

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 62944

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

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Petitioners,

v.

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

**ANSWER TO PETITION FOR WRIT OF
PROHIBITION OR MANDAMUS**

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I. INTRODUCTION

Petitioners Las Vegas Sands Corp. ("LVSC") and Sands China Limited ("Sands China") return to this Court (yet again) falsely portraying themselves as victims. To do so this time, they misrepresent their conduct that led the district court to call for a second sanctions hearing. The facts of this continuing abuse are as straightforward as they are disturbing: These two Petitioners perpetrated a discovery fraud upon the district court and Real Party in Interest, Steven C. Jacobs ("Jacobs"). And, predictably, they want to avoid being held to account. This is now their third writ petition in this action. *See* Case Nos. 59265, 62489. LVSC and Sands China have made clear their chosen path in the face of irrefutable proof of their deception: stall this case indefinitely with procedural maneuvering and their unlimited resources.¹

LVSC and Sands China's present application supposedly protests the district court's March 27, 2013, order which found that they had violated a prior sanctions order and which set an evidentiary hearing to determine: (1) the degree of willfulness in the face of their excuses and (2) the appropriate sanctions. (XIII App. PA2257-60.) Now, LVSC and Sands China urge this Court to foreclose all determinations of these matters.

The hoped-for interference of their application – halting the district court from getting to the bottom of their noncompliance and the appropriate sanction based upon all facts – is apparent. Contrary to the hopes and wants of LVSC and Sands China, extraordinary writ proceedings are not vehicles to have this Court

¹ Indeed, LVSC and Sands China have already announced their intention to seek another writ challenging the district court's ruling that Jacobs' attorneys may access documents that Jacobs has openly and adversely possessed for nearly three years with Petitioners' knowledge. Now, of course, LVSC and Sands China claim that the documents are privileged and cannot be viewed by Jacobs' counsel, even though Jacobs has been reviewing them for years. This Court can rest assured that no argument will be left on the cutting room floor in the Petitioners' need for obstruction and concealment.

1 serve as discovery referee or to preclude an evidentiary determination of where the
2 truth lies. Petitioners' belief that they are too big and too important to be bothered
3 with the law or rules needs to end.

4 Their continued arrogance is underscored by their unfaithfulness to the
5 record. They falsely say that the district court invited the very conduct it intends to
6 address at an evidentiary hearing. Not so. They offensively misstate the district
7 court's direction and feign confusion. The simple fact is that LVSC and
8 Sands China knowingly concealed the existence of evidence and got caught. They
9 then (and still now) seek to circumvent one of the sanctions by more maneuvering.

10 The district court has yet to determine what justification, if any, the
11 Petitioners can substantiate or what sanctions should follow. At this point, there is
12 nothing for this Court to review. Only after the district court establishes a complete
13 evidentiary record based upon its planned hearing (though postponed due to this
14 writ proceeding) will this Court be in the position to know the basis for any possible
15 sanction. Of course, LVSC and Sands China know this, but with limitless resources
16 and a delay strategy, the facts and the law get ignored.

17 **II. FACTS**

18 **A. Petitioners' Strategy Is To Delay And Deceive.**

19 LVSC and Sands China's position in this case has been on a collision course
20 with the truth from its inception. Unfortunately, it continues with the present
21 application for extraordinary relief. This case has been pending since October 20,
22 2010. Now, nearly three years later, the truth about the real reasons for Jacobs'
23 termination is not materially closer to resolution. LVSC and Sands China have
24 made sure of that.

25 There presently is no trial date, nor is there a date for the evidentiary hearing
26 mandated by this Court concerning personal jurisdiction over Sands China. Little
27 testimony has been preserved concerning the real events surrounding Jacobs'
28 termination. Few merits-based documents have been produced and, in the case of

Petitioners, others were not even preserved.² Status quo is precisely what LVSC and Sands China continue to strive for in all aspects of this case and including with their writ application.

Their path is not one of coincidence. The facts that have emerged to date paint a disturbing picture of a Nevada gaming licensee (LVSC) and its wholly-controlled subsidiary (Sands China). Indeed, their disloyalty to the truth has been early and often.

As just one example, in its very first pleading, LVSC told a story of how Jacobs was an employee of Sands China, having no contract with the parent company, LVSC. (I Supp. App. 000007, 10). Indeed, LVSC went so far as to file a counterclaim representing that it had no agreement with Jacobs. *Id.* According to LVSC, Jacobs' allegations as to a term sheet dated April 3, 2009 (the "Term Sheet") were false and made in a desperate effort to extort LVSC. (*Id.* at 14-15, 18.)

But that story, like so many others, was fabricated. LVSC appeared to overlook how it told the United States Securities and Exchange Commission, as well as its own shareholders, how the Term Sheet was Jacobs' employment agreement through LVSC, just like it also seemed to forget that the Term Sheet sets forth the conversion of Jacobs' stock awards into shares of Sands China, a telling omission in their latest presentation to this Court.³ (IV Supp. App. 000649.) But, LVSC's Chief Operating Officer, Michael Leven ("Leven"), knew the story to be false. He admitted that he negotiated and signed the Term Sheet as LVSC's COO

² LVSC and Sands China have had to admit, despite the district court's preservation orders, that they recycled Jacobs' hard drive, scrubbing it clean, and also lost some form of drive or data transfer. (III App. PA636, 638.)

³ Instead, the Petitioners reference an option agreement that they claim was covered by Hong Kong law and that those options do not vest provided that Jacobs was terminated before January 1, 2011 (even if the termination was done fraudulently and in violation of public policy). (Pet. at 6.) Perhaps this was why LVSC needed to manufacture the false claim and false denials concerning the Term Sheet.

1 after it had been approved by LVSC's Chairman, Sheldon Adelson ("Adelson").
2 (*Id.*)

3 But that is just the beginning. One of the more problematic facts for the
4 Petitioners was revealed in an e-mail Leven sent to other executives. In it, Leven
5 complained that one of the problems with Jacobs – and the real reason for his
6 termination – was that he was too forthright in his duties about reporting matters to
7 Sands China's board of directors. (III Supp. App. 000335.) Jacobs, according to
8 Leven, failed to follow the rule that it is up to Adelson to decide what the board is
9 told. (*Id.*)

10 Similarly problematic for Petitioners is an e-mail that they were eventually
11 compelled to produce that exposed Adelson's "leverage idea."⁴
12 (IV Supp. App. 000612-63, 633-37.) Adelson's strategic objective was to obtain
13 information about foreign government decision-makers so as to "leverage" that
14 information over them and persuade them to give Adelson what he wanted. (*Id.*)

15 These and other documents only came to light because they were located in
16 the United States. And, as Jacobs has attested, this is the tip of the iceberg. If the
17 judiciary were to wonder why these Petitioners have resorted to such outright deceit
18 and obstruction so as to keep information in Macau from discovery, it has its
19 answer.

20 **B. The District Court Orders Jurisdictional Discovery, Which**
21 **Petitioners Completely Oppose And Then Sabotage After They**
22 **Lose.**

23 The current stalemate grows out of Sands China's assertion that it is not
24 subject to personal jurisdiction in Nevada. (II App. PA247-60.) But, after raising

25 ⁴ Jacobs repeatedly represented that these documents would emerge sooner or
26 later, and he knew this because he has copies. Demonstrating how they have no
27 hesitancy about making up facts, Petitioners represent to this Court that Jacobs
28 "confessed" to downloading documents at the time of his departure. (Pet. at 7, n.4.)
Notably, they fail to provide any cite in the record as supposed proof of this
"confession." This is not a coincidence; it is another fabrication. Sadly, it will not
be the last.

1 that defense and this Court directing a more comprehensive evidentiary record be
2 developed, Sands China and LVSC opposed all efforts to allow any discovery so
3 that the truth about Sands China's contacts with Nevada could be assessed. (II App.
4 PA247-260.)

5 Initially, Petitioners' tact was to claim that this Court's mandate did not
6 authorize or permit any form of jurisdictional discovery. (*See id.* at PA248.) They
7 claimed that it would violate this Court's stay order. (*Id.*) The district court rightly
8 rejected that self-serving and unsupportable position. (*See* III App. PA539-44.)

9 When that failed, Petitioners claimed that any facts and circumstances
10 surrounding Jacobs' termination were off limits, even if those acts occurred in
11 Nevada on behalf of Sands China. For this, LVSC and Sands China suggested that
12 Jacobs had somehow "waived" any theory of specific jurisdiction, because specific
13 jurisdiction was not mentioned in this Court's order. (III Supp. App. 000434-45.)
14 According to Petitioners, because the district court had found general jurisdiction
15 existed and thus did not reach Jacobs' claims of specific jurisdiction, Jacobs
16 somehow "waived" the point. Just how this constitutes a "waiver" by Jacobs could
17 never be explained.⁵

18 With hindsight, the reason that LVSC and Sands China so vehemently
19 oppose the ordered jurisdictional discovery – including on specific jurisdiction for
20 which they now repeat their untenable waiver argument – should be apparent. It
21 was their compelled response to specific jurisdiction discovery that uncovered
22 many of the damaging acts they would have preferred to keep secret.

23 Petitioners do not inform this Court of how the scheme to terminate Jacobs
24 was hatched and carried out from Las Vegas by executives claiming to be acting in
25 their capacity as representatives for Sands China. (I Supp. App. 000028-32,

26
27 ⁵ As this Court has long ago established, claims of waiver can only be made
28 when a party intentionally relinquishes a known right with full knowledge of the
facts. *Friendly Irishman, Inc. v. Ronnow*, 74 Nev. 316, 319, 330 P.2d 497, 499
(1958).

1 120-38; III Supp. App. 000470, 504-12.) Specifically, at his deposition, Leven
2 confirmed that the planning and execution of Jacobs' termination was carried out by
3 him and Adelson from Las Vegas. (*Id.*) According to both Leven and Adelson,
4 they were acting in their roles as representatives for Sands China when carrying out
5 these deeds in Nevada. (*See id.*) These acts included drafting the fraudulent
6 termination letter. (I Supp. App. 000031-32.) In fact, they had to manufacture
7 fictitious "Sands China" letterhead in Las Vegas upon which to print that letter.
8 The press releases – including those setting forth false facts – were drafted in
9 Las Vegas by executives, again purportedly acting as Sands China's representatives.
10 (III Supp. App. 000489-90.) The lawyers involved in executing the termination
11 were based in Las Vegas and again supposedly acting for Sands China.
12 (*Id.* at 000492-93.) And, the subsequent justification letter – wherein twelve
13 reasons were fabricated to rationalize Jacobs' termination – was created and drafted
14 in Las Vegas, even though it was purportedly sent on behalf of Venetian Macau
15 Limited, a Sands China subsidiary. (*See* I Supp. App. 000029.)

16 Cognizant of the true facts, LVSC and Sands China resorted to the story that
17 Jacobs somehow waived specific jurisdiction by the sheer fact that the district court
18 had previously concluded that general jurisdiction existed. Obviously, as the
19 district court rightly recognized, Jacobs made no such waiver, which is why it
20 rightly ordered discovery as to Sands China's activities in Nevada.

21 **C. Petitioners Defraud Both The District Court And Jacobs In**
22 **Jurisdictional Discovery.**

23 When LVSC and Sands China could not argue their way out of jurisdictional
24 discovery, they knew that compliance would reveal the true facts. Thus, they chose
25 an alternative path: deception. A comprehensive overview of their repeated false
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1 representations as to evidence is set forth in Jacobs' Answer to the second of their
2 petitions, Supreme Court Case No. 62489.⁶

3 The fraud took the form of numerous false representations about the location
4 of evidence, their secret review of that evidence, and the supposed application of a
5 foreign blocking statute known as the Macau Personal Data Privacy Act
6 ("MPDPA"). The incredible and reprehensible conduct of both these Petitioners
7 and their counsel emerged after a near three-day evidentiary hearing before the
8 district court. That hearing exposed repeated and knowingly false representations
9 about the supposed unavailability of evidence, all the while Petitioners and their
10 counsel knew the truth.

11 Jacobs will not rechronical the year-long deception that places LVSC and
12 Sands China in the position they now bemoan.⁷ The record of their fraud is laid
13 bare in response to their second writ petition.⁸ (*See* Supp. App. in Case No. 62489.)
14 In summary, since the date of this Court's original mandate directing an evidentiary
15 hearing over Sands China's personal jurisdiction defense, Petitioners have sought to
16 conceal jurisdictional evidence and sabotage jurisdictional discovery, including
17 hiding behind the MPDPA. The district court's sanctions hearing exposed how the
18 MPDPA had become a convenient tool of discovery obstruction and concealing
19 evidence. (*See* VIII App. PA1359-67.)
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22 ⁶ Jacobs' Answer to Petition in Case No. 62489 was submitted on March 19,
23 2013, and filed on April 8, 2013.

24 ⁷ The complete transcript of the district court's evidentiary hearing that
25 culminated in the Court's September Sanctions Order is included in Jacobs'
Supplemental Appendix for Case No. 62489. (*See* Case No. 62489, II Supp. App.
0263-425; III Supp. App. 0426-667; IV Supp. App. 0668-847.)

26 ⁸ To simplify matters, Jacobs incorporates the facts from his Answer to
27 Petition in Case No. 62489 as well as the Supplemental Appendix, which contains a
28 complete copy of the transcript of the evidentiary hearing conducted by the district
court.

1 One of the witnesses confirming the ruse was LVSC's then-existing Chief
2 Information Officer, Mangit Singh.⁹ Singh admitted that prior to the spring of
3 2011 – when this Court ordered the evidentiary hearing on jurisdiction – the
4 MPDPA was not an obstacle to the transfer of data from Macau to Las Vegas. To
5 the contrary, data flowed freely through an electronic interchange that connected
6 LVSC and its controlled subsidiary, Sands China. (VIII App. PA1279, 1286-87.)
7 There were no restrictions upon data transfer and it occurred as a matter of daily
8 practice.¹⁰

9 But this ease of access was made to change when it no longer suited the
10 litigation interests of LVSC and Sands China. As Singh confirmed, around the time
11 government investigators began examining Jacobs' allegations, Singh was
12 summoned to a meeting. (VIII App. PA1274-75, 1277, 1283-84.) There, he and
13 others were told that the company was changing policy, discontinuing the
14 unfettered access to data. (*Id.*) Now, records would remain offshore and, it would
15 be argued, unreachable. As Singh confirmed, the long-existing data link was
16 disconnected and a "stone wall" erected against any further evidence leaving
17 Macau. (*Id.*)

18 As the district court later determined, because extensive amounts of data had
19 been transferred before this contrived policy change, LVSC and Sands China would
20 rather have made false representations about their access to evidence and the
21

22 ⁹ Jacobs believes that LVSC terminated Singh soon after his revealing
23 testimony.

24 ¹⁰ This fact was also confirmed by LVSC's then-existing internal head of
25 litigation, Michael Kostrinsky. Kostrinsky testified that during his time with LVSC
26 there were no restrictions on accessing information from Macau for use in
27 litigation. (VII App. PA1076-77, 1147). Indeed, he was responsible for carrying
28 out LVSC's directives concerning retrieval of information in Macau for this case.
(VII App. PA1095-1101, 1112-13.) He did this while LVSC executives, including
its general counsel, had full knowledge of his actions. (*Id.*) The transfer of data
was in no way an "error" as Petitioners would later falsely represent to the district
court and this Court. (III App. PA587.) This was how business had always been
conducted.

1 MPDPA in order to avoid production. (VIII App. PA1359-67.) And that is
2 precisely what they repeatedly did.¹¹

3 While LVSC and Sands China now decry the MPDPA as an ominous statute
4 with potential criminal liability, their true actions show that it was just a convenient
5 discovery obstruction.¹² As the district court found, despite their protests as to the
6 MPDPA's supposed strictures, neither LVSC nor Sands China undertook attempts
7 to comply with the MPDPA's supposed protocols relative to Jacobs' jurisdictional
8 discovery until December of 2012, long after the district court had ordered
9 jurisdictional discovery. (*See* X App. PA1701-61; XIII App. PA2258.) As the
10 district court noted, it had expressly set forth a protocol for dealing with discovery
11 in Macau and addressing the MPDPA over a year earlier. (*See* XIII App.
12 PA2181-82.) Yet, Petitioners did nothing to comply with the district court's
13 procedures; instead they chose to do nothing except misrepresent the location of
14 evidence. Plainly, it is not the MPDPA that was the real reason no discovery
15 occurred for over a year; LVSC and Sands China's intention not to produce, and the
16 purposeful delay, were the actual culprits.

17
18 ¹¹ In the present petition, LVSC and Sands China insinuate that the policy
19 change was prompted by the Macau government. (Pet. at 26.) Yet, they presented
20 no such evidence to the district court and it is contrary to what their own Chief
21 Information Officer acknowledged occurred. Indeed, even in their present petition,
22 the best that Petitioners claim is that they changed the policy two months after a
23 supposed meeting was held with Macau officials. Obviously, if the change of
24 policy were really directed by Macau, it would not have taken two months to
25 implement. As the district court found based upon the actual testimony, the change
26 in policy was undertaken to sabotage discovery. (VIII App. PA1365-66.)

27 ¹² In their Petition, LVSC and Sands China claimed that they deceived the
28 district court and Jacobs about the location of evidence because they were
concerned that reviewing documents in the United States might somehow violate
the MPDPA. (Pet. at 9.) This is just another contrived distortion of the record. In
fact, shortly after the documents were transferred to the United States, another of
LVSC's counsel, O'Melveny & Myers, copied all of the data for their own access
and review. (VII App. PA1117-18.) Plus, Petitioners had no qualms about insisting
that Jacobs must produce his documents from Macau so that they could be reviewed
all the while they falsely concealed their own sources of discoverable information.
They were not concerned about receiving documents from Macau. (*See* III App.
PA532-38.) They just wanted to hide their own documents.

1 Petitioners stalled this case with false representations about the MPDPA and
2 their supposed inability to produce documents. (VIII App. PA1364.) After
3 considering all facts presented – including the lack of evidence explaining
4 Petitioners' failure to comply with the Court's ordered protocol for addressing any
5 MPDPA concerns – the district court found that the "lack of disclosure appears to
6 the Court to be an attempt by Defendants to stall the discovery, and in particular,
7 the jurisdictional discovery in these proceedings." (*Id.* at PA1365.)

8 It further found, "[g]iven the number of occasions the [MPDPA] and the
9 production of ESI by Defendants was discussed there can be no other conclusions
10 than that the conduct was *repetitive and abusive*." (*Id.* (emphasis added).) As the
11 one substantive sanction for the year-long deception and noncompliance, the
12 district court ordered that LVSC and Sands China were "precluded from raising the
13 [MPDPA] as an objection or as a defense to admission, disclosure or production of
14 any documents" for purposes of jurisdictional discovery or the yet-to-be-held
15 jurisdictional evidentiary hearing. (*Id.* at PA1366.)

16 **D. In The Face Of The District Court's Findings And Sanctions,**
17 **Petitioners Devise Other Means To Obstruct.**

18 Despite their willingness to petition for writ relief at the drop of a hat, LVSC
19 and Sands China tellingly made no challenge to the September Sanctions Order.
20 They knew full well the basis for the district court's ruling, including the fact that
21 they had falsely enlisted the MPDPA as a basis to obstruct discovery and had
22 purposefully not sought to follow the district court's protocols. But unfortunately,
23 even the September Sanctions Order, with its additional small monetary sanction,
24 did not deter LVSC and Sands China.

25 They initially bought time by switching counsel, but their continued lack of
26 honest compliance resurfaced soon enough. At an October 30, 2012 hearing, Sands
27 China's replacement counsel disclosed that it had not even begun searching for
28 documents in Macau. Supposedly, counsel was going to travel to Macau to begin

1 the process. (I Supp. App. 000042, 58-61.) After this revelation, Jacobs challenged
2 the lack of effort. Trying to buy more time, LVSC and Sands China claimed that
3 the parties needed to meet and confer about the custodians to search in Macau and
4 what should be the applicable search terms. (*Id.* at 000042, 63-64.)

5 Jacobs knew that the stalling game was again afoot: The custodians had been
6 identified over a year earlier and the search terms had already been established and
7 used to search the documents located in the United States. (II Supp. App. 000148,
8 242-44, 313-24.) Petitioners knew who and what they were supposed to be
9 searching for. They simply did not intend to comply.

10 Accordingly, on November 21, 2012, Jacobs filed his first motion for
11 sanctions noting Sands China's continued delays in searching for or producing
12 responsive documents. (I Supp. App. 000039-105.) By then over a year had passed
13 since the district court had ordered jurisdictional discovery. In that years' time,
14 Sands China had done little to nothing but deceive, delay, and obstruct.

15 Sands China's reaction to Jacobs' motion proved too telling: It confirmed
16 Jacobs' contention that the request to meet about custodians and search terms was
17 just another ploy.¹³ Sands China and LVSC countermoved for an emergency
18 protective order asking that they be excused from complying with jurisdictional
19 discovery.¹⁴ (IX App. PA1441.) In fact, now, despite their representations less than
20 a month earlier as to how attorneys were going to Macau to search for responsive
21 documents, the latest story was how Sands China should not have to produce any
22 responsive documents except those for which Jacobs was personally the custodian.

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25 ¹³ In their present petition, LVSC and Sands China have the audacity to criticize
26 Jacobs for having not taken the bait of their request for more discussions.
(Pet. at 17.)

27 ¹⁴ Of course, if that was really the district court's ruling, there would have been
28 no need to discuss custodians or search terms.

1 At the December 18, 2012, hearing on Jacobs' first motion for sanctions and
2 Petitioners' request for protective order, the district court noted LVSC and
3 Sands China's approach of "avoid[ing] discovery obligations that I have had in
4 place since before the stay" and how they had "violated numerous orders." (X App.
5 PA1669, 1690.) And, despite their false denials in their present petition, Petitioners
6 expressly noted how they were aware of the Macau custodians that Jacobs had long
7 ago identified for discovery, including how Jacobs identified them for jurisdictional
8 discovery.¹⁵ (X App. PA1704.)

9 After noting the continued noncompliance, the district court announced that it
10 was setting a firm deadline in an express order so as to bring an end to Petitioners'
11 obstructionism. The district court gave them one final chance to comply and
12 ordered the production of "all information within their possession that is relevant to
13 the jurisdictional discovery" by January 4, 2013 (the "December Discovery Order").
14 (X App. PA1768.)

15 **E. Petitioners Intend To Violate The Ordered Production.**

16 Although Petitioners' misstatements are many, they are particularly
17 outlandish when claiming that the district court said they could redact documents
18 under the MPDPA for their January 4 production, notwithstanding its September
19 Sanctions Order. When quoting the transcript from the hearing on Jacobs' motion,
20 they omit the whole discussion:

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

26 ¹⁵ Petitioners' representation to this Court that the district court expanded the
27 number of custodians only after it announced its plans to hold a sanctions hearing is
28 just more fiction. The identity of the twenty custodians was specifically referenced
by Petitioners' own counsel at the December 18 hearing. (X App. PA1704.)

1 treatment of the Macau Data Privacy Act at different
2 times.

3 ***

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

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

7 MR. PEEK: That's what I thought.¹⁶

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

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

15 MR. PISANELLI: We will indeed --

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

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

22 THE COURT: *I did.*

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

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

(X App. PA1687-90) (emphasis added).

The reason for Petitioners' less than forthright quote of the transcript is
apparent. The district court warned that continued noncompliance, whatever the
form, would result in additional sanctions motions. (*See id.*) LVSC and Sands

¹⁶ Incredibly, this is where LVSC and Sands China end their disclosure as to the
district court's statements. (Pet. at 19.)

1 China understood precisely what was ordered and the consequences of continued
2 gamesmanship. That they must misstate the record to rationalize their conduct
3 shows this Court the lengths to which they will go.

4 **F. Petitioners Make A Farce Of The Ordered Production.**

5 True to past form, noncompliance continued. By the date designated,
6 January 4, 2013, Sands China produced what it claimed were the responsive
7 documents to jurisdictional discovery. (*See* X App. PA1701-61.) However, it
8 searched less than one-third of the custodians identified that would have knowledge
9 of jurisdictional facts, conveniently omitting the Sands China board members.
10 (X App. PA1787-101, XI App. PA1776-77.) Then, after searching only six of the
11 identified custodians, plus two others of its apparent choosing, it searched less than
12 all of the search terms against the reduced list of custodians. (*Id.*)

13 As if that were not enough circumvention, Petitioners then redacted the
14 identity of every author, recipient, or person identified in the body of every
15 document.¹⁷ (XI App. PA1777-78; IV Supp. App. 000535-94.) As a result, the
16 ordered production was rendered unintelligible and of no discernible evidentiary
17 value; a fact not lost on LVSC or Sands China.¹⁸

18 The assertion put forth to this Court – that the district court authorized and
19 invited these redactions – is not only belied by the hearing transcript, but also by
20 Petitioners' own recognition of their need for a backup argument. Specifically,
21 knowing that the September Sanctions Order foreclosed their continued misuse of
22 the MPDPA, Petitioners resorted to rationalizing the redactions – eliminating the

23 _____
24 ¹⁷ Such redactions were made even if the document was publicly available or
on Sands China's webpage. (IV Supp. App. 000567-70.)

25 ¹⁸ Confirming how Petitioners do not let facts stand in the way of an argument,
26 they also contend that the ordered production on January 4, 2013 was not limited to
27 matters pertaining to jurisdiction and thus violated this Court's stay of merits
discovery. Apparently, LVSC and Sands China forgot to inform the author of their
28 present petition that the search terms used to limit and identify documents that were
responsive to jurisdictional discovery for the January 4 production were chosen by
Petitioners.

1 authors, recipients, and any name in the substance of the document – with the
2 specious assertion that such information is not "relevant." (IV Supp. App. 000596.)
3 But, neither Sands China nor LVSC made any such "relevancy" redactions to any
4 documents produced from within the United States – only the documents from
5 Macau. Contrary to Petitioners' less than stealth-like sleight of hand, this
6 information did not magically become irrelevant at precisely the same time they
7 were ordered to produce documents from Macau.

8 These are sophisticated litigants with equally sophisticated counsel. They
9 were and are not confused. They knew that the September Sanctions Order
10 precluded them from enlisting the MPDPA as an obstacle to discovery and thus
11 manufactured an alternative, albeit frivolous, justification for the redactions.

12 **G. Jacobs Renews His Motion For Sanctions.**

13 Faced with continuing obstruction, delays, and defiance of ordered discovery,
14 Jacobs renewed his motion for sanctions. (*See generally* XI App. PA1769-917.) In
15 doing so, Jacobs highlighted just how the redactions had rendered the documents
16 useless for jurisdictional discovery.

17 By way of example, Jacobs showed just a few of the documents to LVSC's
18 Chief Operating Officer, Michael Leven, at his renewed deposition.¹⁹ Jacobs asked
19 Leven to identify the documents and explain their subject matter, as part of Jacobs'
20 efforts to establish how they would relate to jurisdiction. After all, these were the
21 documents that Sands China produced pursuant to *its* search terms for personal
22

23
24 ¹⁹ Petitioners also bemoan the fact that a grand total of four of their executives
25 have had to appear at deposition, and three of them more than once. Of course,
26 once again they omit disclosing that the deposition had to be renewed due to their
27 untimely production of documents and their repeated and abusive instructions to
28 every witness of "don't answer that" any time they would prefer that the facts not
come to light. (I Supp. App. 000124-25 ("Q. Did Mr. Adelson give you any
instructions regarding your meeting with – or you're going to meet with
Mr. Jacobs? MR. PEEK: Don't answer that."); ("Q. Did you carry with you a
[termination] letter [from Las Vegas] to give to Mr. Jacobs? MR. PEEK: Don't
answer that.")) This is the type of conduct that has permeated Petitioners' defense.

1 jurisdiction. As Leven reviewed each of the redacted documents, he confirmed that
2 the redactions rendered them unintelligible:

3 Q. Showing you what's been marked as Exhibit 57,
4 Mr. Leven. Can you tell me what Exhibit 57 is,
Mr. Leven?

5 A. I don't have the slightest idea what this is.

6 Q. Can you make heads or tails out of even what it
7 addresses by reading it?

8 A. I'm looking at this three times I don't have the
slightest idea what it is.

9 Q. Okay.

10 A. Am I supposed to know? I have no idea.

11 (Exhibit 58 marked.)

12 BY MR. BICE:

13 Q. This is 58. Mr. Leven, can you tell me what 58 is?

14 A. Well, it seems to be related to 57 but I don't have
15 any idea what it is.

16 Q. Okay.

17 A. Very strange.

18 (Exhibit 59 marked.)

19 BY MR. BICE:

20 Q. I will show you what's been marked Exhibit 59,
21 Mr. Leven. Can you make heads or tails out of
this document, Mr. Leven?

22 A. No. It's very strange.

23 (Exhibit 60 marked.)

24 BY MR. BICE:

25 Q. Mr. Leven, can you tell me anything about
Exhibit 60?

26 A. No, I wish you would tell me because it's very
27 strange. I don't know who it is. Personal
redaction.

28

MR. PEEK: Mr. Leven, these are redactions required under – by SCL.

(III Supp. App. 000511-12.) Of course, Jacobs could have repeated this process with every one of the documents that Sands China ultimately got around to producing over a year after it was required to respond.²⁰

As if more proof were needed, this futile exercise repeated itself before the district court at the February 28, 2013, hearing on Jacobs' renewed motion. There, the district court expressed "concern" and asked how anyone could decipher or use these documents for jurisdictional purposes without knowing the identity of the authors and recipients, let alone the elimination of all names from the document's body. (XIII App. PA2201) The district court challenged the Petitioners' counsel with just one example from the thousands of redacted pages. (XIII App. PA2200.) The exercise spoke volumes. The four attorneys for Petitioners stood huddled around the lectern examining a document and debating amongst themselves the redactions and how to decipher their own so-called redaction log. (XIII App. PA2199.) After numerous minutes passed on their inability to address just one document, the district court had proven its point, stating that "I'm done with my exercise in futility" (XIII App. PA2200-2204) (emphasis added).²¹

Notably, also absent from LVSC and Sands China's opposition to Jacobs' renewed motion was any actual evidence of their supposed inability to follow the district court's September Sanctions Order or the December Discovery Order. Indeed, there is no evidence whatsoever that they even bothered to inform the

²⁰ Petitioners actually brag about the fact that these three documents were subsequently produced in an unredacted form after Leven's deposition – confirming Petitioners' acknowledgment of noncompliance – because copies had been located in the United States. That Petitioners can waste everyone's time and resources for futile exercises only to later claim that they found some of the documents in the United States would hardly be a point of pride for anyone except LVSC and Sands China.

²¹ Incredibly, Petitioners confirmed their audacity representing that the district court make no determination that the redactions had any impact upon or relevancy to jurisdictional discovery.

Macanese government officials with whom they claim to be in communication as to the actual terms of the September Sanctions Order. Moreover, by all accounts, LVSC and Sands China kept the Macau government in the dark about their misrepresentations concerning the MPDPA and the fact that they had long ago transferred data to the United States and routinely deceived the district court about it. Simply put, by all accounts, Petitioners' lack of candor and disclosure is not limited to just the courts of Nevada, but appears to have also extended to Macanese officials so that Petitioners could profit by the delay that they purposefully created

Faced with the year-long stalling and sabotaging of Jacobs' rights, the district court announced that it would convene another evidentiary hearing. (XIII App. PA2212.) The purpose of that hearing is to determine the degree of willfulness in the continued noncompliance as well as to determine what sanctions are appropriate. *Id.* As the district court expressly noted, one of the things it would consider and balance in determining sanctions was the basis for the continued reliance upon the MPDPA:

[A]s a sanction for the inappropriate conduct that has happened in this case, in this case you've lost the ability to use that [MPDPA] as a defense. I know that there may be some balancing that I do when I'm looking at the appropriate sanctions under Rule 37 standard as to why your clients may have chosen to use that method to violate my order. And I'll balance that and I'll look at it and I'll consider those issues. But they violated my order.

(XIII App. PA2194.) But of course, LVSC and Sands China now want this Court to preempt any such balancing or any factual determination about the basis for their continued noncompliance.

H. An Evidentiary Hearing Will Determine What Really Transpired.

LVSC and Sands China ask this Court to preclude the district court from holding an evidentiary hearing because that is a process designed to determine the truth. It is not because of the phony catch-22 they have created out of whole cloth, suggesting that the district court is placing Nevada gaming companies in jeopardy

1 by forcing parties to choose between complying with foreign law or a court order.²²
2 It is that LVSC and Sands China know their true actions and recognize that a
3 process that determines the truth will not aid them.

4 LVSC and Sands China want to gloss over the fact that their inability to
5 continue to obstruct through the MPDPA is a result of their fraudulent conduct
6 which resulted in sanctions. One of the things that they also appear to want to keep
7 from being addressed at the sanctions hearing is how they also likely deceived
8 officials in Macau. After all, it appears from Petitioners' disclosures thus far that
9 they did not even inform Macanese officials about the data transfers. Instead, they
10 appear to have learned about it as a result of press reports stemming from the
11 September Sanctions Order. It was not until then that the Macau government
12 announced it was going to investigate what Sands China and LVSC had done.

13 The recent announcement of the results of the Macau investigation only
14 confirms why Petitioners would prefer that the district court not determine the real
15 facts in balancing their continued misuse of the MPDPA. Should it do that, the
16 district court might learn how they misstated their burden of compliance and
17 exaggerated the Macau government's investigation. In particular, Petitioners omit
18 mentioning how the MPDPA has an exception for compliance with a court **order**
19 from a foreign jurisdiction, like Nevada. This is one of the not-so-subtle points
20 disclosed in the recently-announced results of the Macau investigation.

21 As Macau's recent announcement discloses, Sands China paid a token fine of
22 \$5,000.00 over those transfers. The fine stemmed from findings that: (1) the
23 transfers were undertaken **prior** to the initiation of any lawsuit; (2) included data

24
25 ²² Petitioners' attempt to hide behind the integrity of other gaming licensees is
26 beyond offensive and a sign of utter desperation. Their argument presupposes that
27 any of Nevada's other gaming licensees doing business in Macau would behave as
28 dishonorably and deceitfully as themselves and thus be sanctioned. There is no
justification for such a smear upon others simply because that is the path chosen by
LVSC and Sands China. Apparently, the old adage is true: There is nothing more
dangerous than a drowning man. He will drag anyone around him under when
attempting to save himself.

1 that had no relationship to the Jacobs' subsequently filed lawsuit; (3) Sands China
2 had failed to inform the Macau government about the transfers; and (4) there was
3 no showing that these sweeping transfers would have been inevitable even after the
4 lawsuit's commencement. (IV Supp. App. 000724-31.) Yet, even in the face of all
5 of these findings, *where there was no court order or sanction in place*, Sands
6 China was fined only \$5,000.00 U.S. dollars.²³ (*Id.*)

7 Instead of having an evidentiary hearing where the actual facts are
8 determined, LVSC and Sands China prefer to make arguments that are untethered to
9 the facts. If the district court holds an evidentiary hearing, they will not be able to
10 put up their false Hobson's choice about having to choose between violating court
11 orders or following foreign law. After all, it is easier to argue when you do not
12 have to be bothered with the actual evidence.

13 **III. REASONS WHY THE WRIT SHOULD NOT ISSUE**

14 **A. Writ Relief Is Not An Appropriate Means To Interfere With The** 15 **Search For The Truth.**

16 Writs, when issued, are *extraordinary* relief. Petitioners' desire for this
17 Court to serve as a discovery referee is hardly the makings of something
18 extraordinary. As discovery is well within the trial court's broad discretion, it is
19 with good reason that “writ relief is *rarely* available with respect to discovery
20 orders. . . .” *Valley Health Sys., LLC v. Dist. Ct.*, 127 Nev. Adv. Op. 15, 252 P.3d
21 676, 677 (2011) (emphasis added).

22 The instances where this Court has found it appropriate to intervene in the
23 discovery process are few and finite. Only when there is no adequate remedy at law
24 will a writ of mandamus issue “to compel the performance of an act that the law
25 requires. . . or to control an arbitrary or capricious exercise of discretion.” *Aspen*

26
27 ²³ Sands China was fined 20,000 Macau patacas for its failure to meet any
28 legitimacy conditions under Macau law and an additional 20,000 Macau patacas for
transferring the data outside of Macau without notifying the Macau government in
advance. Under the present exchange rate, this fine totals \$5,000.00 U.S. dollars.

1 *Fin. Servs. v. Dist. Ct.*, 128 Nev. Adv. Op. 5, 289 P.3d 201, 204 (2012) (quoting
2 *Int'l Game Tech. v. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008)).
3 Similarly, and also when there is no adequate legal remedy, a writ of prohibition is
4 available “to stop a district court from carrying on its judicial functions when it is
5 acting outside its jurisdiction.” *Aspen*, 289 P.3d at 204 (quoting *Sonia F. v.*
6 *Dist. Ct.*, 125 Nev. 495, 498, 215 P.3d 705, 707 (2009)).

7 In keeping with these limitations, this Court has found writ intervention
8 appropriate only when: (1) the trial court has issued blanket discovery orders
9 without regard to relevance; or (2) a privilege will be forever lost. *Clark Cnty.*
10 *Liquor & Gaming Licensing Bd. v. Clark*, 102 Nev. 654, 659-60, 730 P.2d 443, 447
11 (1986). Notably, cries “that there was no right to the discovery ordered by the
12 district court” are not properly the subject of a writ petition, despite the desires of
13 LVSC and Sands China. *Id.*

14 Supposedly, LVSC and Sands China seek a writ of either prohibition or
15 mandamus related to the March 27, 2013 discovery order. However, that order
16 called for the setting of an evidentiary hearing so that the district court could
17 determine the Petitioners' excuses for their conduct. As of yet, the district court has
18 made no determination of what the sanctions should or will be issued. To do that, it
19 will need to hold an evidentiary hearing to determine all of the facts. Apparently,
20 LVSC and Sands China want this Court to disregard what the evidence will be,
21 what the sanction might be, and just conclude that whatever the district court finds
22 and rules will necessarily be an abuse of discretion and unsupported by evidence.

23 Petitioners' request that this Court intercede and disrupt the search for the
24 truth is as transparent as it is improper. As this Court long ago said: “***Mandamus***
25 ***is never granted in anticipation of a supposed omission of duty.***” *State of Nevada*
26 *v. Gracey*, 11 Nev. 223, 187 WL 4551, *7-8 (July 1876) (emphasis added). This
27 Court has reaffirmed this sound logic as recently as *Humboldt County*, when it
28 again denied a writ petition that was premised on speculation about what a district

1 court might do in the future. *Humboldt Cnty. Pub. Defender v. Sixth Judicial Dist.*
2 *Court of the State ex rel. Cnty. of Humboldt*, 124 Nev. 1476, 238 P.3d 820 (2008).

3 LVSC's and Sands China's fear of what an evidentiary hearing will establish
4 concerning their continued discovery misconduct is obvious. But, further attacks
5 upon the district court will have to await the outcome of that hearing. This Court's
6 intervention now is not sought because the district court is acting outside of its
7 jurisdiction or to compel the performance of some act by the district court which the
8 law requires. Rather, it is sought so as to disrupt the search for the truth and delay
9 these proceedings. Only after the district court holds its evidentiary hearing,
10 considers the evidence, and makes its findings will this Court have any outcome
11 and record to actually review.

12 **B. Petitioners' Real Challenge – To The Ordered Jurisdictional**
13 **Discovery And September Sanctions Order – Is As Untimely As It**
Is Meritless.

14 What LVSC and Sands China *really* seek to challenge by way of their present
15 application is the district court's authorization of jurisdictional discovery and the
16 resulting September Sanctions Order due to the fraud that they perpetrated in
17 jurisdictional discovery. Petitioners appear to think that if they can escape any
18 obligations to produce jurisdictional discovery, they can then be freed of
19 accountability for their misconduct. Absent that sweeping relief, they propose that
20 they should be allowed to now challenge the September Sanctions Order as a way
21 of evading accountability for violating it. (Pet. at 5.)²⁴

22
23 ²⁴ LVSC and Sands China supposedly prove their plight by claiming that
24 the district court has given Jacobs everything he has asked for and wanted. Hardly.
25 In addition to being denied some of the jurisdictional discovery he had to seek leave
26 to conduct, (*see* III App. PA539-44), Jacobs was the party required to produce *all* of
27 his electronic media to a third party vendor so that LVSC and Sands China could
28 review Jacobs' documents *before Jacobs counsel* on a manufactured theory that
although Jacobs, as CEO of Sands China, had access to privileged communications
(much of which form the basis of Jacobs' claims of wrongful termination), Jacobs'
counsel was unable to review those documents. Once again, Petitioners omit the
facts to plead their victim status.

1 Although the strict 30-day period for notices of appeal do not expressly apply
2 to writ applications, this Court nonetheless precludes untimely applications under
3 the doctrine of laches. *Bldg. & Constr. Trades Council of N. Nev. v. State of*
4 *Nevada*, 108 Nev. 605, 611, 836 P.2d 633, 637 (1992). The basic questions are:
5 "(1) whether there was an excusable delay in seeking the petition; (2) whether an
6 implied waiver arose from the petitioner's knowing acquiescence in existing
7 conditions; and (3) whether there were circumstances causing prejudice to the
8 respondent." *Id.* (applying laches to bar writ application when petitioner waited one
9 month); *see also State v. Peekema*, 976 P.2d 1128, 1131 (Or. 1998) ("Laches
10 generally requires that a mandamus proceeding be filed within the statutory time
11 frame required for the filing of an appeal.").

12 There is no plausible excuse for the delayed challenge to the district court's
13 discovery order which was entered in March of 2012 or the September Sanctions
14 Order. (*See* III App. PA539-44.) Petitioners' have no excuse for their delays, other
15 than the fact that it works to their advantage.²⁵ They can have no credible excuse
16 as perpetrating a fraud upon the district court in concealing the location of
17 discoverable evidence can never be excused. *See Sierra Glass & Mirror v. Viking*
18 *Indus., Inc.*, 107 Nev. 119, 126, 808 P.2d 512, 516 (1991) (stating that what counsel
19 "considers clever lawyering and proficient advocacy is nothing other than a fraud
20 on the court" when facts are misrepresented to the court. And a "fraud remains a
21 fraud even when the perpetrator does not get caught").

22 Nor can there be any denial that Jacobs is prejudiced by the interminable
23 delays caused by Petitioners' noncompliance and their untimely challenge to both
24 orders. *Foster v. Dingwall*, 126 Nev. Adv. Op. 6, 227 P.3d 1042, 1049 (2010)

25
26 ²⁵ Petitioners suggest that they did not bring any timely challenge to the
27 September Sanctions Order because they had planned on complying with it by
28 unidentified other means. (Pet. at 13.) They conveniently do not explain what that
entails. (*Id.*) After all, the only way to comply was to produce the long-ordered
discovery, something that they plainly never intended to do.

(holding that prejudice is presumed from failure to comply with discovery orders); *Skeen v. Valley Bank of Nev.*, 89 Nev. 301, 303, 511 P.2d 1053, 1054 (1973) ("[D]iligent parties are entitled to be protected against interminable delay and uncertainty as to their legal rights.").

Simply put, LVSC and Sands China knew they had no legitimate challenge to the district court's approval of jurisdictional discovery or its September Sanctions Order. They only now seek to mount a challenge because they have run out of excuses and other means of continued noncompliance.

C. This Court's Stay Does Not Insulate Petitioners From Jurisdictional Discovery.

LVSC and Sands China further seek to rationalize their untimely challenges by suggesting that the district court's authorization of jurisdictional discovery, particularly that from Macau, somehow violates this Court's mandate. (Pet. at 27.) For this, LVSC and Sands China wildly assert that the district court did not limit discovery to the issue of jurisdiction. (*Id.*) But once again, the law and facts show otherwise.

The district court has wide latitude in defining the proper contours of discovery and this Court will not interfere absent clear proof of a manifest abuse of that discretion. *See, e.g., Clark Cnty. Liquor & Gaming Licensing Bd.*, 102 Nev. at 659, 730 P.2d at 447; *Sonia F.*, 125 Nev. at 498, 215 P.3d at 707; *State v. Second Jud. Dist. Ct. ex rel. Cnty. of Washoe*, 120 Nev. 254, 262-63, 89 P.3d 663, 668 (2004). And, the record here shows anything but an abuse of discretion.

It is LVSC and Sands China that identified the search terms to use for segregating documents relevant to the district court's determination of personal jurisdiction over Sands China. (II Supp. App. 000242-44, 313-24.) The custodians had long been identified and Petitioners simply erected false roadblocks at every turn. (*See id.*) How the district court has not confined discovery to the issue of

1 jurisdiction when it is LVSC and Sands China who chose the jurisdictional
2 discovery terms for purposes of document extraction is conveniently omitted.²⁶

3 Equally unfounded is the attack upon the district court's requirement that any
4 document extracted by the jurisdictional search terms – but which are not produced
5 because they supposedly go to the merits and not jurisdiction – be identified on a
6 log. These Petitioners have shown themselves very adept at avoiding production.²⁷
7 It is well within the district court's discretion to require these creative parties to
8 identify any documents that they are withholding from production even when those
9 documents were flagged by the jurisdictional search terms. (XIII App. PA2219.)

10 This process makes perfect sense in implementing this Court's mandate. This
11 will permit the district court to examine documents *in camera* if necessary to
12 determine if any are truly relevant only to the merits as opposed to jurisdiction.
13 (*Id.*) And not coincidentally, that is precisely what this Court directed the district
14 court to do.

15 **D. The District Court's September Sanctions Order Is Well Within**
16 **Its Discretion.**

17 Even if this Court were to ignore the untimeliness of Petitioners' challenge to
18 the September Sanctions Order and the extreme prejudice to Jacobs, the outcome
19 would be the same. The district court acted well within its discretion in sanctioning
20
21

22 ²⁶ Also, in their present petition, LVSC and Sands China proclaim the extreme
23 expense that they have incurred in what they represent is complying with
24 jurisdictional discovery. Notably, there is never any actual evidence to substantiate
25 the wildly vacillating and different numbers that are thrown about in each
26 successive filing. But regardless of where the true figure lies, these were
expenditures not made in achieving compliance with the district court's ordered
discovery. Whatever monies have been expended, it was not done for the purpose
of compliance, but was expended endeavoring to obstruct discovery.

27 ²⁷ As just one example, documents for custodians in the United States were
28 searched with the very same search terms and not produced, only to later be
identified as responsive to those same jurisdictional search terms when the
documents were located in Macau.

1 these two intransigent litigants. It will be a sad day indeed should the judiciary
2 begin to excuse or rationalize frauds perpetrated against the judicial process.

3 This Court has sustained far more severe sanctions for far less egregious
4 conduct. *See Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. Adv. Op. 57, 245
5 P.3d 1182, 1185 (2010) (affirming district court's striking of answer due to
6 discovery noncompliance that included a failure to appear at deposition). Here, the
7 discovery misconduct included month after month of false representations by
8 parties and their counsel. There can be no debate as to the district court's broad
9 discretion in dealing with such discovery misconduct. *Foster*, 227 P.3d at 1048-49.
10 As this Court has expressly stated, "[e]ven if we would not have imposed such
11 sanctions in the first instance, we will not substitute our judgment for that of the
12 district court." *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777,
13 779 (1990).

14 But even in the absence of the deplorable conduct of these Petitioners, it must
15 be noted that they did very little to actually establish that the MPDPA was the
16 impediment to discovery that they represent even before the district court entered its
17 September Sanctions Order. *See United States v. Vetco, Inc.*, 691 F.2d 1281, 1290
18 (9th Cir. 1981) (noting that the burden of demonstrating that foreign law prevents
19 production rests with the party opposing production and further refusing to "mask"
20 names of parties from documents as Sands China did here). The district court had
21 long established a protocol for the identification of any problems with document
22 production under the MPDPA. In response to that, LVSC and Sands China did
23 nothing. They did not conduct any searches for responsive documents. They
24 simply stalled because they had no desire to produce responsive discovery.

25 And even in those instances where a party has not engaged in an outright
26 fraud against the district court by repeatedly lying about the location and their
27 review of evidence, numerous courts have rejected the use of foreign blocking
28 statutes as an obstacle to discovery. *See In re Parmalat Sec. Litig.*, 239 F.R.D. 361,

362 (S.D.N.Y. 2006) (explaining that the obstacles presented by foreign blocking statutes is not a "novel one" and that "the modern trend holds that the mere existence of foreign blocking statutes does not prevent a U.S. court from ordering discovery although it may be more important to the question of sanctions in the event that a discovery order is disobeyed by reason of a blocking statute"); *Graco, Inc. v. Kremlin, Inc.*, 101 F.R.D. 503, 526 (N.D. Ill. 1984) (explaining that party cannot avoid discovery because of foreign blocking statute and explaining that existence of such a statute is relevant to determining the sanction but that the noncompliant parties' good or bad faith is the most vital factor concerning their use of foreign blocking statute).²⁸

Even the United States Supreme Court has held that it is well within a district court's discretion to sanction a party for noncompliance with discovery even in the face of claims that their compliance is contrary to foreign blocking statutes. *Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers*, 357 U.S. 197, 208, 213 (1958); *Linde v. Arab Bank, PLC*, 269 F.R.D. 186, 196 (E.D.N.Y. 2010); *Remington Prods., Inc. v. N. Am. Philips Corp.*, 107 F.R.D. 642, 647 (D. Conn. 1985) (citing the seminal case, *Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers*).

The failure to comply with a production order is the basis for sanctions and the party's conduct, whether in good faith or not, are only relevant to the imposition of sanctions and what sanctions. *Gen. Atomic Co. v. Exxon Nuclear Co., Inc.*, 90 F.R.D. 290, 295, 307 (S.D. Cal. 1981) (imposing sanctions despite finding production of documents would violate Canadian law). "[S]anctions are available even absent [] a finding [of willfulness or bad faith], since failure to comply with

²⁸ But of course here, LVSC and Sands China want this Court to preclude the district court from even making any determination by way of an evidentiary hearing. According to these Petitioners, the mere existence of a foreign blocking statute is *per se* a valid reason to defy a court's discovery order in addition to defying a sanctions order. Notably, they cite no authority from anywhere to support that self-serving proposition.

1 court-ordered discovery 'occur[s] along a continuum of fault-ranging from
2 innocence through the degrees of negligence to intentionality." *Linde*, 269 F.R.D.
3 at 196-97.

4 In *Richmark*, a case embraced by Petitioners, the court upheld the district
5 court's sanctions order. The court reasoned that the defendant, who was relying
6 upon PRC secrecy laws, could have avoided the hardship through various measures,
7 belatedly raised the objection, and PRC did not express any interest in the
8 confidentiality of these documents prior to the litigation. *Richmark Corp. v. Timber*
9 *Falling Consultants*, 959 F.2d 1468, 1475-76 (9th Cir. 1992). "Indeed, [the
10 defendant] ***routinely disclosed information*** regarding its assets, inventory, bank
11 accounts, and corporate structure to the general public, for example through a trade
12 brochure, and to companies with whom it did business." *Id.* at 1476 (emphasis
13 added).

14 Similarly, in *State of Ohio v. Arthur Andersen & Co.*, the court imposed
15 sanctions when the defendant had changed its position as to what the foreign law
16 permitted or did not permit, delayed engaging foreign counsel to advise as to the
17 limitations imposed by Swiss law, and failed to timely identify production issues
18 with "particularity and specificity." 570 F.2d 1370, 1373-74 (10th Cir. 1978). The
19 Tenth Circuit reasoned that FED.R.CIV.P. 1 (as with N.R.C.P. 1) provides the rules
20 "shall be construed to secure the just, speedy, and inexpensive determination of
21 every action," and the defendant callously and flagrantly in bad faith disregarded
22 this rule. *Id.* at 1376; *see also Linde*, 269 F.R.D. at 200 (commenting that the
23 defendant "has decided when it will be cooperative, and when it will not be
24 cooperative," which it has no right to do and "[i]ts selective compliance with
25 foreign bank secrecy laws . . . highlights the limits of its supposed good faith and
26 casts doubt on its claims of hardship").

27 The district court's modest sanctions in its September Sanctions Order were
28 well within its discretion and in keeping with that which other courts have imposed.

For over twelve months, LVSC and Sands China repeatedly and routinely made false representations to the Court as to the location and their review of evidence pertaining to the district court's jurisdictional determination. (*See generally* VIII App. PA1359-67.) Indeed, despite the fact that Petitioners' counsel had clandestinely been reviewing those documents, they falsely claimed that the documents were in Macau and inaccessible due to the MPDPA. (VIII App. PA1362.) They used the MPDPA as a contrived excuse not to respond to any jurisdictional discovery and to not even conduct ordered searches for over a year. The district court was well within its discretion to bring an end to these abusive practices by precluding Petitioners from further erecting the MPDPA as an excuse to stall jurisdictional discovery. They gamed the system long enough.

IV. CONCLUSION

The district court is well within its authority and jurisdiction to convene an evidentiary hearing concerning LVSC and Sands China's continued discovery misconduct. The fact that Petitioners want this Court to preclude a process designed to elicit the truth only confirms how they fear the truth being unearthed. There is no basis for extraordinary writ relief to preempt an evidentiary hearing before the facts are determined and appropriate sanctions assessed. LVSC and Sands China's latest request for extraordinary intervention is simply another attempt at delay. Their application must be rejected and the district court permitted to determine where the truth really lies.

DATED 28th day of May, 2013.

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1 **CERTIFICATE OF COMPLIANCE**

2 I hereby certify that this brief complies with the formatting requirements of
3 NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style
4 requirements of NRAP 32(a)(6) because this brief has been prepared in a
5 proportionally spaced typeface using Office Word 2007 in size 14 font in
6 double-spaced Times New Roman.

7 I further certify that I have read this brief and that it complies with the page
8 or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the
9 brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of
10 14 points or more and 11,641 words.

11 Finally, I hereby certify that to the best of my knowledge, information and
12 belief, it is not frivolous or interposed for any improper purpose. I further certify
13 that this brief complies with all applicable Nevada Rules of Appellate Procedure, in
14 particular NRAP 28(e)(1), which requires that every assertion in this brief regarding
15 matters in the record to be supported by appropriate references to the record on
16 appeal. I understand that I may be subject to sanctions in the event that the
17 accompanying brief is not in conformity with the requirements of the Nevada Rules
18 of Appellate Procedure.

19 DATED this 28th day of May, 2013.

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CERTIFICATE OF SERVICE

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