

EXHIBIT 1

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN C. JACOBS,)	No. 58740
)	
Appellant,)	District Court Case No. A627691
v.)	
)	
SHELDON G. ADELSON, IN HIS)	
INDIVIDUAL AND)	
REPRESENTATIVE CAPACITIES,)	
)	
Respondent.)	

Appeal from Judgment of the Eighth Judicial District Court

**RESPONDENT'S REPLY IN SUPPORT
OF PETITION FOR REHEARING**

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I. INTRODUCTION

This reply addresses the injustice and unfairness of permitting one party to a lawsuit who plays to the media to freely—and with absolute immunity—defame his adversary so long as the defaming party files his defamatory statements with the court. Here, in this case, under the Court's decision, 130 Nev. Adv. Op. 44, 325 P.3d 1282 (2014) appellant Steven Jacobs is free—he is PRIVILEGED—to defame respondent Sheldon Adelson if he does so in a declaration that has some "connection" with this litigation but is published world-wide by the media. Jacobs has done this in a declaration filed in the district court in connection with a discovery dispute in which he says Sheldon Adelson personally approved a "pro-prostitution strategy" at his casinos in Macau. Prostitution in Macau, however, has nothing to do with the ostensible purpose of the defamatory declaration—to support seeking production documents that could support that Sands China is "at home" and doing business in Nevada and subject to jurisdiction here. Adelson, on the other hand, may not say to the same media that publishes and republishes Jacobs's defamatory statements about him that Jacobs is a delusional liar without incurring liability to Jacobs for "defaming" him—that is, for expressing his opinion of Jacobs, the former President of Sands China, Ltd. The Court's majority for Jacobs, in dismissing Adelson's response to his antagonist, put it this way:

Essentially, because Adelson's statements were published to a disinterested party [the *Wall Street Journal*], they are not sufficiently connected to the judicial proceedings to warrant application of the absolute privilege.

It is in this context that Adelson now faces motion practice in the district court by which Jacobs seeks to file an amended complaint against him directly and his companies derivatively, here and in Macau, for Adelson's

"defamatory" expression of opinion about Jacobs to the press—the same press that reported the defamation of Adelson by Jacobs in the complaint he filed in this case. What rational reason supports immunizing Jacobs for saying to the "observing" press through a judicial filing that Adelson is a criminal and a morally corrupt businessman who promotes prostitution in his casinos, but makes Adelson liable for saying in reply to the same press that Jacobs is a delusional liar? There is, we submit, *none*.

In today's media-saturated environment, judicial proceedings are matters of intense media interest that are instantaneously reported. There is no good reason to differentiate a defamatory statement filed in a judicial proceeding but reported world-wide by the press from a reply to the statement to the press that published both on the basis that the press is, in the second instance, an "observer" and the statement in reply is "not sufficiently connected to the judicial proceeding" to render it privileged.¹ It would not be good judicial policy to do so, nor would such a rule be compatible with the First Amendment, as the United States Supreme Court has pointed out.

"The central commitment of the First Amendment . . . is that 'debate on public issues should be uninhibited, robust and wide open.' " *Bond v. Floyd*, 385 U.S. 116, 136 (1966) (citing *New York Times Co. v. Sullivan*,

¹ Jacobs's defamation of Adelson in privileged court filings continues unabated in this Court. For example, in his Answer to Petition for Rehearing, Jacobs assails Adelson, accusing him of "lies and smears", "arrogance", "fear of the truth-finding process", "knowing fabrications", and "malicious falsehoods." Apparently, Jacobs believes these denunciations are encouraged by the Court's decision "to protect the judicial process and [] the sanctity of that process . . ." because he cites the decision as a preface to making these gratuitous defamatory remarks. Answer at 1:21–24.

376 U.S. 254, 270 (1964)). For this salutary constitutional reason, the Court declared that the tort of defamation is constrained by the First Amendment because the common law of defamation can "claim no talismanic immunity from constitutional limitations." *New York Times*, 385 U.S. at 269. It should be no different in Nevada for Jacobs who initiated litigating this case and his characterizations of Adelson in the press. Otherwise, the Court's decision in the *Anzalone* case, 118 Nev. 140, 149, 42 P.3d 233, 239 (2002) (" 'If I am attacked in a newspaper, I may write to that paper to rebut the charges, and I may at the same time retort upon my assailant . . . ' " citing *Foretich v. Capital Cities/ABC, Inc.*, 37 F. 3d 1541, 1559 (4th Cir. 1994)), becomes an outlier, whether the district court in this case applied it or not: "Applying this privilege is a question of law, one we can resolve by simply comparing the two documents published." *Id.*

Although Jacobs acknowledges that the litigation privilege is "designed to *facilitate* access to the courts and the truth-finding process," he believes, and the Court's decision in this case supports, that he can say anything he wants about Adelson—even intentionally false and defamatory statements that are wholly unrelated to the merits of the litigation he commenced. So long as his scurrilous statements are made in a court filing, Adelson cannot reply to those media-disseminated statements to the same media that publishes Jacobs's defamatory remarks unless he, too, simultaneously files them in court. This is not good judicial or First Amendment policy.

II. ARGUMENT

A. Immunizing A Defamer In A Media-Intense Case Because He Speaks To The Media Through Court-Filed Documents Should Not Put The Defamed Person At Risk For Defamation If He Replies To His Defamer Through The Same Media.

Following dismissal of Jacobs's defamation claim in June 2011, and while this appeal was pending, Jacobs defamed Adelson in a "scandal-mongering" court filing that had nothing to do with the merits of his claim for wrongful termination against LVSC and SCL. In response to the district court's routine request for a status update on discovery issues in June 2012, Jacobs submitted a sworn declaration, in which he says Sheldon Adelson approved a "pro-prostitution strategy" to promote his casinos in Macau. Ex. 1, Excerpts of Jacobs Decl. at 3:13–19. This salacious and false statement was and is wholly unrelated to the discovery disputes arising out of Jacobs's contention that Sands China is subject to jurisdiction in Nevada for Jacobs's termination in Macau. Jacobs made this false but sensational defamatory statement to feed the media frenzy about anything Adelson during the 2012 presidential election season, and the "observing" press gobbled it up. *See, e.g., the Wall Street Journal*, June 29, 2012, "Sands Suit Alleges 'Prostitution Strategy' " (Steve Jacobs says "chairman Sheldon Adelson approved a 'prostitution strategy' at the casino operator's Macau properties"), Ex. 2 hereto.

Because Jacobs's defamatory statement about prostitution in Macau is wholly untrue and unrelated to this Nevada litigation, Adelson sued him for defamation in Florida, where he resides. Ex. 3, Excerpts of Opp. to Mot. for Summ. J. at pp. 3–7. In the Florida defamation action, Jacobs successfully argued that his defamatory statement about Adelson was absolutely privileged under Nevada law because it was made in a

declaration he filed in Nevada's district court concerning a discovery dispute. Ex. 4, Excerpts of Mot. for Summ. J. at pp. 10, 12–14. In his Florida motion papers, Jacobs argued that the "privilege is 'broad' and it is applied 'liberally'," *id.* at 13, and that "[t]here is no requirement that the communications to the court be 'relevant' in the legal sense." Ex. 5, Excerpts of Reply in Supp. of Mot. for Summ. J. at p. 4. Jacobs also argued to the Florida court that:

The Nevada Supreme Court in *Circus Circus versus Witherspoon* . . . expressly says that the statements are absolutely privileged. It wouldn't matter if they were false. It wouldn't matter if this statement was false with the very intent of harming Mr. Adelson's reputation. The question then becomes, well, who decides, because the question is, is it in any way . . . Nevada Supreme Court uses the term . . . related to the proceedings. Is it in any way related to the proceedings? Privilege is broad. It has to be applied liberally.

Ex. 6, Excerpts of Tr. of Hr. on Mot. for Summ. J. at 13:19–14:7.

In opposing summary judgment, Adelson contended that Jacobs's position on privilege, if accepted, means there is no limit to what one may say about an adverse party because he is *privileged* to defame that hapless person. The Florida district court approvingly acknowledged Adelson's argument that the "privilege is an easy formula for terrible abuse," Ex. 6, Excerpts of Tr. of Hr. on Mot. for Summ. J. at 38:4–8, 38:14–22,² and said the abuse of the privilege³ gives rise to is the verbal equivalent

² See also Ex. 6, Excerpts of Tr. of Hr. on Mot. for Summ. J. at 21:11–24:25 (Adelson's counsel discussing the lack of relevancy of Jacobs's statement to the discovery dispute).

³ *Id.* at 40:15–21, where the court said, "I don't happen to agree with the privilege. I think it's a terrible thing where people can come in and use that license to go ahead and tarnish someone's reputation. I see it all the time. I think it's terrible, and I wish it didn't exist, but it does exist." This privilege

of "somebody just throwing in a hand grenade."⁴ Nevertheless, the court ruled in Jacobs's favor and granted summary judgment against Adelson, *even though it found that Jacobs's defamatory statement was not relevant to the discovery dispute in which it was offered*. Ex. 6, Excerpts of Tr. of Hr. on Mot. for Summ. J. at 52:18–24 ("All right. I think it is - - I agree with you that it is not relevant, but it bears a connection with the subject of inquiry, which was the jurisdiction of the court in Nevada. So I believe that the privilege applies. I'm granting the motion.").

Thus, Nevada's law of litigation privilege, in Jacobs's view, is both a shield and a sword: He can freely and falsely defame Adelson in the press—as his counsel said, "It wouldn't matter if the[] [statements] were false. It wouldn't matter if this statement was false with the very intent of harming Mr. Adelson's reputation." Ex. 6, Excerpts of Tr. of Hr. on Mot. for Summ. J. at 13:24–14:1. But Adelson cannot under the Court's decision reply with his opinion on Jacobs's defamatory attacks on him because Jacobs's attacks were made in a court filing that the media picked up as an item of public interest and published throughout the world. This distinction between immune and actionable defamation, which the majority's opinion in this case supports, grants an unrestricted license to

that Jacobs successfully invoked in Florida, relying on *Witherspoon* and this Court's decision in *VESI*, is the same privilege the Court's 4–3 decision denies to Adelson for expressing his opinion of Jacobs. Is this fair? Is the "sanctity" of the judicial process with which Jacobs is so concerned (Answer at 1:21–24) "protected" by sanctioning Jacobs to call Adelson a whore master with impunity, but holding Adelson for libeling Jacobs by referring to him as a delusional liar? What laudable social or judicial policy is served by such a result? *None*.

⁴ Ex. 6, Excerpts of Tr. of Hr. on Mot. for Summ. J. at 38:9–10.

the mudslinger while muzzling his target. Surely, the Court did not intend this result when it delivered its split 4–3 decision.

It is in this real-world context that Jacobs, relying on the Court's decision, has recently moved the Clark County District Court for permission to reinstate his defamation claim against Adelson, LVSC, and SCL. According to Jacobs, the Court's decision is "an intervening *change in law* entitling Jacobs to reinstatement of his defamation claims" because "the Nevada Supreme Court has *clarified* the legal issues surrounding Nevada's litigation privilege." Ex. 7, Excerpts of Mot. to Reconsider Dismissal of Defamation Claim Against Defendants Las Vegas Sands Corp. and Sands China Ltd. at 1:24–26, 5:14–15 (emphasis added). This gives mudslinger Jacobs an unconscionable, unjust advantage: He gets to "try his case in the press" with impunity, but his opponent cannot reply in like manner without submitting to a defamation lawsuit. Is this what the Court intended to "clarify" and set as policy for guidance of future litigants who solicit media attention to bait their adversaries to commit a defamation tort by speaking in reply to the press?

If the Court's decision stands as published, it will confer on opportunistic litigants and their lawyers an unrestricted mudslinger's license, as this case so richly illustrates. It will *encourage* them to sensationalize their pleadings with all manner of provocative personal denunciatory allegations in anticipation of prompting a response from the attacked party out of court which, under the majority's view, would appropriately give rise to more litigation, in derogation of free speech and in contrast to the purpose of the absolute privilege.

III. CONCLUSION

The current decision does not reflect sound judicial and First Amendment policy, and for this reason the Court should grant Adelson's petition for rehearing.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this reply in support of petition for rehearing complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this reply has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007 in 14 point Palatino font.

2. I further certify that this reply complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the petition exempted by NRAP 32(a)(7)(C), it does not exceed 8 pages.

3. Finally, I hereby certify that I have read this reply, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this reply complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the reply regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied is to be found. I understand that I may be subject to sanctions in the event that the accompanying reply is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

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

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DATED this 21st day of July, 2014.

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EXHIBIT 1

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8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 STEVEN C. JACOBS,

11 Plaintiff,

12 v.

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

16 Defendants.

17 AND RELATED CLAIMS

Case No.: A-10-627691

Dept. No.: XI

**DECLARATION OF STEVEN C.
JACOBS IN SUPPORT OF MOTION
TO COMPEL**

19 I, STEVEN C. JACOBS, declare as follows:

20 1. I am the plaintiff in the above-captioned matter, and I make this Declaration in
21 support of Plaintiff's Status Memorandum filed pursuant to this Court's directive during the status
22 conference held on May 24, 2012.

23 2. I am over eighteen years of age and am competent to testify to the matters stated
24 herein. I have personal knowledge of the following, unless stated upon information and belief,
25 and can and do competently testify thereto.

26 3. I have reviewed most of the non-attorneys' eyes only documents *produced by*
27 Defendants Las Vegas Sands Corp. ("LVSC") and Sands China Ltd. ("Sands China") (LVSC and
28 Sands China are collectively referred to as "Defendants") (before the latest production received

1 President and CEO of Sands China without prior Sands China Board review and approval despite
2 known conflicts of interest and without following the Hong Kong Stock Exchange's procedural
3 requirements; authorizing and ordering the investigation of Macau government officials via the
4 "Leverage Strategy" directed by Leven and Adelson; instructing vendors providing services to
5 Sands China that Sands China representatives could not sign contracts on behalf of Sands China,
6 but that contracts must be agreed to by Leven and/or LVSC; hiring and instructing U.S.-based
7 sign companies to install new signage within the Venetian Macau mall; and giving instructions
8 regarding investigations and subsequent junket reviews; agreeing and approving the removal of
9 Leonel Alves from Sands China and subsequent rehiring; authorization and instructions regarding
10 the execution of the deal with Playboy related to Parcels 5 and 6, including but not limited to
11 notes associated with his dinner meeting with Playboy Executives prior to the deal being
12 concluded among others.

13 5. ***LVSC Prostitution Strategy for Macau.*** E-mails and documents missing from
14 Defendants' production demonstrate LVSC's Executive Management's control and direction from
15 Las Vegas over acts of prostitution on Sands China's properties. As background, shortly after my
16 arrival to Macau in May 2009, I launched "Operation Clean Sweep" designed to rid the casino
17 floor of loan sharks and prostitution. This project was met with concern as LVSC Senior
18 Executives informed me that the prior prostitution strategy had been personally approved by
19 Adelson. Missing documents include but are not limited to e-mails and notes between myself and
20 Mike Leven concerning Adelson's direct involvement, e-mails between Mark Brown and Senior
21 LVSC Executives/Board members confirming the implementation of the strategy and highlighting
22 its "success." Hard copies of these files were kept in my office drawer in a folder labeled
23 "Outrageous." Again, these documents and e-mails will demonstrate control by LVSC executives
24 from Las Vegas on matters of great import.

25 6. ***Misuse of Blue Cards and Illegal Workers in Macau.*** During the summer of
26 2009, I commissioned an internal audit of foreign workers and their work permits, known as Blue
27 Cards. Shortly after the audit was concluded, over 2000 employees were terminated. In the fall
28 of 2009, the Macau government began enforcing its laws regarding the hiring and use of

1 million write off on Sands China's books for this player's debt, and then subsequently flew him
2 (and his wife) to Las Vegas aboard LVSC's 747, extended him credit, and allowed him to play.
3 Documents not yet produced will also demonstrate that LVSC approved this individual to operate
4 an unlicensed Junket in Macau.

5 12. I declare under penalty of perjury under the laws of the State of Florida and United
6 States of America that the foregoing is true and correct and that I signed this Declaration on
7 June 27 2012.

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STEVEN C. JACOBS

EXHIBIT 2

EXHIBIT 2

Should you be sitting in cash right now?

If you have a \$500,000 portfolio, download the latest report by *Forbes* columnist Ken Fisher's firm. It tells you where we think the market is headed and why. This must-read report includes research and analysis you won't find anywhere else. Don't miss it! [Click Here to Download Your Report!](#)

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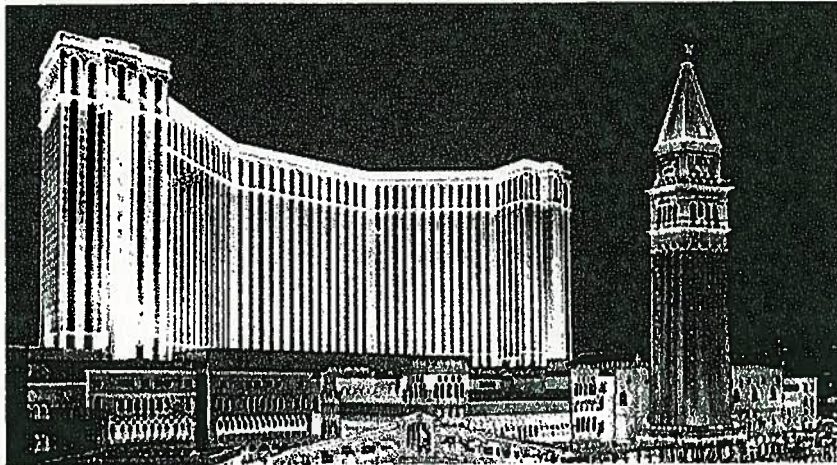
THE WALL STREET JOURNAL

WSJ.com

LAW | June 29, 2012, 8:11 a.m. ET

Sands Suit Alleges 'Prostitution Strategy'

By ALEXANDRA BERZON And KATE O'KEEFE



A former top China executive at Las Vegas Sands suggested in a court filing that its chairman approved a "prostitution strategy" at the casino properties in Macau. The WSJ's Isabella Steger speaks to WSJ reporter Kate O'Keeffe about the dispute.

A former top China executive at Las Vegas Sands Corp. suggested in a court filing made public Thursday that there was potential wrongdoing by company executives, including allegations that chairman Sheldon Adelson approved a "prostitution strategy" at the casino operator's Macau properties.

The filing in Nevada District Court in Las Vegas by Steve Jacobs, the executive, is one of the most explosive yet in a continuing legal dispute between Mr. Jacobs and his former employer. Mr. Jacobs and his attorney accused the casino operator of withholding documents Mr. Jacobs is seeking in order to establish jurisdiction in his wrongful termination lawsuit, which was first filed in 2010.

In a statement Thursday, Las Vegas Sands spokesman Ron Reese said the company has "consistently maintained that the allegations of misconduct and wrongdoing by Jacobs against the company and its senior management are baseless." Mr. Reese's statement added, "Mr. Adelson has always objected to and maintained a strong policy against prostitution on our properties, a fact that Mr. Jacobs knows to be true, and any accusation to the contrary represents a blatant and reprehensible personal attack on Mr. Adelson's character."

Mr. Jacobs has already accused the company of firing him for objecting to Mr. Adelson's illegal demands, which allegedly included extorting senior government officials in Macau, threatening

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Chinese banks and using the services of a Macau lawyer despite concerns his retention posed risks to the Foreign Corrupt Practices Act, which bans bribery by U.S. companies abroad. The company denies the allegations.

In the latest court filing Mr. Jacobs broadened his list of potential allegations against company executives with a seven-page declaration.

Mr. Jacobs is seeking the documents to establish that Las Vegas-based executives such as Mr. Adelson and Las Vegas Sands President Mike Leven had enough control over casinos in Macau, the fast-growing Chinese gambling enclave, to warrant trying his wrongful termination suit in Las Vegas. The company is seeking Macau jurisdiction.

The new filing, coupled with previous allegations, highlights how problematic the lawsuit by Mr. Jacobs, a Harvard graduate and former hotel executive from Tennessee, could be for Las Vegas Sands and for Mr. Adelson. The case comes at a sensitive time for the billionaire gambling mogul, who has emerged as a top Republican campaign donor in the U.S. elections this year.

Las Vegas Sands said last year it believes the wrongful termination case prompted investigations into the company by the U.S. Securities and Exchange Commission and by the U.S. Department of Justice into possible violations of the Foreign Corrupt Practices Act. The company said it is cooperating with the federal investigations.

Among the documents Mr. Jacobs is seeking are those he says would reveal "control and direction" by Las Vegas Sands executives "over acts of prostitution on Sands China's properties."

In the filing, Mr. Jacobs alleged that senior executives were concerned about a project Mr. Jacobs launched after he arrived in Macau in May 2009, called "Operation Clean Sweep," designed to rid the casino floor of loan sharks and prostitution. The executives were concerned with his plan because "the prior prostitution strategy had been personally approved by Adelson," Mr. Jacobs alleged in the filing. The filing didn't provide details on the purported "prostitution strategy."

According to the filing, executives confirmed by email Mr. Adelson's involvement in the strategy and highlighted its "success." Mr. Jacobs says he put hard copies of those emails in a folder labeled "Outrageous" in his office drawer.

Prostitution at Sands China made headlines in December 2010 when police rounded up more than 100 suspected prostitutes at the company's flagship Venetian Macao casino-resort while Mr. Adelson was in town. At the time, the company said in a statement: "The company provided information regarding prostitution-related activities to authorities well in advance of their raid in December 2010. We believe that information was helpful in the development of their case."

Mr. Jacobs also asked for documents he says showed the company offered special deals through an elite "Chairman's Club" to a select group of high-rolling gamblers that included known leaders of Chinese organized-crime rings known as Triads, according to the filing. Mr. Adelson controlled the club and sent personal letters to its members, Mr. Jacobs said in the filing.

Mr. Jacobs is also seeking documents he said in the filing show that Mr. Leven argued in favor of employing illegal construction workers. The Chinese territory's tight controls on foreign labor have caused headaches for casino operators and other businesses eager to expand in the territory.

Las Vegas Sands was particularly hard-hit by the restrictions. Mr. Leven told Mr. Jacobs that the growth of unit Sands China Ltd. would be at risk without the hiring and use of illegal construction workers, according to the filing. Mr. Leven decided to move employees from the Macau payroll to

separate books in Singapore, where the company also operates a casino-resort, to circumvent the issue, said Mr. Jacobs in the filing.

Regarding the allegations of the Chairman's Club and the illegal employment, Mr. Reese, the Las Vegas Sands spokesman, said, "We consistently strive to comply with all applicable law—here and in the other jurisdictions in which we operate." He declined to comment further.

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EXHIBIT 3

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IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

SHELDON G. ADELSON,

Plaintiff,

v.

Case No. 12-28537 CA 20

STEVEN C. JACOBS,

Defendant.

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff SHELDON G. ADELSON ("Plaintiff" or "Mr. Adelson"), by and through undersigned counsel and pursuant to Florida Rule of Civil Procedure 1.510, hereby submits his memorandum in opposition to the Motion for Summary Judgment ("Motion") filed by Defendant Steven C. Jacobs ("Defendant" or "Jacobs") and states as follows:

I. Introduction.

Having exhausted his efforts to misuse the discovery process in this action to bypass a Nevada Supreme Court stay of discovery in his Nevada lawsuit, Jacobs now seeks to avoid a trial over the lie he published in the Nevada action with the intent to maliciously savage the reputation of Mr. Adelson. Jacobs advances the erroneous claim that the litigation privilege immunizes his irrelevant and false accusation against a preeminent business leader and philanthropist. Never before has such an intentional and bad faith defamatory statement been wholly immunized from accountability where the subject matter of the defamation – in this case,

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create a media feeding frenzy about Mr. Adelson in the midst of the 2012 presidential election season, in which Mr. Adelson had an extremely high profile fundraising role. Nonetheless, in his Motion, Jacobs seeks the entry of summary judgment on one narrow ground – that the Defamatory Declaration is protected by what is commonly referred to as the litigation privilege. The Motion presents no evidence that the Defamatory Declaration was truthful (nor could it do so) and does not present evidence disputing that the Defamatory Declaration was filed and published with actual malice. As a result, the Court need only determine whether Jacobs has met his summary judgment burden of establishing that there is no factual issue for jury determination as to whether the Defamatory Declaration is within the bounds of the litigation privilege.² As is explained below, Jacobs has not met this burden and this action should proceed to jury trial.

II. Factual Record Concerning the False and Irrelevant Defamatory Declaration.

Jacobs was formerly employed by Sands China, Ltd. (“SCL”), a company for which Mr. Adelson serves as Chairman of the Board. In July 2010, Jacobs’s employment was terminated. He thereafter filed suit against SCL and an affiliated entity, Las Vegas Sands Corp. (“LVSC”), in state court in Clark County, Nevada in October 2010, essentially alleging breach of his employment contract. The First Amended Complaint (“Jacobs’s Nevada Complaint”) in that action, itemizing alleged improprieties, is Exhibit 1 to the Motion. While Jacobs’s Nevada Complaint accuses Mr. Adelson of, as stated at page 4 of the Motion, “a host of [imagined]

² The inquiry into the scope of the litigation privilege is inherently “fact intensive,” *see Fariello v. Gavin*, 873 So. 2d 1243, 1245 (Fla. 5th DCA 2004), and thus may be viewed as akin to a mixed question of law and fact. As courts have observed many times, summary judgment is improper if even the slightest doubt emerges from the record. *See, e.g., Ramos v. Wright Superior, Inc.*, 610 So. 2d 46, 47 (Fla. 3d DCA 1992) (“Summary judgment must be reversed if there is even the slightest doubt as to the existence of issues of fact.”); *Alfre Marble Corp. v. Twin Stone Designs & Installations, Inc.*, 44 So. 3d 193, 193 (Fla. 3d DCA 2010) (“if the record reflects the existence of any genuine issue of material fact or the possibility of any issue, or if the record raises even the slightest doubt that an issue may exist, summary judgment is improper”).

improprieties” and wrongdoing (*see* Ex. 1 to Motion at ¶¶ 26-28), significantly, **it says not a single word about the issue of prostitution.**

A jurisdictional challenge was raised by SCL in the Nevada action and Jacobs attempted to establish that Nevada had jurisdiction over SCL, in part, because he contended that pertinent documents were housed and management decisions were made in that state. *See* Declaration of J. Stephen Peek (“Peek Decl.”), attached hereto as Exhibit “A”, at ¶¶ 4-5. During document discovery in the Nevada action, Jacobs requested a large variety of materials that he presumably deemed reasonably calculated to lead to the discovery of admissible evidence. Again, **no part of Jacobs’ discovery in Nevada touched in any way whatsoever on the issue of prostitution.** *Id.* at ¶¶ 5, 6. The addition of the bald-faced lie that Mr. Adelson had approved a “prostitution strategy” was irrelevant even to the claims of missing jurisdictional discovery.

Although the issue of prostitution has nothing to do with the allegations of Jacobs’ Nevada Complaint or the materials that he sought in discovery, Jacobs launched a transparent attempt to create a media firestorm during the midst of the 2012 presidential election campaign in which Mr. Adelson was one of the largest financial contributors. A highly sophisticated operative who is believed to have succeeded on two prior occasions in extracting settlements and confidential agreements from former employers (a subject on which Jacobs has improperly stonewalled discovery), Jacobs intentionally unleashed scurrilous falsities that he knew would inflict a maximum of personal distress, professional injury and political radioactivity.

For the first time, Jacobs decided to falsely accuse Mr. Adelson of personally approving a pro-prostitution strategy at the LVSC casinos in Macau. He did so through the guise of the Defamatory Declaration that he filed on June 27, 2012 as part of a discovery status memorandum with the Nevada court, obviously attempting, albeit unsuccessfully, to shield his defamation

within the confines of the litigation privilege. Jacobs knew that his publicity bombshell was not relevant to the Nevada action against LVSC and SCL. But he engineered a cynical strategy to concoct the most personally upsetting, damaging and headline-grabbing falsity he could find, wrongly believing that he was privileged to do so with impunity.

The Defamatory Declaration is Exhibit 7 to the Motion. Under the caption “**LVSC Prostitution Strategy for Macau**,” Jacobs swears “under penalty of perjury under the laws of the State of Florida and United States of America” that, “shortly after my arrival to Macau in May 2009, I launched ‘Operation Clean Sweep’ designed to rid the casino floor of loan sharks and prostitution. This project was met with concern as LVSC Senior Executives informed me that the prior prostitution strategy had been personally approved by Adelson.” *See* Ex. 7 to Motion. At deposition, Jacobs testified that the only LVSC executive – not “executives” – who supposedly informed him that a pro-prostitution strategy had been personally approved by Mr. Adelson was Stephen Weaver. *See* Transcript from September 19, 2012 Deposition of Jacobs (“Jacobs Depo.”), attached hereto as Exhibit “B”, at 90-91, 205-06. Weaver flatly disputes that story, averring that he has no recollection of saying any such thing, and that he does “not believe that I would have said such a thing to Mr. Jacobs or would have received such an instruction from Mr. Adelson, as Mr. Adelson’s opposition to any type of lascivious activity on his properties is well-known.” *See* Declaration of Stephen Weaver, attached hereto as Exhibit “C”, at ¶ 3.

Although this defamatory statement was placed in the middle of a declaration appended to a discovery status memorandum, it became the lead (and often only) topic in news articles immediately circulated throughout the world by a variety of publications, no doubt because of Jacobs pointing out this scurrilous accusation to his friends and supporters in the media so as to

increase the impact and viral spread of his falsehoods. Significantly, in violation of Court Orders, Jacobs has long wrongfully withheld production of the cellular phone records evidencing his communications with the media and his false testimony on the subject, a discovery violation that alone warrants denial of the Motion.

Indeed, the Democratic Congressional Campaign Committee (“DCCC”) ran with Jacobs’s malicious slur, releasing a press statement on June 29, 2012 (two days after the filing of the Defamatory Declaration) under the bold-faced, banner headline **“Breaking: House Republicans’ Biggest Donor Approved ‘Prostitution Strategy’ in China,”** that cited to an Associated Press report about the Defamatory Declaration. The DCCC then released another press statement on July 2, 2012 (three days later) accusing Mr. Adelson of making donations “funded by foreign money from a Chinese prostitution strategy.” One month later, on August 2, 2012, the DCCC retracted its statements and recognized that they were false, apologizing as follows: “In press statements issued on June 29 and July 2, 2012, the DCCC made unsubstantiated allegations that attacked Sheldon Adelson, a supporter of the opposing party. **This was wrong. The statements were untrue and unfair and we retract them.** The DCCC extends its sincere apology to Mr. Adelson and his family for any injury we have caused.” See Exhibit “D” hereto (emphasis added). But retractions do not erase headlines and irretrievable damage was done. Other headlines, such as AP’s “Ex-Sands exec alleges prostitution in Macau sites” and The Wall Street Journal’s “Sands Suit Alleges Prostitution” (see Composite Exhibit “E” hereto) will, along with hundreds of other devastating proclamations, forever dwell on the Internet and elsewhere.

The Defamatory Declaration’s assertion that the supposed documents “demonstrate LVSC’s Executive Management’s control and direction from Las Vegas over acts of prostitution

on Sands China's properties" (*see* Exhibit 7 to Motion) is erroneous for two reasons. First, as mentioned above, Jacobs never requested production of any such materials. *See* Peek Decl. at ¶ 6. Second, even if such materials had been requested, there is nothing supporting the veracity of Jacobs's charge, i.e., that LVSC officials at any level opposed the fanciful "Operation Clean Sweep." The story is a fiction and the purported documents do not exist. Jacobs has produced no such documents, nor has LVSC. Document production instead confirms institutional opposition to prostitution, not a pro-prostitution strategy personally approved by Mr. Adelson.

In response to Jacobs's defamatory misconduct, Mr. Adelson filed this lawsuit in July 2012 in Florida, where Jacobs lives, whose law he invoked in attesting to the truth of the Defamatory Declaration, and where the defamatory statement was republished. Mr. Adelson's Complaint (Exhibit 11 to the Motion) specifically alleges that the defamatory statement was false and neither relevant nor pertinent to the Nevada action, and the Complaint is based exclusively on that part of the Defamatory Declaration concerning prostitution that is quoted above.³ Without moving to dismiss, Jacobs answered the Complaint (and the subsequent Amended Complaint) and denied liability.

As that exemplifies, Jacobs's bad faith defines not only the machinations behind the prostitution allegations, but also his strategies in this action. While professing to have immunity in the first instance, Jacobs responded to the Complaint with an Answer – not a dismissal motion – and a battery of aggressive discovery. Thereafter, at every turn, he pursued all the stratagems available for pursuing discovery to collect information for the merits of his Nevada action, even knowing that merits discovery in that case was stayed by Order of the Nevada Supreme Court.

³ To be sure, there are other false and scurrilous statements in the Defamatory Declaration but, because they are at least relevant to the Nevada action, Mr. Adelson has not brought suit over them.

be subject to prosecution for perjury if untruthful.” *Dueñas v. Yama’s Co., Inc.*, 1991 WL 255834, *5 (D. Guam App. Div. Nov. 18, 1991), *aff’d*, 999 F.2d 542 (9th Cir. 1993). Like Nevada, by statute California requires declarations filed in its courts to invoke California perjury law even if executed outside the state, and the failure to do so renders the declaration invalid. *See Kulshrestha v. First Union Commercial Corp.*, 93 P.3d 386, 389-91 (Cal. 2004).

This extreme and compound duplicity should not be ignored. Moreover, it leads to the inference that Jacobs was submitting a knowingly false declaration while attempting to skirt exposure to perjury prosecution. Such dishonest antics do not immunize a false and malicious statement contained in the knowingly irrelevant, invalid declaration.

VI. Conclusion.

WHEREFORE Plaintiff respectfully requests that the Court deny the Motion for Summary Judgment, and grant such other relief as may be deemed just and proper.

Respectfully submitted,

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EXHIBIT 4

EXHIBIT 4

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

SHELDON G. ADELSON,

Plaintiff,

v.

STEVEN C. JACOBS,

Defendant.

CASE NO.: 12-28537-CA-01-20

**DEFENDANT STEVEN C. JACOBS' MOTION FOR SUMMARY
JUDGMENT AND INCORPORATED MEMORANDUM OF LAW**

Defendant Steven C. Jacobs ("Jacobs"), pursuant to Fla. R. Civ. P. 1.510, moves for the entry of an order granting summary judgment pursuant because the only alleged defamatory statement at issue – a Declaration Jacobs submitted in a Nevada court status memorandum outlining how companies owned and operated by Plaintiff Sheldon G. Adelson ("Adelson") were concealing discovery in a Nevada lawsuit – cannot, as a matter of law, give rise to a claim. Adelson, who has established a record of abusive defamation practices, certainly knows this: Adelson successfully invoked the same litigation privilege in the very same Nevada litigation so as to shield him from defamation claims for comments he has made even outside of the litigation to the media.

MEMORANDUM OF LAW

II. ANALYSIS

A. Summary Judgment is Appropriate as There Are and Can Be No Disputed Issues of Material Fact.

A party is entitled to summary judgment when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *E.g., Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130-31 (Fla. 2000). That is certainly the case here because "[w]hether allegedly defamatory statements are absolutely privileged is a question of law to be decided by the court." *Resha v. Tucker*, 670 So. 2d 56, 59 (Fla. 1996); *cf. Volusia Cnty.*, 760 So. 2d at 130 ("Where the determination of the issues of a lawsuit depends upon the construction of a written instrument and the legal effect to be drawn therefrom, the question at issue is essentially one of law only and determinable by entry of summary judgment.") (internal citation and quotation omitted).

And, because the allegedly defamatory statements were published in the Nevada Action, they are absolutely privileged. Summary Judgment is thus proper.

B. Jacobs is Entitled to Summary Judgment Because His Statements Are Absolutely Privileged Under Nevada Law.

1. Nevada law applies to Adelson's claim.

Adelson's single claim against Jacobs arises entirely from a statement made to the court in the Nevada Action. Because the alleged conduct lacks any connection with this jurisdiction, Nevada law applies to this Court's analysis of Adelson's claims. "Florida applies the 'significant relationship' test to resolve choice of law issues arising from tort claims." *Plath v. Malebranche*, 351 F. Supp. 2d 1338, 1341 (M.D. Fla. 2005) (citing *Bishop v. Fla. Specialty Paint Co.*, 389 So.2d 999, 1001 (Fla. 1980) (first adopting "significant relationship test")); *Pledger v. Burnup &*

Indeed, Nevada has the only significant relationship with Adelson's allegations against Jacobs. Again, Adelson's claim centers upon a declaration that Jacobs filed in the Nevada Action in the course of and related to matters pending before that court. Jacobs' Declaration was prepared and submitted in relation to a Nevada discovery dispute that was (and is) occurring in Nevada. The Nevada Action involves Jacobs' claims that he was wrongfully terminated by LVSC, a Nevada corporation based in Nevada, and that acts that lead up to Jacobs' wrongful termination took place in Nevada. Although Jacobs may reside in and be a citizen of Florida, his relationship with Adelson and his companies is centered in Nevada. Nevada plainly has the most significant relationship and Nevada law applies.⁵

2. **Jacobs' statements in his court-filed Declaration are protected by Nevada's absolute privilege.**

Nevada law is clear and long-standing on this point, as Adelson well knows: "Communications [made] in the course of judicial proceedings [even if known to be false] are absolutely privileged."⁶ *Clark Cnty. Sch. Dist. v. Virtual Educ. Software*, 125 Nev. 374, 382, 213 P. 3d 496, 502 (2009) (alterations in original) (quoting *Circus Circus Hotels v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983)). Of course, the absolute litigation privilege "precludes

⁵ Confirming his improper forum shopping, Adelson has told other courts that Nevada law applies to his claim of defamation stemming from the Jacobs Declaration. In yet another lawsuit Adelson filed for republishing the allegations, Adelson insisted in page after page that the laws of Nevada – where he was supposedly defamed, where he lives, and where he works – applies to his defamation claim. (Ex. 10, Adelson's Combined Mem. of Law in Opp'n to Defs.' Special Mot. to Dismiss Pursuant to the D.C. Anti-SLAPP Statute and Mot. to Dismiss Pursuant to Rule 12(B)(6) at 11-17, filed on Nov. 9, 2012, in *Adelson v. David A. Harris, Marc R. Stanley, and Nat'l Jewish Democratic Council*, case No. 12-Civ-6052-JPC, pending in the United States District Court, Southern District of New York.) Unremarkably, that court recently found that Adelson's lawsuit lacked merit and dismissed it.

⁶ Of course, in bringing this motion, Jacobs in no way concedes that his statements were false. To the contrary, his statements were true, and proven as much by the Nevada court's findings as to the extensive discovery misconduct that occurred at the hands of Adelson's companies, including hiding of discoverable information outlined in the Declaration.

liability even where the defamatory statements are published with knowledge of their falsity and personal ill will toward the plaintiff." *Circus Circus*, 99 Nev. at 60, 657 P.2d at 104.

The purpose of the rule is to promote zealous advocacy by attorneys for their clients and to encourage full disclosure of facts. As such, the scope of the privilege is "broad" and it is applied "liberally." *Fink v. Oshins*, 118 Nev. 428, 433-34, 49 P.3d 640, 643-44 (2002). Any debate as to whether the privilege applies is resolved in "favor of a broad application." *Virtual Educ.*, 125 Nev. at 382, 213 P.3d at 502. Therefore, "[t]he defamatory material need not be relevant in the traditional evidentiary sense, but *need have only 'some relation' to the proceeding*; so long as the material has some bearing on the subject matter of the proceeding, it is absolutely privileged." *Circus Circus, Inc.*, 99 Nev. at 61, 657 P.2d at 104 (emphasis added). Moreover, the protection of the absolute privilege extends to instances where a non-lawyer "asserts an alleged defamatory communication . . . during a judicial proceeding." *Virtual Educ.*, 125 Nev. at 383, 213 P.3d at 503.

There is and can be no debate as to the application of Nevada's litigation privilege to Jacobs' Declaration. As shown, Adelson's one and only claim is based solely upon the contents of Jacobs' Declaration filed with the Nevada state court, and attached as an exhibit to a discovery-related status memorandum that the Nevada court requested. (See Ex. 7, Jacobs' Decl.) Jacobs submitted his declaration after LVSC and Sands China failed to produce relevant discoverable documents. Jacobs' actions were taken for a legitimate purpose and to highlight discovery failures of Adelson's companies to the Nevada court that caused to delay the scheduling of the jurisdictional evidentiary hearing. As Adelson knows well, and as his lawyers were told by the Nevada court (which is why he went forum shopping), Jacobs' statements in his

Declaration are precisely what the litigation privilege protects. (Exhibit 9, Hr'g Tr. dated June 28, 2012, 10:8-12.)

C. Jacobs is Also Entitled to Summary Judgment if Florida Law Applies because Jacobs' Statements are Protected by Florida's Absolute Litigation Privilege As Well.

1. Florida's absolute litigation privilege is similar to Nevada's privilege.

In this case, it largely is irrelevant which state's law applies. Like Nevada, Florida law protects Jacobs' right to prosecute his Nevada Action just as zealously. Florida "has long recognized that judges, counsel, parties, and witnesses should be absolutely exempted from liability to an action for defamatory words published in the course of judicial proceedings, regardless of how false or malicious the statements may be, as long as the statements bear some relation to or connection with the subject of inquiry." *DelMonico v. Traynor*, SC10-1397, 2013 WL 535451, at *4, --- So.3d --- (Fla. Feb. 14, 2013); *see also Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. U.S. Fire Ins. Co.*, 639 So.2d 606 (Fla. 1994) ("*Levin*") ("[W]e find that absolute immunity must be afforded to any act occurring during the course of a judicial proceeding, regardless of whether the act involves a defamatory statement or other tortious behavior . . . so long as the act has some relation to the proceeding . . .").⁷

Florida applies the absolute privilege in defamation cases when the allegedly "defamatory statements at issue were made either in front of a judicial officer or in pleadings or documents filed with the court or quasi-judicial body." *DelMonico*, 2013 WL 535451, at *10. The privilege

⁷ The Florida Supreme Court explained that the absolute privilege was derived from balancing two competing interests – "the right of an individual to enjoy a reputation unimpaired by defamatory attacks versus the right of the public interest to a free and full disclosure of facts in the conduct of judicial proceedings." *Levin*, 639 So.2d at 608. In the end, "the public interest of disclosure outweighs an individual's right to an unimpaired reputation" *DelMonico*, 2013 WL 535451, at *9. Thus, the absolute privilege is "premised" on two concerns: "(1) that the initial trial would needlessly evolve into another trial; and (2) that the potential exposure to a subsequent lawsuit would have a chilling effect on litigants seeking to redress their injuries." *Id.* at *7.

III. CONCLUSION

In light of the foregoing, Jacobs respectfully requests that summary judgment be entered in his favor, and against Plaintiff Sheldon G. Adelson.

Dated: November 4, 2013.

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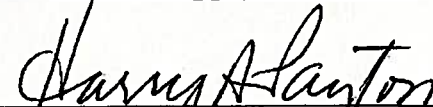
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I HEREBY CERTIFY that pursuant to Florida Rule of Judicial Administration 2.516, a true and correct copy of the above and foregoing was served via email on this 4th day of November, 2013, upon: BENJAMIN H. BRODSKY, ESQ. (bbrodsky@coffeyburlington.com; lperez@coffeyburlington.com; service@coffeyburlington.com) and KENDALL COFFEY, ESQ. (kcoffey@coffeyburlington.com) of Coffey Burlington, P.L.

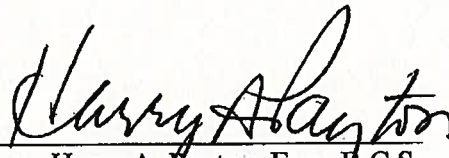

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EXHIBIT 5

EXHIBIT 5

**IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION**

SHELDON G. ADELSON,

CASE NO. 12-28537 CA 20

Plaintiff,

v.

STEVEN C. JACOBS,

Defendant.

**DEFENDANT STEVEN C. JACOBS' REPLY IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Defendant Steven C. Jacobs' ("Jacobs") Motion for Summary Judgment on the litigation privilege has been pending since November of last year. Despite the passage of nearly four months in delaying its resolution, Plaintiff Sheldon G. Adelson ("Adelson") waited until the eve of the hearing to submit his opposition, in hopes of masking his lack of legal substance.

Adelson's opposition rests upon the demonstrably false assertion that the subject of "prostitution" is irrelevant to Jacobs' wrongful termination suit pending in Nevada (the "Nevada Action"). That representation—which is repeatedly made—is expressly rebutted by Adelson's own testimony. On the issue of his supposed zero-tolerance policy on prostitution, Adelson admitted that this was one of the very issues that he claims for the defense of Jacobs' wrongful termination case in Nevada:

- Q. Are you aware of any other executives violating your zero-tolerance policy on prostitution?
- A. I told you, had I been aware of any other executives violating my zero-tolerance policy on prostitution, they would no longer be with the company.

liability to an action for defamatory words published in the course of judicial proceedings, regardless of how false or malicious the statements may be, as long as the statements bear some relation to or connection with the subject of inquiry.").

Contrary to Adelson's assertions to this Court,¹ the litigation privilege is absolute, broad and liberally applied. There is no requirement that the communications to the court be "relevant" in the legal sense, as Adelson falsely says. Courts emphasize otherwise, noting that the communication "*need have only 'some relation' to the proceeding*; [and] so long as the material has some bearing on the subject matter of the proceeding, it is absolutely privileged." *Circus, Inc.*, 99 Nev. at 61, 657 P.2d at 104 (emphasis added).

Nor can Adelson escape the fact that this threshold question is to be decided by this Court as it is a question of law. *DelMonico* at *12 (It "is a threshold question to be made by a judge . . ."); *see also Echevarria, McCalla, Raymer, Barrett & Frappier v. Cole*, 950 So. 2d 380 (Fla. 2007) (application of the absolute litigation privilege is a "question of law"); *Resha v. Tucker*, 670 So.2d 56, 59 (Fla. 1996) (trial court erred in submitting to the jury the question as to whether "statements were made within scope of duties" because whether a statement is 'absolutely privileged was a question of law to be decided by the court.') (citations omitted); *Stephens v. Geoghegan*, 702 So.2d 517, 522 (Fla. DCA 2d 1997) (reversing failure to grant summary judgment because "question of whether allegedly defamatory statements are absolutely privileged is one of law to be decided by the court, and consequently is ripe for determination on a motion for summary judgment").

Indeed, even in those instances where it is a debatable point, which it is not in this case, all doubt is resolved "in favor of a broad application," just as Adelson insisted to the Nevada court when he asserted the litigation privilege for himself. *Virtual Educ. Software, Inc.*, 125 Nev. at 382, 213 P.3d at 502; *Izzi v. Rellas*, 163 Cal. Rptr. 689, 693 (Ct. App. 1980) ("Doubts (if

¹ Jacobs notes that Adelson's position before "this court" is quite different than what his position was on the litigation privilege in front of the Nevada court.

and seeking to establish jurisdiction are absolutely privileged, even they exposed a touchy subject that is contrary to the image that Adelson would prefer to spin about how he and his companies really do business in Macau.

Jacobs' motion for summary judgment should be granted.

CERTIFICATE OF SERVICE

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EXHIBIT 6

EXHIBIT 6

1 IN THE CIRCUIT COURT OF THE
2 11th JUDICIAL CIRCUIT IN AND FOR
3 DADE COUNTY, FLORIDA

4 CASE NO. 12-28537 CA 01 20

5
6 SHELDON G. ADELSON,

7
8 Plaintiff,

9 vs.

10 STEVEN C. JACOBS,

11
12 Defendant.

13 - - - - - X

14
15 The above-entitled case came on for hearing
16 before the Honorable Ronald Dresnick as Judge of the
17 above-styled court at the Dade County Courthouse, Miami,
18 Florida, on Monday, February 24, 2014, commencing at 2:08
19 p.m. taken before Rick White, C.S.R., Registered
20 Professional Reporter and Notary Public for the State of
21 Florida.

22 Reported By:

23 Rick White, C.S.R., F.C.R.
24 Notary Public, State of Florida
25 Network reporting Corporation
Phone: 888-358-8188

1 And if that's their argument, we will
2 address that, but nonetheless, Nevada law is
3 clear on this, and that is any communication...
4 I don't care whether this statement is true or
5 false. In Nevada, we're going to show the court
6 this statement is true; and in fact, that Mr.
7 Adelson's claims about his real attitudes about
8 prostitution in his casinos is vastly different
9 than the public image he wants to create so as
10 to advance his conservative bone fides around
11 the world, but that's for the Nevada action.

12 The point here is, the purpose of this
13 rule is to protect zealous advocates, including
14 litigants from being able to go to the court and
15 state their position, not have to worry about
16 collateral litigation designed to try and
17 silence them in another proceeding. And that's
18 all that is going on here.

19 The Nevada Supreme Court in Circus
20 Circus versus Witherspoon, Your Honor, which I
21 have brought you a copy, expressly says that the
22 statements are absolutely privileged. It
23 wouldn't matter if they were false.

24 It wouldn't matter if this statement was
25 intentionally made knowing it was false with the

1 very intent of harming Mr. Adelson's reputation.

2 The question then becomes, well, who
3 decides, because the questions is, is it in any
4 way... Nevada Supreme Court uses the term...
5 related to the proceedings. Is it in any way
6 related to the proceedings? Privilege is broad.
7 It has to be applied liberally.

8 The Nevada Supreme Court said any doubts
9 about its application, any argument one way or
10 the other has to be resolved in Mr. Jacobs'
11 favor. Most importantly for purposes of this
12 motion, it is a question only for the court to
13 decide that point.

14 And then the Nevada Supreme Court has
15 made that quite clear in the Circus Circus case
16 saying, in that case, they actually reversed the
17 district court, because I'll just quote it. It
18 says, "The district court also erred in leaving
19 to the jury the question of whether the
20 letter"... in that case it was a letter... "the
21 letter's content was sufficiently relevant to
22 fall within the absolute privilege. Absolute
23 privilege and relevance are questions of law for
24 the court to decide."

25 And that's why this motion is before

1 his further statement that Mr. Jacobs was
2 fired because of the prostitution issue.

3 THE COURT: Well, Mr. Coffey, I
4 sustained it, I will continue sustaining it.

5 MR. COFFEY: Your Honor, the issue is
6 relevancy. It is a requirement that is
7 effectively --

8 THE COURT: The Florida Supreme Court
9 said the relevancy standard is not a normal
10 standard.

11 MR. COFFEY: But it is a meaningful
12 standard. But under their view, relevancy is
13 whatever the heck Jacobs says it is. If this
14 litigation privilege, which we all believe
15 in, is going to have a safeguard, which the
16 courts have said it must, if there is going
17 to be, in effect, a safety switch for what is
18 otherwise an unbridled license for character
19 assassination, then, relevancy has to have
20 meaning.

21 And Your Honor, there are cases which we
22 have cited in which they have said those
23 comments go too far. It's not hard when you
24 look at this case and what happened --

25 THE COURT: Hang on. I'm just

1 looking for that one -- I should have made a
2 note. I marked it in yellow. All right.
3 I'm sorry, go ahead.

4 MR. COFFEY: Judge, if relevancy
5 means anything, and if it's meaningless, we
6 have no protection. Any pro se litigant can
7 say anything they want --

8 THE COURT: As I understand what
9 happened is there was a motion to dismiss by
10 Sands Las Vegas of his wrongful firing
11 lawsuit. There was jurisdictional discovery.

12 The discovery, I'm not sure what was
13 going on with the discovery, but at some point,
14 Mr. Jacobs files this affidavit of documents he
15 claims he is not getting, including this
16 paragraph five.

17 MR. COFFEY: Right.

18 THE COURT: And that's attached to
19 this affidavit or that is the affidavit
20 that's attached to the motion, and that gets
21 filed and that that's the basis for your
22 defamation case here.

23 MR. COFFEY: Yes, but let me drill
24 down on a very critical point. We are not
25 suing on the many salacious things in the

1 lawsuit or the many salacious things in the
2 paragraphs. The basis is that relevancy,
3 even construed broadly, has to be tethered to
4 something.

5 Relevancy doesn't exist in the air. So
6 when it's relevancy with respect to a lawsuit...
7 and you deal with this every day... discovery
8 maybe it's broad, but it has to be framed by the
9 issues.

10 THE COURT: But he's saying he's not
11 getting documents. There are documents I'm
12 not getting that I know exist. These are the
13 documents that I'm not getting or I haven't
14 gotten. Included in this is this policy that
15 is a false statement.

16 MR. COFFEY: But did he say that
17 those were documents that he even requested?

18 THE COURT: Does it matter?

19 MR. COFFEY: It does, matter, Judge,
20 because if I can tell you after the fact that
21 I wasn't getting requested documents, and
22 additionally, just make up a lie, I wasn't
23 getting requested documents about the
24 attorneys legal malpractice.

25 And you know what, I wasn't getting

1 documents that I never requested about his drug
2 use. I was never getting documents I never
3 requested about his trust account violations.

4 THE COURT: He was looking for
5 documents which showed that Sands Macao or
6 whatever it is, the Macao corporation was
7 being controlled by Vegas.

8 MR. COFFEY: That may have been the
9 broad purpose, but he had 44 pending
10 jurisdictional discovery requests, because
11 when you complain of documents you are not
12 getting, they have to be documents you have
13 asked for.

14 If I came in to you and said, Judge, I
15 have got document requests that haven't been
16 answered. You say, let me look at them.
17 Additionally, Judge, there are these document
18 requests that could be relevant, but I haven't
19 asked for them.

20 Would you tell me, keep arguing, counsel
21 or would you tell me, get out of your courtroom.
22 The Supreme Court, and we have got to respect
23 the litigation privilege, but we have also got
24 to respect a principle basis for limiting it to
25 the issues in the case, even broadly construed.

1 MR. COFFEY: But it's more than just
2 a position. It's what their document says it
3 is. It's not my invention. I read you in
4 multiple places, because if their position is
5 accepted, if documents that they didn't
6 request are sufficiently relevant, then,
7 there is no limit. And this privilege is an
8 easy formula for terrible abuse.

9 THE COURT: For somebody just
10 throwing in a hand grenade.

11 MR. COFFEY: And if there is a
12 principal basis, which I think the Florida
13 courts have said that they haven't offered
14 what the principal basis. What they really
15 said, if they can come in after the fact and
16 say that this salacious allegation
17 complaining about documents about a
18 prostitution strategy that were not produced
19 can be made even though it is a
20 non-production of unrequested documents.

21 There is no limit if this summary
22 judgment is granted. We would ask you to, at a
23 minimum, let the context and facts develop at
24 trial before ruling on something as critical a
25 this.

1 discovery hearing and if somebody says, I want
2 to talk about a production request I didn't make
3 in terms of what should be done in this case.

4 I think you would tell them, that's
5 irrelevant. That's completely irrelevant,
6 whatever you would say.

7 THE COURT: But I'm not dealing with
8 a privilege. When you're talking about
9 relevancy the way you're talking about it, I
10 agree with you. I 100 percent agree with you
11 using relevancy in those terms.

12 I don't think that's the relevancy that
13 the court is looking for with regard to this
14 privilege. You walked in and said we all agree
15 with the privilege. I don't happen to agree
16 with the privilege.

17 I think it's a terrible thing where
18 people can come in and use that license to go
19 ahead and tarnish someone's reputation. I see
20 it all the time. I think it's terrible, and I
21 wish it didn't exist, but it does exist.

22 MR. COFFEY: If you allow them to use
23 a claim of non-production of documents where
24 they didn't make the request, they didn't
25 make the request to begin with and if that is

1 words of the court. We say in our papers that
2 Myers established a qualified litigation
3 privilege requiring that alleged defamatory
4 statements be relevant to the judicial
5 proceeding.

6 If the subject of inquiry is to have
7 content, it has to be -- and if it's about
8 documents that weren't produced, it has to be
9 about documents that were requested. He has to
10 assume that I'm correct. He has tacitly
11 admitted.

12 They never asked for it. They can't
13 rewrite subject of inquiry to things that they
14 might have asked for. They can only be what was
15 before the court, because otherwise, there is no
16 limits at all to the abuses of litigation
17 privilege.

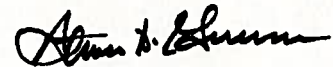
18 THE COURT: All right. I think it
19 is -- I agree with you that it is not
20 relevant, but it bears a connection with the
21 subject of inquiry, which was the
22 jurisdiction of the court in Nevada.

23 So I believe that the privilege applies.
24 I'm granting the motion.

25 MR. BICE: Thank you, Your Honor.

EXHIBIT 7

EXHIBIT 7



CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND RELATED CLAIMS

Case No.: A-10-627691

Dept. No.: XI

**PLAINTIFF STEVEN C. JACOBS'
MOTION TO RECONSIDER
DISMISSAL OF DEFAMATION
CLAIMS AGAINST DEFENDANTS
LAS VEGAS SANDS CORP. AND
SANDS CHINA LTD.**

Hearing Date:

Hearing Time:

On May 30, 2014, the Nevada Supreme Court reversed the dismissal of Steven C. Jacobs' ("Jacobs") defamation claim against Sheldon G. Adelson ("Adelson"), holding that defamatory statements to the media are not protected by the absolute privilege. Although Adelson has filed a cryptic petition for rehearing, it does nothing to change the Supreme Court's holding, a decision that is an intervening change in law entitling Jacobs to reinstatement of his defamation claims against Las Vegas Sands Corp. ("LVSC") and Sands China Ltd. ("Sands China"). Accordingly, Jacobs respectfully requests that this Court reconsider its prior interlocutory order dismissing

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1 litigation privilege. Relying upon *Clark County School District v. Virtual Education Software, Inc.*,
2 125 Nev. 374, 213 P.3d 496 (2009), this Court agreed and dismissed all of the defamation claims
3 against the Defendants. (6/20/11 Order Granting Motions to Dismiss and Directing Final Judgment
4 in Favor of Sheldon G. Adelson [NRCP 54(b)], on file with the Court.) The Court also certified
5 the dismissal of Adelson as final pursuant to NRCP 54(b). (*Id.*) The Court did not certify its
6 dismissal of the defamation claims against LVSC and Sands China because they were not entirely
7 removed from the case. *See* NRCP 54(b).

8 Aggrieved, Jacobs appealed the dismissal of his defamation claims against Adelson and,
9 upon review, the Nevada Supreme Court held that "communications made to the media in an
10 extrajudicial setting are not absolutely privileged, at least when the media holds no more significant
11 interest in the litigation than the general public." *See Jacobs v. Adelson*, 130 Nev. Adv. Op. 44,
12 2014 WL 2451201, at *1 (May 30, 2014). As a result, the Supreme Court reversed the dismissal
13 of Adelson and Jacobs may proceed with his defamation claim.¹

14 Now that the Nevada Supreme Court has clarified the legal issues surrounding Nevada's
15 litigation privilege, this Court can and should reconsider its interlocutory dismissal of the
16 defamation claims against LVSC and Sands China.

17 II. DISCUSSION

18 Courts have inherent authority to reconsider earlier rulings prior to the entry of final
19 judgment. *See Rust v. Clark Cnty. Sch. Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987)
20 ("Prior to the entry of a final judgment the district court remains free to reconsider and issue a
21 written judgment different from its oral pronouncement."); *see generally Valley Bank of Nev. v.*
22 *Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 733 (1994) (explaining that an interlocutory order may
23 be reconsidered or modified until a final judgment is entered); *see also Martin v. United States*,
24 101 Fed. Cl. 664, 670 (Fed. Cl. 2011) ("These rules articulate the understanding that courts possess
25 inherent authority to modify interlocutory orders prior to the entering of final judgment in a case.").

26
27
28 ¹ Although Adelson has since filed a Petition for Rehearing related to the Nevada Supreme Court's decision, that decision remains authority upon this Court.

1 reconsider its earlier decision. *Rust*, 103 Nev. at 688, 747 P.2d at 1382; *Martin*, 101 Fed. Cl. at 670;
2 *Masonry & Tile Contractors Ass'n of S. Nevada*, 113 Nev. at 741, 941 P.2d at 489.

3 **III. CONCLUSION**

4 This Court's dismissal of the defamation claim against LVSC and Sands China cannot stand
5 based on the Nevada Supreme Court's intervening decision that defamatory statements to the media
6 are not protected by the litigation privilege. Therefore, Jacobs respectfully requests that this Court
7 reconsider its prior ruling and reinstate the defamation claims against LVSC and Sands China.

8 DATED this 1st day of July, 2014.

9 PISANELLI BICE PLLC

10 By: /s/ Todd L. Bice

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 1st day of July, 2014, I caused to be served via the Court's E-Filing system, true and correct copies of the above and foregoing **PLAINTIFF STEVEN C. JACOBS' MOTION TO RECONSIDER DISMISSAL OF DEFAMATION CLAIMS AGAINST DEFENDANTS LAS VEGAS SANDS CORP. AND SANDS CHINA LTD.** properly addressed to the following:

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IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jul 22 2014 08:53 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

STEVEN C. JACOBS,

Appellant,

v.

SHELDON G. ADELSON, IN HIS
INDIVIDUAL AND
REPRESENTATIVE CAPACITIES,

Respondent.

No. 58740

District Court Case No. A627691

**RESPONDENT'S MOTION FOR LEAVE TO FILE A REPLY IN
SUPPORT OF PETITION FOR REHEARING**

Sheldon Adelson respectfully moves the Court under NRAP 27(d)(2) to permit him to file a reply to the answer in this rehearing proceeding. The proposed reply is appended to this motion as Exhibit 1.

The answer filed on behalf of appellant Steven Jacobs does not address the substantial First Amendment and judicial policy issues addressed by Mr. Adelson's petition. Instead, the answer continues the gratuitous defamation of Mr. Adelson rather than address the merits of rehearing the Court's 4–3 decision that permits Mr. Jacobs and his counsel to continue vilifying Mr. Adelson with impunity provided by the litigation privilege, as endorsed by the decision. At the same time, they employ the litigation privilege against Mr. Adelson to characterize his reply to their defamatory denouncements of him in court filings as actionable defamation of Mr. Jacobs!

This misuse of privilege as a sword and a shield should be acknowledged and rejected by the Court. *See* 3 Wigmore, *Evidence* § 2238,

at 855 (McNaughton rev. 1961) (privilege "is not to be both a sword and a shield"); *accord*, *U.S. v. Bilzerian*, 926 F.2d 1288, 1292 (2nd Cir. 1991) ("the attorney-client privilege cannot at once be used as a shield and a sword"); *cf. Francis v. Wynn Las Vegas, LLC*, 127 Nev. ___, 262 P.3d 705, 710 (2011) (affirming trial court's declaration that "you can't use the 5th Amendment as a sword and a shield"). Otherwise, the Court's decision will diminish, if not destroy, the First Amendment-based right to speak freely in response to uninvited character assassination.

A brief reply to address this misuse of the litigation privilege by Mr. Jacobs in *this very case* and the First Amendment and judicial policy issues the misuse occasions would benefit the Court. The reply, together with the petition, if acted on by the Court, would also discourage Jacobs and future litigants from decorating their pleadings and other court-filed documents with response-baiting defamatory, inflammatory, and irrelevant scandalous statements. Such statements do not promote civility in litigation, but invite and encourage additional distracting off-topic litigation on defamatory remarks initiated by the defamer, in this case by Mr. Jacobs.

This motion should be granted, and the appended reply should be considered by the Court.

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CERTIFICATE OF SERVICE

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

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DATED this 21st day of July, 2014.

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