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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
GONZALEZ, DISTRICT JUDGE,

Respondents.

and

STEVEN C. JACOBS,

Real Party in Interest.

Supreme Court No.

District Court Case No. A627691-B/Dept XI

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EMERGENCY PETITION UNDER NRAP 21(a)(6) and NRAP 27(e)

**LAS VEGAS SANDS, CORP'S EMERGENCY ORIGINAL PETITION FOR WRIT OF
MANDAMUS**

(ACTION NECESSARY ON OR BEFORE OCTOBER 4, 2011)

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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION1

II. ISSUES PRESENTED2

III. RELIEF SOUGHT2

IV. STATEMENT OF FACTS3

 A. This Court’s Order on SCL’s Writ Petition Stays Underlying Case3

 B. Jacobs’ Counsel Reveals Jacobs is in Possession of Eleven Gigabytes of Documents, Containing Sensitive Information, which Jacobs will not Return or Agree to not Disclose to Third Parties3

 C. The District Court Represents it cannot Address LVSC’s Requested Relief because this Court’s Stay Order Stays the Entire Underlying Action4

 D. LVSC files Separate Action for Conversion and Misappropriation of Trade Secrets.....4

 E. The District Court’s Interim Order.....5

 F. Jacobs Discloses Stolen Documents in First Case5

 G. LVSC is without Plain, Speedy, and Adequate Remedy and Files this Current Petition6

V. POINTS AND AUTHORITIES IN SUPPORT OF EMERGENCY ORIGINAL PETITION FOR WRIT OF MANDAMUS6

 A. Petitioner is Entitled to the Issuance of Extraordinary Writ Relief.....6

 B. Emergency Relief is Warranted as LVSC’s Limited Protection will Expire on October 4, 20118

 C. LVSC Should Be Allowed to Pursue a Protective Order Barring the Production of Company Documents and Requiring Their Return with the District Court.....9

 1. The Documents taken by Jacobs Contain Attorney-Client Privileged Correspondence9

 2. The Documents Contain Trade Secrets, Confidential Research and/or Commercial Information11

 3. Jacobs Must Return the Documents Under the Vagus Consulting Agreement.....12

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2
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4
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6
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8
9
10
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14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. The Documents May Include Personal Data in
Violation of Macau law13

CONCLUSION14

NRAP 27(e) CERTIFICATE15

VERIFIED CERTIFICATE OF COMPLIANCE19

CERTIFICATE OF SERVICE20

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE(S)</u>
<i>Barnes v. Eighth Judicial Dist. Court</i> , 103 Nev. 679, 748 P.2d 483, 485 (1987)	7, 8
<i>Cafasso v. Gen'l Dynamics C4 Sys., Inc.</i> , 637 F.3d 1047 (9th Cir. 2011)	12
<i>D.R. Horton, Inc. v. Eighth Judicial Dist. Court</i> , 215 P.3d 697 (Nev. 2009); Nev. Const. Art. 6, § 4	6, 7
<i>Dubai Islamic Bank v. Citibank, N.A.</i> , 211 F. Supp. 2d 447 (S.D. N.Y. 2001)	11
<i>Gohler v. Wood</i> , 162 F.R.D. 691 (D. Utah 1995)	11
<i>JDS Uniphase Corp. v. Jennings</i> , 473 F. Supp. 2d 697 (E.D. Va. 2007)	12, 13
<i>Mineral County v. State, Dept. of Conservation and Natural Resources</i> , 117 Nev. 235, 20 P.3d 800, 805 (2001)	7
<i>Montgomery v. eTreppid Technologies, LLC</i> , 548 F. Supp. 2d 1175, 1184 (D. Nev. 2008)	9
<i>Olem Shoe Corp. v. Washington Shoe Corp.</i> , 2010 WL 3981694, at *4 (S.D. Fla. 2010)	10
<i>Scarbo v. Eighth Judicial Dist. Court</i> , 206 P.3d 975 (Nev. 2009)	5
<i>Star Scientific, Inc. v. Carter</i> , 204 F.R.D. 410 (S.D. Ind. 2001)	11
<i>U.S. v. Koerber</i> , 2011 WL 2174355, at *10 (D. Utah June 2, 2011).....	10
 <u>Restatements of Law:</u>	
RESTATEMENT (THIRD) OF UNFAIR COMPETITION, §42	13
RESTATEMENT (THIRD) OF UNFAIR COMPETITION, §44	13

1	<u>STATUTES, RULES AND REGULATIONS</u>	
2	Nev. R. App. P 21(a)(6)	1, 8
3	Nev. R. App. P 27(e)	1, 8
4	Nev. R. App. P 27(e)(1)	9
5	Nev. R. App. P 27(e)(1)-(4)	8
6	Nev. R. App. P 27(e)(2), (3)	8
7	Nev. R. App. P 27(e)(3)(A)	15
8	Nev. R. App. P 27(e)(3)(B)	15
9	Nev. R. App. P 27(e)(3)(C)	18
10	Nev. R. Civ. P 26(c)	11
11	Nev. R. Civ. P 27(e)(4)	9
12	NRS 34.160.....	1
13	NRS 34.170	7
14	NRS 34.330.....	7
15	Nev. Const. Art. 6, § 4.....	7
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **PETITION FOR WRIT OF MANDAMUS**

2 Petitioner Las Vegas Sands, Corp. (“LVSC”), by and through its counsel of record, the
3 law firm of Holland & Hart LLP, and pursuant to NRS 34.160, NRAP 21(a)(6) and NRAP 27(e),
4 respectfully petitions the Court for the issuance of Extraordinary Writ Relief for the limited
5 purpose of allowing the Honorable Elizabeth Gonzalez, District Court Judge of the State of
6 Nevada, in and for the County of Clark, to address two motions brought by LVSC. These
7 motions seek the return of documents stolen from LVSC by Steven C. Jacobs (“Jacobs”).
8 Specifically, in order to avoid continued irreparable harm and to obtain the return of its property,
9 LVSC seeks a partial lifting, or carve out, of the stay (“Stay”) set forth in this Court’s August 26,
10 2011 *Order Granting Petition For Writ Of Mandamus* (“Order”) in Supreme Court Case No.
11 58294, which states “the district court shall stay the underlying action, except for matters relating
12 to a determination of personal jurisdiction, until a decision on that issue has been entered.” *See*
13 *Petitioner’s Appendix (“PA”) 1-4.*

14 **I.**

15 **INTRODUCTION**

16 Jacobs has stolen and refuses to return documents and electronically stored information
17 that belong to LVSC. Many of those documents are privileged, confidential or contain otherwise
18 sensitive information. Jacobs’ actions have caused and continue to cause LVSC irreparable harm.
19 LVSC sought an order from the court below compelling the return of the documents and data.
20 The District Court, however, expressed concern that it did not have jurisdiction to act on those
21 motions in light of the Stay in the Order. LVSC now brings this Petition before the Court seeking
22 extraordinary relief. Unless the District Court orders Jacobs to return the documents, LVSC will
23 continue to suffer irreparable harm.

24 By way of this emergency Petition, LVSC seeks review of the Order issued in response to
25 the writ of mandamus by its co-defendant SCL in Supreme Court in Case No. 58294.¹ After the
26 lower court declined to hear LVSC’s motions for return of stolen property based on its concern

27 _____
28 ¹ Pursuant to that Order, the District Court set a jurisdictional hearing for November 21-22, 2011 and ordered the parties to disclose a list of witnesses and documents.

1 that it lacked jurisdiction under the Order, LVSC filed a separate lawsuit based on conversion and
2 misappropriation, seeking return of its property (A648484-B, the “Second Case”). The Second
3 Case was also assigned to the Honorable Judge Gonzalez and LVSC immediately moved for
4 injunctive relief to compel the return of documents. The District Court provided LVSC with a
5 temporary interim order, preventing dissemination of the documents for two weeks. Judge
6 Gonzalez also instructed LVSC seek clarification as to whether the Stay precluded her court’s
7 jurisdiction to hear LVSC’s motions in the underlying case (“First Case”).

8 LVSC has already suffered irreparable harm. Jacobs’ actions are compounding the harm
9 by virtue of his new counsel reviewing and using the stolen documents for the upcoming
10 Evidentiary Hearing that this Court has directed the District Court to undertake. This disclosure
11 is contrary to the representations of Jacobs’ prior counsel and is in violation of the Interim Order.
12 LVSC finds itself without remedy in light of the District Court's concerns over its jurisdiction
13 under the Stay. Wherefore, LVSC respectfully petitions this Honorable Court to provide a carve
14 out of the Stay set forth in the Order, and to clarify that the District Court has jurisdiction to
15 address LVSC's motions seeking return of its property.

16 **II.**

17 **ISSUE PRESENTED**

18 Whether LVSC is entitled to partial relief, or a carve out, from the stay set forth in this
19 Court’s August 26, 2011 *Order Granting Petition For Writ Of Mandamus*, to allow the District
20 Court to address LVSC’s motions regarding Jacobs’ improper retention and use of documents.

21 **III.**

22 **RELIEF SOUGHT**

23 That an Extraordinary Writ be issued under the seal of this Court providing for partial
24 relief, or a carve out, from the stay set forth in the Court’s August 26, 2011 *Order Granting*
25 *Petition For Writ Of Mandamus*, to allow the District Court to address LVSC’s motions for
26 protective order and to compel the return of documents.

27 ///

28 ///

IV.

STATEMENT OF FACTS

A. *This Court's Order Regarding Sands China Ltd's Writ Petition Stays Underlying Case.*

On or about May 5, 2011, Sands China Ltd. ("SCL") filed its Writ Petition in Supreme Court Case No. 58294 challenging the District Court's order denying SCL's Motion to Dismiss for Lack of Personal Jurisdiction in the First Case.² On August 26, 2011, the Court issued its Order granting SCL's Writ Petition in part and instructing the District Court to stay the First Case and to hold an evidentiary hearing ("Evidentiary Hearing") on personal jurisdiction. See PA 1-4. In relevant part, the Order states as follows:

We further direct that the district court shall stay the underlying action, except for matters relating to a determination of personal jurisdiction, until a decision on that issue has been entered. We therefore

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

Id. at 3 (emphasis added). LVSC was not a party to the SCL Writ Petition and was not served with the Order. *Id.* at p. 4.

B. *Jacobs' Counsel Reveals Jacobs is in Possession of Eleven Gigabytes of Documents, Containing Sensitive Information, Which Jacobs will not Return or Agree to not Disclose to Third Parties.*

On September 13th, LVSC moved the District Court for a protective order and to compel Jacobs to return stolen documents.³ LVSC's motions were filed after Jacobs' (now former⁴) counsel revealed that Jacobs had approximately eleven gigabytes of documents in his possession, obtained from LVSC, SCL and/or SCL's subsidiary, Venetian Macau Limited ("VML"). See PA

² The underlying case (A627691) was brought by Steven C. Jacobs against LVSC and SCL whereby Jacobs alleges he was wrongfully terminated. The underlying case forms the basis for LVSC's Writ Petition and is referred to herein as the First Case. See AP 50-66. As is examined below, LVSC has filed a separate complaint against Jacobs alleging the theft of company property and misappropriation of trade secrets, referred to herein as the Second Case. See AP 17-25.

³ LVSC filed its motions with the understanding that the Court's Order and Stay related only to SCL because, among other things, LVSC was not a party to SCL's Writ Petition. LVSC's motions were withdrawn upon the District Court's expressed concern that it did not have jurisdiction in light of the stay to hear the motions. PA13-16.

⁴ Jacobs recently announced that he has substituted new counsel, Pisanelli Bice, to replace Campbell & Williams.

1 5-6. That trove of documents and information contains, among other things, attorney-client
2 communications between LVSC and its counsel. *Id.* Despite repeated demands and attempts to
3 meet and confer to arrange for the return of LVSC's property, Jacobs' former counsel at Campbell
4 & Williams represented that:

- 5 1. Jacobs and his counsel are in possession of documents which Jacobs acquired
6 during the course of his employment.
- 7 2. The documents may be subject to the attorney-client privilege.
- 8 3. Jacobs does not believe that he is bound to keep confidential those documents
9 obtained during the course of his employment because he asserts that he did not
10 sign any confidentiality policy or document containing a confidentiality provision.
- 11 4. Jacobs believes that Macau data privacy laws do not prohibit him from disclosing
12 documents in this matter and that Macau data privacy laws are being used by
13 Defendants as a "farcical canard" to avoid disclosure of documents.
- 14 5. Based upon the foregoing, Jacobs refused to comply with the request for return of
15 documents obtained during the course of his employment and would not commit
16 that he has not or will not provide such documents to third parties.

17 PA 7-8; *see also* PA 9-10. Jacobs' prior counsel also stated, "[w]hile Steve is unable to 'return'
18 the documents to Defendants, *we agreed not to produce the documents in this litigation* until the
19 issue is resolved by the Court. Additionally, *our firm will continue to refrain from reviewing*
20 *the documents* so as not to create any issues regarding the documents containing communications
21 with attorneys." *See* AP 11." PA 11-12. Soon thereafter, LVSC discovered from the press that
22 Jacobs had retained the law firm of Pisanelli Bice LLP to replace Campbell & Williams as
23 counsel.

24 **C. *The District Court Expresses its View that it Cannot Address LVSC's Requested Relief***
25 ***Because this Court's Stay Order Stays the Entire First Case.***

26 On September 16, 2011, at a status conference regarding scheduling issues related to
27 Evidentiary Hearing, LVSC's counsel advised the District Court of LVSC's pending motions
28 regarding Jacobs' improper retention and use of documents. The District Court expressed
concerns that it could not address LVSC's motions because it interpreted the Court's Order to stay
the entire First Case, except as specifically addressed in the Order. Based on the District Court's
statement regarding the Stay, the motions were withdrawn. *See* PA 13-16.

D. *LVSC files Separate Action for Conversion and Misappropriation of Trade Secrets.*

Following the District Court's statement that it lacked jurisdiction to address LVSC's

1 motions, and due to the immediate harm, LVSC filed the Second Case entitled *Las Vegas Sands*
2 *Corp. v. Steven Jacobs and Vagus Group, Inc.*, District Court Case No. A648484-B, based on
3 conversion and misappropriation of trade secrets. *See* PA 17-25. In the Second Case, LVSC
4 immediately moved for a temporary restraining order and preliminary injunction to compel the
5 return of documents or at least to prevent Jacobs, Vagus Group, and their agents, affiliates, family
6 members, and other representatives from reviewing, producing or disseminating stolen company
7 documents and information to third-parties. *See* PA 26-39.

8 ***E. The District Court's Interim Order.***

9 On September 20, 2011, the District Court issued an interim order ("Interim Order") in the
10 Second Case only prohibiting the defendants from disclosing or disseminating any documents or
11 information contained therein, obtained in connection with their consultancy with LVSC and/or
12 employment with SCL and VML, to any third party, other than their own counsel. *See* PA 40-41.
13 However, the District Court made clear that this temporary relief would expire after two weeks
14 and directed LVSC to address the breadth of the Stay in this Court's Order by seeking partial
15 relief or a carve out, to allow the District Court to address LVSC's motions in the First Case.⁵
16 Accordingly, the District Court's Interim Order in the Second Case provides only temporary
17 protection to allow LVSC to petition this Court, but this temporary relief will expire on October
18 4, 2011. *See id.*

19 ***F. Jacobs Discloses Stolen Documents in the First Case.***

20 On September 23, 2011, at about 7:45 p.m., Jacobs' new counsel at Pisanelli Bice LLP
21 emailed supplemental discovery disclosures to counsel for LVSC and SCL. AP 88-94. The
22 documents identified in the supplemental disclosures reveal that Pisanelli Bice does not feel
23 constrained by the representations of Jacobs' former counsel, as additional stolen documents have
24 plainly been reviewed and disclosed. *See id.* Jacobs identified a range of documents which could
25 only have been obtained by wrongful retention of documents following his employment. For
26 example, Jacobs identified correspondence from LVSC's general counsel, chief financial officer,

27 ⁵ LVSC believes that the Second Case (A648484) is based on different facts relating to the theft and retention, by
28 Jacobs, of company property and is distinct from the underlying, first case (A627691), filed by Jacobs, relating to his
allegations of wrongful termination. *See* PA 17-25; 50-66.

1 and other high ranking employees who were privy to confidential information, as well as a host of
2 other documents wrongfully retained following his employment. *See id.* Jacobs' recent
3 disclosures demonstrate that not only is Jacobs in wrongful possession of LVSC's property, but
4 that, contrary to his prior counsel's assurance, he intends to submit documents into evidence in a
5 public hearing, which will obviously allow for dissemination to third parties. The supplemental
6 disclosures further demonstrate the inadequate nature of the limited Interim Order which will
7 quickly expire. Without this Court's intervention, LVSC is without legal recourse to prevent
8 further disclosure and dissemination of its documents by Jacobs and his new attorneys –
9 documents which they have no legal right to possess. Additionally, without this Court's
10 intervention, LVSC cannot seek to prevent Jacobs, or his counsel's, continued review and/or
11 dissemination of attorney-client privileged documents.

12 **G. *LVSC is without Plain, Speedy, and Adequate Remedy and Files this Current Petition.***

13 On September 20, 2011, while LVSC was attempting to obtain relief from the District
14 Court, this Court issued its Notice in Lieu of Remittitur ("Remittitur"), closing the docket for
15 Case No. 58294. *See* PA 42. LVSC was not a party to SCL's Writ Petition and was not served
16 with the Remittitur. *Id.* Accordingly, LVSC was unaware it had become unable to file its
17 prepared motions to intervene and to lift stay in the SCL Writ Petition proceeding until it was
18 informed of the Remittitur by the Court's clerk's office. Accordingly, LVSC is without a plain,
19 speedy and adequate remedy in the ordinary course of law. Therefore, LVSC submits this
20 Petition for extraordinary writ relief to allow the District Court to address LVSC's motions
21 regarding Jacobs' improper retention and use of documents.

22 **V.**

23 **POINTS AND AUTHORITIES IN SUPPORT**
24 **OF EMERGENCY ORIGINAL PETITION FOR WRIT OF MANDAMUS**

25 **A. *Petitioner is Entitled to the Issuance of Extraordinary Writ Relief.***

26 "This court has original jurisdiction to issue writs of prohibition and mandamus" and "also
27 all writs necessary or proper to the complete exercise of its appellate jurisdiction." *See D.R.*
28 *Horton, Inc. v. Eighth Judicial Dist. Court*, 125 Nev. 449, 215 P.3d 697 (2009); Nev. Const. Art.

1 6, § 4. Extraordinary writ relief may be issued in “cases where there is not a plain, speedy and
2 adequate remedy in the ordinary course of law.” See NRS 34.170; NRS 34.330. “[T]he decision
3 as to whether a petition will be entertained lies within the discretion of this court.” *Barnes v.*
4 *Eighth Judicial Dist. Court*, 103 Nev. 679, 681, 748 P.2d 483, 485 (1987). The Court has further
5 held, “where circumstances reveal urgency or strong necessity, this court may grant extraordinary
6 relief.” *Mineral County v. State, Dept. of Conservation and Natural Res.*, 117 Nev. 235, 243, 20
7 P.3d 800, 805 (2001) (internal citation omitted). The facts of this case present just those
8 circumstances.

9 The Court’s intervention is warranted here because, as a result of the Stay, petitioners are
10 without a plain, speedy and adequate remedy in the ordinary course of law to compel the return of
11 stolen property or to prevent Jacobs from reviewing, using or disclosing sensitive and privileged
12 documents. See PA 3. Additionally, the circumstances here reveal urgency and strong necessity
13 as the Interim Order will expire on October 4, 2011, exposing LVSC to the irreparable harm of
14 having its misappropriated confidential information wrongfully disclosed to competitors or other
15 third parties. See PA 40-41. Indeed, neither the Interim Order nor the representations of prior
16 counsel appear to have dissuaded Jacobs from disclosing documents for the forthcoming
17 Evidentiary Hearing to adjudicate whether the District Court holds general personal jurisdiction
18 over SCL. Clearly, the Interim Order is an inadequate remedy which appears to have failed to
19 prevent the very harm LVSC has sought, and is seeking, to prevent. Further, the Interim Order is
20 a temporary remedy, which will expire shortly, on its own terms. Thus, the Court’s discretion in
21 addressing LVSC’s Writ Petition is necessary for LVSC to prevent additional irreparable harm.

22 LVSC moved the District Court for a protective order and to compel the return of
23 documents in the First Case; however, the District Court expressed its view that it did not have
24 jurisdiction in light of the Stay to hear the motions. In the Second Case (for conversion and
25 misappropriation of trade secrets) LVSC moved for injunctive relief compelling the return of
26 documents; however, the Court simply entered Interim Relief and directed LVSC to Petition the
27 Court in connection with the First Case. Accordingly, if LVSC’s Petition is not entertained by
28 this Court, following the expiration of the Interim Order, LVSC will suffer additional irreparable

1 harm. Indeed, until the District Court resolves SCL's jurisdictional issues, LVSC will be without
2 a legal mechanism to prevent Jacobs or his counsel from reviewing, producing or disseminating
3 documents which may contain, without limitation, trade secrets, confidential research,
4 commercial information, attorney-client privileged correspondence or work product, or data
5 protected by Macau law. Jacobs' recent discovery disclosures confirm the legitimacy of LVSC's
6 concerns that attorney-client correspondence and other privileged information is being reviewed.
7 Accordingly, the Court should exercise its discretion and consider the merits of LVSC's Petition.
8 *See Barnes*, 103 Nev. at 681-82.

9
10 **B. Emergency Relief is Warranted as LVSC's Limited Protection will Expire on October 4, 2011.**

11 "A petition that requests the court to grant relief in less than 14 days shall also comply
12 with the requirements of Rule 27(e)." *See* NRAP 21(a)(6). To certify that relief is needed in less
13 than 14 days, the petitioner is governed by the following requirements:

- 14 • Before filing the motion, the movant shall notify the clerk of the Supreme Court and opposing counsel and serve the motion at the earliest possible time.
- 15 • The motion shall include the title "Emergency Motion Under NRAP 27(e)" and state the date or event by which action is necessary.
- 16 • The motion shall be accompanied by a certificate of counsel for the movant, entitled "NRAP 27(e) Certificate," that contains the telephone numbers and office addresses of the attorneys for the parties; the facts showing the existence and nature of the claimed emergency; and when and how counsel for the other parties were notified and served.
- 17 • The motion shall state whether all grounds advanced in support of the motion in the Supreme Court were submitted to the district court.

18
19
20 *See* NRAP 27(e)(1)-(4).

21 Under the foregoing standard, the Court should grant emergency relief to LVSC. The
22 emergency nature of LVSC's Petition is set forth throughout this Petition and specifically stated
23 in LVSC's "NRAP 27(e) Certificate." *See* NRAP 27(e)(2), (3). The District Court's Sept 20,
24 2011 Interim Order in the Second Case, preventing Jacobs from any disclosure or dissemination
25 of the documents at issue, will expire October 4, 2011. *See* PA 40-41. In entering this Interim
26 Order, the District Court expressly recommended that the parties seek partial relief, or a carve out
27 of the Order staying the First Case, to allow the District Court to address LVSC's discovery
28 motions regarding Jacobs' improper retention and use of documents. Indeed, Pisanelli Bice's

1 recent discovery disclosures demonstrate that Jacobs and his new counsel do not feel bound by
2 the representations of Jacobs' prior counsel or the Interim Order. *See* AP 11-12, 40-41 and 88-94.

3 At the hearing on September 20, 2011, LVSC acknowledged the District Court's
4 recommendation and notified the District Court and opposing counsel it would proceed
5 accordingly. *See* NRAP 27(e)(1). LVSC also informed the clerk of the Supreme Court of its
6 intention to file a motion to intervene and for partial relief from the stay on September 22, 2011.
7 However, LVSC's counsel was informed by the clerk's office that the Court had issued its Notice
8 in Lieu of Remittitur two days earlier, closing the docket for Case No. 58294, and that LVSC
9 would have to file a writ petition. Counsel advised it would proceed accordingly.

10 Moreover, under NRCP 27(e)(4), relief from the Court's Stay Order is not available from
11 the District Court. As stated above, LVSC previously sought relief from the District Court by
12 filing motions for the return of stolen documents in both the First Case and in the Second Case.
13 However, the District Court expressed its concerns that it could not address LVSC's motions in
14 the First Case because it currently lacks jurisdiction under this Court's Order and the District
15 Court would only provide temporary relief in the Second Case. Within four days of the issuance
16 of the Interim Order, Jacobs appears to have violated the order, and the representations of Jacobs'
17 prior counsel by disclosing a range of stolen documents to be used at the Evidentiary Hearing.
18 Accordingly, LVSC is suffering, and will continue to be subjected to immediate and irreparable
19 harm if it is not allowed to move forward with such motion practice to prohibit the retention and
20 use of documents that are protected from disclosure pursuant to several separate and
21 independently sufficient grounds.

22 **C. LVSC Should Be Allowed to Pursue a Protective Order Barring the Production of
23 Company Documents and Requiring Their Return with the District Court.**

24 *1. The Documents taken by Jacobs Contain Attorney-Client Privileged
25 Correspondence.*

26 Once a director or officer has left the company "his right to access attorney-client
27 privileged documents terminate[s]." *Montgomery v. eTrepid Technologies, LLC*, 548 F. Supp.
28 2d 1175, 1184 (D. Nev. 2008). A protective order is an appropriate means by which a party may
seek the return of privileged documents in another party's possession. *See, e.g., U.S. v. Koerber*,

1 2011 WL 2174355, at *10 (D. Utah June 2, 2011) (granting protective order compelling
2 government to return potentially privileged documents); *Olem Shoe Corp. v. Washington Shoe*
3 *Corp.*, 2010 WL 3981694, at *4 (S.D. Fla. 2010) (compelling return of privileged documents).

4 Here, Jacobs' prior counsel admitted the documents contain attorney-client
5 correspondence. See PA 5-6. Specifically, "in beginning our review of the e-mails, it appears
6 that Steve [Jacobs] was the recipient of a number of e-mails from various attorneys employed by
7 LVSC and SCL during the normal course and scope of his duties with Defendants." PA 5. LVSC
8 is entitled to the return of the documents on that ground alone. Former counsel also noted,
9 "[w]hile Steve is unable to 'return' the documents to Defendants, *we agreed not to produce the*
10 *documents in this litigation* until the issue is resolved by the Court. Additionally, *our firm will*
11 *continue to refrain from reviewing the documents* so as not to create any issues regarding the
12 documents containing communications with attorneys." See AP 11.

13 Here, the issue has plainly *not* been resolved by the District Court. Moreover, LVSC has
14 done nothing to waive its claim to attorney-client privilege. Unlike the circumstances in the cases
15 above which involve accidental disclosure of privileged documents, the documents at issue here
16 did not come into Jacobs' possession from accidental disclosure. Rather, Jacobs purposefully and
17 wrongfully took these attorney-client privileged emails from the company. On August 3, 2011,
18 Jacobs' former counsel acknowledged the serious nature of this issue and agreed to cease all
19 document review until the issues is resolved by the Court. See PA 12. The law is clear. Once
20 Jacobs left his employment, his right to access attorney-client privileged documents terminated
21 and he must return them to the privilege holder – LVSC. However, not only has Jacobs refused to
22 return documents his attorney acknowledged were privileged, he appears to be disclosing the
23 stolen documents, including attorney correspondence, for use in the public Evidentiary Hearing
24 set to determine whether the District Court has personal jurisdiction over SCL. See PA 88-94.
25 Accordingly, the Court should provide a carve-out of its Stay Order to allow LVSC to pursue
26 motion practice with the District Court and obtain the return of the stolen documents.

27 ///

28 ///

2. *The Documents Contain Trade Secrets, Confidential Research and/or Commercial Information.*

Additionally, LVSC is entitled to an order compelling Jacobs to return the documents because they contain trade secrets, confidential research and/or commercial information. The Nevada Rules of Civil Procedure concerning discovery mandate that Jacobs must return company documents to LVSC because they likely contain trade secrets, confidential research and/or commercial information. *See* NRCP 26(c). Courts have broadly interpreted NRCP 26(c) and its federal equivalent to permit a protective order over a wide variety of documents and information. *See, e.g., Star Scientific, Inc. v. Carter*, 204 F.R.D. 410 (S.D. Ind. 2001); (*Dubai Islamic Bank v. Citibank, N.A.*, 211 F. Supp. 2d 447 (S.D. N.Y. 2001); (*Gohler v. Wood*, 162 F.R.D. 691 (D. Utah 1995).

As a consultant to LVSC through Vagus and as CEO of SCL, Jacobs was privy to a host of privileged and sensitive LVSC company information that, if revealed, could and would harm LVSC. *See* AP 49. In addition to attorney-client correspondence, it is likely that the eleven gigabytes of information in Jacobs' possession includes a range of sensitive and protected information and trade secrets, including but not limited to, casino customer lists, documents regarding customer purchasing habits, sensitive financial information and forecasts, pricing information, documents revealing sales techniques, compliance policies and procedures, company manuals and/or personnel and labor records. Continued dissemination of the foregoing documents would cause further irreparable harm as LVSC's proprietary and confidential information could be disclosed to third parties, including competitors.

Because Jacobs has refused to return the documents, or, at a minimum, has refused to agree not to disseminate them, LVSC faces a difficult situation, which necessitates this emergency Petition. The Interim Order in the Second Case will expire on October 4, 2011. Once it does, there will be no judicial constraint on what Jacobs may do with the subject documents and information. Indeed, the recent discovery disclosures by Pisanelli Bice demonstrate that not even the representations of Jacobs' prior counsel or a lower court's interim order can constrain Jacobs from disclosing the subject documents and information. A partial lifting of the Stay is urgent and

1 necessary to allow LVSC to seek the relief necessary to avoid further injury.

2 3. *Jacobs Must Return the Documents Under the Vagus Consulting Agreement.*

3 LVSC is entitled to an order under the terms of the Vagus Consulting Agreement
4 compelling the return of documents and information that Jacobs stole. *See* PA 43-48. Jacobs was
5 the principal of Vagus and wrote and signed the agreement. Under the Agreement, Jacobs and his
6 company were expressly required to “diligently protect and keep confidential all sensitive
7 information received as part of or related to this project.” *See id.* at 47. Indeed, Jacobs proposed,
8 and agreed that his obligation “shall survive the expiration and/or the termination of the
9 agreement.” *Id.* Jacobs obtained documents and information that are confidential, proprietary
10 and/or subject to the attorney-client privilege and/or work product doctrine. *See* PA 49. Once the
11 agreement terminated and he no longer had any right to the documents, Jacobs had an obligation
12 to return them to their rightful owner. Following his termination, Jacobs filed the First Case
13 against LVSC and SCL. *See* PA 50-66. Rather than honor his contractual obligations, Jacobs
14 now refuses to return documents wrongfully in his possession. In fact, contrary to the
15 representations of his prior counsel, and contemporaneous with the drafting of this Petition,
16 Pisanelli Bice emailed supplemental disclosures, identifying sensitive and confidential
17 information, to be used at the Evidentiary Hearing. *See* AP 88-94.

18 There is no denying that the documents and information now improperly in Jacobs’
19 possession do not belong to him. Jacobs’ refusal to return the documents, *or* to agree not to
20 provide the documents to third parties, subjects LVSC to an immediate threat of continued
21 significant and irreparable harm. Moreover, his recent discovery disclosure manifests that harm
22 and demonstrates that he is in breach of his agreement to diligently protect all confidential and
23 sensitive information following the expiration and/or termination of his employment.

24 Courts have regularly upheld contractual provisions requiring that documents be returned
25 to the company. *See, e.g., Cafasso v. Gen’l Dynamics C4 Sys., Inc.*, 637 F.3d 1047 (9th Cir.
26 2011) (enforcing return of documents under confidentiality provision in employment agreement
27 where former employee copied 11 gigabytes of confidential and attorney-client privileged
28 documents prior to termination); *see also JDS Uniphase Corp. v. Jennings*, 473 F. Supp. 2d 697

1 (E.D. Va. 2007). Moreover, “to insure full compensation to the trade secret owner and to deprive
2 the defendant of all unjust gains, a court may properly require a defendant to return to the trade
3 secret owner documents.” RESTATEMENT (THIRD) OF UNFAIR COMPETITION, §44 cmt. e.⁶ Here,
4 Jacobs agreed to protect the information but now refuses to return the documents he wrongfully
5 retained. Moreover, he has recently disclosed documents he obtained from his prior employment
6 for use in a public hearing. *See* 88-94. Accordingly, the Court’s intervention is warranted here
7 because LVSC is without an adequate remedy in the ordinary course of law to compel the return
8 of the stolen documents.

9 4. *The Documents May Include Personal Data in Violation of Macau law.*

10 Although U.S. law provides more than an adequate basis for an order compelling the
11 return of the documents, LVSC faces potential harm in another way as well absent their return.
12 The Macau Personal Data Privacy Act (“Macau Act”) governs “retrieval, consultation, use,
13 disclosure by transmission, dissemination or otherwise making available” personal information. *See*
14 PA 67-87 (a copy and translation of the Macau Act at Art. 4, Sec. 1(3)). “Personal data” is
15 interpreted very broadly to include:

16 -any information of any type . . . relating to an identified or identifiable natural
17 person (“data subject”); an identifiable person is one who can be identified,
18 directly or indirectly, in particular by reference to an indication number or to one
or more factors specific to his physical, physiological, mental, economic, cultural
or social identity.

19 *Id.* at Art. 4, Sec. 1(1). Pursuant to the Macau Act, personal data may be transferred outside of
20 Macau where the legal system in the destination country to which the data are transferred ensures
21 an adequate level of protection. Where the destination country is deemed not to afford an
22 adequate level of protection, personal data may only be transferred with the unambiguous written
23 consent of the data subject or if the transfer meets certain conditions specified in the Macau Act.
24 Only once Jacobs returns the stolen documents to LVSC can it determine the appropriate
25 treatment and handling of such documents.

26 LVSC’s concerns that Jacobs will disclose company documents that contain personal data

27 ⁶ “[E]ven in the absence of an enforceable covenant a former employee remains subject to the
28 general rules prohibiting use or disclosure of another’s trade secrets in breach of a duty of
confidence.” RESTATEMENT (THIRD) OF UNFAIR COMPETITION §42 cmt. b.

1 in violation of Macau law are confirmed by Jacobs' counsel's *inability* to represent that Jacobs
2 will not disseminate the information. *See* PA 11-12. The Macau Act provides for sanctions for
3 removal of protected data from the jurisdiction without compliance with the strict requirements
4 set forth in the Macau Act. LVSC believes it should act diligently to recover these materials
5 stolen by Jacobs and to ensure that these materials will not in any way be reviewed, distributed or
6 used by Jacobs, his agents (including his attorneys) or any other third parties. Accordingly,
7 LVSC requests the Court issue a Writ whereby LVSC is granted partial relief, or a carve out, from
8 the Stay set forth in the Court's Order, and the District Court is permitted to address LVSC's
9 motions for protective order and to compel the return of stolen documents.

10 **VI.**

11 **CONCLUSION**

12 For the reasons set forth above, LVSC has shown good cause to establish its right to an
13 order compelling the return of the documents and information in Jacobs' possession. However,
14 without relief from this Court, relief that would allow LVSC to proceed in the District Court,
15 LVSC is left without a plain, speedy and adequate remedy in the ordinary course of law. LVSC,
16 therefore, respectfully requests that an Extraordinary Writ be issued providing for partial relief, or
17 a carve out, from the stay set forth in the Court's *Order Granting Petition For Writ Of*
18 *Mandamus*, to allow the District Court jurisdiction to address LVSC's motions regarding Jacobs'
19 improper retention and use of documents.

20 DATED September 26, 2011.

21 /s/ J. Stephen Peek
22 J. Stephen Peek, Esq.
23 Nevada Bar No. 1759
24 Brian G. Anderson, Esq.
25 Nevada Bar No. 10500
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Attorneys for Las Vegas Sands Corp.

NRAP 27(e) CERTIFICATE

(A) Pursuant to NRAP 27(e)(3)(A), the telephone numbers and office addresses of the attorneys for the parties are as follows:

1. J. Stephen Peek
Brian G. Anderson
Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134
702-669-4600

Attorneys for Petitioner Las Vegas Sands, Corp.

2. Honorable Elizabeth G. Gonzalez
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondents

3. James J. Pisanelli
Todd L. Bice
Debra L. Spinelli
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169
702-214-2100

Attorneys for Real Party in Interest Steven C. Jacobs

(B) Pursuant to NRAP 27(e)(3)(B), the facts showing the existence and nature of emergency are as follows:

1. Jacobs' (now former) counsel recently revealed that Jacobs was in possession of approximately eleven gigabytes of documents, which includes (as admitted by Jacobs' own counsel) documents containing attorney-client communications. *See* PA 5-6.

2. In response, counsel for LVSC demanded that Jacobs immediately return all such documents. *See* PA 7-8.

3. However, to date, Jacobs has failed and refused to return company documents to LVSC. *Id.*

4. On August 1, 2011, the parties met and conferred telephonically regarding return of company documents in Jacobs' possession. During the telephone conference, Jacobs' counsel

1 confirmed that:

2 1. Jacobs and his counsel are in possession of documents
3 which Jacobs acquired during the course of his employment.

4 2. These documents include material that may be subject to the
5 attorney-client privilege.

6 3. Jacobs does not believe that he is bound to keep confidential
7 those documents obtained during the course of his employment
8 because he asserts that he did not sign any confidentiality policy or
9 other document containing a confidentiality provision.

10 4. Jacobs believes that Macau data privacy laws do not prohibit
11 him from disclosing documents in this matter and that Macau data
12 privacy laws are being used by Defendants as a “farcical canard” to
13 avoid disclosure of documents.

14 5. Based upon the foregoing, Jacobs refused to comply with
15 the request for return of documents obtained during the course of
16 his employment and would not commit that he has not or will not
17 provide such documents to third parties.

18 *See id.*; *see also* PA 9-10.

19 11. In subsequent correspondence, Jacobs’ counsel confirmed that Jacobs “is *unable* to
20 ‘return’ the documents to Defendants”. *See* PA 11-12.

21 12. Additionally, while Jacobs’ former attorneys have agreed to cease *their* review
22 and/or production of the documents until the matter is resolved by the Court, they are “unable to
23 represent that Steve has not or will not provide any of the documents to certain third parties.” *Id.*

24 13. Upon learning of Jacobs’ purported retention of new counsel at the law firm
25 Pisanelli Bice, counsel for LVSC proposed a stipulation to Jacobs’ new counsel, Jim Pisanelli,
26 requesting that such documents not be reviewed and not be provided to third parties; however,
27 Mr. Pisanelli was not agreeable to signing the stipulation. *See* PA 7-8

28 14. Based on the representations of Jacobs’ counsel, there is an immediate risk that

1 Jacobs will continue to disclose LVSC company documents that contain information that is
2 confidential, sensitive, and/or subject to the attorney-client privilege to third parties who are not
3 entitled to such documents and information. *See id.*

4 15. These documents are also subject to express confidentiality policies and may be
5 subject to the Macau Personal Data Protection Act. *See PA 67-87.*

6 16. When Jacobs refused to return the documents, LVSC filed motions to compel and
7 for protective order for the return of the stolen documents and to restrain and enjoin Jacobs and
8 his agents from further review, disclosure and dissemination to third-parties. *See PA 26-39.*

9 17. At a scheduling conference on September 16, 2011 for scheduling the Evidentiary
10 Hearing on the jurisdiction of co-defendant SCL, as mandated by the Court, the District Court
11 instructed LVSC's counsel that this Court's Order stayed the entire action; and consequently, that
12 the District Court did not have jurisdiction to hear LVSC's motions regarding Jacobs' improper
13 retention and use of documents. Accordingly, LVSC withdrew its pending motions. *See id.*

14 18. Based on the immediacy of the risk, LVSC initiated the Second Case based on
15 conversion and misappropriation of trade secrets in District Court Case No. A648484-B (*Las*
16 *Vegas Sands Corp. v. Steven Jacobs and Vagus Group, Inc.*) *See PA 17-25.* Additionally, LVSC
17 moved for a temporary restraining order and preliminary injunction for the return of documents
18 and to prevent Jacobs, Vagus Group, or their agents from dissemination of stolen documents to
19 third-parties. *See PA 26-39.*

20 19. On September 20, 2011, the District Court issued an Interim Order prohibiting the
21 defendants from disclosing or disseminating any documents or information contained therein
22 obtained in connection with their consultancy with LVSC, including the approximate eleven
23 gigabytes of documents in defendants' possession to any third party. *See PA 40-41.*

24 20. The Interim Order is valid for two weeks and the District Court suggested LVSC
25 seek partial relief, or a carve out of the stay, with this Court in the First Case. *Id.*

26 21. On September 20, 2011, the Court issued its Notice in Lieu of Remittitur, closing
27 the docket for Case No. 58294. *See PA 42.* Accordingly, LVSC is unable to intervene or move to
28 lift the stay in the SCL Writ Petition docket, and is otherwise without a plain, speedy and

1 adequate remedy in the ordinary course of law.

2 22. The Interim Order will expire on October 4, 2011, and unless the Court issues a
3 Writ providing a carve out or partial lift of the stay to allow the District Court to address LVSC's
4 motions for protective order and to compel the return of documents, LVSC will again be exposed
5 to the risk that Jacobs will, among other things, (1) improperly disclose or disseminate
6 confidential or proprietary documents to third parties, (2) improperly review privileged or
7 confidential documents, or (3) improperly disclose, disseminate or review documents associated
8 with the Macau Personal Data Protection Act.

9 23. Notwithstanding the foregoing, late Friday, September 23, 2011, Jacobs' counsel
10 emailed a supplemental disclosure of documents, identifying a range of documents Jacobs
11 obtained from his prior employment. The documents identify, among other things, emails
12 between LVSC's counsel and other potentially sensitive information. Accordingly, it appears
13 Jacobs' new counsel has continued to review the very documents Jacobs' former counsel had
14 agreed not to, in violation of the Interim Order. *See* AP 88-94.

15 24. Therefore, due to Stay in the First Case and the limited duration of the relief
16 granted in the Second Case, LVSC, by and through its counsel, certifies that to avoid irreparable
17 harm, relief is needed in less than 14 days pursuant to NRAP 27(e).

18 **(C) Pursuant to NRAP 27(e)(3)(C), the other parties were notified and have been served**
19 **with this Motion as follows:**

20 Service to the other parties has been effectuated as set forth in the accompanying
21 certificate of service. In addition to formal service, a courtesy copy of this Motion has been sent
22 via email.

23 DATED September 26, 2011.

24 /s/ J. Stephen Peek

25 J. Stephen Peek, Esq.
26 Brian G. Anderson, Esq.
27 Holland & Hart LLP
28 3800 Howard Hughes Parkway, 10th Floor
Las Vegas, Nevada 89169

Attorneys for Las Vegas Sands Corp.

VERIFIED CERTIFICATE OF COMPLIANCE

STATE OF NEVADA)
)
COUNTY OF CLARK) ss.

I, Brian G. Anderson, being duly sworn, do hereby depose and say:

1. I am an attorney with the law firm of Holland & Hart LLP, counsel of record for Petitioner, Las Vegas Sands Corp ("LVSC") named in the foregoing Las Vegas Sand Corp's Emergency Original Petition for Writ of Mandamus ("Writ Petition").

2. I am licensed in the State of Nevada and competent to testify to the matters set forth in this Affidavit.

3. Pursuant to NRAP 21(a)(5) and NRAP 28.2, I hereby certify that I have read LVSC's Writ Petition, and to the best of my knowledge, information, and belief verify that the facts stated therein are true, and to those matters that are on information and belief, such matters I believe to be true.

4. I further certify that this Writ Petition is not frivolous or interposed for any improper purpose and complies with the applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by reference to the page of the appendix where the matter relied on is to be found.

5. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

6. I make this verification on behalf of Petitioner LVSC.

EXECUTED this 26 day of September, 2011.

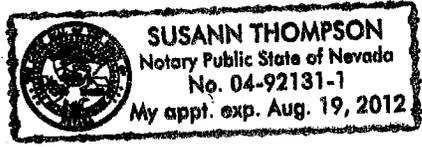


Brian G. Anderson, Esq.

SUBSCRIBED AND SWORN to before me this 26th day of September, 2011.



Notary Public



Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that I am an employee of Holland & Hart; that I am familiar with the firm's practice of collection and processing documents for mailing; that, in accordance therewith, I caused the following document, **LAS VEGAS SANDS, CORP'S EMERGENCY ORIGINAL PETITION FOR WRIT OF MANDAMUS**, to be hand delivered as indicated below on the 26th day of September, 2011:

James J. Pisanelli, Esq.
Pisanelli & Bice
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169

*Attorney for Real Party in Interest
Steven C. Jacobs*

Honorable Elizabeth G. Gonzalez
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An Employee of Holland & Hart LLP

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