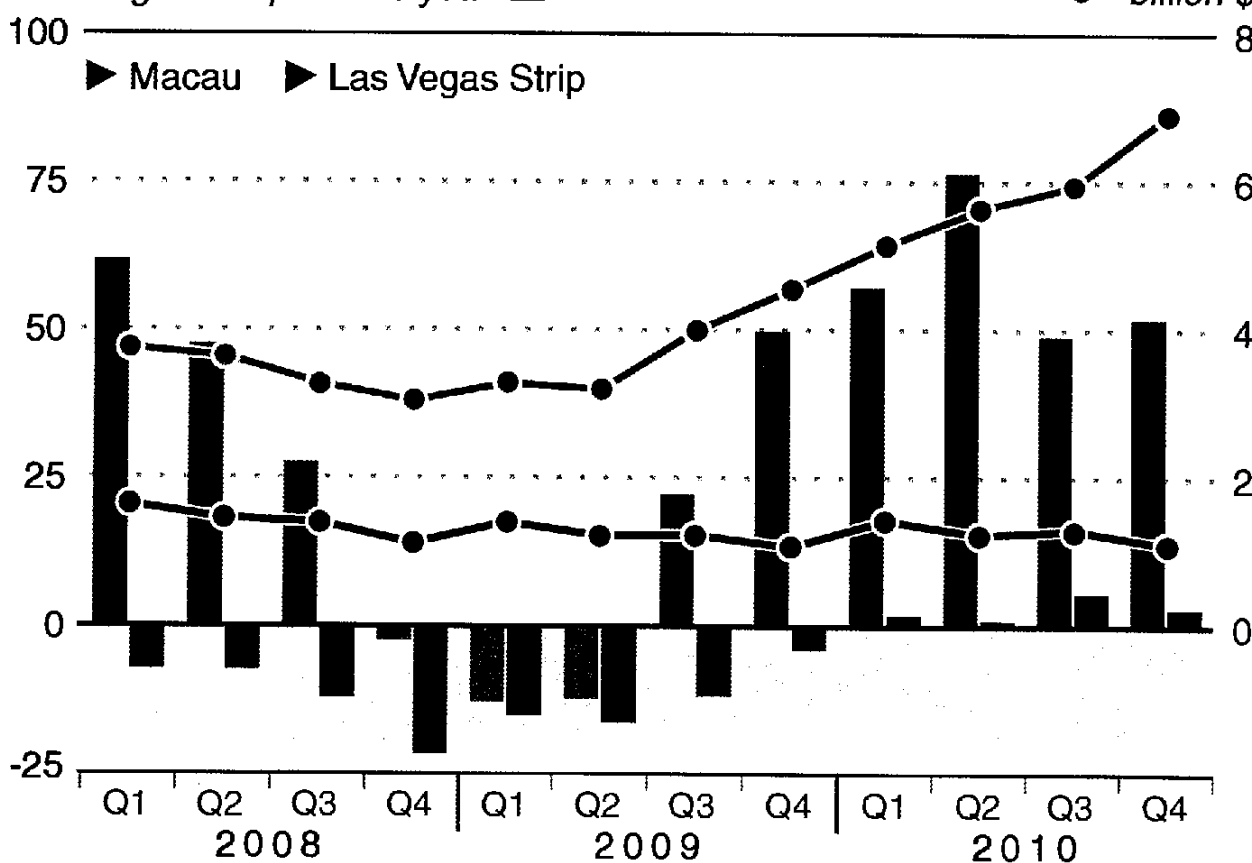
### Macau versus Las Vegas Strip

% change from previous year ■

► Macau ► Las Vegas Strip

1 dollar = 8.0237 mop

—●— billion \$



Source: Macau's Statistics and Census Service, Nevada Gaming Commission

REUTERS

Other cables show U.S. diplomats and casino operators routinely discuss corruption in the Chinese enclave.

Another diplomat divulged that "private sector leaders have noted many loopholes that enable junket operators -- and the casino concessionaires themselves -- to enter legal gray zones with little fear of investigation."

Then there is Manuel Joaquim das Neves, the long-standing head of DICJ, who was remarkably candid when discussing the junkets industry with diplomats. During a conversation with a U.S. official about the worldwide economic downturn, he implicitly linked the triads to Macau's gaming sector, saying that "triads' revenues will probably decline in 2009 along with Macau's gaming earnings."

Neves acknowledged some wiggle room in his agency's licensing, which judges candidates primarily on their criminal history. "If you make hard rules in the beginning, no one applies," a cable quotes him telling U.S. diplomats. "So we forgive small crimes in an applicant's background."

Neves told Reuters "there's no logic" to any assertion that his agency is falling short of its duties. "The majority accept that we are doing a good job in Macau," he said.

"I cannot say that in Macau we don't have triads, but things are under control," he added.

#### CHINA'S CONCERNS

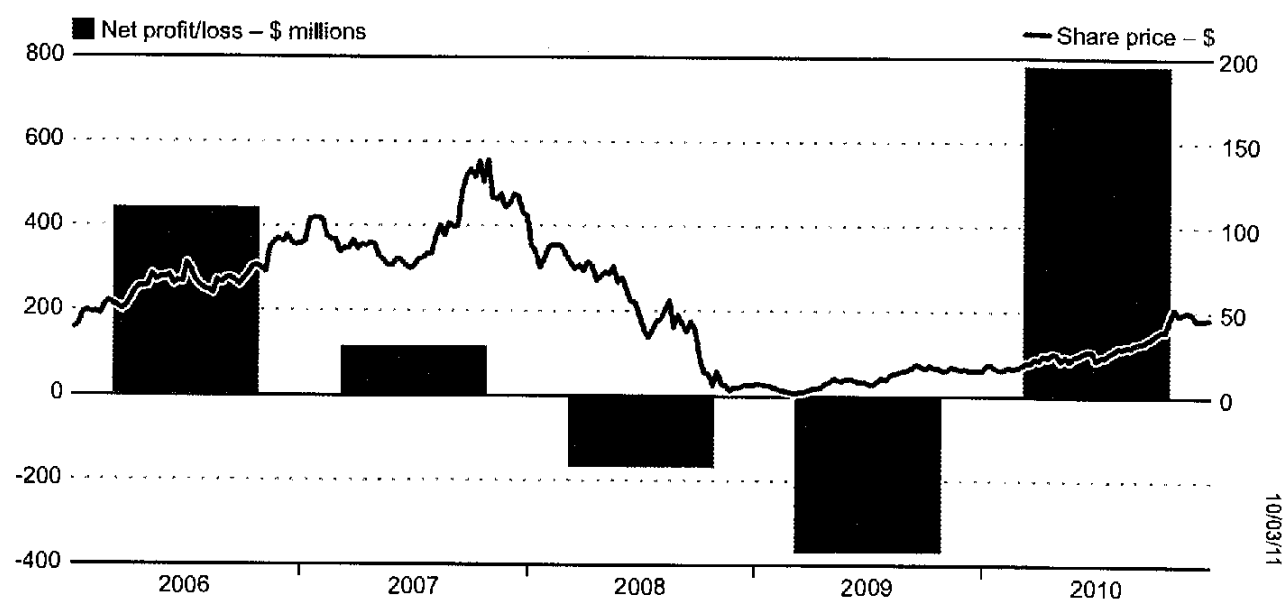
THE SCALE of the corruption in Macau has drawn fire from the most powerful and important critic of all -- the mainland China government. And China's ire already has been felt once as the government choked off the supply of gamblers to Macau.

Criminality within the VIP segment made China "very concerned," one U.S. diplomat revealed in a cable. In late 2008, according to a missive, it changed the rules of the game, cutting the number of visas from mainland China to Macau in a move that was disastrous for U.S. operators, including Sands.

"The fact that mainland gamblers account for the majority of funds flowing into Macau appears increasingly undesirable to Beijing," says one post. "The perception is widespread that, with the implicit assistance of the big 'junket' operators, some of these mainlanders are betting with embezzled state money or proceeds from official corruption, and substantial portions of these funds are flowing on to organized crimes groups in mainland China, if not Macau itself."

## Las Vegas Sands

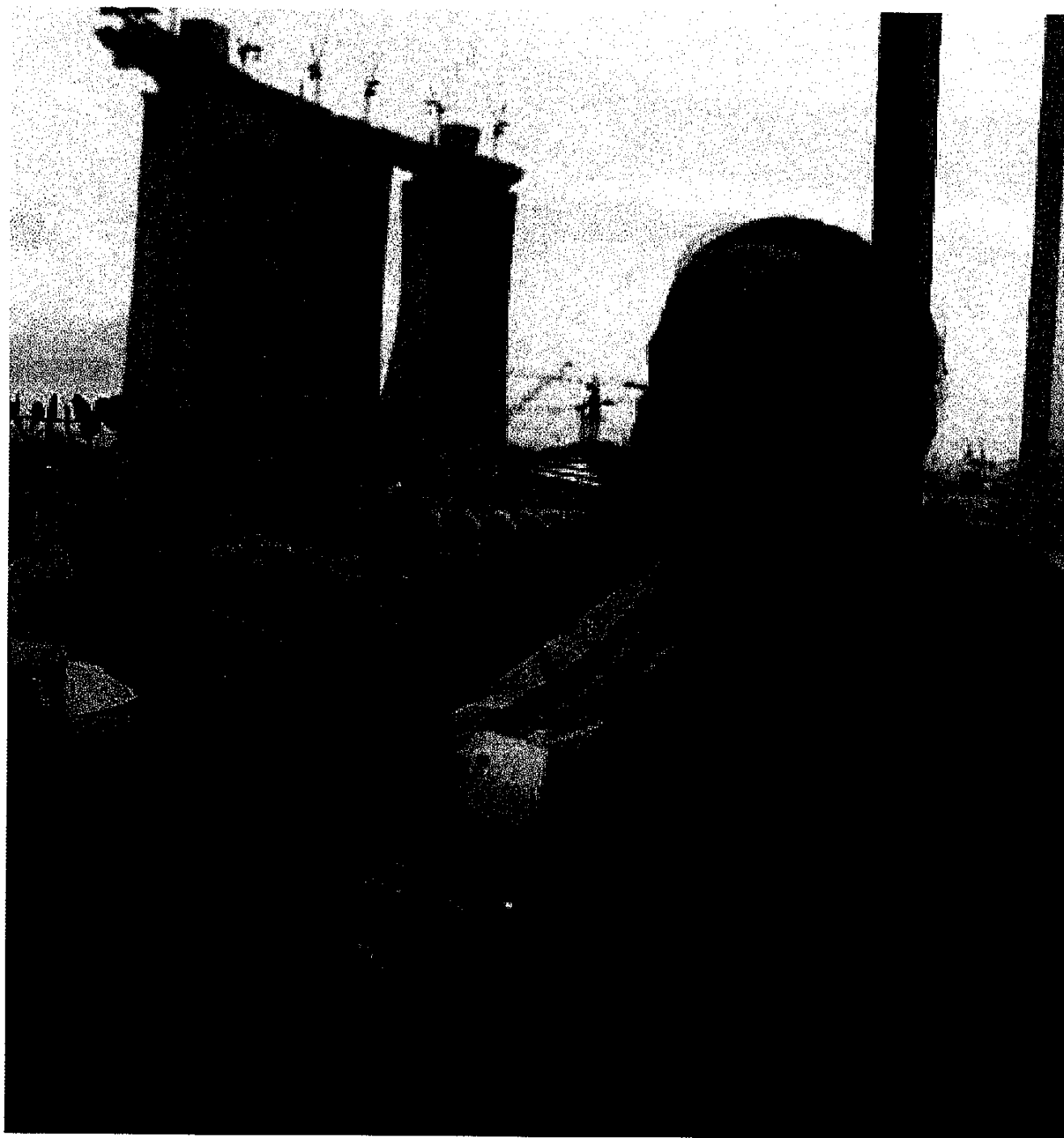
U.S. casino operator Las Vegas Sands has seen share price and profit swing wildly in the last few years as it made an aggressive, costly expansion into the Chinese gambling haven of Macau.



Source: Company reports, Thomson Reuters

Reuters graphic/Stephen Culp

REUTERS



**SANDS CHIEF:** Las Vegas Sands Chief Executive Officer Sheldon Adelson speaks during a media briefing in Singapore December 21, 2009. **REUTERS/VIVEK PRAKASH**

## SO MUCH POWER

EARLY LAST JUNE, at G2E Asia, a conference for casino industry insiders, the Venetian Macao hosted a session to discuss "The Future of VIP."

On stage, beneath a massive, glittering chandelier, sat three men: a former executive from Sands Macao, an academic, and Sean Monaghan, a junket analyst, who proclaimed: "These guys are huge, they're growing, and they hold so much power."

Monaghan was articulating what had already begun to be well understood by the U.S. diplomatic corps. By plunging millions of dollars into the development of the VIP sector, casinos had, in essence created a monster.

Jacobs, quoted in a cable, spoke to this point when he told a diplomat that "the junket operators maintain significant economic and political influence in Macau."

"The government and all the concessionaires rely heavily on the junket operators for the bulk of their revenue streams," says another cable. "They won't make any big moves against the junkets."

Another missive points out that as Macau derives over half of its revenues from the VIP market, it has "proven itself either incapable or unwilling" to rein in the companies.

Toward the end of the session, an emissary from the U.S. consulate rose to make a comment. "I find it remarkable," he said, "that we're talking here about junkets, yet not a single representative from the industry

sits before us."

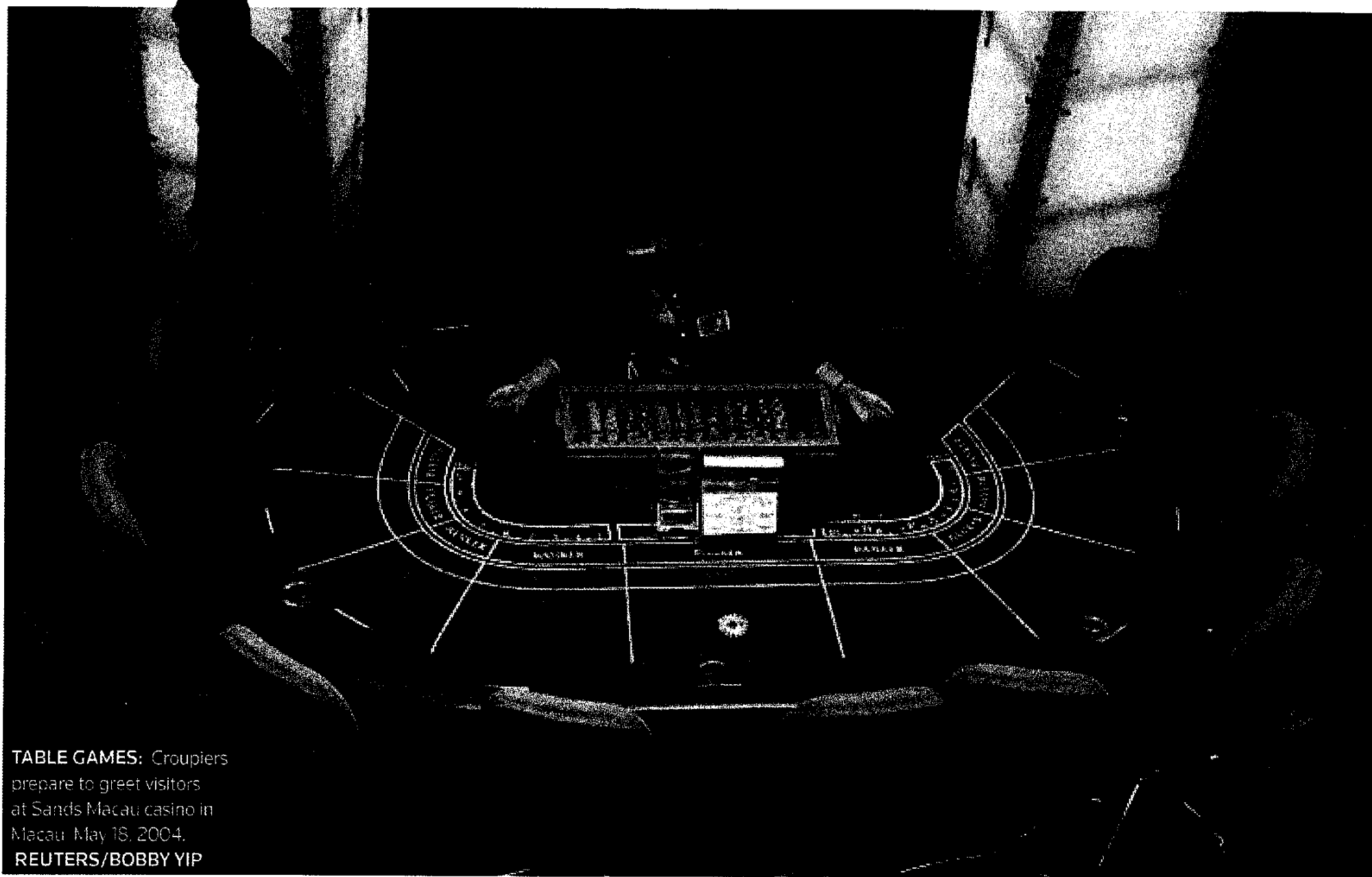
A murmur circulated through the crowd.

The gentleman had identified the 800-pound gorilla -- who was not in the room.

Jacobs had grown wary of the dangers of this gorilla, he said in his complaint. His private objection to expanding the junket business was one of the final battles he fought with his boss. Soon enough, their differences would reach the point of no return.

Now Jacobs is shouting his concerns for all the world to hear, and federal authorities in Washington DC appear to be paying heed.

(Additional reporting by Peter Henderson; Editing by Peter Henderson, Lowell Bergman, Jim Impoco and Claudia Parsons)



**TABLE GAMES:** Croupiers prepare to greet visitors at Sands Macao casino in Macau May 18, 2004. REUTERS/BOBBY YIP

**COVER PHOTO:** The Venetian Macao casino resort of Las Vegas Sands is seen lit up in the evening in Macau June 2, 2009. REUTERS/BOBBY YIP

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## Special Report: The Macau Connection

By Matt Isaacs



updated 3/10/2011 11:41:08 PM ET

BERKELEY, Calif.— When Steve Jacobs joined Las Vegas Sands in 2009, the company was sinking.

The Sands, which owns the Venetian resort, saw its stock price hit an alarming low, below \$2 a share, around the time Jacobs, a 47-year-old Harvard graduate with a boyish face and close-cropped silver hair, took a job heading Sands China, which runs the company's Macau operations.

But over the course of the next year, Sands mounted a remarkable recovery, thanks in large part to Jacobs' leadership in Macau, a gambling boomtown bigger than Las Vegas and 16 time zones ahead of the Strip.

"There is no question as to Steve's performance," Sands COO Michael Leven told the company's board of directors in early 2010, according to court records. "The Titanic hit the iceberg. (Jacobs) arrived and not only saved the passengers, he saved the ship."

The feel-good story, however, was not to last.

Within months, Jacobs was clashing with the

company's CEO Sheldon Adelson over several issues, according to a legal complaint, including whether to hire more so-called junket operators who bring in high rollers. Jacobs says he objected, citing their corrupt reputation -- and last July, the company unexpectedly fired him effective immediately. Two security guards escorted him out of the casino without allowing him to gather his belongings, and then unceremoniously escorted him out of town, Jacobs alleges.

Today, Jacobs is firing on the ship he once saved. The former chief of Macau operations is suing Sands, and his description of unsavory business dealings in the lawsuit has touched off a criminal investigation.

Earlier this month, the company acknowledged

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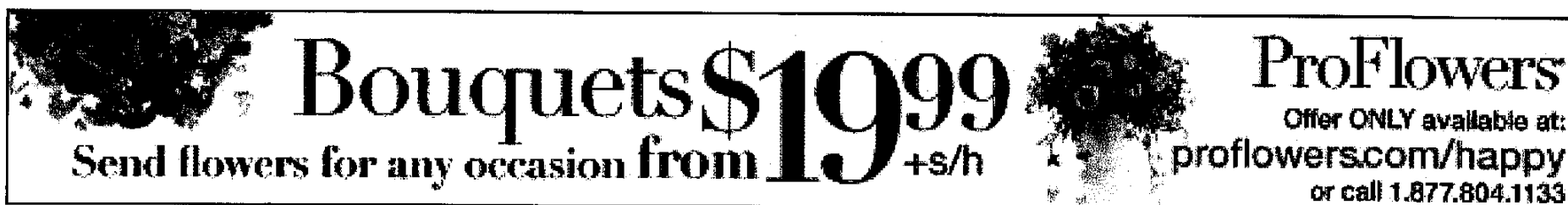
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it had received a subpoena for documents pertaining to possible violations of the U.S. Foreign Corrupt Practices Act, which bars U.S. corporations from bribing foreign officials. Not only are the Securities and Exchange Commission and Justice Department looking at Sands' actions, but the FBI has joined in.

A Reuters investigation in collaboration with the Investigative Reporting Program at U.C. Berkeley has learned that casino executives, U.S. diplomats and the Chinese government share the concerns raised by Jacobs about Macau's booming junkets industry, which they describe as rife with organized crime.

An extensive review of court records, interviews with high-level federal officials, and State Department cables obtained by WikiLeaks and released to Reuters through a third party, reveal widespread corruption in a region that resembles a Chinese version of the early years of Las Vegas.

Among the Reuters-IRP investigation's findings:

\* The FBI has joined the federal investigation of Sands, prompted by the Jacobs allegations.

\* Sands has an internal background report on an alleged criminal figure who had financial links to the company.

\* Mainland China restricted visas to Macau based on its distress about the growing power of criminal groups, known as triads, in the region.

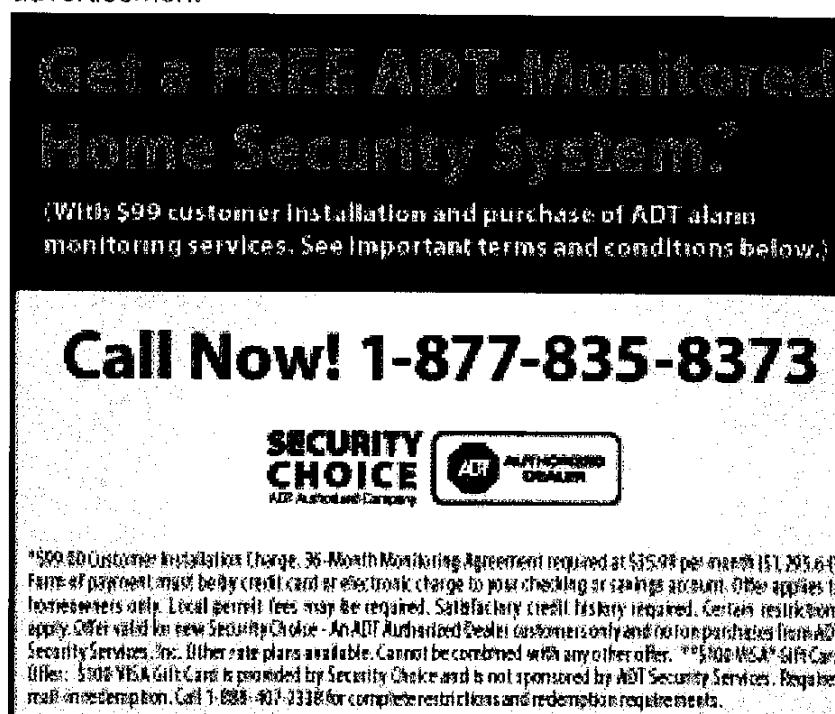
\* U.S. casino executives have discussed with U.S. diplomats the pervasive influence of the triads in the junkets for years -- yet nothing has changed.

Sands says that it has denied all allegations in the Jacobs lawsuit from the outset and on January 21 a subsidiary filed documents seeking to initiate a criminal complaint against Jacobs. It declined to provide a copy of the complaint.

The SEC and Department of Justice inquiries appeared to be a result of Jacobs' allegations in his wrongful termination lawsuit, Sands said by email to Reuters.

"Neither the SEC nor the Department of Justice has accused the company of any wrongdoing. The subpoena is described as a fact-finding inquiry and does not mean the SEC has concluded anyone has broken the law," it said.

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## BIGGER THAN LAS VEGAS

Macau, a former Portuguese colony located less than 40 miles west of Hong Kong, for centuries served as a center for trading and piracy in the South China Sea, a base for vice, gold smuggling and espionage.

But the brazen town on the tip of a Chinese peninsula has evolved into much more than a backwater den of iniquity.

Today Macau is a super-charged conduit for cash on the lip of the world's fast-growing major economy. The once worn casinos huddled near the ferry docks have gone upscale. And in the last ten years, it has become a major source of cash for America's largest casino operators.

Since 2001, when China opened its doors to U. S. casinos, annual revenues have increased more than tenfold to reach \$23.5 billion today -- more than two and half times the revenues of the Las Vegas Strip and Atlantic City combined. The enclave provides two-thirds of Sands' revenue worldwide, according to securities filings.

Behind the gaudy numbers, however, public records suggest the region is becoming a growing geopolitical concern.

The U.S. Department of State, in its 2011 International Narcotics Control Strategy Report, said Macau is "vulnerable to becoming a hub for the laundering of criminal proceeds."

Beyond the casinos, the report says, the "close proximity border with PRC (China) and Macau's open economy, including lack of controls on cross border physical movement of cash, are factors that create a risk of money laundering and terrorist financing activities."

And the triads, according to diplomatic cables, are expanding. A trusted academic told diplomats that China had clamped down on Macau visas, "at least in part to stem the rise of organized crime in the mainland."

The source of this criminal expansion is Macau's unique junket system, which whisks VIPs into casinos, stakes them, and offers legally suspect services to avoid China's strict currency and debt collection laws. The junket companies -- widely linked to the triads, according to diplomatic cables -- generated an incredible 72 percent of the region's gaming revenues last year.

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"Casino operators regret the growing power of 'junket' operators in mainland China that account for most of the Macau casinos' earnings," one U.S. consulate official reported in a cable. "They believe the operators are directly or indirectly involved with organized crime in Macau and the mainland."

The U.S. casinos operating in Macau are bound by Nevada laws that prohibit them from bringing "disrepute" upon the state. But they have immersed themselves in the junkets -- while privately, according to cables, confiding their concerns about the criminality of the industry to diplomats.

Another cable quoted a senior U.S. executive saying the growth of the triads was leading to expanding corruption in China. Provincial officials were providing "sweetheart" land sales, business licenses, and government contracts to junket operators, in exchange for bank deposits or cash sums paid to the officials upon arrival in Macau.

### SANDS' COMBATIVE STYLE

No U.S. casino has more aggressively pursued the Macau dream than Las Vegas Sands.

Sands was the first U.S. casino to plant roots in Macau in 2004, and has since grown into the largest American company in the region, dwarfing the operations of competitors like Wynn Resorts and MGM Resorts International.

Sands raised the stakes for the entire territory. From a swath of reclaimed land, it created a

new gambling resort called the "Cotai Strip," an Eastern rendition of Las Vegas with plans for shopping, restaurants and fancy hotels. The Chinese government planners wanted a diverse assortment of properties, and Sands has delivered, building the Venetian Arena, the Grand Canal Shoppes and the Four Seasons apartments.

But where Las Vegas rivals went in softly, working with local businesses and regulators, Jacobs' suit and diplomatic cables suggest Sands wasn't there to make friends.

One diplomat in a cable referred to the casino's "combative" style. Others describe how Sands executives have gone over the heads of Macau politicians to lobby ranking members of China's politburo, much to the chagrin of the locals.

Jacobs says in court filings that one of his primary tasks involved repairing "strained

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According to the Jacobs suit, Sands has already done its own poking around within Macau's criminal underworld. The casino commissioned background checks on local officials as well as two alleged criminals.

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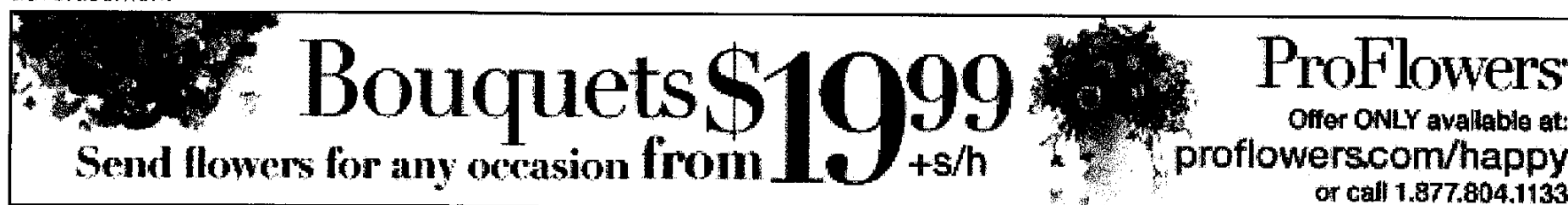
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Sands has given at least one report to Nevada, a casino regulatory source said, but it has gone out of its way to stop the reports from reaching the public eye.

Last year, Reuters published a report on a man named Cheung Chi-tai, described in court testimony as the mastermind behind a plot to murder a dealer suspected of cheating.

At trial a witness identified Cheung as a leader of the Wo Hop To -- one of the largest triads in Hong Kong.

Cheung was also, according to witness testimony, "the person in charge" of a VIP room at the Sands Macao, and Hong Kong stock exchange filings showed him to be a "substantial shareholder" in a junket company with ties to the cloistered room.

The allegations emerged in a routine trial, barely noted beyond the crime pages of Hong Kong newspapers. Yet the revelations were historic: this was one of the first documented examples of an alleged criminal figure financially linked to a U.S.-based, publicly traded casino.

The article led to an ongoing Nevada investigation. The company then commissioned its own private background report on Cheung, said a person involved in the Sands effort who requested anonymity.

The company also ordered a report, according to documents in the Jacobs case, on another figure who was identified as a member of a

triad in a 1992 U.S. Senate Subcommittee probe. Charles Heung was described in a Subcommittee chart of organized crime as an officer of the Sun Yee On triad.

In a 2007 public hearing, the former chair of the Nevada Gaming Control Board, Randy Sayre, also said he had seen three public documents identifying Heung as "a high-ranking member of the triads," according to a transcript.

Heung has repeatedly denied any participation in organized crime.

The Sands background reports on Cheung and Heung are the subject of a series of letters in the Jacobs case. Documents show the former executive still holds copies of at least one of the reports based on the investigations commissioned by the casino.

Sands' displeasure is reflected in its legal

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team's demand for the "immediate" return of the internal inquiries.

"All copies," the attorneys insisted, should "be returned to us or destroyed."

#### COMMON KNOWLEDGE

Nevada spent decades cleansing itself of criminal elements. By the 1980s, as casinos largely assumed corporate control, gambling was widely considered one of the most heavily regulated industries in the United States. Nevada's oversight became the gold standard.

And from the moment Sands landed in Macau, the industry and state regulators insisted the same rules that apply at home apply there. Casinos can lose their licenses if they consort with the wrong characters.

Nevada has no office in Macau and largely depends on local oversight, which casinos executives quoted in cables describe as lax.

Diplomats relay widespread concern about Macau's police and gambling regulator.

The Macau police force is "afraid of triad groups," a diplomat quoted the academic who was a trusted source as saying. Organized crime leaders in Macau "know the identity of each police force member and where they live," the diplomat continued.

Macau's Gaming Inspection and Coordination Bureau, which goes by DICJ for its Portuguese acronym, barely enforces its own rules,

according to accounts in the cables.

Sands executives approached diplomats with particular frustration about the agency's oversight. "They alleged that junket operators are routinely licensed after cursory DICJ investigations," a diplomat wrote in a cable, "while the DICJ does not enforce its own reporting requirements."

A senior executive at MGM told the consulate that "there are some good people at DICJ, but if they're not directed to take enforcement action by Macau's political leadership, they won't."

One Macau casino executive, quoted in a U.S. State Department cable, reported that "all of the junket operators are directly or indirectly involved with the triads."

Other cables show U.S. diplomats and casino operators routinely discuss corruption in the

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Chinese enclave.

Another diplomat divulged that "private sector leaders have noted many loopholes that enable junket operators -- and the casino concessionaires themselves -- to enter legal gray zones with little fear of investigation."

Then there is Manuel Joaquim das Neves, the long-standing head of DICJ, who was remarkably candid when discussing the junkets industry with diplomats. During a conversation with a U.S. official about the worldwide economic downturn, he implicitly linked the triads to Macau's gaming sector, saying that "triads' revenues will probably decline in 2009 along with Macau's gaming earnings."

Neves acknowledged some wiggle room in his agency's licensing, which judges candidates primarily on their criminal history. "If you make hard rules in the beginning, no one applies," a cable quotes him telling U.S. diplomats. "So we forgive small crimes in an applicant's background."

Neves told Reuters "there's no logic" to any assertion that his agency is falling short of its duties. "The majority accept that we are doing a good job in Macau," he said.

"I cannot say that in Macau we don't have triads, but things are under control," he added.

#### CHINA'S CONCERNS

The scale of the corruption in Macau has

drawn fire from the most powerful and important critic of all -- the mainland China government. And China's ire already has been felt once as the government choked off the supply of gamblers to Macau.

Criminality within the VIP segment made China "very concerned," one U.S. diplomat revealed in a cable. In late 2008, according to a missive, it changed the rules of the game, cutting the number of visas from mainland China to Macau in a move that was disastrous for U.S. operators, including Sands.

"The fact that mainland gamblers account for the majority of funds flowing into Macau appears increasingly undesirable to Beijing," says one post. "The perception is widespread that, with the implicit assistance of the big 'junket' operators, some of these mainlanders are betting with embezzled state money or proceeds from official corruption, and substantial portions of these funds are flowing

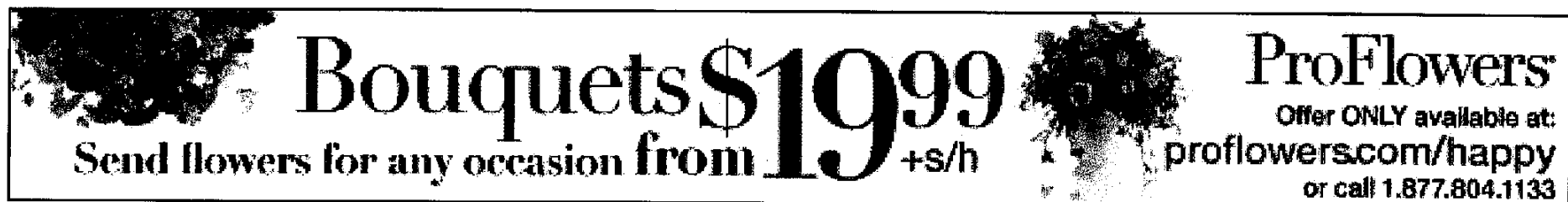
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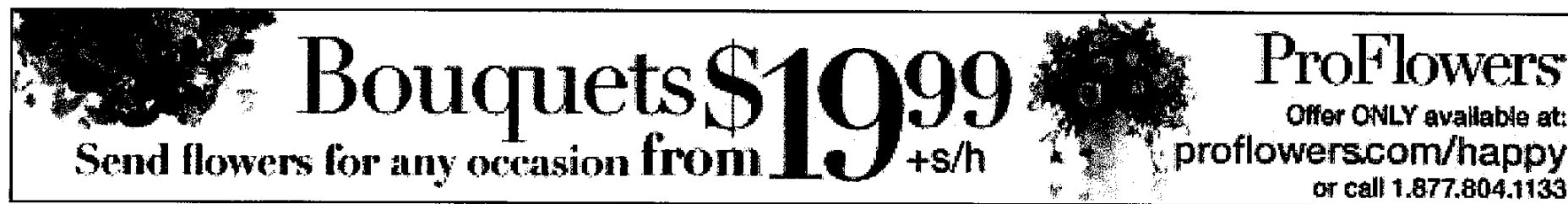
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Mar 2, 2011 ... The company is now controlled by billionaire CEO **Sheldon Adelson**. **Jacobs** was fired from the company and is suing Sands for breach of ...  
[www.streetinsider.com/...News/...Jacobs.../6336590.html](http://www.streetinsider.com/...News/...Jacobs.../6336590.html) - Cached

[Steve Jacobs | California Labor Law BLOG](#)

Mar 24, 2011 ... Steve **Jacobs** claimed the company wrongfully terminated his contract and that **Sheldon Adelson**, billionaire founder of Sands, made repeated ...  
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Mar 10, 2011 ... Within months, **Jacobs** was clashing with the company's CEO **Sheldon adelson** over several issues, according to a legal complaint, ...  
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# EXHIBIT D

# EXHIBIT D

Las Vegas Sun

# Judge: Fired exec's lawsuit against Las Vegas Sands can move forward

By **Steve Green (contact)**

Published Tuesday, March 15, 2011 | 12:46 p.m.

Updated Tuesday, March 15, 2011 | 4:43 p.m.

An attorney for Las Vegas Sands Corp. subsidiary Sands China Ltd. didn't convince a state judge Tuesday to dismiss a lawsuit filed against the company by Sands' fired Macau CEO Steven Jacobs -- but she may have scored some public relations points against Jacobs.

Jacobs, who was fired in July as CEO of Sands' big gaming operations in China at Sands China Ltd., fired back with a lawsuit in October claiming Sands Chairman and CEO Sheldon Adelson had ordered him to commit illegal acts and that Sands had failed to pay him promised stock options by wrongly asserting he was fired for cause.

After Sands filed court papers saying Jacobs was fired for working on unauthorized deals and violations of company policy, Jacobs' attorneys introduced into the court record information about how Sands China transfers "substantial sums of money" to Nevada.

The transfers are in behalf of Sands' customers for their use in Nevada, Jacobs' filing said. This is accomplished by courier or by an "Affiliate Transfer Advice" in which funds are transferred electronically to Las Vegas Sands or its affiliates in Las Vegas, Jacobs' filing said.

The money -- potentially amounting to \$68 million over a three-year period -- may be used for purposes including cash advances for customers to spend when they arrive in Nevada or to re-pay past debts incurred at Las Vegas Sands' Las Vegas properties, Jacobs' filing said.

Sands says Jacobs' lawsuit is responsible for Securities and Exchange Commission and Justice Department investigations of its compliance with the anti-bribery Foreign Corrupt Practices Act.

And the talk about Sands using a "courier" to bring customers' money into the United States fueled media speculation about potential money-laundering violations -- speculation addressed head-on Tuesday in court by Sands China attorney Patricia Glaser.

"This man lied to the court and said money was couriered," Glaser said, pointing at Jacobs.

She said funds transferred electronically between the company's casinos for the benefit of customers is regularly reported to authorities as required.

"This is a good, honorable business practice," Glaser said.

After the hearing in which Jacobs' lawsuit survived for further litigation, Jacobs' attorney, Donald Campbell, said he understood Sands had filed a criminal complaint against Jacobs in Macau and he characterized it as a defamation complaint.

"It didn't come as a shock. It seems punitive," said Campbell, who likened it to a defamation complaint Sands filed several years ago against the Las Vegas Sun and to a libel complaint that Adelson had filed against a Las Vegas Review-Journal columnist Campbell said he couldn't comment further on the criminal complaint.

Glaser, in seeking dismissal of the suit against Sands China, argued the Las Vegas court isn't the appropriate place to resolve the dispute since Sands China doesn't do business in Nevada and its stock options at issue in the lawsuit are subject to the rules of the Hong Kong Stock Exchange .

"If Mr. Jacobs has a beef with Sands China, it belongs in Hong Kong or Macau," she said.

J. Stephen Peek, attorney for Las Vegas Sands, focused his argument for dismissal of the case on the fact that Jacobs had not sued Sands' subsidiary Venetian Macau Ltd., which Peek said was Jacobs' employer.

Since it's not a party to the suit, Venetian Macau can't defend its firing of Jacobs, Peek said.

But Campbell noted Jacobs reported to Adelson and Sands President and Chief Operating Officer Michael Leven in Las Vegas and that Las Vegas Sands, in its SEC filings, had listed Jacobs as an executive officer.

He pointed out extensive contacts between Sands China and its parent, Las Vegas Sands, including shared services and the money-transfer system he said handled \$68 million over a three-year period.

Jacobs even brought a recent W-2 tax statement from Las Vegas Sands to court listing him as a Sands' employee, Campbell said.

Clark County District Court Judge Elizabeth Gonzales in the end refused to dismiss the suit, offering little comment on the dispute but noting she has jurisdiction based on the contacts between the parties in Nevada where Sands is based.

Last week, Gonzalez rejected an objection by Glaser and Peek to a request by PBS' "Frontline" that it be allowed to record, broadcast or take photos during Tuesday's hearing, and a few photo and video journalists filmed and took pictures during the hearing.

The Sands attorneys said in their objection that Jacobs and his attorneys have immunity from defamation claims over statements they may make in court even if they are "false and inflammatory allegations."

"Plaintiff's strategy appears to be to make incendiary allegations, for an in terrorem (threatening) effect, in an effort to exert undue pressure to resolve this case," their filing said. "Defendants have already suffered damages as a result of the negative press based solely on plaintiff's allegations in the complaint and oppositions."

But Gonzalez signed an order finding camera access "would not distract participants, impair the dignity of the court or otherwise materially interfere with the achievement of a fair trial or hearing."

Jacobs in his lawsuit accuses Las Vegas Sands and Sands China of breach of contract for failure to pay him stock options after he was fired; and accuses Las Vegas Sands of breach of the implied covenant of

good faith and fair dealing for the alleged "improper and illegal demands" made by Adelson, Adelson's "continual undermining of Jacobs' authority" and "the wrongful characterization of Jacobs' termination as being for 'cause.'"

Las Vegas Sands is also accused of tortious discharge in violation of public policy for allegedly firing Jacobs because he objected to and refused to participate in illegal conduct requested by Adelson and tried to perform as required by law and favored by public policy.

After Tuesday's hearing, Peek said he was disappointed in the ruling and he and Glaser said they would consider whether to appeal.

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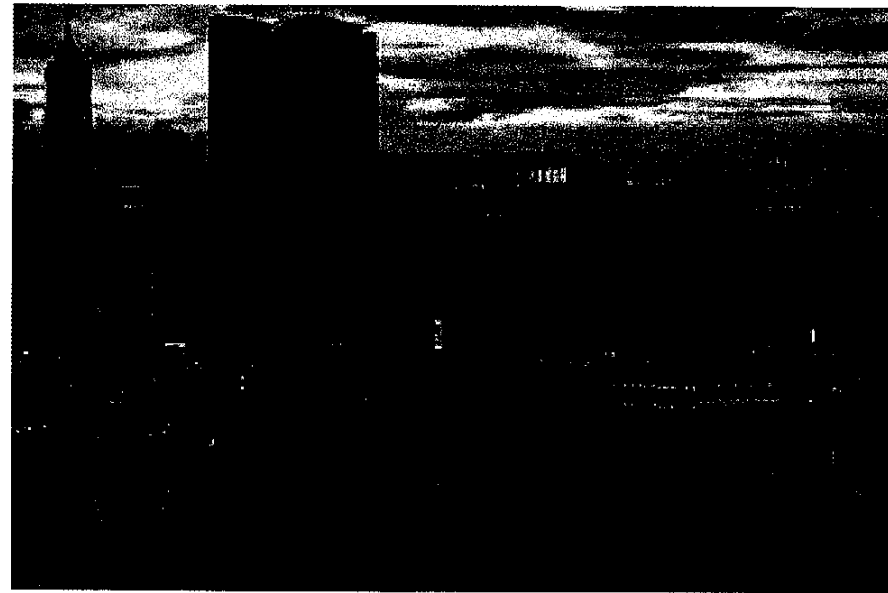
MARCH 16, 2011, 12:27 PM ET

## Judge Denies Motions To Dismiss In Las Vegas Sands Macau Suit

A district court judge on Tuesday denied Las Vegas Sands Corp.'s motion to dismiss an employment lawsuit filed by a former manager who says he was sacked in part for objecting to an alleged bribery scheme in Macau, The Wall Street Journal reports.

The ruling comes on the heels of the casino giant's disclosure earlier this month that it is under investigation by the Securities and Exchange Commission and the Justice Department for potential breaches of the Foreign Corrupt Practices Act, an anti-bribery statute.

Las Vegas Sands has said the investigation stemmed from the employment lawsuit filed by Steve Jacobs, the former chief of Las Vegas Sands' operations in Macau, who accused the company of wrongfully terminating his employment because he wouldn't comply with what he says were illegal demands from his boss, Las Vegas Sands Chief Executive Sheldon Adelson.



Reuters

The Sands Macao resort is seen at sunset in Macau.

After hearing testimony on separate motions from Las Vegas Sands and Macau subsidiary Sands China Ltd., which is also named in the lawsuit, Judge Elizabeth Gonzalez denied both. She found that Jacobs offered enough evidence of Las Vegas' influence over Macau operations to justify her jurisdiction over the case.

Sands China attorney Patricia Glaser said the company would decide soon whether to appeal the ruling. In the interim, the case will proceed toward settlement talks.

Jacobs alleged that Adelson wanted him to employ a Macau attorney, Leonel Alves, a member of Macau's Executive Committee, a government position. Jacobs says he objected over concerns that the move could violate the FCPA, which bars companies from paying bribes to foreign officials to secure business advantage.

Jacobs also alleged that Adelson wanted him to use "improper leverage" against unnamed senior officials of the Macau government to help the company secure rights to sell apartments at its Four Seasons property.

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

Jacobs told the Journal that he was "extremely pleased with the verdict" and that he looked "forward the next phase of the trial."



The Nevada Gaming Control Board has also opened an investigation into Jacobs' allegations. Las Vegas Sands, meanwhile, has said it filed a defamation complaint in Macau against Jacobs.

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## **Las Vegas Sands, Jacobs, and the \$68 million question**

*Posted by **John L. Smith***

*Wednesday, Mar. 16, 2011 at 06:44 PM*

Las Vegas Sands lost its motions to dismiss Tuesday in District Court in Steven Jacobs' wrongful termination lawsuit, but Sands China attorney Patricia Glaser worked hard to explain the company's practice of assisting casino customers with the movement of funds in their gambling accounts between Sands resorts in Macau and Las Vegas.

In court filings, former Sands Macau executive Jacobs outlined a series of transfers totaling approximately \$68 million. Glaser argued the practice is legal and ethical and certainly not something "couriered," as Jacobs suggested.

And, once again for the record, she said no cash was transferred.

"It's interesting to note Jacobs' attorney Don Campbell said the transfer practice made the company appear to be acting as a bank.

Banks in the U.S. operate under a strict set of federal laws. Banks, for instance, must make a good faith attempt to know the identity of their customers.

Campbell used the \$68 million question to help make his jurisdiction argument.

"This wasn't just one transfer," Campbell said. "These transfers were placed over a period of three years. By any definition, I believe that constitutes consistent, ongoing behavior of a significant nature here in Las Vegas, Nevada."

Glaser seized the moment to argue Jacobs lied in his court filings when he said the money was "couriered."

"There's nothing nefarious about it ..." Glaser said. "There's nothing improper about it. And most importantly, it doesn't provide a basis for jurisdiction. We don't run away from this. This doesn't establish jurisdiction, and the case law doesn't say it does."

The Glaser-Campbell skirmish provided an exclamation point in an otherwise pretty ordinary hearing, which was covered by several representatives of national media outlets.

LVSC attorney Stephen Peek had the unenviable task of attempting to argue Jacobs, all facts and a W-2 to the contrary, wasn't really a LVSC employee.

Sands attorneys promise to appeal.

### **Find this article at:**

[http://www.lvrj.com/blogs/smith/Las\\_Vegas\\_Sands\\_Jacobs\\_and\\_the\\_68\\_million\\_question.html?ref=974](http://www.lvrj.com/blogs/smith/Las_Vegas_Sands_Jacobs_and_the_68_million_question.html?ref=974)

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BUSINESS | MARCH 17, 2011, 3:47 P.M. ET

## Casino Boss Adelson Added as Defendant in Macau Suit

By KATE O'KEEFFE

Las Vegas Sands Corp.'s former head of Macau operations has added the company's chief executive, Sheldon Adelson, as a defendant in his wrongful termination suit, which has received widespread media attention since it was filed in the fall.

Steve Jacobs accuses the Las Vegas-based casino company and its Hong Kong-listed unit, Sands China Ltd., of wrongfully firing him because he wouldn't comply with what he says were illegal demands from his boss, Mr. Adelson.

The amended complaint, filed Wednesday in a Nevada court, also accuses Mr. Adelson and his companies of defamation after a statement from the casino boss was published in The Wall Street Journal following a ruling Tuesday rejecting Sands' request to dismiss the case.

Mr. Adelson, through his spokesman Ron Reese, sent an email to The Wall Street Journal with his first comments to the media about the case: "While I have largely stayed silent on the matter to this point, the recycling of his allegations must be addressed," he said. "We have a substantial list of reasons why Steve Jacobs was fired for cause and interestingly he has not refuted a single one of them. Instead, he has attempted to explain his termination by using outright lies and fabrications which seem to have their origins in delusion."

Mr. Jacobs is seeking damages for what he calls the "false and defamatory" comments which he says were sent to a third party with the "express intent of republication to a worldwide audience."

Earlier, Las Vegas Sands said its Macau unit had filed a defamation complaint in the Chinese territory against Mr. Jacobs.

Neither Mr. Jacobs nor his lawyer, Don Campbell, responded to requests for comment.

—Alexandra Berzon in Los Angeles contributed to this article.

**Write to** Kate O'Keeffe at [kathryn.okeeffe@dowjones.com](mailto:kathryn.okeeffe@dowjones.com)

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Las Vegas Sun

# Fired Las Vegas Sands executive hits Sheldon Adelson with defamation claim

By **Steve Green (contact)**

Thursday, March 17, 2011 | 10:09 a.m.

Steven Jacobs, Las Vegas Sands Corp.'s fired Macau executive, amended his lawsuit against the company Wednesday to include a defamation count against Las Vegas Sands and personally against Sands CEO and Chairman Sheldon Adelson.

In amending the lawsuit and adding Adelson as a defendant personally, attorneys for Jacobs said he was defamed by a statement Sands and Adelson provided to the Wall Street Journal on Tuesday after a Las Vegas judge rejected Sands' motions that Jacobs' lawsuit be dismissed.

Jacobs claims he was fired last year after refusing to carry out demands by Adelson that Jacobs believed to be illegal. Sands has said Jacobs was fired for working on unauthorized deals and violations of company policy.

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

Wednesday's amended lawsuit by Jacobs charges: "Adelson's comments to the effect that Jacobs was justifiably fired 'for cause' and Jacobs had resorted to 'outright lies and fabrications' in seeking legal redress constituted defamation per se."

The amended suit charged Adelson's comments were "false and defamatory" and "maliciously published by Adelson knowing their falsity and/or in reckless disregard of the truth."

The amended complaint charges Adelson's comments "intended to and did in fact harm Jacobs' reputation and good name in his trade, business, profession and customary corporate office" and "were of such a nature that significant economic damages must be presumed."

The new count seeks unspecified general and punitive damages against Adelson, Las Vegas Sands and Sands' subsidiary Sands China Ltd. for the defamation claim, charging Adelson's comments "were made without justification or legal excuse and were otherwise not privileged because they did not function as a necessary or useful step in the litigation process."

Jacobs is represented in the lawsuit by the Las Vegas law firm Campbell & Williams. Donald Campbell, one of his attorneys, is known as an aggressive litigator who as a former federal prosecutor specialized in white collar crime and organized crime

Asked about the new defamation claim, Ron Reese, Las Vegas Sands vice president for public relations, said Thursday: "Mr. Adelson's comments speak for themselves and no further explanation is necessary."

A mandatory and routine "Rule 16" conference is scheduled in the case for April 22. In these conferences, the court tries to reduce the cost of litigation, assist in resolution of disputes and, if they can't be resolved, assists in reducing the costs of discovery and trial.

Given that Sands has filed a criminal defamation complaint against Jacobs in China, that Jacobs is now suing Adelson personally and that Jacobs' lawsuit has prompted investigations of Sands' compliance with a U.S. anti-bribery law, it's questionable if the parties will be in a settling mood when they meet.

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# Former Sands executive adds slander claim in lawsuit

By Howard Stutz

LAS VEGAS REVIEW-JOURNAL

Posted: Mar. 18, 2011 | 2:02 a.m.

Updated: Mar. 18, 2011 | 10:37 a.m.

The former chief executive of Las Vegas Sands Corp.'s Macau subsidiary amended his wrongful termination lawsuit against the company Wednesday to include a defamation of character charge after the company's chairman told the Wall Street Journal the ex-employee was "using outright lies and fabrications" to explain his departure.

A day after a Clark County District Court judge said she wouldn't dismiss the lawsuit filed in October by Steven Jacobs against Las Vegas Sands and Sands China subsidiary, his attorney added the defamation charge and included company Chairman and CEO Sheldon Adelson as a defendant.

Jacobs oversaw the company's three-resort operations in Macau for much of 2009 until last summer, when he was fired.

Allegations raised in Jacobs' lawsuit have caused the Securities and Exchange Commission and the Department of Justice to open investigations of Las Vegas Sands for possible violations of the U.S. Foreign Corrupt Practices Act.

After Tuesday's hearing, Adelson, in his first public comments on the case, told the Wall Street Journal that he wanted to address "the recycling of his allegations."

In comments posted on the newspaper's website, Adelson said "We have a substantial list of reasons why Steve Jacobs was fired for cause, and interestingly, he has not refuted a single one of them. Instead, he has attempted to explain his termination by using outright lies and fabrications, which seem to have their origins in delusion."

In the amended complaint, Las Vegas attorney Donald Campbell wrote that "the offending comments made by Adelson" were false and defamatory, distributed worldwide, were malicious, and intended to harm Jacobs' reputation.

Sands spokesman Ron Reese said Adelson's comments "speak for themselves and no further explanation is necessary."

The legal battle has drawn the interest of Wall Street. Analysts are fearful the SEC and justice department investigations could weigh down the stock price of Las Vegas Sands on the New York Stock Exchange. Shares have declined about 25 percent in value since the investigations were revealed.

The company operates casinos in Las Vegas, Macau, Singapore, and Pennsylvania and is looking into other expansion opportunities.

Jacobs has alleged Adelson wanted him to use "improper leverage" against unnamed senior officials of the Macau government to help the company secure rights to sell apartments at its Four Seasons Macau.

He also said in court documents that Adelson wanted him to employ a Macau attorney who held a government position. Jacobs says he objected over concerns that the move could violate the U.S. Foreign Corrupt Practices Act, which bars companies from paying bribes to foreign officials to secure business advantage.

District Court Judge Elizabeth Gonzalez ruled Tuesday that Clark County was proper jurisdiction for the lawsuit and rejected a request to remove Sands China as a defendant.

Contact reporter Howard Stutz at [hstutz@reviewjournal.com](mailto:hstutz@reviewjournal.com) or 702-477-3871.

**Find this article at:**

<http://www.lvrj.com/business/former-sands-executive-adds-slander-claim-in-lawsuit-118226959.html>

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EXHIBIT E





# Las Vegas Sands Must Face Suit Over Firing, Judge Rules

By Jef Feeley - Mar 15, 2011 3:16 PM PT

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Las Vegas Sands Corp., the world's biggest casino operator by market value, must face a lawsuit by the former top executive of its Chinese unit over his firing, a Nevada judge ruled.

State court Judge Elizabeth Gonzalez in Las Vegas today rejected the company's request to dismiss the suit by Steven Jacobs. The former chief executive officer of Sands China Ltd. (1928) claims the company breached his employment contract. Lawyers for Las Vegas Sands argued the case should be heard in China, where the company operates casinos in Macau.

Las Vegas Sands "controlled Mr. Jacobs's employment in every manner," Don Campbell, a lawyer for Jacobs, told Gonzalez at a hearing today while arguing that the case should be heard in her court.

Jacobs contends in court filings that he was fired after clashing with billionaire Sheldon Adelson, the chairman and CEO of Las Vegas Sands. Jacobs claims the disputes centered on his resistance to alleged demands by Adelson to commit acts that might violate U.S. law, according to the filings.

Lawyers for the casino company countered in their own filings that Jacobs was dismissed for working on unauthorized deals and violating company policy.

Ron Reese, a spokesman for Las Vegas Sands, declined to comment today the judge's decision.

SEC Probe

Las Vegas Sands officials said earlier this month they received a subpoena from the U.S. Securities and Exchange Commission for documents from its Macau unit in connection a probe of compliance with the Foreign Corrupt Practices Act.

The U.S. Justice Department has launched a similar probe, Las Vegas Sands said in regulatory filings. The FCPA prohibits U.S. companies and their intermediaries from making improper payments to foreign officials to win or retain business.

Lawyers for the casino operator told Gonzalez that since Jacobs was an employee of a Chinese company set up to oversee Las Vegas Sands's Macau operation, the suit should be heard in China.

Jacobs's employment contract was negotiated with the Chinese company and the executives who signed it "are there in Macau," Stephen Peek, one of Las Vegas Sands's lawyers, said at the hearing.

'Forever Designated'

Jacobs's lawyers said in court filings that Las Vegas Sands controls the Chinese companies overseeing the Macau operations and all of those entities hold their board meetings in Las

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Vegas. The companies also share private jets and money is routinely transferred between the casino operations, according to the filings.

Adelson negotiated the terms of Jacobs's deal and his compensation was approved by a committee of Las Vegas Sands directors, Campbell told the judge. That meant Jacobs was "forever designated as an executive of Las Vegas Sands," the lawyer said.

The case is Jacobs v. Las Vegas Sands Corp. (LVS), A-10-627691, Nevada District Court, Clark County (Las Vegas)

To contact the reporter on this story: Jef Feeley in Wilmington, Delaware at [jfeeley@bloomberg.net](mailto:jfeeley@bloomberg.net)

To contact the editor responsible for this story: David E. Rovella at [drovella@bloomberg.net](mailto:drovella@bloomberg.net).

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## Las Vegas judge refuses to dismiss Sands lawsuit

*Associated Press - March 15, 2011 7:25 PM ET*

LAS VEGAS (AP) - A judge in Las Vegas has ruled she will move forward in hearing a lawsuit against Las Vegas Sands Corp. despite a jurisdictional challenge from the casino operator.

Clark County District Court Judge Elizabeth Gonzalez ruled Tuesday that the lawsuit from former Sands executive Steven Jacobs can go forward because Sands and Jacobs had substantial dealings in Nevada.

Sands has argued the suit should be heard in China because Jacobs was based there as CEO of Sands Macau. Jacobs has accused the company and billionaire CEO Sheldon Adelson of demanding he engage in illegal activity.

Sands has said Jacobs was fired for making unauthorized deals and violating company policy.

Information from: Las Vegas Sun, <http://www.lasvegassun.com>

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EXHIBIT F

***CERTIFIED FOR PUBLICATION***

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

DIGERATI HOLDINGS, LLC,

Cross-complainant and Appellant,

v.

YOUNG MONEY ENTERTAINMENT,  
LLC, et al.,

Cross-defendants and Appellants.

B218639

(Los Angeles County  
Super. Ct. No. EC049512)

APPEALS from an order of the Superior Court of Los Angeles County,  
Michael S. Mink, Judge. Affirmed.

Law Offices of Gary Freedman, Gary Freedman; Browne Woods George,  
Edward A. Woods, Peter W. Ross and Sonia Y. Lee for Cross-complainant and  
Appellant.

Lavelly & Singer, William J. Briggs II and Allison Hart Sievers for  
Cross-defendants and Appellants.

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Young Money Entertainment, LLC (Young Money), and Dwayne Michael Carter, Jr., sued Digerati Holdings, LLC (Digerati), and others for breach of contract and other counts relating to the production of a documentary film. Young Money and Carter allege that the defendants breached the contract by failing to honor Carter's final approval rights. Digerati filed a cross-complaint against Young Money and Carter, alleging that they failed to make Carter available for filming and interviews and wrongfully interfered with the sale and distribution of the film. Young Money and Carter filed a special motion to strike the cross-complaint under the anti-SLAPP statute (Code Civ. Proc., § 425.16).<sup>1</sup> The trial court denied the motion in part and granted it in part. Young Money and Carter appeal the denial of their special motion to strike as to their count for breach of contract, while Digerati appeals the granting of the motion as to the count for breach of the implied covenant of good faith and fair dealing.

The parties dispute whether the two counts arise from an act in furtherance of Young Money's and Carter's constitutional right of petition or free speech in connection with a public issue within the meaning of the anti-SLAPP statute and whether the litigation privilege applies. We conclude that the gravamen of the breach of contract count is Young Money's and Carter's alleged failure to comply with their express contractual obligations, that the count does not arise from protected activity, and that the trial court properly denied the special motion to strike as to that count. We also conclude that the count for breach of the implied covenant of good faith and fair dealing

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<sup>1</sup> All statutory references are to the Code of Civil Procedure unless stated otherwise.

is based primarily on other conduct constituting protected petitioning activity, that the litigation privilege applies, and that the trial court properly granted the special motion to strike as to that count. We therefore will affirm the order.

### ***FACTUAL AND PROCEDURAL BACKGROUND***

#### ***1. Factual Background***

Carter is a well-known entertainer who performs under the stage name Lil' Wayne. Young Money is a corporation founded by Carter. Digerati is an entertainment production company.

Young Money and Digerati entered into a written agreement for the production of a biographical documentary film about Carter. Young Money agreed that it would cause Carter to appear for formal interviews and be available for other filming “when and where required by [Digerati],” and that Digerati would be provided “non-exclusive but first-priority” access to Carter during the film production. Young Money also agreed to provide archival photographs and video footage for use in producing the film, and to make its best efforts to cause certain other individuals to appear for interviews. Young Money also agreed not to authorize the release of or allow Carter to participate in interviews for any feature-length documentary film similar in nature to the subject film.

Digerati agreed in paragraph 2(b) of the agreement that Young Money and Carter would have certain “final approval” rights:

“Subject to Company’s [Digerati’s] distribution agreement, as between Company, on the one hand, and you [Young Money] and DC [Carter], on the other

hand, DC shall have the right to inspect and/or approve the use of the DC Performance and/or the DC Materials, or any other results and proceeds of DC's services hereunder. Said approval shall not be unreasonably withheld and DC shall provide Company with written approval of the Scenes or specific written objections to the Scenes no later than 7 days (for DC's manager) and 3 days (for DC's attorney) following: (i) DC's or such applicable representative's review of the Scenes as they appear in the final cut of the Picture if DC or such applicable representative reviews the Scenes at a location designated by Company, or (ii) DC's or such applicable representative's receipt of a copy of the Scenes if Company agrees to provide DC with a copy of the Scenes for his review. Notwithstanding anything to the contrary set forth herein, DC shall have a sole right of final approval in connection with any scene(s) in the Picture that might depict or describe any of DC's actions or activities as criminal in nature or that might have any adverse affect on DC's pending criminal trials."

Another provision in the agreement stated that in the event of a breach by Digerati, the sole remedy available to Young Money and Carter was an action at law for damages, and that they could not obtain injunctive or other equitable relief.

Digerati produced a documentary film and screened a version of the film for Carter's personal manager, Cortez Bryant, in early 2008. According to Bryant, he objected to several scenes in the film and asked that they be removed, and Digerati agreed to remove the scenes but then failed to do so. According to Digerati, Bryant objected to only two scenes in the film, and Digerati removed those scenes as requested.



Digerati exhibited the film at the Sundance Film Festival in January 2009.

Young Money and Carter, through their attorney, protested and demanded that Digerati cease any further exhibition of the film. Digerati refused and stated that it intended to pursue a distribution deal and exhibit the film at the Cannes Film Festival to be held in May 2009. Young Money and Carter, through their attorney, sent a letter to MTV Networks and Viacom International, Inc., in March 2009, stating that they had formally objected to scenes in the film and had not given their final approval of the film pursuant to the agreement. The letter stated that the recipients could be liable for intentional interference with contractual relations if they proceeded to acquire rights to the film and that Young Money and Carter would seek to enjoin any effort to release or display the film.

## *2. Complaint and Denial of a Preliminary Injunction*

Young Money and Carter filed a complaint in March 2009 against Digerati and others. They allege that the defendants breached the agreement by failing to honor Carter's final approval rights. They allege counts for (1) breach of contract; (2) breach of the implied covenant of good faith and fair dealing; (3) unfair competition (Bus. & Prof. Code, § 17200 et seq.); (4) intentional misrepresentation; (5) constructive fraud; (6) invasion of privacy; and (7) injunctive relief.

Young Money and Carter applied ex parte for a temporary restraining order to prevent the defendants from exhibiting, distributing, licensing, selling, or otherwise exploiting the film, and requested an order to show cause regarding a preliminary injunction. They argued that public exhibition of the disputed film content could

prejudice Carter's defense in his pending criminal cases and irreparably harm him. They also argued that the anti-injunction provision was unconscionable and unenforceable. They argued further that, apart from unconscionability, the anti-injunction provision was inapplicable to a breach of Carter's final approval rights. The trial court denied the application in March 2009, and later denied a preliminary injunction. On appeal, we concluded that the anti-injunction provision was not unconscionable, that the provision precluded injunctive relief, and that the denial of a preliminary injunction therefore was proper. (*Young Money Entertainment, LLC v. Digerati Holdings, LLC* (Dec. 1, 2009, B215765) [nonpub. opn.] )

### 3. *Cross-complaint*

Digerati filed a cross-complaint against Young Money and Carter in April 2009, alleging that they breached their express obligations under the agreement by failing to make Carter available for formal interviews in connection with the film and that Digerati had to resort to recording interviews given to other media outlets in order to obtain interview footage for the film. Digerati also alleges that Young Money and Carter breached the agreement by failing to make other individuals available for interviews as expressly agreed and failing to provide video and photographic materials for use in the film. Digerati alleges that despite these alleged breaches by Young Money and Carter, Digerati "succeeded in producing a dynamic and important

documentary which received tremendous positive response at the Sundance Film Festival in January 2009.”<sup>2</sup>

Digerati also alleges that Young Money and Carter falsely claimed that the version of the film exhibited at the Sundance Film Festival contained unauthorized scenes and falsely asserted a right to object to any and all scenes in the film, rather than only those scenes that might appear to depict criminal activity or that might adversely affect Carter’s pending criminal trials. Digerati alleges further that after the Sundance Film Festival, Young Money and Carter “engage[ed] in a series of unreasonable, bad faith and illegal tactics to prevent the sale and distribution of the Picture.” Digerati alleges that Young Money and Carter demanded that Digerati cease any further screenings until all “ ‘objectionable’ ” scenes had been removed but refused to identify the particular scenes that they objected to, and that they sought to undermine the potential sale and distribution of the film by informing potential distributors that the film was unauthorized and could be subject to future litigation. Digerati alleges that the application for a temporary restraining order and preliminary injunction was frivolous and that Carter gave numerous interviews falsely accusing Digerati of deliberately producing a scandalous documentary. Digerati alleges that as a result, distributors terminated their discussions and negotiations with Digerati.

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<sup>2</sup> Digerati filed an amended cross-complaint in July 2009, after the filing of the special motion to strike. Because the special motion to strike was directed at the original cross-complaint, we must disregard the amended cross-complaint in conducting our review. (*Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1294.)

Following these allegations, Digerati alleges counts for (1) breach of contract, and (2) breach of the implied covenant of good faith and fair dealing. The first count incorporates by reference the prior allegations of the cross-complaint and also, in paragraph 37, repeats the allegations described above concerning breaches of express provisions of the agreement. The second count incorporates by reference the prior allegations of the cross-complaint and alleges that Young Money and Carter thereby breached the implied covenant of good faith and fair dealing.

4. *Special Motion to Strike*

Young Money and Carter filed a special motion to strike the cross-complaint in June 2009, arguing that their communications with Digerati and others concerning the dispute and their attempts to obtain an injunction were acts in furtherance of their constitutional right of petition or free speech, and that Digerati could not demonstrate a probability of prevailing on its claims against them. Young Money filed declarations by Carter, Bryant, and others describing events related to the dispute.

Digerati argued in opposition that its cross-complaint arose from Young Money's and Carter's failure to make Carter and others available for formal interviews and from other alleged breaches of the agreement, and that the cross-complaint did not arise from communications in connection with anticipated or actual litigation. Digerati also argued that it was likely to succeed on the merits of its claims because Young Money and Carter had breached the agreement and wrongfully interfered with Digerati's sale and distribution efforts. Digerati filed several declarations describing events related to the dispute.

After a hearing on the special motion to strike, the trial court granted the motion in part and denied it in part. The court stated in its order ruling on the motion that the gravamen of the count for breach of contract was set forth in paragraph 37 of the cross-complaint and that none of those alleged acts arose from protected activity. The court stated that the count for breach of the implied covenant of good faith and fair dealing, in contrast, was based on acts in furtherance of Young Money's and Carter's right of petition or free speech, including statements made in connection with anticipated or actual litigation. The court also stated that Digerati had failed to present admissible evidence to establish a probability of prevailing on the count for breach of the implied covenant.

Young Money and Carter timely appealed the order. Digerati also timely appealed the order.

### ***CONTENTIONS***

Young Money and Carter contend (1) the count for breach of contract is based on statements made in connection with anticipated or actual litigation and therefore arises from acts in furtherance of their constitutional right of petition or free speech; and (2) Digerati cannot establish a probability of prevailing on that count because the statements were protected by the litigation privilege (Civ. Code, § 47, subd. (b)).

Digerati contends (1) the count for breach of the implied covenant of good faith and fair dealing is based on Young Money's and Carter's wrongful assertion of a right of final approval as to all scenes in the film and their bad faith performance of the agreement, rather than their statements made to distributors, and therefore does not arise

from an act in furtherance of their constitutional right of petition or free speech; (2) the statements made to distributors were not made in anticipation of litigation between the parties to this action and therefore were not acts in furtherance of the constitutional right of petition or free speech; and (3) the statements made to distributors were not protected by the litigation privilege, and Digerati established a probability of prevailing on the count for breach of the implied covenant.

### ***DISCUSSION***

#### ***1. Special Motion to Strike***

A special motion to strike is a procedural remedy to dispose of lawsuits brought to chill the valid exercise of a party's constitutional right of petition or free speech.

(*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055-1056.) The purpose of the anti-SLAPP statute is to encourage participation in matters of public significance and prevent meritless litigation designed to chill the exercise of First Amendment rights. (§ 425.16, subd. (a).) The Legislature has declared that the statute must be "construed broadly" to that end. (*Ibid.*)

A cause of action is subject to a special motion to strike if the defendant shows that the cause of action arises from an act in furtherance of the defendant's constitutional right of petition or free speech in connection with a public issue and the plaintiff fails to demonstrate a probability of prevailing on the claim. (§ 425.16, subd. (b)(1); *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) On appeal, we independently review both of these determinations. (*Hall v. Time Warner, Inc.* (2007) 153 Cal.App.4th 1337, 1345-1346.)

An “ ‘act in furtherance of a person’s right of petition or free speech under the United States or California Constitution in connection with a public issue’ ” is defined by statute to include “(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.” (§ 425.16, subd. (e).) If the defendant shows that the cause of action arises from a statement described in clause (1) or (2) of section 425.16, subdivision (e), the defendant is not required to separately demonstrate that the statement was made in connection with a “public issue.” (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1113 (*Briggs*).)

A cause of action is one “arising from” protected activity within the meaning of section 425.16, subdivision (b)(1) only if the defendant’s act on which the cause of action is based was an act in furtherance of the defendant’s constitutional right of petition or free speech in connection with a public issue. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78.) In deciding whether the “arising from” requirement is satisfied, “the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.” (§ 425.16, subd. (b)(2).)

Whether the “arising from” requirement is satisfied depends on the “ ‘gravamen or principal thrust’ ” of the claim. (*Episcopal Church Cases* (2009) 45 Cal.4th 467, 477, quoting *Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal.App.4th 181, 193.)

A cause of action does not arise from protected activity for purposes of the anti-SLAPP statute if the protected activity is merely incidental to the cause of action. (*Martinez, supra*, at p. 188.)

A cause of action that arises from protected activity is subject to dismissal unless the plaintiff establishes a probability of prevailing on the claim, as we have stated.

A plaintiff establishes a probability of prevailing on the claim by showing that the complaint is legally sufficient and supported by a prima facie showing of facts that, if proved at trial, would support a judgment in the plaintiff’s favor. (*Taus v. Loftus* (2007) 40 Cal.4th 683, 713-714.) The court cannot weigh the evidence, but must determine as a matter of law whether the evidence is sufficient to support a judgment in the plaintiff’s favor. (*Ibid.*) The defendant can defeat the plaintiff’s evidentiary showing, however, by presenting evidence that establishes as a matter of law that the plaintiff cannot prevail. (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821.)

2. *The Trial Court Properly Denied the Special Motion to Strike as to the Breach of Contract Count*

Digerati alleges in its breach of contract count that Young Money and Carter breached the agreement by (1) failing to make Carter available for formal interviews; (2) “failing to make Lil Wayne available at anytime . . . in connection with the shooting of the Picture”; (3) failing to provide “ ‘first priority’ ” access to Carter; (4) failing to



provide video and photographic materials; (5) failing to make other individuals available for interviews; and (6) entering into agreements with other companies for the production of similar documentaries.<sup>3</sup> Digerati also incorporates by reference its prior allegations, including allegations that Young Money and Carter falsely claimed that some scenes in the film were unauthorized and falsely asserted a right to object to scenes that they were not entitled to object to under the contract and to which they had failed to timely object in writing, and allegations that they engaged in other bad faith conduct to prevent the sale and distribution of the film.

The allegations expressly set forth in the breach of contract count all concern alleged breaches of express contractual obligations. The count for breach of the implied covenant of good faith and fair dealing, in contrast, does not expressly set forth the alleged misconduct, but instead only incorporates by reference all prior allegations. The two counts overlap because they incorporate the same prior allegations and because a breach of the implied covenant is necessarily a breach of contract. But this does not necessarily mean that the gravamen of the two counts is the same.

Every contract contains an implied covenant of good faith and fair dealing providing that no party to the contract will do anything that would deprive another party of the benefits of the contract. (*Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 720; *Kransco v. American Empire Surplus Lines Ins. Co.* (2000) 23 Cal.4th 390, 400.) The implied covenant protects the reasonable expectations of the contracting parties

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<sup>3</sup> These allegations all appear in paragraph 37 of the cross-complaint.

based on their mutual promises. (*Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 373-374; *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1395.) The scope of conduct prohibited by the implied covenant depends on the purposes and express terms of the contract. (*Carma Developers, supra*, 2 Cal.4th at p. 373.) Although breach of the implied covenant often is pleaded as a separate count, a breach of the implied covenant is necessarily a breach of contract.<sup>4</sup> (*Careau, supra*, at pp. 1393-1394.)

Considering the complaint and the evidence presented on the anti-SLAPP motion in a practical manner and in light of the purpose of the anti-SLAPP statute, we believe that the gravamen of the two counts differs. The gravamen of the breach of contract count is Young Money's and Carter's alleged failure to comply with their express contractual obligations specified in paragraph 37 of the cross-complaint, while the gravamen of the count for breach of the implied covenant of good faith and fair dealing is their alleged efforts to undermine or prevent the potential sale and distribution of the film, both by informing distributors that the film was unauthorized and could be subject to future litigation and by seeking an injunction.

Young Money and Carter do not argue and have not shown that the conduct alleged in paragraph 37 of the cross-complaint was in furtherance of their constitutional right of petition or free speech within the meaning of the anti-SLAPP statute, and we conclude that it was not. There is no indication that the alleged failure to appear for

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<sup>4</sup> Breaches of distinct contractual obligations may properly be pleaded as separate counts.

interviews or other conduct alleged in paragraph 37 involved any written or oral statement described in section 425.16, subdivision (e) or any other conduct in furtherance of the exercise of the constitutional right of petition or free speech in connection with a public issue or an issue of public importance.

Accordingly, we conclude that the denial of the special motion to strike the breach of contract count was proper.

3. *The Trial Court Properly Granted the Special Motion to Strike as to the Count for Breach of the Implied Covenant*

a. *The Count for Breach of the Implied Covenant Arises From Acts in Furtherance of the Right of Petition*

Digerati alleges in its count for breach of the implied covenant that implied by law in the agreement was a duty of good faith and fair dealing that prohibited Young Money and Carter from acting in any manner that would deprive Digerati of the benefits of the agreement. Digerati incorporates the prior allegations of its cross-complaint and alleges that Young Money and Carter breached their duty of good faith and fair dealing “by engaging in the conduct above.”

Digerati’s prior allegations include the allegations that Young Money and Carter engaged in bad faith conduct to prevent the sale and distribution of the film by demanding that Digerati cease any further screenings of the film until all “ ‘objectionable’ ” scenes were removed; informing distributors that the film was not authorized and threatening them with litigation; filing “a frivolous and meritless application for a temporary restraining order and a motion for preliminary injunction”; and giving interviews falsely accusing Digerati of scandalous behavior. In addition to

these allegations, the introductory “summary of allegations” (emphasis omitted) at the beginning of the cross-complaint emphasizes in particular the alleged misrepresentations and threats made to distributors, false accusations that the film was unauthorized, and frivolous motions to seek an injunction.<sup>5</sup> In our view, the gravamen of the count for breach of the implied covenant of good faith and fair dealing is that this conduct frustrated Digerati’s efforts to market the film and deprived Digerati of the benefits of the agreement.

Statements made before an “official proceeding” or in connection with an issue under consideration or review by a legislative, executive, or judicial body, or in any other “official proceeding,” as described in clauses (1) and (2) of section 425.16, subdivision (e), are not limited to statements made after the commencement of such a proceeding. Instead, statements made in anticipation of a court action or other official proceeding may be entitled to protection under the anti-SLAPP statute. “[J]ust as communications preparatory to or in anticipation of the bringing of an action or other official proceeding are within the protection of the litigation privilege of Civil Code section 47, subdivision (b) [citation], . . . such statements are equally entitled to the benefits of section 425.16.” [Citations.]” (*Briggs, supra*, 19 Cal.4th at p. 1115; accord, *Flatley v. Mauro* (2006) 39 Cal.4th 299, 322, fn. 11.)

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<sup>5</sup> Digerati’s prior allegations also include the allegations concerning Young Money’s and Carter’s failure to comply with their express contractual obligations. We conclude that the gravamen of the breach of contract count is based on those allegations and that the count for breach of the implied covenant is based on other allegations, for the reasons we have stated.

The California Supreme Court has stated that a prelitigation communication is privileged only if it “relates to litigation that is contemplated in good faith and under serious consideration.” (*Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1251 (*Action Apartment*)). “Good faith” in this context refers to a good faith intention to file a lawsuit rather than a good faith belief in the truth of the communication. (*Ibid.*) Similarly, the Courts of Appeal have stated that a prelitigation statement falls within clause (1) or (2) of section 425.16, subdivision (e) if the statement “ ‘concern[s] the subject of the dispute’ and is made ‘in anticipation of litigation “contemplated in good faith and under serious consideration” ’ [citation].” (*Neville v. Chudacoff* (2008) 160 Cal.App.4th 1255, 1268; accord, *Rohde v. Wolf* (2007) 154 Cal.App.4th 28, 37.)

Digerati argues that acts relating to the formation or performance of contractual obligations are not in furtherance of the right of petition or free speech and therefore cannot be not protected activity under the anti-SLAPP statute, citing *Ericsson GE Mobile Communications, Inc. v. C.S.I. Telecommunications Engineers* (1996) 49 Cal.App.4th 1591, 1601-1602. The California Supreme Court rejected this same categorical argument and disapproved *Ericsson* on this point in *Navellier v. Sletten* (2002) 29 Cal.4th 82, 92-93. *Navellier* stated, “conduct alleged to constitute breach of contract may also come within constitutionally protected speech or petitioning.” (*Id.* at p. 92; accord, *Midland Pacific Building Corp. v. King* (2007) 157 Cal.App.4th 264, 272.) Whether conduct is protected under the anti-SLAPP statute depends on the nature

of the conduct rather than the type of cause of action alleged. (*Navellier, supra*, at pp. 92-93.)

We conclude that Young Money's and Carter's statements made through their attorney to Digerati protesting the exhibition of the film and asserting a right of final approval, and their alleged statements made to distributors that the film was not authorized and threatening them with litigation, concerned the subject of the dispute over the right of final approval and that the statements were made in anticipation of a lawsuit by Young Money and Carter against Digerati and the distributors. In light of the statements themselves, the declarations by Bryant and attorneys for Young Money and Carter describing these events, and the fact that Young Money and Carter commenced this litigation soon after the alleged statements were made to Digerati and the distributors, we conclude that the evidence compels the conclusion that, at the time they made the statements, Young Money and Carter seriously and in good faith contemplated commencing litigation against Digerati and the distributors to enforce their rights under the agreement. We therefore conclude that these prelitigation communications were statements made in furtherance of Young Money's and Carter's right of petition pursuant to clause (2) of section 425.16, subdivision (e).

The count for breach of the implied covenant also arises from the filing of an application for a temporary restraining order and a motion for preliminary injunction. Those acts involved a "written or oral statement or writing made before a . . . judicial proceeding" (§ 425.16, subd. (e), clause (1)) and therefore constituted protected activity under the anti-SLAPP statute.

Accordingly, we conclude that Digerati's count for breach of the implied covenant arises from protected activity under the anti-SLAPP statute.<sup>6</sup>

b. *The Litigation Privilege Precludes any Probability of Prevailing on the Claim*

A plaintiff cannot establish a probability of prevailing if the litigation privilege precludes the defendant's liability on the claim. (*Flatley v. Mauro*, *supra*, 39 Cal.4th at p. 323; *Seltzer v. Barnes* (2010) 182 Cal.App.4th 953, 972.) The litigation privilege precludes liability arising from a publication or broadcast made in a judicial proceeding or other official proceeding.<sup>7</sup> “ ‘The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that [has] some connection or logical relation to the action.’ [Citation.] The privilege ‘is not limited to statements made during a trial or other proceedings, but may extend to steps taken prior thereto, or afterwards.’ [Citation.]” (*Action Apartment*, *supra*, 41 Cal.4th at p. 1241.) The litigation privilege is interpreted broadly in order to further its principal purpose of affording litigants and witnesses the utmost freedom of

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<sup>6</sup> In light of our conclusion that the count for breach of the implied covenant arises from the protected activity discussed above, we need not decide whether Carter's alleged statements made in interviews accusing Digerati of scandalous behavior also constituted protected activity.

<sup>7</sup> Civil Code section 47 states, in relevant part: “A privileged publication or broadcast is one made: [¶] . . . [¶] (b) In any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure, except as follows: . . .”

access to the courts without fear of harassment in derivative tort actions. (*Ibid.*) The privilege is absolute and applies regardless of malice.<sup>8</sup> (*Ibid.*)

A prelitigation communication is privileged only if it “relates to litigation that is contemplated in good faith and under serious consideration” (*Action Apartment, supra*, 41 Cal.4th at p. 1251), as we have stated. The requirement of good faith contemplation and serious consideration provides some assurance that the communication has some “ ‘ ‘connection or logical relation’ ’ ” to a contemplated action and is made “ ‘to achieve the objects ’ ’ of the litigation. (*Ibid.*) “Whether a prelitigation communication relates to litigation that is contemplated in good faith and under serious consideration is an issue of fact.” (*Ibid.*; accord, *Feldman v. 1100 Park Lane Associates* (2008) 160 Cal.App.4th 1467, 1487.)

We conclude that the record establishes as a matter of law that the alleged prelitigation statements on which the count for breach of the implied covenant is based related to litigation that was contemplated in good faith and under serious consideration at the time the statements were made, for the same reasons stated above. We also conclude that the filing of an application for a temporary restraining order and a motion for preliminary injunction involved statements made by litigants in judicial proceedings, logically related to the action, and to achieve the objects of the litigation. We therefore

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<sup>8</sup> The litigation privilege does not apply to malicious prosecution actions. (*Albertson v. Raboff* (1956) 46 Cal.2d 375, 382.) *Albertson* explained, “[t]he policy of encouraging free access to the courts that underlies the absolute privilege applicable in defamation actions is outweighed by the policy of affording redress for individual wrongs when the requirements of favorable termination, lack of probable cause, and malice are satisfied.” (*Ibid.*; accord, *Action Apartment, supra*, 41 Cal.4th at p. 1242.)



conclude that these statements made prior to or in the course of litigation were protected by the litigation privilege.<sup>9</sup> Digerati therefore cannot establish a probability of prevailing on its count for breach of the implied covenant, and the trial court properly granted the special motion to strike that count.

***DISPOSITION***

The order is affirmed. Each party must bear its own costs on appeal.

***CERTIFIED FOR PUBLICATION***

CROSKEY, Acting P. J.

WE CONCUR:

KITCHING, J.

ALDRICH, J.

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<sup>9</sup> Digerati presented no evidence of any other conduct allegedly constituting a breach of the implied covenant, such as Carter's alleged statements made in interviews accusing Digerati of scandalous behavior, and therefore failed to establish a probability of prevailing as to those allegations.

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

\*\*\*\*

LAS VEGAS SANDS CORP.,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK: AND THE HONORABLE  
ELIZABETH GOFF GONZALES,  
DISTRICT JUDGE,

Respondent,

and

STEVEN C. JACOBS

Real Party In Interest.

Sup. Ct. Case No. 58740

Electronically Filed  
Dec 19 2011 08:53 a.m.

Tracie K. Lindeman

Clerk of Supreme Court

District Court Case No. A-10-627691

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**JOINT APPENDIX**

**VOL. 1**

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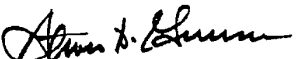
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13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

**A- 10- 627691- C**

15 **STEVEN C. JACOBS,**  
16 **Plaintiff,**

**CASE NO.**  
**DEPT. NO. XXV**

17 **vs.**

**COMPLAINT**

18 **LAS VEGAS SANDS CORP., a Nevada**  
19 **corporation; SANDS CHINA LTD., a Cayman**  
20 **Islands corporation; DOES I through X; and**  
21 **ROE CORPORATIONS I through X,**  
22 **Defendants.**

**Exempt from Arbitration**  
**Amount in Excess of \$50,000**

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

24 **PARTIES**

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

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



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1           3. Defendant Sands China Ltd. ("Sands China") is a Cayman Islands corporation and  
2 a majority-owned subsidiary of LVSC through which the latter engaged in certain of the acts and  
3 omissions alleged below. LVSC is the controlling shareholder of Sands China and, thus, has the  
4 ability to exercise control over Sands China's business policies and affairs. Sands China, through  
5 its subsidiary Venetian Macau, S.A. (also known as Venetian Macau Limited ("VML")), is the  
6 holder of a subconcession granted by the Macau government that allows Defendants to conduct  
7 gaming operations in Macau.  
8

9           4. The true names and capacities, whether individual, corporate, partnership,  
10 associate or otherwise of Defendants named herein as DOES I through X, inclusive, and ROE  
11 CORPORATIONS I through X, inclusive, and each of them are unknown to Plaintiff at this time,  
12 and he therefore sues said Defendants and each of them by such fictitious names. Plaintiff will  
13 advise this Court and seek leave to amend this Complaint when the names and capacities of each  
14 such Defendants have been ascertained. Plaintiff alleges that each said Defendant herein  
15 designated as a DOE or ROE is responsible in some manner for the events and happenings herein  
16 referred to as hereinafter alleged.  
17

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

#### 22 JURISDICTION AND VENUE

23           6. The Court has personal jurisdiction over the Defendants and the claims set forth  
24 herein pursuant to NRS 14.065 on grounds that such jurisdiction is not inconsistent with the  
25 Nevada Constitution or United States Constitution.  
26

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



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

### 3 4 **ALLEGATIONS COMMON TO ALL CLAIMS**

#### 5 **Background**

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

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

11 10. Macau, which is located on the South China Sea approximately 37 miles southwest  
12 of Hong Kong and was a Portuguese colony for over 400 years, is the largest and fastest growing  
13 gaming market in the world. It is the only market in China to offer legalized gaming. In 2004,  
14 LVSC opened the Sands Macau, the first Las Vegas-style casino in Macau. Thereafter, LVSC  
15 opened the Venetian Macau and the Four Seasons Macau on the Cotai Strip section of Macau  
16 where the company has resumed development of additional casino-resort properties.  
17

18 11. Beginning in or about 2008, LVSC's business (as well as that of its competitors in  
19 the gaming industry) was severely and adversely impacted by the global economic downturn.  
20 LVSC's problems due to the economy in general were exacerbated when the Chinese government  
21 imposed visa restrictions limiting the number of permitted visits by Chinese nationals to Macau.  
22 Because Chinese nationals make up more than half the patrons of Macau casinos, China's policy  
23 significantly reduced the number of visitors to Macau from mainland China, which adversely  
24 impacted tourism and the gaming industry in Macau.  
25

26 12. As a result of the deteriorating economy, adverse visa developments in Macau,  
27 and related issues, LVSC faced increased cash flow needs which, in turn, threatened to trigger a  
28



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1 breach of the company's maximum leverage ratio covenant in its U.S. credit facilities. The  
2 management of LVSC (which was led at the time by the company's longtime and well-respected  
3 President and Chief Operating Officer ("COO"), William Weidner) and the company's Board of  
4 Directors (which is led by the company's notoriously bellicose Chief Executive Officer and  
5 majority shareholder, Sheldon G. Adelson) engaged in serious disagreements regarding how and  
6 when to obtain liquidity in order to avoid a covenant breach. The disagreements were significant  
7 enough to force the company to form a special committee to address the serious conflicts between  
8 management and Adelson.  
9

10 13. Because Adelson delayed accessing the capital markets, against Weidner's  
11 repeated advice and the advice of LVSC's investment bank, the company was forced to engage in  
12 a number of emergency transactions to raise funds in late 2008 and early 2009. These  
13 transactions included large investments in the company by Adelson through the purchase of  
14 convertible senior notes, preferred shares, and warrants. Additionally, LVSC, which was already  
15 publicly traded on the New York Stock Exchange, conducted a further public offering of the  
16 company's common stock. Finally, LVSC also took measures to preserve company funds, which  
17 included the shelving of various development projects in Las Vegas, Macau, and Pennsylvania.  
18

19 14. Despite the efforts of LVSC to stop its financial hemorrhaging, the company's  
20 stock plummeted to an all-time low closing price of \$1.41 per share on March 9, 2009. Less than  
21 one year earlier, in April 2008, the stock had traded at more than \$80 per share. The all-time low  
22 share price coincided with LVSC's public announcement that William Weidner had left the  
23 company due to his ongoing disagreements with the mercurial Adelson about the management of  
24 the company. Weidner was replaced as President and COO by Michael Leven, a member of  
25 LVSC's Board of Directors.  
26  
27  
28



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1 **LVSC Hires Steven Jacobs To Run Its Macau Operations**

2  
3 15. Prior to his elevation to the post of LVSC's President and COO, Mr. Leven had  
4 reached out to Plaintiff Steven Jacobs to discuss with him the identification and evaluation of  
5 various candidates then being considered for the position by LVSC's Board of Directors. Messrs.  
6 Leven and Jacobs had known each other for many years having worked together as executives at  
7 U.S. Franchise Systems in the 1990's and in subsequent business ventures thereafter. After  
8 several outside candidates were interviewed without reaching an agreement, Leven received an  
9 offer from LVSC's board to become the company's President and COO. Leven again reached out  
10 to Jacobs to discuss the opportunity and the conditions under which he should accept the position.  
11 The conditions included but were not limited to Leven's compensation package and a  
12 commitment from Jacobs to join Leven for a period of 90-120 days to "ensure my [Leven's]  
13 success."  
14

15 16. Jacobs travelled to Las Vegas in March 2009 where he met with Leven and  
16 Adelson for several days to review the company's Nevada operations. While in Las Vegas, the  
17 parties agreed to consulting contract between LVSC and Jacobs' company, Vagus Group, Inc.  
18 Jacobs then began working for LVSC restructuring its Las Vegas operations.  
19

20 17. Jacobs, Leven, and Adelson subsequently travelled to Macau to conduct a review  
21 of LVSC's operations in that location. While in Macau, Leven told Jacobs that he wanted to hire  
22 him to run LVSC's Macau operations. Jacobs and Leven returned to Las Vegas after spending  
23 approximately a week in Macau. Jacobs then spent the bulk of the next 2-3 weeks working on the  
24 Las Vegas restructuring program and also negotiating with Leven regarding the latter's desire to  
25 hire him as a full-time executive with the company and the terms upon which Jacobs would agree  
26 to do so.  
27  
28



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1           18.     On May 6, 2009, LVSC, through Leven, announced that Jacobs would become the  
2 interim President of Macau Operations. Jacobs was charged with restructuring the financial and  
3 operational aspects of the Macau assets. This included, among other things, lowering operating  
4 costs, developing and implementing new strategies, building new ties with local and national  
5 government officials, and eventually spinning off the Macau assets into a new company to be  
6 taken public on the Hong Kong Stock Exchange.  
7

8           19.     Notwithstanding that Jacobs would be spending the majority of his time in Macau  
9 focusing on LVSC's operations in that location, he was also required to perform duties in Las  
10 Vegas including, but not limited to, working with LVSC's Las Vegas staff on reducing costs  
11 within the company's Las Vegas operations, consulting on staffing and delayed opening issues  
12 related to the company's Marina Bay Sands project in Singapore, and participating in meetings of  
13 LVSC's Board of Directors.  
14

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

21           21.     On or about August 4, 2009, Jacobs received a document from LVSC styled  
22 "Offer Terms and Conditions" (the "Term Sheet") for the position of "President and CEO  
23 Macau[.]" The Term Sheet reflected the terms and conditions of employment that had been  
24 negotiated by Leven and Jacobs while Jacobs was in Las Vegas working under the original  
25 consulting agreement with LVSC and during his subsequent trips back to Las Vegas. The Term  
26 Sheet was signed by Leven on behalf of LVSC on or about August 3, 2009 and faxed to Jacobs in  
27 Macau by Pattie Murray, an LVSC executive assistant located in the company's Las Vegas  
28



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1 offices. Jacobs signed the Term Sheet accepting the offer contained therein and returned a copy  
2 to LVSC. LVSC's Compensation Committee approved Jacobs' contract on or about August 6,  
3 2009.  
4

5 **Jacobs Saves the Titanic**

6 22. The accomplishments for the four quarters over which Jacobs presided created  
7 significant value to the shareholders of LVSC. From an operational perspective, Jacobs and his  
8 team removed over \$365 million of costs from LVSC's Macau operations, repaired strained  
9 relationships with local and national government officials in Macau who would no longer meet  
10 with Adelson due to his rude and obstreperous behavior, and refocused operations on core  
11 businesses to drive operating margins and profits, thereby achieving the highest EBITDA figures  
12 in the history of the company's Macau operations.  
13

14 23. During Jacobs' tenure, LVSC launched major new initiatives to expand its reach  
15 into the mainland frequent and independent traveler marketplace and became the Macau market  
16 share leader in mass and direct VIP table game play. Due in large part to the success of its Macau  
17 operations under Jacobs' direction, LVSC was able to raise over \$4 billion dollars from the  
18 capital markets, spin off its Macau operations into a new company—Sands China—which  
19 became publicly traded on the Hong Kong Stock Exchange in late November 2009, and restart  
20 construction on a previously stalled expansion project on the Cotai Strip known as "Parcels 5 and  
21 6." Indeed, for the second quarter ending June 2010, net revenue from Macau operations  
22 accounted for approximately 65% of LVSC's total net revenue (*i.e.*, \$1.04 billion USD of a total  
23 \$1.59 billion USD).  
24

25 24. To put matters in perspective, when Jacobs began performing work for the  
26 company in March 2009, LVSC shares were trading at just over \$1.70 per share and its market  
27  
28



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

3  
4 25. Simply put, Jacobs' performance as the President and Chief Executive Officer of  
5 LVSC's Macau operations was nothing short of remarkable. When members of the company's  
6 Board of Directors asked Leven in February 2010 to assess Jacobs' 2009 job performance, Leven  
7 advised as follows: *"there is no question as to Steve's performance[,] the Titanic hit the*  
8 *iceberg[,] he arrived and not only saved the passengers[,] he saved the ship."* The board  
9 awarded Jacobs his full bonus for 2009. Not more than three months later, in May 2010, in  
10 recognition of his ongoing contributions and outstanding performance, the board awarded Jacobs  
11 an additional 2.5 million stock options in Sands China. The options had an accelerated vesting  
12 period of less than two years. Jacobs, however, would be wrongfully terminated in just two  
13 months.  
14

#### 15 **Jacobs' Conflicts with Adelson**

16 26. Jacobs' performance was all the more remarkable given the repeated and  
17 outrageous demands made upon him by Adelson which included, but were not limited to, the  
18 following:  
19

- 20 a. demands that Jacobs use improper "leverage" against senior  
21 government officials of Macau in order to obtain Strata-Title for  
the Four Seasons Apartments in Macau;
- 22 b. demands that Jacobs threaten to withhold Sands China business  
23 from prominent Chinese banks unless they agreed to use influence  
24 with newly-elected senior government officials of Macau in order  
25 to obtain Strata-Title for the Four Seasons Apartments and  
favorable treatment with regards to labor quotas and table limits;
- 26 c. demands that secret investigations be performed regarding the  
27 business and financial affairs of various high-ranking members of  
28 the Macau government so that any negative information obtained  
could be used to exert "leverage" in order to thwart government  
regulations/initiatives viewed as adverse to LVSC's interests;



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- 1 d. demands that Sands China continue to use the legal services of  
2 Macau attorney Leonel Alves despite concerns that Mr. Alves'  
3 retention posed serious risks under the criminal provisions of the  
4 United States code commonly known as the Foreign Corrupt  
5 Practices Act ("FCPA"); and  
6  
7 e. demands that Jacobs refrain from disclosing truthful and material  
8 information to the Board of Directors of Sands China so that it  
9 could decide if such information relating to material financial  
10 events, corporate governance, and corporate independence should  
11 be disclosed pursuant to regulations of the Hong Kong Stock  
12 Exchange. These issues included, but were not limited to, junkets  
13 and triads, government investigations, Leonel Alves and FCPA  
14 concerns, development issues concerning Parcels 3, 7 and 8, and  
15 the design, delays and cost overruns associated with the  
16 development of Parcels 5 and 6.

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

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

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1 margins were low, the decision carried credit risks, and Jacobs was concerned given recent  
2 investigations by Reuters and others alleging LVSC involvement with Chinese organized crime  
3 groups, known as Triads, connected to the junket business. Following these meetings, Jacobs re-  
4 raised the issue about the need to advise the Sands China board of the delays and cost overruns  
5 associated with the development of Parcels 5 and 6 in Macau so that a determination could be  
6 made of whether the information must be disclosed in compliance with Hong Kong Stock  
7 Exchange regulations. Adelson informed Jacobs that he was Chairman of the Board and the  
8 controlling shareholder of Sands China and would "do as I please."  
9

10 29. Recognizing that he owed a fiduciary duty to all of the company's shareholders,  
11 not just Adelson, Jacobs placed the matter relating to the delays and cost overruns associated with  
12 Parcels 5 and 6 on the agenda for the upcoming meeting of the Sands China board. Jacobs  
13 exchanged multiple e-mails with Adelson's longtime personal assistant, Betty Yurcich, in  
14 attempts to obtain Adelson's concurrence with the agenda. Adelson finally relented and allowed  
15 the matter to remain on the agenda, but it would come at a price for Jacobs.  
16

17 30. On July 23, 2010, Jacobs attended a meeting with Leven and LVSC/Sands China  
18 board member, Irwin Siegel, for the ostensible purpose of discussing the upcoming Sands China  
19 board meeting. During the meeting, Leven unceremoniously advised Jacobs that he was being  
20 terminated effective immediately. When Jacobs asked whether the termination was purportedly  
21 "for cause" or not, Leven responded that he was "not sure" but that the severance provisions of  
22 the Term Sheet would not be honored. Leven then handed Jacobs a terse letter from Adelson  
23 advising him of the termination. The letter was silent on the issue of "cause."  
24

25 31. After the meeting with Leven and Siegel, Jacobs was escorted off the property by  
26 two members of security in public view of many company employees, resort guests, and casino  
27  
28



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

3  
4 32. Nearly two weeks later and after an unsuccessful effort to dig up any real "dirt" on  
5 Jacobs, LVSC sent a second letter to Jacobs on VML letterhead which identified 12 pretextual  
6 items that allegedly support a "for cause" termination of his employment. In short, the letter  
7 contends that Jacobs exceeded his authority and—in the height of hypocrisy—failed to keep the  
8 companies' Boards of Directors informed of important business decisions. The reality is that  
9 none of the 12 items, even assuming *arguendo* that some of them are accurate, constitute "cause"  
10 as they simply reflect routine and appropriate actions of a senior executive functioning in the  
11 president and chief executive role of a publicly traded company.  
12

13 33. Within approximately four weeks of Jacobs' termination, Sands China went  
14 forward with Adelson's desire to terminate its General Counsel, Luis Melo, and replace him with  
15 Leonel Alves despite acknowledged disputes within Sands China regarding Alves' employment  
16 with the company. In or about the same time frame, Sands China publicly announced a material  
17 delay in the construction of Parcels 5 and 6 and a cost increase of \$100 million to the project,  
18 thereby acknowledging the correctness of Jacobs' position that such matters must be disclosed.  
19

#### 20 FIRST CAUSE OF ACTION

#### 21 (Breach of Contract - LVSC)

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

24 35. Jacobs and LVSC are parties to various contracts, including the Term Sheet and  
25 Nonqualified Stock Option Agreement identified herein.  
26

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



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

3  
4 37. The Term Sheet further provides that in the event Jacobs was terminated "Not For  
5 Cause," he would be entitled to one year of severance plus accelerated vesting of all his stock  
6 options with a one-year right to exercise the options post-termination.

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

9 39. LVSC has breached the Term Sheet agreement by purportedly terminating Jacobs  
10 for "cause" when, in reality, the purported bases for Jacobs' termination, as identified in the  
11 belatedly-manufactured August 5, 2010 letter, are pretextual and in no way constitute "cause."  
12

13 40. On September 24, 2010, Jacobs made proper demand upon LVSC to honor his  
14 right to exercise the remaining stock options he had been awarded in the company. The closing  
15 price of LVSC's stock on September 24, 2010 was \$33.63 per share. At the time of filing the  
16 instant action, LVSC's stock was trading at approximately \$38.50 per share. LVSC rejected  
17 Jacobs' demand and, thus, further breached the Term Sheet and the stock option agreement by  
18 failing to honor the vesting and related provisions contained therein based on the pretext that  
19 Jacobs was terminated for "cause."  
20

21 41. LVSC has wrongfully characterized Jacobs' termination as one for "cause" in an  
22 effort to deprive him of contractual benefits to which he is otherwise entitled. As a direct and  
23 proximate result of LVSC's wrongful termination of Jacobs' employment and failure to honor the  
24 "Not For Cause" severance provisions contained in the Term Sheet, Jacobs has suffered damages  
25 in an amount to be proven at trial but in excess of \$10,000.  
26

27 ....

28 ....



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**SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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



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

3  
4 **THIRD CAUSE OF ACTION**

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

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

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

9 50. The conduct of LVSC described herein including, but not limited to, the improper  
10 and illegal demands made upon Jacobs by Adelson, Adelson's continual undermining of Jacobs'  
11 authority as the President and CEO of LVSC's Macau operations (and subsequently Sands  
12 China), and the wrongful characterization of Jacobs' termination as being for "cause," is  
13 unfaithful to the purpose of the agreements between Jacobs and LVSC and was not within the  
14 reasonable expectations of Jacobs.  
15

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

18  
19 **FOURTH CAUSE OF ACTION**

20 **(Tortious Discharge in Violation of Public Policy - LVSC)**

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

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

25 54. Certain of the improper and illegal demands made upon Jacobs by Adelson as set  
26 forth above would have required Jacobs to engage in conduct that he, in good faith, believed was  
27 illegal. In other instances, the improper and illegal demands would have required Jacobs to  
28



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

3  
4 55. LVSC retaliated against Jacobs' by terminating his employment because he (i)  
5 objected to and refused to participate in the illegal conduct requested by Adelson, and (ii)  
6 attempted to engage in conduct that was required by law and favored by public policy. In so  
7 doing, LVSC tortiously discharged Jacobs in violation of public policy.

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

10 57. LVSC's conduct, which was carried out and/or ratified by managerial level agents  
11 and employees, was done with malice, fraud and oppression, thereby entitling Jacobs to an award  
12 of punitive damages.  
13

14 **PRAYER FOR RELIEF**

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

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

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

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

22 4. For attorney fees and costs of suit incurred herein, as allowed by law, in an amount to  
23 be determined; and  
24

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.....



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

DATED this 20th day of October, 2010.

CAMPBELL & WILLIAMS

By /s/ Donald J. Campbell

DONALD J. CAMPBELL, ESQ. (1216)

J. COLBY WILLIAMS, ESQ. (5549)

700 South Seventh Street

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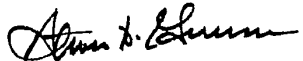
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11 *Attorneys for Plaintiff*  
12 *Steven C. Jacobs*

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 STEVEN C. JACOBS,	)	CASE NO. A-10-627691-C
16	)	DEPT. NO. XI
17 Plaintiff,	)	
18	)	
19 vs.	)	<b>FIRST AMENDED COMPLAINT</b>
20	)	
21 LAS VEGAS SANDS CORP., a Nevada	)	
22 corporation; SANDS CHINA LTD., a Cayman	)	<b>Exempt from Arbitration</b>
23 Islands corporation; SHELDON G. ADELSON,	)	<b>Amount in Excess of \$50,000</b>
24 in his individual and representative capacity,	)	
25 DOES I through X; and ROE CORPORATIONS	)	
26 I through X,	)	
27	)	
28 Defendants.	)	

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

30 **PARTIES**

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

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



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1           3.     Defendant Sands China Ltd. ("Sands China") is a Cayman Islands corporation and  
2 a majority-owned subsidiary of LVSC through which the latter engaged in certain of the acts and  
3 omissions alleged below. LVSC is the controlling shareholder of Sands China and, thus, has the  
4 ability to exercise control over Sands China's business policies and affairs. Sands China, through  
5 its subsidiary Venetian Macau, S.A. (also known as Venetian Macau Limited ("VML")), is the  
6 holder of a subconcession granted by the Macau government that allows Defendants to conduct  
7 gaming operations in Macau.  
8

9           4.     Defendant Sheldon G. Adelson ("Adelson") is a citizen of Nevada. Adelson is the  
10 Chairman of the Board and Chief Executive Officer of LVSC and also acts as the Chairman of the  
11 Board of Sands China.  
12

13           5.     The true names and capacities, whether individual, corporate, partnership,  
14 associate or otherwise of Defendants named herein as DOES I through X, inclusive, and ROE  
15 CORPORATIONS I through X, inclusive, and each of them are unknown to Plaintiff at this time,  
16 and he therefore sues said Defendants and each of them by such fictitious names. Plaintiff will  
17 advise this Court and seek leave to amend this Complaint when the names and capacities of each  
18 such Defendants have been ascertained. Plaintiff alleges that each said Defendant herein  
19 designated as a DOE or ROE is responsible in some manner for the events and happenings herein  
20 referred to as hereinafter alleged.  
21

22           6.     Each Defendant is the agent of the other Defendants such that each Defendant is  
23 fully liable and responsible for all the acts and omissions of all of the other Defendants as set  
24 forth herein.  
25

26     ....

27     ....

28     ....



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**JURISDICTION AND VENUE**

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

8. Venue is proper in this Court pursuant to NRS 13.010 *et seq.* because, among other reasons, LVSC operates its principal place of business in Clark County, Nevada, Sands China engages in a number of systematic and ongoing transactions with LVSC in Nevada, and this action arises out of agreements originating in Clark County, Nevada.

**ALLEGATIONS COMMON TO ALL CLAIMS**

**Background**

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

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

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

12. Beginning in or about 2008, LVSC's business (as well as that of its competitors in the gaming industry) was severely and adversely impacted by the global economic downturn. LVSC's problems due to the economy in general were exacerbated when the Chinese government



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1 imposed visa restrictions limiting the number of permitted visits by Chinese nationals to Macau.  
2 Because Chinese nationals make up more than half the patrons of Macau casinos, China's policy  
3 significantly reduced the number of visitors to Macau from mainland China, which adversely  
4 impacted tourism and the gaming industry in Macau.  
5

6 13. As a result of the deteriorating economy, adverse visa developments in Macau,  
7 and related issues, LVSC faced increased cash flow needs which, in turn, threatened to trigger a  
8 breach of the company's maximum leverage ratio covenant in its U.S. credit facilities. The  
9 management of LVSC (which was led at the time by the company's longtime and well-respected  
10 President and Chief Operating Officer ("COO"), William Weidner) and the company's Board of  
11 Directors (which is led by the company's notoriously bellicose Chief Executive Officer and  
12 majority shareholder, Sheldon G. Adelson) engaged in serious disagreements regarding how and  
13 when to obtain liquidity in order to avoid a covenant breach. The disagreements were significant  
14 enough to force the company to form a special committee to address the serious conflicts between  
15 management and Adelson.  
16

17 14. Because Adelson delayed accessing the capital markets, against Weidner's  
18 repeated advice and the advice of LVSC's investment bank, the company was forced to engage in  
19 a number of emergency transactions to raise funds in late 2008 and early 2009. These  
20 transactions included large investments in the company by Adelson through the purchase of  
21 convertible senior notes, preferred shares, and warrants. Additionally, LVSC, which was already  
22 publicly traded on the New York Stock Exchange, conducted a further public offering of the  
23 company's common stock. Finally, LVSC also took measures to preserve company funds, which  
24 included the shelving of various development projects in Las Vegas, Macau, and Pennsylvania.  
25  
26

27 15. Despite the efforts of LVSC to stop its financial hemorrhaging, the company's  
28 stock plummeted to an all-time low closing price of \$1.41 per share on March 9, 2009. Less than



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1 one year earlier, in April 2008, the stock had traded at more than \$80 per share. The all-time low  
2 share price coincided with LVSC's public announcement that William Weidner had left the  
3 company due to his ongoing disagreements with the mercurial Adelson about the management of  
4 the company. Weidner was replaced as President and COO by Michael Leven, a member of  
5 LVSC's Board of Directors.  
6

#### 7 **LVSC Hires Steven Jacobs To Run Its Macau Operations**

8 16. Prior to his elevation to the post of LVSC's President and COO, Mr. Leven had  
9 reached out to Plaintiff Steven Jacobs to discuss with him the identification and evaluation of  
10 various candidates then being considered for the position by LVSC's Board of Directors. Messrs.  
11 Leven and Jacobs had known each other for many years having worked together as executives at  
12 U.S. Franchise Systems in the 1990's and in subsequent business ventures thereafter. After  
13 several outside candidates were interviewed without reaching an agreement, Leven received an  
14 offer from LVSC's board to become the company's President and COO. Leven again reached out  
15 to Jacobs to discuss the opportunity and the conditions under which he should accept the position.  
16 The conditions included but were not limited to Leven's compensation package and a  
17 commitment from Jacobs to join Leven for a period of 90-120 days to "ensure my [Leven's]  
18 success."  
19

20 17. Jacobs travelled to Las Vegas in March 2009 where he met with Leven and  
21 Adelson for several days to review the company's Nevada operations. While in Las Vegas, the  
22 parties agreed to consulting contract between LVSC and Jacobs' company, Vagus Group, Inc.  
23 Jacobs then began working for LVSC restructuring its Las Vegas operations.  
24

25 18. Jacobs, Leven, and Adelson subsequently travelled to Macau to conduct a review  
26 of LVSC's operations in that location. While in Macau, Leven told Jacobs that he wanted to hire  
27 him to run LVSC's Macau operations. Jacobs and Leven returned to Las Vegas after spending  
28



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1 approximately a week in Macau. Jacobs then spent the bulk of the next 2-3 weeks working on the  
2 Las Vegas restructuring program and also negotiating with Leven regarding the latter's desire to  
3 hire him as a full-time executive with the company and the terms upon which Jacobs would agree  
4 to do so.  
5

6 19. On May 6, 2009, LVSC, through Leven, announced that Jacobs would become the  
7 interim President of Macau Operations. Jacobs was charged with restructuring the financial and  
8 operational aspects of the Macau assets. This included, among other things, lowering operating  
9 costs, developing and implementing new strategies, building new ties with local and national  
10 government officials, and eventually spinning off the Macau assets into a new company to be  
11 taken public on the Hong Kong Stock Exchange.  
12

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

20 21. On June 24, 2009, LVSC awarded Jacobs 75,000 stock options in the company to  
21 reward him for his past performance as a LVSC team member and to incentivize him to improve  
22 his future performance as well as that of the company. LVSC and Jacobs executed a written  
23 Nonqualified Stock Option Agreement memorializing the award, which is governed by Nevada  
24 law.  
25

26 22. On or about August 4, 2009, Jacobs received a document from LVSC styled  
27 "Offer Terms and Conditions" (the "Term Sheet") for the position of "President and CEO  
28 Macau[.]" The Term Sheet reflected the terms and conditions of employment that had been



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1 negotiated by Leven and Jacobs while Jacobs was in Las Vegas working under the original  
2 consulting agreement with LVSC and during his subsequent trips back to Las Vegas. The Term  
3 Sheet was signed by Leven on behalf of LVSC on or about August 3, 2009 and faxed to Jacobs in  
4 Macau by Pattie Murray, an LVSC executive assistant located in the company's Las Vegas  
5 offices. Jacobs signed the Term Sheet accepting the offer contained therein and returned a copy  
6 to LVSC. LVSC's Compensation Committee approved Jacobs' contract on or about August 6,  
7 2009.  
8

9 **Jacobs Saves the Titanic**

10 23. The accomplishments for the four quarters over which Jacobs presided created  
11 significant value to the shareholders of LVSC. From an operational perspective, Jacobs and his  
12 team removed over \$365 million of costs from LVSC's Macau operations, repaired strained  
13 relationships with local and national government officials in Macau who would no longer meet  
14 with Adelson due to his rude and obstreperous behavior, and refocused operations on core  
15 businesses to drive operating margins and profits, thereby achieving the highest EBITDA figures  
16 in the history of the company's Macau operations.  
17

18 24. During Jacobs' tenure, LVSC launched major new initiatives to expand its reach  
19 into the mainland frequent and independent traveler marketplace and became the Macau market  
20 share leader in mass and direct VIP table game play. Due in large part to the success of its Macau  
21 operations under Jacobs' direction, LVSC was able to raise over \$4 billion dollars from the  
22 capital markets, spin off its Macau operations into a new company—Sands China—which  
23 became publicly traded on the Hong Kong Stock Exchange in late November 2009, and restart  
24 construction on a previously stalled expansion project on the Cotai Strip known as "Parcels 5 and  
25 6." Indeed, for the second quarter ending June 2010, net revenue from Macau operations  
26  
27  
28



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1 accounted for approximately 65% of LVSC's total net revenue (i.e., \$1.04 billion USD of a total  
2 \$1.59 billion USD).

3  
4 25. To put matters in perspective, when Jacobs began performing work for the  
5 company in March 2009, LVSC shares were trading at just over \$1.70 per share and its market  
6 cap was approximately \$1.1 billion USD. At the time Jacobs left the company in July 2010,  
7 LVSC shares were over \$28 per share and the market cap was in excess of \$19 billion USD.

8 26. Simply put, Jacobs' performance as the President and Chief Executive Officer of  
9 LVSC's Macau operations was nothing short of remarkable. When members of the company's  
10 Board of Directors asked Leven in February 2010 to assess Jacobs' 2009 job performance, Leven  
11 advised as follows: *"there is no question as to Steve's performance[.] the Titanic hit the*  
12 *iceberg[.] he arrived and not only saved the passengers[.] he saved the ship."* The board  
13 awarded Jacobs his full bonus for 2009. Not more than three months later, in May 2010, in  
14 recognition of his ongoing contributions and outstanding performance, the board awarded Jacobs  
15 an additional 2.5 million stock options in Sands China. The options had an accelerated vesting  
16 period of less than two years. Jacobs, however, would be wrongfully terminated in just two  
17 months.  
18

19  
20 **Jacobs' Conflicts with Adelson**

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

- 24 a. demands that Jacobs use improper "leverage" against senior  
25 government officials of Macau in order to obtain Strata-Title for  
26 the Four Seasons Apartments in Macau;
- 27 b. demands that Jacobs threaten to withhold Sands China business  
28 from prominent Chinese banks unless they agreed to use influence  
with newly-elected senior government officials of Macau in order



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1 to obtain Strata-Title for the Four Seasons Apartments and  
2 favorable treatment with regards to labor quotas and table limits;

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

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

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

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

29 29. Jacobs' ongoing disagreements with Adelson came to a head when they were in  
Singapore to attend the grand opening of LVSC's Marina Bay Sands in late June 2010. While in  
Singapore, Jacobs attended several meetings of LVSC executives including Adelson, Leven, Ken



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1 Kay (LVSC's Chief Financial Officer), and others. During these meetings, Jacobs disagreed with  
2 Adelson's and Leven's desire to expand the ballrooms at Parcels 5 and 6, which would add an  
3 incremental cost of approximately \$30 million to a project already significantly over budget when  
4 Sands China's existing facilities were already underutilized. In a separate meeting, Jacobs  
5 disagreed with Adelson's desire to aggressively grow the junket business within Macau as the  
6 margins were low, the decision carried credit risks, and Jacobs was concerned given recent  
7 investigations by Reuters and others alleging LVSC involvement with Chinese organized crime  
8 groups, known as Triads, connected to the junket business. Following these meetings, Jacobs re-  
9 raised the issue about the need to advise the Sands China board of the delays and cost overruns  
10 associated with the development of Parcels 5 and 6 in Macau so that a determination could be  
11 made of whether the information must be disclosed in compliance with Hong Kong Stock  
12 Exchange regulations. Adelson informed Jacobs that he was Chairman of the Board and the  
13 controlling shareholder of Sands China and would "do as I please."

14  
15  
16 30. Recognizing that he owed a fiduciary duty to all of the company's shareholders,  
17 not just Adelson, Jacobs placed the matter relating to the delays and cost overruns associated with  
18 Parcels 5 and 6 on the agenda for the upcoming meeting of the Sands China board. Jacobs  
19 exchanged multiple e-mails with Adelson's longtime personal assistant, Betty Yurcich, in  
20 attempts to obtain Adelson's concurrence with the agenda. Adelson finally relented and allowed  
21 the matter to remain on the agenda, but it would come at a price for Jacobs.

22  
23 31. On July 23, 2010, Jacobs attended a meeting with Leven and LVSC/Sands China  
24 board member, Irwin Siegel, for the ostensible purpose of discussing the upcoming Sands China  
25 board meeting. During the meeting, Leven unceremoniously advised Jacobs that he was being  
26 terminated effective immediately. When Jacobs asked whether the termination was purportedly  
27 "for cause" or not, Leven responded that he was "not sure" but that the severance provisions of  
28



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1 the Term Sheet would not be honored. Leven then handed Jacobs a terse letter from Adelson  
2 advising him of the termination. The letter was silent on the issue of "cause."

3 32. After the meeting with Leven and Siegel, Jacobs was escorted off the property by  
4 two members of security in public view of many company employees, resort guests, and casino  
5 patrons. Jacobs was not permitted to return to his office to collect his belongings, but was instead  
6 escorted to the border to leave Macau.

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

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

#### 21 FIRST CAUSE OF ACTION

#### 22 (Breach of Contract - LVSC)

23 35. Plaintiff restates all preceding and subsequent allegations as though fully set forth  
24 herein.



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

3           37. The Term Sheet provides, in part, that Jacobs would have a 3-year employment  
4 term, that he would earn an annual salary of \$1.3 million plus a 50% bonus upon attainment of  
5 certain goals, and that he would receive 500,000 LVSC stock options (in addition to the  
6 previously awarded 75,000 LVSC options) to vest in stages over three years.

7           38. The Term Sheet further provides that in the event Jacobs was terminated "Not For  
8 Cause," he would be entitled to one year of severance plus accelerated vesting of all his stock  
9 options with a one-year right to exercise the options post-termination.  
10

11           39. Jacobs has performed all of his obligations under the contracts except where  
12 excused.  
13

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

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

25           42. LVSC has wrongfully characterized Jacobs' termination as one for "cause" in an  
26 effort to deprive him of contractual benefits to which he is otherwise entitled. As a direct and  
27 proximate result of LVSC's wrongful termination of Jacobs' employment and failure to honor the  
28



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1 "Not For Cause" severance provisions contained in the Term Sheet, Jacobs has suffered damages  
2 in an amount to be proven at trial but in excess of \$10,000.

### 3 SECOND CAUSE OF ACTION

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

5  
6 43. Plaintiff incorporates all preceding and subsequent allegations as though fully set  
7 forth herein.

8 44. On or about May 11, 2010, LVSC caused Sands China to grant 2.5 million Sands  
9 China share options to Jacobs. Fifty percent of the options were to vest on January 1, 2011, and  
10 the other fifty percent was to vest on January 1, 2012. The grant is memorialized by a written  
11 agreement between Jacobs and Sands China.  
12

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

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

17 47. On September 24, 2010, Jacobs made proper demand upon LVSC and Sands  
18 China to honor his right to exercise the remaining 2.5 million stock options he had been awarded  
19 in Sands China. The closing price of Sands China's stock on September 24, 2010 was \$12.86  
20 HKD per share. At the time of filing the instant action, Sands China's stock was trading at  
21 approximately \$15.00 per share. LVSC and Sands China rejected Jacobs' demand and, thus,  
22 further breached the Term Sheet and the Sands China share grant agreement by characterizing  
23 Jacobs' termination as being for "cause" when, in reality, the purported bases for Jacobs'  
24 termination, as identified in the belatedly-manufactured August 5, 2010 letter, are pretextual and  
25 in no way constitute "cause."  
26  
27  
28



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1 48. LVSC and Sands China have wrongfully characterized Jacobs' termination as one  
2 for "cause" in an effort to deprive him of contractual benefits to which he is otherwise entitled.  
3 As a direct and proximate result of LVSC's and Sands China's actions, Jacobs has suffered  
4 damages in an amount to be proven at trial but in excess of \$10,000.  
5

6 **THIRD CAUSE OF ACTION**

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

8 49. Plaintiff incorporates all preceding and subsequent allegations as though fully set  
9 forth herein.

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

11 51. The conduct of LVSC described herein including, but not limited to, the improper  
12 and illegal demands made upon Jacobs by Adelson, Adelson's continual undermining of Jacobs'  
13 authority as the President and CEO of LVSC's Macau operations (and subsequently Sands  
14 China), and the wrongful characterization of Jacobs' termination as being for "cause," is  
15 unfaithful to the purpose of the agreements between Jacobs and LVSC and was not within the  
16 reasonable expectations of Jacobs.  
17

18 52. As a direct and proximate result of LVSC's wrongful conduct, Jacobs has suffered  
19 damages in an amount to be proven at trial but in excess of \$10,000.  
20

21 **FOURTH CAUSE OF ACTION**

22 **(Tortious Discharge in Violation of Public Policy - LVSC)**

23 53. Plaintiff incorporates all preceding and subsequent allegations as though fully set  
24 forth herein.

25 54. As an officer of LVSC and an officer and director of Sands China, Jacobs owed a  
26 fiduciary duty to the shareholders of both companies.  
27  
28



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1           55.     Certain of the improper and illegal demands made upon Jacobs by Adelson as set  
2 forth above would have required Jacobs to engage in conduct that he, in good faith, believed was  
3 illegal. In other instances, the improper and illegal demands would have required Jacobs to  
4 refrain from engaging in conduct required by applicable law. Both forms of demands would have  
5 required Jacobs to violate his fiduciary duties to the shareholders of LVSC and Sands China.  
6

7           56.     LVSC retaliated against Jacobs' by terminating his employment because he (i)  
8 objected to and refused to participate in the illegal conduct requested by Adelson, and (ii)  
9 attempted to engage in conduct that was required by law and favored by public policy. In so  
10 doing, LVSC tortiously discharged Jacobs in violation of public policy.  
11

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

14           58.     LVSC's conduct, which was carried out and/or ratified by managerial level agents  
15 and employees, was done with malice, fraud and oppression, thereby entitling Jacobs to an award  
16 of punitive damages.  
17

#### 18                           FIFTH CAUSE OF ACTION

#### 19                           (Defamation Per Se - Adelson, LVSC, Sands China)

20           59.     Plaintiff incorporates all preceding and subsequent allegations as though fully set  
21 forth herein.

22           60.     On Tuesday March 15, 2011, oral arguments by the respective counsel of Jacobs,  
23 LVSC, and Sands China were presented to the Honorable Elizabeth Gonzalez, Eighth Judicial  
24 District Court Judge. These arguments centered upon the motions of LVSC and Sands China to  
25 have all of the foregoing causes of action, detailed in this complaint, dismissed as to each of them  
26 on the grounds that 1) a necessary and indispensable party had not been named and 2) the Court  
27 lacked jurisdiction over Sands China.  
28



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1           61. Following the 90-minute hearing, the Court denied each of the Defendants'  
2 motions to dismiss the action. The hearing received widespread attention by members of the  
3 media, and particularly by journalists who report on affairs in the business community. Included  
4 among those reporters was Ms. Alexandra Berzon, a Pulitzer Prize winning journalist who  
5 attended the hearing on behalf of her employer, the Wall Street Journal®. The Wall Street  
6 Journal® is generally recognized as one of the most respected and widely read publications in the  
7 world, particularly as to matters pertaining to the economy and associated commercial activities  
8 and endeavors.

9  
10           62. Following the hearing, the Wall Street Journal® published an article in its online  
11 edition styled "Setback for Sands in Macau Suit." That article, which was authored by Ms.  
12 Berzon, reported that Adelson had, via e-mail, made the following statements:

13  
14           *"While I have largely stayed silent on the matter to this point, the recycling of his*  
15           *allegations must be addressed," he said. "We have a substantial list of reasons*  
16           *why Steve Jacobs was fired for cause and interestingly he has not refuted a single*  
17           *one of them. Instead, he has attempted to explain his termination by using outright*  
18           *lies and fabrications which seem to have their origins in delusion."*

19           Adelson's comments to the effect that 1) Jacobs was justifiably fired for "for cause" and  
20 2) Jacobs had resorted to "outright lies and fabrications" in seeking legal redress constituted  
21 defamation per se.

22           63. All of the offending statements made by Adelson concerning Jacobs and identified  
23 in Paragraph 62, *supra*, were 1) false and defamatory; 2) published to a third person or party for  
24 the express intent of republication to a worldwide audience; 3) maliciously published by Adelson  
25 knowing their falsity and/or in reckless disregard of the truth thereof; 4) intended to and did in  
26 fact harm Jacobs' reputation and good name in his trade, business, profession, and customary  
27 corporate office; and 5) were of such a nature that significant economic damages must be  
28 presumed.



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64. Adelson's malicious defamation of Jacobs was made in both his personal as well as his representative capacities as Chairman of the Board of LVSC and as Chairman of the Board of its affiliate, Sands China; both of which ratified and endorsed either explicitly or implicitly Adelson's malicious invective.

65. That all the comments and statements by Adelson as detailed in Paragraph 62, *supra*, were made without justification or legal excuse, and were otherwise not privileged because they did not function as a necessary or useful step in the litigation process and did not otherwise serve its purposes.

66. As a direct and proximate result of Adelson, LVSC, and Sands China's defamation, Jacobs has suffered damages in an amount to be proven at trial but in excess of \$10,000. Moreover, Jacobs is entitled to the imposition of punitive damages against Adelson, LVSC, and Sands China, said imposition not being subject to any statutory limitations under NRS 42.005.

## PRAYER FOR RELIEF

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

1. For compensatory damages in excess of Ten Thousand Dollars (\$10,000.00), in an amount to be proven at trial;
2. For punitive damages in excess of Ten Thousand Dollars (\$10,000.00), in an amount to be proven at trial;
3. For pre-judgment and post-judgment interest, as allowed by law;
4. For attorney fees and costs of suit incurred herein, as allowed by law, in an amount to be determined; and

• • • •



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

DATED this 16th day of March, 2011.

CAMPBELL & WILLIAMS

By /s/ Donald J. Campbell  
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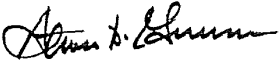
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13 *Attorneys for Defendant Las Vegas Sands Corp.*

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 **STEVEN C. JACOBS,**

17 Plaintiff,

18 v.

CASE NO.: A627691-B  
DEPT NO.: XI

Date: April 22, 2011  
Time: 9:00 a.m.

19 **LAS VEGAS SANDS CORP.,** a Nevada  
20 corporation; **SANDS CHINA LTD.,** a Cayman  
21 Islands corporation; **SHELDON G. ADELSON,**  
22 in his individual and representative capacity;  
23 **DOES I-X;** and **ROE CORPORATIONS I-X,**

24 Defendants.

**JOINT STATUS REPORT**

25 On April 18, 2011 the parties, by and through their respective counsel, met to discuss an  
26 agreeable discovery and briefing schedule. Patricia Glaser appeared on behalf of Defendant  
27 Sands China Ltd. ("SCL"); Stephen Peek appeared on behalf of Defendant Las Vegas Sands  
28 Corp. ("LVSC"); Steve Morris appeared on behalf of Defendant Sheldon G. Adelson  
("Adelson"); and Donald Campbell and Colby Williams appeared on behalf of Plaintiff Steven  
C. Jacobs ("Jacobs"). This Joint Status Report is provided to the Court in anticipation of the  
Mandatory Rule 16 Conference scheduled for 9:00 a.m. on April, 22, 2011. The parties have  
agreed as follows:

**Initial Briefing Schedule**

On or before **April 20, 2011**, LVSC will respond to Plaintiffs' First Amended Complaint  
("FAC") with the filing of an answer and counterclaim and a motion to dismiss Plaintiff's fifth

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1 cause of action; SCL will respond to the FAC with the filing of a motion to dismiss.

2 On or before **May 3, 2011**, Adelson will file a motion to dismiss the FAC. (The  
3 Defendants' respective motions to dismiss are referred to collectively as the "Motions to  
4 Dismiss".)

5 On or before **May 24, 2011**, Jacobs will file his opposition briefs to the Motions to  
6 Dismiss.

7 On or before **June 3, 2011**, Defendants will file their respective reply briefs in support of  
8 the Motions to Dismiss.

9 The parties request the Court schedule the hearing for the Motions to Dismiss for **June 9,**  
10 **2011** or as soon thereafter as the Court will allow.

11 **Discovery Schedule**

12 **Initial Disclosure of Documents:**

13 The parties anticipate that LVSC and SCL's respective initial disclosures will consist of a  
14 high volume of documents which will include Electronically Stored Information ("ESI").  
15 Accordingly, on or before **May 2, 2011**, Jacobs will provide LVSC and SCL with search terms  
16 and date ranges to be used by LVSC and SCL for the collection, review, and production of  
17 documents. Thereafter, and as soon as practicable, LVSC and SCL will begin production of  
18 initial disclosures on a rolling basis which will be completed by **July 1, 2011**.

19 The parties will make a good faith effort to resolve any dispute relating to the ESI terms  
20 and/or dates provided by Jacobs. To the extent the Court's assistance is needed to resolve any  
21 potential ESI dispute, the parties agree to seek the Court's assistance on an expedited basis and  
22 LVSC and SCL will move forward with production of documents related to the *undisputed*  
23 search terms and dates insofar as practicable.

24 On or before **May 16, 2011**, Jacobs will make his initial document disclosures. Jacobs  
25 will continue to produce any remaining documents on a rolling basis which will be completed on  
26 or before **July 1, 2011**.

27 **Initial Disclosure of Witnesses:**

28 On or before **May 16, 2011**, the parties will provide their initial lists of witnesses of each

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1 individual likely to have information discoverable under Rule 26(b).

2 Depositions:

3 The parties agree that no depositions will be taken until after **July 18, 2011**.

4 Discovery and Motion Deadlines

5 The final date to file motions to amend pleadings or add parties without a further court  
6 order will be **November 1, 2011**.

7 The parties will make initial expert disclosures on or before **December 1, 2011**.

8 The parties will make their rebuttal expert disclosures on or before **February 1, 2012**.

9 The parties will complete discovery by **March 12, 2012**.

10 The final date to file dispositive motions will be **April 2, 2012**.

11 Trial

12 The parties estimate the trial will last **three to four weeks** and request a trial setting on  
13 the **June 2012** stack, or as soon thereafter as the Court's calendar will allow.

14 DATED this \_\_\_\_ day of April, 2011.

DATED this \_\_\_\_ day of April, 2011.

16 /s/ J. Stephen Peek  
17 J. Stephen Peek, Esq.  
18 Holland & Hart LLP  
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/s/ Patricia Glaser  
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19 *Attorneys for Defendant Las Vegas Sands Corp.*

*Attorneys for Defendant Sands China Ltd.*

20 DATED this \_\_\_\_ day of April, 2011.

DATED this \_\_\_\_ day of April, 2011.

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26 *Attorneys for Defendant Sheldon G. Adelson*

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