

2 – The storing of data for historical, statistical or scientific purposes for longer periods than in (5) above may be authorised by the public authority at the request of the controller in the case of a legitimate interest.

#### **Article 6**

##### **Criteria for making data processing legitimate**

Personal data may be processed only if the data subject has unambiguously given his consent or if processing is necessary:

- (1) for the performance of a contract or contracts to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract or a declaration of his will to negotiate;
- (2) for compliance with a legal obligation to which the controller is subject;
- (3) in order to protect the vital interests of the data subject if the latter is physically or legally incapable of giving his consent;
- (4) for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed;
- (5) for pursuing the legitimate interests of the controller or the third party to whom the data are disclosed, except where such interests should be overridden by the interests for fundamental rights, freedoms and guarantees of the data subject.

#### **Article 7**

##### **The processing of sensitive data**

1 – The processing of personal data revealing philosophical or political beliefs, political society or trade union membership, religion, privacy and racial or ethnic origin, and the processing of data concerning health or sex life, including genetic data, shall be prohibited.

2 – With guarantees of non-discrimination and with the security measures provided for in Article 16, the processing of the data referred to in the previous number shall be carried out when one of the following conditions applies:

- (1) when the processing of the data referred to in the previous number is given explicit authorisation by a legal provision or by a statutory regulation with organizational nature;
- (2) when, on important public interest grounds, such processing is essential for exercising the legal or statutory rights of the controller, and authorised by the public authority;
- (3) when the data subject has given his explicit consent for such processing.

3 – The processing of the data referred to in No. 1 shall also be carried out when one of the following conditions applies:

- (1) when it is necessary to protect the vital interests of the data subject or of another person, and the data subject is physically or legally incapable of giving his consent;
  - (2) when it is carried out with the data subject's consent in the course of its legitimate activities by a legal person or non-profit seeking body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed to a third party without the consent of the data subjects;
  - (3) when it relates to data which are manifestly made public by the data subject, provided his consent for their processing can be clearly inferred from his declarations;
  - (4) when it is necessary for the establishment, exercise or defence of legal claims and is exclusively carried out for that purpose.
- 4 – The processing of data relating to health and sex life, including genetic data, shall be carried out if it is necessary for the purposes of preventive medicine, medical diagnosis, the provision of care or treatment or the management of health-care services, provided those data are processed by a health professional bound by professional secrecy or by another person also subject to an equivalent obligation of secrecy, and it is notified to the public authority under Article 21, and where suitable safeguards are provided.

#### **Article 8**

##### **Suspicion of illegal activities, criminal and administrative offences**

- 1 – Central registers relating to persons suspected of illegal activities, criminal and administrative offences and decisions applying penalties, security measures, fines and additional penalties may only be created and kept by public services vested with that specific responsibility by a legal provision or a statutory regulation with organizational nature, subject to observance of procedural and data protection rules in force.
- 2 – The processing of personal data relating to persons suspected of illegal activities, criminal and administrative offences and decisions applying penalties, security measures, fines and additional penalties may be carried out, subject to observance of the rules for the protection of data and the security of information, when such processing is necessary for pursuing the legitimate purposes of the controller, provided the fundamental rights and freedoms of the data subject are not overriding.
- 3 – The processing of personal data for the purposes of police investigations shall be restricted to the processing necessary to prevent a specific danger or to prosecute a particular offence and to exercise the responsibilities provided for in a legal provision, in a statutory regulation with organizational nature, or in the terms of instruments of international law or inter-regional agreements applicable in the MSAR.

## **Article 9**

### **Combination of personal data**

- 1 - The combination of personal data not provided for in a legal provision or a statutory regulation with organizational nature shall be subject to the authorisation of the public authority, requested by the controller or jointly by the corresponding controllers under No. 1 of Article 22.
- 2 - The combination of personal data must:
  - (1) be necessary for pursuing the legal or statutory purposes and legitimate interests of the controller;
  - (2) not involve discrimination or a reduction in the fundamental rights and freedoms of the data subjects;
  - (3) be covered by adequate security measures;
  - (4) take account of the type of data subject to combination.

## **CHAPTER III**

### **Rights of the data subject**

## **Article 10**

### **Right to information**

- 1 - The controller or his representative shall provide a data subject from whom data relating to himself are collected with the following information, except where he already has it:
  - (1) the identity of the controller and of his representative, if any;
  - (2) the purposes of the processing;
  - (3) other information such as:
    - (i) The recipients or categories of recipients;
    - (ii) Whether replies are obligatory or voluntary, as well as the possible consequences of failure to reply;
    - (iii) The existence and conditions of the right of access and the right to rectify, provided they are necessary, taking account of the specific circumstances of collection of the data in order to guarantee the data subject that they will be processed fairly.
- 2 - The documents supporting the collection of personal data shall contain the information set down in the previous number.
- 3 - If the data are not collected from the data subject and except where he already has it, the controller or his representative must provide the data subject with the information set

down in No. 1 at the time of undertaking the recording of data or, if a disclosure to third parties is envisaged, no later than the time the data are first disclosed.

4 – If data are collected on open networks the data subject shall be informed, except where he is already aware of it, that personal data relating to him may be circulated on the network without security measures and may be at risk of being seen and used by unauthorised third parties.

5 – The obligation to provide information may be waived by any one of the following:

- (1) a legal provision;
- (2) on the grounds of security and criminal prevention or investigation;
- (3) in particular for processing for statistical purposes or for the purposes of historical or scientific research, when the provision of such information proves impossible or would involve a disproportionate effort or if recording or disclosure is expressly laid down by law or administrative regulations, in which case notification to the public authority is required.

6 – With respect to the basic right of the data subject under No. 3 of the next article, the obligation to provide information under this Article shall not apply to the processing of data carried out solely for journalistic purposes or the purpose of artistic or literary expression.

## **Article 11**

### **Right of access**

1 – The data subject has the right to obtain from the controller without constraint at reasonable intervals and without excessive delay or expense:

- (1) Confirmation as to whether or not data relating to him are being processed and information as to the purposes of the processing, the categories of data concerned and the recipients or categories of recipients to whom the data are disclosed;
- (2) Communication in an intelligible form of the data undergoing processing and of any available information as to their source;
- (3) Knowledge of the reason involved in any automatic processing of data concerning him;
- (4) The rectification, erasure or blocking of data the processing of which does not comply with the provisions of this Act, in particular because of the incomplete or inaccurate nature of the data;
- (5) Notification to third parties to whom the data have been disclosed of any rectification, erasure or blocking carried out in compliance with (4), in which case the third parties are required to rectify, erase or block the data accordingly, unless this proves impossible, or would involve a disproportionate effort.

- 2 – In the case of the processing of personal data relating to security and criminal prevention or investigation, the right of access may be exercised by means of the competent authority in that case.
- 3 – In the cases provided for in No. 6 of the previous article, the right of access is exercised by means of the public authority, securing the rules applicable, in particular those guaranteeing freedom of expression and information, freedom of the press and the professional independence and secrecy of journalists.
- 4 – In the cases provided for in No. 2 and No. 3, if communication of the data might prejudice security, criminal prevention or investigation and freedom of expression and information or the freedom of the press, the competent authority in that case or the public authority shall only inform the data subject of the measures taken within the limits of maintaining the targeted value of protection described in this number.
- 5 – The right of access to information relating to health data, including genetic data, is exercised by means of the doctor chosen by the data subject.
- 6 – If the data are not used for taking measures or decisions regarding any particular individual, the law may restrict the right of access where there is clearly no risk of breaching the fundamental rights, freedoms and guarantees of the data subject, particularly the right to privacy, and when the data are used solely for purposes of scientific research or are kept in personal form for a period which does not exceed the period necessary for the sole purpose of creating statistics.

## **Article 12**

### **Right to object**

1. Save where otherwise provided by law, the data subject has the right to object at any time on compelling legitimate grounds relating to his particular situation to the processing of data relating to him, and where there is a justified objection the processing instigated by the controller may no longer involve those data;
2. The data subject also has the right to object, on request and free of charge, to the processing of personal data relating to him which the controller anticipates being processed for the purposes of direct marketing or any other form of commercial research, or to be informed before personal data are disclosed for the first time to third parties for the purposes of direct marketing or for use on behalf of third parties, and to be expressly offered the right to object free of charge to such disclosure or uses.

## **Article 13**

### **Right not to be subject to automated individual decisions**

- 1 – Every person shall have the right not to be subject to a decision which produces legal effects concerning him or significantly affects him and which is based solely on

automated processing of data intended to evaluate certain personal aspects relating to him, in particular his performance at work, creditworthiness, reliability or conduct.

2 – Without prejudice to compliance with the other provisions of this Act, a person may be subject to a decision taken under No. 1:

- (1) if that decision is taken in the course of the entering into or performance of a contract, provided that the request for the entering into or the performance of the contract has been satisfied, or that there are suitable measures to safeguard his legitimate interests, particularly arrangements allowing him to put his point of view.
- (2) if that decision is authorised by a legal provision which shall lay down measures to safeguard the data subject's legitimate interests.

#### **Article 14**

##### **Right to indemnification**

1 – Any person who has suffered damage as a result of an unlawful processing operation or of any other act incompatible with legal provisions or regulations in the area of personal data protection is entitled to receive compensation from the controller for the damage suffered.

2 – The controller may be exempted from this liability, in whole or in part, if he proves that he is not responsible for the event giving rise to the damage.

3 – If a processor involves, Article 492 of the Civil Code and its following provisions pertinent to relation of commission shall apply.

### **CHAPTER IV**

#### **Security and confidentiality of processing**

##### **Article 15**

##### **Security of processing**

1 – The controller must implement appropriate technical and organisational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing. Having regard to the state of the art and the cost of their implementation, such measures shall ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected.

2 – Where processing is carried out on his behalf the controller must choose a processor providing sufficient guarantees in respect of the technical security measures and organisational measures governing the processing to be carried out, and must ensure compliance with those measures.

3 – The carrying out of processing by way of a processor must be governed by a contract or legal act binding the processor to the controller and stipulating in particular that the processor shall act only on instructions from the controller and that the obligations referred to in No. 1 shall also be incumbent on the processor.

4 – Proof of the will to negotiate, the contract or the legal act relating to data protection and the requirements relating to the measures referred to in No. 1 shall be in writing in a document legally certified as affording proof.

## Article 16

### Special security measures

1 - The controllers of the data referred to in No. 2 of Articles 7 and Article 8 shall take appropriate measures to:

- 1) prevent unauthorised persons from entering the premises used for processing such data (control of entry to the premises);
- 2) prevent data media from being read, copied, altered or removed by unauthorised persons (control of data media);
- 3) prevent unauthorised input and unauthorised obtaining of knowledge, alteration or elimination of personal data input (control of input);
- 4) prevent automatic data processing systems from being used by unauthorised persons by means of data transmission premises (control of use);
- 5) guarantee that authorised persons may only access data covered by the authorisation (control of access);
- 6) guarantee the checking of the bodies to whom personal data may be transmitted by means of data transmission premises (control of transmission);
- 7) guarantee that it is possible to check *a posteriori* , in a period appropriate to the nature of the processing, the establishment in the regulations applicable to each sector of which personal data are input, when and by whom (control of input);
- 8) in transmitting personal data and in transporting the respective media, prevent unauthorised reading, copying, alteration or elimination of data (control of transport).

2 – Taking account of the nature of the bodies responsible for processing and the type of premises in which it is carried out, the public authority may waive the existence of certain security measures, subject to guaranteeing respect for the fundamental rights, freedoms and guarantees of the data subjects.

- 3 – The systems must guarantee logical separation between data relating to health and sex life, including genetic data, and other personal data.
- 4 – Where circulation over a network of the data referred to in Article 7 may jeopardise the fundamental rights, freedoms and guarantees of their data subjects the public authority may determine that transmission must be encoded.

#### **Article 17**

##### **Processing by a processor**

Any person acting under the authority of the controller or the processor, including the processor himself, who has access to personal data must not process them except on instructions from the controller, unless he is required to do so by law.

#### **Article 18**

##### **Professional secrecy**

- 1 – Controllers and persons who obtain knowledge of the personal data processed in carrying out their functions shall be bound by professional secrecy, even after their functions have ended.
- 2 – Officers, agents or staff who act as consultants for the public authority shall be subject to the same obligation of professional secrecy.
- 3 – The provision in the previous numbers shall not exclude the duty to supply the obligatory information according to the law, except when it is contained in filing systems organised for statistical purposes.

### **CHAPTER V**

#### **Transfer of personal data outside the MSAR**

#### **Article 19**

##### **Principles**

- 1 - The transfer of personal data to a destination outside the MSAR may only take place subject to compliance with this Act and provided the legal system in the destination to which they are transferred ensures an adequate level of protection.
- 2 – The adequacy of the level of protection referred to in the previous number shall be assessed in the light of all the circumstances surrounding a data transfer operation or set of data transfer operations; particular consideration shall be given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the place of origin and place of final destination, the rules of law, both general and sectoral, in force in

the destination in question and the professional rules and security measures which are complied with in that destination.

3 – It is for the public authority to decide whether a legal system ensures an adequate level of protection referred to in the previous number.

## **Article 20**

### **Derogations**

1 - A transfer of personal data to a destination in which the legal system does not ensure an adequate level of protection within the meaning of No. 2 of the previous article may be allowed on condition that the public authority is notified, and that the data subject has given his consent unambiguously to the proposed transfer, or if that transfer:

- (1) is necessary for the performance of a contract between the data subject and the controller or the implementation of pre-contractual measures taken in response to the data subject's request;
- (2) is necessary for the performance or conclusion of a contract concluded or to be concluded in the interests of the data subject between the controller and a third party;
- (3) is necessary or legally required on important public interest grounds, or for the establishment, exercise of defence of legal claims;
- (4) is necessary in order to protect the vital interests of the data subject;
- (5) is made from a register which according to laws or administrative regulations is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate legitimate interest, provided the conditions laid down in law for consultation are fulfilled in the particular case.

2 – Without prejudice to No. 1 the public authority may authorise a transfer or a set of transfers of personal data to a destination in which the legal system does not ensure an adequate level of protection within the meaning of No. 2 of the previous article, provided the controller adduces adequate safeguards with respect to the protection of the privacy and fundamental rights and freedoms of individuals and with respect to their exercise, particularly by means of appropriate contractual clauses.

3 – A transfer of personal data which is necessary for the protection of defence, public security and public health, and for the prevention, investigation and prosecution of criminal offences, shall be governed by special legal provisions or by the international conventions and regional agreements to which the MSAR is party.

## CHAPTER VI

### Notification

#### Article 21

##### Obligation of notification

- 1 – The controller or his representative, if any, must notify the public authority in written form within eight days after the initiation of carrying out any wholly or partly automatic processing operation or set of such operations intended to serve a single purpose or several related purposes.
- 2 – The public authority may authorise the simplification of or exemption from notification for particular categories of processing which are unlikely, taking account of the data to be processed, to affect adversely the rights and freedoms of the data subjects and to take account of criteria of speed, economy and efficiency.
- 3 – The authorisation, which must be published in the *Official Gazette of the MSAR*, must specify the purposes of the processing, the data or category of data to be processed, the category or categories of data subjects, the recipients or categories of recipients to whom the data may be disclosed and the length of time the data are to be stored.
- 4 – Processing whose sole purpose is the keeping of a register which according to laws or administrative regulations is intended to provide information to the public and which is open to consultation by the public in general or by any person demonstrating a legitimate interest shall be exempted from notification.
- 5 – The non-automatic processing of the personal data provided for in No. 1 of Article 7 shall be subject to notification when they are processed under No. 3 (1) of that Article.

#### Article 22

##### Prior checking

- 1 – Save where otherwise referred to in No. 2, the authorisation of the public authority is required for:
  - (1) the processing of personal data referred to in No. 2 of Article 7;
  - (2) the processing of personal data relating to credit and the solvency of the data subjects;
  - (3) the combination of personal data provided for in Article 9;
  - (4) the use of personal data for purposes not giving rise to their collection.
- 2 – The processing referred to in the previous number may be authorised by legal provisions or statutory regulations with organizational nature, in which case it does not require the authorisation of the public authority.

### **Article 23**

#### **Content of applications for opinions or authorisation and notification**

Applications for opinions, authorisation and notifications submitted to the public authority shall include the following information:

- (1) the name and address of the controller and of his representative, if any;
- (2) the purposes of the processing;
- (3) a description of the category or categories of data subjects and of the data or categories of personal data relating to them;
- (4) the recipients or categories of recipients to whom the data might be disclosed and in what circumstances;
- (5) the body entrusted with processing the information, if it is not the controller himself;
- (6) any combinations of personal data processing;
- (7) the length of time for keeping personal data;
- (8) the form and circumstances in which the data subjects may be informed of or may correct the personal data relating to them;
- (9) proposed transfers of data to third countries;
- (10) a general description enabling a preliminary assessment to be made of the adequacy of the measures taken under Articles 15 and 16 to ensure security of processing.

### **Article 24**

#### **Obligatory information**

1 – The legal provisions or statutory regulations with organizational nature referred to in No. 2 of Article 7 and No. 1 of Article 8, the authorisations of the public authority and the register of personal data processing must indicate at least:

- (1) the controller of the filing system and his representative, if any;
- (2) the categories of personal data processed;
- (3) the purposes of the data and the categories of body to whom they might be disclosed;
- (4) the form of exercising the right of access and rectification.;
- (5) any combinations of personal data processing;
- (6) proposed transfers of data to third countries or regions.

2 – Any change in the information referred to in No. 1 shall be subject to the procedures provided for in Articles 21 and 22.

### **Article 25**

#### **Publicising of processing operations**

1 – When personal data processing is not covered by a legal provision or statutory regulations with organizational nature, and must be authorised or notified, it shall be set down in a public authority register open to consultation by any person.

2 – The register shall contain the information listed in (1) to (4) and (9) of Article 23.

3 – A controller not subject to notification shall make available at least the information referred to in No. 1 of the previous article in an appropriate form to any person on request.

4 – This Article does not apply to processing whose sole purpose is the keeping of a register which according to laws or administrative regulations is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can provide proof of a legitimate interest.

5 – All the opinions and authorisations drawn up or granted under this Act, particularly the authorisations provided for in No. 2 of Article 7 and No. 1 of Article 9, must be published by the public authority in its annual report.

## **CHAPTER VII**

### **Codes of conduct**

#### **Article 26**

##### **Codes of conduct**

The public authority shall encourage the drawing up of codes of conduct intended to contribute to the proper implementation of the provisions in this Act, to enhance a great efficacy of self regulation, and to exercise and protect privacy pertained basic rights, taking account of the specific features of the various sectors.

#### **Article 27**

##### **Submission of draft codes of conduct**

1 – Professional associations and other bodies representing other categories of controllers which have drawn up draft codes of conduct shall be able to submit them to the public authority for registration.

2 – If the public authority considers the draft as in accordance with the laws and regulations in force in the area of personal data protection, a registration shall be made.

3 – The registration of the codes of conduct has the effect of a declaration of its lawfulness but does not have the nature of a legal provision or a statutory regulation.

## **CHAPTER VIII**

### **Administrative and legal supervision**

#### **SECTION I**

#### **Administrative and legal supervision**

##### **Article 28**

##### **General principles**

Without prejudice to the right to submit a complaint to the public authority, according to the law any individual may have recourse to administrative and legal means to guarantee compliance with legal provisions and statutory regulations in the area of personal data protection.

##### **Article 29**

##### **Special legal supervision**

- 1 – Appeals may be lodged directly to the Court of Final Appeal against decisions reached by a law court for the reason of violation of fundamental rights protected by this act. It shall be direct and limited to only the questions on violation against fundamental rights, and shall have an urgent nature.
- 2 – Without prejudice to the previous number, for administrative acts or simple facts of public powers, appeals may be lodged to the Administrative Court for reasons of violation of fundamental rights protected by this act. The appeal shall have an urgent nature.
- 3 – In compliance with the previous two numbers, Article 7 of the Codes of Civil Procedures shall apply to the duly adapted appeal procedure mentioned in the previous two numbers. It also applies to and supplements the duly adapted law of civil procedures and administrative procedures respectively.

#### **SECTION II**

#### **Administrative offences**

##### **Article 30**

##### **Subsidiary legislation**

The general system of administrative offences, adapted according to the following articles, is subsidiarily applicable to the offences provided for in this section.

### **Article 31**

#### **Compliance with duty omitted**

Whenever the administrative offence arises from omitting a duty, application of the penalty and payment of the fine do not release the perpetrator from compliance with that duty, if it is still possible.

### **Article 32**

#### **Omission or inadequate compliance with obligations**

1 – Bodies which negligently fail to comply with the obligation to notify the public authority of the processing of personal data referred to in No. 1 and No. 5 of Article 21, provide false information or comply with the obligation to notify without observing Article 23 or, having been notified by the public authority, continue to allow access to open data transmission networks to controllers who fail to comply with the provisions of this Act are committing an administrative offence punishable with the following fines:

- (1) In the case of a natural person, a minimum of MOP2,000 and a maximum of MOP20,000;
- (2) In the case of a legal person or a body without legal personality, a minimum of MOP10,000 and a maximum of MOP100,000.

2 – The fine shall be increased to double the maxima in the case of data subject to prior authorisation according to Article 22.

### **Article 33**

#### **Other administrative offences**

1 – Bodies which fail to comply with obligations in Articles 5, 10, 11, 12, 13, 16, 17 and No. 3 of Article 25 are committing an administrative offence punishable with a minimum fine of MOP4,000 and a maximum of MOP40,000.

2 – In the case of failure to comply with the obligations in Articles 6, 7, 8, 9, 19 and 20, the administrative offence is punishable with a fine of MOP8,000 – MOP80,000.

### **Article 34**

#### **Concurrent offences**

1 – If the same fact is simultaneously a crime and an administrative offence the agent shall always be punished by virtue of the crime.

2 – The penalties applied to concurrent administrative offences shall always be materially accumulated.

### **Article 35**

#### **Punishment of negligence and attempt**

- 1 – Negligence shall always be punished in relation to the administrative offences provided for in Article 33.
- 2 – Any attempt to commit the administrative offences provided for in Articles 32 and 33 shall always be liable to punishment.

### **Article 36**

#### **Application of fines**

- 1 – The public authority is responsible for the application of the fines provided for in this Act.
- 2 – The decision of the public authority shall be enforceable if it is not challenged within the statutory period.

## **SECTION III**

### **Crimes**

### **Article 37**

#### **Non-compliance with obligations relating to data protection**

- 1 – Any person who intentionally:
  - (1) omits notification or the application for authorisation referred to in Articles 21 and 22;
  - (2) provides false information in the notification or in applications for authorisation for the processing of personal data or makes alterations in the latter which are not permitted by the legalisation instrument;
  - (3) misappropriates or uses personal data in a form incompatible with the purpose of the collection or with the legalisation instrument;
  - (4) promotes or carries out an illegal combination of personal data;
  - (5) fails to comply with the obligations provided for in this Act or in other data protection legislation when the time limit fixed by the public authority for complying with them has expired;
  - (6) continues to allow access to open data transmission networks to controllers who fail to comply with the provisions of this Act after notification by the public authority not to do so,shall be liable to up to one year's imprisonment or a fine of up to 120 days.
- 2 – The penalty shall be increased to double the maxima in the case of the personal data referred to in Articles 7 and 8.

### **Article 38**

#### **Undue access**

- 1 – Any person who without due authorisation gains access by any means to personal data prohibited to him shall be liable to up to one year's imprisonment or a fine of up to 120 days, if a more severe punishment is not to be enforced due to a specific law.
- 2 - The penalty shall be increased to double the maxima when access:
  - (1) is achieved by means of violating technical security rules;
  - (2) allows the agent or third parties to obtain knowledge of the personal data;
  - (3) provides the agent or third parties with a benefit or material advantage.
- 3 – In the case of No. 1 criminal proceedings are dependent upon a complaint.

### **Article 39**

#### **Invalidation or destruction of personal data**

- 1 – Any person who without due authorisation erases, destroys, damages, deletes or changes personal data, making them unusable or affecting their capacity for use, shall be liable to up to two years' imprisonment or a fine of up to 240 days, if a more severe punishment is not to be enforced due to a specific law.
- 2 - The penalty shall be increased to double the maxima if the damage caused is particularly serious.
- 3 – If the agent acts with negligence as referred to in the previous two numbers the penalty in both cases shall be up to one year's imprisonment or a fine of up to 120 days.

### **Article 40**

#### **Qualified non-compliance**

- 1 – Any person who after being notified to do so does not interrupt, cease or block the processing of personal data shall be subject to a penalty corresponding to the crime of qualified non-compliance.
- 2 – The same penalty shall apply to any person who after being notified:
  - (1) without just cause refuses to provide his cooperation specifically required by the public authority;
  - (2) does not erase or totally or partially destroy the personal data;
  - (3) does not destroy the personal data after the period for keeping them provided for in Article 5 has elapsed.

#### **Article 41**

##### **Violation of the duty of secrecy**

- 1 – Any person bound by professional secrecy according to the law who without just cause and without due consent reveals or discloses personal data, totally or in part, shall be liable to up to two years' imprisonment or a fine of up to 240 days, if a more severe punishment is not to be enforced due to a specific law.
- 2 - The penalty shall be increased by half the maxima if the agent:
  - (1) is a civil servant or equivalent, according to penal law;
  - (2) acts with the intention of obtaining a material advantage or other unlawful gain;
  - (3) adversely affects the reputation, honour and esteem or the privacy of another person.
- 3 -- A person guilty of negligence shall be liable to up to six months' imprisonment or a fine of up to 120 days.
- 4 – Other than the cases provided for in No. 2, criminal proceedings are dependent upon a complaint.

#### **Article 42**

##### **Punishment of attempt**

Any attempt to commit the crimes provided for in this Section shall always be liable to punishment.

### **SECTION IV**

#### **Additional penalty**

#### **Article 43**

##### **Additional penalty**

The following may be ordered in addition to the fines and penalties provided for in Sections II and III in this Chapter when applied:

- (1) temporary or permanent prohibition of processing, blocking, erasure or total or partial destruction of data;
- (2) publication of the judgement;
- (3) public warning or censure of the controller by the public authority.

#### **Article 44**

##### **Publication of judgement**

- 1 – The judgement shall be published at the expense of the person judged in the periodicals with the largest circulation published, one in Chinese and one in Portuguese, and by means of affixing a notice for a period of no less than 30 days.
- 2 – Publication shall be done by means of a summary containing information on the offence and the penalties applied and the identification of the agent.

### **CHAPTER IX**

#### **Final provisions**

#### **Article 45**

##### **Transitional provision**

- 1 – The processing of data held in manual filing systems on the date of the entry into force of this Act shall be brought into conformity with Articles 7, 8, 10 and 11 within two years.
- 2 – At his request the data subject may in any event, in particular when exercising the right of access, obtain the rectification, erasure or blocking of incomplete or inaccurate data or data kept in a manner incompatible with the legitimate purposes of the controller.
- 3 - The public authority may provide that the data held in manual filing systems and kept solely for the purposes of historical research need not be brought into conformity with Articles 7, 8 and 9, provided they are in no case reused for a different purpose.

#### **Article 46**

##### **Entry into force**

This Act comes into force on the 180<sup>th</sup> day following its publication.

Approved on 4 August 2005.

The President of the *Legislative Council*, *Susana Chou*.

Signed on 10 August 2005.

Hereby published.

The Chief Executive, HO HAU WAH.

*Alvin D. Quinn*

CLERK OF THE COURT

TRAN

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

**STATUS CHECK**

THURSDAY, MAY 24, 2012

APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.  
TODD BICE, ESQ.  
DEBRA SPINELLI, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
HENRY WEISSMAN, ESQ.

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

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

RECEIVED

MAY 29 2012

CLERK OF THE COURT

1 LAS VEGAS, NEVADA, THURSDAY, MAY 24, 2012, 9:12 A.M.

2 (Court was called to order)

3 THE COURT: That takes me to the last case on my  
4 calendar this morning. Is anybody here on something other  
5 than Sands Jacobs?

6 Okay. Good morning.

7 All right. Somebody want to tell me what's going  
8 on? I guess you should identify yourselves for purposes of  
9 the record first.

10 MR. PEEK: Good morning, Your Honor. Stephen Peek  
11 on behalf of Las Vegas Sands and on behalf of Sands China  
12 Limited.

13 MR. WEISSMAN: Good morning, Your Honor. My name is  
14 Henry Weissman from the Munger Tolles & Olson firm. I  
15 represent Sands China. And I also wanted to extend my  
16 greetings and apologies for my partner Brad Brian, who  
17 unfortunately threw out his back and is unable to be here this  
18 morning.

19 THE COURT: It's okay. You're going to do fine.

20 MR. BICE: Good morning, Your Honor. Todd Bice on  
21 behalf of Mr. Jacobs.

22 MS. SPINELLI: Good morning. Debra Spinelli on  
23 behalf of Mr. Jacobs.

24 MR. PISANELLI: Good morning, Your Honor. James  
25 Pisanelli on behalf of Mr. Jacobs.

1 THE COURT: Good morning. All right. This was  
2 our status check for us to figure out how we were going to  
3 do our evidentiary hearing on jurisdiction that the Supreme  
4 Court has ordered that I do before we do anything else on this  
5 case. And we had initially planned to start this the week of  
6 June 25th.

7 MR. PEEK: 25th, Your Honor.

8 THE COURT: And I will be back, ready to go on  
9 June 26th in the morning if you guys are ready to start then  
10 if you can give me a little bit of idea on your timing and  
11 issues like that.

12 MR. BICE: Well, I think, Your Honor, from our  
13 perspective we are likely going to be asking you to move that  
14 date in light of where we are at and where --

15 THE COURT: And then where am I going to put the  
16 Corrigan case, and where am I going to put the Harmon Tower,  
17 whatever they're doing with that evidentiary hearing?

18 MR. BICE: I understand, Your Honor. I am involved  
19 in the Corrigan case.

20 THE COURT: And then there's the Planet Hollywood  
21 case that goes for eight weeks starting right at Labor Day,  
22 and then there's a couple of -- about five weeks where I'm  
23 going to try and try every case I have except CityCenter, and  
24 then I'm going to start CityCenter.

25 MR. BICE: Understood.

1 THE COURT: Okay. So?

2 MR. PEEK: And, Your Honor, we obviously want to go  
3 in that week.

4 MR. BICE: Well --

5 THE COURT: I've had that week set aside for a  
6 period of time. So let's talk about it.

7 MR. BICE: Well, all right. Let's talk about it. I  
8 mean, where we are at right now is we have received some  
9 documents, I believe last week, from Las Vegas Sands.  
10 Yesterday we were told that they have not searched Mr.  
11 Jacobs's emails. We are supposed to get --

12 THE COURT: You mean his company emails?

13 MR. BICE: His company emails.

14 THE COURT: Okay.

15 MR. BICE: We were also told yesterday, I believe,  
16 that Sands China had not searched any of its emails, from what  
17 we could gather. We have not received anything from Mr.  
18 Levin, although we have been told that we will get those  
19 perhaps tomorrow and that we will get documents from Mr.  
20 Adelson maybe tomorrow or sometime in the future. And these  
21 were, by the way, just -- we received -- what we received were  
22 just documents. We don't have responses, we don't have any  
23 indication of what they are responsive to, except during a  
24 phone call yesterday where we got a little bit of color on  
25 what some of the documents are.

1           So with that in mind, I think it's a little -- I  
2 mean, I understand their position is, well, we'd like to go,  
3 and, of course, that's easy to say when we don't have the  
4 documents and we've got to take these depositions yet. And  
5 we're clearly, based on yesterday's call, going to have to  
6 have a motion to compel because of what we were told.

7           THE COURT: Or a motion to exclude.

8           MR. BICE: Well, it's a little -- or a motion for  
9 adverse inferences for failure to produce.

10          THE COURT: Or a motion for adverse inferences.

11          MR. BICE: And the Court can --

12          THE COURT: There's a lot of different things you  
13 could do in conjunction with this that doesn't cause me to  
14 have to move that date --

15          MR. BICE: Okay.

16          THE COURT: -- which we set about six months ago.  
17 Well, no. Three months ago?

18          MR. PEEK: More than that, Your Honor.

19          MR. BICE: No. This was --

20          THE COURT: Set it in January or February, didn't  
21 we?

22          MR. BICE: No, because we -- this was the original  
23 start of the trial date. We were on this track for the trial  
24 date. That's how this got set. So --

25          THE COURT: Well, no. We had -- originally I had a

1 date around Thanksgiving, and then I had a date of January,  
2 and then I had a date in March. Now I have this date. I've  
3 always had this date for the trial, but I can't do the trial,  
4 because everything's stayed till resolve the jurisdictional  
5 issue. So you're going to file some motions, huh?

6 MR. BICE: Well, I think we are going to file some  
7 motions. The status where we are at is we have produced Mr.  
8 Jacobs's -- and this is again where we're at a little bit of a  
9 disadvantage. We have produced Mr. Jacobs's electronic  
10 storage equipment per an agreement we have worked out to  
11 advance discovery. Advance discovery I think has done its  
12 first round of segregation of the information or is in the  
13 process of completing that. Then the documents are going to  
14 go to them for review, sort of as we had previously outlined.  
15 We've modified that somewhat by agreement amongst the parties.

16 So part of our other problem is we -- they obviously  
17 have said before, and you've granted their motion, about  
18 deposing Mr. Jacobs. Well, we aren't allowed to look at Mr.  
19 Jacobs's own documents. So, again, we think it's a little  
20 unfair for us to be defending our client at a deposition when  
21 we can't review his own documents. So that again is another  
22 problem.

23 I think another problem is we got a letter, I don't  
24 remember what day it was, I think it was a couple of days ago,  
25 and I think it's pretty clear we're going to have a little

1 tussle about Mr. Adelson's deposition. Even though you've  
2 ordered it, we got a letter -- it's been noticeable to us that  
3 we haven't been provided a date for Mr. Adelson's deposition,  
4 and now we get a letter saying that, well, they're reserving  
5 the right to come back to the Court not to have Mr. Adelson's  
6 deposition. So we've got to bring that issue to a head, too.

7 THE COURT: They can always ask me not to let it.  
8 But you've got to set it first. Then they'll file a motion  
9 that says, hey, Judge, don't let take his depo.

10 MR. BICE: Well, I'm trying to -- I don't -- I don't  
11 want to have to set them unilaterally, but apparently that's  
12 what we're going to have to do with respect to him. But,  
13 again, we've got to get documents from them.

14 THE COURT: Isn't Steve Morris his lawyer in this  
15 case?

16 MR. BICE: Not --

17 THE COURT: Not anymore, huh?

18 MR. BICE: Well, yes. In the defamation component  
19 of it, yes, that's right, he is.

20 But again, we don't have documents from Mr. Adelson,  
21 Mr. Levin, or Mr. Goldstein.

22 THE COURT: And when are the depositions scheduled?

23 MR. BICE: Well, we -- they have proposed dates for  
24 them, Mr. Kay I think sometime next -- the 2nd, and then  
25 they've given us dates that they propose for Mr. Levin and Mr.

1 Goldstein. But again, that's a little bit advantageous for  
2 them to give us dates when we don't have the documents.

3 THE COURT: Really -- we're really slipping  
4 backwards. So why haven't we produced the documents sooner?

5 MR. PEEK: Well, Your Honor, I guess I can address  
6 the Las Vegas Sands issues, and then [inaudible], and Mr. --

7 THE COURT: Weissman. Mr. Weissman.

8 MR. PEEK: -- Weissman, excuse me.

9 THE COURT: I wrote the name down so I'd get it  
10 right.

11 MR. PEEK: I know. I talk to him all the time, and  
12 I was just -- I had a senior moment, Your Honor.

13 THE COURT: I'm not saying anything about that, Mr.  
14 Peek.

15 MR. PEEK: I don't want to say anything about it.  
16 That 40 years I think has gotten to me.

17 Your Honor, we have produced documents in response  
18 to their requests for production sometime ago in rolling  
19 production. We did produce documents in March, we produced  
20 documents last week. Additional documents -- we're going to  
21 produce additional documents this Friday. We have proposed  
22 dates to them for -- on at least two occasions asking them to  
23 select a date for Mr. Kay, Mr. Goldstein, and Mr. Levin, and  
24 they have refused to take a date. But when Mr. Bice stands up  
25 and says we haven't produced any documents till just the other

1 day, that's not correct. We produced documents back in March,  
2 and then we identified, as well, Your Honor, in a first  
3 supplement documents that had been previously produced -- you  
4 may recall that we had started production of documents under  
5 the ESI protocols back in summer of last year.

6 THE COURT: Correct.

7 MR. PEEK: And so we --

8 THE COURT: Prior to the stay.

9 MR. PEEK: Pardon?

10 THE COURT: Prior to the stay.

11 MR. PEEK: Prior to the stay. And so we identified  
12 documents within that grouping that were responsive to their  
13 request. We have -- I gave him a disk last week, and then I  
14 identified by Bates numbers this week the documents -- which  
15 document is responsive to each request. They've insisted on  
16 an index. We're going to provide them with an index, as well,  
17 of the documents.

18 THE COURT: Smart decision on your part.

19 MR. PEEK: I've got to argue these issues, Your  
20 Honor. I think -- well, I'll leave that for another day.

21 So when they say that they don't have documents,  
22 they do.

23 With respect to Jacobs, Jacobs -- I'll have to let  
24 Mr. Weissman deal with Mr. Jacobs, because those are issues  
25 that are of Sands China, because he was a Sands China

1 executive, not a Las Vegas Sands executive. So we don't have  
2 documents on our server related to Mr. Jacobs. So when he  
3 says we haven't searched Mr. Jacobs, he is correct; because we  
4 don't have things to search for Mr. Jacobs.

5 THE COURT: So he didn't have a separate email  
6 address within the Las Vegas Sands server --

7 MR. PEEK: That is my understanding, Your Honor.

8 THE COURT: -- email server?

9 MR. PEEK: His was a .mo, which is the designation  
10 for Macau --

11 THE COURT: Okay.

12 MR. PEEK: -- as opposed to a .com, which would be  
13 the Las Vegas Sands or the venetian.com. So he didn't have  
14 that. With respect to the ESI of Mr. Jacobs, I'll let Mr.  
15 Weissman address that issue.

16 So I guess that my issue is that my clients, who are  
17 executives of Las Vegas Sands, are ready and prepared to go  
18 forward with their depositions on the dates that we've  
19 suggested to them. We've suggested them twice, you know, pick  
20 a date.

21 THE COURT: And at this point you believe you have  
22 fully complied with your discovery obligations in preparation  
23 for this jurisdictional hearing?

24 MR. PEEK: Yes, Your Honor, in the sense that we  
25 have commenced production and we will continue to produce.

1 THE COURT: Okay.

2 MR. PEEK: And they --

3 THE COURT: When do you anticipate --

4 MR. PEEK: They quarrel with I think some of the  
5 depositions -- excuse me, some of the discovery.

6 THE COURT: When do you anticipate completing your  
7 rolling disclosures?

8 MR. PEEK: We will have Mr. Levin and Mr. Goldstein  
9 by this Friday. We're working on Mr. Adelson, and we should  
10 have Mr. Adelson hopefully by the end of next week, but, if  
11 not, no later than the following week, which is the first week  
12 of June.

13 THE COURT: Okay.

14 MR. PEEK: But we hope to have it next week.

15 THE COURT: Understanding there may be an issue  
16 about whether they agree with your production, do you believe,  
17 given that rolling production schedule, you will have fully  
18 complied with your discovery obligations in preparation for  
19 the evidentiary hearing by the first week of June?

20 MR. PEEK: Yes, Your Honor --

21 THE COURT: Okay. Thanks.

22 MR. PEEK: -- I do.

23 THE COURT: Mr. Weissman. I know you've sort of  
24 been thrown in this because somebody's back went out, but I  
25 appreciate you being here, and to the extent you can

1 intelligently answer questions, I will truly appreciate it.

2 MR. WEISSMAN: I'll do my best. And it's a pleasure  
3 to be here, Your Honor. Thank you.

4 First of all, let me just start by saying we, too,  
5 feel very strongly that the hearing should go forward as  
6 planned on June 25th or 26th. Sands China Limited doesn't  
7 believe it should be in this case to begin with, and we're  
8 eager to get that issue heard and decided as soon as possible.

9 THE COURT: I've been ordered to conduct an  
10 evidentiary hearing, and I'm doing my best to get there.

11 MR. WEISSMAN: Thank you. We appreciate that.

12 And to that end, as the Court may recall, we don't  
13 believe that the facts that are relevant to the jurisdictional  
14 issue are in dispute. So we offered to stipulate to those  
15 facts some time ago. Plaintiffs felt that that stipulation  
16 didn't go far enough, they wanted more detail, so hence the  
17 document production and deposition process that we have  
18 ongoing. But we think this -- it's ready to -- it's  
19 appropriate to bring this to a conclusion.

20 With respect to Mr. Jacobs's ESI, we thought that  
21 was the purpose of the protocol that has been discussed many  
22 times with the Court since last October of delivering the  
23 documents that he has to the ESI vendor so they can be  
24 reviewed. I'm assuming that contains his email, since there's  
25 quite a lot of data.

1 THE COURT: Don't make that assumption.

2 MR. WEISSMAN: Well, I think the first thing that  
3 should --

4 THE COURT: It would be bad for your to make that  
5 assumption, because one would hope that his emails were on  
6 your server.

7 MR. WEISSMAN: Another image of them presumably  
8 would be.

9 THE COURT: Well, that's where they should be, is on  
10 the email server. He may have an extra or a duplicate copy  
11 that's on his laptop and the other storage devices he has.

12 MR. WEISSMAN: Right.

13 THE COURT: But they'd better be on your email  
14 server.

15 MR. WEISSMAN: Sure.

16 THE COURT: Because if they're not on your email  
17 server, boy, we'll have a lot of problems.

18 MR. WEISSMAN: Understood. But in terms of --

19 THE COURT: Okay. So when are they going to get  
20 produced?

21 MR. WEISSMAN: In terms of process, Your Honor,  
22 we're going to go through a very elaborate and lengthy and  
23 costly process to review Mr. Jacobs's ESI. It seems to us  
24 that process should run its course before we're obligated to  
25 go back and look at whatever emails we have of his, as well.

1 Why would we do it twice?

2 THE COURT: So you're telling me you haven't  
3 produced any of them and you haven't begun the process.

4 MR. WEISSMAN: That's correct.

5 THE COURT: Okay. The hearing is vacated. I will  
6 see you to discuss rescheduling of the hearing on June 28th.  
7 At that time I want an update as to where Sands China is with  
8 respect to the production of the ESI of Mr. Jacobs and the  
9 fulfillment of all of the discovery obligations which we have  
10 discussed for the evidentiary hearing to occur.

11 Anything else?

12 MR. PEEK: Your Honor, I know you did -- I knew you  
13 did --

14 THE COURT: Thank you -- thank you for being  
15 grilled, Mr. Peek. I really appreciate you going first and  
16 being grilled, because I got -- I set it up for the way that  
17 hopefully we'd get the right answers.

18 MR. PEEK: Yeah. Well, there's one thing that I  
19 don't think Mr. Weissman was allowed to even really address,  
20 because I know that you asked him a question. But Mr. Bice  
21 made much of the fact that, well, we've complied with the  
22 production of the Jacobs ESI to the vendor.

23 THE COURT: Well, you don't have it yet. I know  
24 that.

25 MR. PEEK: That's --

1 THE COURT: I got that part.

2 MR. PEEK: Okay. They just now --

3 MR. BICE: And I don't think -- I don't think I made  
4 much of it.

5 THE COURT: How do you think I missed that, Mr.  
6 Peek?

7 MR. PEEK: They just now produced that, Your Honor.  
8 So those issues that related to the Jacobs ESI --

9 THE COURT: We do not stagger discovery obligations,  
10 period, end of story. The only time I stagger discovery  
11 obligations is where I have expert issues where I know the  
12 expert opinions are dependent on others, and then I frequently  
13 stagger them. I do not stagger initial discovery disclosures.  
14 And having someone tell me they're not going to begin the  
15 search of their own email server until they've had a chance to  
16 review Mr. Jacobs's email off of his laptop is not an  
17 appropriate response.

18 MR. PEEK: Your Honor, you may recall -- and I don't  
19 mean to argue with -- respectfully.

20 THE COURT: It's okay, Mr. Peek. You and I have  
21 argued for 25 years.

22 MR. PEEK: We have, Your Honor. And I don't mean to  
23 cut --

24 THE COURT: And I finally get to get the better of  
25 your every once in a while now.

1 MR. PEEK: Yeah. This is certainly one of them.  
2 Well, this is not -- this is more Mr. Weissman's fight than  
3 mine. But you may recall that the issues that were raised by  
4 Sands China, as well as by Las Vegas Sands, with respect to  
5 the Jacobs ESI is that motion in limine which was filed a long  
6 time ago that Jacobs doesn't even get an opportunity to have  
7 access to the Sands China emails because of his conduct of how  
8 what he has come into his possession.

9 THE COURT: And I'm not ready to hear the motion in  
10 limine and make that decision --

11 MR. PEEK: But if we produce all those documents --

12 THE COURT: -- until I get to the discovery. You  
13 haven't done the discovery yet.

14 MR. PEEK: But -- I guess where I'm going with that  
15 is -- I'm not trying to -- in terms of the staggering, that's  
16 where I was kind of going, Your Honor, is that Sands China is  
17 kind of put into that position of --

18 THE COURT: Remember, you don't represent them  
19 today.

20 MR. PEEK: Yes, I do represent Sands China Limited,  
21 Your Honor. I am local counsel for them.

22 THE COURT: Oh. Are you?

23 MR. PEEK: Yes, I am.

24 THE COURT: Okay.

25 MR. PEEK: You may recall, Your Honor, they have to

1 have somebody here, and it's me. I got the long straw, Your  
2 Honor, the winning straw.

3 But in terms of staggering, the way the motion in  
4 limine had been set up and what you had least addressed to  
5 Sands China at the time, Ms. Glaser, was, well, that's  
6 something that we only can address once you have an  
7 opportunity to see what's on the --

8 THE COURT: True.

9 MR. PEEK: -- the Jacobs ESI that he has in his  
10 possession. So if we give them all of the ESI from our own,  
11 it defeats the whole notion of giving them access to documents  
12 in that motion in limine. So that's why I think there was a  
13 staggering of it.

14 THE COURT: I disagree with your analysis.

15 MR. PEEK: Okay.

16 THE COURT: I certainly respect there are going to  
17 be issues about the admissibility of certain evidence at the  
18 time of our evidentiary hearing, which is why I'm shocked we  
19 haven't got to the deposition stage yet, because I won't have  
20 any time to do evidentiary issues at this point. So I don't  
21 know when you're going to be ready, but clearly you're not  
22 going to be ready for a hearing at the end of June.

23 MR. PEEK: Well, we don't even know, Your Honor,  
24 whether a search of the Jacobs on the Macau server is going to  
25 be such that we couldn't be ready. So that's why -- I mean, I

1 appreciate you vacated that date, but we very well --

2 THE COURT: It's less than five weeks before our  
3 scheduled hearing and the search has yet to begin. I  
4 understand what you're telling me, and I would love to find a  
5 place to reset you. It may not be very easy given my ongoing  
6 schedule for the next year.

7 MR. PEEK: Well, that raises an interesting  
8 question, as well, Your Honor, that perhaps when we come back  
9 on the 28th we can talk about -- maybe this is just something  
10 that needs to be briefed. I don't know that you really need  
11 live witnesses. You can certainly --

12 THE COURT: I'm always happy to take that approach,  
13 and it may be that after you guys have been able to complete  
14 the depositions and the exchange of documents that are  
15 appropriate that we can do this on briefing. But until you've  
16 done what you're supposed to have done since November of last  
17 year I'm not in a position to have a hearing or even set a  
18 briefing schedule.

19 MR. PEEK: Well, you say since November of last  
20 year. We didn't get requests for production until much after  
21 November, and they were also ordered to give the Jacobs  
22 protocol in November we just got it in May.

23 THE COURT: We've been talking about how to get this  
24 evidentiary hearing scheduled in accordance with the writ that  
25 was issued since, what, last October?

1 MR. PEEK: We did, Your Honor, because we started.  
2 THE COURT: And right after that writ came down I  
3 called you all in for a status hearing --  
4 MR. PEEK: You did. You did.  
5 THE COURT: -- to try and figure out what we needed  
6 to do to get that evidentiary hearing set. And we have been  
7 struggling with that since that time.  
8 MR. PEEK: And we want it to go forward as quickly  
9 as we can, Your Honor.  
10 THE COURT: I want it resolved one way or the other  
11 so that I can finish the assignment the Nevada Supreme Court  
12 gave me and we can either do something with the case or it can  
13 be stayed again while you all go up there.  
14 MR. PEEK: Well, hopefully you'll resolve it  
15 favorably, Your Honor, and Sands China will be gone, we'll  
16 proceed to trial on Las Vegas Sands.  
17 THE COURT: That might happen.  
18 Anything else?  
19 MR. BICE: I have a lot of disagreement with what  
20 Mr. Peek was arguing --  
21 THE COURT: It doesn't matter.  
22 MR. BICE: -- but I'm not going to --  
23 MR. PEEK: You won, Todd.  
24 MR. BICE: Yeah, it doesn't matter.  
25 THE COURT: All right. Mr. Bice, that means you

1 need to communicate to your colleagues in the Corrigan case --  
2 MR. BICE: I do.  
3 THE COURT: -- that it looks like you're going.  
4 MR. BICE: Okay. So I'm free to contact Mr. Kennedy  
5 and tell him that -- is it the 26th is going to be the date?  
6 THE COURT: A Tuesday.  
7 MR. BICE: 26th.  
8 THE COURT: And you guys said you needed two weeks.  
9 MR. BICE: I believe that is correct.  
10 MR. PEEK: We just picked up a week, Your Honor.  
11 THE COURT: Well, no. We'd already talked about  
12 when their two weeks were. They were going to wait till you  
13 were finished, and we were worried about the Harmon Hotel  
14 thing, too.  
15 MR. PEEK: So we come back on the 28th, Your Honor,  
16 which is a --  
17 THE COURT: You're coming back on the 28th, and  
18 somebody's going to tell me -- and I'd like a status report  
19 the day before; I know it's hard for you sometimes to get them  
20 to me -- that tells me, Judge, we have made our best efforts  
21 and I can certify to you we did X, Y, and Z and either we  
22 found stuff or we didn't find stuff and now we have to review  
23 it for privilege, blah, blah, blah, and it's going to take  
24 this long.  
25 MR. PEEK: Thank you, Your Honor.

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MR. BICE: Thank you, Your Honor.

THE COURT: Goodbye.

MR. WEISSMAN: Thank you.

MR. PEEK: Goodbye.

THE PROCEEDINGS CONCLUDED AT 9:33 A.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 HOYT, TRANSCRIBER

5/28/12  
\_\_\_\_\_  
DATE



CLERK OF THE COURT

**STMT**

J. Stephen Peek, Esq.  
Nevada Bar No. 1759  
Robert J. Cassity, Esq.  
Nevada Bar No. 9779  
HOLLAND & HART LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, Nevada 89134  
(702) 669-4600  
(702) 669-4650 – fax  
[speek@hollandhart.com](mailto:speek@hollandhart.com)  
[bcassity@hollandhart.com](mailto:bcassity@hollandhart.com)

*Attorneys for Las Vegas Sands Corp.  
and Sands China, LTD.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

STEVEN C. JACOBS,

Plaintiff,

v.

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-X; and ROE CORPORATIONS I-X,

Defendants.

CASE NO.: A627691-B

DEPT NO.: XI

Date: June 28, 2012

Time: 9:00 a.m.

**DEFENDANTS' JOINT STATUS  
CONFERENCE STATEMENT**

AND ALL RELATED MATTERS.

Defendants Las Vegas Sands Corporation ("LVSC") and Sands China Ltd. ("SCL") respectfully submit this joint status report in advance of the case management conference scheduled for June 28, 2012.

**I. INTRODUCTION**

Defendants have now substantially completed the production of documents they had planned to produce in response to Plaintiff's request for documents relating to personal jurisdiction, with the exception of documents for which Plaintiff was the custodian. At the last case management conference on May 24, 2012, the Court vacated the June 25, 2012 date for the

1 hearing on personal jurisdiction, based on the status of jurisdictional discovery, and in particular  
2 SCL's need to review and produce documents for which Plaintiff was the custodian. Since May  
3 24, Defendants have worked diligently to complete the production of documents from other  
4 custodians and to develop a plan for the review and production of Plaintiff's documents. The  
5 latter task has been complicated by Macau law governing the transfer of data to a foreign  
6 destination, but Defendants have developed a plan that will avoid those issues to the extent  
7 possible and hence should maximize the production of documents as quickly as possible. The  
8 details of this plan are described below.

9 **II. DOCUMENTS PRODUCED**

10 Defendants have produced approximately 3,500 documents, consisting of approximately  
11 19,500 pages, responsive to Plaintiff's request for production of documents relating to personal  
12 jurisdiction. Defendants' production includes documents from its senior executives: Messrs.  
13 Adelson, Leven, Goldstein, and Kay.

14 Defendants have engaged in a 3-step process to produce responsive documents. First,  
15 Defendants collected documents from custodians believed most likely to have responsive  
16 documents. Defendants collected approximately 300,000 such documents. Second, Defendants  
17 applied search terms designed to locate documents responsive to Plaintiff's request for production  
18 of documents relating to personal jurisdiction. (Defendants have provided the search terms to  
19 Plaintiff's counsel.) This yielded a population of approximately 15,400 documents. Third,  
20 Defendants reviewed the resulting data for responsiveness and privilege. Defendants produced  
21 the responsive, non-privileged data, along with responses that identify which documents are  
22 responsive to which document request, as well as an index.

23 Specifically, Defendants have produced:

- 24 • Documents relating to SCL Board meetings, including minutes (RFP 1).
- 25 • Documents reflecting travel of LVSC employees and agents to Macau, Hong  
26 Kong, or mainland China during the relevant period. (RFP 2-5). In the case of Messrs. Adelson  
27 and Leven, Defendants provided information on the number of trips.
- 28 • Documents reflecting Michael Leven's services as CEO or SCL and/or Special

1 Advisor to SCL's Board and and/or Executive Director of SCL (RFP 6).<sup>1</sup>

- 2 • Documents reflecting the financing of SCL (RFPs 7 and 20).
- 3 • All contracts between SCL or Venetian Macau Ltd. and Nevada entities or persons
- 4 or the relevant information concerning those contracts (RFP 8).
- 5 • Substantially all responsive, non-privileged documents from Robert Goldstein
- 6 reflecting his services to SCL during the relevant period (RFP 9).
- 7 • All shared services agreements between LVSC and SCL (RFP 10).
- 8 • A substantial volume of documents reflecting services performed by LVSC for
- 9 SCL relating to design, development, and construction of parcels 5&6 (RFPs 11 and 21).
- 10 • Documents relating to recruitment of SCL executives (RFP 12). Defendants deny
- 11 that LVSC provided any recruiting services for SCL, but nevertheless produced documents from
- 12 LVSC custodians relating to the hiring of SCL executives. In a meet and confer on June 27,
- 13 2012, Plaintiff's counsel claimed that LVSC had not produced documents relating to the hiring of
- 14 Ed Tracy. In fact, LVSC did produce such documents on June 25, 2012.<sup>2</sup>

- 15 • A substantial volume of documents reflecting marketing services by LVSC for
- 16 SCL (RFP 13).
- 17 • All documents reflecting communications between LVSC and Harrah's, SJM,
- 18 Base Entertainment, Cirque du Soleil, and Bally in relation to the subjects specified in the
- 19 requests (RFP 14-19).

20 Except for documents for which Plaintiff was the custodian (discussed below), Defendants  
21 have produced substantially all of the documents they had planned to produce. LVSC is in the  
22 process of final review of approximately 3,000 documents, and it expects to produce responsive,  
23 non-privileged documents within the next few weeks.

24 Since the May 24, 2012 status conference, Defendants have continued to review and

25  
26 <sup>1</sup> LVSC learned this week that its IT department has misfiled another hard drive from a computer that may have been  
27 used by Mr. Leven. LVSC will promptly determine if Mr. Leven was the custodian. If he was, LVSC will determine  
if the hard drive contains data that is not duplicative of data previously processed. If so, LVSC will review such data  
for responsiveness, using the same process described above.

28 <sup>2</sup> LVS00117333, LVS00117617, LVS00117638, LVS00117639, LVS00117642, LVS00117643, LVS00117644,  
LVS00117647, LVS00117837.

1 produce documents responsive to Plaintiff's request for production of documents relating to  
2 personal jurisdiction. During this period, Defendants have produced approximately 2,500 of the  
3 3,500 documents produced to Plaintiff, totaling 8,362 pages.

4 Defendants have incurred well over \$300,000 in connection with the review and  
5 production of jurisdictional documents.

6 Despite the foregoing efforts, Plaintiffs on June 27, 2012 stated that they believe  
7 Defendants should have produced additional documents, although they refused to specify all of  
8 their concerns. To the extent Plaintiff believes that gaps remain in the production, the parties  
9 should meet and confer. Plaintiff has not adequately pursued the meet and confer process, and in  
10 particular has identified only two areas in which he believes Defendants' productions are  
11 inadequate. First, Plaintiff asserted that LVSC had not produced documents relating to the hiring  
12 of Ed Tracy; in fact, as noted above, LVSC had done so. Second, Plaintiff asserted that  
13 Defendants had not produced documents relating to the retention of Leonel Alves, an attorney in  
14 Macau. In fact, Plaintiff had not specifically requested such documents,<sup>3</sup> and Defendants  
15 concluded that the documents do not evidence services performed by LVSC for SCL. These and  
16 similar issues should be discussed further among the parties before they are brought to the Court.

### 17 **III. FUTURE PRODUCTION**

18 Since the May 24, 2012 status conference, Defendants also have developed a plan to  
19 review and produce Plaintiff's documents responsive to Plaintiff's personal jurisdiction document  
20 requests. SCL has collected Plaintiff's email and other ESI in Macau. Defendants had originally  
21 planned to defer the review of Plaintiff's ESI until after Plaintiff produced his ESI in his  
22 possession, so as to avoid duplicative review of the same documents. But in light of the Court's  
23 comments at the May 24 status conference, and the fact that Plaintiff did not deliver the ESI in his  
24 possession to Advanced Discovery until May 2012 – more than seven months after the Court first  
25 ordered him to do so – Defendants have revised their plan to commence such review as soon as  
26 possible.

27  
28 <sup>3</sup> RFP 22 requests documents relating to "outside counsel's review of Leonel Alves," not to LVSC's involvement in his retention. Defendants objected to RFP 22.

1 The production of documents that are in Macau raises difficult questions under Macau's  
2 Personal Data Protection Act ("PDPA"). To avoid those issues to the extent possible, and thereby  
3 to maximize the volume of documents to be produced and to minimize delays associated with the  
4 Macau law issues, Defendants have developed a review process that starts with documents  
5 already in the United States. Specifically:

- 6 1. LVSC possesses approximately 100,000 emails and other ESI in the  
7 United States for which Plaintiff was the custodian. This data was  
8 transferred to the United States in 2010 in error.<sup>4</sup> LVSC was concerned  
9 about whether the production of these documents in the United States  
10 would raise additional issues under Macau law. Based on further  
11 consultations with the Macau government, LVSC now believes that  
12 Macau law does not prohibit the production documents already present in  
13 the United States. Accordingly, LVSC will review documents for which  
14 plaintiff was the custodian and which are located in the United States, and  
15 will produce those non-privileged documents responsive to Plaintiff's  
16 jurisdictional discovery requests.<sup>5</sup>
- 17 2. In addition, LVSC searched the emails of a large number of LVSC  
18 custodians and identified emails within the relevant date range that (a)  
19 were sent to or received from Plaintiff and (b) applied search terms  
20 designed to yield relevant hits. Defendants have provided the key words  
21 used for the search to Plaintiff's counsel.
- 22 3. After searching for key words, de-duping, and eliminating certain  
23 irrelevant document types, there are approximately 27,600 documents that  
24 remain. LVSC will review these documents and will produce those non-

25 <sup>4</sup> LVSC did not previously disclose the existence of this data to Plaintiff because their original plan had been to  
26 review the ESI in Plaintiff's possession.

27 <sup>5</sup> The data that was transferred to the United States in 2010 in error also includes data from other  
28 custodians. To the extent those other custodians have documents responsive to the jurisdictional  
discovery requests, LVSC will produce them. In addition, data from two employees in Macau  
was transferred in error to the United States prior to Mr. Jacobs' employment by SCL.

1 privileged documents that are responsive to Plaintiff's jurisdictional  
2 discovery requests.

3 4. SCL will then determine whether there are in Macau any documents for  
4 which Plaintiff was the custodian, and which are responsive to Plaintiff's  
5 jurisdictional discovery requests, that are not also in the United States. To  
6 do so, LVSC will create a copy of the Jacobs ESI in LVSC's possession in  
7 the United States (item 1, above), as well as the emails from LVSC  
8 custodians that were sent to or received from Plaintiff and used certain  
9 key words (item 2, above). LVSC will provide this copy to SCL, which  
10 will take it to Macau. SCL has also requested that Plaintiff provide a copy  
11 of the ESI in his possession, which was delivered to Advanced Discovery,  
12 the Court-appointed ESI vendor. SCL limited its request to the data that  
13 is delivered to Plaintiff's counsel. Under the process established by  
14 Plaintiff, and accepted by Defendants subject to a reservation of rights,  
15 Advanced Discovery will exclude data (a) based on date limitations, (b)  
16 based on Plaintiff's search terms, which are designed to exclude emails  
17 that are unrelated to the case, and (c) based on Defendants' assertion of  
18 privilege. If Plaintiff agrees, SCL will take this copy to Macau as well.  
19 SCL will then de-dupe the data copied in the United States against  
20 Plaintiff's ESI in Macau to determine if there is any data in Macau that is  
21 not also in the United States population.

22 5. If SCL determines that there are additional documents in Macau for which  
23 Plaintiff was the custodian, SCL will review the documents to determine  
24 if they contain "personal data" as defined in Macau's Personal Data  
25 Protection Act ("PDPA"). SCL should be able to transfer outside Macau  
26 documents that do not contain personal data. Further, Defendants have  
27 requested that Plaintiff and his wife agree to waive the protections of the  
28 PDPA, to the extent they might apply. Such a waiver should permit SCL.

1 to transfer outside Macau those documents containing personal data only  
2 of Plaintiff and his wife. If documents in Macau contain personal data of  
3 other persons, and such other persons do not waive the protections of the  
4 PDPA, then the provisions of the PDPA respecting transfer must be  
5 complied with. Representatives of LVSC, SCL and Venetian Macau Ltd.  
6 have met with the Office of Personal Data Protection ("OPDP"), which is  
7 the government agency in Macau charged with the enforcement of the  
8 PDPA, to present their position that such transfers should be permitted.  
9 The OPDP did not agree with this position. Subsequently, Venetian  
10 Macau Ltd. sent OPDP a letter setting forth its justification for the transfer  
11 of such documents and requesting a response from OPDP. To date, no  
12 formal written response has been received.

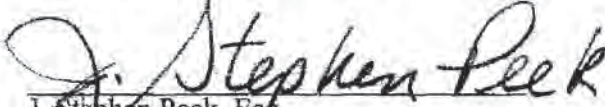
13 On June 19, 2012, Defendants contacted Plaintiff to arrange a meet and confer  
14 teleconference. The teleconference occurred on June 25 and June 27, in which the parties  
15 discussed the foregoing plan and whether Plaintiff would agree to (a) provide a copy of the ESI in  
16 Plaintiff's possession that Plaintiff's counsel receive and (b) waive the protections of the PDPA to  
17 the extent it applies to Jacobs and his wife. On June 27, Plaintiff's counsel stated that Plaintiff  
18 would not agree to provide a copy of the ESI in Plaintiff's possession for purposes of de-duping  
19 in Macau. Plaintiff did not respond to Defendants' request for Plaintiff and his wife to waive the  
20 protections of the PDPA.

21 Plaintiff's counsel contended that Defendants should be required to turn over all of the  
22 data potentially relevant to this case to Advanced Discovery. There is no warrant for this  
23 draconian and expensive measure. To the extent Plaintiff's position is based on a belief that  
24 Defendants' production of documents has not been complete, the proper course of action is to  
25 meet and confer, not to assume that Defendants have acted improperly and seek an immediate  
26 sanction. Moreover, as noted, the wholesale transfer of data from Macau to the United States for  
27 delivery to Advanced Discovery would be prohibited by the PDPA. Defendants plan is more  
28 reasonable and efficient and is the only approach that is legally viable.

1 **IV. NEXT STEPS**

2 As the Court is aware, SCL is anxious for the jurisdictional hearing to be held as soon as  
3 possible. The work plan described above to review Plaintiff's documents, however, will be time-  
4 consuming and costly. Defendants are not yet in a position to predict with confidence the time  
5 required to complete this additional document review. Accordingly, Defendants respectfully  
6 suggest that the Court schedule another case management conference in August, at which time  
7 Defendants hope to be able to provide a clearer schedule for the completion of document  
8 production and depositions, and hence the scheduling of the jurisdictional discovery hearing.

9 DATED June 27, 2012.

10   
11 J. Stephen Peek, Esq.  
12 Robert J. Cassity, Esq.,  
Holland & Hart LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, Nevada 89134

13 *Attorneys for Las Vegas Sands Corp. and Sands*  
14 *China Ltd.*

15 Brad D. Brian, Esq.  
16 Henry Weissmann, Esq.  
17 John B. Owens, Esq.  
18 Bradley R. Schneider, Esq.  
Munger Tolles & Olson LLP  
355 S. Grand Avenue  
Los Angeles, California 90071

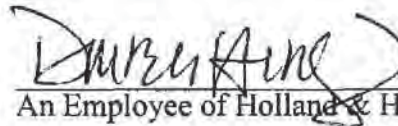
19 *Attorneys for Sands China Ltd.*

**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b), I certify that on June 27, 2012, I served a true and correct copy of the foregoing **DEFENDANTS' JOINT STATUS CONFERENCE STATEMENT** via e-mail and by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

James J. Pisanelli, Esq.  
Debra L. Spinelli, Esq.  
Todd L. Bice, Esq.  
Pisanelli & Bice  
3883 Howard Hughes Parkway, Suite 800  
Las Vegas, Nevada 89169  
214-2100  
214-2101 – fax  
[jjp@pisanellibice.com](mailto:jjp@pisanellibice.com)  
[dls@pisanellibice.com](mailto:dls@pisanellibice.com)  
[tlb@pisanellibice.com](mailto:tlb@pisanellibice.com)  
[kap@pisanellibice.com](mailto:kap@pisanellibice.com) – staff  
[see@pisanellibice.com](mailto:see@pisanellibice.com) – staff

*Attorney for Plaintiff*



An Employee of Holland & Hart LLP

## Dineen Bergsing

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**From:** Dineen Bergsing  
**Sent:** Wednesday, June 27, 2012 3:12 PM  
**To:** James Pisanelli; 'Debra Spinelli'; Todd Bice; 'kap@pisanellibice.com'; 'see@pisanellibice.com'  
**Cc:** 'Fetaz, Max'  
**Subject:** LV Sands/Jacobs - Defendants' Joint Status Conference Statement  
**Attachments:** Untitled.PDF - Adobe Acrobat Pro

Please see attached Defendants' Joint Status Conference Statement. A copy to follow by mail.

**Dineen M. Bergsing**

*Legal Assistant to J. Stephen Peek,  
Justin C. Jones, David J. Freeman  
and Nicole E. Lovelock*

Holland & Hart LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, Nevada 89134  
(702) 669-4600 - Main  
(702) 222-2521 - Direct  
(702) 669-4650 - Fax  
[dbergsing@hollandhart.com](mailto:dbergsing@hollandhart.com)



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1 THE COURT: And the cost.  
2 MS. GLASER: And the cost.  
3 THE COURT: Okay.  
4 MS. GLASER: That's not accurate. The -- since the  
5 last time we were here talking about a stay, the additional  
6 thing, if you're asking for what else has occurred, are two  
7 other things.  
8 THE COURT: Okay.  
9 MS. GLASER: One is that the Nevada Supreme Court on  
10 July 24th issued an order. I'm not suggesting for a moment it  
11 dictates what --  
12 THE COURT: They want an answer.  
13 MS. GLASER: They want an answer.  
14 THE COURT: Okay.  
15 MS. GLASER: We have a reply brief due, which I  
16 believe is August 9. The opposition is due July 25th.  
17 THE COURT: And how long do you think it's going to  
18 take them to rule on a writ given how long CityCenter's been  
19 up there?  
20 MS. GLASER: Your Honor, based on what I have been  
21 told, it is not able to be predicted.  
22 The third thing --  
23 THE COURT: The answer is it's a long time.  
24 MS. GLASER: I respect that.  
25 And the third thing, Your Honor, is that Your Honor

1 ruled on Mr. Adelson's and our, actually, corporate  
2 defendants' motion on --

3 THE COURT: The defamation motion.

4 MS. GLASER: -- the fifth cause of action. That has  
5 been appealed by the other side. And while it's been somewhat  
6 pooh-poohed in the papers as, you know, what difference does  
7 that make, it does make a difference; because it is -- it goes  
8 to the very heart of the allegations. One of the claims is --  
9 in the quote was that Mr. Jacobs was fired for cause. And the  
10 claim is that's not true. And that is going up to the Supreme  
11 Court. And that goes to the very heart of a lot of this --  
12 the fight that's here, number three, and --

13 THE COURT: Well, but I dismissed the defamation  
14 claim --

15 MS. GLASER: Yes.

16 THE COURT: -- not because the statement may or may  
17 not have been appropriate, but because it was privileged.

18 MS. GLASER: Absolutely, Your Honor.

19 THE COURT: So still discovery related to that is  
20 fair game, don't you think, because the statement is made in  
21 the context of this litigation, and it's a statement that one  
22 of the witnesses has made and I'm sure that people are going  
23 to do discovery related to whether I dismiss the claim for  
24 relief or not. Right?

25 MR. WILLIAMS: Correct.

1 THE COURT: Okay. So that's not -- that doesn't  
2 make a difference.

3 MS. GLASER: The other thing that I -- Mr. Fleming's  
4 declaration, which Your Honor's had the opportunity to read,  
5 of course, is very clear that we have a huge row to hoe in  
6 terms of time and in terms of what's ultimately going to be  
7 produced. The other side actually cited to you the Societe  
8 Generale case, and I do want to comment on that, because that  
9 case is -- it's somewhat disingenuous to talk about that.  
10 They are a plaintiff claiming that -- the plaintiff comes into  
11 the court voluntarily and says, I don't want to produce  
12 documents because I've got a discovery problem with the  
13 statute back in the country where I come from; and the court  
14 said, wait a minute, you can't have it both ways, you came in  
15 and used our jurisdiction and to be a plaintiff you've got to  
16 live with the rules here. We did not do that. We are not the  
17 plaintiff here. We are a defendant and certainly, Your Honor  
18 has probably guessed by now, unwilling defendant in this  
19 jurisdiction.

20 THE COURT: You and I have a disagreement about  
21 that, and Carson City's going to work that out some day.

22 MS. GLASER: I hundred percent agree. But at least  
23 our position is that we are -- we were dragged into this  
24 unwillingly. And the most important thing I could add to that  
25 is twofold. One, the Court has before it what we understand

1 the Macau law to be. And I understand that nobody's conceding  
2 that, but we are -- you said the last time we were here -- I  
3 wasn't here, so I'm quoting one of my partners, who said, when  
4 you get on -- in words or substance you said, when you're on  
5 the cusp of violating the law come back and see me. We are on  
6 the cusp of violating the law, Your Honor.

7 THE COURT: You're not there yet.

8 MS. GLASER: Pardon me?

9 THE COURT: I don't think you're there yet.

10 MS. GLASER: Well --

11 THE COURT: I don't think you are in the position  
12 where the production of documents that has been requested is  
13 going to cause you a problem. I think what you need to do at  
14 this point is you need to disclose the documents that are  
15 relevant and which will not in your opinion, not anybody  
16 else's, your opinion, get you in trouble with the Macau  
17 authorities. Once you have done that, I assume that Mr.  
18 Campbell and Mr. Williams are going to file a motion to  
19 compel. And then they are going to say, gosh, Judge, Sands  
20 China hasn't produced enough documents, they really need to  
21 produce all these more documents. And then you're going to  
22 say, Judge, I can't because I'd be in trouble with the Macau  
23 folks. And then I'm going to say, gosh, maybe now is the time  
24 to stay you from producing those additional documents. But  
25 I'm not there yet, because you haven't produced anything.

1 MS. GLASER: I'm going to try -- I need to say this  
2 one more time. And I know that we touched on Mr. Fleming's  
3 declaration. In order to get to the point that Your Honor's  
4 articulating -- I certainly understand what you just said. In  
5 order to get to that point the amount of review, the 2 to 13  
6 whatever it's called, megabytes --  
7 THE COURT: Terabytes.  
8 MS. GLASER: -- terabytes of documents is going to  
9 require us to go to Macau. We're not allowed to look at  
10 documents at a station here in --  
11 THE COURT: Mr. Jones is going to go. He's already  
12 brought dolls back that broke.  
13 MS. GLASER: Actually, Mr. Jones can't go.  
14 MR. JONES: I'm prohibited from going, actually, by  
15 the Macau Government.  
16 MS. GLASER: He is prohibited from going.  
17 THE COURT: I'm sorry to hear that, Mr. Jones.  
18 MS. GLASER: The only people that can go are people  
19 that represent Sands China, and they to do it in Macau. We  
20 then go document by document, and all that work has to be done  
21 before we ever get to a chat with the other side with respect  
22 to what we're able to produce and what we aren't. But what  
23 has to be done is not only do you have to -- we have to review  
24 the documents in Macau --  
25 THE COURT: Correct.

1 MS. GLASER: -- which will take six to eight weeks,  
2 having done that we then must present everybody who's named on  
3 any of these emails, for example --

4 THE COURT: A consent form.

5 MS. GLASER: -- a consent form.

6 THE COURT: Right.

7 MS. GLASER: Once the consent form is signed, we  
8 then must go back to the government document by document, not  
9 just the ones that we believe may or may not be subject to the  
10 Privacy Act, because we're not taking that risk, because there  
11 are criminal sanctions, we literally are going to be in a  
12 position of having to show every document that we intend to  
13 take out of Macau and show to the other side. We must  
14 actually go to the government and get their permission. That  
15 is not only an enormously expensive task, because we will have  
16 to have reviewed all those documents, obviously, but it is a,  
17 to be kind, an unpredictable one other than being told the  
18 likelihood of us being able to produce any volume is not  
19 significant at all. And in order to avoid that huge expense  
20 and that ten -- eight to ten weeks in Macau, I think it is  
21 appropriate for Your Honor to say, you know what -- and I get  
22 your -- I get your problem about the Nevada Supreme Court  
23 acting promptly, and I understand the CityCenter comment. But  
24 the truth of the matter is --

25 THE COURT: Well, it's not because they don't work

1 hard, because they do.

2 MS. GLASER: I'm sure.

3 THE COURT: It's because their caseload is very  
4 high.

5 MS. GLASER: I appreciate that, and I --

6 THE COURT: Just so we're clear --

7 MS. GLASER: I'm not suggesting --

8 THE COURT: -- so this is on the record. And it  
9 will go to Carson City some day.

10 MS. GLASER: We're recording it, Your Honor, I  
11 understand.

12 THE COURT: I know. Just so it's clear, it's not  
13 that they don't work hard. They do work hard. They just have  
14 a tremendous workload.

15 MS. GLASER: Tremendous workload. And what I'm  
16 effectively saying is that one of the issues raised by the  
17 other side in their opposition is, well, we're controlled by  
18 Las Vegas Sands anyway. Actually, it cuts the other way.  
19 When they say they're controlled, let's test that with your  
20 discovery plan, Your Honor. Because indeed, if we're  
21 controlled by Las Vegas Sands, then they should have no  
22 problem getting the documents whether we're parties or whether  
23 there's a stay or not. So the control issue, in our judgment,  
24 is a phony issue.

25 Bottom line, the enormous expense, the -- yes, I

1 understand that there may be some delay if we're stayed and  
2 Your Honor is correct and we are incorrect with respect to  
3 whether or not the Court has jurisdiction over us, it is a  
4 very significant issue. The cases that have been cited by the  
5 other side are inapposite, and in our view, respectfully, Your  
6 Honor, I think you're doing tremendous damage to Sands China,  
7 which is by law required -- under the Hong Kong Stock Exchange  
8 rules by law required to act independently and separate from  
9 Las Vegas Sands.

10 THE COURT: I understand.

11 Mr. Williams.

12 MR. WILLIAMS: Your Honor, I know you've had a  
13 chance to read everything. I don't want to repeat what's in  
14 the briefs. I'll just focus on what I believe to be the main  
15 argument, which is not the issue of what documents are  
16 ultimately going to be withheld and not produced and thus  
17 potentially the subject of a motion to compel. They don't  
18 want to do any search at this point.

19 THE COURT: I understand.

20 MR. WILLIAMS: And so I think we've addressed it in  
21 the brief by saying they're going to have to do that search  
22 anyway. Even if they get out on jurisdiction, I think the  
23 control issue is not a phony issue. Las Vegas Sands does  
24 control Sands China, and by directing discovery requests  
25 ultimately to Las Vegas Sands seeking Sands China documents,

1 they're still going to have to engage in the same exercise  
2 they're trying to avoid now. And I realize we're not there  
3 yet. I agree it's premature, but I just want that made clear  
4 for the record.

5           The second component out there that I don't know the  
6 answer to, they can address it, is this isn't the only piece  
7 of I'll call it litigation or legal proceedings involving some  
8 or all of these issues, that the companies have announced, you  
9 know, publicly in their disclosures that there are government  
10 investigations that are seeking documents from them, as well.  
11 And my point on that is that, irrespective of the Jacobs  
12 lawsuit, they may be having to engage in this exact same  
13 process anyway, irrespective of this litigation or not. So  
14 for that reason, as well, I don't think that the argument they  
15 don't want to engage in the process at all merits a stay in  
16 this action. And I'll just leave it at that.

17           MS. GLASER: May I respond to both points?

18           THE COURT: You may.

19           MS. GLASER: The control issue test ought to be if  
20 Las Vegas -- if Counsel's accurate and Las Vegas Sands  
21 controls us, which is not the case, and I want to be very  
22 clear about that, then the way to test that is serve a  
23 subpoena on Las Vegas Sands asking Las Vegas Sands to require  
24 us to produce all the Sands China documents, and then you'll  
25 be able to test the argument. Because it's not true, number

1 one.

2           Number two, this control -- the government  
3 investigations that are occurring, they have the same  
4 roadblock, the same stone wall that every else has. They are  
5 not -- they are not even permitting the government to come in  
6 and look at documents, period. It is only Sands China lawyers  
7 who are being allowed to even start the process of reviewing  
8 documents. There are no documents that have been produced  
9 that have -- from Sands China to the federal government in any  
10 way, shape, or form. And I need to be very clear about that,  
11 Your Honor.

12           So I appreciate that Counsel doesn't have knowledge  
13 of that. I'm representing that to the Court. We understand  
14 that that is an issue that will have to be dealt with down the  
15 road. But it is certainly not happening now.

16           THE COURT: Okay. The motion is denied. At this  
17 time it is premature. As I indicated, my anticipation is that  
18 the initial document production for those documents that Ms.  
19 Glaser and her other co-counsel believe are appropriate for  
20 production need to initially be produced. If there is a  
21 limitation that is appropriate in order to avoid violation of  
22 Macau law, you should, of course, limit the production. There  
23 will then be a motion to compel, and at that point we may be  
24 in a position to address the motion for stay. Today's not the  
25 day. I keep saying that.

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Anything else?

MR. JONES: Thank you, Your Honor.

MS. GLASER: Thank you, Your Honor.

THE COURT: Have a nice day.

THE PROCEEDINGS CONCLUDED AT 9:15 A.M.

\* \* \* \* \*

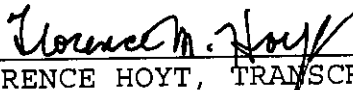
CERTIFICATION

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 HOYT, TRANSCRIBER

7/19/11

DATE



CLERK OF THE COURT

1 **MCOM**

2 J. Stephen Peek, Esq.

3 Nevada Bar No. 1759

4 Justin C. Jones, Esq.

5 Nevada Bar No. 8519

6 Brian G. Anderson, Esq.

7 Nevada Bar No. 10500

8 **HOLLAND & HART LLP**

9 9555 Hillwood Drive, 2nd Floor

10 Las Vegas, Nevada 89134

11 (702) 669-4600

12 (702) 669-4650 – fax

13 [speek@hollandhart.com](mailto:speek@hollandhart.com)

14 [icjones@hollandhart.com](mailto:icjones@hollandhart.com)

15 [bganderson@hollandhart.com](mailto:bganderson@hollandhart.com)

16 *Attorneys for Las Vegas Sands Corp.*

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 **STEVEN C. JACOBS,**

20 Plaintiff,

21 v.

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

27 Defendants.

28 **LAS VEGAS SANDS CORP.,** a Nevada  
29 corporation,

30 Counterclaimant,

31 v.

32 **STEVEN C. JACOBS,**

33 Counterdefendant.

CASE NO.: A627691-B

DEPT NO.: XI

Date:


Time:

**LAS VEGAS SANDS CORP.'S MOTION  
TO COMPEL RETURN OF STOLEN  
DOCUMENTS PURSUANT TO MACAU  
PERSONAL DATA PROTECTION ACT**

34 Las Vegas Sands Corp. ("LVSC") hereby brings the following Motion to Compel Return  
35 of Stolen Documents. This Motion is made pursuant to the Macau Personal Data Protection Act  
36 and is based upon the attached memorandum of points and authorities, the papers and pleadings

1 on file in this matter, and any oral argument that the Court may allow.

2 DATED September 13, 2011.

3   
4 J. Stephen Peek, Esq.  
5 Justin C. Jones, Esq.  
6 Brian G. Anderson, Esq.  
7 Holland & Hart LLP  
8 9555 Hillwood Drive, 2nd Floor  
9 Las Vegas, Nevada 89134

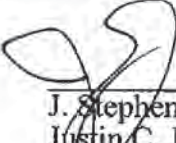
10 *Attorneys for Las Vegas Sands Corp.*

11 **NOTICE OF MOTION**

12 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

13 YOU, and each of you, will please take notice that the undersigned will bring the above  
14 and foregoing **LAS VEGAS SANDS CORP.'S MOTION TO COMPEL RETURN OF**  
15 **STOLEN DOCUMENTS PURSUANT TO MACAU PERSONAL DATA PROTECTION**  
16 **ACT** on for hearing before the above-entitled Court on the 18 day of October, 2011, at  
17 9:00AM a.m. of said day in Department XI of said Court.

18 DATED September 13, 2011.

19   
20 J. Stephen Peek, Esq.  
21 Justin C. Jones, Esq.  
22 Brian G. Anderson, Esq.  
23 Holland & Hart LLP  
24 9555 Hillwood Drive, 2nd Floor  
25 Las Vegas, Nevada 89134

26 *Attorneys for Las Vegas Sands Corp.*

1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2   **I.**

3   **INTRODUCTION**

4           For some time, LVSC suspected that Plaintiff Steve Jacobs ("Jacobs") had stolen sensitive  
5 and/or privileged company documents from LVSC and its indirect subsidiaries Sands China Ltd.  
6 ("SCL") and Venetian Macau Limited ("VML"). LVSC's suspicions were born out recently  
7 when Plaintiff's counsel revealed and explicitly admitted that Jacobs had in his possession  
8 approximately eleven gigabytes of documents taken from LVSC, SCL and/or VML, including  
9 documents that Jacobs admitted were subject to the attorney-client privilege and should properly  
10 be returned to LVSC. LVSC immediately demanded that Jacobs return the documents stolen by  
11 Jacobs; however, after initially agreeing to produce certain potentially privileged documents,  
12 Jacobs now refuses to return any documents to LVSC. Despite good faith attempts to meet and  
13 confer with opposing counsel, LVSC has no choice but to bring the instant motion to compel  
14 Jacobs to return stolen company documents. Jacobs refusal to return stolen company documents  
15 exposes LVSC and its indirect subsidiaries, SCL and VML to possible criminal action in Macau  
16 for potential violation of the Macau Personal Data Protection Act ("Macau Act"). It is critical  
17 that Jacobs be immediately compelled to return all stolen company documents so that LVSC can  
18 determine whether any of the documents are subject to the Macau Act. Accordingly, LVSC  
19 respectfully requests that the Court grant its Motion to Compel.

20   **II.**

21   **STATEMENT OF FACTS**

22           In or about March 2009, Vagus Group, Inc. ("Vagus") and LVSC entered into a consulting  
23 agreement (the "Vagus Consulting Agreement") with Vagus to provide certain management and  
24 consulting services to LVSC. A true and correct copy of the Vagus Consulting Agreement is  
25 attached hereto as **Exhibit "A."** The Vagus Consulting Agreement was authored by and executed  
26 by Jacobs. *Id.* Pursuant to the Vagus Consulting Agreement, Vagus acknowledged the  
27 confidential and highly sensitive nature of information and documents that it would be privy to  
28 under the Agreement. Specifically, the Vagus Consulting Agreement states:

**Confidentiality**

VGI understands that certain information received by and/or made available through LVS and/or its vendors, consultants and advisors is confidential and proprietary and may be restricted due to LVS public company status. VGI agrees that it will not disclose or use, and shall diligently protect and keep confidential all sensitive information received as part of or related to this project. All members of the VGI team assigned to LVS will execute and deliver any standard confidentiality / non-disclosure agreements as requested. This confidentiality provision shall survive the expiration and/or the termination of this agreement . . .

*Id.* During the course and scope of the Vagus Consulting Agreement, Vagus and Jacobs obtained documents and information that are confidential, proprietary and/or subject to the attorney-client privilege and/or work product doctrine. *See* Declaration of Kenneth J. Kay, attached hereto as **Exhibit "B."** In addition, as the former CEO of SCL, an indirect majority-owned subsidiary of LVSC, and its subsidiary, VML, Jacobs obtained additional documents and information from LVSC that are confidential, proprietary and/or subject to the attorney-client privilege and/or work product doctrine. *Id.*

After litigation commenced in this matter, Jacobs was asked by SCL's counsel to return all company property. *See, e.g.,* November 23, 2010 Letter, attached hereto as **Exhibit "C;"** January 7, 2011 Letter, attached hereto as **Exhibit "D."** Jacobs, however, claimed that he had not stolen any documents. *See, e.g.,* November 30, 2010 Letter, attached hereto as **Exhibit "E."**

However, contrary to Jacobs' prior statements, Jacobs' counsel recently revealed that Jacobs was in possession of approximately 11 gigabytes of documents, which includes (as admitted by Jacobs' own counsel) documents containing attorney-client communications between LVSC and its counsel. *See* July 8, 2011 Email, attached hereto as **Exhibit "F."** In response to this revelation, LVSC demanded that Jacobs immediately return all such documents. *See* Declaration of Justin C. Jones, attached hereto as **Exhibit "G."** However, to date, Jacobs has failed and refused to return company documents to LVSC.

On August 1, 2011, the parties conducted further meet and confer discussions telephonically regarding return of company documents in Jacobs' possession. During the telephone conference, Jacobs' counsel represented that:

1. Jacobs and his counsel are in possession of documents which Jacobs acquired

1 during the course of his employment.

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

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

8 4. Jacobs believes that Macau data privacy laws do not prohibit him from disclosing  
9 documents in this matter and that Macau data privacy laws are being used by  
10 Defendants as a "farical canard" to avoid disclosure of documents.

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

14 *See* Jones Decl., Ex. D; *see also* August 2, 2011 Letter, attached hereto as **Exhibit "H."** In  
15 subsequent correspondence, Jacobs' counsel confirmed that Jacobs "is *unable* to 'return' the  
16 documents to Defendants," and Jacobs' attorneys have agreed to cease their review and/or  
17 production of the documents until the matter is resolved by the Court. *See* letter from J. Colby  
18 Williams to Justin C. Jones dated August 3, 2011 attached hereto as **Exhibit "I."**

19 **III.**

20 **LEGAL ARGUMENT**

21 The Macau Act governs "retrieval, consultation, use, disclosure by transmission,  
22 dissemination or otherwise making available" personal information. *See* Art. 4, Sec. 1(3) of the  
23 Macau Act, a copy and translation of which are attached hereto as **Exhibit "J."** "Personal data"  
24 is interpreted very broadly to include:

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

28 *Id.* at Art. 4, Sec. 1(1). Pursuant to the Macau Act, personal data may not be transferred outside

1 of Macau except with unambiguous written consent of the data subject and provided the legal  
2 system in the destination to which they are transferred ensures an adequate level of protection,  
3 except in other limited circumstances that do not apply here. *Id.* at Art. 6, 19. Anyone who  
4 violates the Macau Act "shall be liable to up to one year's imprisonment or a fine of up to 120  
5 days." *Id.* at Art. 37.


6 Here, LVSC has serious concerns that Jacobs will disclose company documents that  
7 contain personal data in violation of Macau law. The Macau Act provides for serious sanctions in  
8 such circumstances, sanctions which could potentially be levied against LVSC and/or its indirect  
9 subsidiaries, SCL and VML. Any such sanctions could be financially devastating to LVSC, as a  
10 substantial portion of LVSC's revenue is derived from its ownership interest in SCL. The  
11 appropriate manner to address this issue is for Jacobs to return stolen company documents to  
12 LVSC and, if necessary, LVSC will then review the documents in Macau to determine if they  
13 contain personal data. Accordingly, LVSC requests that the Court immediately compel Jacobs to  
14 produce all stolen company documents.

15 IV.

16 CONCLUSION

17 For the foregoing reasons, LVSC hereby requests that the Court grant its Motion to  
18 Compel Return of Stolen Documents and thereby compel Jacobs to return all company documents  
19 in his possession to LVSC.

20 DATED September 13, 2011.

21   
22 J. Stephen Peek, Esq.  
23 Justin C. Jones, Esq.  
24 Brian G. Anderson, Esq.  
25 Holland & Hart LLP  
26 9555 Hillwood Drive, 2nd Floor  
27 Las Vegas, Nevada 89134

28 *Attorneys for Las Vegas Sands Corp.*

**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b), I certify that on September 13, 2011, I served a true and correct copy of the foregoing **LAS VEGAS SANDS CORP.'S MOTION TO COMPEL RETURN OF STOLEN DOCUMENTS PURSUANT TO MACAU PERSONAL DATA PROTECTION ACT** via e-mail and by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

Donald J. Campbell, Esq.  
J. Colby Williams, Esq.  
Campbell & Williams  
700 S. 7th Street  
Las Vegas, Nevada 89101  
382-5222  
382-0540 – fax  
[djc@campbellandwilliams.com](mailto:djc@campbellandwilliams.com)  
[jcw@campbellandwilliams.com](mailto:jcw@campbellandwilliams.com)

*Attorneys for Plaintiff*

Patricia Glaser, Esq.  
Stephen Ma, Esq.  
Andrew D. Sedlock, Esq.  
Glaser, Weil, et., al.  
3763 Howard Hughes Parkway, Suite 300  
Las Vegas, Nevada 89169  
650-7900  
650-7950 – fax  
[pglaser@glaserweil.com](mailto:pglaser@glaserweil.com)  
[sma@glaserweil.com](mailto:sma@glaserweil.com)  
[asedlock@glaserweil.com](mailto:asedlock@glaserweil.com)

*Attorneys for Defendant Sands China Ltd.*

  
An Employee of Holland & Hart LLP

## Dineen Bergsing

---

**From:** Dineen Bergsing  
**Sent:** Tuesday, September 13, 2011 6:16 PM  
**To:** Donald Campbell; 'Colby Williams'; 'Patricia Glaser'; 'Stephen Ma'; 'Andrew Sedlock'  
**Subject:** LV Sands/Jacobs - LV Sands' Motion to Compel Return of Stolen Documents Pursuant to Macau Personal Data Protection Act  
**Attachments:** Las Vegas Ikon - 09-13-11 - FKQTE7G.pdf; image001.gif

Please see attached LV Sands' Motion to Compel Return of Stolen Documents Pursuant to Macau Personal Data Protection Act. A copy to follow by mail.

### **Dineen M. Bergsing**

*Legal Assistant to J. Stephen Peek,  
Justin C. Jones and David J. Freeman*  
Holland & Hart LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, Nevada 89134  
(702) 669-4600 - Main  
(702) 222-2521 - Direct  
(702) 669-4650 - Fax  
[dbergsing@hollandhart.com](mailto:dbergsing@hollandhart.com)



**CONFIDENTIALITY NOTICE:** This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this e-mail. Thank you.

## **EXHIBIT A**

**VGI**

To Nelson Riley  
For SBA  
702-733  
5620

March 14, 2009

Mike Leven  
President and COO  
Las Vegas Sands Corporation  
3355 Las Vegas Boulevard South  
Las Vegas, NV 89109

Dear Mike:

Thank you for the opportunity to assist you in implementing the cost reduction and turn around plan for Las Vegas Sands. Expectations for your two year appointment are high and the challenges are great. Analysts call for the economic recovery to be delayed until mid to late 2010, and inflation due excess liquidity is likely to follow. Economic havens, including China, are down grading their outlook. And pending legislation, including the card program, could significantly impact business. That being said, the global economy will recover, and those companies that focus on what they can control – costs, capital and debt – will emerge stronger and in a more sustainable position.

As you well know, your first 180 days are critical to establishing the pace, direction and, most importantly, the culture you intend to leave behind. Having worked with you on numerous occasions, we are well aware of the signature you leave and the culture you instill. Our goal is to help you accelerate the leadership transition and to assist you in realizing the \$470M of identified savings... as well as any additional savings that may yet be undiscovered.

I am planning on joining you April 1, and as requested, I have cleared my calendar for the next six months. Following is a high level overview of our assignment. Additional detail and specific focus areas will be further delineated after our first two to three weeks onsite.

As always, should you wish to discuss or amend any items, please do not hesitate to call.

### Scope

Based on our discussions, our efforts will be focused in three primary and overlapping areas.

#### *1. Accelerating the Leadership Transition and the New Management Culture*

I will work, at your direction, to help you develop and launch your "Go Forward" transition plan which will prioritize objectives and guide managements' time and expenditures over the next 60, 90 and 180 days. Success requires that the right critical issues be identified early and that effort towards non-critical path items are curtailed or eliminated. Early wins provide momentum and as the transition is to be multi-phased, a portfolio approach will minimize distractions due to non-identified issues or delays.

Once a short list has been agreed, we can then begin molding the organization and support systems to accelerate performance. If done properly, the transition plan can also serve as an internal and external scorecard for the organization and its management.

Anticipated work steps include:

- Review debt covenants, work papers and presentations detailing key operational, financial and strategic imperatives
- Review 2009 operating plans, budgets
- Review pre-opening and opening plans and budgets for Bethlehem and Singapore
- Analyze 2009 and out year capital expense, including repair and maintenance (R&M)
- Assimilate project updates and major milestones regarding major projects
- Compile and assess internal management reports to identify tracking capabilities and alignment with strategic / operational objectives
- Review and, as directed, revise / propose near term policies and procedures to conserve capital and minimize expense. This may include areas such as:
  - Project capital expenditure
  - R&M authorization
  - New hires, transfers and use of temporary labor
  - Travel and entertainment policies
  - Third party contracting
  - Telecommunications
  - Purchasing / spending authorization limits
- In conjunction with the President and COO revise the transition plan including:
  - Priority focus areas for each functional and geographic group
  - Key initiatives within each functional and geographic area
  - Key success factors and metrics by which success will be judged
- Review and incorporate senior management input regarding timing, staffing and resource requirements relating to implementation of the plan
- Review and revise, as necessary, tracking and reporting to ensure visibility and real time monitoring of progress. Note: This may or may not include an intranet dashboard.

- Publish and distribute the plan as directed. In past assignments, the document has been the basis for board and executive committee review. In others, the plan has been summarized and a one page “Go Forward Plan” has been distributed to the employee base at large and used as the foundation communications during the transition process.

## **2. Reducing Run Rate Operating Costs**

LVS senior management has identified over \$470M in run rate savings, the majority of which appear to be tied to salary, wages and benefits. Working in conjunction with your cost reduction team, we will manage the implementation to ensure rapid and cost effective reductions in both the U.S. and Asian operations. It is understood and agreed that I will be working closely with Ken and select staff and that you will have day to day involvement and oversight into all aspects of our work.

Major works steps anticipated include:

- Review existing plans relating to organizational savings and impacts to cost and revenue centers
- Analyze existing corporate, entity and departmental organizations to assess spans of control, reporting hierarchies and potential areas for consolidation
- Review recently conducted activity value analysis to assess functional efficiency, opportunities for re-engineering and impacts of proposed restructuring on up or down stream linked activities
- Compile existing labor and load management practices related to scheduling variable labor (e.g. f&b staff to covers, dealers to tables, etc.)
- Conduct review sessions to prioritize and sequence proposed changes.
- Agree to change management procedures
- Propose and agree on new processes for approvals / authorization
- Identify and assign contractual and / or governmentally required notification processes and procedures
- Identify and retain key performers
- Perform risk assessment of critical path functions and operations to ensure continuity of operations throughout the down sizing
- Develop back-up and contingency plans for critical path processes (financial reporting, systems, gaming maintenance, etc.) and customer, labor and press related functions
- Develop pre, post and announcement day implementation plans. Note: Savings tied to “early wins” may favor multiple announcements at the departmental and entity level verses a one time company wide event.
- Build and maintain the war room. Note: May or may not be online.
- Participate in the announcements as required
- Coordinate reporting and tracking of reorganization progress
- Coordinate tracking of actual to run rate forecasted savings

- Participate in audits / read outs of audits of new process and procedures to ensure realization of headcount, capital and expense reductions
- Troubleshoot post reorganization procedures, processes and operations to minimize operational disruption

### ***3. Identifying and Capturing Additional Savings***

On an as agreed basis, we will prioritize and review additional functions and / or areas of operations that you believe hold additional opportunities for re-engineering and / or optimization. While the target list has not yet been identified, it is anticipated to include at least one or two major functional processes and / or groups for which a detailed analysis has been performed. This may include areas relating to back of house operations, information technology, call center operations and / or food and beverage. The methodology and approach will be appropriate to reflect the work done to date. Should a full analysis / due diligence materially increase scope, in keeping with our past assignments and our relationship, VGI and LVS will discuss scope and fees.

### **Timing, Staffing and Fees**

Given the importance of your first 180 days, I will assume overall project responsibility and will become a dedicated resource for you and your team for the six month duration of this assignment. As requested, my CV is attached. Leanne Murdoch, Chris Tessone and/or other VGI associates will be used on an as needed basis. We are prepared to commence work April 1, 2009.

Professional service fees for this assignment will be \$52k per month. Travel and out of pocket expenses will be billed at cost and will include, but is not limited to, items such as airfare, food, lodging, telecommunications and supplies. Invoices are due and payable on the first of each month and sent to:

Vagus Group, Inc.  
979 Valley Crest Drive  
Atlanta, Ga 30327

To minimize costs, I will travel with you from Atlanta to LV and China as schedules and deliverables allow. It is anticipated that we will be onsite Monday through Friday each week and that lodging will be provided.

### **Term and Termination Provisions**

The term of this contract will be six months, commencing April 1 and ending September 30, 2009, unless mutually extended by both parties. In keeping with our long standing relationship, should any material changes in scope necessitate an increase or reduction in fees, they will be openly discussed, mutually and reasonably agreed.

This agreement can be cancelled at any time by LVS with 60 days written notice. Should LVS choose to cancel this agreement prior to the end of the contract without cause, fees and expenses would be due and payable through the last day of the notice period.

VGI agrees to accept and perform this assignment on a "best efforts" basis. Should VGI fail to meet its obligations, LVS agrees to notify VGI in writing of any and all deficiencies. Should said deficiencies not be corrected within 30 calendar days to LVS' reasonable satisfaction, LVS will have the right to terminate VGI services for cause. Should this occur, all fees and expenses will be due and payable through the last day worked.

#### **Indemnification**

Each party agrees to indemnify, defend and hold harmless the other party, its officers, directors and employees and each of its parent and subsidiaries and each of their respective officers, directors and employees against all out of pocket losses actually incurred as a result of gross negligence or willful misconduct of the indemnifying party or its agents or employees in connection with the terms of this agreement. This indemnification provision shall survive the expiration of this agreement. Except in the case of its gross negligence or willful misconduct, it is understood and agreed that VGI's total liability irrespective of cause, event, actual or perceived damage amounts will be limited to the Professional Service Fees paid.

#### **Confidentiality**

VGI understands that certain information received by and/or made available through LVS and/or its vendors, consultants and advisors is confidential and proprietary and may be restricted due to LVS public company status. VGI agrees that it will not disclose or use, and shall diligently protect and keep confidential all sensitive information received as part of or related to this project. All members of the VGI team assigned to LVS will execute and deliver any standard confidentiality / non disclosure agreements as requested. This confidentiality provision shall survive the expiration and/or the termination of this agreement and will in accordance with any governmental and or SEC restrictions.

#### **Dispute Resolution**

In the unlikely event that any dispute related to this project should arise between the parties, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and out of pocket expenses actually incurred. All work will be performed on a "best efforts" basis and LVS hereby agrees not to withhold to VGI the necessary information, approvals, support, authority, funding, reimbursement and resources necessary to accomplish the tasks contemplated under this proposal.

**Acceptance**

On behalf of VGI, we look forward to working with you and your team to transform LVS. We are confident that our efforts within the first 90 - 120 days will be significant and within 180 days the culture, cost basis and focus of both your North American and Asian operations will be greatly improved. By this time next year, we expect substantial and fundamental change.

To authorize VGI to begin work, please sign below and return an original copy to my attention.

Very Truly Yours,

**Authorization Signature**

VAGUS GROUP, INC.

Las Vegas Sands Corp.

By: Steven C. Jacobs  
President

By: Mike Leven  
President and COO

Date

## **EXHIBIT B**

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**DECLARATION OF KENNETH J. KAY**

I, KENNETH J. KAY, under penalty of perjury, state as follows:

1. I have personal knowledge of the matters set forth in this Declaration except as to those matters stated upon information and belief, and I believe those matters to be true.

2. I am at least 18 years of age and am competent to testify to the matters stated in this Declaration.

3. I currently serve as Executive Vice President and Chief Financial Officer for Las Vegas Sands Corp. ("LVSC"). I have worked for LVSC from December 2008 to present.

4. In or about March 2009, Vagus Group, Inc. ("Vagus") and LVSC entered into a consulting agreement (the "Vagus Consulting Agreement") with Vagus and Steve Jacobs to provide certain management and consulting services to LVSC.

5. I interacted on a regular basis with Steve Jacobs and others at Vagus regarding their consulting work for LVSC.

6. During the course and scope of the Vagus Consulting Agreement, Vagus and Jacobs obtained documents and information that are confidential, proprietary and/or subject to the attorney-client privilege.

7. After Jacobs became the CEO of Venetian Macau Limited ("VML") and later CEO of Sands China Ltd. ("Sands China"), I frequently interacted with Jacobs, especially during the negotiations of the initial public offering for Sands China.

8. During that time, I am aware that Jacobs obtained LVSC documents and information that were confidential, proprietary and/or subject to the attorney-client privilege and provided Jacobs with such information and documentation myself on many occasions.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 8<sup>th</sup> day of SEPTEMBER, 2011.

  
KENNETH J. KAY

## **EXHIBIT C**

**Glaser Weil Fink Jacobs  
Howard & Shapiro LLP**

10250 Constellation Blvd.  
10th Floor  
Los Angeles, CA 90067  
310.553.3000 TEL  
310.556.2820 FAX

November 23, 2010

Direct Dial  
(310) 282-8217  
Email  
Pglaser@glaserwell.com

**VIA FACSIMILE TRANSMISSION AND U.S. MAIL**

Donald Campbell, Esq.  
Campbell & Williams  
700 South Seventh Street  
Las Vegas, NV 88101

Re: Las Vegas Sands Corp., et al. adv. Jacobs

Dear Mr. Campbell:

This law firm represents Sands China Ltd. together with its subsidiaries (the "Company"). While we will be responding in due course to what we believe, to be kind, an ill-advised complaint filed in the above referenced matter, we address here a matter of immediate concern to our client. We have reason to believe, based on conversations with existing and former employees and consultants for the Company, that Mr. Jacobs has stolen Company property including but not limited to three reports he, while working for the Company, received from Mr. Steve Vickers of International Risk Ltd.

We urge Mr. Jacobs to avoid the "I don't know what you're talking about" charade and return such reports (and any copies thereof) of which most if not all, have been watermarked. Of course, to the extent he has other Company property, such property must also be returned immediately. If we do not receive the reports within the next five (5) business days, we will be forced to seek Court intervention either in Las Vegas or Macau.

On a related matter, we hereby demand and advise Mr. Jacobs (and any consulting company with which he is or was associated) to retain all of his/their files and his wife's files related to the Company and Las Vegas Sands Corp. Also, we remind Mr. Jacobs and his wife to preserve (a) all electronic mail and information about electronic mail (including message contents, header information, and logs of electronic mail system usage including both personal and business electronic mail accounts); (b) all databases (including all records and fields and structural information in such databases); (c) all logs of activity on computer systems that may have been used to process or store electronic data; (d) all word processing files and file.

Donald Campbell, Esq.  
Campbell & Williams  
November 23, 2010  
Page 2

fragments; and (e) all other electronic data in each case relating to the Company or Las Vegas Sands Corp.

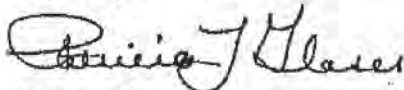
To minimize the risk of spoliation of relevant electronic documents, Mr. Jacobs (and any consulting company with which he is or was associated) and his wife should not modify or delete any electronic data files relating to the Company or Las Vegas Sands Corp. that are maintained on on-line storage and/or direct access storage devices unless a true and correct copy of each such electronic data file has been made and steps taken to ensure that such copy will be preserved and accessible.

Obviously, no one should alter or erase such electronic data and should not perform any other procedures (such as data compression and disc de-fragmentation or optimization routines) that may impact such data on any stand-alone computers and/or network workstations unless a true and correct copy has been made of such active files and of completely restored versions of such deleted electronic files and fragments and unless copies have been made of all directory listings (including hidden files) for all directories and subdirectories containing such files, and unless arrangements have been made to preserve copies.

Finally, any and all steps necessary to preserve relevant evidence created subsequent to this letter should be taken.

This letter is written without waiver of or prejudice to any and all of our client's rights and remedies.

Very truly yours,



Patricia Glaser  
of GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP

PLG:jam

## **EXHIBIT D**

**Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP**

3763 Howard Hughes Parkway  
10250 Constellation Blvd.  
19th Floor  
Los Angeles, CA 90087  
310.553.3000 TEL  
310.556.2920 FAX

Direct Dial  
(310) 282-6217  
Email  
Pglaser@glaserwell.com

January 7, 2011

*VIA FACSIMILE TRANSMISSION AND U.S. MAIL*

Donald Campbell, Esq.  
Campbell & Williams  
700 South Seventh Street  
Las Vegas, NV 88101

Re: Las Vegas Sands Corp., et al, adv, Jacobs  
Clark County District Court Case No.: A10-627691

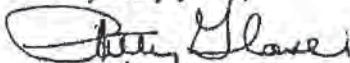
Dear Mr. Campbell:

This letter follows up on our letter of December 13, 2010. Since that letter, we received a UPS package which enclosed what appear to be original reports concerning Macau officials and Mr. Cheung Chi Tai, but which included no cover letter nor the Heung Wah Keong report.

As we said in our letter of December 13, 2010, and as we communicated to you previously, we expect Mr. Jacobs to return to us all original reports, as well as any copies. We therefore reiterate our prior requests that all original reports of the type about which we have corresponded be returned to us, that all copies be returned to us or destroyed and that you confirm in writing that these steps have been completed. Finally, we reiterate our original request that Mr. Jacobs return any other property of Sands China Ltd. or its subsidiaries that he now possesses.

This letter is written without waiver of or prejudice to any and all of our client's rights and remedies.

Very truly yours,



Patricia Glaser  
of GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP

PLG:dd

 MERITAS LAW FIRMS WORLDWIDE

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## **EXHIBIT E**



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

VIA FACSIMILE

November 30, 2010

Patricia Glaser, Esq.  
Glaser Weil Fink Jacobs  
Howard & Shapiro  
10250 Constellation Blvd.  
Los Angeles, California 90067

Re: *Jacobs v. Las Vegas Sands Corp., et al.*

Dear Ms. Glaser:

We are in receipt of your letter dated November 23, 2010, which was received shortly before the Thanksgiving Holiday. Before turning to the substance contained therein, let me begin by stating "nice to meet you, too."

Moving on . . . please be advised that my firm and I have been consumed in another piece of commercial litigation that has been proceeding on an expedited basis with a myriad of court hearings and deadlines throughout the month of November and continuing into December. You may confirm the existence and breakneck pace of the litigation about which I speak with your local counsel, Stephen Peek and Justin Jones, as they represent one of the parties in the action. As such, I have not had an opportunity to address the contents of your letter with my client, Mr. Jacobs. I do, however, anticipate being able to discuss this matter with him in detail early next week.

Meanwhile, you may assist us in avoiding your self-coined "'I don't know what you're talking about' charade" by describing in more detail the "three reports" referenced in your letter. It has been our experience that wrongfully terminated corporate executives are often—and properly—in possession of a multitude of documents received during the ordinary course of their employment. Contrary to the allegations contained in your letter, that does not mean the documents were "stolen." Thus, in order to determine whether Mr. Jacobs possesses the reports you want "returned immediately," it would help to know exactly what you are talking about.

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/382-0228  
FAX: 702/382-0540

Patricia Glaser, Esq.  
November 30, 2010  
Page 2

Finally, insofar as Mr. Jacobs is in possession of any other documents or evidence related to Sands China, Ltd. and Las Vegas Sands, Corp. we have previously instructed him, as we instruct any client, to preserve all such materials in whatever form they exist.

This letter is written without waiver of or prejudice to any and all of our client's rights and remedies.

Very truly yours,

CAMPBELL & WILLIAMS

  
Donald J. Campbell, Esq.

DJC:mp

## **EXHIBIT F**

## Justin Jones

---

**From:** Colby Williams [jcw@campbellandwilliams.com]  
**Sent:** Friday, July 08, 2011 4:30 PM  
**To:** Justin Jones; Stephen Ma  
**Subject:** Document Production

Dear Justin/Steve,

As we approach the end of the week, I thought it would be a good idea to update you on the status of our document production. As you know, I have been out of the office all week on vacation but have, nevertheless, been dealing with various work matters including the Jacobs document production.

Steve electronically transferred to our office a significant number of e-mail communications he received during his tenure with Defendants. That file transfer was completed last weekend after I left for vacation. I believe the amount of material constitutes approximately 11 gigs. In addition, Steve has sent us hard copies of various documents that also arrived at our office this week. I have not reviewed those documents and do not yet know the amount of material contained therein.

In anticipation of Bates Stamping and producing these documents to Defendants, I wanted to address a couple of issues.

First, as it relates to the production of communications that Steve may have had with Macau residents, we believe we are authorized to produce those documents to you despite any potential application of the Macau Data Privacy Act. Our basis for that conclusion is that Steve is a U.S. Citizen, he resides in and is located in the U.S. presently, the information is located in the U.S., and the documents are being produced pursuant to the rules governing procedures in a U.S. lawsuit. Given that the Privacy Act permits the "processing" of personal information to effectuate "compliance with a legal obligation to which the controller is subject" see, Art. 6, § (2), it appears to us that all parties in the litigation would be authorized to produce documents therein. Nonetheless, since Defendants have raised the issue, we would like to include a provision in the SPO to be submitted to the Court whereby Judge Gonzalez confirms that the Macau Data Privacy Act does not provide a basis for withholding documents in this litigation at least insofar as Steve's production is concerned. With respect to whether the act has any impact on Defendants' production, the parties can debate that issue at a later date if it becomes necessary.

Second, in beginning our review of the e-mails, it appears that Steve was the recipient of a number of e-mails from various attorneys employed by LVSC and SCL during the normal course and scope of his duties with Defendants. While we are certainly entitled to e-mails from attorneys that were sent to Steve during his tenure that are relevant to the claims/defenses in the litigation, we likewise recognize that there may be a number of e-mails from attorneys to Steve that are likely not relevant to this action. Frankly, we have neither the time nor interest to review any attorney authored e-mails that are irrelevant to this action. Thus, after initially reviewing a small portion of the material transferred by Steve in order to determine what it comprises, we have stopped the review process so that we may address this issue with you before discovery begins.

We propose the following: We send the material to our third-party ESI vendor for Bates Stamping. We will then produce all of the documents to you (less any documents for which Steve maintains a privilege, which will be identified in an appropriate log). Defendants will then have a certain amount of time (to be agreed upon by the parties) to advise us as to their position as to the relevance/irrelevance of the attorney-authored communications to Steve and whether any should be withheld and logged by Defendants. In the meantime, we will simply continue the suspension of any review of additional emails between Steve and company lawyers. By engaging in this proposed process, we are, of course, not waiving our right to contest Defendants' positions on relevance and/or the application of any privileges, all of which are expressly reserved.

Please let me know your thoughts about our proposals on these two issues so that we may commence with discovery.  
I'll be back in the office on Monday and we can talk then.

Have a good weekend.

Regards,  
Colby

J. Colby Williams, Esq.  
Campbell & Williams  
700 South Seventh Street  
Las Vegas, Nevada 89107  
Tel. 702.382.5222  
Fax. 702.382.0540  
email [jcw@campbellandwilliams.com](mailto:jcw@campbellandwilliams.com)

## **EXHIBIT G**

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1 confidentiality policy or other document containing a  
2 confidentiality provision.

3 4. Jacobs believes that Macau data privacy laws do not  
4 prohibit him from disclosing documents in this matter and that  
5 Macau data privacy laws are being used by Defendants as a  
6 "farcical canard" to avoid disclosure of documents.

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

11 See Exhibit E to Motion for Protective Order.

12 11. In subsequent correspondence, Jacobs' counsel confirmed that Jacobs "is *unable*  
13 to 'return' the documents to Defendants". See Exhibit F to Motion for Protective Order.

14 12. Additionally, while Jacobs' attorneys have agreed to cease *their* review and/or  
15 production of the documents until the matter is resolved by the Court, they are "unable to  
16 represent that Steve has not or will not provide any of the documents to certain third parties."

17 I declare under penalty of perjury of the State of Nevada that the foregoing is true and  
18 correct.

19 DATED September 8, 2011,

20  
21  
22 JUSTIN C. JONES  
23  
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## **EXHIBIT H**



August 2, 2011

**VIA FAX (382-0540) AND U.S. MAIL**

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

**Re: Jacobs v. Las Vegas Sands Corp., et al.**  
**Case No. A627691-C**

Dear Messrs. Campbell and Williams:

This letter follows up on the discussion last night, as well as prior discussions and email correspondence, regarding documents in the possession of your client, Steve Jacobs. My understanding from what you reported last night is as follows:

1. Mr. Jacobs and your firm are in possession of documents which Mr. Jacobs acquired during the course of his employment, which employment Mr. Jacobs alleges was with Las Vegas Sands Corp. ("LVSC").
2. These documents include material that, based upon your initial review, may be subject to the attorney-client privilege.
3. Mr. Jacobs did not sign any confidentiality policy or other document containing a confidentiality provision and thus does not believe that he is bound to keep confidential those documents obtained during the course of his employment.
4. Mr. Jacobs believes that Macanese data privacy laws do not prohibit him from disclosing documents in this matter; rather, Mr. Jacobs believes, after consulting with others, that Macanese data privacy laws are being used by Defendants in this matter as a "farical canard" to avoid disclosure of documents.
4. Based upon the foregoing, Mr. Jacobs will not comply the request for return of documents obtained during the course of Mr. Jacobs' asserted employment with LVSC, nor can Mr. Jacobs commit that he has not or will not provide such documents to third parties.
5. While Mr. Jacobs will not return the requested documents, he will agree not to produce the documents in this litigation until such time as the issue is resolved by

August 02, 2011

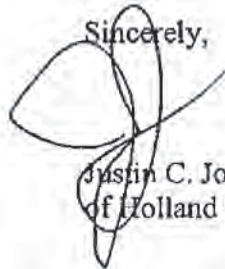
Page 2

the Court upon motion practice. As discussed, a formal stipulation is forthcoming.

6. Furthermore, we requested that you stipulate to our filing of an amended counterclaim to assert claims relating to Mr. Jacobs improper taking of and/or retention of documents. However, you would not agree to stipulate to our filing of an amended counterclaim or to a non-opposition to a motion to amend the counterclaim.

If my understanding of the discussion last night is incorrect, please advise immediately.

Sincerely,

A handwritten signature in black ink, appearing to be "Justin C. Jones", written over the typed name.


Justin C. Jones  
of Holland & Hart LLP

JCJ

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\*\*\* TX REPORT \*\*\*  
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HOLLAND & HART 

Justin C. Jones  
Phone 702-222-2595  
Fax 702-669-4650  
jcjones@hollandhart.com

August 2, 2011

VIA FAX (382-0540) AND U.S. MAIL

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

Re: **Jacobs v. Las Vegas Sands Corp., et al.**  
**Case No. A627691-C**

Dear Messrs. Campbell and Williams:

This letter follows up on the discussion last night, as well as prior discussions and email correspondence, regarding documents in the possession of your client, Steve Jacobs. My understanding from what you reported last night is as follows:

1. Mr. Jacobs and your firm are in possession of documents which Mr. Jacobs acquired during the course of his employment, which employment Mr. Jacobs alleges was with Las Vegas Sands Corp. ("LVSC").
2. These documents include material that, based upon your initial review, may be subject to the attorney-client privilege.
3. Mr. Jacobs did not sign any confidentiality policy or other document containing a confidentiality provision and thus does not believe that he is bound to keep confidential those documents obtained during the course of his employment.
4. Mr. Jacobs believes that Macanese data privacy laws do not prohibit him from disclosing documents in this matter; rather, Mr. Jacobs believes, after consulting with others, that Macanese data privacy laws are being used by Defendants in this

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## **EXHIBIT I**



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

VIA E-MAIL

August 3, 2011

Justin C. Jones, Esq.  
Holland & Hart  
3800 Howard Hughes Pkwy. 10<sup>th</sup> Fl.  
Las Vegas, Nevada 89169

Re: *Jacobs v. Las Vegas Sands Corp., et al.*

Dear Justin:

I wanted to respond to the letter you faxed to our office yesterday, which sought to memorialize the discussions of counsel pertaining to documents in the possession of our client, Steve Jacobs. Before turning to your enumerated points, I think it is important to clarify that our firm was responsible for bringing this matter to everyone's attention via my e-mail communication to you and Steve Ma on July 8, 2011. In that e-mail I advised both of you, *inter alia*, of the amount of documents Steve (Jacobs) had electronically transferred to our firm, the fact that there appeared to be communications between LVSC/SCL attorneys and Steve during the course of his tenure with Defendants, and that we had stopped our review of said documents very shortly after it began so that the parties could address these issues together. Since that time, various counsel for the parties have conducted at least three telephonic meet and confer conferences, and our firm has continued to refrain from any review or production of the documents per those conferences.

With that background, let me briefly respond to your bullet points in the order they were presented:

1. This is an accurate statement.
2. This is an accurate statement as far as it goes. I would clarify, though, our position that: (i) communications Steve had with a company attorney are not necessarily privileged simply because an attorney was involved, and (ii) Steve would nonetheless be entitled to communications he exchanged with company attorneys even if they are deemed protected by the attorney-client privilege so long as they are relevant (*i.e.*, calculated to lead to the discovery of admissible evidence) to the claims and defenses at issue in the litigation.

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/382-6222  
FAX: 702/382-0540

Justin C. Jones, Esq.  
August 3, 2011  
Page 2

3. Our understanding is that Steve did not sign a confidentiality agreement in his capacity as an employee of LVSC or agent of SCL. We have raised this issue not because we believe Steve may freely disperse documents he acquired during his employment to the public at large but, rather, in response to Defendants' allegation that Steve is wrongfully in possession of said documents.

4. This statement is accurate to the extent it reflects our position that the Macau data privacy laws do not prevent any of the parties from producing documents in this action.

4. [sic] We have offered to Bates Stamp and produce all of Steve's documents to Defendants (less those for which Steve has a privilege, which would be logged), who may then conduct a review to determine their position as to the potential attorney-client communications. Defendants responded that they do not want any documents "produced," but instead want all of them "returned." We advised that Steve is unable simply to "return" the documents to Defendants. We are also unable to represent that Steve has not or will not provide any of the documents to certain third parties.


5. While Steve is unable to "return" the documents to Defendants, we agreed not to produce the documents in this litigation until the issue is resolved by the Court. Additionally, our firm will continue to refrain from reviewing the documents so as not to create any issues regarding the documents containing communications with attorneys. We will consider any stipulation you propose on this issue.

6. You are correct that we are unable to agree to stipulate to allow one or both Defendants to amend the counterclaim to assert a cause of action relating to Steve's possession of the subject documents. As we explained, our inability to agree is not designed to create more work for Defendants but, rather, reflects the simple fact that we do not have authorization to consent to such a filing.

While the foregoing is not meant to be a full expression of our rights and positions, I believe it adequately addresses your letter of last night. Please contact me with any questions or comments.

Very truly yours,

CAMPBELL & WILLIAMS

  
J. Colby Williams, Esq.

JCW/

## **EXHIBIT J**

## **THE MACAO SPECIAL ADMINISTRATIVE REGION**

**Act 8/2005**

### **Personal Data Protection Act**

Under Article 71 (1) of the Basic Law of the Macao Special Administrative Region, the Legislative Council hereby decrees the following to implement the fundamental order established by Articles 30, 32, and 43 of the Basic Law of the Macao Special Administrative Region.

#### **CHAPTER I**

##### **General provisions**

###### **Article 1**

###### **Object**

This Act establishes the legal system on the processing and protection of personal data.

###### **Article 2**

###### **General principle**

The processing of personal data shall be carried out transparently and in strict respect for privacy and for other fundamental rights, freedoms and guarantees enacted in the Basic Law of the Macao Special Administrative Region, the instruments of international law and the legislation in force.

###### **Article 3**

###### **Scope**

1 – This Act shall apply to the processing of personal data wholly or partly by automatic means, and to the processing other than by automatic means of personal data which form part of manual filing systems or which are intended to form part of manual filing systems.

2 – This Act shall not apply to the processing of personal data carried out by a natural person in the course of a purely personal or household activity, save those with the purposes of systematic communication and dissemination.

3 – This Act shall apply to video surveillance and other forms of capture, processing and dissemination of sound and images allowing persons to be identified, provided the controller is domiciled or based in the Macao Special Administrative Region (the MSAR)

or makes use of a computer or data communication network access provider established on the MSAR territory.

4 – This Act shall apply to the processing of personal data regarding public safety without prejudice to special rules in instruments of international law and inter-regional agreements to which the MSAR is bound and specific laws pertinent to public safety and other related regulations.

#### **Article 4**

##### **Definitions**

1 – For the purposes of this Act:

- (1) “personal data” shall mean any information of any type, irrespective of the type of medium involved, including sound and image, relating to an identified or identifiable natural person (“data subject”); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an indication number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;
- (2) “data subject” shall mean the natural person whose data are processed;
- (3) “processing of personal data” (“processing”) shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;
- (4) “personal data filing system” (“filing system”) shall mean any structured set of personal data which are accessible according to specific criteria, regardless of the form or method of its establishment, storage and organization;
- (5) “controller” shall mean the natural or legal person, public entity, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data;
- (6) “processor” shall mean a natural or legal person, public entity, agency or any other body which processes personal data on behalf of the controller;
- (7) “third party” shall mean any natural or legal person, public entity, agency or any other body other than the data subject, the controller, the processor and the persons under the direct authority of the controller or the processor, which are qualified to process the data;
- (8) “recipient” shall mean a natural or legal person, public entity, agency or any other body to whom data are disclosed, whether a third party or not; however, authorities which may receive data in the framework of a law or a statutory regulation with organizational nature shall not be regarded as recipients;

- (9) "the data subject's consent" shall mean any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed;
  - (10) "combination of data" shall mean a form of processing which consists of the possibility of correlating data in a filing system with data in a filing system or systems kept by another or other controllers or kept by the same controller for other purposes;
  - (11) "public authority" shall mean an entity to which No. 3 of Article 79 of the Civil Code refers;
  - (12) "statutory regulation with organizational nature" shall mean a provision in law regulating the organization and function, or in the statute, of any entity that is competent to process the personal data or carry out other actions enacted in this act.
- 2 -- To serve (5) above, if the purpose and method are determined in the law or statutory regulation with organizational nature, the controller shall be designated in it.

## **CHAPTER II**

### **Processing and quality of personal data and the lawfulness of their processing**

#### **Article 5**

##### **Data quality**

1 -- Personal data must be:

- (1) processed lawfully and with respect for the principle of good faith and the general principle in Article 2;
- (2) collected for specified, explicit, legitimate purposes and for purposes directly related to the activity of the controller; and not further processed in a way incompatible with those purposes;
- (3) adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed;
- (4) accurate and, where necessary, kept up to date; adequate measures must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified;
- (5) kept in a form which permits identification of their subjects for no longer than is necessary for the purposes for which they were collected or for which they are further processed.

1 MS. GLASER: Not a problem.  
2 THE COURT: Right?  
3 MR. PEEK: Your Honor --  
4 MR. CAMPBELL: I just -- now --  
5 MR. PEEK: -- let me just add one thing, because I  
6 didn't address this. That same Data Privacy Act, Your Honor,  
7 also implicates communications that may be on servers and  
8 email communication and hard document -- hard-copy documents  
9 in Las Vegas --  
10 THE COURT: Here in the States?  
11 MR. PEEK: -- Sands, as well.  
12 THE COURT: Well, you can take the position --  
13 MR. PEEK: Well, we are told that by the --  
14 THE COURT: It's okay.  
15 MR. PEEK: -- the Office of Data Privacy --  
16 THE COURT: You can take the position --  
17 MR. PEEK: -- counsel, Your Honor. And I'll --  
18 we'll brief that with the Court. Again --  
19 THE COURT: And then I'll decide.  
20 MS. GLASER: No problem. Your Honor, the only  
21 reason I want to emphasize this is this isn't a function of  
22 jumping through hoops. If we're in violation of the Privacy  
23 Act, there are criminal implications --  
24 THE COURT: I understand.  
25 MS. GLASER: -- and we treat that seriously.

1           THE COURT: We had that discussion about a month  
2 ago.  
3           MR. PEEK: We did, yeah.  
4           THE COURT: And I said I thought it was premature  
5 and that when we got there we could talk about a stay.  
6           MR. PEEK: And the reason why we're bringing it is,  
7 you may recall it, in our joint status report, Your Honor, we  
8 told the Court that we thought we would be able to produce  
9 documents by July 1. We're not going to be able to make that  
10 date, because --  
11          THE COURT: Why not? You've had documents that  
12 aren't covered by this that you didn't produce --  
13          MR. PEEK: Well, no, no. We will -- those documents  
14 that are not implicated, Your Honor, by the --  
15          THE COURT: Certainly.  
16          MR. PEEK: -- Data Privacy Act we will.  
17          THE COURT: Okay.  
18          MR. PEEK: The other --  
19          THE COURT: Don't wait and produce all the documents  
20 after you think you can comply with --  
21          MR. PEEK: Let me -- let me finish, Your Honor. The  
22 other thing is we haven't completed the ESI protocol  
23 negotiations and the search terms with Mr. Campbell and Mr.  
24 Williams yet. We have had many meetings with them, and we're  
25 I think at the last stage. Perhaps Mr. Williams could tell

1 us, because we had a couple meet and confers on that, and we  
2 haven't completed that process, so we haven't been able to  
3 even run search terms.

4 THE COURT: When are you going to finish the  
5 process?

6 MR. PEEK: I guess it's -- Mr. Williams can --

7 THE COURT: Mr. Justin Jones is going to come help  
8 us. He and Mr. Williams are probably the two who labored on  
9 this.

10 MR. PEEK: And Mr. Krum, as well, Your Honor.

11 THE COURT: And Mr. Krum.

12 MS. GLASER: Your Honor, the only thing that you  
13 said that --

14 THE COURT: Hold on a second.

15 MS. GLASER: -- I just didn't want you to --

16 THE COURT: So when is the ESI going to be  
17 completed, the negotiations on the scope of the ESI search?

18 MR. JONES: Mr. Williams and I talked a minute ago,  
19 and I think we'll get it wrapped up tomorrow. We met last  
20 week. There were a couple of issues that needed --

21 THE COURT: So you now have a 2:00 o'clock  
22 conference call with me to say, yes, Judge, we got it worked  
23 out, okay.

24 MR. JONES: 2:00 o'clock tomorrow?

25 THE COURT: 2:00 o'clock tomorrow. Mr. Jones,

1 you're --

2 Justin Jones is charge of organizing the call and  
3 calling in.

4 MR. JONES: I'll be in a vehicle at the time, but I  
5 will make sure that it happens.

6 THE COURT: It's okay. All right.

7 MS. GLASER: Your Honor, you made a comment, well,  
8 you should be able to start producing documents now.

9 THE COURT: True.

10 MS. GLASER: My only comment to you is that we have  
11 to get permission to get documents out of Macau.

12 THE COURT: All documents from Sands China have to  
13 get permission from the Office of Privacy?

14 MS. GLASER: Oh, yeah. Absolutely.

15 MR. PEEK: Yes.

16 THE COURT: Well, if that's -- if that's what you  
17 think the answer is, then somebody should file a protective  
18 order soon if you don't have a stip.

19 MS. GLASER: Understood. We'll -- we will do that,  
20 Your Honor, and be guided accordingly. Thank you.

21 MR. PEEK: Yeah. And that's -- we're also going to  
22 say we're going to do this on a briefing schedule, Your Honor,  
23 as well.

24 THE COURT: It's like I've been trying to say. At  
25 some point in time it's going to be ripe, and I'm almost

1 there, it sounds like. But I can't just do it on the fly with  
2 you guys telling me this at the last minute.

3 Mr. Campbell, you're waving at me.

4 MR. CAMPBELL: Thank you, Your Honor.

5 Your Honor, we don't accept nor deny what Ms. Glaser  
6 has proffered to the Court. We don't know what the situation  
7 is there. That's our position. We certainly would like to  
8 talk to someone with respect to some of the representations  
9 that have been made that has the knowledge of Macau law. But,  
10 irrespective of that, we are not waiving anything in that  
11 regard. There's a United States Supreme Court case right on  
12 point that says, we don't care what foreign law says, you've  
13 got to produce documents, particularly when they're in the  
14 jurisdiction in which the litigation is taking place like they  
15 are here.

16 But separate and apart from all that, she left  
17 something out. And that was she wants to hold back on  
18 producing Mr. Adelson and Mr. Levin for their depositions that  
19 I've been asking to take for weeks and weeks and weeks. So I  
20 talked to her about that, and I said, okay, here's the deal, I  
21 said, when do you want to hold back until; she says, about mid  
22 August. I said, not a problem. Mr. Peek says, we might need  
23 a little additional more time; I said, fine, let's go  
24 beginning September. We're all playing -- as the Court's fond  
25 of saying, we're all playing nicely.

1 THE COURT: Play nice in the sandbox, yeah.

2 MR. CAMPBELL: Let's go September. So I wanted to  
3 take, you know, Mr. Adelson and Mr. Levin a couple months ago,  
4 okay. But they want until September, that's fine, I want to  
5 take them in September. That's all I have to say.

6 THE COURT: Okay.

7 MS. GLASER: Your Honor, I have to say one thing. A  
8 month ago -- we sat in a meet confer approximately a month  
9 ago, and we urged Mr. Campbell to then hire Macau counsel to  
10 get separate advice from anything we were telling him, and  
11 that apparently has not occurred, number one. Number two --  
12 and that's not our fault. And we've had, believe me, four  
13 different opinions on this point from different Macau counsel  
14 because it's of such concern to us.

15 Number two, absolutely we had a conversation about  
16 Mr. Levin and Mr. Adelson. There was never -- and we have  
17 always told everyone that depositions will start once we  
18 review the documents.

19 THE COURT: Technically depositions can start March  
20 15th, when I suspended the requirement of a joint case  
21 conference report unless you file a protective order --

22 MR. PEEK: Your Honor --

23 THE COURT: -- after being properly noticed.

24 MR. PEEK: -- you may recall we filed a joint status  
25 report.

1 MS. GLASER: Yes.

2 MR. PEEK: In that joint status report we both

3 agreed, which we both signed, is that they would --

4 THE COURT: I know. That's why I said technically.

5 MR. PEEK: I know.

6 THE COURT: All right. So you guys have a dispute.

7 Somebody's going to either notice a deposition or not. If

8 somebody notices a deposition, maybe somebody will file a

9 protective order motion if you guys can't work it out, and

10 then, if you do, we'll talk about it.

11 MR. CAMPBELL: I don't think we have a dispute.

12 That's the point.

13 THE COURT: I don't know if you -- I don't think you

14 have a dispute yet.

15 MR. PEEK: We don't. We don't, Your Honor.

16 MS. GLASER: We're working on it.

17 MR. CAMPBELL: I didn't mean to suggest -- I didn't

18 mean to suggest that Ms. Glaser and I had a dispute --

19 THE COURT: You will have disputes.

20 MR. CAMPBELL: -- on the deposition issue. I'm

21 advising you --

22 THE COURT: It's okay.

23 MR. CAMPBELL: I'm advising you she's asked for --

24 THE COURT: When are you going to be ready for

25 trial?

1 MR. CAMPBELL: Your Honor, could I just finish one  
2 thing?

3 MS. GLASER: Tomorrow.

4 MR. PEEK: Ms. Glaser thinks she's ready right now,  
5 Your Honor.

6 MR. CAMPBELL: Your Honor, so I we don't have a  
7 dispute on that. I have told Ms. Glaser, yes, let's move the  
8 depositions out. I've also told Ms. Glaser I'll put on the  
9 record she asked me if I would take Mr. Levin first. I will  
10 take Mr. Levin first, and then we will take Mr. Adelson,  
11 beginning sometime on or after the 1st of September.

12 One additional matter. If they're coming back to  
13 the Court on this Macau issue, one of the things that Mr.  
14 Adelson has been saying publicly is that the United States  
15 Department of Justice and/or the Securities and Exchange  
16 Commission have been serving subpoenas and they have been  
17 producing documents to the United States Government either in  
18 a civil proceeding or criminal proceeding, I don't know. But  
19 we want to know if they're -- if they're producing documents  
20 to the United States Government. That certainly I think would  
21 have an impact upon what we're doing here.

22 MS. GLASER: Mr. Campbell, I'm sure unintentionally,  
23 is just wrong. And I'll be glad to discuss it out of Your  
24 Honor's presence.

25 THE COURT: I don't need to worry about it. Mr.

1 Campbell, you can always serve a document request or something  
2 asking for that sort of information, or an interrogatory, and  
3 I'm sure you'll get an answer, or you could just talk.

4 When will you be ready for trial? Assume we work  
5 through the document production issue in say a period of time  
6 that the documents have been ruled on and either I've decided  
7 you don't have to produce them or I decide you have to produce  
8 them and then get them produced by October. With that  
9 assumption, when will you be ready for trial?

10 MS. GLASER: I'm hoping to be out of the case, so  
11 I'm going to not say anything right now, Your Honor.

12 MR. CAMPBELL: Well, I think we're currently set for  
13 end of June.

14 MR. PEEK: We --

15 THE COURT: You're not set.

16 MR. PEEK: We told the Court, Your Honor, based upon  
17 the schedule that we presented to the Court in the joint  
18 status report and we -- and we then attended it in August 22nd  
19 of this year. We told the Court that based on the schedule  
20 that we were hopeful we could meet that we should be able to  
21 be ready for trial by June of 2011 [sic]. Because the process  
22 with the Data Privacy Counsel is process and very laborious,  
23 we're not going to be able to meet the Sands China part of  
24 this equation, the production of documents, until I don't know  
25 when. I'm hopeful that we can get it done very soon. But

1 when they say to us that they have to review each and every  
2 document that we propose to produce to determine whether or  
3 not, one, we have consent, whether it meets their statute,  
4 whether or not we have a stipulated protective order from Mr.  
5 Campbell that says that it will only be used in this  
6 proceeding -- that was one of the steps that we thought would  
7 be helpful to the data privacy counsel. So that process is  
8 very laborious. I don't think we can make this case in trial  
9 in June, Your Honor, of 2011.

10 THE COURT: Well, you're not going to make June  
11 2011, because it's June 2011 now. I think --

12 MR. PEEK: Excuse me. June 2012. My apologies.

13 THE COURT: I think we talked about June 2012 --

14 THE COURT: I apologize.

15 THE COURT: -- which leads me back to my burning  
16 question of Mr. Morris.

17 Mr. Morris, have you heard anything about a decision  
18 on the CityCenter case?

19 MR. MORRIS: You know, Your Honor, I wish I had, but  
20 I haven't.

21 THE COURT: Okay. All right.

22 MR. MORRIS: I know that it's coming.

23 THE COURT: Some day. They're worried about  
24 elections right now. Special elections I think is going to be  
25 their hot button topic for a little bit.

1 MR. PEEK: So I would be hopeful that we could make  
2 it June 2012, but I think it's going to be later than that,  
3 Your Honor.

4 THE COURT: Okay. Assume with me for a minute that  
5 you only get five and a half hours of trial time a day. How  
6 many days of trial, Mr. Campbell?

7 MR. CAMPBELL: Two weeks.

8 THE COURT: So I'm doubling that. So that's four to  
9 six.

10 MR. PEEK: Four to six, Your Honor.

11 THE COURT: Okay. Here's the problem. If you don't  
12 make the June date, I've already given the September date,  
13 which would be probably the next place I could put you with a  
14 firm setting, to the Planet Hollywood West Tower litigation,  
15 which is a four- to six-week. And I will have to give you a  
16 firm date because of your international witnesses. So I would  
17 encourage you to file whatever you're going to file about the  
18 Macau issue very soon. And if you do it on an OST, I'm going  
19 to set it out two to three weeks, even though that's shortened  
20 time technically, so that the briefing can be thorough so that  
21 we will have a well-reasoned discussion when we have the  
22 chance. But I don't want to have you guys just sitting  
23 around.

24 MR. PEEK: We are not, Your Honor.

25 THE COURT: Okay. I'm going to give you the trial

1 date in June 2012 for the record, with the understanding there  
2 may be problems. And if there are problems, you'll tell me  
3 about them sooner, rather than later. That trial stack starts  
4 on June 25th, 2012. That is a firm setting for you.

5 The calendar call is June 21, 2012.

6 You've demanded a jury; right, Mr. Campbell?

7 MR. CAMPBELL: Yes.

8 THE COURT: June 1st, 2011 [sic], for the pretrial.

9 And my typical day for people to file their last set  
10 of motions, which for your purposes would be evidentiary  
11 motions and motions in limine, would be May 4th.

12 Motions for summary judgment, motions to dismiss,  
13 other dispositive motions would be due on April 13th, which  
14 means your discovery cutoff's probably going to be sometime  
15 around March 23rd.

16 MR. PEEK: And we'll back up from that the expert  
17 disclosures, as well.

18 THE COURT: I guess so. But I really need to get  
19 the document issue decided sooner, rather than later, because  
20 it impacts a number of other issues.

21 MR. PEEK: Your Honor, we do, as well.

22 MS. GLASER: Thank you, Your Honor.

23 MR. PEEK: Thank you very much.

24 THE COURT: Anything else? All right. Goodbye.

25 THE PROCEEDINGS CONCLUDED AT 11:50 A.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*

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

6/15/11

\_\_\_\_\_  
DATE



CLERK OF THE COURT

**MSTY**  
Patricia L. Glaser, (Pro Hac Vice Admitted)  
Andrew D. Sedlock, State Bar No. 9183  
GLASER WEIL FINK JACOBS  
HOWARD AVCHEN & SHAPIRO LLP  
3763 Howard Hughes Parkway, Suite 300  
Las Vegas, Nevada 89169  
Telephone: (702) 650-7900  
Facsimile: (702) 650-7950  
email: pglaser@glaserweil.com  
asedlock@glaserweil.com

*Attorneys for Defendant Sands China Ltd.*

DISTRICT COURT  
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

Case No.: A-10-627691-C

Dept. No.: XI

**DEFENDANT SANDS CHINA LTD.'S  
MOTION TO STAY PROCEEDINGS  
PENDING WRIT PETITION ON ORDER  
SHORTENING TIME**

DATE:

TIME: **FILE WITH  
MASTER CALENDAR**

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Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

1 Defendant Sands China Ltd. ("SCL" or "Defendant"), respectfully moves this Court, on  
2 shortened time pursuant to EDCR 2.26, to stay the proceedings in this case as against SCL only  
3 pending disposition by the Nevada Supreme Court of SCL's Petition for Writ of Mandamus or in  
4 the Alternative, Writ of Prohibition (the "Writ Petition"), filed on May 5, 2011. On June 24, 2011,  
5 the Nevada Supreme Court issued an Order Directing Answer to the Writ Petition, stating, among  
6 other things, that SCL's Writ Petition "set forth issues of arguable merit." The Writ Petition  
7 demonstrates that (i) an important issue of law requires clarification, (ii) considerations of sound  
8 judicial economy and administration militate in favor of granting the Writ Petition, and (iii) SCL has  
9 no "plain, speedy or adequate remedy" to challenge the Court's ruling denying SCL's Motion to  
10 Dismiss for Lack of Personal Jurisdiction. This Motion to Stay Proceedings Pending Writ Petition  
11 (the "Motion to Stay") is made to preserve SCL's due process rights which are the subject of the  
12 Writ Petition, conserve limited judicial resources and prevent the parties (and SCL in particular)  
13 from incurring substantial costs and expenses in proceeding with this case before the Nevada  
14 Supreme Court issues its ruling on the Writ Petition.

15 This Motion is made and based on the papers and pleadings on file herein, the following  
16 Memorandum of Points and Authorities, the Affidavits of Andrew D. Sedlock, Esq. and David  
17 Fleming, the Writ Petition previously served on this Court, and any oral argument allowed by the  
18 Court.

19 DATED this 13th day of July, 2011.

20 GLASER WEIL FINK JACOBS  
21 HOWARD AVCHEN & SHAPIRO LLP

22 By: 

23 Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)  
24 Andrew D. Sedlock, Esq. (NBN: 9183)  
25 3763 Howard Hughes Pkwy., Ste. 300  
26 Las Vegas, Nevada 89169  
27 Telephone: (702) 650-7900  
28 Facsimile: (702) 650-7950

*Attorneys for Defendant Sands China Ltd.*

Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

**APPLICATION FOR ORDER SHORTENING TIME**

SCL applies for an Order Shortening Time for the hearing on its Motion to Stay Proceedings Pending Writ Petition based upon the following Affidavit of Andrew D. Sedlock, Esq.

DATED this 13th day of July, 2011.

GLASER WEIL FINK JACOBS  
HOWARD AVCHEN & SHAPIRO LLP

By: 

Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)  
Andrew D. Sedlock, Esq. (NBN: 9183)  
3763 Howard Hughes Pkwy., Ste. 300  
Las Vegas, Nevada 89169  
Telephone: (702) 650-7900  
Facsimile: (702) 650-7950

*Attorneys for Defendant Sands China Ltd.*

**AFFIDAVIT OF ANDREW D. SEDLOCK, ESQ. IN SUPPORT OF APPLICATION  
FOR ORDER SHORTENING TIME**

STATE OF NEVADA            )  
  )ss:  
COUNTY OF CLARK        )

I, Andrew D. Sedlock, being first duly sworn, deposes and says as follows:

1. I am an associate with the law firm of GLASER WEIL FINK JACOBS HOWARD AVCHEN & SHAPIRO LLP, counsel of record for Sands China Ltd. ("SCL") in the above-referenced matter. I have personal knowledge of the facts set forth herein, and I am competent to testify thereto if called upon to do so. I make this Affidavit pursuant to EDCR 2.26 in support of SCL's Motion to Stay.

2. This Motion requests a stay of this case as against SCL pending disposition by the Nevada Supreme Court of SCL's Writ Petition, filed on May 5, 2011 and served on this Court on May 18, 2011.

3. Shortly after filing and serving the Petition, SCL filed its first Motion to Stay (the "First Motion to Stay") which was denied without prejudice as premature following the hearing with this Court on May 26, 2011. (A true and accurate copy of the Order denying First Motion to Stay is attached hereto as **Exhibit A.**)

1           4.       On June 24, 2011, the Nevada Supreme Court issued and served an Order Directing  
2 Answer, which stated that SCL "has set forth issues of arguable merit" in the Petition and further  
3 ordered real party in interest, Steven C. Jacobs ("Jacobs") to file an Answer on or before July 25,  
4 2011. (A true and accurate copy of the Order Directing Answer is attached hereto as **Exhibit B.**)

5           5.       As addressed by the Court at the April 22, 2011 early case conference and reflected  
6 in the Joint Status Report filed on April 22, 2011, the parties previously anticipated "that [Las  
7 Vegas Sands Corp's] LVSC's and SCL's respective disclosures will consist of a high volume of  
8 documents which include Electronically Stored Information (ESI)." (A true and accurate copy of  
9 the April 22, 2011 Joint Status Report is attached hereto as **Exhibit C.**)

10          6.       After receiving Jacobs' "Initial Identification of ESI Search Terms and Date Ranges"  
11 (the "Search Terms"), both SCL and LVSC undertook an analysis of the applicable law of the  
12 jurisdiction, Macau, Special Administrative Region of the People's Republic of China ("Macau"), in  
13 which the overwhelming majority of this information is currently located.

14          7.       SCL's counsel has previously advised Jacobs' counsel that a Macau statute [the  
15 Macau Personal Data Protection Act (the "Macau Act")] may be an impediment, if not a bar, to the  
16 parties retrieving, reviewing and producing certain personal information and documents, including  
17 ESI, that may be subject to Nevada Rule of Civil Procedure ("NRCP") 16 disclosure requirements  
18 or that Jacobs may demand be produced.

19          8.       Counsel for SCL have since undertaken an analysis of the Macau Act as well as met  
20 with the Macau Office for Personal Data Protection (the "Macau OPDP") to determine the most  
21 efficient and compliant method to review and produce ESI currently stored in Macau in compliance  
22 with the Macau Act.

23          9.       The Macau OPDP has confirmed that, SCL's Macau subsidiaries are prohibited from  
24 producing or otherwise transferring ESI or other documents containing personal information, to  
25 anyone outside of Macau (including Jacobs' counsel), unless (i) the data subjects of the document  
26 consent to the transfer of personal data outside of Macau, and/or (ii) the Macau OPDP consents to  
27 such transfer of personal data outside of Macau, depending on the sensitivity of the personal data in  
28 question. In the event consent is given by the data subjects of the relevant documents, SCL's Macau

1 subsidiaries must still provide notice to the OPDP that consent has been received before the transfer  
2 of data outside of Macau. In order to seek such consent from the data subjects or the Macau OPDP,  
3 SCL will need to conduct a significant amount of work at considerable expense exceeding One  
4 Million Dollars (U.S.) (\$1,000,000.00) based on the information presently available to SCL.

5 10. Currently, SCL has identified potentially responsive documents and ESI ranging  
6 from approximately 2 terabytes (2000 gigabytes) to 13 terabytes (13,000 gigabytes), or more, that  
7 may have to be reviewed in order to comply with the requirements set forth by the Macau OPDP as  
8 discussed above.

9 11. This amount is approximately equivalent to nearly ten percent (10%) of all of the  
10 information currently catalogued on the U.S. Library of Congress' web archives. A true and  
11 accurate copy of the U.S. Library of Congress Web Archive FAQ page,  
12 [www.loc.gov/webarchive/faq](http://www.loc.gov/webarchive/faq), is attached hereto as **Exhibit D**.

13 12. SCL's counsel has been advised that failure to comply with these requirements could  
14 result in significant civil and/or criminal penalties.

15 13. Pursuant to meet and confer discussions regarding outstanding discovery issues, the  
16 parties have agreed to the foregoing tentative deadlines for the parties to produce responsive  
17 documents in this case:

- 18 • Jacobs: complete production on August 15, 2011
- 19 • LVSC: complete production on August 31, 2011
- 20 • SCL: complete production on August 31, 2011

21 Given the significant amount of work to review and process documents in advance of the foregoing  
22 deadline, SCL would unfairly be required to perform significant work at enormous cost, which will  
23 be unnecessary if the Nevada Supreme Court grants SCL's Writ Petition and rules that the Court  
24 lacks personal jurisdiction over SCL.

25 14. If the Motion to Stay is fully briefed by the parties and heard in the ordinary course,  
26 SCL may be unnecessarily required to undertake actions it maintains are in violation of its due  
27 process rights, which are the subject of the Writ Petition.  
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15. It is respectfully submitted that this Court is justified in shortening the time for briefing and hearing on the Motion to Stay and that the Motion to Stay should be set for hearing at the Court's earliest available calendar date.

EXECUTED July 13, 2011.

Andrew D. Sedlock, Esq.

Subscribed and Sworn to before me on this 13th day of July, 2011.

Notary Public, in and for said County and State.



### ORDER SHORTENING TIME

The Court, having considered Defendant's Application for an Order Shortening Time, the Affidavit of Andrew D. Sedlock, Esq., the Memorandum of Points and Authorities submitted with the Motion to Stay Proceedings Pending Writ Petition on Order Shortening Time, and good cause appearing therefore,

IT IS HEREBY ORDERED that the time for hearing Defendant's Motion to Stay Proceedings Pending Writ Petition is shortened to the 19 day of July, 2011, at the hour of 9:00 a.m. in the above-entitled Court.

DATED this \_\_\_ day of July, 2011.

  
DISTRICT COURT JUDGE

Respectfully Submitted by:

GLASER WEIL FINK JACOBS  
HOWARD AVCHEN & SHAPIRO LLC

By:   
Andrew D. Sedlock, Esq. (NBN: 9183)  
3763 Howard Hughes Pkwy., Ste. 300  
Las Vegas, Nevada 89169  
Telephone: (702) 650-7900  
Facsimile: (702) 650-7950

Attorneys for Defendant Sands China Ltd.

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**NOTICE OF MOTION**

TO: ALL INTERESTED PARTIES; and

TO: COUNSEL FOR ALL INTERESTED PARTIES;

**YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that the undersigned will bring the foregoing Motion to Stay Proceedings Pending Writ Petition on Order Shortening Time on for hearing before the above-entitled Court on the \_\_\_\_\_ day of \_\_\_\_\_, 2011, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_.m. on said date, in Department XI, or as soon thereafter as counsel can be heard.

DATED this 13 day of July, 2011.

GLASER WEIL FINK JACOBS  
HOWARD, AVCHEN & SHAPIRO LLP

By: 

Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)  
Andrew D. Sedlock, Esq. (NBN: 9183)  
3763 Howard Hughes Pkwy., Ste. 300  
Las Vegas, Nevada 89169  
Telephone: (702) 650-7900  
Facsimile: (702) 650-7950

*Attorneys for Defendant Sands China Ltd.*

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Following the denial of SCL's First Motion to Stay, the Nevada Supreme Court issued an Order Directing Answer (the "Order") on June 24, 2011. *See* Ex. B. The Order stated that SCL's Petition "set forth issues of arguable merit and that an answer to the petition is warranted." *Id.* The Order provides a briefing schedule, ordering Jacobs to file his answer to the Writ Petition on or

1 before July 25, 2011, with SCL's reply due fifteen (15) days after service of Jacobs' answer. *Id.*<sup>1</sup> In  
2 light of the foregoing, SCL respectfully submits this new motion to stay proceedings.

3 Pursuant to the parties' meet and confer discussions regarding outstanding discovery issues,  
4 the parties have tentatively agreed to produce relevant documents in August 2011 subject to further  
5 meet and confer discussions. However, based upon recent input from the Macau OPDP, SCL must  
6 ensure that any such production of documents by its Macau subsidiaries complies with Macau law,  
7 including the Macau Act, which will require that SCL cause its Macau subsidiaries to review an  
8 enormous amount of documents and ESI in order to (i) seek consent from the data subjects that  
9 transfer of personal data outside of Macau is authorized, and/or (ii) seek such consent from the  
10 Macau OPDP, depending on the sensitivity of the personal data at issue.<sup>2</sup> For example, even if a  
11 data subject gives consent, SCL's Macau subsidiaries must still notify the OPDP before transferring  
12 the personal data outside of Macau. In order to perform this significant amount of work by the end  
13 of August 2011, SCL would be unfairly (and perhaps unnecessarily) forced to expend a significant  
14 amount of resources and expenses, exceeding One Million Dollars (\$1,000,000.00), including but  
15 not limited to SCL's outside lawyers traveling to Macau to review and analyze these materials,  
16 hiring outside vendors to process between approximately 2 to 13 terabytes of ESI, or possibly more,  
17 and hiring contract lawyers to travel to Macau to review these materials.

18 As described in greater detail below, a stay is warranted at this time pursuant to the analysis  
19 of the following four factors set forth by Nevada law: (1) the purpose of SCL's Writ Petition, which  
20 is to protect SCL's due process rights and prevent further improper exercise of personal jurisdiction;  
21 (2) SCL will suffer irreparable harm if the stay is denied, including the continued deprivation of due  
22 process rights, the inevitable conflict between Macau's data privacy laws and Nevada's rules  
23

24 <sup>1</sup> Separately, the Nevada Supreme Court now has before it Plaintiff Jacobs' recent Notice of Appeal challenging the  
25 decision of this Court to grant the motion to dismiss Jacobs' defamation claim and the resulting dismissal of former  
26 defendant Sheldon G. Adelson ("Adelson") from the pending lawsuit.

27 <sup>2</sup> Based upon information presently available to SCL, it is unclear whether the Macau OPDP will provide such consent  
28 to produce or otherwise transfer personal data outside of Macau. Even before SCL approaches the OPDP to seek such  
consent, SCL would be required to expend a significant amount of resources and expenses to process and review the  
data at issue in order to identify the potentially personal data subject to the Macau Act. *See* Affidavit of David Fleming.

1 regarding production of documents, along with the staggering cost of reviewing and producing such  
2 documents; (3) Jacobs will suffer no harm by the issuance of a stay; and (4) as established by the  
3 Nevada Supreme Court's recent Order, SCL's Writ Petition has merit and will be ruled upon  
4 following the submission of the parties' briefs.

5 Therefore, SCL now respectfully requests that this Court stay the proceedings pending the  
6 disposition of SCL's Writ Petition, which is warranted to protect SCL's due process rights and  
7 conserve both the parties' and the Court's resources.

## 8 II. STATEMENT OF PERTINENT FACTS

9 While the Court is now familiar with the underlying facts in this case, SCL submits an  
10 abridged summary of the factual and procedural history preceding this Motion to Stay.

### 11 A. SCL's Writ Petition Regarding its Motion to Dismiss for Lack of Personal 12 Jurisdiction

13 SCL is a Cayman Islands company that does business exclusively in Macau and Hong Kong  
14 SAR of the People's Republic of China ("Hong Kong"). *See* Affidavit of Anne Salt ("Salt Aff'd")  
15 at ¶ 3, attached to SCL's December 22, 2010 Motion to Dismiss.<sup>3</sup> Jacobs' remaining claim against  
16 SCL, as set forth in his First Amended Complaint ("FAC"), is for breach of contract and alleges that  
17 while employed in Macau as SCL's President and Chief Executive Officer, SCL presented Jacobs  
18 with a letter (the "Stock Option Grant Letter") that allegedly provided for a grant to Jacobs of an  
19 option to purchase 2.5 million shares of SCL stock. *See* First Amended Complaint at ¶ 44. The  
20 Stock Option Grant Letter states that it is governed by and construed in accordance with Hong Kong  
21 law and further conditioned Jacobs' ability to exercise the option to purchase SCL stock on, among  
22 other things, Jacobs' continued employment for SCL. *See* true and accurate copy of Stock Option  
23 Grant Letter, attached to SCL's December 22, 2010 Motion to Dismiss at Exhibit F. Jacobs was  
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27 <sup>3</sup> SCL is required by the Rules Governing the Listing of Securities of the Stock Exchange of Hong Kong Limited to  
28 carry on its business independently of, and at arms' length from, its "controlling shareholder," namely, LVSC. *See* true  
and accurate copy of the Rules Governing the Listing of Securities of the Stock Exchange of Hong Kong Limited,  
attached as Exhibit B to SCL's Reply in Support of December 22, 2010 Motion to Dismiss.

1 subsequently terminated before any of his options vested pursuant to the Stock Option Grant Letter.  
2 See Salt Aff'd at ¶ 15.

3 SCL responded to Jacobs' Complaint on December 22, 2010 by filing the Motion to Dismiss  
4 for Lack of Personal Jurisdiction (the "Jurisdiction Motion").<sup>4</sup> The Court denied the Jurisdiction  
5 Motion and ruled that it could exercise general personal jurisdiction over SCL due to the actions  
6 taken in Nevada by Adelson, a non-executive director and Chairman of SCL's Board of Directors  
7 (the "Board"), and by Michael Leven ("Leven"), a special advisor to SCL's Board of Directors. See  
8 Transcript of March 15, 2011 Hearing, p. 62, lines 11-13. Adelson and Leven also are officers and  
9 directors of Las Vegas Sands Corp. ("LVSC"), which is SCL's majority shareholder by virtue of its  
10 ownership of approximately seventy percent (70%) of SCL's outstanding shares. See Salt Aff'd at  
11 ¶¶ 4, 5.

12 SCL subsequently filed the Writ Petition, which requests an Order from the Nevada  
13 Supreme Court compelling this Court to grant the Jurisdiction Motion, dismiss SCL from the  
14 pending suit and cease the continued exercise of personal jurisdiction over SCL. See May 6, 2011  
15 Writ Petition.

16 **B. SCL's Significant Work to Comply With Macau Law In Order to Gather and**  
17 **Produce Documents in this Action**

18 Following the Court's denial of SCL's First Motion to Stay as premature, the parties have  
19 continued to meet and confer regarding the scope of defendants' initial production of documents,  
20 and have tentatively agreed that SCL and LVSC shall complete their respective initial production of  
21 documents on or before August 31, 2011, with Jacobs scheduled to complete his production on or  
22 before August 15, 2011. In anticipation of reviewing and producing documents located in Macau,  
23 SCL's General Counsel and Company Secretary, David Fleming, met with the Macau OPDP to  
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26  
27 <sup>4</sup> SCL also filed a Motion to Dismiss for Failure to State a Claim on April 20, 2011, which was scheduled for hearing  
28 with this Court on June 9, 2011. That motion was denied in part, as to the breach of contract claims, and granted in part,  
in regard to the defamation claims included in Jacobs' First Amended Complaint.

1 confirm the proper procedure required by the Macau Act and enforced by the Macau government.  
2 See Affidavit of David Fleming (the "Fleming Aff'd").

3 According to the Macau OPDP, production of ESI and other documents stored in Macau will  
4 require strict compliance with relevant Macau law. *Id.* First, SCL's Macau subsidiaries will be  
5 required to review a vast amount of documents and ESI in order to (i) identify and obtain consent  
6 from relevant data subjects before transferring any personal data outside of Macau, and/or (ii) obtain  
7 consent from the Macau OPDP before transferring such personal data outside of Macau, depending  
8 on the sensitivity of the personal data at issue. *Id.* In the event consent is given by the data subjects,  
9 SCL's Macau subsidiaries must still provide notice to the OPDP that consent has been received  
10 before the transfer of data outside of Macau. *Id.*

11 In order to perform this amount of work before the August 31, 2011 deadline, SCL's Macau  
12 subsidiaries must bring several of its outside counsel to Macau to review and analyze this  
13 information after hiring vendors to process between approximately 2 to 13 terabytes of information,  
14 or possibly more. *Id.* Strict protocols must be adhered to in order to ensure that no personal data  
15 leaves Macau in breach of the Macau Act. *Id.* For the Court's perspective, the lowest estimate of 2  
16 terabytes (2000 gigabytes) is equivalent to nearly ten percent (10%) of all of the information  
17 currently catalogued by the U.S. Library of Congress. See Ex. D. It is currently estimated that this  
18 process will cost in excess of One Million Dollars (\$1,000,000.00) to complete. See Fleming Aff'd.  
19 Lastly, SCL has also been informed that the Macau Act and its requirements will be strictly  
20 enforced, and failure to comply may result in civil and criminal penalties. *Id.*

21 SCL now submits its renewed Motion to Stay, which is warranted due to the mounting  
22 burdens posed by the discovery process and the Nevada Supreme Court's recent decision to hear  
23 SCL's Writ Petition challenging the Court's continued exercise of personal jurisdiction over SCL in  
24 derogation of SCL's due process rights.

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**III. ARGUMENT**

**A. The Legal Standard.**

In ruling on a motion to stay proceedings pending the Nevada Supreme Court's review of a writ petition, the Court should consider the following factors under Nevada law:

(1) Whether the object of the appeal or writ petition will be defeated if the stay is denied;

(2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied;

(3) Whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and

(4) Whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

*Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000) (explaining that the requirements in NRAP 8(a) apply to writ petitions when the petitioner "seeks to challenge" a decision "issued by the district court") (citing *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948)).

As demonstrated below, the foregoing factors provide the Court with good cause to stay the proceedings in this case pending the Nevada Supreme Court's disposition of the Writ Petition.

**B. The Object of the Petition Will be Defeated Unless A Stay is Granted in the Underlying Proceedings.**

As stated above, the Nevada Supreme Court issued the Order on June 24, 2011 which confirmed that, after its review of the Writ Petition, SCL had "set forth issues of arguable merit and that an answer to the petition is warranted." See Ex. A. The Order further required Jacobs to file an Answer within thirty (30) days of the filing of the Order (or July 25, 2011), with SCL's Reply due fifteen (15) days after service of the Answer. *Id.*

The willingness of the Nevada Supreme Court to consider SCL's Writ Petition regarding personal jurisdiction issues reflects the fact that matters concerning the determination of personal jurisdiction necessarily involve threshold, fundamental due process considerations. 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). As stated in the Writ Petition and in SCL's First Motion to Stay, the due process protections at issue in a challenge to personal jurisdiction are recognized as

1 “fundamental rights and liberties which are, objectively, ‘deeply rooted in this Nation’s history and  
2 tradition,’” and are “implicit in the concept of ordered liberty,” such that “neither liberty nor justice  
3 would exist if they were sacrificed.” *See Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934).

4 The Nevada Supreme Court has recognized the arguable merits of the Petition’s arguments,  
5 and that SCL may not be subject to personal jurisdiction in this Court. In the absence of personal  
6 jurisdiction, the Court cannot enter or enforce any orders against SCL, and SCL is not subject to  
7 service, discovery requests, or any other demands whatsoever incident to an ongoing litigation. *See*  
8 *Monteverde, et al. v. Selnick*, 223 B.R. 755, 757 (D. Nev. 1998) (ruling that without personal  
9 jurisdiction, the court cannot enter or enforce any orders, even by contempt proceedings). In the  
10 absence of a stay, the object of the Writ Petition will be defeated as SCL will continue to be subject  
11 to the Court’s jurisdiction and any further orders or obligations imposed by the NRCP.

12 While reserving its respective rights as set forth in the Writ Petition, the discovery process  
13 has commenced and the parties have already exchanged initial lists of witnesses, and have continued  
14 the formidable task of identifying and producing relevant documents. A stay is now warranted and  
15 indeed required to avoid any further exercise of personal jurisdiction over SCL before that very  
16 issue is decided by the Nevada Supreme Court.

17 Therefore, to avoid defeating the purpose of the Writ Petition and interfering with the  
18 Nevada Supreme Court’s consideration of the arguments set forth in the Writ Petition, this Court  
19 should stay these proceedings against SCL.

20 **C. SCL Will Suffer Irreparable Harm Unless the Stay is Granted.**

21 The Nevada Supreme Court has stated that when a party can demonstrate that it will face  
22 irreparable or serious harm if a stay is denied, that should be considered in the stay analysis. *See*  
23 *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253 (2004). With the recent filing of the Order  
24 and the Nevada Supreme Court’s decision to consider the Writ Petition’s meritorious arguments, the  
25 possibility of irreparable harm has now become timely and more tangible.

26 In the absence of a stay, SCL must continue with the ongoing costly and time-consuming  
27 discovery process and will be under an obligation to produce documents and information pursuant  
28 to the discovery requirements set forth in Nevada law. However, if the Nevada Supreme Court

1 grants the relief requested in the Writ Petition and issues an order dismissing SCL from the lawsuit  
2 at some future date, how can this process be undone? Jacobs will be in possession of information of  
3 which he may otherwise not be entitled to receive, with no mechanism in place to “un-ring the bell.”  
4 This affects not only SCL, but the other defendant in this case, LVSC (and possibly Adelson if the  
5 Nevada Supreme Court grants Jacobs’ appeal of the Court’s Order dismissing the defamation cause  
6 of action against Adelson).<sup>5</sup> Simply put, the harm potentially caused by a failure to grant a stay has  
7 no remedy, and the impact of that harm strongly supports the imposition of a stay as to SCL.

8 In addition to the irreparable harm directly caused by SCL’s production of documents and  
9 information in this case is the heavy burden of reviewing and producing the information currently  
10 stored and controlled by SCL’s subsidiaries in Macau (which makes up a significant portion of all  
11 information in SCL’s possession). As explained above, this herculean task will necessarily involve  
12 the processing of an overwhelming amount of information, after which consent must be given by  
13 each generating user of the relevant document or ESI and/or representatives of the Macau  
14 government before any personal data can be transferred out of Macau. See Fleming Aff’d at ¶¶ 5,  
15 6. The sheer cost, in terms of time and resources, of engaging in this process would severely  
16 prejudice SCL, particularly considering the Nevada Supreme Court’s possible subsequent ruling that  
17 this Court cannot exercise personal jurisdiction over SCL in this case. Given the due process issues  
18 addressed in the Writ Petition, SCL respectfully requests that this Court stay the proceedings to  
19 avoid causing irreparable harm and further violating SCL’s due process rights.

20 **D. Jacobs Will Suffer No Harm Through A Stay of These Proceedings.**

21 Jacobs will suffer no harm by waiting for the Nevada Supreme Court to decide whether to  
22 consider the Writ Petition. Jacobs’ only claimed “harm” that could be caused by the stay would be a  
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25 <sup>5</sup> Jacobs’ recent Notice of Appeal further complicates this matter because if the Nevada Supreme Court subsequently  
26 grants Jacobs’ appeal to overturn the Court’s dismissal of the defamation claim against Adelson, SCL may be forced to  
27 revisit and perhaps repeat its work to gather, process and review documents and ESI in order to include discovery  
28 regarding the defamation cause of action, that is currently not part of this litigation. Additionally, the scope of discovery  
and discovery obligations of SCL’s Chairman of the Board of Directors (Adelson) will also change depending on  
whether Mr. Adelson is a non-party to this litigation (as he is now), or becomes a party (if the Nevada Supreme Court  
grants Jacobs’ appeal).

1 delay in the proceedings, and “a mere delay in pursuing discovery and litigation normally does not  
2 constitute irreparable harm.” *See Mikohn*, 120 Nev. at 253. This factor therefore weighs in favor of  
3 granting SCL’s Motion to Stay.

4 Additionally, given Jacobs’ recent filing of an appeal challenging the Court’s decision to  
5 dismiss his defamation claim and Adelson from this case, Jacobs would benefit from a stay while  
6 the Nevada Supreme Court considers Jacobs’ appeal.

7 Therefore, as Jacobs will suffer no harm as a result of a stay, SCL’s request is warranted and  
8 the Court should issue an order staying this case as to SCL.

9 **E. SCL is Likely to Prevail on the Merits of Their Petition.**

10 The Order filed by the Nevada Supreme Court made clear that it has reviewed the Writ  
11 Petition and found it to be arguably meritorious. In summary, the Writ Petition addresses the  
12 following important issues:

13 First, Nevada should join the majority of jurisdictions which require a showing of alter ego  
14 before a domestic entity’s in-forum contacts can be attributed to a foreign affiliate for jurisdictional  
15 purposes. *See Doe v. Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001) (“[I]f the parent and  
16 subsidiary are not really separate entities, or one acts as the agent of the other, the local [entity’s]  
17 contacts with the forum may be imputed to the foreign [entity]”); *see also Newman v.*  
18 *Comprehensive Care Corp.*, 794 F.Supp. 1513 (D. Or. 1992); *AT&T v. Lambert*, 94 F.3d 586 (9<sup>th</sup>  
19 Cir. 1996). It is undisputed that Jacobs did not introduce any evidence, nor did the Court make any  
20 findings, that SCL is the alter ego of LVSC. If the Nevada Supreme Court adopts the prevailing  
21 standard, the Writ Petition will be granted and an order will be issued to grant the Motion and  
22 dismiss SCL.

23 Second, a minority of jurisdictions that have addressed this issue have held that only when  
24 evidence is presented that shows the in-forum entity exerts a level of control over the foreign entity  
25 that exceeds its investment status in the foreign entity, can the in-forum entity’s actions be  
26 considered in the jurisdictional analysis regarding the foreign entity. *See Reul v. Sahara Hotel, Inc.*,  
27 372 F.Supp 995, 998 (S.D. Tx. 1974). Again, Jacobs presented no evidence, and the Court made no  
28 findings, that LVSC exerted an excessive degree of control over SCL, considering LVSC’s status as

majority shareholder. Thus, even adopting a minority standard, the Nevada Supreme Court should grant the Writ Petition and dismiss SCL from this case.

Third, Nevada should join the consensus that the mere presence of directors or officers in the Nevada, and the corresponding performance of their duties, cannot (without a showing of alter ego or excessive control by the in-forum entity) be used to confer general personal jurisdiction over a foreign entity in Nevada. *See Transure, Inc. v. Marsh and McLennan, Inc.*, 766 F.2d 1297, 1299 (9th Cir. 1985). To the extent that the Court's denial of SCL's Motion was based on the activities of Adelson and Leven in Nevada without regard to the degree of control exercised by LVSC over SCL, such a decision is contrary to established due process requirements and the basic tenet of corporate law that recognizes a legal separation between entities and their officers, directors, shareholders, and affiliates. The Nevada Supreme Court should recognize the nearly universal application of this principle and grant the Petition.

Finally, and perhaps most fundamentally, in order to satisfy the "substantial or continuous and systematic" requirements under Nevada law, 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). In this case, Jacobs' allegations concern 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<sup>6</sup>.

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<sup>6</sup> To the extent Jacobs attempts to introduce evidence that Adelson and Leven performed their duties as Chairman of the SCL Board of Directors and Special Advisor to the SCL Board of Directors, respectively, from Las Vegas and that SCL allegedly directed or participated in actions with its parent company, LVSC, in Las Vegas, the Writ Petition addresses those arguments as insufficient to establish general personal jurisdiction. First, the presence of directors in the forum state and the discharge of their duties from the forum state is inadequate to confer general personal jurisdiction. *See Gordon et al. v. Greenview Hosp., Inc.*, 300 S.W.3d 635, 648 (Tenn. 2009) (noting that a corporation is separate and distinct from its officers and directors, and declining to find personal jurisdiction based on resulting actions taken by directors in forum state). Second, evidence of SCL's interaction with LVSC or participation in shared services cannot form the basis of general jurisdiction, as such participation or oversight by a parent corporation does not denote alter ego or an "excessive degree of control" as required to apply general personal jurisdiction over a foreign subsidiary. *See Fletcher v. Atex, Inc.*, 68 F.3d 1451, 1459-60 (2d Cir. 1995) (appropriate parental involvement includes overseeing accounting procedures and other corporate functions); *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).

1 Because SCL is likely to prevail on the merits of its Writ Petition, this Motion to Stay should  
2 be granted.

3  
4 **IV. CONCLUSION**

5 For the reasons set forth above, SCL respectfully requests that the Court grant this Motion to  
6 Stay pending disposition by the Nevada Supreme Court of SCL's Writ Petition.

7 Dated this 13th day of July, 2011.

8 GLASER WEIL FINK JACOBS  
9 HOWARD AVCHEN & SHAPIRO LLP

10 By: 

11 Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)  
12 Andrew D. Sedlock, Esq. (NBN: 91893)  
13 3763 Howard Hughes Pkwy., Ste. 300  
14 Las Vegas, Nevada 89169  
15 Telephone: (702) 650-7900  
16 Facsimile: (702) 650-7950

17 *Attorneys for Defendant Sands China Ltd.*

**AFFD**

Patricia L. Glaser, (Pro Hac Vice Admitted)  
Andrew D. Sedlock, State Bar No. 9183  
GLASER WEIL FINK JACOBS  
HOWARD AVCHEN & SHAPIRO LLP  
3763 Howard Hughes Parkway, Suite 300  
Las Vegas, Nevada 89169  
Telephone: (702) 650-7900  
Facsimile: (702) 650-7950  
email: pglaser@glaserweil.com  
asedlock@glaserweil.com

*Attorneys for Defendant Sands China Ltd.*

DISTRICT COURT  
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

Case No.: A-10-627691-C

Dept. No.: XI

**AFFIDAVIT OF DAVID FLEMING IN  
SUPPORT OF DEFENDANT SANDS  
CHINA LTD.'S MOTION TO STAY  
PROCEEDINGS PENDING WRIT  
PETITION ON ORDER SHORTENING  
TIME**

)  
)ss:  
)

David Fleming, being first duly sworn, deposes and states:

1. I am the General Counsel and Company Secretary of Sands China Ltd. ("SCL"). I have personal knowledge of the matters stated herein except those stated upon information and belief and I am competent to testify thereto.
2. I make this Affidavit in support of SCL's Motion to Stay Proceedings Pending Writ Petition on Order Shortening Time (the "Motion to Stay").

1           3.       On June 28, 2011, I met with representatives of the Macau government's Office for  
2       Personal Data Protection (the "Macau OPDP") to identify the proper procedures required by Macau  
3       law and enforced by the Macau government, in particular the Personal Data Protection Act (the  
4       "Macau Act"), in connection with SCL's work to gather, review and produce documents.

5           4.       According to the Macau OPDP, production of Electronically Stored Information  
6       ("ESI") and other documents stored in Macau will require strict compliance with relevant Macau  
7       law.

8           5.       For example, in order to comply with the Macau Act, SCL's Macau subsidiaries will  
9       be required to review a vast amount of documents and ESI in order to (i) obtain consent from  
10      relevant data subjects before transferring any personal data outside of Macau, and/or (ii) obtain  
11      consent from the Macau OPDP before transferring such personal data outside of Macau, depending  
12      on the sensitivity of the personal data at issue, as required by the Macau Act.

13          6.       In the event consent is given by the data subjects, SCL's Macau subsidiaries must  
14      still provide notice to the Macau OPDP that consent has been received for the transfer before the  
15      initiation of the transfer of the data outside of Macau. Even before SCL approaches the data  
16      subjects or the Macau OPDP to seek such consent, SCL would be required to expend a significant  
17      amount of resources and expenses to process and review the data at issue in order to identify the  
18      potentially personal data subject to the Macau Act.

19          7.       In order to perform this amount of work before the tentative August 31, 2011  
20      deadline as discussed with Jacobs' counsel, SCL's Macau subsidiaries will need to bring more than  
21      ten (10) of its outside counsel and ESI consultants to Macau to review, analyze, and process  
22      between approximately 2 to 13 terabytes of information, or possibly more. Strict protocols must be  
23      adhered to in order to ensure that no personal data leaves Macau in violation of the Macau Act.  
24      Based on information provided to SCL by vendors, it is currently estimated that this process will  
25      cost in excess of One Million U.S. Dollars (\$1,000,000.00) to complete.

8. SCL has also been informed that the Macau Act and its requirements will be strictly enforced by the Macau government, in particular the Macau OPDP, and failure to comply may result in civil and criminal penalties.

9. Nothing in this declaration is intended to be a waiver of any privileges, including but not limited to, the attorney-client privilege and the attorney work product privilege, all of which are expressly reserved.

~~David Fleming~~

Subscribed and sworn to before me  
this \_\_\_\_\_ day of July, 2011

NOTARY PUBLIC in and for

My Commission expires \_\_\_\_\_

Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

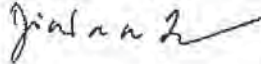
**CARTÓRIO DO NOTÁRIO PRIVADO DIAMANTINO DE OLIVEIRA FERREIRA**

Reconheço a assinatura retro de **DAVID ALEC ANDREW FLEMING**, por confronto com a assinatura aposta no seu Passaporte nº EB641239, emitido em 20 de Agosto de 2009, pelo Governo da Nova Zelândia, cuja pública-forma me foi exibida.  
Conta nº 96

\$7,00

Macau, 13 de Julho de 2011

O Notário,



TRANSLATION

**OFFICE OF THE PRIVATE NOTARY DIAMANTINO DE OLIVEIRA FERREIRA**

I certify the signature on the front page, of **DAVID ALEC ANDREW FLEMING** by confront with the signature shown on his Passport nºEB641239, issued on the 20th August 2009, by the Government of New Zealand, which notarized copy was shown to me.  
Account nº 96

\$7,00

Macao 13<sup>th</sup> July 2011

The Notary  
(signature)

Translation made in Macao, on 13<sup>th</sup> July 2011, by me Diamantino de Oliveira Ferreira in my capacity of Attorney at Law in the SAR of Macao, and its according to the original.

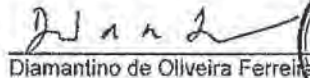
  
Diamantino de Oliveira Ferreira

EXHIBIT "A"

EXHIBIT "A"

  
CLERK OF THE COURT

1 **ORDER**

2 **CAMPBELL & WILLIAMS**  
3 **DONALD J. CAMPBELL, ESQ. (#1216)**  
4 **djc@campbellandwilliams.com**  
5 **J. COLBY WILLIAMS, ESQ. (#5549)**  
6 **jcw@campbellandwilliams.com**  
7 **700 South Seventh Street**  
8 **Las Vegas, Nevada 89101**  
9 **Telephone: (702) 382-5222**  
10 **Facsimile: (702) 382-0540**

11 *Attorneys for Plaintiff*  
12 *Steven C. Jacobs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 **STEVEN C. JACOBS,**  
16 **Plaintiff,**

17 **vs.**

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

24 **Defendants.**

) **CASE NO. A-10-627691-C**  
) **DEPT. NO. XI**

) **ORDER DENYING DEFENDANT**  
) **SANDS CHINA LTD.'S MOTION**  
) **TO STAY PROCEEDINGS**  
) **PENDING WRIT PETITION ON**  
) **ORDER SHORTENING TIME**

) **Hearing Date: May 26, 2011**  
) **Hearing Time: 9:00 a.m.**  
)

25 Defendant Sands China Ltd.'s Motion to Stay Proceedings Pending Writ Petition was heard  
26 on shortened time on May 26, 2011; Plaintiff Steven C. Jacobs having been represented by Donald J.  
27 Campbell, Esq. and J. Colby Williams, Esq.; Defendant Las Vegas Sands Corp. having been  
28 represented by Stephen J. Peek, Esq.; Defendant Sands China, Ltd. having been represented by Mark  
G. Krum, Esq.; Defendant Sheldon G. Adelson having been represented by Steve Morris, 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:

Page 1 of 2



**CAMPBELL  
& WILLIAMS**  
ATTORNEYS AT LAW

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

07-01-11P02:39 RCVD

1 The Court finds that the Motion to Stay is premature for the reasons set forth more fully on  
2 the record at the time of hearing. Accordingly, the Motion is DENIED without prejudice.

3 DATED this \_\_\_\_ day of June, 2011.

4  
5 DISTRICT COURT JUDGE

6 Submitted by:

7 CAMPBELL & WILLIAMS

8  
9 By: 

10 DONALD J. CAMPBELL, ESQ. (#1216)

11 J. COLBY WILLIAMS, ESQ. (#3549)

12 700 South Seventh Street

13 Las Vegas, Nevada 89101

14 *Attorneys for Plaintiff*

15 *Steven C. Jacobs*

16 Approved as to form:

17 HOLLAND & HART, LLP

GLASER, WEIL, FINK, JACOBS

HOWARD & SHAPIRO, LLP

18 By:

19 STEPHEN J. PEEK, ESQ. (#1758)

20 JUSTIN C. JONES, ESQ. (#8519)

21 3800 Howard Hughes Pkwy., 10<sup>th</sup> Fl.

22 Las Vegas, Nevada 89169

23 *Attorney for Defendant*

24 *Las Vegas Sands Corp.*

25 MORRIS PETERSON

26 By:

27 STEVE MORRIS, ESQ. (#1543)

28 300 South Fourth Street, #900

Las Vegas, Nevada 89101

*Attorneys for Defendant*

*Sheldon G. Adelson*

By:

PATRICIA GLASER, ESQ. (*pro hac*)

ANDREW SEDLOCK, ESQ. (#9183)

3763 Howard Hughes Pkwy., Suite. 300

Las Vegas, Nevada 89169

*Attorneys for Defendant*

*Sands China, Ltd.*



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/382-6222  
FAX: 702/382-6540

1 The Court finds that the Motion to Stay is premature for the reasons set forth more fully on  
2 the record at the time of hearing. Accordingly, the Motion is DENIED without prejudice.

3 DATED this 5<sup>th</sup> day of July, 2011.

4  
5   
DISTRICT COURT JUDGE

6 Submitted by:

7 CAMPBELL & WILLIAMS

8  
9 By: 

10 DONALD J. CAMPBELL, ESQ. (#1216)

11 J. COLBY WILLIAMS, ESQ. (#5549)

12 700 South Seventh Street

Las Vegas, Nevada 89101

13 *Attorneys for Plaintiff*

14 *Steven C. Jacobs*

15 Approved as to form:

16 HOLLAND & HART, LLP

17  
18 By:  (NBA 10900)

19 STEPHEN J. PEEK, ESQ. (#1758)

20 JUSTIN C. JONES, ESQ. (#8519)

3800 Howard Hughes Pkwy., 10<sup>th</sup> Fl.

Las Vegas, Nevada 89169

21 *Attorney for Defendant*

22 *Las Vegas Sands Corp.*

23 MORRIS PETERSON

24  
25 By:

26 STEVE MORRIS, ESQ. (#1543)

300 South Fourth Street, #900

Las Vegas, Nevada 89101

27 *Attorneys for Defendant*

28 *Sheldon G. Adelson*

GLASER, WEIL, FINK, JACOBS

HOWARD & SHAPIRO, LLP

By:

PATRICIA GLASER, ESQ. (*pro hac*)

ANDREW SEDLOCK, ESQ. (#9183)

3763 Howard Hughes Pkwy., Suite. 300

Las Vegas, Nevada 89169

*Attorneys for Defendant*

*Sands China, Ltd.*



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/392-8222  
FAX: 702/392-1540

1 The Court finds that the Motion to Stay is premature for the reasons set forth more fully on  
2 the record at the time of hearing. Accordingly, the Motion is DENIED without prejudice.

3 DATED this \_\_\_\_ day of June, 2011.

4  
5 \_\_\_\_\_  
DISTRICT COURT JUDGE

6 Submitted by:

7 CAMPBELL & WILLIAMS

8  
9 By: 

10 DONALD J. CAMPBELL, ESQ. (#1216)  
11 J. COLBY WILLIAMS, ESQ. (#5549)  
700 South Seventh Street  
Las Vegas, Nevada 89101

12  
13 *Attorneys for Plaintiff*  
Steven C. Jacobs

14  
15 Approved as to form:

16 HOLLAND & HART, LLP

GLASER, WEIL, FINK, JACOBS  
HOWARD & SHAPIRO, LLP

17  
18 By:

STEPHEN J. PEEK, ESQ. (#1758)  
JUSTIN C. JONES, ESQ. (#8519)  
3800 Howard Hughes Pkwy., 10<sup>th</sup> Fl.  
Las Vegas, Nevada 89169

By:

PATRICIA GLASER, ESQ. (*pro hac*)  
ANDREW SEDLOCK, ESQ. (#9183)  
3763 Howard Hughes Pkwy., Suite. 300  
Las Vegas, Nevada 89169

19  
20  
21 *Attorney for Defendant*  
Las Vegas Sands Corp.

*Attorneys for Defendant*  
Sands China, Ltd.

22  
23 MORRIS PETERSON

24  
25 By: 

STEVE MORRIS, ESQ. (#1543)  
300 South Fourth Street, #900  
Las Vegas, Nevada 89101

26  
27 *Attorneys for Defendant*  
Sheldon G. Adelson



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/382-9222  
FAX: 702/382-4540

EXHIBIT "B"

EXHIBIT "B"

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

**FILED**

JUN 24 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER DIRECTING ANSWER

This original petition for a writ of mandamus or prohibition challenges a district court order denying a motion to dismiss.

Having reviewed the petition, it appears that petitioner has set forth issues of arguable merit and that an answer to the petition is warranted. Therefore, real party in interest, on behalf of respondents,<sup>1</sup> shall have 30 days from the date of this order to file and serve an answer,

---

<sup>1</sup>Based on the documents before us, it appears that petitioner has not served its petition and appendices on respondents, the Eighth Judicial District Court of the State of Nevada in and for the County of Clark and the Honorable Elizabeth Goff Gonzalez. Petitioner shall therefore have five days from this order's date to serve respondents with a copy of the petition and appendices. Within that same time period, petitioner shall file in this court a certificate of service demonstrating that respondents were served with these documents. We caution petitioner that its failure to comply with this directive may result in the dismissal of this petition.

including authorities, against issuance of the requested writ. Petitioner shall have 15 days from the date of service of real party in interest's answer to file and serve any reply.

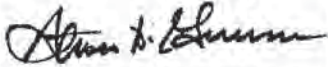
It is so ORDERED.

Dryden, C.J.

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

EXHIBIT "C"

EXHIBIT "C"

  
CLERK OF THE COURT

1 **STAT**

2 J. Stephen Peek, Esq.

3 Nevada Bar No. 1759

4 Justin C. Jones, Esq.

5 Nevada Bar No. 8519

6 **HOLLAND & HART** LLP

7 3800 Howard Hughes Parkway, 10th Floor

8 Las Vegas, Nevada 89169

9 (702) 669-4600

10 (702) 669-4650 – fax

11 [speek@hollandhart.com](mailto:speek@hollandhart.com)

12 [jcjones@hollandhart.com](mailto:jcjones@hollandhart.com)

13 *Attorneys for Defendant Las Vegas Sands Corp.*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 STEVEN C. JACOBS,

17 Plaintiff,

18 v.

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

24 Defendants.

CASE NO.: A627691-B

DEPT NO.: XI

Date: April 22, 2011

Time: 9:00 a.m.

**JOINT STATUS REPORT**

On April 18, 2011 the parties, by and through their respective counsel, met to discuss an agreeable discovery and briefing schedule. Patricia Glaser appeared on behalf of Defendant Sands China Ltd. ("SCL"); Stephen Peek appeared on behalf of Defendant Las Vegas Sands Corp. ("LVSC"); Steve Morris appeared on behalf of Defendant Sheldon G. Adelson ("Adelson"); and Donald Campbell and Colby Williams appeared on behalf of Plaintiff Steven C. Jacobs ("Jacobs"). This Joint Status Report is provided to the Court in anticipation of the Mandatory Rule 16 Conference scheduled for 9:00 a.m. on April, 22, 2011. The parties have agreed as follows:

**Initial Briefing Schedule**

On or before **April 20, 2011**, LVSC will respond to Plaintiffs' First Amended Complaint ("FAC") with the filing of an answer and counterclaim and a motion to dismiss Plaintiff's fifth

1 cause of action; SCL will respond to the FAC with the filing of a motion to dismiss.

2 On or before **May 3, 2011**, Adelson will file a motion to dismiss the FAC. (The  
3 Defendants' respective motions to dismiss are referred to collectively as the "Motions to  
4 Dismiss".)

5 On or before **May 24, 2011**, Jacobs will file his opposition briefs to the Motions to  
6 Dismiss.

7 On or before **June 3, 2011**, Defendants will file their respective reply briefs in support of  
8 the Motions to Dismiss.

9 The parties request the Court schedule the hearing for the Motions to Dismiss for **June 9,**  
10 **2011** or as soon thereafter as the Court will allow.

11 **Discovery Schedule**

12 **Initial Disclosure of Documents:**

13 The parties anticipate that LVSC and SCL's respective initial disclosures will consist of a  
14 high volume of documents which will include Electronically Stored Information ("ESI").  
15 Accordingly, on or before **May 2, 2011**, Jacobs will provide LVSC and SCL with search terms  
16 and date ranges to be used by LVSC and SCL for the collection, review, and production of  
17 documents. Thereafter, and as soon as practicable, LVSC and SCL will begin production of  
18 initial disclosures on a rolling basis which will be completed by **July 1, 2011**.

19 The parties will make a good faith effort to resolve any dispute relating to the ESI terms  
20 and/or dates provided by Jacobs. To the extent the Court's assistance is needed to resolve any  
21 potential ESI dispute, the parties agree to seek the Court's assistance on an expedited basis and  
22 LVSC and SCL will move forward with production of documents related to the *undisputed*  
23 search terms and dates insofar as practicable.

24 On or before **May 16, 2011**, Jacobs will make his initial document disclosures. Jacobs  
25 will continue to produce any remaining documents on a rolling basis which will be completed on  
26 or before **July 1, 2011**.

27 **Initial Disclosure of Witnesses:**

28 On or before **May 16, 2011**, the parties will provide their initial lists of witnesses of each

individual likely to have information discoverable under Rule 26(b).

Depositions:

The parties agree that no depositions will be taken until after **July 18, 2011**.

Discovery and Motion Deadlines

The final date to file motions to amend pleadings or add parties without a further court order will be **November 1, 2011**.

The parties will make initial expert disclosures on or before **December 1, 2011**.

The parties will make their rebuttal expert disclosures on or before **February 1, 2012**.

The parties will complete discovery by **March 12, 2012**.

The final date to file dispositive motions will be **April 2, 2012**.

Trial

The parties estimate the trial will last **three to four weeks** and request a trial setting on the **June 2012** stack, or as soon thereafter as the Court's calendar will allow.

DATED this \_\_\_\_ day of April, 2011.

DATED this \_\_\_\_ day of April, 2011.

/s/ J. Stephen Peek  
J. Stephen Peek, Esq.  
Holland & Hart LLP  
3800 Howard Hughes Parkway, 10th Floor  
Las Vegas, Nevada 89169

*Attorneys for Defendant Las Vegas Sands Corp.*

/s/ Patricia Glaser  
Patricia Glaser, Esq.  
Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP  
3763 Howard Hughes Parkway, Suite 300  
Las Vegas, NV 89169

*Attorneys for Defendant Sands China Ltd.*

DATED this \_\_\_\_ day of April, 2011.

DATED this \_\_\_\_ day of April, 2011.

/s/ Steve Morris  
Steve Morris, Esq.  
Morris Peterson  
900 Bank of America Plaza  
300 South Fourth Street  
Las Vegas, Nevada 89101

*Attorneys for Defendant Sheldon G. Adelson*

/s/ J. Colby Williams  
Donald J. Campbell, Esq.  
J. Colby Williams, Esq.  
Campbell & Williams  
700 S. Seventh St.  
Las Vegas, Nevada 89101

*Attorneys for Plaintiff Steven C. Jacobs*

# EXHIBIT "D"

# EXHIBIT "D"

## Library of Congress Web Archiving



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### Web Archiving FAQs

#### About the Library of Congress Web Archives

1. [What is the Library of Congress Web Archive?](#)
2. [Why is the Library of Congress archiving websites?](#)
3. [What kinds of websites does the Library archive?](#)
4. [How large is the Library's archive?](#)
5. [Are other organizations doing similar work?](#)
6. [Why is the Library archiving websites if others are doing it as well?](#)
7. [How can I contact the Library of Congress about its web archive?](#)

#### How Web Archiving Works

1. [How does the Library archive websites?](#)
2. [What is a web crawler?](#)
3. [How much of a website is collected in the archive?](#)
4. [Do you archive all identifying site documentation, including URL, trademark, copyright statement, ownership, publication date, etc.?](#)
5. [Is there any personal information in the web archive?](#)

#### Information Especially for Webmasters and Site Owners

1. [Why was my website selected?](#)
2. [How often and for how long will you collect my site?](#)
3. [What should I do if your crawler causes problems with my site?](#)
4. [My site has a password-protected area that requires a user ID and password. Will this protected content be archived?](#)
5. [I have a robots.txt exclusion on my website to block crawlers from certain parts of my site. How does this affect your collecting activity?](#)
6. [Do we need to contact you if our URL changes?](#)
7. [How do researchers access the archived websites?](#)
8. [What will people see when they access the archived site?](#)
9. [When will my archived site be available to researchers?](#)
10. [Will the archived page compete with my current site?](#)
11. [Will there be a link from your archive to my site as it currently exists?](#)
12. [What if I change my mind about allowing access to offsite researchers?](#)
13. [What are the copyright implications of the archiving of our site?](#)
14. [Will Library of Congress take over hosting of my site?](#)
15. [I would like to archive my website. Can you help me?](#)

#### The Library of Congress Permissions Process

1. [I was contacted via e-mail by the Library of Congress about archiving of my site. Is this a real request? Is it safe to click on the link?](#)
2. [What does it mean to grant or deny permission to allow the Library to display off-site?](#)
3. [I am having difficulty filling out your permission form.](#)

4. Why have I received multiple permission requests from the Library of Congress?

## About the Library of Congress Web Archives

1. **What is the Library of Congress Web Archive?**

The Library of Congress Web Archive is a collection of archived websites grouped by theme, event, or subject area. Web archiving is the process of creating an archival copy of a website. An archived site is a snapshot of how the original site looked at a particular point in time. The Library's goal is to document changes in a website over time. This means that most sites are archived more than once. The archive contains as much as possible from the original site, including text, images, audio, videos, and PDFs.

2. **Why is the Library of Congress archiving websites?**

The Library of Congress is working with other libraries and archives from [around the world \(external link\)](#) to collect and preserve the web because an increasing amount of information can only be found in digital form on websites. A lot of cultural and scholarly information is created only in a digital format and not in a physical one. If it is not archived, it may be lost in the future.

Creating a web archive also supports the goals of the Library's Digital Strategic Plan. The Plan focuses on the collection and management of digital content and the [National Digital Information Infrastructure and Preservation Program's \(NDIIPP\)](#) strategic goal to manage and sustain at-risk digital content.

3. **What kinds of websites does the Library archive?**

The Library archives websites that are selected by recommending officers, or curators, based on the theme or event being documented. The types of sites archived include, but are not limited to: United States government (federal, state, district, local), foreign government, candidates for political office, political commentary, political parties, media, religious organizations, support groups, tributes and memorials, advocacy groups, educational and research institutions, creative expressions (cartoons, poetry, etc.), and blogs.

In 2010, the Library launched a program to archive sites not related to a particular theme or event. The sites are selected based on the subject expertise of recommending officers in three divisions: Humanities and Social Sciences; European Division; and Science, Business and Technology.

For a list of all current and previous collections, visit our [collections](#) page. To view publicly available collections, visit the [Library of Congress Web Archives](#).

4. **How large is the Library's archive?**

As of April 2011, the Library has collected about 235 terabytes of data (one terabyte = 1,024 gigabytes). The archives grow at a rate of about 5 terabytes a month.

5. **Are other organizations doing similar work?**

Yes, there are a variety of other organizations that archive websites, including non-profits, the U.S. government, libraries, and archives.

The [Internet Archive \(external link\)](#) is a non-profit organization that has archived billions of web pages since 1996. The Library of Congress contracts with the Internet Archive for many of its web archiving projects.

A number of U.S. federal government agencies collect official web content, including the [National Archives and Records Administration \(external link\)](#) (NARA) and the [Government Printing Office \(external link\)](#) (GPO).

The Library of Congress also works closely with members of the [International Internet Preservation Consortium \(external link\)](#) (IIPC). The IIPC was formed in 2003 to collect of a rich body of Internet content from around the world and to foster the development and use of common tools, techniques and standards. The Library of Congress is a founding member of the IIPC. Other members include the national libraries of Australia, Canada, Denmark, Finland, France, Iceland, Italy, Norway, Sweden and the United Kingdom, the Internet Archive, and many others. Visit the [IIPC Member Archives \(external link\)](#) portal to learn more about their programs.

6. **Why is the Library archiving websites if others are doing it as well?**

Libraries and other organizations that archive the web have different collection strategies and collect different URLs at varying frequencies and depths. The Internet Archive is often thought to be archiving "the entire web" but

in reality it is just a slice of what's available. It is important for libraries and archives to also select and create collections of web content. By working together, libraries, historical associations, archives, state governments, universities, and others focusing on specific collecting areas, can make sure that a larger amount digital content is archived and preserved for the future.

#### 7. **How do I contact the Library of Congress about its web archive?**

Use the [online form](#) to ask a question about web archiving activities or to send a message to the Library's Web Archiving Team.

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### How Web Archiving Works

#### 1. **How does the Library archive websites?**

The Library or its agent makes a copy of a website using an open-source archival-quality web crawler called [Heritrix \(external link\)](#). The Library uses other in-house tools to manage the selection and permissions process.

#### 2. **What is a web crawler?**

A web crawler is a software agent that traverses the web in an automated manner, making copies of the content it finds as it goes along. Web crawlers are used to create the index against which search engines search, or, in the context of archival crawling, to capture web content intended for longer-term preservation.

#### 3. **How much of a website is collected in the archive?**

The Library's goal is to create an archival copy—essentially a snapshot—of how the site appeared at a particular point in time. Depending on the collection, the Library archives as much of the site as possible, including html pages, images, flash, PDFs, audio, and video files, to provide context for future researchers. The Heritrix crawler is currently unable to archive streaming media, "deep web" or database content requiring user input, and content requiring payment or a subscription for access. In addition, there will always be some websites that take advantage of emerging or unusual technologies that the crawler cannot anticipate.

#### 4. **Do you archive all identifying site documentation, including URL, trademark, copyright statement, ownership, publication date, etc.?**

The Library attempts to completely reproduce a site for archival purposes.

#### 5. **Is there any personal information in the web archive?**

The Library collects websites that are publicly accessible. These may include pages with personal information.

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### Information Especially for Webmasters and Site Owners

#### 1. **Why was my website selected?**

Websites are selected by Library subject experts according to collection strategies developed for each thematic or event collection. The Library maintains a [collections policy statement](#) and other internal documents to guide the selection of electronic resources, including websites.

#### 2. **How often and for how long will you collect my site?**

Typically the Library crawls a website once a week or once monthly, depending on how frequently the content changes. Some sites are crawled more infrequently—just once or twice a year.

The Library may crawl your site for a specific period of time or on an ongoing basis. This varies depending on the scope of a particular project. Some archiving activities are related to a time-sensitive event, such as before and immediately after a national election, or immediately following an event. Other archiving activities may be ongoing with no specified end date.

#### 3. **What should I do if your crawler causes problems with my site?**

The Library or its agent always tries to politely crawl sites in order to minimize server impact. Occasionally there may be problems. Please [contact us](#) immediately if you have problems or questions.

4. **My site has a password-protected area that requires a user ID and password. Will this protected content be archived?**

The Library does not archive password-protected content, unless by special permission from the site owner.

5. **I have a robots.txt exclusion on my website to block crawlers from certain parts of my site. How does this affect your collecting activity?**

The Library attempts to collect as much of the site as possible in order to create an accurate snapshot for future researchers. The Library notifies site owners before crawling which means we generally ignore robots.txt exclusions. Please [contact us](#) immediately if you have questions about this policy.

6. **Do we need to contact you if our URL changes?**

We periodically monitor websites for changes that might affect the crawler, however, it is helpful if you [notify us](#) with any changes to the URL.

7. **How do researchers access the archived websites?**

Public web archives are available on the [Library of Congress Web Archives](#) site. Researchers will access the collections through this main page. Each collection has a homepage where researchers can search or browse the catalog records for that collection.

Users may also [browse](#) or [search](#) across all of the available archives. Please note that the archives sites themselves are not full-text indexed, only the records about the archived sites are searchable.

If off-site access is available for an archived website, the catalog record will contain a page that links to all of the dates the site was archived. If off-site access is not available, the record will state "Access restricted to on-site users at the Library of Congress." Off-site access is only available if the site owner granted permission.

8. **What will people see when they access the archived site?**

Your archived site will appear much like it was on the day it was archived. The Library tries to get capture the content as well as the look and feel. It will have a [banner](#) at the top of the page that alerts researchers that they are viewing an archived version. The date that the site was archived also appears in this banner. Researchers will be able to navigate the site much like the live web. Some items don't work in the archive, such as mailto links, forms, fields requiring input (e.g. search boxes), some multimedia, and some social networking sites.

9. **When will my archived site be available to researchers?**

Web archive collections are made available as permissions, Library policies, and resources permit. There is normally a 6 month to a year lag time before the collection is made available to researchers. This is due to production and cataloging work that occurs for each archived site.

10. **Will the archived page compete with my current site?**

This is generally not a problem due to the time it takes for the archive to be available to researchers. The public will need to visit your live website in order to retrieve current information. If you have concerns about public access to the archived version of your website, you may deny the Library permission to provide access to researchers off-site.

11. **Will there be a link from your archive to my site as it currently exists?**

The catalog record will record the original URL—see the "[URL at time of capture](#)" field, but it will not be hyperlinked. Also, the original URL will also be listed on the page that displays all of the archived [dates](#).

12. **What if I change my mind about allowing access to offsite researchers?**

Please [contact](#) the Library if you change your mind about access via the public website, and you are a copyright owner of or otherwise have exclusive control over materials presently in the archive.

In your request, please identify the specific website, collection name (if you know it), (e.g., [www.mysite.com](#); Election 2004 Web Archive). If you have the original email the Library sent you for permission, please reply to that; it has tracking information in it to help the Library identify your URL in its collections.

**13. What are the copyright implications of the archiving of our site?**

The copyright status of your site remains with you. We have a statement on each [collection homepage](#) about copyright.

**14. Will Library of Congress take over hosting of my site?**

No. By archiving your site, the Library of Congress is preserving a snapshot of your site at a particular time. You are still responsible for hosting and maintaining your live website.

**15. I would like to archive my website. Can you help me?**

At this time, the Library of Congress does not have a program to help individuals archive their personal websites. However, the Library's Digital Preservation website has information about [personal archiving](#).

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**The Library of Congress Permission Process****1. I was contacted via e-mail by the Library of Congress about archiving of my site. Is this a real request? Is it safe to click on the link?**

The Library notifies each site that we would like to include in the archive (with the exception of government websites), prior to archiving. In some cases, the e-mail asks permission to archive. All notifications request permission to provide off-site access to researchers.

The Library uses a permissions tool that allows easy contact with site owners via e-mail, and enables the site owners to respond to permissions requests using a web form. The responses are then recorded in a database.

The e-mail you receive from the Library of Congress contains [webcapture@loc.gov](mailto:webcapture@loc.gov) in the "from" address, and "Library of Congress Permission Request" in the subject line. At the bottom of the e-mail message is the line, "LC Reference: [record ID, blanket ID]", which is the Library's internal tracking information.

If you would like to confirm that the Library sent the permission e-mail, please [contact](#) us and a member of the Web Archiving Team will assist you.

**2. What does it mean to grant or deny permission to allow the Library to display off-site?**

If you grant the Library permission to display your archived website off-site, it means the Library of Congress will provide public access to the archived copies of your website. If you deny off-site access, the Library may catalog and identify the site as part of a particular collection on our public website, but your archived site will only be available to researchers who visit the Library of Congress buildings in Washington, D.C.

**3. I am having difficulty filling out your permissions form.**

Please [contact](#) us if you have problems with the form, or reply to the e-mailed permission request and someone from the Library's project team will assist you.

**4. Why have I received multiple permission requests from the Library of Congress?**

In previous years, the Library was required to send permission notices to all selected websites in every collection it initiated, even if the site had previously granted or denied permission. Policies changed in 2006 and the Library can now request and apply blanket permission. This means that if a site owner granted permission after 2006, the Library can use that permission for future collections. This has minimized duplication in permission requests, however the Web Archiving Team occasionally contacts site owners for additional permissions if required.

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**ORIGINAL**

*Allen D. Quinn*

CLERK OF THE COURT

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 DEFENDANT SANDS CHINA'S MOTION TO STAY  
PROCEEDINGS PENDING WRIT PETITION

TUESDAY, JULY 19, 2011

APPEARANCES:

FOR THE PLAINTIFF:

COLBY WILLIAMS, ESQ.

FOR THE DEFENDANTS:

JUSTIN C. JONES, ESQ.  
PATRICIA GLASER, ESQ.

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

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

RECEIVED  
JUL 20 2011  
CLERK OF THE COURT

1 LAS VEGAS, NEVADA, TUESDAY, JULY 19, 2011, 9:03 A.M.

2 (Court was called to order)

3 THE COURT: Anyone who has a plane to catch and  
4 wants the other lawyers to wait for you? Come on up.

5 MS. GLASER: Good morning, Your Honor.

6 THE COURT: 'Morning.

7 MR. JONES: 'Morning, Your Honor. Justin Jones on  
8 behalf of Las Vegas Sands.

9 MR. WILLIAMS: Good morning, Your Honor. Colby  
10 Williams on behalf of plaintiff Steve Jacobs.

11 MS. GLASER: Good morning, Your Honor. Patricia  
12 Glaser for Sands China.

13 THE COURT: And you want to thank all the counsel  
14 for letting you go first.

15 All right. So here's my question for you. Because  
16 I read through all the briefs last night and I read the  
17 affidavit and I've looked at everything, and it looks like the  
18 only thing that has changed since the last time we discussed  
19 the stay issue is that additional investigation has been done  
20 by your in-house counsel and other people working with the  
21 Macau Government to make a determination as to the extent of  
22 the work that is necessary to comply with the document  
23 requests.

24 MS. GLASER: Both the extent and the ramifications  
25 if the statute is not complied with, Your Honor.

ORIGINAL

*Allen D. Schuman*

CLERK OF THE COURT

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 DEFENDANTS' MOTIONS TO DISMISS

THURSDAY, JUNE 9, 2011

APPEARANCES:

FOR THE PLAINTIFF:

DONALD JUDE CAMPBELL, ESQ.  
COLBY WILLIAMS, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
JUSTIN C. JONES, ESQ.  
PATRICIA GLASER, ESQ.  
STEVE L. MORRIS, ESQ.  
DAVID FLEMING, ESQ.

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript  
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JUN 16 2011

CLERK OF THE COURT

44

1 LAS VEGAS, NEVADA, THURSDAY, JUNE 9, 2011, 10:03 A.M.

2 (Court was called to order)

3 THE COURT: All right. Are we ready with the hookup  
4 to Macau? I see you. Can you see us? Can you hear us?

5 Why don't you guys come on up. I apparently have --

6 MR. PEEK: This is 1:00 o'clock in the morning  
7 there, Your Honor.

8 THE COURT: I see a conference room.

9 MS. GLASER: Your Honor, that is Mr. David Fleming,  
10 who's general counsel of Sands China.

11 THE COURT: Good morning, Mr. -- Mr. Fleming, I  
12 think it's good morning for you.

13 MR. FLEMING: It certainly is, Judge. Good morning  
14 to you.

15 THE COURT: Thank you.

16 MS. GLASER: Good morning, Your Honor.

17 THE COURT: Good morning. Can I have everyone  
18 please identify themselves for purposes of the record,  
19 starting with Mr. Campbell.

20 MR. CAMPBELL: Good morning, Your Honor. Donald J.  
21 Campbell appearing on behalf of the plaintiff in this action,  
22 Campbell & Williams.

23 MR. WILLIAMS: Good morning, Your Honor. Colby  
24 Williams, Bar Number 5549, appearing on behalf of the  
25 plaintiff.

1           MR. JACOBS: Good morning, Your Honor. Steve  
2 Jacobs, plaintiff.

3           MS. GLASER: Good morning, Your Honor. Patricia  
4 Glaser for Sands China. And Mr. Fleming is here by whatever  
5 you call this device.

6           THE COURT: Video conference I think is what we're  
7 calling it today.

8           MR. PEEK: And good morning, Your Honor. Stephen  
9 Peek on behalf of Las Vegas Sands.

10           And good morning, David. How are you this morning?

11           MR. FLEMING: I'm not too bad, Steve.

12           MR. MORRIS: Good morning, Your Honor. Steve Morris  
13 on behalf of Sheldon Adelson.

14           THE COURT: All right. I would like to start with  
15 the defamation claim motion first, since I have three that are  
16 basically identical with an omnibus response. However you  
17 want to start.

18           And, Mr. Fleming, if you cannot hear because counsel  
19 are either not using robust voices or they've strayed away  
20 from a microphone, please let me know, and I will try and get  
21 them back in a position where you can hear them.

22           MR. FLEMING: I will, Your Honor.

23           THE COURT: All right. Mr. Morris, I'm going to  
24 start with you.

25           MR. MORRIS: Your Honor, thank you. Good morning

1 and greetings on behalf of Mr. Adelson.

2 I'm here to argue our motion to dismiss the  
3 defamation claim in this context. The claim made against Mr.  
4 Adelson was one to which he was invited to respond. The  
5 statement he made was by invitation of Mr. Jacobs in his  
6 pleadings that were completely and entirely unnecessary to  
7 support his claim for wrongful termination in breach of  
8 contract. That's the sum and substance of this lawsuit. Not  
9 a single characteristic that was attributed to Mr. Adelson was  
10 necessary to state Mr. Jacobs's claim for discharge in breach  
11 of contract. Not one requirement or interpretation of Rule 8  
12 with respect to a plain and simple statement of claim required  
13 him to describe in the complaint Sheldon Adelson's  
14 characteristics that he said led to or contributed to his  
15 discharge.

16 This isn't Mr. Jacobs's counsel's first rodeo with  
17 this defendant. This complaint was prepared, I submit and as  
18 we submitted in our papers with supporting reasons, to invite  
19 Mr. Adelson to respond to the allegations Mr. Jacobs makes  
20 against him in his complaint of criminal misconduct. And in  
21 so doing and in adopting this theatrical method of pleading  
22 and then publishing worldwide the allegations that were  
23 altogether unnecessary to support his single claim for  
24 wrongful termination in breach of contract Mr. Adelson,  
25 following the proceedings here on March the 15th, when all of

1 these allegations against him personally, rude and  
2 obstreperous, mercurial, demanding Mr. Jacobs engage in  
3 illegal conduct when all of those were republished again  
4 worldwide to the media which was present in court and to which  
5 this complaint and those allegations was plain, it is in this  
6 context during this judicial proceeding, during this lawsuit  
7 in this courtroom that Mr. Adelson made the single statement  
8 that he did on the evening of March the 15th to the Wall  
9 Street Journal, one of the media present in court and  
10 reporting and recycling the claims that Mr. Jacobs made  
11 against him in his complaint.

12 This is the context in which this fifth claim for  
13 defamation should be evaluated. And if it is evaluated in  
14 this context, the law that pertains to it, in particular as  
15 discussed in Circus Circus Enterprises versus Witherspoon and  
16 the Clark County -- excuse me, the VESI case involving this  
17 court, this Eighth Judicial District Court --

18 THE COURT: Not me that time.

19 MR. MORRIS: Not you. Not you.

20 -- the statements that Mr. -- the statement that Mr.  
21 Adelson made on the evening of March the 15th in the course of  
22 this proceeding was absolutely privileged. And Circus Circus  
23 tells us that absolute privilege is not something that we need  
24 to defer for discovery and for later summary judgment practice  
25 or trial, if necessary; that's a determination that can be

1 made here and now and should be made by you to dismiss this  
2 defamation claim which is altogether collateral. It's  
3 ornamental and is unnecessary to advance and to adjudicate the  
4 claim Mr. Jacobs comes to court on. And that is was he  
5 discharged in breach of contract or not.

6           The opposition to this motion is long on rhetoric  
7 and very short on specifics and almost silent, and that's why  
8 in our reply I called it an empty opposition, on the question  
9 whether in the context in which we face this claim Nevada law  
10 will support continuing this lawsuit for defamation against  
11 Mr. Adelson beyond today. But plaintiff makes a good deal in  
12 his papers in opposition to this motion that there is a  
13 question of fact here that has got to be fleshed out. That  
14 question, although not clearly articulated by the plaintiff,  
15 appears, from reading the opposition twice, to be this. New  
16 York law says that the question of malice with respect to the  
17 statement Mr. Adelson made is something that should be decided  
18 by the trier of fact. I won't quarrel with whether that is an  
19 accurate statement of the law in New York, because the law of  
20 New York, if that is the law, is not the law in Nevada.

21           This is what our court had to say on this subject in  
22 Circus Circus Enterprises versus Witherspoon. Even where --  
23 and I'm now looking at 99 Nev., page 57 -- I'm sorry, 61  
24 "The public interest in having people speaking freely  
25 outweighs the risks that individuals will occasionally abuse

1 the privilege by making false and malicious statements." That  
2 conclusion, Your Honor, was reached after the court said on  
3 the preceding page, even where the defamatory statements --  
4 and we're not saying or contending that Mr. Adelson's  
5 statement was defamatory itself, but assuming that it was, as  
6 the plaintiffs say it was, even where the defamatory  
7 statements are published with knowledge of their falsity and  
8 personal ill will toward the plaintiff, the absolute privilege  
9 still protects them.

10 With respect to relevance to this proceeding that is  
11 raised elliptically in the opposition to this motion the court  
12 in Witherspoon went on to say, "The defamatory material need  
13 not be relevant in the traditional evidentiary sense, but need  
14 have only 'some relation' --" and "some relation" is in quotes  
15 by the court, "to the proceeding. So long as the material has  
16 some bearing on the subject matter of the proceeding it is  
17 absolutely privileged."

18 Now, consider what Mr. Adelson said on March 15th  
19 following the hearing in this court which gave rise to, as he  
20 said in his statement, the recycling of the allegations made  
21 by Mr. Jacobs against him that are wholly extraneous to the  
22 issues that arise as the consequence of his breach of contract  
23 action against the corporate defendants. All he said in  
24 response to that was, because of this recycling -- and we  
25 cited and have appended some examples -- at the time we wrote

1 this motion there were 90,000, 90,000 online hits for the  
2 search term "Steven Jacobs" and "Adelson." It is in that  
3 context of worldwide distribution of altogether scurrilous and  
4 insulting allegations unnecessary to support a claim for  
5 breach of contract made by Mr. Jacobs in his complaint and  
6 recycled as a consequence of the hearing in this Court on  
7 March the 15th that Mr. Adelson said, Mr. Jacobs's allegations  
8 that are now being republished against me are not true,  
9 they're based on lies and fabrications and seem to him to be  
10 the product of delusion. You don't make, I submit to you on  
11 the law that applies to this case, a claim for defamation out  
12 of responding to someone who says, you're a crook, by saying  
13 that that is a fabrication and a lie and it is delusional.  
14 There is nothing wrong, and the law does not say that all you  
15 can do in response to in attack like this that is initiated by  
16 the plaintiff is file an answer and say "denied," which is  
17 about all that opposition has to say.

18           Mr. Adelson was entitled to, and he did, accept Mr.  
19 Jacobs's invitation to dispute the personal and hostile and  
20 altogether unnecessary allegations of criminal misconduct made  
21 against him. And all he said was, they're not true and  
22 they're imagined.

23           The law says -- whether you call that absolute  
24 privilege or conditional privilege, the law says it's  
25 privileged, it isn't actionable. And the fact that it

1 occurred outside the immediate environs of this courtroom is  
2 immaterial. As the court pointed out in Clark County School  
3 District versus Virtual Education Software, Incorporated,  
4 that's the VESI case I referred to a moment ago, in that case  
5 what I told you a moment ago the court said several years ago  
6 in Witherspoon was brought forward and confirmed by the  
7 Supreme Court in 2009, and it said in that opinion that is  
8 applicable to the situation and the statement that brings us  
9 here today, "The absolute privilege affords parties to  
10 litigation the same protection from liability that exists for  
11 an attorney for defamatory statements made during or in  
12 anticipation of judicial proceedings." You can apply that  
13 statement in this manner. If the lawyers representing a party  
14 initiate an action accusing a defendant of criminal misconduct  
15 and the defendant replies and says, it isn't true, those are  
16 lies being told about me, that the defendant has a privilege  
17 to make that statement.

18 THE COURT: An absolute privilege under the Clark  
19 County-VESI case.

20 MR. MORRIS: Correct. And as I said a moment ago,  
21 and I'll close with this, Your Honor, even if this were an  
22 issue of conditional privilege as arises from time to time in  
23 New York, including the case relied on by the plaintiff in his  
24 opposition, it doesn't raise an issue of fact that must be  
25 determined by the jury. Our court said in the Anzalone case,

1 which is State versus Eighth Judicial District Court -- that's  
2 not you, either, Your Honor, it was Judge Mahan --

3 THE COURT: No, it's not me, either. You found a  
4 couple that weren't me today, Mr. Morris.

5 MR. MORRIS: -- applying this privilege is a  
6 question of law. And then the court went on to say with  
7 respect to the conditional privilege of reply, if somebody  
8 calls you a crook or a liar, you're free to respond to that so  
9 long as the reply does not include substantial defamatory  
10 matter that is irrelevant or nonresponsive.

11 Mr. Adelson's statement in this case was specific  
12 and wholly responsive to the allegations that had been made  
13 against him of criminal misconduct in discharging Mr. Jacobs  
14 or in the -- related to the discharge of Mr. Jacobs. The  
15 alleged defamatory material would have to be disproportionate  
16 to the initial statement. All Mr. Adelson said was, I can't  
17 remain silent while these terrible accusations made against me  
18 in a privileged pleading are being recycled by Mr. Jacobs.

19 So we have two of the four requirements of Anzalone  
20 being met. What's the third? It's the statement shall not be  
21 excessively publicized. The statement Mr. Adelson made was  
22 publicized to one of the many media that was invited to this  
23 court. But even if he had publicized it to all of them, the  
24 result wouldn't be any different, because this is the media to  
25 which Mr. Jacobs is playing, the same media that he encouraged

1 and invited to come to court to film and to report and to talk  
2 about and to distribute worldwide all of the nasty and vicious  
3 things he was saying about Sheldon Adelson is the same  
4 audience to whom Mr. Adelson made this response. And it is  
5 under State versus Eighth Judicial District Court entirely  
6 appropriate and not excessive.

7 And the fourth issue is whether a statement was made  
8 with malice in the sense of actual spite or ill will. Well,  
9 you've looked at the cases that we have and the opposition has  
10 cited to with respect to statements much more personal and  
11 inflammatory than those made by Mr. Adelson which were held to  
12 be within the privilege of reply, such as the plaintiff is  
13 insane, he or she is crazy, he is or she is delusional. These  
14 are the statements that courts have looked at and said in  
15 context, as I ask you to do here, if someone says of you  
16 publicly in a pleading, you're a vicious, nasty, evil person  
17 and you are a criminal, you have the absolute right to reply.  
18 And unless the law changes, you can say, you know, Mr. Jacobs,  
19 in my opinion those statements are based on lies and  
20 fabrications, some of the same lies that were articulated to  
21 you, Your Honor, in this courtroom on March the 15th by  
22 Patricia Glaser on behalf of Sands China, and in my opinion  
23 claiming that I have or am responsible for your discharge  
24 because I'm rude and obstreperous, I'm mercurial, I'm a  
25 difficult person to deal with and I'm a criminal in my opinion

1 is a lie. Those statements and my characterization of those  
2 statements are absolutely privileged under the circumstances  
3 and facts of this case. And even if they were not, if the  
4 conditional privilege applies, we have demonstrated and there  
5 isn't any argument to the contrary other than rhetoric, that  
6 the statement made by Mr. Adelson on March the 15th included  
7 substantial defamatory statement that was irrelevant or  
8 nonresponsive, that it was -- included material that was  
9 disproportionate to the initial statement, that it was  
10 excessively publicized, or that it was made in the sense of  
11 actual spite or ill will.

12           And on that last point consider what the court  
13 concluded with in discussing conditional privilege for  
14 defamation in State versus Eighth Judicial District Court.  
15 "The test for whether a statement constitutes fact or opinion  
16 is whether a reasonable person would be likely to understand  
17 the remark as an expression of the source's opinion or as a  
18 statement of existing fact." And I submit to you, Your Honor,  
19 and I don't want to say that I'm abandoning the proposition  
20 that Mr. Adelson's statement was absolutely privileged, but if  
21 you look at that statement in the context it was made, you  
22 can't conclude, I suggest, can't reasonably conclude other  
23 than Mr. Adelson was expressing his God-given and legally  
24 supported opinion that Mr. Jacobs was simply dead wrong in  
25 accusing him of the misconduct and criminal offenses that led

1 to his termination as an employee in Macau.

2 On that basis, Your Honor, I ask you to terminate  
3 this claim in this litigation and let this case move on  
4 without the distraction of an altogether unnecessary and  
5 spiteful claim of defamation that was, as I said in our  
6 initial motion, not only invited, but was expected, and it  
7 exemplifies, I think, the adage that we closed with, and that  
8 is lawyers should be careful, lawyers speaking for parties  
9 should be careful what they ask for in their pleadings,  
10 because they may just get it. And in this case they did, and  
11 what they got is absolutely privileged, and it is not  
12 actionable. Thank you.

13 THE COURT: Thank you, Mr. Morris.

14 Ms. Glaser, as to the defamation claim which is a  
15 part of your motion would you like to add anything in addition  
16 to what Mr. Morris told us?

17 MS. GLASER: I would not at this time, Your Honor.

18 THE COURT: Mr. Peek, since you have a separate  
19 issue on this same basis --

20 MR. PEEK: Your Honor, I would not.

21 THE COURT: Thank you.

22 MR. PEEK: I wish Mr. Urga were here to see this so  
23 that he'd know I didn't speak.

24 THE COURT: Well, we'll make a note.

25 MR. PEEK: Thank you.

1           THE COURT: Perhaps we'll have the transcript made  
2 and send it around.

3           Mr. Campbell. Mr. Campbell, I again want to thank  
4 you for the cases that your office delivered while I was  
5 sitting in my car. With all my child's activity last night it  
6 made it a lot easier to read some of the cases. I had  
7 forgotten what they said.

8           MR. CAMPBELL: All right, Your Honor. I'm pleased  
9 to do so. Get myself organized here, if I could just a  
10 moment, Your Honor.

11           I'd like to begin today, Your Honor, by hopefully  
12 clarifying the positions of the parties. Now, in the reply  
13 that Mr. Morris filed he said that our opposition was  
14 disjointed and scattergunned and somewhat confusing. I do not  
15 believe that to be the case. In fact, I believe that what Mr.  
16 Adelson has filed is very disjointed and scattergunned and  
17 confuses a lot of issues, and I'd like to try to put those to  
18 rest.

19           What we're talking about in this particular case are  
20 three different things, essentially. Number one, we're  
21 talking about an absolute privilege; number two, we are then  
22 talking about conditional privileges; and number three is part  
23 of number two, we're talking about reply and opinion.

24           But let us begin before we address any of that with  
25 what we're here on. We're here on a 12(b)(5). Now, there's

1 been an awful lot of fugitive documents filed and, quite  
2 frankly, extrajudicial and fugitive statements that have been  
3 made by Mr. Morris. He's a fine advocate, but he knows as  
4 well as I do this is neither the time nor the place. We're  
5 dealing here with the pleadings. Accordingly, everything that  
6 he attached and is relying upon in such statements as somehow,  
7 I think he said in his reply, that Mr. Jacobs spoke to the  
8 press after this case was last in court and that Mr. Jacobs  
9 invited all of the press in are absolutely not only false, but  
10 they're simply, even if they were true, not a part of these  
11 proceedings.

12 THE COURT: And they don't make a difference to me  
13 in my consideration of the determination of the privilege.

14 MR. CAMPBELL: No. I appreciate it, and I'll move  
15 off that point.

16 THE COURT: Now, in a minute I'll get to that with  
17 Ms. Glaser on her request for judicial notice, but I'm not  
18 there yet on that motion.

19 MR. CAMPBELL: Your Honor, we are also not dealing  
20 with any sort of admission here, as Mr. Adelson has claimed in  
21 his reply brief, to the effect that Mr. Jacobs had admitted  
22 that the defamatory statements made were made during -- quote,  
23 "during the course of this judicial proceeding." We do not  
24 admit that. In fact, it is just the opposite contention that  
25 Jacobs advances. Jacobs advances the contention that it was

1 an extrajudicial statement that we are dealing here with and  
2 that was completely and totally unprivileged in all regards.  
3 And we also know, Your Honor, that there's not a single case  
4 that is cited, including the Witherspoon case that was cited  
5 -- and I'll deal with that because it did apply to an absolute  
6 privilege -- or didn't apply to the issue of malice, rather --  
7 that was decided at a 12(b)(5) stage.

8           So let me begin. At the time that Mr. Adelson  
9 issued this press release he had issued this press release to  
10 the Wall Street Journal, and what he said in the press release  
11 was that my client was a liar, essentially, and that he was  
12 fired for cause.

13           Now, let's deal first with respect to whether or not  
14 that was absolutely privileged. I agree with Mr. Morris. Mr.  
15 Morris is correct. When we are dealing in the realm of  
16 absolute privileges it makes no difference if malicious intent  
17 was part of that, it makes no difference if ill will was part  
18 of that. I agree with him with respect to absolute privilege.  
19 But the cases that we cited with respect to issues of ill will  
20 and malice and how that must be decided by the jury related  
21 and were cited by the court, and I'll point them out, on  
22 conditional privilege, not on absolute privilege. Mr. Morris  
23 is confused, and I hope to basically take him through the --  
24 and the Court to show how that distinction is made.

25           THE COURT: But at this stage, Mr. Campbell, isn't

1 the legal determination as to whether the absolute privilege  
2 exists really one the Court needs to make under the dictates  
3 the Nevada Supreme Court gave us in the Clark County School  
4 District versus Virtual Education Software, Inc. or VESI case?

5 MR. CAMPBELL: No, Your Honor. We don't believe so.  
6 And we'll tell you why. We believe first of all that we're  
7 entitled to a full exploration of exactly what was done here.  
8 All we know is that there was apparently some sort of a press  
9 release. We get to find out the following and explore the  
10 following. We get to find out exactly who prepared it, we get  
11 to find out how many drafts of it were there, we get to find  
12 out what preceded it, a and what it and what it was in reply  
13 to. We also get to find out whether or not anything  
14 supplementary was distributed pursuant to it. As we stated,  
15 Your Honor, in our pleadings, we believe and we forecast we're  
16 going to be able this libel was enhanced by Mr. Adelson at the  
17 end -- at the -- what was it, I'll get the precise term so  
18 it's in the record and very clear -- at the JP Morgan Gaming  
19 Seminar when he engaged this --

20 THE COURT: Well, but let me stop you.

21 MR. CAMPBELL: -- ad homily attack. And with --

22 THE COURT: In your fifth amended complaint, Mr.  
23 Campbell, the only statement that you are basing your pleading  
24 on as being defamatory is the statement that was made to the  
25 Wall Street Journal, and you've quoted it.

1 MR. CAMPBELL: Yes.

2 THE COURT: And we all agree, I guess, that this  
3 statement was made shortly following a very long hearing that  
4 we had that day, the day before you filed the complaint.

5 MR. CAMPBELL: Correct, Your Honor. Yes, Your  
6 Honor.

7 THE COURT: And that's the only statement that  
8 you've included in this cause of action.

9 MR. CAMPBELL: That is -- that is true. And the  
10 reason for that, Your Honor, is that after we filed our  
11 complaint is when Mr. Adelson went out and made all sorts of  
12 additional statements.

13 THE COURT: Well, but that's not what's in this.

14 MR. CAMPBELL: And you're exactly right. But you're  
15 asking whether or not essentially you're limited at this stage  
16 of the proceedings. And we don't think so, because that's one  
17 of the considerations that you make, is there additional  
18 discovery that will help illuminate all of this. And our  
19 answer to that is yes, there is.

20 Number two, with respect to the VESI case what you  
21 were dealing with there was a very, very modest exchange that  
22 was -- and the Witherspoon case, that was a very modest  
23 exchange that was between two potential litigants in the form  
24 of letters going back and forth, and then with respect to  
25 Witherspoon there was an absolute privilege for letters that

1 were written by in that case hotel HR directors to the  
2 Department of Employment Security detailing why this person  
3 was fired, we fired this person because this person was  
4 stealing at a blackjack or a craps game.

5 THE COURT: And why they didn't want him to get  
6 unemployment benefits.

7 MR. CAMPBELL: That's exactly right. And there's a  
8 specific privilege for that. There's a statute that says that  
9 is absolutely, totally, and completely privileged.

10 But that's not what we have here, Your Honor, not at  
11 all what we have here. What we have here is something far  
12 different. Now, what I'd like to do, Your Honor, today is  
13 address the issue of absolute privilege with the two principal  
14 cases that were cited by the defendants and the two principal  
15 cases that were cited by us.

16 Let's deal first with Rothman. This is precisely  
17 what Sands China placed in their brief and what they said was  
18 the applicable standard. They said that the absolute  
19 privilege has been recognized in other jurisdictions.

20 THE COURT: But it doesn't really matter what they  
21 say comes from other jurisdictions, because I have Nevada  
22 authority that is very clearly on point on this issue. So, I  
23 mean, I don't have that often, but I have that today.

24 MR. CAMPBELL: Tell me what it is. I'm happy to  
25 address it, Your Honor.

1 THE COURT: It's the Clark County-Virtual Education  
2 Software, Inc. case.

3 MR. CAMPBELL: But, Your Honor, what that deals  
4 with is that's just an exchange of letters to a very discrete  
5 group of people that were involved --

6 THE COURT: Correct.

7 MR. CAMPBELL: -- or potentially involved in  
8 litigation. That is not a situation where a complaint has  
9 been filed and then they go out and make extrajudicial  
10 statements about that. In fact, all of the caselaw, all of  
11 it, says that if you do that that it takes it completely out  
12 of the realm.

13 Look, for example, at the Rothman case, and this is  
14 the very point I wanted to make. In the Rothman case they  
15 said, lookit, if you file a complaint or whatever it is in a  
16 court of law, that is absolutely, totally, and completely  
17 privileged, but if you then go out and repeat the same  
18 allegations in an extrajudicial statement, you're on your own.

19 THE COURT: Not according to the Nevada Supreme  
20 Court in this VESI case, because this was pre litigation.

21 MR. CAMPBELL: Your Honor, that's fine if it's pre  
22 litigation. But the point of it is -- what VESI is relying on  
23 and all these cases are relying upon is the Restatement. And  
24 the Restatement basically says, lookit, if it's incidental to  
25 impending, that's also covered. But what they're talking

1 about is attorneys engaging in this essentially. They extend  
2 it to the actual parties there because it's extremely limited.

3 That's not what we have here, Your Honor. We have  
4 something completely different. And every single case that  
5 has been cited to the Court on this in which the individual  
6 made extrajudicial statements, every single one, including the  
7 Oprah Winfrey case which was decided by the Seventh Circuit  
8 Court of Appeals and is directly on point, she said after the  
9 complaint was filed, it's a pack of lies and he's a liar and  
10 I'm going to fight it and I'm not paying him a penny. The  
11 Seventh Circuit Court of Appeals said, that is not privileged,  
12 that is absolutely subject to a cause of action and it should  
13 not have been dismissed by the court.

14 It's exactly the situation that we have here,  
15 precisely the situation we have here. The situation that we  
16 have here is not lawyers or the principals exchanging letters  
17 in a very modest, discrete, confined way. What you have here  
18 is something far different, Mr. Adelson going to an award-  
19 winning journalist from the Wall Street Journal, saying that  
20 my client is a liar and that he was fired for cause. And both  
21 of those, both of those have been held by the court -- those  
22 claims of liar and fired for cause, both of them have been  
23 held to be defamatory, absolutely defamatory.

24 And let me raise something with respect to that  
25 particular issue, all right. So we don't have this very, very

1 confined -- this very, very confined setting. They cited a  
2 case in the reply, and I think it was Mr. Morris. But Mr.  
3 Peek also made this statement, and the statement was, you  
4 haven't cited any case which says that this reply that's being  
5 made to a statement that's been made in a pleading has to be  
6 exactly the same. In other words, our position is, wait a  
7 second, you weren't a lawyer, Mr. Adelson, you weren't a party  
8 in this case at that point personally, you weren't even a  
9 witness in the case. Protection occurs in and only in the  
10 courtroom or the quasi judicial proceeding. That is the  
11 teaching of Rothman and Green Acres. That's exactly what it  
12 is. That's exactly what the law holds.

13           So when he goes outside the courtroom and he says,  
14 I'm just replying, the courts say, nonsense, that's not at all  
15 what you're doing, Mr. Adelson, not at all what you're doing.

16           When you're dealing with discrete and conditionally  
17 privileged, conditionally privileged defense --

18           THE COURT: I understand the difference between the  
19 privilege issues.

20           MR. CAMPBELL: Okay. When you're dealing with the  
21 conditional privilege of reply it has to be in the same forum.  
22 It has to be in the same forum. And you don't have to believe  
23 me for this. Look at -- look at this case that they cited,  
24 this Foretich case. Here it is. It's at the bottom of --  
25 Foretich is 37 F.3d 1541. At the bottom of the page 1563 it

1 says, "The counterattack must be made primarily in the forum  
2 selected by the original attacker." I don't quibble with the  
3 suggestion that if my client went out and was talking to Ms.  
4 Berzon outside the courtroom and saying these things that Mr.  
5 Adelson would have been entitled to say, no, I disagree,  
6 that's a lie. He would have been entitled to do that if Mr.  
7 -- if that was what Mr. Jacobs did. Mr. Jacobs didn't do  
8 that. Mr. Jacobs did not do that. Mr. Jacobs hasn't said  
9 anything to the press other than they asked him what he  
10 thought, he said he had no comment, that he was looking  
11 forward to his trial. Nothing else, okay.

12 What they're saying is, lookit, he put this in a  
13 publicly filed complaint and he went overboard. Mr. Morris is  
14 right. This isn't my first rodeo on retaliatory discharge.  
15 On retaliatory discharge --

16 THE COURT: We all knew that Mr. Campbell.

17 MR. CAMPBELL: I beg your --

18 THE COURT: We all knew it wasn't your first rodeo.

19 MR. CAMPBELL: But on retaliatory discharge. As the  
20 Court knows, I represent a lot of executives, there've been a  
21 lot of decisions that have dealt with retaliatory discharge.  
22 I know what those decisions are, and there's an awful lot of  
23 decisions dealing with when you're dealing with retaliatory  
24 discharge in the public policy setting. When you're saying, I  
25 was fired as retaliatory discharge, in the public policy

1 setting you must plead with particularity. If we didn't put  
2 everything down in there, Mr. Morris, being the very fine  
3 lawyer that he is, would be storming in here saying, dismiss  
4 this. And I can give you multiple cites to cases on that,  
5 because I've had to deal with him in other cases where they  
6 said I didn't plead with particularity.

7           So let's also deal now and continuing on with the  
8 absolute privilege, with exactly what the holding of Clemens  
9 was, the precise same factual setting. What the court said  
10 there is with respect to the allegation that was made by  
11 Clemens and Mr. Hardin, who, incidentally, used to be Mr.  
12 Adelson's lawyer in another case that we had against him, Mr.  
13 Hardin called Mr. Clemens's trainer, McNamee, a liar. Mr.  
14 Clemens also went on "60 Minutes" and said, it's all lies,  
15 he's lying. And the court said, too bad, yes, you had this  
16 does underway, yes indeed there had been appearances before  
17 Congress, doesn't make a difference, that's not where this  
18 took place, you went out of your way to impugn him and he's  
19 entitled to sue you for it. And it's a long and exhaustive  
20 opinion, and I won't go all the way there.

21           But if you read the Green Acres case, a case cited  
22 by them, which in fact was -- the original case cite by them  
23 was reversed, and there's no other way of putting it kindly,  
24 that case was reversed and they said just the opposite of what  
25 Mr. Adelson said the case stood for. If you look at Rothman,

1 a case cited by Sands China as controlling, okay, that, too,  
2 is exactly the opposite. And they make the very point in  
3 there, lookit, if you're talking to the press, too bad, all  
4 bets are off.

5 Now, let me -- let me cite one thing, if I could,  
6 Your Honor, on that point before I move to conditional  
7 privileges. In Rothman, "An analysis of the policies --" and  
8 this is at -- this is at 1146. "An analysis of the policies  
9 which underline the litigation privilege compels our  
10 conclusion that similarity or even identity of subject matter  
11 is not connection or logical relation between litigation and  
12 communication, which is alone sufficient to trigger the  
13 litigation privilege." It goes on to say, "The litigation  
14 privilege exists so that persons who have been harmed or have  
15 other grievances calling for redress through the judicial  
16 process can and will use the judicial process, the courts,  
17 rather than self help," as Mr. Adelson did, "to obtain relief.  
18 The privilege thus affords its extraordinary protection to the  
19 uninhibited airing, discussion, and resolution of disputes,"  
20 and these words are in bold italics of the court, "**and only in**  
21 **judicial or quasi judicial arenas.**" Public mud slinging,  
22 while a less physically destructive form of self help than a  
23 public brawl, is nevertheless one of the kinds of unregulated  
24 and harmful feuding that the courts and their process exist to  
25 prevent. It would be counterproductive to afford it the same

1 protections."

2 Accordingly, when an individual goes out, the court  
3 held, you are on your own, you take the risk that you're going  
4 to be sued for those statement.

5 Now, moving to the issue of conditional privilege,  
6 in speaking about conditional privileges, Your Honor, you'll  
7 see that -- and I'll make it fast on this point -- you'll see  
8 it's all fact driven and that universally the courts --

9 THE COURT: I agree. Conditional privilege is fact  
10 driven.

11 MR. CAMPBELL: It's all fact driven. So, you know,  
12 I'm really not going to get into all that. But there's one  
13 thing that has been cited in the Del Papa case, it's actually  
14 State versus --

15 THE COURT: And that's the Anzalone case.

16 MR. CAMPBELL: Yeah. It's State versus Eighth  
17 Judicial District Court.

18 THE COURT: It's the Attorney General firing their  
19 investigator case.

20 MR. CAMPBELL: Yeah. It's Frankie Sue Del Papa and  
21 one of her investigators, a guy by the name of Anzalone. And  
22 in Mr. Adelson's reply he states as follows. He -- and we'll  
23 get to this with respect to the issue of opinion, that this  
24 was just opinion. They've mixed apples and oranges there.  
25 There were multiple defendants in that case, multiple

1 defendants. It was Frankie Sue Del Papa, it was two of her  
2 senior deputies, and it was another investigator. And Mr.  
3 Adelson in his reply says that in State versus Eighth Judicial  
4 District Court there the court, quote, "issued a finding that  
5 a statement which reflected negatively on plaintiff's  
6 character, professional integrity, and honesty," end quote,  
7 was a statement of opinion. That is not what the court said  
8 there. He said that in his reply at page 9, lines 7 to 8.  
9 That is wholly incorrect.

10 If you look at the case, specifically 42 P.3d at  
11 page 240, what they're talking about is yet another defendant.  
12 It was J. T. Healy who was the investigator. And the court is  
13 grappling with the claim on the investigator, not Ms. Del  
14 Papa. And what they say there is that, "Anzalone says that  
15 his -- the statement by Healy reflected negatively on the  
16 plaintiff's character, professional integrity, and honesty.  
17 That was Anzalone's claim. That's not what the court said.  
18 And parenthetically, what the statement that Healy said was, I  
19 think the investigation that Anzalone conducted was crappy.  
20 And the court rightly said, that's an opinion, that's entirely  
21 absolutely protected, that's an opinion. So their citation in  
22 that regard is wrong.

23 Now, they also -- and we've also talked about the  
24 Lubin case in both of our pleadings. And, as Her Honor  
25 pointed out, the falsity of the statements in question in

1 Lubin were not subject to dismissal at the stage of 12(b)(5).  
2 So, Your Honor, I'm not going to go any further if that's the  
3 Court's position, as well, and the Court is abiding by it.

4           They also said something else. "A statement that is  
5 capable of defamatory construction is not actionable if the  
6 communication is privileged. We observe, however, that  
7 privileges are defenses to a defamation claim and therefore  
8 the defendant has the initial burden of properly alleging the  
9 privilege and then proving the allegations at trial."

10           Now, there has also been a schizophrenia of sorts  
11 between what they're claiming -- and this is even more reason  
12 why we want to take some depositions in this case. Mr. Morris  
13 says this press release that was issued by Sheldon Adelson,  
14 the chairman of the board of Las Vegas Sands Corporation, was  
15 issued because --

16           MR. PEEK: Could you direct your comments to the  
17 Judge.

18           MR. CAMPBELL: -- what had been said had been put in  
19 a pleading and Mr. Adelson was responding to it. Mr. Peek  
20 says something completely different.

21           MR. PEEK: Address your remarks to her, please.

22           MR. CAMPBELL: I am addressing them -- Mr. Peek says  
23 something completely different. Mr. Peek says --

24           THE COURT: Don't point at -- don't point at Mr.  
25 Peek. It makes him get riled up, and then we have trouble.

1           MR. CAMPBELL: I don't want to get him emotional.  
2           Mr. Peek says something different. He says the  
3 reason, okay, that this was done was something far different.  
4 And he says, you know, what we're dealing here with is a  
5 republication of what was said in the courtroom by Ms. Glaser,  
6 that's what Mr. Adelson was doing, he was republishing and  
7 that's privileged. Well, Mr. Peek, respectfully, has cited  
8 something that's not privileged, there's no such thing as  
9 republication privilege. I think what he's trying to say is  
10 that there -- it was a fair report privilege. But he's never  
11 pled that. He raises that for the first time in his reply.  
12 And, by the way, it doesn't apply in this particular setting,  
13 because Mr. Adelson wasn't saying, lookit, you know, I'm  
14 dealing here with a specific event that took place in court  
15 and I'm commenting on it and that's what I'm doing here. He  
16 doesn't say any of that. So none of that even applies.  
17           But it's interesting that Las Vegas Sands is saying  
18 one thing and Mr. Adelson is saying something exactly the  
19 opposite. And Mr. Adelson, no matter how they try to paint  
20 this, has made this an extrajudicial statement in response  
21 supposedly to things that were happening in a courtroom.  
22 Every single case that has been cited says that that is not  
23 privileged.  
24           Now, to sum up, Your Honor, I'd like to make a few  
25 observations. They've cited a case and relied upon it heavily

1 that was reversed. They then cited another case, Rothman, for  
2 a proposition of law that was not the proposition of law for  
3 which it stood. It stood for just the opposite. They also  
4 said that we didn't properly plead because we didn't put in  
5 our pleading that the statement was unprivileged. We did in  
6 fact say exactly that. There's a whole paragraph where we  
7 said this statement by Mr. Adelson was unprivileged, and we  
8 cited it to the Court. So, you know, that's three strikes  
9 right there.

10 And with respect to this commentary that this is  
11 merely ornamental, this claim of defamation is merely  
12 ornamental, it is not merely ornamental. It's his life. He's  
13 an executive who has been harmed as being fired for cause.  
14 Mr. Adelson went out and said, I fired him for cause and  
15 there's lots of reasons for that. We've cited cases that have  
16 held just that exact statement, there are reasons that we did  
17 this, as saying that's defamatory, in and of itself, that's  
18 defamatory, and he's a liar, we have cited case after case  
19 after case, including the Oprah Winfrey and the Clemens case  
20 that says the same thing. The Pease case, all of these cases,  
21 when you say that extrajudicially, that is not privileged.

22 And while it's not my first rodeo on these issues,  
23 neither is it Mr. Adelson's first rodeo when it comes to  
24 defamation. Mr. Adelson knows exactly what he's doing and  
25 what he thinks he can get away with. He can't get away with

1 what he did here. When he -- and there's a demonstration of  
2 it. He thinks he knows, but he doesn't know. Mr. Adelson has  
3 had a long and rich and sordid history of suing individuals  
4 for defamation in this district, and you can take judicial  
5 notice of that fact.

6 THE COURT: I'm not going to, though.

7 MR. CAMPBELL: But that's -- but this is an issue  
8 that's certainly, that's certainly, Your Honor, going to be --  
9 going to be something that you should take notice of,  
10 particularly when we're dealing with an individual here that  
11 he's saying one thing, the counsels are saying another thing,  
12 and he's engaged in this process extrajudicially. So our  
13 point is this, Your Honor. Our point is that Mr. Adelson went  
14 ahead and made these statements to the Wall Street Journal,  
15 and they weren't a reply to anything. Nothing. The proper  
16 way to reply to what is in a complaint -- if that's the reason  
17 he did it, the proper way to reply to a complaint is with an  
18 answer. And if he didn't like the complaint because it was  
19 pled with particularity as is required by the courts, too bad.  
20 Then he shouldn't have fired him, and he shouldn't have  
21 engaged in the illegal conduct which resulted in my client  
22 being forced to say that he wouldn't do it.

23 So that's the bottom line in the case, Your Honor.  
24 I'm happy to address any other issues that the Court may  
25 believe are germane at this point. But, Your Honor, this is

1 something that should certainly all be flushed out in  
2 depositions and discovery, because there's a lot more here  
3 than meets the eye.

4 THE COURT: Thank you, Mr. Campbell.

5 Paragraph 62 of the amended complaint is the basis  
6 for the fifth cause of action which cites to only one  
7 statement alleged to be defamatory, the statement we've been  
8 speaking about to the Wall Street Journal. The circumstances  
9 of that statement made by Mr. Adelson are not one in which  
10 there are factual issues. As I have indicated, there is a  
11 single statement, which leads the Court to believe that this  
12 particular statement is absolutely privileged as it relates to  
13 the litigation, and under the decision made by the Nevada  
14 Supreme Court in Clark County School District versus Virtual  
15 Education Software, Inc., which we've referred to today on the  
16 record as VESI, would provide for the Court making a legal  
17 determination as to the application of the privilege, and for  
18 purposes of this single statement that has been briefed today  
19 the Court grants the motion to dismiss.

20 Anybody want this certified?

21 MR. WILLIAMS: We would, Your Honor.

22 THE COURT: Mr. Morris, any objection to 54(b)  
23 certification in the -- getting you out of the case?

24 MR. MORRIS: I think it's completely unnecessary.  
25 This is a motion to dismiss.

1 THE COURT: But your guy's now all gone. Mr.  
2 Adelson as a party is totally out of this case as an  
3 individual, because that's the only claim for relief he was  
4 in.

5 MR. MORRIS: And you've dismissed -- you've  
6 dismissed this fifth claim.

7 THE COURT: As to all of you and as to Mr. Adelson  
8 only it would appear appropriate for me to certify it --

9 MR. PEEK: Oh. Okay.

10 THE COURT: -- even under the new 54(b) standard.

11 MR. MORRIS: You can. You can. I have no objection  
12 to that.

13 THE COURT: Okay.

14 MR. PEEK: So this is just as to Mr. Adelson?

15 THE COURT: Well, he's the only party who's been  
16 totally resolved.

17 MS. GLASER: Correct.

18 MR. PEEK: Correct.

19 THE COURT: All the rest of you are stuck with me  
20 for a while.

21 MR. PEEK: I just want to make sure, because it's  
22 also been dismissed as to Ms. Glaser's --

23 THE COURT: Well, but as to Mr. Adelson it appears  
24 clearly appropriate for 54(b) certification --

25 MR. MORRIS: Yes, Your Honor.

1           THE COURT:  -- which will get the issue you want in  
2 front of the Nevada Supreme Court.  If they decide to  
3 entertain it, that's a different issue.

4           All right.  If I can go to the rest of the motion to  
5 dismiss that Ms. Glaser filed, and if I could first go to the  
6 request for judicial notice.  I typically do not take judicial  
7 notice of anything that is not already in this court or  
8 another court's file.  For that reason I am going to decline  
9 to take judicial notice of Exhibit H of your proposed  
10 documents, which is a newspaper article.  The others were  
11 previously attached as exhibits to other pleadings or are  
12 pleadings or transcripts themselves, so they're fair game.

13           MS. GLASER:  Thank you, Your Honor.  I will note,  
14 and it's minor, there was no objection to the request for  
15 judicial notice.  But I take -- I heard Your Honor very  
16 clearly.

17           THE COURT:  I have paranoia about it.

18           MS. GLASER:  Your Honor, what I did was -- and I  
19 have extra copies, small copies if it -- because I'm not sure  
20 Your Honor can read this.

21           THE COURT:  I can read it, but, if you'd like,  
22 please give a copy to everybody.  I'll mark it as a Court's  
23 exhibit.  If anybody feels like they need to move to see the  
24 big boards, please feel free to do so, unless, of course,  
25 you're in the gallery, in which case you're stuck.

1 MS. GLASER: Thank you, Your Honor.

2 THE COURT: Do you want me to mark it as a Court's  
3 exhibit?

4 MS. GLASER: I do, Your Honor.

5 THE COURT: If you have an extra copy, I will. Is  
6 it a two-page, or one page?

7 MS. GLASER: It's two pages, Your Honor. This is  
8 the first, and there's a second.

9 THE COURT: Mark those as Court's Exhibit 1 and 2.  
10 The longer one is 1, the shorter one is 2.

11 Okay. You may proceed.

12 MS. GLASER: Okay. Your Honor, thank you. And let  
13 me address this, because this is the motion to dismiss the  
14 second claim for breach of contract against Sands China, and  
15 we believe it should be granted, and we think there's plenty  
16 of authority, both factual in terms of what the Court can take  
17 judicial notice of and what the complaint says and what has  
18 been acknowledged by all the parties, including plaintiff.

19 Let me start. The plain and unambiguous language of  
20 the only contract Mr. Jacobs alleges is with Sands China,  
21 Limited, is the stock option grant letter. I've referred to  
22 it as SOGL. And it provides that unvested options are  
23 extinguished upon termination for any reason, cause, no cause.  
24 And that's unequivocal and unambiguous.

25 Now, what do I have for that? I have the SOGL,

1 appendix to subsection 2.1(2)(i). Quote, "If the grantee's  
2 employment with the company and its subsidiaries is terminated  
3 for any reason, including for cause, the unvested portion of  
4 the option shall expire on the date of termination." There is  
5 -- it's undisputed, it's alleged by plaintiff that he was  
6 terminated -- Mr. Jacobs was terminated in July of 2010 and no  
7 options by the terms of this agreement had vested under  
8 anybody's theory, and everyone acknowledges that. He is suing  
9 separately in the terms sheet for the options that are listed  
10 there. He got some of them under the terms sheet. He  
11 acknowledges that. And he says, you know what, there were  
12 250,000 more options in the terms sheet with Las Vegas Sands  
13 that need to be moved up so I can exercise those 250,000  
14 options. So it's completely disingenuous to suggest, oh, wait  
15 a minute, the terms sheet was referring to those -- you know,  
16 they're going to be converted when there was an IPO. He's  
17 claiming both all of the options under the terms sheet from  
18 Las Vegas Sands and two and a half million options from China,  
19 Sands China, in a completely separate document that comes  
20 literally months, almost a year after the terms sheet that he  
21 says is enforceable against Las Vegas Sands.

22 Now, there is no reference, of course, to the terms  
23 sheet in the SOGL. And that's Exhibit B to the request for  
24 judicial notice, Your Honor. Then we go to another port of  
25 authority, when a single transaction is evidenced by multiple

1 writings, which is what his contention is, seems to be his  
2 argument. Hong Kong courts -- and I -- you know, Your Honor,  
3 we sort of warned you about this before.

4 THE COURT: It's not my first case where we've had  
5 experts on foreign law have to come in. Mr. Peek knows how to  
6 do it.

7 MS. GLASER: And we did provide Your Honor copies of  
8 everything we relied on, and, of course, to the other side.  
9 Hong Kong courts will interpret those documents consistently  
10 unless this would result in a breach of the terms of the  
11 documents. And that's the HSH Nord Bank case that we cited,  
12 2009 Hong Kong case.

13 Lastly on this point, in Nevada the interpretation  
14 and construction of contractual terms is a question of law  
15 that can be and, based on the law as we understand it, should  
16 be determined by the Court at a motion to dismiss stage.

17 Now, the Court in our view is both entitled and  
18 required to interpret claim and unambiguous language of the  
19 alleged agreement at this stage. The plain -- our second  
20 point, the plain and unambiguous language of the SOGL requires  
21 Jacobs to sign and return it within 28 days. And you say to  
22 yourself, oh, come on, what's the big deal. Well, I'll tell  
23 you what the big deal is. The first amended complaint doesn't  
24 and cannot allege that he did so, and until that offer is  
25 accepted it may be rescinded at any time. How do we know

1 that? We gave you authority for that, Your Honor, Hong Kong  
2 authority, which is also Hong Kong authority that in itself is  
3 clear and unambiguous. If you don't accept within 28 days,  
4 you are deemed to have declined it. And I'm going to just  
5 porch the language here. Subsection (5), if you wish to  
6 accept this offer of the option, you're supposed to sign it,  
7 pay a dollar -- we're not focusing on the dollar, Your Honor  
8 -- to a specific individual of the company within 28 days of  
9 the date, and if you don't receive that acceptance within  
10 28 days, it's gone. And the language is clear and  
11 unambiguous.

12           Now, if it's not enough, in their opposition to Las  
13 Vegas Sands's motion to add an indispensable party that we  
14 were talking about that hearing a few minutes ago, Your Honor,  
15 in another context, that was on March 15, 2011. And if you go  
16 -- if Your Honor has a chance to go to pages 26 to 37 of the  
17 transcript, which we were able to order, over and over and  
18 over again that terms sheet Mr. Campbell describes is with Las  
19 Vegas Sands. He says it over and over and over again. I  
20 won't even go to something which arguably is extrajudicial.  
21 When Mr. Campbell first made his claim on September 24, 2010,  
22 to Las Vegas Sands he actually says in that letter, that claim  
23 his deal, the terms sheet is -- again, not only does he say it  
24 in the complaint, not only does he say it in his initial  
25 disclosures which are before the Court, not only does he say

1 it in this court on March 15, when he starts this action he  
2 acknowledges, my fight, my terms sheet is with Las Vegas  
3 Sands. He does not say Sands China. He couldn't. Sands  
4 China hadn't even gone public by then. Sands China wasn't in  
5 existence then.

6 Let me go to my next point, if I might, Your Honor.  
7 And that's the second board. There are arguments that have  
8 been raised by the other side, and I wanted to address those  
9 directly. Which is slightly smaller print. I hope the Court  
10 can still see it.

11 Mr. Jacobs has several arguments. He argues that  
12 the terms sheet governs the rights and obligations of SCL  
13 under stock option agreement. Well, you say to yourself, wait  
14 a minute, there isn't even a reference to the terms sheet in  
15 the stock option grant letter. Sands China is not a party to  
16 the terms sheet. Everybody acknowledges that. And it's only  
17 a party to the stock option agreement. The stock option grant  
18 letter again contains no language that adopts or incorporates  
19 any provisions of the terms sheet. Mr. Jacobs argues that his  
20 allegation -- and this is a little odd, but I think it's just  
21 an apples and oranges confusion. He argues in his allegation  
22 that he performed all the contractual obligations under the  
23 SOGL -- that's in paragraph 46 of the first amended complaint  
24 -- alleges acceptance. Respectfully, Your Honor, so what?  
25 This isn't -- this isn't anything other -- what he alleges is,

1 I performed everything I was supposed to perform except what I  
2 was prevented from performing. Not an unusual provision. The  
3 problem is this goes to contract formation. This does not go  
4 to whether or not he performed everything he was supposed to  
5 perform under the contract and therefore I breached. We're  
6 not there. We never get to that step. We never get over this  
7 big bass canyon called offer and acceptance whether there's a  
8 contract or not.

9 Now, what we do is we tell you in I think no  
10 uncertain terms that we cite to Hong Kong law which stands for  
11 the propositions we articulated in our briefs. The terms  
12 sheet -- and I -- to say it to you once again, the terms sheet  
13 has 500,000 options it references, some of which he  
14 acknowledges he already received. They were not converted at  
15 the time of the IPO. Everybody concedes that. He's suing for  
16 all the options in the terms sheet plus and separately two and  
17 a half million options under the SOGL.

18 Now, he cites to paragraph 8.1, if I might, of the  
19 -- it's Exhibit B to your -- to the request for judicial  
20 notice. 8.1 says, "The grant of options and these terms and  
21 conditions shall not form part of any contract of employment  
22 between the Company or any subsidiary and any employee and the  
23 rights and obligations of any employee under the terms of this  
24 office or employment shall not be affected thereby."

25 Your Honor, the first sentence of 8.1 provides that

1 the stock option grant letter will not affect the terms of any  
2 contract of employment, quote, "between the Company," capital  
3 C, "or any subsidiary and any employee." The company is  
4 defined in the same document in the notice of exercise portion  
5 of the stock option grant letter as Sands China. By its terms  
6 8.1 refers only to employment agreements with Sands China and  
7 subsidiaries of Sands China. It goes without saying that Las  
8 Vegas Sands is not a subsidiary of Sands China. Contrary to  
9 what Mr. Jacobs suggests, therefore, the terms sheet between  
10 Jacobs and Las Vegas Sands is not referenced, and you can't  
11 make up a phony argument to suggest it is in 8.1.

12 At paragraph 47 of the first amended complaint  
13 that's the only reference to any contract breached by Sands  
14 China, and that's a reference to the stock option grant  
15 letter. In short, the first amended complaint does not allege  
16 any other contract, including any employment agreement,  
17 between Mr. Jacobs and Sands China.

18 Now, Mr. Jacobs says -- talked about how he  
19 performed all the contractual obligations under the SOGL.  
20 Again I say to you he confuses, and I say it respectfully,  
21 acceptance with performance. Without acceptance there is no  
22 contract.

23 Now, we then cite to you an enforceable contract  
24 must include a valid offer and acceptance. We cite to you  
25 Chitty on Contracts, which is the thirtieth edition, 2008.

1 And the acceptance must be in writing, and we cite to you the  
2 Yates Building case, which is again a 1976 case under Hong  
3 Kong law. And we also cite to you the stock option grant  
4 letter subsection (5), which requires it to be in writing.

5 Pursuant to Hong Kong law an offer may be terminated  
6 at any time. And that's the Payne versus Kay case. I  
7 apologize. It is a 1789 case, Your Honor, and I rarely go  
8 back one century, much less more than one century, to find  
9 authority. This is the prevailing authority in Hong Kong, and  
10 it's unequivocal. And in that case the facts were actually  
11 somewhat similar. He's essentially alleging, well, wait a  
12 minute, you terminated me before the 28 days was up, how could  
13 I possibly have done anything, how could I possibly have  
14 exercised it, my time wasn't up. And the response is, and  
15 Payne teaches us this, so what, it's an offer that can be  
16 rescinded at any time. That offer has no consideration until  
17 it's accepted. It was never accepted. He acknowledges it  
18 wasn't accepted.

19 Mr. Jacobs then argues, wait a minute, I was  
20 wrongfully terminated so I'm allowed to seek damages for the  
21 loss of the option to purchase the stock of Sands China. And  
22 I think, and again I say this respectfully, he seems to rely  
23 on a bunch of -- I say irrelevant, and I'm not being flippant,  
24 has nothing to do with this case. Hong Kong law applies  
25 pursuant to the SOGL. Its terms state SOGL, Hong Kong law

1 applies.

2           The irrelevant American cases on which Jacobs  
3 relies, however, if you want to look at American law, each  
4 provide that an employment contract with the entity granting  
5 the option is a prerequisite for this argument. In other  
6 words, most of those -- I think all those cases -- I can -- I  
7 could even give you some of them, Your Honor. One of them was  
8 a Knox case, another one was a Morschbach case. Morschbach  
9 was particularly interesting. But those cases, and those are  
10 just examples, are cases where you had an employment agreement  
11 that one of the provisions of the employment agreement was  
12 stock options were granted. That's not here. There's no  
13 employment agreement alleged with Sands China. Sands China  
14 does not belong in this lawsuit. The only reason it's here is  
15 because of the stock option grant letter, and that doesn't  
16 belong here, either, Your Honor. There is not any reason not  
17 to dismiss the motion.

18           Now, I just want to speak for a second about the  
19 Morschbach case. That's a 2002 case, and we cited that to  
20 Your Honor. There the plaintiff was a CEO of a defendant's  
21 subsidiary through a merger, her employment agreement with the  
22 parent. The claim was entitled to -- the claim is he was  
23 entitled to exercise options to purchase the subsidiary's  
24 stock after the merger which caused his wrongful termination.  
25 The court found the subsidiary's stock option agreement in

1 plan governed which had express clauses that there was no  
2 right to purchase once the employment ceased. Quote, "The  
3 stock option agreements are stand-alone grants which do not  
4 tie into any other contract." By its terms the stock option  
5 grant letter is a stand-alone agreement that does not tie into  
6 anything else, Your Honor. And the motion to dismiss should  
7 be granted.

8 I'm glad to answer any other questions the Court may  
9 have.

10 THE COURT: Thank you.

11 Mr. Williams.

12 MR. WILLIAMS: Yes, Your Honor.

13 We can leave these up, because I think they'll be  
14 helpful. I appreciate the review of basically what's been in  
15 the briefs. And I know Your Honor has read them, so I'll try  
16 to focus my statements on some of the new issues that have  
17 been touched on, or the inaccuracies that have just been  
18 presented to the Court.

19 First of all, back to the first board, obviously,  
20 Your Honor, we're here on a motion to dismiss. I don't need  
21 to rehash what those standards are. Your Honor's very well  
22 versed in them. And I think the defendants recognize that  
23 we're here on that, so they make this statement to you. They  
24 come down here and they say, "In Nevada interpretation of and  
25 construction of contractual terms is a question of law that

1 can be determined in a 12(b)(5) motion to dismiss." And they  
2 cite for that NGA #2 LLC versus Rains. Now, if you read NGA 2  
3 LLC versus Rains, that is a case dealing with summary  
4 judgment. It is not a motion to dismiss at all. And in fact  
5 the Nevada Supreme Court reversed the case because there were  
6 questions of fact that existed.

7           The same is true -- they cited -- it's not on this  
8 board, but they cited the Angooey [phonetic] case for the same  
9 proposition. Same thing, Your Honor. It, too, was summary  
10 judgment. None of the cases that they have cited to you are  
11 motion to dismiss cases.

12           So, having gotten that out of the way, let's talk  
13 about this issue of Mr. Jacobs's alleged nonacceptance of the  
14 stock option grant letter. We've alleged in the second cause  
15 of action that there is a contract, that the contract was  
16 breached. Your Honor, I submit for purposes of this motion  
17 that's sufficient. We don't need to come in and present  
18 evidence of how he accepted it, when he accepted it, or any of  
19 that. We don't need to do it at this stage. If we did,  
20 however, Your Honor, I could present to you evidence from  
21 Sands China's public filings wherein they are telling the  
22 public that Mr. Jacobs had 2.5 million stock options in the  
23 company. And what they state is that those options lapsed,  
24 not because he didn't accept them, but because he was  
25 terminated. So they are representing to the public that he

1 had the options, in other words, he accepted them. So this  
2 whole issue in my opinion is a red herring, Your Honor.

3 The Hong Kong cases they cite inaccurately described  
4 by Ms. Glaser, respectively, the Payne case was dealing with  
5 an auction. The bidder bid a certain amount, and the  
6 auctioneer required him to accept certain additional  
7 obligations as part of that bid. He said, I'm not doing it;  
8 and they said, okay, you're not obligated on that bid.

9 The Dixon v. Dodds case is the other Hong Kong case  
10 they cited, and I think that's the one she was actually  
11 reciting the facts for. And in that case it is true the Hong  
12 Kong court stated that an offer that is held to be open for a  
13 specified period of time can be withdrawn prior to that time  
14 by the offeror. But what would that -- so I take it what  
15 they're saying is that's essentially what we did here with  
16 Jacobs. But, Your Honor, what would that require? That would  
17 require evidence. There's no evidence in the record that they  
18 withdrew this offer. If that's their position, then they're  
19 going to have to prove that. And we're entitled to get into  
20 discovery to go over that. So I think the issue of acceptance  
21 is a non issue.

22 Now, as I just touched on, the other three cases  
23 that they've cited with respect to contract interpretation  
24 being a question of law, the two Nevada cases were summary  
25 judgment cases reversed on appeal because genuine issues of

1 fact existed. The other one was the Morschbach case which Ms.  
2 Glaser referenced at the end of her presentation. That was  
3 cited by them in response to our position that the terms sheet  
4 and the stock option grant letter should be construed  
5 together. And, as the Court knows, we've cited a number of  
6 cases saying that whether two documents are to be construed  
7 together is a question of fact.

8 In Morschbach the court -- again, this is summary  
9 judgment, Your Honor. It was not a motion to dismiss. In  
10 Morschbach the court found that the plaintiff's employment  
11 contract and the stock option agreements were stand alone  
12 because the employment agreement never referenced the issue of  
13 stock options at all. And, as Your Honor knows, that is not  
14 what we have here. The terms sheet expressly references stock  
15 options and contemplates that Mr. Jacobs is going to be  
16 getting stock options not just in Las Vegas Sands, but in  
17 Sands China. So we would submit that Morschbach is certainly  
18 distinguishable on that basis.

19 Now, Your Honor, a couple of other comments that  
20 were made was that Sands China was not in existence at the  
21 time of the terms sheet, didn't go public, and then was -- the  
22 statement was amplified on to say it wasn't in existence.  
23 Your Honor, if you go back to their motion to dismiss based on  
24 jurisdiction, and I'm talking about Sands China's, the  
25 lawyers', they state that Sands China was formed on July 15th,

1 2009. The terms sheet is in early August 2009. So it  
2 absolutely was in existence. I don't know if they just forgot  
3 that they put that in their brief or if they aren't familiar  
4 with the corporate formation history, but that's the state of  
5 facts on that.

6 Ms. Glaser also said we acknowledge that the terms  
7 sheet -- or that the stock option agreement was never  
8 accepted. That is not what we say, Your Honor. We went  
9 through and presented an example with respect to his ability  
10 -- his potential inability to have accepted or performed  
11 because he was terminated before the expiration period lapsed.  
12 But we're not saying he didn't accept it. We're saying he  
13 did. And we'll get into discovery and we'll establish that.

14 So, Your Honor, I don't want to rehash everything  
15 else that's in the briefs. I know you've read everything.  
16 But I'm happy to answer any other questions you have on it.

17 THE COURT: I don't have any.

18 Because this is a motion to dismiss, the Court  
19 cannot make the determination that is being requested of it  
20 today. This is an issue that, if you believe appropriate,  
21 should be renewed on a motion for summary judgment. At this  
22 point the allegations that have been made have to be taken by  
23 the Court as true. And while I will make a legal  
24 determination about the scope and interpretation of the  
25 contract provisions, I'm not going to do it at the motion to

1 dismiss stage.

2 MR. WILLIAMS: Thank you, Your Honor.

3 THE COURT: Thank you for including the foreign  
4 authorities. It's helpful, since there's no other way for me  
5 to access Hong Kong law.

6 MS. GLASER: Your Honor, I have two questions, if I  
7 might.

8 THE COURT: Yep.

9 MS. GLASER: One is I need to understand one thing,  
10 and if the Court would enlighten me.

11 THE COURT: Sure.

12 MS. GLASER: And if the Court doesn't choose to,  
13 it's fine, too. One is may we make a motion for summary  
14 adjudication now --

15 THE COURT: Yes.

16 MS. GLASER: -- and avoid the discovery? Because it  
17 is a -- it's in our view senseless.

18 THE COURT: File your motion for summary judgment.  
19 There's a different standard that applies on a motion for  
20 summary judgment. So file it, characterize it as a motion for  
21 summary judgment, they'll do what they're going to do, which  
22 may include some issues related to some other stuff, and then  
23 we'll talk about it.

24 MS. GLASER: Second issue, if I might. Thank you.  
25 I appreciate it. That's -- I needed that guidance.

1           The second issue is we -- and I don't know if the  
2 Court wants to hear about this, but we have some not disputes,  
3 we're all working together --

4           THE COURT: How about before you go to those I hear  
5 the other case that's still waiting. You guys make sure all  
6 of you know what the issue is you want to talk to me about,  
7 and unless somebody objects, I'd be happy to talk to you about  
8 it. But I want to get those other folks out of here.

9           MS. GLASER: Thank you, Your Honor.

10          (Court recessed at 11:27 a.m., until 11:34 a.m.)

11          THE COURT: Mr. Morris, you're the one who's  
12 preparing the order on the defamation motion.

13          MR. MORRIS: Yes, I will, Your Honor.

14          THE COURT: And send it over to everybody to look  
15 at.

16          MR. MORRIS: Circulate it? Certainly I will.

17          THE COURT: Please.

18          MR. CAMPBELL: Your Honor, and I presume it's just  
19 basically going to reiterate what was in --

20          THE COURT: One would hope.

21          MR. CAMPBELL: -- the statement that the Court made.

22          THE COURT: I've found there's an absolute  
23 privilege, no factual issues related to the nature of the  
24 statement, motion granted, go up to the Supreme Court.

25          MR. CAMPBELL: On the basis of the VESI case.

1 THE COURT: Absolute privilege.  
2 MR. PEEK: You didn't need to get to the reply  
3 issue.  
4 THE COURT: Correct. Nor did I need to deal with  
5 conditional privileges since I found it to be an absolute  
6 privilege.  
7 Okay. What do you want to talk to me about?  
8 MS. GLASER: Your Honor, we want to just alert you,  
9 and we've alerted the other side, and we -- we think we have a  
10 general sort of understanding. There is --  
11 THE COURT: And Mr. Fleming is back.  
12 MS. GLASER: Good morning, good morning, good  
13 morning very early, Mr. Fleming.  
14 Two things. One, we will be filing a motion for  
15 summary adjudication, and I appreciate the Court's guidance.  
16 It's not a surprise.  
17 THE COURT: No problem.  
18 MS. GLASER: Two, with --  
19 THE COURT: There's a \$250 filing fee with that.  
20 MS. GLASER: Oh.  
21 MR. PEEK: Is that all you get for reviewing it,  
22 Your Honor?  
23 THE COURT: I don't get anything.  
24 MS. GLASER: Not a problem.  
25 Second, and this is what we were about to discuss

1 with Your Honor, there's something called the Privacy Act in  
2 Macau, and the Privacy Act is a pretty laborious piece of  
3 legislation which requires something like the following. And  
4 we have explained it to the other side. They're going to get  
5 their own counsel, Macau counsel, because I don't want them to  
6 rely on us. And I'm sure they wouldn't anyway.

7 This is what happens. Documents get -- must be  
8 reviewed in Macau. We're starting that process now. We have  
9 gone through the process and represent to the Court we have  
10 gathered electronic documents, as well as hard copy.

11 THE COURT: Correct.

12 MS. GLASER: They're in Macau. They are not allowed  
13 to leave Macau. We have to review them there, and then to the  
14 extent that the Privacy Act, which is read very broadly --  
15 according to our Macau written opinion counsel, it's read very  
16 broadly, it then -- then you go to the office that supervises  
17 the Privacy Act, say, okay, with respect to these group of  
18 documents, not the whole universe, but these group of  
19 documents we want to take them out of Macau, produce them in  
20 this litigation, and we do that pursuant to a stipulation and  
21 hopefully court order that says, of course, these are only  
22 going to be used in connection with this litigation and for no  
23 other purpose.

24 We then hope to and anticipate being able to  
25 convince the Macau court, not a problem, okay, go -- Macau

1 office that we -- indeed the government says, yes, you can do  
2 these in the Jacobs litigation. Mr. Campbell said to me,  
3 well, okay, fine, we'll get our own counsel, no problem, and  
4 can you give me a date by which you think you will be able to  
5 produce whatever you can produce.

6 THE COURT: Is this related to the document  
7 production we issued -- talked about last time where you said  
8 there be a violation of Macau law? You didn't, you did.

9 MS. GLASER: Yes, ma'am.

10 THE COURT: And I said, well, then that would be the  
11 time to ask me about the stay.

12 MS. GLASER: Okay. So --

13 THE COURT: Is that what you're trying to intimate  
14 to me, we're getting closer to that time?

15 MS. GLASER: We're getting closer to that time.

16 THE COURT: Okay. Well, some day we'll actually get  
17 there; right?

18 MS. GLASER: But I simply -- somebody -- there's a  
19 rumor out there in Las Vegas that if people don't raise issues  
20 early with you, you might get a little testy with the lawyers.

21 THE COURT: I get frustrated.

22 MS. GLASER: And I don't want to get -- I don't want  
23 anybody being testy with me.

24 THE COURT: So are you entering into a stipulation  
25 and confidentiality order related to the Privacy Act in Macau?

1 MS. GLASER: They haven't agreed to that yet, Your  
2 Honor.  
3 MR. PEEK: Yeah, we did.  
4 THE COURT: It was just a question.  
5 MR. PEEK: It's --  
6 THE COURT: There was a question mark at the end of  
7 my statement.  
8 MR. PEEK: And the reason for that is we'd be able  
9 to tell the Office of Data Privacy counsel that we're --  
10 they're being used for this purpose so --  
11 THE COURT: But I still need to hear Mr. Campbell's  
12 answer to my question.  
13 MR. CAMPBELL: Thank you, Your Honor. The answer to  
14 that is no.  
15 THE COURT: Okay.  
16 MR. CAMPBELL: Would you like me to elaborate?  
17 THE COURT: No. You're going to consult with  
18 somebody in Macau.  
19 MR. CAMPBELL: No.  
20 THE COURT: All right. You're not going to consult  
21 with somebody in Macau. They're going to do what they're  
22 going to do, they're going to produce documents with a  
23 privilege log which may include this unusual entry for us,  
24 which is Macau privacy law, and then we will deal with that  
25 some day.

IN THE SUPREME COURT OF THE STATE OF NEVADA

James J. Pisanelli, Esq., Bar No. 4027  
[JJP@pisanellibice.com](mailto:JJP@pisanellibice.com)  
Todd L. Bice, Esq., Bar No. 4534  
[TLB@pisanellibice.com](mailto:TLB@pisanellibice.com)  
Debra L. Spinelli, Esq. Bar No. 9695  
[DLS@pisanellibice.com](mailto:DLS@pisanellibice.com)  
PISANELLI BICE PLLC  
3883 Howard Hughes Parkway, Suite 800  
Las Vegas, Nevada 89169  
Telephone: 702.214.2100  
Facsimile: 702.214.2101

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

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Clerk of Supreme Court

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,  
DEPARTMENT 11,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

***Supreme Court Case No. 62489***

**REAL PARTY IN INTEREST'S  
SUPPLEMENTAL APPENDIX**

**VOLUME 1 OF 5**

## CHRONOLOGICAL INDEX

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Transcript of Hearing on July 19, 2011, on Defendant Sands China's Motion to Stay Proceedings Pending Writ Petition	07/20/2011	I	0107-0120
Las Vegas Sands Corp.'s Motion to Compel Return of Stolen Documents Pursuant to Macau Personal Data Protection Act	09/13/2011	I	0121-180
Transcript of Status Check on May 24, 2012	05/29/2012	I	0181-202
Defendants' Joint Status Conference Statement	06/27/2012	I	0203-212
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Defendants' Statement Regarding Data Transfers	07/06/2012	II	0254-262
Transcript of Court's Sanctions Hearing on September 10, 2012 – Day 1	09/11/2012	II	0263-425
Transcript of Court's Sanctions Hearing on September 11, 2012 – Day 2 (Vol. I)	09/12/2012	III	0426-497
Transcript of Court's Sanctions Hearing on September 11, 2012 – Day 2 (Vol. II)	09/12/2012	III	0498-667
Transcript of Court's Sanctions Hearing on September 12, 2012 – Day 3	09/13/2012	IV	0668-847
Notice of Entry of Order	01/17/2013	IV	0848-854
Plaintiff's Renewed Motion for NRCP 37 Sanctions on Order Shortening Time	02/08/2013	V	0855-1003

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Plaintiff Steven C. Jacobs' Motion to Return Remaining Documents from Advanced Discovery	02/15/2013	V	1004-1022
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Las Vegas Sands Corp.'s Motion to Compel Return of Stolen Documents Pursuant to Macau Personal Data Protection Act	09/13/2011	I	0121-180
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Pisanelli Bice, and that on this 19th day of March, 2013, I electronically filed and served a true and correct copy of the above and foregoing **REAL PARTY IN INTEREST'S SUPPLEMENTAL APPENDIX VOLUME 1 OF 5** properly addressed to the following:

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

J. Randall Jones, Esq.  
Mark M. Jones, Esq.  
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway, 17th Floor  
Las Vegas, NV 89169

Steve Morris, Esq.  
Rosa Solis-Rainey, Esq.  
MORRIS LAW GROUP  
300 South Fourth Street, Suite 900  
Las Vegas, NV 89101

**SERVED VIA HAND-DELIVERY ON 03/20/13**

The Honorable Elizabeth Gonzalez  
Eighth Judicial District Court, Dept. XI  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89155

/s/ Kimberly Peets  
An employee of Pisanelli Bice, PLLC