

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS SANDS CORP., a Nevada
corporation, and SANDS CHINA LTD., a
Cayman Islands corporation

Petitioners,

vs.

CLARK COUNTY DISTRICT COURT, THE
HONORABLE ELIZABETH GONZALEZ,
DISTRICT JUDGE, DEPT. 11,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Electronically Filed
Apr 08 2013 09:08 a.m.
Tracie K. Lindeman
Clerk of Supreme Court
District Court Case Number
A627691-B

**APPENDIX TO PETITION
FOR WRIT OF
PROHIBITION OR
MANDAMUS
RE MARCH 27, 2013
ORDER**

**Volume IV of XIII
(PA653 – 699)**

MORRIS LAW GROUP
Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

KEMP, JONES & COULTHARD, LLP
J. Randall Jones, Bar No. 1927
Mark M. Jones, Esq., Bar No. 267
3800 Howard Hughes Pkwy, 17th Flr.
Las Vegas, Nevada 89169

HOLLAND & HART LLP
J. Stephen Peek, Esq., Bar No. 1759
Robert J. Cassity, Esq., Bar No. 9779
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Attorneys for Petitioners

**APPENDIX TO EMERGENCY PETITION FOR WRIT OF
PROHIBITION OR MANDAMUS RE MARCH 27, 2013 ORDER
CHRONOLOGICAL INDEX**

Date	Description	Vol. #	Page Nos.
12/22/2010	Sands China Ltd's Motion to Dismiss including Salt Affidavit and Exs. E, F, and G	I	PA1 - 75
3/16/2011	First Amended Complaint	I	PA76 - 93
4/1/2011	Order Denying Defendants' Motions to Dismiss	I	PA94 - 95
5/6/2011	Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition (without exhibits)	I	PA96 - 140
5/17/2011	Defendant Sands China Ltd.'s Motion to Stay Proceedings Pending Writ Petition on OST(without exhibits)	I	PA141 - 57
7/14/2011	Defendant Sands China Ltd.'s Motion to Stay Proceedings Pending Writ Petition on OST including Fleming Declaration	I	PA158 - 77
7/26/2011	Answer of Real Party in Interest Steven C. Jacobs to Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition (without exhibits)	I	PA178 - 209
8/10/2011	Petitioner's Reply in Support of Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition (without exhibits)	I	PA210 - 33
8/26/2011	Order Granting Petition for Writ of Mandamus	I	PA234 - 37
9/21/2011	Plaintiff's Motion to Conduct Jurisdictional Discovery	I	PA238 - 46

Date	Description	Vol. #	Page Nos.
9/26/2011	Defendant Sands China Ltd.'s Opposition to Plaintiff's Motion to Conduct Jurisdictional Discovery on OST(without exhibits)	II	PA247 - 60
9/27/2011	Transcript: Hearing on Plaintiff's Motion to Conduct Jurisdictional Discovery	II	PA261 - 313
9/28/2011	Sands China Ltd.'s Motion in Limine to Exclude Documents Stolen by Jacobs in Connection with the November 21, 2011 Evidentiary Hearing re Personal Jurisdiction on OST(without exhibits)	II	PA314 - 52
10/6/2011	Sands China Ltd.'s Motion for Clarification of Jurisdictional Discovery Order on OST (without exhibits)	II	PA353 - 412
10/12/2011	Plaintiff Steven C. Jacobs' Opposition to Sands China Ltd.'s Motion for Clarification of Jurisdictional Discovery Order on OST(without exhibits)	II	PA413 - 23
10/13/2011	Transcript: Hearing on Sands China's Motion in Limine and Motion for Clarification of Order	III	PA424 - 531
12/9/2011	Notice of Entry of Order re November 22 Status Conference and related Order	III	PA532 - 38
3/8/2012	Order Regarding Plaintiff Steven C. Jacobs' Motion to Conduct Jurisdictional Discovery and Defendant Sands China Ltd.'s Motion for Clarification	III	PA539 - 44
3/22/2012	Stipulated Confidentiality Agreement and Protective Order	III	PA545 - 60

Date	Description	Vol. #	Page Nos.
5/24/2012	Transcript: Status Check	III	PA561 - 82
6/27/2012	Defendants' Joint Status Conference Statement	III	PA583 - 92
6/27/2012	Plaintiff Steven C. Jacobs' Status Memorandum on Jurisdictional Discovery	III	PA592A - 592S
6/28/2012	Transcript: Hearing to Set Time for Evidentiary Hearing	III	PA593 - 633
7/6/2012	Defendants' Statement Regarding Data Transfers	III	PA634 - 42
8/7/2012	Defendants' Statement Regarding Investigation by Macau Office of Personal Data Protection	III	PA643 - 52
8/27/2012	Defendant's Statement Regarding Hearing on Sanctions	IV	PA653 - 84
8/27/2012	Appendix to Defendants' Statement Regarding Hearing on Sanctions and Ex. HH	IV	PA685 - 99
8/29/2012	Transcript: Telephone Conference	V	PA700 - 20
8/29/2012	Transcript: Hearing on Defendants' Motion to Quash Subpoenas	V	PA721 - 52
9/10/2012	Transcript: Court's Sanction Hearing – Day 1 – Monday, September 10, 2012	VI	PA753 - 915
9/11/2012	Transcript: Court's Sanction Hearing – Day 2 – Volume I Tuesday, September 11, 2012	VI	PA916 - 87
9/11/2012	Transcript: Court's Sanction Hearing – Day 2 – Volume II Tuesday, September 11, 2012	VII	PA988 - 1157
9/11/2012	Defendants Las Vegas Sands Corp.'s and Sands China Limited's Statement on Potential Sanctions	VII	PA1158 - 77

Date	Description	Vol. #	Page Nos.
9/12/2012	Transcript: Court's Sanctions Hearing – Day 3 – Wednesday, September 12, 2012	VIII	PA1178 - 1358
9/14/2012	Decision and Order	VIII	PA1359 - 67
10/16/2012	Notice of Compliance with Decision and Order Entered 9-14-12	VIII	PA1368 - 1373
11/21/2012	Plaintiff Steven C. Jacobs' Motion for NRCP 37 Sanctions	VIII	PA1374 - 91
11/27/2012	Defendants' Motion for a Protective Order on Order Shortening Time (without exhibits)	VIII	PA1392 - 1415
12/4/2012	Defendant Sands China Ltd.'s Motion for a Protective order on OST	IX	PA1416 - 42
12/4/2012	Appendix of Exhibits to Defendant Sands China Ltd.'s Motion for a Protective order on OST and Exs. F, G, M, W, Y, Z, AA	IX	PA1443 - 1568
12/6/2012	Transcript: Hearing on Motion for Protective Order	IX	PA1569 - 1627
12/12/2012	Defendants' Opposition to Plaintiff's Motion for Sanctions (without exhibits)	IX	PA1628 - 62
12/18/2012	Transcript: Hearing on Motions for Protective Order and Sanctions	X	PA1663 - 1700
1/8/2013	Defendant Sands China Ltd.'s Report on Its Compliance with the Court's Ruling of December 18, 2012	X	PA1701 - 61
1/17/2013	Notice of Entry of Order re: Sands China Ltd.'s Motion for Protective Order and related Order	X	PA1762 - 68

Date	Description	Vol. #	Page Nos.
2/08/2013	Plaintiff's Renewed Motion for NRCP 37 Sanctions on Order Shortening Time	XI	PA1769 - 917
2/25/2013	Defendants' Opposition to Plaintiff's Renewed Motion for NRCP 37 Sanctions	XII	PA1918 - 48
2/25/2013	Appendix to Defendants' Opposition to Plaintiff's Renewed Motion for NRCP 37 Sanctions NOTE: EXHIBITS O AND P FILED UNDER SEAL (Bates PA2119-2159A Submitted Under Seal)	XII	PA1949 - 2159A
2/28/2013	Transcript: Hearing on Plaintiff's Renewed Motion for NRCP 37 Sanctions	XIII	PA2160 - 228
3/6/2013	Reply In Support of Plaintiff's Renewed Motion for NRCP 37 Sanctions	XIII	PA2229 - 56
3/27/2013	Order re Renewed Motion for Sanctions	XIII	PA2257 - 60

**APPENDIX TO EMERGENCY PETITION FOR WRIT OF PROHIBITION OR
MANDAMUS TO PROTECT PRIVILEGED DOCUMENTS
ALPHABETICAL INDEX**

Date	Description	Vol. #	Page Nos.
7/26/2011	Answer of Real Party in Interest Steven C. Jacobs to Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition (without exhibits)	I	PA178 - 209
12/4/2012	Appendix of Exhibits to Defendant Sands China Ltd.'s Motion for a Protective order on OST and Exs. F, G, M, W, Y, Z, AA	IX	PA1443 - 1568
2/25/2013	Appendix to Defendants' Opposition to Plaintiff's Renewed Motion for NRCP 37 Sanctions (Excerpt) NOTE: EXHIBITS O AND P FILED UNDER SEAL (Bates PA2119-2159A Submitted Under Seal)	XII	PA1949 - 2159A
8/27/2012	Appendix to Defendants' Statement Regarding Hearing on Sanctions and Ex. HH	IV	PA685 - 99
9/14/2012	Decision and Order	VIII	PA1359 - 67
12/4/2012	Defendant Sands China Ltd.'s Motion for a Protective order on OST	IX	PA1416 - 42
5/17/2011	Defendant Sands China Ltd.'s Motion to Stay Proceedings Pending Writ Petition on OST(without exhibits)	I	PA141 - 57
7/14/2011	Defendant Sands China Ltd.'s Motion to Stay Proceedings Pending Writ Petition on OST including Fleming Declaration	I	PA158 - 77

Date	Description	Vol. #	Page Nos.
9/26/2011	Defendant Sands China Ltd.'s Opposition to Plaintiff's Motion to Conduct Jurisdictional Discovery on OST(without exhibits)	II	PA247 - 60
1/8/2013	Defendant Sands China Ltd.'s Report on Its Compliance with the Court's Ruling of December 18, 2012	X	PA1701 - 61
6/27/2012	Defendants' Joint Status Conference Statement	III	PA583 - 92
9/11/2012	Defendants Las Vegas Sands Corp.'s and Sands China Limited's Statement on Potential Sanctions	VII	PA1158 - 77
11/27/2012	Defendants' Motion for a Protective Order on Order Shortening Time	VIII	PA1392 - 1415
12/12/2012	Defendants' Opposition to Plaintiff's Motion for Sanctions (without exhibits)	IX	PA1628 - 62
2/25/2013	Defendants' Opposition to Plaintiff's Renewed Motion for NRCP 37 Sanctions	XII	PA1918 - 48
7/6/2012	Defendants' Statement Regarding Data Transfers	III	PA634 - 42
8/27/2012	Defendant's Statement Regarding Hearing on Sanctions	IV	PA653 - 84
8/7/2012	Defendants' Statement Regarding Investigation by Macau Office of Personal Data Protection	III	PA643 - 52
3/16/2011	First Amended Complaint	I	PA76 - 93
10/16/2012	Notice of Compliance with Decision and Order Entered 9-14-12	VIII	PA1368 - 1373

Date	Description	Vol. #	Page Nos.
12/9/2011	Notice of Entry of Order re November 22 Status Conference and related Order	III	PA532 - 38
1/17/2013	Notice of Entry of Order re: Sands China Ltd.'s Motion for Protective Order and related Order	X	PA1762 - 68
4/1/2011	Order Denying Defendants' Motions to Dismiss	I	PA94 - 95
8/26/2011	Order Granting Petition for Writ of Mandamus	I	PA234 - 37
3/8/2012	Order Regarding Plaintiff Steven C. Jacobs' Motion to Conduct Jurisdictional Discovery and Defendant Sands China Ltd.'s Motion for Clarification	III	PA539 - 44
3/27/2013	Order re Renewed Motion for Sanctions	XIII	PA2257 - 60
5/6/2011	Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition (without exhibits)	I	PA96 - 140
8/10/2011	Petitioner's Reply in Support of Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition (without exhibits)	I	PA210 - 33
11/21/2012	Plaintiff Steven C. Jacobs' Motion for NRCP 37 Sanctions	VIII	PA1374 - 91
10/12/2011	Plaintiff Steven C. Jacobs' Opposition to Sands China Ltd.'s Motion for Clarification of Jurisdictional Discovery Order on OST	II	PA413 - 23
6/27/2012	Plaintiff Steven C. Jacobs' Status Memorandum on Jurisdictional Discovery	III	PA592A - 592S
9/21/2011	Plaintiff's Motion to Conduct Jurisdictional Discovery	I	PA238 - 46

Date	Description	Vol. #	Page Nos.
2/08/2013	Plaintiff's Renewed Motion for NRCP 37 Sanctions on Order Shortening Time	XI	PA1769 - 917
3/6/2013	Reply In Support of Plaintiff's Renewed Motion for NRCP 37 Sanctions	XIII	PA2229 - 56
10/6/2011	Sands China Ltd.'s Motion for Clarification of Jurisdictional Discovery Order on OST (without exhibits)	II	PA353 - 412
9/28/2011	Sands China Ltd.'s Motion in Limine to Exclude Documents Stolen by Jacobs in Connection with the November 21, 2011 Evidentiary Hearing re Personal Jurisdiction on OST (without exhibits)	II	PA314 - 52
12/22/2010	Sands China Ltd's Motion to Dismiss including Salt Affidavit and Exs. E, F, and G	I	PA1 - 75
3/22/2012	Stipulated Confidentiality Agreement and Protective Order	III	PA545 - 60
9/10/2012	Transcript: Court's Sanction Hearing – Day 1 – Monday, September 10, 2012	VI	PA753 - 915
9/11/2012	Transcript: Court's Sanction Hearing – Day 2 – Volume I Tuesday, September 11, 2012	VI	PA916 - 87
9/11/2012	Transcript: Court's Sanction Hearing – Day 2 – Volume II Tuesday, September 11, 2012	VII	PA988 - 1157
9/12/2012	Transcript: Court's Sanctions Hearing – Day 3 – Wednesday, September 12, 2012	VIII	PA1178 - 1358

Date	Description	Vol. #	Page Nos.
8/29/2012	Transcript: Hearing on Defendants' Motion to Quash Subpoenas	V	PA721 - 52
12/6/2012	Transcript: Hearing on Motion for Protective Order	IX	PA1569 - 1627
12/18/2012	Transcript: Hearing on Motions for Protective Order and Sanctions	X	PA1663 - 1700
9/27/2011	Transcript: Hearing on Plaintiff's Motion to Conduct Jurisdictional Discovery	II	PA261 - 313
2/28/2013	Transcript: Hearing on Plaintiff's Renewed Motion or NRCP 37 Sanctions	XIII	PA2160 - 228
10/13/2011	Transcript: Hearing on Sands China's Motion in Limine and Motion for Clarification of Order	III	PA424 - 531
6/28/2012	Transcript: Hearing to Set Time for Evidentiary Hearing	III	PA593 - 633
5/24/2012	Transcript: Status Check	III	PA561 - 82
8/29/2012	Transcript: Telephone Conference	V	PA700 - 20

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE MARCH 27, 2013 ORDER** to be served as indicated below, on the date and to the addressee(s) shown below:

VIA HAND DELIVERY

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

Respondent

VIA ELECTRONIC AND U.S. MAIL

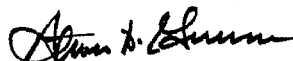
James J. Pisanelli
Todd L. Bice
Debra Spinelli
Pisanelli Bice
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169

Attorneys for Steven C. Jacobs, Real Party in Interest

DATED this 5th day of April, 2013.

By: /s/ PATRICIA FERRUGIA

Electronically Filed
08/27/2012 11:24:04 AM



CLERK OF THE COURT

1 **STMT**
2 J. Stephen Peek, Esq.
3 Nevada Bar No. 1759
4 Robert J. Cassity, Esq.
5 Nevada Bar No. 9779
6 **HOLLAND & HART LLP**
7 9555 Hillwood Drive, 2nd Floor
8 Las Vegas, Nevada 89134
9 (702) 669-4600
10 (702) 669-4650 – fax
11 speek@hollandhart.com
12 bcassity@hollandhart.com

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

15 Brad D. Brian, Esq.
16 Henry Weissmann, Esq.
17 John B. Owens, Esq.
18 Bradley R. Schneider, Esq.
19 Munger Tolles & Olson LLP
20 355 S. Grand Avenue
21 Los Angeles, California 90071
22 213-683-9100
23 brad.brian@mto.com
24 henry.weissmann@mto.com
25 john.owens@mto.com
26 bradley.schneider@mto.com

27 *Attorneys for Sands China, LTD.*

DISTRICT COURT

CLARK COUNTY, NEVADA

18 STEVEN C. JACOBS,
19
20 Plaintiff,
21 v.

22 LAS VEGAS SANDS CORP., a Nevada
23 corporation; SANDS CHINA LTD., a Cayman
24 Islands corporation; SHELDON G. ADELSON,
25 in his individual and representative capacity;
26 DOES I-X; and ROE CORPORATIONS I-X,
27
28 Defendants.

29 AND ALL RELATED MATTERS.

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

Date: n/a
Time: n/a

**DEFENDANTS' STATEMENT
REGARDING HEARING ON
SANCTIONS**

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

In advance of the August 30-31, 2012 hearing, Defendants Las Vegas Sands Corporation (“LVSC”) and Sands China Ltd. (“SCL”) submit this brief concerning data transfers and Macau’s Personal Data Protection Act (“PDPA”) and explaining why sanctions should not be imposed.

I. INTRODUCTION

After Defendants filed a Status Conference Report that discussed the transfer from Macau of certain electronically stored information (“ESI”),¹ including ESI for which Plaintiff was the custodian, the Court sua sponte ordered a hearing to consider the imposition of sanctions. The Court stated that it would evaluate whether Defendants’ previous arguments about data transfers and the PDPA had (1) violated EDCR 7.60(b) by causing the Court and plaintiff to waste time on the PDPA, or (2) breached Defendants’ duty of candor to the Court.

We deeply regret that our conduct has given rise to the Court’s concerns. We file this brief in the dual hope of addressing those concerns and providing context for the issues, each of which will be discussed in detail below. With regard to the first question, the July 31, 2012 announcement by the responsible Macau government agency of an investigation into past data transfers from Macau, together with the agency’s August 8, 2012 official rejection of the companies’ position that data can be transferred from Macau for purposes of producing documents in discovery in this case and to the United States Government, demonstrate that the application of the PDPA and attendant privacy issues remain very real hurdles to discovery and that the defendants’ concerns were well-founded.

With regard to the second question, it is our sincere hope to satisfy the Court that there was neither a violation of the duty of candor nor any violation of our discovery obligations as they arose and in the context of competing international legal considerations. On June 9, 2011, LVSC’s counsel informed the Court that the PDPA “implicates” some of its documents in Las

¹ On June 27, 2012, Defendants filed a Joint Status Conference Report in which they disclosed that ESI for which Plaintiff was the custodian, as well as certain other data, had been transferred from Macau to the United States (Attached hereto as Exhibit DD). (Defendants submit concurrently herewith one (1) volume of exhibits, constituting the pleadings and transcripts discussed in this submission. Defendants also submit concurrently herewith an Appendix that sets forth a chronological discussion of their statements.) On July 6, 2012, Defendant filed a Statement Regarding Data Transfers, which described these and other data transfers (Attached hereto as Ex. EE). The data that was transferred from Macau to the United States as described in those filings is referred to herein as the “Subject Transfers.”

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

1 Vegas. Because LVSC does not do business in Macau, LVSC's invocation of the PDPA could
 2 only mean that it possessed in the United States documents that had come from Macau. At the
 3 same hearing, Plaintiff's counsel stated that "foreign law" was not a basis for refusing to produce
 4 documents that are "in the jurisdiction in which the litigation is taking place like they are here."
 5 In subsequent meet-and-confer communications, Plaintiff's counsel specifically denied that
 6 LVSC "would be entitled to withhold documents in its possession in Las Vegas on the grounds
 7 that production of the same would violate the Macau Act." Plaintiff's counsel stated that he
 8 would bring a motion to compel once he knew "what materials are being withheld." Yet Plaintiff
 9 never asked what SCL documents were outside Macau or what documents in LVSC's possession
 10 came from Macau. Had Plaintiff asked those questions, a truthful answer would have been given.
 11 But the question was not asked, and in adversarial litigation, that fact makes a difference. There
 12 was, as we show below, no legal or ethical duty to volunteer.

13 In hindsight, Defendants acknowledge that their statements could have been clearer and
 14 more detailed and, had they been so, this hearing would not have been necessary. But the failure
 15 to do so was at most an honest mistake, not a violation of a legal duty and certainly not a fraud on
 16 the Court as Plaintiff has suggested. Defendants sincerely regret failing to meet the Court's
 17 expectations, but respectfully submit that sanctions are unwarranted for several reasons.

18 First, Defendants properly invoked the Macau Data Protection Act in pleadings and
 19 arguments to this Court. The PDPA was and remains a genuine impediment to the production of
 20 documents in Macau. Although Defendants transferred certain data from Macau to the United
 21 States, including data for which Plaintiff was the custodian, a far larger quantity of potentially
 22 responsive documentary information remains in Macau. Indeed, Plaintiff initially demanded that
 23 SCL review data from 38 custodians employed by SCL's operating subsidiary in Macau,
 24 Venetian Macau Limited ("VML"). SCL estimated that those custodians' data, which was and is
 25 housed in Macau and has not been transferred to the United States, amounted to 2 to 13 terabytes
 26 of data or more.

27 Since May 2011, the Macau Office for Personal Data Protection ("OPDP"), the agency
 28 charged with enforcement of the PDPA, has made clear to VML that transfers of personal data

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

1 from Macau are subject to the PDPA, that OPDP will strictly enforce the PDPA, and that failure
2 to comply with the PDPA may result in civil and criminal penalties. On July 31, 2012, following
3 Defendants' disclosures to this Court of the Subject Transfers and related press accounts, OPDP
4 commenced an official investigation into the alleged transfer from Macau by VML to the United
5 States of certain data. In addition, on August 3, 2012 Francis Tam, Macau's Secretary for
6 Economy and Finance, stated that the Macau government will have "no tolerance" for breaches of
7 the PDPA. In sum, there can be no question that the PDPA remains applicable to documents that
8 are still located in Macau and the PDPA therefore remains a significant issue in this litigation,
9 regardless of the Subject Transfers.

10 Plaintiff has criticized LVSC for seeking to compel Plaintiff to return data that he took
11 upon his departure from SCL without disclosing the Subject Transfers to the Court. But
12 Defendants had a reasonable basis—both for PDPA and non-PDPA reasons—for distinguishing
13 the Subject Transfers from the Plaintiff's transfers. For one thing, the PDPA was not the only, or
14 even the first, argument LVSC made in support of its LVSC's efforts to obtain a return of the data
15 taken by Plaintiff; LVSC also relied on grounds wholly independent of the PDPA, such as
16 ownership, confidentiality, and privilege. Insofar as the PDPA was concerned, LVSC focused on
17 the possibility that Plaintiff would publicly disclose documents containing personal data that he
18 had removed from Macau. In this context, LVSC had a reasonable basis for invoking the PDPA,
19 whose central purpose is to prevent public disclosure of personal data.

20 By contrast, the Subject Transfers did not endanger privacy interests in the same way as
21 did Plaintiff's possible disclosures, which could have exposed VML to adverse consequences
22 under Macau law. LVSC's removal of data from Macau would in no way justify Plaintiff's
23 public disclosure of Macau data, whether taken by him or someone else. LVSC's arguments
24 concerning Plaintiff's transfers were neither frivolous, vexatious nor a waste of the parties' or the
25 Court's time, regardless of the Subject Transfers.

26 Second, Defendants did not make any false or misleading factual representations to the
27 effect that they had *not* transferred any data from Macau. On the contrary, SCL correctly stated
28 that "the overwhelming majority" of SCL's documents were in Macau. That statement truthfully

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

1 conveys two things: That most of the documents are in Macau, and that some were not. In
2 addition, as noted, LVSC told the Court and Plaintiff's counsel that it had documents in Las
3 Vegas that implicated the PDPA, which could only mean documents that had come from Macau.

4 Third, Defendants had a reasonable basis for not disclosing the Subject Transfers sooner.
5 Defendants had a legitimate concern that a premature disclosure of the Subject Transfers could
6 have led to an adverse reaction by the Macau authorities. Beginning on May 13, 2011,
7 Defendants pursued numerous discussions with OPDP to address the PDPA. It was not until a
8 meeting with OPDP on May 28, 2012 that Defendants achieved a level of comfort that LVSC
9 could produce in this case the documents that had been transferred from Macau to the United
10 States, although even then VML faced the possibility of an enforcement action in respect of past
11 transfers should the disclosure result in frustration of the purposes of the PDPA. Subsequent
12 events have confirmed that Defendants' concerns were well-founded, as OPDP's recently-
13 announced official investigation demonstrates. In addition, Defendants did not violate—let alone
14 willfully violate—any order of the Court. Defendants had a reasonable basis for concluding that
15 they were not under an immediate obligation to disclose the Subject Transfers before VML
16 pursued additional communications with OPDP, given that their document production was not
17 complete.

18 *****

19 Defendants understand that the hearing on August 30-31, 2012 is the *Court's* hearing, at
20 which the Court will ask questions and hear presentations about the issues of concern to the
21 Court. Mr. Peek will attend the hearing, and we understand that Ms. Glaser will as well. In
22 addition, Michael Kostrinsky (LVSC's former Associate General Counsel) and Manjit Singh
23 (LVSC's Chief Information Officer) will be available to answer the Court's questions.

24 Although the Court has indicated that Plaintiff's counsel will be permitted to ask
25 questions, the Court should not permit Plaintiff's counsel to misuse the hearing to pursue their
26 own agenda. Plaintiff's counsel have given every indication that they will attempt to do just that.
27 On the evening of August 23, Plaintiff's counsel sent an email in which they attached proposed
28 subpoenas for Michael Leven, LVSC's Chief Operating Officer, a 30(b)(6) designee on the topics

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

1 that were covered by their 30(b)(6) deposition notice (including two that the Court ruled they
 2 could not pursue pending further briefing), and Manjit Singh.

3 The email went on to demand that ten lawyers attend the hearing, including not only Mr.
 4 Peek and Ms. Glaser, but also their colleagues Justin Jones, Stephen Ma, and Andrew Sedlock.
 5 Even more disturbing, the email demands the attendance of Gayle Hyman and Robert Rubenstein
 6 (in-house LVSC lawyers that the Court has already ruled cannot be deposed), David Fleming
 7 (SCL's General Counsel, who resides in Macau), and Brad Brian and Henry Weissmann
 8 (attorneys of record for SCL). The email states that "[w]hile it is not our intent to seek testimony
 9 from any of the above-listed counsel during the hearing (and hence no subpoenas are attached for
 10 any of them), since they all have played some role in the disclosures or non-disclosures to the
 11 Court, we believe it would be prudent if each/all were present upon chance the Court wishes to
 12 ask them questions directly (rather than proceed through a game of telephone)." The email then
 13 threatens to subpoena these lawyers if Defendants do not agree to produce them at the hearing.

14 The Court's concerns, which led it to set this hearing, are not a license for Plaintiff's
 15 counsel to engage in such abusive litigation tactics. Despite the Court's repeated statements about
 16 the limited scope of the hearing, Plaintiff's counsel persists in trying to turn this hearing into a
 17 courtroom circus. Plaintiff continues to threaten to file his own motion for sanctions. To date,
 18 however, he has not done so, and the only motion calendared for hearing on August 30-31 is the
 19 Court's own motion. The Court should not countenance Plaintiff's counsel's harassing and
 20 improper behavior.

21 **II. ARGUMENT**

22 This section sets forth the governing legal standards and then applies those standards to
 23 the statements Defendants have made in pleadings and in open court.²

24 **A. Legal Standards**

25 "The general rule in the imposing of sanctions is that they be applied only in *extreme*

26
 27 ² In order to present a complete record, Defendants discuss the statements made prior to the Supreme Court's August
 28 26, 2011 order staying non-jurisdictional issues. (Attached hereto as Exhibit M). Defendants respectfully submit,
 however, that the Supreme Court's stay order limits the Court's authority to impose sanctions for conduct that does
 not directly relate to jurisdiction. Defendants reserve all rights in this regard.

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

1 *circumstances* where willful noncompliance of a court's order is shown by the record."
2 *Finkelman v. Clover Jewelers Boulevard, Inc.*, 91 Nev. 146, 147, 532 P.2d 608, 609 (1975)
3 (emphasis added). In *Finkelman*, defendant was ordered to produce certain documents, and the
4 copies produced were "illegible, unintelligible, unidentifiable and so badly reproduced as to be
5 worthless for examination." *Id.* As a sanction, the trial court ordered the defendant's answer
6 stricken and entered judgment for the plaintiff. The Nevada Supreme Court reversed, finding
7 "nothing in the record that indicates willful disregard of the district court's order to produce
8 documents....We have here...an incident where the parties have partially complied with the
9 court's order and have provided an explanation for their failure to fully comply. This, of course,
10 negates willfulness." *Id.*

11 As discussed below, Defendants did not disobey an order of the Court or any other
12 requirement; they had a reasonable basis for the arguments they presented to the Court; and they
13 did not misrepresent the facts. Accordingly, sanctions are not warranted.

14 1. EDCR 7.60(b)

15 The Eighth Judicial District Court Rule ("EDCR") rule governing sanctions provides:

16 The court may, after notice and an opportunity to be heard, impose
17 upon an attorney or a party any and all sanctions which may, under
18 the facts of the case, be reasonable, including the imposition of
19 fines, costs or attorney's fees when an attorney or a party without
20 just cause:

- 21 (1) Presents to the court a motion or an opposition to a motion
22 which is obviously frivolous, unnecessary or unwarranted.
23 (2) Fails to prepare for a presentation.
24 (3) So multiplies the proceedings in a case as to increase costs
25 unreasonably and vexatiously.
26 (4) Fails or refuses to comply with these rules.
27 (5) Fails or refuses to comply with any order of a judge of the
28 court.

23 EDCR 7.60(b). Defendants understand the Court's concerns are based on clauses (1) and (3).

24 There has been no suggestion that counsel failed to prepare for a presentation or that the
25 nondisclosure of the Subject Transfers violated the rules or a court order.

26 Clauses (1) and (3) embody the standards set forth in Nev. R. Civ. P. 11, which requires
27 the person submitting a pleading to certify, "to the best of the person's knowledge, information,
28 and belief, formed after an inquiry reasonable under the circumstances," that the pleading "is not

1 being presented for any improper purpose, such as to harass or to cause unnecessary delay or
 2 needless increase in the cost of litigation,” that the legal contentions “are warranted by existing
 3 law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or
 4 the establishment of new law,” and that the factual contentions “have evidentiary support or, if
 5 specifically so identified, are likely to have evidentiary support after a reasonable opportunity for
 6 further investigation or discovery.”

7 Indeed, EDCR 7.60 must be construed as coextensive with Rule 11 because Nev. R. Civ.
 8 P. 83 permits district courts to adopt local rules only if such rules are “not inconsistent” with the
 9 Nevada Rules of Civil Procedure. “[U]nder NRCP 83, district court rules must be consistent with
 10 the Nevada Rules of Civil Procedure. Therefore, EDCR 7.60 cannot exceed the scope of NRCP
 11 37(b).” *Nevada Power Co. v. Fluor Illinois*, 108 Nev. 638, 644, 837 P.3d 1354, 1359 n.4 (1992).
 12 The same reasoning applies with respect to the relationship between EDCR 7.60(b) and NRCP
 13 11.

14 Sanctions under NRCP 11 may be imposed only when the claim is “frivolous,” i.e., when
 15 it “is ‘both baseless and made without a reasonable and competent inquiry.’ Thus, a
 16 determination of whether a claim is frivolous involves a two-pronged analysis: (1) the court must
 17 determine whether the pleading is ‘well grounded in fact and is warranted by existing law or a
 18 good faith argument for the extension, modification or reversal of existing law’; and (2) whether
 19 the attorney made a reasonable and competent inquiry.” *Bergmann v. Boyce*, 109 Nev. 670, 676,
 20 856 P.2d 560, 564 (1993) (citations omitted).

21 The Supreme Court has cautioned against imposition of Rule 11 sanctions for claims that
 22 are novel and ultimately unsuccessful. “Rule 11 sanctions are not intended to chill an attorney’s
 23 enthusiasm or creativity in reasonably pursuing factual or legal theories, and a court should avoid
 24 employing the wisdom of hindsight in analyzing an attorney’s action at the time of the pleading.”
 25 *Marshall v. District Court*, 108 Nev. 459, 465-66, 836 P.2d 47, 52 (1992); *see also K.J.B. Inc. v.*
 26 *Drakulich*, 107 Nev. 367, 370, 811 P.2d 1305, 1307 (1991) (claim was “warranted by
 27 ambiguities” in existing law and “a reasonable belief” that the claim might be barred if brought
 28 later; “[w]e cannot fault appellant’s counsel for zealously protecting his client’s interests”).

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

1 In *Rivero v. Rivero*, 125 Nev. 410, 216 P.3d 213 (2009), the Supreme Court reversed the
2 imposition of sanctions under NRCP 11 and EDCR 7.60 for filing a motion to disqualify the trial
3 court judge. The Court noted that sanctions may be imposed for a frivolous motion, but the
4 “district court must determine if there was any credible evidence or reasonable basis for the claim
5 at the time of filing.” 125 Nev. at 411, 216 P.3d at 234. Although the motion “may have been
6 without merit, that alone is insufficient for a determination that the motion was frivolous,
7 warranting sanctions.” *Id.*

8 Clause (3) of EDCR 7.60(b) is also similar to 28 U.S.C. § 1927, which provides:

9 Any attorney or other person admitted to conduct cases in
10 any court of the United States or any Territory thereof who so
11 multiplies the proceedings in any case unreasonably and
12 vexatiously may be required by the court to satisfy personally the
excess costs, expenses, and attorneys’ fees reasonably incurred
because of such conduct.

13 In construing this statute, federal courts have held that it does not permit the imposition of
14 sanctions “absent a finding that counsel’s conduct resulted in bad faith, rather than
15 misunderstanding, bad judgment, or well-intentioned zeal.” *LaSalle Nat’l Bank v. First Conn.*
16 *Holding Group, LLC*, 287 F.3d 279, 289 (3d Cir. 2002). As EDCR 7.60(b)(3) uses the same
17 wording, it should be construed in the same way. See *Edgington v. Edgington*, 119 Nev. 577,
18 584, 80 P.3d 1282, 1288 (2003) (recognizing that state statutes substantially similar to previously-
19 enacted federal statutes should be construed in the same manner).

20 2. Duty of Candor

21 Nevada Rule of Professional Conduct Rule 3.3, entitled “Candor Toward the Tribunal,”
22 states:

23 (a) A lawyer shall not knowingly:

24 (1) Make a false statement of fact or law to a tribunal or fail
to correct a false statement of material fact or law previously made
to the tribunal by the lawyer;

25 (2) Fail to disclose to the tribunal legal authority in the
controlling jurisdiction known to the lawyer to be directly adverse
26 to the position of the client and not disclosed by opposing counsel;
or

27 ///

28 ///

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

1 (3) Offer evidence that the lawyer knows to be false....
2 (d) In an ex parte proceeding, a lawyer shall inform the tribunal of
3 all material facts known to the lawyer that will enable the tribunal
4 to make an informed decision, whether or not the facts are adverse.

5 Rule 3.3(a)(1) thus prohibits an attorney from making a false statement of fact or making a
6 statement of fact that is misleading due to the failure to disclose other facts. See Official
7 Commentary to Model Rules of Professional Conduct 3.3(a) ("There are circumstances where
8 failure to make a disclosure is the equivalent of an affirmative misrepresentation."); *Gum v.*
9 *Dudley*, 505 S.E.2d 391, 402 (W.Va. 1997) ("[I]n determining whether an attorney's silence
10 violated the general duty of candor owed to a court, it must be shown by a preponderance of the
11 evidence that (1) the silence invoked a material misrepresentation, (2) the court believed the
12 misrepresentation to be true, (3) the misrepresentation was meant to be acted upon, (4) the court
13 acted upon the misrepresentation, and (5) that damage was sustained."); cf. *Brody v. Transitional*
14 *Hospitals Corp.*, 280 F.3d 997, 1006 (9th Cir. 2002) ("To be actionable under the securities laws,
15 an omission must be misleading, in other words it must affirmatively create an impression of a
16 state of affairs that differs in a material way from the one that actually exists.").

17 An attorney does not, however, have a generalized duty to disclose all facts in an
18 adversarial proceeding. This is made clear by NRPC 3.3(d), which imposes a duty on an attorney
19 *in an ex parte proceeding* to disclose all material facts. This special duty demonstrates that in an
20 adversarial proceeding such as this one, no such duty to disclose all material facts exists.

21 The limited scope of the duty imposed on attorneys to disclose adverse facts was
22 discussed in *Apotex Corp. v. Merck & Co., Inc.*, 229 F.R.D. 142 (N.D. Ill. 2005). Apotex sued
23 Merck for patent infringement with respect to a drug. Merck prevailed on the ground that it had
24 invented the process before Apotex had filed the patent, and that Merck had not concealed or
25 suppressed the invention. Some years later, in a separate lawsuit, Merck's witness testified that
26 the use of a compound in the production of the drug was a trade secret. Apotex sued Merck,
27 claiming that the prior failure to disclose to the court that the role of this compound was a trade
28 secret was improper—indeed, fraudulent. Specifically, Apotex challenged Merck's argument in
the prior case that it had not suppressed the process for making the drug. The court disagreed. It

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

1 found that Merck's statements "were not an attempt to characterize the truth as an omniscient
 2 observer might see it. Rather, they were comments on the sufficiency of the evidence that was
 3 submitted in the case." *Id.* at 147. The court continued:

4 It was not a "fraud" for Merck to argue the inferences from the
 5 evidence that had been presented in the case-even if it now turns out
 6 that the evidence that was presented might not have represented the
 7 full story. Absent a showing that Merck had withheld or concealed
 8 evidence requested in discovery or presented false testimony or
 9 evidence, the contention in its briefs that there was no concealment
 10 of the Vasotec process was an appropriate argument regarding the
 11 evidence that had been offered....

12 Apotex seems to suggest that by raising the § 102(g) issue, Merck
 13 effectively assumed an obligation to make full disclosure of all the
 14 evidence bearing on that issue, helpful or harmful, even without
 15 appropriate discovery requests by Apotex. But for better or worse,
 16 that is not the way civil litigation works. Our system of justice
 17 largely leaves it to the adversarial process to ferret out the truth.
 18 That process does not always work perfectly even if all parties
 19 comply with their obligations; sometimes one side or another does
 20 not ask the right questions and as a result fails to uncover helpful
 21 evidence. But when that happens in a civil case, the other side has
 22 no independent obligation to produce what it has not been asked to
 23 produce, unless a statute or rule requires it to do so.

24 *Id.* at 147-48.

25 The court noted that "nondisclosure does not amount to fraud absent a duty to speak," and
 26 concluded that there was no duty to "volunteer information" to a litigation opponent absent a
 27 request or a statutory requirement. *Id.* at 148. The court also found that the prior statements were
 28 not a "half-truth," i.e., "a disclosure that is misleading because it omits important information."
Id. at 149. The prior statements were accurate, and the witness did not "say or imply that the
 explanations" were anything more than a "summary." *Id.* Apotex's failure to inquire further in
 discovery into the process did "not suggest fraud on the part of Merck." *Id.*

The court specifically addressed the attorney's duty of candor under Illinois' version of
 Rule 3.3, stating: "The Rules [of Professional Conduct] do not bar a lawyer in a civil case from
 arguing the evidence in the case, even if that evidence does not represent the truth as an
 omniscient observer might see it." *Id.* at 148. *See also Winkler Construc. v. Jerome*, 734 A.2d
 212 (Md.1999) (a subcontractor claiming a mechanic's lien does not have to disclose that there is
 a dispute about the work; a party is not required to present adverse evidence supporting a defense,
 especially in a proceeding that is not ex parte).

1 By contrast, in *Sierra Glass & Mirror v. Viking Industries, Inc.*, 107 Nev. 119, 808 P.2d
 2 512 (1991), the defendant, which contested personal jurisdiction, read at trial the deposition of a
 3 sales representative. While representing that the entire deposition was being read, defendant's
 4 counsel omitted the portion in which the representative stated that she resided in Nevada. In
 5 holding that this omission violated the duty of candor, the Nevada Supreme Court also expressly
 6 recognized that there is no general duty for an attorney to disclose all facts that the opponent
 7 might find helpful in its arguments: "An attorney has no obligation to proffer evidence that helps
 8 the opponent. But if an attorney represents that he or she is proffering an entire document,
 9 omitting pertinent portions of that document is a blatant fraud." 107 Nev. at 126, 808 P.2d at 516.
 10 Defendant's counsel compounded this misrepresentation by arguing in its appellate brief that the
 11 sales representative did not live in Nevada, even though defendant's counsel knew or should have
 12 known that this representation was false. When plaintiff specifically challenged this statement,
 13 the defendant failed to correct it. The Court found that this "failure to correct the misstatement
 14 once it was brought to their attention" was an especially "egregious action." 107 Nev. at 127, 808
 15 P.2d at 516.

16 In sum, the duty of candor imposed by NRPC 3.3 prohibits an attorney from making a
 17 false statement of fact or a statement that is rendered misleading by the omission of important
 18 information. But the rule does not impose an obligation to disclose all facts in an adversarial
 19 proceeding.

20 **B. Defendants Did Not Engage In Sanctionable Conduct By Invoking the PDPA**

21 1. The PDPA Was and Remains an Obstacle to the Production of Documents
 22 in this Action

23 Macau's PDPA was and remains in effect and applies to the transfer of personal data from
 24 Macau to the United States, including for purposes of production in this case. The PDPA is not
 25 unique. It is based on Portuguese law and is similar to data protection laws through Europe, in
 26 particular, the European Privacy Directive of 1995 (Directive 95/46/EC). Declaration of David
 27 Fleming ("Fleming Decl.") at ¶ 3, August 21, 2012. (Attached hereto as Exhibit HH at
 28 APP00871). All of these laws, including the PDPA, restrict automated data processing, entitle

1 data subjects to object to automated data processing, and mandate protections and restrictions on
2 processing certain types of data for certain purposes. *Id.*

3 Article 19 of the PDPA prohibits transfers of personal data to a destination outside Macau,
4 unless the destination jurisdiction ensures “an adequate level of protection,” and subject to
5 compliance with the conditions imposed by the PDPA. *Id.*, ¶ 6. The PDPA defines the phrase
6 “adequate level of protection” in terms similar to those used in the European Directive. Transfers
7 may be made only if the destination jurisdiction, or the transfers themselves, appear on a list
8 maintained by the OPDP. No such list has yet been published by the OPDP, whose approach is to
9 deal with requests for consent on a case-by-case basis. *Id.* European nations have determined
10 that the United States does not provide an “adequate level of protection” within the meaning of
11 the European Directive.

12 Article 20 of the PDPA enumerates “derogations” or exceptions to Article 19, which are
13 similar to the exceptions contained in Article 26 of the European Directive. Generally speaking, a
14 transfer of personal data to a destination outside Macau requires the consent of the data subject, or
15 consent from the OPDP, to be obtained prior to the transfer taking place. The OPDP has
16 indicated that it would be unlikely to consent to a transfer of personal data to a jurisdiction that
17 did not provide an adequate level of protection for personal data, similar to the “safe harbor” or
18 “safe haven” protection measures provided to individuals in European jurisdictions. The
19 alternative option would be for the public or judicial authorities in the destination jurisdiction to
20 approach the Macau Special Administrative Region, through the usual diplomatic or mutual legal
21 assistance channels, to obtain assistance with facilitating a transfer of personal data. *Id.*, ¶ 7.

22 Violations of the PDPA may be enforced as administrative offences, analogous to civil
23 penalties, punishable by fines, and as crimes, punishable by larger fines and penalties and/or
24 imprisonment. *Id.*, ¶ 5.

25 Defendants’ past transfers of ESI for which Plaintiff and others were custodians do not
26 mean that the Court’s attention to the PDPA was wasted or that PDPA is a sham, as Plaintiff
27 suggested in oral arguments. Since May 2011, OPDP has made clear to VML that transfers of
28 personal data from Macau are subject to the PDPA, that OPDP will strictly enforce the PDPA,

1 and that failure to comply with the PDPA may result in civil and criminal penalties. *Id.*, ¶ 9.
 2 Representatives of LVSC, SCL, and VML met with OPDP on March 7, 2012 and argued that
 3 transfers of data for purposes of compliance with discovery obligations in this case, and for
 4 purposes of production to the SEC, should be regarded as consistent with the PDPA. *Id.*, ¶ 10.
 5 VML confirmed and elaborated on these points in a June 27, 2012 letter. *Id.*, ¶ 12. OPDP,
 6 however, disagrees. At the March 7, 2012 meeting, OPDP stated that the PDPA does not permit
 7 VML to transfer personal data in order to comply with discovery obligations imposed by United
 8 States law on LVSC and SCL, and stated that OPDP must approve any transfer consistent with
 9 the PDPA. *Id.*, ¶ 10. VML received OPDP's formal response to VML's June 27, 2012 letter on
 10 August 14, 2012. It rejects VML's position in favor of procedures available under international
 11 legal assistance provisions of the law. *Id.*, ¶ 16.

12 Following Defendants' disclosures to this Court on June 27, 2012 and July 6, 2012, and
 13 related press accounts, OPDP sent a letter on July 31, 2012, notifying VML that OPDP had
 14 launched an official investigation procedure in relation to the alleged transfer from Macau by
 15 VML to the United States of certain data. *Id.*, ¶¶ 13-14. This notification was made public with
 16 the knowledge of the OPDP in a filing by SCL with the Hong Kong Stock Exchange followed by
 17 an SEC filing by LVSC. On August 2, 2012, Francis Tam, Macau's Secretary for Economy and
 18 Finance, made a statement that was reported in the press, in which he stated that if OPDP finds
 19 "any violation or suspected breach" of the PDPA, the government "will take appropriate action
 20 with no tolerance. Gaming enterprises should pay close attention to and comply with relevant
 21 laws and regulations." *Id.*, ¶ 15. Nor is VML the only entity subject to the PDPA. On June 3,
 22 2012, OPDP confirmed that it had begun investigation procedures into the disclosure of personal
 23 information by Wynn Macau Ltd. as part of a report on removed director Kazuo Okada.³

24 As OPDP has made clear, the PDPA remains applicable to documents that are still located
 25 in Macau. Notwithstanding the Subject Transfers, vast quantities of data that Plaintiff seeks in
 26 discovery remain in Macau and are subject to the PDPA. Plaintiff's initial discovery demand was

27
 28 ³ <http://www.macaudailytimes.com.mo/macau/34267-GDPD-launches-Wynn-privacy-probe-Google-fined-for-Street-View.html>

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

1 for SCL to review data from 38 VML custodians whose data is housed in Macau. On May 2,
2 2011, Plaintiff served his “Initial Identification of ESI Search Terms and Date Ranges,” in which
3 he demanded that Defendants search the email accounts of 76 custodians, of which 38 are VML
4 employees whose data resides in Macau. (Attached hereto as Exhibit A). SCL estimated that
5 these requests would call for review of approximately 2 terabytes to 13 terabytes of data, or more,
6 in Macau. SCL’s Renewed Motion for Stay (July 14, 2011) at 5 (Sedlock Decl., ¶ 10); Fleming
7 Declaration, ¶ 7. (Attached hereto as Exs. J at APP00177 & I at APP00172). This is far more data
8 than in the Subject Transfers. Regardless of when Defendants disclosed the Subject Transfers,
9 the Court would have to address whether Defendants should be ordered to produce documents
10 located in Macau in light of the PDPA.

11 The Subject Transfers do not render Defendants’ invocation of the PDPA frivolous or
12 inappropriate. SCL filed two motions for stay pending its writ petition on its personal jurisdiction
13 motion—one on May 17, 2011 and the second on July 14, 2011. Each motion argued (1) there
14 was a potential conflict between the obligations imposed by NRC 16 and the PDPA, and (2)
15 compliance with NRC 16 would require its counsel to travel to Macau to review documents,
16 which would be costly and burdensome. Specifically, the May 17, 2011 motion argued that the
17 PDPA may “be an impediment, if not a bar, to SCL retrieving, reviewing and producing certain
18 information and documents, including ESI, that may be subject to Nevada Rule of Civil
19 Procedure (“NRC”) 16 disclosure requirements or that Jacobs may demand be produced,”
20 although it noted that “this advice was not definitive.” Krum Decl., ¶ 6. (Attached hereto as
21 Exhibit B at APP00010). *See also* May 26, 2011 Tr. 5:14-19. (Attached hereto as Exhibit C at
22 APP00084). These statements were all correct.

23 SCL’s July 14, 2011 stay motion attached a declaration from SCL’s General Counsel, who
24 reported that OPDP stated that production of ESI “and other documents stored in Macau will
25 require strict compliance with relevant Macau law,” and that the PDPA “will be strictly enforced
26 by the Macau government, in particular the Macau OPDP, and failure to comply may result in
27 civil and criminal penalties.” Fleming Decl., ¶¶ 4, 8. (Attached hereto as Exhibit I at APP00172,
28 APP00173). *See also* Motion at 4-5 (Sedlock Decl., ¶¶ 6-12). (Attached hereto as Exhibit J at

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

1 APP00177). At the hearing on the motion, SCL's counsel stated that documents in Macau had to
2 be reviewed in Macau and presented to OPDP before being transferred out of Macau:

3 [Ms. GLASER:] Documents get -- must be reviewed in Macau.
4 We're starting that process now. We have gone through the process
5 and represent to the Court we have gathered electronic documents,
6 as well as hard copy.

7 THE COURT: Correct.

8 Ms. GLASER: They're in Macau. They are not allowed to leave
9 Macau. We have to review them there, and then to the extent that
10 the Privacy Act, which is read very broadly according to our Macau
11 written opinion counsel, it's read very broadly, it then -- then you
12 go to the office that supervise the privacy Act, say, okay, with
13 respect to these group of documents, not the whole universe, but
14 these group of documents we want to take them out of Macau,
15 produce them in this litigation, and we do that pursuant to a
16 stipulation and hopefully court order that says, of course, these are
17 only going to be used in connection with this litigation and for no
18 other purpose.

19 We then hope to and anticipate being able to convince the Macau
20 court, not a problem, okay, go -- Macau office that we -- indeed, the
21 government says, yes, you can do these in the Jacobs litigation.

22 June 9, 2011 Tr. 52:7-53:2 (Attached hereto as Exhibit D at APP00151-APP00152); *see also* July
23 19, 2011 Tr. 6:1- 8:24. (Attached hereto as Exhibit K at APP00218- APP00220).

24 These factual statements were and remain true, and the legal arguments were not
25 frivolous. Documents were in Macau and they were and remain subject to the PDPA. Neither
26 prong of NRCP 11 (which is also the standard under EDCR 7.60(b)) is met in this situation.
27 Defendants' arguments about the PDPA were well grounded in fact and had a reasonable basis in
28 law. *Bergmann*, 109 Nev. at 676, 856 P.2d at 564; *Rivero*, 125 Nev. at 440, 216 P.2d at 234.
Moreover, Defendants' counsel made a "reasonable and competent inquiry," *Bergmann*, 109 Nev.
at 676, 856 P.2d at 564, as shown by the multiple communications with OPDP.

2. LVSC's Actions To Obtain Return Of Documents In Plaintiff's Possession
Was Not Sanctionable

LVSC filed three sets of pleadings to compel Plaintiff to return the documents that he took
upon his departure from SCL. On September 13, 2011, LVSC filed a motion to amend the
counterclaim, attaching a proposed counterclaim that alleged that the documents Plaintiff took
upon his departure were LVSC's property, that they contained information that was confidential,

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

1 proprietary, and/or privileged, and that “upon information and belief, the documents stolen and/or
2 wrongfully retained by Jacobs contain personal data that is subject to Macau’s Personal Data
3 Protection Act, the violation of which carries criminal penalties in Macau.” Proposed Amended
4 Counterclaim, ¶¶ 53-56. (Attached hereto as Exhibit N at APP00250). On the same date, LVSC
5 filed a motion to compel return of stolen documents, which argued that Plaintiff’s refusal to return
6 “stolen company documents exposes LVSC and its indirect subsidiaries, SCL and VML to
7 possible criminal action in Macau for potential violation of the Macau Personal Data Protection
8 Act (“Macau Act”).” Motion at 3. (Attached hereto as Exhibit P at APP00310). LVSC also
9 asserted that it had “serious concerns that Jacobs will disclose company documents that contain
10 personal data in violation of Macau law. The Macau Act provides for serious sanctions in such
11 circumstances, sanctions which could potentially be levied against LVSC and/or its indirect
12 subsidiaries SCL and VML.” Motion at 6. (*Id.* at APP00313.) Also on September 13, 2011,
13 LVSC filed a motion for protective order and for return of stolen documents, which argued that
14 Jacobs had wrongfully retained documents containing privileged information and/or trade secrets.
15 (Attached hereto as Exhibit O). LVSC withdrew all three of these pleadings on September 19,
16 2011. (Attached hereto as Exhibit S).

17 After the Court indicated that the Supreme Court’s stay prevented it from acting on those
18 motions, LVSC filed a new action against Jacobs, Case No. A-11-648484-B, on September 16,
19 2011. (Attached hereto as Exhibit Q). The complaint was similar to the proposed amended
20 counterclaim. Also on September 16, 2011, LVSC filed an ex parte motion for Temporary
21 Restraining Order, arguing that there was an immediate risk that Jacobs would disclose LVSC
22 documents that were confidential, privileged, and subject to the PDPA. The motion also argued
23 that Jacobs’s disclosure may violate the PDPA, and that such violations might expose LVSC
24 and/or its subsidiaries to penalties. (Attached hereto as Exhibit V).

25 On September 26, 2011, LVSC filed an Emergency Petition for Writ of Mandamus in the
26 Nevada Supreme Court. The petition sought a writ to modify the stay to permit this Court to
27 consider motions to return the documents in Plaintiff’s possession. Similar to the pleadings filed
28 with this Court, LVSC’s petition argued that it was entitled to relief because the documents taken

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

1 by Plaintiff contain attorney-client privileged correspondence, trade secrets, documents protected
 2 from disclosure by contract, and may include personal data protected by the PDPA. LVSC noted
 3 the sanctions for violations of the PDPA and stated it wished to “recover these materials stolen by
 4 Jacobs and to ensure that these materials will not in any way be reviewed, distributed or used by
 5 Jacobs, his agents (including his attorneys) or any other third parties.” Petition at 13-14.
 6 (Attached hereto as Exhibit U at APP00439- APP00440).

7 The factual predicate for these actions was that Plaintiff removed data from Macau that he
 8 was not entitled to possess at all after his termination, let alone remove from Macau. Those facts
 9 are not rendered untrue or misleading by the additional fact that Defendants transferred data from
 10 Macau.

11 Nor do the Subject Transfers render frivolous the legal arguments made in support of the
 12 efforts to compel Plaintiff to return the data he removed from Macau. First, the PDPA was not
 13 the only, or even the first, ground for those efforts, which also argued that the documents Plaintiff
 14 obtained while employed remain company property, and that they include material that is
 15 confidential, proprietary and/or subject to the attorney-client privilege and/or work product
 16 doctrine. The argument that Plaintiff’s removal of the data violated the PDPA was only an
 17 additional ground. Hence, the PDPA argument did not unreasonably and vexatiously multiply
 18 proceedings in violation of EDCR 7.60(b)(3).

19 Second, LVSC’s arguments based on the PDPA were reasonable. This is shown
 20 conclusively by OPDP’s July 31, 2012 notice of investigation. Even absent OPDP’s action, there
 21 was a reasonable basis for the concern at the time, which was sufficient to justify LVSC’s
 22 position under NRCP 11 and EDCR 7.60(b). *K.J.B.*, 107 Nev. at 370, 811 P.2d at 1307.

23 Third, LVSC’s PDPA-based arguments remain reasonable when considered in light of the
 24 fact of the Subject Transfers. Plaintiff’s actions implicated the policies of the PDPA in a way that
 25 the Subject Transfers did not. LVSC’s arguments focused on the possibility that Plaintiff would
 26 disclose publicly documents containing personal data that he had removed from Macau.⁴ The

27 ⁴ Defendants’ concerns about leaks to the press of documents containing personal data were borne out by recent
 28 articles in the press quoting documents that include attorney-client communications. Defendants do not yet know
 who was the source of those leaks.

1 purpose of the PDPA is to protect individuals' privacy and personal data, and Plaintiff's
2 threatened disclosure of that data to third parties would have undermined that purpose. LVSC
3 also expressed concern that it would be subject to penalties under Macau law if Plaintiff were to
4 publicly disclose personal data that he had removed from Macau.

5 By contrast, the transfer of data from Macau, and LVSC's continued possession of that
6 data in the United States, did not implicate the same concerns. LVSC had control of the data
7 from the Subject Transfers and any required production would be made subject to appropriate
8 safeguards—not disseminating it to the public.

9 In any event, even if LVSC's position might somehow have been weakened by disclosure
10 of the Subject Transfers, a failure to disclose that a party has arguably acted inconsistently with its
11 own tenable legal position is not a sufficient basis to impose Rule 11 sanctions. In *Dunn v. Gull*,
12 990 F.2d 348 (7th Cir. 1993), plaintiff sued for trademark infringement, alleging that defendant's
13 "restaurant sign and the names and symbols contained therein were substantially similar to
14 [plaintiff's] restaurant signs." *Id.* at 349. After filing suit, plaintiff applied to register three
15 trademarks with the U.S. Patent and Trademark Office ("USPTO"). *Id.* The USPTO denied one
16 of the applications on the ground that plaintiff's proposed mark "did not identify or distinguish its
17 services from those of others." *Id.* Plaintiff then moved for summary judgment against
18 defendant, without disclosing the USPTO's denial of its application. *Id.* Later still, Plaintiff
19 voluntarily dismissed its suit, stating that defendants had changed their sign. *Id.* Defendants, who
20 had learned on their own of the denial of plaintiff's trademark application, moved for sanctions.
21 *Id.* The district court denied the motion.

22 On appeal, the Seventh Circuit affirmed. Rejecting the defendants' argument that
23 plaintiff's failure to disclose the USPTO's decision was fraudulent, the court explained that while
24 the decision "bears weight, it [was] not enough to render [plaintiff's] motion for summary
25 judgment legally baseless." *Id.* at 352. The court also emphasized that plaintiff "did not make
26 false factual or legal representations." *Id.* Finally, the court cited the district court's finding that
27 the nondisclosure was not intentional. *Id.*

28 Similarly, the Subject Transfers did not render LVSC's filings sanctionable. As in *Dunn*,

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

1 LVSC's arguments were not legally baseless and LVSC did not make false factual or legal
2 representations in presenting its position. *See id.* at 352.

3 C. **Defendants Did Not Engage In Sanctionable Conduct By Failing To Disclose**
4 **The Data Transfers Sooner**

5 The prior section explains why the legal arguments Defendants made with respect to the
6 PDPA do not justify the imposition of sanctions; this section explains why Defendants' factual
7 representations with respect to data transfers were neither false nor misleading.

8 1. Defendants Did Not Make Any False Or Misleading Statements of Fact
9 Regarding The Subject Transfers

10 Defendants did not make any false or misleading statements of fact with respect to the
11 transfer of data from Macau. Defendants did not represent to the Court that they had not
12 transferred data from Macau to the United States.

13 On June 9, 2011, the Court heard argument on SCL's motion to dismiss. After the motion
14 was argued, there was an extended discussion of the impact of the PDPA on discovery in the case.
15 In the course of that discussion, SCL's counsel stated that documents in Macau had to be
16 reviewed in Macau, and that OPDP had to authorize the removal of particular documents from
17 Macau. Tr. 52:12-53:5 (Ex. D at APP00151- APP00152). Further in the same vein, SCL's
18 counsel stated:

19 [Ms. GLASER:] [W]e have to get permission to get
20 documents out of Macau.

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

MS. GLASER: Oh, yeah. Absolutely.

23 *Id.* at 58:11-14 (APP00157). Because the last statement immediately followed the reference to
24 the documents still in Macau, the statement that OPDP's permission was required for all SCL
25 documents meant all documents located in Macau.

26 SCL's counsel did not state or imply that all SCL documents were in Macau. In fact, SCL
27 was careful to state just the opposite. For example, in a motion for stay filed soon after the June
28 9, 2011 hearing, SCL stated that the "overwhelming majority" of its responsive documents were

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

1 located in Macau. SCL's Renewed Motion for Stay (July 14, 2011) at Motion at 4 (Sedlock
2 Decl., ¶ 6). (See Ex. J at APP00177). This statement makes clear that some responsive
3 documents, albeit a minority, were not located in Macau. See also SCL's First Motion for Stay
4 (May 17, 2011) at 9 (stating that PDPA may prevent SCL's compliance with "certain" NRCP 16
5 disclosure obligations and "certain" discovery requests). (See Ex. B at APP00014). Although
6 SCL did not specifically identify the Subject Transfers at that time, SCL did not represent that all
7 responsive documents were located solely in Macau and, indeed, indicated to the contrary.

8 This point is reinforced by statements made by LVSC's counsel at the same June 9, 2011
9 hearing:

10 MR. PEEK: let me just add one thing, because I didn't
11 address this. *That same Data Privacy Act, Your Honor, also*
12 *implicates communications that may be on servers and email*
communication and hard document - - hard-copy documents in
Las Vegas - -

13 THE COURT: Here in the States?

14 MR. PEEK: -- Sands, as well.

15 THE COURT: Well, you can take the position

16 MR. PEEK: Well, we are told that by the - -

17 THE COURT: It's okay.

18 MR. PEEK: Office of Data Privacy

19 THE COURT: You can take the position - -

20 MR. PEEK: - - counsel, Your Honor. And I'll we'll brief
21 that with the Court. Again--

22 THE COURT: And then I'll decide.

23 Tr. 55:5-19 (emphasis added) (See Ex. D at APP00154). Since LVSC operates in the United
24 States and not in Macau, LVSC's invocation of the PDPA indicates that it possessed in the United
25 States documents that had come from Macau. The only reason the PDPA could apply to
26 documents in Las Vegas is if those documents originated in Macau. This statement therefore
27 made clear that some data from Macau was in the United States, which negates any suggestion
28 that Defendants stated or implied that no data had been transferred to the United States from
Macau.

Later in the same hearing, Plaintiff's counsel denied that the PDPA could be used to block
discovery: "There's a United States Supreme Court case right on point that says, we don't care
what foreign law says, you've got to produce documents, *particularly when they're in the*
jurisdiction in which the litigation is taking place like they are here." Tr. 59:11-15 (emphasis

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

1 added). (*See* Ex. D at APP00158). Plaintiff's counsel thus understood the comments by LVSC's
 2 counsel to mean that LVSC was asserting that "foreign law" (i.e., the PDPA) applied to
 3 documents "in the jurisdiction" (i.e., in Nevada), which could only mean that such documents had
 4 come from Macau.

5 In follow-up meet-and-confers with Plaintiff's counsel, LVSC again disclosed that LVSC
 6 possessed information subject to the PDPA. On June 22, 2011, Mr. Peek wrote an email to
 7 Plaintiff's counsel, Colby Williams, stating that the PDPA "make[s] it difficult for LVSC and SCL
 8 to meet the initial disclosure deadlines...." (Attached hereto as Exhibit E; (emphasis added)).⁵
 9 Again, LVSC's invocation of the PDPA indicates that it possessed in the United States documents
 10 that had come from Macau. Mr. Williams responded on June 24, 2011, writing that Plaintiff did
 11 not agree "that LVSC would be entitled to withhold documents in its possession in Las Vegas on
 12 the grounds that production of the same would violate the Macau Act." Mr. Williams noted that a
 13 motion to compel would "not be ripe until we know what materials are being withheld."
 14 (Attached hereto as Exhibit G).

15 On July 8, 2011, Mr. Williams wrote an email to Defendants' counsel requesting an
 16 agreement that the PDPA does not provide a basis for withholding documents in the litigation "at
 17 least insofar as [Jacobs's] production is concerned." Mr. Williams stated that the parties could
 18 debate later whether the PDPA provides a basis for Defendants to withhold documents. (Attached
 19 hereto as Exhibit H). Mr. Williams' July 8 email also discloses that Plaintiff possessed
 20 approximately 11 GB of emails received during his tenure with Defendants, including emails
 21 from LVSC and SCL attorneys. The July 8, 2011 email was submitted to the Court on numerous
 22 occasions and was marked as a Court exhibit at the October 13, 2011 hearing. (Attached hereto as
 23 Exhibit AA). Hence, the Court was again apprised of LVSC's position that the PDPA could be
 24 applicable to documents in LVSC's possession, further demonstrating that LVSC was not
 25 concealing that it possessed documents in Las Vegas that had been transferred from Macau to the
 26 United States.

27
 28 ⁵ Several of the exhibits to this Statement are authenticated in the Declaration of J. Stephen Peek, Esq., attached
 hereto as Exhibit II.

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

1 Plaintiff never served discovery—or even an informal request—for more information
2 about the Macau data held by LVSC. This failure is all the more notable in light of the Court’s
3 suggestion at the June 9, 2011 hearing that Plaintiff serve discovery or otherwise inquire into
4 what materials may have been provided to the SEC. Tr. 62:12-63:3 (*See* Ex. D at APP00161-
5 APP00162). Despite the meet and confer emails in which Plaintiff’s counsel noted the need to
6 address further what documents LVSC was withholding based on the PDPA, Plaintiff never
7 followed up about the nature of those documents.

8 Nor did Defendants make any other statement of fact that was rendered misleading by the
9 nondisclosure of the Subject Transfers. SCL’s motions for stay noted that there was a potential
10 conflict between SCL’s discovery obligations under Rule 16 and the restrictions imposed by the
11 PDPA. (*See* Exs. B & J). These statements did not imply that there were no documents in the
12 United States that had been transferred from Macau. The factual predicate for the argument in the
13 stay motion was that documents in Macau would be subject to disclosure obligations under Rule
14 16, not that *all* of SCL’s documents were only in Macau. Indeed, SCL’s July 14, 2011 motion for
15 stay specifically referred only to the “overwhelming majority” of the information to which the
16 PDPA was applicable being in Macau:

17 6. After receiving Jacobs’ “Initial Identification of ESI
18 Search Terms and Date Ranges” (the “Search Terms”), both SCL
19 and LVSC undertook an analysis of the applicable law of the
20 jurisdiction, Macau, Special Administrative Region of the People’s
21 Republic of China (“Macau”), in which the *overwhelming majority*
22 of this information is currently located.

23 8. Counsel for SCL have since undertaken an analysis
24 of the Macau Act as well as met with the Macau Office for Personal
25 Data Protection (the “Macau OPDP”) to determine the most
26 efficient and compliant method to review and produce ESI
27 *currently stored in Macau* in compliance with the Macau Act.

28 SCL’s Renewed Motion for Stay (July 14, 2011) at Motion at 4 (Sedlock Decl., ¶ 6, 8). (*See* Ex. J
at APP00177) (emphasis added).

That factual predicate was and remains true. As noted, Plaintiff’s initial demand was for
SCL to search the email accounts of 38 VML custodians whose data resides in Macau, with an
estimated volume of 2 to 13 terabytes or more of data. The fact that *some* of the SCL information

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

1 requested by Plaintiff, including ESI for which Plaintiff was the custodian, had already been
2 transferred to the United States, did not make it misleading to say that the PDPA applied to
3 documents still in Macau, especially with the qualification that the documents in Macau were
4 only the “overwhelming majority” of the documents to which the PDPA might apply, not all such
5 documents.

6 Also at the July 19, 2011 hearing, again the context of SCL’s argument that the review of
7 documents in Macau would be burdensome and costly, there was a discussion of whether LVSC’s
8 counsel could participate in the review of documents in Macau. Defendants stated that LVSC’s
9 counsel could not go to Macau to review documents, because only attorneys who represent SCL
10 could review documents there. Tr. 7:9-24. (See Ex. K at APP00219).⁶ There was no discussion
11 of whether LVSC’s counsel could review documents *in Nevada* that had come from Macau. In
12 fact, as Defendants have previously described, LVSC’s counsel reviewed data from the Subject
13 Transfers in Las Vegas. Defendants’ Statement Regarding Data Transfers (July 6, 2012) at 3.
14 (Attached hereto as Exhibit EE at APP00823).

15 Another discussion of the PDPA occurred at a status check on May 24, 2012. At that
16 hearing, Plaintiff’s counsel raised issues regarding the status of document discovery, and
17 particularly the production of Plaintiff’s email. In response, LVSC’s counsel stated:

18 [MR. PEEK:] With respect to Jacobs, Jacobs - - I’ll have to
19 let Mr. Weissman deal with Mr. Jacobs, because those are issues
20 that are of Sands China, because he was a Sands China executive,
21 not a Las Vegas Sands executive. So we don’t have documents on
22 our server related to Mr. Jacobs. So when he says we haven’t
23 searched Mr. Jacobs, he is correct; because we don’t have things to
24 search for Mr. Jacobs.

25 THE COURT: So he didn’t have a separate email address
26 within the Las Vegas Sands server or Macau

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

28 Tr. 9:23-10:7. (Attached hereto as Exhibit CC at APP00798-APP00799). In context, the
statement that Plaintiff’s data was not on LVSC servers meant that Plaintiff did not have an
LVSC email account separate from his SCL email account—not that Plaintiff’s data had never

⁶ VML specially authorized O’Melveny & Myers LLP, which reported to the LVSC Audit Committee, to collect and review documents in Macau. We are informed that O’Melveny did so, but did not transfer any documents out of Macau.

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

1 been transferred from Macau. In addition, Defendants disclosed the transfer of Jacobs' data soon
 2 thereafter on June 27, 2012, and LVSC clarified this comment in its Statement on Data Transfers
 3 on July 6, 2012, where it said that the reference to not having searched Plaintiff's data was made
 4 in the context of the review of Plaintiff's data for the purpose of responding to Plaintiff's
 5 jurisdictional discovery requests. Defendants' Statement Regarding Data Transfers (July 6, 2012)
 6 at 3 n.2. (*See* Exhibit EE at APP00823).

7 In reviewing the record in this case in connection with the preparation of this brief,
 8 Defendants have identified one additional statement, albeit not directly with respect to the Subject
 9 Transfers, that warrants further comment. On July 19, 2011, the Court heard argument on SCL's
 10 renewed motion for stay pending the disposition of its writ petition. As noted, at this hearing,
 11 SCL's counsel explained that, under the PDPA, Defendants believed that documents in Macau
 12 had to be reviewed in Macau. Tr. 5:25-8:19. (*See* Ex. K at APP00217- APP00220). In response,
 13 Plaintiff's counsel (Colby Williams) observed that SCL would have to engage in the same
 14 document review process in connection with investigations by the United States Government. *Id.*
 15 at Tr. 10:20-11:16. (APP00222- APP00223). SCL's counsel replied:

16 [MS. GLASER:] [T]he government investigations that are
 17 occurring, they have the same roadblock, the same stone wall that
 18 every else has. They are not – they are not even permitting the
 19 government to come in and look at documents, period. It is only
 20 Sands China lawyers who are being allowed to even start the
 process of reviewing documents. There are no documents that have
 been produced that have – from Sands China to the federal
 government in any way, shape, or form.

21 *Id.* at Tr. 12:2-10. (APP00224). As of the date of the July 19, 2011 hearing, O'Melveny & Myers
 22 LLP, which reported to the LVSC Audit Committee, had produced to the United States
 23 Government certain legal bills that had been presented to Sands entities in Macau and
 24 subsequently transferred by these Sands entities to Nevada. In addition, O'Melveny produced to
 25 the United States Government certain SCL and VML policy and procedure documents. As of
 26 July 19, 2011, O'Melveny had not produced to the United States Government any ESI for which
 27 Plaintiff was the custodian. We understand that Ms. Glaser will attend the August 30-31, 2012
 28

1 hearing and, subject to privilege considerations,⁷ be prepared to address her comments in light of
 2 (1) the fact that the legal bills were in Nevada, and (2) her lack of knowledge, then or now, of any
 3 other document productions by O'Melveny to the United States Government prior to the July 19,
 4 2011 hearing.

5 In sum, Defendants did not violate the duty of candor by failing to specifically identify the
 6 Subject Transfers. Indeed, Defendants' statements and omissions are less problematic than those
 7 analyzed in *Apotex*, where the defendant presented evidence and argument that portrayed a certain
 8 set of facts without disclosing other facts that pointed in the opposite direction, yet the court
 9 found no violation. Here, the existence of the Subject Transfers was not inconsistent with
 10 Defendants' argument. That argument was and is legitimate. So too is its core factual predicate.

11 Unlike *Sierra Glass & Mirror*, moreover, Defendants did not make assertions that were
 12 misleading absent the disclosure of the Subject Transfers, let alone affirmative misrepresentations
 13 about those transfers. Further, Defendants did voluntarily disclose the Subject Transfers
 14 themselves, in contrast to counsel in *Sierra Glass & Mirror*, who argued on appeal that the
 15 employee did not live in Nevada and then failed to correct that misstatement when it was brought
 16 to their attention. 107 Nev. at 126-27, 808 P.2d at 516.

17 2. Defendants Had A Reasonable Basis For Not Disclosing The Transfers
 18 Sooner

19 Defendants had a reasonable basis for not disclosing the data transfers sooner than they
 20 did. Because Defendants can explain their conduct, such conduct cannot be deemed "willful."
 21 *Finkelman*, 91 Nev. at 148, 532 P.2d at 609.

22 First, there was a reasonable ground for concern that public disclosure of past transfers of
 23 data from Macau could have led the OPDP to take adverse action. Beginning on May 13, 2011,
 24 VML pursued numerous communications with OPDP. Throughout these discussions, OPDP
 25 made clear it regards the transfer of personal data from Macau as being subject to the PDPA, that
 26 OPDP will strictly enforce the PDPA, and that failure to comply with the PDPA may result in

27
 28 ⁷ Defendants do not intend to, and do not, waive any applicable privilege. Defendants will seek the Court's guidance on the scope of privilege in the context of responding to specific questions at the August 30 hearing.

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

1 civil and criminal penalties. During the course of those communications, VML became
 2 concerned that OPDP might be compelled to take enforcement action if publicity surrounding the
 3 Subject Transfers resulted in frustration of the purpose of the PDPA.

4 It was not until a meeting between SCL's General Counsel and OPDP on May 28, 2012
 5 that Defendants achieved a level of comfort that LVSC's production in this case of documents
 6 previously transferred from Macau to the United States would not constitute a separate violation
 7 of the PDPA by LVSC. Nevertheless, VML remains at risk for past transfers of data from Macau
 8 to the extent that such transfers result in the disclosure of personal data, particularly a public
 9 disclosure, in a manner that undermines the purposes of the PDPA.⁸

10 These concerns about the OPDP's response to a public disclosure of prior data transfers
 11 were well-founded, as conclusively demonstrated by OPDP's July 31, 2012 letter notifying VML
 12 of the launch of OPDP's official investigation into alleged data transfers. Also relevant is
 13 Secretary Tam's August 2, 2012 comments to the effect that OPDP has a policy of "no tolerance"
 14 for breaches of the PDPA. These developments underscore that Defendants' concerns about
 15 disclosure of past transfers were legitimate, and that their efforts to communicate with OPDP
 16 prior to the disclosure were reasonable.

17 Second, Defendants had a reasonable basis for concluding that they were not under an
 18 immediate obligation to disclose the past data transfers before VML pursued additional
 19 communications with OPDP. As discussed elsewhere in this submission, Defendants did not state
 20 or imply that data had not been transferred from Macau to the United States, and their
 21 representations to the Court and Plaintiff's counsel about the PDPA did not trigger a legal duty to
 22 disclose the Subject Transfers. In addition, Defendants had not completed their production of
 23 documents in response to Plaintiff's jurisdictional discovery requests.⁹ Nor was there any order

24 ⁸ We are informed that, subsequent to the July 19, 2011 hearing, O'Melveny produced to the United States
 25 Government additional documents that originated in Macau, but had been previously transferred by the company to
 26 Nevada. These productions did not involve a public disclosure; indeed, the particulars of what was produced to the
 27 Government remain confidential. These productions therefore presented different considerations than the public
 disclosure of the Subject Transfers and the production of documents from the Subject Transfers in discovery in this
 case.

28 ⁹ Defendants also had not completed their Rule 16.1 disclosures when the Supreme Court issued the writ staying non-
 jurisdictional proceedings.

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

1 requiring the production of documents from the Subject Transfers by a date certain, or indeed at
 2 any time.

3 In these circumstances, there was a reasonable basis for not disclosing the Subject
 4 Transfers earlier. Hence, there was not a willful violation that would justify the imposition of
 5 sanctions.

6 **III. PROCEDURE FOR HEARING**

7 Because the hearing was set by the Court sua sponte, the hearing should be limited to the
 8 specific issues that the Court has identified as its concern. The purpose of the hearing is to
 9 answer the Court's questions and concerns, and thereby protect *Defendants'* rights.

10 The purpose of the hearing is decidedly not to give Plaintiff's counsel a forum to harass
 11 Defendants, their executives and their counsel for their own ends. On July 10, 2012, the Court
 12 denied Plaintiff's motion for leave to depose Ms. Hyman and Mr. Rubenstein. Yet, Plaintiff's
 13 August 23, 2012 email demands that they appear at the hearing. Aug. 23, 2012 Email from D.
 14 Spinielli to S. Peek et al. attaching subpoenas. (*See* Ex. JJ at APP00883). At the August 2, 2012
 15 hearing, the Court stated that the information Plaintiff was seeking in its 30(b)(6) deposition
 16 notice was not the Court's concern in the hearing it had set: "if that discovery doesn't get done
 17 before my hearing, it's not going to bother me, because the questions I'm going to ask are going
 18 to be rather direct and to the point." Tr. 30:19-22. (Attached hereto as Exhibit GG at APP00863).
 19 Yet, Plaintiff's August 23, 2012 email proffers a proposed subpoena for a 30(b)(6) witness on
 20 these same topics—even topics 10-11, regarding communications with O'Melveny and the
 21 Compliance Committee, which the Court said Plaintiff could not depose a witness about, pending
 22 further briefing. At the August 23, 2012 hearing, in response to statements by Plaintiff's counsel
 23 about their intention to subpoena Mr. Leven and Mr. Singh, the Court stated that what it "really
 24 want[ed] to know is why didn't anyone tell me" about the PDPA, Tr. 30:24-25 (Attached hereto
 25 as Exhibit KK at APP00929), that this was a question for Ms. Glaser and Mr. Peek, *id.* at 31:2-4
 26 (APP00930), and that "the only people who have spoken to me about the Macau Data Privacy Act
 27 and their inability to produce the documents are lawyers," *id.* at 32:15-17 (APP00931). Yet, later
 28 that same evening, Plaintiff's counsel sent an email that not only seeks to subpoena Mr. Leven,

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

1 but expands the list to a 30(b)(6) witness, which they had never previously raised with Defendants
2 and without any support for the proposition that a subpoena for a 30(b)(6) witness at a hearing (as
3 opposed to a deposition) is appropriate.

4 Plaintiff's counsel exhibited even more reckless behavior in demanding that Brad Brian
5 and Henry Weissmann, counsel of record for SCL, appear at the hearing. Mr. Brian and Mr.
6 Weissmann certainly will be present at the hearing, but the implication of Plaintiff's letter is that
7 those attorneys also made representations to the Court that Plaintiff's counsel thinks were
8 questionable. There is no basis for this implication. At the hearing on August 23, 2012,
9 Plaintiff's counsel suggested that Defendants' Statement on Data Transfers (filed July 6, 2012)
10 was "untrue" because it did not disclose that Mr. Peek and attorneys at Glaser Weil had VPN
11 access to the Sands network. Tr. 13:21-14:21. (See Ex. KK at APP00912- APP00913). On the
12 contrary, the Statement said that LVSC created "'shared drives' [which] were document
13 repositories that allowed authorized personnel, such as inside *and outside counsel*, to review
14 images of documents that had been collected..." Defendants' Statement Regarding Data Transfers
15 (July 6, 2012) at 3:24-4:2 (emphasis added). (See Ex. EE at APP00823). Although the word
16 "VPN" was not used, this passage makes patently obvious that outside counsel could access
17 documents on the LVSC network. The Statement also disclosed that Mr. Peek and others had
18 reviewed certain emails on Mr. Kostrinsky's computer. *Id.* at 3:11-14. (APP00823). Plaintiff's
19 counsel's claim that the Statement was "untrue," and their implication that the conduct of Messrs.
20 Brian and Weissmann is the subject of the Court's concern, is recklessly false.

21 The larger point is that Plaintiff's counsel should not permitted to hijack the Court's
22 hearing or try to distract Defendants further by creating a wedge between counsel and their
23 clients. On August 24, 2012, Defendants' counsel informed Plaintiff's counsel that the demands
24 set forth in the August 23, 2012 email were wholly improper and that Defendants' counsel would
25 not accept service of any subpoenas. On Sunday, August 26, 2012, Plaintiff's counsel persisted in
26 their gamesmanship by sending an email providing notice of their intention to serve seven
27 subpoenas, including one on former LVSC General Counsel Gayle Hyman, whom the Court ruled
28 on July 10, 2012 could not be deposed. The continued effort to harass the Defendants will be


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

1 addressed in a separate motion to quash. Respectfully, the Court should not countenance
2 Plaintiff's irresponsible behavior. Plaintiff has filed no motion and has no right to dictate the
3 scope of the hearing or to seek any relief. The Court should limit the hearing to the specific
4 concerns the Court has articulated.

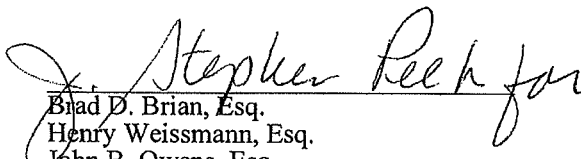
5 **IV. CONCLUSION**

6 Defendants deeply regret that their conduct has caused the Court to express the concerns it
7 has stated. Defendants acknowledge, with the benefit of hindsight, that their statements could
8 have been clearer and more detailed. Defendants sincerely regret failing to meet the Court's
9 expectations, but respectfully submit that sanctions are unwarranted.

10 DATED August 27, 2012.

11 
12 J. Stephen Peck, Esq.
13 Robert J. Cassity, Esq.,
14 Holland & Hart LLP
15 9555 Hillwood Drive, 2nd Floor
16 Las Vegas, Nevada 89134

17 *Attorneys for Las Vegas Sands Corp. and Sands
18 China Ltd.*

19 
20 Brad D. Brian, Esq.
21 Henry Weissmann, Esq.
22 John B. Owens, Esq.
23 Bradley R. Schneider, Esq.
24 Munger Tolles & Olson LLP
25 355 S. Grand Avenue
26 Los Angeles, California 90071

27 *Attorneys for Sands China, LTD.*

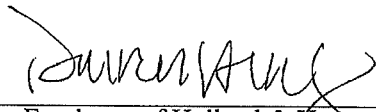
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

CERTIFICATE OF SERVICE

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

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

Attorney for Plaintiff


An Employee of Holland & Hart LLP

Dineen Bergsing

From: Dineen Bergsing
Sent: Monday, August 27, 2012 10:58 AM
To: 'jjp@pisanellibice.com'; 'dis@pisanellibice.com'; 'tib@pisanellibice.com'; 'kap@pisanellibice.com'; 'see@pisanellibice.com'
Subject: LV Sands/Jacobs - Defendants' Statement Regarding Hearing on Sanctions
Attachments: 3476_001

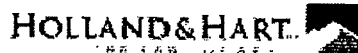
Please see attached Defendants' Statement Regarding Hearing on Sanctions. A copy to follow by mail.

Appendix and Exhibits under separate emails to follow.

Dineen M. Bergsing

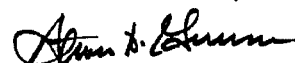
*Legal Assistant to J. Stephen Peek,
Justin C. Jones, David J. Freeman
and Nicole E. Lovelock*

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



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

Electronically Filed
08/27/2012 11:32:42 AM



CLERK OF THE COURT

1 **APEN**
J. Stephen Peek, Esq.
2 Nevada Bar No. 1758
Robert J. Cassity, Esq.
3 Nevada Bar No. 9779
HOLLAND & HART LLP
4 9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
5 (702) 669-4600
(702) 669-4650 – fax
6 speek@hollandhart.com
bkunimoto@hollandhart.com
7 bcassity@hollandhart.com

8 *Attorneys for Defendants/Counterclaimants*

9 Brad D. Brian, Esq.
Henry Weissmann, Esq.
10 John B. Owens, Esq.
Bradley R. Schneider, Esq.
11 Munger Tolles & Olson LLP
355 S. Grand Avenue
12 Los Angeles, California 90071
213-683-9100
13 brad.brian@mto.com
henry.weissmann@mto.com
14 john.owens@mto.com
bradley.schneider@mto.com

15 *Attorneys for Sands China, LTD.*

16 **DISTRICT COURT**
17 **CLARK COUNTY, NEVADA**

18 STEVEN C. JACOBS,

19 Plaintiff,

20 v.

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

24 Defendants.

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

Date: August 30, 2012
Time: 10:00 a.m.

**APPENDIX TO DEFENDANTS'
STATEMENT REGARDING HEARING
ON SANCTIONS**

Exhibit	Date	Description	Bates Nos.
26 A.	5/2/2011	Jacobs Initial ID of ESI Search Terms and 27 Date Ranges.	APP00001-APP00005
28			

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

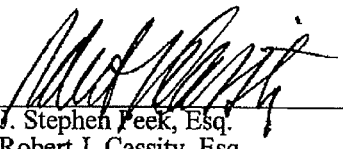
Holland & Hart LLP
 9555 Hillwood Drive, 2nd Floor
 Las Vegas, Nevada 89134

Exhibit	Date	Description	Bates Nos.
B.	5/17/2011	Sands China's Motion to Stay Proceedings Pending Writ Petition on Order Shortening Time.	APP00006-APP00079
C.	5/26/2011	Hearing Transcript - Sands China's Motion to Stay Proceedings.	APP00080-APP00099
D.	6/9/2011	Hearing Transcript - Defendants' Motions to Dismiss.	APP00100-APP00166
E.	6/22/2011	Steve Peek email to Colby Williams regarding initial disclosures.	APP00167
F.	6/23/2011	Colby Williams letter to Justin Jones regarding LVS Priority Custodians.	APP00168
G.	6/24/2011	Colby Williams email to Patricia Glaser; Stephen Ma; Steve Peek; Justin Jones regarding production & ESI deadlines.	APP00169
H.	7/8/2011	Colby Williams email notifies defendants that Steve Jacobs has ESI that could contain privileged documents.	APP00170
I.	7/14/2011	Fleming Declaration In Support of Sands China's Motion to Stay Proceedings Pending Writ Petition.	APP000171-APP000173
J.	7/14/2011	Sands China's Motion to Stay Proceedings Pending Writ Petition.	APP00174-APP00212
K.	7/19/2011	Hearing Transcript - Defendant Sands China's Motion to Stay Proceedings Pending Writ Petition.	APP00213-APP00226
L.	7/20/2011	Colby Williams letter to Justin Jones regarding SCL Priority Custodians.	APP00227-APP00228
M.	8/26/2011	Order Granting Petition for Writ of Mandamus.	APP00229-APP00232
N.	9/13/2011	Las Vegas Sands Corp.'s Motion for Leave to File Amended Counterclaim.	APP00233-APP00263
O.	9/13/2011	Las Vegas Sands Corp.'s Motion for Protective Order and for Return of Stolen Documents.	APP00264-APP00307
P.	9/13/2011	Las Vegas Sands Corp.'s Motion to Compel Return of Stolen Documents Pursuant to Macau Personal Data Protection Act.	APP00308-APP00367
Q.	9/16/2011	Complaint & Case Cover Sheet (LVSC v. Jacobs, Case No. A-11-648484-B).	APP00368-APP00377
R.	9/16/2011	Hearing Transcript - Telephonic Status Check.	APP00378-APP00390
S.	9/19/2011	LV Sands Corp.'s Notice of Withdrawal of Motions.	APP00391-APP00394
T.	9/20/2011	Hearing Transcript - Application for Temporary Restraining Order (LVSC v. Jacobs, Case No. A-11-648484-B).	APP00395-APP00421

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

Exhibit	Date	Description	Bates Nos.
U.	9/26/2011	LV Sands' Emergency Original Petition for Writ of Mandamus.	APP00422-APP00447
V.	9/28/2011	Las Vegas Sands Corp.'s Ex Parte Motion for Temporary Restraining Order and Preliminary.	APP00448-APP00512
W.	9/29/2011	Interim Order.	APP00513-APP00515
X.	10/4/2011	Hearing Transcript re Plaintiffs Motion for Sanctions.	APP00516-APP00550
Y.	10/4/2011	Order Denying Petition for Writ of Mandamus.	APP00551-APP00552
Z.	10/10/2011	Jacobs Opposition to Sands China's Motion in Limine.	APP00553-APP00618
AA.	10/13/2011	Hearing Transcript- Sands China's Motion in Limine.	APP00619-APP00726
BB.	1/3/2012	Hearing Transcript - Plaintiffs Motion for Protective Order.	APP00727-APP00789
CC.	5/24/2012	Hearing Transcript - Status Check.	APP00790-APP00811
DD.	6/27/2012	Defendants' Joint Status Conference Statement.	APP00812-APP00820
EE.	7/6/2012	Defendants' Statement Regarding Data Transfers.	APP00821-APP00829
FF.	9/26/2011	Letter enclosing proposed interim order	APP00830-APP00833
GG.	8/2/2012	Hearing Transcript - Motion for Protective Order.	APP00834-APP00869
HH.	8/21/2012	Declaration of David Fleming.	APP00870-APP00880
II.	8/23/2012	Affidavit of J. Stephen Peek.	APP00881-APP00882
JJ.	8/23/2012	Debra Spineilli to Steve Peek, et al. attaching subpoenas for evidentiary hearing.	APP00883-APP00899
KK.	8/23/2012	Hearing Transcript - Motion for Protective Order re: Deposition of Ron Reese.	APP00900-APP00933

DATED August 27, 2012.


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

Attorneys for Defendants/Counterclaimants

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

CERTIFICATE OF SERVICE

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

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

Attorney for Plaintiff


An Employee of Holland & Hart LLP

1 **DECL**
2 J. Stephen Peek, Esq.
3 Nevada Bar No. 1759
4 Robert J. Cassity, Esq.
5 Nevada Bar No. 9779
6 HOLLAND & HART LLP
7 9555 Hillwood Drive, 2nd Floor
8 Las Vegas, Nevada 89134
9 (702) 669-4600
10 (702) 669-4650 – fax
11 speek@hollandhart.com
12 bcassity@hollandhart.com
13
14 *Attorneys for Las Vegas Sands Corp.*
15 *and Sands China, LTD.*
16
17 Brad D. Brian, Esq.
18 Henry Weissmann, Esq.
19 John B. Owens, Esq.
20 Bradley R. Schneider, Esq.
21 Munger Tolles & Olson LLP
22 355 S. Grand Avenue
23 Los Angeles, California 90071
24 213-683-9100
25 brad.brian@mto.com
26 henry.weissmann@mto.com
27 john.owens@mto.com
28 bradley.schneider@mto.com
Attorneys for Sands China, LTD.

DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,
Plaintiff,

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

vs.

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

DECLARATION OF DAVID FLEMING

18373578.3

APP00870

PA689

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

2 1. I am the General Counsel and Company Secretary of Sands China Ltd. ("SCL"). I
3 am admitted as a barrister and solicitor of the supreme court of South Australia (1979) and
4 solicitor of the supreme and high courts in England and Hong Kong (1992). I have personal
5 knowledge of the matters stated herein except those stated upon information and belief and I am
6 competent to testify thereto.

7 2. I make this affidavit in response to Plaintiff's Notice of Deposition of NRCP
8 30(b)(6) witness(es) for Las Vegas Sands Corp. ("LVSC") for Sanctions Discovery, topics 14 and
9 15. I understand that this affidavit may also be submitted to the Court in connection with that
10 Notice and/or other matters.

11 3. Although I am not admitted to the bar in Macau, I have the following
12 understanding of Macau's Personal Data Protection Act ("PDPA"), Law No. 8/2005. The PDPA
13 is based on the data protection law of Portugal, in particular the Portuguese Data Protection Act
14 of 1998 (Law No. 67/1998), which was based on the European Privacy Directive of 1995
15 (Directive 95/46/EC). The PDPA adopts similar personal data protection measures to those that
16 exist throughout the body of the European Community. The purpose of the PDPA is to protect
17 individuals' privacy and personal data.

18 4. I further understand that the PDPA is administered and enforced by the Office for
19 Personal Data Protection ("OPDP"), which was established by the Chief Executive of Macau in
20 February 2007, having the legal powers of the "public authority" designated to regulate the
21 PDPA.

22 ~~5. I further understand that, in common with European personal data protection law,~~
23 the PDPA requires de-identification, restricts automated processing, entitles data subjects to
24 object to automated processing, and contains security protections and restrictions on processing
25 certain kinds of data. Violations of the PDPA may be enforced as administrative offences,
26 analogous to civil penalties, punishable by fines, and as crimes, punishable by larger fines and
27 penalties and/or imprisonment.

28

18373578.3

- 2 -

APP00871

PA690

1 6. I further understand that Article 19 of the PDPA prohibits transfers of personal
 2 data outside Macau, unless the destination jurisdiction ensures "an adequate level of protection,"
 3 and subject to compliance with the conditions imposed by the PDPA. What constitutes "an
 4 adequate level of protection" is defined in analogous terms to the European Directive. Transfers
 5 can only be made if the destination jurisdiction, or the transfers themselves, appear on a list
 6 maintained by the OPDP. No such list has yet been published by the OPDP whose approach is to
 7 deal with requests for consent on a case by case basis pursuant to Article 20 of the PDPA. Article
 8 20 of the PDPA contains a list of "derogations" or exceptions to Article 19, which are similar to
 9 the exceptions contained in Article 26 of the European Directive.

10 7. I further understand that, generally speaking, a transfer of personal data to a
 11 destination outside Macau requires the consent of the data subject, or consent from the OPDP, to
 12 be obtained prior to the transfer taking place. The OPDP has indicated that it would be unlikely to
 13 give its consent to a transfer of personal data to a jurisdiction that did not provide an adequate
 14 level of protection for personal data, similar to the "safe harbor" or "safe haven" protection
 15 measures provided to individuals in European jurisdictions. The alternative option would be for
 16 the public or judicial authorities in the destination jurisdiction to approach the Macau Special
 17 Administrative Region, through the usual diplomatic or mutual legal assistance channels, to
 18 obtain assistance with facilitating a transfer of personal data.

19 8. The PDPA is a relatively new law in Macau, and I understand that many of its key
 20 provisions have not been defined or applied. VML's understanding of the PDPA, as well as the
 21 understandings of other companies operating in Macau, is evolving as affected companies and
 22 OPDP gain experience with its application.

23 9. Beginning on May 13, 2011 and thereafter, representatives of Venetian Macau
 24 Ltd. ("VML") have had a number of communications and meetings with the OPDP regarding the
 25 collection, review and transfers of Macau documents in response to subpoenas issued by U.S.
 26 government authorities and/or in connection with the Jacobs litigation. Although I understand the
 27 specifics of the communications are confidential, the OPDP made clear that it regards the
 28 transfers of personal data from Macau as being subject to the PDPA, that OPDP will strictly

18373578.3

- 3 -

APP00872

PA691

1 enforce the PDPA, and that failure to comply with the PDPA may result in civil and criminal
2 penalties.

3 10. On March 7, 2012, a meeting was held at the OPDP. The meeting was attended by
4 representatives of Las Vegas Sands Corp. ("LVSC"), SCL, and VML. Although I did not attend
5 this meeting, I understand there was a discussion of a proposed transfer of data from Macau to the
6 U.S. in connection with a subpoena issued by the United States Securities and Exchange
7 Commission ("SEC") and in connection with the Jacobs case. I further understand OPDP
8 representatives stated that personal data could not be transferred without a request by VML and
9 advance approval from OPDP, and there was no assurance that such approval would be provided
10 absent consent of the data subject. Moreover, I understand OPDP stated that any transfer of
11 personal data in connection with the SEC subpoena and the Jacobs case must comply with the
12 PDPA.

13 11. On May 28, 2012, I met with a representative of the OPDP to discuss past data
14 transfers. It was only as a result of this meeting that LVS and SCL achieved a level of comfort
15 that the production of documents previously transferred from Macau to the U.S. would not
16 constitute a separate violation of the PDPA. Nevertheless, past transfers of data from Macau
17 could result in enforcement action to the extent that such transfers result in the disclosure of
18 personal data in a manner that undermines the purposes of the PDPA.

19 ~~12. On June 27, 2012, I sent a letter to OPDP that (a) notifies OPDP of the~~
20 ~~circumstances surrounding the proposed transfer of data from Macau to the U.S. in connection~~
21 ~~with the SEC subpoena and the Jacobs case, (b) explains why VML believes that the transfer is~~
22 ~~consistent with the PDPA, and (c) solicits OPDP's concurrence for the proposed transfer.~~

23 13. I am informed and believe that LVSC and SCL made submissions to the Court on
24 June 27, 2012 and July 6, 2012 in which they disclosed that data had been transferred from
25 Macau to the U.S. These disclosures were reported by the press, including a July 27, 2012 story
26 by ProPublica.¹

27 ¹ [http://www.propublica.org/article/new-questions-about-sheldon-adelsons-casino-operations-in-](http://www.propublica.org/article/new-questions-about-sheldon-adelsons-casino-operations-in-macau)
28 [macau.](http://www.propublica.org/article/new-questions-about-sheldon-adelsons-casino-operations-in-macau)

14. On July 31, 2012, OPDP sent a confidential letter notifying VML that OPDP had launched an official investigation procedure in relation to the alleged transfer from Macau by VML to the United States of certain data. On August 1, 2012, with OPDP's knowledge, SCL filed a Voluntary Announcement with the Hong Kong Stock Exchange regarding this event. A true and correct copy of the Voluntary Announcement is attached hereto as Exhibit A. On August 1, 2012, LVSC filed a Form 8-K with the United States Securities and Exchange Commission, which in turn attaches SCL's Voluntary Announcement. A true and correct copy of the Form 8-K is attached hereto as Exhibit B.

15. On August 2, 2012, Francis Tam, Macau's Secretary for Economy and Finance, gave an interview, which was subsequently reported in the press, in which he stated that if OPDP finds "any violation or suspected breach" of the PDPA, the government "will take appropriate action with no tolerance. Gaming enterprises should pay close attention to and comply with relevant laws and regulations."²

16. On the evening of August 14, 2012, VML received a confidential letter from the OPDP dated August 8, 2012 in response to VML's letter of June 27, 2012 rejecting the Company's outline of a procedure to allow data transfers to the U.S. in connection with the SEC subpoena and Jacobs litigation, absent consent of the subject of the data transfer, in favor of procedures available under international legal assistance provisions of the law.

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

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands and any territory or insular

² http://www.macaodaily.com/html/2012-08/03/content_721150.htm;
<http://www.macaodailytimes.com.mo/macau/37657-francis-tam%3A-gov%E2%80%99t-won%E2%80%99t-tolerate-corporate-irregularities.html>;
<http://www.macaubusiness.com/news/little-room-for-more-new-tables-gov%E2%80%99t/17752/>

1 possession subject to the jurisdiction of the United States.

2 Executed on the 21st day of August, 2012, at Macau, S.A.R., China.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

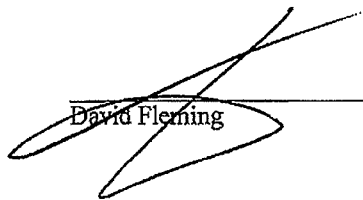
24

25

26

27

28


David Fleming

18373578.3

- 6 -

APP00875

PA694

eh1200947_ex9901.htm

Page 1 of 1

EX-99.1 2 eh1200947_ex9901.htm EXHIBIT 99.1

EXHIBIT 99.1

Hong Kong Exchanges and Clearing Limited and The Stock Exchange of Hong Kong Limited take no responsibility for the contents of this announcement, make no representation as to its accuracy or completeness and expressly disclaim any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this announcement.

SANDS CHINA LTD.

金沙中國有限公司 *

(incorporated in the Cayman Islands with limited liability)

(Stock Code: 1928)

Voluntary Announcement

Sands China Ltd. (the "Company") notes that its subsidiary, Venetian Macau Limited ("VML") has received a notification from the Office for Personal Data Protection of the Government of the Macao Special Administrative Region of the People's Republic of China (the "OPDP") indicating that the OPDP has launched an official investigation procedure in relation to the alleged transfer from Macao by VML to the United States of America of certain data.

The Company is unable to comment further at this time.

By Order of the Board
Sands China Ltd.
David Alec Andrew Fleming
Company Secretary

Macao, August 1, 2012

As at the date of this announcement, the directors of the Company are:

Executive Directors:

Edward Matthew Tracy
Toh Hup Hock

Non-executive Directors:

Sheldon Gary Adelson
Michael Alan Leven *(David Alec Andrew Fleming as his alternate)*
Jeffrey Howard Schwartz
Irwin Abe Siegel
Lau Wong William

Independent non-executive Directors:

Iain Ferguson Bruce
Chiang Yun
David Muir Turnbull

* For identification purposes only

<http://www.sec.gov/Archives/edgar/data/1300514/000095...> 8/1/2012

APP00876

PA695

eh1200947_8k.htm

Page 1 of 4

8-K 1 eh1200947_8k.htm FORM 8-K

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (date of earliest event reported):
August 1, 2012

LAS VEGAS SANDS CORP.
(Exact name of registrant as specified in its charter)

NEVADA
(State or other jurisdiction
of incorporation)

001-32373
(Commission File Number)

27-0099920
(IRS Employer
Identification No.)

3355 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA
(Address of principal executive offices)

89109
(Zip Code)

Registrant's telephone number, including area code: (702) 414-1000

NOT APPLICABLE
(Former name or former address, if changed since last report)

Check the appropriate box if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (See General Instruction A.2. below):

- ☐ Written Communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

<http://www.sec.gov/Archives/edgar/data/1300514/000095...> 8/1/2012

APP00877

PA696

Item 7.01 Regulation FD Disclosure.

On August 1, 2012, Sands China Ltd. ("SCL"), a subsidiary of Las Vegas Sands Corp. with ordinary shares listed on The Stock Exchange of Hong Kong Limited (the "SEHK"), filed an announcement (the "Announcement") with the SEHK stating that SCL's subsidiary, Venetian Macau Limited ("VML"), has received a notification from the Office for Personal Data Protection of the Government of the Macao Special Administrative Region of the People's Republic of China (the "OPDP") indicating that the OPDP has launched an official investigation procedure in relation to the alleged transfer from Macao by VML to the United States of America of certain data. The Announcement is attached as Exhibit 99.1 to this report and is incorporated by reference into this item.

The information in this Form 8-K and Exhibit 99.1 attached hereto shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, nor shall they be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, except as shall be expressly set forth by specific reference in any such filing.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

99.1 SCL announcement, dated August 1, 2012.

eh1200947_8k.htm

Page 3 of 4

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report on Form 8-K to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: August 1, 2012

LAS VEGAS SANDS CORP.

By: /s/ Ira H. Raphaelson

Name: Ira H. Raphaelson

Title: Executive Vice President and Global
General Counsel

3

<http://www.sec.gov/Archives/edgar/data/1300514/000095...> 8/1/2012

APP00879

PA698

INDEX TO EXHIBITS

99.1 SCL announcement dated August 1, 2012.

4

<http://www.sec.gov/Archives/edgar/data/1300514/000095...> 8/1/2012

APP00880

PA699