July 20th, 2011 --

MR. PEEK: Which is merits discovery.

THE COURT: I understand.

MR. PEEK: And you're saying that those should be inclusive for jurisdictional discovery and we should search those. And then I guess you will determine whether we should or should not redact for personal data, names.

THE COURT: No. I've told you you can't redact for personal data --

MR. PEEK: Okay. I just want to make sure. You're saying --

THE COURT: -- but if you decide that because of your risks in Macau you want to redact for personal data, then I weigh that in my wilfulness balancing of issues.

MR. PEEK: Or we may come back to you and say in an appropriate objection, appropriate motion or something, or we just do. And then you weigh that on -- is that what I understand?

THE COURT: What I'm trying to convey to you, and I hope this is really clear is, I am not ordering you to produce at this time documents responsive to the ESI search that you do that would only relate to merits discovery. If you choose to withhold those at this time, great. It's --

MR. PEEK: Choose to withhold those. What do you mean "those"? I don't know what "those" is.

THE COURT: A document that talks about why Mr. Jacobs was terminated. Remember how I have the who, what, where, when, how --

MR. PEEK: I do.

THE COURT: -- but we can't ask about why?

MR. PISANELLI: And, Your Honor, if I can make the record clear --

MR. PEEK: So we're just --

MR. PISANELLI: I'm sorry, Mr. Peek. Go ahead.

THE COURT: Wait. We've got to let Mr. Peek finish, Mr. Pisanelli.

MR. PISANELLI: Yes.

MR. PEEK: Thank you. I wasn't because, Your Honor, the -- that type of discovery of the who, what, where, when, how has not been the subject matter of their request for production. And we have search terms associated with those requests for production. That's how we came up with the search terms, was based upon the specific jurisdictional discovery that you allowed in you March 8th order, not what propounded but what you allowed. So --

THE COURT: So are you telling me that it's your position that Luis Melo has nothing to do with any of the requests for production that were served?

MR. PEEK: We are, Your Honor. We are telling you that.

THE COURT: And you're telling me that Ian Bruce has nothing to do with any of the --

MR. PEEK: We are -- with the discovery that you permitted, Your Honor, we --

THE COURT: Then here -- here's what I'm going to tell you. Run the searches and then list them on a privilege log. And I am permitting you to raise the relevance issue related to merits discovery as opposed to jurisdictional discovery. But please understand, if I go through and do an in-camera review and it's not something that's a how and it's a repetitive process, there will be sanctions.

MR. PEEK: So you're allowing them now to do more discovery on document production than what you allowed them to do in your March 8th order. Because they --

THE COURT: I am requiring you to do the ESI search related to the twenty custodians identified on the July 20th, 2011, letter and produce any information that is responsive to the discovery requests --

MR. PEEK: Thank you.

THE COURT: -- and to withhold anything that goes only to merits discovery.

MR. PEEK: We understand now, Your Honor.

MR. PISANELLI: And so the point the I was going to make, Your Honor, is I get the impression, and maybe I'm wrong, but I'm going to be careful here, that Mr. Peeks

remarks about our twenty custodians being merit based is to create an improper impression that they are not also our custodians for jurisdictional discovery, which I have already said in this court so I'll repeat it again --

THE COURT: Mr. Pisanelli, I got that. Did you just hear the part about --

MR. PISANELLI: I'm just making --

THE COURT: -- how I said you can hold the how stuff -- or the why stuff, because I've talked about this over the last several months --

MR. PISANELLI: Agreed.

THE COURT: -- repeatedly and I know it's a hard path to negotiate. But jurisdictional discovery is not a black-and-white issue especially in this case.

MR. PISANELLI: I agree.

THE COURT: And that's why we've had so many conference calls and so much motion practice related to it. And I do not fault you folks for that practice. I think it's appropriate. I'm just trying to make sure that you run the ESI search, okay.

MR. PISANELLI: And so the point -- the point I was getting to, Your Honor, on the evidentiary hearing, if we -- would we be permitted to --

THE COURT: I can't throw these away. Sorry.

MR. PISANELLI: That's okay.

THE COURT: I can't throw your stuff away because I set another hearing.

MR. PISANELLI: A Freudian slip.

THE COURT: I'm trying to get rid of you guys. Yes. Keep going.

MR. PISANELLI: Assuming that this evidentiary hearing will permit us to rebut the suggestion that, for example, Mr. Melo's emails have nothing to do with jurisdiction and if we can establish that they have been improperly withheld that will be taken into consideration for the sanctions under this motion. Because this is the discovery we're waiting for by this case in this motion, and that's what was supposed to have been produced on January 4th.

THE COURT: The custodian issue I think is a more complicated issue, Mr. Pisanelli, and I don't know that you will be in that position at this hearing. Part of the reason is because, as we all know, ESI searches and review of information is a time-consuming practice. And so I don't know that we will be ready given the trial schedule that some of you have with the Suen case to address the custodian issues at the time of this evidentiary hearing. I will certainly listen to them, but they are not the primary focus of my problem. My problem -- my primary focus is going to be the improper redactions which have resulted, you claim, in prejudice to your clients and the examples you have given me relate to the

delays and the duplication of other discovery activities.

MR. PISANELLI: Can we have a response date for the searches and production of these missed custodians?

MR. PEEK: Your Honor, we should look at Mr. Lackey I think in the --

THE COURT: Okay. I'm now looking at you, Mr. Lackey. How long you think you --

MR. LACKEY: Wow. Twenty custodians. I believe, what, six of them have already been done, so it's fourteen more custodians. Obviously, the more time the better, Your Honor, since we don't have anything going here. But if we could have six weeks, that -- would that fit with Your Honor's idea?

THE COURT: Hold on a second. Six weeks should push you to about April 12th.

MR. LACKEY: Let's see. The hearing's going to be on May 13th --

THE COURT: Which is about a month before that.

MR. LACKEY: I would ask the Court's indulgence since -- as much time as we could get. As you just said, it's a lot of data.

THE COURT: Well, let's shoot for the April 12th.

MR. LACKEY: Okay.

THE COURT: I understand it is a large process. And what I am trying to communicate to you is you've got to do the

ESI search to then make the determination as to whether it's merits or jurisdictional. And if you don't do the ESI search, then you're not going to know the answer, which is what disturbed me the most about how the ESI search was run.

MR. LACKEY: Can I just respond for one moment, Your Honor --

THE COURT: Yes.

MR. LACKEY: -- on that point? Tried to target the custodians who are most reasonably likely to have the information --

THE COURT: I saw that in your brief.

MR. LACKEY: -- and -- okay. And it's obviously --

THE COURT: I understand the process.

MR. LACKEY: If we are having trouble, Your Honor, with that April 12th date, because I have no idea what the volume is going to be --

THE COURT: I would rather hear about it sooner, rather than later, Mr. Lackey. As they all tell you, I do all the discovery in my cases for a reason, to try and control our delays that are related to discovery issues. And if you perceive there is a problem, I'd rather have a hearing about it, a status conference, and try and get it set up to try and identify the problems, whether it's going to impact other things we have scheduled.

MR. LACKEY: Thank you, Your Honor.

THE COURT: And I'm going to again thank all of you for the minutes you took to speak to the school children this morning. And, you know, they come, and the presentations that we do in Business Court really aren't very helpful for them, but talking to you guys they do gain some information. I think it makes it a helpful experience. So thank you very much for taking that time and speaking to them.

MR. PEEK: Your Honor, is this --

MR. BICE: Your Honor, we do have -- sorry.

MR. PEEK: -- an order you want plaintiff to draft and pass by us, or is the Court going to draft this order?

THE COURT: Sure. Draft it, Mr. Pisanelli. Send it over to them to look at and --

'Bye, Mr. Jones. Have fun cross-examining your expert witness, hopefully you'll get out of trial some day.

MR. RANDALL JONES: Thank you, Your Honor.

THE COURT: I got done with mine, so I'm feeling good about life.

MR. PEEK: Did you make a decision on it?

THE COURT: I issued a decision. It was in the paper today. You should read about it.

MR. BICE: Your Honor, we have one --

MR. PEEK: I was busy preparing for this, Your Honor.

MR. BICE: We have one sort of housekeeping matter

that I'm not --

THE COURT: Of course you do.

MR. BICE: We filed our reply -- or we submitted our reply yesterday, and Max informed us and --

THE COURT: You've got to do better on your sealing process. You need to read the rule from the --

MR. BICE: Here --

THE COURT: -- Nevada Supreme Court.

MR. BICE: But here's the thing. And here's the problem. And I will and try and work this out with them, but we -- we're done with the every document is designated as confidential. We've told them that in correspondence. It hasn't changed anything.

THE COURT: So there is a protocol that you're supposed to use when you object to the designation of confidential. You're supposed to file a motion and say, dear Judge, we think they're bad, they're overusing the word "confidential" --

MR. BICE: No, actually --

THE COURT: -- please make them do it differently.

MR. PEEK: They have a different view of that, Your Honor, and --

MR. BICE: Our order -- actually, our order says the opposite. Our order says that we are to point out to them that they're abusing it and it's their burden to come to you.

MR. PEEK: And, Your Honor, we understand that burden, and we'll come to you with that.

THE COURT: All right. I haven't read the order recently. I'm sorry. I was using the more common version.

MR. BICE: That's all right.

MR. PEEK: But we'll come to you with a motion practice on that, Your Honor.

THE COURT: Okay. But you've got to file the motion to seal when you file the pleading.

MR. BICE: And every -- and that's why we objected to this over a month ago and told them we were not going to accept any more of these. And --

THE COURT: You've still got to file the motion to seal if it's still identified as confidential.

MR. BICE: And that's the reason -- here's the problem with that, Your Honor. That's why you don't have a motion from them. This has been going on for two months because --

THE COURT: Mr. Peek said he's going to give me a motion now.

MR. BICE: Okay.

THE COURT: Maybe I'll get it. Anything else?

MR. BICE: We look -- we look forward to that.

THE COURT: I know you do. It's so nice of you all to be so cooperative.

MR. BICE: Thank you, Your Honor.

MR. PEEK: Thank you, Your Honor.

THE COURT: And I really truly appreciate you talking to the school children.

MR. PEEK: Thank you, Your Honor. It's our pleasure -- it was my pleasure anyway.

THE PROCEEDINGS CONCLUDED AT 11:40 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 — 3/1/13

FLORENCE HOYT, TRANSCRIBER — DATE

and make sure they searched for all of our requests for production, and if at that point the plaintiffs haven't done the defendants' job well enough by telling them what to do, then at least they've got a better argument that they shouldn't fly off the cliff and that Todd and I and Debbie should do a better job of instructing them how to do their discovery. But they didn't even do that. This doesn't even come close to an argument that this is short of wilful. They know what they're doing, and the reason they're doing it is Mr. Peek's word he told us a while ago, they are and have been and always will be constrained. Constrained by their client, of course.

But it gets better. So we get about 5,000 pieces of paper. We've attached 12 to 16, I don't know what they were, in our motion to give you a flavor of what these redactions were. The redactions come in two different categories. I cannot decide which is more offensive, one or the other. The first one is redactions on relevance. Your Honor expressed your views on that last time we were before you, and I can tell you, Your Honor, since you made it so perfectly clear to the one person who stood before you and tried to make that an argument, nothing's changed, nothing was corrected, no relevance redactions were removed even from the time you were so firm in your position about redactions on relevance.

The other, of course, was the Macau Data Privacy

Act. They redacted on Macau Data Privacy Act. I really can't tell you, as I said, which one surprises me more. If it weren't so disrespectful, it'd be funny.

So let me --

THE COURT: So you think the word "other" in Footnote Number 12 of my September 14th, 2012, order might mean not the Macau Data Privacy Act?

MR. PISANELLI: I think it means what you've said. You've said if there was a -- this is a quote, "a true privilege issue" is what you've said, then of course there can be redactions and privilege logs and challenges, a true privilege issue. There is nothing about the Macau Data Privacy Act that creates a privilege. A constraint perhaps, hurdle perhaps for someone who didn't already violate the rules of this Court and were not already sanctioned stripping them of the ability to do it. You were very clear of what the redactions could be and what they could not be.

Now, Your Honor, I have all of these records here for two reasons, one, as you were very clear last time we were here, is you don't want to be looking at someone's computer files to look at one. You said you like paper. Here it is. Here they are. And here's the other reason we --

THE COURT: It's only because I just finished a six-month trial where everything was electronic, and I would rather look at paper now.

MR. PISANELLI: And I actually am the dinosaur in our firm who likes paper, too. So --

But the point is this. This group of defendants congratulated themselves because they said, look, even of the 12 or 15, whatever the number was, that were attached to our exhibit they had replaced those, give or take four or five of them. In other words, about 25 percent even in our sampling they said they had gone back and replaced. They're actually congratulating themselves that they got about 75 percent of it right. They didn't, but that's their position.

The reason these are all here, Your Honor, is we have 5,000 records. And we could play a game like we did as kids with fanning out a deck of cards and just go pick one. This is -- these were just examples. You can pick one after another after another after another blindly, and you will see the same inappropriate redactions that render this production a waste of paper. They are unintelligible, as you have seen from the deposition transcript of Mr. Leven. He laughed a bit, was frustrated a bit, had no idea what this was. And I got the impression, at least reading from the cold transcript -- I think you get it -- that he thought Mr. Bice was trying to trick him and he was nervous about it. He didn't even know what these things were and couldn't make heads nor tails about them. So let's not be so fast to congratulate ourselves that 25 percent failure rate is good enough to overcome this wilful

noncompliance issue.

But we have to make some other points here. When they tell you that they have fixed some of them -- well, let me take a step back. I apologize. I don't want to miss this point about the Macau Data Privacy Act. I'll get to the fixing of the redactions before I close.

They tell you, our mistake, we were confused when Your Honor said -- this is their argument -- that we can't use the Macau Data Privacy Act as a defense to production of a document we didn't know that that would also strip us of the ability to redact it basically down to a blank page and produce it anyway, we thought we could still do that. As if anyone in this courtroom is going to accept that there really is a difference between holding a paper back and redacting it down to zero information. There is certainly too much experience and too much intelligence in this group to think that you somehow would have allows the Macau Data Privacy Act to be a basis for redaction down to zero when you said so clearly that it was no longer a defense to disclosure or production.

Now, they tell us in the fix here that, Your Honor, we have gone back and replaced upwards of -- since January 4th, long after the car fell off the cliff, they're still breathing, apparently, and tell us that they have produced about 2100 records -- pages of records that replaced

their redactions because they found them in the United States. That admission to me was as shocking as anything we heard for a few reasons. First of all, whether or not the document's in the United States is irrelevant, as we've said, because you can't use the Macau Data Privacy Act as a defense. But, most importantly, Your Honor, if these documents were in the United States, why didn't Las Vegas Sands produce them? We had documents produced to us as replacement documents for the Sands documents that were in the United States that were never produced by the custodians prior to the custodians' depositions. Mike Leven is an example. We deposed Mike Leven, the same search terms -- and I think this applies to Rob Goldstein, as well -- the same exact search terms that they used in Macau they had to use in Las Vegas. So this tells us that they had these records in Las Vegas, in Nevada, but didn't produce them. They only produced them when they got caught with their hand in the cookie jar approaching -- I'll mix my metaphors -- approaching the cliff and said, oh, here's some documents we were withholding from you. If they were in the United States, where have they been? We conducted depositions without these records that they knew existed.

Let's be clear, by the way, that this 2100 or so still leaves about 60 percent of this mess useless. Useless because of relevance and the Macau Data Privacy Act.

And finally on this issue of fixing the problem, no

harm, no foul, as I said, we've been severely prejudiced by taking these depositions, we still don't have the records, and January 4th came and gone. We're now months in. Remember, Your Honor told these counsel, no, no more of the meet and confer game, we see what that means, meet and confer, okay, we'll see if we can find something, here's something useless, gotta have another meet and confer, we'll see if we can find you something, here's something useless, wait, you can't file a sanctions motion, gotta have another meet and confer. Your Honor said that doesn't happen after an order, and so you put an end to it. Isn't that what this late, after January 4th, production is doing anyway? They're now replacing this with documents that should have been produced 16 months ago and saying that, this isn't wilful, we're doing our best and no harm, no foul. Well, there's plenty of harm, and there's plenty of foul.

So I violated my own promise to you, and I've started to get angry. And let me back up now.

Sands China, Your Honor, is very, very clear in its position, a light is not shining on their records, we are not going to open the roof and let the sun shine in, they're not even going to let a little flashlight come in there and let us see these records that we're entitled to in this case. Las Vegas Sands is no better, and they're equally culpable. They're the ones orchestrating this whole thing. And, as

we've seen with the replacement documents, they've been holding back documents that were supposed to be produced long ago, as well. Fine. If they are so concerned about what the world will see when these records are produced, then let's just stop this charade. Let's get to a sanctions issue. If Your Honor thinks it's necessary for an evidentiary hearing, we invite it, let's have it.

THE COURT: Nevada Power says I have to have an evidentiary hearing if they want me to.

MR. PISANELLI: If they want it, then we welcome it. Your Honor, I would -- I'd tell you this. I think that the pattern of behavior here has been so severe and so disrespectful that despite we find ourselves in this case, in the jurisdictional stage, I don't believe that that limit on what we were supposed to do from a debate perspective strips you of your authority to sanction parties for contempt. I think you can go straight to the striking of an answer and let's just have an evidentiary hearing. I know you're not inclined to. My point is in you're empowered to.

THE COURT: I've got a limited stay that says I'm only allowed to deal with jurisdictional issues at this point --

MR. PISANELLI: I understand. My only point --

THE COURT: -- with respect to Sands China.

MR. PISANELLI: I understand. My only point is that

the violations have been so numerous and so wilful I believe you still hold that power. I understand you're not inclined to exercise all of it yet, but at a minimum I think we should proceed immediately to an evidentiary hearing to strip this Sands China of its defense and any other sanction that you deem appropriate. Because as soon as we do, as soon as merits is opened, mark my words, Your Honor, we're going to go through this again, and we'll end up in a striking of the answer evidentiary hearing against these parties. And it's fine by them. They're spending millions upon millions of dollars to hide records, not produce them. They're not worried about what it is that's going to come out of this courtroom, they're worried about keeping their companies secret and away from public view. And all we ask as the advocates for a plaintiff who's looking for his fair day in this courtroom, let's give them what they want and let's get right to these evidentiary hearings and be done with this charade.

THE COURT: Thank you.

MR. PISANELLI: Thank you.

THE COURT: Mr. Randall Jones.

MR. RANDALL JONES: Good morning, Your Honor.

THE COURT: And are you glad not to be talking about pipe?

MR. RANDALL JONES: Well, Your Honor, I will be as

soon as I leave here. I have an expert witness on cross-examination, and I have counsel who is covering for me this morning while they're crossing him.

THE COURT: Oh. I thought you were dark today on your trial.

MR. RANDALL JONES: We were dark yesterday, Your Honor.

THE COURT: Oh. Okay.

MR. RANDALL JONES: But, Your Honor, I will say this. In light of the -- and, by the way, I would this, as well. I've known Mr. Pisanelli a long time, and I have had many cases with him, and I will say this. He does not disappoint. And I understand Your Honor may have certain beliefs and opinions about what's gone on in this case, but I will say that Mr. Pisanelli has I think made it clear from our perspective that the real motive here is what they're looking for is discovery by tort. They don't want the discovery that they profess so greatly to have been abused by. They don't want it. They -- I don't believe they've ever wanted it.

And, Your Honor, I want to go back, step back just for moment and talk about what's going on here from our perspective. And I know this has -- this case has a long history that existed before me, and I know the Court -- and I've read your prior orders and I've read the transcripts, and I understand the Court was -- at least the impression I get is

the Court was quite upset. And I've been on both sides of these types of issues in the past in front of Your Honor, but, Judge, I want to focus on what we're talking about. There is a massive amount of information, and from my perspective -- and, again, I've only been in this case since September or October and I've been preoccupied with another trial, but I've tried to keep as much up to speed with everything that's going on, I've been trying to attend as many hearings as I can so that I could keep up to speed.

I've been in large document production cases before. For Mr. Pisanelli, who has been in those same kind of cases himself before, to suggest that this is an easy process is just false. It's just false. To try to collect this kind of information is extremely difficult whether he wants to acknowledge it or not. And in fact --

THE COURT: Mr. Jones, I've been trying to have this information collected for a year and a half. So when I give a two-week deadline to comply because I've run out of options in getting people to comply with what I've asked for less formally than in written orders, I'm frustrated.

MR. RANDALL JONES: I understand.

THE COURT: You can tell I'm frustrated in this case. But there has to be a way that the jurisdictional discovery and the information that has been subject to the ESI protocol for almost two years should have been produced by

now.

MR. RANDALL JONES: Your Honor, I understand. And, by the way, I understand your frustration, as well. I also want you to take into account -- because, again, we're talking about Rule 37 sanctions that they're requested. And, again, I think it's now been laid out in the open what their real goal here has been is, look, let's try to set this up, there's clearly been difficulties, they have the defendants at a disadvantage. We have a law we have to comply with as best we can. That is a reality whether we like it, whether this Court likes it, or certainly whether the plaintiffs like it or not. That is a reality.

THE COURT: So you missed the argument at 8:30 about -- where this issue came up on a different case involving Macau? Not all defendants in litigation from Macau think the Macau Data Privacy Act affects their discovery obligations.

MR. RANDALL JONES: Well, you know, maybe the difference there and this case is we actually made inquiry of the government office to ask them what their position would be, and we got a written response that said, here's what the rule is. And it was only --

THE COURT: You got a written response after six months.

MR. RANDALL JONES: Your Honor, there's a difference between delay and there are -- in fact, this Court made

rulings about the delay issues back in September, and I understood the Court's frustration at that point about the delays that occurred. But there's a difference between delay and a wilful violation of order and the complete frustration of the discovery process. And that's what we're talking about from the plaintiff's perspective. They're saying the discovery process has been completely frustrated, that there is no going back, that you cannot remedy this, that we have been so prejudiced that there is only option, the death penalty.

THE COURT: Well, but under the stay I can't give them that. Under any circumstances I could not give them that, because I only have a limited stay that deals strictly with jurisdictional issues.

MR. RANDALL JONES: And, Your Honor, I don't disagree with that. But -- again, you're the Judge, but I --

THE COURT: I understand what they're saying, but I can't do it.

MR. RANDALL JONES: The point is they essentially make the argument that demonstrates our point. So here -- if I may, the standard, as you know, is wilful noncompliance with an order. And first of the order has to be clear and explicit. So I understand your position is that, okay, on January 4th you had that order, South China [sic], you had that order. And, you know, I like Mr. Pisanelli's argument.

He giveth with one hand, then he taketh away. He says, I know these lawyers and I know them to be ethical, good lawyers and they wouldn't be doing this except for this particular defendant that put them in this position and Mr. Peek said it himself, I've been constrained. Well, we have been constrained, Your Honor. We've been constrained by a law in a jurisdiction where this company's principal place of business is where they have told us in writing what we can and cannot do. And so in good faith -- which is the other aspect of Rule --

THE COURT: Rule 37.

MR. RANDALL JONES: -- thank you -- Rule 37 sanctions analysis is did we comply in good faith or did we do our best to comply in good faith. And I want to talk about that, because Mr. Pisanelli doesn't want to talk about that. He gives you the general example, he'll give you a sort of a, let me just talk about generally what we think they've done, without actually talking about whether it actually caused a problem.

So what I can tell you -- and I do take umbrage and I try not to attack counsel, and I think that the plaintiff's counsel has a history -- there have been a lot of cases where they have come in and they don't try the merits of the case. They try to villainize the opposing party and talk about the party and the bad people they are, sometimes on subjects that

have nothing to do with the merits.

So I would like to talk for a moment about actually happened here. We did have -- there's correspondence that can't be denied. Let's talk about what was asked of us to do and what we did to try to accomplish in good faith or not. And that's your call. But I would respectfully suggest to you that it was absolutely in good faith. And here's our perspective on good faith.

Before we got involved in the case there was correspondence to them that said, look, if we're going to search jurisdictional discovery tell us who you think we need to search. And I heard Mr. Pisanelli -- because they never really tried to respond to that in their papers of saying why they didn't talk to us. Well, he comes up today and says, well, because you knew we -- we wanted all these twenty different people. Well, Judge, you've said it yourself several times and Mr. Pisanelli acknowledged, one of the few things he will acknowledge about this case, is that there is a limitation that has been imposed by the Supreme Court which you have found to be in existence. That is jurisdictional discovery first. They gave us a list of twenty people, custodians, that had to do with merits discovery. By definition those people are not as to this buzz word here "relevant." But should they have thought those twenty people were relevant, meaning are we going to find anything

meaningful -- you know, and this gets to another point. They've used the term "document dump" several times in their papers. So what is it, Judge? Did we give them too much information, or not enough? They criticize us for not searching more, but then they accuse us of presenting them with a document dump. We offered to stipulate to many of these jurisdictional issues almost a year ago, and they declined. They declined.

THE COURT: That was last summer; right?

MR. RANDALL JONES: It was actually I believe last spring, as I recall. And again, I'm not the best historian in this case, so I'll defer to others. But that's my recollection. But the point is that we offered to do that and they declined. So --

THE COURT: That was the Munger Tolles slips; right?

MR. RANDALL JONES: That was. It was not --

THE COURT: Trying to remember the group.

MR. PEEK: It was March last year, Your Honor.

MR. MARK JONES: March 7, Your Honor.

MR. RANDALL JONES: So having --

THE COURT: Good job, Mr. Mark Jones.

MR. RANDALL JONES: Having said that, Your Honor, the point is that that -- they talk about, we want to shine a clear light on what they're doing here and we see their true motive is that they don't want to ever give this information

up. Well, Your Honor, I'm here to tell you as counsel of record and as an officer of this court who I hope has some credibility with this Court that has never been any part of our strategy since we have been involved. And I don't believe for a second it was before. But they -- going back to motives, why wouldn't they stipulate to multiple issues of jurisdictional facts? Why wouldn't they? What is their motivation for refusing to do that? We didn't say we were going to stop them from doing other discovery. So you offer to stipulate, they say no, but then they say, you gave us too many documents but you didn't give us enough, you didn't search enough people.

So we went and said, look, here are the people we want to search -- actually, I shouldn't say that. We asked them before the new firms got involved, and there's an email that's never been refuted where Mark Jones was going to Macau with Mr. Lackey, sent another email and said, look, we want to make sure, are we searching enough; and that point alone, Judge, is demonstrative of a lack of a wilful intent to frustrate the process, especially as it relates to custodians. So we said, hey, you want to tell us who else? They could have easily sent in email back. That's all they had to do is send an email back saying, we think all twenty are relevant to the search of jurisdictional discovery. That's all it would have taken. Now, would we have agreed with them? Who knows?

We may have, or we may have said, no, we need to get some direction from the Court. They wilfully refused to cooperate. And that has to be taken into account by this Court in making this determination. If they don't cooperate in helping limit or expand the people we're searching, as you know -- I believe you are a student of the Sedona Principles -- as you know, then when they don't do that we have an obligation in good faith -- and this happens every day, every day in every case. When you are tasked as a lawyer for your client you have to make certain judgment calls as to what is appropriate.

THE COURT: So why on earth when you're doing the searches with the ESI vendors do you use different custodians for different purposes? Because typically you just run the search for the custodians and the key words.

MR. RANDALL JONES: Well, you know, that's an irony here that I think has been lost upon the plaintiffs, and I hope I can make the Court aware of what went on there. We looked at -- and this is I think referenced on page -- starting on page 16 of our opposition. We looked at their written discovery on jurisdiction. Because, as you told them many, many months ago, look, discovery is not just going to happen because you want it to happen, you have to propound discovery and you have to tell them what you want. So in good faith we went and looked at that discovery and we said, okay, based upon what they think is relevant, Judge, not what we

think is relevant, what they think is relevant that they put to us in written discovery requests. We will then go and look at the most appropriate custodians using the Sedona Principles, because we don't want to be accused of a document dump, and we looked the those custodians in connection with -- directly in connection with their written jurisdictional discovery requests, and we came up with eight names, and we started doing the searches. So, to answer your question, Judge, this was not done at random.

And since we're on this subject, I want to come back and point out this point Mr. Pisanelli made, because he either doesn't understand it or he's just flat wrong. With respect to the Las Vegas Sands discovery and nonredacted documents -- and he made the big point, the proof of the pudding here, Judge, he says, is that they were wilfully withholding this information, Las Vegas Sands obviously had this document or else they couldn't have produced unredacted copies when they got the redacted copies and compared them with what was produced in the Sands China Limited production. Well, Judge, again, a catch 22. Well, the reason, it's a real simple, straightforward reason, there's nothing nefarious, there's nothing improper, and in fact what it is is compliance with our discovery obligations. After the production -- because you've got to remember we don't know who the names are, we could not get that information. So what we did in our

continuing discovery obligations, we went to look at our production in Las Vegas Sands to compare it to what we got in the Sands China production that was redacted. And the reason we came up with new hits, because they were different custodians, Your Honor. They're different custodians we looked at in Sands China, so they're different emails. They're all available. That was --

So here we are, they're seeking to punish us. It's the old adage, no good deed goes unpunished. And I understand that's stretching the Court's patience with respect to that cliche in this circumstance, but that is in fact a reality, Your Honor. What would they have us do? Would they have us ignore our continuing obligation to produce information after we had the redacted versions and not compare it against what we had from Las Vegas? That would be a wilful violation, it seems to me. And I will tell this Court in every case I've ever had, especially large ESI-type cases, we will continue to probably find information as time goes on it. Presumably the volume will fall to smaller and smaller portions, but you continue to find things. In a case of this magnitude with this many documents it's impossible to get it right the first time. So that is the nefarious motive behind our production of the unredacted copies, continuing our continuing obligation to supplement discovery. That's what we did wrong that they would ask you to grant sanction for.

So, Your Honor, I would ask you to take that into consideration in this whole process.

Now, with respect to the wilfulness, Judge, we went to Macau. And in fact I'll tell the Court when Mr. Lackey and my brother went to Macau the first time to look at those documents there was a concern that if they, of-of-country lawyers, looked at that stuff they could be subject to criminal penalties themselves. This was information we went after your order in September to try to make sure we did what you wanted us to do. And, Your Honor, look, Mr. Pisanelli's argument -- think about it. The only way he could make that argument is if in fact we were so afraid of actually having merits discovery that we would shoot ourselves in the head. If we were bound and determined to do that, we wouldn't have produced anything on the 4th of January, we wouldn't have spent millions of dollars. And I can tell you I was in the middle of trial and I was involved in that process at the same time. This was late-night meetings, weekend meetings, discussions, trying to make sure we complied with what you wanted us to do on January 4th. And I'm telling you that as an officer of the court, and you can take that for what you think it's worth, Your Honor. But I can tell you here in open court we were pulling out all the stops that we thought we could pull to try to get this done so we would not be in wilful violation of your order.

And that brings up another issue, and this is the redaction issue. That is a troublesome issue, Your Honor. There is no doubt about it. It is -- there's no question we cited the place in the brief where it was referenced that you'd said we could still do redactions.

THE COURT: Absolutely. My order says that.

MR. RANDALL JONES: And you mention it again even on the 8th of February, where you said again, on page 19 of the transcript, "No, Mr. Peek, you can do redactions," and you go on to talk about that. "There is a privilege issue. I would hope you would do redaction." The Court, "My concern is that perhaps the redactions have been overused, but I'm not there yet today, it's just a concern."

So, Your Honor, even after the production, based on what you said -- and I wasn't there, but I've read it -- you do have a concern about redactions. And, Your Honor, I'm here to tell you I understand your concern.

THE COURT: Here's the footnote in the order, Mr. Jones -- and this is why the redactions were of such concern to me when I heard about them. But since it wasn't an issue I was addressing that day, I simply said it was a concern. The footnote says, "This does not prevent the defendants from raising any other appropriate objection or privilege." And that's what we've had discussions about redactions. I hope that if there is a true privilege issue that it would be

handled appropriately. That doesn't mean redactions under the MDPA, which you have been precluded from doing anything with respect to.

Now, I certainly understand that Sands China may have obligations with the Macau Government. But because of what's happened in that case, in this particular case you've lost the ability to use that as a defense in any way, shape, or form.

MR. RANDALL JONES: Well, Your Honor, my response to that be -- and I hear what you just said and I know the Court understands this, but I think it's necessary to make this point on the record. My client is faced with the proverbial Hobson's choice. It truly is. And in trying to make sure we did not wilfully violate your order and complied with discovery in good faith we did what we did. So the redactions that are there do exist.

And, by the way, I would disagree with Mr. Pisanelli's percentages. The way I calculate it is at most 10 percent of the documents produced have a redacted vein. But then let's look beyond that. Mr. Pisanelli says that these documents that are redacted are meaningless. He says they are essentially a blank page. They are not a blank page, Your Honor. There are several issues that go directly contrary to that, and I want to talk about that in a couple of respects. One is the subject matter, the substance of the

email has not been redacted, so only individual names have been redacted. So you could still -- to suggest that --

THE COURT: That is violative of my order, Mr. Jones. And I don't really care that your client is in a bad position with the Macau Government. Your client is the one who decided to take the material out of Macau originally, failed to disclose it to anyone in the court, and then as a sanction for that conduct loses the ability in this case to raise that as an issue. I'm not saying you don't have problems in Macau. I certainly understand you may well have problems in Macau with the Macau Government. I tried to understand the letter you got from the Macau Government. I read it three times. And I certainly understand they've raised issues with you. But as a sanction for the inappropriate conduct that's happened in this case, in this case you've lost the ability to use that as a defense. I know that there may be some balancing that I do when I'm looking at appropriate sanctions under the Rule 37 standard as to why your client may have chosen to use that method to violate my order. And I'll balance that and I'll look at it and I'll consider those issues. But they violated my order.

MR. RANDALL JONES: Well, Your Honor, again, I would respectfully state that I was a part of that process, and whether we were being obtuse -- I hope that I'm never obtuse when I'm looking at a Court's transcript or order -- that when

we talked about redactions as it related to those we certainly didn't intend to wilfully violate your order. I will tell you that, and you can take that for what it's worth coming from me. We've appeared before you many times. I would not ever tell a client to wilfully violate any court's order, and certainly, Your Honor, I have great respect for you, I would not ever suggest that a client of mine do that intentionally. And that's just period. I would never do that. And I certainly didn't think we were doing that at the time. We were trying to thread a needle, I certainly agree we were trying to do that, and we hope we have accomplished that. And I understand what you just said.

Having said that, I would ask you to consider this. With respect to this whole point about a blank page and the information that they don't have, first of all, this goes back to this issue of document dump. We have grossly overproduced what could possibly be relevant, because we didn't want to base it on relevance, and the jurisdictional discovery out of a fear of the very kind of thing that's going on here, that they would ask for the death penalty or some other extreme sanction because they are trying to get, from our perspective, not discovery, they're trying to get jurisdiction by tort or essentially put us in a position because of some of the history that's occurred in this case so that they could ask you for the death penalty. And we know that's what happened.

We heard it today. Mr. Pisanelli has now made it public what we all suspected to be the case.

So then we have to go back and look at what was the alleged harm assuming there was a violation of this Court's order. The harm was they didn't get the exact name of a person in an email. They got all the other information, they got the date, they got a log that told them who the email was from and who it was to. So from a jurisdictional standpoint when you look at the subject you could see this came from this company to that company or it was an internal email or it was to a third party and here's what was discussed in that email.

So it would seem to me that -- we're talking about wilful conduct -- they have not come forth and shown you anyplace that -- in fact they did give you several examples of these emails that have been redacted, and we came forward and said, oh, guess what, we found the majority of them, we found the duplicates in the Las Vegas Sands documents, and, by the way, show us, Plaintiff, where any of these emails have prejudiced you. In fact, Mr. Pisanelli said today, we didn't get these emails for the depositions we took. I have yet to hear him tell you how, verbally or in writing, that prejudiced their ability in the deposition. And I suspect on reply he's going to get up here and say, well, it's blank, or, it's unintelligible, Mr. Leven -- and I wanted to get to that, because they used Mr. Leven as their great example of how

these things are unintelligible even to one of these custodians. Well, Your Honor, I would just ask this Court to use -- think about this in the context of one of the stock jury instructions that this Court gives to every jury that ever -- civil jury that it ever swears in. Use your common-sense, everyday experiences. So in context of Mr. Leven seeing an email that is a subject matter he may have nothing to do with in the company or the date that may have occurred years before from one of the highest executives in the company that whether it had the names on it or not, would you reasonably expect that senior executive to know what that email was culled out of hundreds of thousands of emails that may have absolutely nothing to do with his daily business, and even if it did, if it was something that occurred years before on a minor matter, would you reasonably expect him to recall what that email was about.

So from our perspective, Your Honor, this is something -- nothing but a setup attempt by the plaintiffs because they don't want to get into jurisdictional discovery. This is perfect end run for them, hey, we've got them now, they redacted and they didn't -- and then they produced stuff even though they have a continuing obligation to produce after the January 4th date, we've got them, let's go for the death penalty. It makes clear -- you talk about motives being apparent. Their motive is apparent. They can't even decide

what their jurisdictional legal arguments are.

And, you know, I'm going to quote my father, because there's very few times that I recall this -- and it's a pretty standard cliche that we've heard as lawyers, except my father had an interesting twist on it that I've never heard from anybody else. And my dad used to say, you know, when you don't have the law you argue the facts, and when you don't have the facts you argue the law --

THE COURT: Is that where Drake Delanoy got that thing?

MR. RANDALL JONES: Well, actually, Your Honor, this is a twist my father had on it that I always thought was most appropriate, and when you don't have either one of them, you drag a skunk around the courtroom.

THE COURT: That one I haven't heard before, Mr. Jones. That's good.

MR. RANDALL JONES: And if that cliche ever applied, this is the case.

So, Your Honor, Mr. Pisanelli I know gets to get up here and he gets to make his reply and say all the reasons why what I just told you is not true. The fact of the matter is all you have to do is look at our brief and look at the attachments to it, and every single thing Mr. Pisanelli just told you in his opening remarks is refuted and does not rise to the level of wilful misconduct. We had a good-faith belief

in the custodians we chose, we had a good-faith belief in the language of your order with respect to July 4th [sic], and I understand you disagree with that, but I'm telling you we believed we had the right to do that, and we felt even more reassured when we saw the language that you mentioned in your -- at the hearing on February 8th. So --

And then I would add this last point, Your Honor. Where have they demonstrated -- other than hyperbole and vitriolic rhetoric, where have they demonstrated to you any real actual harm to them other than delay? And the delay that was occasioned was resolved on January 4th, with the exception of our continuing obligations to supplement, which we did as timely as we possibly could. And, again, other than rhetoric, there's been no statement and no showing of any real prejudice to the plaintiff as a result of our production and the manner in which we produced it. Was it slow? Undeniably. In a perfect world could we have done it better? Perhaps. But I will tell you, Your Honor, and we have the affidavits and the statement of counsel of what we did try to do to make sure we did comply with what you wanted us to do, and we continue to represent to you that we will continue to try as best we can to respond to these discovery issues.

And, Your Honor, we see no reason, in spite of the rhetoric and the hyperbole, that the jurisdictional hearing cannot go forward. Until they can show you specifically why

any of these redactions will inhibit their ability to do the hearing on jurisdictional discovery, then we think certainly the burden is on them in a Rule 37 motion to show you exactly how it's interfered with their ability to go forward. It may have slowed it down, and there are certainly ways the Court can address that. We thought you addressed that in September, and then you gave us a deadline. And we thought we've complied with that. And we understand your issue about the redactions, but we don't see how, and we certainly don't believe they've demonstrated how, that has inhibited or interfered with their ability to go forward with the jurisdictional motions, Your Honor.

THE COURT: Okay. Before you sit down pull the motion at Tab 11.

MR. RANDALL JONES: Of our --

THE COURT: Their motion. It's an email with a bunch of redactions. I want to ask you some questions.

MR. RANDALL JONES: Okay.

(Pause in the proceedings)

THE COURT: And you guys can huddle together if you want, because this may be a group question, as opposed to a Randall Jones question.

MR. RANDALL JONES: Well, let me see if can respond to it, Your Honor, and I'll defer to counsel if they have any other additional comment.

THE COURT: Okay. Here's my question. This is an email -- and I'm not going to go too much into the substance of it because it might have privacy issues, who knows. It appears to be an email from Macau seeking direction on how to proceed with a proposed solution to a problematic financial transaction. That's what it appears to be. I can't tell that, though; because, with the exception of the email address that says, @venetian.com I don't have any other information as to who it is, and somebody named David who's involved in this. And the purpose of the jurisdictional discovery is to try and determine what that connection was for some of those issues. Or at least that's what I thought we were doing. So that's why the redactions give me so much concern, Mr. Jones.

MR. RANDALL JONES: Well, and, Your Honor, I understand your point. And, again, let me -- because, candidly, I've been a little preoccupied with other things.

THE COURT: You're in trial, I know and I understand.

MR. RANDALL JONES: Let me get with counsel.

(Pause in the proceedings)

MR. RANDALL JONES: Actually, Your Honor, Mr. Lackey had the obvious answer and one I'd even spoke about before, and I think that's -- that's our point on this issue.

THE COURT: Which is?

MR. RANDALL JONES: If you have -- if you have the

log under Tab M, I believe, of our documents, and I --

THE COURT: I'm there. Max just sent me there.

MR. RANDALL JONES: And --

THE COURT: And then go to document 102981 on the log maybe?

MR. RANDALL JONES: Yes, Your Honor. The point being is that it doesn't necessarily matter who the individual was. When you know who the sender was and who the recipient was that's the critical information you need to make a jurisdictional decision based upon the point you made, there -- the substance of that email is there. They're talking about this repayment. So, again, does it make a difference who the actual sender was if you know who the entity was that was sending it and who the entity was that was receiving it?

THE COURT: Well, unfortunately for all of us, this particular document is not on the log. I'm on page 13 of 163.

MR. RANDALL JONES: Let's see.

THE COURT: Unless, of course, the log isn't in numerical order, which --

MR. RANDALL JONES: This may have been --

THE COURT: -- would make my life really hard.

(Pause in the proceedings)

MR. RANDALL JONES: Your Honor, let me --

THE COURT: And I picked this one totally at random, Mr. Jones.

MR. RANDALL JONES: Oh, I understand, Your Honor.

MR. PEEK: Your Honor, it should be on the log.

MR. RANDALL JONES: Yeah, it should be on there.

THE COURT: Yeah. I'm not saying it shouldn't be, I'm just saying it isn't on the log, because --

MR. PEEK: And what I'm also not sure of is whether it may have also been produced in an unredacted form, too.

THE COURT: It may have been.

MR. RANDALL JONES: And that's the question, Your Honor, I was having, is if it was produced in an unredacted form because six of the -- or I think nine of the --

MR. PEEK: Of the 15.

MR. RANDALL JONES: -- of the 15 they submitted were ultimately produced in unredacted form. So if it was produced in unredacted form,it would not be on the log.

THE COURT: Mr. Bice, do you know? I'm on Exhibit 11 to your motion. Was it produced in unredacted form to the best of your knowledge? And I know I'm testing you.

MR. BICE: I don't know.

THE COURT: All right.

MR. BICE: But it wouldn't surprise me that -- because this log is created after this date, if you look at the log date. They created this log on February 7th, so it maybe that's why it's omitted. I don't know for sure.

THE COURT: Okay. Thank you, Mr. Bice.

MR. BICE: Thank you.

THE COURT: All right. I'm done with my exercise in futility, Mr. Jones. Thank you.

MR. RANDALL JONES: Thank you, Your Honor.

MR. PEEK: Your Honor, I just -- I only have a brief statement to make. And I don't want to really say anything, but because there were certain accusations that were made --

THE COURT: I didn't hear a single accusation about you.

MR. PEEK: Well -- yeah. I just want to make sure that by not --

THE COURT: I didn't hear a single accusation.

MR. PEEK: Good. Because I didn't want to say anything on behalf Las Vegas Sands --

THE COURT: I'm just going to let you --

MR. PEEK: -- here because this is not directed at me.

THE COURT: Go sit down.

MR. PEEK: Thank you.

THE COURT: Mr. Pisanelli.

MR. PISANELLI: One might question whether that committee we just witnessed made our point on a document they produced and they had a caucus and couldn't figure out what it was, where you can find it, who sent it, who it went to, or if it's on a log, and what it was supposed to tell us. Your

Honor picked out a good one in the sense that you can't tell anything about it.

Now, Mr. Jones --

THE COURT: And it may relate to jurisdictional issues because of the content of it.

MR. PISANELLI: Right. And here's the point about Mr. Jones -- what he was dancing around was the issue of relevance; right? He kept saying, all we need to know is where it came from, you don't need to know the people, et cetera. And my point is of course we do. We're talking about jurisdiction here. We're talking about debates of whether executives from Las Vegas have managerial control and direction over the operations of that company or vice versa. It couldn't be more relevant in a jurisdictional debate of who these emails are coming to, who they're from, what they're talking about, and how, if at all, this email reflects upon the contacts that this company has with Las Vegas.

It's also important to point out, with due respect to Mr. Jones, he spoke of many topics of which he just clearly doesn't know what he was talking about. I don't believe for one moment he's trying to mislead you, but he'd said some very demonstrably false things. For instance, he tried to give you the impression, Your Honor, that all we had to do is connect the dots, that if we had this redacted email we could sit in front of a witness for a deposition -- by the way, that had

already been conducted -- but we could sit with this deposition that's been redacted look at the privilege log and fill in the holes. What he doesn't apparently know is that the privilege log doesn't give those names. The privilege log gives Employee 1, Employee 2, designations of that sort, which is no different than a blank piece of paper once again. We never doubted for one minute that someone who is using a venetian.com email address was a employee. That didn't tell us anything that it's Employee 1 or Employee 2.

He also spoke about a topic of these custodians which reflected a lack of knowledge, saying that these were completely new custodians. Well, they're not new custodians, Your Honor. The custodians for Las Vegas Sands, including Mr. Leven and Mr. Goldstein were the custodians and used the same exact search terms for LVS in their production. It wasn't until they had to go back now and replace documents that we see documents from existing custodians being produced for the very first time after those gentlemen have already been deposed. You notice Mr. Jones never answered that question to you. Why was it that custodians that we had asked for that we had deposed ended up producing documents only as replacement documents to Sands China and not in Las Vegas Sands's original production? And these are key emails. There was no answer, because he doesn't have one.

There is also noticeable silence from Mr. Jones on

the point that I made about our list. He seemed to still be embracing this concept that they didn't know, they didn't know. I can read it to them again. I can read his own self-congratulatory memo to you in January of this year where they said they knew that I said from this podium I wanted the twenty custodians in the letter from Colby Williams. Of course they knew. And he also didn't tell you whether or not, Your Honor, that they actually had researched those custodians but just didn't produce them. I would ask Mr. Jones to stand up right now and confirm for Your Honor whether his company has researched and reviewed the emails from Louis Melo. I am certain I know the answer to that question, but I would love to hear from Las Vegas Sands or from Sands China of whether they have researched Louis Melo's emails and why we don't have any of them.

THE COURT: Mr. Pisanelli, please direct your comments to me.

MR. PISANELLI: I'm sorry. That's true. I apologize, Your Honor. But the point being, where is it, why haven't they been searched, and where are the records?

He also speaks from a lack of knowledge about this concept of a stipulation. He told you that his predecessor counsel had offered to stipulate to all of this and we rejected it because of our improper motive in this case. What he doesn't know is that that stipulation was so self serving

as to be laughable, frankly, a stipulation with a few events of contacts but not even touching upon how broad the contacts were. And, contrary to what Mr. Jones said, it was in substitution of discovery. That's why his predecessor counsel wanted to do the stipulation in the first place, to keep us from deposing their executives.

THE COURT: Well, and he thought the hearing would be shorter.

MR. PISANELLI: I'm sorry?

THE COURT: And he said he thought the hearing would be shorter.

MR. PISANELLI: Well, it would be shorter, sure, if they gave us no facts that were useful to us and we weren't entitled to any discovery. We probably would have had a 20-minute losing evidentiary hearing had we agreed to that. So I can't blame them for offering it, but I do question how they can criticize us for saying no. Put in our shoes, I have no doubt every lawyer in this room would have made the same choice.

Now, nothing unique at all about the defense, the overriding theme that we see in the papers, the overriding theme we heard in oral argument that our motive is to -- is discovery or victory by tort. Every single litigant who is caught violating rules who is facing sanctions says the same exact thing. As creative and artful as Mr. Jones is, this one

is an old, tired excuse from every single litigant who isn't playing by the rules, oh, Your Honor, they're afraid of the merits. Well, if this team was so interested in the merits, one would question why they just don't produce what it is they have, why it is they just don't comply with your orders as they're obligated to do.

Now, he also speaks completely out of school in what he claimed to be an exception to his practice by attacking our motives and our practice. What he doesn't know about any other case where discovery sanctions were issued --

THE COURT: I don't want to talk about those other cases that I was the settlement judge. I --

MR. PISANELLI: All I was going to say is that you know all about the case.

THE COURT: I don't want to know about it --

MR. PISANELLI: That was the funny part about it.

THE COURT: -- because I was the settlement judge.

MR. PISANELLI: Fair enough. That's my point. He doesn't know that you know all about it. So we'll leave it alone.

The long short of it is, Your Honor, he tells you -- do you have that case tabbed? He tells you that, sure, there's been some delay, no harm, no foul, Your Honor, what's the big deal. I'll tell you what the big deal is. We have been waiting now for two years. We have been struggling and

spending attorneys' fees, we've been wasting our time deposing -- deposing principals not knowing that they're hiding records. We now will have to duplicate those depositions again because of this behavior.

Our Supreme Court told us in the Temora Trading case versus Perry that, "Terminating sanctions are proper where the normal adversary process has been halted due to an unresponsive party, as diligent parties are entitled to be protected against interminable delay and uncertainty and resolution of illegal tactics." In other words, hiding discovery, making a case go forward only to be duplicated because of tactics of this sort is the exact type of discovery -- I'm sorry, sanction that Rule 37 and the cases interpreting it are intended to cover. They is nothing here about no harm, no foul. We have at best, at best, a client that has known what it has been doing, and it has done everything it can to halt the process. It has unlimited funds. Sanctions, monetary sanctions have been meaningless to it so far. All that is left at this point, I believe, is an evidentiary hearing to resolve -- an evidentiary hearing not to resolve the jurisdiction, but an evidentiary hearing to resolve this sanction motion in which this defense of lack of personal jurisdiction on behalf of Sands China and any other sanctions that you deem appropriate should be ordered. They lost. Just like they lost the right to hide behind the Macau Data Privacy

Act, they lost the right to contest jurisdiction with the manner in which they've conducted themselves.

THE COURT: Thanks.

I have a couple of concerns and I'm going to tell you guys and we're going to address these in a different hearing. The two concerns that I have are the redactions. The redactions, especially the ones that have the word "personal" on them, appear to be violative of my order. And while there may be a very good business reason that has generated that decision, it is still a violation of my order, and I need to have a hearing related to that as to the degree of wilfulness and the prejudice related to those redaction issues.

With respect to the search and selection of the custodian issues I am going to order that the custodians that are identified in Exhibit 6 to the motion, which is the twenty people in the letter, be searched, and that then if there are true privilege issues, that you may do a redaction and a privilege log. But other than that, you should produce the information. I certainly understand if you believe an issue does not go to jurisdictional discovery that there may be an appropriate objection related to that particular production. But it requires you to do the search. You can't do the search until you -- you can't make the decision until you've done the search of the documents.

So I'm going to have a hearing. And at my evidentiary hearing I'm going to make a couple determinations. I'm going to make a determination as to the degree of wilfulness, I'm going to make a determination as to whether there has been prejudice, and, if there has been prejudice, the impact of the prejudice. And if I make a determination that there has been prejudice, then I'm going to talk about an appropriate sanction.

So under those circumstances when are you going to be done with Suen case and ready to have such a hearing?

MR. PISANELLI: Suen is intended to go through April.

MR. PEEK: Yeah. What -- we just talked to the judge, Your Honor. We start the 25th, and we're scheduled really for six weeks on his trial calendar.

THE COURT: Okay.

MR. PEEK: The case tried for six weeks previously.

THE COURT: I know. I'm -- you know, I'm just frustrated. Not your fault. I have to resume the Planet Hollywood case, the last part of it, the week of April 29th. So would you guys be ready to go the week of May 13th on this hearing?

MR. RANDALL JONES: What date, Your Honor?

THE COURT: The week of May 13th.

MR. RANDALL JONES: May 13th?

THE COURT: That week.

MR. RANDALL JONES: I have --

THE COURT: Because you'll be done in March. Judge Johnson --

MR. RANDALL JONES: Oh, no, I'll be done.

THE COURT: -- says you're trial's going to be done in March. And then they've got to try the Suen case and they'll be done at the end of April. So if I can get you guys in the week of May 13th, maybe I can make things work out.

MR. PEEK: Well, since this involves Mr. Jones, I mean, that's his decision, Your Honor, on May 13th.

MR. RANDALL JONES: I --

MR. PEEK: I mean, I certainly want to be here for that.

THE COURT: I'm not just --

MR. RANDALL JONES: Sooner the better.

THE COURT: I'm asking the entire group of people.

MR. RANDALL JONES: That's fine, Your Honor.

MR. PEEK: The question is Mr. Pisanelli.

THE COURT: He's looking. He settled the Whittemore case, so now that opened up that --

MR. PEEK: He's got lots of time.

THE COURT: Because that trial was supposed to be going then. And you settled the Newton case, or got the Newton case resolved in Bankruptcy Court, so you --

MR. PEEK: No, I haven't gotten it resolved in Bankruptcy Court, Your Honor. It's actually just as bad in --

THE COURT: I heard it's being sold, the Ranch is being sold.

MR. PEEK: It is, Your Honor. But actually we have motion to remand the non parties back to you being heard on the 29th, so it's going to come back to you, I believe.

THE COURT: And then you'll ask me for a preferential trial setting again because they're older.

MR. PEEK: I will based upon the age of the -- both plaintiff and defendants, Your Honor.

THE COURT: Just let me know when something happens that I need to react to.

MR. PEEK: I will, Your Honor.

MR. PISANELLI: That week works.

THE COURT: All right. So how long do you think you're going to need for this hearing?

MR. PISANELLI: Two days.

THE COURT: Okay. What two days of that week would you like to use?

MR. PEEK: Does the week start on the 13th? Is that what you're saying, Your Honor? I just want to make sure.

THE COURT: The week starts on Monday, May 13th, 2013.

MR. PEEK: I would like Monday and Tuesday, Your

Honor.

THE COURT: Okay. The problem with that is I can't start until 1:00 on Monday because I do my Business Court settlement conferences on Monday mornings still. So if you think you can get it done in a day and a half or if you think you may need to go into Wednesday, that's fine, I'll just -- I've got to write the number of days down so I don't set something at the same time.

MR. PEEK: Why don't we do Monday -- start Monday afternoon and go through Wednesday, Your Honor?

THE COURT: Is that okay with you Mr. Pisanelli and Mr. Bice? Yes, Judge, that's great.

MR. BICE: Yes, Judge, that's great.

THE COURT: Okay. So you're 5/13 through 5/15.

MR. PISANELLI: What did we just agree to?

MR. PEEK: Your Honor, may I ask for some clarification here, because --

THE COURT: As much as you want, Mr. Peek.

MR. PEEK: Thank you. And this is probably more Mr. Jones's clarifications. But do I understand on -- it says, your redactions appear to violative of your order. Are you then saying to us that the 25,000 pages that we produced, we go back and take the redactions off, or that's the subject matter of whether you believe there's a degree of wilfulness?

THE COURT: I will tell you what has happened in

other cases where I have identified problems with discovery and set these evidentiary hearings. Some people go back and do some work and then they can say, gosh, there's not so much prejudice and a monetary sanction would be appropriate. And then we have a discussion about whether that's true or not. But that requires you to go back and do that work. I'm not ordering you to do that.

MR. PEEK: That's -- that really was my question.

THE COURT: I'm --

MR. PEEK: Because I don't violative of another order. Because I don't think I'm in violation of the first order, but I don't want to be --

THE COURT: You and I have a difference of opinion about --

MR. PEEK: We do.

THE COURT: -- that conversation. But with respect to the custodians I've ordered you to do that.

MR. PEEK: Well, that's the next question that's going to come up, is that now you're ordering us to search twenty -- the twenty custodians on --

THE COURT: That were identified --

MR. PEEK: -- their merits discovery -- I just want to make clear, the twenty custodians on their merits discovery requests.

THE COURT: The twenty custodians identified on the

EXHIBIT 18

SUBMITTED UNDER SEAL PURSUANT TO CONFIDENTIALITY ORDER

EXHIBIT 19

SUBMITTED UNDER SEAL PURSUANT TO CONFIDENTIALITY ORDER

EXHIBIT 20

SUBMITTED UNDER SEAL PURSUANT TO CONFIDENTIALITY ORDER

EXHIBIT 21

SUBMITTED UNDER SEAL PURSUANT TO CONFIDENTIALITY ORDER

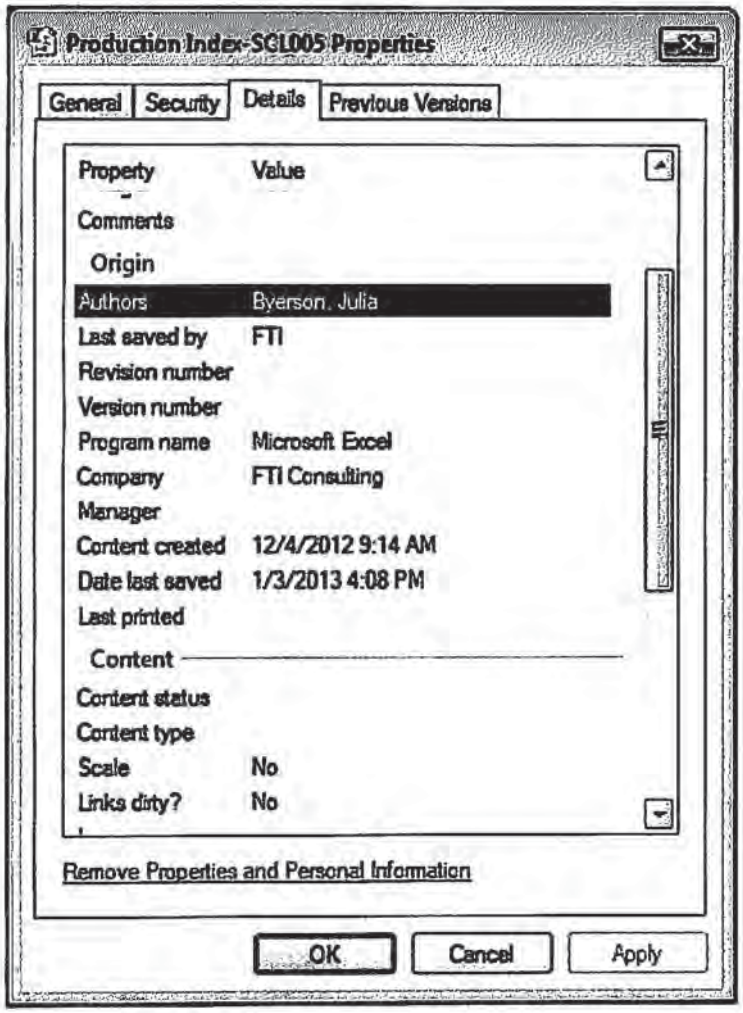
EXHIBIT 22

SUBMITTED UNDER SEAL PURSUANT TO CONFIDENTIALITY ORDER

EXHIBIT 23

SUBMITTED UNDER SEAL PURSUANT TO CONFIDENTIALITY ORDER

EXHIBIT 24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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS, Plaintiff, v. LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; DOES I through X; and ROE CORPORATIONS I through X, Defendants. AND RELATED CLAIMS	Case No.: A-10-627691 Dept. No.: XI **PLAINTIFF STEVEN C. JACOBS' MOTION TO RETURN REMAINING DOCUMENTS FROM ADVANCED DISCOVERY** Hearing Date: Hearing Time:

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Plaintiff Steven C. Jacobs ("Jacobs") moves to compel the return of all remaining documents which he deposited with this Court's third-party ESI provider, Advanced Discovery. These remaining documents, more than 11,000 in total, are being withheld under the auspices of supposed privileges asserted by the Defendants Las Vegas Sands Corp. ("LVSC") and/or Sands China, Ltd. ("Sands China"). These are, of course, documents that Jacobs generated, received and/or possessed in serving as the Chief Executive Officer of Sands' gaming operations in Macau.

Unfortunately, these Defendants have made no bones as to their intent to preclude Jacobs' access to proof at all costs. They have misrepresented the existence and location of evidence, as

well as erect artificial barriers insisting that they cannot produce documents into the United States after years of contrary practice. But, that strategy can only get them so far. They cannot pretend that documents that Jacobs possesses do not exist. Thus, they must pursue a different tact for these. Unable to convince the Court that they were "stolen," Defendants then went through Jacobs' documents asserting claims of supposed privilege as a basis to keep evidence from view. Their initial privilege log exceeded 3,000 pages in length. They later modified it to only slightly exceed 1,700 pages. They advanced these so-called privileges despite the fact that Jacobs is mostly the author or recipient of these documents, and that their subject matter is squarely at issue based upon the claims, defenses and counterclaims asserted.

Regardless, their proffered privilege log is superficial and does not demonstrate legitimate claims of privilege. Indeed, there are multiple documents where there is no author identified, no recipient identified, or even a subject matter. Others are communications with third parties. On top of that, contrary to Defendants' wishful thinking, the law does not effectuate a lobotomy on a former executive's knowledge as to communications, even those with in-house legal personnel. Presupposing that such documents could be privileged against outsiders, they are not as against the former employee, particularly when those documents concern the very subject matters at issue in the case.

Even those courts that say that the attorney-client privilege belongs to the corporation, not those running it, recognize that a litigant is still entitled to access the documents and communications that he/she created or participated in while affiliated with the entity. And this makes all the more sense in a case such as this where the documents are put at issue by the litigants. Indeed, the Defendants cannot prevent Jacobs from seeing his own documents, so they are attempting to use contrived claims of privilege to prevent his legal counsel from seeing what exists. There is and can be no legal basis for blinding a party's legal counsel to sources of proof.

This is in addition to the settled fact that those claiming any privilege bear a strict burden of proof and persuasion. All doubts are resolved in favor of production and against any attempts to use privileges to obstruct the search for the truth. Defendants' log fails to substantiate any legitimate claims of privilege, let alone those that would preclude Jacobs' counsel from accessing

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records he possesses. And this is particularly so when defendants issue false denials and proclaims how there is "no evidence" of their wrongdoing, but then attempts to assert privilege over the very evidence that they claim does not exist.

This Motion is supported by the following Memorandum of Points and Authorities, any and all exhibits attached thereto, the papers and pleadings on file herein, including Jacobs' Motion for Protective Order, *Or* Alternatively Motion to Compel Production of Documents, and any oral argument this Court may consider.

DATED this 15th day of February, 2013.

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NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned counsel will appear at Clark County Regional Justice Center, Eighth Judicial District Court, Las Vegas, Nevada, on the 22 day of March, 2013, at Chambers .m., in Department XI, or as soon thereafter as counsel may be heard, to bring this **PLAINTIFF STEVEN C. JACOBS' MOTION TO RETURN REMAINING DOCUMENTS FROM ADVANCED DISCOVERY** on for hearing.

DATED 15th day of February, 2013.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

A. Jacobs' Source Of Proof Is At Issue.

Notwithstanding this Court's extensive involvement to date, a short summary of the claims, defenses and counterclaims at issue is appropriate in noting the nature of Defendants' attempts to withhold sources of proof. Recall, Jacobs brought this action after having been hastily terminated from his role as head of Sands China's casino operations in Macau. The termination was orchestrated by senior LVSC executives despite the fact that just months earlier, Jacobs was praised and awarded substantial stock for his efforts, being credited with not only saving the titanic, but also all of its passengers. (*See* First Am. Compl. ¶ 26.)

The about-face occurred because of Jacobs' challenge to LVSC Chairman, Sheldon Adelson ("Adelson") over Adelson's insistence that board members not be informed of a host of activities that he had undertaken. These included (1) Adelson's desire to conceal cost overruns; (2) Adelson's "leverage idea" of obtaining information on government officials so as to have leverage over them in an attempt to get them to change policy; and (3) attempts to coerce Macau's then-Chief Executive with assertions that Adelson had paid tens of millions of dollars to settle a lawsuit for the benefit of the Chief Executive. When Jacobs announced his intention to address these matters with Sands China board members at a scheduled July 25, 2010 meeting, Jacobs was summarily fired at Adelson's insistence two days earlier, guaranteeing that no such disclosure would occur.

To be sure, the Defendants claim differently. In fact, LVSC filed an extensive Answer, not only denying Jacobs' version of events but also asserting a host of affirmative defenses, including broadly proclaiming that it "acted in accordance with reasonable commercial standards, in good faith, and with ordinary care". (LVSC's Answer at 7.) And it went even further. LVSC asserted counterclaims for abuse of process, defamation, intentional interference and civil extortion. For these sweeping claims, LVSC asserts that Jacobs fabricated the facts of Adelson's conduct and in doing so endangered LVSC's and Sands China's relationship with the governments of both Macau and mainland China. *Id.*, p. 12, ¶¶ 22-26. But even that was not enough for

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Adelson. He affirmatively took to the media calling Jacobs delusional and asserting that "there isn't a shred of evidence." (Ex. 1, Forbes Article.) In fact, he boldly told the public that "[w]hen the smoke clears, I am 1000 percent positive that there won't be any fire below it. What they will find is a foundation of lies and fabrications . . . ." (Ex. 2, New York Times Article.)

Jacobs agrees with Adelson and the Defendants about one thing: Someone is indeed lying in this case. And that is precisely why the contemporancously created documents, including those presently being withheld, are key to showing just who is telling the truth.

B. Defendants' Hope Is To Keep The Proof Of What Was Really Occurring From Coming Out.

The Defendants have attempted mightily to make Adelson's proclamation – that there will be is no proof – a self-fulfilling one. There is no denying the lengths that they have gone to conceal evidence. Their misrepresentations as to the location and their own secret review of critical documents are well documented. But, of course, that is only one side of the equation: *i.e.*, documents that the Defendants possess. They also need to find a way of depriving Jacobs of the proof that he already possesses. Trying to do that, Defendants have thrown the proverbial kitchen sink of arguments at Jacobs' possession of his own documents.

They first tried to claim that all of his documents were "stolen" and thus should be returned to them. No doubt, they would have quickly scurried them off to Macau so as to later claim that they were precluded from producing them in the United States. When that attempt failed, they insisted that Jacobs' counsel could not review any of his documents until such time as the Defendants had reviewed them first. They wanted to see what Jacobs had so that they could conceive of ways to preclude Jacobs from disproving Adelson's proclamations that there would be no proof.

And there is no denying that the Defendants have been diligent and spent freely in pursuit of that objective. True to that goal, they initially presented a more than 3,000 page log of documents they claimed were privileged and which Jacobs' counsel should not see. Underscoring that the real focus is putting problematic documents out of reach, they claimed privilege and/or protection over documents that had no identified authors or recipients, as well as communications

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between non-attorneys and even those with third-parties. (*See* Ex. 3, Spinelli Ltr. dated Oct. 9, 2012.) Additionally, they concocted nonexistent privileges such as "gaming regulations" as a basis to withhold evidence. Not surprisingly, Jacobs protested. But keeping with the objective of denying access to proof, the Defendants set about to "revise" the privilege log – reducing it down to 1,773 pages – while maintaining those very same deficiencies.

Jacobs has endeavored to pierce through the convoluted and obstructionist log by breaking it down into categories as a means to uncover what Defendants are withholding. Through that process, Jacobs has identified and reorganized the log into the following general categories of documents from which the failures in the privilege claims can better be seen:

1. Those with no author or recipient identified. (Exs. 4 and 5.)
2. Those where Jacobs is listed as either the author, recipient or copied on. (Ex. 6.)
3. Those where no attorney is identified at all on the privilege log. (Ex. 7.)
4. Those where an attorney is only identified in the "other names" column, but is not an author, recipient or copied. (Ex. 8.)
5. Documents where the work product privilege is claimed. (Ex. 9.)
6. Documents where the accountant-client privilege is claimed. (Ex. 10.)
7. Documents where no attorney is identified at all, but a generic reference to "legal department" is listed. (Ex. 11.)
8. Documents where no privilege is asserted at all, but the documents are still withheld. (Ex. 12.)
9. Documents that are identified as "redaction needed" but still not produced. (Ex. 13.)
10. Documents that are communications with third parties. (Ex. 14.)
11. Documents identified as being withheld on a so-called gaming regulation privilege. (Ex. 15.)

Jacobs challenges every claim of privilege asserted and puts Defendants to their proof. On the face of the log, it is clear that the Defendants are engaged in abusive and improper designations. Their goal is to withhold the sources of proof to avoid the embarrassment that will

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follow when the documents show the Chairman has been less than forthright with this Court, his fellow board members, the shareholders, government investigators, and the public.

II. ANALYSIS

A. Defendants Fail To Establish Any Factual Or Legal Basis For Their Claims Of Privilege.

An initial telling omission in Defendants' privilege log is the lack of any identification of just who is asserting privilege. They do not say whether it is LVSC, Sands China or both. Then, they make sweeping designations that, even on the face of their log, could not remotely constitute a valid claim of privilege. They do not identify the authors, recipients, or even the subject matters of many documents. They even designate documents with third parties as somehow being subject to privilege.

The simple fact is that these Defendants, in their endeavor to keep proof from coming to light, distort the attorney-client privilege beyond all cognizable parameters. In fact, it attaches only to communications that are (1) made in confidence; and (2) for the purpose of facilitating legal services by the lawyer for the client. *United States v. Chen*, 99 F.3d 1495, 1501 (9th Cir. 1996). And, because attempts to enlist "the attorney-client privilege obstructs the search for the truth, it should be narrowly construed." *Whitehead v. Comm'n. on Jud. Discipline*, 110 Nev. 380, 415, 873 P.2d 946 (1994). This means that all "doubts must be resolved against the party asserting the privilege." *Roberts v. Heim*, 123 F.R.D. 614, 636 (N.D. Cal. 1988); *Burrows Welcome Co. v. Barr Lab., Inc.*, 143 F.R.D. 611, 617 (E.D.N.C. 1992) ("[T]he court has strictly construed the privilege . . . and has resolved all doubts in favor of disclosure.").

Because it is an obstacle to the truth, the party claiming privilege has the burden of establishing both the factual and legal basis for the claim. Thus, for every document that they seek to conceal, Defendants must prove that an actual privilege exists which has not otherwise been waived. *Rogers v. State*, 255 P.3d 1264, 1268 (Nev. 2011); *In re Keeper of Records*, 348 F.3d 16, 22 (1st Cir. 2003) ("[T]he party who invokes the privilege bears the burden of establishing that it applies to the communications at issue and has not been waived."); *Granite Partners v. Bear, Sterns & Co., Inc.*, 184 F.R.D. 49, 52 (S.D.N.Y. 1999) (same).

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Here, even if Defendants had legitimate claims of privilege to assert as to Jacobs – which they do not – they have abused the opportunity. They designated documents that were communications with third party over which no claim of privilege could extend. (Ex. 14.) They designated documents for which there is no identified author or recipient from which any purported claim of privilege can be judged. (Exs. 4 and 5.) They designated documents where Jacobs is communicating directly with other executives. (*See, e.g.,* Ex. 7.) The Court must see this conduct for what it is –just another installment in the campaign to keep the truth hidden from view.

Not only does their purported log lack an adequate factual basis upon which any legitimate claim or privilege could rest, courts have rightly concluded that such abusive practices warrant the wholesale rejection of any privilege claim. The law simply does not reward those that abuse the opportunity. *See Universal City Dev. Partners, Ltd. v. Rye & Show Eng'g., Inc.*, 230 F.R.D. 638, 698 (N.D. Fla. 2005) (log must "provide a party whose discovery is constrained by a claim of privilege with information sufficient to evaluate such a claim and resist it if it seems unjustified."). Thus, "if the party invoking the privilege does not provide sufficient detail to demonstrate fulfillment of ***all the legal requirements for application of the privilege***, his claim will be rejected." *Ruran v. Beth-El Temple of W. Hartford, Inc.*, 226 F.R.D. 165, 168-69 (D. Conn. 2005) (emphasis added) (citations omitted).

B. Communications To And From Jacobs Are Not Immune From Disclosure, At Least As To Him.

Of course, the categories for which they knowingly made inadequate designations are not what the Defendants really worry about. These are mere camouflage where the Defendants hope this Court will get lost in the thicket. The documents that Jacobs either authored or received and which go to matters at issue are what the Defendants really want to conceal. And that is precisely why the Defendants have made them the hill to die for.

To be sure, because some of these documents pertain to activities for which the Defendants would like to keep secret, they may very well be sent to, copied on, or reference an in-house attorney. But that alone hardly establishes a privilege. It is hardly original for a

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defendant to try and hide documents behind an in-house counsel with unsubstantiated claims of privilege. To preclude this abuse, the burden of establishing a privilege for in-house counsel is closely scrutinized. Courts hold that communications to and from in-house counsel can be sheltered "only upon a ***clear showing*** that [in-house counsel] gave [advice] in a professional legal capacity." *Lindley v. Life Investors Ins. Co. Ram.*, 267 F.R.D. 382, 390 (N.D. Okla. 2010) (emphasis added). "[I]t is well settled that merely copying an attorney on an email does not establish that the communication is privileged." *IP Co., LLC v. Cellnat Tech., Inc.*, 2008 WL 3876481 (N.D. Cal., Aug. 18, 2008). In-house attorneys typically wear two hats and thus a claim of privilege cannot be established by simply referencing an in-house attorneys' involvement.

And here, even if the Defendants could satisfy their burden of establishing an actual and honest claim of privilege, it is not an impediment to Jacobs' access to information that he authored or received while serving as CEO. The Defendants cling to *Montgomery v. Etreppid Techs, LLC*, 548 F. Supp. 2d 1175 (D. Nev. 2008) claiming that it is the white-horse case of all analyses on the point. With it, they tell this Court that "a former executive cannot waive a corporation's attorney-client privilege – or obtain copies of privilege documents himself – even if he previously had access to such documents." (*See* Opp'n to Mot. to Compel, 8:8-10.)

Predictably, Defendants overstate the case. In *Montgomery*, the court considered the jurisdictional split as to the question of "who is the client for purposes of the attorney-client privilege?" *Id.* at 1180. Some jurisdictions follow the "Collective Corporate Client" approach addressed in *Gottlieb v. Wiles*, 143 F.R.D. 241 (D. Col. 1992). Under that approach, the "client" is considered to be the people running a corporation, such that a "former director and CEO had the right to access the [privileged] documents that had been created while he was a director and officer at the corporation." *Id.* at 1185 (explaining the "Collective Corporate Client" approach). Others follow the "Entity is the Client" approach from the case *Milroy v. Hanson*, 875 F. Supp. 646 (D. Neb. 1995), where the "client" is considered to be the corporation, not those running it, such that "once the former CEO left the corporation, his right to access attorney-client privileged documents terminated." *Id.* at 1184-85 (explaining the "Entity is the Client" approach).

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Ultimately, "while *Milroy* may not be the 'majority' position," the *Montgomery* court followed the "Entity is the Client" approach. *Id.* at 1186. It held that a former director or executive is not entitled to privileged documents simply because the documents were created during his tenure. But that is, of course, a far cry from claiming that a former executive can be deprived access to communications that he actually created or participated in at the time. *Compare with id.* at 1187 (noting that the executive in *Montgomery* "would have had access" to the documents during his employ, but did not necessarily do so); *Milroy*, 875 F. Supp. at 647 ("There has also been no showing that Milroy ever participated in any of the meetings, conferences, or discussions that gave rise to the assertion of the attorney-client privilege.").

The Defendants' ignoring of this point will not make it go away. Their overreaching can best be demonstrated by examining the most obvious circumstance where privileged documents are at issue which were either created or received by a former employee: When a former in-house attorney seeks access to their own work product for purposes of litigation. Obviously, attorneys owe their former employers an even greater duty about maintaining confidences than that of an ordinary former employee. But even in those extreme circumstances, courts recognize that the former employer cannot deny access to privileged information that the former in-house attorney generated or received during his or her tenure.

For instance, in *Willy v. Administrative Review Board,* 423 F.3d 483 (5th Cir. 2005), an in-house attorney brought retaliation claims before an administrative law judge under the federal whistleblower statute, claiming that he had been fired for a report he had written about his employer's liability issues. The corporate employer attempted to prevent the former employee from obtaining a copy of the report and using it to support his lawsuit, arguing that it was privileged. *Id.* at 494-501. The Fifth Circuit sided with the former employee. The court reasoned that the former employee, even if a lawyer, "does not forfeit his rights simply because to prove them he must utilize confidential information. Nor does the client gain the right to cheat the lawyer by imparting confidences to him." *Id.* at 499 (quotation omitted). The court rejected the argument "that the attorney-client privilege is a *per se* bar to retaliation claims under the federal whistleblower statutes, *i.e.*, that the attorney-client privilege mandates exclusion of all documents

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subject to the privilege." *Id.* at 500. While the court noted that there was a potential for concern in the actual use of privileged information as part of a public proceeding, it indicated that it did not need to worry about that issue since this dispute was before an administrative law judge.

The Third Circuit had reached the same conclusion earlier in *Kachmar v. SunGard Data Systems, Inc.*, 109 F.3d 173 (3d Cir. 1997), where a former in-house attorney sued her former employer under Title VII for gender discrimination. The employer claimed that the former employee could not use privileged information offensively in order to prove her case. The Third Circuit rejected that assertion. Rather than depriving the plaintiff of proof, the court held instead that the trial court should simply take precautions through various measures that would allow the plaintiff to make use of the proof while protecting actual privileged information from unnecessary disclosure to those outside the case. Some of the protective measures it suggested were sealing exhibits, limited admissibility of some evidence, orders restricting the use of the information, and, if necessary, *in camera* proceedings. But the wholesale attempt to claim that the former in-house attorney had no right of access was simply not the law.

The Ninth Circuit relied on both *Willy* and *Kachmar* in a case arising from the District of Nevada. In *Van Asdale v. Int'l Game Tech.*, 577 F.3d 989 (9th Cir. 2009), two in-house attorneys from Nevada sued their former employer, IGT, for tortious discharge after they were terminated for reporting possible shareholder fraud in connection with a merger. *Id.* at 992. IGT claimed that since the only proof that the former employees would use to prove their case was privileged, it should be dismissed because they were not allowed to use privileged information against their former employer. *Id.* at 994. The Ninth Circuit rejected this argument and found that the attorneys' cases should be allowed to proceed with the use of the privileged information. As with the earlier cases, even if there is actual privileged information at issue, that alone would not permit it to be swept under the rug and placed out of the plaintiffs' reach. Instead, the court should take adequate protection to safeguard the information against unnecessary disclosures above and beyond permitting the plaintiff to use the proof, particularly since the plaintiffs were participants in the creation of the proof. *Id.* at 995-996.

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Contrary to the Defendants' perverse wants, this Court cannot give Jacobs a lobotomy so as to remove his knowledge of documents that he participated in creating or reviewing while serving as CEO. Nor will the courts interfere with Jacobs' attorney-client representation by putting blinders on his counsel so that they do not know the sources of his proof. Even if the Defendants could establish a legitimate claim of privilege over any of these documents against outsiders, that fact does not deprive Jacobs of access to the proof, particularly when he was a participant in its creation. Even in the extreme circumstance involving an in-house counsel – someone who owes an independent duty to a former employer – the law does not permit the employer to cheat the employee by imparting privileged information to them so as to later claim that the proof is off limits.

C. Any Claim Of Privilege Was Waived Because These Contemporaneous Documents Are At Issue.

But there are even more reasons why Defendants' cries of privilege fail here. The documents they want to suppress are plainly "at issue" due to the claims, defenses and counterclaims asserted. As such, even if the Defendants could establish legitimate claims of privilege as against Jacobs, those claims are deemed waived in a case such as this. "[I]t has become a well-accepted component of waiver doctrine that a party waives his privilege if he affirmatively pleads a claim or defense that places at-issue the subject matter of privileged material over which he has control." *Wardleigh v. Second Judicial Dist. Court In & For County of Washoe*, 111 Nev. 345, 354, 891 P.2d 1180, 1186 (1995). This doctrine "reflects the position that ***the attorney-client privilege was intended as a shield, not a sword.***" *Id.* (emphasis added). Additionally, selective use of privileged information by one side can improperly "garble" the truth. *Id.* at 355, 891 P.2d at 1186.

This means that a privilege cannot be asserted by a party who has asserted a factual claim the truth of which involves an examination of the supposedly privileged communication. *Bowne of New York City, Inc. v. AmBase Corp.*, 150 F.R.D. 465, 488 (S.D.N.Y. 1993). As a result, "where invasion of the privilege is necessary to determine the validity of the client's claim or defense, [t]he attorney-client privilege must give way." *In re Pfohl Bros. Landfill Litig.*,

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175 F.R.D. 13, 24 (W.D.N.Y. 1997). And, courts have "generally applied the [at-issue waiver] doctrine liberally." *Bank Brussels Lambert v. Credit Lyonnais (Suisse), S.A.*, 210 F.R.D. 506, 510 (S.D.N.Y. 2002).

Defendants cannot seriously deny that they themselves have put Jacobs' principal documents at issue. Although there are many examples, two are noteworthy and obvious. Buried within Defendants' obtuse privilege log are documents concerning multiple investigations, including those of foreign officials, that are at issue here, including determining who was controlling these events and from where (*i.e.*, this Court's jurisdiction over Sands China). As Jacobs explains, these reports and related documents, including emails, concern Adelson's personal leverage idea where he wanted to obtain information on foreign officials so that he could "leverage" that information against them in order to induce them into changing certain table limits. (Ex. 16 at ¶¶ 7, 8.) But of course, despite claiming that this never happened, the Defendants try to claim privilege over the very documents that show that it indeed occurred.

The same is true concerning their attempts to claim privilege over internal documents surrounding Jacobs' reporting of Adelson's threats against Macau's then-Chief Executive, Edmond Ho. Again, scurried away in this voluminous privilege log are the documents, including emails, discussing these threats, and Jacobs' reporting of it to LVSC's general counsel as well as its COO in Las Vegas. (Ex. 16 at ¶ 6.) But conveniently, LVSC again claims that these events never occurred, while simultaneously asserting privilege over the very proof that shows that it did. Contrary to the Defendants' wishful thinking, the law does not allow them withhold proof of what really occurred while they pretend it never happened.

Again, these are but two examples of the Defendants' inconsistency. The unfairness and inappropriateness of this attempted double standard was addressed and rejected in *Mitzner v. Sobol*, 136 F.R.D. 359 (S.D.N.Y. 1991), where an employee brought a civil rights claim against her employer, the Education Department. At issue was a memorandum prepared by the Education Department's general counsel investigating allegations of cheating. The court concluded that the defendants had waived any claim of privilege as to the report because they had asserted the affirmative defense of qualified immunity, which placed at issue the relevant

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information. The court further held that because the defendants had instituted "disciplinary action against the plaintiff, which is the underlying basis for the civil rights claim," they had also "clearly and repeatedly waived" the privilege by putting the matter at issue. *Id.* at 362.

Indeed, courts hold that attempts by a defendant to rationalize their actions as being undertaken in good faith also puts at issue supposedly privileged communications that undermine that claim: "[T]he assertion of a good-faith defense involves an inquiry into the state of mind, which typically calls forth the possibility of an implied waiver of the attorney-client privilege." *In re County of Erie*, 546 F.3d 222, 228-29 (2nd Cir. 2008); *see, e.g., Brownell v. Roadway Package Sys., Inc.*, 185 F.R.D. 19, 25 (N.D.N.Y. 1999) (employer waived its right to invoke both attorney-client privilege and work-product doctrine by asserting the adequacy of its investigation into sexual harassment claims as an affirmative defense); *Hearn v. Rhay*, 68 F.R.D. 574, 577 (E.D. Wash. 1975) (finding "that if the privilege did exist it has now been waived by defendants' assertion of the good faith defense."). And, of course, LVSC has asserted that one of its affirmative defenses is how it undertook its actions in good faith.

The point is that not only have the Defendants not shown any privileges as for Jacobs' communications that he sent or received, but even if they could, any such privilege would also be lost by the fact that those communications are squarely at issue in this case. They are unquestionably at issue in determining who is telling the truth about Adelson's directives regarding investigating foreign officials, obtaining leverage over them, and making threats against Edmund Ho, just to name a few. And of course, they also are at issue in proving who was giving these directives and from where, which establishes jurisdiction over Sands China. The fact that the Defendants do not like what these documents will show only underscores how much they are at issue in the case.[1]

[1] In fact, because the documents are at issue, Defendants cannot even argue for the protections that the courts in *Kachmar* and *Van Asdale* indicated would be appropriate for truly privileged information.

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D. Defendants Also Wrongly Withhold Documents Under The Accountant-Client Privilege.

In addition to the improper and unsubstantiated claims of attorney-client privilege, Defendants also withheld documents asserting the accountant-client privilege. Under Nevada's accountant-client privilege, "[a] client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications" between the client and his or her accountant. NRS 49.185. To assert the privilege, the party must establish: (1) the accountant was "certified or registered as a public accountant" in Nevada at the time the communication occurred; and (2) the communication was "[m]ade for the purpose of facilitating the rendition of professional accounting services." *Id.*; NRS 49.135.

The privilege is narrowly construed, however, and does not protect communications regarding "the preparation of financial statements, the nature and extent of accounting work, banking services, and the preparation of accounts receivable." *See McNair v. Eighth Judicial Dist. Court In & For County of Clark,* 110 Nev. 1285, 1288, 885 P.2d 576, 578 (1994) ("[N]either Nevada law nor general policy reasons support McNair's argument that we should broadly construe the accountant-client privilege.").

But once again, the Defendants withheld documents with no showing of a basis for privilege here. They do not identify who is claiming the privilege, nor do they present any basis to conclude that a Nevada licensed CPA was involved, let alone that the nature of the documents fall within the scope of the privilege.

E. Defendants Erroneously Claim Work Product Protection.

The Defendants have also withheld documents, claiming the work product privilege. Of course, it only applies to materials "prepared in anticipation of litigation." NRCP 26(b)(3). And, notably, Defendants do not dare attempt to explain how documents prepared months (if not years) before Jacobs' termination could have been prepared in anticipation of this litigation. *See Hickman v. Taylor*, 329 U.S. 495 (1947) (case establishing work-product doctrine only involving materials prepared in anticipation of the litigation then before the Court); *see also United States v. Int'l Business Machines Corp.*, 66 F.R.D. 154, 178 (S.D.N.Y. 1974) (document must be prepared

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in anticipation of litigation in the case in which the special immunity accorded to such material is sought); *Honeywell, Inc. v. Piper Aircraft Corp.*, 50 F.R.D. 117, 119 (M.D. Pa. 1970) (same).

F. Defendants' Claims Of A Gaming Regulatory Privilege Are Erroneous.

Demonstrating the lengths to which they will go to withhold evidence, Defendants also withhold evidence based upon a so-called "gaming regulatory" privilege. Notably, they do not explain where such a privilege comes from. The only gaming-related privilege in Nevada is NRS 463.3407, which provides:

> Any communication or document of an applicant or licensee, or an affiliate of either, which is made or transmitted to the Board or Commission or any of their agents or employees . . . is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.

(Emphasis added). In other words, "[t]he absolute privilege under NRS 463.3407 bars any civil cause of action grounded on communications by a holder of, or applicant for, a gaming license to the Gaming Control Board or Gaming Commission to assist the entity in its functions." *Hampe v. Foote*, 118 Nev. 405, 408-09, 47 P.3d 438, 440 (2002) abrogated on other grounds by *Buzz Stew, LLC v. City of N. Las Vegas,* 124 Nev. 224, 181 P.3d 670 (2008). However, as the language of the statute demonstrates, the privilege only "provides that such communications cannot be a ground for liability in any civil action." *See id.* The statute does not create an evidentiary privilege as to the production of documents in a civil action.

But the Defendants already knew this. Their ever-litigious Chairman, Adelson, attempted a similar misuse of this privilege in the case *In re Smith*, 397 B.R. 124, 132 (Bankr. D. Nev. 2008), and lost. There, Adelson sued an author for defamation after writing a book that "link[ed] Mr. Adelson to unsavory characters, and to unsavory activities." *Id.* at 126. When the author subpoenaed records from the Nevada Gaming Control Board to show that his statements were true and non-defamatory, Adelson claimed privilege under NRS 463.3407. The court rejected Adelson's claim that the statute provided an evidentiary privilege, finding that "[a] better and more contextual reading is that NRS 463.3407 refers to the law of defamation – as indicated by the last clause of the statute." *Id.* at 128-29.

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III. CONCLUSION

The Defendants' abusive privilege claims are part and parcel of their attempts to deny Jacobs access to proof while they simultaneously claim that no proof exists. Their claims of privilege are deficient on their face. They know that their log is deficient, and that is no doubt part of the strategy. They make certain claims of privilege so obviously deficient that perhaps the Court will focus upon them and lose sight of what they really want to keep secret. They hope that the Court will thus overlook the glaring improprieties of their claims of privilege over the more critical documents in this case, which go to show what Adelson and his executives were doing, where they were doing it, and why. The Defendants are right to fear these documents. But fear of the truth is not a basis for claiming privilege or withholding evidence.

Defendants have no legitimate claims of privilege, and even if they did, those claims cannot be used to conceal documents that Jacobs participated in while an executive.

DATED this 15th day of February, 2013.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on 15th day of February, 2013, I caused to be served via electronic service and e-mail, true and correct copies of the above and foregoing **PLAINTIFF STEVEN C. JACOBS' MOTION TO RETURN REMAINING DOCUMENTS FROM ADVANCED DISCOVERY** properly addressed to the following:

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DISTRICT COURT
CLARK COUNTY, NEVADA
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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 PLAINTIFF'S RENEWED MOTION FOR NRCP 37 SANCTIONS

THURSDAY, FEBRUARY 28, 2013

APPEARANCES:

FOR THE PLAINTIFF:	JAMES J. PISANELLI, ESQ. TODD BICE, ESQ.
FOR THE DEFENDANTS:	J. STEPHEN PEEK, ESQ. JON RANDALL JONES, ESQ. MARK JONES, ESQ. MICHAEL LACKEY, ESQ.
COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

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

LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 28, 2013, 10:08 A.M.

(Court was called to order)

THE COURT: Okay. Are we ready? Mr. Pisanelli, are you arguing today, or is Mr. Bice?

MR. PISANELLI: I am, Your Honor.

THE COURT: All right. Please use regular people language today.

MR. PISANELLI: I will. And if I slip, please feel free to interrupt me, and I'll do my best to rephrase it.

For the record and for the audience, Your Honor, James Pisanelli on behalf of the plaintiff, Steven Jacobs.

Your Honor, I'm going to be blunt. There is a lot of reasons to be angry in this case. This case has been corrupted. And when I say there's a lot of reasons to be angry I don't me personally, I mean virtually every participant in this case, certainly Mr. Jacobs. His justice is being denied. Through just simply the delay his justice is being denied, his fair trial appears to be out of reach in light of what we've seen. Your Honor has as much reason to be angry as anyone. You've been given a mandate, an instruction from the Supreme Court to conduct a hearing on jurisdictional discovery, and the defendants' conduct in this case has gotten in the way of you doing your job. Certainly Mr. Bice and I have expressed some anger to you in the past, both in written word and at this podium, to a degree at times when we were

both regretful and wished we could take it back and calm down a little bit.

And I would even go so far as to say that the defendants' counsel has enough reason to be angry, too. They have been put in a challenging position, certainly reputational capital has been spent on behalf of these defendants. So we all have a lot of reason to be angry.

But today I believe and I hope is a new day, the beginning of a new chapter in this case where we can just take the anger and put it aside and focus on how we cure the poison that has infected this case. Challenging, but not impossible. Actually, I think we have a clear path, and the path has been set forth by the defendants themselves. And what we do in order to cure the poison that's in this case in my view is we simply accept the reality of this case, where we find ourselves, and the reality of these defendants and how they've conducted themselves. We'll accept it. We know who they are, we know what they want.

What I think we need to do to cure the poison, to fix the corruption that has occurred in this case is simply give these two defendants what they have so obviously been asking of you for going on two-plus years now, and that is the default judgment that they ultimately would rather have than having the consequence of shining light on their company and what's going on in particular in Macau.

So what we can't do is allow this to stand. If there's anything we know from the rules of procedure, from the rules of this court, from the rules of the Supreme Court, and from the rules across the land is that parties that behave so badly as the defendants in this case have cannot under any circumstance benefit from that bad behavior. And so we have options available to them -- to us to fix this problem; but ignoring and simply accepting good enough, is what we hear from the defendants today, is not going to cure the problem.

So how do we do it? Now, let me take a step back. How do we know that what Las Vegas and Sands China is really angling for in the end of the day is for you to simply do what you need to do so that they don't actually have to stand trial in this case on the merits. How do we know they'd rather serve -- or just be defaulted?

First of all let's look at the history of this case very, very briefly. And by history of this case I mean the history of this defense table. That tells us a lot in and of itself. We have had a series of some of the most experienced and skilled and reputable lawyers come in and out of this case, and we have one person who fits all of those characteristics who has been a mainstay, and he's still in this case. All of these lawyers have behaved identically one after another, and they all have behaved identically in relation to this discovery, which is out of their character,

out of their own reputation, and out of their own reputation of their law firms. They have come in and acted extraordinarily different than anything we have seen, I personally have seen, from any of them in past dealings.

And so the question is why is that. And the answer is very obvious. Every one of them has said to Your Honor in either writing or standing at this podium in one form or another the same exact thing Mr. Peek said when he was on that stand. His words were "constrained," I was constrained, I did what I could do. And I'm paraphrasing Mr. Peek. Take it in context, out of context, that's the theme we've heard from this collection of incredibly talented lawyers that are doing things that they must know cannot and should not be done in civil litigation ever. And they are all doing it, and the reason they're doing it is their client. This is a client-driven strategy, and these lawyers, my prediction, Your Honor, we haven't seen the end of the revolving door of these lawyers. They will either quit, I predict, or they will be fired, I predict; but we will see other lawyers come in and out when this strategy of Las Vegas Sands continues, that they would rather suffer consequences than shine light as the discovery rules require on their company.

So what we have here is not -- even as I have argued to you before, this is not someone butting heads with you, this is not somebody who is acting belligerent about their

power being greater than yours. This is someone making in my view what it appears by all measures is a business choice, a business choice of lesser evils. Point being there's nothing that can come out of this courtroom by way of sanctions for discovery or even a default judgment that is worse than the consequences on this company of shining light on all of their business practices, both Macau and here. They have made that so crystal clear to us that my suggestion in order to cure the poison in this case is to let them make that business choice. They can say to Your Honor, as they're entitled to say, no, we're not going to give our discovery, no, we're not going to let you see who wrote emails to whom when, where and what it was about, no, we're not going to give Steve Jacobs the evidence he's entitled to prove every aspect of his case, including damage, no, we won't do it. I would assert to Your Honor they're entitled to say that. But there's consequences to that choice, and today is the beginning of those consequences, I hope.

So if there's anything we know about this group of defendants is they're not shy. They're not shy about painting themselves as victims, they're not shy about taking advantage of any misstep along the way, and so we can't just simply say that, you're transparent, Las Vegas Sands, it's time to end this charade and enter a default against you; we have to create a record. Because the Supreme Court will look at it

and they'll appeal, the defendants will, for as long as they can.

So what do we need to do in order to create a record? What do we need to look at in order to show that there is yet another wave of wilful misconduct from these defendants that justifies severe sanctions by way of default, striking answers, striking defenses, and anything else Your Honor deems appropriate?

First let's look at where we've been. Your Honor may recall in November of last year, as we were approaching the holiday season, we filed a Rule 37 motion for sanctions. At that time, Your Honor, I'm not sure if you recall, but we were 16 months into the jurisdictional discovery that you ordered. And at the time we filed that motion, by my best count and anyone on either team will correct me if I'm wrong, these monolithic companies with resources that are endless had produced all of 55 pages of documents after 16 months of litigating, 16 months of discovery that you had ordered. And so we had had enough, and we came to Your Honor with our first Rule 37 motion.

Your Honor held a hearing on December 18, which was the beginning of what brings us here today. Your Honor may recall what you did at that hearing is you raised the stakes. You raised the stakes. You did not want any ambiguity about prior orders, which you did note that they had violated

several of them, but you wanted a clean record, you wanted a clear record, you wanted a clear mandate and instruction to these defendants, you have something to do and you have a date by which you will do it. And your instruction could not have been clearer. You said to these people, to these companies, that on January 4th, two weeks later, quote, "Sands China will produce all information within its possession that is relevant to jurisdictional discovery."

Now, every single person in our audience can answer the very simple question, what does it all mean.

THE COURT: You can change back to regular lawyer talk now. You bored them so badly, Mr. Pisanelli.

MR. PISANELLI: Well, it's only getting better, so too bad they missed it.

The point is this, Your Honor. "All" means all. When we're talking about the 55 pages that Sands China had produced at that point, all meant all. And that order, by the way, of course, was preceded by your order of September 14th in which you also made clear not only to the Sands China, who was sitting on their 55-page production at the time, but you also made it clear to both parties, quote, "Las Vegas Sands and Sands China will be precluded from raising the MDPA as an objection or as a defense to admission, disclosure, or production of any documents," all documents produced, nothing about the Macau Data Privacy Act is a defense anymore. You

could not have been clearer.

Your Honor, at the December 18th, as you may recall, politically we approaching January 1st of this year, which in the politics world was called the fiscal cliff. Everyone was talking about the fiscal cliff during that time period. What you did in this case, my interpretation, was you created this discovery cliff for these defendants. You made it clear that you'd had enough and that January 4th was their cliff day, they can do what you've told them to do for the two years preceding or suffer the consequences with their eyes wide open and with no room for complaint, because you were so crystal clear in your expectation of them.

And so we take a look now at what happened on January 4th to determine what is in our record to determine whether the beginning of the end of these defendants is appropriate, that this wilful conduct has continued, and that severe sanctions is now appropriate. Well, I don't think anyone can fairly say anything other than that this group of defendants took the dive, created -- they went right off the cliff on January 4th and did nothing more than create a charade on what they produced. They spent millions of dollars, they say, congratulating themselves on the back, by the way, in making sure that what it was that they produced to us was meaningless and, more importantly, useless, useless to Mr. Jacobs in this case, useless to anyone who might get their

hands on it, be it the government, the press, or anyone else that these companies may sue for actually telling the truth about what's going on in this company.

So here's the reality. This is the charade. January 4th we find out -- and we find out much of this, by the way, Your Honor, from the self-congratulatory memo that they gave to you telling you and the world what a great job they did over those two weeks. We know that of the twenty custodians that they had been in possession of from us, a list of twenty custodians, they chose six of them, six. They added three of their own, but of the twenty that we gave to them they chose only six to look for records.

Now, I don't know about anyone else, but "all" means all. So six isn't all of twenty. Twenty is all of twenty. If there were other people we were -- did not have enough information about to put on that list of twenty, then I would assert to Your Honor they had an obligation to put twenty-plus on the list of custodians they were going to search records for. But to take twenty and pull it back to six and say that that is compliant, "all" doesn't mean all, "all" means a fraction, apparently, in the world of Las Vegas Sands. They were not so graceful, by the way, in their avoidance of some of the most important people on that list, Luis Melo being one of them, the Number Two person on the hit list, didn't seem to make his way onto the list.

Now, what is their excuse? Not a shocker. Our fault. My fault, Todd Bice's fault, Debbie Spinelli's fault, we didn't tell them how to do their job, we didn't help them, they say, in figuring out who these people are. That was perhaps one of the most remarkable things that I saw in this reply. And I tagged it. I had to tag it, because in their reply they wrote, quote, "Plaintiff never --" "never" being bolded and italicized, "Plaintiff never provided defendants with a proposed list of custodians or search terms for jurisdictional discovery."

Now, perhaps whoever wrote that brief wasn't standing in this courtroom on December 18th when I specifically said, standing at this podium, that we want the custodians from the list from two years ago from Colby Williams. I made it perfectly clear when they raised that same defense in December. And, remarkably, even if the person who wrote that brief was not in this courtroom on December 18th, they only need to look at their own self-congratulatory memo. The same people who just wrote that quote to you in an opposition brief also wrote, "To be sure, at the December 18th, 2012, hearing plaintiff asserted for the first time that he had sent a letter more than two years ago providing a last of relevant custodians." In two different papers filed within days of each other they say, we didn't know, and the other paper they say, we did know. The point of

it is of course they knew. They've always known the list. They've had the list for two years.

But it doesn't end there. Even when you look at the very few custodians they so conveniently selected, what do they do with them? They conveniently selected which of our requests for production that they wanted to search for. You see on page 9 of our opening motion we set forth a very brief schedule of every one of our requests and how many custodians they actually searched. Some of them are as low as three, some of them we were benefitted where they gave us all six.

THE COURT: One you have seven.

MR. PISANELLI: Seven. I don't see any of them that had the entire nine, but some of them as little as three.

What is remarkable about this exercise, Your Honor, and what certainly shows to all of us that this entire campaign is wilful is we're talking about computer clicks here; right? We have all spent a fortune on both understanding and becoming experts, some of us more than others, on ESI discovery using vendors, how you search, and we're talking about computer clicks of what we're doing for a particular custodian and which requests for production are going to be searched for a custodian. If someone actually doesn't want to go over what I have characterized as the discovery cliff, wouldn't you think they'd just click them all? Wouldn't you think they'd take the entire list of twenty

Your Honor sitting there and reminding everybody during the deposition if they behave and they act professionally and they don't engage, what's the problem? And if they don't, we submit that a deposition can be used for any purpose at the time of trial, and we'll see what -- whether or not we might we able to use it at the time of trial.

In sum, it's a motion for protective order. And we would submit, of what? We don't find anything that says that you have to ask leave of the court within the rule. We think the cases are distinguishable that they cited. We don't think that Mr. Bice or Mr. Pisanelli will be intimidated in deposition. And we think it's within accordance of the rules, and we're paying for it.

And finally, if the Court says that leave is required under some long-standing rule, we're asking for it now.

THE COURT: Thank you.

The motion is granted. Only under unusual circumstances would the Court issue permission to videotape counsel who are taking the deposition. The audio record of the videotape does certainly provide a basis for protecting against misconduct of counsel. If for some reason you believe there is in fact misconduct, as opposed to a facial expression that someone takes exception to, I would be happy to reconsider on a case-by-case basis permitting the camera to be

on counsel.

All right. Goodbye.

MR. RANDALL JONES: Your Honor, just to clarify that, with respect to a case-by-case basis. So if something comes up at a deposition --

THE COURT: Here's the deal, Mr. Jones. I will tell you that Kathy England I both in separate cases had occasions where a specific attorney came across the table and threatened us. From that point forward that person was on the camera, as well, not just the deponent. And that was approved -- my recollection, mine was approved by Discovery Commissioner Biggar, Kathy's was approved by a magistrate. But that was where the attorney was doing something other than, you know, a facial expression or smirking. You know, you guys do that in court all the time. What am I supposed to do? 'Bye.

MR. RANDALL JONES: Thank you, Your Honor.

THE PROCEEDINGS CONCLUDED AT 8:55 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

12/30/12
DATE

EXHIBIT B

To whom this may concern,

The abovementioned official letter has been well received.

This is in connection with the letter from your company (Venetian Macau Limited) stating that the local court in Nevada, US would be trying a civil case (Proceedings No.: A627691-B) involving Steven C. Jacob and Sands China Limited (hereinafter referred to as "SCL") with "Steven C. Jacob v. Las Vegas Sands Corp.; Sands China Ltd; Sheldon G. Adelson, et al." as the case name. In order to deliberate on whether it has jurisdiction over the abovementioned case, the court has requested SCL to provide information evidencing its relationship with "Las Vegas Sands Corporation" (hereinafter referred to as "LVSC"). Since your company believes that there may be documents in Macau which are significant to SCL's preparation of its own defense in the abovementioned case, your company intends to engage a lawyer in Macau, and to engage a law firm in Hong Kong which shall collaborate with that lawyer in inspecting the documents and information at your company's headquarters in Macau through the signing and provision of a contract of service. Your company believes that the abovementioned acts of document inspection and the treatment of personal data in connection therewith comply with the stipulations of Article 6, Item (5) of Macau's *Personal Data Protection Act* (Act 8/2005), and accordingly shall give notice to our Office pursuant to Article 21, No. 1 of that Act, or, in cases where our Office deems that a notice shall not be given, request the granting of permission by our Office in accordance with the stipulations of Article 22, No. 1, Item (4)[1] of that Act. As a public authority as defined under Article 79, No. 3 of the *Macau Civil Code* and the *Personal Data Protection Act*, our Office is responsible for monitoring and coordinating the compliance with and implementation of the *Personal Data Protection Act* by virtue of the responsibilities conferred upon it by Chief Executive's Dispatch No. 83/2007 and Dispatch No. 6/2010.

Pursuant to the stipulations of Article 4, No. 1, Items (5) and (6) of the *Personal Data Protection Act*, the "entity responsible for processing personal data" refers to "*a natural person or legal person, public entity, department or any other body which decides, individually or jointly with others, upon the purposes and means of the processing of personal data*", while

[1] The original version of the incoming letter reads "*nos termos do disposto na alínea 4) do artigo 22.º da Lei 8/2005.*"

"subcontractor" refers to "*a natural person or legal person, public entity, department or any other body which is authorized by an entity responsible for processing personal data to process personal data.*"

In accordance with the content specified in the letter from your company, your company intends to inspect the documents and information at your company's headquarters through engaging a lawyer in Macau and a law firm in Hong Kong which shall collaborate on such inspection, in order to provide evidence of the relationship between SCL and LVSC. It is thus clear that your company has the control and decision rights regarding the processing of the abovementioned information, including the decision of engaging a lawyer in Macau and a law firm in Hong Kong which shall collaborate to inspect such documents and information. Consequently, your company is an entity responsible for processing personal data, while the lawyer in Macau and the law firm in Hong Kong, which are authorized, are subcontractors.

It should be noted that, based upon the fact that your company has authorized a law firm in Hong Kong to inspect documents containing personal data, as well as the fact that the specimen contract intended to be signed with the law firm in Hong Kong as provided by your company indicates that the services to be provided by such law firm shall include "defining the scope of the document disclosure requirements relating to the civil proceedings filed by Steven C. Jacob against Las Vegas Sands Corp. and Sands China Limited with the local court in Nevada, US and making responses thereto; and inspecting and analyzing all relevant documents under a mechanism complying with Macau's laws (including but not limited to Macau's *Personal Data Protection Act* (Act 8/2005))," our Office deems that the information relating to the documents containing personal data entailed in this case which an institution registered outside Macau has been authorized to inspect has been transferred to places outside Macau (including Hong Kong), and that under such circumstances, your company shall be allowed to proceed only when the stipulations of Article 19 or 20 of the *Personal Data Protection Act* are observed.

In view of the stipulations of Articles 19 and 20 of the *Personal Data Protection Act*, our Office deems that your company may only authorize a law firm in Hong Kong to inspect relevant documents subject to compliance with the stipulations of Article 20, No. 1, Item (1) or (2) of that

Act and upon giving notice to our Office. However, since your company has provided our Office with no information evidencing that your company has obtained the express consent of the parties relating to such information, nor any contract of employment signed between your company and its employees or such information as contracts signed between your company and its clients, our Office cannot deem that your company's authorization of a law firm in Hong Kong to inspect relevant documents complies with relevant stipulations of the *Personal Data Protection Act*.

In addition, the letter from your company states that it thereby notifies our Office of its act of engaging a lawyer for document inspection pursuant to the stipulations of Article 21, No. 1 of the *Personal Data Protection Act*, but that in cases where our Office deems that a notice shall not be given, it shall request the granting of permission by our Office in accordance with the stipulations of Article 22, No. 1, Item (4)[2] of that Act.

Article 21, No. 1 of the *Personal Data Protection Act* stipulates the following: "*The entity responsible for processing personal data or its representative (if any) shall notify the public authority in writing, within 8 days from the commencement of processing, of one or a series of totally or partially automated processing operations intended to achieve one or more interconnected purposes.*" The situations in which notification is exempted are stipulated in No. 2 and No. 4 of that Article.

In view of the abovementioned legal stipulations, it is clear that the responsible entity shall give notifications and make declarations based upon the various purposes of personal data processing, rather than in connection with discrete, individual operations of personal data processing. In this case, as an entity responsible for processing personal data, your company shall give notifications and make declarations with respect to automated processing with one or more interconnected purposes, and shall not notify our Office of merely one of the procedures (i.e. engaging a lawyer to inspect information) within an individual activity. Moreover, your company has not provided the information necessary for notification and declaration, such as an indication of the types of information being processed, in accordance with the stipulations of

[2] The original version of the incoming letter reads "*nos termos do disposto na alínea 4) do artigo 22.º da Lei 8/2005.*"

Article 23 of the *Personal Data Protection Act*. Therefore, our Office cannot regard your company's previous letter as a fulfillment of its notification obligations.

Further, Article 22, No. 1, Item (4) of the *Personal Data Protection Act* stipulates that the use of personal data for purposes other than those of data collection shall be subject to permission by our Office. No inconsistency therefore exists between the notification obligations as stipulated in Article 21, No. 1 the *Personal Data Protection Act* and the application for permission as stipulated in Article 22, where the two Articles are concerned with different treatments of personal data. Consequently, an application for permission shall be directed to our Office pursuant to the stipulations of Article 22, No. 1, Item (4) and Article 23 of that Act in cases where personal data are used for purposes other than those of data collection, notwithstanding the fact that your company has effected notification and declaration with our Office in accordance with Article 21, No. 1 of that Act. Given that your company has provided neither sufficient information nor an account of the original purposes of data collection or the necessity of using personal data for purposes other than those of data collection, our Office cannot examine or approve the application for permission.

Based upon the foregoing, our Office shall archive your company's previous notification, declaration and application for permission, and we hereby recommend that your company re-examine its personal data processing situation, clearly define its need to fulfill notification and declaration obligations and to apply for permission, and provide our Office with statutory information for our examination and approval pursuant to the stipulations of Article 23 of the *Personal Data Protection Act*. Notifications and declarations may be effected and applications for permission may be made through submitting to us a *Declaration of Personal Data Processing*, which can be downloaded from the website of our Office (http://www.gpdp.gov.mo).

Should your company wish to appeal against the decision of our Office, an objection may be directed to our Office within 15 days upon receipt of this official letter of reply in accordance with the stipulations of Article 149 of the *Approved Code of Administrative Procedures* (Decree-Law No. 57/99/M of October 11); alternatively, an optional hierarchical appeal may be lodged to

the Chief Executive within the designated period for filing a judicial appeal in connection with relevant acts in accordance with the stipulations of Articles 155 and 156 of that Decree-Law.

In addition, your company may also file a judicial appeal with the Administrative Court within the period as stipulated in Article 25 of the *Approved Code of Administrative Proceedings* (Decree-Law No. 110/99/M of December 13).

Yours faithfully,

EXHIBIT C

CUSTODIANS AND SEARCH TERMS FOR MACAU REVIEW

- All search terms were run on documents using a date limiter of January 1, 2009 to and including October 20, 2010, except for Order ¶ 9 (RFP 6), which was run with the limiters as described in Paragraph 1 below.

1. March 8, 2012 Order ¶ 9 (RFP ¶ 6): Leven's services

Custodian: Steve Jacobs

Search terms:
Search terms for period between 10/14/09 and 7/23/10:
Leven w/25 ((Steve w/3 Jacobs) OR (Jeff* w/3 Schwartz) OR (Irwin w/3 Siegel) OR (Stephen w/3 Weaver) OR (Steve w/3 Weaver) OR (Iain w/3 Bruce) OR (Ian w/3 Bruce) OR (Ferguson w/3 Bruce) OR (Iain w/3 Ferguson) OR (Ian w/3 Ferguson) OR (Chiang w/3 Yun) OR (Rachel w/3 Chiang) OR (Dav* w/3 Turnbull) OR Lionel OR Leonel or Alves OR ((SGA OR Adelson OR Sheldon) AND (SCL OR "Sands China" OR VML OR "Venetian Macau Limited")) OR ((SCL OR "Sands China") w/10 (board or member* OR director)) OR "leverage strategy" OR (investigation* w/10 (government OR official*)) OR ((Stanley w/3 Ho) w/25 ((Parcel* 6 7) OR (Parcel* 6 pre/1 7) OR (P6 pre/1 7) OR (P6 and 7) OR (Site* 6 and 7) OR (Site* 6 pre/1 7) OR (P6 pre/1 7) OR (P6 and 7))) OR (Starwood) OR (st. w/3 regis*) or "advisor" or ("acting CEO or "interim CEO"))

Search terms for period between 7/23/10 and 10/20/10:
Leven or "acting CEO or "interim CEO"

Custodians: Benjamin Toh, Edward Tracy, Fiona Chan, Gunter Hatt, Kevin Clayton, Matthew Pryor, Stephen Weaver

Search terms:
Search terms for period between 10/14/09 and 7/23/10:
Leven w/25 ((Steve w/3 Jacobs) OR (Jeff* w/3 Schwartz) OR (Irwin w/3 Siegel) OR (Stephen w/3 Weaver) OR (Steve w/3 Weaver) OR (Iain w/3 Bruce) OR (Ian w/3 Bruce) OR (Ferguson w/3 Bruce) OR (Iain w/3 Ferguson) OR (Ian w/3 Ferguson) OR (Chiang w/3 Yun) OR (Rachel w/3 Chiang) OR (Dav* w/3 Turnbull) OR ((SGA OR Adelson OR Sheldon) AND (SCL OR "Sands China" OR VML OR "Venetian Macau Limited")) OR ((SCL OR "Sands China") w/10 (board or member* OR director)) OR "advisor" OR ("acting CEO OR "interim CEO"))
OR Lionel OR Leonel or Alves OR "leverage strategy" OR (investigation* w/10 (government OR official*)) OR ((Stanley w/3 Ho) w/25 ((Parcel* 6 7) OR (Parcel* 6 pre/1 7) OR (P6 pre/1 7) OR (P6 7) OR (Site* 6 7) OR (Site* 6 pre/1 7) OR (P6 pre/1 7))) OR (Starwood) OR (st. w/3 regis*) OR ("acting CEO or "interim CEO"))

Search terms for period between 7/23/10 and 10/20/10:
Leven w/25 ((Steve w/3 Jacobs) OR (Jeff* w/3 Schwartz) OR (Irwin w/3 Siegel) OR (Stephen w/3 Weaver) OR (Steve w/3 Weaver) OR (Iain w/3 Bruce) OR (Ian w/3 Bruce) OR (Ferguson w/3 Bruce) OR (Iain w/3 Ferguson) OR (Ian w/3 Ferguson) OR (Chiang w/3 Yun) OR (Rachel w/3 Chiang) OR (Dav* w/3 Turnbull) OR (Toh w/3 Hock) OR (Ben w/3 Toh) OR (Matthew w/3 Pryor) OR (Peter w/3 Wu) OR (Mark w/3 McWhinnie) OR (David w/3 Sylvester) OR (Andrew w/3 Billany) OR (Ed w/3 Tracy) OR (Edward w/3 Tracy) OR (David w/3 Sisk) OR (David w/3 Fleming) OR (Kevin w/3 Clayton) OR (Jeff* w/3 Poon) OR (Virginia w/3 Lam) OR (Gus w/3 Liem) OR "Venetian Marketing Services" OR (Perry w/3 Lau) OR Alves OR ((SGA OR Adelson OR Sheldon) AND

(SCL OR "Sands China" OR VML OR "Venetian Macau Limited")) OR ("acting CEO OR "interim CEO"))

2. March 8, 2012 Order ¶¶ 10, 16 (RFP ¶ 7 and 20): Funding of Sands China

Custodian: Steve Jacobs

Search terms:
"Venetian Oriental Limited" OR "VOL Credit Agreement" OR ((Alves OR Leonel OR Lionel) w/25 (strata OR "4 seasons" OR condo* OR 4S OR "Four Seasons" OR apartment*)) OR ((BOCI OR "Bank of China") w/35 ("Four Seasons" OR 4S))

Custodians: Edward Tracy, Fiona Chan, Benjamin Toh, Stephen Weaver

Search terms:
Bella OR IPO OR "Venetian Oriental Limited" OR "VOL Credit Agreement" OR ((Alves OR Leonel OR Lionel) w/25 (strata OR "4 seasons" OR condo* OR 4S OR "Four Seasons" OR apartment*)) OR ((BOCI OR "Bank of China") w/35 ("Four Seasons" OR 4S))

3. March 8, 2012 Order ¶¶ 11, 16 (RFP ¶ 8, 16): Base Entertainment

Custodian: Steve Jacobs

Search terms:
"Base Entertainment" OR (Brian w/3 Becker) OR (Scott w/3 Zeiger) OR (Jason w/3 Gastwirth)

Custodians: Edward Tracy, Fiona Chan, Matthew Pryor, Kevin Clayton, Stephen Weaver

Search terms:
"Base Entertainment" OR (Brian w/3 Becker) OR (Scott w/3 Zeiger) OR (Jason w/3 Gastwirth)

4. March 8, 2012 Order ¶¶ 11, 16 (RFP ¶ 18): Bally Technologies

Custodian: Steve Jacobs

Search terms:
Bally OR Merlin OR (Robert w/3 Parente) OR (Ken w/3 Campbell)

Custodians: Edward Tracy, Fiona Chan, Gunter Hatt, Stephen Weaver,

Search terms:
Bally OR Merlin OR (Robert w/3 Parente) OR (Ken w/3 Campbell)

5. March 8, 2012 Order ¶ 12 (RFP ¶ 9): Goldstein's services

Custodian: Steve Jacobs

Search 1 (Phase 2/3):
(Goldstein w/35 ((player w/10 (funding OR credit OR development OR collection)) OR marketing OR promotion OR advertising OR Kwok OR Clayton OR (Steve w/3 Chan)

OR (Ben w/3 Lee) OR (Raymond w/3 Lo) OR (Isabel w/3 Leong) OR (David w/3 Law) OR VIP OR Junket OR (Cheung w/3 Chi) OR (Cheung w/3 Tai) OR (Chi w/3 Tai) OR CCT OR (Charles w/3 Heung) OR VMSL OR SCL OR Sands China)) OR (Goldstein w/25 (Steve Jacobs OR Jeffrey Schwartz OR Irwin Siegel OR Stephen Weaver OR Iain Bruce OR Chiang Yun OR David Turnbull OR Toh Hock OR Ben Toh OR Matthew Pryor OR Ed Tracy OR Edward Tracy OR David Fisk OR David Fleming OR "Venetian Marketing Services")) or (Charles /4 (Heung or Wah or Keung) OR (VIP* w/5 promoter*) or (("high-roller" or "whale*) w/25 (Macau or Macao)) or ((unlicensed or (no* /3 license*)) w/25 junket) OR 71646 or 530636 or 746600 or 3272980 or 3898206 or 3728791

Custodians: Benjamin Toh, Edward Tracy, Fiona Chan, Kevin Clayton, Matthew Pryor, Stephen Weaver

Search terms:
(Goldstein w/25 ((Steve /3 Jacobs) OR (Jeff* w/3 Schwartz) OR (Irwin w/3 Siegel) OR (Stephen w/3 Weaver) OR (Steve w/3 Weaver) OR (Iain w/3 Bruce) OR (Ian w/3 Bruce) OR (Ferguson w/3 Bruce) OR (Iain w/3 Ferguson) OR (Ian w/3 Ferguson) OR (Chiang w/3 Yun) OR (Rachel w/3 Chiang) OR (Dav* w/3 Turnbull) OR (Toh w/3 Hock) OR (Ben w/3 Toh) OR (Matthew w/3 Pryor) OR (Peter w/3 Wu) OR (Mark w/3 McWhinnie) OR (David w/3 Sylvester) OR (Andrew w/3 Billany) OR (Ed w/3 Tracy) OR (Edward w/3 Tracy) OR (David w/3 Sisk) OR (David w/3 Fleming) OR (Kevin w/3 Clayton) OR (Jeff* w/3 Poon) OR (Virginia w/3 Lam) OR (Gus w/3 Liem) OR "Venetian Marketing Services" OR Perry Lau) OR (Charles /4 (Heung OR Wah OR Keung) OR (VIP* w/5 promoter*)) OR (("high-roller" OR "whale*) w/25 (Macau OR Macao)) Or ((unlicensed OR (no* /3 license*)) w/25 junket) OR 71646 OR 530636 OR 746600 OR 3272980 OR 3898206 OR 3728791

6. March 8, 2012 Order ¶ 13, 15 (RFP ¶ 10, 22): LVSC Services on behalf of SCL

Custodian: Steve Jacobs

Search terms:
(Yvonne w/3 Mao) OR (((Eric w/3 Chiu) OR Yeung) w/25 Hengqin) OR (Chu Kong Shipping) OR CKS OR (basketball w/10 team) OR (Adelson Center) OR ("International Risk" OR IR) OR (collection w/20 (customer OR patron OR junket)) OR Vickers

Custodians: Benjamin Toh, Edward Tracy, Fiona Chan, Stephen Weaver

Search terms:
(Yvonne w/3 Mao) OR (((Eric w/3 Chiu) OR Yeung) w/25 Hengqin) OR (Chu Kong Shipping) OR CKS OR (basketball w/10 team) OR (Adelson Center) OR ("International Risk" OR IR) OR (collection w/20 (customer OR patron OR junket)) OR Vickers

7. March 8, 2012 Order ¶¶ 15(1), 16 (RFP ¶ 11 and 21): Parcels 5 and 6

Custodian: Steve Jacobs

Search terms:
((Parcel* 5 and 6) OR (Parcel* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6) OR (Site* 5 and 6) OR (Site* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6)) AND (Gensler OR KNA OR (Shema w/3 Dougall) OR Manzella OR Pryor OR (Timothy w/3 Baker) OR (Paul w/3 Gunderson))

Custodians: Benjamin Toh, Edward Tracy, Fiona Chan, Kevin Clayton, Matthew Pryor, Stephen Weaver

Search terms:
((Parcel* 5 and 6) OR (Parcel* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6) OR (Site* 5 and 6) OR (Site* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6)) AND (Gensler OR KNA OR (Shema w/3 Dougall) OR Manzella OR Pryor OR (Timothy w/3 Baker) OR (Paul w/3 Gunderson))

8. March 8, 2012 Order ¶ 15(2) (RFP ¶ 12): Recruitment of SCL executives

Custodian: Steve Jacobs

Search terms:
(Spencer Stuart) OR (Tracy w/20 (resume OR interview)) OR (Sisk w/20 (resume OR interview)) OR (Egon Zehnder) OR ((Resume OR Recruit* OR Interview OR Curriculum Vitae OR CV) w/30 (candidate OR executive OR VP OR "Vice president" OR "Chief Operating Officer" OR COO OR "Chief Financial Officer" OR CFO OR "Chief Development Officer" OR CDO))

Custodians: Edward Tracy Fiona Chan, Gunter Hatt, Stephen Weaver,

Search terms:
(Spencer Stuart) OR (Tracy w/20 (resume OR interview)) OR (Sisk w/20 (resume OR interview)) OR ("Egon Zehnder") OR ((Resume OR Recruit* OR Curriculum Vitae OR CV) w/25 (candidate* OR executive* OR VP OR "Vice president" OR "Chief Operating Officer" OR COO OR "Chief Financial Officer" OR CFO OR "Chief Development Officer" OR CDO))

9. March 8, 2012 Order ¶ 15(3) (RFP ¶13): Marketing of Sands China properties

Custodian: Steve Jacobs

Search terms:
"International marketing" OR (Chairman* Club) OR (Rom w/3 Hendler) OR (Larry w/3 Chiu) OR (Kirk w/3 Godby) OR (Matthew w/3 Kenagy) OR (Dennis w/3 Dougherty) OR (Cheung w/3 Chi) OR (Cheung w/3 Tai) OR (Chi w/3 Tai) OR CCT OR (Jack w/3 Lam) OR (Charles w/3 Heung) OR (Heung w/3 Wah Keung) OR "frequency program" OR ("Lotus Night Club" w/10 "VIP") OR (Goldstein w/35 ((Kevin w/3 Clayton) OR (Raymond w/3 Lo) OR (Steve w/3 Chan) OR (Ben w/3 Lee) OR (Kerwin w/3 Kwok)))

Custodians: Fiona Chan, Kevin Clayton, Stephen Weaver, Edward Tracy

Search terms:

"International marketing" OR (Chairman* Club) OR (Rom w/3 Hendler) OR (Larry w/3 Chiu) OR (Kirk w/3 Godby) OR (Matthew w/3 Kenagy) OR (Dennis w/3 Dougherty) OR (Cheung w/3 Chi) OR (Cheung w/3 Tai) OR (Chi w/3 Tai) OR CCT OR (Jack w/3 Lam) OR (Charles w/3 Heung) OR (Heung w/3 Wah Keung) OR "frequency program" OR ("Lotus Night Club" w/10 "VIP") OR (Goldstein w/25 ((Kevin w/3 Clayton) OR (Chris w/3 Barnbeck) OR (Kirk w/3 Godby) OR (Raymond w/3 Lo) OR (Steve w/3 Chan) OR (Ben w/3 Lee) OR (Kerwin w/3 Kwok)))

10. March 8, 2012 Order ¶¶ 15(4), 16 (RFP ¶¶ 14, 19): Harrah's

Custodian: Steve Jacobs

Search terms:
Harrah* OR Loveman

Custodians: Fiona Chan, Stephen Weaver, Edward Tracy

Search terms:
Harrah* OR Loveman

11. March 8, 2012 Order ¶ 15(5) (RFP ¶ 15): Negotiation with SJM

Custodian: Steve Jacobs

Search 1 and 2 (Phase 2/3 and 4):
(SJM OR (Stanley w/3 Ho) OR (Ambrose w/3 So)) w/20 ((Parcel* 7 8) OR (Parcel* 7 pre/1 8) OR (P7 pre/1 8) OR (P7 and 8) OR (Site* 7 and 8) OR (Site* 7 pre/1 8) OR (P7 pre/1 8) OR (P7 and 8) OR (Parcel* 5 and 6) OR (Parcel* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6) OR (Site* 5 and 6) OR (Site* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6))

Custodians: Benjamin Toh, Edward Tracy, Fiona Chan, Stephen Weaver

Search terms:
(SJM OR (Stanley w/3 Ho) OR (Ambrose w/3 So)) w/20 ((Parcel* 7 8) OR (Parcel* 7 pre/1 8) OR (P7 pre/1 8) OR (P7 and 8) OR (Site* 7 and 8) OR (Site* 7 pre/1 8) OR (P7 pre/1 8) OR (P7 and 8) OR (Parcel* 5 and 6) OR (Parcel* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6) OR (Site* 5 and 6) OR (Site* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6))

12. March 8, 2012 Order ¶ 16 (RFP ¶ 17): Cirque du Soleil

Custodian: Steve Jacobs

Search terms:
(Daniel w/3 Lamarre) OR (Jerry w/3 Nadal) OR Zaia OR CDS OR Cirque or (Jason w/3 Gastwirth) OR (Sundust)

Custodians: Edward Tracy, Fiona Chan, Kevin Clayton, Ruth Boston

Search 1 and 2 (Phase 1 and 4):

- (Daniel w/3 Lamarre) OR (Jerry w/3 Nadal) OR (Jason w/3 Gastwirth) OR ((Zaia OR CDS OR Cirque OR Sundust) w/10 (talk* OR communicat* OR discuss* OR refer* OR spoke OR speak*))

EXHIBIT 5

Jennifer L. Braster

From: Todd Bice
Sent: Wednesday, December 12, 2012 11:05 AM
To: Steve Peek; Mark M. Jones (m.jones@kempjones.com)
Cc: Debra Spinelli; James Pisanelli; Jennifer L. Braster; Eric T. Aldrian
Subject: Bruce & Turnbull

Steve and Mark: I'm just following up on the request relative to deposing Mr. Bruce and Mr. Turnbull. I would like to get this matter in front of the court in the near future if the defendants intend to object. Thanks.

-- Todd.

EXHIBIT 6

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW

VIA E-MAIL

July 20, 2011

Justin C. Jones, Esq.
Holland & Hart
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Stephen Ma, Esq.
Glaser Weil Fink Jacobs
Howard & Shapiro
3763 Howard Hughes Pkwy., Ste. 300
Las Vegas, Nevada 89169

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

Dear Justin and Steve:

Per our previous discussions, we have prepared the following list of Sands China Ltd. custodians to search as part of the first phase of the searching process:[1]

1. Ben Toh
2. Luis Melo
3. Fiona Chan
4. Pete Wu
5. Eric Chiu[2]
6. Antonio Ferriera
7. Gunter Hatt
8. Matthew Pryor
9. Ian Humphries
10. Iain Fairbain
11. Iain Bruce
12. David Turnbull
13. Rachel Chiang
14. Kevin Clayton
15. Andrew Billany
16. Andrew MacDonald
17. Kerry Andrewartha
18. Allidad Tash
19. Ruth Boston
20. Mark McWhinnie

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[1] While certain individuals have/had multiple roles both with LVSC and Sands China, we have not included the names of such individuals on this list if they were included on the previous list we sent prioritizing LVSC custodians (e.g., Adelson, Leven, Jacobs, Schwartz, etc.) as it our understanding we only need to include them once. Please advise if you have a different understanding.

[2] We previously identified this individual as Eric Chen, but I believe his name is actually Eric Chiu.

7001 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

By providing the foregoing list, Jacobs is not waiving his right to have other custodians searched as discovery proceeds.

Please contact me with any questions or comments.

Very truly yours,

CAMPBELL & WILLIAMS

J. Colby Williams, Esq.

JCW/

EXHIBIT 7

PB | PISANELLI BICE

January 18, 2013

TODD L. BICE
ATTORNEY AT LAW
TLB@PISANELLIBICE.COM

VIA E-MAIL

J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
speek@hollandhart.com
bcassity@hollandhart.com

Randall Jones, Esq.
Mark Jones, Esq.
Kemp, Jones & Coulthard
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
jrj@kempjones.com
mmj@kempjones.com

RE: ***Steven C. Jacobs v. Las Vegas Sands Corp, et al.***
Eighth Judicial District Court, Case No. A627691-B

Dear Counsel:

We have received a series of documents purportedly coming from Sands China Ltd. ("Sands China"). Our review of those documents raises several questions for which we require a prompt response:

1. Where were the documents actually located and reviewed for production?

2. Virtually every document produced contains redactions which render the documents unintelligible. What is the basis for those redactions, considering that the court has sanctioned the Defendant for their past concealment of evidence and has overruled any objection to production of information under the Macau Personal Data Privacy Act?

3. We also noticed that several of the documents were sent either to or from custodians located in the United States which you have previously represented were searched. How is it that these documents were not produced from the custodians in the United States?

4. The documents do not appear to include the files and handwritten notes that Steven Jacobs knows were in his desk on the date of his termination. Were physical copies of Mr. Jacobs' files reviewed?

5. Robert Cassity sent us an email referencing "technical glitches" in a disk that had been delivered to our office concerning documents Nos. SCL00101824-109852. Yet, no explanation was provided as to what those glitches were, simply asking us to remove those documents from our system. While the disk has been returned, we would like to know the nature of the so-called technical glitches before we will agree to delete that prior production from our system. Some of the documents had been reviewed prior to receiving Mr. Cassity's email. We are suspicious that what is being claimed as a technical glitch is in fact proof that the documents were in the United States in an unredacted format. Is that what you claim was the "glitch"?

6. Tellingly absent from the production are any documents from Luis Melo, despite the fact that he was one of the top custodians long ago identified and his documents were transported to the United States over two years ago. What is the basis for having failed to produce documents from Melo? Please identify all persons that have reviewed Melo's documents, including the date those documents were reviewed.

7. Although certain documents have been produced, Sands China has not supplemented its discovery responses identifying which documents pertain to the discrete discovery requests. When is Sands China intending to do so?

These issues are without prejudice to additional areas of dispute as we further review the documents. However, in the face of the extensive redactions that render the documents unintelligible, we are unwilling to spend time debating or excusing Sands China's noncompliance. Please provide us with time early next week to hold a conference under Rule 2.34 on these issues, as we intend to seek prompt judicial relief for the noncompliance.

Regards,

Todd L. Bice

cc: Michael Lackey, Esq. (via e-mail)

EXHIBIT 8

HOLLAND&HART

J. Stephen Peek
Phone (702) 222-2544
Fax (702) 669-4650
speek@hollandhart.com

January 24, 2013

Via E-Mail Only: tlb@pisanellibice.com

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

Re: Las Vegas Sands/Jacobs

Dear Todd:

Thank you for your correspondence of January 18, 2013. As a preliminary matter, I note that our January 8, 2013 Report to the Court contains detailed information responsive to many of the questions you raise in your letter.

I also note that several of your questions deal with specific search terms and/or custodians, even though you declined to participate in any cooperative effort to reach agreement on search terms and custodians for the SCL production. As we noted in our Report, after serving your jurisdictional discovery requests, you never (1) provided Defendants with a list of proposed custodians for jurisdictional discovery; (2) participated with Defendants in finalizing an expanded list of search terms for jurisdictional discovery; or (3) responded to Defendants' October 6, 2012 request to meet and confer about jurisdictional discovery in Macau. (*See, e.g.*, D. Spinelli e-mail to B. Schneider, Aug. 14, 2012 ("Unfortunately, we are just not in a position to be able to tell you what terms you should use to search your documents.")). Having declined to participate in the meet-and-confer process, you have waived any objections to the adequacy of the search strategy. *See, e.g., Covad Commc'ns. Co. v. Revanet*, 258 F.R.D. 5, 14 (D.D.C. 2009).

Nevertheless, in the spirit of cooperation, I provide below the answers to your specific questions in the order you raised them.

1. As set forth in our Report, we searched for and identified ESI and other documents at SCL facilities in Macau. (Report, at 4-9).

2. As set forth in our Report, we redacted both personal data and privileged communications from the SCL production. (Report, at 6-7). As you know, both the Stipulated Confidentiality Order and the Court authorized the parties to redact

documents. (December 18, 2012 Tr., at 26-27; SCO, ¶ 7). We based the "personal data" redactions on two alternative grounds: (1) the Macau Data Privacy Act; and (2) a determination that personal data relating to specific individuals is not "relevant to jurisdictional discovery." Your claim that the documents are "unintelligible" without such personal data is incorrect. Nevertheless, we are currently preparing a "redaction log" that will provide additional information about redactions in e-mails and other documents produced. Also, as part of this process, we are identifying copies of currently-redacted documents that are located in the United States in unredacted form. All such copies will be produced in unredacted form as we identify them.

3. We have not determined to what extent (if at all) the SCL production contains documents to or from U.S. custodians that are not contained in the LVSC production. Nevertheless, if the SCL production does contain unique documents sent to (or received from) U.S. custodians, it simply reflects the fact that we used different custodians for the Macau jurisdictional searches than we did for the U.S. jurisdictional searches. If you had any issues with our selection of jurisdictional custodians, you should have raised such issues as part of the meet-and-confer process. Instead, you chose not to respond to our request for a meet-and-confer.

4. Yes, we searched hard copy documents in Macau, including hard copy documents that we believe were maintained by Plaintiff.

5. The "technical glitch" was that the vendor's software failed to impose the redactions in one of SCL's initial productions. As noted above, copies of any currently-redacted documents that are located in the United States in unredacted form will be produced in unredacted form.

6. We selected custodians who were likely to have documents relevant to jurisdictional discovery. Because Melo was an attorney—and because he was not involved in the operational side of the business—we determined that he was not reasonably likely to possess unique documents relevant to the narrow jurisdictional discovery permitted by the Court. We further determined that, in any event, his documents were likely to be privileged. Contrary to your suggestion, you never proposed Melo as a custodian for jurisdictional discovery. Again, if you had any issues with our selection of jurisdictional custodians, you should have raised such issues as part of the meet-and-confer process, instead of declining to participate at all.

7. We are preparing a supplemental response to our document production identifying which documents pertain to discrete discovery requests. We expect to submit the supplemental response on or before January 28, 2013.

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If, after reviewing these responses, you would like to discuss any of these issues further, we can be available for a meet-and-confer conference call on January 29, 2013 at 2:00 p.m.

Sincerely,

J. Stephen Peek
of Holland & Hart LLP

JSP/dmb

5975564_1

EXHIBIT 9

SUBMITTED UNDER SEAL PURSUANT TO CONFIDENTIALITY ORDER

EXHIBIT 10

SUBMITTED UNDER SEAL PURSUANT TO CONFIDENTIALITY ORDER

EXHIBIT 11

SUBMITTED UNDER SEAL PURSUANT TO CONFIDENTIALITY ORDER

EXHIBIT 12

SUBMITTED UNDER SEAL PURSUANT TO CONFIDENTIALITY ORDER

EXHIBIT 13

SUBMITTED UNDER SEAL PURSUANT TO CONFIDENTIALITY ORDER

EXHIBIT 14

SUBMITTED UNDER SEAL PURSUANT TO CONFIDENTIALITY ORDER

EXHIBIT 15

SUBMITTED UNDER SEAL PURSUANT TO CONFIDENTIALITY ORDER

EXHIBIT 16

SUBMITTED UNDER SEAL PURSUANT TO CONFIDENTIALITY ORDER

EXHIBIT 17

SUBMITTED UNDER SEAL PURSUANT TO CONFIDENTIALITY ORDER

REPT

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

/

AND ALL RELATED MATTERS.

CASE NO.: A627691-B
DEPT NO.: XI

Date: n/a
Time: n/a

DEFENDANT SANDS CHINA LTD'S REPORT ON ITS COMPLIANCE WITH THE COURT'S RULING OF DECEMBER 18, 2012

Defendant Sands China Ltd. ("SCL") hereby provides the Court with a Report of its compliance with the Court's ruling of December 18, 2012. This compliance resulted in the production to Plaintiff of more than 5,000 documents (consisting of more than 27,000 pages) on or before January 4, 2013.

I. THE COURT'S DECEMBER 18, 2012 RULING

After Plaintiff served his jurisdictional discovery requests, Defendants began searching for and producing responsive documents. In this process, the parties eventually reached an impasse on SCL's position that, as to jurisdictional issues, a search of the ESI of custodians other than Plaintiff in Macau would be largely duplicative of LVSC's production.

Accordingly, on December 6, 2012, Defendants filed a motion for a Protective Order seeking the Court's guidance on whether the Macau search would have to include custodians other than Plaintiff. At that time, SCL was proceeding with an ESI search in Macau, but only for documents contained in Plaintiff's own ESI.

At a hearing held on December 18, 2012, the Court denied Defendants' motion and stated that it would enter an order directing SCL to produce all information relevant to jurisdictional discovery:

> The motion for protective order is denied. I am going to enter an order today that within two weeks of today, which for ease of calculation because of the holiday we will consider to be January 4th, Sands China will produce all information within their possession that is relevant to the jurisdictional discovery. That includes electronically stored information. Within two weeks.

(Dec. 18, 2012 Tr., Ex. A, at 24). In so doing, the Court expressly noted that its ruling did not foreclose SCL from making appropriate redactions. (*Id.*, at 27).

As of January 4, 2013, the above-described order had not yet been entered. Nevertheless, after the hearing, SCL immediately began taking steps to expand its on-going efforts in Macau to comply with the Court's ruling.

II. SCL'S COMPLIANCE WITH THE COURT'S RULING

SCL's production of more than 27,000 pages of documents resulted from an extended process that included seven major stages: (1) the recruitment of additional Macau lawyers to

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assist the existing team in reviewing the documents generated by the expanded search; (2) the engagement of an additional vendor with sufficient expertise, technology and resources to assist SCL in completing the expanded search; (3) the identification of relevant custodians and search terms using accepted principles of electronic discovery; (4) the physical review of all documents retrieved by these search terms to determine responsiveness to Plaintiff's jurisdictional discovery requests; (5) the identification of all "personal data" in responsive documents within the meaning of the Macau Personal Data Protection Act ("MPDPA"); (6) the subsequent redaction of personal data from those identified documents; and (7) a review in the United States for privilege and confidentiality determinations.

To oversee and manage this document production effort (both before and after the Court's December 18, 2012 ruling), SCL engaged the law firm of Mayer Brown LLP, including lawyers from the Firm's Hong Kong office.

A. The Recruitment of Macau Lawyers to Review Documents

The first challenge following the Court's December 18, 2012 ruling was to recruit on short notice and during the holiday season a sufficient number of Macau attorneys to assist in completing the expanded search and review of documents in Macau. As SCL previously informed the Court, on November 29, 2012, the Office of Personal Data Protection ("OPDP") notified SCL that it could not rely on Hong Kong lawyers (or any other non-Macau lawyers) to review or redact Macau documents containing "personal data." (Ex. B). This restriction imposed a significant limitation on the pool of potential reviewers because Macau has fewer than 250 licensed lawyers (excluding trainees and interns), and many of those attorneys work for firms that cannot represent SCL because of pre-existing conflicts. In addition, the required review had to be conducted between December 18, 2012 and January 4, 2013, when Macau had five days of public holidays.

Notwithstanding these limitations, SCL succeeded in recruiting additional Macau lawyers, until, by December 27, 2012, SCL had engaged a total of 22 Macau attorneys to review potentially-responsive documents and redact personal data contained in those documents.

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B. The Selection of an Additional Vendor

To complete the discovery directed by the Court, SCL also had to enlist an additional vendor to assist in processing and handling of the significantly increased volume of documents that had to be reviewed and produced. The existing vendor used a software application that repeatedly encountered several technical difficulties in attempting to "de-duplicate" the increased volume of documents and in preserving redactions throughout the production process. By December 19, 2012, SCL concluded that these difficulties would likely prevent the vendor from completing the project by itself.

Accordingly, on December 19, 2012, SCL engaged another vendor, FTI, to assume most of the technical aspects of the review and redaction process. Between December 19 and January 4, FTI not only re-processed all data that the initial vendor had processed, but also logged more than 500 hours in processing additional data, training reviewers and redacting responsive documents—all at a cost of more than $400,000.

C. The Identification of Relevant Search Terms and Custodians

In addition to engaging a qualified vendor and recruiting a sufficient number of reviewers, SCL had to develop a strategy for the expanded search in Macau. In this process, SCL was left to its own devices. As described in earlier court filings, Plaintiff declined to cooperate with Defendants in identifying relevant custodians and search terms in either the United States or Macau.[1] For example, in June 2012, Plaintiff announced to Defendants that they should develop their own lists of search terms and custodians for the U.S. searches, while in October 2012, Plaintiff simply ignored Defendants' request to meet and confer about ESI discovery in Macau.[2]

To be sure, at the December 18, 2012 hearing, Plaintiff asserted for the first time that he had sent a letter *more than two years ago* providing a list of relevant custodians:

> ... We met for hours with his prior counsel explaining over and over to the extent it was even needed if we're talking about the custodians that they didn't know about in Macau, they needed only look to *Colby Williams's letter giving them 20 custodians that we want that they've known for two years.*

---

1 *See, e.g.*, Defendants' Opposition to Plaintiff's Motion for Sanctions, at 7-8 and Exhibit BB.

2 *Id.*

(Dec. 18, 2012 Tr., Ex. A, at 23-24) (emphasis supplied). But this letter merely listed the custodians that Plaintiff claimed were relevant to *merits* discovery, not to jurisdictional discovery. Indeed, Plaintiff sent the letter long before he had even served his jurisdictional discovery requests, and, in any event, the issues in jurisdictional discovery are very different from the merits issues.

With respect to *jurisdictional* discovery, Plaintiff simply declined to participate in any cooperative effort to reach agreement on search terms and custodians. In particular, after serving his jurisdictional discovery requests, Plaintiff never (1) provided Defendants with a proposed list of custodians for jurisdictional discovery; (2) participated with Defendants in finalizing an expanded list of search terms for jurisdictional discovery;[3] or (3) responded to Defendants' October 6, 2012 request to meet and confer about jurisdictional discovery in Macau.[4]

As a result, SCL was forced to make its own determinations of relevant search terms and custodians to comply with the Court's ruling. To this end, SCL first identified eight Macau custodians (in addition to Plaintiff) whose ESI was reasonably likely to contain documents relevant to jurisdictional discovery. (*See* Ex. C, attached to this Report). SCL then utilized (with only minor variations) the same expanded set of search terms that Defendants had unilaterally developed to conduct the jurisdictional searches in the United States—search terms that Plaintiff has never challenged or even asked to review. (Attached to this Report is Exhibit C, which lists the custodians and search terms used by SCL to identify and produce documents relevant to jurisdictional discovery.).

This procedure comports with "best practices" in electronic discovery. The Sedona Principles instruct parties responding to discovery requests to "define the scope of the electronically-stored information needed to appropriately and fairly address the issues in the case and to avoid unreasonable overbreadth, burden, and cost." The Sedona Conference, Sedona Principles Addressing Electronic Document Production, Cmt. 4.b (2d ed. 2007) ("Sedona

[3] In July and August 2012, Defendants expanded the list of search terms and custodians used for the searches of LVSC's ESI after Plaintiff claimed that LVSC's production was inadequate.

[4] Defendants' Opposition to Plaintiff's Motion for Sanctions, at 7-8 and Exhibit BB.

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Principles"), Cmt. 6.b. This process typically includes "collecting electronically-stored information from repositories used by key individuals," and "defining the information to be collected by applying reasonable selection criteria, including search terms, date restrictions, or folder designations." *Id.*; *see also id.* Cmt. 11.a (instructing that "selective use of keyword searches can be a reasonable approach when dealing with large amounts of electronic data").

Consistent with these principles, the Nevada courts have repeatedly endorsed the use of specified custodians and search terms to govern electronic discovery. *See, e.g., Cannata v. Wyndham Worldwide Corp.*, No. 2:10-cv-00068-PMP-VCF, 2012 WL 528224, at *5 (D. Nev. Feb. 17, 2012) (ordering parties to agree on a final list of search terms and custodians).

The courts have also held that when a party requesting discovery refuses to agree on custodians and search terms, the responding party should develop its own search terms and list of custodians. *See, e.g., Treppel v. Biovail Corp.*, 233 F.R.D. 363, 374 (S.D.N.Y. 2006). In these circumstances, the party requesting discovery effectively waives its objections because it would be unfair to allow the requesting party to refuse to participate in the process of developing a search strategy and then later claim that the strategy was inadequate. *See, e.g., Covad Commc'ns Co. v. Revanet, Inc.*, 258 F.R.D. 5, 14 (D.D.C. 2009).

Thus, in the absence of any meaningful participation by Plaintiff, despite being invited to do so by Defendants, SCL relied on widely-accepted principles of electronic discovery to select a list of custodians and search terms that could reasonably be expected to yield documents relevant to the limited jurisdictional discovery the Court has allowed.

D. The Review and Redaction of Documents

After SCL developed its search strategy, it then applied the designated search terms to the ESI of the relevant custodians. SCL also processed approximately 20,000 pages of hardcopy documents maintained by Plaintiff and the other relevant custodians. Finally, SCL manually reviewed more than 50,000 hardcopy documents maintained by Plaintiff to determine whether they were copies of ESI or otherwise not relevant to any jurisdictional issues. This process yielded a population of more than 26,000 potentially responsive documents. FTI then "tiffed" each of these documents so that the Macau attorneys could redact personal data contained in the

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documents.

In the next step, the Macau attorneys reviewed each of the documents identified as potentially responsive to determine whether the document was, in fact, relevant to jurisdictional discovery and, if so, whether it contained any "personal data" within the meaning of the MPDPA. If the documents did contain "personal data," the reviewers then redacted that personal information.[5]

To complete this process, the attorneys logged more than 1,326 hours over a nine-day period, with several attorneys working up to 20 hours per day and on holidays. In total, the reviewing attorneys billed more than $500,000 to complete the work in Macau.

E. The Privilege Review and Final Preparation of the Documents for Production

After FTI incorporated the redactions into new tiff images to ensure that the redactions could not be removed, the documents were transferred to the United States, where they were reviewed for privilege and confidentiality determinations. After the completion of this review, FTI created a new tiff image endorsed with a Bates number for each document. The new tiff image was then processed to create a new text file for production that omitted the text in the redacted area. The productions provided to Plaintiff contained the tiff images and text files created in the United States.

F. Ongoing Quality Control Review

In addition to the above-described production, SCL is currently undertaking quality control procedures to determine whether there are any documents relevant to jurisdictional discovery that the above review did not capture. For example, on January 7, 2013, the Macau reviewers identified approximately 17 hardcopy documents that had been maintained by some of the relevant custodians and that are arguably relevant to jurisdictional issues. These 17 documents are currently being prepared for transfer to the United States and final production. In addition, SCL is conducting an electronic search of the more than 50,000 hardcopy documents that SCL manually reviewed prior to production. If this electronic search results in the

[5] The reviewers designated redactions based on the MPDPA as "Personal Redactions" and redactions based on the attorney-client privilege as "Privileged."

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identification of any documents that are arguably relevant to jurisdictional discovery and that have not already been produced, SCL will produce such documents to Plaintiff.

III. CONCLUSION

In this Report, SCL has summarized the document production that it undertook in compliance with the Court's December 18, 2012 ruling. In addition to this production, SCL understands that LVSC has produced the travel records ordered by the Court and that the remaining depositions of Defendants' executives have now been scheduled, leaving only Plaintiff's deposition to be scheduled. Accordingly, SCL believes that, subject to the Court's schedule, a jurisdictional hearing can now be set following the completion of the depositions.

DATED January 8, 2013.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on January 8, 2013, I served a true and correct copy of the foregoing **DEFENDANT SANDS CHINA LTD'S REPORT ON ITS COMPLIANCE WITH THE COURT'S RULING OF DECEMBER 18, 2012** via e-mail and by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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EXHIBIT A

TRAN COPY

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 MOTIONS FOR PROTECTIVE ORDER AND SANCTIONS

TUESDAY, DECEMBER 18, 2012

APPEARANCES:

FOR THE PLAINTIFF: JAMES J. PISANELLI, ESQ.
DEBRA SPINELLI, ESQ.
TODD BICE, ESQ.

FOR THE DEFENDANTS: JON RANDALL JONES, ESQ.
J. STEPHEN PEEK, ESQ.
MARK JONES, ESQ.
MICHAEL LACKEY, 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.

33

LAS VEGAS, NEVADA, TUESDAY, DECEMBER 18, 2012, 8:06 A.M.

(Court was called to order)

THE COURT: Good morning. Which motion do you guys want to handle first, the protective orders?

MR. MARK JONES: Your Honor, I have a housekeeping issue, if I may, first.

THE COURT: Sure.

MR. MARK JONES: Spoke with Mr. Bice. Thank you.

Yesterday was the last day for the other side to oppose Mr. Lackey's pro hac admission for his -- excuse me, pro hac application for his admission into this case, and there's no opposition. So Mr. Bice had asked if the Court - if I may --

THE COURT: Any objection?

MR. BICE: No.

THE COURT: All right. Then you can approach. I'll be happy to sign, Mr. Jones. Here you go.

All right. Now which motion do you guys want to argue first?

MR. RANDALL JONES: Your Honor, in a sense I guess they're sort of mixed together, but perhaps our --

THE COURT: Well, the protective order on the videotape deposition is different than the sanctions and the other protective order motion.

MR. RANDALL JONES: And I guess what I was thinking

is maybe the protective order -- the first protective order motion filed. But I don't know if the Court wants to do that or not.

MR. PISANELLI: That's a convenient way for the defendants to jump in front of an argument, but --

THE COURT: Actually, I want to do that way. And you're going to be surprised why after the argument.

MR. PISANELLI: All right.

THE COURT: Mr. Jones.

MR. RANDALL JONES: I hope not pleasantly, Your Honor.

THE COURT: Well, do you want to read my note?

MR. RANDALL JONES: Your Honor, I wouldn't mind reading your note.

THE COURT: No, that's okay, Mr. Jones.

MR. RANDALL JONES: It might help sharpen my argument.

THE COURT: It's all right. You're in trial in the other department, so --

MR. RANDALL JONES: Thank you, Your Honor.

THE COURT: -- let's argue the motion for protective order on the search of data in Macau.

MR. RANDALL JONES: Yes, Your Honor. As you know, obviously I don't have the full -- well, have not been involved in this case for very long, so the history has been

created before my time. And I've done my best to try to get up to speed with that history in connection with these motions and just in general tried to become familiar with this case.

I think I would start by talking a little bit about that history and why we feel that that motion is appropriate. And I guess the first order of that history would be a letter that was sent back by defendants' counsel in May to the plaintiffs, talking about the search parameters and what they believe would be the appropriate way to do this process. And I want to mention this because I think it is important as relates to -- for this overall process and the relationship with the motion for sanctions. And in that letter not only did the defense counsel spell out what we intended to do, but also made comment about willingness to meet and confer. So that's sort of the first part of that process.

And the next part of the process was the joint case conference statement, which also spelled out in great detail and I think there's somewhat seven different points that were spelled out about the process that the defense intended to take in trying to comply with the discovery. And that spelled out very specifically that we would look first at the -- our client's, Jacobs's ESI information in the U.S. And again, the whole point of this is, as far as we know, the best information we have is that that's a ghost copy of what was created in Macau. So presumably it's no different than what's

in Macau in the first instance. So we spelled that out and said that's what we're going to do, then we're going to look all -- of course, all the Las Vegas Sands information and start producing that as quickly as we can.

And then there is a hearing the next day, June 28th, where this two-step approach was spelled out to the Court and counsel and was consistent with what was in the case conference statement.

Then there's a July 30th letter which reinstated -- or, excuse me, reiterated that the defendants would review all of the U.S. ESI first and then focus on Macau, and there was some -- this wasn't just done, Your Honor, to try to delay things. And I say that, Your Honor, because I have been involved in discovery where you're talking about not just out of the state, but out of the country. And this is a unique circumstance. Certainly I would hope the Court would take into account that we are dealing with the sovereign government that may have a different idea of what we can and can't do. So the idea was to let's look at that stuff first, the information we have on the ghost hard drive here in the U.S. and whatever we have we produce that, and then we go look at what we know is going to be more of an issue in Macau.

And then, of course -- and I want to make sure to point out that they've made some comments about this so-called staggered approach which the Court said, no, you can't have

the staggered approach.

THE COURT: I've been saying that for a year and a half already.

MR. RANDALL JONES: Absolutely. And, Your Honor, you defined what a staggered approach was. Well, based on what I've read in the file and your rulings, a staggered approach was what we initially said, look, let's get the plaintiff's ESI from the plaintiff, from Mr. Jacobs --

THE COURT: Every time someone brought that up I said no.

MR. RANDALL JONES: Absolutely. And we understand that. That is not what we are saying we are doing.

THE COURT: No, I know. Now you're saying, we want to search what we have access to in the United States without dealing with the Macau Data Privacy Act and then, depending upon what we find, we may look at the stuff in Macau.

MR. RANDALL JONES: No, actually I don't think that's what we're saying. That's not my understanding of what we're -- in fact, that's not my understanding --

THE COURT: That's how I read this.

MR. RANDALL JONES: -- of what we're doing. In fact, that -- I will tell the Court that is not what we were doing. What we were doing was trying to make sure, especially after the hearing in September, that we got access to the Macau information. But we have to do it the way they let us

do it.

And so what happened after that hearing, we were retained, Mr. Lackey's firm was retained, and action started right away. This was within weeks of that hearing, Your Honor. New counsel was brought in. The reason we were brought in was to try to make sure that we complied with what you wanted us to do. And, Your Honor, I've been practicing here a long time and I've known you both in private practice and on the bench, and I would hope the Court would understand that we take our -- not only our oath, but our obligation on discovery very, very seriously.

THE COURT: Oh, I have no doubt about that, Mr. Jones. That's not the issue. The issue is not you or your firm's credibility or Mr. Lackey or Mr. Peek or any of the attorneys at this point. The issue is a -- what appears to be an approach by the client to avoid discovery obligations that I have had in place since before the stay.

MR. RANDALL JONES: And, Your Honor, I understand that's your concern. And I understood that before you said that just now. And I understand why that's your concern. I have tried to make sure that I understand the history of this case. And I will tell you the client understands the concern. That's why new counsel this far along in the case was brought in.

THE COURT: Third new counsel.

MR. RANDALL JONES: Understood. And we all hope the lasting counsel. And a major part of that decision was to make sure that any errors or issues that the Court was concerned about in the past are addressed and addressed appropriately. So with that in mind our firm was retained. I was just about to start my jury trial, and so my brother Mark Jones was tasked, with Mr. Lackey -- this was within weeks of us being retained -- of flying to Macau and addressing the issue directly. And we didn't know what we were going to find out when we got there. We were going there to try to see what we could do immediately. And so -- and, again, I hope the Court appreciates that there's two different issues here. One is -- from my perspective one is a party trying to hide behind the law of another country or another state, for that matter, to thwart the discovery process. That's on issue. The other issue is also trying to make sure that if you have to deal with the laws of another country you're in compliance with those laws.

So to the extent the Court was concerned that the OPDP law was being used to try to block discovery, that, I will this Court in open court on the record as an officer of the Court, is not what we are trying to do at this point. If it was ever -- and I certainly don't believe it was ever being done, but I will tell the Court to the extent there was some miscommunication or misunderstanding of what our rights and

obligations were, two lawyers went to Macau to try to straighten that out. And when they got there they were informed of certain things. And I want to make sure the Court's aware of the fact that before Mark Jones went to Macau he sent an email again saying, look, we want to know what -- we want to meet with you, we want to talk to you before -- on going -- this was mentioned in court the week before, I believe, on going to Macau, I want to talk to you all to make sure that we're all on the same page at least as to whether or not you have different terms -- search terms or parameters that you want us to look at, this is what we think we should be doing. And I think it's important to the Court.

We tried to meet and confer with them over the summer, before our firms were involved, but still, the record is clear. We tried to meet with them on a couple of occasions and ask them about what search terms they wanted to use to try to expand the ESI discovery, and -- both in terms of names and search terms. And they didn't meet with us. And so we expanded those search terms on our own and made them broader than what were initially spelled out. So that's -- and, Your Honor, those are the facts as I understand them, that there's documentation to that effect in the file. So I have every reason to believe it's true.

So then before Mark Jones and Mike Lackey go to Macau an email is sent, said, let us know, we're going. And

we get no response. They go there and they have a discussion. They are told for the first time that, no, Macanese lawyers can look at this information. And by the way, finally -- we don't know this until November 29th. We've talked to the Court, we sent the information to the Court. We are informed that we can have the Macanese lawyers look at this information and they can do the searches and to the extent there's any personal data that may be redacted. Our hope is that because it's Mr. Jacobs's ESI that there will be very little, if any, personal data that's going to be redacted. But we believe within the next week or two we're going to start getting production. And as we get it, whatever we get, if it is redacted, we're going to immediately produce it to the other side. And to the extent it's redacted we will address that as quickly as we can with the other side to see if there's any way to address that issue with the Macanese government and -- assuming there's even a concern, depending on the type of information that appears to be redacted. So, Your Honor, we are trying to make sure we do what you want us to do.

But we have to try to -- and we did read your order as saying that we don't have to try to comply with the laws of another country. We can't use those laws inappropriately to simply block discovery, and we're not trying to do that. But we do have to try to comply with those laws. And I can't believe this Court would ever issue an order that says you

have to violate the laws of another country in order to produce documents here.

THE COURT: You already violated those laws, Mr. Randall --

MR. RANDALL JONES: No.

THE COURT: -- Mr. Jones, Randall Jones. Sorry, Randall.

MR. RANDALL JONES: That's all right. And we don't want to compound the error. And I can't believe this Court would want us to do that.

And so the question is -- we've done everything else. We've produced 150,000 pages of documents since June. We have spent an ungodly amount of money trying to make sure we do this. So all we're asking this Court to is to allow us to say, let's look at this information first -- and I know the Court's impatient with this process, and I understand.

THE COURT: You know what, Mr. Jones, I'm not impatient with this process. I am under a writ from the Nevada Supreme Court to conduct an evidentiary hearing on certain limited issues and enter findings of fact and conclusions so that the Nevada Supreme Court can make some additional conclusions related to the writ that is pending. I am unable to accomplish what I have been ordered to do by the Nevada Supreme Court in large part because of discovery issues.

MR. RANDALL JONES: I understand. And I also understand that this Court issued an order that said what the parameters of discovery were going to be. And based on those parameters we believe we are in compliance, with the exception of the Macau ESI, which we're working on trying to get to the Court.

So I guess I would ask this Court, well, Your Honor, again, you know, we referenced the Sedona Principles. We're in a -- somewhat of a brave new world as it relates to discovery. That's -- electronic discovery is still new territory in a lot of respects. And that's why you have things like the Sedona Principles that are out there to try to give litigants and the Court some guidance about this process. And, you know, proportionality is a -- one of the principles that is expressed in Sedona, and it relates to electronic discovery.

THE COURT: Since you've mentioned the Sedona Principles, Mr. Jones, has your client made an attempt to obtain a protective order that is agreeable to the Macau Government for the production of the information that would otherwise be discoverable in this case?

MR. RANDALL JONES: No, Your Honor. And I'll tell you why in a minute.

THE COURT: I asked that question a year and a half ago. I asked the same question, and we still haven't done it.

MR. RANDALL JONES: And here's why. Because we are hoping to be able to produce all the information that is in Macau in that ESI. And, Your Honor, again, that's a ghost image. And I know the Court is familiar -- more familiar probably than most courts in this jurisdiction about electronic discovery. So if it's a ghost image --

THE COURT: And Data Privacy Acts.

MR. RANDALL JONES: And Data Privacy Act. And a ghost image is just that. It should be duplicative of what is already here in the U.S. which has been produced. And, again, there's a limit to what this Court has ordered to be produced in this jurisdictional discovery. So the point is we believe that this redundant. But, irrespective of that, a great deal of time and expense has been incurred since September. Some of these things should have been done before. What we're asking this Court is to say, look -- we got to a point in September where the Court made some findings, and the Court made those findings based upon the information available to it up to that point in time. We're trying to move forward. And so since that time actions have been taken to try to make sure we comply with the Court's order as it relates to the Macau documents.

So if you expand the search terms -- remember, Your Honor, in Sands China we're talking about -- the claim as relates to Sands China is about an option agreement. The

search terms that we have used to try to find documents all seem to be related to information that in fact is overexpansive beyond what would be contacts that Sands China might have with the United States, in particular with Nevada. So we're essentially, we believe, getting a substantial amount of overinclusive documents.

Let me just give you an example. In the depositions two documents were used in Mr. Adelson's deposition of the 200,000 documents that have been discovered, and I think 19 were used in either in Mr. Goldstein or Mr. Leven's deposition, I can't remember, but one of those two. But the point is, Your Honor, is that we have been trying to accomplish this discovery, and we believe that the Court has set limits on what this discovery is. In fact, your order says what the limits of discovery are. And so our --

THE COURT: You're referring to the March 8th, 2012, order?

MR. RANDALL JONES: That's correct, Your Honor. And so I guess I would ask the Court some questions to help us try to understand where the Court has a concern that we are not in compliance or at least attempting to comply and why the parameters should be expanded beyond Mr. Jacobs's ESI in Macau. We've given them everything we have in Las Vegas, including the ghost image information of the Jacobs ESI. What possibly could we expect to find with respect to contacts with

Nevada in Macau in the ESI of other people that would not be duplicative of what is found in the Las Vegas Sands ESI that's already been produced. And we haven't seen any indication from the plaintiff that there is such information that they expect to find or that they have not had full discovery.

We have answered their discovery, their requests to produce. We've laid out, what we've answered, in our brief. So, Your Honor, again, we don't know how -- and I guess under Rule 26, you know, the rule itself provides that -- 26(b)(2)(1) unreasonable -- discovery is limited is unreasonable, cumulative, or duplicate documents. We believe that to the extent -- and we're doing this anyway with the Macau ESI, we're still producing that -- the party seeking discovery has had an ample opportunity to discover and to obtain the information sought. And we think that that has been the case here. And, (3), the discovery is truly burdensome or expensive, taking into account all the needs of the case, the amount in controversy, and the limits of resources and importance of the issues.

So here, Your Honor, we don't see the need -- and we don't believe the need has been spelled out by the plaintiffs as to why they need to go beyond the Macau ESI of Mr. Jacobs in this discovery.

Now, the timing is a different issue. And we certainly wish it could have been faster. And counsel

involved in this case at this point in time are doing everything they can to try to make sure that it happens in short order. We've told the Court we believe -- we think we're going to have all this information with the extent of possibly any personal information being redacted by January 15th. But we hope to start having some of this information within the next week. And as soon as we get it we're going to start rolling it out.

So, Your Honor, we would ask that the Court have some proportionality with respect to how far the Court goes in allowing this discovery in Macau. And it further complicates the case. We've got to then ask for information beyond Mr. Jacobs's ESI which we don't see any grounds to --

(Pause in the proceedings)

MR. RANDALL JONES: And, Your Honor, and Mr. Peek is helping me out here because, again, I'm trying to catch up with all the information. You'd asked a question about a protective order and whether there had been one asked for. It's in Exhibit Y to our motion. The Macanese Government does specifically reference page 18, also mentioned the, quote, "protective order," and the related Jacobs litigation is sufficiently protected in compliance with the guidelines defined by the Personal Data Protection Act, Article 20, Item 2.

So there has been such a request, and the Macanese

Government has apparently -- and this was something I was not aware of digging through all of these exhibits, didn't find this reference on page 18, so I was not aware of that. But that has been addressed by the Macanese Government.

So I guess the biggest point is, Your Honor, is that we would ask the Court to consider the proportionality of the need for this information versus the burden and especially in the limited scope that the Court has ordered in this particular case.

So with that, Your Honor, if you have any questions, I would do my best to answer them.

THE COURT: Thank you.

THE COURT: Mr. Pisanelli.

MR. PISANELLI: Thank you, Your Honor. I'm going to do my best to exercise some restraint here, both in my emotions over what I just heard and understanding that we're talking about just a protective order so far.

First let me take an opportunity to correct Counsel, because I know he's not intentionally trying to mislead you. He is the newest person at the desk and clearly doesn't know the real history of what happened. When he suggests to you that we did not meet and confer in the summer or in the spring or the fall or last winter or two years ago, he's mistaken. Even in the circumstance in which he was referring me met for hours with his prior counsel explaining over and over to the

extent it was even needed if we're talking about the custodians that they didn't know about in Macau, they needed only look to Colby Williams's letter giving them 20 custodians that we want that they've known for two years. And the suggestion that they don't know what to do here, if that's what their client is telling Mr. Jones now, is something short of the real truth.

Counsel also tells you something that needs to be corrected. When he tells you that they have produced hundreds of thousands or 150,000, I can't remember the number, of documents and they're really working hard, remember we're talking about Sands China here, Your Honor. They've produced 15 documents, 55 pages. That's what Sands China has produced. So let's not get lost in them patting themselves on the back over a two-and-a-half-million-dollar bill, they say, with the all the hard work they did. Apparently that two and a half million dollars was spent on obstructing discovery, not actually finding.

And now this concept that will take us through the entire motion about redundancy and the very limited nature of discovery. I have to question whether Sands China has an order that no one else in this Court has seen. The have taken an approach in this motion and again in the presentation to you this morning that the only thing they're obligated to do is look at Steve Jacobs's ESI that is located in Macau

because, as they say, they have a ghost image here and why produce it twice.

Well, there's so much wrong with that statement. First of all, there's nothing in the Court's order that says that this jurisdictional discovery is limited to Steve Jacobs. And why would it be, Your Honor?

THE COURT: You're talking about the March 8th order?

MR. PISANELLI: Yes.

THE COURT: The order related to certain depositions that you noticed and what documents I was going to require be produced related to those depositions.

MR. PISANELLI: Right. And in that order Your Honor said that the discovery that Sands China was obligated to give us had a time restriction on it, and the time restriction was after Mr. Jacobs's termination up to the filing of the complaint. Which one might then question, well, why in the world would you limit your discovery to just Steve Jacobs's ESI when the Court ordered discovery that occurred after he wasn't even at the company anymore, is there even possibly a reasonable interpretation from your words to say that, we thought that all we needed to look for was the deduplication -- the product of the deduplication to make sure we had all of Steve Jacobs's ESI.

Recall this. Another handicap of Mr. Jones, because

he wasn't here. Henry Weissman stood before you on this exact topic. This is what inspired Your Honor to make the no staggering remark that is quoted in our reply at page 5. He said, why would we produce the same document twice, we want to get, he said -- and now I'm paraphrasing, that was a quote I just gave you -- he said, we will get Steve Jacobs's ESI and then we'll figure out what we have that he didn't already give to us. And that's when Your Honor let him know the rules of this Court, the rules of Nevada and how you govern discovery, and you were very clear and unequivocal when you said, no, that's not what you do, Mr. Weissman, quote, "We do not stagger discovery obligations, period, end of story."

And so what Sands China did through the revolving door of counsel that has come in this courtroom is did exactly what Henry Weissman said he wanted to do and the exact opposite of what you told them to do. They staggered discovery, and now come in here hat in hand saying, well, we thought this was a limited exercise of deduplication, Your Honor, oh, we're so sorry, we thought this was all you actually asked of us and it has cost us so much money to do this. It really is an unbelievable position for Sands China to take to come in here and tell you that they thought when you said, we do not stagger, you meant we do stagger and go ahead and just do your deduplication process. There isn't a believable aspect of this position that they're sending -- or

saying to you.

Now we hear some new defenses from them. For the first time we hear them say, Your Honor, we're not allowed to review our own records and we would ask you to be proportionate, I think that was the word, and not make us violate some other country's laws. Again, I can't imagine Sands China didn't hear your message loud and clear from the sanctions hearing when you said, Sands China, you will no longer be hiding behind the Macau PDPA. You were very clear that not because of anything from a discovery perspective -- that's what we're here to do today, the Rule 37 motion has to do with discovery issues. This was because of a lack of candor to this Court, a lack of candor which Your Honor found, as I understand it, to be directed and orchestrated from the management offices of Las Vegas Sands on Las Vegas Boulevard. You cannot hide behind the Macau Personal Data Privacy Act.

And what is the theme today? Your Honor, the Macau Personal Data Privacy Act prohibits us from producing these records, you wouldn't possibly tell us to do something in violation of that order, would you, they say. We are not permitted, they say for the first time, to even review our own records. Can you imagine, Your Honor, the position that they're offering? We need government approval to review our own records in Macau. So the obviously, admittedly somewhat sarcastic question I would ask is, how in the world do you run

your business in Macau if you need government permission to look at your own records.

Rhetorical as it may be, let's just look at something far more specific. Sheldon Adelson and Mike Kostrinsky both gave us a little peek behind the curtain. There has been a free flow of information from Macau to Las Vegas Boulevard since the inception of the Macau enterprise. Every single thing Mike Kostrinsky ever wanted he got. Sheldon Adelson has information coming on a daily basis to his office on Las Vegas Boulevard until one thing happened. And Your Honor saw right through it and referenced it in your order. The discovery in this case and perhaps the discovery in a criminal investigation, that's when they said, oh, we can't review our records in Macau, with a wink and a nod, we've actually been doing it from day one, but now to comply with discovery we're not permitted to do that. It is contrary to what the record in this case tells us.

And you know what else it's contrary to, Your Honor, what the prior counsel told us. You saw in our papers that Steve Ma told us in June of 2011 -- I'm sorry, wrong date -- that Steve Ma told us that he was -- in June 2012 that he was gathering and reviewing documents for CSL, gathering and reviewing, he said in a letter to us. And then he said he would produce them on a rolling basis. He did, all of those 15 staggering documents that we got.

Then Patty Glaser came in this courtroom and she said to Your Honor, we sent a team of lawyers to do it, that's a fact. Remember, she was very emphatic. We had a little bit of a confrontation at the time. That's a fact. She may have even been pointing her finger at me when she said it. We spent a lot of money, the client's money, we sent lawyers to Macau to review documents in Macau. Your Honor that is irreconcilable with what they're saying now. Patty Glaser and Steve Ma say not only that they can and they will, but they had reviewed Macau documents. And now the newest team comes in and says, we're handcuffed and not permitted to.

THE COURT: Well, but you know they took -- you know they reviewed Macau documents because Mr. Kostrinsky carried them back.

MR. PISANELLI: That's part of my sanction motion.

THE COURT: I mean, we know.

MR. PISANELLI: So I'm beating this drum here because it is just outrageous to me. I will wrap it up. I understand your point. But it's outrageous that this company would come in here and as soon as this group of lawyers takes a turn, that admits something they're not supposed to, produces a piece of paper the Sands management didn't want to get out of their hands, my prediction is we're going to see a new team here. Because every single time someone stands up and tries or at least promises you that they'll start doing a

better job than their predecessor, then guess what happens, we have a new set of lawyers coming in.

I'm overlapping a little bit on the basis of the motion.

THE COURT: I don't want to do the sanctions motions, yet.

MR. PISANELLI: So I won't do that.

THE COURT: Thank you.

MR. PISANELLI: The point is very simply you never told them not to produce it, and they didn't do it.

THE COURT: Thank you.

The motion for protective order is denied. I am going to enter an order today that within two weeks of today, which for ease of calculation because of the holiday we will consider to be January 4th, Sands China will produce all information within their possession that is relevant to the jurisdictional discovery. That includes electronically stored information. Within two weeks.

So I can go the motion for sanctions. The motion for sanctions appears to be premature since I've not previously entered an order requiring that certain information that is electronically stored information in Macau be provided. About two weeks from now you might want to renew your motion if you don't get it.

Can I go to the motion for the protective order on

the videotape.

MR. PEEK: Your Honor, can we have some clarification?

THE COURT: Yes.

MR. PEEK: And here's the challenge that we have, is you're telling us to produce all of the documents that are responsive to the requests for production, and --

THE COURT: If a motion is renewed, Mr. Peek, and there is an impediment to production which Sands China believes relates to the Macau Data Privacy Act, when I make determinations under Rule 37 I will take into account the limitations that you believe exist related to the Macau Data Privacy Act. But, believe me, given the past history of this case there seems to be different treatment of the Macau Data Privacy Act at different times.

MR. PEEK: Your Honor, I appreciate what we went through in September. I appreciate what the Court's ruling was. And I think Mr. Jones has certainly made it clear how serious we take this. The motion for protective order certainly goes to who are the custodians, what are the search terms --

THE COURT: Your motion for protective order is really broad. Your motion for protective order says, "For the foregoing reasons Sands China urges the Court to enter an order providing that SCL has no obligation to search the ESI

in Macau of custodians other than Jacobs or to use any more expansive search terms on the Jacobs ESI in Macau that was used to search the Jacobs's ESI that was transferred to the United States in 2010."

The answer is no. Denied.

MR. PEEK: Okay. I'll let --

MR. PISANELLI: Your Honor, on the Rule 37 issue of whether there's an order --

THE COURT: Hold on a second, Mr. Pisanelli. Let me go back to Randall Jones.

MR. PISANELLI: Okay.

THE COURT: Not Jim Randall, Randall Jones.

MR. RANDALL JONES: Thank you, Your Honor. I do want to make clear because of what was said there's never been said and if it was misstated by me, then I want to make sure it's clear on the record. It's never been our position that our client can't look at the documents. The issue is whether or not we can take certain information -- our client is allowed to take certain information out of the country. And so I just want to make sure that's clear on the record. Our client can look at the documents, and our client's Macanese, we've just found out, can look at the documents. And from there it becomes more complicated. So I just want to make sure that's clear to the Court.

We understand what you're saying, and we will

continue to do our best to try to comply with the Court's orders as best we can. And that's -- and I hope the Court does appreciate this is a complicated situation, and we -- I can -- I'll just tell you again, Your Honor, we're trying to make sure that we -- the lawyers and our client comply with your discovery.

THE COURT: I understand.

MR. PEEK: Yeah. We need to have redactions as part of that, as well, as that's -- I understood --

THE COURT: I didn't say you couldn't have redactions.

MR. PEEK: That's what I thought.

THE COURT: I didn't say you couldn't have privilege logs. I didn't say any of that, Mr. Peek.

MR. RANDALL JONES: As I understand it, Your Honor, you said we can still otherwise comply with the law as we believe we should and then you ultimately make the call as to whether or not we have appropriately done that.

MR. PISANELLI: We will indeed --

THE COURT: I assume there will be a motion if there is a substantial lack of information that is provided.

MR. PISANELLI: So, Your Honor, on this issue of the Court order, we're saying it again. As part of your sanction order you were very clear and you said that they're not hiding behind that anymore.

THE COURT: I did.

MR. PISANELLI: And they're giving us a precursor that they don't hear you, they just never hear you.

THE COURT: Well, Mr. Pisanelli, I've entered orders, I've now entered an order that says on January 4th they're going to produce the information. They're either going to produced it or they're not. And if they produce information that you think is insufficient, you will then have a meet and confer. And then if you believe they are in violation of my orders, and I include that term as a multiple order, then you're going to do something.

MR. PISANELLI: I will. I want --

THE COURT: And then I'll have a hearing.

MR. PISANELLI: I will. I want to make this one point, because you've made a statement that they have not yet violated an order, and that's of concern to me.

THE COURT: Well, they've violated numerous orders. They haven't violated an order that actually requires them to produce information. I have said it, we discussed it at the Rule 16 conference, I've had people tell me how they're complying, I've had people tell me how they're complying differently, I've had people tell me how they tried to comply but now apparently they're in violation of law. I mean, I've had a lot of things. But we've never actually entered a written order that says, please produce the ESI that's in

Macau within two weeks.

MR. PISANELLI: Well, you haven't entered anything that specific, but you have entered an order that calls for ESI protocol that calls for this production --

THE COURT: I know.

MR. PISANELLI: -- and you directed from this bench, which is no different than an order, for them to create a log --

THE COURT: Nevada Supreme Court thinks written orders are really important. So we're going to have a written order this time, Mr. Pisanelli --

MR. PISANELLI: We are indeed. But --

THE COURT: -- especially since I am under a limited stay which only permits me to deal with jurisdictional information, which I've been trying to get to for a year and a half.

MR. PISANELLI: As have we.

THE COURT: And I have a note that says, "Find a place for the Sands-Jacobs evidentiary hearing." But I can't find a place for you until you actually have your discovery done or at least close to done.

MR. PISANELLI: I will remind Her Honor and the battery of lawyers de jure [sic] that Your Honor told this team I think a year and a half ago, create --

THE COURT: Well, it wasn't this team, it was a

different team.

MR. PEEK: Your Honor, I certainly appreciate Mr. Pisanelli's remarks about how he wants to characterize what the Court's order was.

THE COURT: Okay.

MR. PEEK: And I certainly disagree.

THE COURT: Okay. Will you stop arguing about this. I've ruled.

MR. PEEK: I'm happy to do that.

THE COURT: I now want to go to your motion for protective order on the videotaping of the deposition. That's your motion, Mr. Bice's motion.

MR. BICE: This our motion. It's actually not a videotaping of the deposition, Your Honor. It's a videotaping of opposing counsel --

THE COURT: No, I know, Mr. Bice.

MR. BICE: -- which is what this is, without any Court authorization, without seeking any leave of the Court to do so. You know, Your Honor, we've submitted our motion, we went over the history of this. I didn't receive any written opposition. I don't know if the Court has received a written opposition from them or not.

THE COURT: I don't remember.

MR. BICE: The point here is, Your Honor, Rule 30 -- we have been videotaping all of the depositions without any

issues, and then we got this claim by Mr. Peek that, well, we want the videotape -- we want to put a camera behind the witness, I guess, from the other side of themselves and videotape you and your client during these depositions.

We objected to that. We told them, you know, you want to do that, you have to get permission of the Court to do that. Their position was now we're going to do it anyway. We thought that that issue was sort of -- they dropped it with the Mr. Leven deposition as long as I would move up his deposition by a half an hour. And then we found out because we got a cross-notice of deposition dropped in the mail to us that says that they're going to videotape opposing counsel during the deposition.

As we cite the caselaw to Your Honor, The Federal Courts under the exact same rule have said that that's inappropriate. They have sought any leave of the Court, so we ask the Court to enter a protective order. This is, with all due respect --

THE COURT: Thank you.

MR. BICE: -- it's simply harassment.

THE COURT: Mr. Mark Jones.

MR. MARK JONES: Thank you, Your Honor.

This was on an order shortening time, so, if I -- if I may address it, we did not file any written opposition.

Your Honor, I'd like to emphasize one statement, and

that is the first sentence of plaintiff's motion for protective order, because that's really what this is all about. It says, "The games, harassment, and unprofessional conduct continue." And, Your Honor, I want to tell you that I do not play games in my practice. I do not need to play games. One of the games that Mr. Bice believes that I am playing is with the timing. There's a lot going on with this case, Your Honor, and it got filed -- when it got filed there was no --

THE COURT: And the CityCenter case, which you guys got dragged into, too.

MR. MARK JONES: The point is that I received an email from Mr. Bice that a colleague and I read about the protocol of the counsel. One of the first things we filed -- I've already talked to them about it and apologized. If I'm going to apologize for anything it's only that we did not email it to him. I think that was my assistant's fault. I didn't know anything about it, Your Honor, and just realized last night when Mr. Bice was talking about it. And we appreciate an extension that he had given us recently. And, of course, we in the normal course expect to get extensions back as they may ask for them on their end.

Now, as to the merits of the motion, yes, this was filed and served right before the deposition, but you don't hear them say it is late. And in fact it is not late, Your

Honor. It is timely filed under Rule 30, NRCP Rule 30, and that is that a cross-notice such as the one we had filed must be served upon five days' notice. And it was.

They say in their motion that a party needs leave of the Court to tape other parties or counsel. They cite to two Federal Court cases in FRCP with regard to that. The two cases are distinguishable. And in the Langsea [phonetic] case Mr. Adelson actually walked into a deposition, they've cited to that, with his own videographer with no prior notice. The Posorive [phonetic] case, in that case the plaintiff deponent brought his own camera to tape a deposition in violation of the court's explicit order prohibiting him to do so. Again, we think that those two cases are distinguishable. It's a federal -- they're federal rulings with regard to the Federal Court Rule, FRCP 30, and we think that there's is a significant difference in NRCP 30 and Nevada law with regard to that.

THE COURT: So can I interrupt you. Why do you think that it's appropriate in this particular case to depart from our long history in Nevada of only having the camera on the deponent? The only time I remember attorneys ever being on camera in a deposition was when they introduced themselves. And then it would go back to the deponent.

MR. MARK JONES: Your Honor, thank you. To answer that I would now go a little bit out of order. I was going to

get to the why. The genus of this is -- and I would characterize my involvement in coming into this case as an extremely contentious matter. I think that's fair to say. And I would estimate that I have taken -- excuse me, called the Court perhaps two times in my -- average in my career, every couple years. To my recollection, in this case the Court has been called I think about an average of twice for each deposition that has been taken.

The cross-notice stems from the Sheldon Adelson deposition and, frankly, the smirking and we would submit very inappropriate engaging of counsel with Mr. Adelson. And I wasn't there. Mr. Peek was, though. He's prepared to back me up on what exactly happened there, if the Court wants him to do that.

I'd like to back up one -- if that answers your question, I'd like to back up one minute to discuss NRCP 30, which is I think very important here, Your Honor. First of all, we found nothing in the rule and no caselaw holding that leave of the court is required for such a cross-notice under the circumstances. And I want to read to you from NRCP 30(b)(4), which has a very enlightening statement it about three fourths of the way down. And it says, "The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound recording techniques." Why do they include attorneys in that? That's right in the rule, Your

Honor. Again, we found nothing to say that this cannot take place.

And why are we doing this really? Your Honor, we would submit this. It's a safeguard to assure that this behavior does not happen again. We'd ask that you consider that in court or in trial there is a judicial officer that is monitoring and regulating order and monitoring such proceedings. And a court at trial that kind of behavior does not exist. The courts won't put up with that. Unfortunately, under the circumstances with the contentiousness, we believe and would submit that such a cross-notice would do the same. We think that it is harassing of professional conduct. And I don't know about the other -- I can't remember the last time I was called unprofessional, Your Honor, but welcome to this case.

We also, Your Honor, are bearing the cost -- we would bear the cost of the videographer, and we don't submit this puts any additional burden upon Mr. Jacobs.

And lastly, at the end of the motion they say that we've resorted to harassment in trying to intimidate our opponents because we can win any legitimate debates. This cross-notice isn't oppressive or harassing, Your Honor. I can't imagine having -- or Mr. Bice or Mr. Pisanelli being intimidated by having a camera on them. And it keeps professionalism in the depositions. It's almost like having

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND RELATED CLAIMS

Case No.: A-10-627691
Dept. No.: XI

PLAINTIFF'S RENEWED MOTION FOR NRCP 37 SANCTIONS ON ORDER SHORTENING TIME

Hearing Date: 02/28/13

Hearing Time: 10 a.m.

Plaintiff Steven C. Jacobs ("Jacobs") renews his motion for sanctions, including the striking of Sands China Ltd.'s ("Sands China") personal jurisdiction defense. To the surprise of no one, particularly Jacobs, Sands China openly defied this Court's December 18, 2012 discovery order, as well as this Court's entire sanctions ruling. It is no surprise because Sands China's disregard is in accord with the campaign of noncompliance that it and its Co-Defendant, Las Vegas Sands Corp. ("LVSC"), have waged for nearly two years. Defendants have made the clear choice that the consequences of noncompliance of this Court's rules and orders are preferable to the truth about them and their activities coming out in discovery. Thus, they

knowingly concealed documents and information that LVSC had secretly brought from Macau and had its own attorneys review. They conveniently "lost" the originals of Jacobs' electronically stored information and hard drives from Macau, and omitted informing either Jacobs or this Court. They purposefully changed their own data transfer policy between corporate entities so as to erect a "stone wall" in the face of discovery demands made by Jacobs and the United States government. Plus, they have obstructed depositions and necessitated repeated motions to compel by instructing witnesses not to answer questions on matters that the Court has repeatedly overruled. And these are just the things Jacobs and the Court know about.

It is through that lens of history that Sands China's latest maneuver is viewed. On December 18, 2012, this Court gave Sands China two weeks to do what it had been told to do for over a year – produce the responsive documents to Jacobs' jurisdictional discovery requests, whether they were located in Macau or elsewhere. Of course, Sands China knew that it was never going to actually comply. But rather than just admit it, Sands China employed its limitless resources towards a sham response. On the day of the ordered production, January 4, 2013, Sands China carried out a document dump. This dump consisted of producing around 27,000 pages that are redacted to the point of rendering the documents of import unintelligible. But even knowing what it had done and the blatant impropriety of it, Sands China added insult to injury by then filing a report with this Court congratulating itself on a job well done. And, from their standpoint, it is indeed "mission accomplished." Sands China produced a pile of essentially useless and unintelligible papers. It should have saved the trees and produced nothing, which was, of course, its intent all along.

This conduct is not a product of inadvertence, confusion or lack of sophistication by a novice litigant. No, it is the product of a perverse but necessary calculus by those who fear the truth coming out. Defendants have concluded that the consequences of noncompliance with this Court's rulings are preferable to the consequences of the evidence seeing the light of day. These Defendants have limitless financial resources. There is no monetary sanction that this Court can order that will impact them. These companies are controlled by one of the world's richest men. Paying attorneys' fees equates to victory.

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The time has come to end the charade. Sands China and LVSC have no intention of complying. Their intention is and remains unchanged: Avoid having the facts see the light of day. There is nothing more that Jacobs or this Court can do to alter the Defendants' calculated plan. They have knowingly violated multiple orders, including the December 18, 2012 Order. The time has come to strike Sands China's defense of personal jurisdiction, impose serious evidentiary sanctions on these Defendants, and allow Jacobs to proceed with the merits of his case.

Jacobs requests that this Court entertain an order shortening time because the Court previously indicated that it may convene an evidentiary hearing concerning Jacobs' requested relief. If that is the Court's inclination, then Jacobs asks this Court for an order shortening time so as to establish the timing of such an evidentiary hearing and to further set the briefing schedule. LVSC and Sands China have ground this case to a halt by disputing jurisdiction while simultaneously sabotaging the discovery process so as to avoid an evidentiary hearing on jurisdiction, let alone a full and fair one.

This Motion is based on Nevada Rule of Civil Procedure 37, the following Memorandum of Points and Authorities, any and all exhibits thereto, the papers and pleadings on file herein, including Jacobs' Motion for NRCP 37 Sanctions (the "First Motion for Sanctions"), and any oral argument this Court may consider.

DATED this 7th day of February, 2013.

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By: _____

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ORDER SHORTENING TIME

Before this Court is the Request for an Order Shortening Time accompanied by the Declaration of counsel. Good cause appearing, the undersigned counsel will appear at Clark County Regional Justice Center, Eighth Judicial District Court, Las Vegas, Nevada, on the 28 day of February, 2013, at 10 a.m., in Department XI, or as soon thereafter as counsel may be heard, to bring this **PLAINTIFF'S RENEWED MOTION FOR NRCP 37 SANCTIONS ON ORDER SHORTENING TIME** on for hearing.

DATED: 02/08/13

DISTRICT COURT JUDGE

Respectfully submitted by:

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DECLARATION OF TODD L. BICE, ESQ. IN SUPPORT OF PLAINTIFF'S RENEWED MOTION FOR NRCP 37 SANCTIONS ON ORDER SHORTENING TIME

I, TODD L. BICE, Esq., being first duly sworn, hereby declare as follows:

1. I am one of the attorneys representing Plaintiff Steven C. Jacobs ("Jacobs") in the action styled *Steven C. Jacobs v. Las Vegas Sands Corp., et al.*, Case No. A656710, pending before this Court. I make this Declaration in support of Plaintiff's Renewed Motion for Sanctions (the "Motion"). I have personal knowledge of the facts stated herein and I am competent to testify to those facts.

2. On November 21, 2012, Jacobs filed a Motion for NRCP 37 Sanctions and in connection with that Motion, on December 4, 2012, filed a Motion to Conduct Limited Discovery Relating to Pending NRCP 37 Sanctions Motion and Motion to Set Evidentiary Hearing for Pending NRCP 37 Sanctions Motion ("Motion for Evidentiary Hearing").

3. The Court heard the Motion for Evidentiary Hearing on December 6, 2012, and denied the motion without prejudice, stating that if the Court determines evidentiary sanctions are appropriate, then the Court would offer Defendants the option of having an evidentiary hearing.

4. Jacobs respectfully requests the Court set a hearing on shortened time not to fully address the merits of this Motion but to address whether or not Defendants will be requesting an evidentiary hearing relating to this Motion and to set a briefing schedule and date(s) for the evidentiary hearing.

5. In other words, Jacobs is seeking to avoid the inevitable delay that will occur if the Court sets this Motion for a hearing in the ordinary course and then at that hearing date the Defendants request an evidentiary hearing.

6. I certify that this Motion is not brought for any improper purpose.

I declare under the penalties and perjury of the laws in the state of Nevada that the foregoing is true and correct.

Dated this 7th day of February, 2013.

TODD L. BICE, ESQ.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Sands China did not intend to comply with this Court's December 18, 2012 Order, and it knows it. It admits that it only produced a small portion of information that Jacobs knows exists. It searched only nine custodians, and purposefully omitted those that Jacobs identified as having highly relevant information. But of course, these are the same custodians that would also have documents that Sands China and LVSC would prefer this Court not to see. Thus, they were not searched. As if it needed to be more contemptuous, Sands China exacerbated its defiance by redacting the documents on grounds that this Court has expressly overruled, so as to render the documents indecipherable and useless. Its goal was to produce nothing of substance, and that is precisely what it did. Sands China appears to think that it can escape the consequences of this misconduct by presenting the Court with a receipt for $900,000 as proof of all the work they did to make sure that no useful information was produced, and thus the Court will overlook how the emperor has no clothes. No one is that blind.

It would have been better, or at least more honest for Sands China to have just produced nothing at all. The result to Jacobs and this Court would have been the same (albeit without Jacobs having to incur attorneys' fees to sort through the unintelligible productions). But Sands China has no plans of being honest with Jacobs or the Court, as doing so only confirms that it is never going to comply with this Court's orders. For Defendants, any sanction this Court may impose is a pittance compared to what they stand to lose should the truth come out in this litigation or any government investigation. Accordingly, they have told this Court (by their actions): "Go ahead, sanction us. We are not going to comply." This is the one instance where the Court should take the Defendants at their word.

II. BACKGROUND

A. In Response To Jacobs' First Motion for Sanctions, The Court Orders Sands China To Produce All Jurisdictional Documents.

This Court has already said the obvious: "[T]here appears to be an approach ***by the client*** to avoid discovery obligations that I have had in place since before the stay [issued on August 26,

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2011]." (Ex. 1, Hr'g. Tr. dated Dec. 18, 2012, 7:13-17 (emphasis added).) Unsurprisingly then, on November 21, 2012, Jacobs filed the First Motion for Sanctions. In that Motion and the subsequent hearing thereon, Jacobs pointed out that Defendants had not only ignored its discovery obligations under Nevada's Rules of Civil Procedure, but also this Court's express orders. Indeed, during the sixteen months of jurisdictional discovery, Sands China produced only fifty-five pages, or nineteen total documents, which is ridiculous given that the purpose of jurisdictional discovery to determine whether the Court has personal jurisdiction over *Sands China*.

Falling back on their old defense, Sands China claimed that it was excused from producing (or even reviewing) documents because of the Macau Personal Data Protection Act (the "MPDPA"). That tired excuse was meritless, in no small part because three months earlier this Court ruled that the MPDPA can no longer be used as a defense or excuse for not producing jurisdictional documents. (Ex. 2, Decision & Order dated Sept. 14, 2012 ("Decision & Order"), 8:20-2 ("Las Vegas Sands and Sands China will be precluded from raising the MDPA as an objection or as a defense to admission, disclosure or production of any documents.").)

In another of its routine moves, Sands China tried to shift the blame to Jacobs. It claimed that Jacobs failed to meet and confer with its counsel concerning the proper custodians in Macau or applicable search terms. This story proved equally disingenuous. The search terms had long been the subject matter of LVSC's production. And, the principal custodians in Macau had long been identified in correspondence. Sands China's only retort was to note that the custodians had been identified for merits discovery. But of course, it could not explain how that somehow diminished its obligation to search for jurisdictional documents from the same key individuals. In the end, Sands China simply grasped for any excuse for its own noncompliance.

This Court rightly rejected these excuses, nothing that these Defendants had "violated numerous orders." (Ex. 1, Hr'g. Tr. Dated Dec. 18. 2012, 28:17). It gave Sands China one last chance to comply. (*Id.*, 28:17.) The Court set a firm deadline that by January 4, 2013, "Sands China will produce all information within their possession that is relevant to the jurisdictional discovery." (*Id.*, 24:15-17.) In other words, Sands China had fourteen days, including holidays, to do what the Court had already ordered nine months ago, and then again

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three months prior. (*See* Ex. 3, Order Regarding Mot. to Conduct Juris. Discovery dated March 8, 2012, 3:16-5:7; Ex. 2, Decision & Order, 8:20-2.)

B. Sands China Purposefully Violates the Court's Order.

Sands China wants to pretend that a new miracle occurred over the holiday season. It claims that it was able to search for and produce all of its documents from Macau, a feat it decried as impossible just days earlier. In fact, Sands China asks for a round of applause. It filed a status report proclaiming how it had employed countless attorneys in Macau at high expense to conduct the review and get the production done. As supposed proof of its Herculean efforts, Sands China claimed that it spent over $900,000 to produce some 27,000 pages (*i.e.*, about 5,000 documents) on January 4, 2013. But as this Court has seen before, what these Defendants say in "status reports" oftentimes bear little resemblance to reality. And so it is yet again.

1. Sands China knowingly did not search the principal custodians in Macau.

To begin, Sands China only searched a total of nine Macau custodians.[1] Nine. And the nine custodians were not even the highest prioritized custodians designated by Jacobs – in fact, only six are on the list.[2] Sands China simply selected the persons *Sands China* wanted to review, which ensured that the most problematic documents for the Defendants would remain hidden offshore. (Ex. 4, Sands China's Report on Compliance, 5:12-13.) And even for these nine custodians, Sands China did not search for all of the relevant documents.

Take the custodian Ruth Boston just for the sake of example. Sands China only searched her documents with respect to one of Jacobs' Requests for Production of Documents. (*Id.* at Ex. C.) This is in addition to the fact that it did not even search custodians in Macau for a number of the document requests, and then limited the search to a subset of custodians for most all of the other document requests:

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[1] Jacobs was one of those nine, meaning that Jacobs already had a large portion of the information Sands China just produced to him.

[2] Jacobs is unable to confirm Sands China's representation that it searched the nine custodians' ESI because of the substantial redactions made to the documents produced. For all Jacobs knows, the documents produced could have come from LVSC's previous productions.

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- Request No. 6 – searched only seven custodians
- Request No. 7 – searched only four custodians
- Request No. 8 – searched only five custodians
- Request No. 9 – searched only six custodians
- Request No. 10 – searched only four custodians
- Request No. 11 – searched only six custodians
- Request No. 12 – searched only four custodians
- Request No. 13 – searched only four custodians
- Request No. 14 – searched only three custodians
- Request No. 15 – searched only four custodians
- Request No. 16 – searched only five custodians
- Request No. 17 – searched only four custodians
- Request No. 18 – searched only four custodians
- Request No. 19 – searched only three custodians
- Request No. 20 – searched only four custodians
- Request No. 21 – searched only six custodians
- Request No. 22 – searched only four custodians

(*See id.*)

To highlight the manipulative nature of Sands China's non-search of key designees, the Court needs to look only at its purposeful failure to search the records of Iain Bruce and David Turnbull, two of Sands China's independent directors. The involvement of these two individuals, particularly Turnbull, has been routinely discussed at the jurisdictional depositions, including various emails with LVSC executives to which they were parties. And there is no denying that some of these emails have been the most embarrassing and problematic for the Defendants to try and rationalize. Clearly Bruce's and Turnbull's ESI were reasonably likely to contain documents relevant to jurisdictional discovery. Indeed, that is precisely why on December 12 (six days before the December 18 hearing), Jacobs' counsel requested an agreement to depose Bruce and Turnbull for jurisdictional discovery. (Ex. 5, Bice e-mail dated Dec. 12, 2012.) True to form, not

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only would Sands China not cooperate in the depositions, it then purposefully failed to search their documents even in the face of this Court's order. Again, this is intentional, not an oversight.

But the crown jewel of noncompliance is Defendants' intentional refusal to produce documents from custodian Luis Melo. Melo is the Number 2 person identified on the list of most important custodians in Macau. (Ex. 6.) And, Melo's documents are already located in the United States, being part of the secret shipment that Sands China made to LVSC in August of 2010 that they concealed from both this Court and Jacobs. Sands China and LVSC know how important Melos' documents are to this case. That is precisely why they secretly shipped those documents to Las Vegas at the same time they brought over Jacobs' ESI.[3] Yet, despite this Court's sanctions order, despite their possession of these documents for two years in Las Vegas, and despite their own counsel representing to this Court that "we've given them everything we have in Las Vegas," Sands China has not produced a single document from Melo's ESI. (Ex. 1, Hr'g. Tr. Dated Dec. 18, 2012, 14:23.)

2. Sands China knowingly produces unintelligible documents.

The purposeful non-search of central custodians is, in and of itself, an intentional violation of the Court's order. But Sands China had even more in store for Jacobs and this Court. Its last and loudest laugh came in the form of redactions that it made to the limited documents that it produced with its under-inclusive search. Sands China redacted everything and anything that might reveal whose document it was, or who had access to the document. Specifically, it redacted the names, titles, telephone numbers, fax numbers, and email addresses of everyone and anyone associated with each document. (Exs. 9-23, samples of production.) For good measure, Sands China would also redact dates and the names of board committees (and even what appears

[3] In what can only be some form of perverse joke, Sands China asserted that Melo is not likely to have information relevant to personal jurisdiction – even though their own witness, particularly Ken Kay, identified Melo as having extensive involvement in the company's financing which was directed out of Las Vegas – and that many of his documents may be privileged. (Ex. 7, Bice Ltr. Dated Jan. 18, 2013; Ex. 8, Peek Ltr. Dated Jan. 29, 2013.) This Court would be hard pressed to find a more transparently improper attempt at avoiding compliance. LVSC and Sands China know precisely how important Melo's documents are, which is why they were some of the first documents brought to the United States "inadvertently" before they needed to find an excuse for nonproduction. And, this Court can rest assured that these Defendants have already been through Melo's ESI with a fine tooth comb, but have simply not produced any of it for jurisdictional purposes.

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to be the term "Board of Directors" itself), among other innocuous things. (Ex. 22.) The effect of these redactions was precisely what Sands China intended – any document of substance was transformed into useless pieces of paper from which neither Jacobs nor any witness could ever glean real information. Sands China did not want to produce anything of substance, so it made sure that it did not by redacting the few documents it actually searched for.

Even the Defendants' own witnesses acknowledge that the redactions have rendered the production worthless. For instance, at Michael Leven's renewed deposition, Jacobs showed him several samples of Sands China's latest tactics and asked Leven to identify the document and explain its subject matter. Leven's testimony proved how Sands China had sabotaged the production:[4]

[4] Jacobs currently only has a rough copy of Mr. Leven's deposition transcript and will supplement with the final transcript upon receipt.

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Sands China knew that it had purposefully not complied with this Court's order. But that did not stop it from filing a so-called "Report on Its Compliance with the Court's Ruling of December 18, 2012," and proclaim its good deeds. But the real effect of that "Report" was to highlight how much money Sands China spent (supposedly $900,000) in making sure that whatever substantive documents were produced would contain nothing decipherable. There are no limits to Sands China's arrogance.

III. ARGUMENT

A. A Litigant's Established Pattern of Misconduct And Deception Mandates Additional Sanctions.

As a preliminary matter, although the Court's analysis of Jacobs' First Motion for Sanctions focused upon Sands China's failure to produce so much as a single page from Macau, Jacobs also sought (and seeks) sanctions against both Defendants for their long campaign of discovery abuses. As this Court has already noted, "there [were] varying degrees of willfulness demonstrated by the Defendants and their agents in failing to disclose transferred data to Jacobs ranging from careless nondisclosure to knowing, willful and intentional conduct with an intent to prevent [Jacobs'] access to information discoverable for the jurisdictional proceedings." (Ex. 2, Decision & Order, ¶ 35(a).) At that time the Court's concern was with the "limited issue" of *Defendants' counsels'* "lack of candor and nondisclosure of information to the Court and

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appropriate sanctions pursuant to EDCR 7.60." (*Id.* at 1:28-2:9; Hr'g. Tr. dated Sept. 10, 2012, 5:13-14 (the Court noting that its "hearing [was] not intended to infect any rights that Mr. Jacobs may have related to Rule 37 sanctions relating to the same issues.")).

The Court recognized that Jacobs was free to pursue additional Rule 37 sanctions based upon the concealment of outstanding evidence. And, under the law, such a past pattern of misconduct strongly counts toward the imposition of severe sanctions for repeat offenders. *Young v. Ribeiro Bldg., Inc.*, 106 Nev. 88, 93, 787 P.2d 777, 779-80 (1990) (The Nevada Supreme court has long found that in fashioning sanctions, specifically in determining the appropriateness of terminating sanctions, the court should look to, among other factors, the totality of the circumstances relating to a party's conduct throughout discovery); *Temora Trading Co., Ltd. v. Perry*, 98 Nev. 229, 645 P.2d 436 (1982) (terminating sanctions are proper where the normal adversary process has been halted due to an unresponsive party, as diligent parties are entitled to be protected against interminable delay and uncertainly in resolution of their legal rights.).

But even before addressing the consequences for violating this Court's December 18, 2012, Order, it is important to note that Sands China's representations to this Court have proved less than forthright even about events that proceeded the Order's entry. Put bluntly, Sands China's story does not match up. Specifically, Sands China claims in its Report on Compliance that it engaged FTI on **December 19, 2012**, to "assume most of the technical aspects of the review and redaction process" because its prior vendor was unable to handle the "significantly increased volume of documents that had to be reviewed and produced." (Ex. 4, Sands China's Report on Compliance, 4:2-10.) However, FTI's production "indexes" that Sands China produced along with its documents were created well before December 19, 2012, showing that FTI's "review and redaction process" began as early as **December 4, 2012**. (Ex. 24, Screen shots of index's Properties)

Considering that FTI does not have an office in Macau, it appears that Sands China transferred its documents to FTI's office in Hong Kong for the review and redaction process. This is contrary to what Sands China told this Court when it claimed that "it could not rely on Hong Kong lawyers (or any other non-Macau lawyers) to review or redact Macau documents

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containing 'personal data.'" (Ex. 4, Sands China's Report on Compliance, 3:17-19). Thus, not only did Sands China engage FTI well before December 19, 2012, FTI's documents show that it had already undertaken the process of reviewing and redacting its documents before the Court issued the December 18 Order. This was occurring while at the very same time Sands China was telling this Court that it had been precluded from reviewing documents.

In truth, what little information Sands China did produce on January 4, 2013, only casts further doubt as to the accuracy of its various representations as to what it has been doing in Macau and why the documents were not produced long ago. On the face of FTI's own reports, it had been reviewing the documents for Sands China's own apparent strategic purposes while at the very same time Sands China was telling this Court that it could not review documents. Once again, more hiding of the ball appears to be occurring.

B. The Time Has Come To End The Charade About Personal Jurisdiction.

Regardless of the inconsistencies of Sands China's reporting as to its true activities, there is no dispute as to its knowing and intentional noncompliance with this Court's order that all documents be produced by January 4, 2013. Sands China did not search material custodians. Even for the few custodians it did search, it searched for less than a majority of the responsive requests. Then, to top it all off, what few documents of substance were gathered were then redacted so as to make them useless by redacting the names of every person, including who sent or received a document, and what it concerned.

As Jacobs explained in his First Motion for Sanctions, there are many legal grounds upon which this Court can and should impose severe sanctions for recurrent violations of this Court's orders. Rule 37 authorizes sanctions for "willful noncompliance with a discovery order of the court." *See also Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990). In addition to Rule 37, the Court has "inherent equitable powers" to impose sanctions for "abusive litigation practices." *Id.* (citing *TeleVideo Sys., Inc. v. Heidenthal,* 826 F.2d 915, 916 (9th Cir. 1987)) (citations omitted); *see also GNLV Corp. v. Serv. Control Corp.*, 111 Nev. 866, 869, 900 P.2d 323, 325 (1995) (noting that courts have the inherent authority to impose discovery sanctions "where the adversary process has been halted by the actions of the unresponsive party."). As the

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Nevada Supreme Court warned, "[l]itigants and attorneys alike should be aware that these [inherent] powers may permit sanctions for discovery and other litigation abuses not specifically proscribed by statute." *Young*, 106 Nev. at 92, 787 P.2d at 779.

"Fundamental notions of fairness and due process require that discovery sanctions be just and that sanctions relate to the specific conduct at issue." *GNLV Corp.*, 111 Nev. at 870, 900 P.2d at 325 (citing *Young*, 106 Nev. at 92, 787 P.2d at 779-80). Along those lines, the minimum sanction a court should impose is one that deprives the wrongdoer of the benefits of their violations. *See Burnet v. Spokane Ambulance*, 933 P.2d 1036, 1041 (Wash. 1997) (*en banc*) ("The purpose of sanctions generally are to deter, punish, to compensate, to educate, and ***to ensure that the wrongdoer does not profit from the wrongdoing***." (emphasis added)); *Woo v. Lien*, No. A094960, 2002 WL 31194374, 6 (Cal. Ct. App., Oct. 2, 2002) (upholding trial court's imposition of sanctions because not doing so "would allow the abuser to benefit from its actions.").

For that reason, one of the sanctions Rule 37 provides is an order that the "***designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order***." NRCP 37(b)(2) (emphasis added). At the same time, "[t]here is no indication in Rule 37 that this list of sanctions was intended to be exhaustive." *J. M. Cleminshaw Co. v. City of Norwich*, 93 F.R.D. 338, 355 (D. Conn. 1981). The language "suggests that, under that rule, a court possesses the authority to fashion any of a range of appropriate orders to enforce compliance with the requirements of pre-trial discovery." *Id.* (citing *Flaks v. Koegel*, 504 F.2d 702, 707 (2d Cir. 1974) (noting the discretionary nature of discovery sanctions)). In other words, a court may fashion any form of sanction that meets the purpose of sanctions, which is "to ensure that a party does not benefit from its failure to comply, and to deter those who might be tempted to such conduct in the absence of such a deterrent." *Starlight Int'l Inc. v. Herlihy*, 186 F.R.D. 626, 647 (D. Kan. 1999).

Thus, "by imposing certain types of sanctions, the Court can prevent frustration of the discovery process by giving the frustrated party or parties the benefit of an inference that the deposition would have yielded evidence favorable to its position – or at least unfavorable to that

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defendant." *See In re ClassicStar Mare Lease Litig.*, (multiple Civ. Action Nos.) 2012 WL 1190888 (E.D. Ky. Apr. 9, 2012). Ultimately, "[s]election of a particular sanction for discovery abuses under NRCP 37 is generally a matter committed to the sound discretion of the district court." *Stubli v. Big D Int'l Trucks, Inc.*, 107 Nev. 309, 312, 810 P.2d 785, 787 (1991); *see also GNLV Corp.*, 111 Nev. at 866, 900 P.2d at 325 (noting the decision to impose discovery sanctions is "within the power of the district court and the [Nevada Supreme Court] will not reverse the particular sanctions imposed absent a showing of abuse of discretion.")

Here, LVSC and Sands China have knowingly sabotaged Jacobs' prosecution of this action. They have objected, obfuscated and obstructed the very process they asked for, thereby preventing Jacobs from proceeding with showing personal jurisdiction over Sands China. Defendants cannot be allowed to continue to profit from this noncompliance. At long last, the only means to deprive LVSC and Sands China of the benefits of their conduct is to strike Sands China's defense of personal jurisdiction, impose substantive and adverse inferences, and allow Jacobs to proceed with the merits of his case. *See Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxities de Guinee*, 456 U.S. 694 (1982) (affirming the federal district court's finding of facts establishing personal jurisdiction as a sanction for the foreign defendant's failure to produce documents during jurisdictional discovery); *Bayoil, S.A. v. Polembros Shipping Ltd.*, 196 F.R.D. 479 (S.D.Tx. 2000) (federal district court striking the defendant's defenses of lack of personal jurisdiction and forum non conveniens).[5]

IV. CONCLUSION

After everything that has happened in this case, the Court gave Sands China one more chance to produce its documents and comply (albeit untimely) with its obligations for jurisdictional discovery. Sands China ignored that opportunity. Instead, it used its resources to create a phony appearance of compliance while simultaneously making sure that whatever it

[5] In the interest of brevity, Jacobs hereby incorporates his analysis of *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxities de Guinee*, 456 U.S. 694 (1982) and *Bayoil, S.A. v. Polembros Shipping Ltd.*, 196 F.R.D. 479 (S.D.Tx. 2000) from the First Motion for Sanctions.

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produced was useless to Jacobs or the Court. This Court warned Sands China that its time is up on January 4, 2013. The Court can no longer excuse the Defendants' refusal to comply.

DATED this 7th day of January, 2013.

PISANELLI BICE PLLC

By: _____

James J. Pisanelli, Esq., Bar No. 4027
Todd L. Bice, Esq., Bar No. 4534
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 7th day of February, 2013, I caused to be sent via e-mail and electronic service true and correct copies of the above and foregoing **PLAINTIFF'S RENEWED MOTION FOR NRCP 37 SANCTIONS** properly addressed to the following:

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EXHIBIT 1

TRAN COPY

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS FOR PROTECTIVE ORDER AND SANCTIONS

TUESDAY, DECEMBER 18, 2012

APPEARANCES:

FOR THE PLAINTIFF:	JAMES J. PISANELLI, ESQ. DEBRA SPINELLI, ESQ. TODD BICE, ESQ.
FOR THE DEFENDANTS:	JON RANDALL JONES, ESQ. J. STEPHEN PEEK, ESQ. MARK JONES, ESQ. MICHAEL LACKEY, ESQ.
COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

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

33

LAS VEGAS, NEVADA, TUESDAY, DECEMBER 18, 2012, 8:06 A.M.

(Court was called to order)

THE COURT: Good morning. Which motion do you guys want to handle first, the protective orders?

MR. MARK JONES: Your Honor, I have a housekeeping issue, if I may, first.

THE COURT: Sure.

MR. MARK JONES: Spoke with Mr. Bice. Thank you.

Yesterday was the last day for the other side to oppose Mr. Lackey's pro hac admission for his -- excuse me, pro hac application for his admission into this case, and there's no opposition. So Mr. Bice had asked if the Court - if I may --

THE COURT: Any objection?

MR. BICE: No.

THE COURT: All right. Then you can approach. I'll be happy to sign, Mr. Jones. Here you go.

All right. Now which motion do you guys want to argue first?

MR. RANDALL JONES: Your Honor, in a sense I guess they're sort of mixed together, but perhaps our --

THE COURT: Well, the protective order on the videotape deposition is different than the sanctions and the other protective order motion.

MR. RANDALL JONES: And I guess what I was thinking

do it.

And so what happened after that hearing, we were retained, Mr. Lackey's firm was retained, and action started right away. This was within weeks of that hearing, Your Honor. New counsel was brought in. The reason we were brought in was to try to make sure that we complied with what you wanted us to do. And, Your Honor, I've been practicing here a long time and I've known you both in private practice and on the bench, and I would hope the Court would understand that we take our -- not only our oath, but our obligation on discovery very, very seriously.

THE COURT: Oh, I have no doubt about that, Mr. Jones. That's not the issue. The issue is not you or your firm's credibility or Mr. Lackey or Mr. Peek or any of the attorneys at this point. The issue is a -- what appears to be an approach by the client to avoid discovery obligations that I have had in place since before the stay.

MR. RANDALL JONES: And, Your Honor, I understand that's your concern. And I understood that before you said that just now. And I understand why that's your concern. I have tried to make sure that I understand the history of this case. And I will tell you the client understands the concern. That's why new counsel this far along in the case was brought in.

THE COURT: Third new counsel.

search terms that we have used to try to find documents all seem to be related to information that in fact is overexpansive beyond what would be contacts that Sands China might have with the United States, in particular with Nevada. So we're essentially, we believe, getting a substantial amount of overinclusive documents.

Let me just give you an example. In the depositions two documents were used in Mr. Adelson's deposition of the 200,000 documents that have been discovered, and I think 19 were used in either in Mr. Goldstein or Mr. Leven's deposition, I can't remember, but one of those two. But the point is, Your Honor, is that we have been trying to accomplish this discovery, and we believe that the Court has set limits on what this discovery is. In fact, your order says what the limits of discovery are. And so our --

THE COURT: You're referring to the March 8th, 2012, order?

MR. RANDALL JONES: That's correct, Your Honor. And so I guess I would ask the Court some questions to help us try to understand where the Court has a concern that we are not in compliance or at least attempting to comply and why the parameters should be expanded beyond Mr. Jacobs's ESI in Macau. We've given them everything we have in Las Vegas, including the ghost image information of the Jacobs ESI. What possibly could we expect to find with respect to contacts with

better job than their predecessor, then guess what happens, we have a new set of lawyers coming in.

I'm overlapping a little bit on the basis of the motion.

THE COURT: I don't want to do the sanctions motions, yet.

MR. PISANELLI: So I won't do that.

THE COURT: Thank you.

MR. PISANELLI: The point is very simply you never told them not to produce it, and they didn't do it.

THE COURT: Thank you.

The motion for protective order is denied. I am going to enter an order today that within two weeks of today, which for ease of calculation because of the holiday we will consider to be January 4th, Sands China will produce all information within their possession that is relevant to the jurisdictional discovery. That includes electronically stored information. Within two weeks.

So I can go the motion for sanctions. The motion for sanctions appears to be premature since I've not previously entered an order requiring that certain information that is electronically stored information in Macau be provided. About two weeks from now you might want to renew your motion if you don't get it.

Can I go to the motion for the protective order on

THE COURT: I did.

MR. PISANELLI: And they're giving us a precursor that they don't hear you, they just never hear you.

THE COURT: Well, Mr. Pisanelli, I've entered orders, I've now entered an order that says on January 4th they're going to produce the information. They're either going to produced it or they're not. And if they produce information that you think is insufficient, you will then have a meet and confer. And then if you believe they are in violation of my orders, and I include that term as a multiple order, then you're going to do something.

MR. PISANELLI: I will. I want --

THE COURT: And then I'll have a hearing.

MR. PISANELLI: I will. I want to make this one point, because you've made a statement that they have not yet violated an order, and that's of concern to me.

THE COURT: Well, they've violated numerous orders. They haven't violated an order that actually requires them to produce information. I have said it, we discussed it at the Rule 16 conference, I've had people tell me how they're complying, I've had people tell me how they're complying differently, I've had people tell me how they tried to comply but now apparently they're in violation of law. I mean, I've had a lot of things. But we've never actually entered a written order that says, please produce the ESI that's in

on counsel.

All right. Goodbye.

MR. RANDALL JONES: Your Honor, just to clarify that, with respect to a case-by-case basis. So if something comes up at a deposition --

THE COURT: Here's the deal, Mr. Jones. I will tell you that Kathy England I both in separate cases had occasions where a specific attorney came across the table and threatened us. From that point forward that person was on the camera, as well, not just the deponent. And that was approved -- my recollection, mine was approved by Discovery Commissioner Biggar, Kathy's was approved by a magistrate. But that was where the attorney was doing something other than, you know, a facial expression or smirking. You know, you guys do that in court all the time. What am I supposed to do? 'Bye.

MR. RANDALL JONES: Thank you, Your Honor.

THE PROCEEDINGS CONCLUDED AT 8:55 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

12/30/12

DATE

EXHIBIT 2

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN JACOBS, Plaintiff(s), vs LAS VEGAS SANDS CORP, ET AL, Defendants.	**Case No.** 10 A 627691 **Dept. No.** XI **Date of Hearing:** 09/10-12/12

DECISION AND ORDER

This matter having come on for an evidentiary hearing before the Honorable Elizabeth Gonzalez beginning on September 10, 2012 and continuing day to day, based upon the availability of the Court and Counsel, until its completion on September 12, 2012; Plaintiff Steven Jacobs ("Jacobs") being present in court and appearing by and through his attorney of record, James Pisanelli, Esq., Todd Bice, Esq., and Debra Spinelli, Esq. of the law firm of Pisanelli Bice; Defendant Las Vegas Sands appearing by and through its counsel J. Stephen Peek, Esq. of the law firm of Holland & Hart and counsel for purposes of this proceeding, Samuel Lionel, Esq. and Charles McCrea, Esq., of the law firm of Lionel Sawyer & Collins; Defendant Sands China appearing by and through its counsel J. Stephen Peek, Esq. of the law firm of Holland & Hart, Brad D. Brian, Esq., Henry Weissman, Esq., and John B. Owens, Esq. of the law firm of Munger Tolles & Olson and counsel for purposes of this proceeding, Samuel Lionel, Esq. and Charles McCrea, Esq., of the law firm of Lionel Sawyer & Collins; the Court having read and considered the pleadings filed by the parties and the transcripts of prior hearings; having reviewed the evidence admitted during the trial; and having heard and carefully considered the testimony of the witnesses called to testify; the Court having considered the oral and written arguments of counsel, and with the intent of deciding the limited issues before the Court related to lack of candor and nondisclosure of information to

the Court and appropriate sanctions pursuant to EDCR 7.60. The Court makes the following findings of fact and conclusions of law:

I.
PROCEDURAL POSTURE

On August 26, 2011, the Nevada Supreme Court issued a stay of proceedings in this matter pending the conduct of an evidentiary hearing and decision on jurisdictional issues related to Sands China. The Court granted Jacobs request to conduct jurisdictional discovery prior to the evidentiary hearing. The order granting the jurisdictional discovery was ultimately entered on March 8, 2012.

II.
FINDINGS OF FACT[1]

1. Prior to litigation, in approximately August 2010, a ghost image of hard drives of computers used by Steve Jacobs in Macau[2] and copies of his outlook emails were transferred by way of electronic storage devices (the "transferred data") to Michael Kostrinsky, Esq., Deputy General Counsel of Las Vegas Sands.[3]

---

[1] Counsel for Las Vegas Sands objected on the basis of attorney client privilege to a majority of the questions asked of the counsel who testified during the evidentiary hearing. Almost all of those objections were sustained. While numerous directions not to answer on the basis of attorney client privilege and the attorney work product were made by counsel for Las Vegas Sands, sustained by the Court, and followed by the witnesses, sufficient information was presented through pleadings already in the record and testimony of witnesses without the necessity of the Court drawing inferences related to the assertion of those privileges. See generally, Francis v. Wynn, 127 NAO 60 (2011). The Court also rejects Plaintiff's suggestion that adverse presumptions should be made by the Court as a result of the failure of Las Vegas Sands to present explanatory evidence in its possession and declines to make any presumptions which might arguably be applicable under NRS Chapter 47.

[2] There is an issue that has been raised regarding the current location of those computers and hard drives from which the ghost image was made. The Court does not in this Order address any issues related to those items.

[3] According to a status report filed by Las Vegas Sands on July 6, 2012, there were other transfers of electronically stored data. Based upon testimony elicited during the evidentiary hearing, counsel was unaware of those transfers prior to the preparation and filing of the status report.

2. Kostrinsky requested this information in anticipation of litigation with Jacobs after learning of receipt of a letter by then general counsel for Las Vegas Sands from Don Campbell.

3. This transferred data was placed on a server at Las Vegas Sands and was initially reviewed by Kostrinsky.

4. The attorneys for Sands China at the Glaser Weil firm were aware of the existence of the transferred data on Kostrinsky's computer from shortly after their retention in November 2010.

5. The transferred data was reviewed in Kostrinsky's office by attorneys from Holland & Hart.

6. On April 22, 2011, in house counsel for Sands China, Anne Salt, participated in the Rule 16 conference by videoconference and responded to inquiry by the Court related to electronically stored information and confirmed preservation of the data.

7. At no time during the Rule 16 conference did Ms. Salt or anyone on behalf of Sands China advise the Court of the potential impact of the Macau Personal Data Privacy Act (MDPA) upon discovery in this litigation.

8. Following the Rule 16 conference with the Court, the parties filed a Joint Status Report on April 22, 2011, in which they agreed that the initial disclosure of documents pursuant to NRCP 16.1 would be made by Sands China and Las Vegas Sands prior to July 1, 2011. The MDPA is not mentioned in the Joint Status Report as potentially affecting discovery in this litigation.

9. Following the Rule 16 conference, no production or other identification of the information from the transferred data was made.

10. Beginning with the motion filed May 17, 2011, Sands China and Las Vegas Sands raised the MDPA as a potential impediment (if not a bar) to production of certain documents.

11. At a hearing on June 9, 2012, counsel for Sands China represented to the Court that the documents subject to production were in Macau; were not allowed to leave Macau; and, had to be reviewed by counsel for Sands China in Macau prior to requesting the Office of Personal Data Protection in Macau for permission to release those documents for discovery purposes in the United States.

12. At the time of the representation made on June 9, 2012, the transferred data had already been copied; the copy removed from Macau; and reviewed in Las Vegas by representatives of Las Vegas Sands.

13. The transferred data was stored on a Las Vegas Sands shared drive totaling 50 – 60 gigabytes of information.

14. Prior to July 2011, Las Vegas Sands had full and complete access to documents in the possession of Sands China in Macau through a network to network connection.

15. Beginning in approximately July 2011, Las Vegas Sands access to Sands China data changed as a result of corporate decision making.

16. Prior to the access change, significant amounts of data from Macau related to Jacobs was transported to the United States and reviewed by in house counsel for Las Vegas Sands and outside counsel, and placed on shared drives at Las Vegas Sands.

17. At no time did Las Vegas Sands or Sands China disclose the existence of this data to the Court.[4]

18. At no time did Las Vegas Sands or Sands China provide a privilege log identifying documents which it contended were protected by the MDPA which was discussed by the Court on June 9, 2011.

---

[4] While Las Vegas Sands contends that a disclosure was made on June 9, 2011, this is inconsistent with other actions and statements made to the Court including the June 27, 2012 status report, the June 28, 2012 hearing and the July 6, 2012 status report.

19. For the first time on June 27, 2012, in a written status report, Las Vegas Sands and Sands China advised the Court that Las Vegas Sands was in possession of over 100,000 emails and other ESI that had been transferred "in error".

20. In the June 27, 2012 status report, Las Vegas Sands admits that it did not disclose the existence of the transferred data because it wanted to review the Jacobs ESI.[5]

21. Any finding of fact stated hereinabove that is more appropriately deemed a conclusion of law shall be so deemed.

III.
CONCLUSIONS OF LAW

22. The MDPA and its impact upon production of documents related to discovery has been an issue of serious contention between the parties in motion practice before this Court since May 2011.

23. The MDPA has been an issue with regards to documents, which are the subject of the jurisdictional discovery.

24. At no time prior to June 28, 2012, was the Court informed that a significant amount of the ESI in the form of a ghost image relevant to this litigation had actually been taken out of Macau in July or August of 2010 by way of a portable electronic device.

25. EDCR Rule 7.60 provides in pertinent part:

* * *

(b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:

* * *

(3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.

---

[5] The Court notes that there have also been significant issues with the production of information from Jacobs. On appropriate motion the Court will deal with those issues.

26. As a result of the failure to disclose the existence of the transferred data, the Court conducted needless hearings on the following dates which involved (at least in part) the MDPA issues:

May 26, 2011

June 9, 2011

July 19, 2011

September 20, 2011[6]

October 4, 2011[7]

October 13, 2011

January 3, 2012

March 8, 2012

May 24, 2012

27. The Court concludes after hearing the testimony of witnesses that the 100,000 emails and other ESI were not transferred in error, but was purposefully brought into the United States after a request by Las Vegas Sands for preservation purposes.

28. The transferred data is relevant to the evidentiary hearing related to jurisdiction, which the Court intends to conduct.

29. The change in corporate policy regarding Las Vegas Sands access to Sands China data made during the course of this ongoing litigation was made with an intent to prevent the disclosure of the transferred data as well as other data.[8]

30. The Defendants concealed the existence of the transferred data from this Court.

---

[6] This hearing was conducted in a related case, A648484.

[7] This hearing was conducted in a related case, A648484.

[8] While the Court recognizes that several other legal proceedings related to certain allegations made by Jacobs were commenced during the course of this litigation including subpoenas from the SEC and DOJ, this does not excuse the failure to disclose the existence of the transferred data; the failure to identify the transferred data on a privilege log, or the failure produce of the transferred data in this matter.

31. As the transferred data had already been reviewed by counsel, the failure to disclose the existence of this transferred data to the Court caused repeated and unnecessary motion practice before this Court.

32. The lack of disclosure appears to the Court to be an attempt by Defendants to stall the discovery, and in particular, the jurisdictional discovery in these proceedings.

33. Given the number of occasions the MDPA and the production of ESI by Defendants was discussed there can be no other conclusions than that the conduct was repetitive and abusive.

34. The conduct however does not rise to the level of striking pleadings as exhibited in the Foster v. Dingwall, 227 P.3d 1042 (Nev. 2010) or the entry of default as in Goodyear v. Bahena, 235 P.3d 592 (Nev. 2010) cases.[9]

35. After evaluating the factors in Ribiero v. Young, 106 Nev. 88 (1990), the Court finds:

a. There are varying degrees of willfulness demonstrated by the Defendants and their agents in failing to disclose the transferred data to Plaintiff ranging from careless nondisclosure to knowing, willful and intentional conduct with an intent to prevent the Plaintiff access to information discoverable for the jurisdictional proceedings;[10]

b. There are varying degrees of willfulness demonstrated by the Defendants and their agents ranging from careless nondisclosure to knowing, willful and intentional conduct in concealing the existence of the transferred data and failing to disclose the transferred data to the Court with an intent to prevent the Court ruling on the discoverability for purposes of the jurisdictional proceedings;

---

[9] The Court recognizes no factors have been provided to guide in the evaluation of sanctions for conduct in violation of EDCR 7.60, but utilizes cases interpreting Rule 37 violations as instructive.

[10] As a result of the stay, the court does not address the discoverability of the transferred data and the effect of the conduct related to the entire case.

c. The repeated nature of Defendants and Defendants' agents conduct in making inaccurate representations over a several month period is further evidence of the intention to deceive the Court;

d. Based upon the evidence currently before the Court it does not appear that any evidence has been irreparably lost;[11]

e. There is a public policy to prevent further abuses and deter litigants from concealing discoverable information and intentionally deceiving the Court in an attempt to advance its claims; and

f. The delay and prejudice to the Plaintiff in preparing his case is significant, however, a sanction less severe than striking claims, defenses or pleadings can be fashioned to ameliorate the prejudice.

36. The Court after evaluation of the evidence and testimony, weighing the factors and evaluating alternative sanctions determines that evidentiary and monetary sanctions are an alternative less severe sanction to address the conduct that has occurred in this matter.

37. Any conclusion of law stated hereinabove that is more appropriately deemed a finding of fact shall be so deemed.

IV.

ORDER

Therefore the Court makes the following order:

a. For purposes of jurisdictional discovery and the evidentiary hearing related to jurisdiction, Las Vegas Sands and Sands China will be precluded from raising the MDPA as an objection or as a defense to admission, disclosure or production of any documents.[12]

---

[11] There is an issue that has been raised regarding the current location of those computers and hard drives from which the ghost image was made. The Court does not in this Order address any issues related to those items.

[12] This does not prevent the Defendants from raising any other appropriate objection or privilege.

b. For purposes of jurisdictional discovery and the evidentiary hearing related to jurisdiction, Las Vegas Sands and Sands China are precluded from contesting that Jacobs ESI (approx. 40 gigabytes) is not rightfully in his possession.[13]

c. Defendants will make a contribution of $25,000 to the Legal Aid Center of Southern Nevada.

d. Reasonable attorneys' fees of Plaintiff will be awarded upon filing an appropriate motion for those fees incurred in conjunction with those portions of the hearings related to the MDPA identified in paragraph 26.

Dated this 14th day of September, 2012

ELIZABETH GONZALEZ
District Court Judge

Certificate of Service

I hereby certify that on or about the date filed, this document was copied through e-mail, or a copy of this Order was placed in the attorney's folder in the Clerk's Office or mailed to the proper person as follows:

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Samuel Lionel, Esq. (Lionel Sawyer & Collins)

Brad D. Brian Esq. (Munger Tolles & Olson)

James J. Pisanelli, Esq. (Pisanelli Bice)

Dan Kutinac

[13] This does not prevent the Defendants from raising any other appropriate objection or privilege.

EXHIBIT 3

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND RELATED CLAIMS

Case No.: A-10-627691
Dept. No.: XI

ORDER REGARDING PLAINTIFF STEVEN C. JACOBS' MOTION TO CONDUCT JURISDICTIONAL DISCOVERY and DEFENDANT SANDS CHINA LTD.'s MOTION FOR CLARIFICATION

Date and Time of Hearings:

September 27, 2011 at 4:00 p.m.

October 13, 2011 at 9:00 a.m.

Plaintiff Steven C. Jacobs' ("Jacobs") Motion to Conduct Jurisdictional Discovery ("Motion") came before the Court for hearing at 4:00 p.m. on September 27, 2011. James J. Pisanelli, Esq., and Debra L. Spinelli, Esq., of the law firm PISANELLI BICE PLLC, appeared on behalf of Jacobs. Patricia L. Glaser, Esq., of the law firm Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP, appeared on behalf of Defendant Sands China Ltd. ("Sands China"). J. Stephen Peek, Esq., of the law firm Holland & Hart LLP, appeared on behalf of Defendant

Las Vegas Sands Corp. ("LVSC"). The Court considered the papers filed on behalf of the parties and the oral argument of counsel, and good cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion to Conduct Jurisdictional Discovery is GRANTED IN PART and DENIED IN PART as follows:

1. GRANTED as to the deposition of Michael A. Leven ("Leven"), a Nevada resident, who simultaneously served as President and COO of Las Vegas Sands Corp. ("LVSC") and CEO of Sands China (among other titles), regarding the work he performed for Sands China, and work he performed on behalf of or directly for Sands China while acting as an employee, officer, or director of LVSC, during the time period of January 1, 2009, to October 20, 2010;[1]

2. GRANTED as to the deposition of Sheldon G. Adelson ("Adelson"), a Nevada resident, who simultaneously served as Chairman of the Board of Directors and CEO of LVSC and Chairman of the Board of Directors of Sands China, regarding the work he performed for Sands China, and work he performed on behalf of or directly for Sands China while acting as an employee, officer, or director of LVSC, during the time period of January 1, 2009, to October 20, 2010;

3. GRANTED as to the deposition of Kenneth J. Kay ("Kay"), LVSC's Executive Vice President and CFO, who, upon Plaintiff's information and belief, participated in the funding efforts for Sands China, regarding the work he performed for Sands China, and work he performed on behalf of or directly for Sands China while acting as an employee, officer, or director of LVSC, during the time period of January 1, 2009, to October 20, 2010;

4. GRANTED as to the deposition of Robert G. Goldstein ("Goldstein"), a Nevada resident, and LVSC's President of Global Gaming Operations, who, upon Plaintiff's information and belief, actively participates in international marketing and development for Sands China, regarding the work he performed for Sands China, and work he performed on behalf of or directly for Sands China while acting as an employee, officer, or director of LVSC, during the time period of January 1, 2009, to October 20, 2010;

[1] This time period was agreed upon and ordered by the Court in the Stipulation and Order Regarding ESI Discovery entered filed on June 23, 2011, and is also relevant to the limited jurisdictional discovery permitted herein.

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5. GRANTED as to a narrowly tailored NRCP 30(b)(6) deposition of Sands China in the event that the witnesses identified above in Paragraphs 1 through 4 lack memory knowledge concerning the relevant topics during the time period of January 1, 2009, to October 20, 2010;

6. GRANTED as to documents that will establish the date, time, and location of each Sands China Board meeting (including the meeting held on April 14, 2010, at 9:00 a.m. Macau Time/April 13, 2010, at 6:00 p.m. Las Vegas time), the location of each Board member, and how they participated in the meeting during the period of January 1, 2009, to October 20, 2010;

7. GRANTED as to documents that reflect the travels to and from Macau/China/Hong Kong by Adelson, Leven, Goldstein, and/or any other LVSC employee for any Sands China related business (including, but not limited to, flight logs, travel itineraries) during the time period of January 1, 2009, to October 20, 2010;

8. DENIED as to the calendars of Adelson, Leven, Goldstein, and/or any other LVSC executive who has had meetings related to Sands China, provided services on behalf of Sands China, and/or travelled to Macau/China/Hong Kong for Sands China business during the time period of January 1, 2009, to October 20, 2010;

9. GRANTED as to documents and/or communications related to Michael Leven's service as CEO of Sands China and/or the Executive Director of Sands China Board of Directors without payment, as reported to Hong Kong securities agencies, during the time period of January 1, 2009, to October 20, 2010;

10. GRANTED as to documents that reflect that the negotiation and execution of the agreements for the funding of Sands China occurred, in whole or in part, in Nevada, during the time period of January 1, 2009, to October 20, 2010;

11. GRANTED as to contracts/agreements that Sands China entered into with entities based in or doing business in Nevada, including, but not limited to, any agreements with BASE Entertainment and Bally Technologies, Inc., during the time period of January 1, 2009, to October 20, 2010;

12. GRANTED as to documents that reflect work Robert Goldstein performed for Sands China, and work he performed on behalf of or directly for Sands China while acting as an

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employee, officer, or director of LVSC, during the time period of January 1, 2009, to October 20, 2010, including (on Plaintiff's information and belief) global gaming and/or international player development efforts, such as active recruitment of VIP players to share between and among LVSC and Sands China properties, and/or player funding;

13. GRANTED as to all agreements for shared services between and among LVSC and Sands China or any of its subsidiaries, including, but not limited to, (1) procurement services agreements; (2) agreements for the sharing of private jets owned or made available by LVSC; and (3) trademark license agreements, during the time period of January 1, 2009, to October 20, 2010;

14. DENIED as to documents that reflect the flow of money/funds from Macau to LVSC, including, but not limited to, (1) the physical couriering of money from Macau to Las Vegas; and (2) the Affiliate Transfer Advice ("ATA"), including all documents that explain the ATA system, its purpose, how it operates, and that reflect the actual transfer of funds;

15. GRANTED as to all documents, memoranda, emails, and/or other correspondence that reflect services performed by LVSC (including LVSC's executives) on behalf of Sands China, including, but not limited to the following areas: (1) site design and development oversight of Parcels 5 and 6; (2) recruitment and interviewing of potential Sands China executives; (3) marketing of Sands China properties, including hiring of outside consultants; (4) negotiation of a possible joint venture between Sands China and Harrah's; and/or (5) the negotiation of the sale of Sands China's interest in sites to Stanley Ho's company, SJM, during the time period of January 1, 2009, to October 20, 2010;

16. GRANTED as to all documents that reflect work performed on behalf of Sands China in Nevada, including, but not limited, documents that reflect communications with BASE Entertainment, Cirque du Soleil, Bally Technologies, Inc., Harrah's, potential lenders for the underwriting of Parcels 5 and 6, located in the Cotai Strip, Macau, and site designers, developers, and specialists for Parcels 5 and 6, during the time period of January 1, 2009 to October 20, 2010;

17. DENIED as to documents, including financial records and back-up, used to calculate any management fees and/or corporate company transfers for services performed and/or provided by LVSC to Sands China, including who performed the services and where those

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services were performed and/or provided, during the time period where there existed any formal or informal shared services agreement;

18. GRANTED as to all documents that reflect reimbursements made to any LVSC executive for work performed or services provided related to Sands China, during the time period of January 1, 2009, to October 20, 2010;

19. GRANTED as to all documents that Sands China provided to Nevada gaming regulators, during the time period of January 1, 2009 to October 20, 2010; and

20. DENIED as to the telephone records for cellular telephones and landlines used by Adelson, Leven, and Goldstein that indicate telephone communications each had with or on behalf of Sands China.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the parties are to abide by the Nevada Rules of Civil Procedure as it relates to the disclosure of experts, if any, for purposes of the evidentiary hearing on personal jurisdiction over Sands China.

In addition, Defendant Sands China's Motion for Clarification of Jurisdictional Discovery Order on Order Shortening Time ("Motion for Clarification") came before the Court for hearing on 9:00 a.m. on October 13, 2011. James J. Pisanelli, Esq., and Debra L. Spinelli, Esq., of the law firm PISANELLI BICE PLLC, appeared on behalf of Jacobs. Patricia L. Glaser, Esq., of the law firm Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP, appeared on behalf of Defendant Sands China, and J. Stephen Peek, Esq., of the law firm Holland & Hart LLP, appeared on behalf of Defendant LVSC. The Court considered the papers filed on behalf of the parties and the oral argument of counsel, and good cause appearing therefor:

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IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion for Clarification is GRANTED IN PART as follows:

1. The parties are only permitted to conduct discovery related to activities that were done for or on behalf of Sands China; and

2. This is an overriding limitation on all of the specific items requested in Jacob's Motion to Conduct Jurisdictional Discovery.

DATED: March 8, 2012

THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

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By: _____

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Approved as to form by:

HOLLAND & HART

By: _____

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EXHIBIT 4

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Attorneys for Real Party in Interest Steven C. Jacobs

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 5 OF 5

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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 5 OF 5** properly addressed to the following:

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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