IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

vs.

CLARK COUNTY DISTRICT AND THE HONORABLE ELIZABETH GONZALEZ, DISTRICT JUDGE,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Case Number:

District Court Case Number A627691-B

EMERGENCY PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIVILEGED DOCUMENTS

RELIEF REQUESTED BY JULY 5, 2013

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Rule 26.1 Disclosure

The undersigned counsel of record certifies that the following are persons and entities as described in Nev. R. App. P. 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Petitioner Las Vegas Sands Corp. ("LVSC") is a publicly-traded Nevada corporation. LVSC owns a majority of the stock in Petitioner Sands China Ltd. ("SCL"), which is a Cayman Islands corporation whose stock is publicly traded on the Stock Exchange of Hong Kong Limited ("HKEx").

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I. INTRODUCTION

Defendants reluctantly bring their third Petition for a Writ of Mandamus in this wrongful termination litigation. This Petition arises out of the district court's June 19, 2013 Order directing that more than 11,000 documents containing defendants' privileged information be released to plaintiff for his use against defendants, with no evaluation of the merits of any of defendants' privilege claims. In compelling this *en masse* disclosure of privileged materials, the district court did not dispute that the challenged documents contained privileged information, or that defendants had taken all necessary steps to preserve the privilege. Instead, the court based its ruling on the broad assertion—made with no citation to any authority—that plaintiff is within a special "sphere of persons" legally entitled to disclose and use defendants' privileged documents because he had access to the documents when he was the CEO of Petitioner Sands China Ltd. ("SCL") and took them with him when he was terminated.

This ruling from one of Nevada's business courts places Nevada directly at odds with law elsewhere, including decisions of the U.S. Supreme Court and Nevada's federal court. *See*, *e.g.*, *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 349 (1985); *Montgomery v. eTreppid Techs., LLC*, 548 F. Supp. 2d 1175, 1187 (D. Nev. 2008). In these cases, the courts have held that (1) the attorney-client privilege applies to a corporation's communications with its attorneys; (2) the corporation is the exclusive holder of the privilege; and (3) a former executive therefore has no right to disclose or use the corporation's privileged documents. *Weintraub*, 471 U.S. at 349; *Montgomery*, 548 F.Supp.2d at 1183-87.

In this case, the privilege issue arose after SCL learned that plaintiff had surreptitiously taken nearly 40 gigabytes of the company's

electronically-stored information ("ESI")—including documents protected by the company's attorney-client privilege—when the company terminated him in 2010. After defendants brought this issue to the district court's attention, the court appointed a third-party vendor to take control of the ESI and then established a detailed protocol for the parties to review the data and make privilege claims. Using this protocol, defendants reviewed more than 98,000 electronic data files and prepared a detailed privilege log containing more than 11,000 entries.

Yet, at the end of this lengthy and expensive court-ordered process, the district court did not review a single document or evaluate the merits of any of defendants' privilege assertions. Nor did the court make any finding that the privileged communications are relevant to plaintiff's underlying claims. Instead, the court declared (with no analysis or supporting case law) that (1) an undefined "sphere of persons" has a legal right to inspect a corporation's privileged documents and then use the documents against the company in litigation; (2) defendants bore the burden of *disproving* plaintiff's assertion that he came within that "sphere"; and (3) defendants did not meet the "burden" the court had imposed on them. On this basis, the district court ordered the *en masse* disclosure of thousands of documents containing privileged information to plaintiff *and his attorneys* within 10 days.[1]

A writ of prohibition is the proper "remedy for the prevention of improper discovery," *Wardleigh v. Dist. Ct.*, 111 Nev. 345, 350, 891 P.2d

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[1] Defendants are seeking a stay of the district court's June 19 Order pending this Court's ruling. If that Order is not stayed, the e-discovery vendor to whom the documents were provided would be required to release the documents to plaintiff and his counsel by July 5, 2013, ten days after the June 20 notice of entry of the order.

1180, 1183 (1995). Defendants have no adequate remedy other than to seek extraordinary relief from this Court. Absent this Court's intervention, the documents at issue "would irretrievably lose [their] confidential and privileged quality and petitioners would have no effective remedy, even by a later appeal." *Id*. at 350-51, 891 P.2d at 1183-84.

This Petition also raises an important question of first impression under Nevada law—*i.e.*, whether a corporation's *former* executive has a right to review the corporation's privileged documents and then use the documents against the company in litigation. While this Court has not yet considered this question, other courts have done so. Most notably, the U.S. Supreme Court and other federal courts have squarely held that "[d]isplaced managers" like plaintiff have no control over a corporation's privileged communications, "even as to statements that the former [managers] might have made to counsel." *Weintraub*, 471 U.S. at 349; *see also Montgomery*, 548 F.Supp.2d at 1187.

The rationale of these decisions is especially applicable where, as here, the displaced manager is *suing* the corporation and thus pursuing personal interests that are directly adverse to the corporation. A corporation's managers are fiduciaries, and they must place the best interests of the company above their own interests. Allowing a former executive to take the company's privileged communications and then use them *against* the company in a lawsuit is fundamentally contrary to that manager's fiduciary duty. It is also antithetical to the important public interests served by the privilege. A corporate client (like anyone else who seeks legal advice) must be allowed to communicate candidly with its attorneys, without worrying that one of its officers might later try to use those communications against it.

Accordingly, Petitioners respectfully ask this Honorable Court for a writ of prohibition or mandamus (1) clarifying that plaintiff, as a former officer of SCL, has no right of access to (or control over) privileged documents belonging to SCL or its affiliates and no right to use their privileged documents against them; and (2) directing the district court to set aside its erroneous June 19, 2013 Order.

II. ISSUE PRESENTED BY THIS WRIT PETITION

Whether a corporation's former executive has a right to review the corporation's privileged documents, disclose them to his attorneys, and then use those documents against the company in litigation.

III. STATEMENT OF FACTS

A. The Underlying Litigation.

Plaintiff Steven C. Jacobs was the CEO of defendant SCL (which does business exclusively in Macau) until his termination in July 2010. Shortly thereafter, he filed this lawsuit in the Clark County district court against SCL and LVSC, alleging wrongful termination and breach of contract.

SCL moved to dismiss Jacobs' claims against it for lack of personal jurisdiction. The district court denied SCL's motion to dismiss, but on August 26, 2011, this Court issued an Order granting SCL's Petition for Mandamus. Petitioners' Appendix ("PA") 1-4. The Court's Order directed the district court to hold an evidentiary hearing and issue findings on the issue of personal jurisdiction over SCL. PA3. The Court also directed the district court to "stay the underlying action," except for matters relating to jurisdiction. *Id*.

B. Defendants Learn that Jacobs Took Their Documents, and Promptly Seek to Protect Their Rights.

On November 23, 2010, shortly after Jacobs filed suit, SCL advised Jacobs' attorney that SCL had reason to believe that Jacobs had taken company property following his termination, including three specifically-identified reports. PA26. SCL demanded that Jacobs return the reports and any "other Company property" he might have. *Id*. SCL further demanded that Jacobs "not modify or delete" any data relating to SCL or LVSC that was maintained on electronic storage devices. PA27. In late December 2010, Jacobs' attorneys returned two of the three requested reports, but they did not say whether he had any other company documents. PA3009, PA3011.

Months later, on July 8, 2011, Jacobs' attorneys revealed to SCL that Jacobs had "electronically transferred" to his attorneys' offices about 11 gigabytes of corporate e-mail communications,[2] including e-mails from "various attorneys employed by LVSC and SCL." PA34. In subsequent communications, Jacobs' attorneys "agreed not to produce the documents in this litigation" until the district court resolved the privilege issue. PA45. The attorneys also assured defendants that "our firm will continue to refrain from reviewing the documents so as not to create any issues regarding the documents containing communications with attorneys."[3] *Id.*

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[2] A "byte" is the digital analog of a word, and a "gigabyte" is over 1 billion bytes. Eleven gigabytes of data are equivalent to "tens of thousands of pages." *U.S. ex rel. Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1062 (9th Cir. 2011). As discussed below, defendants later learned that Jacobs actually held nearly four times that much data, some 40 gigabytes.

[3] On September 13, 2011, LVSC filed motions for a protective order and to compel Jacobs to return all of the documents he had taken with him when he left Macau. PA5-14. LVSC subsequently withdrew those motions when the district court expressed doubts about whether it had jurisdiction to

On September 28, SCL filed a motion *in limine* to exclude Jacobs' ESI from the jurisdictional hearing. PA119-30. In briefing this motion, SCL proposed that the court adopt a protocol for a third party vendor to take custody of the ESI so that defendants could review the ESI and assert privilege objections to specific documents as appropriate. PA180-82.

C. The Court Approves a Detailed Protocol for the Parties to Review the Data and Make Privilege Claims.

On October 13, 2011, the district court denied SCL's motion *in limine* and directed the parties to meet and confer to develop a protocol for reviewing the ESI that Jacobs had taken from SCL. PA254, PA299. In the ensuing negotiations, defendants learned that (1) the total ESI in plaintiff's possession was nearly 40 gigabytes (and not 11 gigabytes, as Jacobs had previously represented) (PA367, PA494 § 2.5), and (2) despite an agreed order requiring the parties to preserve documents (and despite the specific representations made by Jacobs' counsel) Jacobs had continued to work with the electronic devices holding the data (PA369-73).

Following a November 22, 2011 hearing (PA622-23, PA654-57), the district court entered an order establishing the protocol for the parties to review the ESI that Jacobs had taken and to assert privileges. PA730-34. In the order, the court appointed Advanced Discovery to serve as the third-party ESI vendor (PA731 ¶ 1) and directed Jacobs either to (a) produce a "full mirror image of all electronic storage devices" to the vendor or (b) file a motion for a protective order showing that government requirements prevented the production of a full mirror image. PA731 ¶ 4.

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entertain the motions in light of the limitations this Court had imposed in its August 26, 2011 Order. PA62-65.

Instead of producing the ESI, Jacobs moved for a protective order, complaining that the court-ordered process would force him to disclose privileged data. PA707-27. At the hearing on the motion, Jacobs' attorney represented that he could not assure the court that the data in his possession was truly a mirror image.[4] PA2880. He also claimed that it was "extremely risky" to turn over "all of this sensitive information" to a third party vendor. PA2881. In response, the court directed the parties to meet and confer about revisions to the protective order that could accommodate Jacobs' concerns about the ESI review. PA769-70.

After the court approved the parties' modifications to the protective order in March 2012, Jacobs finally turned over his electronic devices to Advanced Discovery on May 17, 2012. PA2948. The vendor then had to extract the user files and process them for screening by plaintiff. *See* PA732 ¶¶ 5-6. Plaintiff took an additional month to complete his screening of the ESI. *See* PA2833.

D. Defendants Gain Access to the Data and Assert Detailed Privilege Objections.

As a result of this lengthy process, defendants were not able to review any of the data until July 24, 2012 (PA2836) – nearly two years after Jacobs took the ESI, and over a year after Jacobs' attorneys first notified defendants that he had taken the ESI. When defendants did gain access, four additional factors complicated their review: (1) the documents were voluminous, encompassing more than 98,500 files (PA2836); (2) the court-

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[4] Even now, there is still no assurance that the data plaintiff eventually produced is truly complete. On January 3, 2012 – the day of the hearing – plaintiff filed a police report claiming that his hard drive had been stolen from his apartment in Florida, where it had been hidden in a coffee pot. PA2886-90. Plaintiff did not notify defendants or the court of the alleged burglary.

appointed vendor had not completed its investigation of more than 7,500 "placeholder" files (PA2836-37); (3) defendants could not print or make copies of the electronic data (PA2833); and (4) defendants could not redact documents, or otherwise produce the non-privileged parts of documents (*id*.; PA2836 n.2).

Despite these obstacles, defendants produced a preliminary list of potentially-privileged documents on September 15, 2012 (PA2836), which allowed plaintiff to access the vast majority of the ESI—approximately 84,000 of the total 98,500 files. PA2812. In addition, in November 2012, defendants completed their review of the 14,000 potentially privileged files and arranged for Advanced Discovery to release an additional 3,000 files to plaintiff. PA2813. Defendants then gave plaintiff a final privilege log on December 2, 2012 (*id*.) – just two weeks after plaintiff issued his own log (PA2952-54). In total, defendants reviewed over 98,500 data files; released 84,000 files and provided a draft privilege log within two months; then released another 3,000 files and issued a final privilege log comprising over 1,700 pages (PA810) and containing over 11,000 entries (PA2813) about two months after that.[5]

E. The District Court's June 19, 2013 Order.

After receiving defendants' final privilege log, plaintiff never requested a meet-and-confer with defendants to discuss any issues relating to defendants' privilege log. Instead, on February 15, 2013 plaintiff filed a motion asking the district court to order the wholesale release of every

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[5] The vast majority of entries on defendants' log are based on the attorney-client privilege. A much smaller number are based on the work-product doctrine, as they relate to litigation with third parties that was pending or anticipated when Jacobs was terminated. A handful assert other privileges, such as the accountant-client privilege.

document identified on that log. PA809-27. Plaintiff acknowledged federal case law holding that terminated employees have no authority over corporate privileges, but claimed that the law recognized an exception for privileged documents authored or received by a former employee. PA810. In so doing, plaintiff did not make any showing that the privileged documents would be relevant to the jurisdictional inquiry (the only issue properly before the district court), but instead asserted that the documents would be relevant to his substantive claims. PA813-14.[6]

Defendants filed an opposition and a request for oral argument. PA2808-29, PA2891-96. The district court denied the request for oral argument and decided to first address plaintiff's claim that the privilege did not apply to his motion for access to the documents. PA2906. To this end, the court asked defendants to file a supplemental brief addressing the "effect of the privilege" when the corporation is litigating against a former officer and a protective order restricts the disclosure or use of confidential documents outside the litigation. *Id*.

Defendants filed a supplemental brief providing additional legal authority showing that a former officer like plaintiff may not use privileged documents against his former employer. PA2916. Defendants also showed that the existence of a protective order was irrelevant, because releasing defendants' privileged documents to their adversaries (plaintiff *and* his attorneys) would violate their privileges whether or not plaintiff disseminated those documents to the outside world. PA2916-20.

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[6] Plaintiff also argued that defendants had not adequately supported their privilege objections, and that defendants had waived privilege by placing privileged communications "at issue." Defendants opposed these arguments, and the district court did not reach them.

In his reply, Plaintiff made a new argument, asserting for the first time that the relevant issue was whether he was among a "class of persons" legally permitted to review and use the corporation's privileged communications. PA2956. Plaintiff then claimed that he was such an individual because he had possessed the documents during his employment at SCL and continued to possess them after his termination. PA2962-65. Defendants promptly moved to strike the new argument and (in the alternative) sought leave to file a sur-reply. PA3029-35.

On April 12, 2013, the district court issued a minute order stating that it would grant plaintiff's motion. PA3027. The court acknowledged that "any privilege related to these documents in fact *belongs to the Defendants*," but nevertheless held that plaintiff could "use the documents for purposes of this litigation." *Id.* (emphasis added). The court based this conclusion on the fact that "Jacobs was in a position and in fact had access to the documents at issue during the period of his employment." *Id.*

Subsequently, the district court gave defendants leave to file a sur-reply in opposition to the motion. PA3105. Defendants filed that sur-reply on June 12, 2013. PA3106-19. Two days later, the district court issued a minute order stating that it still intended to grant plaintiff's motion. PA3137. On June 19, 2013, the court entered its final order. PA3180-84. In the order, the court stated that it did not need to address defendants' privilege claims because it thought the relevant question was whether plaintiff "is among the class" or "sphere" of persons legally entitled to review and use defendants' privileged documents. PA3182 ¶¶ 10, 12. The order shifted the burden to defendants to prove that that plaintiff was not a member of this special "class of persons," then concluded they had not satisfied that burden because plaintiff possessed the documents both

during and after his tenure as CEO. *Id.* The order provided no case law or legal analysis to support its assertions that (1) an undefined "class of persons" enjoys a legal right to inspect a corporation's privileged documents and then use the documents in litigation against the company; (2) defendants bore the burden of showing that plaintiff was *not* a member of that special "class"; and (3) defendants could not exclude plaintiff from the purported "special" class because he possessed the documents both before and after his period of employment.

On this basis, the court directed Advanced Discovery to release to plaintiff and his counsel all of the documents defendants maintain are privileged and had logged as such in the log the district court required but did not review. PA2813, 2823-28, 3183. The court stayed the effective date of the order for 10 days after notice of entry (*id*.) so that defendants could seek writ relief from this Court. Defendants intend to promptly file a motion asking the district court to further stay the effect of its June 19 Order, pending this Court's consideration of this writ petition.

IV. STATEMENT OF REASONS WHY THE WRIT SHOULD ISSUE

A. The District Court's Order Presents Important Questions Of First Impression That Urgently Require Clarification.

Writ relief is appropriate where the petitioner has no "plain, speedy and adequate remedy in the ordinary course of law." NRS 34.330. Prohibition is the proper "remedy for the prevention of improper discovery," *Wardleigh*, 111 Nev. at 350, 891 P.2d at 1183, because discovery orders are not immediately appealable and the affected party does not have a plain, speedy, or adequate remedy at law to prevent disclosure. *Id*.

This is especially true for a district court order, like the one here, that "requires disclosure of privileged information." *Club Vista Fin. Servs., LLC*

v. Eighth Judicial Dist. Ct., 128 Nev. ___, 276 P.3d 246, 249 (2012). "If improper discovery were allowed" in such a case, "the assertedly privileged information would irretrievably lose its confidential and privileged quality and petitioners would have no effective remedy, even by a later appeal." *Id*. (quoting *Wardleigh*, 111 Nev. at 350-51, 891 P.2d at 1183-84). In this case, the district court ordered the *en masse* release of thousands of privileged documents, without evaluating the merits of defendants' privilege claims for any of those documents. Appeal in the normal course "would not effectively remedy" the massive and "improper disclosure of" privileged information that the district court has directed. *Id*.

Over and above the imminent threat of irreparable harm, "the consideration of an extraordinary writ" is also justified here because "an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction.'" *Sonia F. v. Eighth Judicial Dist. Ct.*, 125 Nev. 495, 498, 215 P.3d 705, 707 (2009) (citation omitted). It is clear that the attorney-client privilege belongs to the client, and that a corporation that obtains legal advice is the client. The district court itself acknowledged that "any privilege related to these documents in fact belongs to the Defendants." PA3027. This is mainstream law that should apply in Nevada. *Weintraub*, 471 U.S. at 348.

Yet notwithstanding these well-established principles, the district court held—with no supporting analysis or citations to case law—that a former executive is among a special "class of persons" having the legal right to inspect a corporation's privileged documents and then use those documents against the company in litigation. PA3182 ¶ 10. This Court has never considered, let alone endorsed, such a result, and it is directly contrary to the Supreme Court's decision in *Weintraub*.

In addition to its far-reaching implications for the attorney-client privilege, the district court's singular ruling, if allowed to stand, carries profound ramifications for corporate governance. A company's CEO has virtually limitless access to its most sensitive and privileged information. But with that power comes the equally weighty responsibility of being a fiduciary. Corporate officers must act in the best interests of the company, without regard to their own personal interests. Once terminated, their right to possess corporate property ends, but their fiduciary duties endure.

Under the district court's theory, however, a former officer is free to load the corporation's privileged documents into the digital equivalent of several semi-trucks upon his departure, and then haul those files away to use them against the company. The district court's ruling turns the concepts of fiduciary duty and loyalty upside down. Thus, in addition to preventing irreparable harm in this case, this Court's intervention will provide clarification on "an important issue of law" and serve broader "public policy" interests. *Sonia F.*, 125 Nev. at 498, 215 P.3d at 707.

B. The District Court's Order Adopts a Sweeping, and Unsupported, Exception to the Attorney-Client Privilege.

The district court held that plaintiff is a member of an undefined "class of persons" who can lawfully inspect (and use) defendants' privileged documents because (1) he previously had access to the documents during his period of employment; and (2) he continued to "possess" the documents after his termination. Neither theory has merit.

1. Plaintiff's Prior Access to Defendants' Privileged Documents Does Not Create a Right to Inspect or Use the Documents After His Termination.

The district court appeared to base its ruling primarily on the theory that plaintiff could legally inspect defendants' privileged documents (and use them against the company in litigation) because plaintiff had access to the documents during his tenure as SCL's CEO. This theory is contrary to settled principles of attorney-client privilege law.

It is beyond doubt that the attorney-client privilege belongs to the client. NRS 49.095 ("A client has a privilege to refuse to disclose, and to prevent any other person from disclosing" privileged communications). It is equally indisputable that when a corporation receives legal services, that corporation is the client. NRS 49.045 (defining "client" to "includ[e] a . . . corporation"); *Weintraub*, 471 U.S. at 348 ("It is by now well established, and undisputed by the parties to this case, that the attorney-client privilege attaches to corporations."). The district court did not disagree with this principle; on the contrary, it specifically acknowledged that "any privilege related to these documents in fact belongs to the Defendants." PA3027. Contrary to the district court's Order, this fact is not only relevant but dispositive. Because defendants hold the privilege, only they can decide if, when, and how their privileged documents may be used.

Plaintiff's status as the former CEO of SCL does not give him any "right of access" to defendants' privileged communications, even if he reviewed, created or received the communications during his tenure as CFO. If the corporation is the exclusive holder of the privilege (and the district court agreed that it is), the corporation has the *exclusive* right to decide whether to assert or waive the privilege with respect to privileged

documents. Consequently, a former executive has no "right of access" to such documents because he is no longer a part of the corporation.

Consistent with this logic, the Supreme Court in *Weintraub* explained that "for solvent corporations" – like the Petitioners here – "the power to waive the corporate attorney-client privilege rests with the corporation's management and is normally exercised by its officers and directors." 471 U.S. at 348. Thus, "when control of a corporation passes to new management, the authority to assert and waive the corporation's attorney-client privilege passes as well." *Id.* at 349. "Displaced managers may not assert the privilege over the wishes of current managers." *Id.* The Court made clear that this principle applies "even as to statements that the former [managers] might have made to counsel." *Id.* Based on that principle, the Court concluded that a former executive "who is now neither an officer nor a director . . . retains no control over the corporation's privilege." *Id*. at 349 n.5.

Similarly, the federal district court in Nevada held that a former officer "may not access" his former employer's "attorney-client privileged communications" in his lawsuit against his former employer. *Montgomery*, 548 F. Supp. 2d at 1187. The court found "very convincing" the Supreme Court's opinion in *Weintraub* (discussed above), "which states that the privilege belongs to the corporation, can be asserted or waived only by management, and that this power transfers when control of the corporation is transferred to new management." *Id.* Further, after a lengthy survey of case law (*id*. at 1183-87), the court concluded that the "line of cases" holding that "the corporation is the sole client" (and thus has exclusive power over the privilege) was "more persuasive" (*id.* at 1187). Finally, the court added, the former officer was "not suing on behalf of" the company "or in his

capacity as a former manager or officer," but was instead "suing to benefit himself individually," a position that did not "entitle him to [the company's] attorney-client privileged communications." *Id.* At the time of suit, he was "adverse" to the client – and even during his employment (when he had lawful "access to such documents") "he still would have been duty-bound to keep such information confidential." *Id.*

Contrary to the district court's view, it makes no difference that plaintiff is a former CEO of SCL or that he had access to the privileged documents while he was CEO. Because the privilege belongs exclusively to the corporation, a former executive has no control over a corporation's privileged communications. As noted earlier, the Supreme Court squarely held in *Weintraub* that "[d]isplaced managers may not assert the privilege over the wishes of current managers, even as to statements that the former [managers] might have made to counsel concerning matters within the scope of their corporate duties." 471 U.S. at 349.

Likewise, the Nevada federal court in *Montgomery* held that a former officer "may not access" his ex-employer's privileged documents, "even though [he] would have had access to such documents during his time [at the company]." 548 F. Supp. 2d at 1187. *See also Gilday v. Kenra, Ltd.*, No. 1:09-cv-229-TWP-TAB, 2010 WL 3928593, at *4 (S.D. Ind. Oct. 4, 2010) (corporation "may assert the attorney-client privilege against [former employee], even as to privileged documents she accessed during her employment"); *Davis v. PMA Cos.*, No. CIV-11-359-C, 2012 WL 3922967, at *6 (W.D. Okla. Sept. 7, 2012) (corporation's former president may not "access communications that he once authorized, received or otherwise

participated in while president" because after termination he "is not the client and has no right to access any privileged communications").[7]

All of these results make perfect sense. In each case – and in this one as well – the former officer made or obtained privileged communications while he was still employed by the company, in his capacity as a corporate officer. In that capacity, the officer is bound by a fiduciary duty to serve the company's interests, without regard to his or her own personal interests. Thus, "even though [plaintiff] would have had access" to privileged communications while he was employed, "he still would have been duty-bound to keep such information confidential." *Montgomery*, 548 F. Supp. 2d at 1187. But now, plaintiff "is suing to benefit himself individually." *Id.* That may be "a perfectly acceptable position, but" it is certainly "not one which should entitle him to [defendants'] attorney-client privileged communications." *Id.* It would be "paradoxical to allow a party to access information previously available to that individual only because

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[7] Other decisions reach the same result. *See*, *e.g.*, *Milroy v. Hanson*, 875 F. Supp. 646, 649-50 (D. Neb. 1995) ("A dissident director is by definition not 'management' and, accordingly, has no authority to pierce or otherwise frustrate the attorney-client privilege."); *Fitzpatrick v. Am. Int'l Group, Inc.*, 272 F.R.D. 100 (S.D.N.Y. 2010) (former CEO, who sued his ex-employer alleging he was terminated without cause, was not entitled to discovery of privileged documents); *Barr v. Harrah's Entm't, Inc.*, No. Civ. 05-5056JEI, 2008 WL 906351 (D.N.J. Mar. 31, 2008) (former CEO, who filed putative class action related to stock options, could not obtain in discovery documents he had access to while CEO); *In re Hechinger Inv. Co.*, 285 B.R. 601, 610 (D. Del. 2002) ("[T]hose managers displaced may not assert or waive the privilege over the desires of the current managers, including for statements that the former [managers] made to counsel"); *Dexia Credit Local v. Rogan*, 231 F.R.D. 268, 277 (N.D. Ill. 2004) ("[O]nce [former CEO's] control group status terminated, so too did his right of access to privileged documents of the corporation.").

of his or her role as a fiduciary once that party is adverse to the corporation." *Davis*, 2012 WL 3922967, at *6.

The Nevada privilege statutes compel the same conclusion. NRS 49.095 plainly authorizes the client to "prevent any other person from disclosing" confidential attorney-client communications. NRS 49.115 lists the exceptions to the privilege, but it does not contain any exception for former employees who happen to make, receive, or otherwise obtain access to privileged communications. There is no basis for the district court's attempt to create such an exception here.

2. Plaintiff's Possession of Defendants' Privileged Documents After His Termination Does Not Create A Right to Inspect or Use the Documents in Litigation.

Because there is no exception to privilege for documents created or obtained by a former officer, plaintiff and the district court tried shifting to avoid the issue of privilege entirely. Thus, the June 19 Order states that it "does not need to address . . . whether any of the particular documents identified by the Defendants are subject to some privilege" or "whether Jacobs has the power to assert or waive any particular privileges that may belong to the Defendants." PA3182 ¶ 10. The Order states that "[t]he documents at issue are all presently within [Jacobs'] possession, custody and control" and deems the assertion of privilege irrelevant in considering whether "to allow Jacobs' counsel to access these documents" or to allow Jacobs and his attorneys to "use them in the prosecution of his claims." *Id*.

Contrary to the district court's view, an adverse party's possession of privileged documents does not make the issue of privilege go away. As holders of the privilege, defendants have the right to prevent Jacobs from using those communications against them or from disclosing those

communications to his lawyers, to the district court, or to anyone else. NRS 49.095 gives defendants the absolute "privilege to refuse to disclose" their privileged communications *and* "to prevent *any other person* from disclosing" those communications.

Gaining possession of privileged documents does not give an adverse party any right to disclose them further or to use them in litigation against the privilege holder. To the contrary, if a party receives privileged documents that were inadvertently produced, Model Rules of Prof'l Conduct R. 4.4(b) requires the receiving party's counsel to "promptly notify the sender." Indeed, this Court has recognized that an attorney who receives the other side's privileged documents "must promptly notify opposing counsel," even if the documents were received from an anonymous source or a third party unrelated to the litigation. *Merits Incentives, LLC v. Eight Judicial Dist. Ct.*, 127 Nev. ___, 262 P.3d 720, 725 (2011). These duties apply with even more force when an attorney receives an adverse party's confidential documents from his or her client. *Id*. at 724-25. Moreover, "a party whose privileged information has been obtained by the opposing party" may "seek[] the return of that information" from its opponent and then seek "relief from the district court" if the opponent refuses. *Id*. at 725 n.7. The June 19 Order's refusal even to confront the issue of privilege is flatly contrary to the statute and to this Court's holdings.

Whether or not plaintiff properly obtained the privileged documents while he was employed as CEO of SCL makes no difference.[8] As discussed

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[8] Defendants believe that plaintiff downloaded much of the data in anticipation of his termination, in order to take it with him when he left. To the extent that was the case, the documents would not have come to his

above, now that plaintiff has been terminated, he no longer has any authority over privileges that belong to SCL and LVSC. When plaintiff obtained the documents, he was under a fiduciary duty to act in the company's best interests. Now that he has been terminated and is pursuing a lawsuit *against* the company, he has no right to use those privileged documents against defendants (who are the only rightful holders of the privilege) or to disclose them to his attorneys. *See In re Marketing Investors Corp.*, 80 S.W.3d 44, 50 (Tex. App. 1998) ("We conclude the attorney-client privilege applies against" terminated executive notwithstanding his "possession of the Corporate documents"); *Gilday*, 2010 WL 3928593, at *1, *4 (corporation "may assert the attorney-client privilege against [former employee], even as to privileged documents she accessed during her employment," and even though former employee "copied several documents" and took them prior to termination). The employee's possession of privileged documents cannot make a difference: otherwise, terminated employees would have the perverse incentive to take masses of privileged documents with them as they leave the building.

Equally baseless is the district court's reference (PA3181 ¶ 6) to a prior order, entered September 14, 2012, that sanctioned defendants by precluding them, for purposes of jurisdictional discovery and the evidentiary hearing on jurisdiction (now scheduled to begin on July 16, 2013), "from contesting that Jacobs ESI . . . is not rightfully in his possession" (PA770I). The question here is not whether the ESI is rightfully in Jacobs' possession, but whether he may now disclose defendants' *privileged* documents to his attorneys and then use the documents against

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attention in the ordinary course of his employment. He had no right to access the documents or take them with him.

defendants in the underlying lawsuit. While the September 14, 2012 sanctions order settles the admissibility issue with respect to the *non-privileged* documents that Jacobs took with him, for purposes of the evidentiary hearing on jurisdiction, it has no relevance to whether defendants can object to plaintiff's dissemination or use of documents on privilege grounds.

Indeed, the September 14, 2012 order makes that very point clear: far from foreclosing or resolving claims of privilege, the order expressly *preserves* them. It squarely states that "[t]his [sanction] *does not prevent* the Defendants from raising any other appropriate objection *or privilege*." PA770I n.13 (emphasis added). Given the order's express preservation of privilege, it was manifestly improper for the district court to subsequently bootstrap that order into a basis for disregarding privilege.[9]

Finally, the June 19 Order is fundamentally inconsistent with the purpose of the privilege: "to encourage full and frank communication between attorneys and their clients," without fear that the communication might someday be turned against them. *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). To serve that purpose, the U.S. Supreme Court held that the privilege extends beyond the narrow "control group" to encompass an attorney's communications with middle and lower-level employees. *Id.* at 390-93. As the Court explained, the restricted control-group test would

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[9] The district court entered the September 14 order as a discovery sanction after defendants voluntarily disclosed in 2010 that they had transferred a copy of the ESI for which Jacobs was the custodian from Macau to Las Vegas; the district court decided that defendants should have disclosed the transfer sooner. A subsequent order entered on March 27, 2013 that purports to interpret the September 14 order is the subject of a separate Petition, No. 62944, which this Court has accepted. The June 19 Order here represents another improper expansion of the September 14, 2012 order.

"frustrate[] the very purpose of the privilege by discouraging the communication of relevant information": employees outside the control group are likely to "have the relevant information needed by corporate counsel" and they are also likely to be the ones who "will put into effect" the lawyer's advice. *Id*. at 391-92.

This Court has "approve[d] the test announced in *Upjohn*." *Wardleigh*, 111 Nev. at 352. But the district court's theory is fundamentally opposed to that framework. Under the June 19 Order, any employee who communicated with a lawyer – *and* any other employee who happens to get his or her hands on a copy of that communication – would be able to use that privileged communication against the company. Thus, widening the circle of attorney-client communication would *increase* the company's risk and increase the number of people who might take privileged communications with them when they depart and later use those communications against the company. If that were the case, companies would not encourage their employees to communicate with company attorneys in the first place. As the court held in *Dexia*, allowing former employees to use the company's privileged documents "would undermine the privilege" and "chill the willingness of control group members to speak candidly on paper (or these days, in electronic media) about privileged matters, knowing that some day one of their number may leave the control group and become adverse (whether through litigation or business activity) to the corporation." 231 F.R.D. at 277. *See also Gilday*, 2010 WL 3928593, at *4 ("These rationales [for upholding privilege] are sound, particularly given the revolving door that is a mainstay of today's corporate employment setting.").

3. The Law Recognizes No "Sphere Of Persons" Having a Legal Right to Inspect or Use a Corporation's Privileged Documents.

After discarding the dispositive issue of privilege, the district court turned to an irrelevant question, advanced by plaintiff in his reply brief: whether plaintiff falls within an undefined "class" or "sphere of persons" who purportedly have a legal right to review and use defendants' privileged documents. PA3182, ¶¶ 10, 12. The court then held that plaintiff fell within this special "sphere of persons." PA3182 ¶ 12. In so doing, the court committed two fundamental errors.

First, the court posed the wrong question. Under Nevada law there is no "sphere of persons" – other than the client itself – that has any authority to disclose or use privileged documents. By its plain terms, NRS 49.095 gives the client the privilege "to prevent *any other person* from disclosing" privileged communications. No person or class of persons is exempt from the statutory command. Likewise, neither the June 19 Order, nor the plaintiff's briefs below, cited any Nevada case law exempting any class of persons from the statutory privilege. Where (as here) privilege is asserted, the only proper inquiries are the ones the district court avoided: (i) whether the communication satisfies the statutory elements for protection; (ii) whether one of the statutory exceptions in NRS 49.115 applies; and (iii) whether *the client* waived the privilege.

Lacking any basis in Nevada law for his "special class" theory, plaintiff tried to manufacture support from out-of-state case law. PA819-20, PA2963-65. None of those cases supports the district court's June 19 Order. Most of them arose in the wholly unrelated context in which a former in-house attorney sues his client in a dispute about the attorney's

advice.[10] Such attorney-client disputes are inapposite. They are the subject of a special exception to privilege that is expressly limited to disputes between attorney and client. *Willy*, 423 F.3d at 496 (citing exception for attorney-client disputes under model rules); NRS 49.115(3) (Nevada privilege exception limited to "a communication relevant to an issue of breach of duty by the lawyer to his or her client or by the client to his or her lawyer"). That separate exception has no bearing here. Plaintiff is not an attorney and this case is not an attorney-client dispute.

Plaintiff's other citations are equally off base. *People v. Greenberg*, 851 N.Y.S.2d 196 (Ct. App. 2008) did not involve a former officer's suit against the corporation; in fact, the former officers and the company were aligned. *Greenberg* dealt with the right of two former directors to view privileged memoranda in defending against a suit by the New York Attorney General, who was also suing the company. *Id*. at 198. The "[m]ost significant" factor in the *Greenberg* decision was that the company had already waived its privilege claims by voluntarily producing virtually all of the documents to the SEC. *Id*. at 202. Further, the court relied on New York law giving former directors a qualified right to inspect corporate documents generated during their tenure. *Id*. at 199. None of these case-specific facts is presented here: plaintiff is obviously not aligned with the corporate clients

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[10] *See Willy v. Admin. Review Bd*., 423 F.3d 483 (5th Cir. 2005); *Kachmar v. SunGard Data Sys., Inc.* 109 F.3d 173 (3d Cir. 1997); *Van Asdale v. Int'l Game Tech*., 577 F.3d 989 (9th Cir. 2009); *Fox Searchlight Pictures, Inc. v. Paladino*, 106 Cal. Rptr. 2d 906 (Ct. App. 2001). *Kachmar* and *Van Asdale* do not even address discovery, much less order the disclosure of privileged communications. They simply hold, at the pleadings stage, that a former attorney may bring a whistleblower suit, notwithstanding the possibility that attorney-client confidences might later be implicated.

but adverse to them, he is not a former director, and defendants have not waived their privilege claims.

In re Braniff Insolvency Litig., 153 B.R. 941 (M.D. Fla. 1993) is also inapposite; indeed, it involves a context that is the polar opposite of the situation here. In *Braniff*, former officers and directors were *defendants* in a suit brought by the company (which was then in bankruptcy). *Id*. at 942 & n.1. Plainly, *Braniff* does not address the situation presented here, in which the roles are reversed and a former officer seeks to use privileged documents offensively, as a plaintiff. In the context presented here, the weight of federal authority holds that a displaced officer has no right to access, disclose or use the company's privileged communications. As discussed above, that conclusion stems from the Supreme Court's decision in *Weintraub*, the officer's fiduciary duty of loyalty, and the public policy of encouraging candid communication between the corporate client and its attorney. *Braniff* arose in a context opposite from the one at bar, and the court's opinion does not mention *Weintraub*, does not address the concept of fiduciary duty, and does not discuss the policies served by the privilege.

4. Plaintiff May Not Disclose or Use Defendants' Privileged Documents.

As the preceding section shows, the district court asked the wrong question – whether plaintiff belongs to a privilege-exempt "class of persons" when no such class exists under Nevada law. The district court then gave the wrong answer when it decided that plaintiff was entitled to disclose defendants' privileged documents to his attorneys and use those documents in litigation.

The district court reached that erroneous conclusion by shifting the burden to defendants to *disprove* plaintiff's assertion that he belonged in a

special "class" and then stating that defendants "failed to sustain" that burden. PA3182 ¶¶ 11, 13. Requiring defendants to prove the negative –or to exclude plaintiff from a "class of persons" when no such class exists under Nevada law in the first place – is manifestly improper. As demonstrated above, NRS 49.095 gives the corporate client an absolute privilege against the disclosure of privileged communications by "*any other person*" and plaintiff's status as a former officer of one defendant does not give him any rights to defendants' privileged documents. Defendants bear the burden of establishing *privilege*, but the district court did not evaluate their claims on the merits and indeed "assum[ed] . . . that Defendants had valid claims of privilege to assert." PA3182 ¶¶ 11, 13.

The district court's suggestion that the documents might "relate to the claims, defenses or counterclaims asserted in this action" makes no difference. At the outset, there is no record basis for such a finding. The district court ordered the wholesale release of thousands of privileged documents *without looking at any of them*. The court made *no attempt* to assess whether any document was even relevant to the "claims, defenses or counterclaims asserted in this action." And it strains credulity to suggest that every one of the nearly 11,000 documents is somehow relevant to the issues in this case.

Nor did the court make any finding that any of the privileged documents is relevant to the question of personal jurisdiction, the only issue properly before the district court in light of this Court's August 2011 Order. Plaintiff did not show that any of the privileged documents (let alone all of them) were relevant to jurisdiction; instead, his brief below argued they would be relevant to the merits. The district court's statement

that plaintiff could use the documents "in the prosecution of his claims" (PA3182 ¶ 10) reinforces the lack of any connection to jurisdiction.

More fundamentally, though, the statutory attorney-client privilege is not qualified but "absolute," and it does not permit courts to perform any "balance between a public interest [in nondisclosure] and the need for relevant evidence in civil litigation." *State ex rel. Tidvall v. Eighth Judicial Dist. Ct.*, 91 Nev. 520, 525, 539 P.2d 456, 459 (1975) (construing identical language of governmental privilege in NRS 49.025). The attorney-client privilege "cannot be overcome by a showing of need." *Admiral Ins. Co. v. U.S. Dist. Ct.*, 881 F.2d 1486, 1494 (9th Cir. 1989) (quoting Saltzburg, *Corporate and Related Attorney-Client Privilege: A Suggested Approach*, 12 Hofstra L. Rev. 279, 299 (1984). A rule that exposes privileged communications to the client's adversary for use in litigation based on claims of relevance "would destroy the privilege or render it so tenuous and uncertain that it would be 'little better than no privilege at all.'" *Id*. at 1495 (quoting *Upjohn*, 449 U.S. at 393). Because "the attorney-client privilege" is "an absolute privilege, once the court determines that the matter sought falls within the scope of the privilege, it cannot order the matter disclosed unless it fits within some exception to the privilege." Wright, Graham, Gold & Graham, *Federal Practice & Procedure*, § 5690. The June 19 Order is based on the district court's improper evasion of the only inquiries that the statutory privilege permits.

C. The Protective Order in the Underlying Litigation Does Not Permit the District Court to Order the Release of Defendants' Privileged Communications to their Adversary.

The June 19 Order also errs in assuming that the district court is free to disregard defendants' rights and turn their privileged documents over to plaintiff and his attorneys for use in the litigation, simply because a

protective order prevents them from using or disclosing the documents outside the litigation. PA3182¶ 14. The existence of a protective order does not allow the district court to disregard defendants' privileges.

The protective order prevents parties from disclosing confidential information to outsiders, or using that information outside this litigation. But that is not the protection that the attorney-client privilege demands. The court-ordered disclosure of defendants' privileged documents to defendants' adversary, and that adversary's use of those documents *within* the underlying litigation, would be patent violations of the privilege, and would wreak irreparable harm on defendants. *See Chase Manhattan Bank, N.A. v. Turner & Newall, PLC*, 964 F.2d 159 (2d Cir. 1992) (granting writ of mandamus and vacating discovery order that allowed opposing counsel to review privileged documents, even though review was governed by an "attorneys'-eyes-only" protective order); *In re Dow Corning Corp.*, 261 F.3d 280, 286 (2d Cir. 2001) (remanding discovery order that had compelled disclosure of privileged documents and deposition of attorney pursuant to protective order, and admonishing trial court that "a protective order will not adequately safeguard the privilege holder's interests such that the attorney-client privilege may be neglected").

In *Chase Manhattan*, as in the present case, the defendant asserted privilege as to "thousands of documents" and the plaintiff challenged that assertion. 964 F.2d at 160-61. Instead of resolving the privilege issue *before* disclosure, the district court ordered the defendant to produce the documents for review by plaintiff's counsel under an attorneys'-eyes-only provision of the protective order. The appellate court granted a writ of mandamus and vacated the order. First, the court observed, "[o]ur research suggests that . . . such a procedure is, but for one precedent, non-

existent" – and that one precedent was an "unreported decision by a district court in another circuit" with "no reasoning" and "no precedential value." *Id*. at 164, 165.

Second, the court recognized that disclosure would create irreparable harm even if the communications were "later deemed to be privileged" and thus "inadmissible at trial." *Id*. at 165. As the court explained, "[t]he attorney-client privilege prohibits disclosure to adversaries as well as the use of confidential communications as evidence at trial." *Id*. at 164. Therefore, "[i]f opposing counsel is allowed access to information arguably protected by the privilege before an adjudication as to whether the privilege applies, a pertinent aspect of confidentiality will be lost" whether or not the documents are admitted or excluded at trial. *Id*. at 165.

Third, the court found that the attorneys'-eyes-only review permitted by the trial court under the terms of a protective order was still a violation of privilege. Indeed, as the court noted, "a litigant claiming the privilege would probably prefer almost anyone other than adversary counsel to review the documents in question." *Id*. at 164. "The attorneys'-eyes-only condition" of the protective order did not support disclosure, because it "allows one kind of critical disclosure – to opposing counsel in litigation – that the privilege was designed to prevent." *Id*.

Similarly, the appellate court in *Dow Corning* held that "a protective order purportedly designed to safeguard Dow Corning's privileges and prevent further dissemination" did not support the disclosure of privileged documents. 261 F.3d at 282-83. As the court held, the "compelled disclosure of privileged attorney-client communications, absent waiver or an applicable exception, is contrary to well established precedent." *Id*. at 284. As in *Chase Manhattan*, the court "found no authority . . . that holds

that imposition of a protective order like the one issued by the district court permits a court to order disclosure of privileged attorney-client communications." *Id*. "The absence of authority no doubt stems from the common sense observation that such a protective order is an inadequate surrogate for the privilege." *Id*. Accordingly, the appellate court remanded the matter to the trial court for an evaluation of the privilege asserted – with the stern admonition "that relevance without more does not override the privilege, and that a protective order will not adequately safeguard the privilege holder's interests such that the attorney-client privilege may be neglected." *Id*. at 286.

V. CONCLUSION

Petitioners respectfully request that this Court exercise its discretion to entertain this Petition and grant Petitioners emergency relief by July 5, 2013, either by granting the Petition or by staying the effect of the district court's June 19 Order pending consideration of the Petition. Petitioners further request that the Court grant the Petition by: (1) clarifying that a corporation's former CEO has no right to use privileged communications of the corporation and its affiliates in a suit against those companies; and (2) directing the district court to set aside its erroneous Order.

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NRAP 27(E) CERTIFICATE OF NEED FOR EMERGENCY RELIEF

I, Steve Morris, declare:

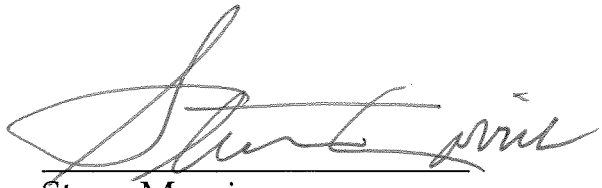
1. I am a lawyer with Morris Law Group, counsel of record for CityCenter.

2. I certify that the relief requested in this Petition is needed on an emergency basis. Unless the district court's order is reversed, Petitioners will suffer immediate and irreparable harm and their privileges will be impaired.

3. As explained in this Petition, urgency of immediate review is present because the district court's order requires a third-party vendor to release petitioners' privileged documents on July 5, 2013. Petitioners intend to promptly seek a stay from the district court pending this Court's review of the Petition and will advise the Court immediately of the outcome.

4. The contact information (including telephone numbers) for the other attorneys in this case is as follows: James J. Pisanelli, Todd Bice, Debra Spinelli, Pisanelli Bice, 3883 Howard Hughes Parkway, Suite 800, Las Vegas, Nevada 89169, (702) 214-2100. Opposing counsel were notified that Petitioners would be challenging the district court's order by writ, and have been e-served with a copy of this Petition concurrently with its submission to this Court.

I declare the foregoing under penalty of perjury under the laws of the State of Nevada.



Steve Morris

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this **EMERGENCY PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIVILEGED DOCUMENTS**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Nev. R. App. P. 28(e), which requires every section of the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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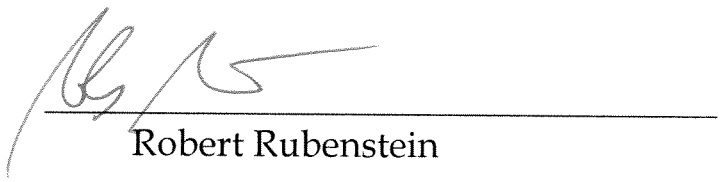
Attorneys for Petitioners

VERIFICATION

1. I, Robert Rubenstein, declare:
2. I am Vice President and Global Deputy General Counsel at Las Vegas Sands Corp., one of the Petitioners herein;
3. I verify that I have read the foregoing **EMERGENCY PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIVILEGED DOCUMENTS**; that the same is true of my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true.

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

Executed on this 20th day of June 2013 in Las Vegas, Nevada, U.S.A.



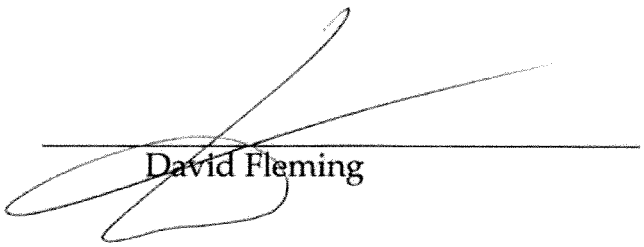
Robert Rubenstein

VERIFICATION

1. I, David Fleming, declare:
2. I am the General Counsel and Company Secretary at Sands China, Ltd., one of the Petitioners herein;
3. I verify that I have read the foregoing **EMERGENCY PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIVILEGED DOCUMENTS**; that the same is true of my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true.

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

Executed on this 20th day of June 2013 in London, England.



David Fleming

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 **REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE MARCH 27, 2013 ORDER** to be hand delivered, in a sealed envelope, on the date and to the addressee(s) shown below:

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

Respondent
James J. Pisanelli
Todd L. Bice
Debra Spinelli
Pisanelli Bice
3883 Howard Hughes Parkway, Suite 800
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Attorneys for Steven C. Jacobs, Real Party in Interest

DATED this 21st day of June, 2013.

By: /s/ PATRICIA FERRUGIA