CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt

FLORENCE HOYT, TRANSCRIBER

10/17/11

DATE

MR. PEEK: And, Your Honor, as part of that process, because I'm sort of peripherally involved --

THE COURT: Well, Mr. Kay gave an affidavit about it, so yeah.

MR. PEEK: Right. Because I'm peripherally involved, there will be an issue, Your Honor, as to whether or not any of the documents can rightfully be used. And that'll be briefed in detail, rightfully be used --

THE COURT: Absolutely.

MR. PEEK: -- because we'll take depositions, we'll get to the bottom, as Mr. --

THE COURT: And you have a motion for protective order that's coming up and a motion to compel return of documents that's coming up. I mean, I've got all sorts of motion practice coming up.

MR. PEEK: Yeah. But I just didn't want there to be any question about this, is that, as Mr. Pisanelli wants to take the deposition of the IT folks in Macau, we likewise want to take the deposition of Mr. Jacobs --

THE COURT: That's Item Number 4.

MR. PEEK: -- as to how he came into possession.

THE COURT: I'm not into 4 yet.

MR. PEEK: You're right. I thought it was part of the protocols. But you're right, it is.

THE COURT: That's depos.

MR. PISANELLI: I promise --

THE COURT: Mr. Pisanelli.

MR. PISANELLI: I promise Mr. Peek not --

THE COURT: I have the July 8, 2011, email in front of me, as well as the ESI order that is already in file on this case dated June 23rd, 2011.

MR. PISANELLI: Yep. That last paragraph at the bottom of page 1 we are prepared to comply with today. There is a fraction of hyperbole in it, but the point is immediately or nearly immediately we can give them exactly what Mr. Williams said in July. They can have in .tif form, Bates stamped, all of them. There is no reason for delay. We don't need to go through all of this long basically disguised TRO that they presented to you, squeezing in the language that you've rejected time and time again. They want a copy of everything in .tif form, they want it all Bates numbered so that there's identifier of exactly what they're in possession of, I'm telling Your Honor as early as tomorrow I think. And if it's -- if I can't get that done, it's going to be like within days. I'm not talking months, weeks, anything of that sort. We're ready to give it to them and let's get this process underway.

I promise Mr. Peek that I will not claim ever to be surprised that either of them are going to argue that all of them should be excluded. I'm very much aware of that

position, and I'm very much aware that he's not waived it today and that I will be hearing this argument again. I get it. But our position, like Mr. Williams's, has always been, here, you can have a copy of them, tell us what you think we're not entitled to see or use and keeping in mind that Ms. Glaser once again, in our view, said -- told you the exact opposite of what the law is. That privilege, though they hold it, cannot be asserted against a party like Mr. Jacobs who was entitled to these communications in the course of his work. They cannot assert it, they cannot claim that he doesn't get to see them. She is dead wrong on the law. But we'll debate that another day.

So we don't need all of this long disguised issue.

THE COURT: Okay. So can --

MR. PISANELLI: This is what we'll do.

THE COURT: Wait. I need to get clarification from you.

MR. PISANELLI: Yes.

THE COURT: I assume from your suggestion that the last paragraph of the July 8th, 2011, email, which I'm marking as Court's Exhibit 1 for purposes of today's hearing, that you will transmit an electronic version to the ESI vendor that all of you agree upon. How, then, do you intend to do the review to determine if there is privileged material of Mr. Jacobs separate and apart from any materials that might be for the

Sands?

MR. PISANELLI: Yeah. We will --

THE COURT: How are you going to do that search?

MR. PISANELLI: We will -- that's a very good question.

THE COURT: It's a search term question, really.

MR. PISANELLI: It is a search term. And we will work with our client to determine what possibly could be in there. I remain optimistic and hopeful that that is going to be minimal, but I don't want to give away that issue.

THE COURT: Okay. Here is my concern, because I certainly agree that is an appropriate procedure. My fear is I don't want you looking at all 11 gigabytes of information. I want the vendor to run a search using the search terms you've identified that are expansive enough to capture all of the potential documents that may be privileged to Mr. Jacobs separate and apart from the other documents that are at issue in this ongoing battle. That is my concern.

MR. PISANELLI: I can live with that.

THE COURT: I don't want you to go through all the documents --

MR. PISANELLI: I don't want to.

THE COURT: -- but I want you to be able to review the documents that this isolated search that you propose the search terms to can identify --

MR. PISANELLI: Sure.

THE COURT: -- and then you have to do the privilege log and provide that.

MR. PISANELLI: That makes perfect sense to me.

THE COURT: Then -- then after that happens typically what I would hope is that the rest of the documents, since Sands China has indicated an intention to review all 11 gigabytes or more of data, that with the exception of those that you've identified as attorney-client of Mr. Jacobs and which I agree with you, they will then begin document by document reviewing those and making the identification as to whether there is a privilege or it is protected by Macau law or it is a trade secret, which are their three things they've told me are important to them. But I need you to do that review first, since Mr. Williams specifically identified that as an issue in the July email. And I need to know what your position is and your timing related to that, because it will greatly impact the work I have done.

I will tell you, I have a case -- and none of you guys are involved in this, luckily -- where it took them six months for the first person to complete the review before the data could be transmitted to the other people. And that's too long. And I get grumpy when people don't do their job in a expeditious fashion.

So tell me what your plan is.

MR. PISANELLI: My plan would be the following. Of course, go down the path that you described, give me 30 days. Trigger whatever it is you will require of the defendants based upon my production, not the 30 days, so that if I can hypothetically call back and say, Your Honor, I don't need to do that, Mr. Jacobs knows exactly what he possesses and is willing to produce without any redaction, so I'll give it to them immediately. So I don't know that to be the truth. I suspect it's probably not the case. But I think 30 days should work. And if it won't, I will -- the burden will be on me to come back to you and explain why I need more time and how much more time. And then I won't -- I'll reserve comment, but I'll let defendants decide how long they will need.

THE COURT: How long do you need to make the determination as to whether you're going to have the search terms run?

MR. PISANELLI: That I can let you know by the beginning of the week.

MS. GLASER: I'm sorry. I didn't hear that.

THE COURT: He said he needs the beginning of next week.

MS. GLASER: Fine.

THE COURT: How about I give you a couple extra days, because I'm always worried when people tell me they can do things that short, to the 19th.

MR. PISANELLI: Okay.

THE COURT: And if you decide after communicating with your client that you are not going to need to have the search terms run to make a determination as to whether there are any independent documents protected by attorney-client privilege or a privilege that would be held by Mr. Jacobs, as opposed to Sands China, then you will tell us on October 19th. You're either going to have the search terms available to the ESI vendor who will then run the search in their fashion and give you the results, or you will say, I don't need to have the search run.

And then Sands China will have how long to give me your search terms? Oh. No. You want to review them all.

MR. PEEK: We want to look at all the documents, Your Honor.

MS. GLASER: Believe me, I'm not looking forward to it, Your Honor.

THE COURT: Then the ESI vendor will have to post them and make them available on a remote site, and they will keep a log of every document that is reviewed and by whom, which means they have to assign user identification numbers to everyone who is involved in the process.

And how long will it take Sands China to review the documents, assuming there's about 11 gigs?

MS. GLASER: I need to know --

THE COURT: The answer is "longer."

MR. PEEK: Yeah. It's longer than 45 days, Your Honor.

THE COURT: Do you like how I added that part?

MR. PEEK: Yeah, I get that, Your Honor. It's not six months.

THE COURT: Mr. Pisanelli, you think if you're doing this you get 30 days' review period if you get to that point?

MS. GLASER: Your Honor, we would request 90 days, because it will take that long to do this properly.

And I do have a clarification request.

THE COURT: Okay. Hold on. Let me finish writing notes here.

(Pause in the proceedings)

THE COURT: All right. You had a question?

MR. PISANELLI: I do, as well.

THE COURT: I don't care who goes first.

MS. GLASER: I've got a couple of questions, Your Honor. I need to make sure -- I'm being told I need to make sure --

THE COURT: We need your people who are IT people and specialists who have done this before to communicate with me. Please feel free -- even if you're not admitted in Nevada or you're not a lawyer, please feel free to come up to the table so that when Ms. Glaser is telling me what you want her

to tell me she tells me what you mean. Because I --

MS. GLASER: Ninety days. When do we count the 90 days from? That's the big issue.

THE COURT: We'll count the 90 days from the date either on which you get the notification from Mr. Pisanelli on October 19th that he does not need to run search terms to determine if there's any privileged material on behalf of Mr. Jacobs that would be separate and apart, or, alternatively, upon the time that he gives you the list of privileged material and the ESI vendor can then begin making other materials that are not on his privilege log available to you --

MR. PEEK: Your Honor --

THE COURT: -- while I am in the process of reviewing the materials that are on the privilege log that Mr. Pisanelli identifies typically through motion practice.

Yes.

MS. GLASER: Your Honor, we may finish it shorter than 90 days, and we want to be able to move this process along, too.

THE COURT: If you finish short of 90 days, you know, you give it to me.

MR. PEEK: Well, I -- here's my question.

THE COURT: But I doubt you're going to.

MR. PEEK: Because the 90 days is starting from the

19th of October, I think is what --

THE COURT: Not necessarily.

MR. PEEK: Okay. That's what I'm trying to get --

THE COURT: You have a moving target on when the 90 days starts.

MR. PEEK: Because we have to -- we have to get the documents loaded, Bate numbered --

THE COURT: That's not you. Here's what happens --

MR. PEEK: That's my question.

THE COURT: Mr. Pisanelli has electronic data. The electronic data within 48 hours of today, which is by -- 48 judicial hours, which is by Monday, will be given to the ESI vendor, which typically means you upload it to their site.

MR. PISANELLI: I think it's already done.

THE COURT: All right.

MR. PISANELLI: I think it's already Bates numbered, .tif, and it's ready to be produced.

THE COURT: So if that's the case and the vendor already has it --

MR. PISANELLI: And I believe the vendor to be QUiVX, so outside institutional company --

MS. GLASER: Don't we have to agree?

MR. PEEK: But the --

THE COURT: Wait, wait, wait. Let's --

MR. PEEK: The issue that we have -- and I'm not

questioning Mr. Pisanelli's assertion here -- is we have a much broader protocol as to what it is that he has in his possession. So when he says --

THE COURT: You're asking for exactly the same thing that's already in the ESI protocol that I've signed. Isn't it nice that you were consistent?

MS. GLASER: May I --

MR. PEEK: Your Honor, there's a broader -- if you looked at our -- if you look in our ESI protocol, which is a broader one of everything that he ever had, that he got during the course of his employment, that's not --

THE COURT: I've limited the discovery on these issues to a specific period of time. My recollection, and I will refer to the ESI protocol, since I was wrong the last time I said it, was that time frame ran from January 1st, 2009, to October 20th, 2010.

MR. PEEK: Right. I agree with that one.

MS. GLASER: This is a clarification --

MR. PEEK: May I see that, Your Honor, just for a moment.

THE COURT: Yes. I just punched it. Max has been very good at going to the --

MR. PEEK: Go ahead, Ms. Glaser. I'm sorry.

MS. GLASER: Because Your Honor rightfully has not ruled on the appropriateness of Mr. Jacobs having these

documents, and I appreciate that, we want a representation, which we will take to Your Honor, from Counsel that there will be nothing done -- our protocol that we had -- the special protocol that we had suggested made everybody turn over all the documents, and the ESI vendor is sort of the neutral who has everything. If he chooses not to do that or Your Honor doesn't order it and we think Your Honor should, then at minimum there should be a representation to the Court that there will be no use of the documents and/or the information in the documents absent further order of the Court.

THE COURT: Well, until the process is completed. The process is -- the anticipated path is that the electronic images are provided by Mr. Pisanelli to the ESI vendor, and I haven't determined that the one he's already picked is the one, but we'll have that discussion in a minute. He provides that. The understanding is he's not looking at those documents anymore, which is why I'm making him use search terms to review the documents.

MS. GLASER: And I appreciate that.

THE COURT: The reason he's having to review search terms is my goal was to keep him from getting further down a path where there may be a document that is protected by the attorney-client privilege, the Macau Privacy Act, or a trade secret that Mr. Jacobs has that I later determine he shouldn't have and I don't get into a position later where I have to

disqualify counsel because he was looking at documents when he shouldn't be.

MS. GLASER: Understood.

THE COURT: I don't want to be in that position, because it will make my case take longer.

MS. GLASER: Fair enough.

THE COURT: And it also screws things up procedurally.

MR. PEEK: And, Your Honor, I apologize. You are correct. Because our protocol did capture this, because it says that, "The parties must accurately identify and produce responsive non-privileged, active ESI stored [unintelligible] that is in their possession, custody, or control notwithstanding its location."

THE COURT: True.

MR. PEEK: So --

THE COURT: And that's already an order I issue, although it's stayed for all purposes except this.

MR. PEEK: Yeah. I guess it's really the "identify and produce responsive," but if he's just giving me everything that he has, that's what Mr. Pisanelli is telling me, is that everything that Mr. Jacobs has I'm going to give to the ESI vendor.

MS. GLASER: Your Honor --

THE COURT: And that's a yes, not just a nod. Come

on. Nods don't come out on my record, Mr. Pisanelli. Say yes.

MR. PISANELLI: I'm just waiting till he's finished.

THE COURT: Well, the nodding was -- say yes.

MR. PISANELLI: Yes.

THE COURT: Okay. Thank you.

MS. GLASER: Your Honor, the other clarification -- and we did -- if you looked at -- and I can hand it up to the Court if it's easier. At paragraph 6 we actually --

THE COURT: Of yours?

MS. GLASER: Of our protocol. Do you want me to hand it up to you?

THE COURT: No. I have it.

MS. GLASER: Oh. I'm sorry.

THE COURT: I have all this stuff. Okay. And I've dealt with ESI issues many times.

MS. GLASER: We actually provide a mechanism for what Mr. Jacobs might determine to be his attorney-client privilege, as opposed to --

THE COURT: Well, but you understand that what paragraph 6 says is he's giving the search terms. That's what paragraph 6 says. I already told him that.

MS. GLASER: Okay. As long as we're in the same boat. Thank you.

THE COURT: But the search terms doesn't have to

necessarily be only those items that you've identified in 6, because there may be other items that the search terms Mr. Pisanelli believes are appropriate to elicit a response as to a document he believes Mr. Jacobs would hold the attorney-client privilege for may be something which isn't an attorney, but there's a particular subject that is an unrelated legal issue that's captured on there.

MS. GLASER: Okay. I'm --

THE COURT: Do you understand what I'm saying?

MS. GLASER: Fair enough. Fair enough.

THE COURT: He hired a lawyer to help him with a special LLC called, for instance, Sagebrush, so he wants to run "Sagebrush" as one of the search terms, so he'll make sure he pulls all that stuff.

MS. GLASER: Now, this is my question, because I just need to understand this. He goes through that process just as Your Honor's outlined, and now he identifies -- I'm making up a number -- 10 documents that he feels outside -- he wants to make sure they're protected from his standpoint. How does Your Honor then make the determination whether that's justified?

THE COURT: He does a privilege log. You get a copy of the privilege log from him, because he serves it upon you. If you look at it and you think there is a problem, then you talk to him, because that's what Rule 2.34 requires you to do.

MS. GLASER: I'm never going to be before Your Honor again --

THE COURT: And then --

MS. GLASER: -- without doing that.

THE COURT: -- after you talk to him -- or you could talk to Ms. Spinelli or Mr. Bice or whoever it is in their office they designate to respond to you, after you've had that communication in good faith to try and resolve the issue on the privilege log, then you're going to file a motion to require the production.

MS. GLASER: Understood.

THE COURT: And then he's going to say, this is the basis. And what almost always happens, unfortunately, is I then do an in-camera review.

MS. GLASER: Understood.

THE COURT: Almost always.

All right. Yes.

MR. PISANELLI: Perhaps -- I have to confess to you I'm a little confused.

THE COURT: You've done ESI before. You can't be confused.

MR. PISANELLI: I have done it before, and I'm still -- I always get confused.

THE COURT: Mr. Peek can be confused, 'cause he's older than us.

MR. BICE: On that we concur, Your Honor.

MR. PISANELLI: I have --

THE COURT: But he brought Mr. Anderson, who understands it.

MR. PEEK: I brought Brian with me today, Your Honor, to help me.

MR. PISANELLI: I have a body of documents that are stored electronically. And I'm going to do this broad strokes just to make sure I'm where you want me to be on this, okay. I have a body of evidence that is stored electronically. It has been identified by Bates number and whatever .tif means is what it is. I am going to take that body of evidence in electronic form, not hard copies, and I'm going to give it to the defendants. The only thing I expect to extract from that body of evidence is -- are the documents, if any, that I believe they are not entitled to see.

THE COURT: Correct.

MR. PISANELLI: And that will not be made a secret to them or you or anyone else. They will know by Bates number document, et cetera. In order to determine what of that body of evidence I am not going to give to them, I'm going to give the ESI vendor --

THE COURT: Well, not that you're not going to give to them, to which you are making a claim of privilege.

MR. PISANELLI: Yes.

MR. PEEK: Privilege log.

MR. PISANELLI: Yes. Of course. And in order to find them I'm not going to do what they are going to do and read every document and pull them out. I am going to give search terms to the vendor to say, here is the body of evidence, find me documents that have these words. And then --

THE COURT: And that search terms, the search terms that are communicated to the vendor get circulated to everyone. So if there is a dispute as to whether the search terms are too broad or they think your search term is going to pull information to which they will claim a privilege, then I have a different issue I have to resolve.

MR. PISANELLI: That's actually where I was headed with the confusion. So I'm there.

THE COURT: Are we done now?

MR. PISANELLI: I think so.

THE COURT: Any other questions on my Item Number 3, which was the ESI protocol issue?

MR. PEEK: Maybe Number 4 is going to capture it, because I certainly have questions, Your Honor.

THE COURT: 4 is my depo issue.

MR. PEEK: Yeah. But I even have more questions. What I'm concerned about is are we receiving in native format with metadata attached in those 11 gigabytes that will let us

know or give us insight as to when the documents were --

THE COURT: Hold on. Let me ask the question for Mr. Pisanelli.

How did the documents get converted into their current .tif format with Bates numbering on them?

MR. PISANELLI: I didn't do it, so I would be guessing.

THE COURT: I don't want you to guess.

MR. PISANELLI: I don't know.

THE COURT: How do I find out?

MR. PISANELLI: That was handled by outside counsel -- by outside I mean out side of me --

THE COURT: Correct.

MR. PISANELLI: -- and I have kept myself away from the process.

THE COURT: Frequently people hire Dennis Kennedy to do that, for some reason, and I have no idea why he's the one who always gets hired.

MR. PISANELLI: I did not hire Dennis Kennedy.

MR. PEEK: Oh. You're shocking me.

MR. PISANELLI: But it was handled by counsel for Mr. Jacobs, and I have maintained distance --

THE COURT: Okay.

MR. PISANELLI: -- with that process.

THE COURT: Here's the question that I need

answered. And it may be that the ESI vendor will have to be the one who tells me the answer to this question. If they get information and it appears to them that the .tif files they are receiving are files that were, for lack of a better term, printed and scanned, then I'm going to have a problem.

MR. PISANELLI: Okay. I'll find that out.

MR. PEEK: Yeah. Because you've seen in our protocol what we talk about is the metadata attached to the .tif file. That's --

THE COURT: It's not in -- it's in the order. It's in an order. I assume that the order that is currently in place, dated June 23rd, 2011, was complied with.

Here, Mr. Pisanelli. I'm going to give you a copy, because you weren't here then.

MR. PISANELLI: And by the way, if it was not complied with, can't even represent to you that this was done before or after this order, but I will do this. I mean, if -- if we don't have the metadata, for instance, and that is something you want, then we're just going to have to --

THE COURT: Well, no. It's something I ordered.

MR. PISANELLI: I'm sorry?

THE COURT: It's something I ordered.

MR. PISANELLI: Okay.

THE COURT: It's not something I want.

MR. PISANELLI: My point is, then, maybe money has

been wasted and we have to start over.

THE COURT: That may be.

All right. So next question. The vendors.

MR. PISANELLI: All I know is that QUiVX was used, contracted directly with the law firm. I understand there to be a confidentiality obligation in relation to their work. That's all I can represent to you.

MR. PEEK: Don't know anything about them, Your Honor. I just want the opportunity to --

THE COURT: Other people have used them in other cases.

MR. PEEK: They're not familiar to me, and --

THE COURT: They aren't one that I've had a problem with yet.

MR. PEEK: Oh. That's a good sign, then.

MS. GLASER: Are not, or are?

THE COURT: Have not yet had a problem with.

MS. GLASER: Your Honor, we probably will have no problem, because --

THE COURT: But I want you to look and decide if you have a problem.

MR. PEEK: We want to check to vet them, that's all.

THE COURT: How long do you need? Because I ordered Mr. Pisanelli to give it to them by Monday, and I'm not going to make you give it, since they already have it.

MR. PEEK: In an abundance of caution, Your Honor, I'll give him till Tuesday, if it's okay with the Court, so that we can vet them, because it's already Thursday.

THE COURT: How long do you need to vet is what I'm trying to find out.

MS. GLASER: By the end of the day on Monday we should be able to get back to Mr. Pisanelli, and if you -- if Your Honor wishes, Your Honor, as well.

THE COURT: I don't care. But if you don't pick QUiVX, then I need to see you.

MR. PEEK: Then we need to pick somebody --

THE COURT: Unless you agree, I need to see you.

So the 48 hours that I gave you is tolled pending a decision on either they agree to QUiVX or I order a particular person to be your vendor.

MS. GLASER: Thank you, Your Honor.

MR. PEEK: Thank you, Your Honor.

THE COURT: So none of the dates are going to start moving until you hit that, till you know who your vendor is.

MS. GLASER: Understood.

THE COURT: All right. Does anybody have any questions, including those people who are more technically oriented than the rest of us, about what I have ordered, which are simply modifications to the prior ESI order?

MR. PISANELLI: I have a non-technical question on

cost.

MS. GLASER: We do not, Your Honor.

THE COURT: Okay. So Mr. -- your cost question, Mr. Pisanelli?

MR. PISANELLI: What do we do about it?

THE COURT: I don't know. What's it say in the order?

MR. PISANELLI: I don't know. I haven't read it.

THE COURT: I gave you my copy. Hold on a second.

MR. PISANELLI: I gave it back to you.

THE COURT: I think we addressed that in the original order.

MR. PEEK: Yeah.

THE COURT: "Each party expressly reserves its right to petition the Court to shift the cost of the production of the ESI to the requesting party." That's what it says.

MR. PEEK: Yeah. I agree. That's what my recollection was, too, Your Honor.

THE COURT: You want it back?

MR. PISANELLI: No, we've got one.

THE COURT: Anything else?

MR. PISANELLI: I don't think so.

MS. GLASER: No. Thank you, Your Honor.

MR. PEEK: Well, but what do we do in the short run of paying, paying QUiVX? Because certainly we have that cost

shifting.

THE COURT: He's the producing party.

MR. PEEK: So he's paying for it, he can shift it back to me later if he wants?

THE COURT: On that part. He can shift it later.

MR. PEEK: Okay.

THE COURT: But when you then are accessing your however many documents it ends up being, you're paying for all of that and the logging that has to be done. And I will tell you that there have been occasions where I've had to review the log that the ESI vendor keeps to make a determination as to whether anything fishy happened.

MR. PEEK: Okay. So, if I understand correctly, what you have suggested as a protocol for review of document by document with SCL is not contained within the body of the protocol, I don't believe, where we keep a log, as you're suggesting --

THE COURT: You don't keep a log. That's part of what the ESI vendor does. They issue user names. They typically keep a log of everybody who accesses each document.

MR. PEEK: But that -- but we wouldn't have that, for example, Your Honor --

THE COURT: You don't get it. We only get it when there's trouble.

MR. PEEK: Right.

THE COURT: And hopefully we won't have trouble.

MR. PEEK: My point is, Your Honor, that I don't recall seeing that in the protocol, that there is, as you say -- because I know, for example, when I'm reviewing the documents right now -- when I reviewed them before the stay and produced them to Jacobs, I had folks reviewing on my system where I had uploaded them. And I would assume that Jim would have done the same thing on his system had we gone through the normal process without this dispute.

THE COURT: Hold on.

MR. PEEK: So I just want to make -- I just want to have that clarification.

THE COURT: You're absolutely right that it is not covered in this order.

MR. PEEK: Right. So we just need to -- and I get what you're saying, Your Honor --

THE COURT: Typically the ESI vendors keep that. That's why they make you have user names that are independent for everyone who accesses it. I'm trying to see if I can find -- you had a proposal from a vendor that was a contractual document, didn't you?

MS. GLASER: No. Ours --

MR. PEEK: I don't recall that we did, Your Honor, have a proposal from a vendor.

MS. GLASER: No. Our proposal is not from a vendor,

it's from a bunch of lawyers.

THE COURT: Oh. Okay.

MS. GLASER: I can hand that up to Your Honor if you don't have a copy.

MR. PEEK: Because I -- you know, we have to have a protocol about, okay, you're going to keep this log, but I don't --

THE COURT: They keep the log.

MR. PEEK: They keep a log. If I access Bate range of --

MS. GLASER: They know.

MR. PEEK: -- they know how long I'm there, what I do. I'm okay with --

THE COURT: They don't typically know how long you're there. They know if you reviewed it or if you downloaded it. That's typically the things that are recorded on those logs.

MR. PEEK: And we are going to be downloading --

THE COURT: Some.

MR. PEEK: -- some. So I'm going to just look on the screen. Okay.

THE COURT: Depends whether you hire a hundred law students to help you with your 11-gig review like some of the people do.

MR. PEEK: I know. To get it done in the 90 days.

Okay.

MS. GLASER: Thank you, Your Honor.

MR. PEEK: So we'll have to -- we'll have to put that into place somehow, Your Honor. We'll put that protocol into place.

THE COURT: That needs to be in whatever order we use adopting and approving the ESI vendor.

MR. PEEK: We'll work on that, Your Honor.

THE COURT: Okay. Because there will have to be either a stip and order for the ESI vendor for their protection, as well as yours, or, if it's a contested issue, we'll issue an order from me.

MR. PEEK: And I'll work with Mr. Pisanelli on getting that work -- on getting that done, Your Honor.

THE COURT: Anything else?

MR. PISANELLI: On this topic, or others?

THE COURT: On the ESI protocol issues.

MR. PISANELLI: No.

THE COURT: All right. My next topic listed on mine is depos of IT folks, depos of Jacobs, requests for productions of documents.

MR. PISANELLI: That's my actual -- that was the question I had for you. While we are doing this process I'd like to be productive, right. I'm going to have an argument coming our way about whether we have an entitlement to any of

them. We're going to have that big global debate again. And so I would like to conduct discovery and take Ms. Glaser up on her offer of their IT folks and find out what exactly they know about what they've been doing, et cetera, et cetera, et cetera.

THE COURT: Okay. Since we are stayed and limited to purely discovery related to this jurisdictional issue which the Supreme Court has given me a writ ordering me to do certain things, I am not going to compel what would typically be Rule 16 disclosures related to that. I am going to require you to serve an interrogatory to identify those folks, or, alternatively, you may identify them through a 30(b)(6) deposition notice.

MR. PISANELLI: Will do.

THE COURT: Next?

MR. PEEK: Well, similarly, Your Honor, there's the corresponding -- I don't know whether Las Vegas Sands is entitled to be involved in this process, because --

THE COURT: I'm not clear, either.

MR. PEEK: Yeah. But certainly I'll speak for Las Vegas Sands, and Ms. Glaser can speak for herself, and it may get to the same point, is that we would want to take the deposition of Mr. Jacobs for that discrete subject matter related to when he -- what he came into possession, how he came into possession of it, when he came into possession of

it, what he did with it, where did it get stored, what thumb drive.

THE COURT: How about I say it this way? I believe Mr. Jacobs should be deposed if you think it's appropriate, or Ms. Glaser did, related to all issues that are the subject of the issues that are currently not stayed, rather than deposing him on four separate occasions on sub issues. And that would be the same for every witness. I would prefer to have each individual not inconvenienced overly and to try and consolidate all of the issues for their deposition at one time, because it's just polite and well-mannered practice.

MR. PEEK: The only reason I would -- I would agree with that under normal circumstances. Why I have a little bit of a concern here is that the issue of a substantive deposition of Mr. Jacobs on jurisdiction would normally follow after the review of all of the documents. One would want, I think perhaps -- and I'm not saying this is what Ms. Glaser will do -- that the issues of how he came into possession of those might be taken -- or learned or discovered earlier than that substantive deposition. And I'm not trying to take two depositions. I agree with the Court. I don't want to inconvenience Mr. Jacobs. But we'll --

THE COURT: I understand what you're saying, but I really don't think Mr. Jacobs's testimony is relevant to the privileges that are going to be asserted after those folks

review the 11 gigs or so of documents. There's going to be somebody who says that the document violates the Macau Privacy Act by it being removed from Macau, there's going to be an objection that says it might be attorney work product, there might be an objection that says it's an accountant-client privilege, it might be an attorney-client privilege, or it might be a trade secret. I think that's the entire universe of --

MR. PEEK: No. There's one more, Your Honor.

THE COURT: What is it?

MR. PEEK: You came into the possession of them wrongfully.

THE COURT: That's the broader issue.

MR. PEEK: That's the broader issue, and it's certainly --

THE COURT: I am merely at this point in time on the 11 gigs looking for the privilege issues.

MR. PEEK: Correct. But in order to get to that last, much broader issue of did you come into possession of them in a manner that I don't consider proper, that would be the subject of, as I said, how, when, what, where did you get -- come into the possession.

THE COURT: I am not seeing -- that discussion, which I certainly understand we will have, I do not see that at the same time as my decision on the what I'm characterizing

as privilege issues. You understand what I'm saying?

MR. PEEK: I do. I do.

THE COURT: I intend to resolve the privilege issues first, and then I know you're going to argue that there's a lot more that aren't on that list that you claim he shouldn't have.

MR. PEEK: Correct.

THE COURT: And we're going to have a discussion about it after you take his depo.

MR. PEEK: Okay. After I take his depo.

MS. GLASER: So, if I'm understanding Your Honor, because this is important to us, we obviously have to depose him on all the privilege issues, but we also have to depose him on jurisdictional issues, not just privilege issues.

THE COURT: You don't have to. You can.

MS. GLASER: But we -- yes. But, Your Honor, we are -- he's taken the position that he's not subject to our confidentiality and return document --

THE COURT: He is taking that position.

MS. GLASER: Yeah. I heard that loud and clear, read it loud and clear. We need to --

THE COURT: That doesn't mean he's right.

MS. GLASER: I understand that.

THE COURT: It's a factual issue I will make a determination on at some point in time.

MS. GLASER: That's one issue that is pre before you get to the evidentiary hearing on jurisdiction.

THE COURT: Absolutely. I will make that determination I assume when you renew your motion in limine after having a conference under 2.47 and after you've taken his deposition and after I've ruled on the privilege issues.

MS. GLASER: I have memorized now -- if I haven't, I will memorize 2.47.

THE COURT: You should read the whole bunch of local rules. Some of them will actually amuse you, because they're funny.

MS. GLASER: Last thing, the two issues that sort of pre -- are before Your Honor determines jurisdiction are going to be his claim that he's not subject to the policies, which we've just articulated, and, two, how he came into possession of what we believe to be greater than 11 gigabytes of documents. I'm not saying that that deposition -- I haven't thought it through, honestly, but there can be all one deposition, but it might be two. And we're going to try as best we can not to inconvenience Mr. Jacobs for sake of inconvenience, because it inconveniences everyone.

THE COURT: How's this? I bet if you ask for -- if you don't to it all in the first depo, you're going to get a fight on whether you get the second depo. So I'd be really careful.

MS. GLASER: I'm not -- I'm not arguing with you. We're going to think that through carefully.

THE COURT: Okay. Here's what I'm trying to make sure we all understand. There's going to be an ESI production, there's going to be an ESI search, there's going to be reviews of documents that are separate and apart, there's going to be a ruling on any privilege issues related to particular documents, you're going to take depositions, some may be going on during this process, some may occur after the process. You are then going to, if you want, file a motion in limine again to prevent the use of the documents at the evidentiary hearing. But we will now have a framework which I had hoped we would be able to have through a different process than we're doing now on which documents would be used at the evidentiary hearing. Does that make sense?

MS. GLASER: It totally makes sense. And it's appreciated. And I, for one, would represent to the Court and to Mr. Pisanelli that I'm hopeful that we can work things out. I don't want to be in a position, nor do I think he does, of me being concerned that he's not -- he's saying one thing to the Court and one thing to me and vice versa. And we hope to avoid that at all costs, and I'm sure I can speak for both of us in that regard, Your Honor.

THE COURT: I certainly hope I don't get in the middle of those things.

Anything else you want to tell me, Mr. Peek?

MR. PEEK: The only thing I have, Your Honor, is that the hearings for next week --

THE COURT: On October 18th at 9:00 a.m., motion for leave to file an amended counterclaim, motion for protective order, and motion to compel. The last two probably are premature, but I'm happy to deal with them if you want, and I'll --

MR. PEEK: I think that those were all --

THE COURT: -- probably say they're premature.

MR. PEEK: -- those are all the ones that the Court asked us to withdraw.

THE COURT: Are they?

MR. PEEK: Yes.

THE COURT: Are you going to file an amended counterclaim, though?

MR. PEEK: I would love to. But I -- but that was one of the motions that you said to us that we couldn't go forward on that.

THE COURT: I can't rule on that. I can't rule on it. I'm stayed.

MR. PEEK: Right. So you asked us to withdraw those motions. So the fact that there's a hearing still on calendar for those withdrawn motions --

THE COURT: Can you vacate those hearings.

THE CLERK: I can do that, Judge.

MR. PEEK: And I think we've actually done that, Your Honor, by a pleading.

THE COURT: But the Clerk's Office doesn't vacate them. I have to tell them.

MR. PEEK: I know. So I wanted to just have it here clear that --

THE COURT: All right.

MR. PEEK: -- those are the ones you asked us to withdraw and we did withdraw.

THE COURT: What else can I do to help you, since I am now through my four agenda items and it's 11:25?

MR. PISANELLI: I feel -- I feel compelled only to make a reservation on the record, you don't have to rule on it, that if the decision after thought, as we heard, is to depose Mr. Jacobs before we have gotten through this ESI exchange and before I can and will go through and start studying it myself, I will reserve the right to come back to you for a protective order, because I do I think it --

THE COURT: Sure. I'm not stopping anybody --

MR. PISANELLI: -- will be inherently unfair to have him deposed --

THE COURT: -- from filing motions for protective order or anything. I assume you will file whatever is appropriate if you think it's appropriate. I just have a

general policy that it is appreciated by witnesses to only have to be deposed once. And if you can finish him in one sitting, great. If it takes more than one sitting and you're doing your best and not harassing him, okay, we all understand and we try and work together.

I also really like it when counsel can work together, although I know that doesn't always happen.

Anything else?

MR. PEEK: I was just going to say we agree with Mr. Pisanelli that we all are going to reserve whatever we have. So it goes without saying. We'll work on this.

MS. GLASER: Thank you for your time, Your Honor.

THE COURT: Anything else?

MR. PISANELLI: Nope.

THE COURT: All right.

(Off-record colloquy)

THE PROCEEDINGS CONCLUDED AT 11:27 A.M.

* * * * *

to say, well, he was the chairman of Sands China --

THE COURT: Okay. Let me answer the question very directly.

MR. PISANELLI: Yes.

THE COURT: Since Mr. Leven and Mr. Adelson both have titles as officers or directors Sands China, you're going to ask them about the work that they did for Sands China. If they did any work on behalf of Sands China while they were acting as employees or officers or directors of Las Vegas Sands, that is also fair game. However, you are not going to ask them about their daily activities in conjunction with Las Vegas Sands.

MR. PEEK: And it's during the relevant time period of --

THE COURT: Yes.

MR. PEEK: -- January 1 through October of 2010.

THE COURT: January 1, '09, through October -- yes.

MR. PEEK: Okay.

MS. GLASER: And, Your Honor, we will -- I apologize for the clarification, but I need to say it.

THE COURT: I'm here.

MS. GLASER: In connection with their supervisory roles. That's what the law says, I'm not making it up.

THE COURT: No, I understand.

MS. GLASER: And if they were performing -- their

hat was in a supervisory role wearing a Las Vegas Sands hat, whether it touched on Sands China or not is irrelevant.

THE COURT: Ms. Glaser, you would have a better argument if they were only serving as a director. Once they have a title of the CEO or the chairman of the board, that makes it a much more difficult argument for you to make, in my opinion. But that is a factual determination that I will make after hearing the evidence at the time of the evidentiary hearing.

MS. GLASER: Your Honor --

THE COURT: The reason I made a determination earlier that there were pervasive contacts -- and what I said was there pervasive contacts with the state of Nevada by activities done in Nevada by board members of Sands China.

MS. GLASER: Understood.

THE COURT: I was not referring to activities of Las Vegas Sands employees.

MS. GLASER: I know you weren't.

THE COURT: I was very specific about what I was saying.

MS. GLASER: I know you weren't. But the activities that you heard about were in their capacity as supervisory activities.

THE COURT: I understand that's your position. That is a factual determination I will make at the time of the

evidentiary hearing.

MS. GLASER: One question. Then I will sit down. Does Your Honor have a procedure -- I ask out of ignorance, so forgive me --

THE COURT: No. Please.

MS. GLASER: -- with respect to discovery if we get into I'll call them --

THE COURT: You have two issues. If you're in a depo and you have an issue, you call and I try and take a break from my trial or reschedule the time.

MS. GLASER: That's what I'm asking.

THE COURT: If it is something that is more substantive, like you have discovered there's all this privileged issue that you think Mr. Pisanelli is going to go into, you can file a motion for protective order on an order shortening time, and I'll try and get it done on three days' notice.

MS. GLASER: I appreciate it. Thank you.

THE COURT: Those are the two best options.

MS. GLASER: Thank you, Your Honor.

THE COURT: Or sometimes what people do is you realize you've got a discovery dispute and you're all going to be down here at the courthouse on something else, so you ask if you can come in at whatever time, and we all talk.

MS. GLASER: Understood.

MR. PISANELLI: Your Honor, I just --

THE COURT: There's a number of different ways to get here.

MR. PISANELLI: Your Honor, I just missed on your notes. On Items 9 and 10 did you say yes? I thought you said yes, but I --

THE COURT: You're going to make me get -- hold on, hold on.

MR. PISANELLI: I don't want to overreach.

THE COURT: 9 I said yes, and I believe I said yes on 10.

MR. PISANELLI: Okay. Now, the only other issue I have for you is after I asked for those depositions we received their witness and exhibit list, which experts. And so if they're going to put -- you're going to allow them to put experts, I think in all fairness I should not only get a report from this expert before they show up in this courtroom, but be allowed to examine them under oath.

THE COURT: I have never before had an expert on a jurisdictional hearing.

MR. PISANELLI: Neither have I.

THE COURT: That doesn't mean I won't entertain it. But I need to have some more information before I can make that determination.

MS. GLASER: Your Honor, I think you'll --

THE COURT: I didn't say yes or no. I said I need more information.

MS. GLASER: Glad to provide it.

THE COURT: So how am I going to get that more information?

MS. GLASER: We'll provide you -- let me do this. First of all, I don't think the disclosures have been provided to Your Honor because I think we were just supposed to exchange them.

THE COURT: I don't want the disclosures.

MS. GLASER: But that's more information.

THE COURT: All right. So, Mr. Pisanelli, you have two options. You can tell me you're going to file a motion to exclude the expert that Ms. Glaser thinks she wants to use, or alternatively to let you do stuff related to the expert. And I think that's probably the best, if Ms. Spinelli can spend a few minutes doing that.

MR. PISANELLI: Can I pick both?

THE COURT: I usually make -- I usually make you pick one or the other.

MR. PISANELLI: If I depose them, then that means they get to take the stand?

THE COURT: That doesn't mean I'm going to think they're credible or I think they're important, but I will listen to them.

MS. GLASER: Thank you, Your Honor.

THE COURT: And sometimes even though you think you're winning on the not getting him to testify, I'll say, you know what, you're right, but I'm still going to make you take a depo and listen to him.

MR. PEEK: Your Honor --

MR. PISANELLI: Does this mean if I want information, Your Honor, I'm getting a report as we would normally, and I'll depose him?

THE COURT: There is a requirement in Nevada on how you are going to disclose expert information. It can either be by report or by the other method that the rule dictates.

MR. PEEK: Your Honor --

MR. PISANELLI: Thank you, Your Honor.

THE COURT: Mr. Peek, it's so nice to see you.

Mr. Pisanelli, I did not get a competing order from you on the interim order. Will you have it to me tomorrow so I can sign one way or the other.

MR. PISANELLI: Yes. Yes, we will. Thank you.

THE COURT: By noon.

MR. PISANELLI: Yes.

MR. PEEK: And we --

THE COURT: Mr. Peek.

MR. PEEK: You know, I've been in trial, so I haven't had a chance to even look at what he wants, because he

did send me something to take a look at.

THE COURT: I don't know.

MR. PEEK: So I'll take a look at it and get back to Jim.

THE COURT: I know that my former law clerk, Brian Anderson, sent me a letter saying that he wanted me to sign this, but Pisanelli had a different version and I haven't seen it.

MR. PEEK: I haven't, either.

Your Honor, just a quick question. I know everybody wants to leave here. But the hearing Tuesday is at 9:00, 9:30, 10:00, 10:30, 1:00 o'clock?

THE COURT: What hearing Tuesday?

MR. PEEK: On my motion for sanctions of the interim -- the interim order.

THE COURT: That's on 9:00 o'clock, Steve.

MR. PEEK: 9:00 o'clock.

MS. GLASER: Thank you.

THE COURT: And I signed the OST. You meed to file and serve.

MR. PEEK: It got brought out without me knowing it.

THE COURT: I took care of it all. I'm on the ball.

(Off-record colloquy)

THE COURT: Have a nice evening, everyone.

THE PROCEEDINGS CONCLUDED AT 5:10 P.M.

CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt — 10/4/11

FLORENCE HOYT, TRANSCRIBER — DATE

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

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

THURSDAY, OCTOBER 13, 2011

APPEARANCES:

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

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

invitation to depose her IT personnel.

THE COURT: I'm not there yet. That's Item 4 on my agenda.

All right. Let's go to your motion for clarification. And I apologize the other day for vacating a hearing without you present, Ms. Glaser. But it became apparent during our hearing that there was no way we were going to be able to be ready, given the issues that had to be accomplished and the position the Nevada Supreme Court took with respect to the extraordinary relief that I instructed Mr. Peek's firm to accomplish.

MS. GLASER: I have to say, Your Honor, I have never had a judge be as candid as you have been with respect to that. And it is not lost on me, and it's very much appreciated. So thank you for that.

THE COURT: But I apologize, because Mr. Ma was here, so I took the opportunity to have him come up to participate and then let him go back while I dealt with the other case so you weren't making an affirmative appearance in that case.

MS. GLASER: Not a problem. Thank you.

THE COURT: All right. Now we're on your motion for clarification.

MS. GLASER: Your Honor, I don't think anything speaks better about why we need a clarification than the

opposition to the motion for clarification. Your Honor may recall, and we keep harping on this, there were two things in the reply papers -- excuse me, the opposition papers that in our view are simply wrong. We've been up to the Nevada Supreme Court and -- as Your Honor well knows, and in -- I want to just address -- I want to address two points. Your Honor will recall that in the opposition they talk about, hey, we get discovery with respect to specific jurisdiction. And I want to remind the Court of three things. In their answer in the Nevada Supreme Court with respect to what was before the Nevada Supreme Court and what had been before Your Honor on the motion to dismiss Mr. Jacobs says, and I'm quoting from page 1 of his brief -- this is the answer in the Nevada Supreme Court, "Jacobs asserted two grounds for personal jurisdiction -- 'transient' and 'general' jurisdiction," number one.

Number two, on plaintiff's motion to conduct jurisdictional discovery the first page of the motion, "Jacobs has already shown this Court that there is more than good reason to believe that Sands China is subject to general jurisdiction here."

Third, the order granting petition for writ of mandamus from the Nevada Supreme Court, if you go, Your Honor, to the third page, this court says, "We therefore direct the District Court to revisit the issue of personal jurisdiction

over petitioner by holding an evidentiary hearing and issuing findings regarding general jurisdiction." There is no reference to specific because it was dropped by prior counsel. The court didn't have it to review, the court didn't consider it, and the court didn't order an evidentiary hearing in connection with it. So that's number one.

Then for the first time -- actually, it's not the first time. It was raised in oral argument when we were last before Your Honor. There's now suddenly a theory apparently attributable to general jurisdiction that talks about agency. And I want to address agency for a moment. Because, again, that's why the discovery is too broad, in our view, and why it needs --

THE COURT: Are you referring to the quote I gave from the transcript of the original motion to dismiss, or are you referring to something else?

MS. GLASER: With respect to what I just said?

THE COURT: The agency issue. The new issue that you're talking about. I as part of our hearing recently went back and read part of the transcript during our hearing about what my finding really was --

MS. GLASER: Correct.

THE COURT: -- related to the board members.

MS. GLASER: Yes. Yes.

THE COURT: Okay. I just want to make sure that --

that's always been an issue to me.

MS. GLASER: Okay. And I want to address that.

THE COURT: Okay.

MS. GLASER: Thank you for asking the question.

What is said at page 17 of its opposition to the motion to dismiss, "Mr. Jacobs," I'm quoting, "seeks to establish jurisdiction over SCL based on SCL's contacts with the forum --" it goes on to say, and Counsel tries to take advantage of this "-- not just those attributable to Las Vegas Sands Corporation."

In the answer to the petition, in their answer to the petition at page 5, and I'm quoting, "SCL is subject to personal jurisdiction based on its own," based on its own, "contacts with Nevada." That's their -- that's the position that they presented to Your Honor, and that's what went up to the Nevada Supreme Court, not any so-called agency theory. And by agency, just so we're not oblique here, they're essentially saying that -- I guess that Las Vegas Sands acted as -- or an officer or director acted as an agent for Sands China in connection with actions taken in Nevada. I guess that's the theory. And what we're saying is that wasn't briefed, it wasn't the position they took before Your Honor on the motion to dismiss, and it certainly wasn't reviewed by the Nevada Supreme Court when they issued their writ.

Now, they have acknowledged that they are not

alleging personal jurisdiction over SCL by virtue of any conduct of SCL's parent, LVSC. Now -- and again I'm quoting from the -- from the answer, "As Jacobs explicitly stated to the District Court, he never sought to drag SCL into Nevada on LVSC's coattails. Instead, he asserted personal jurisdiction over SCL based on SCL's own contacts," own contacts, "with Nevada. SCL is subject to personal jurisdiction based on its own contacts with Nevada. For purposes of this dispute the affiliation between SCL and LVSC is the reddest of herrings."

That's where we start. I believe it's quite clear that that's a new theory. But, in any event, we're not here to reargue. We obviously respectfully disagree, but we're not here to reargue discovery. That ship has sailed. What we're saying is that you don't need to take Mr. Kay's deposition, and we outlined, I thought quite well, but perhaps not, why that was inappropriate. Mr. Kay was the CFO and executive vice president of Las Vegas Sands. I don't know if Your Honor remembers, and I'm -- and I'm not going to correctly quote you, but Your Honor was -- when we had this discovery issue before Your Honor on whether there should be discovery or not you were talking about, look -- you said it perhaps nicer than --

THE COURT: It's on page 43 of the transcript.

MS. GLASER: You were a little nicer than I'm saying it now, but you said, look, they have a title here that they

are chairman of Las Vegas Sands and chairman of Sands China. And then you went on to -- and Mr. Leven, no question, was a special consultant to the board of Sands China, and he's also an officer of Las Vegas Sands. And that was significant. And I'm not -- whether I agree or disagree, Your Honor was quite clear about that. I'm distinguishing, Mr. Goldstein, who's the president of Global Gaming at Las Vegas Sands Corporation, and he's been that since January 1, 2011. He's also executive vice president, and he had a prior management position with Las Vegas Sands, not with Sands China. Never an officer or director of Sands China, period. Mr. Kay is the CFO and executive vice president of Las Vegas Sands China [sic] since December 1, 2008. He's never been employed by anybody connected with Sands, anybody before that date. And he has always been an officer of Las Vegas Sands Corporation, never of Sands China.

So if you go to, for example, the next point, the Request Number 15, that is, quote, "Services performed by Las Vegas Sands on behalf of Sands China --" I think I'm directly quoting or something close to that, "-- regard site development, recruiting of executives, marketing Sands China's properties, negotiation of the joint venture with Harrah's, negotiation of Macau real estate to Stanley Ho." Your Honor, just too broad if you're considering general jurisdiction, the contacts that Sands China through its representatives has

here, whether that is sufficiently pervasive to justify the Court exercising jurisdiction over Sands China.

Request Number 18, "Reimbursement to Las Vegas Sands China's executives for work related to Sands China." Again, we don't -- we have always taken the position, and it's a matter of public record, Las Vegas Sands owns 70 percent of Sands China has, period. We've also emphasized to the Court it's a separate Hong Kong entity on the Hong Kong Stock Exchange, and no question it's required to be independent. They don't have bank accounts here, et cetera. We went through all this. I won't bore you with that again.

What we're asking the Court to clarify quite clearly, and, frankly, we were accused of -- this actually being a motion for consideration. I think there's nothing more obvious than a reconsideration when now we're being told that you're supposed to allow discovery with respect to specific jurisdiction, which was clearly not the position and not what was ordered by the Nevada Supreme Court. That's reconsideration. But having said that, we're not -- we're simply trying to demonstrate to the Court that specific jurisdiction clearly is out. Agency was not addressed before Your Honor, nor was it addressed in the Nevada Supreme Court, and we think that one's out, and therefore the limitations on the categories and the people being deposed ought to be more significant than it is right now.

THE COURT: Thank you.

Mr. Pisanelli.

MR. PISANELLI: Here we go again. Motion for clarification. I'm assuming underlying the word "clarification" is Ms. Glaser's concession that she's confused.

Now, what she did just tell you in relation to our position I guess is that she was confused that there were a longer list of grounds for hauling Sands China into court here than she had realized at that hearing. Or is she confused that we actually were quite crystal clear about our position at the hearing but later went back and took a word or two out of context and said because an argument was being made about general jurisdiction everything else was eliminated? For instance, Your Honor, never had to get to transient jurisdiction. Neither did the Supreme Court. But neither Your Honor nor the Supreme Court ever said transient jurisdiction's off the table. She tried that one and lost that one before.

So, you know, all I ask on this topic is just let's be forthright here, right. I didn't throw out any procedural hurdles, I didn't say that there's time limits that were missed in our opposition. I just said, let's just please be honest with each other, there's no confusion, there's no confusion as to whether Mr. Kay gets to be deposed or not.

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

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

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

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

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

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

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

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

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

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

position as president and CEO, she knows that he was running the company from Las Vegas Boulevard here in Nevada, the Venetian's headquarters, and she doesn't want the evidence to come in about those very substantial contacts. Why else would she say, no, let's push it back to the date of his termination?

There's no confusion. She's not confused what you said. There wasn't new evidence, wasn't new law, there's no confusion. It's a request for a do over, telling you you got it wrong. That's all it is, you got it wrong, Judge.

Same thing, she says, on the start date, that it should be from the IPO. What? The IPO, because it could not logically without money have been doing anything. Well, how about some evidence about that? I think we're going to find that it had lots and lots and lots going on, lots of contracts were being put in place for its benefit or even being executed on its own. And this concept that we shouldn't -- we should turn a blind eye and again have a fictitious debate over what happened by turning our head against relevant evidence during a time period for reasons -- I don't know, public policy? I can't even think of what the logic would be to intentionally turn our back on evidence and start at the IPO, rather than sometime earlier when Sands China, either in its official capacity or its predecessor entities or its promoters, the people that were creating it, were actually having contact

with Nevada.

The long and short of it is this, Your Honor. You already decided all these things. And I don't need to rest on that simple issue, Bob, I don't need to rest on the simple issue that you've already decided, though I could. The issue is you decided it because you thought about it and you considered the debate and you considered the arguments and you considered the evidence and the law. That's why we shouldn't change this whatsoever. Sands China was not thought up as an afterthought.

THE COURT: You agree, though, that if I think I was wrong I should change it?

MR. PISANELLI: Well, that depends if you're right about being wrong. So we'll have to see exactly what it is that you're talking about.

MR. PEEK: That's a good concession, Jim.

MR. PISANELLI: But if there is an issue that you're considering, I'd be happy to address it. But I just don't see it, Your Honor. The only argument -- I'll be frank with you. I think the only argument even worthy of discussion, though it is not clarification, it is indeed still a motion for a reconsideration, is whether we should go pre incorporation on Sands China. They say that, you know, we're going to have an argument about contacts Sands China had before its organizational documents were filed in the Cayman Islands.

And I would suggest to Your Honor -- again, I'll concede that at least that's a fair debate. But it shouldn't -- you shouldn't change it. We should go back to January 1st for a few reasons. One, they've already stipulated to that window. I think she forgot about that when they filed this opposition. That's a window they've already stipulated to.

And secondly, and it was the last point I was going to make, that is it is a fiction to say that in an organization of complexity that LVSC is that Sands China was an afterthought that came about in a spur of the moment and there really was nothing going on pre incorporation -- and by incorporation we're talking about filing of documents. This army of lawyers and accountants and executives were doing a lot. They were doing a lot in Nevada for the benefit of that entity and for the benefit of the preexisting entities that would become Sands China. And we're entitled to analyze to see whether it actually was an entity that had its name changed, was merged into another one. We're entitled to analyze to see if it was, as they claim now, a brand-new entity that had no contacts with anything. If that latter conclusion is found, then the discovery's going to be easy, won't it. You don't have any contacts, it didn't have anything that was going on in Nevada, it didn't have any business dealings that were occurring, well, then the discovery's going to be pretty simple.

I don't think that's true, and that's why I ask Your Honor -- we're not talking about relevance, we're not talking about admissibility, we're talking about discovery, a far broader standard than we should be looking at, before we just close the window and say, no, you don't get to look down that alley.

THE COURT: But it's limited discovery in conjunction with the order -- or, I'm sorry, the writ the Nevada Supreme Court has issued to me.

MR. PISANELLI: Right.

THE COURT: Okay. We have to be mindful of that, because there is a stay that's in place. And so I am limited significantly in what might generally be allowed as discovery. But I think I narrowed it when I did the order --

MR. PISANELLI: As did I.

THE COURT: -- whether you guys like it or not.

MR. PISANELLI: And if there is anything that you have doubt about, about being accurate and fair, all filtered through the fact that we're talking about discovery, not admissibility for purposes of contact, then, of course, I'd be happy to address the point. But I think we know where we're going. It is a sham to say we were confused. Nobody in this room is confused. We all sought clarification at the moment, and you told us what you wanted --

THE COURT: I even stayed after 5:00 to give you

clarification.

MR. PISANELLI: Right. You asked all of us, you exhausted all the questions. There was nobody confused when we walked out of here.

THE COURT: All right. Ms. Glaser.

MS. GLASER: Your Honor, I don't mean to be too cute about this, but there was no meet and confer with respect to the motion for discovery, and Mr. Pisanelli actually admits that in writing. He says it wouldn't have mattered anyway because we would never have been able to agree. So I'm --

THE COURT: Well, you guys told me you wouldn't agree in open court.

MS. GLASER: I'm not --

MR. PISANELLI: And she told me on the telephone, as well. Perhaps she forgot that.

THE COURT: Well, no. You told me in open court, which to me is a pretty big deal. When you guys tell me in open court you're not going to reach an agreement, I say, then I guess you're going to have to file a motion.

MS. GLASER: All I'm saying, Your Honor, is there was a specific effort to meet and confer by us. Mr. Pisanelli filed his motion with a meet and confer, and I'm just -- I think what's good for the goose is good for the gander in any event.

THE COURT: I'm happy to discuss that with you at

the time of that hearing. Today we're here on a motion for clarification because you want me to limit the scope of what I ordered beginning on page 43 of the transcript --

MS. GLASER: Right, Your Honor.

THE COURT: -- at the hearing I did on the day at 4:00 o'clock because Judge McKibben asked me to because Mr. Peek had to be at his trial.

MS. GLASER: Okay. And, Your Honor, I want to say it as clearly as I can --

THE COURT: September 27th.

MS. GLASER: -- the best reason for clarification is found in the opposition papers, because the Nevada Supreme Court has limited the jurisdictional evidentiary hearing to general jurisdiction, not specific jurisdiction. And I won't bore you with quoting from the --

THE COURT: Actually what the Nevada Supreme Court says, just so we're entirely all clear, because I am bound to do what they tell me to when they issue a write --

MS. GLASER: I have it right here, but go ahead.

THE COURT: "Order that 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."

MS. GLASER: Your Honor, if you go up 11 lines above that, it clearly says to hold -- "by holding an evidentiary hearing and issuing findings regarding general jurisdiction." Because I'm telling Your Honor, and Your Honor can check the briefs --

THE COURT: I'm not checking the briefs, Ms. Glaser.

MS. GLASER: I understand. No question --

THE COURT: I'm going with what the Supreme Court told me to do in the writ that they issued.

MS. GLASER: And it says "general jurisdiction," not specific jurisdiction. Because counsel -- prior counsel, albeit, waived their argument with respect to specific jurisdiction both before Your Honor and again in front of the Nevada Supreme Court.

THE COURT: Anything else?

MS. GLASER: No, there is not, Your Honor.

THE COURT: Thank you.

The motion for clarification is granted in part. I am going to clarify again what I have said repeatedly since this case has been sent back sort of by the Nevada Supreme Court.

We are only going to do discovery related to activities that were done for or on behalf of Sands China.

That was an overriding limitation on all of the specific items that were requested in the motion for discovery.

Is there any further clarification that you would like to ask me at this time? Okay.

MS. GLASER: I would like the Court to be clear that with respect to specific jurisdiction it's a separate analysis that was not before the Nevada Supreme Court. And by definition not only do they articulate it in their order, but they clearly also say they can't be ordering an evidentiary hearing on issues that weren't before it and there's nothing discussed about specific jurisdiction.

THE COURT: Anything else?

MS. GLASER: I do -- I understand Your Honor's argument, and I think you're not agreeing with me on the agency theory.

THE COURT: I'm going to actually read you the writ, which is much more important than any other document from the Supreme Court.

MS. GLASER: Okay.

THE COURT: The writ says -- and it's directed to me. This is the second paragraph. "Now, therefore, you are instructed to hold an evidentiary hearing on personal jurisdiction, to issue findings of fact and conclusions of law stating the basis for your decision following that hearing, and to stay the action as set forth in the order until after

entry of your personal jurisdiction decision, in the case entitled Steve C. Jacobs versus Las Vegas Sands Corp., Case Number A-10-627691-C." Love and kisses, Nevada Supreme Court.

MS. GLASER: Your Honor, I did properly quote from the order above that.

THE COURT: I know. But what I'm trying to tell you is what matters more isn't what they say in their opinions, it's what the issue in the writ instructing me what to do. That's what I have to do. And I'm going to do it. And there's going to be a good order this time, instead of a lousy order that goes up, even if I have to draft it myself.

All right. Let's go to Item Number 3 on my agenda, which is --

MR. PEEK: I assume you mean by that your order denying jurisdiction. Well, I'm just trying to --

THE COURT: Okay. Let me -- instead of saying "good order," I will say a well-drafted and complete order. How's that?

MR. PEEK: Yeah. Because you don't have to necessarily find that there's jurisdiction.

THE COURT: No.

MR. PEEK: Okay.

THE COURT: I have to make a decision following an evidentiary hearing on the issue that a writ has been sent to me saying, you are specifically commanded to do this. And I

intend to do what they told me to do.

MR. PISANELLI: Quick question on the clarification issue.

THE COURT: Yes.

MR. PISANELLI: It was our understanding when we left this courtroom that we presented to Your Honor categories of discovery that we wanted, you granted many, you tailored some. We walk out now prepared to receive discovery and start noticing depositions. I have not had a discussion, so I don't know there's a debate in hand. But because of the silence we've heard since that last time I'm fearful that they're not intending to comply with that order unless they're receiving formal discovery requests, things of that sort. And I understood you not to be expecting that.

THE COURT: No, no. You're going to have to do formal discovery requests. Don't -- please, let's not assume that just because I said you can do these things --

MR. PISANELLI: Okay. Fair enough.

THE COURT: -- which is what I said, that that means they have to immediately respond. They don't.

MR. PISANELLI: But --

THE COURT: You have to do something affirmatively to put them in a position where they get it, which is one of the reasons I vacated the hearing, because there was no way we're ever going to get through it all by the time I had set

aside for November 21st, 22, and 23.

MR. PISANELLI: Well, in that regard do you want us, then -- I'll tell you the reason I thought you were expecting immediate compliance was because of the hearing, 30 days to respond and things of that sort just didn't fit. And so do you want us to go down that path pursuant to the rules as they're stated with response dates as --

THE COURT: That's Item Number 4 on my agenda.

MR. PISANELLI: Okay. I'll wait, then. I'm sorry to interrupt.

THE COURT: I'm on Number 3 right now, which is your ESI protocol. I understand that there's been a draft of an ESI protocol perhaps circulated. And, unfortunately, I've not had an opportunity to review the multiple competing drafts of the ESI protocol. Does anybody want to say anything about it while we're all here together?

MR. PISANELLI: I do, Your Honor --

MS. GLASER: Sure do, Your Honor. It was our draft, so maybe we should say it.

MR. PISANELLI: -- and I'll tell you what it is that I would like to say.

THE COURT: Okay. Why don't I let Ms. Glaser start?

MR. PISANELLI: I'll leave Colby Williams's email for her to see so she'll know exactly what it is I'm --

THE COURT: The July email? The one that -- the

July email that I started with on September 16th?

MR. PISANELLI: That's the one.

MS. GLASER: May I have just one moment, Your Honor?

THE COURT: Sure. It's really handy, because I've been harping on that particular email now for a month.

MS. GLASER: Well, we've spent a lot -- a lot of time drafting it.

(Pause in the proceedings)

MS. GLASER: Your Honor, I actually I think it's -- doesn't matter, but it's Exhibit C to one of the 5,000 motions that have been before Your Honor.

MR. PEEK: It's Exhibit C to the reply, Your Honor.

THE COURT: Thank you.

MS. GLASER: It's called "Proposed Document Review Protocol." And what it literally does is agrees to -- the parties are required to agree to an ESI vendor. It really takes out of our hands and the other side's hands these documents. Just so I'm clear, Mr. Peek --

THE COURT: That's the hope.

MS. GLASER: No, it is. I mean --

THE COURT: I'm just telling you, Ms. Glaser, from past experience it's the hope.

MS. GLASER: Well, you know what --

THE COURT: Sometimes the ESI vendors make mistakes.

MS. GLASER: -- you're scaring me a little bit. But

okay. The idea was to pick an ESI vendor we both agreed to, to share the cost 50 percent, 50-50, then what happens is the ESI vendor then Bates-stamp numbers everything, plaintiff's counsel is supposed to provide to the ESI -- the ESI vendor all the documents received by Mr. Jacobs that are in his possession, custody, or control that he obtained. And I don't we do not want to get into a debate, because we actually put in the protocol "he obtained as an employee of SCL." We don't care about that. It's just he obtained as an employee, whether it was VML, SCL, Las Vegas Sands, all those documents of which we all concede are well over 11 gigabytes of documents. We want all those given to the ESI vendor. The ESI vendor shall put Bates-stamp numbers on everything so nobody's confused about what was provided, and I mean the originals go, so he doesn't keep anything in his possession, so nobody ever has to worry that somebody is let's just say even inadvertently reviewing trade secret information, more importantly, attorney-client privileged information, and, just as importantly Macau Privacy Act material that should not be reviewed by anybody.

After the Bates-stamp numbers are put on, then it's along with searchable -- and I'm a little out of my element, Your Honor, this is above my pay grade, but I'm going to describe what we put in the document, "searchable metadata information where it's available as required to make these

documents reasonably usable." And then we literally say, okay, this is what you do with emails, author, recipient, cc, bcc, et cetera; this is what you do with other electronic files, file name, file type or extension, et cetera; and for all documents the custodian, the Bates-stamp numbers beginning and the Bates-stamp numbers ending and the family range beginning and the family range ending; and then .tif images are produce in a monochrome, single-page format at 300 dpi resolution with Group 4, blah, blah. I mean, this is hypertechnical, but it's in an effort to safeguard the documents. And then what happens is effectively we -- they -- the -- we go through the documents, our documents, nobody contends they're not --

THE COURT: Actually the ESI vendor typically runs a search, given search terms.

MS. GLASER: No problem.

THE COURT: You then go through the documents that are identified with issues related to the search terms. And then, if there are privileged items or other items I have to rule on, that's where we start.

MS. GLASER: That's the way this is set up. And it still takes into account full briefing, Your Honor, on the issue which we have not conceded and which Your Honor says is -- and it clearly is -- the notion that he shouldn't have had any of the documents to begin with and that the right way to

deal with this is -- it doesn't take them out -- we don't do anything with the documents, because the ESI vendor has them, but it doesn't take away from the issue that Your Honor still gets full briefing on who -- and maybe after discovery, okay with that, too, who is entitled to these documents, is Mr. Jacobs required to give them all back and do what normal plaintiffs do, file requests for production of documents, and not keep, and not have counsel or anybody else, any third party, review documents that don't belong to him. And the notion if something is privileged and he received it in his capacity as a CEO of the company and it was privileged at the time, he can waive that privilege, that is not true, and that's not the law. The law is quite clear that it's the company's privilege, not his, and the company does not waive that privilege and never has waived an attorney-client privilege. Nobody has conceded that, and no one has suggested that.

So what this protocol does -- and it's lengthy, but it's intended to be detailed because we put a lot of thought into it, and we are perfectly willing to meet and confer, if we can get that done, with a court reporter present or whatever present, telephone recording, doesn't matter to me, but we need to get this resolved so that the documents generally can be considered by the Court, should they be used or not in connection with evidentiary hearing, and to the

extent that Your Honor somehow disagrees that he doesn't improperly have them and shouldn't return them all, then at least we go document by document and determine what's privileged, what's subject to trade secret, and what is subject to the Macau Privacy Act.

THE COURT: You're going to go through all 11 gigabytes?

MS. GLASER: Yes, ma'am, we are. And we have people set up to do that.

THE COURT: Okay.

MR. PEEK: We think there may be more than 11 gigabytes, though, Your Honor. Because in light of the opposition that we saw from Mr. Pisanelli suggests to me that there's more than 11 gigabytes. I don't know what it is or not, and I'm not trying to put words in his mouth, but the opposition suggests that there's more than 11 gigabytes.

MR. PISANELLI: I think there is, but I don't know.

THE COURT: Let me ask a question -- let me ask the question more completely. Is it the intention of Sands China to go through all of the documents that are delivered to the ESI vendor and imaged for you to then review to determine if there is a particular issue and then to provide me with an item-by-item description as to your position?

MS. GLASER: Yes, ma'am, it is.

THE COURT: Okay.

these two lawyers that are throwing these allegations out will read our disclosures and see that they're all public documents or documents that have actually been submitted in this court or a 16.1 production before they start so loosely throwing these allegations out, and maybe they'll withdraw those motions. If they don't, we'll call them out for all the mistakes they've made in their papers and today, and we'll respond in 10 days.

THE COURT: Okay. Well, here's my concern with that. I had an interim order that was in effect for a period of 14 days from the day I issued it. My order expires on October 4th. I am looking to schedule a hearing prior to that date.

MR. PEEK: And October 4th is Monday.

THE COURT: No, it's a Tuesday.

MR. PEEK: Tuesday?

THE COURT: It's the Tuesday a week from today.

MR. PEEK: I'm happy to do it on Tuesday, Your Honor. Mr. Pisanelli and I are together on Monday on another matter, so I'm happy to do it on Tuesday.

THE COURT: Because you guys --

MR. PISANELLI: Well, since we're doing everything --

THE COURT: -- all have cases together.

MR. PISANELLI: Since we're doing everything at

hyperspeed, Your Honor, I don't think a reply should be a material concern to everyone. So we'll file a brief with you on Monday, and we'll show up on Tuesday.

MS. GLASER: Your Honor, if I might -- again, I'm not involved in that particular motion. If you look at the documents the were on the disclosure --

MR. PISANELLI: This is what we're going to brief, Your Honor.

MS. GLASER: Let me -- let me finish.

MR. PISANELLI: We're going to have the oral argument today?

MS. GLASER: May I finish?

THE COURT: No, we're not going to have an oral argument today.

MS. GLASER: Your Honor --

THE COURT: But I'll listen to Ms. Glaser, because if she wants to tell me to do something in the Las Vegas Sands versus Jacobs case, I will certainly listen to her. But I thought she was going to make a decision not to do anything in that case.

MS. GLASER: I'm not talking that case.

THE COURT: Okay.

MS. GLASER: But I do need to address something that was said by Mr. Pisanelli, and I'd like it to be addressed in the context of the evidentiary hearing, which is of great

concern to us, Your Honor. Your Honor, if you look at -- and I'm strictly limiting my comments to one thing he said. If you look at the disclosures made in connection with the evidentiary hearing, you will see Bates stamp numbers that go all the way past 1100. That means that Mr. Pisanelli and his office and his client have used documents and have literally looked at documents that were taken from us without our permission.

MR. PISANELLI: That is blatantly false --

THE COURT: I'm --

MR. PISANELLI: -- and she says it with nothing to base it on. We have a thing here called an Internet, and if they want to look they'll find all of those new Bates numbers from the Internet.

THE COURT: Okay.

MS. GLASER: That's not true.

THE COURT: Gentlemen, ladies. I am not going to address whether there has or has not been a substantive violation of the interim order or whether that somebody has or had not stolen documents or whether somebody has or has not got documents that are protected by the attorney-client privilege. I'm not going to address that today.

MR. PISANELLI: Fair enough.

THE COURT: And I'm not going to address that in the case called Las Vegas Sands versus Jacobs, because I think

that I'm -- that's part of a discovery dispute that's in Jacobs versus Sands, which the action has been stayed.

MR. PISANELLI: Right.

THE COURT: And luckily, Mr. Justin Jones was kind enough to file an emergency request for relief for the Nevada Supreme Court, which they may do something about.

I am, however, very concerned about the issue which I discussed when Mr. Campbell was still counsel of record and we had our discussion I want to say at the end of August about when we were going to schedule the evidentiary hearing and what had to be done so that I could comply with the writ that was issued to me by the Nevada Supreme Court. And during that original discussion I did have a discussion, and I don't remember who it was that said it first, about whether discovery would be appropriate for jurisdictional issues; because sometimes it is, and when it is it's appropriate to do. And I suggested at that time that counsel get together and see if they could agree. My guess by the fact you're here is that you didn't agree. And the fact that Mr. Pisanelli is new has probably meant that we're here later than we would have been if Mr. Campbell had still been counsel. So --

MS. GLASER: Let me --

THE COURT: -- that's my preface of where I am today with respect to you guys.

MS. GLASER: Understood.

THE COURT: So it's your motion, Ms. Glaser.

MS. GLASER: It's actually --

MR. PISANELLI: Your Honor, it's our motion.

THE COURT: Or no, it's Mr. Pisanelli's motion. Sorry.

MR. PISANELLI: Thank you. Well, in looking forward to the evidentiary hearing, Your Honor, I have to give the defendants credit for their chutzpa. I mean, what are we looking at, the position that they are proffering to you that they would like to present? They asked to be let out of this litigation on grounds of no personal jurisdiction. They asked now in five different contexts that I and my colleagues be blindfolded to the evidence we rightly possess, these very fun and now very tired labels of "stolen" being thrown out there for press purposes or otherwise. They give no evidence whatsoever but for a couple of perfunctory, conclusory, self-serving affidavits and original briefs. They now even go so far, Your Honor, as to offer expert testimony. And they still, with all that said, come in front of you and say, but no other discovery, don't let them have anything else, this is tough enough, I'm assuming they're saying to themselves, to stay out of this jurisdiction with what we know, don't let them get to the real evidence that will govern this issue. I have to ask if they even blush when they make these type of arguments, wanting so much and giving so little.

So we start with a couple of general I think irrefutable principles that we have to deal with and defendants have to come to grips with, one of which they like, right. And that is that we carry this burden. We'll have the debate of whether the burden is one of prima facie evidence because we are pretrial, or whether because of the nature of the evidentiary hearing we're actually going to go to the preponderance. But in any event, we carry the burden, and you're not going to hear me dispute that.

That legal issue in and of itself has very, very strong consequences and it's what leads us to the very substantial body of law dealing with discovery. Because we carry the burden, equity says that we have the right to discovery. And it is a very, very minimal standard that Your Honor has to apply, one that has been characterized as whether our position on jurisdiction over Sands China appears to be clearly frivolous. If you find that our position is clearly frivolous under the Metcalf decision you can say, no need for discovery because I see where this is going and none of this discovery is going to help this concept of a frivolous notion.

And so the question before you today is is our position that Sands China is subject to jurisdiction in this state one that is clearly frivolous? Well, logically of course, as the new person in the case you know where I started, I started reading, right. I started reading a lot

about this very topic, including what Your Honor had to say about it. And Your Honor said that this is not an issue that's clearly frivolous. Matter of fact, Your Honor said that you saw that there were pervasive contacts that Sands China had with this forum. Now, I'll be frank, Your Honor. I'm not altogether clear with what the Supreme Court wrestled with. I'm not. I saw what was before you as evidence. Was testimonial evidence by way of affidavits, it -- there was verified documents before you, as well, there was lot of them. And you read them and you considered them and you balanced the law, and you found pervasive contacts.

So what the Supreme Court didn't see or struggle with, I don't know. All that matters is they told us to come back and have an evidentiary hearing, and that's what we're going to do, and that's all that really matters. But the point is this. In determining whether you can find now that, rather than pervasive, our position is clearly frivolous, you know, do we really need to look beyond what you've already seen and what is in the record today? We have the two top executives of Sands China live here, CEO and at one time the president, and, of course, the chairman, Mr. Adelson. They live here, and not only do they live here but they perform their functions, from what we can see and what's in the record, from Las Vegas. The two top-ranking officials of this company live here and direct this company from Las Vegas.

We know that substantial energy went into designing and developing projects for Sands China here in Las Vegas. We know that they recruit executives for Sands China here in Las Vegas. We know numerous contracts with Las Vegas Sands Corp. for sharing responsibilities, et cetera, that Las Vegas Sands Corp. has been so kind as to say are arm's-length deals. Arm's-length deals. Doesn't matter that it's its parent. They are contracting with the Nevada entity. They're not just contracting with Las Vegas Sands, they're contracting with Bally's, they're negotiating with Harrah's, they're dealing with a company by the name of BASE Entertainment, they're dealing with a company that governs and controls Circ Du Solei. The point is this. They purposely direct their energies into this state with contracts with entities from this state. We'll find out if they're governed by Nevada law and whether they're taking advantage in gaining the protections of Nevada law. But we're filtering it right now, all this evidence already in the record, through this clearly frivolous standard to see if Sands China can rightly say that no discovery should be allowed.

We know we have these ATAs, transfers of $60 million-plus. Saw the boards Mr. Campbell had prepared that he was using to demonstrate that issue. I think it was characterized that this entity is being used as a bank so that their customers, Ms. Glaser's words, could have the convenience of

depositing money in China and walking into a Las Vegas casino and taking that value out here, no different than if I went to Bank of America to deposit my paycheck and then showed up in Dublin to get the same type of benefit of my funds with the banking institute. They don't like the idea of banking, and they say that it's accounting and all that. But nonetheless, right now we're talking about a clearly frivolous standard of whether Sands China should be subject to discovery. So --

THE COURT: And you're only talking about jurisdictional discovery at this point.

MR. PISANELLI: I'm sorry.

THE COURT: Jurisdictional discovery.

MR. PISANELLI: Right. And this is my point, Your Honor. You already know all of these things in this case in relation to our claim that Sands China is subject to jurisdiction here. We are going to have an evidentiary hearing, they have rebutted all of these categories and we are entitled -- because we have the burden and because our position is not clearly frivolous, we have the right to conduct this discovery. That is the simple point that we are making. And court after court has said under circumstances like this, Your Honor, that if we don't -- if we are not permitted to have discovery, it is, in all due respect, an abuse of your discretion. So that's how we get here. Those are the standards that we look at in determining whether

discovery is appropriate.

So let's look at the discovery we're asking for that has got everyone so incensed and exercised here. We're looking really for four depositions. I have a fifth only because I have played the Sands discovery game in the past in my career, and so just as a safety net I put in a 30(b)(6) deposition, as well, in case I get failing memories one after another or lack of preparedness one after another with witnesses coming in and saying, I don't know. But a 30(b)(6) will eliminate that. And so what we're talking about, of course, is those first two people that I mentioned, the highest-ranking officers of Sands China, one currently still holding that position, Mr. Adelson, and the person who took over for Mr. Jacobs as president and acting CEO, Mr. Leven. We know from the evidence before you, Your Honor, that these two gentlemen have as much to do with that company certainly during the relevant time period as anyone anywhere. And so where else would we start this analysis but with the deposition of these two people?

Remember, we're talking in Mr. Jacobs a person who's a low-level employee, we're not talking about a valet parker here; we're talking about a person who held the position of president and CEO having direct daily communications with these two gentlemen. If any -- the three key witnesses in this entire debate I would argue are Mr. Jacobs and these two

gentlemen.

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

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

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

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

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

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

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

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

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

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

THE COURT: Because that would be a loser.

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

this Court.

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

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

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

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

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

to be done out of China if he didn't do it? What about the financing with Mr. Kay? If he's not performing those functions here in Las Vegas for Sands China, would Sands China have to have somebody else on their own payroll doing it? These are all relevant to this analysis. And that's what the Ninth Circuit certainly told us in Doe versus Unical.

There's another misstatement of law that was quite disturbing in Ms. Glaser's briefs, that having to do with transient jurisdiction. As Your Honor knows, this is an issue, this is a cloud on the horizon if we need to get to it. Mr. Leven was served. He is a -- he is an executive, he is an officer of Sands China, or certainly was at the time, and he was served here in Las Vegas.

Now, on page 4, in Footnote 2 of Ms. Glaser's brief, she says on line 26, 25-1/2, "As this Court is aware, SCL, Sands China, fully addressed the transient jurisdiction in its reply in support of motion to dismiss for lack of personal jurisdiction, and clearly demonstrated that transient jurisdiction is inapplicable to foreign corporations such as SCL," and she cites the Burnham decision for the United States Supreme Court. Notably, Your Honor, she cites a Supreme Court case that says that this issue is clearly resolved, and this decision she's citing to is Footnote 1 of Burnham, an issue of such great importance the Supreme Court resolved in Footnote 1.

Well, I don't know if Ms. Glaser thought we wouldn't read it, but we read Footnote 1 -- and I tell you, talk about a moment where you're scratching your head -- telling Your Honor that transient jurisdiction doesn't apply to corporations and it's a well-settled principle of law and will have nothing to do with case. What did the Supreme Court say in Footnote 1 that was so telling? Quote, "Even when the cause of action does not arise out of or relate to the foreign corporation's activities in the forum state, due process is not offended by a state subjecting the corporation to its in person -- in personam jurisdiction when there are sufficient contacts between the state and the foreign corporation. Only our holdings supporting that statement, however, involved regular service of summons upon the corporation's president while he was in the foreign state acting in that capacity." So far no rejection.

The Supreme Court went on, "It may be that whatever special rule exists permitting continuous and systematic contacts to support jurisdiction with respect to matters unrelated to activity in the forum applies only to corporations which have never fitted comfortably in jurisdictional regime based upon de facto power over the defendant's person," a question the Supreme Court is posing in it's footnote. It may be, the Supreme Court said.

Well, the Supreme Court went on to say in relation

to the question it was posing, "We express no views on these matters, and for simplicity's sake, until reference to the aspect of contacts-based jurisdiction in our discussion," a decision where the Supreme Court expressly stated no views, Ms. Glaser tells us clearly establishes that transient jurisdiction doesn't apply to corporations. Well, the decision that the Supreme Court was relying upon in that very footnote, Perkins decision, Your Honor, which is as telling as anything we can point to, said, "Today if an authorized representative of a foreign corporation be physically present in the state of the forum and be there engaged in activities appropriate to accepting service or receiving notice on its behalf, we recognize that there is no unfairness in subjecting that corporation to the jurisdiction of the courts of that state through such service of process upon that representative."

In other words, if Mr. Leven goes to the beach in California, not in his capacity as president of Sands China, and he's served there, would that be fair to say that he's subject to jurisdiction -- or the company is subject to the jurisdiction of California? Probably not. He wasn't serving in his function as the officer of that company. But when a process server comes to Las Vegas Boulevard and hands Mr. Leven service of process in his capacity as the president of Sands China, we know that there is nothing unfair about saying

that Sands China now is subject to transient jurisdiction, an issue settled by Footnote 1 in Burnham, I think not, Your Honor. And the point is this. Discovery as to Mr. Leven and his roles and what he does on Las Vegas Boulevard, the function he was serving when he was served is all relevant for transient jurisdiction. Contrary to what Ms. Glaser tells us, transient jurisdiction is very much alive in this case and something that Your Honor is going to be asked to resolve.

THE COURT: And for the record, something I haven't ruled on to this point.

MR. PISANELLI: Right. Understood. So what we have, then, for debate in November general jurisdiction based upon what Sands China does here, general jurisdiction based upon the agency role of Las Vegas Sands and what it performs here on behalf of Sands China, specific jurisdiction of what Sands China did here in relation to the causes of action that was presented to you, and, of course, transient jurisdiction of Sands China. All of these issues will be debated. All of the evidence that we have asked goes directly to these four issues. Sands China can not stand up through Ms. Glaser, through Mr. Adelson, through Mr. Leven, through any of them with a straight face and look you in the eye and say, in light of everything we already know that this type of jurisdiction -- in light of the law governing jurisdiction would be clearly frivolous. They cannot do that with a straight face. And

because they can't do that with a straight face, we are entitled to the discovery that is so regularly given to parties who find themselves, like Mr. Jacobs does, in trying to defend against a challenge of personal jurisdiction.

THE COURT: Thank you.

Ms. Glaser.

MS. GLASER: Your Honor, I'm coming to you with a straight face. In our view in no uncertain terms we think that the Nevada Supreme Court order filed August 26th, 2011, speaks volumes. And what is attempting to be done here is to relitigate issues that have already been determined by the Nevada Supreme Court. And by that I mean -- and I'm looking specifically, starting on page 2, when it discusses the MGM Grand decision and it discusses the Goodyear decision. We came to Your Honor and we made a motion to dismiss for lack of personal jurisdiction. What was presented were facts. The Court, in our view erroneously, but nonetheless, the Court determined that you had enough to rule on, you made a determination, and we took that to the Nevada Supreme Court. When we went to the Nevada Supreme Court, the Nevada Supreme Court said, look, based on the MGM case, and more importantly, I think, Your Honor, the Goodyear case, which is a U.S. Supreme Court 2011 case, considered whether jurisdiction over foreign subsidiaries of a U.S. parent corporation was proper by looking only to the subsidiary's conduct.

The discovery that's being sought here is an attempt to bolster a case that they claim, and I'm using their words, you already -- you purportedly already know, you already know the facts, you already know what is sufficient, and the only question is clarifying it for the Nevada Supreme Court so they're clear on what you meant.

THE COURT: That's not what they told me to do. They told me to conduct an evidentiary hearing.

MS. GLASER: They --

THE COURT: If I've got to conduct an evidentiary hearing, we have to do some more stuff than we've done already.

MS. GLASER: Your Honor, what they're saying is -- but there is certain case law that is the law of the case. They're saying, for example, the fact that Mr. Leven and Mr. Adelson are a -- also officers and directors of Las Vegas Sands and they have a 70 percent subsidiary in China, they have an obligation, a supervisory obligation under the Goodyear case and under the MGM case. There is no question that they have that obligation, and they have a fiduciary obligation to make sure what's going on there they participate in. No question about that. We don't debate that. And the fact that they make a -- they contribute here in connection with what's going on in China, I don't back away from that. I don't hide from that. That's not jurisdiction. That's

performing supervisory responsibilities in their capacity as a parent regarding a subsidiary that's in China. I do not back away from that at all. But to call that jurisdiction, in our judgment, is not only wrong, it's already been decided by -- in my judgment, that part of it has already been decided by the Nevada Supreme Court.

So what is there left in our view? And I want to be very clear about -- by the way, the Burnham case does stand for the proposition -- I urge the Court to take a look at it whenever it's convenient. The Burnham case stands for the proposition that transient jurisdiction can't be established by serving Mr. Leven here in Nevada. And we believe that. We don't back away from that, either.

Now, I want to -- I want to be very clear about this. We think you don't need any discovery at all, and we think it because six months ago -- I'm probably wrong about how much -- many months ago it was, Your Honor, because I don't remember exactly when we were in front of you --

THE COURT: It was about six months ago.

MR. PEEK: March 15th.

MS. GLASER: They're looking for a second bite of the apple after much has been determined, not everything, I acknowledge that you, much as been determined by the Nevada Supreme Court. The Nevada Supreme Court wants clarity as to how Your Honor believes you were able to find jurisdiction,

minimum contacts.

THE COURT: If that's what they wanted, Ms. Glaser, they wouldn't have ordered me to have an evidentiary hearing.

MS. GLASER: Your Honor, I think they want you to either bolster or not be able to bolster what has already been -- the facts that were presented to you. I do believe that. I'm not arguing that you shouldn't have an evidentiary hearing. That would be foolish. The court's asked for that.

THE COURT: Well, they told me to have an evidentiary hearing.

MS. GLASER: Absolutely.

THE COURT: They didn't ask me, they told me.

MS. GLASER: And they didn't tell you, they didn't tell you, by the way, you should order discovery because we always allow discovery in jurisdictional hearings. Your Honor, if you look at the Metcalf case, perfect case and relied upon by the other side. The Metcalf case is -- and I'm going to use a bad example, because it's a stranger case. It's saying, when somebody who is a stranger to the company wants to allege jurisdiction over a parent or a sub they're supposed to get discovery. I don't argue that point. Do you think for a moment the other side could argue that Mr. Jacobs is a stranger? He was the CEO of Sands China. He was not a stranger, he was a member of the board of Sands China. He is not entitled to any discovery, frivolous or otherwise. I

don't care what the standard is, he is not a stranger to these companies at all. And if you look at the Metcalf case, and it's not just the Metcalf case, Your Honor, it's also -- because they cite another one, which stands for exactly the same proposition. Metcalf is a Third Circuit case, 566 F.3d 324. It's a 2009 decision, and it cites and relies on, and I'm proud to say, a West Virginia case, which is where I'm from. And in that West Virginia case unequivocally it's talking about strangers. I don't dispute the fact that -- in this West Virginia case, for the record, Your Honor, is the Bowers case. It's 202 W.Va. 43, and that Bowers case which Metcalf cites is a case, again, over and over again there are instances when -- I've participated in myself, when jurisdictional discovery is appropriate. But it's, for example, if somebody has a car accident in Nevada and wants to sue General Motors here, the Nevada subsidiary, and General Motors in Detroit, somebody says, well, wait a minute, you're entitled to discovery to see if there's sufficient contacts. But there, the guy's a stranger. He had an accident. He doesn't know anything about the internal workings of the company. Jacobs knows everything, and he knows it, and he presented what he had and what he knew, and the Supreme Court said, not enough, before.

And what we're saying to you now is no more discovery and certainly not the kind of discovery that's being

sought here, which is the sun, the moon, and the stars, but the Goodyear case and the MGM case provide that no alter ego, no discovery, period.

Now, I want to talk about the IAA transactions, because I remember sitting here in court, and Your Honor looked at a board that Mr. Campbell put up, and you actually -- I don't know if it's spontaneously, said, "pervasive," I think was the word in the transcript. And I'm saying to you, respectfully, that's a wrong view of what is going on. Mr. Jacobs came to Your Honor under oath and he told Your Honor that money changed hands. We quickly determined that wasn't the case, that Mr. Jacobs either was wrong or not telling the truth. I hope it's simply that he was wrong. He comes and tells Your Honor that. And then we find out what really happens is -- and all of this is nothing more than a bookkeeping entry which case after case, and we cite them in our brief, when you joint marketing, when you have accommodations made between a subsidiary and a parent it is not sufficient for jurisdiction, it's just not.

One of the things they said is -- and I -- this one I love. Your Honor may remember VML. There was a motion to dismiss for lack of a -- failure to join an indispensable party. And Your Honor said what I think is both the truth and the law, I don't have any jurisdiction over VML. You --

THE COURT: Well, I also asked if I let the case go

in Macau if everybody would consent to jurisdiction in Macau, and nobody said yes.

MS. GLASER: No. We said yes.

MR. PEEK: I said yes, as well, Your Honor.

MS. GLASER: They said yes.

THE COURT: You did not say yes --

MR. PEEK: Yes, I did, Your Honor.

THE COURT: -- at the time.

MS. GLASER: Well, let me just tell you. We have always been willing to do that.

MR. PEEK: No. I said -- you go back to that transcript, Your Honor. You'll see that.

MS. GLASER: And in fact there has been prior litigation between American citizens and Sands China in Macau, because that is the appropriate forum. I'm not contesting otherwise. But we haven't changed our tune. VML -- because I want to stick with VML. VML -- I'm supposed -- after we came, I think it was Mr. Peek's motion, made a motion to join VML, you said you didn't have jurisdiction. I think you're clearly right about that. It is VML that is party to all of these IAA transactions. It is the subconcessionaire, it is the entity.

Now, if you want to ignore that, I don't think that's fair. VML is a absolutely appropriate corporate entity in Macau. It has the transactions for IAA. And we've been willing and we'll open our books on that in a second because

that's true. So for them to now say -- gloss over that and pretend VML is not the proper party is just, by the way, turning truth on its head, Your Honor. And that's not fair. You can't have it both ways. VML is the only entity that's involved in those IAA transactions as a matter of fact and as a matter of law.

Now, let me just go on for a couple minutes. In the Goodyear case, Your Honor, Goodyear --

THE COURT: Because I'm breaking in five minutes, because we don't pay overtime.

MS. GLASER: I'll try to finish. There was a filibuster conducted a few moments ago, so I'm stuck with my five minutes.

THE COURT: I understand. You're welcome to come back tomorrow, when Mr. Peek's partner's trial will resume.

MS. GLASER: Your Honor, I am willing to come back any time. That's how strongly we feel about this.

THE COURT: Okay. I understand. It's not like I'm not familiar with these issues --

MS. GLASER: I understand.

THE COURT: -- because I handle these issues in Business Court frequently --

MS. GLASER: I know you do.

THE COURT: -- in similar contexts with international companies, and I'm not sure what the right

answer is, because the Nevada Supreme Court has yet to clarify some of those things.

MS. GLASER: But the Nevada Supreme Court clearly said, and they quoted -- strike that. They didn't quote, they cited Goodyear --

THE COURT: Yes.

MS. GLASER: -- prominently. And that case declined to impute the domestic parent's activities to a foreign subsidiary defendant, recognizing that merging a parent and a sub for jurisdictional purposes requires an inquiry, quote, "comparable to the corporate law question of piercing corporate veil," end of quote.

Here supervisory activities, which was clearly the way it was presented to Your Honor before and what was considered by the -- just as importantly, the Nevada Supreme Court, that's all that's here. And no amount of discovery could or would show to the contrary. They are required, Leven and Adelson are required in their capacity as part of the parent with a 70 percent subsidiary, they are required to exercise their fiduciary duties and engage in supervisory activities. We don't deny that, and we never have. And that's what was presented to Your Honor up the -- excuse the expression, up the yazoo before. And Your Honor heard that, Your Honor made the determination, we think wrongly, but the Nevada Supreme Court says you've got to get the law right and

the facts right. The facts we heard. Now you've got to apply the law to those facts. And that's what I think the evidentiary hearing --

THE COURT: That's not what they said. What they said is, based on the record before them, which is the transcript and a very poorly written order by Mr. Campbell, that they can't tell what I ruled on. So they ordered me to have an evidentiary hearing. So I'm going to have an evidentiary hearing --

MS. GLASER: Your Honor --

THE COURT: -- and I'm going to make detailed findings of fact and conclusions of law, and then they're going to decide if I'm right.

MS. GLASER: Correct. And I'm saying --

THE COURT: That's what's going to happen.

MS. GLASER: I want to use this, if I could, the IAA transactions one more time, because I have about three more minutes.

THE COURT: You're winning on that issue.

MS. GLASER: Okay. Never mind. I'll stop.

Your Honor, what is particularly concerning to us is that the disclosure being sought -- and I -- and I say this -- I'm not suggesting -- this is not attributable to Counsel. I hope not, anyway. But I say to you we cited to you the Zahodnik case. If a client has taken documents

inappropriately, and we cited to you the policy that was in place in Macau, they can't be used in an evidentiary hearing or any proceeding, and they can't be used by counsel, and they certainly can't be used by Mr. Jacobs. And I don't think that's particularly unusual, but there is a very clear policy that we put forth that --

THE COURT: I'm going to resolve that issue on October 13th at 9:00 o'clock.

MS. GLASER: Okay. Your Honor, we don't believe any discovery should be taken. Certainly they don't need any depositions. If they need some IAA documents to demonstrate further about VML, glad to provide them. But, Your Honor, what's here is a complete overreach.

MR. PISANELLI: Did you file something?

MR. PEEK: I don't think I need to file anything, Your Honor.

THE COURT: Mr. Pisanelli, I need to ask you a question.

MR. PISANELLI: Yes, ma'am.

THE COURT: It appears to me at least in part Ms. Glaser is right, that some of your requests are overbroad. There is no limitation of time as to many of these requests. Can you give me what you believe to be a reasonable time. And you can think about it while I hear from Mr. Peek, who didn't file a brief, so he's going to be really short in his

comments.

MR. PEEK: Well, Your Honor, I don't think I --

THE COURT: Because he has 30 seconds before I'm shutting down.

MR. PEEK: Okay. My 30 seconds relates to your request to take discovery from Las Vegas Sands Corp. as a purported agent of Sands China Limited when I am not permitted to move forward with my motions with respect to theft of the documents of Las Vegas Sands, and yet he's allowed to take discovery against Las Vegas Sands in the face of the stay. That seems to me to be highly improper on the part of his request, the sword and the shield. And I'll sit down, because the staff has to leave, Your Honor, and I --

THE COURT: I didn't issue the stay, Mr. Peek.

MR. PEEK: I understand that.

THE COURT: I certainly understand your frustration.

MR. PEEK: But let's honor the stay and not allow discovery against Las Vegas Sands as he is requesting it to be conducted.

THE COURT: I understand your position.

Mr. Pisanelli, could you give me a reasonable time limit.

MR. PISANELLI: I can. Mr. Jacobs appears to have started his service for the company in 2006, and so we would ask --

MS. GLASER: I'm sorry. What was that?

MR. PISANELLI: 2006. And so we would ask that the discovery be limited between 2006 to the present.

THE COURT: He didn't start in 2006.

MR. PISANELLI: He didn't?

MS. GLASER: No. 2009.

MR. PEEK: Your Honor, we have a stipulation already with respect to the scope of discovery generally of January 2009 through October 2010. We already have that.

THE COURT: That's what I thought. That's what I thought. I thought we had one that was '09.

MR. PEEK: We do, Your Honor.

MR. PISANELLI: He was performing services back in -- as early as 2006, Your Honor. I can provide that to you. But that's our position.

MS. GLASER: That's absolutely incorrect.

THE COURT: Okay. Wait, wait, wait. Sit down. Let me tell you what we're doing.

To the extent I permit any depositions, and I'm going to tell you which ones I'm allowing, the depositions are limited to the capacity the deponent is being taken in with respect to work done on or -- done for or on behalf of Sands China. That means that if someone is working in capacities for both Las Vegas Sands and Sands China, we're not going to ask them about their daily activities with Las Vegas Sands.

However, to the extent their work is on behalf of Sands China or directly for Sands China, it will be fair game.

MR. PISANELLI: Questions at the end, or now?

THE COURT: Not yet.

MR. PISANELLI: Okay.

THE COURT: Time periods, January 1, '09, through October 1, 2010. Mr. Leven's deposition may be taken, Mr. Adelson's deposition may be taken. I'd really rather not get into a dispute where Mr. Adelson's deposition is taken. So if you guys would just listen to what the Federal Court judge said. Mr. Kay's deposition, Mr. Goldstein's deposition, a narrowly tailored 30(b)(6) deposition of Sands China representatives. And I assume if there is an issue, someone will raise it in a protective order motion.

Issues related to the location and scheduling of board meetings, along with copies of the minutes of board meetings, as well as the list of attendees and how they participated in board meetings from January 1st, 2009, to October 1st, 2010; documents that relate to travels from Macau, China, Hong Kong, by Adelson, Leven, Goldstein, and any other individual who is employed by Las Vegas Sands who was acting on behalf of Sands China will be provided.

I am not going to require the calendars to be provided. I'm not requiring phone records to be provided.

Documents related to Mr. Leven's service as CEO

without being compensation [sic], which is Number 9. Number 11 is fair game. Number 12, to the extent they are documents by Mr. Goldstein that would be subject to issues that you're going to discuss with him at his deposition with the limitation that I have given you. Agreements between Las Vegas Sands and Sands China related to services that are performed by Las Vegas Sands on behalf of Sands China. That is covered by Number 13.

Item Number 14 I'm not going to permit.

Item Number 15 I am going to permit.

Item Number 16 I am going to permit.

Item Number 17 I am not going to permit.

Item 18 I am going to permit.

19 I'm permitting.

20 I've already said I'm not permitting.

And now for your questions so I can get my staff out of here.

MR. PISANELLI: Just very quickly. The only question I have on the capacity of acting on behalf of Sands China, we have a company that elected to give dual roles. And so while Ms. Glaser says everything Mr. Adelson did, by way of example, was part of the exercise and fulfillment of his fiduciary duties to oversee the subsidiary, in a vacuum, if he was only the chairman of Las Vegas Sands, there would be merit to that argument. What don't want to happen is have a debate

TABLE OF AUTHORITIES

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The issue set forth in Sands China Ltd.'s ("SCL") Petition for Writ of Mandamus, or in the alternative, Writ of Prohibition (the "Writ Petition"), is under what circumstances can a court properly exercise general personal jurisdiction over a foreign entity with no substantial or continuous and systematic contacts with Nevada, apart from those that arise from its relationship as a subsidiary to a domestic parent company. The Writ Petition demonstrated that such contacts are plainly insufficient to establish general personal jurisdiction without a concurrent showing of an alter ego relationship between the parent and subsidiary, or an excessive degree of control by the parent corporation.

Setting aside the pejorative attacks and conclusory rhetoric contained therein, the Answer to the Writ Petition (the "Answer") is remarkable in that it demonstrates that many of the key facts and legal authority in support of the Writ Petition remain undisputed.

First, Jacobs does *not dispute* the factors set forth in the Writ Petition regarding the determination of general personal jurisdiction over foreign defendants based on shared contacts with an in-forum affiliate. Specifically, in the context of a foreign subsidiary and a domestic parent corporation, a substantial majority of jurisdictions require evidence that the two entities are alter egos of each other before general personal jurisdiction can be applied to the foreign subsidiary. *See Doe v. Unocal Corp.*, 248 F.3d 915, 916 (9th Cir. 2001) (holding that a local entity's contacts with the forum can only be imputed to the foreign entity if there is evidence of an alter ego relationship); *see also AT&T v. Lambert*, 94 F.3d 586, 596-99 (9th Cir. 1996) (declining to assert general personal jurisdiction over foreign subsidiary where in-forum parent held a majority of seats on subsidiary's board, approved subsidiary's hiring decisions, directed subsidiary's financial and business decisions, and appointed one of its own board members to serve as subsidiary's chairman).

As further described herein, this principle was recently affirmed by the U.S. Supreme Court in a decision issued shortly after the Writ Petition was filed. *See Goodyear v. Brown*, 131 S.Ct. 2846 (2011), 2011 U.S. LEXIS 4801. As with the present case, the U.S. Supreme Court in *Goodyear* declined to impute the domestic parent's activities to the foreign subsidiary defendant,

recognizing that merging parent and subsidiary for jurisdictional purposes requires an inquiry "comparable to the corporate law question of piercing the corporate veil." *Id.* at 810. The U.S. Supreme Court in *Goodyear*, and in the companion case *J. McIntyre Machinery, Ltd. v. Nicastro*, rejected state court expansion of general personal jurisdiction in the context of asserting personal jurisdiction over foreign subsidiaries of United States parent companies. In these June, 2011 cases the U.S. Supreme Court reversed the Supreme Court of New Jersey, and the Court of Appeals of North Carolina, and directed them to dismiss the foreign subsidiaries. *Id.; see also J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011), 2011 U.S. LEXIS 4800. Therefore, in the absence of a showing of alter ego, the actions of representatives of SCL's parent company, Las Vegas Sands Corp. ("LVSC") cannot be used to establish general personal jurisdiction over SCL, even if they also serve as representatives of SCL.

Second, it is *undisputed* that Jacobs carries the burden of proof to demonstrate a *prima facie* case for personal jurisdiction, and absent that showing, SCL should be dismissed from the underlying lawsuit. As discussed in more detail below, Jacobs' jurisdictional allegations amount to nothing more than hyperbolic and erroneous attacks on activities carried out by the non-executive Chairman of SCL's Board of Directors, Sheldon Adelson ("Adelson") and, at that time, a special advisor to SCL's Board of Directors, Michael Leven ("Leven"), both of whom also served as top-level officers and directors for LVSC. Again, Jacobs ignores the established legal authority in multiple jurisdictions which holds that without a concurrent showing of an alter ego relationship between the parent and subsidiary, or an excessive degree of control by the parent corporation, such contacts are simply irrelevant and cannot support the District Court's finding of general jurisdiction.

Similarly, Jacobs tries to revive another argument that has been dismantled by the Writ Petition and SCL's prior filings, namely that SCL is subject to general personal jurisdiction due to its participation in a process that allegedly transfers casino player funds to and from Las Vegas. However, Jacobs does not dispute the cumulative affidavits provided by SCL on this issue (and the references to his own submitted evidence) that prove SCL was not involved in this process and did not otherwise transfer any funds either to or from Las Vegas. More importantly, Jacobs does not dispute that, assuming *arguendo*, even if SCL did participate in this process (and it did not, as

demonstrated previously), cooperative management of an internal accounting or marketing program is insufficient to support a finding of general personal jurisdiction. *See Fletcher v. Atex, Inc.*, 68 F.3d 1451, 1459-60 (2d Cir. 1995) (co-participation in accounting procedures is insufficient to establish general jurisdiction; *see also Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1177 (9th Cir. 1980).

Third, it is *undisputed* that the District Court based its decision to exercise general personal jurisdiction solely on "activities done in Nevada by board members of Sands China." (Transcript, Appendix 6 to Writ Petition, at p. 62, lines 4-5). The District Court did not provide any other basis or reasoning for its decision, and did not imply that other forms of personal jurisdiction were applicable to the present case. Unfortunately, Jacobs burdens this Court with a renewed attempt to apply the doctrine of transient personal jurisdiction to SCL, a corporate entity. As addressed in the Writ Petition and set forth in detail in the record, transient personal jurisdiction is wholly inapplicable to corporate defendants such as SCL, as further evidenced by the District Court's refusal to even acknowledge the issue during the March 15, 2011 hearing on the Motion. (Transcript, Appendix 6 to Writ Petition). To the extent the Court considers the argument, SCL has provided a summary of the applicable arguments and case law, and SCL is not precluded in any way from responding at this time to Jacobs' renewed arguments.

Finally, it is *undisputed* that SCL is not the alter ego of LVSC, nor does LVSC exert a disproportionate amount of control considering its status as majority shareholder. Again, the uncontested authority in the Writ Petition requires such a showing before the activities of Adelson and Leven, taken while serving as the non-executive Chairman of SCL's Board of Directors and special advisor to SCL's Board of Directors, respectively, can be considered in SCL's jurisdictional analysis. Jacobs makes no effort to dispute or even address the numerous facts that establish SCL's corporate and operational independence from LVSC and the absence of any alter ego argument. Such facts include, but are not limited to: (1) SCL's operation as a public company with stock traded on The Stock Exchange of Hong Kong Limited, which requires a demonstration of operational independence, (2) maintenance of an independent treasury department, financial controls, bank accounts and accounting system, (3) an independent Board of Directors with three

independent non-executive directors, and (4) the existence of a Non-Competition Deed between LVSC and SCL that prohibits SCL from conducting business or directing efforts to Nevada. (Writ Petition at p. 33).

By ignoring the need to make a showing of alter ego before seeking to apply Adelson and Leven's actions to SCL's jurisdictional analysis, Jacobs likewise ignores a fundamental corporate principle that a corporation and its subsidiary are distinct legal entities that exist separate from their respective shareholders, officers and directors. *See Transure v. Marsh and McLennan, Inc.*, 766 F.2d 1297, 1299 (9th Cir. 1985) ("It is entirely appropriate for directors of a parent company to serve as directors of its subsidiary, and that fact alone may not serve to expose parent to liability for its subsidiary's acts.").

Jacobs' decision to ignore or otherwise misconstrue SCL's Writ Petition only serves to highlight the validity of SCL's positions. SCL therefore submits that the District Court was compelled by law to dismiss SCL for lack of personal jurisdiction and has continued to exceed its authority through its continued exercise of jurisdiction, and SCL is entitled to extraordinary relief in the form of a Writ of Mandamus or a Writ of Prohibition.

II. LEGAL ARGUMENT

A. Jacobs' Jurisdictional Allegations are Insufficient to Establish a Prima Facie Case for General Personal Jurisdiction

As stated above, Jacobs has attempted to frame the issue in the Writ Petition, as he did at the District Court level, as one "involving a 'coattail' assertion of personal jurisdiction on the ground that, although it has no contacts with Nevada, SCL has nonetheless been compelled to defend itself here because of LVSC's contacts with Nevada." (Answer at p. 3, lines 9-11). This statement evidences Jacobs' profound misunderstanding of both fundamental jurisdictional and corporate legal principles. Jacobs also attempts to shift this Court's focus away from the actual stated issue presented in the Writ Petition, namely, whether a Nevada state court may exercise general personal jurisdiction over a foreign entity with no contacts with Nevada, other than those incident to its status as a subsidiary – not alter ego – of a Nevada corporation.

The issue is not whether the District Court imputed LVSC's unrelated forum contacts to SCL, but whether it erred when it found that the actions of Adelson and Leven (LVSC executives who also served as the non-executive Chairman of and special advisor to the SCL Board of Directors) were sufficient to establish general jurisdiction over SCL, even when those actions were entirely consistent with a parent/subsidiary relationship. SCL's Writ Petition cited numerous cases where courts had explicitly ruled that this type of evidence was inadequate to establish general personal jurisdiction, and further demonstrated that Nevada has yet to issue a decision that comports with either the majority or minority view on this issue. In response, Jacobs merely restates his prior jurisdictional allegations and avoids distinguishing or even discussing any of these cases cited in the Writ Petition.

Jacobs' refusal to address this issue only underscores the inherent flaws in his argument and the need for this Court to both dismiss SCL from this lawsuit and clarify this issue for Nevada's state courts. As demonstrated in the Writ Petition and discussed further below, Jacobs' jurisdictional allegations are, in many cases, simply incorrect, and, more importantly, inadequate as a matter of law to establish general personal jurisdiction.

1. Determining General Personal Jurisdiction Over a Foreign Affiliated Entity

In the Writ Petition, SCL set forth the widely-recognized factors used by courts to determine general personal jurisdiction over a foreign entity, and further demonstrated that a majority of jurisdictions will not impute the actions taken by a parent company to its subsidiary, or a board member or executive shared by both the parent and subsidiary, absent a showing of alter ego. Critically, Jacobs does not dispute this established legal authority. (Answer at p. 4, lines 15-16).

At the outset, it is important to note that general personal jurisdiction will only be found where the level of contact between the foreign defendant and the forum state is so substantial that it should be deemed present in the forum and therefore subject to suit for any claim. *See Firouzabadi v. First Jud. Dist. Ct.*, 110 Nev. 1348, 1352 (1994). In the context of a suit involving a foreign defendant who also has a domestic affiliated entity, courts have recognized that the jurisdictional analysis must include a recognition of the distinction between "substantial or continuous and systematic" contacts and those merely associated with normal corporate governance. *See Doe v.*

Unocal Corp., 248 F.3d 915, 925 (9th Cir. 2001) (noting the "well established principal of corporate law" that a corporation and its subsidiary, or subsidiary's agents, are presumed to be separate for liability and jurisdictional purposes).

As set forth above, this past June, the U.S. Supreme Court emphasized the need to separate the in-forum actions of the domestic parent from its foreign subsidiary, and the infrequency with which the U.S. Supreme Court has justified the exercise of general personal jurisdiction over a foreign defendant. *See Goodyear v. Brown*, 131 S.Ct. 2846, 180 L. Ed. 2d 796 (2011). As with the present case, the plaintiffs' claim in *Goodyear* arose solely due to actions that occurred outside the U.S., and were allegedly attributable to a foreign subsidiary of a domestic corporation, namely Goodyear USA, which had previously conceded personal jurisdiction in North Carolina. *Id.* at 802. Goodyear USA's foreign subsidiaries, however, maintained that the North Carolina courts lacked personal jurisdiction. *Id.* The U.S. Supreme Court first noted that since deciding the seminal case of *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945), it had issued just one opinion where "an out-of-state corporate defendant's in-state contacts were sufficiently 'continuous and systematic' to justify the exercise of general jurisdiction over claims unrelated to those contacts." *Id.* at 807 (citing *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952)). In its holding, the U.S. Supreme Court found that general personal jurisdiction did not exist over the foreign defendant, even though it had intentionally and repeatedly directed products to the forum state. *Id.* at 809-10. The Court went further and stated that "even regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales". *Id.* at 810, n.6. The Court also rejected respondent's "single enterprise" theory, recognizing that merging parent and subsidiary for jurisdictional purposes requires an inquiry "comparable to the corporate law question of piercing the corporate veil." *Id.* at 810.

The holding in *Goodyear* reinforces the well established legal authority supporting SCL's Writ Petition. The legal authority relied upon in the Writ Petition specifically address the issue of whether for jurisdiction purposes a court can consider the actions of a parent company representative, who also serves either as an executive or as a board member for a foreign subsidiary. (Writ Petition at pp. 28-32). In those circumstances, a substantial majority of jurisdictions require,

as was found in *Goodyear*, evidence that the two entities are alter egos of each other before general personal jurisdiction can attach.[1]

As demonstrated in SCL's Writ Petition, a minority of jurisdictions take a slightly different approach, examining the degree of control exercised by the parent and only finding general jurisdiction over the foreign subsidiary if the parent exercises an excessive degree of control.[2] (Writ Petition at pp. 31-32). However, for the reasons set forth in the Writ Petition, this minority view similarly does not allow a court to base general jurisdiction on activities commensurate with normal parental involvement or control. *See Reul v. Sahara Hotel, Inc.*, 372 F.Supp. 995, 998 (S.D. Tx. 1974) (holding that sole ownership over subsidiary or common directors is insufficient to establish general jurisdiction absent a showing that the parent exerted "more than that amount of control of one corporation over another which mere common ownership and directorship would indicate").

It is undisputed that Jacobs submitted no evidence that SCL is the alter ego of LVSC, or that (through Adelson or Leven) LVSC exercised a level of domination and control greater than would be expected from a majority shareholder. (Writ Petition at pp. 33-34). Again, Jacobs declined to address this issue and in restating the same allegations put forth to the District Court, he asks this Court to analyze SCL's alleged contacts without any factual or legal support for any alter ego relationship between SCL and LVSC.

2. Adelson and Leven's Alleged Actions are Insufficient to Establish General Personal Jurisdiction

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[1] *See Doe v. Unocal Corp.*, 248 F.3d 915, 916 (9th Cir. 2001) (holding that a local entity's contacts with the forum can only be imputed to the foreign entity if there is evidence of an alter ego relationship); *see also AT&T v. Lambert*, 94 F.3d 586, 596-99 (9th Cir. 1996) (declining to assert general personal jurisdiction over foreign subsidiary where in-forum parent held a majority of seats on subsidiary's board, approved subsidiary's hiring decisions, directed subsidiary's financial and business decisions, and appointed one of its own board members to serve as subsidiary's chairman); *Gordon et al. v. Greenview Hosp., Inc.*, 300 S.W.3d 635, 649 (Tenn. 2009) (holding that in-forum presence of officers or directors of foreign entity is insufficient to establish general personal jurisdiction).

[2] *See Hargrave v. Fireboard Corp.*, 710 F.2d 1154, 1159-61 (5th Cir. 1983) (finding that the activities of a parent company representative can be imputed to a foreign affiliate if the parent exercises domination and control "greater than that normally associated with common ownership and directorship."); *see also Reul v. Sahara Hotel, Inc.*, 372 F.Supp. 995 (S.D. Tx. 1974).

In the Writ Petition, SCL demonstrated that, during Jacobs' tenure as SCL's Chief Executive Officer, Adelson served as the non-executive Chairman of SCL's Board of Directors, and Leven served as a special advisor to SCL's Board of Directors. (Writ Petition at p. 14). Jacobs disingenuously ignores that both Adelson and Leven held those positions with SCL by virtue of the high-level executive positions they also held with SCL's parent company, LVSC. As was discussed repeatedly in the cases cited in the Writ Petition (and ignored by Jacobs), the issue in this case is whether general personal jurisdiction can be based on the in-forum activities of SCL's board members, who also serve and act on behalf of SCL's domestic parent company.

In his Answer, Jacobs asks the Court to disregard SCL's affiliation with LVSC, and analyze Adelson and Leven's alleged actions in Nevada, without recognizing that those actions allegedly occurred in Nevada solely because of SCL's affiliation with LVSC.[3] Likewise, Jacobs' refusal to address the numerous cases cited in the Writ Petition becomes clear when it is readily apparent that he missed the point of those consistent holdings – without a showing of alter ego or excessive control, a court cannot exercise general personal jurisdiction over a foreign subsidiary based on in-forum activities of parent company representatives, even if they also serve as representatives of the foreign subsidiary. *See e.g. Gordon*, 300 S.W.3d at 650 (no general personal jurisdiction over wholly-owned foreign subsidiary even when subsidiary's directors, who also served as directors of in-forum parent company, were domiciled in forum state and controlled subsidiary's finance/budget decisions, policies and procedures, and general corporate performance); *see also AT&T*, 94 F.3d at

[3] The Writ Petition demonstrated that all of Adelson and Leven's alleged activities were directed at Macau, not Nevada, and that an analysis of general personal jurisdiction should examine the effect of the conduct on the forum state, i.e. Nevada. *See Kumarelas v. Kumarelas*, 16 F.Supp.2d 1249, 1254 (D. Nev. 1998). Jacobs responds first with an attempt to distinguish this case by claiming that the analysis only relates to claims of specific rather than general personal jurisdiction. (Answer at p. 15, lines 19-20). However, the court in *Kumarelas* discussed this factor in the context of establishing "purposeful availment," which is an element of both specific and general personal jurisdiction, and is particularly applicable to the case at hand. *Id.* at 1253-54. Jacobs also cites to *Gator.Com Corp. v. L.L. Bean, Inc.*, 341 F.3d 1072 (9th Cir. 2003) in an effort to show that SCL somehow failed to demonstrate that SCL's activities *within* Nevada were insufficient to establish general personal jurisdiction. However, the court in *Gator.Com* did not engage in such semantic distinctions, and found general personal jurisdiction because the foreign defendant had "serve[d] the market in the forum State" by marketing and shipping products to customers in the forum state and maintaining contacts with numerous vendors in the forum state. *Id.* at 1078. Again, Jacobs does not carry his established burden to show that Adelson or Leven's actions had any impact on Nevada or its residents, and the cases cited in support of his arguments are inapplicable here.

591 (holding that in order for parent's relationship to confer general personal jurisdiction, there must be a showing of an alter ego relationship).

Instead, Jacobs seeks to avoid the established jurisprudence on the issue and attempts to mischaracterize SCL's argument as an assertion that "the *mere presence* of directors in the forum state is insufficient to establish general jurisdiction over a foreign corporation," and repeats his claim that Adelson and Leven made high-level management decisions on behalf of SCL. (Answer at pp.14-15). Significantly, Jacobs does not (and cannot as a matter of law) allege or even imply that such actions are evidence of alter ego or an excessive degree of control. In fact, all of Adelson and Leven's alleged actions, for example, "determin[ing] whom SCL should hire and retain as counsel, whom to favor with SCL's business and how to expand it, how to design SCL properties and under what terms to sell them, etc.," are well within what would be expected from board members and advisors who also served as representatives for SCL's majority shareholder.[4] (Answer at p. 15, lines 1-5).

Jacobs also neglects to address the numerous facts that establish SCL's corporate and operational independence from LVSC. (Writ Petition at pp. 33-34). As demonstrated in the Writ Petition, such facts include, but are not limited to (1) SCL's operation as a public company with stock traded on The Stock Exchange of Hong Kong Limited, which requires a demonstration of operational independence, (2) maintenance of an independent treasury department, financial controls, bank accounts and accounting system, (3) an independent Board of Directors with three independent non-executive directors, and (4) the existence of a Non-Competition Deed between LVSC and SCL that prohibits SCL from conducting business or directing efforts to Nevada. (Writ

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[4] Jacobs attempts to argue that SCL has placed improper emphasis on Leven's titles, whether they be special advisor to the SCL Board of Directors, or acting CEO of SCL (which Leven has occupied since Jacobs' termination). However, it is Jacobs who creates a distinction where none actually exists, as it is irrelevant what position Leven occupies as it is held in connection with his position as a LVSC representative. The cases cited by Jacobs in support of his argument are similarly inapplicable, as none involve any jurisdictional analysis whatsoever. *See Marcuse v. Del Webb Communities, Inc.*, 123 Nev. 278, 285 (2007) (deciding standing of unnamed class members); *Brad Assocs. v. Nevada Fed. Fin. Corp.*, 109 Nev. 145, 149 (1993) (deciding applicability of NRS 602.070 to parties not named on Deed of Trust). Furthermore, Jacobs' citation to *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1331 (9th Cir. 1984), does not support Jacobs' position because the *Gates* case did not involve a general personal jurisdiction analysis in the context of a parent/subsidiary relationship, and further found that despite numerous contacts and the solicitation of business in the forum state, general personal jurisdiction could *not* be established.

Petition at p. 33). By ignoring these uncontested facts, Jacobs also ignores the well-established legal authority that absent a showing of an alter ego relationship between SCL and LVSC, the District Court should not have considered Adelson or Leven's contacts with Nevada in SCL's jurisdictional analysis.

3. SCL Demonstrated That Jacobs' Allegations Regarding Monetary Transfers Were Factually Incorrect and Legally Irrelevant

In both the Motion and Writ Petition, SCL demonstrated through uncontested affidavits and Jacobs' own proffered evidence, that Jacobs' allegation that SCL regularly transfers its customers' funds to and from Las Vegas was demonstrably false. (Writ Petition at pp. 37-38). In addition to demonstrating that the funds in question are not transferred at all (but instead are entered as a series of intra-company bookkeeping entries known as Inter-company Accounting Advice ("IAA")), the Court was provided with uncontroverted evidence that this process is handled in Macau not by SCL, but by its subsidiary VML. (Writ Petition at p. 38). Not surprisingly, Jacobs's own evidence identifies VML as the originating/receiving party in Macau, and also clearly demonstrates that he is attempting to attribute actions to SCL that took place more than two years before it came into existence.[5] (Answer at p. 16, Ex. 14 to Jacobs' Opposition to the Motion).

This follows logically from VML's role as the Macau gaming license subconcessionaire, and thus is the only entity authorized to deal with transactions related to patron's gaming funds. (Writ Petition at p. 12). Despite Jacobs' histrionics and conjecture, no patron funds are actually "transferred" to either location, and as set forth in the Writ Petition, the fact remains that it consists of nothing more than a series of intra-corporate bookkeeping entries to account for funds that have been deposited in either Macau or Las Vegas. (Writ Petition at p. 38). Jacobs offers no substantive response and merely lobs pejorative (and unsupported) assertions that the IAA process is an "insultingly transparent charade" and a "house-of-cards contrivance to mask the millions of Macau dollars 'available' in Las Vegas." (Answer at p. 18, lines 5-9). Jacobs offers no reasoning or

[5] Jacobs only other piece of evidence submitted in support of his allegation is a self-serving and conclusory affidavit which alleged that SCL "transfer[ed] funds electronically from Asia to LVSC or its affiliates in Las Vegas." (Ex. 1 to Opposition, ¶ 14). Jacobs' allegation is rebutted by both SCL's submitted evidence and Jacobs' own documents, and thus is not entitled to a presumption of validity.

evidence to support these allegations, and pursuant to his own cited case law, such arguments cannot be considered as a matter of law. *See Mainor v. Nault*, 120 Nev. 750, 777 (2004).

Even assuming *arguendo* that such allegations were true (and SCL has shown that they are not), Jacobs' allegations remain irrelevant as a matter of law because, as demonstrated in SCL's Writ Petition (see Writ Petition at page 38:13 – 39:6), such allegations are inadequate to establish general jurisdiction.[6] *See Fletcher v. Atex, Inc.*, 68 F.3d 1451, 1459-60 (2d Cir. 1995) (co-participation in accounting procedures is insufficient to establish general jurisdiction; *Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1177 (9th Cir. 1980) (cooperative marketing or promotional efforts inadequate to establish general personal jurisdiction); *Romann v. Geissenberger Mfg. Corp.*, 865 F.Supp. 255, 260-61 (E.D.Pa. 1994) (no general jurisdiction even though defendant made $230,000 in direct sales to forum state and was qualified to do business in forum state).[7]

In sum, the IAA process cannot provide a basis for general personal jurisdiction over SCL due to its complete lack of involvement, and to its inherent lack of "substantial or continuous and systematic" contacts with Nevada.

B. <u>This Court Should Clarify This Issue of Law for Nevada's State Courts</u>

In addition to the arguments set forth in the Writ Petition, this Court need not look any further than Jacobs' Answer for a clear example of why the issue presented in the Writ Petition

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[6] Jacobs cites to *Provident Nat. Bank v. California Federal Sav. & Loan Ass'n*, 819 F.2d 434 (3d Cir. 1987) in an attempt to demonstrate that participation in the IAA process could subject SCL to general personal jurisdiction in Nevada. (Answer at p. 19, lines 6-16). However, as demonstrated previously in the SCL's briefs to the District Court, the Provident case is entirely distinguishable from the present action. In Provident, the 3d Circuit U.S. District Court applies general personal jurisdiction principles to the defendant primarily due to the existence of nearly one thousand (1000) of defendant's account depositors residing in the forum state. *Id.* at 436. The defendant in Provident was also involved in servicing more than Ten Million Dollars ($10,000,000.00) in loan funds, which necessarily involved the transfer and deposit of funds into the forum state. *Id.* at 436-37. In stark contrast, SCL has already demonstrated with uncontested evidence that the IAA process reflects only a record of inter-company accounting transactions between VML and an LVSC affiliate, and does not involve any transfers of funds to or from Nevada. (SCL Reply in Support of Motion (the "Reply"), pp. 18-19; Affidavits of Jennifer Ono, Patricia Green and Jason Anderson attached in support of Reply).

[7] In his Answer, Jacobs contended that the *Romann* case "is no longer good law" and "was abrogated by the court that decided it." (Answer at p. 20, fn. 59). Jacobs' assertion is incorrect. *Romann* was criticized in *Eagle Traffic Control, Inc. v. James Julian, Inc.*, 933 F.Supp. 1251 (E.D. Pa. 1996), solely on the issue of whether merely registering to do business in the forum established general jurisdiction and did not otherwise criticize or abrogate the holding in *Romann,* including with regard to sales or transfers of funds to the forum state. *Id.* at 1256.

requires additional clarification for Nevada's state courts. In his Answer, Jacobs continually misapplies and misconstrues basic jurisdictional principles, and fails to recognize the difference between the actions of a foreign entity acting on their own accord, and actions taken on behalf of that entity by a representative shared with its in-forum parent.

This issue remains unresolved for Nevada's state courts, and while Jacobs argues that the issue itself is "a straw man fabricated by SCL in disregard of the actual issues...," (Answer at p. 4, line 15) the fact remains that a majority of other jurisdictions (including the U.S. Supreme Court) have considered this a very important issue and have consistently ruled that only when the foreign entity is considered the alter ego of the domestic entity, can the domestic entity's contacts be considered in the jurisdictional analysis of a foreign affiliate. *See Goodyear*, 180 L. Ed. 2d at 810; *Doe*, 248 F.3d at 926; *Newman v. Comprehensive Care Corp.*, 794 F.Supp. 1513, 1519 (D. Or. 1992).

And while SCL certainly did not "prophesize an End-of-Western-Civilization-As-We-Know-It catastrophe," the expansion of Nevada's gaming companies will ensure that this issue will come before a Nevada state court again. Nevada's courts must be provided with the precedent to decide such cases, as the current test leaves the issue open to inconsistent results. SCL therefore requests that the law in Nevada should be clarified to employ the prevailing test applied in a majority of jurisdictions, which in the present case, has not been met under any interpretation of the submitted facts.

C. <u>The Exercise of Personal Jurisdiction Over SCL is Unreasonable</u>

Because the District Court did not make any findings as to the reasonableness of its exercise of personal jurisdiction over SCL, and Jacobs failed to add any significant arguments on this point that he did not previously make in his Opposition, SCL will limit its discussion of this issue to clarify a few points that were misstated in Jacobs' Answer.

As an initial matter, Jacobs does not dispute the established legal authority set forth in the Writ Petition regarding the finding of general personal jurisdiction over a foreign entity. (Answer at pp. 4-5). Additionally, it is important to recognize that Jacobs' claim against SCL for breach of contract is unrelated to any actions taken in Nevada, by either SCL or LVSC. Jacobs' claim relates

to the Stock Option Grant Letter which purportedly granted Jacobs an option to purchase SCL stock.[8] (Exhibit F to Motion). Whether or not SCL's "two top executives live and work [in Nevada]" has no bearing on how burdensome or efficient it will be for SCL to litigate this claim in Nevada. (Answer at p. 22, line 16). In fact, as demonstrated in SCL's Motion, Adelson and Leven did not hold executive positions with SCL during Jacobs' tenure as their positions were, respectively, Non-Executive Director and Special Advisor. (Motion at p. 5, lines 1-12). As such, Jacobs' claim against SCL does not involve SCL's "two top executives" or any LVSC representatives, and with the exception of Jacobs, nearly all of the relevant witnesses and documents are located in Macau. Therefore there is little question that Macau would provide the most suitable forum to litigate Jacobs' claim against SCL, which tips strongly against the reasonableness of the District Court's continued exercise of personal jurisdiction.

Jacobs argues that because Nevada "has a vital interest in the conduct of its gaming licensees, of which LVSC is one," that Nevada's interest somehow overrides Macau's interest in protecting companies such as SCL, which actually does business in Macau. (Answer at p. 23, line 7). Without providing any supporting legal authority, Jacobs asserts that Nevada's gaming laws extend to its licensee's foreign operations, such as SCL in Macau, and "therefore, Nevada has a paramount interest in the adjudication of this dispute." (Answer at p. 23, lines 9-10).

A review of the prospectus cited in Jacobs' Answer demonstrates that this position is not grounded in fact. (Appendix 3 to Answer). SCL's prospectus provides that due to LVSC's status as SCL's "controlling shareholder," it must oversee certain SCL operations to ensure LVSC remains compliant with Nevada's gaming laws. *Id.* A review of the possible actions that may be taken in the event of a failure to comply shows that all disciplinary actions taken by the Nevada Gaming Commission would affect only LVSC, and not SCL. *Id.*

As noted above, the foreign gaming sections of the Nevada Gaming Control Act, NRS 463.680-.720, are restrictions on LVSC to avoid unsuitable associations and practices, not entities

[8] As demonstrated in the Motion, the Stock Option Grant Letter is unenforceable by its own terms as a matter of law because, among other things, Jacobs never signed the document and the unvested SCL options ceased to exist (as set forth in the explicit terms of the Stock Option Grant Letter) upon the termination of Jacobs' employment on July 23, 2010. (Exhibit F to Motion; Affidavit of Anne Salt in support of Motion, ¶¶ 13, 14).

operating outside of Nevada. Furthermore, Jacobs' argument would set a dangerous precedent, because it effectively asserts that the otherwise well-established minimum contacts jurisdictional analysis is preempted in every instance in which an entity regulated by the Nevada Gaming Commission is a "controlling" shareholder of a foreign corporation.

Taken with the remaining factors as set forth in the Writ Petition, this Court should find that the District Court's continued exercise of jurisdiction is unreasonable and would offend the principles of due process if allowed to continue.

D. Jacobs' "Transient" Personal Jurisdiction Argument is Meritless And Was Not, In Any Way, Replied Upon By The District Court

In his Answer, Jacobs inexplicably leads with the argument that SCL should be subject to "transient" personal jurisdiction, by virtue of the fact that a SCL corporate officer was served with the summons and complaint while present in Nevada. (Answer at p. 6, lines 5-8). Jacobs further argues that because SCL did not address this issue in its Writ Petition, it has effectively conceded the issue and should be precluded from challenging the argument in this proceeding. (Answer at pp. 6-8). Neither position has merit, and as demonstrated by SCL in its Reply in Support of SCL's Motion to Dismiss (the "Reply") and by both parties at the March 15, 2011 hearing, the principle of transient personal jurisdiction is inapplicable to the issue of personal jurisdiction over SCL.

1. The Principle of Transient Personal Jurisdiction is Inapplicable to Corporate Defendants Such As SCL and Was Not Considered by the District Court

As with most of his arguments in the Answer, Jacobs' contention that SCL is subject to transient personal jurisdiction because its acting CEO was served in Nevada is recycled from his Opposition filed in response to SCL's Motion. (Opposition, attached as Appendix 3 to the Writ Petition, at pp. 10-13). In both the Answer and Opposition, Jacobs relies primarily on *Burnham v. Superior Court*, 495 U.S. 604 (1990) for the proposition that service upon a corporate officer in the forum state is a proper basis for asserting personal jurisdiction over the corporate entity. (Answer at p.6, fn. 16; Opposition at pp. 10-12).

However, as explained in detail in SCL's Reply, while the transient personal jurisdiction principle was applied to the defendant in *Burnham*, the U.S. Supreme Court limited its application

to individual defendants and *expressly declined to extend it to corporate entities. See Burnham*, 495 U.S. at 610 n. 1 ("[C]orporations ... have never fitted comfortably in a jurisdictional regime based primarily upon 'de facto power over the defendant's person.' We express no views on these matters and, for simplicity's sake, omit reference to this aspect of 'contacts'-based jurisdiction in our discussion.")(internal citations omitted).

SCL's Reply also addressed the other cases cited by Jacobs in support of his position, namely, *Comerica Bank-California v. Sierra Sales, Inc., et al.*, 1994 U.S. Dist. LEXIS 21542 (N.D. Cal. 1994), *Northern Light Technology, Inc. v. Northern Lights Club*, 236 F.3d 57 (1st Cir. 2001), and *Oyuela v. Seacor Marine (Nigeria), Inc.*, 290 F.Supp.2d 713 (E.D. La. 2003), and noted that despite Jacobs' claims to the contrary, none actually stood for the proposition that the *Burnham* decision could be applied to corporate defendants. (Reply at pp 8-10).[9]

In short, SCL's Reply made clear that the transient personal jurisdiction principle could not be considered as part of the District Court's jurisdictional analysis, and that Jacobs' arguments were fundamentally flawed. At the March 15, 2011 hearing on the Motion, counsel for SCL briefly addressed the *Burnham* case and its inapplicability to corporate entities such as SCL. (Transcript of March 15, 2011 hearing, attached to Writ Petition as Appendix 6, at p. 48, lines 4-8). This statement prompted no response from the District Court, and Jacobs' counsel avoided the transient personal jurisdiction issue altogether during his argument.

It is irrelevant whether Jacobs' counsel chose not to address this issue because he was "constrained by time limits and flow of colloquy," as claimed in his Answer, or for some other

---

[9] In citing to *Comerica,* Jacobs disingenuously ignores the fact that the court's decision in that case dealt with another individual defendant, and not the corporate defendant. *See Comerica*, 1994 U.S. Dist. LEXIS at *6-11 (N.D. Cal. 1994)(applying *Burnham* ruling to determine personal jurisdiction over individual co-defendant James Gary Pyle). *Northern Light* and *Oyuela* are similarly inapplicable, as the court's analysis of transient jurisdiction in *Northern Light* was contained in a footnote and only referenced *Burnham* by stating that due to the defendants' failure to raise it earlier, any argument that it did not apply had been waived. *See Northern Light*, 236 F.3d at 63; *see also C.S.B. Commodities, Inc. v. Urban Trend, Ltd., et al.*, 626 F.Supp.2d 837, 849-50 (N.D. Ill. 2009). The *Oyuela* court had relied solely upon *Northern Light* and had also proceeded with a minimum contacts analysis to determine that jurisdiction was proper. *See Oyuela*, 290 F.Supp.2d at 722; *see also C.S.B. Commodities,* 626 F.Supp.2d at 851 ("Neither [the *Northern Light* or *Oyuela*] case thus provides much support for the application of *Burnham* without a minimum contacts analysis.").

strategic purpose. What is relevant, however, is that his argument was shown to be without merit or application, and the District Court neither discussed nor chose to base its ruling on transient personal jurisdiction. Critically, Jacobs offers absolutely no additional support for his argument that transient personal jurisdiction could be applied to SCL without violating established law and simple logic.

2. SCL Has Neither Conceded the Issue of Transient Personal Jurisdiction, Nor Is It Precluded From Responding to Jacobs' Argument

Jacobs also argues that because SCL allegedly failed to provide additional analysis of the transient personal jurisdiction issue in the Writ Petition, it has "abandon[ed] that issue, and must accept the consequences." (Answer at p. 7, line 7). As discussed above, SCL has repeatedly demonstrated that transient personal jurisdiction has no impact on the issues presented in this case, and as stated above, was ignored by the District Court in its decision to grant the Motion.

Jacobs cites to *Wyeth v. Rowatt*, 244 P.3d 765 (2010), *Mainor v. Nault*, 120 Nev. 750 (2004), and *Browning v. State*, 120 Nev. 347 (2004) in support of his argument. Upon further examination however, those cited cases do not support the blanket assertion espoused by Jacobs. In each case, the issues that were disregarded by the appellate court were those that had not been raised or addressed at the trial court level and were specifically relied upon as part of the argument in the appellate brief. *See Wyeth*, 244 P.2d at 779, fn. 9 (declining to consider argument first raised in appellate brief that trial court gave an improper jury instruction); *Mainor*, 120 Nev. 776-77 (noting that the court was entitled to reject an argument to take judicial notice of opposing counsel's prior conduct); *Browning*, 120 Nev. at 361 (rejecting argument that trial counsel was ineffective when the particular issue had been raised for the first time in the appellate brief).

In the present case, the transient personal jurisdiction issue had been extensively briefed to the District Court, and subsequently shown to be inapplicable. The District Court did not address or even allude to the issue, and did not cite the transient personal jurisdiction doctrine as support for the decision at issue in the Writ Petition. (Transcript, attached as Appendix 6 to Writ Petition, at p. 62, lines 3-5 (stating that the denial of SCL's Motion was based on " pervasive contacts with the state of Nevada by activities done in Nevada by board members of Sands China.")). However, SCL

still brought the issue to this Court's attention in the Writ Petition, and provided a full record of the proceedings in the event this Court had a desire to examine it further.

While no additional analysis is necessary, Jacobs has nonetheless decided to waste both this Court's and SCL's time and resources by raising this issue again. SCL submits, as it did to the District Court, that Jacobs' argument has no basis in law or fact and should be summarily rejected.

III. CONCLUSION

The District Court erred in denying SCL's Motion to Dismiss for Lack of Personal Jurisdiction. General jurisdiction does not exist in this case because SCL made no substantial or continuous and systematic contacts with Nevada. Specifically, general jurisdiction over SCL cannot be based on its corporate contacts with its majority shareholder, LVSC, without a showing of an alter ego relationship between SCL and LVSC, or evidence of LVSC's excessive degree of control over SCL. Moreover, the exercise of personal jurisdiction in this case would offend the principles of fair play and substantial justice, which the District Court did not consider when making its ruling.

Based upon the foregoing, SCL respectfully requests that this Court issue a Writ to the Eighth Judicial District Court to grant its Motion to Dismiss for Lack of Personal Jurisdiction and to prohibit the District Court from exercising personal jurisdiction, either general or specific, over SCL in this matter.

Dated August 9, 2011.

GLASER WEIL FINK JACOBS HOWARD, AVCHEN & SHAPIRO LLP

By: _____

Patricia L. Glaser, ESQ.
Pro Hac Vice Admitted
Andrew D. Sedlock, ESQ.
Nevada Bar No. 9183
3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169

Attorneys for Petitioner Sands China Ltd.

VERIFICATION

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

I, Andrew D. Sedlock, being first duly sworn, deposes and states:

1. I am an attorney with the law firm of GLASER WEIL FINK JACOBS HOWARD, AVCHEN & SHAPIRO LLP, counsel of record for Petitioner, Sands China Ltd. named in the foregoing Petitioner's Reply In Support Of Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition and know the contents thereof.

2. The facts stated in the Petition are true of my knowledge, and to those matters that are on information and belief, such matters I believe to be true.

3. I make this verification on behalf of Petitioner Sands China Ltd.

Andrew D. Sedlock

Subscribed and sworn to before me
this 9th day of August, 2011

NOTARY PUBLIC in and for
said County and State

My Commission expires 9-27-13

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
DAWN M. DUDAS
Appt. No. 97-4047-1
My Appt. Expires Sept. 27, 2013

Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of GLASER WEIL FINK JACOBS HOWARD AVCHEN SHAPIRO LLP and on the 9th day of August, 2011, I deposited a true and correct copy of the foregoing **PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION** by U.S. Mail at Las Vegas, Nevada, in a sealed envelope upon which first class postage was prepaid and addressed to:

J. Stephen Peek, Esq.
Justin C. Jones, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Donald J. Campbell, Esq.
J. Colby Williams, Esq.
CAMPBELL & WILLIAMS
700 S. 7th Street
Las Vegas, NV 89101

An Employee of GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP

Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP

Dawn Dudas

From: efiling@nvcourts.nv.gov
Sent: Tuesday, August 09, 2011 4:53 PM
To: Dawn Dudas
Subject: Your filing, Re: 58294 - Original Proceeding - Other, was filed subject to acceptance

RECEIPT OF ELECTRONIC DOCUMENT SUBMITTED FOR FILING

Docket Number:	58294
Case Category:	Original Proceeding
Submitted by:	Andrew Sedlock
Date Submitted:	Aug 09 2011 04:51 p.m.
Document Category:	Other
Document Title:	Petitioner's Reply In Support Of Petition For Writ Of Mandamus, Or In The Alternative, Writ Of Prohibition
Filing Status:	**Filed subject to acceptance**

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 58294

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

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

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

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

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

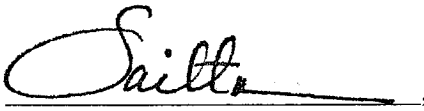
In MGM Grand, Inc. v. District Court, 107 Nev. 65, 807 P.2d 201 (1991), we held that jurisdiction over a nonresident corporation could not be premised upon that corporation's status as parent to a Nevada corporation. Similarly, the United States Supreme Court in Goodyear Dunlop Tires Operations, S.A.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

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

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

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

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



_____, J.
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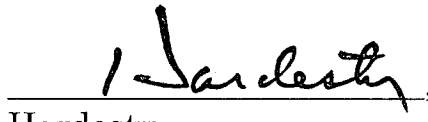
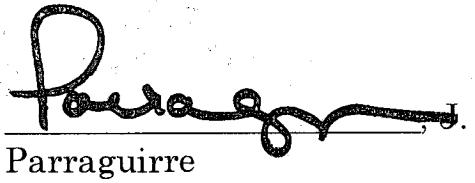


_____, J.
Hardesty



_____, J.
Parraguirre

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

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

ORIGINAL COPY

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON PLAINTIFF'S MOTION TO CONDUCT JURISDICTIONAL DISCOVERY

TUESDAY, SEPTEMBER 27, 2011

APPEARANCES:

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

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

LAS VEGAS, NEVADA, TUESDAY, SEPTEMBER 27, 2011, 4:07 P.M.

(Court was called to order)

THE COURT: All right. Can everybody please identify themselves who's participating in the argument on Jacobs versus Sands.

MR. PISANELLI: Good afternoon, Your Honor. James Pisanelli on behalf of the plaintiff.

MS. GLASER: Good afternoon, Your Honor. Patricia Glaser for Sands China, here only on the issues involving the evidentiary hearing.

MR. PEEK: And good afternoon, Your Honor. Stephen Peek on behalf of Las Vegas Sands Corp.

THE COURT: Okay. I think I have four agenda items, some of which you don't know about. One is each of you has submitted order shortening times, or at least side has submitted order shortening times. One is in the Las Vegas Sands versus Jacobs case, which I haven't signed, and one is in the Jacobs versus Las Vegas Sands case. One's by Ms. Glaser, one's by Mr. Peek. Does anybody want to discuss with me the briefing schedule that we should have before I have to have a conference call like I just did with Mr. Backus and his adverse counsel?

MR. PEEK: Well, Your Honor, I sort of fall in the same trap that you did with Mr. Pisanelli's motion that we're here today on the jurisdictional discovery which, I think was

set on about three days' notice. We're happy with three days' notice.

MR. PISANELLI: Three days' notice on an issue that has no relevancy until November? I'd ask Your Honor to give us the appropriate amount of time to respond to what appears to be --

THE COURT: The motion in limine.

MR. PEEK: I was just talking about my motion.

THE COURT: See, I've got a motion for sanctions, and I've got a motion in limine.

MR. PEEK: Yeah. I --

THE COURT: I've got two different kinds of motions.

MS. GLASER: Actually, the --

MR. PISANELLI: This is all news to me. I haven't seen them.

THE COURT: Oh. Okay.

MS. GLASER: Your Honor, with respect to the motion in limine, which I -- is the only one that I can address, we would like it as quickly as humanly possible. Mr. Pisanelli has been served with a motion in limine. We are asking for -- that the -- no documents stolen by Mr. Jacobs be utilized in connection with anything having to do with the evidentiary hearing. And I think that issue needs to be resolved as soon as possible by Your Honor.

THE COURT: Okay.

MR. PISANELLI: I'll object to --

THE COURT: Well, wait.

MR. PISANELLI: I'm sorry.

THE COURT: Let me go to -- I don't sign OSTs on motions in limine usually. That's the general rule. So let me go to a subset of the situation in this particular case.

Has anybody heard from the Nevada Supreme Court on the emergency petition that Justin Jones was kind enough to take me up on and file?

MS. GLASER: No, Your Honor, we have not.

MR. PEEK: We have not, Your Honor.

THE COURT: It's not your fault.

MR. PEEK: No, it's not, Your Honor.

THE COURT: I'm not saying it's your fault.

MR. PEEK: Your Honor, the motion was just filed, so I didn't expect the Supreme Court to hear it. And I hope you heard about it not from the newspapers as opposed to --

THE COURT: This time it was served on --

MR. PEEK: Good.

THE COURT: -- me as required by the rules, and I looked at it. And I didn't read about it in the paper. So I certainly understand, Ms. Glaser, that you would like to have this heard sooner, rather than later. The issues are integrally interrelated with the issues that are the subject of this what I'm calling a discovery dispute which isn't

before the Nevada Supreme Court, which unfortunately I can't resolve because of the stay that is in place. But in connection with the hearing that is upcoming I can certainly address it as part of that process. But the question's going to be how long are we going to do it, and I'm not going to shorten it to three, four days.

MS. GLASER: Your Honor, I obviously will bow to whatever you want to do in that regard. It clearly needs to be resolved, because we think if you look at the disclosures that were served on us that they intend to -- documents they intend to use, those are documents that were stolen, in our view, I don't think there's a different view from -- by Mr. Jacobs, some of which are attorney-client privileged documents. Your Honor, none of these documents should be utilized in connection with any evidentiary hearing set for November 21.

THE COURT: Mr. Pisanelli, have you seen the motion in limine yet?

MR. PISANELLI: No.

THE COURT: Okay. Assume you get a copy in the next day or so --

MR. PISANELLI: It was served. I haven't seen it.

THE COURT: It looks a lot like this.

MR. PISANELLI: It was served. I just haven't seen it.

MR. PEEK: And mine was also served, Your Honor, on Mr. Pisanelli.

THE COURT: The text of the motion is 12 pages and, gosh, it looks a lot like what we're dealing with on the motion that we dealt with a week ago Friday and the motion we dealt with --

MR. PISANELLI: Sure.

THE COURT: -- Monday?

MR. PEEK: A week ago Tuesday, I think, Your Honor. Maybe Monday.

MS. GLASER: It's actually more restricted, because it only deals with documents in connection with the evidentiary hearing, Your Honor.

THE COURT: Okay.

MR. PISANELLI: Okay.

THE COURT: So it's the same issue that we've been talking about.

MR. PISANELLI: So Ms. Glaser will be surprised, I'm sure, when she says that no one disagrees on what to do or even what we have, we have a lot of disagreement even with the --

THE COURT: I'm not arguing the motion today.

MR. PISANELLI: -- labels that are being thrown around with stolen documents. Understood.

THE COURT: I'm not arguing it. I'm just want to

know how long you think you need to brief it.

MR. PISANELLI: Give me -- I'm leaving town for a mediation tomorrow, so I'm going to be out for the next couple days. So since our hearing doesn't begin until November, I would ask for 10 days.

THE COURT: That means I need a response for you -- from you by next Friday, which is October 7th.

MR. PISANELLI: Okay.

THE COURT: Ms. Glaser, once you get that, how long do you need before you give me a reply brief?

MS. GLASER: The 10th, Your Honor.

THE COURT: That's the Monday. So do you want to have a hearing on October 13th, which is the day Mr. Pisanelli's already scheduled to be here with Mr. Ferrario which you're trying to move? Does that work?

MS. GLASER: Absolutely.

THE COURT: All right.

THE CLERK: What time?

THE COURT: 9:00 o'clock.

THE CLERK: Thank you.

THE COURT: So we have negotiated the first of our issues.

Now with respect to Mr. Peeks sanction motion, Mr. Peek, this I guess is because you believe there has been a violation of the interim order that I entered because I really

think that the Las Vegas Sands versus Jacobs is a subset of the Jacobs versus Sands discovery dispute.

MR. PEEK: I know. And we disagree with the --

THE COURT: I understand.

MR. PEEK: -- the Court on that, so -- but we can certainly agree to disagree.

THE COURT: But it's a violation of the interim order that I entered in that case.

MR. PEEK: That is correct, Your Honor. Because what we found when we saw the disclosures that Mr. Pisanelli submitted in this case --

THE COURT: The Jacobs versus Sands case.

MR. PEEK: -- the Jacobs versus Sand -- what we saw clearly were attorney-client communications.

THE COURT: Okay.

MR. PEEK: And I remember Mr. Pisanelli standing before this Court and talking in his -- about he was not going to violate the rules of professional responsibility, he was not going to violate the Nevada Rules of Civil Procedure so what was the harm and why do we need all this relief. Well, now we know. We also know, Your Honor, and perhaps the Court didn't know this, is that the docket has been closed in the remand to -- from the Nevada Supreme Court to this Court --

THE COURT: I read that in --

MR. PEEK: Yes.

THE COURT: -- the writ petition.

MR. PEEK: So we didn't -- we had to open a docket with the Nevada Supreme Court. We can't go back to that same docket. So --

THE COURT: I was surprised that occurred, since --

MR. PEEK: I was too, Your Honor.

THE COURT: -- they told me to send it back up.

MR. PEEK: I was actually very surprised that that's happened.

THE COURT: I thought I had a Honeycutt issue basically that I was dealing with.

MR. PEEK: That's kind of what I thought, as well, Your Honor, was really a Honeycutt issue. So we had to open a new docket. So we're concerned that we won't be able to get the relief that we want within the two weeks that the Court gave us, and we now have a clear violation of the interim order, well, with respect to the review of attorney-client privileged documents that Mr. Pisanelli told us he wasn't going to look at.

THE COURT: Mr. Pisanelli, just assume with me for a minute that Mr. Peek has a point, whether it's right or not. Just assume he has a point. I know. How long is it going to take you to respond to this one?

MR. PISANELLI: Well, I would say the same. I would hope that between now and the 10 days that I respond that

VERIFICATION

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

I, Andrew D. Sedlock, being first duly sworn, deposes and states:

1. I am an attorney with the law firm of GLASER WEIL FINK JACOBS HOWARD, AVCHEN & SHAPIRO LLP, counsel of record for Petitioner, Sands China Ltd. named in the foregoing Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition (the "Petition") and know the contents thereof.

2. The facts stated in the Petition are true of my knowledge, and to those matters that are on information and belief, such matters I believe to be true.

3. I make this verification on behalf of Petitioner Sands China Litd.

Andrew D. Sedlock

Subscribed and sworn to before me
this 5th day of May, 2011

NOTARY PUBLIC in and for
said County and State
My Commission expires 9-27-13

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
DAWN M. DUDAS
Appt No. 97-4047-1
My Appt Expires Sept. 27, 2013

Glaser Weil Fink Jacobs
Howard Avchen & Shapiro LLP

IN THE SUPREME COURT

OF THE STATE OF NEVADA

ANDS CHINA, LTD., Petitioner, v. THE EIGHTH JUDICIAL DISTRICT COURT, in and for the County of Clark, STATE OF NEVADA, and the HONORABLE ELIZABETH GONZALEX, District Judge, Respondents, and, STEVEN C. JACOBS, Real Party in Interest.	APPEAL NO.: 58294 (D.C. CASE NO.: A-10-627691-C) **RECEIPT OF COPY OF PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION AND APPENDICES**

I hereby acknowledge that on the ____ day of May, 2011, I received a true and correct copy of the Petition For Writ of Mandamus, Or In The Alternative, Writ Of Prohibition And Appendices.

HOLLAND & HART LLP

By: JSP/TM @ 2:30pm

J. Stephen Peek, Esq.
3800 Howard Hughes Parkway
10th Floor
Las Vegas, NV 89169

Attorneys for Defendant Las Vegas Sands Corp.

:

Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP

IN THE

SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA, LTD. Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, in and for the COUNTY OF CLARK and THE HONORABLE ELIZABETH GOFF GONZALEZ, Respondents, and STEVEN C. JACOBS, Real Party in Interest.	Supreme Case No. 58294

ANSWER OF REAL PARTY IN INTEREST STEVEN C. JACOBS TO PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION

CAMPBELL & WILLIAMS
DONALD J. CAMPBELL, ESQ. (1216)
J. COLBY WILLIAMS, ESQ. (5549)
700 South Seventh Street
Las Vegas, Nevada 89101
Tel. (702) 382-5222
Fax. (702) 382-0540

Attorneys for Real Party in Interest
Steven C. Jacobs

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

TABLE OF CONTENTS

Page

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

TABLE OF AUTHORITIES

Page

Cases

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

Cases (cont'd)

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

Cases (cont'd)

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

Cases (cont'd)

Statutes

Rules of Court

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

Pursuant to this Court's June 24, 2011 order, Real Party in Interest Steven C. Jacobs ("Jacobs") hereby files his Answer to the Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition.

INTRODUCTION AND SUMMARY OF ARGUMENT

Pending before the Court is a writ petition by Sands China Ltd. ("SCL"), a Cayman Islands corporation that conducts gaming operations in Macau, China. SCL's professed grievance concerns personal jurisdiction. Specifically, SCL is a subsidiary of Las Vegas Sands Corp. ("LVSC"), a Nevada corporation, and, according to SCL, it has wrongfully been forced to defend itself in Nevada solely because of *LVSC*'s contacts with Nevada which, as SCL's parent company, have been imputed to SCL. Both in fact and law alike, however, SCL's protest is groundless.

First of all, SCL misrepresents the issue. Jacobs never argued, and the district court did not find, that SCL is subject to personal jurisdiction in this state because of *LVSC*'s contacts with Nevada. Rather, Jacobs argued, the district court found, and the record confirms that SCL is subject to jurisdiction here because of *its own* contacts with Nevada. The supposed issue which SCL urges this Court to consider, in other words, is a mirage.

Not only is SCL's petition misleading, it is incomplete as well. Jacobs asserted two grounds for personal jurisdiction—"transient" and "general" jurisdiction—but SCL's petition addresses only the latter. By failing to address the former, SCL has abandoned any objection to jurisdiction on that basis, thus making it moot whether, in addition, SCL is also amenable to general personal jurisdiction.

In any event, SCL's challenge to general personal jurisdiction quickly collapses under the weight of adverse law and evidence. At this stage of the case, Jacobs need only make a *prima facie* showing that facts exist to support a finding of personal jurisdiction, and the record abounds

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

with evidence sufficient for that purpose. SCL apparently deemed Las Vegas quite a congenial place to do business, for it routinely conducted operations from Las Vegas and repeatedly transferred tens of millions of dollars to Las Vegas. Having systematically taken advantage of Nevada's commercial opportunities and facilities, it is only fair that SCL participate in Nevada's judicial process too.

SUMMARY OF FACTS

LVSC initially retained Jacobs as a consultant in March 2009 to help restructure its operations during the global economic meltdown.[1] By May 2009, LVSC had appointed Jacobs as the head of its gaming operations in Macau, memorializing their relationship in a written agreement dated August 3, 2009.[2] LVSC ultimately spun off its Macau assets and operations into a new public company, SCL, which would be traded on the Hong Kong stock exchange. Jacobs was made President and Chief Executive Officer of SCL, leading the company through its initial public offering in November 2009 and helping return LVSC and SCL to significantly improved financial health during his time with Defendants.[3] In March 2010, Michael Leven, LVSC's Chief Operating Officer, assessed Jacobs' 2009 job performance as follows: "*there is no question as to Steve's performance[;] the Titanic hit the iceberg[,] he arrived and not only saved the passengers[,] he saved the ship.*"[4] Jacobs' tenure, however, came to an abrupt end just months later on July 23, 2010 when he was terminated at the direction of LVSC's and SCL's Chairman,

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1 *See* Complaint [**Appx. 1**] at ¶ 16.

2 *See* Complaint [**Appx. 1**] at ¶¶ 18; 21.

3 *See* Complaint [**Appx. 1**] at ¶¶ 22-24.

4 *See* Complaint [**Appx. 1**] at ¶ 25.

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

Sheldon G. Adelson.[5] Jacobs thereafter sued LVSC and SCL for breach of contract related to his employment agreement with LVSC and his respective stock option agreements with LVSC and SCL, breach of the implied covenant of good faith and fair dealing, and tortious discharge in violation of public policy.[6] To the extent additional facts are pertinent to this Answer, they will be discussed in the context of the Argument that follows.

ARGUMENT

I. SCL MISSTATES THE ISSUE DECIDED BELOW.

SCL depicts the present case as involving a "coattail" assertion of personal jurisdiction on the ground that, although it has no contacts with Nevada, SCL has nonetheless been compelled to defend itself here because of LVSC's contacts with Nevada.[7] The Petition then proceeds to snip these coattails. SCL argues, at considerable length, that most courts do not impute the contacts of a domestic parent company to its foreign affiliate unless there is an alter ego relationship between the two entities, while other courts require control by the parent disproportionate to its investment; and that, since LVSC is neither an alter ego of SCL nor exercises control over SCL disproportionate to its investment, SCL is not subject to personal jurisdiction in Nevada based on its affiliation with LVSC.[8]

The foregoing issue, according to SCL, is unfinished business left over from *MGM Grand, Inc. v. Eighth Judicial Dist. Ct.*, 107 Nev. 65, 807 P.2d 201 (1991), where this Court held that the

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[5] *See* Complaint [**Appx. 1**] at ¶¶ 26-31.

[6] *See* Complaint [**Appx. 1**] at ¶¶ 34-57.

[7] *See* Petition 17:17-18 ("SCL demonstrated that it lacks any contacts with Nevada, apart from its ongoing relationship with its majority shareholder, LVSC").

[8] *See* Petition, pp. 27-37.

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700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

Walt Disney Company was not subject to personal jurisdiction in Nevada based on its subsidiaries' Nevada contacts, but did not decide whether an alter ego relationship is necessary.[9] Moreover, SCL characterizes the issue as one of the utmost urgency. Without immediate intervention by this Court, SCL prophesizes an End-of-Western-Civilization-As-We-Know-It catastrophe, warning that foreign companies will be subject to process here for any matter whatsoever, "provided only that the foreign corporation is a subsidiary of a controlling parent corporation domiciled in Nevada"[10] and that "Nevada's courts would be at risk to be inundated with lawsuits brought by every foreign litigant who has a claim against a foreign entity that is a corporate affiliate of a Nevada company."[11] Hence, concludes SCL, "[t]he issue of whether, due to a relationship with a corporation or other affiliate in Nevada, a litigant can bring a suit in Nevada against a foreign entity . . . based on the presence of a Nevada affiliate, is vitally important to the companies based in Nevada and to their foreign subsidiaries."[12]

But the preceding melodrama—indeed, the entire professed issue—is a myth, a straw man fabricated by SCL in disregard of the actual issues argued and decided below. As Jacobs explicitly stated to the district court, he never sought to drag SCL into Nevada on LVSC's coattails. Instead, he asserted personal jurisdiction over SCL based on *SCL's own* contacts with Nevada.[13] And, as

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[9] *See* Petition, pp. 20-21.

[10] Petition 17:8-15.

[11] Petition 19:28 to 20:2.

[12] Petition 21:25-28.

[13] *See* Plaintiff's Opposition to Sands China Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Plaintiff's Failure to Join an Indispensable Party [**Appx. 3**] 17:23-24 ("Jacobs seeks to establish jurisdiction over SCL *based on its own contacts* with the forum, not just those attributable to LVSC") (emphasis added).

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

the evidence discussed below in Point III demonstrates, SCL is subject to personal jurisdiction based on *its own* contacts with Nevada. For purposes of the dispute at hand, the affiliation between SCL and LVSC is the reddest of red herrings, for the outcome would be no different if they were unrelated entities.

SCL, in other words, is attempting to whet this Court's interest with a false portrayal of the controversy. Such a materially inaccurate presentation undermines the efficacy of writ review. After all, in order to determine whether a dispute has sufficient legal merit, much less the extraordinary urgency required for mandamus or prohibition, this Court obviously must have before it a fair presentation of the issues.[14] Otherwise, the Court would potentially find itself in the awkward position of discovering, after issuing a writ, that the writ was unwarranted because the issues were not as represented in the petition. In addition, it is a long-established axiom that "[a]ppellate courts do not give opinions on moot questions." *Edwards v. City of Reno*, 45 Nev. 135, 143, 198 P. 1090, 1092 (1921). This self-imposed restraint on the squandering of scarce judicial resources applies with particular force to the purely discretionary exercise of writ review. *Marquis & Aurbach v. Eighth Judicial Dist. Ct.*, 122 Nev. 1147, 1155, 146 P.3d 1130, 1135 (2006).

Whether from the standpoint of docket management, substantive justice, or basic honesty, the use of tainted bait to fish for writ review, so to speak, should be vigorously discouraged. Summarily denying such petitions is an essential first step in that direction.

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[14] *See* NRAP 21(a)(3)(B) (a writ petition must state "the issues presented").

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

II. BY FAILING TO ADDRESS THE ISSUE ON APPEAL, SCL HAS ABANDONED ANY OBJECTION TO THE EXERCISE OF TRANSIENT PERSONAL JURISDICTION.

During the proceedings below, Jacobs raised two distinct grounds for the exercise of personal jurisdiction over SCL. One was so-called "transient" personal jurisdiction, *i.e.*, that a nonresident is amenable to jurisdiction in a state where he or she is physically present and personally served with process,[15] based on that fact that Michael Leven ("Leven"), SCL's Chief Executive Officer, was personally served with process in Las Vegas.[16] The other ground was "general" personal jurisdiction based on SCL's contacts with Nevada, as discussed below in Point III.[17] But SCL discusses only the latter basis for jurisdiction, ignoring the former, on the one-sentence pretext, buried in a footnote, that "SCL's Reply debunked [transient personal jurisdiction], and Jacobs did not raise this argument at the March 15, 2011 hearing on the Motion, and the District Court did not address the argument, implicitly rejecting it."[18]

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[15] *See, e.g., Burnham v. Superior Ct.*, 495 U.S. 604, 110 S.Ct. 2105, 109 L.Ed.2d 631 (1990); *Cariaga v. Eighth Judicial Dist. Ct.*, 104 Nev. 544, 762 P.2d 886 (1988).

[16] *See* Plaintiff's Opposition to Sands China Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Plaintiff's Failure to Join an Indispensable Party [**Appx. 3**], pp. 10-13 (citing, for example, *Northern Light Technology, Inc., v. Northern Lights Club*, 236 F.3d 57, 63-64 n.10 (1st Cir. 2001), *cert. denied* 533 U.S. 911, 121 S.Ct. 2263 (2001) (personal service on president of unincorporated association and foreign corporation in forum state when present as spectator in legal proceedings was sufficient to obtain personal jurisdiction over both businesses); *Oyuela v. Seacor Marine (Nigeria), Inc.*, 290 F.Supp.2d 713, 719-20 (E.D.La. 2003) (court acquired transient jurisdiction over Bahamian company by personal service on its Assistant Secretary in the forum; "*Burnham's* reassertion of the general validity of transient jurisdiction provides no indication that it should apply only to natural persons").

[17] *See* Plaintiff's Opposition to Sands China Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Plaintiff's Failure to Join an Indispensable Party [**Appx. 3**], pp. 13-21.

[18] Petition, p. 14, footnote 2.

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

An appellant whose brief fails to provide substantive argument and authority regarding an issue abandons that issue on appeal. *Wyeth v. Rowatt*, 126 Nev. Adv. Op. 44, 244 P.3d 765, 779 n.9 (2010); *Mainor v. Nault*, 120 Nev. 750, 777, 101 P.3d 308, 326 (2004). This rule applies to cursory assertions in footnotes such as that offered by SCL. *Browning v. State*, 120 Nev. 347, 361, 91 P.3d 39, 50 (2004). Whatever its reasons for ignoring the alternative basis for jurisdiction over it, SCL made a deliberate tactical decision to abandon that issue, and must accept the consequences.

Furthermore, SCL's rationale for ignoring the issue is entirely unfounded. SCL's boast that its reply in the district court "debunked" transient personal jurisdiction is as dubious as it is presumptuous. Some of the precedent it cites is no longer good law,[19] and most is inapplicable. *C.S.B. Commodities, Inc. v. Urban Trend (HK) Ltd.*, for instance, collects cases which have "come to the conclusion that service of process on an agent of a foreign corporation is insufficient, *by itself* to confer personal jurisdiction." 626 F.Supp.2d 837, 850 (N.D. Ill. 2009) (emphasis added).[20] Be that as it may, transient personal jurisdiction over SCL is *not* based on service upon Leven *by itself*, without additional circumstances. Leven did not simply happen, by fortuitous accident, to be in Nevada. He was not, say, the assistant treasurer of a small Nebraska company with no connection to Nevada, who was served with process while in the security line at McCarran Airport waiting to change flights to attend his aunt's funeral in San Diego. Leven resides in Las Vegas and, as the

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[19] For example, *Synthes (U.S.A.) v. G.M. dos Reis Jr. Ind. Com. de Equip. Medico*, 2008 U.S. Dist. LEXIS 22483, 2008 WL 789925 (S.D. Cal. Mar. 21, 2008) (cited in Defendant Sands China Ltd.'s Reply in Support of Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Plaintiff's Failure to Join an Indispensable Party [**Appx. 4**] 9:13-16) was reversed in *Synthes (U.S.A.) v. G.M. Dos Reis Jr. Ind. Com de Equip. Medico*, 563 F.3d 1285 (Fed. Cir. 2009).

[20] The *C.S.B. Commodities* decision typifies the handful of authorities cited in SCL's reply. *See, e.g., Golden Scorpio Corp. v. Steel Horse Saloon I*, 2009 U.S. Dist. LEXIS 35949, 2009 WL 976598, at *3 n.4 (D. Ariz. Apr. 9, 2009) (citing *C.S.B. Commodities*).

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

company's CEO, operates SCL from an office in Las Vegas.[21] As a practical matter, in other words, SCL's executive headquarters are located in Las Vegas. Moreover, Leven was served with process in that very building.[22] Do these additional facts make a difference? Probably so, but perhaps not. Either way, this much is certain: the question is at least *debatable*. Yet, by failing to provide analysis and authority addressing it, SCL has prevented this Court from considering the issue, and has thereby forfeited its right to have the issue resolved in its favor. SCL can hardly claim victory on an issue it refuses to discuss.

Nor is it an excuse that Jacobs' counsel did not raise the issue during the hearing. The scope of briefs invariably differs from that of oral argument. Briefs tend to be comprehensive, whereas oral argument, constrained by time limits and the flow of colloquy, tends to be selective and more focused.[23] If argument during hearings merely reiterated the points already addressed in writing, indeed, there would be little reason for oral argument. Consequently, a litigant who raises an issue in pre-hearing papers need not raise it again during oral argument in order for the issue to be considered on appeal. *Uhrich v. State Farm Fire & Cas. Co.*, 109 Cal.App.4th 598, 135 Cal.Rptr.2d 131, 140 (2003) (fact that liability insurer emphasized policy exclusions rather than lack of coverage during hearing on its summary judgment motion did not bar insurer from arguing lack of coverage on appeal because coverage issue was included in insurer's motion papers). This

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[21] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶¶ 8-9. The details of Leven's systematic work in Las Vegas on behalf of SCL are set forth in Part III, below.

[22] *See* Affidavit of R. David Groover [**Appx. 3, Exh. 15**].

[23] The hearing below illustrates this very point. Because it was SCL's motion, SCL's counsel argued first and, in so doing, challenged only general jurisdiction. Since Jacobs' counsel was responding to SCL's argument, he naturally directed his comments accordingly—but not, however, before stating his assumption that the district court had read, and thus was familiar with, Jacobs' more complete written opposition. *See* 3/15/11 Tr. [**Appx. 6**] 51:14-16.

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

Court, therefore, can consider the issue—or, rather, *could have* considered it had SCL bothered to address it.

Equally flawed, finally, is SCL's assumption that the district court, by not finding transient personal jurisdiction, rejected it. This illogic is both factually untenable and also legally immaterial. Factually, it is a non sequitur that ignores the well-settled judicial practice of avoiding unnecessary issues: if personal jurisdiction exists on one basis, there is no need to consider whether it can also be sustained, redundantly, on another.[24] Such was the situation here. Because the district court found general personal jurisdiction over SCL, there was no need to consider transient personal jurisdiction.

But let us assume, for argument's sake, that SCL's mistaken factual premise is correct, *i.e.*, that the district court implicitly rejected transient personal jurisdiction. Even so, that does not mean the issue is no longer germane on appeal, for "it is well established that this court may affirm rulings of the district court on grounds different from those relied upon by the district court." *Milender v. Marcum*, 110 Nev. 972, 977, 879 P.2d 748, 751 (1994).[25] This is true, in particular, when the district court reaches the right result *for the wrong reasons*. *Bongiovi v. Sullivan*, 122 Nev. 556, 575 n.44, 138 P.3d 433, 447 n.44 (2006); *Hotel Riviera, Inc. v. Torres*, 97 Nev. 399, 403,

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[24] *See, e.g., Pakootas v. Teck Cominco Metals, Ltd.*, 452 F.3d 1066, 1076 n.16 (9th Cir. 2006), *cert. denied*, 552 U.S. 1095, 128 S.Ct. 858, 169 L.Ed.2d 722 (2008) (because specific personal jurisdiction existed, there was no need to decide whether general personal jurisdiction also existed); *American Gen. Life Ins. Co. v. Rasche*, 273 F.R.D. 391, 396 n.1 (S.D. Tex. 2011) (same); *Bible Way Church of Our Lord Jesus Christ World Wide, Inc. v. Showell*, 578 F.Supp.2d 164, 168 n.2 (D.D.C. 2008) (because general personal jurisdiction existed, there was no need to decide whether specific personal jurisdiction also existed).

[25] *See, e.g., City of Las Vegas v. Lawson*, 126 Nev. Adv. Op. 52, 245 P.3d 1175, 1182 (2010); *Moon v. McDonald, Carano & Wilson, LLP*, 126 Nev. Adv. Op. 47, 245 P.3d 1138, 1140 n.5 (2010); *State ex rel. State Bd. of Equalization v. Bakst*, 122 Nev. 1403, 1416 n.40, 148 P.3d 717, 726 n.40 (2006)

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

632 P.2d 1155, 1158 (1981). If the record allowed (which it does not), this Court could concur with two of SCL's assertions—*i.e.*, (1) that the district court rejected transient personal jurisdiction, and (2) that no evidence exists to support general personal jurisdiction—yet conclude that, because the record supports transient personal jurisdiction despite the district court's implicit finding to the contrary, the district court correctly denied SCL's motion to dismiss, albeit for the wrong reason. Because transient personal jurisdiction is thus potentially germane to the disposition of SCL's writ petition, even under SCL's skewed view of the record, SCL had an obligation to present the issue before this Court, an obligation violated by SCL's premature declaration of victory.

III. AMPLE EVIDENCE EXISTS IN THE RECORD TO SUSTAIN A *PRIMA FACIE* FINDING THAT SCL IS SUBJECT TO GENERAL PERSONAL JURISDICTION IN NEVADA.

A. SCL Is Subject to General Personal Jurisdiction in Nevada If Its Activities in This State Were Either Substantial, or Continuous and Systematic.

To obtain personal jurisdiction over a non-resident defendant, a plaintiff must show (1) that the requirements of Nevada's long-arm statute (NRS 14.065) have been satisfied, and (2) that due process is not offended by the exercise of jurisdiction. *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Ct.*, 122 Nev. 509, 512, 134 P.3d 710, 712 (2006). However, since Nevada's long-arm statute extends to the outer reaches of due process,[26] these two tests may be collapsed into one; that is, whether the exercise of personal jurisdiction offends due process. *Trump v. Eighth Judicial Dist. Ct.*, 109 Nev. 687, 698, 857 P.2d 740, 747 (1993).

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[26] *See* NRS 14.065(1) ("[a] court of this state may exercise jurisdiction over a party to a civil action on any basis not inconsistent with the constitution of this state or the Constitution of the United States").

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

A defendant's contacts with Nevada satisfy due process if either general or specific personal jurisdiction exists. *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Ct.*, *supra*, 122 Nev. at 512, 134 P.3d at 712. General personal jurisdiction exists if the nonresident's activities in Nevada are so substantial, or so continuous and systematic, that it is deemed present in and thus subject to suit in Nevada, even though the claims are unrelated to those activities. *Firouzabadi v. First Judicial Dist. Ct.*, 110 Nev. 1348, 1352, 885 P.2d 616, 619 (1994). A court must also consider whether requiring the defendant to appear in the action comports with fair play and substantial justice; that is, whether it would be reasonable. *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Ct.*, *supra*, 122 Nev. at 513, 134 P.3d at 713. But a defendant who has purposely availed himself of benefits in the forum "'must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.'" *Levinson v. Second Judicial Dist. Ct.*, 103 Nev. 404, 408, 742 P.2d 1024, 1026 (1987) (quoting *Burger King v. Rudzewicz*, 471 U.S. 462, 477, 105 S.Ct. 2174, 2184, 85 L.Ed.2d 528 (1985)).

The disjunctive test for general personal jurisdiction—whether a nonresident's local activities are "substantial *or* continuous and systematic", *Firouzabadi v. First Judicial Dist. Ct.*, *supra*, 110 Nev. at 1352, 885 P.2d at 619 (emphasis added)—is meant to distinguish, respectively, significant activities from trivial ones, and habitual from sporadic ones, based upon duration, frequency and amount. This is common sense as well as common law. After all, the more a nonresident takes advantage of local markets, the more reasonable it becomes that he or she should expect to be subject to local courts.

What constitutes substantial or continuous and systematic activity is, of course, a fact-intensive issue whose outcome varies with the circumstances of each case. Clearly, though, where *all three* components of the test are met by a pattern of repeated transactions (thus

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

systematic) over many years (thus continuous) involving hundreds of thousands of dollars (thus substantial), general personal jurisdiction exists. *See, e.g., Theo. H. Davies & Co. v. Republic of Marshall Islands*, 174 F.3d 969, 974-75 (9th Cir. 1998) (defendant made repeated purchases from providers in the state over a period of roughly a decade, including three transactions in the amounts of $206,887.00, $265,800.00 and $1,187,612.00); *Michigan Nat'l Bank v. Quality Dinette, Inc.*, 888 F.2d 462, 466 (6th Cir. 1989) (defendant retained independent sales representative in state, conducted mail order solicitations of state businesses, and made more than 400 in-state sales totaling more $625,000 in 1986-87, including at least one sale each month during those two years). As will be discussed below, SCL's business activities in Nevada are systematic *and* continuous *and* substantial. Under these circumstances, there is nothing remotely unreasonable about requiring SCL to defend itself here.

B. Jacobs Introduced More Than Enough Evidence to Satisfy His *Prima Facie* Burden of Demonstrating that SCL's Activities in Nevada Are Substantial, Continuous and Systematic.

Where, as here, a pretrial motion challenging personal jurisdiction is decided without an evidentiary hearing, the plaintiff need only make a *prima facie* showing of jurisdictional facts, and the plaintiff's facts must be taken as true. *Tuxedo Int'l Inc. v. Rosenberg*, 127 Nev. Adv. Op. 2, 251 P.3d 690, 692 n.3 (2011); *Trump v. Eighth Judicial Dist. Ct.*, *supra*, 109 Nev. at 692-93, 857 P.2d at 743-44. Such, therefore, is Jacobs' minimal burden and the presumption of credibility to which his evidence is entitled in the present case.

Did Jacobs satisfy this burden? The district court so found, and the record so confirms—in abundance. For present purposes, there is no need to belabor all the evidence, for two aspects alone suffice to demonstrate, far beyond the threshold of mere *prima facie* proof, that SCL's activities in Nevada are substantial, continuous and systematic: (1) the operation of SCL's business

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

from its de facto executive headquarters in Las Vegas, and (2) SCL's systematic transfer of tens of millions of dollars to Las Vegas.[27]

1. *SCL Regularly Conducts Business from its De Facto Executive Headquarters in Las Vegas.*

Sheldon G. Adelson ("Adelson") is the Chairman of SCL's Board of Directors; Leven is its Chief Executive Officer and Executive Director.[28] Adelson and Leven both reside in Las Vegas, Nevada. They also work in Las Vegas; specifically, in the executive offices of the Venetian Resort-Hotel-Casino.[29] Adelson and Leven routinely conduct SCL business from there.[30] From the Las Vegas office, they recruited and interviewed executives to work for SCL, worked on marketing strategies to increase foot traffic to the retail mall areas in SCL properties, supervised the site design and development of two SCL projects, and negotiated the potential sale of other SCL properties.[31] In addition, while Jacobs was President of SCL, Adelson instructed him to withhold SCL business from certain banks unless they agreed to exert their influence with Macau officials to obtain various advantages for SCL, directed him to have investigative reports prepared on government officials and junket representatives, and ordered that SCL use the legal services of a

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[27] Omitted from this synopsis, though undoubtedly germane to the jurisdiction question, are SCL's numerous transactions with Nevada companies, SCL board meetings in Las Vegas, and the many SCL business meetings which Jacobs, during his tenure with the company, attended in Las Vegas. *See* Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶¶ 9, 11-13.

[28] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶¶ 6-7. (Leven was appointed SCL's Chief Executive Officer on July 23, 2010, after Jacobs' termination, and Executive Director of SCL's Board on July 27, 2010. Before then, he served as special advisor to SCL's Board. *Id.*).

[29] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶ 8.

[30] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶ 9.

[31] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶ 10.

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

specific Macau attorney—all of this, again, from Las Vegas.[32] By any standard, these activities were continuous and systematic.

SCL's efforts to explain away these facts are unavailing. A common refrain throughout the petition is SCL's insistence that "the *mere presence* of directors in the forum state is insufficient to establish general jurisdiction over a foreign corporation."[33] Perhaps, but that is not the situation here. Leven, first of all, was not simply a director; he also became SCL's Chief Executive Officer. More importantly, the significance of Adelson and Leven's role is not their *mere presence in* Las Vegas, but their *active and regular management of SCL from* Las Vegas.

SCL emphasizes that Adelson holds the position of a non-executive director, and that Leven was only a special advisor until after Jacobs' ouster.[34] But a court should examine the "economic reality" of a defendant's activities when determining whether a reasonable basis for general personal jurisdiction exists,[35] whereas SCL's focus upon Adelson's and Leven's *titles* promotes form over substance, a fallacy this Court has repeatedly refused to endorse.[36] In particular, this Court has wisely rejected the "artificial classification of [persons] by title" which SCL advocates.[37] It makes no difference what Adelson and Leven were *called*. What matters is what they *did*. And

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[32] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶ 10.

[33] Petition 22:18-20, 26:25-26, 37:8-9 (emphasis added).

[34] *See, e.g.*, Petition 34:10-11, 41:27-28.

[35] *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1331 (9th Cir. 1984).

[36] *See, e.g., Marcuse v. Del Webb Communities, Inc.*, 123 Nev. 278, 285, 163 P.3d 462, 467 (2007); *Brad Assocs. v. Nevada Fed. Fin. Corp.*, 109 Nev. 145, 149, 848 P.2d 1064, 1067 (1993).

[37] *See Borger v. Eighth Judicial Dist. Ct.*, 120 Nev. 1021, 1027-28, 102 P.3d 600, 605 (2004) (admissibility of expert testimony "is governed by the scope of the witness' knowledge and not the artificial classification of the witness by title") (quoting *Marshall v. Yale Podiatry Group*, 5 Conn. App. 5, 496 A.2d 529, 531 (1985)).

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

what they did, insofar as the evidence shows, is to micromanage SCL: they determined whom SCL should hire and retain as counsel, whom to favor with SCL's business and how to expand it, how to design SCL properties and under what terms to sell them, etc. This was hands-on, elbow-deep management at its most intrusive, all of it from Las Vegas.

Such detailed control contradicts SCL's assertion that Adelson's and Leven's activities are consistent with LVSC's status as a majority shareholder.[38] The objection is, moreover, immaterial even if true, for it acknowledges only *half* of the evidence; namely, that Adelson and Leven are directors of LVSC. Yes, but they are also directors (and, in Leven's case, CEO) of *SCL* as well. This defect in SCL's reasoning is dramatically apparent in its non sequitur that, because *LVSC* did not have the requisite control, Adelson's and Leven's actions while acting for *SCL* cannot be considered.[39] The entire line of argument, in any event, is misplaced because, as explained earlier, it attacks a straw man (the phantom notion of "coattails" jurisdiction) which Jacobs never asserted and is not before this Court.

The final arrow in SCL's quiver regarding Adelson's and Leven's activities likewise falls far short of the mark. SCL argues that activities *in* the forum are not enough to support general personal jurisdiction, that conduct must be directed *at* the forum.[40] But the law is otherwise. SCL relies on a case which involved a claim of *specific* rather than general personal jurisdiction.[41] Furthermore, in the excerpt cited by SCL, the court held that actions directed at the forum are

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38 *See* Petition 22:15-18.

39 Petition 15:28 to 16:4.

40 Petition 36:24-28.

41 *See Kumarelas v. Kumarelas*, 16 F.Supp.2d 1249, 1253 (D. Nev. 1998) ("plaintiff is not claiming that this court has general jurisdiction over defendant but rather that this court has specific jurisdiction over defendant").

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

sufficient, but not *necessary*, to support personal jurisdiction.[42] To the contrary, the remarks cited by SCL refer to the "purposeful availment" test for "minimum contacts" due process,[43] under which "a plaintiff may show *either* that a defendant purposefully availed himself of the privilege of conducting activities within the forum *or* that a defendant purposefully directed his activities toward the forum." *Pat Clark Sports, Inc. v. Champion Trailers, Inc.*, 487 F.Supp. 2d 1172, 1177 (D. Nev. 2007) (emphasis added). Note the half of this alternative test omitted by SCL: "activities *within* the forum".[44] That, of course, aptly describes SCL's de facto executive headquarters in Las Vegas.

2. *SCL Regularly Transfers Millions of Dollars to and from Las Vegas in Furtherance of Its Business.*

SCL periodically uses so-called "Affiliate Transfer Advices" to transmit its customers' funds electronically to LVSC or its affiliates in Las Vegas. The sums are significant (*e.g.*, USD $2,000,000.00; $2,080,100.00; $1,902,900.00).[45] All in all, these transfers total nearly USD *$70 million* over a three-year period.[46] During the hearing below, SCL's counsel defended these

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[42] *Kumarelas*, 16 F.Supp.2d at 1253 ("in tort cases, jurisdiction may attach if the defendant's conduct is aimed at or has an effect in the forum state").

[43] The purposeful availment prong of minimum contacts requires a qualitative evaluation of the defendant's contact with the forum state in order to determine whether "[the defendant's] conduct and connection with the forum State are such that [the defendant] should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980).

[44] *See, e.g., Gator.Com Corp. v. L.L. Bean, Inc.*, 341 F.3d 1072, 1079 (9th Cir. 2003), *dismissed on reh'g en banc*, 398 F.3d 1125 (9th Cir. 2005) (general jurisdiction existed because nonresident defendant "deliberately and purposefully availed itself, on a very large scale, of the benefits of doing business *within* the state") (emphasis added).

[45] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶ 14 & *id.* Exh. 14.

[46] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶ 14 & *id.* Exh. 14; **Appx. 5**.

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

transactions as "a good business practice" for the convenience of SCL customers, thereby "facilitating somebody who wants to gamble in Las Vegas and somebody who might want to gamble in China."[47] The legitimacy of these transactions is not in question here as that issue will be reviewed and decided elsewhere. Their intent, regularity, magnitude and destination, however, *are*.

The intent of these transactions is self-evident. As SCL's counsel admitted, they are meant to promote SCL's business interests. Keeping customers and financiers happy, after all, keeps them gambling, which, in turn, keeps the profits flowing into SCL's coffers. Hence these transactions may, indeed, be "a good business practice". And, because they are a *practice*, they are, by definition, regular.[48]

Their magnitude too is manifest: millions upon millions of dollars, transfer after transfer, adds up to serious money.

The *destination* of these funds is a topic that inspires SCL's impassioned flimflammery. SCL chides Jacobs for using an outdated "moniker".[49] According to SCL, these transactions are no longer called an "Affiliate Transfer Advice". Their new label is "Inter-Company Accounting Advice" to correct the misimpression that a transfer of funds from Macau to Las Vegas occurs. Instead, funds on deposit in Macau are merely "made available" in Las Vegas through a series of

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[47] 3/15/11 Tr. [**Appx. 6**] 57:23-25, 58:11, 58:20-24.

[48] *See* Affidavit of Jason M. Anderson [**Appx. 4**] ¶ 6 (inter-affiliate accounting adjustments occur every 30 days).

[49] Petition 37:27, 40:7-8.

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

debits and credits; the patron's account is debited in Macau and credited in Las Vegas.[50] Money is thus magically "available" in Las Vegas without leaving Macau.

This "moniker" rationale again exalts form over substance, but here the fallacy is aggravated by impudence on steroids. SCL's house-of-cards contrivance to mask the millions of Macau dollars "available" in Las Vegas exemplifies the verbal obfuscation denounced by courts as "antics with semantics".[51] It is an insultingly transparent charade which did not fool the district court and remains equally implausible on appeal. Its problem, in a nutshell, is that it fails the common sense "duck" test, *i.e.*, "if it walks like a duck, quacks like a duck, and swims like a duck, it's a duck."[52] Had SCL physically carted suitcases full of currency into Nevada, it presumably would not deny that a "transfer" of funds took place. Its quibble that the identical result was achieved by transmitting electronic blips rather than paper strips is a distinction without a difference, for entering electronic debits and corresponding credits is precisely how an electronic funds *transfer* occurs. *See* 15 U.S.C. § 1693a(6); *Brooke Credit Corp. v. Buckeye Ins. Ctr.*, 563 F.Supp.2d 1205, 1207 (D. Kan. 2008) (franchisor performed accounting services for franchisees, which included making "electronic funds transfers *to credit and debit various accounts*") (emphasis added). SCL's own affidavits admit that the debit-credit differentials "are settled by wire *transfer*";[53] and, during

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[50] *See* Petition 40:22-28.

[51] *Brown v. Lumbermens Mut. Cas. Co.*, 285 N.C. 313, 204 S.E.2d 829, 833 (1974).

[52] *See, e.g., Lake v. Neal*, 585 F.3d 1059, 1059 (7th Cir. 2009), *cert. denied*, __ U.S. __, 130 S.Ct. 3296, 176 L.Ed.2d 1187 (2010); *People v. Monjaras*, 164 Cal.App.4th 1432, 79 Cal.Rptr.3d 926, 929 (2008). As this Court succinctly observed in *Wolff v. Wolff*, 112 Nev. 1355, 1363, 929 P.2d 916, 921 (1996), "[c]alling a duck a horse does not change the fact it is still a duck."

[53] Affidavit of Jason M. Anderson [**Appx. 4**] ¶ 8 (emphasis added).

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

oral argument, even SCL's counsel stated that the money "is transferred" to and from Las Vegas.[54] These transfers constitute a significant forum contact when considering the jurisdiction question. *See, e.g., Provident Nat. Bank v. California Federal Sav. & Loan Ass'n*, 819 F.2d 434 (3d Cir. 1987).

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

SCL also insists that *it* did not transfer the funds, but instead its subsidiary, Venetian Macau Limited ("VML") performed these actions. On its face, this upstream transfer from SCL's subsidiary to SCL's parent, which somehow conveniently leapfrogs over the intermediary (SCL itself), exhibits all the earmarks of simply another none-too-subtle subterfuge meant to disguise the substance of the transaction.[55] Furthermore, the objection mistakes the burden of proof. As

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[54] 3/15/11 Tr. [**Appx. 6**] 57:20-21.

[55] SCL explains it on the ground that VML, as the gaming subconcessionaire, is the sole entity allowed to deal with patrons' funds under Macau law. *See* Petition 40:19-20. Perhaps, but creating superficial appearances to conceal the reality of transactions, in order to circumvent government regulations while seeming to obey them, is a time-honored artifice in the corporate world.

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

noted earlier, Jacobs need only make a *prima facie* showing of facts to support personal jurisdiction. *Trump v. Eighth Judicial Dist. Ct.*, *supra*, 109 Nev. at 692-93, 857 P.2d at 743-44. Having been SCL's President and CEO, Jacobs has attested that *SCL* transfers the funds to Las Vegas.[56] This, for present purposes, is dispositive, for it is more than enough to establish, *prima facie*, that SCL does, in fact, transfer these funds to Las Vegas. Hence it makes no difference that SCL's witnesses state otherwise; such a conflict merely goes to the *weight* of the evidence, an inquiry that is premature at the present stage of the case.

SCL, in short, methodically moves millions of dollars to Las Vegas to ingratiate itself with its patrons. Bear in mind, moreover, that this trans-Pacific financial current flows both ways:[57] funds are also transferred *from* Las Vegas in order to facilitate gambling in Macau.[58] In this fashion, SCL *doubly* benefits from its contacts with Las Vegas: by transferring funds *to* Las Vegas, it keeps its patrons happy; by transferring funds *from* Las Vegas, it keeps them solvent. Both streams, of course, lead to the same end, *i.e.*, lining SCL's pockets. There is nothing necessarily sinister in this. It may well be, as SCL's counsel correctly noted, simply a good business practice. But to deny, in the face of this practice, that SCL's contacts with Nevada are substantial, continuous and systematic is utter nonsense.

The cases cited by SCL do not support a contrary conclusion. One of them is no longer good law,[59] and the others are factually distinguishable. *Fields v. Ramada Inn, Inc.*, 816 F.Supp.

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[56] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶ 14.

[57] Affidavit of Jennifer Ono [**Appx. 4**] ¶ 6.

[58] 3/15/11 Tr. [**Appx. 6**] 57:24-25.

[59] *Romann v. Geissenberger Mfg. Corp.*, 865 F.Supp. 255 (E.D. Pa. 1994) (cited at Petition 38:19-21), was abrogated by the court that originally decided it. *See Eagle Traffic Control, Inc. v.*

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

1033 (E.D. Pa. 1993), for example, held that merely advertising in the forum, without more, is an insufficient contact. *See Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119, 1126 (W.D. Pa. 1997) (*Fields* was inapplicable because the defendant in *Zippo* "has done more than advertise" in the forum). SCL's contacts with Nevada include connections far more entrenched and substantial than simple advertising from afar—not only its financial transactions, but also its use of Las Vegas facilities as its executive headquarters, discussed earlier, for "it is the cumulative significance of all the activities conducted in the jurisdiction rather than the isolated effect of any single activity that is determinative." *Abbott v. Second Judicial Dist. Ct.*, 90 Nev. 321, 324, 526 P.2d 75, 76 (1974).

Inapplicable for the same reason is *Arroyo v. Mountain School*, 68 A.D.3d 603, 892 N.Y.S.2d 74 (2009), which involved circumstances radically dissimilar from those in the present case. *Arroyo* was an action against a Vermont school for injuries sustained on the school premises. The plaintiff relied on the fact that the school had approximately $14 million invested with New York firms as a basis for personal jurisdiction in New York. The court disagreed. Noting New York's unique role as a global financial nerve-center, and the school's lack of other substantial contacts with New York, it held that "[t]he investment of money in New York cannot alone be considered a form of 'doing business' for the purpose of [New York's long-arm statute]; if it were, then almost every company in the country would be subject to New York's jurisdiction." 892 N.Y.S.2d at 75 (internal quotation marks omitted). The latter rationale, and the facts which engendered it, have no pertinence here.

James Julian, Inc., 933 F.Supp. 1251, 1256 (E.D. Pa. 1996).

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

C. SCL Has Not Made a Plausible Showing, Much Less a Compelling One, that Other Considerations Render the Exercise of Jurisdiction Unreasonable.

SCL correctly identifies the factors considered in determining whether personal jurisdiction is reasonable: (1) the extent of a defendant's purposeful contacts with the forum, (2) the burden on the defendant in defending in the forum, (3) the extent of any conflict with the sovereignty of the defendant's state, (4) the forum's interest in adjudicating the dispute, (5) the most efficient judicial resolution of the controversy, (6) the importance of the forum to the plaintiff's interest in convenient and effective relief, and (7) the existence of an alternative forum. *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1132 (9th Cir. 2003). But there is no justifiable basis for SCL's attempts to stretch the facts in order to tilt these criteria in its favor.

The blanket assertion, regarding the first criterion, that "SCL has *no* purposeful contacts with Nevada"[60] is flagrantly false. As demonstrated above, SCL's purposeful contacts with Nevada are persistent, extensive and substantial.

Nor will SCL be unduly burdened by litigating in Nevada. Its two top executives live and work here, and it regularly operates its business from here. Nevada can hardly be a congenial place to conduct business and, at the same time, an onerous place to defend actions arising from that business.

SCL invokes the specter of a conflict with Hong Kong sovereignty because of Hong Kong's interest in governing companies whose stock is listed on the Hong Kong Stock Exchange. But this supposed conflict is illusory. The controversy here is not a securities fraud claim, but a private contract dispute. In this context, it makes no difference where SCL's stock happens to be listed.

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[60] Petition 41:22-23 (emphasis added).

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

Hong Kong thus has little interest in the matter. The sovereignty argument, moreover, cuts both ways. SCL, after all, is not the sole defendant. LVSC, a *Nevada* corporation, is also a defendant. Nevada, accordingly, has at least as great an interest as Hong Kong, if not greater.

That, in turn, implicates the fourth criterion, *i.e.*, the forum's interest in deciding the dispute. Nevada has a vital interest in the conduct of its gaming licensees, of which LVSC is one. Nevada's gaming laws, moreover, and thus its interests extend to LVSC's foreign gaming operations in Macau, as SCL itself has admitted.[61] Jacobs has raised gravely serious questions regarding the conduct of LVSC, SCL and their senior management. Clearly, therefore, Nevada has a paramount interest in the adjudication of this dispute.

Nevada is also the most efficient forum to resolve this dispute, for the bulk of Jacobs' claims stem from his contractual relationships with Nevada-based LVSC. It is also the most convenient forum for Defendants since SCL has its own substantial ties to the State and LVSC is headquartered here. Although Jacobs' stock option agreement with SCL includes a Hong Kong choice-of-law provision, SCL has not identified any substantive conflict between Nevada and Hong Kong law.[62] Even if such a conflict existed, moreover, Nevada courts are perfectly capable of applying Hong Kong law. *See* NRCP 44.1. Hence there is "no connection between the parties' choice-of-law provision and the issue of reasonableness" because "a court can exercise jurisdiction, and at the

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[61] *See* SCL prospectus [**Appx. 3, Exh. 3**], p. 43.

[62] SCL's discussion of *procedural* differences, such as the absence of a jury under Hong Kong law (*see* Petition 42:24-27) misstates the scope and effect of the choice-of-law provision, which recites that *interpretation of the agreement* is to be governed by Hong Kong law. *See* **Appx. 2 (Part 2), Exh. C**] ¶ 14. It does not, and legally could not, bind the interpreting court to adopt the *judicial procedures* of Hong Kong law. To the extent SCL's Petition also takes a passing swipe at the substantive viability of Jacobs' contract claim against SCL (*see* Petition at 12:16 – 13:4), Jacobs would note that the district court denied SCL's subsequent efforts to have this claim dismissed. *See* Order Denying SCL's Motion to Dismiss Plaintiff's Second Cause of Action dated 7/6/11.

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

same time, apply the law of another [jurisdiction]." *Card Player Media, LLC v. The Waat Corp.*, 2009 WL 948650, at *4 (D. Nev. Apr. 6, 2009). The district court's ability to apply choice-of-law rules, indeed, further undermines SCL's misplaced emphasis on Hong Kong sovereignty, for any conflicting sovereignty interests can be accommodated through choice-of-law rules, thus rendering that factor one of little importance in assessing reasonableness. *Allstar Marketing Group, LLC v. Your Store Online, LLC*, 666 F.Supp.2d 1109, 1125 (C.D. Cal. 2009).

Because Nevada is the most efficient forum to resolve this dispute, having the Nevada courts adjudicate it is also important to Jacobs' interest in convenient and effective relief. Otherwise, as SCL would undoubtedly prefer as a tactical coup of attrition, Jacobs would be forced to litigate his claims on the other side of the globe. Finally, SCL acknowledges that Nevada has a competent legal system with a strong interest in the controversy.[63]

On this record, SCL cannot satisfy, and has not satisfied, its burden of proving that Nevada's exercise of personal jurisdiction over it is unreasonable.

D. Jacobs Has Requested the Opportunity to Conduct Jurisdictional Discovery, If Necessary.

Courts have frequently held that the party opposing a jurisdictional challenge is entitled to conduct discovery regarding jurisdiction "where pertinent facts bearing on the question of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary." *Laub v. U.S. Dept. of Interior*, 342 F.2d 1080, 1093 (9th Cir. 2003). Jacobs obviously agrees with the district court that he has already satisfied his burden of making a *prima facie* showing of jurisdiction over SCL based on the evidence adduced to date. If, however, this Court determines that additional information on SCL's contacts with Nevada is necessary to determine whether the

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[63] *See* Petition 43:4-6.

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

district court may properly assert jurisdiction over the company, Jacobs hereby renews his request that he be given the opportunity to conduct jurisdictional discovery.[64]

CONCLUSION

For the reasons set forth above, this Court should deny SCL's writ petition.

DATED this 25th day of July, 2011.

Respectfully submitted,

CAMPBELL & WILLIAMS

By _____
DONALD J. CAMPBELL, ESQ. (#1216)
J. COLBY WILLIAMS, ESQ. (#5549)
700 South Seventh Street
Las Vegas, Nevada 89101
Tel. (702) 382-5222
Fax. (702) 382-0540

Attorneys for Real Party in Interest
Steven C. Jacobs

[64] *See* Plaintiff's Opposition to Sands China Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Plaintiff's Failure to Join an Indispensable Party [**Appx. 3**], p. 21.

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of July, 2011, I served via hand delivery and a true and correct copy of the foregoing **Answer of Real Party in Interest Steven C. Jacobs to Petition for Writ of Mandamus, in the Alternative, Writ of Prohibition** to the following:

The Honorable Elizabeth Gonzalez
Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Glaser Weil Fink Jacobs Howard Avchen & Shapiro, LLP
Patricia Glaser, Esq,
Stephen Ma, Esq.
3763 Howard Hughes Parkway, Suite 300
Las Vegas, NV 89169

Attorneys for Defendant Sands China Ltd.

Holland & Hart, LLP
J. Stephen Peek, Esq.
Justin C. Jones, Esq.
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Attorneys for Defendant Las Vegas Sands Corp.

Nancy A. Gregory
An employee of Campbell & Williams

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

IN THE SUPREME COURT

OF THE STATE OF NEVADA

SANDS CHINA LTD.,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT, in and for the County of Clark, STATE OF NEVADA, and the HONORABLE ELIZABETH GONZALEZ, District Judge,

Respondents,

and,

STEVEN C. JACOBS,

Real Party in Interest.

Case No.: 58294

(D.C. No.: A-10-627691-C)

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION

GLASER WEIL FINK JACOBS
HOWARD, AVCHEN & SHAPIRO LLP

Patricia L. Glaser, (Pro Hac Vice Admitted)
Andrew D. Sedlock, State Bar No. 9183
3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169

Attorneys for Petitioner

CAMPBELL & WILLIAMS

Donald J. Campbell, State Bar No. 1216
J. Colby Williams, State Bar No. 5549
700 South Seventh Street
Las Vegas, Nevada 89101

Attorneys for Real Party in Interest

TABLE OF CONTENTS

stock and that SCL rejected his demand and thereby breached a July 7, 2010 letter from SCL to Jacobs (the "Stock Option Grant Letter"). The Stock Option Grant Letter provides that it is governed by Hong Kong law.

SCL moved to dismiss for lack of personal jurisdiction. In ruling that SCL must answer in Nevada for a claimed breach in Macau of an alleged contract governed by Hong Kong law, the District Court failed to observe the requirements for establishing either specific or general jurisdiction over SCL. The District Court did not make jurisdictional findings. Instead, the District Court judge merely said at the conclusion of the hearing on SCL's Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, for Plaintiff's Failure to Join a Necessary Party (the "Motion") that "there are pervasive contacts with the State of Nevada by activities done in Nevada by board members of [SCL]."

The District Court thus accepted Jacobs' argument that actions taken in Nevada by the non-executive Chairman of SCL's Board of Directors, Sheldon Adelson ("Adelson"), and by a special advisor to SCL's Board of Directors, Michael Leven ("Leven"), demonstrated such control by Las Vegas Sands Corp. ("LVSC") over SCL that those actions should be considered in assessing whether SCL is subject to general jurisdiction in Nevada. The District Court further concluded that the alleged actions of Adelson and Leven, who also are officers and directors of LVSC, a Nevada corporation which is SCL's majority shareholder, were sufficient to satisfy the applicable due process standards in exercising jurisdiction over SCL.

In so ruling, the District Court did not specify the legal standard it applied. This Court has had only one occasion to address directly the issue of whether (and, if so, when) a parent company's exercise of control over a subsidiary rises to such a level that the domestic entity's contacts with Nevada should be considered in determining whether general personal jurisdiction exists over the foreign affiliate. *See MGM Grand, Inc. v. Eighth Judicial Dist. Court*, 107 Nev. 65 (1991). Further, in the *MGM Grand* case, this Court limited its discussion to two sentences, as follows:

> In addition, our review of the record convinces us that Disney exercises no more control over its subsidiaries than is appropriate for the sole shareholder of a corporation. Thus, Disney's subsidiaries' contacts may not be counted for jurisdictional purposes.

Id. at 69 (citing *Hargrave v. Fireboard Corp*, 71 0 F.2d 1154, 1159-61 (5th Cir. 1983).

This Court, in *MGM Grand*, did not expressly address or analyze the question of whether a showing of alter ego is required before a corporate affiliate's contacts with Nevada properly are considered for jurisdictional purposes.

As will be discussed below, the prevailing test is that the contacts of a domestic parent (or other corporate affiliate) should not be considered (or "counted") in analyzing whether general jurisdiction exists over a foreign subsidiary (or other corporate affiliate) unless a showing of alter ego has been made. SCL respectfully submits that the law of Nevada should be clarified to employ that test, which Jacobs did not even attempt to meet.

Moreover, even employing a more lenient alternative standard based on whether the control exercised by the parent over the subsidiary is disproportionate to the parent's financial interest in the subsidiary, the District Court was compelled by law to dismiss SCL for lack of personal jurisdiction.

Finally, the law of Nevada also should be clarified to hold that the mere presence of directors in Nevada is insufficient to establish general jurisdiction over a foreign corporation.

Here, (i) an important issue of law requires clarification, (ii) considerations of sound judicial economy and administration militate in favor of granting this petition, and (iii) SCL has no "plain, speedy or adequate remedy" to challenge the District Court's ruling. For these reasons, SCL respectfully requests that either (a) a Writ of Mandamus be issued under the seal of this Court directing the Eighth Judicial District Court of the State of Nevada in and for the County of Clark and the Honorable Elizabeth Gonzalez to reverse the Order entered on April 1, 2011 and dismiss the action against SCL for lack of personal jurisdiction or (b) a Writ of Prohibition be issued under the seal of this Court to the Eighth Judicial District Court of the State of Nevada in and for the County of Clark and the Honorable Elizabeth Gonzalez prohibiting the District Court from exercising personal jurisdiction over SCL.

II.

ISSUE PRESENTED

Whether a Writ of Mandamus or Writ of Prohibition should issue against the respondent District Court and Judge prohibiting them from exercising personal jurisdiction over SCL, a foreign entity which has no substantial or continuous and systematic contacts with the State of Nevada, but which is a subsidiary – not an alter ego – of LVSC, a Nevada corporation which exercises a degree of control over SCL commensurate with LVSC's ownership interest in SCL.

III.

RELIEF SOUGHT

1. That a Writ of Mandamus be issued under the seal of this Court directing the Eighth Judicial District Court of the State of Nevada in and for the County of Clark and the Honorable Elizabeth Gonzalez to reverse the Order entered on April 1, 2011 and dismiss the action against SCL for lack of personal jurisdiction;

2. That a Writ of Prohibition be issued under the seal of this Court to the Eighth Judicial District Court of the State of Nevada in and for the County of Clark and the Honorable Elizabeth Gonzalez prohibiting the District Court from exercising personal jurisdiction over SCL.

IV.

STATEMENT OF FACTS

1. SCL was incorporated in the Cayman Islands on July 15, 2009 and maintains its principal place of business in Macau, with additional operations in Hong Kong. *See* true and accurate copy of the Global Offering Document, pp. 75-76, attached as Exhibit A to the Motion.

2. SCL is a publically traded company, the stock of which is listed on HKEx. SCL completed its initial public offering on November 30, 2009. *Id.* at p. 1.

3. SCL subsidiaries own and operate (excluding the Four Seasons Hotel) the Sands Macao, The Venetian Macao-Resort-Hotel ("The Venetian Macao"), and the integrated resort which includes (i) the Four Seasons Hotel; (ii) the Plaza Casino; (iii) the Paiza mansions, the Shoppes at Four Seasons, restaurants and spa; and (iv) a luxury apartment-hotel tower (the "Plaza Macao"). *Id.* at 75. The gaming areas in the Sands Macao, The Venetian Macao, and the Plaza Macao are

operated by an SCL subsidiary, Venetian Macau Limited ("VML"), which was granted a subconcession to operate casino games, as approved and authorized by the Macau government. *Id.* at 75-93.

4. During the relevant time period, SCL's Board of Directors (the "Board") was comprised of eight (8) directors, including three independent non-executive directors with no prior relationship to SCL's majority shareholder; two executive (or management) directors; and three non-executive (or outside) directors who also served on the board of directors of SCL's majority shareholder, LVSC. *Id.* at pp. 227-232.

5. LVSC, a Nevada corporation, is SCL's majority shareholder by virtue of indirectly owning approximately seventy percent (70%) of SCL's issued stock. *Id.* at pp. 211-216.

6. SCL was named as a defendant in a lawsuit brought by Jacobs.

7. Jacobs, who neither is nor ever was a Nevada resident, filed his complaint (the "Complaint") in the Eighth Judicial District Court of Nevada, County of Clark, against SCL and LVSC on October 20, 2010. A true and accurate copy of the Complaint filed by Jacobs is attached hereto as **Appendix 1**.

8. The Complaint asserted only one cause of action against SCL, for breach of contract. The Complaint alleged only one contract between Jacobs and SCL, namely, i.e., the Stock Option Grant Letter, that provided for a grant to Jacobs of an option to purchase 2.5 million shares of SCL stock, which grant was the subject of a May 11, 2010 "Grant of Share Options" announcement by the SCL board of directors pursuant to applicable rules of the HKEx. *See* Complaint at ¶ 43. True and correct copies of the Stock Option Grant Letter and the Grant of Share Options are attached to the Motion as Exhibits E and F, respectively.

9. The Stock Option Grant Letter states that it is governed by and construed in accordance with Hong Kong law. *See* Exhibit E to the Motion.

10. The Stock Option Grant Letter expressly conditioned Jacobs' ability to exercise the option to purchase SCL stock on Jacobs' continued employment for SCL, and automatically terminated any such rights if Jacobs' employment for SCL was terminated before any portion of the option vested. *Id.*

11. Jacobs was terminated from his position as President and CEO of SCL on or about July 23, 2010, well before January 1, 2011, the date on which the first tranche of the option provided for by the Stock Option Grant Letter was eligible to vest. *See* Complaint at ¶¶ 30, 43; *see also* Exhibit E to the Motion.

12. SCL responded to Jacobs' Complaint on December 22, 2010 by filing the Motion[1]. A true and accurate copy of the Motion, along with the supporting exhibits and affidavits, is attached hereto as **Appendix 2**.

13. In its Motion, SCL argued that the District Court lacked personal jurisdiction over SCL due to its lack of contacts with the State of Nevada. *Id.* at pp 7-12.

14. In particular, SCL argued that because Jacobs in his claim for breach of contract did not (and could not truthfully) allege that SCL had performed any actions in Nevada, or affected Nevada in any way, the District Court had no basis to assert specific personal jurisdiction over SCL. *Id.* at pp 9-11.

15. Additionally, SCL argued that because Jacobs could not demonstrate that SCL had "substantial or continuous and systematic" contacts with Nevada, Jacobs therefore could not make the required *prima facie* showing that general personal jurisdiction exists over SCL. *Id.* at 11-12.

16. In particular, SCL argued that Jacobs could not make a *prima facie* showing that SCL had sufficient "substantial or continuous and systematic" contacts with Nevada, as SCL is party to a reciprocal Non-Competition Deed (the "Deed") with LVSC which limits SCL's business activities to specific territories in Asia, is further required by The Rules Governing the Listing of Securities of the HKEx (the "HKEx Rules") to conduct its business in Macau independently and at arm's-length with LVSC, and also maintains a separate and independent Board, executive management team, and financial operations. *Id.*; *see also* Global Offering Document at pp. 213-216.

17. Thus, because SCL demonstrated that it was not the alter ego of LVSC, the District Court could not consider LVSC's actions incident to parental control or supervision over SCL to determine general jurisdiction over SCL. *Id.*

[1] LVSC also filed a Motion to Dismiss for Plaintiff's Failure to Join a Necessary Party on December 22, 2010.

18. Jacobs filed his opposition to the Motion (the "Opposition") on February 9, 2011. A true and accurate copy of the Opposition, along with the supporting exhibits and affidavits, is attached hereto as **Appendix 3**.

19. In his Opposition (and at the hearing on the Motion), Jacobs did not address SCL's arguments regarding specific personal jurisdiction, effectively conceding that the District Court had no basis to apply specific jurisdiction principles to SCL. *See gen.* Opposition.

20. Jacobs also did not dispute the facts set forth in SCL's Motion regarding its separate business operations, and did not otherwise argue that SCL was the alter ego of LVSC. *Id.*

21. Instead, Jacobs argued that actions taken in Nevada by the non-executive Chairman of SCL's Board, Adelson, and by a special advisor to SCL's Board, Leven, constituted "continuous and systematic contacts [by SCL] in the forum." *Id.* at p. 2, lines 15-16[2].

22. Adelson also served as Chairman of the Board, Chief Executive Officer and Treasurer of LVSC, and Leven also served as President and Chief Operating Officer and director of LVSC. Each held his respective position as a member of, and special advisor to, SCL's Board by virtue of LVSC's status as SCL's majority shareholder. *See* Global Offering Document, pp. 227-232.

23. SCL filed its reply brief in support of the Motion (the "Reply") on February 28, 2011. A true and accurate copy of the Reply, along with the supporting exhibits and affidavits, is attached hereto as **Appendix 4**.

24. SCL's Reply demonstrated that the majority of the allegations on which Jacobs relied in an attempt to make the required *prima facie* showing to justify the exercise of general jurisdiction over SCL were based on some aspect of SCL's subsidiary relationship with LVSC, and that the actions allegedly taken in Nevada by Adelson and Leven were directed to SCL in Macau, and were

[2] Jacobs also argued that because he served the summons and complaint upon SCL's acting CEO in Nevada, the "transient jurisdiction" principles set forth in *Burnham v. Superior Court*, 495 U.S. 604 (1990) allowed the District Court to properly exercise personal jurisdiction over SCL without a "minimum contacts" analysis. *See* Opposition at pp. 10-13. The argument in SCL's Reply debunked this proposition, and Jacobs did not raise this argument at the March 15, 2011 hearing on the Motion, and the District Court did not address this argument, implicitly rejecting it.

not actions by SCL directed at Nevada (and thus not invoking the benefits and protections of the state with the resulting expectation of being haled into court in Nevada). *See gen.* Reply.

25. In addition, in support of his general jurisdiction argument, Jacobs alleged that SCL participated in an intra-corporate bookkeeping system that made casino player funds available in either Macau or Las Vegas. In fact, SCL showed by way of affidavits, that SCL was not a party to the process that Jacobs erroneously suggested entailed the actual transfer of funds, and that the entity in Macau that was a party to the (bookkeeping) process was VML, the casino operator that holds the Macau gaming subconcession. As SCL demonstrated without contradiction, the funds were not funds of SCL, the funds were not even funds of VML, but were funds of customers of VML, and the funds were not transferred. Instead, customer funds that remained in Macau were made available to VML customers in Las Vegas by VML making an accounting entry of a payable to Venetian Casino Resort, LLC ("VCR") and VCR making an accounting entry of a receivable from VML. Because SCL was not a party to any of these activities, Jacobs' contention had nothing to do with an assertion of jurisdiction over SCL. *Id.* at pp. 5-8; *see also* Affidavits of Jennifer Ono, Patricia L. Green, and Jason M. Anderson (the "IAA Affidavits") attached to the Reply.

26. The hearing for SCL's Motion was held on March 15, 2011, at which counsel for Jacobs and SCL presented argument regarding general jurisdiction and Jacobs' counsel proffered demonstrative aids for the District Court's review (the "Hearing Exhibits"). *See* true and accurate copies of Jacobs' Hearing Exhibits, attached hereto as **Appendix 5.**

27. After the arguments had been presented, Judge Gonzalez denied the Motion and stated that "[h]ere there are pervasive contacts with the state of Nevada by activities done in Nevada by board members of Sands China," thereby ruling that the District Court did have personal jurisdiction over SCL. *See* a true and accurate copy of the transcript of the March 15, 2011 hearing (the "Transcript"), p. 62, lines 3-5, attached hereto as **Appendix 6**.

28. A true and accurate copy of the Order denying the Motion is attached hereto as **Appendix 7**.

29. However, as demonstrated herein, the respondent District Court did not have and does not have jurisdiction over SCL, because the actions of Adelson and Leven, who on occasion

discharged their duties respectively as a member of and special advisor to SCL's Board from their LVSC offices in Nevada, cannot be considered in the jurisdictional analysis because there was no evidence of an "alter ego" relationship between LVSC and SCL or, alternatively, a degree and type of control exercised by LVSC over SCL in excess of what would be expected from a 70% owner. (Moreover, even if the actions of Adelson and Leven properly were considered in the jurisdictional analysis, they were actions directed from Nevada to Macau, not actions by or for SCL directed to Nevada, and therefore cannot serve as a basis for general jurisdiction).

30. The respondent District Court and Judge Gonzalez will proceed to try the action now pending in the court below and render judgment unless prohibited and restrained by a writ of mandamus and/or prohibition issued by this Court. SCL has no plain, speedy or adequate remedy by appeal or otherwise for the reason that no appealable order has been entered by the District Court.

V.

POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRITS OF MANDAMUS AND PROHIBITION

A. INTRODUCTION

In ruling on SCL's Motion, the District Court was required to determine if its exercise of personal jurisdiction satisfied the due process requirements of the Nevada Constitution and the U.S. Constitution.

Satisfaction of the due process requirements associated with personal jurisdiction occurs when the non-resident defendant has "certain minimum contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *See Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *see also Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). This is a two-part test which requires evaluating whether the requisite minimum contacts are present and whether the exercise of jurisdiction is fair. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985). Personal jurisdiction may be either "general" or "specific," and the threshold for satisfying the requirements of general jurisdiction is substantially higher than the requirements for specific jurisdiction. *See* James Wm. Moore, *Moore's*

Federal Practice and Procedure § 1067.5, at 517 (3d ed. 2009) (stating that the requirements to establish general jurisdiction are higher and foreign defendant's contacts must be sufficiently continuous and systematic to justify asserting jurisdiction over the defendant based on activities that did not occur in the forum state).

Due process is a central principle in American constitutional jurisprudence, and establishes a framework for the protection and enforcement of private rights in a manner that does not violate traditional notions of fair play and substantial justice.

If adopted by Nevada's district courts, Judge Gonzalez's ruling that SCL is subject to general jurisdiction in Nevada will allow litigants such as foreign nationals or traveling businesspersons who have never set foot in the United States, let alone Nevada, to sue foreign corporations in Nevada's state courts for any matter whatsoever, including for example a personal injury sustained in or a dispute over a bill from a hotel operated overseas by a foreign corporation, provided only that the foreign corporation is a subsidiary of a controlling parent corporation domiciled in Nevada. Thus, the issues presented in this case are of critical importance to Nevada's judiciary and Nevada's businesses, including the increasing number of Nevada companies, like LVSC, with foreign subsidiaries.

In the present case, SCL demonstrated that it lacks any contacts with Nevada, apart from its ongoing relationship with its majority shareholder, LVSC. Jacobs' jurisdictional allegations were nothing more than actions directed at SCL in Macau taken in Las Vegas by a non-executive director of and a special advisor to the SCL Board, both of whom are LVSC officers and directors who hold their SCL Board and advisory positions due to LVSC's status as majority shareholder of SCL.

The District Court was compelled by law to dismiss SCL for lack jurisdiction, and by continuing to improperly exercise personal jurisdiction over SCL it has violated the applicable due process standards and exceeded the scope of its authority. For the reasons set forth below, SCL therefore submits that extraordinary relief in the form of a writ of mandamus and/or prohibition should be granted in this case.

B. PETITIONER IS ENTITLED TO A WRIT DIRECTING THE DISTRICT COURT TO DISMISS THE PENDING ACTION FOR LACK OF PERSONAL JURISDICTION

a. PROPRIETY OF EXTRAORDINARY RELIEF

Either a writ of mandamus or prohibition may be used to challenge a denial of a motion to dismiss for lack of personal jurisdiction. *See* NRS 34.160 and 34.320. SCL acknowledges that this Court will not exercise its discretion to consider writ petitions that challenge district court orders denying motions to dismiss except in certain circumstances, including where (i) an important issue of law requires clarification, (ii) considerations of sound judicial economy and administration militated in favor of granting such petitions, and (iii) there are no disputed factual issues and, pursuant to clear authority under a statute or rule, the district court is obligated to dismiss an action. *See Smith v. Eighth Judicial Dist. Court*, 113 Nev. 1343, 1346 (1997). The interests of judicial economy, which inspired the *State ex rel. Department of Transportation v. Thompson* rule, will remain the primary standard by which this Court exercises its discretion. *See* 99 Nev. 358 (1983).

In this case, each of these considerations (and others) weigh heavily and uniformly in favor of granting the writs sought.

i. SCL is Entitled to a Writ of Mandamus

A Writ of Mandamus is proper when there is no plain, speedy, or adequate remedy in the ordinary course of law or when this Court must correct an arbitrary or capricious abuse of discretion. *See Barnes v. Eighth Judicial Dist. Court*, 103 Nev. 679 (1987). This Court has broad discretion to decide whether to consider a petition for a writ of mandamus, and may entertain such petitions "when judicial economy and sound judicial administration militate in favor of writ review." *See Scarbo v. Eighth Judicial Dist. Court*, 125 Nev. Adv. Rep. 12, 14 (2009). Additionally, this Court may exercise its discretion and entertain a writ petition when an important issue of law requires clarification, or to compel the lower court or tribunal to take an act that the law requires. *Id.*; *see also We the People Nevada ex rel. Angle v. Miller,* 124 Nev. Adv. Rep. 75, 79 (2008).

1. SCL has no "plain, speedy, or adequate remedy" to challenge the District Court's ruling

The order denying SCL's Motion is not immediately appealable. Therefore, SCL's only speedy recourse is through this petition. *See* NRAP 3A(b) (codifying the grounds for seeking an appeal prior to a final judgment); *see also Marquis & Aurbach v. Eighth Judicial Dist. Court*, 122 Nev. 1147, 1155 ("As an appeal is not authorized...the proper way to challenge such dispositions is through an original writ petition[.]").

Specifically regarding matters of personal jurisdiction, this Court has held that a district court's failure to quash service or dismiss for lack of personal jurisdiction presents a circumstance where there is in fact no "plain, speedy or adequate remedy available in the ordinary course of law." *See Shapiro v. Pavlikowski*, 98 Nev. 548 (1982); *State ex rel. Dep't of Highways v. Eighth Judicial Dist. Court*, 95 Nev. 715 (1979) (finding that a writ of mandamus is an available tool to challenge a district court's order denying a motion to dismiss).

SCL is challenging the District Court's determination that it can properly exercise personal jurisdiction over SCL. A writ petition is SCL's only tool to address this threshold issue prior to the conclusion of trial and the unnecessary expenditure of significant time and resources by the litigants and the District Court. Therefore, SCL has no plain, speedy or adequate remedy and is entitled to writ relief.

2. Judicial economy and sound judicial administration support writ review in this case

In determining whether considerations of judicial economy and administration support review, this Court may take into account the impact the lower court's decision, and in turn, this Court's ruling on the petition, could have on Nevada's residents, the individual litigants, and the judiciary as a whole. *See State v. Babayan*, 106 Nev. 155, 175 (1990). Such petitions should be granted if the result would provide a benefit for those parties. *See Jeep Corp. v. Dist. Court*, 98 Nev. 440, 443 (1982).

Here, the Court should consider what will certainly follow if Nevada's district court judges apply Judge Gonzalez's ruling to matters involving foreign entities. If that occurs, Nevada's courts

would be at risk to be inundated with lawsuits brought by every foreign litigant who has a claim against a foreign entity that is a corporate affiliate of a Nevada company. The costs attendant to processing such cases would tax an already overburdened court system and require Nevada's judicial resources to be directed to resolving disputes between parties who and which are neither domiciled nor do business in Nevada. The costs to Nevada's businesses that do business outside of Nevada, i.e. subjecting their foreign affiliates to suit here, are likely to adversely impact the number of companies that incorporate or maintain their principal places of business in Nevada.

SCL understands that it is entirely within this Court's discretion to consider this petition, and that discretion is exercised sparingly. However, in this case, the issues are such that failure to act may have deleterious effects on the State's judicial system (and economy) as a whole. Therefore, judicial economy and sound judicial administration strongly support consideration of SCL's writ petition.

3. An important issue of law regarding personal jurisdiction requires clarification

This Court has had only one occasion to address directly the issue of whether (and, if so, when) a parent company's exercise of control over a subsidiary rises to such a level that the domestic entity's contacts with Nevada should be considered in determining whether general personal jurisdiction exists over the foreign affiliate. *See MGM Grand,* 107 Nev. 65. Further, in the *MGM Grand* case, this Court limited its discussion to two sentences, as follows:

> In addition, our review of the record convinces us that Disney exercises no more control over its subsidiaries than is appropriate for the sole shareholder of a corporation. Thus, Disney's subsidiaries' contacts may not be counted for jurisdictional purposes.

Id. at 69 (citing *Hargrave*, 710 F.2d at 1159-61).

This Court, in *MGM Grand*, did not expressly address or analyze the question of whether a showing of alter ego is required before a corporate affiliate's contacts with Nevada would be "considered" for jurisdictional purposes. Although this Court did cite the 1993 *Hargrave* case in support of its holding, the court in *Hargrave* discussed "applying a less stringent standard for alter ego jurisdiction than for alter ego liability," but acknowledged difficulties "in articulating the type

and degree of control necessary to ascribe to a parent the activities of its subsidiary." *Hargrave*, 710 F.2d at 1159.

Other jurisdictions have addressed the issue directly and definitively and have held that, only when evidence is presented to show that the foreign entity can be considered an "alter ego" of the domestic entity pursuant to the forum state's law, can the domestic entity's contacts be considered in the jurisdictional analysis. *See Doe v. Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001) ("[I]f the parent and subsidiary are not really separate entities, or one acts as the agent of the other, the local [entity's] contacts with the forum may be imputed to the foreign [entity]"); *see also Newman v. Comprehensive Care Corp.*, 794 F.Supp. 1513 (D. Or. 1992); *AT&T v. Lambert*, 94 F.3d 586 (9th Cir. 1996).

The rationale for requiring a showing of alter ego is found in perhaps the most fundamental tenet of corporate law, namely, that a corporation (or other legal entity) has a legal identity separate from its shareholders, officers, directors, members and affiliated entities. *See Yates v. Hendon*, 541 U.S. 1, 63 (2004) (recognizing that a corporation's separate legal status must be respected and only disregarded when evidence of a "unity of interest" is presented); *see also United States v. Bestfoods*, 524 U.S. 51, 72 (1998) (identifying "general principal of corporate law 'deeply engrained in our economic and legal systems'" that the acts of a subsidiary may not be imputed to the parent without clear evidence of an alter ego relationship); 1 W. Fletcher, *Encyclopedia on the Law of Private Corporations*, §§ 25, 28 (1990).

For substantially the same reasons, the law in Nevada should be clarified to provide that the mere presence of directors in the forum state is insufficient to establish general jurisdiction over a foreign corporation.

Nevada's companies, including in particular its gaming companies, are increasingly global in their scope and often operate through subsidiaries or other related entities in multiple locations throughout the world. The issue of whether, due to a relationship with a corporation or other affiliate in Nevada, a litigant can bring a suit in Nevada against a foreign entity (on a theory of general jurisdiction) based on the presence of a Nevada affiliate, is vitally important to the companies based in Nevada and to their foreign subsidiaries. In particular, the legal test to be

applied in Nevada to determine whether a domestic affiliate's contacts with Nevada will be considered in assessing whether general jurisdiction exists over foreign affiliates is less than clear. SCL respectfully submits that this Court should clarify this important issue of law, and that this petition therefore should be granted.

4. Alternatively, the District Court Was Compelled By Law To Dismiss SCL for Lack of Personal Jurisdiction

A writ of mandamus is proper to compel a party to exercise its judgment and render a decision where a failure of justice would arise if such a decision is not properly made. *See State ex rel. McGuire v. Wattterman*, 5 Nev. 323, 326 (1869). In this case, the District Court was required as a matter of law to grant SCL's Motion and dismiss the claim against it based on a lack of personal jurisdiction. Jacobs did not make a *prima facie* showing of personal jurisdiction and did not present any evidence that SCL has the requisite "minimum contacts" needed to satisfy the due process requirements associated with the exercise of personal jurisdiction, no matter whether an alter ego or lesser standard is employed.

However, the District Court failed to follow *MGM Grand*, because Jacobs' allegations regarding actions allegedly taken in Nevada by Adelson and Leven were consistent with LVSC's status as seventy percent shareholder of SCL, and should not have been considered in the jurisdictional analysis. Likewise, the mere presence of directors in the forum state is insufficient to establish general jurisdiction over a foreign corporation. Finally, the District Court failed to make the required determination of whether the exercise of personal jurisdiction over SCL (whether based solely on the activities of Adelson and Leven or some other basis) is reasonable, which it clearly is not. Therefore, the District Court should be compelled to act and dismiss SCL.

ii. SCL is Entitled to a Writ of Prohibition

A writ of prohibition is the counterpart to a writ of mandamus, and functions to arrest the proceedings of a tribunal when such proceedings are without or in excess of the jurisdiction of such tribunal. *See* NRS 34.320. The object of a writ of prohibition is to restrain inferior courts from acting without authority of law in cases where wrong, damage and injustice are likely to follow from such action. *See Attorney General v. Steffen*, 112 Nev. 369, 372 (1996). The fact that an appeal is

available from final judgment does not preclude the issuance of a writ of prohibition, "particularly in circumstances where, as here, the trial court is alleged to have exceeded its jurisdiction and the challenged order is not appealable.". *See G. & M. Properties v. Second Judicial Dist. Court*, 95 Nev. 301, 304 (1979).

Generally, because a writ of prohibition seeks an extraordinary remedy, the Court will exercise its discretion to consider such a petition only when (1) there is not a plain, speedy and adequate remedy in the ordinary course of law; (2) there are urgent circumstances; or (3) there are important legal issues that need clarification in order to promote judicial economy and administration. *See Cheung v. Eighth Judicial Dist. Court*, 121 Nev. 867 (2005); *see also Silver Peak Mines v. Second Judicial Dist. Court*, 33 Nev. 97, 99 (1910) (finding that a writ of prohibition ought to issue freely whenever it is necessary for the protection of rights of a litigant and he has no other plain, speedy and adequate remedy).

1. SCL has established that it has no plain, speedy and adequate remedy

The arguments in Section V(B)(a)(i)(1) apply to this particular factor as well. As it relates specifically to writs of prohibition, this Court frequently has held that a district court's failure to quash service or dismiss for lack of personal jurisdiction presents a circumstance where there is no plain, speedy or adequate remedy available in the ordinary course of law due to the absence of the availability of an immediate appeal. *See Budget Rent-A-Car v. Eighth Judicial Dist. Court*, 108 Nev. 483, 484 (1992) (finding that district court's erroneous refusal to quash service of process for lack of personal jurisdiction presented a circumstance where petitioner had "no plain, speedy or adequate remedy..."); *see also Gojack v. Second Judicial Dist. Court*, 95 Nev. 443 (1979); *Wolzinger v. Eighth Judicial Dist. Court*, 105 Nev. 160 (1989).

Therefore, because SCL cannot immediately appeal the Order entered on April 1, 2011, it has no plain, speedy or adequate remedy in the ordinary course of law.

2. This petition presents urgent circumstances for SCL if not granted

As stated above, the issue presented in this petition is significant, and this Court's decision and clarification in further defining the jurisdictional guidelines related to foreign subsidiaries of Nevada entities would serve both the public's interest and the interest of the judiciary.

SCL's petition to the Court for its clarification is particularly urgent, considering the consequences that will follow if the petition is not granted. For the purposes of a writ petition, urgency may be shown if a litigant has already requested relief from the lower tribunal, such as a motion to dismiss for lack of personal jurisdiction, and such claimed injustice will not be cured in the ordinary course of the judicial proceedings. *See Silver Peak Mines,* 33 Nev. at 99.

Here, SCL will be forced to continue to defend the claims made by Jacobs in a forum in which it is not subject to personal jurisdiction, pursuant to procedural and substantive rules that are different from those in Hong Kong. Nevertheless, SCL may otherwise gain relief only at the conclusion of the entire discovery, pretrial and trial process. SCL should not be forced to wait until after a judgment has been rendered to raise this issue on appeal, only to find out then that the District Court did not have jurisdiction.

The parties to the pending litigation have recently filed a Joint Status Report, which followed the early case conference held before Judge Gonzalez on April 22, 2011. *See* true and correct copy of the Joint Status Report attached hereto as **Appendix 8**. According to the Joint Status Report, the parties "anticipate that LVSC's and SCL's respective disclosures will consist of a high volume of documents which include Electronically Stored Information (ESI)." *Id.* It further requires the parties to search for and produce such documents on a rolling basis, with the production to be completed on July 1, 2011. *Id.* The discovery process in this case has begun, and is expected to be extremely time consuming over the coming months. SCL will be forced to expend substantial resources to participate if this Court does not grant the requested relief and order the District Court to dismiss SCL from this matter.

Further, if Jacobs is allowed to maintain his claim against SCL in the District Court, the parties will likely have to identify and compensate experts in Hong Kong law, which controls the Stock Option Grant Letter on which Jacobs bases his breach of contract claim against SCL. Judge Gonzalez specifically anticipated this need at the March 15, 2011 hearing, and stated as follows: "At some point I assume that we will have experts in Hong Kong law provide information so that an appropriate decision can be made on the stock option agreement." *See* Transcript at p. 62, lines 8-

11. This expense also would be unnecessary if the District Court had properly dismissed SCL and required Jacobs to litigate his claim in Hong Kong.

For the foregoing reasons, SCL respectfully submits that it has demonstrated that its petition is warranted by urgent circumstances, and should be granted by this Court.

3. An important issues of law regarding personal jurisdiction requires clarification

As set forth above in Section V(B)(a)(i)(3), the law in Nevada requires clarification, particularly regarding the determination of personal jurisdiction over foreign entities and the effect of in-forum activities by a parent company or other related person or entity. This Court has had just one opportunity to address this issue. However, it did not determine whether it would follow the majority rule which requires a showing of "alter ego" before a parent company's contacts with Nevada could be considered when determining personal jurisdiction over a foreign subsidiary, or if a lesser standard utilized in other jurisdictions should be adopted by Nevada's courts. Therefore, because clarification is needed in this important area of law, this Court should grant this petition and issue the requested relief.

b. RELEVANT PRINCIPLES OF GENERAL JURISDICTION

i. Factors to Determine General Jurisdiction over Foreign Entities

To properly exercise personal jurisdiction over a non-resident defendant, the District Court must determine both that NRS 14.065 is satisfied and that due process is not offended by the exercise of jurisdiction. *See Firouzabadi v. First Judicial Dist. Ct.*, 110 Nev. 1348, 1352 (1994)(citing *Trump v. Dist. Court*, 109 Nev. 687, 698 (1993)). To make this determination, in must conclude that Jacobs had made a prima facie showing that either general of specific[3] jurisdiction exists. *Id.*

[3] As observed above, Jacobs did not respond to or otherwise address SCL's argument regarding the lack of specific personal jurisdiction in his Opposition or during the March 15, 2011 hearing, effectively waiving any argument that the District Court has specific personal jurisdiction in this case. This is consistent with the nature of Jacobs' claim against SCL, which is for breach of contract and based on rights allegedly conferred by the Stock Option Grant Letter, executed in Macau for the option to purchase SCL stock listed on the HKEx.

General personal jurisdiction exists "where the defendant's activities in the forum state are so substantial or continuous and systematic that it may be deemed present in the forum and hence subject to suit over claims unrelated to its activities there." *See Firouzabadi,* 110 Nev. at 1352; *see also Gordon et al. v. Greenview Hosp., Inc.*, 300 S.W.3d 635, 648 (Tenn. 2009) ("In order to warrant the exercise of general jurisdiction over a non-resident defendant, 'the defendant must be engaged in longstanding business in the forum state, such as marketing or shipping products, or performing services...") (internal citation omitted).

Thus, general jurisdiction will only lie where the level of contact between the defendant and the forum state is high. *See Trump*, 109 Nev. at 701 (declining to find general jurisdiction over a defendant who did business with a Nevada resident, but owned no Nevada property, never entered the state, exhibited no persistent course of conduct with Nevada, and derived no revenues from goods or services provided in Nevada); *see also Helicopteros Nacionales de Columbia*, 466 U.S. at 416 (finding that Texas did not have general jurisdiction over a foreign corporation which sent officers to Texas to negotiate contracts, directed assorted personnel to travel to Texas to train, transferred funds from a Texas bank, and purchased equipment from a Texas company); *Cubbage v. Merchant,* 744 F.2d 665, 667-68 (9th Cir. 1984) (Doctors had insufficient contacts with California despite a significant number of California residents as patients, use of state health insurance and regulatory systems, and California-accessible telephone listings); *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1330-31 (9th Cir. 1984) (declining to assert general jurisdiction in Arizona over company which sent representatives to the state on numerous occasions, purchased materials in the state, solicited an agreement in the state that included an Arizona choice of law and forum provisions and engaged in continuous communications with Arizona residents).

Additionally, insofar as the District Court's basis for denying SCL's Motion was based on the activities of Adelson and Leven without regard to the degree of control exercised by LVSC over SCL, the mere presence of directors in the forum state is insufficient to establish general jurisdiction over a foreign corporation. *See Gordon*, 300 S.W.3d at 649 ("[Appellant's] lawyer has pointed to no case holding that corporate officers or directors maintaining an office or a residence is sufficient to establish general jurisdiction over the corporation. And with good reason. A corporation is a

distinct legal entity that exists separate from its shareholders, officers and directors."); *see also Transure, Inc. v. Marsh and McLennan, Inc.*, 766 F.2d 1297, 1299 (9th Cir. 1985) (in denying to exercise general jurisdiction over a parent corporation due, in part, to allegations that shared directors for a subsidiary reside in the forum state, finding that "[i]t is entirely appropriate for directors of a parent company to serve as directors of its subsidiary, and that fact alone may not serve to expose the parent corporation to liability for its subsidiary's acts."). As explained further below, this view is consistent with the basic tenet of corporate law that recognizes a legal separation between affiliated entities. If such a rule were not in place, and a court could exercise general jurisdiction over a corporation in any forum where a director may reside or maintain an office, then no corporation would risk appointing an outside director who may reside anywhere but the forum in which the company is actually domiciled or does business.

Finally, this Court has held that "[w]hen a challenge to personal jurisdiction is made, the plaintiff has the burden of introducing competent evidence of essential facts which establish a prima facie showing that personal jurisdiction exists." *See Abbott-Interfast v. Eighth Judicial Dist. Court*, 107 Nev. 871, 873 (1991). The required showing of "essential facts" is not satisfied by unsubstantiated or incorrect factual conclusions or through an affidavit that fails to properly connect a defendant to the forum or particular transaction. *See McDermond v. Siemens*, 99 Nev. 226, 229 (1980).

Thus, Jacobs bore the burden of establishing that this Court has personal jurisdiction over SCL, a Cayman Islands company with its principal place of business in Macau.

Lastly, even if Jacobs were able to establish the essential facts to connect SCL to Nevada, the District Court's exercise of jurisdiction must be found to be subjectively reasonable and comport with traditional notions of fair play and substantial justice. *See Doe,* 248 F.3d at 922.

ii. Absent a Showing of Alter Ego, the Majority of Jurisdictions Will Not Impute the In-Forum Contacts of a Corporation to its Foreign Affiliate For Purposes of Establishing Personal Jurisdiction

As observed above, this Court has had only one opportunity to address the specific issue of intra-corporate activities as a basis for personal jurisdiction. *See MGM Grand, Inc.*, 107 Nev. at 68-

69. In the *MGM Grand* case, this Court upheld the lower court's decision to quash service of process on a non-resident corporation, the Walt Disney Company ("Disney"). *Id.* This Court began by finding that Disney's own contacts with Nevada, which "amount[ed] to no more than advertising and promoting the company's California theme parks, are neither continuous nor systematic," and were therefore insufficient to convey personal jurisdiction. *Id.* The Court added the following:

> In addition, our review of the record convinces us that Disney exercises no more control over its subsidiaries than was appropriate for the sole shareholder of a corporation. Thus Disney's subsidiary's contacts may not be counted for jurisdictional purposes.

Id. (citing *Hargrave*, 710 F.2d at 1159-61 (finding that mere existence of parent/subsidiary relationship is insufficient to confer jurisdiction over foreign entity).

Although this Court in *MGM Grand* declined to apply Disney's subsidiaries' forum contacts to its jurisdictional analysis, it did not specify the standard that should be used to determine whether (and, if so, when) a parent company's exercise of control over a subsidiary rises to such a level that the domestic entity's contacts with Nevada should be considered in determining whether general personal jurisdiction exists over the foreign affiliate.

Most jurisdictions that have addressed this issue directly, including the Ninth Circuit Court of Appeals, have held that contacts between a parent and subsidiary (e.g., presence at or location of board meetings, shared directors/executives, involvement in personnel decisions, shared financials and investments, co-marketing efforts, etc.) cannot form the basis for personal jurisdiction over a non-resident corporate defendant unless those contacts also show that there is such a unity of interest and ownership that separate personalities of the parent and subsidiary no longer exist, and that a failure to disregard their separate entities would result in fraud and injustice. *See Doe,* 248 F.3d at 926 ("Nonetheless; 'if the parent and subsidiary are not really separate entities, or one acts as an agent of the other, the local subsidiary's contacts with the forum may be imputed to the foreign parent corporation.' An alter ego or agency relationship is typified by parental controls of the subsidiary's internal affairs or daily operations."); *see also Newman,* 794 F.Supp. at 1519 ("[t]he activities of the parent corporation are irrelevant absent some indication that the formal separation between parent and subsidiary is not scrupulously maintained."); *Gordon,* 300 S.W.3d at 652

("[T]he actions of a parent corporation may be attributable to a subsidiary corporation...when the two corporations are essentially the alter egos of each other."). In this case, neither Jacobs nor the District Court even addressed this established line of case law.

For this Court's consideration, both the *AT&T* and *Gordon* cases are particularly relevant examples of the application of this principle to a similar fact pattern.

In *AT&T*, the plaintiff attempted to establish personal jurisdiction over a Belgian parent company due to its involvement with a U.S. subsidiary, which it contended demonstrated the "[parent's] total control over [the subsidiary]" was sufficient to establish an alter ego relationship and jurisdiction over the foreign entity. *AT&T,* 94 F.3d at 598. In particular, the plaintiff presented evidence that the parent (1) held a majority of the seats on the subsidiary's board; (2) approved proposals to terminate the employment contracts of the subsidiary's original owners; (3) directed financial and business decisions for the subsidiary, including the substantial distribution of cash for capital investments and development; (4) appointed one of its own board members to serve as the subsidiary's chairman; and (5) eventually held all of the subsidiary's working capital. *Id.* at 590.

With this evidence, the plaintiff attempted to argue that the parent's "domination and control over [the subsidiary], constituted contacts by which [the parent] purposefully availed itself of the United States' benefits and protection." *Id.* The court disagreed, saying that in order for the parent's relationship with the subsidiary to confer personal jurisdiction, there must be a *prima facie* showing that (1) there is such a unity of interest and ownership that separate personalities of the parent and subsidiary no longer exist, and (2) failure to disregard their separate entities would result in fraud and injustice. *Id.* at 591. Further, the court found that the "domination," as alleged by the plaintiff, reflected nothing more than a normal parent/subsidiary relationship, and that plaintiff had failed to establish the essential facts required to convey general jurisdiction. *Id.*

In *Gordon*, the appellant argued that exercise of general jurisdiction over a foreign subsidiary was proper because: (1) the subsidiary's directors (who also served as directors of the in-forum parent company) were domiciled in the forum state and worked out of offices in the forum state, (2) the subsidiary listed its principal place of business in the forum state in legal filings, and (3) the subsidiary was wholly owned by the in-forum parent company. *Gordon*, 300 S.W.3d at 650.

The court affirmed the trial court's dismissal of the respondent for lack of personal jurisdiction, finding that "[s]o long as the parent and subsidiary corporations maintain their status as separate and distinct entities, the presence of one corporation in the forum cannot be attributed to the other." *Id.* at 651. The court further held that a parent company's involvement with the subsidiary's corporate performance, finance/budget decisions, general policies and procedures, or complete ownership of the subsidiary with the same officer and directors does not "demonstrate the kind of 'complete control' which renders the subsidiary nothing more than an instrumentality...of the parent corporation." *Id.* at 654. Thus, the court in *Gordon* required the appellant to demonstrate that the two corporations are the alter egos of each other, and declined to disregard the presumption of corporate separation unless evidence was submitted of the parent's domination (not merely involvement) in the day-to-day operations of the subsidiary.

In addition to the case law cited in SCL's briefs, the cases Jacobs cited in his Opposition actually supported SCL's argument that an alter ego determination is necessary to establish personal jurisdiction over SCL based on its interaction with LVSC. *See Villagomez, et al. v. Rockwood Specialties, Inc.*, 210 S.W.3d 720, 732 (Tx.Ct.App. 2006) (finding that the subsidiaries' contacts with the forum state cannot be imputed to the corporate defendant, and stating that in order to ascribe such contacts, plaintiff must prove the parent is the alter ego and controls the internal business operations and affairs of subsidiary); *see also Striefer et al. v. Cabol Enter., Ltd., et al.*, 231 N.Y.S.2d 750, 754 (1962) (noting that, as a matter of course, corporate entities may not be subjected to jurisdiction due to the activities of affiliated entities, and distinguishing case at bar by finding that the corporation was the alter ego of the in-forum entity and was "merely an instrumentality or agent of [the in-forum entity] through which [it] engaged in business in the State of New York," and "owed its active existence solely from funds received from [the in-forum entity] and without which it could not have performed any function whatsoever.").

The rule that, absent evidence of an "alter ego" relationship, contacts between a parent and subsidiary should not be considered in a personal jurisdiction analysis, has its basis in the most fundamental rule of corporate law, namely, the presumption of legal separation between an entity and its affiliates, stockholders, officers and directors. *See infra Yates*, 541 U.S. at 63 (a

corporation's separate legal status is presumed absent a showing of a "unity of interest."); *Bestfoods*, 524 U.S. at 72 (recognizing legal separation of a corporation and its affiliates as a "general principal of corporate law"); *Doe,* 248 F.3d at 925 (noting "well established principal of corporate law" that a corporation and its subsidiary, or subsidiary's agents, are presumed to be separate for liability and jurisdictional purposes).

This rule of law comports with the fundamental notions of substantial justice and fair play as required by due process, which should be applied in Nevada and should have been applied by the District Court in this case.

iii. Other Jurisdictions Have Declined to Impute Contacts to a Foreign Subsidiary Unless the In-Forum Parent Exercises A Degree of Control That is Disproportionate to Its Investment

Although courts in most jurisdictions, particularly the Ninth Circuit, have applied a traditional "alter ego" test to determine whether a corporation's in-forum activity can be imputed to a foreign affiliate for the purposes of conferring jurisdiction, a minority of courts have utilized an arguably less rigorous test that examines a parent's level of control in proportion to its investment level in the foreign subsidiary. This distinction was recognized in *Hargrave*, 710 F.2d at 1159-61 (finding that jurisdiction may be conferred if the parent exercises domination and control "greater than that normally associated with common ownership and directorship" and recognizing the possible application of a "less stringent standard for alter ego jurisdiction than for alter ego liability..."). However, the court in *Hargrave* did find that because the subject entities did maintain formal corporate separation, and the policymaking authority exercised by the parent "was no more than that appropriate for a sole shareholder of a corporation," the facts presented were insufficient to consider the in-forum corporation's contacts to its foreign affiliate for jurisdictional purposes. *Id.*

Other courts that have dealt with the issue using the "appropriate level of control" test have reached the same conclusion in reference to foreign subsidiaries and in-state parent companies. In *Reul v. Sahara Hotel, Inc.*, the court initially recognized that sole ownership over a subsidiary or the presence of common directors generally is insufficient to confer jurisdiction, but in that case evidence was presented showing that there was "more than that amount of control of one

corporation over another which mere common ownership and directorship would indicate." 372 F.Supp 995, 998 (S.D. Tx. 1974). The court in *Reul* did not undertake a specific "alter ego" analysis or discuss the maintenance of corporate form, but did examine the parental involvement in the subsidiaries' business affairs and found that the subject parent corporation controlled substantially all of the subsidiaries' corporate and business activities from the forum state and that the subsidiaries "constitute[d] completely integrated subsidiaries which exist for the convenience of the parent corporation, its stockholders, officers, and directors." *Id.* at 1002; *see also Perkins v. Benguet*, 342 U.S. 437, 447-49 (1952) (finding general jurisdiction over forum entity where in-forum agent held all board meetings, kept company records, maintained employees, opened two bank accounts, and performed substantially all of the foreign company's business functions within the forum state).

As will be discussed below, whether this Court applies an "alter ego" analysis to the present facts, or examines LVSC's degree of control as SCL's majority shareholder, the result is the same – the District Court erred when it denied SCL's Motion and the exercise of general personal jurisdiction over SCL is improper and is at odds with the applicable due process requirements.

c. SCL'S STATUS AS A LVSC SUBSIDIARY AND THE ACTIONS OF AN OUTSIDE NON-EXECUTIVE DIRECTOR AND SPECIAL ADVISOR TO THE SCL BOARD ARE INSUFFICIENT TO CONFER GENERAL JURISDICTION

i. The District Court's Ruling As Stated At The March 15, 2011 Hearing

After counsel for Jacobs and SCL presented their oral argument at the March 15, 2011 hearing on the Motion, Judge Gonzalez issued the following ruling from the bench:

> Here there are pervasive contacts with the State of Nevada by activities done in Nevada by board members of Sands China. Therefore, while Hong Kong law may indeed apply to certain issues that are discussed during the progress of this case, that does not control the jurisdictional issues here. At some point in time I assume that we will have experts in Hong Kong law provide information so that an appropriate decision can be made on the stock option agreement. So [SCL's Motion] is denied, and [SCL's] request to join in [LVSC's Motion to Dismiss] was denied when I denied [it].

See Transcript at p. 62, lines 3-12.

ii. SCL Is Not the Alter Ego of LVSC

To establish a *prima facie* case that there is a unity of interest between two entities, i.e., that one entity is the alter ego of the other, a plaintiff must include allegations such as co-mingling funds, misuse of corporate assets as stockholders' own, failure to observe corporate formalities, sole ownership of all stock and assets, employment of same employees, and failure to maintain an arms' length relationship. *See Lorenz v. Beltio, Ltd.*, 114 Nev. 795, 808 (1998) ; *see also North Arlington Medical Bldg., Inc. v. Sanchez Const. Co.*, 86 Nev. 515, 522 (1970); *Mosa v. Wilson-Bates Furniture Co.*, 94 Nev. 521, 524 (1978).

In its briefs, SCL established uncontroverted facts in reference to its relationship with LVSC that definitively demonstrated that SCL and LVSC has diligently maintained separate corporate forms and are not alter egos of one another, including the following:

(i): SCL is a public company, the stock of which is traded on the HKEx. *See gen.* Global Offering Document.

(ii): SCL operates its own treasury department, financial controls, independent bank accounts, tax registration and auditing/accounting systems; *Id.* at pp. 211-232.

(iii): SCL's Board, and its Board committees, conduct separate meetings and keep separate minutes from the meetings and minutes of LVSC; *Id.* at pp. 211-232.

(iv): SCL's eight-member Board, at the time Jacobs served as an SCL executive, included three independent non-executive directors with no prior relationships with LVSC, two executive management directors who oversaw SCL's corporate functions exclusively from Macau, and three outside non-executive directors who also served as directors for LVSC, specifically, Adelson, Jeffrey Schwartz ("Schwartz") and Irwin Siegel ("Siegel"); *Id.*

(v): SCL is required by the HKEx Rules to demonstrate that it operates its business independently of, and at arms' length from LVSC; *see* Affidavit of Anne Salt, attached to Reply; *see also* true and accurate copy of the HKEx Rules, attached as Exhibit B to the Reply; and

(vi): SCL is party to the Deed with LVSC which effectively limits SCL's business activities to specific territories in Asia and prohibits SCL from conducting business or directing its efforts to Nevada. *See* Global Offering Document, pp. 213-216.

Jacobs neither disputed the foregoing facts, nor did he argue that SCL was the alter ego of LVSC. Absent a showing of an alter ego relationship, the District Court should not have considered LVSC's contacts with Nevada in determining jurisdiction over SCL, and with the evidence presented, was compelled to grant SCL's Motion and dismiss the case against SCL for lack of personal jurisdiction. Thus, under the prevailing law – which SCL submits should be the clearly articulated law of Nevada – SCL's Motion should have been granted.

iii. The Purported Bases for the Exercise of Personal Jurisdiction

Instead of addressing the facts raised in SCL's briefs, Jacobs made the following allegations in support of his jurisdictional argument:

(i): During Jacobs' tenure as an SCL executive, Adelson and Leven, a non-executive director and special advisor to the SCL Board, respectively, worked out of LVSC's executive offices in Las Vegas, and occasionally attended to SCL business from that location, including: (1) attending a telephonic SCL Board meeting on April 14, 2010 from Las Vegas along with Jacobs, Schwartz and Siegel; (2) recruited potential candidates for SCL senior executive management positions in Macau; (3) directed Jacobs regarding SCL's business in Macau and unspecified involvement with local Macau government officials; (4) directed real estate project development in Macau and developed marketing strategies for a $2.5 billion SCL development in Macau; and (5) negotiated a possible joint venture for the development and sale of parcels owned by SCL in Macau.

(ii). SCL allegedly participated in transferring casino patron funds from Macau to Las Vegas[4]; and allegedly utilized a system Jacobs identifies as Affiliate Transfer Advice[5] ("ATA") to electronically transfer casino patron funds from Macau to LVSC or its affiliates in Las Vegas. *See* Complaint at ¶¶ 26; *see also* Opposition at pp. 3-9.

[4] Although Jacobs in his Opposition alleged that SCL "had significant funds physically couriered to Nevada," his counsel did not pursue that claim at the March 15, 2011 hearing after SCL demonstrated in its Reply that this allegation was false.

[5] As discussed herein, SCL provided extensive and uncontested evidence that it was not involved in the administration or processing of these bookkeeping transactions regarding casino patron funds, nor were any funds transferred, contrary to Jacobs' allegations.

At the March 15, 2011 hearing on the Motion, counsel for Jacobs and SCL discussed the previous points but did not raise any additional factual issues that had not been addressed in the parties' briefs.

iv. Even Applying the "Control Disproportionate to Investment Status" Standard, Jacobs Did Not Demonstrate That LVSC's Contacts With Nevada Should Be Considered in SCL's Jurisdictional Analysis

In the event that this Court determines that the arguably less-stringent "control disproportionate to investment status" test should be used in Nevada, Jacobs allegations, even if assumed accurate, were insufficient to consider (or "count") LVSC's Nevada contacts in SCL's jurisdictional analysis.

1. Adelson and Leven's alleged actions are consistent with LVSC's status as majority shareholder

As stated above, Jacobs made several allegations regarding Adelson's and Leven's involvement with SCL's business and corporate function. Specifically, Jacobs alleged that Adelson and Leven had (1) attended a telephonic SCL Board meeting from Las Vegas with two other outside non-executive directors, (2) recruited senior management candidates for SCL, (3) issued directives regarding SCL's involvement with local Macau government officials, (4) and gave direction regarding certain large-scale SCL real estate development and possible joint venture projects in Macau.

Neither individually nor collectively were these actions evidence of the exercise of the level of control required by *Hargrave* and *Reul*, cited above. In both of the cited cases, the court recognized that in situations where a parent company controls substantially all of the subsidiary's day-to-day operations, including its finances and means of production or provision of services, and further presents itself as a single company, it may be treated as such for the purposes of its subsidiary's jurisdictional analysis. *See Reul*, 372 F.Supp. at 1001-1003 (finding that the parent company's contacts could be imputed to subsidiaries where the corporate separation was only a formality and "for all *operational* purposes [was] one big, albeit well organized, corporation controlled at the top by [the parent company].").

SCL has already set forth facts that establish it is not the alter ego of LVSC, and those facts are relevant to this analysis as well. Contrary to being "one big, albeit well organized, corporation," both LVSC and SCL are actually contractually prohibited by the Deed from engaging in business activities in each other's primary places of business. *See* Global Offering Document at pp. 213-216. Additionally, SCL has an independent Board, maintains and controls its own finances, and is required by the HKEx Rules to demonstrate its operational independence from LVSC. *Id.* at pp. 211-232; *see also* Exhibit B to the Reply.

Jacobs allegations do not provide any evidence that LVSC, through Adelson and Leven, exercises "complete control" over SCL. Attendance at Board meetings, recruitment and hiring of senior executives, directing general policy, including high-level financial and development decisions, are all appropriate parental actions that do not indicate an excessive level of control sufficient to apply a parent's contacts to its subsidiary for jurisdictional purposes. *See Hargrave*, 710 F.2d at 1160 (finding that even where parent had "complete authority" over general policy and financial decisions, its in-forum contacts could not be imputed to the subsidiary for jurisdictional purposes); *see also Walker v. Newgent*, 583 F.2d 163, 167 (5th Cir. 1978) (noting that 100% stock ownership and commonality of officers and directors is insufficient to impute contacts to establish general jurisdiction, and requiring proof of control by parent over internal business operations and affairs of the subsidiary).

Additionally, all of Jacobs' allegations of Adelson's and Leven's actions regarded meetings and directives issued to Jacobs himself, in his capacity as SCL's President and CEO. *See* Complaint at ¶¶ 26; *see also* Opposition at pp. 3-9. In other words, Adelson's and Leven's alleged actions involved only high-level corporate functions, and were directed to the individual who occupied the highest executive position in the company.

Finally, and perhaps most fundamentally, in order to satisfy the "substantial or continuous and systematic" requirements, courts examine a defendant's intentional conduct that is actually directed at the forum state. *See Kumarelas v. Kumarelas*, 16 F.Supp.2d 1249, 1254 (D. Nev. 1998). Here, Jacobs' allegations concern directives or actions taken by Adelson and Leven that were directed at SCL in Macau, not actions taken by SCL directed to Nevada. The alleged actions of

Adelson and Leven therefore cannot be used to demonstrate any "substantial or continuous and systematic" contact necessary for general jurisdiction.

Therefore, under no circumstances do Jacobs' allegations regarding Adelson's and Leven's alleged activity support the District Court's decision to apply LVSC's Nevada contacts to SCL for the determination of general personal jurisdiction.

2. Jurisdiction over a foreign corporation cannot be based solely on activities of directors in the jurisdiction

The mere presence of directors in the forum state is insufficient to establish general jurisdiction over a foreign corporation. *See Gordon*, 300 S.W.3d at 649 ("[Appellant's] lawyer has pointed to no case holding that corporate officers or directors maintaining an office or a residence is sufficient to establish general jurisdiction over the corporation. And with good reason. A corporation is a distinct legal entity that exists separate from its shareholders, officers and directors."). Were the law otherwise, corporations would be subject to jurisdiction in forums in which they otherwise are not subject to jurisdiction under the applicable due process principles described above. *See Firouzabadi*, 110 Nev. at 1352. In other words, there is no "director exception" to the requirements of due process.

3. SCL's alleged participation in an intra-corporate bookkeeping process is insufficient as a matter of law to establish general personal jurisdiction

In his Opposition to SCL's Motion, and again at the March 15, 2011 hearing, Jacobs made certain (false) allegations that SCL utilized a process, referred to by LVSC as Inter-Company Accounting Advice[6] ("IAA"), to "move money for customers by transferring funds electronically from Asia to LVSC or affiliates in Las Vegas." *See* Opposition at p. 8, lines 8-13. Jacobs' counsel repeated this allegation at the March 15, 2011 hearing. *See* Transcript, pp. 54-57.

[6] As explained in SCL's Reply, LVSC and VML ceased use of the "Affiliate Transfer Advice" moniker, erroneously identified by Jacobs, and currently refer to the system as "Inter-Company Accounting Advice," which removed the "Transfer" term because it incorrectly suggested that these bookkeeping entries result in the transfer of funds when in fact no funds are transferred when such an entry is made. *See* Affidavit of Patricia L. Green, attached to the Reply.

Judge Gonzalez at the hearing apparently recognized correctly that these funds were casino patron funds, not property of SCL, and recognized that the IAA process did not constitute an actual transfer of funds, but rather was a bookkeeping exercise used for "marketing" purposes. *Id.* at p. 58, lines 9-10. As explained below, SCL was not a party to this bookkeeping process. Nonetheless, the District Court did not make an explicit finding, as supported by SCL's proffered evidence and Jacobs' own evidence, that SCL has no involvement with the IAA process.

The IAA process, set forth in evidence by SCL in its Reply supported by three separate affidavits and acknowledged by the District Court – accounts for funds on deposit either in Macau or Las Vegas that belong to patrons and are made available to respective patrons at properties in Las Vegas or Macau through bookkeeping entries. *See* IAA Affidavits. No funds are transferred when an IAA entry is made, and the "receiving" entity merely makes the value of the deposited funds available to the patron. *Id.*

However, even if Jacobs' allegations are taken as true, they are still insufficient, either on their own or analyzed within the "control commensurate with investment status" test, to establish general jurisdiction over SCL.

The IAA process constitutes does not demonstrate that SCL "conducted a 'continuous and systematic part of its general business' in the forum state," as required to support a finding of general jurisdiction. *See Fields v. Ramada Inn, Inc.*, 816 F. Supp. 1033, 1036 (E.D. Pa. 1993); *see also Romann v. Geissenberger Man. Corp.*, 865 F. Supp. 255 (E.D. Pa. 1994) (no general jurisdiction even though defendant made $230,000 in direct sales to forum state and was qualified to do business in the forum state); *Arroyo v. The Mountain School, et al.*, 892 N.Y.S.2d 74, 75-76 (2009) (holding that maintaining a business relationship with in-forum entity and even transfers of funds did not support finding of general jurisdiction, even when defendant had previously invested nearly $14 million with in-forum entities and maintained an account in the forum state for the purpose of receiving wire transfers).

Additionally, as discussed above, participation in a parent company's accounting procedures or marketing efforts is insufficient to show either alter ego or an excessive degree of control. *See Fletcher v. Atex, Inc.*, 68 F.3d 1451, 1459-60 (2d Cir. 1995) (appropriate parental involvement

includes overseeing accounting procedures); *Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1177 (9th Cir. 1980) (co-marketing efforts insufficient to demonstrate unity of interest between entities).

Thus, Jacobs' allegations are insufficient, either individually or collectively, under any test that this Court decides is appropriate, to demonstrate that the District Court can properly exercise general jurisdiction over SCL.

4. SCL provided uncontroverted evidence that SCL had no involvement in the IAA process, which did not involve the transfer of (player's) funds to or from Nevada

During the March 15, 2011 hearing on SCL's Motion, Jacobs' counsel repeated the allegations in the Opposition regarding SCL's claimed involvement with the IAA process, and further alleged that "[t]hese reflected from Sands China players $68 million in credit deposits and credits for gambling activities, not just for Sands China play, but for Las Vegas play, as well." *See* Transcript, p. 55, lines 4-7. Jacobs' counsel also introduced an exhibit at the hearing which purported to summarize the contents of a purported ledger (the "Ledger"), attached to Jacobs' Opposition at Exhibit 14, that Jacobs claimed listed transactions and amounts processed by this system from February 24, 2007 to March 29, 2010. The exhibit shown at the hearing consisted simply of the number "$68 Million," above the term "Sands China," with an arrow pointing to "LVSC" in Las Vegas. *See* Jacobs' Hearing Exhibits.

In response to Jacobs' claim that SCL routinely transferred casino player funds from Macau to Las Vegas, SCL provided the District Court with extensive evidence exposing Jacobs' allegations as completely false and misleading, including three separate affidavits stating, unequivocally, that (1) SCL was not a party to the IAA process, which is handled on the Macau side by the Macau gaming license subconcessionare, VML, (2) that the funds in question were patron funds, and (3) that the entries described in the Ledger were bookkeeping entries and were not evidence of electronic transfers. *See* IAA Affidavits.

Thus, SCL had provided the District Court with uncontested affidavits showing that no funds, either belonging to SCL or gaming patrons, were ever transferred to Nevada, and that VML,

not SCL, handled the IAA entries from Macau. Additionally, the Ledger submitted by Jacobs provided further evidence that VML was involved in the IAA process by identifying VML as the originating entity, and by including IAA entries from February 4, 2007 – nearly two and a half years before SCL was even formed. *See* Exhibit 14 to the Opposition; *see also* Global Offering Document at p. 75.

As to the first point, SCL provided three separate affidavits that first noted that LVSC and its affiliates ceased use of the "Affiliate Transfer Advice" moniker and now refer to the system as "Inter-Company Accounting Advice ("IAA") and removed the "Transfer" term as it incorrectly suggested that these transactions result in the transfer of funds when in fact no funds are transferred when an IAA transaction takes place. *See* IAA Affidavits. Additionally, at the top of each page in the ledger Jacobs submitted to the District Court as Exhibit 14 to his Opposition, there is a notation identifying the originating and receiving entity for each IAA transaction. *See* Exhibit 14 to Opposition. Specifically, the ledger submitted by Jacobs lists IAA transactions beginning on February 24, 2007. *Id.* It is undisputed that SCL was not formed until July 2009. *See* Global Offering Document at p. 75. Jacobs thus ascribes to SCL actions that took place more than two years before SCL even came into being. Consistent with this fact, the "From" entity is not identified as SCL, but as "Venetian Macau." *See* Exhibit 14 to Opposition. Again, this comports with the uncontroverted fact that VML holds the Macau gaming subconcession, and is the only entity authorized to deal, directly or indirectly, with gaming patron funds. *See* Global Offering Document, pp. 75-93.

As to the second and third points, the IAA process identifies transactions where funds on deposit in Macau at VML that belong to patrons are made available to patrons in Las Vegas through mere bookkeeping entries. *See* IAA Affidavits. Contrary to what Jacobs alleged, an IAA transaction does not constitute a transfer of funds owned by either VML or SCL, and no player funds are transferred. Instead, the patron account is zeroed out at VML by a debit to the patron account, and a credit entry is made by VML for an account payable to VCR, and a credit is inputted to the patron account by VCR in Las Vegas and a debit is entered by VCR for a receivable from VML. *Id.* Simply put, contrary to Jacobs' assertions, an IAA does not constitute a transfer of funds

either from or to Nevada and, as relevant to the jurisdictional analysis, do not involve funds owned or controlled by SCL.

In the face of this clear evidence however, the District Court either ignored or misunderstood the actual facts in this case and accepted Jacobs' allegations as true. To the extent that Jacobs' false allegations regarding the IAA process formed the basis of the District Court's decision to deny SCL's Motion, the District Court committed clear error because the uncontroverted evidence showed that SCL was not a party to the IAA's, which did not entail the transfer of (player) funds, to or from Nevada, and this Court should order the District Court to reverse its decision and dismiss SCL from this case for lack of personal jurisdiction.

v. The Exercise of Personal Jurisdiction Over SCL is Unreasonable

In making its decision to deny SCL's Motion, the District Court made no findings regarding the reasonableness of the exercise of personal jurisdiction over SCL. The due process requirements associated with the determination of personal jurisdiction demand that the exercise of personal jurisdiction must be "reasonable," and must comport with the notions of fair play and substantial justice. *See FDIC v. British-American Ins. Co.*, 828 F.2d 1439 (9th Cir. 1987).

To determine whether the exercise of personal jurisdiction is "reasonable," the court must examine seven factors: (1) the extent of SCL's purposeful contacts; (2) the burden on SCL of having to defend an action in Nevada; (3) the extent to which jurisdiction conflicts with SCL's domiciliary country; (4) Nevada's interest in adjudicating the dispute; (5) which forum is the most efficient for resolving the dispute; (6) Jacobs' interest in choosing Nevada as a forum; and (7) the existence of alternative forums to adjudicate Jacobs' claims. *See FDIC,* 828 F.2d at 1442.

As to the first factor, SCL has no purposeful contacts with Nevada. This fact therefore weighs in favor of dismissal. In his Opposition, Jacobs conceded that his claims against SCL have nothing to do with any actions taken in Nevada, when he failed to respond to SCL's argument that the District Court could not exercise specific personal jurisdiction over SCL. As discussed above, neither the presence of a controlling shareholder in Nevada, nor the actions taken in Nevada by a non-executive SCL director and a special advisor to the SCL Board constitute "purposeful" contacts with Nevada for jurisdictional purposes.

In reference to the second factor, SCL is a Cayman Islands company with its registered office in Hong Kong and its principal place of business in Macau. *See* Global Offering Document at pp. 75-76. It does no business in Nevada or elsewhere in North America. *Id.* The alleged contract at issue in Jacobs' claim against SCL was executed in Macau and is governed by Hong Kong law. *See* Stock Option Grant Letter. SCL will be forced to incur substantial costs to defend this case in Nevada. Therefore, this factor also weighs heavily in favor of dismissal.

The third and fourth factors also show the exercise of jurisdiction over SCL to be unreasonable. To start, the District Court's continued exercise of jurisdiction over SCL would significantly conflict with Hong Kong's interest in protecting public companies with stock listed on the HKEx. Conversely, SCL's and Jacobs' lack of connections with Nevada mean that Nevada has no interest in resolving any dispute Jacobs has with SCL regarding an option to purchase SCL stock.

As to the fifth factor, which forum is the most efficient for resolving the dispute, the overwhelming majority of evidence and witnesses will be located in Macau and Hong Kong. SCL is a HKEx listed company, which means that the HKEx Rules regarding stock options, not just the applicable Hong Kong civil law, will bear upon Jacobs' claim against SCL. Clearly, both Hong Kong and Macau are decidedly more efficient forums for resolving Jacobs' claims against SCL.

Additionally, in specific reference to the fifth factor, the presence of a Hong Kong choice-of-law provision in the Stock Option Grant Letter weighs strongly in favor of denying the exercise of jurisdiction in Nevada and requiring Jacobs to litigate his claim against SCL in Macau or Hong Kong. Courts have concluded that a court may decline to exercise jurisdiction when the chosen law conflicts with, or is substantially different from that in the forum state, and may therefore be difficult for the forum court to administer. *See Cubbage*, 744 F.2d at 671. The District Court has acknowledged that if the case continues in Nevada, experts in Hong Kong law may be required to assist the parties, and the District Court, with navigating the substantial procedural and substantive differences between U.S. and Hong Kong law. In particular, Hong Kong law is based on British law. As such, one fundamental difference (among others, such as the availability of a jury trial) between litigating pursuant to Hong Kong law as opposed to Nevada law, is that Jacobs is free to pursue his claim to have retained rights to exercise an option to purchase SCL stock following his

termination without fear of having to pay SCL's fees and costs when it prevails. These differences are not immaterial, and the difficulty presented by implementing Hong Kong law in a Nevada district court weighs strongly in favor of dismissal.

Lastly, Hong Kong and Macau both have an available judicial system, and both have a strong interest in overseeing the conduct of those entities that list their stock (Hong Kong) and do business (Macau) there.

In whole, each reasonableness factor that the District Court was bound to consider weighed in favor of granting SCL's Motion and dismissing it from the pending action. The District Court's exercise of jurisdiction over SCL is unreasonable and would offend the principles of due process if allowed to continue. Therefore, SCL respectfully requests that this Court grant the requested extraordinary relief.

VI.

CONCLUSION

The District Court erred in denying SCL's Motion to Dismiss for Lack of Personal Jurisdiction. General jurisdiction does not exist in this case because SCL made no personal or purposeful contacts with Nevada. Specifically, general jurisdiction over SCL cannot be based on its corporate contacts with its majority shareholder, LVSC. Moreover, the exercise of personal jurisdiction in this case would offend the principles of fair play and substantial justice, which the District Court did not consider when making its ruling.

Based upon the foregoing, SCL respectfully requests that this Court issue a Writ to the Eighth Judicial District Court to grant its Motion to Dismiss for Lack of Personal Jurisdiction and to prohibit the District Court from exercising personal jurisdiction, either general or specific, over SCL in this matter.

Dated May 5, 2011.

GLASER WEIL FINK JACOBS HOWARD, AVCHEN & SHAPIRO LLP

By: _____

Patricia L. Glaser, ESQ.
Pro Hac Vice Admitted
Mark G. Krum, ESQ.
Nevada Bar No. 10913
Andrew D. Sedlock, ESQ.
Nevada Bar No. 9183
3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169

Attorneys for Petitioner Sands China Ltd.

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS SANDS CORP., a Nevada corporation, and SANDS CHINA LTD., a Cayman Islands corporation

Petitioners,

vs.

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Case Number:

District Court Case Number: A627691-B

APPENDIX TO EMERGENCY PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIVILEGED DOCUMENTS

Volume 1 of 3

MORRIS LAW GROUP
Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

KEMP, JONES & COULTHARD, LLP
J. Randall Jones, Bar No. 1927
Mark M. Jones, Esq., Bar No. 000267
3800 Howard Hughes Pkwy, 17th Flr.
Las Vegas, Nevada 89169

HOLLAND & HART LLP
J. Stephen Peek, Esq., Bar No. 1759
Robert J. Cassity, Esq., Bar No. 9779
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Attorneys for Petitioners

APPENDIX TO EMERGENCY PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIVILEGED DOCUMENTS

CHRONOLOGICAL INDEX

Date	Description	Vol. #	Page Nos.
3/16/2011	First Amended Complaint	1	LVSC/SCL 0001-20
4/1/2011	Order Denying Defendants' Motions to Dismiss	1	LVSC/SCL 0021-22
5/6/2011	Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition	1	LVSC/SCL 0023-68
7/25/2011	Answer of Real Party in Interest Steven C. Jacobs to Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition	1	LVSC/SCL 0069-100
8/9/2011	Petitioner's Reply in Support of Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition	1	LVSC/SCL 0101-125
8/26/2011	Order Granting Petition for Writ of Mandamus	1	LVSC/SCL 0126-129
9/27/2011	Transcript: Hearing on Plaintiff's Motion to Conduct Jurisdictional Discovery	1	LVSC/SCL 0130-182
10/13/2011	Transcript: Hearing on Sands China's Motion in Limine and Motion for Clarification of Order	1	LVSC/SCL 0183-247
8/27/2012	Defendants' Statement Regarding Hearing on Sanctions	2	LVSC/SCL 000248-78
9/12/2012	Transcript: Court's Sanction Hearing – Day 3	2	LVSC/SCL 0279-356

Date	Description	Vol. #	Page Nos.
9/14/2012	Decision and Order	2	LVSC/SCL 0357-65
11/16/2012	Plaintiff Steven C. Jacob's Motion to Compel Production of Documents Used by Witness to Refresh Recollection	2	LVSC/SCL 000366-403
12/4/2012	Defendant Sand China Ltd.'s Motion for a Protective Order on Order Shortening Time	2	LVSC/SCL 0404-30
12/6/2012	Transcript: Hearing on Motion for Protective Order	2	LVSC/SCL 0431-89
12/7/2012	Defendants' Opposition to Plaintiff's Motion to Compel Production of Documents Used by Witness to Refresh Recollection	2	LVSC/SCL 0490-502
12/14/2012	Reply in Support of Plaintiff Steven C. Jacobs' Motion to Compel Production of Documents Used by Witness to Refresh Recollection	3	LVSC/SCL 000503-08
1/08/2013	Defendant Sands China Ltd.'s Report on Its Compliance with the Court's Ruling of December 18, 2012	3	LVSC/SCL 000509-68
1/17/2013	Order Regarding Plaintiff Steven C. Jacobs' Motion to Compel Production of Documents Used by Witness to Refresh Recollection	3	LKVSC/SCL 0569-71
1/18/2013	Notice of Entry of Order	3	LVSC/SCL 000572-76

APPENDIX TO EMERGENCY PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIVILEGED DOCUMENTS
ALPHABETICAL INDEX

Date	Description	Vol. #	Page Nos.
7/25/2011	Answer of Real Party in Interest Steven C. Jacobs to Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition	1	LVSC/SCL 0069-100
9/14/2012	Decision and Order	2	LVSC/SCL 0357-65
12/4/2012	Defendant Sand China Ltd.'s Motion for a Protective Order on Order Shortening Time	2	LVSC/SCL 0404-30
1/08/2013	Defendant Sands China Ltd.'s Report on Its Compliance with the Court's Ruling of December 18, 2012	3	LVSC/SCL 000509-68
12/7/2012	Defendants' Opposition to Plaintiff's Motion to Compel Production of Documents Used by Witness to Refresh Recollection	2	LVSC/SCL 0490-502
8/27/2012	Defendants' Statement Regarding Hearing on Sanctions	2	LVSC/SCL 000248-78
3/16/2011	First Amended Complaint	1	LVSC/SCL 0001-20
1/18/2013	Notice of Entry of Order	3	LVSC/SCL 000572-76
4/1/2011	Order Denying Defendants' Motions to Dismiss	1	LVSC/SCL 0021-22

Date	Description	Vol. #	Page Nos.
8/26/2011	Order Granting Petition for Writ of Mandamus	1	LVSC/SCL 0126-129
1/17/2013	Order Regarding Plaintiff Steven C. Jacobs' Motion to Compel Production of Documents Used by Witness to Refresh Recollection	3	LKVSC/SCL 0569-71
5/6/2011	Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition	1	LVSC/SCL 0023-68
8/9/2011	Petitioner's Reply in Support of Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition	1	LVSC/SCL 0101-125
11/16/2012	Plaintiff Steven C. Jacob's Motion to Compel Production of Documents Used by Witness to Refresh Recollection	2	LVSC/SCL 000366-403
12/14/2012	Reply in Support of Plaintiff Steven C. Jacobs' Motion to Compel Production of Documents Used by Witness to Refresh Recollection	3	LVSC/SCL 000503-08
9/12/2012	Transcript: Court's Sanction Hearing – Day 3	2	LVSC/SCL 0279-356
12/6/2012	Transcript: Hearing on Motion for Protective Order	2	LVSC/SCL 0431-89
9/27/2011	Transcript: Hearing on Plaintiff's Motion to Conduct Jurisdictional Discovery	1	LVSC/SCL 0130-182
10/13/2011	Transcript: Hearing on Sands China's Motion in Limine and Motion for Clarification of Order	1	LVSC/SCL 0183-247

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **APPENDIX TO EMERGENCY PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIVILEGED DOCUMENTS** to be served as indicated below, on the date and to the addressee(s) shown below:

VIA HAND DELIVERY ON 1/24/13
Judge Elizabeth Gonzalez
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent

VIA ELECTRONIC AND U.S. MAIL
James J. Pisanelli
Todd L. Bice
Debra Spinelli
Pisanelli Bice
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169

Attorneys for Steven C. Jacobs, Real Party in Interest

DATED this 23rd day of January, 2013.

By: /s/ PATRICIA FERRUGIA

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CLERK OF THE COURT

ACOM
CAMPBELL & WILLIAMS
DONALD J. CAMPBELL, ESQ. (#1216)
djc@campbellandwilliams.com
J. COLBY WILLIAMS, ESQ. (#5549)
jcw@campbellandwilliams.com
700 South Seventh Street
Las Vegas, Nevada 89101
Telephone: (702) 382-5222
Facsimile: (702) 382-0540

Attorneys for Plaintiff
Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

PARTIES

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

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

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

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

4. Defendant Sheldon G. Adelson ("Adelson") is a citizen of Nevada. Adelson is the Chairman of the Board and Chief Executive Officer of LVSC and also acts as the Chairman of the Board of Sands China.

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

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

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CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

JURISDICTION AND VENUE

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

8. Venue is proper in this Court pursuant to NRS 13.010 *et seq.* because, among other reasons, LVSC operates its principal place of business in Clark County, Nevada, Sands China engages is a number of systematic and ongoing transactions with LVSC in Nevada, and this action arises out of agreements originating in Clark County, Nevada.

ALLEGATIONS COMMON TO ALL CLAIMS

Background

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

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

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

12. Beginning in or about 2008, LVSC's business (as well as that of its competitors in the gaming industry) was severely and adversely impacted by the global economic downturn. LVSC's problems due to the economy in general were exacerbated when the Chinese government

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

imposed visa restrictions limiting the number of permitted visits by Chinese nationals to Macau. Because Chinese nationals make up more than half the patrons of Macau casinos, China's policy significantly reduced the number of visitors to Macau from mainland China, which adversely impacted tourism and the gaming industry in Macau.

13. As a result of the deteriorating economy, adverse visa developments in Macau, and related issues, LVSC faced increased cash flow needs which, in turn, threatened to trigger a breach of the company's maximum leverage ratio covenant in its U.S. credit facilities. The management of LVSC (which was led at the time by the company's longtime and well-respected President and Chief Operating Officer ("COO"), William Weidner) and the company's Board of Directors (which is led by the company's notoriously bellicose Chief Executive Officer and majority shareholder, Sheldon G. Adelson) engaged in serious disagreements regarding how and when to obtain liquidity in order to avoid a covenant breach. The disagreements were significant enough to force the company to form a special committee to address the serious conflicts between management and Adelson.

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

15. Despite the efforts of LVSC to stop its financial hemorrhaging, the company's stock plummeted to an all-time low closing price of $1.41 per share on March 9, 2009. Less than

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

one year earlier, in April 2008, the stock had traded at more than $80 per share. The all-time low share price coincided with LVSC's public announcement that William Weidner had left the company due to his ongoing disagreements with the mercurial Adelson about the management of the company. Weidner was replaced as President and COO by Michael Leven, a member of LVSC's Board of Directors.

LVSC Hires Steven Jacobs To Run Its Macau Operations

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

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

18. Jacobs, Leven, and Adelson subsequently travelled to Macau to conduct a review of LVSC's operations in that location. While in Macau, Leven told Jacobs that he wanted to hire him to run LVSC's Macau operations. Jacobs and Leven returned to Las Vegas after spending

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

approximately a week in Macau. Jacobs then spent the bulk of the next 2-3 weeks working on the Las Vegas restructuring program and also negotiating with Leven regarding the latter's desire to hire him as a full-time executive with the company and the terms upon which Jacobs would agree to do so.

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

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

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

22. On or about August 4, 2009, Jacobs received a document from LVSC styled "Offer Terms and Conditions" (the "Term Sheet") for the position of "President and CEO Macau[.]" The Term Sheet reflected the terms and conditions of employment that had been

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

negotiated by Leven and Jacobs while Jacobs was in Las Vegas working under the original consulting agreement with LVSC and during his subsequent trips back to Las Vegas. The Term Sheet was signed by Leven on behalf of LVSC on or about August 3, 2009 and faxed to Jacobs in Macau by Pattie Murray, an LVSC executive assistant located in the company's Las Vegas offices. Jacobs signed the Term Sheet accepting the offer contained therein and returned a copy to LVSC. LVSC's Compensation Committee approved Jacobs' contract on or about August 6, 2009.

Jacobs Saves the Titanic

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

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

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

accounted for approximately 65% of LVSC's total net revenue (*i.e.*, $1.04 billion USD of a total $1.59 billion USD).

25. To put matters in perspective, when Jacobs began performing work for the company in March 2009, LVSC shares were trading at just over $1.70 per share and its market cap was approximately $1.1 billion USD. At the time Jacobs left the company in July 2010, LVSC shares were over $28 per share and the market cap was in excess of $19 billion USD.

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

Jacobs' Conflicts with Adelson

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

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

b. demands that Jacobs threaten to withhold Sands China business from prominent Chinese banks unless they agreed to use influence with newly-elected senior government officials of Macau in order

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

to obtain Strata-Title for the Four Seasons Apartments and favorable treatment with regards to labor quotas and table limits;

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

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

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

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

29. Jacobs' ongoing disagreements with Adelson came to a head when they were in Singapore to attend the grand opening of LVSC's Marina Bay Sands in late June 2010. While in Singapore, Jacobs attended several meetings of LVSC executives including Adelson, Leven, Ken

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
720 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

Kay (LVSC's Chief Financial Officer), and others. During these meetings, Jacobs disagreed with Adelson's and Leven's desire to expand the ballrooms at Parcels 5 and 6, which would add an incremental cost of approximately $30 million to a project already significantly over budget when Sands China's existing facilities were already underutilized. In a separate meeting, Jacobs disagreed with Adelson's desire to aggressively grow the junket business within Macau as the margins were low, the decision carried credit risks, and Jacobs was concerned given recent investigations by Reuters and others alleging LVSC involvement with Chinese organized crime groups, known as Triads, connected to the junket business. Following these meetings, Jacobs re-raised the issue about the need to advise the Sands China board of the delays and cost overruns associated with the development of Parcels 5 and 6 in Macau so that a determination could be made of whether the information must be disclosed in compliance with Hong Kong Stock Exchange regulations. Adelson informed Jacobs that he was Chairman of the Board and the controlling shareholder of Sands China and would "do as I please."

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

31. On July 23, 2010, Jacobs attended a meeting with Leven and LVSC/Sands China board member, Irwin Siegel, for the ostensible purpose of discussing the upcoming Sands China board meeting. During the meeting, Leven unceremoniously advised Jacobs that he was being terminated effective immediately. When Jacobs asked whether the termination was purportedly "for cause" or not, Leven responded that he was "not sure" but that the severance provisions of

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

the Term Sheet would not be honored. Leven then handed Jacobs a terse letter from Adelson advising him of the termination. The letter was silent on the issue of "cause."

32. After the meeting with Leven and Siegel, Jacobs was escorted off the property by two members of security in public view of many company employees, resort guests, and casino patrons. Jacobs was not permitted to return to his office to collect his belongings, but was instead escorted to the border to leave Macau.

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

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

FIRST CAUSE OF ACTION

(Breach of Contract - LVSC)

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

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

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

37. The Term Sheet provides, in part, that Jacobs would have a 3-year employment term, that he would earn an annual salary of $1.3 million plus a 50% bonus upon attainment of certain goals, and that he would receive 500,000 LVSC stock options (in addition to the previously awarded 75,000 LVSC options) to vest in stages over three years.

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

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

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

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

42. LVSC has wrongfully characterized Jacobs' termination as one for "cause" in an effort to deprive him of contractual benefits to which he is otherwise entitled. As a direct and proximate result of LVSC's wrongful termination of Jacobs' employment and failure to honor the

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

"Not For Cause" severance provisions contained in the Term Sheet, Jacobs has suffered damages in an amount to be proven at trial but in excess of $10,000.

SECOND CAUSE OF ACTION

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

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

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

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

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

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

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

48. LVSC and Sands China have wrongfully characterized Jacobs' termination as one for "cause" in an effort to deprive him of contractual benefits to which he is otherwise entitled. As a direct and proximate result of LVSC's and Sands China's actions, Jacobs has suffered damages in an amount to be proven at trial but in excess of $10,000.

THIRD CAUSE OF ACTION

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

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

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

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

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

FOURTH CAUSE OF ACTION

(Tortious Discharge in Violation of Public Policy – LVSC)

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

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

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

55. Certain of the improper and illegal demands made upon Jacobs by Adelson as set forth above would have required Jacobs to engage in conduct that he, in good faith, believed was illegal. In other instances, the improper and illegal demands would have required Jacobs to refrain from engaging in conduct required by applicable law. Both forms of demands would have required Jacobs to violate his fiduciary duties to the shareholders of LVSC and Sands China.

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

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

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

FIFTH CAUSE OF ACTION

(Defamation Per Se - Adelson, LVSC, Sands China)

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

60. On Tuesday March 15, 2011, oral arguments by the respective counsel of Jacobs, LVSC, and Sands China were presented to the Honorable Elizabeth Gonzalez, Eighth Judicial District Court Judge. These arguments centered upon the motions of LVSC and Sands China to have all of the foregoing causes of action, detailed in this complaint, dismissed as to each of them on the grounds that 1) a necessary and indispensible party had not been named and 2) the Court lacked jurisdiction over Sands China.

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

61. Following the 90-minute hearing, the Court denied each of the Defendants' motions to dismiss the action. The hearing received widespread attention by members of the media, and particularly by journalists who report on affairs in the business community. Included among those reporters was Ms. Alexandra Berzon, a Pulitzer Prize winning journalist who attended the hearing on behalf of her employer, the Wall Street Journal®. The Wall Street Journal® is generally recognized as one of the most respected and widely read publications in the world, particularly as to matters pertaining to the economy and associated commercial activities and endeavors.

62. Following the hearing, the Wall Street Journal® published an article in its online edition styled "Setback for Sands in Macau Suit." That article, which was authored by Ms. Berzon, reported that Adelson had, via e-mail, made the following statements:

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

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

63. All of the offending statements made by Adelson concerning Jacobs and identified in Paragraph 62, *supra*, were 1) false and defamatory; 2) published to a third person or party for the express intent of republication to a worldwide audience; 3) maliciously published by Adelson knowing their falsity and/or in reckless disregard of the truth thereof; 4) intended to and did in fact harm Jacobs' reputation and good name in his trade, business, profession, and customary corporate office; and 5) were of such a nature that significant economic damages must be presumed.

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

64. Adelson's malicious defamation of Jacobs was made in both his personal as well as his representative capacities as Chairman of the Board of LVSC and as Chairman of the Board of its affiliate, Sands China; both of which ratified and endorsed either explicitly or implicitly Adelson's malicious invective.

65. That all the comments and statements by Adelson as detailed in Paragraph 62, *supra*, were made without justification or legal excuse, and were otherwise not privileged because they did not function as a necessary or useful step in the litigation process and did not otherwise serve its purposes.

66. As a direct and proximate result of Adelson, LVSC, and Sands China's defamation, Jacobs has suffered damages in an amount to be proven at trial but in excess of $10,000. Moreover, Jacobs is entitled to the imposition of punitive damages against Adelson, LVSC, and Sands China, said imposition not being subject to any statutory limitations under NRS 42.005.

PRAYER FOR RELIEF

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

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

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

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

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

....

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

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

DATED this 16th day of March, 2011.

CAMPBELL & WILLIAMS

By */s/ Donald J. Campbell*
DONALD J. CAMPBELL, ESQ. (1216)
J. COLBY WILLIAMS, ESQ. (5549)
700 South Seventh Street
Las Vegas, Nevada 89101

Attorneys for Plaintiff
Steven C. Jacobs

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE 702/382-5222
FAX 702/382-0540

CSERV

CAMPBELL & WILLIAMS
DONALD J. CAMPBELL, ESQ. (#1216)
djc@campbellandwilliams.com
J. COLBY WILLIAMS, ESQ. (#5549)
jcw@campbellandwilliams.com
700 South Seventh Street
Las Vegas, Nevada 89101
Telephone: (702) 382-5222
Facsimile: (702) 382-0540

Attorneys for Plaintiff
Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS, Plaintiff, vs. LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; SHELDON G. ADELSON, in his individual and representative capacity, DOES I through X; and ROE CORPORATIONS I through X, Defendants.	CASE NO. A-10-627691-C DEPT. NO. XI **CERTIFICATE OF SERVICE**

I hereby certify that on this 24th day of March, 2011, I served via e-mail and U.S. Mail, first class postage pre-paid, a true and correct copy of the foregoing First Amended Complaint to the following counsel of record:

Glaser Weil Fink Jacobs Howard Avchen & Shapiro, LLP
Mark G. Krum, Esq.
Andrew D. Sedlock, Esq.
3763 Howard Hughes Parkway, Suite 300
Las Vegas, NV 89169
E-Mail: pglasser@glaserweil.com
mkrum@glaserweil.com

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

LVSC/SCL0019

asedlock@glaserweil.com

Attorneys for Defendant Sands China Ltd.

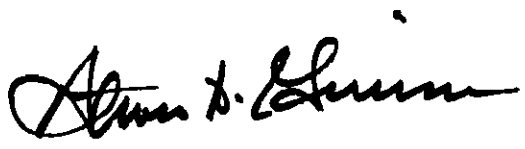
Holland & Hart, LLP
J. Stephen Peek, Esq.
Justin C. Jones, Esq.
3800 Howard Hughes Parkway, 10th Fl.
Las Vegas, NV 89169
E-Mail: speek@hollandhart.com
jcjones@hollandhart.com

Attorneys for Defendant Las Vegas Sands Corp.

/s/ Lucinda Martinez

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW
700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

LVSC/SCL0020



ORDR
CAMPBELL & WILLIAMS
DONALD J. CAMPBELL, ESQ. (#1216)
djc@campbellandwilliams.com
J. COLBY WILLIAMS, ESQ. (#5549)
jcw@campbellandwilliams.com
700 South Seventh Street
Las Vegas, Nevada 89101
Telephone: (702) 382-5222
Facsimile: (702) 382-0540

Attorneys for Plaintiff
Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

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

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

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

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

DISTRICT COURT JUDGE

Submitted by:

CAMPBELL & WILLIAMS

By
DONALD J. CAMPBELL, ESQ. (#1216)
J. COLBY WILLIAMS, ESQ. (#5549)
700 South Seventh Street
Las Vegas, Nevada 89101

Attorneys for Plaintiff
Steven C. Jacobs

Approved as to form:

HOLLAND & HART, LLP

By:
STEPHEN J. PEEK, ESQ. (#1758)
JUSTIN C. JONES, ESQ. (#8519)
3800 Howard Hughes Pkwy., 10th Fl.
Las Vegas, Nevada 89169

Attorney for Defendant
Las Vegas Sands Corp.

GLASER, WEIL, FINK, JACOBS
HOWARD & SHAPIRO, LLP

By:
PATRICIA GLASER, ESQ. (*pro hac*)
MARK G. KRUM, ESQ. (#10913)
3763 Howard Hughes Pkwy., Suite. 300
Las Vegas, Nevada 89169

Attorneys for Defendant
Sands China, Ltd.

IN THE SUPREME COURT

OF THE STATE OF NEVADA

SANDS CHINA LTD.,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT, in and for the County of Clark, STATE OF NEVADA, and the HONORABLE ELIZABETH GONZALEZ, District Judge,

Respondents,

and,

STEVEN C. JACOBS,

Real Party in Interest.

Case No.:

(D.C. No.: A-10-627691-B)

PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION

GLASER WEIL FINK JACOBS
HOWARD, AVCHEN & SHAPIRO LLP

Patricia L. Glaser, (Pro Hac Vice Admitted)
Mark G. Krum, State Bar No. 10913
Andrew D. Sedlock, State Bar No. 9183
3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169

Attorneys for Petitioner

CAMBELL & WILLIAMS

Donald J. Campbell, State Bar No. 1216
J. Colby Williams, State Bar No. 5549
700 South Seventh Street
Las Vegas, Nevada 89101

Attorneys for Real Party in Interest

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TREATISES

STATUTES

PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION

Petitioner Sands China Ltd., a Cayman Islands entity, by and through its counsel of record, the law firm of GLASER WEIL FINK JACOBS HOWARD, AVCHEN & SHAPIRO, and pursuant to NRS 34.160, 34.320 and NRAP 21, respectfully petitions the Court for the issuance of a Writ of Mandamus or, in the alternative, a Writ of Prohibition, against the respondents, the Honorable Elizabeth Gonzalez, District Judge of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, directing Judge Gonzalez and the District Court to vacate and modify its Order denying SCL's Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, for Plaintiff's Failure to Join a Necessary Party pursuant to NRCP 12(b)(5)-(6) entered on April 1, 2011 and to compel said District Court to dismiss the action filed by Steven C. Jacobs against SCL in the Eighth Judicial District Court of the State of Nevada, Case No. A-10-627691-C, upon the grounds and for the reasons that the District Court lacks personal jurisdiction over SCL, and prohibiting said District Court from continuing to exercise personal jurisdiction against SCL.

I.

INTRODUCTION

Petitioner Sands China Ltd. ("Petitioner" or "SCL") is a Cayman Islands corporation that does business exclusively in Macau Special Administrative Region (SAR) of the People's Republic of China ("Macau") and Hong Kong SAR of the People's Republic of China ("Hong Kong"). It is a public company, the stock of which trades on The Stock Exchange of Hong Kong Limited ("HKEx"). SCL is not present in Nevada, and it has not done business here.

Real Party in Interest Steven C. Jacobs ("Jacobs" or "Plaintiff") is not a resident of Nevada, nor was he a Nevada resident when he commenced employment with SCL in Macau. Likewise, Jacobs was not a Nevada resident when he was terminated in Macau from his position with SCL in Macau.

Jacobs nevertheless sued SCL in Nevada, claiming that SCL breached an alleged contract with Jacobs. For his breach of contract claim against SCL, Jacobs alleged that he made a demand on SCL on September 24, 2010 to "honor his [alleged] right to exercise" an option to purchase SCL