

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.

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A627691-B

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

**Volume XIII of XIII
(PA2160 - 2260)**

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**APPENDIX TO EMERGENCY PETITION FOR WRIT OF
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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

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DATED this 5th day of April, 2013.

By: /s/ PATRICIA FERRUGIA

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03/04/2013 02:32:07 PM

ORIGINAL

Alvin L. Quinn

CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants
.....

CASE NO. A-627691

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON PLAINTIFF'S RENEWED MOTION FOR NRCP 37 SANCTIONS

THURSDAY, FEBRUARY 28, 2013

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
JON RANDALL JONES, ESQ.
MARK JONES, ESQ.
MICHAEL LACKEY, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

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MAR 04 2013

CLERK OF THE COURT

PA2160

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

2 (Court was called to order)

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

5 MR. PISANELLI: I am, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 could not have been clearer.

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

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

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

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

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

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

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

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

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

11 THE COURT: One you have seven.

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

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

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

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

25 The other, of course, was the Macau Data Privacy

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

4 So let me --

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

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

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

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

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

3 But the point is this. This group of defendants
4 congratulated themselves because they said, look, even of the
5 12 or 15, whatever the number was, that were attached to our
6 exhibit they had replaced those, give or take four or five of
7 them. In other words, about 25 percent even in our sampling
8 they said they had gone back and replaced. They're actually
9 congratulating themselves that they got about 75 percent of it
10 right. They didn't, but that's their position.

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

1 noncompliance issue.

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

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

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

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

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

25 And finally on this issue of fixing the problem, no

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

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

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

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

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

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

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

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

24 THE COURT: -- with respect to Sands China.

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

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

19 THE COURT: Thank you.

20 MR. PISANELLI: Thank you.

21 THE COURT: Mr. Randall Jones.

22 MR. RANDALL JONES: Good morning, Your Honor.

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

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

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

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

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

8 THE COURT: Oh. Okay.

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

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

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

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

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

21 MR. RANDALL JONES: I understand.

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

1 now.

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

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

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

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

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

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

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

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

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

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

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

11 THE COURT: Rule 37.

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

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

1 have nothing to do with the merits.

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

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

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

9 THE COURT: That was last summer; right?

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

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

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

17 THE COURT: Trying to remember the group.

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

19 MR. MARK JONES: March 7, Your Honor.

20 MR. RANDALL JONES: So having --

21 THE COURT: Good job, Mr. Mark Jones.

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

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

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

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

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

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

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

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

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

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

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

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

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

6 THE COURT: Absolutely. My order says that.

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

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

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

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

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

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

17 And, by the way, I would disagree with Mr.
18 Pisanelli's percentages. The way I calculate it is at most
19 10 percent of the documents produced have a redacted vein.
20 But then let's look beyond that. Mr. Pisanelli says that
21 these documents that are redacted are meaningless. He says
22 they are essentially a blank page. They are not a blank page,
23 Your Honor. There are several issues that go directly
24 contrary to that, and I want to talk about that in a couple of
25 respects. One is the subject matter, the substance of the

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

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

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

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

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

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

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

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

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

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

1 what their jurisdictional legal arguments are.

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

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

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

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

17 MR. RANDALL JONES: And if that cliché ever applied,
18 this is the case.

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

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

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

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

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

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

15 MR. RANDALL JONES: Of our --

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

18 MR. RANDALL JONES: Okay.

19 (Pause in the proceedings)

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

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

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

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

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

19 MR. RANDALL JONES: Let me get with counsel.

20 (Pause in the proceedings)

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

24 THE COURT: Which is?

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

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

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

3 MR. RANDALL JONES: And --

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

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

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

17 MR. RANDALL JONES: Let's see.

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

20 MR. RANDALL JONES: This may have been --

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

22 (Pause in the proceedings)

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

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

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

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

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

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

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

8 THE COURT: It may have been.

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

12 MR. PEEK: Of the 15.

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

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

19 MR. BICE: I don't know.

20 THE COURT: All right.

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

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

1 MR. BICE: Thank you.

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

4 MR. RANDALL JONES: Thank you, Your Honor.

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

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

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

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

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

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

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

18 THE COURT: Go sit down.

19 MR. PEEK: Thank you.

20 THE COURT: Mr. Pisanelli.

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

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

3 Now, Mr. Jones --

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

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

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

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

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

25 There is also noticeable silence from Mr. Jones on

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

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

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

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

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

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

9 MR. PISANELLI: I'm sorry?

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

12 MR. PISANELLI: Well, it would be shorter, sure, if
13 they gave us no facts that were useful to us and we weren't
14 entitled to any discovery. We probably would have had a
15 20-minute losing evidentiary hearing had we agreed to that.
16 So I can't blame them for offering it, but I do question how
17 they can criticize us for saying no. Put in our shoes, I have
18 no doubt every lawyer in this room would have made the same
19 choice.

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

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

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

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

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

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

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

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

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

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

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

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

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

3 THE COURT: Thanks.

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

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

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

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

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

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

16 THE COURT: Okay.

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

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

23 MR. RANDALL JONES: What date, Your Honor?

24 THE COURT: The week of May 13th.

25 MR. RANDALL JONES: May 13th?

1 THE COURT: That week.

2 MR. RANDALL JONES: I have --

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

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

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

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

12 MR. RANDALL JONES: I --

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

15 THE COURT: I'm not just --

16 MR. RANDALL JONES: Sooner the better.

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

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

19 MR. PEEK: The question is Mr. Pisanelli.

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

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

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

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

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

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

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

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

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

14 MR. PEEK: I will, Your Honor.

15 MR. PISANELLI: That week works.

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

18 MR. PISANELLI: Two days.

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

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

23 THE COURT: The week starts on Monday, May 13th,
24 2013.

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

1 Honor.

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

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

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

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

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

15 MR. PISANELLI: What did we just agree to?

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

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

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

25 THE COURT: I will tell you what has happened in

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

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

9 THE COURT: I'm --

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

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

15 MR. PEEK: We do.

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

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

21 THE COURT: That were identified --

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

25 THE COURT: The twenty custodians identified on the

1 July 20th, 2011 --

2 MR. PEEK: Which is merits discovery.

3 THE COURT: I understand.

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

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

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

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

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

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

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

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

4 MR. PEEK: I do.

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

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

8 MR. PEEK: So we're just --

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

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

12 MR. PISANELLI: Yes.

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

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

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

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

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

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

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

15 THE COURT: I am requiring you to do the ESI search
16 related to the twenty custodians identified on the July 20th,
17 2011, letter and produce any information that is responsive to
18 the discovery requests --

19 MR. PEEK: Thank you.

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

22 MR. PEEK: We understand now, Your Honor.

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

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

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

7 MR. PISANELLI: I'm just making --

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

11 MR. PISANELLI: Agreed.

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

15 MR. PISANELLI: I agree.

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

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

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

25 MR. PISANELLI: That's okay.

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

3 MR. PISANELLI: A Freudian slip.

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

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

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

1 delays and the duplication of other discovery activities.

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

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

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

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

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

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

18 THE COURT: Which is about a month before that.

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

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

23 MR. LACKEY: Okay.

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

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

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

7 THE COURT: Yes.

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

11 THE COURT: I saw that in your brief.

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

13 THE COURT: I understand the process.

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

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

25 MR. LACKEY: Thank you, Your Honor.

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

8 MR. PEEK: Your Honor, is this --

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

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

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

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

16 MR. RANDALL JONES: Thank you, Your Honor.

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

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

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

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

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

25 MR. BICE: We have one sort of housekeeping matter

1 that I'm not --

2 THE COURT: Of course you do.

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

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

7 MR. BICE: Here --

8 THE COURT: -- Nevada Supreme Court.

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

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

19 MR. BICE: No, actually --

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

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

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

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

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

5 MR. BICE: That's all right.

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

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

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

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

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

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

21 MR. BICE: Okay.

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

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

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

1 MR. BICE: Thank you, Your Honor.

2 MR. PEEK: Thank you, Your Honor.

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

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

7 THE PROCEEDINGS CONCLUDED AT 11:40 A.M.

8 * * * * *

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CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146

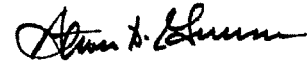
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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

Case No.: A-10-627691

Dept. No.: XI

**REPLY IN SUPPORT OF PLAINTIFF'S
RENEWED MOTION FOR NRCP 37
SANCTIONS ON ORDER
SHORTENING TIME**

Date of Hearing: February 28, 2013

Time of Hearing: 10:00 a.m.

AND RELATED CLAIMS

I. INTRODUCTION

Sands China Ltd. ("Sands China") claims that it is a victim. It says that Plaintiff Steven C. Jacobs ("Jacobs") is trying to win this case by sanction because he has meritless claims. That is a telling assertion for Sands China and its parent, Las Vegas Sands Corp. ("LVSC") to make. If hiding evidence, purposefully erecting barriers to the truth coming out and deceiving the judiciary is the type of conduct Sands China and LVSC will undertake in defense of a supposedly meritless case, one can only fathom the things they would do to avoid what they think is a meritorious case.

1 Plainly, the party who recognizes the need to resort to such tactics exposes what they really know
2 about the merits.

3 The question for this Court is straightforward: Did Sands China comply with this Court's
4 order that it "produce all information within [its] possession that is relevant to the jurisdictional
5 discovery" by January 4, 2013? (Ex. 1, Hrg. Tr. dated Dec. 18, 2012, 24:15-17.) Sands China's
6 opposition confirms that it did not. Instead, it proffers 30 pages of excuses and
7 self-rationalization. Sands China claims that it had discretion to determine which documents to
8 search, and then which to produce because this Court did not really mean "all" when that is what
9 it ordered. It claims that even for the narrow class of documents it searched and then produced, it
10 had the discretion to redact them so as to make them useless because, yet again, the Court did not
11 mean what it said in its order.

12 There is no need to continue to pretend that Sands China intended to comply. It did not
13 and will not. It and LVSC have made the decision that the consequences of noncompliance are
14 preferable to those of actual compliance. Continuing to act as though its conduct is anything but
15 knowing and calculated in that regard only perpetuates the lack of forthright disclosure that this
16 Court has faced from these Defendants for over two years now.

17 II. ANALYSIS

18 There is no need to waste more paper in addressing each excuse Sands China offers in its
19 30 pages. The self-recognition by Sands China of the need to proffer so many excuses is, in and
20 of itself, compelling proof of its noncompliance. There is no need for drawn out excuses,
21 explanations and self-rationalization by someone complying with orders.

22 Indeed, all of the posturing only goes to underscore how Sands China's actions were a
23 knowing and calculated means of not complying. To begin, on the appointed day, January 4,
24 2013, Sands China produced a select number of documents, nearly every one of which is redacted
25 to the point of being unintelligible. When those documents were sought to be used at deposition,
26 even the Defendants' own witnesses conceded that they could not understand them and that they
27 were useless. No one could explain what they were about or how they related to jurisdiction.
28 Now, the best that Sands China can offer in trying to distract from this reality is that months after

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1 the Court's final deadline, it located some of the same documents in the United States and thus
2 produce them in an unredacted form.¹

3 But of course, this only proves that all of the documents actually located in Macau which
4 this Court ordered produced, save and except those for which LVSC could find duplicates in the
5 United States, remain overly redacted to this very day. On top of that fact, Sands China knows
6 full well that this Court's order directing that it produce all responsive information no later than
7 January 4, was not an aspirational suggestion that Sands China produce what it wanted to by that
8 date. That order culminated from a long pattern of misconduct by these Defendants. When
9 setting that deadline, the Court specifically noted how they had repeatedly ignored and violated
10 orders and discovery obligations. The Court stated that it was setting a clear and unequivocal
11 deadline in an express order so that the Defendants could not later contend that there was no
12 written order being violated. The Court did not invite Sands China to continue to stall by
13 undertaking a document dump on January 4 with useless pieces of redacted paper so that it could
14 simply buy more time with assertions that it would someday get around to producing "some" of
15 the documents in an unredacted form. Its violation of the Court's order is knowing and
16 undeniable.

17 Sands China also tries to rationalize its conduct claiming that it had unlimited discretion in
18 choosing to limit its search to those of its choosing. In fact, it tries to blame Jacobs, claiming that
19 his counsel refused to cooperate in determining the appropriate custodians to search.² But
20 Sands China seems to have forgotten that it admitted that it knew otherwise at the December 18,
21 2012, hearing. There, Jacobs noted that his list of Macau custodians also applied to this
22 jurisdictional discovery. (See Ex. 4 to Motion, Sands China's Rpt. On Compliance, 4:22-23
23 (conceding that at the December 18, 2012, hearing, Sands China understood that Jacobs' list of

24
25 ¹ Of course, that begs the question of why those documents were not produced by LVSC if they
were already in the United States.

26 ² If this misdirection sounds familiar, it should. As the Court surely recalls, when the Defendants
27 got caught deceiving Jacobs and the Court as to how documents had been transported from Macau to
28 Las Vegas, they had the audacity to claim that it was Jacobs' fault that the truth was not told. They
asserted that if Jacobs had only asked the "right" questions, they would have been forced to tell the truth.
Sadly, the same sham excuse-making is repeating itself.

1 custodians applied to jurisdictional discovery.) This was the same day the Court ordered
2 Sands China to "produce all information within [its] possession," and was before Sands China had
3 even begun the process of searching for and producing documents from Macau. Sands China
4 knew full well who the listed custodians were. It made no request of this Court to excuse or limit
5 its ordered compliance from Jacobs' list. Of course it did not. It knew it was not going to comply,
6 so it wanted to be able to preserve one of its many planned excuses knowing that it would be
7 brought before the Court on a sanctions motion.

8 But Sands China's noncompliance does not stop there. Rather than just acknowledge that
9 it was not going to produce anything of substance by January 4, Sands China needed to create the
10 phony appearance that it produced documents so it flaunted this Court's September 14, 2012
11 sanctions order. There, this Court held that "Las Vegas Sands and Sands China will be precluded
12 from raising the M[P]DPA as an objection or as a defense to admission, disclosure or production
13 of any documents." (Ex. 2 to Motion, Sept. 14, 2012 Order, 8:20-23.) As a result, any redaction
14 purportedly pursuant to the MPDPA violates not only the Court's December 18 Order to produce
15 "all relevant information," but also the September 14 Order precluding its obstructionism through
16 the MPDPA.

17 Unable to dispute the actual terms of the September 14 Order, Sands China resorts to
18 claiming that the Court did not mean what it said. According to Sands China, it is still allowed to
19 withhold evidence under the MPDPA because it can redact any information that it wants to claim
20 is covered. Indeed, Sands China claims that this Court expressly approved of this conduct.
21 Hardly. As the transcript from the December 18, 2012, hearing demonstrates, moments after the
22 Court ordered it to produce all of its documents from Macau, counsel for Sands China posited:

23 As I understand it, Your Honor, you said we can still otherwise
24 comply with the law as we believe we should and they you
25 ultimately make the call as to whether or not we have appropriately
done that.

26 (Ex. 1, Hrg. Tr. dated Dec. 18, 2012, 27:15-18.) To which the Court responded: "I assume there
27 will be a motion if there is a substantial lack of information that is provided." (*Id.*, 27:20-21.)
28 The Court later clarified:

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

5 (*Id.*, 28:4-11 (emphasis added).) In other words, the Court did not say Sands China could make
6 redactions under the MPDPA; it said that if Sands China did not comply with its order, it
7 expected Jacobs to bring the present motion. Not coincidentally, that is precisely what Jacobs has
8 done.

9 And, Sands China's claims of a "misunderstanding" in this regard are disproven by its own
10 brief. According to Sands China, it also redacted all of the names and contact information for the
11 documents because it is not sufficiently "relevant" to this Court's jurisdictional hearing. But
12 tellingly, neither Sands China nor LVSC make those types of redactions to the documents that
13 were in the United States. If that is a legitimate basis for redaction, why did Sands China and
14 LVSC only come up with it when they were looking for an excuse to not produce documents from
15 Macau?

16 Obviously, Sands China knew all along that its redactions under the MPDPA were
17 precluded by this Court's September 14 Order. Thus, it recognized that it needed to manufacture
18 some other excuse for its redactions. Sands China and its counsel are very sophisticated. They
19 were not confused. If they honestly thought that this Court was allowing them to redact
20 documents under the MPDPA, they would have never resorted to the specious argument that the
21 Court intended to allow them to redact documents – and only the documents from Macau – on the
22 theory that the names and contact information of every document is "irrelevant." Frankly, the
23 Court would be hard pressed to find more compelling evidence of a knowing and calculated
24 violation than Sands China's very own backup argument.

25 Finally, and yet predictably, Sands China plays the money card. It actually asserts that its
26 noncompliance should be excused because the Defendants say (with no proof of course) that they
27 have spent "more than \$4 million to produce close to 200,000 pages of documents." (*See*
28 *Opp'n*, 2:15-16, 3:17-19.) Notably, the price keeps growing and growing. Just a few weeks ago,

1 the Defendants claimed that they had spent \$2.3 million to produce 148,000 pages. But of course,
 2 as this Court knows, whatever the true amount of money the Defendants have spent has not been
 3 expended to *produce* evidence. Those funds were used in advancing their long campaign of *not*
 4 *producing* evidence.

5 If the increased amount of \$1.7 million was spent in the two weeks the Court gave Sands
 6 China to produce documents from Macau, then it was plainly spent on the baseless redactions that
 7 Sands China undertook in violation of this Court's order. This should hardly be a point of pride
 8 for the Defendants. Instead, it confirms what Jacobs has said all along: These Defendants have
 9 almost unlimited resources that they will devote to keep the truth from coming out. They can and
 10 will spend far more money in their pursuit of making sure there is no compliance with this Court's
 11 rulings than they will ever expend on actual compliance.³

12 At the end of the day, there can be no honest denial that Sands China's violations of this
 13 Court's order as well as its sanctions ruling were knowing, calculated, and that it never intended to
 14 comply. (*See* Ex. 2, Hrg. Tr. dated Feb. 8, 2013, 15:16-18 (the Court explaining that Sands
 15 China's redactions to "the precise name of the person is a Macau Data Privacy Act issue. *I've*
 16 *already said you can't rely on the Macau Data Privacy Act.*").) Indeed, Sands China admits as
 17 much when it argues that the Court should reconsider its September 14 Order. It cites to *Societe*
 18 *Nationale Industrielle Aerospatiale v. United States District Court*, 482 U.S. 522 (1987) and asks
 19 this Court to revisit the multi-factor analysis to determine whether Sands China should really be
 20 required to produce documents in this case, over the assertion of foreign secrecy laws.

21
 22 ³ In what has become second nature, Sands China again asks this Court for a pat on the back with
 23 respect to its 163-page Redaction Log. That Log, attached as Ex. M to Sands China's Opposition, provides
 24 little information. What little information it does provide further exemplifies the game employed by both
 25 Defendants to prevent any meaningful discovery. The Log contains several entries of documents to which
 26 an LVSC employee is the author, recipient or copied on. (*See, e.g.*, Appendix to Opp. at 0350, 0353,
 27 0354.) However, Defendants have failed to explain why these documents were not produced by
 28 January 4, 2013, or still have not been produced at all. Defendants simply state the process of locating
 these documents in the United States is "still ongoing." (Opp'n, 20:2.) The deadline for production was
 January 4, 2013. In any case, this is why Sands China claims Jacobs should have had to conduct a
 meet-and-confer before filing the instant Motion; it wants to perpetually delay Jacobs from raising its
 noncompliance with the Court. (*See* Ex. 2, Hrg. Tr. dated Feb. 8, 2013, 6:4-5 (the Court rejecting
 Sands China's claim that Jacobs should have conducted a meet-and-confer because "[u]sually there aren't
 2.34 conferences after I issue an order."))

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(Opp'n, 23:14-27:3.) However, the Court has already made that determination. And it did not do so lightly. It did so after a lengthy evidentiary hearing where the Defendants' own witnesses admitted to the Court that these laws posed no obstacle to the free flow of data until Sands China and LVSC needed to find an excuse for not producing documents to Jacobs or to government investigators in the United States.⁴ The Court thus ruled that "Las Vegas Sands and Sands China will be precluded from raising the MDPA as an objection or defense to admission, disclosure or production of any documents." This means that Sands China must produce all of its information relevant to jurisdictional discovery, free of any redactions purportedly called for by the MPDPA. Contrary to Sands China's way of thinking, a party cannot violate an express order and then expect the Court to simply change the order to accommodate its knowing noncompliance.

III. CONCLUSION

Sands China never intended to comply with this Court's order or the January 4 deadline. Its opposition confirms that fact. Sands China did not and will not comply because it has decided that the consequences of noncompliance are preferable to those of complying. The majority of LVSC's revenues come from Macau. Macau and the money it produces is the primary asset for LVSC's majority shareholder, Sheldon Adelson. The simple fact is that maintaining the money-generating machine that is Macau is far more important to Defendants and their Chairman than this Court's rulings and orders will ever be. There is no amount of money this Court can ever take away from them, whether by sanctions or entry of a judgment, that will persuade them to

⁴ Indeed, one of the few documents recently produced by Sands China is an email string from August of 2010 confirming the fact that the companies had set up a remote share drive for the data providing access to it in Las Vegas. (Ex. 3; Ex. 4 (as produced on January 4, 2013.)) Notably, this document was not produced by LVSC as part of its production, even though it is from one of the custodians it claims to have searched for jurisdictional discovery. And how convenient that the "Macau Share Drive" suddenly became disconnected and disappeared just as soon as documents were going to have to be produced in the United States which would have exposed what was really going on in Macau.

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1 choose compliance over maintaining their secrets in Macau. They are not going to produce
2 documents in the United States that Jacobs can then use, or that could end up in the hands of
3 government investigators.

4 DATED this 27th day of February, 2013.

5 PISANELLI BICE PLLC

6
7 By: 

8 James J. Pisanelli, Esq., Bar No. 4027
9 Todd L. Bice, Esq., Bar No. 4534
10 Debra L. Spinelli, Esq., Bar No. 9695
11 3883 Howard Hughes Parkway, Suite 800
12 Las Vegas, Nevada 89169

13 Attorneys for Plaintiff Steven C. Jacobs
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PISANELLI BICE PLLC
3883 HOWARD HUGHES PARKWAY, SUITE 800
LAS VEGAS, NEVADA 89169

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 27th day of February, 2013, I caused to be sent via e-mail and electronic service true and correct copies of the above and foregoing **PLAINTIFF'S REPLY IN SUPPORT OF RENEWED MOTION FOR NRCP 37 SANCTIONS** properly addressed to the following:

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An employee of PISANELLI BICE PLLC

EXHIBIT 1

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TRAN

COPY *LINE*

Alma D. Quinn

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants

CASE NO. A-627691

DEPT. NO. XI

Transcript of
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS FOR PROTECTIVE ORDER AND SANCTIONS

TUESDAY, DECEMBER 18, 2012

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

JON RANDALL JONES, ESQ.
J. STEPHEN PEEK, ESQ.
MARK JONES, ESQ.
MICHAEL LACKEY, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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CLERK OF THE COURT

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PA2239

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

2 (Court was called to order)

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

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

7 THE COURT: Sure.

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

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

14 THE COURT: Any objection?

15 MR. BICE: No.

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

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

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

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

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

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

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

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

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

8 THE COURT: Thank you.

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

11 THE COURT: Thank you.

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

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

25 Can I go to the motion for the protective order on

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

7 THE COURT: I understand.

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

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

12 MR. PEEK: That's what I thought.

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

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

19 MR. PISANELLI: We will indeed --

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

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

1 THE COURT: I did.

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

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

12 MR. PISANELLI: I will. I want --

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

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

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

1 on counsel.

2 All right. Goodbye.

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

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

16 MR. RANDALL JONES: Thank you, Your Honor.

17 THE PROCEEDINGS CONCLUDED AT 8:55 A.M.

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CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt

FLORENCE HOYT, TRANSCRIBER

12/30/12

DATE

EXHIBIT 2

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants
.....

CASE NO. A-627691

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON PLAINTIFF'S MOTION FOR PROTECTIVE ORDER

FRIDAY, FEBRUARY 8, 2012

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
MARK JONES, ESQ.
MICHAEL LACKEY, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

PA2247

1 LAS VEGAS, NEVADA, FRIDAY, FEBRUARY 8, 2013, 8:36 A.M.

2 (Court was called to order)

3 THE COURT: Since I have Mr. Peek on the phone, is
4 he going to be arguing?

5 MR. JONES: Yes, Your Honor.

6 THE COURT: All right. I need everybody to come up
7 here, because Mr. Peek's on the phone. Please identify
8 yourselves as you're walking up here. Bring whatever you want
9 to bring. Feel free to stand close. I'm not as sick as I was
10 so --

11 Mr. Pisanelli, nice to see back among the living.

12 MR. PISANELLI: Thank you, Your Honor. It's good to
13 be back.

14 THE COURT: Good press coverage yesterday. Who was
15 your mediator?

16 MR. PISANELLI: Just Stan Hall and I for weeks
17 working on it.

18 THE COURT: Wow. That's an amazing accomplishment.
19 Congratulations.

20 MR. PISANELLI: Thank you very much. appreciate it.

21 THE COURT: Mr. Peek, good morning.

22 MR. PEEK: Good morning, Your Honor. I hope you're
23 feeling better.

24 THE COURT: I am. Can everybody please identify
25 themselves starting with Mr. Jones.

1 against us because we can use this process to buy time. We're
2 a month in, Your Honor, since the date of your order to
3 comply.

4 THE COURT: Usually there aren't 2.34 conferences
5 after I issue an order. But that's a different issue.

6 MR. BICE: Okay. Fine.

7 THE COURT: I'm not dealing with that today. What
8 I'm dealing with today is does Mr. Jacobs get to have his
9 deposition taken during the jurisdictional process, and, if
10 so, what is the scope, and, if so, what does he get to have
11 before he has deposition taken. It's all I really want to
12 talk about. Because I know we have lots of other problems,
13 but I don't want to do that today.

14 MR. BICE: Understood. So let me then respond.
15 With respect to is he -- should he be subject to deposition at
16 all, you know, they -- again, they claim that I've waived that
17 issue.

18 THE COURT: No. I said he could be deposed a year
19 ago.

20 MR. BICE: Right. But what we were talking about at
21 that point in time was --

22 THE COURT: I know.

23 MR. BICE: -- ESI, how did he get his documents,
24 et cetera. If they want to claim -- and again, I actually
25 don't disagree with Mr. Jones on one aspect of this. He says

1 who I know are trying to do what they have to do under Macau
2 law, making the determination as to what U.S. counsel gets to
3 see, it appears that we are in violation of my order. I'm not
4 going to say anything else about it today, because I'm sure
5 somebody will work it out someday or bring a motion. But it
6 appears problematic to me given the sanction that I've issued.

7 MR. LACKEY: Your Honor, just one note. The
8 redaction that were, in our motion that we submitted on the
9 7th, I believe it was right around in there, notes there were
10 two bases, and one was the notion that the actual name of the
11 person is not relevant to jurisdiction. And in light of, you
12 know, that fact, as well, of what the issue is the interaction
13 under the jurisdictional theories between the two companies.
14 And so, you know, the precise name of the person wouldn't be
15 relevant to that issue. So there were actually two bases --

16 THE COURT: Yeah, but the precise name of the person
17 is a Macau Data Privacy Act issue. I've already said you
18 can't rely on the Macau Data Privacy Act. Relevance is not an
19 appropriate issue for which to withhold documents, period, end
20 of story.

21 All right. Now, before we go on the document issue
22 -- because I am really here on whether Mr. Jacobs gets to have
23 his deposition taken, is really all we're doing. I agree with
24 you, you get to take his deposition. My concern is a timing
25 issue. And it sounds like I have some other bridges to cross

1 MR. BICE: -- I thought that was an invitation to
2 just keep going, Your Honor.

3 THE COURT: Three times I interrupted you.
4 Anything else?

5 MR. BICE: Thank you, Your Honor.

6 THE COURT: Sorry you can't do the deposition now,
7 but we'll get it scheduled soon.

8 MR. JONES: Thank you.

9 MR. PEEK: Your Honor, thank you for the time. And
10 I'd love to stay and listen to Mr. Ferrario, but I have much
11 better things to do.

12 THE PROCEEDINGS CONCLUDED AT 9:01 A.M.

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CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146

2/10/13

FLORENCE HOYT, TRANSCRIBER

DATE

EXHIBIT 3

**SUBMITTED
UNDER
SEAL
PURSUANT
TO
CONFIDENTIALITY
ORDER**

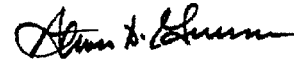
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EXHIBIT 4

**SUBMITTED
UNDER
SEAL
PURSUANT
TO
CONFIDENTIALITY
ORDER**

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CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

CASE NO.: A627691-B

DEPT NO.: XI

**ORDER REGARDING PLAINTIFF
STEVEN C. JACOBS' RENEWED
MOTION FOR NRCP 37 SANCTIONS
ON ORDER SHORTENING TIME**

Date: February 28, 2013

Time: 10:00 a.m.

AND ALL RELATED MATTERS.

Presently before this Court is Steven C. Jacobs' Renewed Motion for NRCP 37 Sanctions on Order Shortening Time ("Renewed Motion"). James J. Pisanelli, Esq. and Todd L. Bice, Esq. of the law firm PISANELLI BICE PLLC, appeared on behalf of Plaintiff Steven C. Jacobs ("Jacobs"). J. Stephen Peek, Esq., of the law firm Holland & Hart LLP, appeared on behalf of Defendants Las Vegas Sands Corp. ("LVSC") and Sands China Ltd. ("Sands China"). J. Randall Jones, Esq. and Mark M. Jones, Esq., of the law firm Kemp Jones & Coulthard, LLP, and Michael E. Lackey, Jr., of the law firm Mayer Brown LLP, appeared on behalf of Defendant Sands China. The Court considered the papers on file and the oral argument of counsel finds as follows:

1. On September 14, 2012, this Court entered its Sanctions Order. One of the sanctions imposed is that neither Defendant is permitted to raise the Macau Personal Data Protection Act ("MPDPA") as "an objection or as a defense to admission, disclosure or production of any documents."

CLERK OF THE COURT

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2. On December 18, 2012, this Court held a hearing and subsequently entered an order requiring Sands China to produce all information in its possession, custody or control that is relevant to jurisdictional discovery, including ESI, no later than January 4, 2013.

3. By January 4, 2013, Sands China produced what it maintains are all responsive documents. On January 8, 2013, Sands China filed a status report with this Court representing that it had complied with the Court's December 18 Order.

4. On February 8, 2013, Jacobs filed his Renewed Motion for Sanctions asserting that Sands China had not complied with the December 18, 2012 Order and the September 14, 2012 Sanctions Order.

BASED UPON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Jacobs has made a prima facie showing as to a violation of this Court's orders which warrants an evidentiary hearing;

2. Sands China violated this Court's September 14, 2012 order by redacting personal data from its January 4, 2013 document production based upon the MPDPA and, therefore, an evidentiary hearing on the Renewed Motion shall commence on May 13, 2013 at 1:00 p.m. to determine the degree of willfulness related to those redactions and the prejudice, if any, suffered by Jacobs; and,

2. By April 12, 2013, LVSC and Sands China shall search and produce the records of all twenty (20) custodians identified on Exhibit 6 to the Renewed Motion for documents that are relevant to jurisdictional discovery, which includes documents that are responsive to Plaintiff's discovery requests as permitted by this Court's March 8, 2012 Order. Following the search, and to the extent there are privilege issues with respect to those documents or the documents are responsive to merit-based discovery but not jurisdictional discovery, LVSC and Sands China may appropriately redact documents and provide a privilege log in compliance with Nevada law¹ for any and all documents withheld or redacted based upon privilege or

¹ For each communication or document, the party withholding a document shall

1 because the documents are only relevant to merits-based discovery. But as previously ordered,
2 LVSC and Sands China are precluded from redacting or withholding documents based upon the
3 MPDPA.

4 DATED: 27 March 2013

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7 ELIZABETH GONZALEZ
8 EIGHTH JUDICIAL DISTRICT COURT
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25 specifically identify the author (and their capacity) of the document; the date on which
26 the document was created; a brief summary of the subject matter of the document; if the
27 document is a communication -- the recipient, sender and all others (and their respective
28 capacities) provided with a copy of the document; other individuals with access to the
document (and their respective capacities); the type of document; the purpose for
creation of the document; and a detailed, specific explanation as to why the document is
privileged or otherwise immune from discovery.

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, I mailed a copy of the ORDER REGARDING PLAINTIFF STEVEN C. JACOBS' RENEWED MOTION FOR NRCP 37 SANCTIONS ON ORDER SHORTENING TIME, or placed a copy in the attorney's folder, to:

James J. Pisanelli, Esq., Todd L. Bice, Esq. and Debra L. Spinelli, Esq. (Pisanelli Bice)
Attorneys for Plaintiff

J. Stephen Peek, Esq. and Robert J. Cassity, Esq. (Holland & Hart)
Attorneys for Las Vegas Sands Corp. and Sands China, Ltd.

J. Randall Jones, Esq. and Mark M. Jones, Esq. (Kemp Jones & Coulthard)
Attorneys for Sands China, Ltd.


Maximilien D. Fetaz