

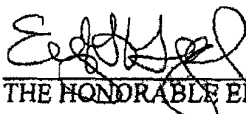
1 THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

2 1. The Motion to Return Remaining Documents from Advanced Discovery is
3 GRANTED. When this Order becomes effective, Advanced Discovery shall release to Jacobs
4 and his counsel all documents contained on the various electronic storage devices received by
5 Advanced Discovery from Jacobs on or about May 18, 2012, and that have otherwise not been
6 previously released to Jacobs and his counsel.

7 2. Those documents listed on the Defendants' privilege log dated November 30,
8 2012, shall be treated as confidential under the Stipulated Confidentiality Agreement and
9 Protective Order entered on March 22, 2012 until further order from this Court.

10 3. This Order shall become effective ten (10) days from the date of its notice of
11 entry.

12 DATED: 18 June 2013

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14 
15 THE HONORABLE ELIZABETH GONZALEZ,
16 EIGHTH JUDICIAL DISTRICT COURT
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, I mailed a copy of the ORDER ON PLAINTIFF STEVEN C. JACOBS' MOTION TO RETURN REMAINING DOCUMENTS FROM ADVANCED DISCOVERY, or placed a copy in the attorney's folder, to:

Todd L. Bice, Esq. (Pisanelli Bice)
Attorney for Plaintiff

J. Randall Jones, Esq. (Kemp Jones & Coulthard)
Attorney for Defendant Sands China Ltd.

J. Stephen Peek, Esq. (Holland & Hart)
Attorney for Defendants

Maximilien D. Fetaz

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1 10. Prior to accepting the position of CEO of VML, in or about May 2009, Jacobs
2 was asked to perform consulting work for VML.

3 11. In connection with this work, Jacobs executed an Agreement for Services with
4 VML governing his employment relationship. The Agreement for Services states as follows:

5 CONFIDENTIALITY AND OWNERSHIP OF WORKS. The
6 Consultant agrees that neither it nor any of its employees, either during or
7 after this Agreement, shall disclose or communicate to any third party any
8 information about the Company's policies, prices, systems, methods of
9 operation, contractual agreements or other proprietary matters concerning
10 the Company's business or affairs, except to the extent necessary in the
11 ordinary course of performing the Consultant's Services. Upon
12 termination of this Agreement for any reason, all papers and documents in
13 the Consultant's possession or under its control belonging to the
14 Company, must be returned to the Company.

15 12. A copy of the Agreement for Services is attached hereto as Exhibit B.

16 13. As CEO of VML, Jacobs expected that all employees abide by company policies,
17 including the Confidential Company Information Policy.

18 14. In fact, Jacobs terminated at least one employee for failing to comply with the
19 Confidential Company Information Policy.

20 15. Following Jacobs' own termination, Jacobs failed to return company documents
21 to SCL or VML as required.

22 I declare under penalty of perjury that the foregoing is true and correct.

23 DATED this 26 day of August, 2011.

24 
25 AMY LEE

EXHIBIT E

AGREEMENT FOR SERVICES
("Agreement")

- by and between -

Venetian Macau Limited
("the Company")

- and -

Jacobs, Steve
("Consultant")

AGREEMENT FOR SERVICES

THIS AGREEMENT FOR SERVICES ("Agreement") by and between Venetian Macau Limited ("the Company") and Jacobs, Steve (the "Consultant").

WITNESSETH:

WHEREAS, the Company is a corporation duly organized and existing under the laws of Macau (SAR), and maintains its registered address at Estrada da Baía de N. Senhora da Esperança, w/n, Executive Office, The Cotai Strip™, Taipa, Macau SAR, P.R. China, and the Company is engaged in the business of developing, designing, constructing, equipping, staffing, owning and operating legalized casino(s) in Macau SAR;

WHEREAS, the Consultant represents and warrants to the Company that has the requisite knowledge, ability and experience to assist the Company on senior management issues.

NOW, THEREFORE, for and in consideration of the foregoing recitals and the mutual promises, representations, understandings, undertaking and agreements hereinafter set forth, the Company and the Consultant hereby covenant and agree as follows:

1. **CONSULTANT SCOPE OF WORK.** During the Term of this Agreement, the Company retains the Consultant to perform, and the Consultant agrees to perform on behalf of the Company, certain consulting and services for the Company's, liaise with all aspects related to senior management issues and other assignments that can be appointed by President and Chief Operating Officer of the parent company, subject to change at the Company's discretion.

2. **COMPENSATION TO CONSULTANT.** For and in complete consideration of the Consultant's full and faithful observance of all of the Consultant's duties under this Agreement, the Company shall pay to the Consultant, and the Consultant shall accept from the Company the professional fee of MOP 28,814.25 per day. The Company will withhold the relevant tax according to the Macau Tax Laws. The Company shall reimbursement of all out of pocket expenses incurred by the consultant and approved by the company.

3. **TERM.** This Agreement shall commence on May 1st, 2009 and shall continue in full force and effect until the Consultant's Services are completed; provided however, the Company may terminate this Agreement at any time, without cause, upon the giving of one (1) week advance notice to the Consultant, by letter or telephone or e-mail. The Consultant will not be allowed to work more than 48 working days in Macau during the period of 6 months.

The Company may opt to hire the Consultant as an employee after termination of the present agreement.

4. **INDEPENDENT CONSULTANT.** The Company and the Consultant hereby covenant and agree that the Consultant shall furnish the Consultant's Services pursuant to this Agreement solely as an independent Consultant and not as an employee or agent of the Company; it is specifically agreed that the Consultant and the Company shall not be deemed to have a relationship other than as an independent Consultant. The Consultant shall have no power or authority to bind the Company to any contract or agreement. All purchase orders and supply contracts shall be executed directly between the Company and the third party vendor.

5. **BUSINESS CONDUCT.** The Consultant acknowledges that the Company's policy is to conduct its business pursuant to high ethical standards. The Consultant agrees that during the performance of the Consultant's Services it shall at all times comply with high standards of professional and ethical business conduct.

6. **CONFIDENTIALITY AND OWNERSHIP OF WORKS.** The Consultant agrees that neither it nor any of its employees, either during or after this Agreement, shall disclose or communicate to any third party any information about the Company's policies, prices, systems, methods of operation, contractual agreements or other proprietary matters concerning the Company's business or affairs, except to the extent necessary in the ordinary course of performing the Consultant's Services. Upon termination of this Agreement for any reason, all papers and documents in the Consultant's possession or under its control belonging to the Company, must be returned to the Company.

7. **ASSIGNMENT.** Neither this Agreement nor any rights or obligations hereunder may be assigned, delegated, or otherwise transferred by the Consultant in whole or in part without the prior written consent of the Company, which consent may be unreasonably withheld, nor shall this Agreement inure to the benefit of any trustee in bankruptcy, receiver, or other successor of the Consultant whether by operation of law or otherwise without such consent. Any attempt so to assign, delegate, or transfer this Agreement or any rights or obligations hereunder without such consent shall be null and void and of no force and effect.

8. **WAIVER.** The Company's failure to enforce or delay in enforcement of any provision hereof or any right hereunder shall not be construed as a waiver of such provision or right. The Company's exercise of any right hereunder shall not preclude or prejudice the exercise thereafter of the same or any other right.

9. **SEVERABILITY.** If any term, provision, covenant, or condition of this Agreement, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void, or unenforceable, all provisions, covenants and conditions of this Agreement, and all applications thereof, not held invalid, void, or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

10. **GOVERNING LAW & MISCELLANEOUS PROVISIONS.**

(a) This Agreement is the complete, entire, and exclusive statement of the contract terms between the parties.

(b) This Agreement supersedes any prior understandings, agreements or undertakings between the parties.

(c) This Agreement shall be governed by and interpreted in accordance with the laws of Macau (SAR).

(d) The parties agree to the exclusive jurisdiction of the courts of Macau (SAR) for any legal proceedings related to this Agreement.

(e) The parties agree that the controlling language of this Agreement shall be English. Each party fully understands this Agreement as written in the controlling language of English. If required by the courts of Macau (SAR), the parties agree that the Company may at its option obtain either a Portuguese or Chinese translation of this Agreement.

(f) Each party warrants that it has full power and authority to execute and deliver this Agreement.

(g) No modification of or addition or amendment to this Agreement shall be binding unless agreed to in writing and signed by both the parties.

(h) The Consultant agrees to comply with all laws of Macau.

IN WITNESS WHEREOF, the Company and the Consultant have caused this Agreement to be executed and delivered as of the date and year first above written.

VENETIAN MACAU LIMITED

DATED: _____, 2009

By: 

CONSULTANT

DATED: _____, 2009

By: 

Venetian Macau Limited Agreement

Page 5 of 5

Jacobs, Steve

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

June 14, 2013

A-10-627691-B Steven Jacobs, Plaintiff(s)
vs.
Las Vegas Sands Corp, Defendant(s)

June 14, 2013 3:00 AM Status Check: Sur-Reply

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Dulce Romea

RECORDER:

PARTIES None.

PRESENT:

JOURNAL ENTRIES

- Court reviewed Sur-Reply filed on 06/12/13, and does not believe a change in the prior ruling made on 4/12/13 is appropriate. That ruling is modified as follows to provide further clarification of the Court's analysis.

The Court, having reviewed the motion for return of remaining documents from Advanced Discovery and all of the related briefing and being fully informed, GRANTS the motion as Jacobs was in a position and in fact had access to the documents at issue during the period of his employment. The Court by granting Jacobs and his counsel access to the documents at issue inherently recognizes that while Jacobs may use the documents for purposes of this litigation notes that Jacobs may not disseminate the information further than his counsel, as any privilege related to these documents in fact belongs to the Defendants. Accordingly the documents shall be treated as confidential under the existing protective order. No waiver of the existing attorney client privilege occurs as a result of Jacob's possession of the documents. No waiver of the existing attorney client privilege occurs as a result of these disclosures to Plaintiff's counsel. Court recognizes that currently competing orders have been submitted. The Court anticipates discussing these issues with the parties on Tuesday June 18, 2013 at 8:15 am.

6-18-13 8:15 AM STATUS CHECK

PRINT DATE: 06/14/2013

Page 1 of 2

Minutes Date: June 14, 2013

CLERK'S NOTE: A copy of the above minute order was distributed via electronic mail to: J. Stephen Peek, Esq. (Holland & Hart, LLP; speek@hollandhart.com); Robert Casstiy, Esq. (Holland & Hart, LLP; bcassity@hollandhart.com); Jon Randall Jones, Esq. (Kemp, Jones & Coulthard, LLP; r.jones@kempjones.com); Mark Merrill Jones, Esq. (Kemp, Jones & Coulthard, LLP; m.jones@kempjones.com); James Pisanelli, Esq. (Pisanelli Bice PLLC; jjp@pisanellibice.com); Todd Bice, Esq. (Pisanelli Bice PLLC; tlb@pisanellibice.com). / dr 6-14-13

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants
.....

CASE NO. A-627691

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

STATUS CHECK

TUESDAY, JUNE 18, 2013

APPEARANCES:

FOR THE PLAINTIFF:

TODD BICE, ESQ.
DEBRA SPINELLI, ESQ.
ERIC ALDREN, ESQ.

FOR THE DEFENDANTS:

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

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, TUESDAY, JUNE 18, 2013, 8:27 A.M.

2 (Court was called to order)

3 THE COURT: Does everybody want to state your
4 appearances, please.

5 MR. ALDREN: Eric Aldren on behalf of plaintiff
6 Steve Jacobs.

7 MS. SPINELLI: Debra Spinelli on behalf of Mr.
8 Jacobs.

9 MR. BICE: Todd Bice on behalf of Jacobs.

10 MR. RANDALL JONES: Randall Jones on behalf of Sands
11 China Limited.

12 MR. MARK JONES: And Mark Jones, Your Honor. Good
13 morning.

14 MR. PEEK: And Stephen Peek on behalf of Las Vegas
15 Sands and Sands China Limited, Your Honor. Good morning.

16 THE COURT: Okay. Good morning. You can sit down.

17 Thank you for coming in. One of the reasons that I
18 set this is I'm trying desperately to get you set -- case set
19 for the jurisdictional discovery hearing that the Nevada
20 Supreme Court ordered me to do in their writ of mandamus on
21 Case Number 58214. I am concerned, I think you guys know
22 that, because I've said it before, about the length of time
23 it's taken us to do this discovery. Now that we have resolved
24 the issue about Jacobs documents, and I will go ahead and sign
25 an order with modifications from what you guys have submitted,

1 how much more time do you need before I can set the hearing?

2 MR. BICE: Well, once you sign that, Your Honor --

3 THE COURT: You'll have it today.

4 MR. BICE: Okay. So once that is set we then,
5 however, still have the outstanding issue of the -- our motion
6 for sanctions under Rule 37.

7 THE COURT: But that has nothing to do with the
8 jurisdictional issue unless you're going to ask for an
9 evidentiary sanction.

10 MR. BICE: And that -- as you will recall, that
11 motion does ask for an evidentiary sanction, and it has been
12 effectively stayed by this Court granting them a stay --

13 THE COURT: On the Macanese production.

14 MR. BICE: -- to petition to the Nevada Supreme
15 Court. And that motion seeks two things. It seeks to strike
16 their affirmative defense of personal jurisdiction, number
17 one, to eliminate the need for any jurisdictional hearing,
18 and, alternatively, if the Court doesn't so strike, then we
19 have asked for a number of evidentiary sanctions that flow
20 from a result of the sort of long-standing noncompliance with
21 discovery over the course of about 24 months.

22 THE COURT: Assume for a minute that I don't vacate
23 the stay I've already imposed because of the issues pending in
24 the Nevada Supreme Court related to the Macau Data Privacy
25 Act.

1 MR. BICE: Yes.

2 THE COURT: Do you want to go forward with the
3 evidentiary hearing before the sanctions hearing completes?

4 MR. BICE: Well, it renders moot, obviously, our
5 sanctions hearing, and we believe that we are entitled to
6 those sanctions. If the Court is saying that it's not going
7 to impose any sanctions --

8 THE COURT: I didn't say that.

9 MR. BICE: Okay.

10 THE COURT: I said, Mr. Bice, assume I'm not going
11 to lift the stay I've already imposed because of the writ
12 related to the Macau Data Privacy Act that's pending in the
13 Nevada Supreme Court.

14 MR. BICE: Yes, sir.

15 THE COURT: Assume I'm not going to lift that stay.

16 MR. BICE: All right.

17 THE COURT: That means the evidentiary hearing on
18 the sanctions doesn't go forward. Do you still want to go
19 forward with your jurisdictional hearing, or do you want to
20 continue to wait on the Nevada Supreme Court?

21 MR. BICE: I would like to schedule the evidentiary
22 hearing.

23 THE COURT: Okay.

24 MR. BICE: I do not want to continue. I think as we
25 disclosed to you -- and I think we disclosed to you in our

1 status report we actually tried to get the Nevada Supreme
2 Court to --

3 THE COURT: I read your application to them.

4 MR. BICE: -- to lift the stay, and it was summarily
5 rejected by the clerk, saying we need to direct that to you.
6 We had a debate with the clerk, and the clerk, of course, won
7 that debate, as she often does. So, as a result, it is our
8 intention regardless of what you do today to submit that
9 motion to you. Now, whether or not that motion becomes moot
10 depending upon the timing of when you set the evidentiary
11 hearing, obviously we'll make adjustments accordingly and
12 reassess in light of whatever you direct us today in terms of
13 timing.

14 THE COURT: Okay. So do you really want me to delay
15 the evidentiary hearing any further, or do you want me to just
16 go ahead and set it?

17 MR. BICE: I think I would ask the Court to go ahead
18 and set it. That obviously presupposes, Your Honor, that we
19 obtain access to our client's documents, which has been the
20 subject of the other order that I understand --

21 THE COURT: Well, that order will get entered, and
22 then somebody's going to file -- they say they're going to
23 file an extraordinary writ.

24 MR. BICE: Right.

25 THE COURT: They're going to do that, then they're

1 going to ask me for a stay.

2 MR. BICE: Correct.

3 THE COURT: Then I'm going to decide. And if I stay
4 it, then we will have to vacate the jurisdictional hearing
5 because you can't go forward without having that information.

6 MR. BICE: That we believe is true.

7 THE COURT: So I understand that dynamic, but I'm
8 not there yet.

9 MR. BICE: Understood. Thank you, Your Honor.

10 THE COURT: I need to set the evidentiary hearing so
11 it looks like I'm at least trying to do what the Nevada
12 Supreme Court told me to do two and a half years ago.

13 MR. BICE: We understand that. Thank you, Your
14 Honor.

15 THE COURT: Mr. Jones. Welcome back.

16 MR. RANDALL JONES: Thank you, Your Honor.
17 Hopefully I'll make some sense. I'm still suffering a little
18 jet lag.

19 Your Honor, as you I'm sure saw in our joint status
20 report, we've indicated we're willing to go forward with the
21 evidentiary hearing now. And the only issues we had was that
22 there are a number of different theories that have been
23 proposed by the plaintiff with respect to jurisdiction over
24 Sands China. And we would simply like to have the Court
25 provide some kind of a briefing schedule prior to that hearing

1 whenever it's set. Obviously, whatever schedule the Court
2 thinks is appropriate, but we would like to get a statement
3 from the plaintiff as to what their jurisdictional theories
4 are that they want to move forward for for the hearing and a
5 short statement of a legal and factual basis for those legal
6 theories, and then give us an opportunity to file motions for
7 summary judgment with respect to any legal theories that we
8 think are susceptible to summary judgment so we can narrow the
9 issues. That's the only issue that we have. And, as we've
10 indicated in our report, while we would like to take the
11 deposition of Mr. Jacobs before the hearing, we understand
12 under the circumstances --

13 THE COURT: Keep going. I'm listening. I'm also
14 looking for a writing utensil.

15 MR. RANDALL JONES: No problem.

16 We understand under the circumstances that that's
17 not going to happen or it's not possible with the rulings of
18 the Court, so we just want to reserve our right to make sure
19 we can cross-examine Mr. Jacobs at the hearing and also call
20 him as a witness in our case if we think that's appropriate.

21 So really all we're saying is we'd just like a
22 briefing schedule so we can find out exactly what their
23 position is on jurisdiction and give us an opportunity to
24 narrow those issues before the hearing so that we can make the
25 hearing as efficient as possible.

1 THE COURT: Mr. Mark Jones, do you want to tell
2 anything to Mr. Randall Jones? It's my no double teaming rule
3 that requires a lot of counseling.

4 (Pause in the proceedings)

5 MR. RANDALL JONES: Your Honor, Mr. Mark Jones has
6 informed me that both sides, as I understand it, agreed to
7 supplement documents and witnesses before the evidentiary
8 hearing. So I assume that's something --

9 THE COURT: When before?

10 MR. RANDALL JONES: Pardon me?

11 THE COURT: How long before? Anybody.

12 MR. RANDALL JONES: I think that's really, again,
13 part of what we're asking the Court to do, is give us some
14 kind of a briefing schedule as to if you're going to set it,
15 when it's going to be set, when we would have to --

16 THE COURT: Hold on. Let me -- wait, wait. Let me
17 ask.

18 MR. MARK JONES: Your Honor, we had talked to Mr.
19 Bice about 60 to 45 days before the hearing, and Mr. Bice
20 replied that --

21 THE COURT: I'm not giving you that long before the
22 hearing. So here's the issue.

23 MR. MARK JONES: And that was then. And he said,
24 let's, then, subject to what we want the Court to decide.

25 MR. BICE: That's right. I am amenable -- as Mr.

1 Mark Jones and I have discussed, I'm amenable to doing a list
2 of witnesses and disclosures for the hearing. I'm not
3 agreeable to this briefing.

4 THE COURT: Lists I would require you to give in any
5 evidentiary hearing --

6 MR. BICE: Absolutely. Absolutely, Your Honor.

7 THE COURT: -- of the witnesses you intend to call
8 and the documents you intend to use.

9 MR. BICE: Right. Yes.

10 THE COURT: Okay. So that's a normal thing I do in
11 every evidentiary hearing.

12 MR. BICE: Correct. So -- now, this -- obviously,
13 if this was not in contemplation --

14 THE COURT: Let's let Mr. Randall Jones finish the
15 argument, since I interrupted with this supplemental issue,
16 which was whether it was discovery or something else was going
17 to confuse me. Okay.

18 MR. RANDALL JONES: I really have -- I have nothing
19 else to add, Your Honor. I just think that it would help you.
20 Obviously there's been a lot going on in this case for a long
21 time, and I think it would be helpful to the Court, it'd
22 certainly be helpful to us, to understand exactly what Mr.
23 Jacobs believes he has. We've seen now in his status report
24 an indication that he thinks, at least as I understand their
25 position, the fact that a decision was made with respect to

1 Mr. Jacobs's employment status in Las Vegas that's sufficient
2 under any circumstances to confer jurisdiction. We'd just
3 like to know exactly what their position is. We'd like to
4 brief those issues, and, if the Court feels it appropriate,
5 then make some legal rulings about some of those issues before
6 we go forward with an evidentiary hearing so we'll all be
7 better prepared to have the hearing and understand exactly
8 what the scope of the hearing is.

9 THE COURT: Okay. Thank you.

10 MR. RANDALL JONES: Thank you.

11 THE COURT: Now Mr. Bice.

12 MR. BICE: Your Honor, on the issue about witnesses
13 and documents, obviously that would be a standard directive
14 from you, and Mr. Jones and I are in agreement on that.

15 I think my -- well, I know my discussion with Mark
16 Jones was let's see what Judge Gonzalez has in mind in terms
17 of scheduling and then we will either pick or have you tell us
18 when you would like those disclosures to occur. Obviously
19 we're not viewing this as an opportunity to now identify new
20 witnesses that have not previously been disclosed and subject
21 to any form of examination, number one.

22 Number two, I disagree with Mr. Jones's position.
23 And again, I'm not attributing this to him or Mark Jones or
24 Mr. Peek, but, you know, Las Vegas Sands and its entities have
25 a pretty established track record of their way of doing

1 litigation is to make any plaintiff spend as much money as
2 possible to get to a trial. We have experienced that in a
3 number of cases, and this one is no exception. So to tell us
4 now that because new -- yet new counsel is on board they'd
5 like us to have to file more motions for their benefit I think
6 is unwarranted and unnecessary. We have briefed this issue of
7 our jurisdictional theories on countless occasions. They are
8 free to read them just like the Court has had to do, just like
9 we have had to do. If they want to file some form of motion
10 in limine at the time of this hearing claiming that certain
11 facts aren't admissible to prove a certain theory, have at it.
12 They're free to do so. But to tell us that -- to shift the
13 burden onto us yet again so that we can file yet another
14 motion to educate them yet again I think is unnecessary and
15 burdensome on us, Your Honor.

16 So we would ask -- I don't know what Her Honor has
17 in terms of timing. I can tell you that we could do an
18 evidentiary hearing in the month of September, and we could do
19 one in the month of November. I don't know -- but, again, I
20 don't know what your timing is.

21 THE COURT: My timing is July.

22 MR. BICE: Okay.

23 THE COURT: That would be next month.

24 MR. BICE: That'll be next month.

25 THE COURT: Yes.

1 MR. BICE: Okay.

2 THE COURT: But I need to ask some questions before

3 I make that determination --

4 MR. BICE: Understood.

5 THE COURT: -- which is why I'm trying to get

6 through your discussions about what you think scope issues and

7 what you have to do are so that I can try and see if what I'm

8 thinking of works.

9 MR. BICE: Understood. Thank you, Your Honor.

10 THE COURT: How many days do you believe such an

11 evidentiary hearing limited to jurisdictional issues only will

12 take, Mr. Bice?

13 MR. BICE: I would say three to four.

14 THE COURT: Three to four?

15 MR. BICE: Yes, sir -- or yes, ma'am.

16 THE COURT: Mr. Jones, how many days? Best

17 estimate.

18 MR. RANDALL JONES: I guess one of my first

19 questions is what is a day. Because --

20 THE COURT: A day for me is 10:30 to noon with a

21 break, and then 1:15 to 5:00.

22 MR. RANDALL JONES: Okay.

23 THE COURT: It's a week-long basically.

24 MR. RANDALL JONES: Yeah. So I would suspect, Your

25 Honor, we would probably figure six or seven to be

1 conservative.

2 THE COURT: Okay. Lucky for you I have six days in
3 a row. Well, there's a weekend in between.

4 MR. RANDALL JONES: And that's fine, Your Honor.
5 Six days in July?

6 THE COURT: Yes. The middle of July.

7 MR. RANDALL JONES: I have a trial next week that is
8 number one on the stack. It's a bench trial. It's in front
9 of Judge Sturman. It's anticipated to go into the following
10 week a little bit, and so it shouldn't be a major --

11 THE COURT: But you'll be done the first week of
12 July, maybe the second week of July?

13 MR. RANDALL JONES: I think the first week of July
14 is what everybody's anticipating. And barring any unforeseen
15 circumstances, that's what the court and counsel are
16 anticipating.

17 THE COURT: Okay.

18 MR. RANDALL JONES: So the only other point I would
19 make, Your Honor, is that -- and I don't want to belabor this,
20 but we -- I have read the briefs and I know what they've said
21 about jurisdiction, their theories. I've read them all, and
22 I --

23 THE COURT: Starting with the first one.

24 MR. RANDALL JONES: Starting with the first one,
25 exactly. And so I do think -- and I don't think that's overly

1 burdensome to have them clarify for us exactly what they want
2 to go forward -- what theories. If it's all theories, I think
3 we've got at least six that we've identified. That's fine. I
4 just want to be able to know what that is. And that's nothing
5 different than we would have certainly in a trial where we
6 have a pretrial order that says, here's what our legal
7 theories are, so we can then anticipate that and we can go
8 forward. And there may be some that are clearly as a matter
9 of law not tenable under any take on the facts as they
10 understand them. And so it makes -- it seems to me it makes
11 no sense -- they're the ones talking about this great expense.
12 If we have to drag out the evidentiary hearing on points that
13 are clearly not tenable under Nevada law, then that's an
14 expense that they're burdening the Court with and themselves
15 with that's unnecessary. So I don't see the great burden of
16 asking that we be allowed to at least address those issues
17 legally. I think it's appropriate, it makes sense, and it's
18 not burdensome and in fact will make the process more
19 efficient.

20 So with that, Your Honor, we would ask that we at
21 least be allowed to get those theories, what they are, and
22 then make the appropriate motion. The Court can decide that
23 it doesn't agree, but at least we'll have it.

24 THE COURT: Mr. Bice.

25 MR. BICE: We've made this disclosure on countless

1 occasions by way of motion, and we've -- in our statement to
2 the Court for this hearing we said that we intend to pursue
3 all of our available theories relative to personal
4 jurisdiction. So there isn't any confusion. This motion
5 isn't going to streamline anything. If they would like to
6 file their own motions, if there's certain theories they claim
7 are precluded as a matter of law, by all means they're free to
8 file their motions. But to try and shift the onus onto us is
9 what they're really trying to do.

10 THE COURT: Okay. Thank you.

11 (Pause in the proceedings)

12 THE COURT: All right. Gentlemen, I have six days
13 in a row for you. There is one caveat. On one of those days
14 I have committed to recruit pro bono lawyers at the firm of
15 Holland & Hart. I wouldn't expect Mr. Peek to make that
16 luncheon, but I'll make it.

17 MR. PEEK: Somebody would be happy to, you know, go
18 over there with you, Your Honor.

19 THE COURT: July 16, 17, 18, 19, 22, 23.

20 Mr. Kutinac, please do not book a Business Court
21 settlement conference on the 22nd.

22 MR. KUTINAC: I will block it in.

23 THE COURT: Okay.

24 MR. RANDALL JONES: Your Honor, could you say that
25 again. I'm a little slow today.

1 THE COURT: July 16 through 23rd, not including the
2 Saturday and Sunday.

3 MR. PEEK: Is the 16th a Tuesday?

4 THE COURT: A tuesday.

5 MR. PEEK: Thank you.

6 THE COURT: And we should be able to start at
7 10:00-ish on most days from my current calendar.

8 MR. RANDALL JONES: 10:00 on Wednesday?

9 THE COURT: 10:00 on Tuesday --

10 MR. RANDALL JONES: On Tuesday, the first --

11 THE COURT: -- the 16th. Looks like 10:00 on
12 Wednesday, 10:00-ish. So that depends. As soon as I finish
13 my other stuff I'm ready to start. Sometimes I finish early,
14 sometimes I finish later.

15 MR. PEEK: Since you have most of the long-winded
16 lawyers in that hearing --

17 THE COURT: It's really light. In the middle of
18 July nobody wants to be in Las Vegas. So I have that time
19 open for you. I knew you'd like that.

20 All right. So let's set a couple -- I've got four
21 deadlines that I want to negotiate with you, and they are the
22 following. And I will take -- yes?

23 MR. BICE: Your Honor, may I -- I think we can -- we
24 need to talk, and I'd like to be able to step out into the
25 hall and talk to Mr. Jacobs, because --

1 THE COURT: I will give you that minute as soon as I
2 give you the four categories of things I want you to tell me
3 the dates on.

4 MR. BICE: All right. And we also are going to --
5 there is another case that is in front of you that we may have
6 some issues with discovery on those dates, but we will address
7 that. But I think we can make those dates work.

8 THE COURT: I'm happy to have the Granite Gaming
9 discussion at our next scheduled status --

10 MR. BICE: It's not that. It's the Bright Source
11 matter, Your Honor, would be the --

12 THE COURT: Oh. Okay. All right. Well, that case
13 is going the last weeks of the year until the end of the year,
14 and it's finished.

15 MS. SPINELLI: We just keep postponing depositions.
16 Opposing counsel keeps saying that we're treating it like the
17 red-headed stepchild, so I just want to make sure --

18 THE COURT: I booked that trial in stone.
19 Apparently one wife has already told the husband she's taking
20 the time off, he doesn't get to. I don't know which husband
21 it is, but it's somebody at your firm.

22 Okay. Proposed findings of fact, conclusions of law
23 will be submitted prior to the hearing; a witness list
24 identifying the witnesses you intend to call and a general
25 statement of what you anticipate the witness to speak about;

1 the documents you intend to use in evidence at the hearing,
2 and a trial brief, which will not be blind but will be served
3 on the other side.

4 So I'm going to take a quick break from your case,
5 Mr. Bice, so you can go make whatever calls you want to. And
6 if the defendants' counsel need to make any calls about the
7 scheduling, please do.

8 MR. BICE: Thank you, Your Honor.

9 MR. PEEK: And, Your Honor, you didn't give us a
10 date when all that was due. Is that what we're waiting on?

11 THE COURT: I'm waiting on two things, Mr. Bice to
12 tell me that Mr. Jacobs won't be joining us, in which case
13 I'll have a different discussion with Mr. Bice, and then some
14 dates on what we're going to do for those four times. And I
15 am negotiable on the scheduling of those. I usually have them
16 two days before the hearing. I may want to do it more before
17 the hearing given the nature of this case.

18 MR. PEEK: Did I understand that Mr. Bice was going
19 to check if Mr. Jacobs will be available during those six
20 days? Is that what --

21 THE COURT: I believe that's what he's going to call
22 about.

23 MR. BICE: That's what I'm calling about.

24 MR. PEEK: And that's what we were talking about in
25 terms of wanting Mr. Jacobs here for the hearing because we

1 didn't get a chance to take his deposition.

2 THE COURT: I heard that part. I got that.

3 Okay. So if you guys would step back, I'll do the
4 other things that are on my calendar this morning.

5 (Court recessed at 8:48 a.m., until 9:18 a.m.)

6 THE COURT: All right. If we could go back to
7 Jacobs versus Sands.

8 MR. BICE: Thank you for the brief opportunity to
9 confer with my client, Your Honor. We will make those dates
10 work.

11 THE COURT: Okay. So let's talk about the order of
12 the disclosures of the four categories I've identified. And,
13 as Mr. Peek can tell you from prior experience in here, and I
14 think Mr. Bice has had to do it, too, I frequently require
15 proposed findings of fact and conclusions of law not only on
16 bench trials, but also for preliminary injunction and
17 evidentiary hearings so that you are forced to frame the
18 issues better before you stand up and start presenting your
19 case in front of me, and it makes my work as a judge easier so
20 that I can keep on top of my cases. Because otherwise I
21 forget and I'm not able to get decisions out in a timely way,
22 and this is the way that works for me. I'm sorry it's a
23 burden on you, but it's the only way I can make my very heavy
24 schedule work.

25 So I don't really need those findings of fact and

1 conclusions of law until a couple days before the hearing.
2 But if you think it will assist you in seeing each other's
3 ahead of the hearing, I'm happy to give that a little more
4 lead time.

5 MR. RANDALL JONES: Your Honor, you raised an issue
6 I wanted to raise with the Court anyway with respect to the
7 timing. Because -- again, from our perspective there have
8 been new things brought up in terms of their legal theories
9 about jurisdiction, and I don't understand Mr. Bice's position
10 that, no, they're not, but I certainly understand the original
11 order from the Supreme Court. There were two jurisdictional
12 arguments made, and there's certainly more than two now. So
13 what we would like, if the Court would agree, we think that
14 they have the burden and this would be appropriate, that they
15 file their proposed conclusions and findings at least -- we'd
16 like a week before we have to file ours so that we can again
17 see what their position is, and then we can appropriately
18 respond to it. And I would ask the Court to -- we're all on a
19 pretty short schedule here, but we think that would be an
20 appropriate thing to do under the circumstances.

21 THE COURT: Mr. Bice.

22 MR. BICE: Your Honor, again, this isn't a criticism
23 of Mr. Jones, but with every new counsel comes the argument
24 that they don't understand what has happened in this case.
25 And that's fine. That could be their position. But to now

1 say, well, we should be given yet another advantage by -- they
2 should assemble their findings of fact, their proposed
3 findings of fact and conclusions of law a week in advance so
4 that -- of our having to submit one, again, you know, it's a
5 desire to have this constantly unlevel playing field. Even
6 when you have preliminary injunction hearings, Your Honor, the
7 parties submit their competing orders, their competing
8 findings of fact, conclusions of law simultaneously. The
9 desire to now say, well, we'd like to get theirs first, well,
10 of course they would. Who wouldn't? I'd like to get theirs
11 first. But the fact is that those should be exchanged
12 simultaneously. We would propose that they be exchanged on
13 the 11th of July, which is the Thursday before, and we would
14 also propose that that be the same day for the trial brief.

15 THE COURT: What about the witness list and the
16 documents?

17 MR. BICE: We would propose the witness list and the
18 documents submitted on the 5th of July.

19 THE COURT: Okay.

20 MR. RANDALL JONES: Your Honor, first of all, it is
21 a criticism of me to say that we are new counsel and we don't
22 know what their positions are. We've seen all their
23 positions. Their positions change, and they have changed
24 repeatedly. Whether I was the attorney at the beginning of
25 this case and stayed the attorney up to the present time

1 doesn't change things. They have moved the ball all around
2 with respect to their legal theories. So -- and they have the
3 burden of proof. And the Court -- in my experience this Court
4 and other courts don't always require simultaneous exchanges.
5 So in this particular case we think that, since they have the
6 burden, that they've certainly changed their position from the
7 original hearing on jurisdiction at the beginning of time,
8 which I am aware of, and I have seen their positions change
9 over time, as recently as their status report, that we think
10 it's not only fair, but appropriate, since they do have the
11 burden, that they submit theirs first.

12 And with respect to the 11th, if they want to submit
13 theirs on the 11th, certainly we would like then at least till
14 the 17th -- well, actually that's --

15 THE COURT: Already be started by then.

16 MR. RANDALL JONES: Yeah. Right. We start on the
17 16th. So the 11th won't work. So -- well, then we would like
18 them to submit theirs, since they think they can submit the
19 trial brief on the 5th -- or, excuse me, exchange witnesses
20 and documents by the 5th, they submit by the 5th, and we can
21 certainly submit ours by the 11th.

22 THE COURT: How about we do this. July 2nd each of
23 you will exchange a list of witnesses and document lists.
24 That will include any summaries or demonstrative evidence that
25 you think you're going to use.

1 By July 9th you will submit your proposed findings
2 of fact and conclusions of law in electronic format.

3 By July 11th you will submit your trial briefs. You
4 may file those simultaneously, but you must serve each other.

5 And on July 15th any exhibits must be delivered to
6 the clerk.

7 And, Dolce, what time do you want them to come see
8 you, after noon? I'm doing a settlement conference all day
9 long that day, so you won't be in court much.

10 THE CLERK: 1:00 p.m.

11 THE COURT: 1:00 p.m.

12 Are you going to be presenting your exhibits
13 electronically given the volume, or are you going to use
14 paper?

15 MR. BICE: My guess is we're going to use paper,
16 Your Honor. That's my present belief.

17 MR. RANDALL JONES: Your Honor --

18 MR. PEEK: May I consult with Mr. Jones for a
19 minute?

20 THE COURT: You may.

21 (Pause in the proceedings)

22 MR. RANDALL JONES: Your Honor, I think electronic.
23 And if we change our position, Your Honor --

24 THE COURT: There is a special protocol that we're
25 experimenting with after my five-month-long trial where almost

1 all the exhibits were presented electronically. We came up
2 with a new protocol. I will have Max send it out to you. It
3 is still in draft form, but it is what the Clerk's Office is
4 trying to use as a recommended standard. We haven't adopted
5 it yet. We're working through bugs still. So Max will send
6 that to you. If you want to use electronic, it will be how we
7 do it so that Dolce can follow the rules her bosses have
8 instituted.

9 MR. RANDALL JONES: Your Honor, one other
10 clarification point or additional point. As I understand it,
11 you want the exchange of witnesses and documents by the 7th --
12 or, excuse me, the 2nd?

13 THE COURT: July 2.

14 MR. RANDALL JONES: The 2nd.

15 THE COURT: Two. July 2.

16 MR. RANDALL JONES: Yes. Understood.

17 THE COURT: Proposed findings of fact, conclusions
18 of law exchanged on July 9 with electronic format sent to me.

19 July 11th for your trial briefs. If you guys really
20 think you need another day, I'll give you till July 12th,
21 because I'm not going to read it till the weekend. But I do
22 need you to have it to me by 3:00 o'clock on the Friday.

23 And July 5th that you're going to meet with Dolce in
24 delivering the exhibits.

25 MR. RANDALL JONES: Your Honor, my point was that

1 since -- again, we have a concern about their theories, at
2 least we would like the opportunity to have a supplement -- to
3 supplement our witness and exhibit list after the 2nd. If we
4 could have say --

5 THE COURT: If you want to do that, you'll have to
6 ask me, and I will be happy to sign an OST to deal with that
7 issue. You've got a little bit of lead time on it, Mr. Jones.

8 MR. RANDALL JONES: All right.

9 THE COURT: And that applies to everyone.

10 MR. BICE: Yes.

11 THE COURT: And if it's a true rebuttal issue that
12 you couldn't have anticipated, that is, of course, a different
13 issue.

14 MR. BICE: That was going to be my only point of
15 clarification, Your Honor. I don't expect to see new
16 witnesses.

17 THE COURT: Mr. Bice, you might see new witnesses,
18 like this plumber they had in the other case who apparently
19 they knew about but never knew they re-plumbed it differently.

20 MR. BICE: And if it's true rebuttal, I understand
21 that.

22 THE CLERK: [Inaudible]

23 THE COURT: I think Mr. Bice is going to talk to his
24 people about whether he wants to use electronic exhibits or
25 not.

1 MR. BICE: I am. But I will tell you this, Your
2 Honor, based upon our own experience, including with Mr.
3 Adelson. Paper tends to work best with these witnesses. So
4 if your anticipation -- and maybe I misunderstood the Court's
5 instruction.

6 THE COURT: Dolce wants to know whether you're
7 bringing her in 27 bankers' boxes or --

8 MR. BICE: No.

9 THE COURT: -- or an external hard drive.

10 MR. BICE: I will be bringing her a hard drive. I
11 apologize.

12 THE COURT: She's happy now.

13 MR. BICE: My misunderstanding.

14 MR. BICE: May I have --

15 MR. PEEK: Your Honor, my experience, though,
16 however is it's still -- and I think Mr. Bice is correct that
17 certainly a piece of paper oftentimes works better to show a
18 witness.

19 THE COURT: Absolutely.

20 MR. PEEK: So if we want to not necessarily bring in
21 the 27 boxes, but certainly if we have an exhibit that we
22 think we want to show a --

23 THE COURT: Absolutely. In fact, in the one we did
24 for five months I had the contract in a binder so that I could
25 refer to it and highlight and make notes on it even though

1 technically everything was being presented electronically.

2 MR. PEEK: But can I have my witnesses make notes in
3 their binders, too?

4 THE COURT: If it's theirs and not Dolce's. But
5 then you know notes can be looked at. People can look at it.

6 MR. PEEK: I know, Your Honor.

7 THE COURT: Then we have a different issue, Mr.
8 Peek.

9 MR. PEEK: We do.

10 THE COURT: What else did you guys still want to
11 talk to me?

12 MR. BICE: I misunderstood, Your Honor. So, yes,
13 there actually is one other issue, and it's referenced in
14 their status report about they are -- I'd like to get a
15 deadline now in light of this schedule. They'd indicated that
16 they are working on the privilege log of the --

17 THE COURT: Yeah. That was the Suen. Hold on. Let
18 me go to the place that says Suen.

19 MR. BICE: Right. And there's another log, also,
20 and that's this log on documents that they have withheld that
21 were flagged --

22 THE COURT: Shortly. It wasn't "Suen," it was
23 "shortly."

24 MR. BICE: -- that were flagged by the
25 jurisdictional discovery terms, but they withheld them on the

1 basis that they said that they went to merits and not to
2 jurisdiction. And you had indicated they were to log those.
3 So --

4 THE COURT: Page 3, line 9, "The log should be ready
5 shortly."

6 MR. RANDALL JONES: Your Honor, Mr. Lackey's not
7 here, and he's the one involved with that. But I can get an
8 answer today and get that to the Court and counsel.

9 MR. BICE: That's fine.

10 THE COURT: Okay. That'd be lovely.

11 MR. BICE: May I have one second to speak to Mr.
12 Peek --

13 THE COURT: Yes.

14 MR. BICE: -- before we end. And Mr. Jones.

15 MR. RANDALL JONES: And I have another issue I want
16 to raise, as well.

17 MR. BICE: Oh. I apologize.

18 THE COURT: Why don't you caucus.

19 (Pause in the proceedings)

20 THE COURT: Mr. Jones, you had something else you
21 wanted to say.

22 MR. RANDALL JONES: With respect to witnesses,
23 because it's typical in a situation like this, I think
24 everybody, certainly we anticipated we'd be finished with the
25 jurisdictional discovery before we designated experts, we had

1 a couple of experts that we were considering using. Obviously
2 we --

3 THE COURT: For the jurisdictional discovery?

4 MR. RANDALL JONES: Yes, Your Honor. We have not
5 prepared expert reports because we didn't know we were going
6 to have the hearing on July 11th -- or, excuse me, July 16th.
7 So that's somewhat problematic, but I wanted to raise that
8 with the Court, that we --

9 THE COURT: How soon could you get -- you know,
10 technically you don't have to provide a report under Rule 30
11 -- is it 30? 20? Whatever rule it is. The one that changed
12 what you've got to provide in the experts --

13 MR. RANDALL JONES: 26. I think it's 26.

14 THE COURT: Maybe it's -- yeah. Whatever rule it
15 is.

16 MR. RANDALL JONES: I think it's 26.

17 THE COURT: You don't technically have to provide an
18 expert report, you can provide a summary of what the expert is
19 prepared to say, and if you can get those exchanged, I'm happy
20 to do it; but you're going to have to do it within the next
21 week or so.

22 MR. RANDALL JONES: Understood, Your Honor.

23 MR. PEEK: What's the "or so," Your Honor?

24 MR. RANDALL JONES: Yeah, what's the "or so."
25 That's a good point.

1 MR. PEEK: I got the week, but I was wondering more
2 about the "or so." In other words, what's the --
3 THE COURT: Week to 10 days.
4 MR. RANDALL JONES: That's fine, Your Honor.
5 THE COURT: That's a timing issue. That's me
6 looking at a calendar and saying, how will I make this work.
7 MR. PEEK: Would July 1 work, Your Honor, which is
8 really --
9 THE COURT: No, July 1 won't work.
10 MR. PEEK: Ten days is the 28th, which is a Friday.
11 THE COURT: July 1 won't work, because I have the
12 witness lists and document lists scheduled.
13 MR. PEEK: On the 2nd.
14 MR. BICE: Well, Your Honor, I'd like to be heard on
15 this.
16 THE COURT: Okay, Mr. Bice.
17 MR. BICE: I disagree, because we had this
18 discussion about reports --
19 THE COURT: Who?
20 MR. BICE: -- with Ms. Glaser. I mean, we've been
21 through two sets of counsel now when we had this --
22 THE COURT: There've been more than two sets of
23 counsel.
24 MR. BICE: -- right -- when we had this debate about
25 these experts. And you told them they were going to have to

1 comply with the rule. These --

2 THE COURT: Experts on jurisdictional issues?

3 MR. BICE: Yes.

4 THE COURT: When did I say that?

5 MR. BICE: This is at the September 27, 2011,

6 hearing. Now, these -- and this is our problem here.

7 THE COURT: Okay. I'm listening.

8 MR. BICE: These are not percipient witnesses who

9 are being designated as experts, also, so therefore you can do

10 the summary sort of approach with them. These are -- as we

11 understand it -- now, maybe we misunderstand, because we

12 haven't seen anything from them -- these are outside, purely

13 outside witnesses being retained purely, solely to provide

14 expert opinion.

15 THE COURT: Bunch of law professors probably; right?

16 MR. BICE: So we believe that reports were

17 necessary. These witnesses have been disclosed or identified

18 as they might use them on I believe it was -- I apologize,

19 Your Honor; I'm going to find the --

20 MR. PEEK: Within the Court's order I believe it's

21 the 22nd or 23rd of September is when I think Your Honor

22 required it to be done, and we met that rule. Sands China met

23 that requirement. We both exchanged them on the same day. I

24 believe it's the --

25 MR. BICE: September 23 of 2011.

1 MR. PEEK: Yeah. That was my recollection, Your
2 Honor.
3 MR. BICE: And so to now hear them say --
4 THE COURT: Hold on, Mr. Bice.
5 MR. BICE: -- hear them say, well, we didn't do a
6 report in the last year and six months we think is --
7 THE COURT: What page of the transcript? 49?
8 MR. BICE: Yeah, I think it was page -- let me look,
9 Your Honor. Maybe I misunderstood.
10 MR. PEEK: There was a -- I remember there was a
11 discussion.
12 THE COURT: Hold on. I'm there.
13 MR. BICE: Well, the discussion is about -- yeah,
14 it's on to page 50, Your Honor.
15 THE COURT: That was when I said I'd never before
16 had an expert on a jurisdictional hearing.
17 MR. BICE: Correct. And Ms. Glaser didn't --
18 THE COURT: Wait. Let me read.
19 MR. BICE: Oh. I apologize, Your Honor.
20 MR. PEEK: May I read over your shoulder, Todd?
21 MR. BICE: You may.
22 (Pause in the proceedings)
23 THE COURT: I didn't say it had to be a report. I
24 said, "The other method the rule dictates." That's on line 12
25 of page 51.

1 MR. BICE: Right. And Ms. Glaser -- is that it?

2 THE COURT: That's what I said.

3 MR. BICE: I understand that.

4 THE COURT: "It can either by report or by the other
5 method that the rule dictates, and, unfortunately, as I sit
6 here I can't tell you what rule it is."

7 MR. PEEK: That's what I recall from the same thing,
8 Your Honor.

9 THE COURT: I'm reading the transcript.

10 MR. BICE: Well, it's in the transcript, right. Our
11 point is Ms. Glaser said she was going to bring this to the
12 Court.

13 THE COURT: No. What I told Mr. Pisanelli is that
14 she needed to provide the information so that we would have a
15 clue. I told Mr. Pisanelli he could then either move to
16 strike it or take the deposition and that I would then decide,
17 and it didn't mean I would think the witness was credible or
18 important, but I would listen to them.

19 MR. BICE: Right. "Can either be by report or other
20 method that the rule dictates." Our point is the rule doesn't
21 -- for truly outside experts like these there is -- the rule
22 dictates a report.

23 MR. RANDALL JONES: Your Honor --

24 MR. BICE: These aren't treating physicians who are
25 allowed --

1 THE COURT: I know, Mr. Bice. We had this lovely
2 discussion on the ADKT 487 hearing about a week ago that I'm
3 still trying to get over. Hold on a second.

4 (Pause in the proceedings)

5 THE COURT: It's 26(4). So it's 26(b)(4). But I
6 think the rule change was in 16.1 related to the expert
7 disclosures. Yeah. It's in 16.1(a)(2). "The court upon good
8 cause shown or by stipulation of parties may relieve a party
9 of the duty to prepare a written report in an appropriate
10 case," blah, blah, blah, blah.

11 In the initial disclosures of witnesses that were
12 exchanged in 2011 was there a disclosure as to a summary of
13 the facts and opinions to which the witness is expected to
14 testify, the qualification of that witness to present evidence
15 under the statutes, and compensation?

16 MR. BICE: I have it here if you'd like --

17 THE COURT: That's a disclosure?

18 MR. BICE: Yes.

19 THE COURT: May I see it.

20 MR. BICE: You may.

21 THE COURT: Thank you.

22 That's it?

23 MR. RANDALL JONES: Pardon me?

24 THE COURT: How's that going to help me make a
25 determination on jurisdictional for either Mr. Howe or Mr.

1 Klugerman?

2 MR. RANDALL JONES: Your Honor, here's the dilemma.
3 In every case I've been involved with first of all there's a
4 scheduling order with respect to these things, so this case
5 has gone on sort of a different track.

6 THE COURT: I've had discovery stayed in this case
7 with the exception of jurisdictional issues by the Nevada
8 Supreme Court for two and a half years.

9 MR. RANDALL JONES: Understood, Your Honor.

10 THE COURT: Or however. Maybe it's only two years.

11 MR. RANDALL JONES: We've disclosed these experts
12 back in 2011, and we talked about issues of corporate
13 governance. We haven't certainly been a position to get any
14 kind of report, because we haven't taken the deposition of Mr.
15 Jacobs because of the facts in this case or finish other
16 discovery, factual discovery. I've -- every case I've been
17 involved in the parties typically finish factual discovery
18 before they have expert reports due. So --

19 THE COURT: Not any case I'm involved in,
20 unfortunately. They never finish factual discovery ever.

21 MR. RANDALL JONES: You tend to have some unique
22 cases, Your Honor. And I've been involved in some of those,
23 so I can appreciate what you're saying. But certainly the
24 most appropriate way as a litigator from my perspective is you
25 want to know what the facts are before you have your experts

1 decide what their opinions are going to be or --

2 THE COURT: Yes. But this is a very unusual
3 situation, because we are purely dealing with jurisdictional
4 issues. And, as I told Ms. Glaser on September 27th, 2011,
5 I'd never had an expert testify in a jurisdictional hearing.
6 I wasn't saying at the time I wouldn't let them testify, but I
7 was. And I told her she needed to disclose the information.
8 And if that's the disclosure, it doesn't seem to comply with
9 16.1's requirement for what experts are required to have
10 disclosed, much less whether there's been a report or not.

11 MR. RANDALL JONES: Well, I guess my point is, Your
12 Honor, is that at this point there was a disclosure, we've
13 gone on from there. At this point the Court has told us now
14 we're going to have a hearing in very short order.

15 THE COURT: I gave you 30 days' notice, almost
16 30 days' notice.

17 MR. RANDALL JONES: I'm not -- again, I'm just
18 pointing out the facts. It is a short deadline. Mr. Bice got
19 up and said initially they would be ready by September or
20 November, and you said, that's not what's going to happen.
21 That's fine. You're the judge. And you may not think this
22 expert or any expert is appropriate to testify in a
23 jurisdictional issue. We would like the opportunity to have
24 this expert testify, or experts, as the case may be. We may
25 not designate -- or use either one of them, but we would like

1 the opportunity. And, again, the path of this case has been
2 certainly unusual in my experience, and I've only been in
3 this, as Mr. Bice likes to point out, a relatively short
4 period of time. We would like the opportunity to at least
5 present this information to the Court. And, you know, if the
6 Court says no, the Court says no. But we --

7 THE COURT: No, I don't have a problem listening to
8 people tell me what the rules are. The question is whether
9 the rules were followed. I mean, because they're very
10 different issues as to what the rules are for being listed on
11 the Hong Kong Exchange and the corporate governance issues
12 between a parent company and its foreign subsidiary are very
13 interesting issues from a practical standpoint and may impact
14 us. But what best practices are and what actually happened is
15 why I'm having a jurisdictional hearing.

16 MR. RANDALL JONES: Understood. Understood, Your
17 Honor. Again, we're here simply saying we would like to use
18 these experts -- actually, I can't even go that far. That's a
19 decision we now are going to have to make in light of the
20 ruling of the Court today of when we're going to have this
21 hearing.

22 THE COURT: Well, I said, apparently on
23 September 27th, 2011, that the disclosure of experts could
24 either be by report or by the other method that the rule
25 dictates. That means that I relieved you from the requirement

1 of providing a report, because I allowed you to use the other
2 method the rule dictates. But if you're going to do that, the
3 disclosure must be within -- it must be prior to June 28th.

4 MR. RANDALL JONES: That's --

5 THE COURT: And if Mr. Bice needs to do something
6 because you have provided experts who tell us what the
7 expectations of the Hong Kong Exchange are and what the best
8 practices of the relationship between a parent company and its
9 foreign subsidiary are, then I will listen to Mr. Bice. And
10 if he needs to have someone speak on rebuttal to that issue,
11 he will be relieved of a report requirement --

12 MR. RANDALL JONES: Understood, Your Honor.

13 THE COURT: -- because the timing won't permit it.

14 MR. RANDALL JONES: Should we do that before the
15 28th, or by the 28th?

16 THE COURT: Before close of business on the 28th.

17 MR. RANDALL JONES: That's fine.

18 MR. PEEK: Thank you, Your Honor.

19 THE COURT: Mr. Bice, here's your copy back. Thank
20 you for sharing that with me.

21 MR. BICE: Thank you, Your Honor.

22 THE COURT: Thank you for reminding me I'd already
23 addressed this issue two years ago.

24 MR. BICE: Depending on what I get on the 28th, Your
25 Honor, I guess I may be back in front of you --

1 THE COURT: Lucky for all of us, I'm here.

2 MR. BICE: Lucky for me.

3 -- to address this issue, because I don't believe
4 that was what we discussed back in 2011. I believe the rule
5 provides a means to be relieved of the report requirement, and
6 it wasn't in any way followed. And now these experts haven't
7 been deposed, these experts haven't provided us with any
8 information at all.

9 THE COURT: I understand what you're saying.

10 MR. BICE: So we'll see what we get. We may have a
11 rebuttal witness, depending on what we get, and the rules will
12 -- I guess the rules will be applied to us in the same fashion
13 in which they apply to them.

14 THE COURT: I try to apply the rules equally to
15 everyone.

16 MR. BICE: I wasn't suggesting that you weren't,
17 Your Honor.

18 THE COURT: They may seem draconian, but they're
19 applied equally.

20 MR. PEEK: Equally draconian, Your Honor?

21 MR. RANDALL JONES: You mean for today, Your Honor?

22 THE COURT: Yes, for today, Mr. Jones.

23 MR. RANDALL JONES: You have not made a decision on
24 the competing order.

25 THE COURT: I actually have. I just haven't

1 communicated it to you. I'm using parts of Mr. Bice's, parts
2 of Mr. Jones's, and rewriting part of the paragraphs, and you
3 should have it by the end of the day.

4 MR. BICE: All right.

5 THE COURT: That's why I asked Max while you are
6 here about the electronic versions, because I wanted to see if
7 anyone had any additions given the minute order that I issued
8 on Friday. Because I read the surreply, and I clarified a
9 couple issues in my minute order, and I need to make sure
10 those are incorporated. So I have an electronic version from
11 both of you. I can cut and paste better than you can, because
12 I know what's in my head.

13 MR. RANDALL JONES: I think -- if I understand your
14 order, I think you have addressed -- the minute order, I think
15 you have addressed some of our issues.

16 THE COURT: I tried.

17 Anything else?

18 MR. BICE: No.

19 THE COURT: All right.

20 THE PROCEEDINGS CONCLUDED AT 9:46 A.M.

21 * * * * *

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CERTIFICATION

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

AFFIRMATION

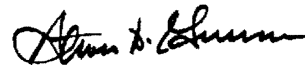
I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**FLORENCE HOYT
Las Vegas, Nevada 89146**

FLORENCE HOYT, TRANSCRIBER

6/19/13

DATE



CLERK OF THE COURT

1 **ORDR**

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5 **EIGHTH JUDICIAL DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**
7

8 STEVEN C. JACOBS,
9
10 Plaintiff,

11 vs.

12 LAS VEGAS SANDS CORP., a Nevada
13 corporation, et al.,

14 Defendants.

15 AND ALL RELATED CLAIMS
16

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

**ORDER ON PLAINTIFF STEVEN
C. JACOBS' MOTION TO
RETURN REMAINING
DOCUMENTS FROM
ADVANCED DISCOVERY**

Hearing Date: April 12, 2013

Hearing Time: In Chambers

17
18 Before this Court is Plaintiff Steven C. Jacobs' ("Jacobs") Motion to Return Remaining
19 Documents from Advanced Discovery (the "Motion"). The Court has considered all briefing on
20 the Motion, including the supplemental brief it ordered from Defendants and the Defendants'
21 Sur-Reply. The Court being fully informed, and good cause appearing therefor:

22 THE COURT HEREBY STATES as follows:

23 1. At issue are documents that Jacobs has had in his possession since before his
24 termination on July 23, 2010.

25 2. Amongst the documents that Jacobs possessed at the time of his termination were
documents over which Defendants claim an attorney-client or other form of privilege.

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1 3. These are documents that Jacobs authored, was a recipient of, or otherwise
2 possessed in the course and scope of his employment.

3 4. Jacobs' present Motion does not seek to compel the Defendants to produce
4 anything. Rather, Jacobs seeks return of documents that were transferred to the Court's
5 approved electronic stored information ("ESI") vendor, Advanced Discovery, pursuant to a
6 Court-approved protocol.

7 5. Pursuant to a Court-approved protocol, Defendants' counsel were allowed to
8 review Jacobs' documents and have now identified approximately 11,000 of them as being
9 subject, in whole or in part, to some form of privilege, such as attorney-client, work product,
10 accounting or gaming.

11 6. Based upon these assertions of privilege, Defendants contend that even though
12 the documents are presently in Jacobs' possession, custody and control – the Court having
13 previously concluded as part of its Decision and Order dated September 14, 2012 that
14 Defendants are precluded from claiming that he stole the documents – they assert that Jacobs
15 cannot provide these documents to his counsel even if they relate to the claims, defenses or
16 counterclaims asserted in this action.

17 7. Jacobs' Motion, although styled as one seeking return of documents from the
18 Court's approved ESI vendor, Advanced Discovery, more aptly seeks to allow Jacobs' counsel
19 to access these documents, which Jacobs has otherwise possessed and had access to since before
20 July 23, 2010.

21 8. The Defendants assert that all privileges belong to the Defendants' corporate
22 entities, not any of their executives, whether present or former. From this, they contend that
23 Jacobs does not have the power to waive any privileges.

24 9. The Court notes a split of authority as to who is the client under such
25 circumstances. *See Montgomery v. Etrepid Techs. LLC*, 548 F. Supp. 2d 1175 (D. Nev. 2008).
However, the facts of this case are different, and the Court disagrees with the Defendants'
framing of the issue.

1 10. The Court does not need to address (at this time) the question of whether any of
2 the particular documents identified by the Defendants are subject to some privilege (a
3 contention which Jacobs disputes), whether Jacobs has the power to assert or waive any
4 particular privileges that may belong to the Defendants (a position which the Defendants'
5 dispute) or whether Defendants waived the privilege. Instead, the question presently before this
6 Court is whether Jacobs, as a former executive who is currently in possession, custody and
7 control of the documents and was before his termination, is among the class of persons legally
8 allowed to view those documents and use them in the prosecution of his claims and to rebut the
9 Defendants' affirmative defenses and counterclaim, as these were documents that the former
10 executive authored, received and/or possessed, both during and after his tenure.

11 11. Even assuming for the sake of argument that Defendants had valid claims of
12 privilege to assert to the documents as against outsiders, they have failed to sustain their burden
13 of demonstrating that Jacobs cannot review and use documents to which he had access during
14 the period of his employment in this litigation.

15 12. In the Court's view, the question is not whether Jacobs has the power to waive
16 any privilege. The more appropriate question is whether Jacobs is within the sphere of persons
17 entitled to review information (assuming that it is privileged) that pertains to Jacobs' tenure that
18 he authored, received and/or possessed, and has retained since July 23, 2010.

19 13. Even assuming for the sake of argument that Defendants had valid claims of
20 privilege to assert to the documents as against outsiders, they have failed to sustain their burden
21 of demonstrating that they have privileges that would attach to the documents relative to Jacobs'
22 review and use of them in this litigation.

23 14. That does not mean, however, that at this time the Court is making any
24 determination as to any other use or access to sources of proof. Until further order, Jacobs may
25 not disseminate the documents in question beyond his legal team. And, all parties shall treat the
documents as confidential under the Stipulated Confidentiality Agreement and Protective Order
entered on March 22, 2012.

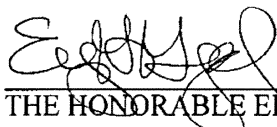
1 THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

2 1. The Motion to Return Remaining Documents from Advanced Discovery is
3 GRANTED. When this Order becomes effective, Advanced Discovery shall release to Jacobs
4 and his counsel all documents contained on the various electronic storage devices received by
5 Advanced Discovery from Jacobs on or about May 18, 2012, and that have otherwise not been
6 previously released to Jacobs and his counsel.

7 2. Those documents listed on the Defendants' privilege log dated November 30,
8 2012, shall be treated as confidential under the Stipulated Confidentiality Agreement and
9 Protective Order entered on March 22, 2012 until further order from this Court.

10 3. This Order shall become effective ten (10) days from the date of its notice of
11 entry.

12 DATED: 18 June 2013

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14 
15 THE HONORABLE ELIZABETH GONZALEZ,
16 EIGHTH JUDICIAL DISTRICT COURT
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7 Attorneys for Plaintiff Steven C. Jacobs

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 STEVEN C. JACOBS,

11 Plaintiff,

12 v.

13 LAS VEGAS SANDS CORP., a Nevada
14 corporation; SANDS CHINA LTD., a
15 Cayman Islands corporation; DOES I
16 through X; and ROE CORPORATIONS
17 1 through X,

Defendants.

18 AND RELATED CLAIMS

Case No.: A-10-627691

Dept. No.: XI

**NOTICE OF ENTRY OF ORDER ON
PLAINTIFF STEVEN C. JACOBS'
MOTION TO RETURN REMAINING
DOCUMENTS FROM ADVANCED
DISCOVERY**

Hearing Date: April 12, 2013

Hearing Time: In Chambers

19 PLEASE TAKE NOTICE that an "Order on Plaintiff Steven C. Jacobs' Motion to Return
20 Remaining Documents From Advanced Discovery" was entered in the above-captioned matter on
21 June 19, 2013, a true and correct copy of which is attached hereto.

22 DATED this 20th day of June, 2013.

23 PISANELLI BICE, PLLC

24 By: 

25 James J. Pisanelli, Esq., Bar No. 4027

26 Todd L. Bice, Esq., Bar No. #4534

27 Debra L. Spinelli, Esq., Bar No. 9695

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Las Vegas, Nevada 89169

28 Attorneys for Plaintiff Steven C. Jacobs

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RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing NOTICE OF ENTRY OF ORDER
ON PLAINTIFF STEVEN C. JACOBS' MOTION TO RETURN REMAINING
DOCUMENTS FROM ADVANCED DISCOVERY is hereby acknowledged this 20 day of
June, 2013.

HOLLAND & HART

By: ISP/ABC 12:56p

J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134

KEMP, JONES & COULTHARD

By: _____

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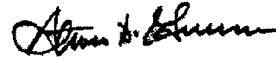
CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 20th day of June, 2013, I caused to be sent via United States Mail, postage prepaid, a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF ORDER ON PLAINTIFF STEVEN C. JACOBS' MOTION TO RETURN REMAINING DOCUMENTS FROM ADVANCED DISCOVERY** properly addressed to the following:

Michael E. Lackey, Jr., Esq.
MAYER BROWN LLP
1999 K Street, N.W.
Washington, DC 20006
mlackey@mayerbrown.com

Steve Morris, Esq.
Rosa Solis-Rainey, Esq.
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An employee of PISANELLI BICE, PLLC



CLERK OF THE COURT

1 ORDER

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5 EIGHTH JUDICIAL DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 STEVEN C. JACOBS,

9 Plaintiff,

10 vs.

11 LAS VEGAS SANDS CORP., a Nevada
12 corporation, et al.,

13 Defendants.

14 AND ALL RELATED CLAIMS
15

Case No.: A-10-627691-B

Dept. No.: XI

ORDER ON PLAINTIFF STEVEN
C. JACOBS' MOTION TO
RETURN REMAINING
DOCUMENTS FROM
ADVANCED DISCOVERY

Hearing Date: April 12, 2013

Hearing Time: In Chambers

16
17
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19 Documents from Advanced Discovery (the "Motion"). The Court has considered all briefing on
20 the Motion, including the supplemental brief it ordered from Defendants and the Defendants'
21 Sur-Reply. The Court being fully informed, and good cause appearing therefor:

22 THE COURT HEREBY STATES as follows:

23 1. At issue are documents that Jacobs has had in his possession since before his
24 termination on July 23, 2010.

25 2. Amongst the documents that Jacobs possessed at the time of his termination were
documents over which Defendants claim an attorney-client or other form of privilege.

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1 3. These are documents that Jacobs authored, was a recipient of, or otherwise
2 possessed in the course and scope of his employment.

3 4. Jacobs' present Motion does not seek to compel the Defendants to produce
4 anything. Rather, Jacobs seeks return of documents that were transferred to the Court's
5 approved electronic stored information ("ESI") vendor, Advanced Discovery, pursuant to a
6 Court-approved protocol.

7 5. Pursuant to a Court-approved protocol, Defendants' counsel were allowed to
8 review Jacobs' documents and have now identified approximately 11,000 of them as being
9 subject, in whole or in part, to some form of privilege, such as attorney-client, work product,
10 accounting or gaming.

11 6. Based upon these assertions of privilege, Defendants contend that even though
12 the documents are presently in Jacobs' possession, custody and control – the Court having
13 previously concluded as part of its Decision and Order dated September 14, 2012 that
14 Defendants are precluded from claiming that he stole the documents – they assert that Jacobs
15 cannot provide these documents to his counsel even if they relate to the claims, defenses or
16 counterclaims asserted in this action.

17 7. Jacobs' Motion, although styled as one seeking return of documents from the
18 Court's approved ESI vendor, Advanced Discovery, more aptly seeks to allow Jacobs' counsel
19 to access these documents, which Jacobs has otherwise possessed and had access to since before
20 July 23, 2010.

21 8. The Defendants assert that all privileges belong to the Defendants' corporate
22 entities, not any of their executives, whether present or former. From this, they contend that
23 Jacobs does not have the power to waive any privileges.

24 9. The Court notes a split of authority as to who is the client under such
25 circumstances. *See Montgomery v. Etrepid Techs. LLC*, 548 F. Supp. 2d 1175 (D. Nev. 2008).
However, the facts of this case are different, and the Court disagrees with the Defendants'
framing of the issue.

1 10. The Court does not need to address (at this time) the question of whether any of
2 the particular documents identified by the Defendants are subject to some privilege (a
3 contention which Jacobs disputes), whether Jacobs has the power to assert or waive any
4 particular privileges that may belong to the Defendants (a position which the Defendants'
5 dispute) or whether Defendants waived the privilege. Instead, the question presently before this
6 Court is whether Jacobs, as a former executive who is currently in possession, custody and
7 control of the documents and was before his termination, is among the class of persons legally
8 allowed to view those documents and use them in the prosecution of his claims and to rebut the
9 Defendants' affirmative defenses and counterclaim, as these were documents that the former
10 executive authored, received and/or possessed, both during and after his tenure.

11 11. Even assuming for the sake of argument that Defendants had valid claims of
12 privilege to assert to the documents as against outsiders, they have failed to sustain their burden
13 of demonstrating that Jacobs cannot review and use documents to which he had access during
14 the period of his employment in this litigation.

15 12. In the Court's view, the question is not whether Jacobs has the power to waive
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17 entitled to review information (assuming that it is privileged) that pertains to Jacobs' tenure that
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20 privilege to assert to the documents as against outsiders, they have failed to sustain their burden
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22 review and use of them in this litigation.

23 14. That does not mean, however, that at this time the Court is making any
24 determination as to any other use or access to sources of proof. Until further order, Jacobs may
25 not disseminate the documents in question beyond his legal team. And, all parties shall treat the
documents as confidential under the Stipulated Confidentiality Agreement and Protective Order
entered on March 22, 2012.

b. Sands China and LVSC failed to take "reasonable steps" to recover the documents, and the recent clamor is too little, too late.

Even after Jacobs' filed suit and began using the documents he retained in this litigation, Sands China's and LVSC's efforts to recover the documents were minimal to none. All they did was write a few letters, until the Supreme Court ordered an evidentiary hearing, this Court set the date, and, importantly, this Court discussed allowing related, speedy discovery. But Sands China's and LVSC's meager efforts to recover the privileged documents about which they are only now in a clamor were well less than what the law deems reasonable. Indeed, they result in waiver.

Many courts have considered what constitutes "reasonable steps" to recover privileged documents in the hands of one's adversary to avoid waiver. *E.g., Bowles*, 224 F.R.D. at 253 (holding that a party waives its privileges in "documents, and in all documents of the same subject matter, by failing to take reasonable steps to recover the documents and preserve any privilege once it was aware they were in the hands of a party opponent. "); *SDI Future Health, Inc.*, 464 F. Supp. 2d at 1046-47; *De la Jara*, 973 F.2d at 750; *In re Grand Jury (Impounded)*, 138 F.3d at 981. The analysis always starts with informing an adversary that they possess privilege communications, and asking for their return. What happens thereafter and when matters most. And, here, nothing happened.

In *SDI Future Health, Inc.*, the court concluded that "a reasonable person would not only inform his or her adversary of the breach of the privilege, but also a judicial determination of the controversy if his or her adversary took an opposing stance." 464 F. Supp. 2d 1027 (quoting *In re Grand Jury (Impounded)*, 138 F.3d at 982, and adding emphasis to distinguish important factors). Here, similar to *In re Grand Jury (Impounded)* and in contrast to *SDI*, Jacobs has always been firmly opposed to Sands China's and LVSC's accusation of improper possession. From

information constitutes a trade secret is a question of fact, to be determined based on a variety of circumstances. *Frantz v. Johnson*, 116 Nev. 455, 466, 999 P.2d 351, 358 (2000). Of course, neither counsel nor his client has offered any factual basis that any of Jacobs' documents constitute trade secrets.

1 the outset, Jacobs' position has been exactly the same: Jacobs is rightfully in possession of any
2 and all documents he possessed when his relationship with Defendants ceased, and he will not
3 return them absent a court order. Jacobs always refused to return copies of the documents he
4 possessed. And, Jacobs never agreed that any documents were improperly in his possession. In
5 December 2010, Jacobs willingly returned two original documents that he possessed and that
6 Sands China requested he return. (Ex. I.)

7 However, Jacobs clearly stated that he retained copies of those documents because he was
8 rightfully in possession of them and others. *Id.* Again, in July 2011, when Jacobs' counsel
9 approached Sands China and LVSC about certain of Jacobs' documents, Jacobs' counsel reiterated
10 that all of Jacobs' documents – privileged or otherwise – were rightly in Jacobs' possession.
11 (Ex. J.) Only to avoid wasting time on the review of documents unrelated to the claims and
12 defenses in this action and to avoid any unnecessary controversy as to those documents (a
13 laughable notion, at this point), Jacobs offered to have Sands China and LVSC conduct the
14 document review to identify any potential privileged *and* irrelevant documents. (*Id.*) They still
15 did nothing.

16 In fact, Sands China and LVSC waited over 10 months to seek judicial relief. Jacobs
17 filed his Complaint on October 20, 2010, pulling from information he gleaned and documents he
18 possessed. Giving Sands China and LVSC the benefit of the doubt, they knew, at least, by
19 November 23, 2010 that Jacobs retained and possessed documents, since their attorneys said as
20 much in her correspondence of the same date (though, as Kay testified in his Affidavit, they knew
21 long before). (Ex. E; Ex. M.) Jacobs filed his opposition to Sands China's motion to dismiss,
22 attaching what the Sands Defendants now claim are privileged "stolen" communications, on
23 February 9, 2011.

24 Sands China and LVSC absolutely were "on notice that [Jacobs] was using the documents
25 against [them] in these very proceedings." *Bowles*, 224 F.R.D. at 255. Any harm from the
26 possession was therefore "immediate. Taking steps to prevent further disclosure of the documents
27 would do no good here; the disclosure had already breached the confidentiality in the documents
28 in every way that mattered, insofar as an opposing party had possession of the documents and was

1 using them in litigation. At this point, [Sands China and LVSC] had a clear obligation to move
2 expeditiously for relief by taking legal measures to preserve the privilege in the documents." *Id.*
3 (internal quotations omitted).

4 Oh, Sands China took action. It filed a reply brief in support of its motion to dismiss, and
5 purposefully put more of its "privileged" and confidential information and documents into the
6 public record; documents the Sands Defendants have since claimed are privileged and were
7 "stolen" by Jacobs. Only when Sands China did not obtain the reversal it wanted at the Supreme
8 Court, LVSC (not Sands China for fear of jurisdiction) sought court intervention to compel the
9 return of Jacobs' documents, for the first time, on September 13, 2011. Ten months later. Sands
10 China and LVSC waived any privilege. *See De la Jara*, 973 F.2d at 750 (6 months); *In re Grand*
11 *Jury (Impounded)*, 138 F.3d at 981 (4 months).

12 **D. Jacobs' Counsel Has Not Violated Any Nevada Ethical Rules.**

13 Needing to distract from its own misconduct, Sands China resorts to bluster and accuses
14 Jacobs' new counsel of "clearly" violating Nevada Rules of Professional Conduct ("RPC") 4.4
15 and 8.4(d), by "deliberately taking advantage of Jacobs' criminal conduct, and flouting the
16 attorney client privilege of Sands China. . . ." (Mot. 9:12-10:22.) While this Court has already
17 rejected the exact same assertion by Sands China's parent, LVSC, a very recent Nevada Supreme
18 Court decision confirms their misstatement and understanding of the rule. For either of these
19 rules to be triggered, "the attorney must take some type of affirmative action" *Merit*
20 *Incentives, LLC v. The Eighth Judicial Dist. Ct.*, 127 Nev., Adv. Op. 63, pp. 10-11 (Oct. 6, 2011.)
21 Our Supreme Court explained it this way: "the attorneys must have either "played some part in
22 obtaining an opposing party's documents or were complicit in actions used to wrongfully obtain
23 those documents." *Id.*

24 Neither Jacobs nor his current counsel have in any way stolen documents or misused
25 them. Underscoring that point, Sands China resorts to making the false accusation that Jacobs'
26 new counsel violated the interim order entered in the second action by virtue of Bates-labeling
27 documents from the internet and the public record, listing them on a 16.1 supplemental disclosure
28 (as our Nevada and local rules require), and by identifying those very same records on an exhibit

1 list for the evidentiary hearing. This Court has already ruled (in the second action, where Sands
2 China sits in the room but not at counsel table) that neither Jacobs, nor his company, Vagus
3 Group, nor his lawyers violated the interim order. (Interim Order, on file with the Court.) To the
4 extent the accused violation forms a basis for Sands China's motion to exclude, the argument
5 should not only be disregarded, it should result in sanctions for making false accusations. *In re*
6 *Belue*, 766 P.2d 206, 208 (Mont. 1988) (holding it is itself unethical to make frivolous and
7 unethical charges against opposing counsel). This is particularly so considering that LVSC's
8 counsel apologized for making the identical false charges, while Sands China's counsel stands
9 stubbornly behind their frivolous allegations.

10 **IV. CONCLUSION**

11 In light of the foregoing, Sands China's application for injunctive relief thinly veiled as a
12 motion in limine must be denied in its entirety.

13 DATED this 10th day of October, 2011.

14 PISANELLI BICE PLLC

15
16 By: /s/ James J. Pisanelli

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 10th day of October, 2011, I caused to be sent via email and United States Mail, postage prepaid, true and correct copies of the above and foregoing **PLAINTIFF STEVEN C. JACOBS' OPPOSITION TO SANDS CHINA LTD.'S MOTION IN LIMINE** properly addressed to the following:

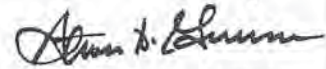
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EXHIBIT 3


CLERK OF THE COURT

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

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

**SANDS CHINA LTD.'S REPLY IN
SUPPORT OF MOTION *IN LIMINE* TO
EXCLUDE DOCUMENTS IN
CONNECTION WITH THE
EVIDENTIARY HEARING REGARDING
PERSONAL JURISDICTION**

**DATE OF HEARING: October 13, 2011
TIME OF HEARING: 9:00 A.M.**

LAS VEGAS SANDS CORP., a Nevada
corporation,

Counterclaimant,

v.

STEVEN C. JACOBS,

Counterdefendant.

Sands China Ltd. ("SCL") hereby files the following Reply in Support of Motion *in Limine* to Exclude Evidence in connection with the Evidentiary Hearing regarding Personal Jurisdiction (the "Reply"). This Reply is based upon the attached Memorandum of Points and Authorities, the Declarations of Amy Lee and Stephen Y. Ma and attached exhibits, the papers

Page 1

1 and pleadings on file in this matter, and any oral argument that the Court may allow.

2 DATED October 11, 2011.

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MEMORANDUM OF POINTS AND AUTHORITIES

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1 To date, Plaintiff has not accepted Defendants' proposed protocol. Moreover, Plaintiff's
2 counsel has, thus far, been unavailable to meet and confer with Defendants regarding the
3 proposed protocol, thereby preventing the parties from finalizing the protocol before the October
4 13 hearing.

5 The Court should adopt Defendants' proposed protocol. Doing so will preserve the status
6 quo and allow SCL to determine privileged and/or otherwise protected documents. The parties
7 can thereafter further brief the issues for the Court with reference to specific documents. This
8 process will enable the Court to better understand the precise nature of the subject documents and
9 help it make an informed decision regarding their disposition.

10 Plaintiff's Opposition underscores why adoption of the document review protocol is
11 appropriate. Plaintiff argues that "Sands China does not identify any particular documents or
12 evidence for exclusion." Opp., 2:2-3; *see also*, 9:15-16. There is a simple reason for that:
13 Plaintiff has refused to return the documents to Defendants. Moreover, beyond the few non-
14 privileged documents that Plaintiff attached to prior briefs, Plaintiff has not disclosed to SCL the
15 precise documents that he retained after his termination, nor the precise contents of the
16 voluminous documents that he downloaded *the day he was terminated*. Now, Plaintiff seeks to
17 capitalize on his secrecy by asking that the Motion in Limine be denied for lack of specificity.
18 Plaintiff's argument punctuates the need for implementation of a document review protocol, so
19 that Defendants can, once and for all, determine what it is that Plaintiff possesses, and which of
20 those documents Plaintiff should be precluded from using at the evidentiary hearing.

21 In his Opposition, Plaintiff spends pages discussing how he necessarily came into
22 possession of various documents during the performance of his employment duties ("Work Duty
23 Documents"), then Plaintiff inappropriately attempts to commingle these documents with the
24 voluminous documents that he downloaded from his work computer on July 23, 2010, *the same*
25 *day he was terminated* ("Downloaded Documents").¹ Plaintiff's retention and use of **both** the
26 Work Duty Documents and the Downloaded Documents (collectively the "Subject Documents")

27 ¹ Plaintiff's own Opposition concedes that Plaintiff likely possesses company documents above
28 and beyond the eleven gigabytes of data improperly downloaded by Plaintiff. Opp., p. 7, fn. 5.

1 violates Venetian Macau Limited's ("VML") express written policy requiring all terminated
2 employees "to return all electronic files, CDs, floppy disks, information reports and documents
3 (including copies) containing any confidential and/or proprietary information" ("Document
4 Return Policy"). **Exhibit A** (Document Return Policy). Plaintiff was not only fully aware of
5 VML's Document Return Policy; he was responsible for enforcing it, and he terminated an
6 employee for failing to comply with other portions of this same policy regarding confidentiality.
7 Lee Decl., ¶¶ 8-9, 13-14. Plaintiff's Consulting Agreement with VML separately required him to
8 return all company documents. **Exhibit B** (Plaintiff's Consulting Agreement) ("Upon termination
9 of this Agreement for any reason, all papers and documents the Consultant's possession or under
10 its control belonging to the Company, must be returned to the Company.").² Therefore, Plaintiff
11 was (and is) required to return **both** the Work Duty Documents and the Downloaded Documents,
12 and his retention of both categories of documents was and is wrongful.

13 Plaintiff's acquisition, retention and use of the Downloaded Documents is an order of
14 magnitude more wrongful because, in contrast to the Work Duty Documents allegedly acquired
15 while performing his job duties, he surreptitiously took the Downloaded Documents *the same day*
16 *he was terminated*. Therefore, while Plaintiff was required to return all of the Subject Documents
17 upon his termination, including the Work Duty Documents, at least his initial possession of the
18 Work Duty Documents was arguably permissible prior to his termination. In contrast, Plaintiff's
19 downloading of company documents *the day he was terminated* was never permissible.
20 Moreover, *Plaintiff makes no effort to justify or legitimize his possession of the Downloaded*
21 *Documents*.

22 Plaintiff also makes much ado that his "Term Sheet" – a short form statement of material
23 deal points – does not set forth an obligation to return company documents. Plaintiff's myopic
24 focus on the Term Sheet is unavailing because Plaintiff was subject to VML's written Document
25 Return Policy, his Consulting Agreement, and the July 3, 2010 Letter of Agreement, all of which

26 ² Plaintiff also executed a July 3, 2010 Letter of Agreement with VML which requires Plaintiff
27 to maintain the confidentiality of VML "private, personal or proprietary information." **Exhibit**
28 **H**. See also Exhibit A to LVSC's Ex Parte Motion for Temporary Restraining Order in Case No.
648484.

1 expressly required Plaintiff to return documents to the company. **Exhibits A & B.** Plaintiff has
2 not cited a single authority requiring that the document return obligation be set forth specifically
3 in the employee's employment contract (an unreasonable requirement given that most employees
4 do not have written employment contracts). To the contrary, a written policy and agreements
5 requiring the return of company documents are enforceable and renders the continued retention
6 wrongful.

7 Plaintiff argues that SCL has waived any right to object to Plaintiff's use of the Subject
8 Documents. As discussed below in detail, Plaintiff's waiver arguments fail because: (1) SCL first
9 discovered Plaintiff's possession of the Downloaded Documents in July 2011 and, after meeting
10 and conferring with Plaintiff regarding the documents, LVSC filed a TRO Application on
11 September 8 and SCL filed this Motion in Limine on September 26, thus evidencing Defendants'
12 diligent efforts to protect their rights, and belying any waiver argument; (2) Plaintiff did not
13 disclose the Downloaded Documents until July 8, 2011 and, therefore, SCL could not, and did
14 not, *knowingly and intentionally* waive any rights by virtue of filings made prior to Plaintiff's July
15 8 disclosure; and (3) none of the documents attached to prior briefing, and listed on disclosures,
16 are privileged, and the use of a *non*-privileged document does not, as a matter of law, constitute a
17 waiver.³

18 Plaintiff's reference to communications during November 2010 through January 2011
19 concerning three unrelated reports does not remotely advance his waiver argument. In November
20 2010, SCL discovered that Plaintiff possessed "three reports" and immediately demanded their
21 return. After a short exchange, Plaintiff returned the original reports to SCL in late December
22 2010, and the reports have never been introduced into evidence. Thereafter, Plaintiff did not
23 disclose his possession of any other company documents until his July 8, 2011 revelation
24

25 ³ Plaintiff acknowledges possessing in excess of eleven gigabytes of documents, which may
26 amount to a million or more pages. *See e.g.,*
27 www.lexisnexis.com/applieddiscovery/lawlibrary/whitePapers/ADI_FS_PagesInAGigabyte.pdf.
Therefore, it is inevitable that SCL will use certain of these *non*-privileged documents in its
defense, and to do so does not, by any theory, relieve Plaintiff of responsibility for his wrongful
acquisition or constitute a waiver by SCL (otherwise, SCL would effectively be prevented from
using documents in its defense simply because Plaintiff improperly acquired them).

1 concerning the Downloaded Documents. The previously returned reports have no relationship to
2 the subsequently discovered Downloaded Documents.

3 Plaintiff's prior counsel recognized that his prior use of the Downloaded Documents was
4 improper and he agreed to discontinue any further use (he also suggested a protocol to vet the
5 documents). Unfortunately, Plaintiff has since retreated from this position.

6 Based on the foregoing, SCL is entitled to an order precluding Plaintiff from using any of
7 the Subject Documents at the jurisdictional evidentiary hearing, and during the jurisdictional
8 discovery preceding the hearing. Alternatively, the Court should adopt Defendants' proposed
9 document protocol (Exhibit C) and continue this Motion until the parties have completed the
10 requirements of the protocol.⁴

11 **II. DEFENDANTS' PROPOSED DOCUMENT REVIEW PROTOCOL**

12 Defendants' proposed document review protocol is attached hereto as Exhibit C and is
13 summarized here. Under the protocol, the parties will retain a third party ESI vendor, with each
14 side to pay 50% of the costs. Plaintiff's counsel will provide the ESI vendor with all documents
15 received from Plaintiff or within Plaintiff's possession, custody and control, and which he
16 obtained while employed by SCL or acting as a consultant to LVSC, or which are nonpublic
17 documents created or transmitted to any person affiliated with Defendants or their affiliates. This
18 includes the 11 gigabytes of data that Plaintiff's previous counsel informed Defendants were
19 obtained by Plaintiff in the course of his employment—although the Opposition admits that
20 "Jacobs current counsel does not know the exact magnitude of all of the data which Jacobs
21 possess as a result of his employment, *but it certainly believes that it exceeds the 11 gb* which
22 Jacobs' then-counsel was reviewing." Opp. at 7 n. 5 (emphasis added).

23 When providing these documents to the ESI vendor, Plaintiff's counsel will identify
24 communications between Plaintiff and his former or current litigation counsel in this matter, as to
25 which they may assert a privilege.

26
27 ⁴ Despite numerous attempts to meet and confer regarding Jacobs' use of the Subject Documents,
28 Jacobs' counsel refused to engage in discussions or come to an agreement with SCL's counsel,
necessitating the current Motion. See Ma Decl. at ¶¶ 5 through 12 and Exhibits D through P.

1 Defendants will then review the remaining documents and will prepare a schedule
2 identifying those documents that Defendants contend should not be reviewed or used by Plaintiff,
3 along with a brief identification of the grounds for such contentions listed separately for each
4 document. Thereafter, the parties will meet and confer regarding Defendants schedule of
5 protected documents. If the parties cannot agree as to the classification of certain documents,
6 Plaintiff's counsel will create a schedule of the disputed documents that they wish to review for
7 possible use in connection with the evidentiary hearing on personal jurisdiction.

8 Defendants will file a motion for protective order and/or other relief with respect to those
9 documents, and the Court will decide which documents, if any, Plaintiff and his counsel may
10 review and use. This briefing will apply only to documents that Plaintiff wishes to review in
11 connection with the evidentiary hearing on personal jurisdiction. With respect to all other
12 documents, the parties will discuss a process for submitting briefs to the court subsequent to the
13 lifting of the stay by the Nevada Supreme Court.

14 Plaintiff and his counsel would not disseminate, review or use the documents except (a) as
15 determined by the Court⁵; (b) documents on Plaintiff's privilege log, (c) documents not on
16 Defendants' Schedule.

17 The proposed protocol sets forth deadlines for each of the significant steps in the process.
18 The protocol contemplates 96 days from the date of execution of a contract with the ESI vendor to
19 the date of submission of a reply brief on the motion for protective order and/or other relief.

20 Again, the Court should adopt this protocol in order to ensure that the facts are fully
21 developed, including specifically the nature and extent of the Subject Documents possessed by
22 Plaintiff, before the Court makes any decisions regarding the fate of the documents; as opposed to
23 making decisions now without the benefit of knowing precisely what the documents consist of
24 (beyond what has already been introduced by Plaintiff).

25 SCL provided Plaintiff with the proposed protocol on October 7, and hoped to meet and
26

27 ⁵ Such review, use, or dissemination would not commence for 10 days following the Court's
28 ruling(s) in order to preserve Defendant's right to seek appellate review (except if and to the
29 extent Defendants notify Plaintiff that they do not intend to seek such appellate review).

1 confer with Plaintiff's counsel regarding the protocol prior to the October 13 hearing date.
2 Unfortunately, Plaintiff's counsel have, thus far, not made themselves available to discuss the
3 protocol. **Exhibit D.**

4 **III. LEGAL ARGUMENT**

5 **A. Plaintiff Cannot Conceal the Subject Documents From SCL, Then Oppose**
6 **Exclusion Because SCL Cannot Specifically Identify The Concealed**
7 **Documents**

8 Plaintiff's first argument in his Opposition speaks volumes about the current state of the
9 record. Plaintiff asks the Court to deny SCL's Motion because "Sands China does not identify
10 any particular documents or evidence for exclusion." Opp., 2:2-3; *see also*, 9:15-16. Of course,
11 Plaintiff conveniently fails to acknowledge that he has never provided Plaintiff access to the
12 Downloaded Documents, nor the Work Duty Documents, so SCL has no way to identify with
13 particularity the precise documents that it seeks to exclude. Plaintiff acknowledges that at least
14 certain of the Downloaded Documents are privileged. **Exhibits E, F and G** (July 8, 2011 E-Mail;
15 August 2, 2011 Letter; and August 3, 2011 Letter). Yet, because SCL cannot identify these
16 concealed privileged documents with precision, Plaintiff asks the Court to deny SCL's Motion.
17 Plaintiff's gamesmanship cannot be permitted.

18 The foregoing reinforces the need for the Court to implement a protocol for SCL to review
19 the Subject Documents and make more particularized objections, and the parties can thereafter
20 further brief the issues for the Court with reference to specific documents. This additional
21 information will enable the Court to make an informed decision regarding the fate of the Subject
22 Documents based upon a thorough vetting.

23 **B. Plaintiff's Retention of the Subject Documents – Both Work Duty and**
24 **Downloaded Documents – Violates Company Policy and is Wrongful**

25 Plaintiff spends the bulk of his brief focused on documents that he purportedly acquired
26 while performing his job duties, before he was terminated ("Work Duty Documents"), then
27 inappropriately conflates those documents with the separate and distinct voluminous documents
28 that Plaintiff downloaded *the same day he was terminated* (these documents were obviously taken

1 for reasons unrelated to Plaintiff's performance of his job duties) ("Downloaded Documents").
2 Notwithstanding the greater impropriety surrounding the Downloaded Documents, the fact
3 remains that Plaintiff was required to return **both** the Work Duty Documents and the Downloaded
4 Documents upon his termination, and his continued retention of both is wrongful.

5 **1. Plaintiff Was Obligated to Return All of the Subject Documents Upon**
6 **His Termination**

7 Plaintiff was (and is) obligated to return **all** of the Subject Documents – both Work Duty
8 and Downloaded Document – upon his termination. To whatever extent Plaintiff was authorized
9 to receive and review documents in the course and scope of his job duties, he was **not** authorized
10 to retain those documents following his termination, and Plaintiff has cited no authority
11 authorizing him to retain company documents following his termination, even if legitimately
12 acquired for purposes of performing his job duties. The documents belong to the company, not
13 Plaintiff. *See e.g., In Re Marketing Investors Corp.*, 80 S.W.3d 44, 46-48 (Tex.App. 1998) ("We
14 see no difference between the Corporation's documents and any other corporate property.
15 MacDonald is entitled to possession only as long as he is an employee. Thus, he must return the
16 documents to the Corporation.").

17 VML's express written Document Return Policy requires all terminated employees "to
18 return all electronic files, CDs, floppy disks, information reports and documents (including
19 copies) containing any confidential and/or proprietary information." **Exhibit A.** Plaintiff was
20 provided with a copy of this Document Return Policy on two separate occasions. Lee Decl., ¶¶ 8-
21 9. Plaintiff never objected. *Id.* To the contrary, as CEO of VML, Plaintiff was responsible for
22 enforcing this policy, and on at least once occasion, Plaintiff terminated an employee for failing to
23 comply with VML's Confidential Company Information Policy (which includes the Document
24 Return Policy). Lee Decl., ¶¶ 13-14. Additionally, Plaintiff's Consulting Agreement with VML
25 also provides that "[u]pon termination of this Agreement for any reason, all papers and documents
26 the Consultant's possession or under its control belonging to the Company, must be returned to
27 the Company." **Exhibit B.**

28 Plaintiff also signed the July 3, 2010 Letter of Agreement with VML—the agreement that

1 Plaintiff called the "Side Letter" in opposing SCL's motion to dismiss. **Exhibit G.** The July 3
2 agreement states that Jacobs will "hold confidential all Confidential Information (shall mean all
3 private, personal or proprietary information, tangible or intangible, owned or pertaining to
4 [VML], LVSC and affiliated or subsidiary companies and Sheldon G. Adelson), which
5 information was learned or acquired as a result of [Jacobs] providing services to [VML] in any
6 capacity." *Id.* Further, Plaintiff agreed that he would "treat any Confidential Information
7 disclosed to [him] or learned by [him] as fiduciary agent of [VML] recognizing that [VML] only
8 made the Confidential Information accessible to [him] by reason of the special trust and
9 confidence [VML] placed in [him]." Finally, the July 3 agreement states that Plaintiff "shall not
10 disclose, disseminate, transmit, publish, distribute, make available or otherwise convey any of the
11 Company, LVSC, its affiliated companies and subsidiaries and Sheldon G. Adelson trade secrets
12 to any person." *Id.*

13 Not surprisingly, Plaintiff's Opposition makes no mention of the VML Policy, nor his
14 Consulting Agreement, nor the Side Letter, because they are fatal to his argument. Instead,
15 Plaintiff repetitively states that his brief Term Sheet imposes no obligation to return company
16 property. Plaintiff's Term Sheet is not instructive here. More importantly, Plaintiff does not cite
17 a single authority holding that a written company policy requiring return of company
18 property/documents is unenforceable unless referenced in a written employment agreement. In
19 fact, the opposite is true; company policies are enforceable even in the absence of a specific term
20 in an employment contract, and even if the employee refuses to sign an acknowledgement. *See*
21 *e.g., In re Dillard Department Stores, Inc.*, 198 S.W.3d 778, 780 (Tex. 2006) (Employer may
22 enforce company policies if employee received notice of policy and continued employment after
23 receipt, even if employee explicitly rejects the policy change or refused to sign acknowledgment
24 of receipt.); *Perkins v. Ulrich*, 2007 Tex.App. LEXIS 3088, *6 -8 (Tex. App. Ct. April 24, 2007)
25 (Employee bound by company policies, even when signed under protest, when employee
26 continued to work after receiving policy); *Gonzalez v. Toscorp, Inc.*, 1999 U.S. Dist. LEXIS
27 12109, *5-7 (S.D.N.Y. August 5, 1999) (Employee bound by company policy even though he
28 refused to sign acknowledgment form.). Plaintiff never objected to VML's Document Return

1 Policy; to the contrary, he was primarily responsible for its enforcement. Lee Decl., ¶¶ 8-9, 13-
2 14. Given that the foregoing obligations apply equally to the Work Duty and Downloaded
3 Documents, such that Plaintiff is obligated to return both, the analysis could end here. That being
4 said, Plaintiff's possession and continued retention of the Downloaded Documents is considerably
5 more egregious because he did not acquire these documents as part of his normal and customary
6 performance of his job duties. Rather, he downloaded these voluminous documents the same day
7 he was terminated, thus demonstrating that the download was unrelated to Plaintiff's performance
8 of his job duties. Therefore, not surprisingly, Plaintiff makes no attempt to justify or legitimize
9 his original acquisition and possession of the Downloaded Documents. Plaintiff does not claim
10 that he was entitled to take these documents after he was terminated. Instead, Plaintiff simply
11 commingles the Downloaded Documents with the Work Duty Documents.

12 **2. Plaintiff Had Common Law Duties to Return the Subject Documents**

13 In addition to the company policies and executed agreements addressed above, Plaintiff
14 was under common law duties that precluded him from retaining possession of company
15 documents containing privileged, confidential and private information following his termination.
16 Those duties preclude him and his counsel from disseminating or using those documents in the
17 future. For example, when a corporate officer receives a privileged communication in the course
18 and scope of employment, he is not entitled to the privileged documents after he or she is
19 removed from that position. *Montgomery v. eTrepid Technologies, LLC*, 548 F.Supp.2d 1175
20 (D. Nev. 2008). In *Montgomery*, plaintiff sought documents reflecting privileged
21 communications with an LLC at the time that he was its manager and member. The court denied
22 plaintiff's motion to compel, finding that "the corporation is the sole client," and that individuals
23 such as plaintiff who received the communications were acting "on behalf of the corporation, not
24 on behalf of themselves as corporate managers or directors." *Id.* at 1187. Because plaintiff was
25 no longer part of management, he could not access the privileged documents. *Id.*

26 Plaintiff is also prohibited from divulging or using Defendants' trade secrets and other
27 confidential information for his own purposes. Plaintiff states that whether information is a trade
28 secret is a question of fact and criticizes SCL for failing to demonstrate that any of the Subject

1 Documents contain trade secrets. Opp. at 16-17 n. 10. Once again, Plaintiff demonstrates why
2 the document review protocol is appropriate: so that Defendants can review the Subject
3 Documents and identify those containing trade secrets.

4 Plaintiff also is subject to restrictions of Macau law, including the Macau Personal Data
5 Protection Act, with respect to documents reflecting certain personal information.

6 **3. Case Law Confirms that Retention of the Documents Was Wrongful**

7 In similar circumstances, courts have prohibited former employees from retaining and
8 using documents obtained in the course of their employment. In *Zahodnick v. International*
9 *Business Machines Corp.*, 135 F.3d 911 (4th Cir. 1997), an employee “retained confidential
10 materials belonging to [the company] after termination of his employment and forwarded those
11 documents to his counsel without [the company’s] consent.” *Id.* at 915. The *Zahodnick* court
12 affirmed an order enjoining the employee from disclosing the documents to third parties and
13 requiring him to return all confidential materials to the company.

14 Likewise, in *In Re Marketing Investors Corp.*, 80 S.W.3d 44, 46-47 (Tex.App. 1998), the
15 former president of the company took and retained company documents after he was terminated.
16 The president was subject to a company policy which specified that confidential and proprietary
17 information belonged to the company, that no employee could disclose such information without
18 permission, and that these restrictions continued after termination. The *Marketing Investors* court
19 held that these restrictions were valid and binding, and that they precluded the former president
20 from using the documents in the litigation. *Id.* at 48.

21 *Meritas Incentives, LLC v. Bumble and Bumble Products, LLC*, 127 Nev., Advance
22 Opinion 63 (Case No. 56313) is inapposite for several reasons. First, the documents at issue there
23 were received from an anonymous, unidentified source, and only contained a single privileged
24 document. Here, Plaintiff did not simply receive an anonymous package. Rather, he actively and
25 wrongfully downloading voluminous documents the day he was terminated, and likewise retained
26 documents in violation of VML’s Document Return Policy. Second, the *Meritas* appeal was
27 limited to the district court’s disqualification ruling, and the Nevada Supreme Court did not
28 directly address the propriety of plaintiff’s use of the non-privileged documents (because that

1 issue was not appealed). Notwithstanding these considerable factual difference, *Meritas* is
2 noteworthy because the Nevada Supreme Court distinguished documents received from an
3 anonymous source, as opposed to where “the attorney’s client provid[es] the confidential
4 documents to the attorney,” and indicated that a heightened standard applies when an attorney
5 receives documents from his client that the client obtained wrongfully. *Id.*

6 **C. SCL Acted Promptly to Protect its Rights**

7 SCL did not discover Plaintiff’s wrongful possession of the Downloaded Documents until
8 July 8, 2011. **Exhibits E, F and G.**⁶ SCL immediately demanded that Plaintiff both return, and
9 refrain from using, the Downloaded Documents. *Id.* On August 3, 2011, Plaintiff’s former
10 counsel committed to Defendants that “[w]hile [Jacobs] is unable to ‘return’ the documents to
11 [LVSC], *we agreed not to produce the documents in this litigation* until the issue is resolved by
12 the Court. Additionally, our firm will *continue to refrain from reviewing the documents* so as
13 not to create any issues regarding the documents containing communications with attorneys.”
14 **Exhibit G** (Emphasis added). Shortly thereafter, Plaintiff changed counsel and it appeared that
15 Plaintiff’s position regarding future use of the Downloaded Documents had changed. Therefore,
16 in September 2011, LVSC brought an application for a TRO and SCL brought this motion.

17 SCL has demonstrated diligence but Plaintiff attempts to confuse the foregoing
18 chronology, by reference to narrowly focused communications between the parties during
19 November 2010 through January 2011 regarding three discrete reports. Those discussions have
20 no relationship whatsoever to the Downloaded Documents, which SCL did not discover until
21 many months later. To the contrary, in November 2010, SCL discovered that Plaintiff had three
22 discrete reports in his possession and immediately demanded their return, and in December 2010,
23 Plaintiff returned the original reports. Thereafter, Plaintiff did not use these reports in any of his
24 filings. Over six months later, on July 8, 2011, Plaintiff suddenly revealed that he has eleven
25 gigabytes of documents in his possession. This was Plaintiff’s first acknowledgement that he
26

27 ⁶ SCL subsequently investigated the matter and discovered that, on the day of his termination,
Plaintiff performed a Google search regarding how to download documents, then attached an
external hard drive to his work computer and downloaded voluminous documents.

1 possessed any company documents since his December 2010 return of the three original reports.
2 As set forth above, SCL again promptly addressed the new revelation. Therefore, the narrow
3 dealings between the parties regarding the discrete issue of the three reports does not constitute,
4 nor even remotely evidence, a waiver of any rights.

5 Plaintiff also erroneously characterizes the contents of both Kenneth Kay's declaration
6 and a November 30, 2010 letter from Plaintiff's prior counsel. Mr. Kay did not declare, as
7 Plaintiff claims, that he knew Plaintiff took documents with him when he was terminated. Opp.,
8 p. 18. Rather, Mr. Kay merely observed that Plaintiff came into possession of confidential
9 documents during the course of his consulting and employment services, as one would expect in
10 light of Plaintiff's position, but Kay declared nothing regarding the disposition of those
11 documents following Plaintiff's termination, nor Plaintiff's continued retention of the documents.
12 Opp., Exh. M. Likewise, in his November 30, 2010 letter, Plaintiff's prior counsel did not state
13 that Plaintiff was in possession of a "multitude" of company documents, as incorrectly asserted by
14 Plaintiff. Opp., p. 5. Rather, Plaintiff's prior counsel merely observed that, in his experience,
15 executives sometimes retain possession of documents following the cessation of employment.
16 Opp., Ex. F ("It has been our experience that wrongfully terminate corporate executives are
17 often—and properly—in possession of a multitude of documents received during the ordinary
18 course of their employment."). The actual letter is far from the damning disclosure Plaintiff
19 falsely claims in his Opposition. Moreover, Plaintiff's counsel subsequently revealed that he did
20 not discover Plaintiff's possession of the eleven gigabytes of documents until July 2011, seven
21 months later. **Exhibit E.**

22 **D. SCL Has Not Waived its Right to Preclude Plaintiff's Use of the Subject**
23 **Documents at the Evidentiary Hearing**

24 Notwithstanding the clear prohibition against Plaintiff's retention of the Subject
25 Documents, Plaintiff suggests that he has immunity and is free to use the Subject Documents
26 without limitation because SCL allegedly waived its right to object. Plaintiff is wrong. SCL has
27 not waived any rights in relationship to the Subject Documents.

28 ////

1 1. Plaintiff's Previous Use of Company Documents in this Litigation,
2 Before His Wrongful Download Was Discovered, Does Not Permit
3 Plaintiff to Continue His Improper Use of the Documents

4 Plaintiff cannot justify his continued use of the Downloaded Documents on the grounds
5 that he improperly attached a few of the documents to prior briefs. Indeed, any prior misconduct,
6 intentional or otherwise, does not relieve Plaintiff from any ethical and/or legal duties moving
7 forward. Plaintiff has not cited any authority for the misguided proposition that, if a party
8 initially gets away with wrongdoing, he may continue his wrongdoing with impunity. Plaintiff's
9 prior use of the Downloaded Documents was improper, and any further use, including at the
10 evidentiary hearing, would be equally impermissible. Two wrongs do not make a right.

11 Plaintiff's prior counsel clearly understood and acknowledged this simple maxim. Upon
12 discovering Plaintiff's possession of company documents, including those attached to prior briefs,
13 Plaintiff's prior counsel did not claim waiver and seek to continue using the documents. To the
14 contrary, Plaintiff's prior counsel promptly agreed to discontinue any further review or use, and
15 suggested the implementation of a protocol to vet the documents. Exhibits E-G. Plaintiff's new
16 waiver theory is completely contrary to the position of his prior counsel and, more importantly,
17 also contrary to the law.

18 2. SCL Did Not Intentionally Relinquish a Known Right or Privilege
19 Because SCL Was Not Aware of Plaintiff's Wrongful Document
20 Download When Company Documents Were Initially Introduced

21 A waiver will only occur "where a party knows of an existing right and either actually
22 intends to relinquish the right or exhibits conduct so inconsistent with an intent to enforce the
23 rights as to induce a reasonable belief that the right has been relinquished." *McKeeman v.*
24 *General American Life Ins.*, 111 Nev. 1042, 1048 (1995); *see also Hudson v. Horseshoe Club*
25 *Operating Co.*, 112 Nev. 446, 457 (1996); *Raquepaw v. State of Nevada*, 108 Nev. 1020, 1022
26 (1992) (Waiver requires "an intentional relinquishment or abandonment of a known right or
27 privilege").

28 Plaintiff cannot meet this exacting standard because he cannot show that SCL was aware

1 of the Downloaded Documents prior to July 8, 2011. Plaintiff refers to the documents attached to
2 his oppositions to SCL's and LVSC's Motions to Dismiss in February -- March 2011. When
3 Plaintiff initially introduced these *non*-privileged documents with his opposition briefs, Plaintiff
4 had not yet disclosed that he wrongfully downloaded eleven gigabytes of documents. To the
5 contrary, Plaintiff did not disclose his improper and unauthorized document download until
6 several months later. **Exhibits E-G.** Therefore, , SCL did not and could not knowingly and
7 intentionally waive any rights arising from Plaintiff's wrongful acquisition of documents.

8 SCL also introduced certain *non*-privileged documents with its original Motion to
9 Dismiss, filed in December 2010 that, according to Plaintiff, are among the million plus pages of
10 documents wrongfully acquired by Plaintiff. Opp., p. 6. As SCL has not seen Plaintiff's eleven
11 gigabytes of company documents, it cannot confirm this assertion. But even if SCL's exhibits
12 were also in Plaintiff's possession, SCL's action is not a knowing and intentional waiver of its
13 right to object to Plaintiff's possession and use of *other* company documents.

14 **3. SCL Has Not Waived Any Rights Because Only *Non*-Privileged**
15 **Documents Were Introduced in Prior Briefing and Subsequently**
16 **Disclosed**

17 Neither Plaintiff nor SCL has introduced any privileged documents or information in their
18 prior briefs and disclosures. Rather, Plaintiff and SCL introduced only *non*-privileged documents
19 in their prior briefs.

20 Given that only *non*-privileged documents were introduced in prior briefs, no waiver of
21 any kind occurred as a matter of law. *See e.g., Cheyenne Constr., Inc. v. Hozz*, 102 Nev. 308, 312
22 (1986) (Waiver will only be applied where the disclosure itself involves privileged information; a
23 voluntary disclosure of non-privileged information will not be deemed a waiver of any privilege.).
24 The same is true of SCL's identification of certain *non*-privileged documents on its discovery
25 disclosures -- because the identified documents are all *non*-privileged, no waiver occurred by
26 virtue of their disclosure. *Id.*

27 ///

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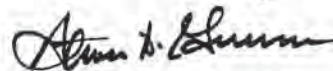
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14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 STEVEN C. JACOBS,

17 Plaintiff,

18 v.

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

24 Defendants.

25 AND RELATED CLAIMS

Case No.: A-10-627691

Dept. No.: XI

**STEVEN C. JACOBS' OPPOSITION TO
DEFENDANTS' MOTION TO STRIKE
NEW ARGUMENT RAISED FOR FIRST
TIME IN REPLY OR, IN THE
ALTERNATIVE, FOR LEAVE TO
SUBMIT A SUR-REPLY**

Date of Hearing: May 17, 2013

Time of Hearing: In chambers

26 Defendants Las Vegas Sands Corp. ("LVSC") and Sands China, Ltd. ("Sands China")
27 moved to strike certain arguments contained in Plaintiff Steven C. Jacobs' ("Jacobs") Reply in
28 Support of Motion to Return Remaining Documents from Advanced Discovery ("Reply")
claiming that Jacobs raised these arguments for the first time in his Reply. What LVSC and
Sands China seem to ignore, however, is that Jacobs' brief replies to arguments and "facts" from
Defendants' Opposition *and* Supplemental Opposition relating to the timeliness of Defendants'
review of Jacobs' ESL. More importantly, not only was Defendants' Supplemental Opposition
invited by the Court during the March 14, 2013 hearing, but Jacobs' Reply – to Defendants'
original Opposition and its Supplement – was *also* invited by the Court during the hearing.

1 During the March 14, 2013 hearing, the Court directed Defendants to "do a supplemental
2 opposition that more specifically identifies the factual issues in this specific case." (3/14/13 Tr. at
3 11:15-17). Defendants, to some degree, did that and outlined the procedure involving the deposit
4 and review of Jacobs' ESI with Advanced Discovery. In his Reply (expressly permitted by the
5 Court), Jacobs outlined the acts leading up to the deposit and review of his ESI with Advanced
6 Discovery and the effect of those acts. In other words, Jacobs supplied the facts that Defendants
7 conveniently chose to omit.

8 As an example, in Defendants' Opposition and Supplemental Opposition, Defendants cast
9 dispersions on Jacobs for his alleged delay in depositing his ESI with Advanced Discovery.
10 Jacobs addresses this incorrect statement in his Reply and provides the Court (and the record)
11 with the necessary background: Defendants dragged their heels in demanding Jacobs' ESI, and it
12 was Defendants who tried to shift the blame by accusing Jacobs of delaying the deposit of his ESI
13 with Advanced Discovery. Defendants refer to the hearings in the fall of 2011 regarding Jacobs'
14 ESI and the orders related to those hearings in their oppositions. But Defendants ignore the fact
15 that these hearings did not occur until the fall of 2011 *because that is when Defendants first*
16 *raised the issue with the Court.* Defendants originally demanded the return of documents in
17 November 2010. Jacobs refused. Then Defendants waited until the fall of 2011 to address this
18 matter with the Court. Jacobs' Reply responds to the false picture Defendants painted as to the
19 timeliness of Jacobs' acts in comparison with those of the Defendants. Jacobs cannot be faulted
20 for complying with this Court's instructions and providing the factual background for Defendants'
21 (erroneous) contention that "Defendants Acted Reasonably And Promptly In Reviewing The
22 Advanced Discovery Documents." (Suppl. Opp'n, 7:4-5.)

23 Further, and perhaps most pertinent, the Court already ruled on Jacobs' Motion to Return
24 Remaining Documents from Advanced Discovery ("Motion"). The Court granted Jacobs' Motion
25 on April 12, 2013, the very same date the Court stated she would rule on the Motion after
26 Defendants' submitted their Supplemental Opposition (on April 1) and Jacobs would submit his
27 Reply (on April 8). Despite the fact that Defendants' Motion to Strike was knowingly untimely
28 filed (it was filed on April 15, 2013 – after the date set for the matter to be heard and ruled upon

1 in chambers), the Court did not rely upon the argument Defendants seek to strike, rendering
2 Defendants' motion moot. (See Ex. 1, Minute Order dated 4/12/13.)

3 For either of the foregoing reasons, Defendants' motion to strike fails.

4 DATED this 2 day of May, 2013.

5 PISANELLI BICE PLLC

6
7 By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 2 day of May, 2013, I caused to be sent via e-mail and electronic service true and correct copies of the above and foregoing **STEVEN C. JACOBS' OPPOSITION TO DEFENDANTS' MOTION TO STRIKE NEW ARGUMENT RAISED FOR FIRST TIME IN REPLY OR, IN THE ALTERNATIVE, FOR LEAVE TO SUBMIT A SUR-REPLY** properly addressed to the following:

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EXHIBIT 1

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New District Civil/Criminal](#)
[Search](#) [Refine Search](#) [Close](#)

Location : District Court Civil/Criminal [Help](#)

REGISTER OF ACTIONS

CASE No. A-10-627691-B

Steven Jacobs, Plaintiff(s) vs. Las Vegas Sands Corp, Defendant §
 (s) §
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Case Type: **Business Court**
 Date Filed: **10/20/2010**
 Location: **Department 11**
 Case Number History: **A-10-627691-C**
 Conversion Case Number: **A627691**
 Supreme Court No.: **58740**

PARTY INFORMATION

Counter Claimant	Las Vegas Sands Corp	Lead Attorneys J. Stephen Peek <i>Retained</i> 702-669-4600(W)
Counter Defendant	Jacobs, Steven C	James J Pisanelli <i>Retained</i> 702-214-2100(W)
Defendant	Las Vegas Sands Corp	J. Stephen Peek <i>Retained</i> 702-669-4600(W)
Defendant	Sands China LTD	Jon Randall Jones <i>Retained</i> 7023856000(W)
Other	Goldstein, Robert G.	Robert J. Cassity <i>Retained</i> 702-669-4600(W)
Other	Leven, Michael A.	Robert J. Cassity <i>Retained</i> 702-669-4600(W)
Other	Reese, Ronald	Robert J. Cassity <i>Retained</i> 702-669-4600(W)
Plaintiff	Jacobs, Steven C	James J Pisanelli <i>Retained</i> 702-214-2100(W)

EVENTS & ORDERS OF THE COURT

04/12/2013 Motion (3:00 AM) (Judicial Officer Gonzalez, Elizabeth)
Plaintiff Steven C. Jacobs' Motion to Return Remaining Documents from Advanced Discovery

Minutes
 03/22/2013 3:00 AM
 04/12/2013 3:00 AM

The Court, having reviewed the Motion for Return of Remaining Documents from Advanced Discovery and the related briefing and being fully informed, GRANTS the Motion as Jacobs was in a position and in fact had access to the documents at issue during the period of his employment. The Court, by granting Jacobs and his counsel access to the documents at issue, inherently recognizes that while Jacobs may use the documents for purposes of this litigation, notes that Jacobs may not disseminate the information further than his counsel, as any privilege related to these documents in fact belongs to the Defendants. Accordingly the documents shall be treated as confidential under the existing protective order. Counsel for Jacobs is directed to submit a proposed order consistent with the foregoing within ten (10) days and distribute a filed copy to all parties involved in this matter. Such order should set forth a synopsis of the supporting reasons proffered to the Court in briefing. This Decision sets forth the Court's intended disposition on the subject but anticipates further order of the Court to make such disposition effective as an order. Mr. Pisanelli is to be notified by way of minute order to prepare the Order and notify the appropriate parties. CLERK'S NOTE: A copy of the above minute order was placed in the attorney folder(s) of: James Pisanelli, Esq. (Pisanelli Bice PLLC); J. Stephen Peek, Esq., & Robert Cassity, Esq. (Holland & Hart); Michael Lackey, Jr., Esq. (Mayer Brown LLP; 1999 K Street, N.W., Washington, D.C. 20006); J. Randall Jones, Esq. (Kemp, Jones & Coulthard); Steve Morris, Esq. (Morris Law Group). / dr

[Return to Register of Actions](#)

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7 Attorneys for Plaintiff Steven C. Jacobs

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 **STEVEN C. JACOBS,**

11 Plaintiff,

12 v.

13 **LAS VEGAS SANDS CORP.,** a Nevada
14 corporation; **SANDS CHINA LTD.,** a
15 Cayman Islands corporation; **DOES I**
16 through X; and **ROE CORPORATIONS**
17 I through X,

Defendants.

18 **AND RELATED CLAIMS**

Case No.: A-10-627691

Dept. No.: XI

**NOTICE OF ENTRY OF ORDER
REGARDING DEFENDANTS' MOTION
FOR ORAL ARGUMENT**

Hearing Date: March 14, 2013

Hearing Time: 8:30 a.m.

19 PLEASE TAKE NOTICE that an *Order Regarding Defendants' Motion for Oral*
20 *Argument* was entered in the above-captioned matter on May 8, 2013, a true and correct copy of
21 which is attached hereto.

22 DATED this 8th day of May, 2013.

23 **PISANELLI BICE PLLC**

24 By:  #C9182A

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 8th day of May, 2013, I caused to be sent via United States Mail, postage prepaid, a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF ORDER REGARDING DEFENDANTS' MOTION FOR ORAL ARGUMENT** properly addressed to the following:

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CLERK OF THE COURT

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14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 STEVEN C. JACOBS,

17 Plaintiff,

18 v.

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

24 Defendants.

Case No.: A-10-627691

Dept. No.: XI

**ORDER REGARDING DEFENDANTS'
MOTION FOR ORAL ARGUMENT**

Date: March 14, 2013

Time: 8:30 a.m.

25 **AND RELATED CLAIMS**

26 On March 14, 2013, the parties came before this Court on Defendants' Motion for Oral
27 Argument on Plaintiff's Motion to Return Remaining Documents from Advanced Discovery on
28 Order Shortening Time ("Motion for Oral Argument"). James J. Pisanelli, Esq. and Todd L.
Bice, Esq., of the law firm PISANELLI BICE PLLC, appeared on behalf of Plaintiff Steven C.
Jacobs ("Jacobs"). J. Stephen Peek, Esq., of the law firm Holland & Hart LLP, appeared on
behalf of Defendants Las Vegas Sands Corp. ("LVSC") and Sands China Ltd. ("Sands China").
Mark M. Jones, Esq., of the law firm Kemp Jones & Coulthard, LLP, appeared on behalf of
Defendant Sands China. The Court considered the papers filed on behalf of the parties and the
oral argument of counsel, and good cause appearing therefor:

///

04-25-15 P06:00 RCVD

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LAS VEGAS, NEVADA 89169

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:


1. The Motion for Oral Argument is DENIED without prejudice.

DATED: May 7, 2013


THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

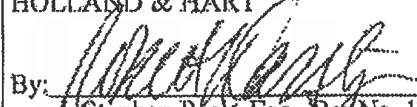
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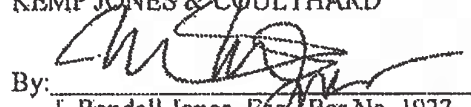
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

May 17, 2013

A-10-627691-B Steven Jacobs, Plaintiff(s)
vs.
Las Vegas Sands Corp, Defendant(s)

May 17, 2013 3:00 AM Defendants' Motion to Strike New Argument Raised for
First Time in Reply, or, in the Alternative, for Leave to
Submit a Sur-Reply

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Dulce Romea

RECORDER:

PARTIES None.
PRESENT:

JOURNAL ENTRIES

- COURT ORDERED, Defendants' Motion to Strike is DENIED; however, Defendants may, if they believe appropriate, file a sur-reply to address the "new" issues. If so, the Court will review the sur-reply in Chambers and make a determination as to whether anything modifies this Court's prior decision. Any brief may be filed on or before 6/13/13 at 4:00 PM. Court will review as Status Check: Sur-reply on the Chambers Calendar on 6/14/13.

6/14/13 STATUS CHECK: SUR-REPLY - CHAMBERS

CLERK'S NOTE: A copy of the above minute order was emailed to: J. Randall Jones, Esq. (jrj@kempjones.com); Mark Jones, Esq. (m.jones@kempjones.com); J. Stephen Peek, Esq. (speek@hollandhart.com); James Pisanelli, Esq. (jjp@pisanellibice.com); Todd Bice, Esq. (tlb@pisanellibice.com); Debra L. Spinelli, Esq. (dls@pisanellibice.com). / dr

PRINT DATE: 05/23/2013

Page 1 of 1

Minutes Date:

May 17, 2013

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

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

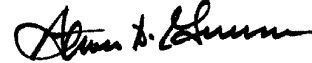
24 Defendants.

25 AND ALL RELATED MATTERS.
26

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CLERK OF THE COURT

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

Date: n/a
Time: n/a

**DEFENDANTS' SUR-REPLY IN
OPPOSITION TO PLAINTIFF'S
MOTION TO RETURN REMAINING
DOCUMENTS FROM ADVANCED
DISCOVERY**

INTRODUCTION

Pursuant to this Court's Order of May 17, 2013 granting leave, Defendants Las Vegas Sands Corporation ("LVSC") and Sands China Limited ("SCL") respectfully file the following sur-reply in opposition to Plaintiff's motion for the "return" of documents from Advanced Discovery. Defendants address only the new theories that Plaintiff advanced for the first time in his reply brief. In so doing, Defendants do not agree with or concede the other arguments in Plaintiff's reply.

After his termination as CEO of SCL in July 2010, Plaintiff downloaded and took with him some 40 gigabytes of documents belonging to Defendants, including thousands that are protected by the attorney-client privilege. When SCL learned that Plaintiff had possession of corporate documents, it promptly objected and demanded that he return them. Plaintiff refused, and it took several months of negotiation and court proceedings just for Defendants to gain access to the data. Defendants then spent months reviewing nearly 100,000 files, determined that some 11,000 of them were protected, and prepared a privilege log comprising over 1,700 pages.

Plaintiff's motion asks this Court to disregard Defendants' privileges and release the documents *en masse* to Plaintiff so he can disclose them to his attorneys and use them against Defendants, without even considering the merits of Defendants' objections. Plaintiff's initial brief acknowledged federal case law holding that terminated employees have no authority over privileges asserted by the corporation, but argued that those cases made an exception for documents that a former employee authored or received before termination. Defendants' opposition briefs showed that there was no such exception. So Plaintiff tried a new approach on reply, arguing that Defendants' privileges (and the question whether Plaintiff had authority to waive those privileges, which Plaintiff himself had addressed in his opening brief) were irrelevant because Plaintiff had possession of the documents *after* he was terminated. According to Plaintiff's Reply, the relevant question is now "whether Jacobs is in the class of persons permitted to view and have access to this information for purposes of litigation." Pl. Reply, at 2. From this premise, Plaintiff argues that (i) if he is within this "class of persons," he is entitled to disclose and use the documents; and (ii) if he is not within the exempt "class of persons," he can still

1 disclose and use the documents anyway, on the theory that Defendants waived privilege. As
2 shown below, Plaintiff's new arguments fail.

3 **I. Plaintiff's Possession Of The Privileged Documents Makes No Difference.**

4 Plaintiff's new theories all proceed from a false premise: that by taking possession of
5 Defendants' privileged documents, Plaintiff changed the whole legal framework for analyzing
6 Defendants' rights. Pl. Reply at 8 (contending that Plaintiff's lack of authority to waive
7 Defendants' privilege is irrelevant because "he already has" the documents). Plaintiff's premise
8 crumbles, because gaining possession of privileged documents does not give an adverse party any
9 right to disclose them further or to use them in litigation against the privilege holder. To the
10 contrary, if a party receives privileged documents that were inadvertently produced, RPC 4.4(b)
11 requires the receiving party's counsel to "promptly notify the sender." Indeed, the Nevada
12 Supreme Court has recognized that an attorney who receives the opposing party's privileged
13 documents "must promptly notify opposing counsel," even if the documents were received from
14 an anonymous source or a third party unrelated to the litigation. *Merits Incentives, LLC v. Eighth*
15 *Judicial Dist. Ct.*, 262 P.3d 720, 725 (Nev. 2011). The Court found that these duties apply with
16 even greater force when an attorney receives an adverse party's confidential documents from his
17 or her client. *Id.* at 724-25. The Court therefore stated that "a party whose privileged information
18 has been obtained by the opposing party" may "seek[] the return of that information" and then
19 seek "relief from the district court" if the opponent refuses. *Id.* at 725 n.7. That is exactly what
20 Defendants did here.

21 Whether or not Plaintiff properly obtained the privileged documents while he was
22 employed as CEO of SCL makes no difference.¹ As Defendants showed in their prior briefs,
23 Plaintiff has been terminated, and as a result he no longer has any authority over privileges that
24 belong to SCL and LVSC. When Plaintiff obtained the documents, he was under a fiduciary duty
25 to act in the company's best interests. Now that he has been terminated and is pursuing a lawsuit
26 *against* the company, he has no right to use those privileged documents against Defendants (who

27 ¹ SCL believes that Plaintiff downloaded much of the data in anticipation of his termination, in
28 order to take it with him when he left. To the extent that was the case, the documents would not
have come to his attention in the ordinary course of his employment.

1 are the only rightful holders of the privilege) or to disclose them to his attorneys. See *In re*
2 *Marketing Investors Corp.*, 80 S.W.3d 44, 50 (Tex. App. 1998) (“We conclude the attorney-client
3 privilege applies against” terminated executive notwithstanding his “possession of the Corporate
4 documents”); *Gilday v. Kenra, Ltd.*, No. 1:09-cv-00229-TWP-TAB, 2010 WL 3928593, at *1, *4
5 (S.D. Ind. Oct. 4, 2010) (corporation “may assert the attorney-client privilege against [former
6 employee], even as to privileged documents she accessed during her employment,” and even
7 though former employee “copied several documents” and took them prior to termination). The
8 employee’s possession of privileged documents cannot make a difference: otherwise, terminated
9 employees would have the perverse incentive to take masses of privileged documents with them
10 as they leave the building.²

11 Further, Plaintiff’s theory is fundamentally inconsistent with the purpose of the privilege:
12 “to encourage full and frank communication between attorneys and their clients,” without fear
13 that the communication might someday be turned against them. *Upjohn Co. v. United States*, 449
14 U.S. 383, 389 (1981). To serve that purpose, the U.S. Supreme Court held that the privilege
15 extends beyond the narrow “control group” to encompass an attorney’s communications with
16 middle and lower-level employees. *Id.* at 390-93. As the Court explained, the restricted control-
17 group test would “frustrate[] the very purpose of the privilege by discouraging the communication
18 of relevant information”: employees outside the control group are likely to “have the relevant
19 information needed by corporate counsel” and they are also likely to be the ones who “will put
20 into effect” the lawyer’s advice. *Id.* at 391-92.

21 The Nevada Supreme Court has “approve[d] the test announced in *Upjohn*.” *Wardleigh*,
22 111 Nev. at 352. But Plaintiff’s theory is fundamentally opposed to that framework. The way

23
24 ² Because Plaintiff’s possession of the documents has no effect on Defendant’s rights, his
25 reference (Pl. Reply at 10 n.4) to the Court’s September 14, 2012 sanctions order has no bearing
26 here. The Order precludes Defendants, for purposes of jurisdictional discovery and the eventual
27 hearing on jurisdiction, “from contesting that Jacobs ESI . . . is not rightfully in his possession.”
28 The question here is not whether the ESI is rightfully in Jacobs’ possession, but whether he may
now disclose it to his attorneys and then use it against Defendants in this suit. Far from
foreclosing or resolving the issues of privilege presented here, 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*.” Sept. 14, 2012 Order at 9 n.13 (emphasis added).

1 Plaintiff sees things, any employee who happens to take copies of privileged communications
2 with him when he leaves would be able to use those communications against the company. Thus,
3 expanding the circle of attorney-client communication would *increase* the company's risk and
4 increase the number of people who might take privileged communications with them when they
5 depart and later use those communications against the company. If that were the case, companies
6 would not encourage their employees to communicate with company attorneys in the first place.
7 Allowing former employees to take and use the company's privileged documents "would
8 undermine the privilege" and "chill the willingness of control group members to speak candidly
9 on paper (or these days, in electronic media) about privileged matters, knowing that some day one
10 of their number may leave the control group and become adverse (whether through litigation or
11 business activity) to the corporation." *Dexia Credit Local v. Rogan*, 231 F.R.D. 268, 277 (N.D.
12 Ill. 2004). See also *Gilday*, 2010 WL 3928593, at *4 ("These rationales [for upholding privilege]
13 are sound, particularly given the revolving door that is a mainstay of today's corporate
14 employment setting.").

15 **II. Plaintiff Is Not Within A "Class Of Persons" That Can Use Defendants' Privileged**
16 **Documents.**

17 **A. There Is No "Class Of Persons" That Has A Special Right To Disclose Or Use**
18 **Another Party's Privileged Documents.**

19 Because Plaintiff's possession of Defendants' documents does not affect Defendants'
20 legal rights, Plaintiff's new theory fails out of hand. While the destruction of Plaintiff's premise is
21 already dispositive, Plaintiff's argument also fails because it proceeds to an erroneous result.
22 Plaintiff argues that instead of assessing Defendants' claims of privilege, the Court has to answer
23 an entirely irrelevant question: whether Plaintiff falls within an undefined "class of persons" who
24 can disclose and use Defendants' documents even if those documents are privileged. Plaintiff then
25 contends that he falls within this exempt "class." Plaintiff makes two fundamental errors.

26 *First*, Plaintiff is asking the wrong question. Under Nevada law there is no "class of
27 persons" – other than the client itself – that has any authority to disclose or use privileged
28 documents. By its plain terms, NRS 49.095 gives the client the privilege "to prevent *any other*

1 person from disclosing” privileged communications. No person or class of persons is exempt
2 from the statutory command. Not surprisingly, Plaintiff’s briefs do not cite any Nevada case law
3 exempting any class of persons from the statutory privilege.

4 Plaintiff tries to muster support for his “special class” theory from out-of-state case law,
5 but none of those cases supports his novel theory. *Fox Searchlight Pictures, Inc. v. Paladino*, 106
6 Cal. Rptr. 2d 906 (Ct. App. 2001) (cited at Pl. Reply, p. 11) arose in the wholly unrelated context
7 in which a former in-house attorney sues his client in a dispute about the attorney’s advice. Such
8 attorney-client disputes are inapposite. They are the subject of a special exception to privilege
9 that is expressly limited to disputes between attorney and client. See *id.* at 922 (citing California
10 exception to privilege for attorney-client disputes); NRS 49.115(3) (Nevada privilege exception
11 limited to “a communication relevant to an issue of breach of duty by the lawyer to his or her
12 client or by the client to his or her lawyer”). That separate exception has no bearing here.
13 Plaintiff is not an attorney and this case is not an attorney-client dispute.

14 Plaintiff’s other citations are equally off base. *People v. Greenberg*, 851 N.Y.S.2d 196
15 (Ct. App. 2008) (Pl. Reply at 9) did not involve a former officer’s suit against the corporation; in
16 fact, the former officers and the company were aligned. In *Greenberg*, the company and two
17 former directors were all defending against a suit by the New York Attorney General. *Id.* at 197.
18 In that setting, the court allowed the former directors to see the company’s documents, but the
19 “[m]ost significant” factor in the *Greenberg* decision was that the company had already
20 voluntarily produced virtually all of the documents to the SEC. *Id.* at 202. Further, the court
21 relied on New York law giving former directors a qualified right to inspect corporate documents
22 generated during their tenure. *Id.* at 199. None of these case-specific facts is presented here.
23 Plaintiff is obviously not aligned with the corporate clients but adverse to them, he is not a former
24 director, and there is no contention that Defendants waived their privileges by producing
25 documents to the government.

26 *In re Braniff Insolvency Litig.*, 153 B.R. 941 (M.D. Fla. 1993) (Pl. Reply at 9) is also
27 inapposite; indeed, it involves a context that is the polar opposite of the situation here. In *Braniff*,
28 former officers and directors were *defendants* in a suit brought by the company (which was then

1 in bankruptcy). *Id.* at 942 & n.1. Here, the roles are reversed and a former officer seeks to use
2 privileged documents offensively, as a plaintiff. In the context presented here, federal cases hold
3 that a displaced officer has no right to access, disclose or use the company's privileged
4 communications. See, e.g., *Dexia*, 231 F.R.D. at 277 (“[O]nce [former CEO’s] control group
5 status terminated, so too did his right of access to privileged documents of the corporation.”). As
6 Defendants showed at length in their prior briefs, that conclusion stems from three sources: (i) the
7 U.S. Supreme Court’s decision in *Commodity Futures Trading Comm’n v. Weintraub*, 471 U.S.
8 343, 349 (1985) (stating that “[d]isplaced managers” no longer have control over the privilege
9 “even as to statements that the former [managers] might have made to counsel”); (ii) the officer’s
10 fiduciary duty of loyalty; and (iii) the public policy of encouraging candid communication
11 between the corporate client and its attorney. *Braniff* arose in a context opposite from the one at
12 bar, and the court’s opinion does not mention *Weintraub*, does not address the concept of
13 fiduciary duty, and does not discuss the policies served by the privilege. It provides no basis for
14 the radical result Plaintiff seeks here.

15 **B. Plaintiff Is Not Entitled To Disclose Or Use Defendants’ Privileged**
16 **Documents.**

17 As the preceding section shows, Plaintiff’s reply brief asks the wrong question – whether
18 Plaintiff belongs to a privilege-exempt “class of persons” when no such class exists under Nevada
19 law. Plaintiff also gives the wrong answer when he argues that he is part of the “class” and can
20 disclose defendants’ privileged documents to his attorneys and use those documents in litigation.
21 As Defendants showed in their prior opposition briefs, Plaintiff’s status as a former officer of one
22 defendant does not give him any special rights to disclose or use Defendants’ privileged
23 documents.

24 Plaintiff’s assertion that the litigation “unquestionably implicate[s]” the documents
25 (Reply, at 2) makes no difference. At the outset, there is no record basis for such an assertion.
26 Plaintiff wants the Court to order the wholesale release of thousands of privileged documents
27 without looking at any of them. It strains credulity to suggest that every one of the thousands of
28 documents on the privilege log is critical to the case, and certainly Plaintiff has made no showing

1 that they are. Moreover, Plaintiff has made no showing that any document (let alone all of them)
2 is relevant to the question of personal jurisdiction, the only issue properly before the Court in light
3 of the Supreme Court's August 2011 Order. Instead, his brief argued that they would be relevant
4 to the merits.

5 More fundamentally, though, as a matter of law there is no showing of relevance or need
6 that can overcome the attorney-client privilege. The statutory privilege is not qualified but
7 "absolute" and it does not permit courts to perform any "balance between a public interest [in
8 nondisclosure] and the need for relevant evidence in civil litigation." *State ex rel. Tidvall v.*
9 *Eighth Judicial Dist. Ct.*, 91 Nev. 520, 525 (1975) (construing identical language of governmental
10 privilege in NRS 49.025). The attorney-client privilege "cannot be overcome by a showing of
11 need." *Admiral Ins. Co. v. U.S. Dist. Ct.*, 881 F.2d 1486, 1494 (9th Cir. 1989) (quoting Saltzburg,
12 *Corporate and Related Attorney-Client Privilege: A Suggested Approach*, 12 Hofstra L. Rev. 279,
13 299 (1984)). A rule that exposes privileged communications to the client's adversary for use in
14 litigation based on allegations that the evidence is "needed" or unavailable from other sources
15 "would destroy the privilege or render it so tenuous and uncertain that it would be 'little better
16 than no privilege at all.'" *Id.* (quoting *Upjohn*, 449 U.S. at 393). Because "the attorney-client
17 privilege" is "an absolute privilege, once the court determines that the matter sought falls within
18 the scope of the privilege, it cannot order the matter disclosed unless it fits within some exception
19 to the privilege." Wright, Graham, Gold & Graham, *Federal Practice & Procedure*, § 5690.
20 Plaintiff's reply brief is an improper attempt to evade the only inquiries that the statutory privilege
21 permits.

22 **III. Defendants Did Not Waive Privilege.**

23 After insisting (incorrectly) that the only "relevant question" is whether Plaintiff falls
24 within a "class of persons" that can use Defendants' privileged documents, and then trying
25 (unsuccessfully) to show that he does, Plaintiff contends that the answer doesn't matter anyway.
26 According to Plaintiff, if he is not within the privileged "class of persons" then he is a stranger
27 and Defendants have waived their privileges by allowing him to possess the documents.

28 Plaintiff is ignoring the basic facts. *Before* his termination, Plaintiff had access to

1 Defendants' privileged documents because he was the CEO of one Defendant, SCL. At that time,
2 he was part of corporate management and a representative of the corporate "client," with authority
3 to assert and waive privilege – coupled with a fiduciary duty of loyalty. Obviously, Defendants
4 did not waive privilege by giving him access to privileged communications – in fact, he
5 participated in many of those communications. See NRS 49.095 (giving "client" the privilege
6 over communications "[b]etween the client or the client's representative" and the client's
7 lawyers).

8 *After* his termination, Plaintiff's authority over Defendants' privileges and his rights to
9 their documents ceased. But Defendants did not even learn that he had taken possession of the
10 documents at issue here until nearly a year after his termination. On July 8, 2011, Colby
11 Williams (an attorney representing Plaintiff at that time) informed SCL for the first time that
12 Jacobs had "electronically transferred to our office a significant number of e-mail
13 communications he received during his tenure" at SCL, including "a number of e-mails from
14 various attorneys employed by LVSC and SCL." Pl. Reply Ex. 11. Plaintiff's attorneys
15 committed that they would suspend their review of the e-mails and give LVSC and SCL time to
16 review the data and assert privileges (while reserving the right to contest those objections). *Id.*
17 After further discussions between counsel, Jacobs' attorney again "agreed" in writing on August
18 3, 2011 "not to produce the documents in this litigation until the issue [of privilege] is resolved by
19 the Court." Ex. A hereto, at 2 (¶ 5). He further committed that "our firm will continue to refrain
20 from reviewing the documents so as not to create any issues regarding the documents containing
21 communications with attorneys." *Id.*

22 Upon notice, Defendants moved promptly and vigorously to protect their rights. On
23 September 13, 2011, LVSC filed motions for a protective order and to compel Jacobs to return all
24 of the documents he had taken with him when he left Macau. On September 28, SCL filed a
25 motion in limine to exclude the data from the jurisdictional hearing. LVSC even went so far as to
26 initiate a new action against Plaintiff on September 16, and obtained an interim order from the
27 Court to preserve the status quo on an emergency basis. Ex. B hereto. These proceedings (along
28 with months of meet-and-confer negotiations) culminated in the Court's December 7, 2011 Order,

1 which established the Advanced Discovery process and specifically gave Defendants the
2 opportunity to review the data and assert privileges as appropriate. Defendants asserted detailed
3 objections pursuant to the Court-established process: a process that took a year, largely because
4 Plaintiff consumed several months asserting his own privilege objections. No one looking at this
5 costly, years-running battle could reasonably conclude that Defendants intended to waive
6 privilege.

7 Unable to confront history, Plaintiff tries rewriting it. Plaintiff unveils the jaw-dropping
8 claim that his “counsel confirmed possession of a ‘multitude’ of [corporate] documents” in a
9 November 30, 2010 letter, and argues that Defendants “twiddled their thumbs for over a year.” Pl.
10 Reply at 4, 5. The 2010 letter makes no such disclosure – as is manifest from the fact that
11 Plaintiff’s brief does not actually quote the letter, but simply cribs the word “multitude” from it
12 out of context and then manufactures the rest. *Id.* at 4. This, in a pleading that accuses
13 Defendants of “amnesia” and purports to “refresh their memories.” *Id.* at 3. In reality, the 2010
14 letter merely contained a generic statement that “corporate executives are often . . . in possession
15 of a multitude of documents received during the ordinary course of employment.” Pl. Reply Ex.
16 5, at 1. Plaintiff’s lawyer most certainly did *not* say that Plaintiff himself held any such
17 documents, nor did he identify any specific documents in Jacobs’ possession or say that some
18 might be privileged. In fact, he represented that he “ha[d] not had an opportunity to address the
19 contents of your letter with my client, Mr. Jacobs” because he had “been consumed in another
20 piece of commercial litigation.” *Id.*

21 As discussed above, Plaintiff’s attorneys did not advise Defendants that Plaintiff had the
22 documents at issue here until July 8, 2011. Pl. Reply Ex. 11.³ Even then, Defendants did not
23 know *which* documents Plaintiff had taken – and thus, did not know and could not have known
24 which were privileged – until a year after that, when they finally gained access to the documents

25 ³ Plaintiff claims that the July 2011 disclosure simply “reiterated” the alleged disclosure in the
26 November 2010 letter. Pl. Reply at 5. But the July 2011 e-mail does not even refer to the 2010
27 letter. And if Plaintiff’s attorneys truly thought that they had disclosed Jacobs’ possession of the
28 documents months before July 2011, they would not have voluntarily “stopped the review
process” in July 2011 “so that we may address this issue with you before discovery begins” (Pl.
Reply Ex. 11), and they would not have agreed in August 2011 to suspend their review of the
documents pending a Court ruling (Ex. A hereto, at p. 2 ¶ 5).

1 pursuant to the Court-established process for document review. Once Defendants completed their
2 review, they again asserted privilege. Plaintiffs' citations (Reply at 12-13) to cases in which the
3 party asserting privilege (i) was clearly informed that an adverse party held privileged documents
4 and (ii) took no legal action for months after that notice, simply highlight the different facts in this
5 case, in which Defendants did not receive notice for a year and took prompt actions to defend
6 their rights when they did receive notice.⁴

7 Equally unavailing is Plaintiff's contention that the "term sheet" for his position as CEO
8 did not expressly prohibit him from taking privileged documents upon his departure. Pl. Reply at
9 3. Once again, Plaintiff is overlooking key facts. Before signing the term sheet, Plaintiff was the
10 president of SCL's subsidiary Venetian Macau Limited, where he was subject to an express
11 Document Return Policy that requires all terminated employees "to return all electronic files,
12 CDs, floppy discs, information, reports and documents . . . containing any confidential and/or
13 proprietary information." Ex. C hereto, at 2. VML gave Jacobs a copy of that Policy on two
14 separate occasions. Ex. D hereto (Aug. 26, 2011 Lee Declaration) ¶ 8. Not only did Jacobs fail to
15 object, he enforced the Policy by terminating a VML employee for failing to comply. *Id.* ¶¶ 9, 14.
16 And before becoming VML's president, Plaintiff entered into a consulting agreement with VML
17 providing that "[u]pon termination of this Agreement for any reason, all papers and documents in
18 [Jacobs'] possession . . . belonging to the Company, must be returned to the Company." Ex. E
19 hereto, ¶ 6. It is disingenuous for Plaintiff to contend that Defendants intended a simple term
20 sheet as a waiver of privilege, or as *carte blanche* for Plaintiff to take Defendants' privileged
21

22
23 ⁴ See *Bowles v. National Ass'n of Homebuilders*, 224 F.R.D. 246, 249, 251 (D.D.C. 2004) (two
24 weeks after termination, president informed former employer that she "has certain documents in
25 connection with her employment," but employer "knowingly allowed her to retain the documents
26 for more than a year . . . without taking any legal action"); *In re Grand Jury (Impounded)*, 138
27 F.3d 978, 980 (3d Cir. 1998) (party "waived the work product privilege by waiting nearly four
28 months to file a motion to compel the return" of materials seized by government); *United States v.*
de la Jara, 973 F.2d 746, 750 (9th Cir. 1992) ("De la Jara did nothing to recover the letter or
protect its confidentiality during the six month interlude between its seizure and introduction into
evidence"); *United States v. SDI Future Health, Inc.*, 464 F. Supp. 2d 1027 (D. Nev. 2006)
(government seized documents in January 2002; party obtained access to seized documents and
asserted some objections in February 2002, but then tried to assert additional objections in court
in late 2005).

1 documents with him upon termination and then use those documents against Defendants in a
2 lawsuit.

3 "To establish a waiver, the party asserting waiver must prove that there has been an
4 intentional relinquishment of a known right." *Gramanz v. T-Shirts & Souvenirs, Inc.*, 111 Nev.
5 478, 483 (1995). Here, Plaintiff has not shown (and cannot show) that Defendants intended to
6 relinquish their privileges, or even knew of their rights, before Plaintiff's attorney revealed in July
7 2011 that Plaintiff had taken the documents at issue. "In order to be effective, a waiver must
8 occur with *full knowledge of all material facts*," *Thompson v. City of North Las Vegas*, 108 Nev.
9 435, 439 (1992) (emphasis added). Obviously, "a party cannot waive something unknown" to
10 them. *Id.* Defendants did not have *any* knowledge that Plaintiff had the documents at issue until
11 July 2011, and did not have "full knowledge of all material facts" until they obtained access to the
12 documents and completed their review in late 2012. Upon receiving notice at each of those points
13 (and throughout the months in between), Defendants promptly and vigorously asserted their
14 rights. Plaintiff's assertion that Defendants waived privilege in late 2010 or early 2011 – when
15 they did not even know that Plaintiff had taken the documents at issue, much less know the
16 specific documents he had taken – fails out of hand. At most, Plaintiff's allegations raise
17 questions of fact that would require an evidentiary hearing. See *Mahban v. MGM Grand Hotels,*
18 *Inc.*, 100 Nev. 593, 596 (1984) ("Whether there has been a waiver is a question for the trier of
19 facts.").

20 ///

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26 ///

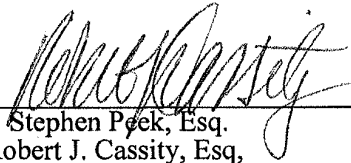
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28 ///

CONCLUSION

For the reasons set forth above and in their initial and supplemental opposition briefs, Defendants respectfully request that the Court deny Plaintiff's motion to obtain the remaining Advanced Discovery documents.

DATED June 12, 2013.



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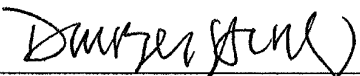
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on June 12, 2013, I served a true and correct copy of the foregoing **DEFENDANTS' SUR-REPLY IN OPPOSITION TO PLAINTIFF'S MOTION TO RETURN REMAINING DOCUMENTS FROM ADVANCED DISCOVERY** via e-mail and by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

James J. Pisanelli, Esq.
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Attorney for Plaintiff


An Employee of Holland & Hart LLP

Dineen Bergsing

From: Dineen Bergsing
Sent: Wednesday, June 12, 2013 11:00 AM
To: James Pisanelli; Debra Spinelli; Todd Bice; 'Kimberly Peets'; Sarah Elsdon
Subject: LV Sands/Jacobs - Defendants' Sur-Reply in Opposition to Plaintiff's Motion to Return Remaining Documents from Advanced Discovery
Attachments: 1065_001

Please see attached Defendants' Sur-Reply in Opposition to Plaintiff's Motion to Return Remaining Documents from Advanced Discovery. A copy to follow by mail.

Dineen M. Bergsing

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

EXHIBIT A



CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

VIA E-MAIL

August 3, 2011

Justin C. Jones, Esq.
Holland & Hart
3800 Howard Hughes Pkwy. 10th Fl.
Las Vegas, Nevada 89169

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

Dear Justin:

I wanted to respond to the letter you faxed to our office yesterday, which sought to memorialize the discussions of counsel pertaining to documents in the possession of our client, Steve Jacobs. Before turning to your enumerated points, I think it is important to clarify that our firm was responsible for bringing this matter to everyone's attention via my e-mail communication to you and Steve Ma on July 8, 2011. In that e-mail I advised both of you, *inter alia*, of the amount of documents Steve (Jacobs) had electronically transferred to our firm, the fact that there appeared to be communications between LVSC/SCL attorneys and Steve during the course of his tenure with Defendants, and that we had stopped our review of said documents very shortly after it began so that the parties could address these issues together. Since that time, various counsel for the parties have conducted at least three telephonic meet and confer conferences, and our firm has continued to refrain from any review or production of the documents per those conferences.

With that background, let me briefly respond to your bullet points in the order they were presented:

1. This is an accurate statement.
2. This is an accurate statement as far as it goes. I would clarify, though, our position that: (i) communications Steve had with a company attorney are not necessarily privileged simply because an attorney was involved, and (ii) Steve would nonetheless be entitled to communications he exchanged with company attorneys even if they are deemed protected by the attorney-client privilege so long as they are relevant (*i.e.*, calculated to lead to the discovery of admissible evidence) to the claims and defenses at issue in the litigation.

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Justin C. Jones, Esq.
August 3, 2011
Page 2

3. Our understanding is that Steve did not sign a confidentiality agreement in his capacity as an employee of LVSC or agent of SCL. We have raised this issue not because we believe Steve may freely disperse documents he acquired during his employment to the public at large but, rather, in response to Defendants' allegation that Steve is wrongfully in possession of said documents.

4. This statement is accurate to the extent it reflects our position that the Macau data privacy laws do not prevent any of the parties from producing documents in this action.

4. [sic] We have offered to Bates Stamp and produce all of Steve's documents to Defendants (less those for which Steve has a privilege, which would be logged), who may then conduct a review to determine their position as to the potential attorney-client communications. Defendants responded that they do not want any documents "produced," but instead want all of them "returned." We advised that Steve is unable simply to "return" the documents to Defendants. We are also unable to represent that Steve has not or will not provide any of the documents to certain third parties.

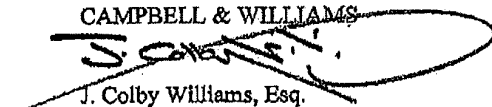
5. While Steve is unable to "return" the documents to Defendants, we agreed not to produce the documents in this litigation until the issue is resolved by the Court. Additionally, our firm will continue to refrain from reviewing the documents so as not to create any issues regarding the documents containing communications with attorneys. We will consider any stipulation you propose on this issue.

6. You are correct that we are unable to agree to stipulate to allow one or both Defendants to amend the counterclaim to assert a cause of action relating to Steve's possession of the subject documents. As we explained, our inability to agree is not designed to create more work for Defendants but, rather, reflects the simple fact that we do not have authorization to consent to such a filing.

While the foregoing is not meant to be a full expression of our rights and positions, I believe it adequately addresses your letter of last night. Please contact me with any questions or comments.

Very truly yours,

CAMPBELL & WILLIAMS


J. Colby Williams, Esq.

JCW/



EXHIBIT B

Holland & Hart LLP
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1 **ORDER**

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13 *Attorneys for Plaintiff*

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 LAS VEGAS SANDS CORP., a Nevada
17 corporation,

18 Plaintiff,

19 v.

20 STEVEN C. JACOBS, an individual; VAGUS
21 GROUP, INC., a Delaware corporation; DOES I
22 through X and ROE CORPORATIONS XI
23 through XX;

24 Defendants.

CASE NO.: A-11-648484-B
DEPT NO.: XI

INTERIM ORDER

25 Plaintiff Las Vegas Sands Corp.'s ("Plaintiff") Application for Temporary Restraining
26 Order and Motion for Preliminary Injunction or in the Alternative for Protective Order
27 ("Motion") came before the Court for hearing at 1:15 p.m. on September 20, 2011 whereby
28 Plaintiff asserted it was entitled to injunctive relief because Defendants were in possession of
stolen documents containing sensitive information, including without limitation, documents
potentially subject to the Macau Personal Data Protection Act, or protected by privilege or
confidentiality (the "Subject Documents"). J. Stephen Peek and Brian G. Anderson of the law
firm Holland & Hart LLP appeared on behalf of Plaintiff. James J. Pisanelli, Todd L. Bice, and
Debra Spinelli appeared on behalf of Defendants Steven C. Jacobs and Vagus Group, Inc.
("Defendants"). The Court, having reviewed Plaintiff's Motion, and having considered the oral
arguments of counsel, and for good cause appearing, finds that relief should be granted through

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1 the issuance of an Interim Order. Therefore,

2 IT IS HEREBY ORDERED that Defendants, their agents, representatives, attorneys,
3 affiliates, and family members shall not disclose or disseminate in any way, to any third party
4 anywhere, any of the Subject Documents, including data or other information, whether written,
5 copied, printed or electronic, contained therein, obtained in connection with Defendants'
6 consultancy with LVSC and/or employment with SCL and VML, including without limitation,
7 the approximate eleven gigabytes of documents in Defendants' possession.

8 IT IS FURTHER ORDERED that the Interim Order shall remain in full force and effect
9 until October 4, 2011.

10 THE COURT FURTHER ADVISED counsel to conduct their handling of the documents
11 consistent with the Nevada Rules of Professional Responsibility and to refrain from reviewing
12 documents potentially protected by attorney-client privilege, attorney work product, or which
13 may contain trade secrets or other confidential/commercial information, or which may be subject
14 to the Macau Personal Data Protection Act.

15 DATED this _____ day of September, 2011.

16
17 DISTRICT COURT JUDGE

18
19 Respectfully submitted by:

Approved to form/content:

20 DATED this _____ day of September, 2011

DATED this ____ day of September, 2011

21 HOLLAND & HART LLP

PISANELLI BICE PLLC

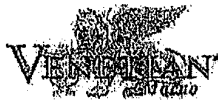
22
23
24 J. Stephen Peck, Esq.
Brian G. Anderson, Esq.
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

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

25
26 *Attorneys for Plaintiff*

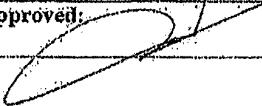
Attorneys for Defendants

EXHIBIT C



Sands 金沙

POLICIES

Policy Number: HR - C04	Effective Date: May 26, 2004
Subject: Confidential Company Information Policy	
Distribution: All Team Members	Approved: 
Policy: <p>During the course of Team Members' employment with the Company, Team Members may have access to confidential information. The Confidential Company Information Policy of The Venetian Macau Ltd. prohibits the dissemination or misuse of the Company's confidential and/or proprietary information. All Team Members are required to sign a Confidentiality Agreement as a condition of employment.</p> <p>Dissemination/misuse includes, but is not limited to, any unauthorized disclosure, release, transfer, sale, copy, removal, reproduction, falsification, modification, destruction and deliberate or careless discussion of confidential and/or proprietary information. Additionally, disclosure or misuse includes the discussing or sharing of confidential and/or proprietary information with unauthorized personnel, fellow Team Members, competitors, family, friends or any other outside parties.</p> <p>Confidential and/or proprietary information includes, but is not limited to, trade secrets, marketing plans, programs and strategies, research analyses, and/or development data, guest and/or supplier information including identities, credit, gaming or ratings information, lists or any other related information, guest and/or Company financial information not publicly disclosed, business plans, personnel plans, personnel files and/or other information regarding Team Members, agents or representatives of the Company, policies and procedures, Company manuals, proprietary computer software programs developed by the Company, Company financial or budget information, organizational charts, any information regarding Team Members and promotional ideas or any items that are unique assets of The Venetian Macau Limited, Venetian Las Vegas or LVSL.</p> <p>Dissemination/misuse of confidential and/or proprietary information furnished to or coming to a Team Member's attention, except as necessary for the performance of a Team Member's duties or as required by law, is prohibited and constitutes grounds for disciplinary action up to and including termination. In the event that a Team Member's action constitutes a violation of the law, the matter must be referred to the Company's legal department and HR department who will contact the appropriate agency for handling. Failure to report dissemination or misuse will result in disciplinary action.</p> <p>Venetian Macau Ltd. Team Members must not disclose to the Company any information that is deemed to be the proprietary or confidential information and/or trade secret of a third party. Confidential and/or proprietary information is to be kept confidential during and subsequent to a Team Member's employment and may not, in any way, be used to benefit the Team Member or any subsequent employer.</p> <p>To ensure compliance with this policy, the Company requires that all preparers and users of</p>	

Venetian Macau Limited
威尼斯人澳門股份有限公司

11th Floor, Wynn Building, 40, Sun King Hill, 40/F, Macao SAR, P.R. China
11樓 永利酒店 40樓 永利酒店 40/F, Macao SAR, P.R. China

P.1/3 (Policy Ref: HR-C04)



confidential information take the following steps in preparing and/or distributing confidential information:

- Distribution of confidential information shall be only to specifically authorized individuals.
- A secure method of distribution shall be used. In most instances this means hand delivery to the authorized individual or through return protected secure e-mail.
- Distribution of information pertaining to marketing or to guests shall be copy controlled, with the distributor recording by whom and when each copy was received and then following up on a regular basis to ensure the documents are either returned or destroyed when no longer needed.
- All confidential information shall be protected from unauthorized access. Protection includes locking the information in desks, file cabinets or offices when not being used. Access to the keys to these areas should likewise be controlled.
- The same protection measures described above are to apply to confidential information stored on personal computers. If stored on a hard disk, the personal computer itself should be locked, logged off or password protected or located in an office that can be locked when not in use. CDs, Floppy disks and other storage devices containing confidential information shall likewise be secured when not in use.
- All confidential documents and reports are to be shredded as soon as they are no longer needed (assuming they are not original documents or reports required to be retained as part of Company records).

Upon separation from the Venetian Macau Ltd., all Team Members are required to return all electronic files, CDs, floppy discs, information, reports and documents (including copies) containing any confidential and/or proprietary information to the respective department head.

Limitations to the Policy:

Team Members must not disclose confidential information, either during or after employment, except when authorized by the Company to disclose it to suppliers, customers, or others who have entered into confidentiality agreements with the Company. In addition, Team Members must not disclose any confidential information obtained from the Company's customers, partners, suppliers, and others who furnish information to the Company on a confidential basis, except as provided in such contracts or as necessary to carry out their duties under the contracts.

The Legal Department is to be consulted whenever there are questions about the confidentiality of particular items and/or information. Questions as to who is to be permitted access to confidential information are to be brought to the attention of individual department Directors or divisional Vice Presidents. Any failure to adhere to this policy must immediately be communicated to the Legal Department. Failure to report non-compliance will result in disciplinary action up to and including termination. Any exception or modification to this policy must be approved by the Legal Department.

EXHIBIT D



CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

Via E-Mail
Pglaser@glaserwell.com

January 11, 2011

Patricia Glaser
Glaser, Weil, Fink, Jacobs, et al.
10250 Constellation Blvd., 19th Floor
Los Angeles, California 90067

Re: *Jacobs v. Las Vegas Sands Corp.*

Dear Ms. Glaser:

I am in receipt of your e-mailed letter sent to us last Friday evening. As I am presently out of state, I wanted to get you a quick response.

The original materials forwarded to you were sent directly by Mr. Jacobs. There was no Heung Wah Keong report found by Mr. Jacobs in any files currently in his possession. This is not to say that a copy of such a report might not later be located, but Mr. Jacobs feels confident he has conducted a review which has been fairly exhaustive and, accordingly, thinks the likelihood of his possession of the same is remote.

Mr. Jacobs does, however, maintain possession of a copy of those original reports which he forwarded to your attention. Mr. Jacobs respectfully declines your request that he destroy them. Instead, it is his intention to preserve all such copies which are likely to be of evidentiary value in any future legal proceedings.

Sincerely yours,

CAMPBELL & WILLIAMS

Donald J. Campbell

Donald J. Campbell, Esq.

Dictated but not read to avoid delay

DJC:mp

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0340

EXHIBIT 11

Justin Jones

From: Colby Williams [cww@campbellandwilliams.com]
Sent: Friday, July 08, 2011 4:30 PM
To: Justin Jones; Stephen Ma
Subject: Document Production

Dear Justin/Steve,

As we approach the end of the week, I thought it would be a good idea to update you on the status of our document production. As you know, I have been out of the office all week on vacation but have, nevertheless, been dealing with various work matters including the Jacobs document production.

Steve electronically transferred to our office a significant number of e-mail communications he received during his tenure with Defendants. That file transfer was completed last weekend after I left for vacation. I believe the amount of material constitutes approximately 11 gigs. In addition, Steve has sent us hard copies of various documents that also arrived at our office this week. I have not reviewed those documents and do not yet know the amount of material contained therein.

In anticipation of Bates Stamping and producing these documents to Defendants, I wanted to address a couple of issues.

First, as it relates to the production of communications that Steve may have had with Macau residents, we believe we are authorized to produce those documents to you despite any potential application of the Macau Data Privacy Act. Our basis for that conclusion is that Steve is a U.S. Citizen, he resides in and is located in the U.S. presently, the information is located in the U.S., and the documents are being produced pursuant to the rules governing procedures in a U.S. lawsuit. Given that the Privacy Act permits the "processing" of personal information to effectuate "compliance with a legal obligation to which the controller is subject" see, Art. 6, § (2), it appears to us that all parties in the litigation would be authorized to produce documents therein. Nonetheless, since Defendants have raised the issue, we would like to include a provision in the SPD to be submitted to the Court whereby Judge Gonzalez confirms that the Macau Data Privacy Act does not provide a basis for withholding documents in this litigation at least insofar as Steve's production is concerned. With respect to whether the act has any impact on Defendants' production, the parties can debate that issue at a later date if it becomes necessary.

Second, in beginning our review of the e-mails, it appears that Steve was the recipient of a number of e-mails from various attorneys employed by LVSC and SCL during the normal course and scope of his duties with Defendants. While we are certainly entitled to e-mails from attorneys that were sent to Steve during his tenure that are relevant to the claims/defenses in the litigation, we likewise recognize that there may be a number of e-mails from attorneys to Steve that are likely not relevant to this action. Frankly, we have neither the time nor interest to review any attorney authored e-mails that are irrelevant to this action. Thus, after initially reviewing a small portion of the material transferred by Steve in order to determine what it comprises, we have stopped the review process so that we may address this issue with you before discovery begins.

We propose the following: We send the material to our third-party ESI vendor for Bates Stamping. We will then produce all of the documents to you (less any documents for which Steve maintains a privilege, which will be identified in an appropriate log). Defendants will then have a certain amount of time (to be agreed upon by the parties) to advise us as to their position as to the relevance/irrelevance of the attorney-authored communications to Steve and whether any should be withheld and logged by Defendants. In the meantime, we will simply continue the suspension of any review of additional emails between Steve and company lawyers. By engaging in this proposed process, we are, of course, not waiving our right to contest Defendants' positions on relevance and/or the application of any privileges, all of which are expressly reserved.

Please let me know your thoughts about our proposals on these two issues so that we may commence with discovery.
I'll be back in the office on Monday and we can talk then.

Have a good weekend.

Regards,
Colby

J. Colby Williams, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89107
Tel. 702.382.5222
Fax. 702.382.0540
email jcw@campbellandwilliams.com

EXHIBIT 12

Jennifer L. Braster

From: Debra Spinelli
Sent: Tuesday, May 08, 2012 2:30 PM
To: Brian Kawasaki
Cc: Todd Bice; James Pisanelli; Jennifer L. Braster; Steve Peek; Owens, John; Brad D. Brian (Brad.Brian@mto.com); Weissmann, Henry; Bradley R. Schneider (Bradley.Schneider@mto.com)
Subject: Steven C. Jacobs v. Las Vegas Sands Corp, et al.. Eighth Judicial District Court, Case No. A627691-B
Attachments: SAO Protective Order.03.22.12 filed.pdf

Dear Brian,

Please advise when this week you are available for a conference call related to the above-referenced action. The parties have entered into an agreement on the process by which Advanced Discovery will receive, mirror, scrub, and make available to Sands China, Ltd. certain documents stored on certain electronic documents in Mr. Jacobs' possession. Prior to the implementing the process, Advanced Discovery must review and agree to the attached stipulated confidentiality agreement and protective order in place in the action. Additionally, the parties wish to conference with you so that all parties and Advanced Discovery have the same understanding of the agreed upon process to be implemented.

Please be advised that counsel for Defendant Sands China has changed since last the parties communicated with you. The law firm of Munger, Tolles and Olson has been substituted in place of the law firm of Glaser Weil, and Holland and Hart is now counsel for both Las Vegas Sands and Sands China. Current counsel for all parties have been copied on this email, and I respectfully request that you "reply all" to this email when you respond.

We look forward to hearing from you.

Regards,

Debbie

Debra L. Spinelli
Pisanelli Bice PLLC
3883 Howard Hughes Pkwy, Suite 800
Las Vegas, NV 89169
tel 702.214.2100
fax 702.214.2101



Please consider the environment before printing.

To ensure compliance with requirements imposed by the IRS, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for purposes of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or tax-related matter addressed herein.

This transaction and any attachment is attorney privileged and confidential. Any dissemination or copying of this communication is prohibited. If you are not the intended recipient, please notify us immediately by replying and delete the message. Thank you.

EXHIBIT 13



PISANELLI BICE

October 9, 2012

DEBRA L. SPINELLI
ATTORNEY AT LAW
DLS@PISANELLIBICE.COM

VIA E-MAIL AND UNITED STATES MAIL

Bradley R. Schneider, Esq.
MUNGER, TOLLES & OLSON LLP
355 South Grand Street, 35th Floor
Los Angeles, CA 90071

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

Dear Counsel:

The purpose of this correspondence is to outline certain deficiencies in Sands China Limited's ("SCL") "preliminary privilege log" (the "Privilege Log") produced on September 26, 2012. As addressed below, SCL is obligated to immediately supplement its Privilege Log and production of documents described herein or, alternatively, participate in an EDCR 2.34 conference.

Initially, the requirements for a privilege log bear mentioning. Under NRCP 26(b)(5):

When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable the other parties to assess the applicability of the privilege or protection.

In addition, a privilege log must include the following information for each purportedly protected document:

(1) the author(s) and their capacities; (2) the recipients (including cc's) and their capacities; (3) other individuals with access to the document and their capacities; (4) the type of document; (5) the subject matter of the document; (6) the purpose(s) for the production of the document; (7) the date on the document; and (8) a detailed, specific explanation as to why the document is privileged or otherwise immune from discovery, including a presentation of all factual grounds and legal analyses in a non-conclusory fashion.

Disc. Comm. Op. No. 10, *Albourn v. Koe M.D.* (Nov. 2001). Ultimately, the purpose of a privilege log "is to provide a party whose discovery is constrained by a claim of privilege with information sufficient to evaluate such a claim and to resist if it seems unjustified." *Universal City Dev. Partners, Ltd. v. Ride & Show Eng'g, Inc.*, 230 F.R.D. 688, 698 (M.D. Fla. 2005) (emphasis added).



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October 9, 2012
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With the rules in mind, the deficiencies in SCL's Privilege Log are stark. To begin, SCL asserts Nevada's attorney-client privilege over documents without providing both the documents' author(s) and recipient(s).¹ (See, e.g., SJACOBS0049-53, 387-88, 96, 411, 505-13, 514-22, 538, 539, 563-64, 589, 590, 592, 593, 594, 610, 614, 630, 631, 819, 823, 881, 886, 891, 912, 1287, 1288, 1289.) Certain documents contain neither an author nor recipient (or fail to identify an actual individual, e.g., identifying "Administrator," "VCL," "TechDev," "user," "PW Employee," or "cdrguest"), making it virtually impossible to evaluate SCL's claim of privilege. By definition, the attorney-client privilege only applies to "confidential communications [b]etween the client or the client's representative and the client's lawyer or the representative of the client's lawyer." NRS 49.095(1) (emphasis added). On the face of the Privilege Log, there is no basis upon which to claim privilege as to these documents. Accordingly, Jacobs expects SCL to immediately produce them.

Even where the document's author(s) and recipient(s) are identified, SCL fails to identify the capacities of the parties. Once again, the Privilege Log fails to demonstrate that these documents are, in fact, confidential communications between a client and lawyer for the purpose of rendering legal advice. Because the Privilege Log as prepared by SCL fails to establish any factual basis for the assertion of a privilege – it does not identify the lawyers or a basis for asserting that the information involves the provision of legal advice – the claims of privilege are invalid and the documents must be promptly produced. See *Pham v. Hartford Fire Ins. Co.*, 193 F.R.D. 659, 662 (D. Colo. 2000) (rejecting party's assertion of attorney-client privilege because the party did not "identify the lawyers . . . involved in the conversations").

Particularly troubling is SCL's claim of attorney-client privilege over many documents that Jacobs knows are not between a client and lawyer. For instance, SCL asserted the privilege over communications solely between Jacobs and the following executives and directors:

- Sheldon Adelson (see, e.g., SJACOBS00082973, 81107, 87574, 87689);
- Betty Yurcich (see, e.g., SJACOBS00054571, 81365, 87557);
- Michael Leven (see, e.g., SJACOBS00054108, 58069, 60493, 88333, 88381);
- David Turnbull (see, e.g., SJACOBS00052534);
- Irwin Siegel (see, e.g., SJACOBS00059862);

¹ These documents are identified as either an "Edoc" or "Edoc-Attachment." However, because SCL has had access to the documents, SCL must identify the specific file format of the documents. See *Nurse Notes, Inc. v. Allstate Ins. Co.*, Civil Action No. 10-CV-14481, 2011 WL 2173934 (E.D. Mich. June 2, 2011).



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- Stephen Weaver (*see, e.g.*, SJACOBS00058523, 87784); and
- Elana Friedland (*see, e.g.*, SJACOBS00082684).

Not surprisingly, it seems that many of these non-privileged communications may go to the very heart of this case. (*See, e.g.*, SJACOBS00082684 ("Stock Options.msg").) As SCL well knows, a communication is only privileged if it "is in furtherance of the rendition of professional legal services to the client" NRS 49.055. In other words, "while discussions between executives of legal advice should be privileged, conversations between executives about company business policies and evaluations are not." *Wilstein v. San Trojai Condo. Master Ass'n*, 189 F.R.D. 371, 379 (N.D. Ill. 1999). Indeed, *a communication that is not addressed to or from a lawyer is presumed not to be privileged. See Saxholm AS v. Dynal, Inc.*, 164 F.R.D. 331, 339 (E.D.N.Y. 1996) (noting that "documents . . . which were not addressed to or from Saxholm's attorneys (or, in appropriate situations, patent agents) are presumed *not* to be privileged and must be produced." (emphasis in original)). Nothing in SCL's Privilege Log rebuts the presumption of non-privilege.

Additionally, even for those documents where a lawyer is the author or recipient, it is not privileged simply because it was addressed to or from a lawyer. Indeed, "it is well settled that merely copying an attorney on an email does not establish that the communication is privileged." *IP Co., LLC v. Cellnet Tech., Inc.*, No. C08-80126 MISC MMC (BZ), 2008 WL 3876481 (N.D. Cal. Aug. 18, 2008) (citing *ABB Kent-Taylor, Inc. v. Stallings & Co.*, 172 F.R.D. 53, 57 (W.D.N.Y. 1996)). Thus, SCL was required to make a "clear showing" that communications to or from a lawyer were made in confidence and for the purpose of legal advice. *See Hartford Fire Ins. Co. v. Garvey*, 109 F.R.D. 323, 327 (N.D. Cal. 1985) (requiring a party to establish all elements of privilege, "including confidentiality, which is not presumed"); *Marten v. Yellow Freight Sys., Inc.*, No. CIV. A. 96-2013-GTV, 1998 WL 13244 (D. Kan. Jan. 6, 1998) ("When an attorney serves in a non-legal capacity, such as a voting member of a committee required to review proposed employment actions, his advice is privileged only upon a clear showing that he gave it in a professional legal capacity."). Again, SCL's log fails to establish a valid assertion of privilege in this regard.

In fact, a vast majority of the documents SCL listed in its Privilege Log (presumably, because a lawyer was copied on the communication) appear to have been created in the ordinary course of business. For example, there are hundreds of "CIS" documents that appear to be regular business reports sent to SCL's executives. (*See Priv. Log at 1681-2578.*) If so, the documents are not privileged, regardless of whether a lawyer was copied on the communication. *See Coleman v. Am. Broad. Cos., Inc.*, 106 F.R.D. 201, 205 (1985) ("[C]ommunications between an attorney and another individual which relate to business, rather than legal matters, do not fall within the protection of the privilege.").



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As another example, SCL asserts the attorney-client privilege over an email from Fred Kraus to Steve Jacobs, wherein Kraus asks Jacobs: "What number can I reach you on[?]" (See SJACOBS00060879.) Despite the fact that Fred Kraus is/was an in-house lawyer for Las Vegas Sands Corp. (though he likely has dual business and lawyer roles), the email is obviously not for the purpose of providing legal advice and is not privileged.

Similarly, SCL claims privilege over a communication from Louis Lau to several SCL executives, including former in-house counsel Luis Melo, with an attached report on "Prostitution Activities at the Macau Venetian Resort." (See SJACOBS00076132.) However, even if Louis Lau were an attorney, the underlying report appears to have been prepared in the ordinary course of business, making it non-privileged. See also *Upjohn v. United States*, 449 U.S. 383, 395-96 (1981) (noting that "the [attorney-client] privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney" and "a party cannot conceal a fact merely by revealing it to his lawyer").

The examples go on and on, and if Jacobs were to identify each document that appears to be an ordinary business document, as opposed to a confidential communication between a client and lawyer, this letter would mirror SCL's unwieldy 3,090-page Privilege Log. To be blunt, Jacobs does not believe that SCL has acted forthrightly in the preparation of its Privilege Log. Unfortunately, it confirms Jacobs' suspicion that SCL has elected to use the process as a means of further withholding discoverable information that it considers to be harmful to its position in this litigation. On its face, many documents on the Privilege Log are not privileged, and a party that inappropriately puts matters on a privilege log so as to conceal them from discovery is rightly subject to sanctions.

Reinforcing that problem, SCL asserts the attorney-client privilege over communications to and from third parties, which are clearly not privileged. See *United States v. ChevronTexaco Corp.*, 241 F. Supp. 2d 1065, 1070-71 (N.D. Cal. 2002) ("As a general rule, the privilege does not extend to communications between either the client or its attorney and a third party."); see also *United States v. Ruehle*, 583 F.3d 600, 612 (9th Cir. 2009) (acknowledging "the settled rule that any voluntary disclosure of information to a third party waives the attorney-client privilege"). For example, SCL asserts the attorney-client privilege over emails from an unidentified third party, "sandsinsider@hotmail.com," to SCL's former general counsel, Luis Melo. (See SJACOBS00060054-57.) The subjects of the emails from this third party are "Corruption Commission of Hong Kong - Your people being investigated," "Cotai Ferry - corruption investigation," and "RE: Cotai Ferry - corruption investigation." (See *id.*) Despite that Melo's forward of these emails may be privileged, the actual emails from "sandsinsider@hotmail.com" are not privileged and must be produced to Jacobs. See *Matter of Fischel*, 557 F.2d 209, 212 (9th Cir. 1977) (noting that "facts which an attorney receives from a third party about a client are not privileged.") (quoting *Hickman v. Taylor*, 329 U.S. 495 (1947)); see also *id.* ("An attorney's subsequent use of



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this information in advising his client does not automatically make the information privileged.").

The "sandsinsider@hotmail.com" example is not an isolated incident. SCL improperly asserts the attorney-client privilege over hundreds – if not thousands – of communications between SCL employees and various third parties, including, but not limited to, persons with email addresses from the following domain names:

- austal.com (*see, e.g.*, SJACOBS00094334);
- amisales.com (*see, e.g.*, SJACOBS00094337);
- gs.com (*see, e.g.*, SJACOBS00052503 -04);
- playboy.com (*see, e.g.*, SJACOBS00086278);
- edesedort.com (*see, e.g.*, SJACOBS00093926);
- swiretravel.com (*see, e.g.*, SJACOBS00093917);
- simsl.com (*see, e.g.*, SJACOBS00095200);
- hutai-serv.com (*see, e.g.*, SJACOBS00100202);
- aon-asia.com (*see, e.g.*, SJACOBS00100199);
- cafedesigngroup.com (*see, e.g.*, SJACOBS00088160);
- knadesign.com (*see, e.g.*, SJACOBS00058663);
- rrd.com (*see, e.g.*, SJACOBS00056732);
- intl-risk.com (*see, e.g.*, SJACOBS00056108);
- ballytech.com (*see, e.g.*, SJACOBS00081060);
- citigate.com.hk (*see, e.g.*, SJACOBS00080068);
- pwc.com (*see, e.g.*, SJACOBS00054341);
- ensenat.com (*see, e.g.*, SJACOBS00053341);
- ceslasia.com (*see, e.g.*, SJACOBS00049937);
- bocigroup.com (*see, e.g.*, SJACOBS00049109);
- bocmacau.com (*see, e.g.*, SJACOBS00049109);
- towerswatson.com (*see, e.g.*, SJACOBS00048725);
- tricorglobal.com (*see, e.g.*, SJACOBS00046482); and
- prestige.hk.com (*see, e.g.*, SJACOBS00046066).
- ubs.com (*see, e.g.*, SJACOBS00040661)
- citi.com (*see, e.g.*, SJACOBS00041059)

SCL provides no plausible basis for claiming privilege over such communications. Once again, Jacobs demands the immediate production of all of the documents sent to or received from third parties.

Finally, SCL asserts an unidentified and uncited "Gaming Regulatory" privilege over many documents listed in the Privilege Log. (*See, e.g.*, SJACOBS00088333, 92841-42, 92844-45.) Specifically, without elaboration or explanation, SCL claims that documents



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and emails it received from the Macau government are somehow protected from disclosure in this case. (*See id.* ("Document from Macau Govt.pdf"), 84740 (email from joli@macau.ctm.net), 84765 (email from joli@macau.ctm.net)). Not only has SCL failed to establish the existence of a privilege over the documents exchanged with the Macau government, but SCL has once again improperly asserted a privilege over documents and emails received from third parties. Once again, we demand that SCL produce all emails and documents obtained from third parties.

Ultimately, in order for SCL to withhold documents identified in the Privilege Log, SCL was required to establish the existence of a privilege and make a "clear showing" that the asserted privilege applies to those documents. *See Metzger v. Am. Fid. Assur. Co.*, No. CIV-05-1387-M, 2007 WL 3274922, 1 (W.D.Okla. Oct. 23, 2007); *see also United State v. Austin*, 416 F.3d 1016, 1019 (9th Cir. 2005) ("A party claiming the [attorney-client] privilege must identify specific communications and the grounds supporting the privilege as to each piece of evidence over which privilege is asserted."). SCL has not done so.

Due to the voluminous nature of the Privilege Log, this letter only encompasses those deficiencies noted in our initial review, and additional defects may be raised upon further examination of the 3,000 page Privilege Log. Considering the apparent attempt to withhold information where no credible claim of privilege appears to exist, SCL again appears to be taking untenable positions for the purpose of withholding evidence. If SCL does not immediately remedy this and produce the documents and an actual, forthright privilege log, Jacobs will ask the Court to brand SCL's conduct as a bad faith assertion of privilege and require it to produce all documents on the privilege log. Jacobs is not going to be burdened with searching for needles in a haystack by SCL's improper preparation of a voluminous and transparently deficient log.

If SCL will not timely comply with its obligations under Rule 26, supplement its privilege log and produce the above-described documents that cannot be privileged or otherwise protected, please consider this correspondence as a request for a conference under EDCR 2.34.

Sincerely,



Debra L. Spinelli

cc: J. Stephen Peek, Esq. (via e-mail only)
Brad D. Brian, Esq. (via e-mail only)
Henry Weissmann, Esq. (via e-mail only)
John Owens, Esq. (via e-mail only)

EXHIBIT 14

Jennifer L. Braster

From: Steve Peek <SPeek@hollandhart.com>
Sent: Thursday, November 29, 2012 2:16 PM
To: Debra Spinelli; Mark M. Jones (m.jones@kempjones.com); J. Randall Jones (r.jones@kempjones.com); Jing Zhao (j.zhao@kempjones.com)
Cc: James Pisanelli; Todd Bice; Eric T. Aldrian; Jennifer L. Braster; Lackey, Jr., Michael E.
Subject: RE: Jacobs v. LVSC, et al. -- SCL Privilege log for Jacobs' documents

Debbie:

The SCL Privilege log for the Jacobs' collection will be forwarded to you tomorrow along with additional Privilege logs for documents requested from LVSC. Once you receive them, please let me know if you have any questions or concerns about the Privilege Logs provided to you.

Steve

From: Debra Spinelli [mailto:dls@pisanellibice.com]
Sent: Wednesday, November 28, 2012 10:55 AM
To: Steve Peek; Mark M. Jones (m.jones@kempjones.com); J. Randall Jones (r.jones@kempjones.com); Jing Zhao (j.zhao@kempjones.com)
Cc: James Pisanelli; Todd Bice; Eric T. Aldrian; Jennifer L. Braster
Subject: RE: Jacobs v. LVSC, et al. -- SCL Privilege log for Jacobs' documents

Steve –

We did receive Brad Schneider's October 19 email withdrawing privilege claims with respect to certain documents, and authorizing AD to release those specific documents for our review. We did subsequently receive them from Advanced Discovery.

My email from yesterday concerns the *remaining* documents (from those that Mr. Jacobs possessed and provided AD for SCL's privilege review) that Defendants believe are covered by a privilege and the status of the final privilege log. Apologies if my email was unclear.

Debbie

From: Steve Peek [mailto:SPeek@hollandhart.com]
Sent: Wednesday, November 28, 2012 10:42 AM
To: Debra Spinelli; Mark M. Jones (m.jones@kempjones.com); J. Randall Jones (r.jones@kempjones.com); Jing Zhao (j.zhao@kempjones.com)
Cc: James Pisanelli; Todd Bice; Eric T. Aldrian; Jennifer L. Braster
Subject: RE: Jacobs v. LVSC, et al. -- SCL Privilege log for Jacobs' documents

Debbie, I am attaching an email from Brad Schneider dated October 19 in which Brad withdrew privilege designations for additional documents in the documents listed in the attachment. Do you not have this email and isn't this a follow up to his October 18 email? Please advise.

From: Debra Spinelli [mailto:dls@pisanellibice.com]
Sent: Tuesday, November 27, 2012 4:20 PM
To: Steve Peek; Mark M. Jones (m.jones@kempjones.com); J. Randall Jones (r.jones@kempjones.com); Jing Zhao (j.zhao@kempjones.com)
Cc: James Pisanelli; Todd Bice; Eric T. Aldrian; Jennifer L. Braster
Subject: Jacobs v. LVSC, et al. -- SCL Privilege log for Jacobs' documents

Counsel –

I am writing to follow up on the status of Sands China, Ltd.'s ("Sands China") privilege log related to documents Mr. Jacobs possessed and provided to Advanced Discovery. Former SCL counsel, MTO produced a preliminary log on September 26, 2012. In a letter dated October 9, 2012 (attached), we raised a number of deficiencies with respect to that preliminary log. Mr. Schneider (with MTO) and I exchanged a few emails thereafter, the last one dated October 18, 2012 (attached for ease of reference), wherein he said he expected to produce a final log shortly thereafter. Because this log concerns Mr. Jacobs' documents that his counsel cannot review, we would like to resolve and/or brief the court on related issues and move promptly forward. Please advise of the status.

Thank you,
Debbie

Debra L. Spinelli
Pisanelli Bice PLLC
3883 Howard Hughes Pkwy, Suite 800
Las Vegas, NV 89169
tel 702.214.2100
fax 702.214.2101



Please consider the environment before printing.

To ensure compliance with requirements imposed by the IRS, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for purposes of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or tax-related matter addressed herein.

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

April 12, 2013

A-10-627691-B Steven Jacobs, Plaintiff(s)
vs.
Las Vegas Sands Corp, Defendant(s)

April 12, 2013 3:00 AM Plaintiff Steven C. Jacobs' Motion to Return Remaining documents from Advanced Discovery

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Dulce Romea

RECORDER:

PARTIES None.
PRESENT:

JOURNAL ENTRIES

- The Court, having reviewed the Motion for Return of Remaining Documents from Advanced Discovery and the related briefing and being fully informed, GRANTS the Motion as Jacobs was in a position and in fact had access to the documents at issue during the period of his employment. The Court, by granting Jacobs and his counsel access to the documents at issue, inherently recognizes that while Jacobs may use the documents for purposes of this litigation, notes that Jacobs may not disseminate the information further than his counsel, as any privilege related to these documents in fact belongs to the Defendants. Accordingly the documents shall be treated as confidential under the existing protective order. Counsel for Jacobs is directed to submit a proposed order consistent with the foregoing within ten (10) days and distribute a filed copy to all parties involved in this matter. Such order should set forth a synopsis of the supporting reasons proffered to the Court in briefing. This Decision sets forth the Court's intended disposition on the subject but anticipates further order of the Court to make such disposition effective as an order.

Mr. Pisanelli is to be notified by way of minute order to prepare the Order and notify the appropriate parties.

CLERK'S NOTE: A copy of the above minute order was placed in the attorney folder(s) of: James Pisanelli, Esq. (Pisanelli Bice PLLC); J. Stephen Peek, Esq., & Robert Cassity, Esq. (Holland & Hart); Michael Lackey, Jr., Esq. (Mayer Brown LLP; 1999 K Street, N.W., Washington, D.C. 20006); J. Randall

PRINT DATE: 04/17/2013

Page 1 of 2

Minutes Date:

April 12, 2013

Jones, Esq. (Kemp, Jones & Coulthard); Steve Morris, Esq. (Morris Law Group). / dr



CLERK OF THE COURT

1 J. Randall Jones, Esq.
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2 jrj@kempjones.com
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11 Las Vegas, Nevada 89134
*Attorneys for Las Vegas Sands Corp.
and Sands China, Ltd.*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

12 STEVEN C. JACOBS,
13
14
15 Plaintiff,

16 v.

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

21 Defendants.
22
23
24
25
26
27
28

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

**DEFENDANTS' MOTION TO STRIKE
NEW ARGUMENT RAISED FOR
FIRST TIME IN REPLY OR, IN THE
ALTERNATIVE, FOR LEAVE TO
SUBMIT A SUR-REPLY**

Date:
Time:

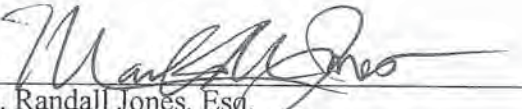
AND ALL RELATED MATTERS.

Defendants LAS VEGAS SANDS CORP. ("LVSC") and SANDS CHINA LTD.
("SCL") (collectively, "Defendants"), by and through their undersigned counsel, respectfully
move to strike portions of Plaintiff's April 8, 2013, reply in support of his motion to obtain the
Advanced Discovery documents. Much of Plaintiff's brief is not really a reply to Defendants'

1 opposition briefs, but rather an attempt to raise a new waiver theory that Plaintiff failed to make
2 in his initial motion. In the alternative, Defendants seek leave to file a sur-reply responding to
3 Plaintiff's new arguments.

4 This Motion is based upon the following memorandum of points and authorities, the
5 papers and pleadings on file herein, and any oral argument that the Court may allow.

6 DATED this 15th day of April, 2013.

7
8 
9 J. Randall Jones, Esq.
Mark M. Jones, Esq.
Kemp, Jones & Coulthard, LLP
3800 Howard Hughes Pkwy., 17th Floor
Las Vegas, Nevada 89169
10 *Attorneys for Sands China, Ltd.*

11
12 J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
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15 *Attorneys for Las Vegas Sands Corp. and Sands China,*
16 *Ltd.*

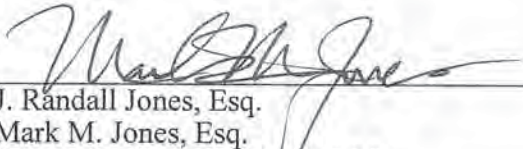
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NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

YOU, and each of you, will please take notice that the undersigned will bring the above and foregoing **DEFENDANTS' MOTION TO STRIKE NEW ARGUMENT RAISED FOR FIRST TIME IN REPLY OR, IN THE ALTERNATIVE, FOR LEAVE TO SUBMIT A SUR-REPLY** on for hearing before the above-entitled Court on the 17 day of MAY, CHAMBERS 2013, at the hour of _____ a.m./p.m. in Department XI of the Eighth Judicial District Court.

DATED this 15 day of April, 2013.


J. Randall Jones, Esq.
Mark M. Jones, Esq.
Kemp, Jones & Coulthard, LLP
3800 Howard Hughes Pkwy., 17th Floor
Las Vegas, Nevada 89169
Attorneys for Sands China, Ltd.

J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
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9555 Hillwood Drive, 2nd Floor
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Attorneys for Las Vegas Sands Corp. and Sands China, Ltd.

MEMORANDUM OF POINTS AND AUTHORITIES

In support of their Motion, Defendants state as follows:

1. On December 7, 2012, the Court entered an Order establishing the process for the parties to access the electronically stored information retrieved by the Court-approved vendor, Advanced Discovery, from media supplied by Plaintiff. The Order allowed Defendants to review the information and isolate any documents as to which they claimed privilege, with the understanding that the Court would decide whether the documents were in fact privileged and therefore should not be made available to Plaintiff for use in this litigation.

2. Defendants obtained access to the Advanced Discovery files on July 24, 2012. After completing an initial privilege screen, Defendants released the majority of the files to Plaintiff and gave Plaintiff a preliminary privilege log in September 2012. Defendants completed their review, released additional documents to Plaintiff, and issued a final privilege log on December 2, 2012.

3. On February 15, 2013, Plaintiff filed a motion asking the Court to release all of the remaining Advanced Discovery files to him notwithstanding Defendants' privileges. Plaintiff made three arguments in support of the motion: (1) that the attorney-client privilege does not apply to documents authored or received by a corporation's executive; (2) that Defendants placed the privileged communications "at issue" by defending against Plaintiff's suit; and (3) that Defendants' privilege log was inadequate. Defendants filed an opposition refuting each of Plaintiff's arguments on March 7, 2013.

4. At a hearing held on March 14, 2013, the Court denied Defendants' motion for oral argument. The Court made quite clear its intent in doing so: that it wanted to prevent either party from making new arguments not contained in the briefs. In the Court's words, "the playing field changes constantly when you guys are here, and I get new issues in argument that weren't raised in briefs. And we're not going to do it on this issue." Ex. 1 (Hearing Tr.) at 11. The Court expressly directed its admonition "*to all sides.*" *Id.* (emphasis added).

5. The Court did direct Defendants to file a supplemental brief on April 1, 2013. Defendants filed that brief, and addressed the two issues raised by the Court at the hearing.

6. On April 8, 2013, Plaintiff filed a document that he called a "reply brief." Ex. 1. In reality, however, much of that brief does not "reply" to any of the arguments that Defendants made in their March 7 opposition brief or their April 1 supplemental brief. Instead, Plaintiff has tried to raise a new theory. The tell-tale signs are that Plaintiff's brief contains a new 5-page "background" section (at 3-7) and attaches 14 new exhibits. Plainly, Plaintiff recognizes that the three grounds presented in his original motion are crumbling, and now wants to try something different.

1 7. Plaintiff's new theory is that Defendants waived any privileges by not
2 immediately asserting privilege (i) in Plaintiff's August 2009 "term sheet," (ii) when Plaintiff
3 was terminated in July 2010, or (iii) right after Plaintiff filed suit in October 2010. Under
4 Plaintiff's theory, the Court's December 7, 2012 Order regarding the Advanced Discovery
5 documents (and in particular, the Order's carefully constructed framework for Defendants to
6 review the information and assert privilege by providing Plaintiff with a privilege log) was all a
7 waste of time. Plaintiff now claims that Defendants waived privilege two years or more before
8 the Court entered its Order.


9 8. Defendants vigorously disagree with Plaintiff's new arguments, but the more
10 important point for now is that the Court should not consider those arguments. It is well
11 established that arguments made for the first time on reply are improper. See *Francis v. Wynn*
12 *Las Vegas, LLC*, 262 P.3d 705, 714 n.7 (Nev. 2011) ("We decline to consider this argument
13 because Francis did not cogently raise the issue in his opening brief; rather, he raised it for the
14 first time in his reply brief, thereby depriving Wynn of a fair opportunity to respond.").
15 Plaintiff could have and should have presented his new theory in his opening brief. That is
16 particularly true because the argument is not a new one. Instead, it is recycled from a brief
17 Plaintiff filed on October 10, 2011 in opposition to SCL's Motion in Limine, before the Court
18 entered its December 7, 2012 Order establishing the Advanced Discovery protocol. See Ex. 2
19 hereto. Plaintiff devoted five pages of that brief to the very same argument he makes here —
20 that SCL and LVSC "impliedly waived any claims of privilege." *Id.* at 14:1. And he relied on
21 many of the same exhibits to support his waiver argument. Indeed, nine of the fourteen exhibits
22 Plaintiff has attached to his April 8, 2013 reply were also exhibits to his October 10, 2011
23 brief.¹ Plaintiff chose not to make this waiver argument in his opening brief. He cannot
24 resurrect it on reply.

27
28 ¹ SCL filed a Reply on October 12, 2011 in which it explained why Plaintiff's waiver argument
was wrong on both the facts and the law. A copy of that Reply is attached hereto as Ex. 3.

CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Court strike and disregard Plaintiff's new theory, raised for the first time in Plaintiff's reply, in which Plaintiff asserts that Defendants waived privilege by not claiming privilege before they were permitted to do so by this Court's December 7, 2012 Order. In the alternative, if the Court wishes to entertain Plaintiff's new theory, Defendants respectfully request the opportunity to submit a sur-reply within 7 days of the Court's ruling on this motion.

DATED this 15 day of April, 2013.


J. Randall Jones, Esq.
Mark M. Jones, Esq.
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Las Vegas, Nevada 89169
Attorneys for Sands China, Ltd.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on April th15, 2013, I served a true and correct copy of the foregoing **DEFENDANTS' MOTION TO STRIKE NEW ARGUMENT RAISED FOR FIRST TIME IN REPLY OR, IN THE ALTERNATIVE, FOR LEAVE TO SUBMIT A SUR-REPLY** via e-mail and by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

James J. Pisanelli, Esq.
Todd L. Bice, Esq.
Debra L. Spinelli, Esq.
Jennifer L. Braster, Esq.
Pisanelli & Bice
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see@pisanellibice.com – staff
Attorney for Plaintiff


An Employee of Kemp, Jones & Coulthard

EXHIBIT 1

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants
.....

CASE NO. A-627691

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON DEFENDANTS' MOTION FOR ORAL ARGUMENT

THURSDAY, MARCH 14, 2013

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

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

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, THURSDAY, MARCH 13, 2013, 8:56 A.M.

2 (Court was called to order)

3 THE COURT: Can I ask a Sands-Jacobs question. Are
4 we arguing the motion for the return of the documents today,
5 or are we --

6 MR. MARK JONES: No, Your Honor.

7 THE COURT: Come on up.

8 MR. PEEK: We're just asking you -- we want oral
9 argument is all, and scheduling.

10 MR. BICE: Good morning, Your Honor.

11 THE COURT: Good morning.

12 So here's my question for you, Mr. Peek. Part of
13 the issues related to this motion is whether I am someday
14 going to make a determination as to an assertion by your
15 client of privilege related to those documents; right?

16 MR. PEEK: Yes.

17 THE COURT: How are you going to tee that issue up,
18 and how long is it going to take? Because that's sort of how
19 I'm going to decide when to set the motion for oral argument.

20 MR. BICE: The motion is set for --

21 THE COURT: I know when it's set.

22 MR. BICE: Okay.

23 MR. PEEK: The motion --

24 THE COURT: Good morning, Mr. Peek. These are
25 questions you didn't anticipate, aren't they?

1 MR. PEEK: Well, are you talking about the motion
2 for the return of documents that is -- we've asked to have set
3 -- or set for oral argument?

4 THE COURT: Okay.

5 MR. PEEK: Or are you talking about something
6 generally different on a motion regarding privilege issues of
7 Las Vegas Sands?

8 THE COURT: Here's the deal. I read your
9 opposition. Their motion is, Judge, give us back the
10 documents --

11 MR. PEEK: Right.

12 THE COURT: -- there's no issues left. they've
13 waived them. Your position is, Judge, it's too early for you
14 to say we've waived them because you haven't evaluated the
15 privilege issues.

16 MR. PEEK: Correct.

17 THE COURT: When are you going to put me in a
18 position where I can evaluate the privilege issues, Mr. Peek?

19 MR. PEEK: I thought that that's the way they had
20 teed it up. But perhaps if I'm mistaken, which is that we
21 have said all of the documents on which we have claimed a
22 privilege on the privilege log that we said to them that these
23 -- I don't remember the number, what the count of the
24 documents was, Your Honor, but it was I think 10,000 documents
25 -- these documents we claimed a privilege either of attorney-

1 client or work product. The say, you have waived the
2 privilege. And they give reasons and points and authorities
3 as to how that waiver occurred. So I thought the issue was
4 teed up. But if I'm mistaken, you want to do more, say in the
5 nature of an evidentiary hearing on those documents --

6 THE COURT: I need more specific information, I
7 believe, in order to resolve the privilege issues.

8 MR. PEEK: Okay. Is --

9 THE COURT: I understand what Mr. Bice is saying,
10 which is, Judge, they've already waived it all. And I think I
11 need to make a further inquiry than that.

12 MR. PEEK: Well, I think so, too. And I think it's
13 their burden, Your Honor, on both of those counts.

14 THE COURT: No. You're the one asserting a
15 privilege.

16 MR. PEEK: Okay.

17 THE COURT: So how are you going to put me in a --
18 which I'm asking you -- how are you going to put me in a
19 position where I can resolve the issue? Because you're
20 asserting a privilege. I'm happy to evaluate the claim of
21 privilege, and I know you've done this in other cases --

22 MR. PEEK: I have.

23 THE COURT: -- in Northern Nevada, and I'm happy to
24 deal with it. But I've got to have it teed up. And I know
25 you're getting ready to start the Suen trial again.

1 MR. PEEK: Right. And we've already --

2 THE COURT: Unless you've settled it.

3 MR. PEEK: We've already talked about scheduling.
4 We've already talked about scheduling this motion, Your Honor.
5 It seems to me, then, following on what you're saying is the
6 first burden of the waiver has to be decided by you, then the
7 next burden, as you're suggesting to me, is my burden to say,
8 I didn't waive and, oh, by the way, all of the documents on
9 which I claimed a privilege you now, Judge, if they're going
10 to assert that there is no privilege or that I have overstated
11 the privilege -- that's a different issue than waiver, Your
12 Honor.

13 THE COURT: Let me see if I could --

14 MR. PEEK: Maybe I --

15 THE COURT: -- refocus this. For two and a half
16 years I have been hearing from various folks, not just you,
17 not Mr. Jones, because he's new, that these documents are
18 privileged and that Mr. Jacobs couldn't take them because they
19 were privileged. I have been waiting patiently for somebody
20 to address the basis of the privilege related to those
21 documents. Patiently. I'm done being patient. So when are
22 we going to tee it up?

23 MR. PEEK: Your Honor, respectfully to you, we
24 didn't get to even see those documents to even claim the
25 privilege until the fall or late summer of 2012, was the first

1 time those documents were released to us. We went through the
2 steps that were in the protective order that you approved in
3 March of 2012, and identified those that we claimed are
4 privileged, completed that log preliminarily in September, and
5 finalized that log in November, 1st of November.

6 They have now said, okay, you have waived the
7 privilege and for the various reasons that they say as a
8 matter of law you have waived the privilege. So --

9 THE COURT: Right.

10 MR. PEEK: So I think that the first threshold issue
11 that you should decide is as a matter of law under the
12 principles that they have cited have we waived the privilege
13 based upon the fact that Jacobs, at the time that he may have
14 received some of the documents, was the chief executive
15 officer and the president of Sands China Limited and was
16 receiving those documents in his capacity as president and
17 therefore is entitled to have those documents and his lawyers
18 are entitled to have those documents. That to me is a
19 threshold legal issue. Then the subsequent issue is not the
20 waiver, but are these documents in fact --

21 THE COURT: Okay. I understand.

22 MR. PEEK: -- attorney-client privileged documents.

23 THE COURT: I now understand what you're trying to
24 tee up, which is different.

25 Mr. Jones, good morning. How are you?

1 MR. MARK JONES: Good morning, Your Honor. Thank
2 you. Fine. How are you?

3 THE COURT: I'm well.

4 MR. MARK JONES: Good. Thank you.

5 Just a couple of things to add. I wanted to state
6 that we have a bit of a scheduling issue with --

7 THE COURT: Not if I deny the motion you don't.

8 MR. MARK JONES: Not if you deny the motion. Your
9 Honor, I would just otherwise like to add that again -- and we
10 did ask as early -- we don't think that there's any prejudice
11 or any urgency here. We did ask as early as July 2012 for the
12 other side to meet and confer with regard to the privilege
13 log, and then we also asked again in September.

14 THE COURT: We've been discussing the privilege
15 issues related to this document since Ms. Glaser was involved
16 in the case.

17 MR. PEEK: Well, Your Honor, that's a different --
18 there's a different issue there, too, is whether or not --
19 those privilege issues were embodied, Your Honor, in the
20 Court's order in November. Those privilege issues were
21 embodied in the stipulated protective order of March of 2012,
22 and it wasn't until, as we said, September -- or, excuse me,
23 August that we even got the documents on which we could even
24 review them to claim a privilege.

25 THE COURT: Okay.

1 MR. PEEK: So, you know, we haven't been delaying
2 this.

3 THE COURT: I'm on Mr. Jones --

4 MR. PEEK: Okay.

5 THE COURT: -- your sort of co-counsel.

6 MR. MARK JONES: And there was -- and again, as
7 early as November, I believe, of 2011 Mr. Pisanelli thought
8 that they would be able to put those documents that originated
9 -- and it wasn't until June or July of 2012 when they actually
10 were put in.

11 I would also just like to point out that there isn't
12 any deposition set at this point and that with regard to
13 scheduling Mr. Randall Jones, assuming that you are going to
14 grant the oral --

15 THE COURT: He's never getting out of that trial.

16 MR. MARK JONES: He actually is.

17 THE COURT: They were working on jury instructions
18 yesterday, and I don't think they're ever going to get done.

19 MR. MARK JONES: Your Honor, he is -- he's doing
20 closing on Monday and he on the 21st and 22nd of March, when
21 you have this set for chambers calendar, he will be out of
22 state, I believe in Minnesota.

23 THE COURT: But if it's on the chambers calendar,
24 nobody needs to come.

25 MR. MARK JONES: Well, I'm just saying if you were

1 going to grant the argument and allow it. Otherwise,
2 again, we would submit that he's going to be out the week
3 of March 25th. And with regard to the dark days on Tuesdays,
4 Wednesdays, and Thursdays of the Suen trial, there's
5 availability --

6 MR. PEEK: Dark mornings.

7 MR. MARK JONES: Dark mornings, excuse me.

8 THE COURT: All morning?

9 MR. PEEK: Yeah. Your Honor, Mr. Jones --

10 MR. MARK JONES: Anyways, the point is --

11 THE COURT: Okay. I understand there's scheduling
12 issues.

13 MR. MARK JONES: -- the point is --

14 THE COURT: Let me address the motion first.
15 Anything else you want to tell me about why you think it's
16 important on your oral argument on this motion related to the
17 waiver issue, which isn't nearly as complex as the privilege
18 issue?

19 MR. MARK JONES: Well, other than the fact -- what
20 we say is we supported Mr. Peek's affidavit that -- you know,
21 for the record, all of the other motions we've had oral
22 argument is did the Court think it's a very important issue
23 other than one and that we want to be able to make a full
24 record and opportunity to address any positions that might be
25 taken. There are new points in the reply brief.

1 THE COURT: Okay. The motion is denied --

2 MR. PEEK: Your Honor, there's nothing more
3 important --

4 THE COURT: The motion is denied, Mr. Peek.
5 However, I will give both sides an opportunity, if they want
6 -- because I am going to decide only the waiver issue at this
7 point, and I need you to more fully address after reading your
8 brief the issues of when there is litigation between the
9 officer who has left who was entitled to see the documents at
10 the time he was there, who has agreed to a protective order
11 not to disclose to the outside world that information, the
12 effect of the privilege.

13 MR. PEEK: Your Honor, that was the exact same issue
14 in eTrepid and Montgomery.

15 THE COURT: I know.

16 MR. PEEK: I litigated that issue, Your Honor.

17 THE COURT: I read your --

18 MR. PEEK: And you may not agree with Judge Cook,
19 Magistrate Judge Cook on that case --

20 THE COURT: I respect Valerie Cook. She's a very
21 bright and hard-working lady. But I need you -- when I read
22 your opposition I had concerns. So I'm going to let you do a
23 supplement, and I want you to specifically address with
24 respect to the factual issues in this case whether the waiver
25 is appropriate. I'm going to do it on the briefs, and there's

1 a reason I'm going to do it on briefs in this case this time.

2 MR. PEEK: I'd like to hear that, Your Honor,
3 because this is an important issue to us on the attorney-
4 client privilege.

5 THE COURT: Because the playing field changes
6 constantly when you guys are here, and I get new issues in
7 argument that weren't raised in briefs. And we're not going
8 to do it on this issue. This issue is one that you're going
9 to take your position and you're going to stop. And that's to
10 all sides, not to any one of you in this room. Because all of
11 you are excellent lawyers, you're very creative, and the
12 arguments change during our oral presentations. And they're
13 not going to on this issue. On this issue you're going to be
14 based on your briefs and I'm going to make a ruling.

15 So how long, Mr. Peek, to do a supplemental
16 opposition that more specifically identifies the factual
17 issues in this specific case?

18 MR. PEEK: Well, Your Honor, I think that's really,
19 respectfully, something that should be addressed to Mr. Bice
20 and Mr. Pisanelli, because I think it should be their brief,
21 and then we should then have an opportunity to put in an
22 opposition, unless you're saying we do blind briefs. And I
23 don't know what the Court's pleasure is here.

24 THE COURT: I'm not saying you do blind briefs.

25 MR. PEEK: Pardon?

1 THE COURT: I'm saying I read your opposition. I
2 think you need to do a supplement to your opposition.
3 MR. PEEK: You think just the -- just the Las Vegas
4 Sands, Sands China Limited defendants need to do the
5 supplement? Okay.
6 THE COURT: At this point in time, yes.
7 MR. PEEK: Thank you, Your Honor. Then we would ask
8 for two weeks.
9 THE COURT: Okay. Two weeks from today?
10 MR. PEEK: Mark, what's your --
11 MR. MARK JONES: Tomorrow? Two weeks from --
12 THE COURT: Two weeks from Monday?
13 MR. PEEK: Yeah. I think that's really -- that's --
14 THE COURT: Hold on a second.
15 MR. PEEK: -- the 1st of April.
16 THE COURT: So can you have your brief to me on
17 April 1, your supplemental brief?
18 MR. PEEK: We well, Your Honor.
19 THE COURT: Then, Mr. Bice, if you can have your
20 supplemental brief to me by April 8.
21 MR. BICE: It really won't be a supplemental brief,
22 Your Honor. Our --
23 THE COURT: Your reply brief. Sorry.
24 MR. BICE: Our reply otherwise would have been due
25 tomorrow.

1 THE COURT: April 8th.
2 MR. BICE: So I'll wait.
3 THE COURT: April 8th.
4 MR. BICE: Understood.
5 THE COURT: And then I will have it on my chambers
6 calendar for April 12th.
7 MR. BICE: Thank you.
8 THE COURT: And I will issue a written decision.
9 MR. BICE: Thank you, Your Honor.
10 MR. PEEK: Let me see if I understand exactly, Your
11 Honor, how to frame this issue, because I don't want to get it
12 wrong.
13 What you have said to me is in the context of
14 litigation where there is a stipulated protective order in
15 place approved by the Court does it -- and dealing with the
16 litigation between a former executive, president and chief
17 executive officer of one of the defendants, who then sues, who
18 then has possession, plain documents on which the party by
19 whom he was employed claims privilege, is does a protective
20 order that the Court has entered change that dynamic of
21 privilege? Am I --
22 THE COURT: Yes, Mr. Peek, that's what I'm asking
23 you. Because as to the rest of the world there may be no
24 waiver and no entitlement for those individuals to see it.
25 But just like when you have a joint defense agreement, which

1 occurs in litigation, there are certain waivers or limitations
2 with respect to those privileges.

3 MR. PEEK: So that the lawyers for that party would
4 be entitled to see the attorney-client privileged documents
5 under the stipulated protective order, as well as the client.

6 THE COURT: Which their client has already seen and
7 in fact dealt with as part of his job duties.

8 MR. PEEK: Just trying to understand, Your Honor,
9 how to frame the issue, not making my argument here today,
10 although I'm still going to respectfully request as part of my
11 supplemental briefing -- unless you're telling me, I'm denying
12 this with prejudice, don't bring it up to me again --

13 THE COURT: You can always --

14 MR. PEEK: -- I'm going to ask it in the
15 supplemental brief for oral argument. Because this is a very
16 important issue to us.

17 THE COURT: You can always ask over and over again.
18 You're not in the Second, where you never get a hearing and
19 it's highly unusual. But on this particular issue the parties
20 are going to be bound by their briefs. So I'm not going to
21 take oral argument.

22 MR. PEEK: Okay. I get it, Your Honor. And I --

23 THE COURT: Because I want the playing field to be
24 well defined for purposes of the appellate review.

25 MR. PEEK: Yes. So do we, Your Honor, want to --

1 THE COURT: Which is why we're not going to have
2 oral argument, because you guys are really good and creative
3 and sometimes create new issues during argument.

4 MR. PEEK: I don't know if we take that as a
5 compliment, Your Honor, or --

6 THE COURT: It's intended as a compliment.

7 MR. PEEK: Thank you.

8 THE COURT: But it makes my job as a judge who's
9 being reviewed on a regular basis by the appellate court
10 difficult.

11 MR. PEEK: I understand, Your Honor.

12 THE COURT: So on this issue we're not going to have
13 any oral argument.

14 MR. PEEK: Your Honor, there was -- by the way,
15 there was an order, I believe, that -- from the 28th hearing
16 -- I don't think --

17 THE COURT: I was at the judicial college for the
18 last several days teaching, so I just got back yesterday. So
19 if it's in Max's pile, he's been trying to get time with me,
20 and we've been going through and I've been signing stacks, so
21 I may not have hit it if we have it. But I intend to get
22 through the rest of it today, the rest of the pile.

23 MR. PEEK: Doesn't sound like -- from what Mr. Bice
24 said, I don't think he's submitted it. We haven't seen it, so
25 I was just wondering if --

1 THE COURT: I was out of town, in Reno.
2 MR. BICE: Mr. Peek may be right that -- I just
3 talked to Mr. Jones. I think it's due tomorrow. It may be
4 that we did not send them drafts. I will -- as soon as I get
5 out of here --
6 THE COURT: Mr. Bice --
7 MR. BICE: I know.
8 THE COURT: -- you're being scolded.
9 MR. BICE: I know. As soon as I get back to the
10 office I'll make sure that they get it so they could look at
11 it today. Sorry about that. We have not --
12 THE COURT: I was in Reno, so --
13 MR. BICE: No. We would not send it over to you
14 without getting their input. So you don't have it. You don't
15 -- it's not that we sent it over to you without giving --
16 THE COURT: I'm not behind?
17 MR. BICE: No, you're not.
18 THE COURT: Okay.
19 MR. BICE: This is on us, not them or you.
20 THE COURT: Lovely.
21 MR. PEEK: Thank you, Your Honor.
22 THE PROCEEDINGS CONCLUDED AT 9:12 A.M.
23 * * * * *
24
25

CERTIFICATION

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

AFFIRMATION

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

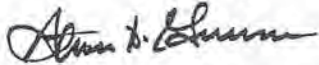
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3/16/13

DATE

EXHIBIT 2


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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND RELATED CLAIMS

Case No.: A-10-627691

Dept. No.: XI

**PLAINTIFF STEVEN C. JACOBS'
OPPOSITION TO SANDS
CHINA LTD.'S MOTION IN LIMINE**

Hearing Date: October 13, 2011

Hearing Time: 9:00 a.m.

I. INTRODUCTION

Defendant Sands China Ltd. ("Sands China") hopes to disguise the previously-denied request for temporary restraining order in the form of a motion in limine. Indeed, Sands China telegraphs this fact by asking this Court to: (1) not only exclude from evidence all documents Plaintiff Steven Jacobs possesses, but also (2) preclude Jacobs and his counsel from using any documents Jacobs possesses to even prepare for this Court's upcoming evidentiary hearing. (Motion p. 4, ¶ 10.) In short, Sands China now asks this Court for the same affirmative relief denied to its parent, Las Vegas Sands Corp. ("LVSC") on more than one occasion.

Beyond its transparent procedural impropriety, Sands China's motion is substantively without merit as well. Sands China does not identify any particular documents or evidence for exclusion, based on substantive inadmissibility. Rather, Sands China requests an order in limine to preclude Jacobs from offering *any* evidence, regardless of its relevancy or how Jacobs possesses the evidence, resorting instead to specious hyperbole of calling all Jacobs' documents "stolen" to mask the motion's lack of substance. Courts hold that motions in limine like that brought by Sands China – requesting the exclusion of broad and ill-defined documents and evidence – are improper. Sands China must identify the precise piece of evidence and why it is inadmissible to bar the admissibility of relevant evidence. And admissibility must be judged in context of the entire evidentiary picture. Thus, motions in limine that do not identify specific evidence to be excluded fail. Any objections to specific evidence, including specific documents, should be addressed at the trial or evidentiary hearing, so as to allow this Court to evaluate its admissibility in the context of the overall case. Sands China's attempt to exclude all documentary evidence by resorting to wild labels thus fails as a matter of law.

Further, Sands China's resort to rhetoric over substance is unremarkable when the Court considers how and why Jacobs possesses the documents he does. Sands China has known since before Jacobs' termination that he possessed the information and documents in question.¹ Cognizant that his possession is proper, it did nothing. Courts recognize that such intentional inaction not only proves that the executive is properly in possession of the documents, but also that even if he were not, the former employer waived the issue through inaction. Here, Jacobs properly possesses documents that he obtained while overseeing LVSC's operations in Macau. In fact, the term sheet governing Jacobs' employment, a fact LVSC has admitted, contains no prohibition upon his possession and retention of documents and other information. Jacobs stole nothing, and the fact that Sands China and its parent LVSC fear that these documents will expose their unethical and illegal business activities in no way supports keeping them hidden from public view. Indeed, the exact opposite is true.

¹ Ironically, LVSC's own papers, including the affidavit of Ken Kay, confirm that Jacobs was in possession of the information and documents. (Affidavit of K. Kay, attached hereto as Ex. M.)

1 **II. BACKGROUND**

2 **A. Jacobs' Employment And Wrongful Termination.**

3 Jacobs will not repeat the history of how he came to be affiliated with LVSC and ended up
4 running its Macau operation. This Court knows that history. Briefly, as Jacobs alleges, his
5 employment and position are evidenced by the binding "Offer Terms and Conditions" (the "Term
6 Sheet") dated August 3, 2009, and signed by LVSC's President, COO and Board Member,
7 Michael Leven ("Leven"). (Term Sheet, attached hereto as Ex. A.) Neither Sands China nor
8 LVSC can deny this fact, since Leven has admitted it. (LVSC Q2 2010 Earnings Call Transcript,
9 attached hereto as Ex. B at SJ000950.) Specifically, when Jacobs' termination came to light, Wall
10 Street analysts raised questions. One question was whether Jacobs was subject to a covenant not
11 to compete, as his ability to work for a competitor might have serious consequences for LVSC's
12 Macau operations. (*Id.*) During LVSC's second quarter earnings call with Wall Street analysts,
13 LVSC's President and Chief Operating Officer, Leven, admitted that Jacobs was not subject to
14 any form of covenant not to compete, or any other routine contract terms. (*Id.*; *see also* Ex. A.)
15 As Leven admitted to J. P. Morgan's analysts: "I don't believe he has a non-compete, Joe.
16 Actually, he does not have an actual employment contract. *He had a signed term sheet.* We
17 never got to a contract with it, and I don't believe he has a non-compete in that term sheet." (*Id.*)
18 (emphasis added).

19 Notably, that Term Sheet in no way precludes Jacobs from possessing information that he
20 obtained during his employment. (Ex. A.) Nor did it require him to return any information or
21 documents after his termination, especially if he was wrongfully terminated for attempting to
22 blow the whistle on corporate improprieties. (*Id.*)

23 Nor can LVSC or Sands China deny knowledge that Jacobs possessed extensive amounts
24 of information and documentation concerning his role in overseeing the Macau operations. Due
25 to the nature of Jacobs' role, which involved extensive commuting between Macau and Hong
26 Kong as well as Macau and Las Vegas, he was a highly mobile executive. (Decl. of S. Jacobs
27 ("Jacobs Decl.") ¶ 4, attached hereto as Ex. C.) As such, he routinely and unremarkably carried
28 and possessed extensive amounts of information and documentation on his personal laptop as well

1 as portable electronic devices, like thumb drives. (*Id.*) To do his job, Jacobs needed access to
2 volumes of information and did so through various electronic means. (*Id.*) He used his personal
3 laptop, and information and data from multiple thumb drives in many executive meetings and
4 presentations. (*Id.*) Jacobs even received thumb drives with data from Sands China. (*Id.*)

5 What steps did LVSC or Sands China take to recover all of this information prior to
6 staging Jacobs' termination? Nothing. Jacobs' termination was contrived so as to preclude him
7 from exposing corporate improprieties to the full Board of Directors for Sands China. (Jacobs
8 Decl. ¶¶ 5-6.) Early in the morning of July 23, 2010, just two business days before the scheduled
9 Board meeting, Leven requested to meet Jacobs for breakfast ostensibly to discuss the Board
10 Agenda and to continue the discussion which Leven began in Singapore and Mr. Adelson well
11 before. (*Id.* ¶ 5.) Specifically, Jacobs believed Leven was meeting with him to dissuade Jacobs
12 from raising his concerns and sharing comments from counsel at the Board meeting.² (*Id.*)
13 Jacobs went to this meeting fully prepared to discuss these topics. (*Id.* ¶ 5.)

14 Irwin Siegel, another person who served on both the Boards for LVSC and Sands China,
15 was also present at the meeting. (*Id.* ¶ 6.) Leven informed Jacobs that he was being terminated
16 and that he had two choices resign and LVSC would agree to pay for his relocation back to the
17 United States, or be terminated effective immediately. (*Id.* ¶ 7.) When Jacobs asked if he was
18 being terminated for cause, Leven responded, "We don't know. We think it is for cause but we
19 are unsure." (*Id.*) Jacobs gave Leven a third option: pay what was stipulated in the Term Sheet,
20 and he would successfully transition the company to a new CEO. (*Id.* ¶ 8.) Leven stated that
21 Adelson had not allowed him to negotiate and Leven handed Jacobs a letter signed by Sheldon
22 Adelson announcing Jacobs' immediate termination. (*Id.*; Ltr. dated July 23, 2010, to S. Jacobs
23 from S. Adelson, attached hereto as Ex. D.) Tellingly, that letter did not dare specify any
24 justification for the termination. (Ex. D.)

25
26 ² The issues included, but were not limited to, Hong Kong Stock Exchange disclosure
27 requirements related to cost overruns on parcels 5 & 6, document findings of independent
28 investigators regarding LVSC's ties to organized crime, Foreign Corrupt Practices Act issues
relating to the acts of Leonel Alves, including but not limited to communications regarding
strata-title for the Four Seasons Hotel Apartments, and LVSC mandated changes to the guarantor
list for junkets and junket credit recourse. (Jacobs Decl. ¶ 5.)

1 Thereafter, Jacobs was immediately confronted by security guards, including the head of
2 LVSC's security team who had flown to Macau from Las Vegas. (Jacobs Decl. ¶ 9.) Before
3 escorting Jacobs off of the property, he was taken to his hotel room to gather his personal items,
4 which included his laptop. (*Id.*) Jacobs did not return to his office. (*Id.*) Instead, he was
5 escorted off the property and taken directly to a ferry which would transfer him to Hong Kong.
6 (*Id.*)

7 No one asked Jacobs to surrender his personal laptop or any other portable electronic
8 devices he possessed and used in his duties. (*Id.* ¶ 10.) No one ever asked Jacobs to surrender
9 any documents that he possessed. (*Id.*) Nor did anyone make any effort to collect any
10 documents. (*Id.*) Instead, LVSC and Sands China simply had Jacobs dropped off at the ferry and
11 told him to go away.

12 **B. Jacobs Confirmed His Rightful Possession of Documents and Sands Does**
13 **Nothing.**

14 Jacobs commenced this action on October 10, 2010, asserting that LVSC and Sands China
15 had contrived false reasons for terminating him so as to cover up their own impropriety. Slightly
16 more than a month later, counsel for Sands China wrote a letter asserting that they "have reason to
17 believe, based on conversations with existing and former employees and consultants for [Sands
18 China], that Mr. Jacobs has stolen [Sands China] property . . ." and demanded that the property be
19 returned.³ (Nov. 23, 2010 Ltr. from P. Glaser to D. Campbell, attached hereto as Ex. E.)

20 Jacobs in no way denied that he possessed and retained documents. To the contrary,
21 Jacobs' counsel responded and confirmed that Jacobs had rightfully possessed and preserved a
22 "multitude" of documents that he had both generated and received during his oversight of the
23 Macau operations. (Nov. 30, 2010 Ltr. from D. Campbell to P. Glaser, attached hereto as Ex. F.)
24 The documents were hardly stolen, and Jacobs made no apologies for his possession of them.

25 A few days later, counsel for Sands China again insinuated that Jacobs had somehow
26 stolen the documents and asserted that they are "the sole property of [Jacobs'] former employer
27

28 ³ Ironically, Sands China threatened to file suit against Jacobs "either in Las Vegas or
Macau." (Ex. F.)

1 and must be returned immediately." (Dec. 3, 2010 Ltr. from P. Glaser to D. Campbell, attached
2 hereto as Ex. G.) Confirming that they knew what Jacobs possessed, Sands China's counsel
3 focused on three background investigation reports of Macau government officials and individuals
4 reported to be leaders of Triads and organized crime in Asia and their business dealings with
5 LVSC. (*Id.*) Knowing what they revealed, Sands China insisted on retrieving these documents
6 and the information contained therein. (Ex. E; *see also* Dec. 9, 2010 Ltr. from D. Campbell to
7 P. Glaser, Dec. 13, 2011 Ltr. from P. Glaser to D. Campbell, both of which are attached as Ex. H.)

8 But again, Jacobs confirmed what Sands China and LVSC already knew: He possessed a
9 multitude of documents in his role of overseeing the Macau operations, and he reiterated that he
10 was not going to return them. Counsel for Jacobs simply agreed to return the "originals" of two
11 of the three background investigations. Reaffirming his position, Jacobs' counsel made clear that
12 while the originals of the reports were being returned, he was keeping copies consistent with
13 Jacobs' "intention to preserve all such copies which are likely to be of evidentiary value in any
14 future proceedings."⁴ (Jan. 11, 2011 Ltr. from D. Campbell to P. Glaser, attached hereto as Ex. I.)

15 What did Sands China do in response to Jacobs' repeated confirmations that he possessed
16 and would not return the "multitude" of documents that he possessed? Again, nothing. In fact, it
17 did worse than nothing. In the following months, Jacobs and Sands China filed their respective
18 briefs, including exhibits, concerning Sands China's assertion that the Court lacked personal
19 jurisdiction. (Jacobs' Opp'n to Sands China's Mot. to Dismiss for Lack of Personal Juris., filed on
20 Feb. 9, 2011, on file with the Court; Sands China's Reply, filed on Feb. 28, 2011, on file with the
21 Court.)

22 Tellingly, a number of these exhibits are the very same documents that Sands China and
23 LVSC bluster about as "stolen". Of course, these same documents were discussed at length
24 during the March 15, 2011, hearing before this Court. These very same documents were made
25 part of the record and briefed before the Nevada Supreme Court concerning Sands China's
26
27

28 ⁴ Jacobs could not locate one of the three reports that Sands China requested. (Ex. I.)

1 application for a writ of mandamus. Once again, neither Sands China nor LVSC made any
2 attempt to preclude Jacobs' possession or use of these documents.

3 As if Sands China's and LVSC's purposeful inaction to this point were not dispositive, it
4 continued on month after month. In fact, their lackadaisical approach continued even when
5 Jacobs' counsel later reaffirmed the multitude of documents that Jacobs possessed. Specifically,
6 in July of 2011, Jacobs' counsel reviewed a portion of the documents Jacobs had provided.⁵
7 During that review, Jacobs' counsel noticed documents that did not appear to be relevant to the
8 case, but which might give rise to arguments of privilege by LVSC. So, on July 8, 2011, counsel
9 again contacted Sands China and LVSC, told them that "while [Jacobs is] certainly entitled to
10 e-mail from attorneys that were sent to Steve during his tenure that are relevant to the
11 claims/defenses in this litigation, [w]e likewise recognize that there may be a number of e-mails
12 from attorneys to Steve that are likely not relevant to this action." (E-mail dated July 8, 2011
13 from C. Williams to J. Jones and S. Ma, attached hereto as Ex. J.) Jacobs' counsel then proposed
14 a protocol for the parties to ferret out the relevant or non-relevant materials. (*Id.*)

15 Did LVSC or Sands China act with great promptness concerning this most recent
16 reaffirmation of Jacobs' possession of a magnitude of documents? Of course not. In typical form,
17 LVSC and Sands China responded with the knee jerk demand that "all" documents be returned,
18 again ignoring Jacobs' right to possess and use any documents relevant to this litigation. (Decl. of
19 Justin Jones, ¶ 6, attached hereto as Ex. K.) Of course, this was the same tired mantra that LVSC
20 and Sands China had been repeating since November, 2010.

21 Indeed, not until late July – nearly nine months after Sands China acknowledged Jacobs
22 possessed documents – did Sands China and LVSC hold any conferences with Jacobs' counsel
23 concerning the multitude of documents that Jacobs possessed. The parties discussed Jacobs'
24 position and his proposed protocol to sort through the volumes of documents. But yet again,
25 LVSC and Sands China essentially did nothing but demand that Jacobs return everything,

26
27 ⁵ Jacobs' counsel indicated that the portion of the documents he was reviewing constituted
28 11 gb of data. Although Sands China and LVSC have continually invoked this figure, Jacobs'
current counsel does not know the exact magnitude of all of the data which Jacobs possesses as a
result of his employment, but it certainly believes that it exceeds the 11 gb which Jacobs'
then-counsel was reviewing.

1 something that Jacobs had made clear nearly a year ago was not going to happen. (Aug. 2, 2011
2 Ltr. from J. Jones to C. Williams and Aug. 3, 2011 Ltr. from C. Williams to J. Jones, both of
3 which are attached hereto as Ex. L.)

4 **C. The Evidentiary Hearing And Jacobs' New Counsel.**

5 The old adage – be careful what you ask for – now has proven true as to Sands China's
6 attempt to evade this Court's jurisdiction. Sands China sought a writ from the Nevada Supreme
7 Court complaining that this Court's jurisdictional order did not provide a sufficient factual basis to
8 subject Sands China to personal jurisdiction. As a result, the Supreme Court ordered this Court to
9 conduct an evidentiary hearing to determine Sands China's contacts with the State of Nevada.
10 Now, of course, Sands China is very concerned about the "multitude" of documents that Jacobs
11 has long possessed, as they might prove problematic for Sands China's denials about its contacts
12 with the State of Nevada (in addition to exposing the highly unethical and illegal activities of
13 some of LVSC's highest ranking personnel).

14 At about that same time, Jacobs announced that he was changing counsel in this case.
15 Apparently thinking an opportunity existed, LVSC and Sands China suddenly sprang into action,
16 clamoring that there was a great emergency because they had "recently" discovered that Jacobs
17 possessed numerous documents from his days of overseeing the Macau operation. Cognizant that
18 they would have to distract from their own inactivity, they shamelessly resorted to accusing
19 Jacobs' new counsel of various unethical behavior because they would not immediately return the
20 documents that Jacobs had been refusing to relinquish for nearly a year.

21 Demonstrating that they will never let the true facts get in the way, LVSC and Sands
22 China claim that Jacobs has disclosed these "stolen" documents for the first time in anticipation of
23 the evidentiary hearing. Of course, LVSC and Sands China omit mentioning that these are the
24 very same documents used in the motion to dismiss and concerning the writ application to the
25 Nevada Supreme Court. To be blunt, if LVSC and Sands China are genuinely concerned about
26 ethics, they should focus their attention on a mirror.

1 **III. DISCUSSION**

2 **A. Sands China's Attempt To Exclude Generic And Sweeping Categories Of**
3 **Evidence Through A Motion In Limine Is Improper.**

4 It is, of course, no accident that Sands China cites no authorities concerning motions in
5 limine. It appears lost on Sands China that the "purpose of a motion in limine is to exclude
6 irrelevant and immaterial matters, or to exclude evidence where its probative value is outweighed
7 by the danger of unfair prejudice." *Devoe v. Western Auto Supply Co.*, 537 So.2d 188, 189 (Fla.
8 Dist. Ct. App. 1989) (citations omitted). Of course, that is not what Sands China seeks here. It
9 seeks an injunction to bar Jacobs and his counsel from using these documents – which Jacobs
10 *rightfully* possesses – to prepare for this Court's evidentiary hearing. Couching it in terms of a
11 motion in limine does nothing to save Sands China's transparently improper request, other than to
12 confirm that Sands China is seeking affirmative injunctive relief from this Court and seeking the
13 benefits of this Court's jurisdiction and powers.

14 Even if Sands China were really seeking an order in limine as opposed to an affirmative
15 injunction, such relief is hardly ripe. Sands China identifies no specific document or evidence
16 that it contends is irrelevant or somehow unduly prejudicial. Instead, it wants to exclude
17 wholesale categories of document – anything in Jacobs' possession – regardless of how or why he
18 possesses it. The law is squarely otherwise: "Motions in limine that seek exclusion of broad and
19 unspecific categories of evidence, however, are generally disfavored." *Carpenter v. Forest*
20 *Meadows Owners Ass'n*, 2011 WL 3207778 (E.D. Cal., July 27, 2011) (citing *Sperberg v. The*
21 *Goodyear Tire & Rubber Co.*, 519 F.2d 708, 712 (6th Cir. 1975)).

22 Rather, courts hold that it "is almost always better situated during the actual trial to assess
23 the value and utility of evidence." *Wilkins v. K-Mart Corp.*, 487 F. Supp. 2d 1216, 1218 (D. Kan.
24 2007). In fact, a motion in limine should only be considered if the evidence is clearly
25 inadmissible for any and all purposes. *Hawthorne Partners v. AT&T Techs.*, 831 F. Supp. 1398,
26 1400 (N.D. Ill. 1983). Outside of those extreme circumstances, any ruling on admissibility should
27 be deferred until the actual trial or evidentiary hearing so as to allow questions of admissibility to
28 be resolved in an appropriate context. *Id.*

1 Here, Sands China's motion is exactly what courts reject. It does not identify a single
2 specific document that is not relevant and admissible. It simply claims that any document that
3 Jacobs possesses should not be used as evidence to establish that Sands China is subject to
4 jurisdiction in Nevada. This Court would be hard pressed to envision a more overbroad and
5 inappropriate motion in limine.

6 **B. Jacobs Rightfully Possesses Documents He Received In The Ordinary Course**
7 **Of His Job; He Stole Absolutely Nothing.**

8 Sands China's and LVSC's inaction with respect to Jacobs' documents for all of this time
9 must be seen for what it is: A clear acknowledgement that Jacobs always was and is entitled to
10 retain the documents in his possession. The Defendants' bluster to the contrary only highlights a
11 lack of evidence, lack of substance, and apparent regret that they have failed to actually negotiate
12 further employment terms with Jacobs. The simple and irrefutable fact is that Jacobs possessed
13 the documents in the ordinary course and he stole nothing.

14 Courts across jurisdictions have addressed the issue of document retention and return
15 following the end of one's employment is determined only by the contract that guides the
16 employee relationship. *See, e.g., Zahodnick v. IBM Corp.*, 135 F.3d 911 (4th Cir. 1997) (relied
17 upon by Sands China); *Haught v. Louis Berkman LLC*, 417 F. Supp. 2d 777, 783 (N.D.W. Va.
18 2006) (also relied upon by Sands China)⁶; *see also Ayco Co., L.P. v. Frisch*, 1:11-CV-0580
19 LEK/DRH, --- F. Supp. 2d, ---, 2011 WL 2413516 (N.D.N.Y. June 10, 2011) (breach of contract
20 analysis regarding a former employee who signed a contract to, upon termination, immediately
21 return all of the company's property to the company); *Lamorte Burns & Co. v. Walters*, 770 A.2d
22 1158, 1162 N.J. 2001 (analyzing breach of loyalty claim where a former employee signed an
23 agreement with a non-compete and a provision to return all documents and material to the
24 company and the end of their relationship but engaged in competitive acts while still employed).

25 Thus, if Jacobs' employment agreement – the Term Sheet – had a contractual provision
26

27 ⁶ Sands China's Motion cites this case as *Leonard v. The Louis Berkman, LLC*, rather than
28 *Haught*, but provides the exact same citation. (Mot. 11:10-11.) However, upon researching the
issue, Jacobs believes that Sands China's citation is in error and that *Haught* is the correct title.

1 dictating the return of documents at the end of their relationship (combined with a non-compete
2 even), the debate over rightful possession could be had. However, this is not the case. There are
3 admittedly no such provisions in the Term Sheet. Indeed, the only two cases Sands China offers
4 in support of its flawed position discuss a former employee's retention of documents in the
5 context of an existing contract provision. For instance, in *Zahodnick*, 135 F.3d 911, the plaintiff
6 employee signed two non-disclosure agreements, by which he contractually "agreed not to
7 disclose confidential information to anyone outside of [the company] and to return all [company]
8 property to [the company] when he left [the company]'s employment." *Id.* at 915. When the
9 plaintiff voluntarily resigned from the company, he retained confidential materials in violation of
10 the non-disclosure agreement and forwarded those documents to his counsel. *Id.* The defendant
11 company asserted a counterclaim for breach of the non-disclosure agreements. *Id.* Subsequently,
12 the district court enjoined the plaintiff from disclosing the records (deemed to belong to the
13 company as a result of the executed NDAs) and ordered the documents returned to the company.
14 *Id.*

15 As Leven told investors, Jacobs's employment is guided by the August 3, 2009 Term
16 Sheet that Leven executed and admitted controls. (Ex. B.) The Term Sheet does not include a
17 nondisclosure agreement. The Term Sheet does not contain a provision guiding the ownership of
18 any documents that rightfully came into Jacobs' possession. (*Id.*) And, the Term Sheet does not
19 include a clause requiring Jacobs to return any and all documents. (*Id.*)

20 Feigning confusion as to the terms of Jacobs' employment, Sands China argues that a party
21 is also not permitted to disclose "confidential or privileged" documents to its counsel if the party
22 "knows, or has reason to know, that the information is confidential or privileged."
23 (Mot. 11:8-11.) For this proposition, Sands China again cites to a case that does not at all support
24 its position. The plaintiff in *Haught* executed an agreement that guided the use and treatment of
25 confidential information. 417 F. Supp. 2d at 783. Importantly, the contract provided that all
26 company documents shall be returned to the company by the employee plaintiff upon termination.
27 *Id.* The plaintiff did not act in accordance with his contract, and the company asserted
28 counterclaims related to plaintiff's breach of duties under the agreements. *Id.* The Court

1 specifically held that the plaintiff "breached her duty to act as authorized under the agreement" by
2 retaining confidential documents and then again by subsequently disclosing those same
3 documents to a third party. *Id.* at 784. Put simply, the terms of the contract guided the court's
4 determination – not a "knows, or has reason to know" standard, whatever that may be.

5 Knowing that the Term Sheet lacks the contractual provision that the law requires, Sands
6 China tries to squeeze itself into shoes that don't fit. Sands China claims that Jacobs – its
7 President and CEO – was bound by one of its subsidiary's company policies provided in an
8 employee handbook. (Mot. 11:13-19.) Revealing the desperate nature of its plea to preclude the
9 documents, Sands China actually argues that its CEO was an employee of Sands China's
10 subsidiary, VML. (Mot. 11:12-13.) This is a fiction.⁷ As the Term Sheet indicates, LVSC hired
11 Jacobs to serve as President and CEO of Sands China. (Ex. B.)

12 In short, LVSC failed to bargain for a non-compete and for the retention of documents in
13 its executive agreement with Jacobs. When LVSC chose to terminate Jacobs, Jacobs rightfully
14 retained the documents he then possessed. Sands China and LVSC knew this, which is why they
15 made absolutely no efforts to seek the return of Jacobs' documents.

16 **C. Sands China And LVSC Long Waived Claims That Jacobs Stole Documents.**

17 **1. *Sands China and LVSC expressly waived any ability to complain.***

18 Any argument as to Jacobs' entitlement to the documents he possesses was long rendered
19 academic by Sands China's and LVSC's knowing failure to take any steps to recover these
20 documents. This includes any claim that either would have that the documents are somehow
21 privileged. Courts recognize that the party's knowing failure to take precautionary measures
22 month after month after month – as Sands China and LVSC did here – triggers the doctrine of
23 waiver. When assessing whether a party has waived a privilege, courts look to the circumstances
24 surrounding the disclosure. *United States v. de la Jara*, 973 F.2d 746, 749 (9th Cir. 1992). A
25 privilege can be expressly and explicitly waived. *E.g., Gottwals v. Rencher*, 60 Nev. 35, 98 P.2d
26 481, 487 (1940). And, that is what happened here.

27
28 ⁷ And, if this were not a fiction, it is an irrelevancy because VML is not a party to this case
and is not asserting any rights before this Court.

1 During Jacobs' tenure as President and CEO, Jacobs was "squarely within the class of
2 persons who would receive communications and work product" from counsel. *Gottlieb v. Wiles*,
3 143 F.R.D. 241, 247 (D. Colo. 1992). As to any documents that Jacobs was authorized to and
4 did access during his tenure and in his role as President and CEO, Sands China and LVSC
5 expressly waived any privilege or protection as it relates to Jacobs. *Id.*; accord *In re*
6 *Hutchins, Jr.*, 211 B.R. 330, 333 (E.D. Ark. 1997); see also *Glidden Co. v. Jandernoa*, 173 F.R.D.
7 459, 474 (W.D. Mich. 1997) ("[A]s a general matter, a corporation cannot assert the
8 attorney-client privilege to deny a director access to legal advice rendered during the director's
9 tenure.").

10 Furthermore, Sands China expressly waived any claim of privilege, yet again, when it
11 moved to dismiss Jacobs' claims and purposefully injected one or more "privileged"
12 communication into the record to support its argument for lack of personal jurisdiction.
13 *Wardleigh v. Second Jud. Dist. Court*, 111 Nev. 345, 354-55, 891 P.2d 1180, 1186 (1995) ("The
14 great weight of authority holds that the attorney-client privilege is waived when a litigant places
15 information protected by it in issue through some affirmative act for his own benefit, and to allow
16 the privilege to protect against the disclosure of such information *would be manifestly unfair* to
17 the opposing party.") (quotation omitted). When Sands China lost and sought a writ from the
18 Supreme Court, it once again put these supposedly "privileged" communications into the record to
19 support its litigation efforts. By doing so, Sands China waived any claims of privilege to these
20 documents.

21 Despite purposefully putting these "privileged" communications into the public record,
22 Sands China (and LVSC) are now trying to claw them back, as well as all of the other documents
23 Jacobs possessed and retained when his relationship with Defendants ended. Not only can
24 privilege not be used as both a shield and a sword, but Sands China cannot withdraw its previous,
25 advertant waiver of the privilege. *E.g., id.* at 354, 891. P.2d at 1186 ("The doctrine of waiver by
26 implication reflects the position that the attorney-client privilege was intended as a shield, not a
27 sword."). Indeed, doing so constitutes a waiver of privilege with respect to the same subject
28 matter – jurisdiction. *Id.* at 354-55, 891, P.2d at 1186.

2. *Sands China and LVSC also impliedly waived any claims of privilege.*

Of course, a holder of any privilege can also waive it by implication, even involuntarily or inadvertently.⁸ *De la Jara*, 973 F.2d at 750 (citing *Weil v. Inv./Indicators, Research & Mgmt*, 647 F.2d 18, 24 (9th Cir. 1981)). Cases where an employee rightfully possesses documents during employment and then retains the documents upon leaving the company "do not fit neatly into either category," but the "core" concern is the same: "the measures a party must take to prevent the disclosure of privileged documents and to recover privileged documents once they are disclosed." *Bowles*, 224 F.R.D. at 253; *see also De la Jara*, 973 F.2d at 750 (stating a privilege is preserved "if the privilege holder has made efforts 'reasonably designed' to protect and preserve the privilege" but waived "if the privilege holder fails to pursue all reasonable means of preserving the confidentiality of the privileged matter"); *accord In re Grand Jury (Impounded)*, 138 F.3d 978, 981 (3d Cir. 1998) (including as a factor "the steps taken by a party to remedy the disclosure and any delay in doing so.").

These factors are similar to those employed under the Ninth Circuit's totality of the circumstances approach for "inadvertent" disclosures and waiver. *United States v. SDI Future Health, Inc.*, 464 F. Supp. 2d 1027, 1045 (D. Nev. 2006) (listing the following factors: ((1) the reasonableness of the precautions to prevent inadvertent disclosure; (2) the time taken to rectify the error; (3) the scope of the discovery; (4) extent of the disclosure; and (5) the overriding issue of fairness." (quotations omitted).

a. **Neither Sands China nor LVSC tried to preserve any privilege or protect any disclosure.**

As outlined, Sands China and LVSC have made little to no effort to preserve any privilege or prevent disclosure of any privileged documents that Jacobs possessed during the ordinary course and scope of his employment. LVSC did not take any preventative measures that would dictate the return of all LVSC's and Sands China's documents at the end of the employment

⁸ For definitional purposes, "inadvertent" disclosures are "where the holder of the privilege is in possession of the materials and fails to take adequate precautions to maintain their confidentiality" and "involuntary disclosures" are "where a third party over whom the holder of the privilege has no control is in possession of the materials and discloses them." *Bowles v. Nat'l Ass'n of Home Builders*, 224 F.R.D. 246, 253 (D.D.C. 2004)

1 relationship. Specifically, Jacobs' employment agreement with LVSC, the Term Sheet, does not
2 include "the simple precaution of . . . a provision. . . requiring the surrender of any documents
3 obtained in the court of employment." *Bowles*, 224 F.R.D. at 256.

4 Consistently, neither LVSC nor Sands China took any measures to preserve when LVSC
5 wrongfully terminated Jacobs on July 2010. In fact, Sands China and LVSC were silent on the
6 topic of documents. No one ever asked Jacobs what documents he possessed. (Jacobs Decl. ¶ 9.)
7 And, no one ever asked Jacobs to return any documents or thumb drives he possessed. (*Id.*) In
8 short, Sands China and LVSC did nothing; until Jacobs filed suit, that is. The game changed and
9 only then did Sands China and LVSC concern themselves with documents that Jacobs retained
10 after he was escorted off the premises. This is all too little, too late.

11 While Sands China and LVSC have since asked Jacobs to return the documents he
12 retained when his relationship with them ended, they made no efforts to assert specific claims of
13 privilege to specific documents, as the law requires. *E.g.*, *United States v. Martin*, 278 F.3d 988,
14 1000 (9th Cir. 2002) ("A party claiming the privilege must identify specific communications and
15 the grounds supporting the privilege as to each piece of evidence over which privilege is
16 asserted."); *SDI Future Health, Inc.*, 464 F. Supp. 2d at 1045-46 (concluding attorney client
17 privilege was waived by party's failure to assert specific attorney-client privileges to documents,
18 including computer-based records). Sands China and LVSC likely will argue that they do not
19 know what Jacobs possesses, yet there are at least two problems with this argument.

20 First, though neither will admit to it, it is highly unlikely that neither Sands China nor
21 LVSC has reviewed Jacobs' desktop computer, emails, and files. In any event, whether Sands
22 China and LVSC did or did not review Jacobs' old computer and files, they could have. As
23 evidenced by Sands China's November 23, 2011 correspondence, Sands China was able to
24 identify three specific documents they believed Jacobs' possessed. (Ex. E.) They could have and
25 should have searched for other additional documents to assert a more specific privilege. They did
26 not. Rather than review those documents and provide a more specific claim of privilege, Sands
27
28

1 China and LVSC choose to assert a blanket privilege claim, which is not permitted.⁹ *Martin*, 278
2 F.3d at 1000; *SDI Future Health, Inc.*, 464 F. Supp. 2d at 1046 ("[T]he Court does not agree that a
3 mere generalized assertion that seized records may contain attorney-client privileged materials is,
4 in and of itself, sufficient to preserve the defendant's privilege.").

5 Second, despite knowing that Jacobs possessed documents, neither Sands China nor
6 LVSC has requested to review the files to index them. Neither suggested a protocol to review the
7 files, in light of Jacobs' consistent position that he will not return them. When Jacobs' counsel
8 suggested a protocol on July 9, 2011, to allow Sands China and LVSC an opportunity to review
9 Jacobs' documents and isolate non-relevant, privileged documents, Sands China and LVSC did
10 nothing. Indeed, as of the TRO hearing on September 20, 2011, Sands China did not even recall
11 the protocol Jacobs suggested months ago.

12 Even after that hearing, and despite repeated statements to the contrary in multiple court
13 filings, neither Sands China nor LVSC reached out to discuss a protocol until October 8, 2011.
14 These non-efforts are unreasonable and serve to waive any purported privilege. *SDI Future*
15 *Health, Inc.*, 464 F. Supp. 2d at 1046-47 ("SDI was granted access . . . it could have reviewed to
16 identify additional privileged attorney-client communications. Therefore, it was unreasonable for
17 SDI to fail to take steps to identify and assert its privilege regarding other documents within a
18 reasonable time after it was granted access . . .").

19 In essence, Sands China and LVSC sat back and waited. They know what Jacobs has and
20 there is no reason to agree to a protocol if the status quo means Jacobs will not get to use the
21 documents against Sands China and/or LVSC for the personal jurisdiction debate and for the
22 larger issues. They took no efforts to preserve their privilege, or prevent disclosure of any
23 documents they claim are privileged and confidential.¹⁰ Thus, under the circumstances, Sands
24 China and LVSC waived any privilege to make such arguments.

25
26 ⁹ Sands China and LVSC likely will complain about the number of computer based
27 documents they would have to (if they haven't already) review for privilege. However, the
District of Nevada has stated that the size and number of the documents is not a sufficient basis to
avoid asserting specific claims of privilege. *SDI Future Health, Inc.*, 464 F. Supp. 2d at 1046.

28 ¹⁰ In the declaration of counsel attached to the motion in limine, counsel testifies that the
documents Jacobs possesses include trade secrets. In Nevada, whether some piece of corporate

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

vs.

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in

Interest.

Electronically Filed
Jun 24 2013 10:00 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Case Number:

District Court Case Number
A627691-B

**APPENDIX IN SUPPORT
OF EMERGENCY
PETITION FOR WRIT OF
PROHIBITION OR
MANDAMUS TO
PROTECT PRIVILEGED
DOCUMENTS**

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(PA2962-3192)**

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**APPENDIX IN SUPPORT OF EMERGENCY PETITION FOR
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **APPENDIX IN SUPPORT OF EMERGENCY PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIILEGED DOCUMENTS - VOLUME 24 of 24 (PA2962-3192)** to be served as indicated below, on the date and to the addressee(s) shown below:

VIA HAND DELIVERY

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

Respondent

VIA ELECTRONIC AND U.S. MAIL

James J. Pisanelli
Todd L. Bice
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By: /s/Fiona Ingalls

(Mar. 14, 2013 Tr. at 10:21-25). Their supplement simply cites two additional cases for the proposition that a stipulated protective order is not, in and of itself, a basis to compel a party to produce otherwise privileged information to those not entitled to review it. *In re Dow Corning Corp.*, 261 F.3d 280, 286 (2d Cir. 2001); *Chase Manhattan Bank, N.A. v. Turner & Newall, PLC*, 964 F.2d 159 (2d Cir. 1992). Jacobs has never advocated otherwise. Instead, Jacobs has always contended that he is entitled to possess and use the documents in his possession and, to the extent there are valid claims of privilege as against outsiders, a protective order is adequate to address those concerns.

III. ANALYSIS

Defendants seek to frame the debate around a false premise: That the question is whether a former executive has the ability to "waive" a privilege for a defendant corporation so as to compel its production of privileged communications. But of course, that is not the issue in this case. Jacobs does not seek to compel production of documents from the Defendants. Jacobs possesses every one of the documents at issue. They are in *his* files. He has possessed them since the day he was forcibly removed from Macau. Both LVSC and Sands China knew he possessed them for over a year before they decided to try and make a litigation tactic out of his possession. Simply pretending that these critical facts do not exist will never make them go away.

A. Jacobs Is Within The Sphere Of Persons Allowed To View Privileged Communications He Possesses.

Any debate over the divergent approaches some courts have taken relative to a former executive's ability to compel disclosure of privileged communications is a convenient diversion for LVSC and Sands China. But it is not the debate for now. Jacobs presently does not seek to compel production of documents from LVSC or Sands China. He already has the documents. The issue is his use of the documents he possesses. And, the Defendants' knowing avoidance of that point is noteworthy.

None of the authorities cited by LVSC or Sands China address anything like the matter presented here, where documents in question are (1) presently and rightfully in their opponent's possession and (2) are matters to which he substantively participated. Indeed, even where the first

1 element is lacking, the court's framing of the issue in *People v. Greenberg*, 851 N.Y.S.2d 196,
2 202 (N.Y. Sup. Ct. 2008) is instructive. There, the court faced a question of access to privileged
3 information by two former executives:

4 The issue here is not whether the legal memoranda constitute
5 privileged attorney-client materials (they do) or whether Greenberg
6 and Smith are entitled to assert or waive AIG's privilege (they are
7 not), but whether Greenberg and Smith ***are among the class of***
8 ***persons legally allowed to view those privileged communications.***
 Under both New York and Delaware laws, the fact that Greenberg
 and Smith are no longer directors is not fatal to their motion to
 compel, since their conduct while directors has been called into
 question and the inspection is needed to prepare their defenses.

9 *Id.* (emphasis added). After properly framing the issue, the court concluded that these former
10 executives (and their counsel) were entitled to view the privileged materials without causing a
11 waiver because they "were privy to, and on many occasions actively participated in, [the] legal
12 consultations regarding the four subject transactions . . . "). *Id.* As a result, the court held that
13 the corporation – the proponent of the privilege – "failed to sustain its burden of establishing that
14 the privilege is assertible" against those former executives. *Id.* See, e.g., *In re Braniff, Inc.*,
15 153 B.R. 941, 946 (M.D. Fla. 1993) (A former director or officer is entitled to otherwise
16 privileged communications he authored, received or were copied on during his tenure based on
17 the notion of fundamental fairness.).

18 Defendants instead try to reorient the debate to cases addressing who holds and may waive
19 the privilege, a debate that does not get them very far since Jacobs does not contend he has that
20 power. He merely contends that, consistent with the law, the privilege cannot be asserted against
21 him as to documents he possesses and for which he was a participant. The cases to which
22 Defendants cling do not say otherwise.

23 For instance, *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343 (1985)
24 involved the assertion of attorney-client privilege by trustee of corporation. In that case, contrary
25 to Defendants' assertion that the court stated displaced managers no longer have control over the
26 privilege to statements they made, the court simply stated in dicta that a displaced manager may
27 not assert a privilege if the current managers do not seek to assert privilege. *Id.* at 348.

1 *Weintraub* did not address what happens when a former executive retains⁴ possession of
2 purportedly privileged communications that he authored, received or was copied on during his
3 tenure.

4 *In re Hechinger Investment Co.*, 285 B.R. 601 (D. Del. 20002) is another bankruptcy case
5 cited by Defendants, addressing whether a bankruptcy trustee has the ability to assert or waive the
6 corporation's privileges. The court found the trustee did not timely assert privilege and therefore,
7 it was waived. The case of *Barr v. Harrah's Entertainment, Inc.*, 2008 WL 906351 (D.N.J.
8 Mar. 31, 2008) addressed the issue relative to a class action: "a former officer or director serving
9 as a class representative in a class action lawsuit asserting a breach of contract claim does not
10 have the right to review privileged documents of the corporation solely based upon the officer or
11 director's prior access to such documents during his tenure as a former officer or director with the
12 corporation." *Id.* at *7.⁵

13 Defendants then rely upon *Milroy v. Hanson*, *In re Marketing Investors Corp.*, and
14 *Montgomery v. eTrepid*, all of which simply hold that a former officer, director or manager is not
15 entitled to privileged communications that he only might have had access to during his
16 employment. In *Milroy*, the court noted "[t]here has been no showing that [the former director]
17 ever participated in any of the meetings, conferences, or discussions that gave rise to the assertion
18 of the attorney-client privilege." 875 F. Supp. 646, 647 (D. Neb. 1995). The court in *In re*
19 *Marketing Investors Corp.* based its holding on a nondisclosure covenant in his employment
20 agreement that prohibited the employee from retaining the documents.⁶ Similarly, in
21 *Montgomery* there is no evidence that the former manager seeking the privileged communications
22 authored, received, or was copied on any of them. Rather, the former manager sought those
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24 ⁴ Pursuant to the Court's September 14, 2012, Decision and Order, Defendants are
25 precluded from contesting that Jacobs' ESI is not "rightfully in his possession." Decision and
Order at 9.

26 ⁵ A similar fact distinguishes *Fitzpatrick v. Am. Int'l Group, Inc.*, 272 F.R.D. 100 (S.D.N.Y.
27 2010) where the court noted disagreement amongst authorities but in that case the party seeking
production did not otherwise possess the documents at issue.

28 ⁶ Jacobs has no such provision in his contract.

documents he "would have had access to" while at the company. 548 F. Supp. 2d 1175, 1187 (D. Nev. 2008).

Equally unavailing is LVSC's and Sands China's dismissive response to the fact that former corporate employees who happen to be attorneys cannot be deprived of access to information simply because it is privileged. Jacobs recognizes that the former attorney is within the circle of persons entitled to view privileged information, and that is the whole point. The fact that such a person is no longer employed by the corporation does not mean that the former employee-attorney has the power to waive the privilege. It merely means that they cannot be denied access to sources of proof simply because it is privileged if it is information that they created or reviewed while employed: "[F]ormer in-house counsel may disclose to her attorney all facts relevant to the termination, including employer confidences and privileged communications." *Fox Searchlight Pictures, Inc. v. Paladino*, 106 Cal. Rptr. 2d 906, 918 (Cal.Ct.App. 2001). While a former in-house counsel is an attorney, she is also an employee and afforded the same legal protections has a non-attorney. *Id.* at 919.

The question is not who has the power to waive a privilege. Jacobs does not claim that power. The question is who is within the sphere of persons who are permitted to review privileged information without it serving as a waiver. When the issue is properly framed, it becomes apparent why LVSC and Sands China insist upon avoiding that debate.

B. If Jacobs Were Not Entitled To View These Communications, His Long-Standing And Continuing Possession Of Them Constitutes A Knowing Waiver By Defendants.

LVSC and Sands China ignore the consequences of claiming that Jacobs' termination ends his rights to access information. If LVSC and Sands China are right – that Jacobs becomes just another outsider the minute he is terminated – then his possession of those communications with Defendants' knowledge constitutes a waiver of the privilege for all purposes. After all, if Jacobs is just like any other member of the general public, a party loses the ability to claim privilege by allowing such a person to have possession of their so-called privileged communications. It is

1 only if he is in the circle of people entitled to view the documents that preclude his present
2 possession from constituting a full waiver.⁷

3 The law is long standing that a party claiming privilege waives it, involuntarily or
4 inadvertently, if they fail to take reasonable measures "to prevent the disclosure of privileged
5 documents [or to] recover privileged documents once they are disclosed." *Bowles v. National*
6 *Ass'n of Homebuilders*, 224 F.R.D. 246, 253 (D.D.C. 2004). As the Ninth Circuit has
7 admonished, the party claiming the privilege must undertake all efforts "reasonably designed" to
8 preserve an asserted privilege and the privilege is waived if they fail "to pursue all reasonable
9 means of preserving the confidentiality of the privileged matter." *Accord In re Grand Jury*
10 *(Impounded)*, 138 F.3d 978, 981 (3rd Cir. 1998) (including as a factor in waiver are "the steps
11 taken by a party to remedy the disclosure and any delay in doing so").

12 Courts hold that the failure to take reasonable steps to recover so-called privileged
13 documents that are in the hands of one's adversary constitute a waiver. *Bowles*, 224 F.R.D. at 253
14 (Party waives its privilege in "documents, and in all documents of the same subject matter, by
15 failing to take reasonable steps *to recover the documents and preserve any privilege once it was*
16 *aware they were in the hands of a party opponent.*") (emphasis added). This means that if the
17 adversary announces that it intends to retain the documents and use them in the case, then a
18 reasonable litigant must obtain prompt judicial relief or else the privilege is gone. *United States*
19 *v. SDI Future Health, Inc.*, 464 F.Supp.2d 1027, 1046-47 (D. Nev. 2006).

20 And, there is no dispute that LVSC and Sands China knew that Jacobs possessed the
21 documents in question. Recall, within weeks of Jacobs' filing of this action in 2010, the
22 Defendants accused him of stealing the documents. At that time, Jacobs disputed that assertion
23 and flatly announced that he was rightfully in possession of the documents, intended to use them,
24 and would not return them to the Defendants. If LVSC and Sands China really thought that

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27 ⁷ Courts hold that allowing strangers outside of the circle of permitted recipients to possess
28 and retain privileged communications constitutes a waiver of the privilege for "all purposes."
Winbond Elec. Corp. v. International Trade Com'n, 262 F.3d 1363, 1376 (Fed. Cir. 2001).

1 Jacobs was outside of the circle of persons entitled to review those documents, they were required
2 to take prompt action to have this Court preclude him from possessing the documents.

3 But as this Court knows, Defendants did nothing of the sort. Instead, month after month
4 passed. It was not until some ten months later when the Defendants, searching about for a
5 litigation tactic, brought the matter to this Court's attention. The law is clear that if Jacobs is
6 outside the scope of permissible viewers, then the Defendants' allowing of Jacobs to possess those
7 documents without seeking immediate judicial relief constitutes a waiver. *United States v. de la*
8 *Jara*, 973 F.2d 746, 750 (9th Cir. 1992) (allowing adverse party to possess documents for six
9 months is a waiver); *In re Grand Jury (Impounded)*, 138 F.3d at 981 (failing to file motion to
10 recover privileged documents for four months is a waiver). Thus, if LVSC and Sands China want
11 to claim that Jacobs is outside the sphere of permissible possessors of privileged communications
12 (*i.e.*, Jacobs is an ordinary outsider like the public), then they have waived all privileges as to
13 everyone else due to their own inaction.

14 **C. Defendants Have Also Placed These Privileged Communications At Issue.**

15 LVSC and Sands China also contend that they have not placed any of the communications
16 at issue. But, the proof is otherwise. They each contend that Jacobs was fired for cause, citing a
17 whole host of manufactured after-the-fact reasons. Notably, they do not deny that these so-called
18 privileged documents go to the substance of their termination for cause and who was calling the
19 shots for Sands China, facts going to this Court's personal jurisdiction.

20 As the Court held in *Wardleigh*, "[F]airness should dictate that where litigants raise issues
21 that will compel the litigants to necessarily rely upon privileged information at trial to defend
22 those issues, the privilege as it relates only to those issues should be waived." *Wardleigh v.*
23 *Second Judicial Dist. Court In & For County of Washoe*, 111 Nev. 345, 356, 891 P.2d 1180, 1187
24 (1995). "The doctrine of waiver by implication reflects the position that the attorney-client
25 "privilege 'was intended as a shield, not a sword.'" *Id.* at 354, 891 P.2d at 1186. Jacobs has lost
26 track of the number of times Defendants have used the privilege as a sword, not a shield. A
27 review of the three-day sanctions hearing in September is replete with examples, where the
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1 Defendants offer testimony and make assertions as to matters they believe are helpful to them, but
2 then seek to foreclose any cross-examination that might undermine the self-serving story.

3 The recently-filed declarations by Defendants underscore the point. Jacobs filed a
4 declaration describing communications being withheld on the grounds of privilege that
5 demonstrate the connection between Sands China and Las Vegas to show jurisdiction.
6 Defendants then filed declarations from Messrs. Adelson and Leven denying Jacobs' statements
7 and pretending that certain documents supposedly do not exist. How convenient. They claim that
8 documents do not exist but then assert privilege over these non-existent documents. Defendants
9 know Jacobs cannot produce documentary evidence substantiating his statements (under the threat
10 of disqualification of counsel) as they have withheld it with cries of privilege.

11 The law is not so perverse. Defendants cannot continue to wage their name-calling
12 campaign against Jacobs – liar, extortionist, delusional – but then pretend that they have not put
13 documents at issue that go to contradict the bluster. Defendants' conduct has squarely caused
14 these supposedly-privileged communications to be at issue in the jurisdictional phase of this
15 litigation (as well as the merits). In fact, LVSC bases its counterclaim for abuse of process on its
16 contention this Court lacks jurisdiction and Jacobs therefore has engaged in abuse of process.

17 Defendants' only halfheartedly attempt to refute the legal authority cited by Jacobs
18 requiring the production of privileged communications when the communications are "at issue."⁸
19 Defendants misquote *In re County of Erie* when asserting the court held, "a party must *rely* on
20 privileged advice from his counsel." *In re County of Erie*, 546 F.3d 222, 229 (2d Cir. 2008).
21 Jacobs agrees that the court did make that statement in the context of discussing the advice of
22 counsel defense. But that court went on to note that the petitioners do not claim a "good faith"
23 defense, which is the case here. *Id.*

24 In the *Brownell v. Roadway Package System, Inc.* case relied upon by Jacobs, Defendants
25 state in passing that the case not only involved the assertion of good faith, but "Defendants there
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27 ⁸ Defendants do not even address the case of *Mitzi v. Sobol*, 136 F.R.D. 359 (S.D.N.Y.
28 1991) where the court ordered the production of a privileged report investigating allegations of
cheating when defendants' affirmative defenses placed at issue the relevant information contained
in the report.

1 relied upon a investigation its attorneys had conducted." Opp. at 13:1-2. Defendants
2 misunderstand the relevancy of *Brownell*. That case involved accusations of sexual harassment,
3 which the employer refuted, contending it "fully and fairly" investigated. 185 F.R.D. 19, 25
4 (N.D.N.Y. 1999). There, the court held "equity requires" plaintiff to be able to "explore the
5 parameters of the investigation in order to rebut this affirmative defense." *Id.* Further, by
6 asserting the adequacy of the investigation as a defense, the employer waived the attorney-client
7 privilege by placing the investigation "at issue."

8 Defendants rely upon the case of *Cardtoons, L.C. v. Major League Baseball Players Ass'n*
9 for the premise that privilege is not waived when the defendant asserts it acted in good faith.
10 199 F.R.D. 677, 682 (N.D. Okla. 2001). They are wrong. They misunderstand the *Cardtoons*
11 court's analysis and reasoning since it was the plaintiff in that matter that had the burden to prove
12 bad faith for its claims, it did not matter if the defendant not only denied it acted in bad faith but
13 affirmatively asserted good faith. *Id.* Yet LVSC's assertion of a "good faith" defense here is not
14 gratuitous immaterial in a case such as this. It affirmatively put its supposed "good faith" at issue
15 and doing so waives any claim of privilege as to evidence on that issue.

16 **D. Defendants' Cursory Discussion of the Privilege Log Entries Falls Vastly**
17 **Short of Satisfying Their Burden of Proving Privilege.**

18 At this point it is unclear to Jacobs whether this Court desires further briefing on the
19 inadequacy of the particular claims of privilege with respect to the various categories of
20 documents. Jacobs will briefly outline the various deficiencies in that regard and must note that
21 neither LVSC nor Sands China made any effort to substantiate their claims of privilege as to any
22 particular entry on their log. Such nonresponse, in and of itself, defeats a claim of privilege. *See*
23 *In re Keeper of Records*, 348 F.3d 16, 22 (1st Cir. 2003) ("[T]he party who invokes the privilege
24 bears the burden of establishing that it applies to the communications at issue and has not been
25 waived."). Accordingly, even setting aside the fact that Jacobs presently possesses these
26 documents – and treating this as an ordinary motion to compel where an opponent is seeking
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1 production of documents – the Defendants' claims of privilege here would fail because they do
2 not substantiate their burden to prove actual privilege for the documents at issue.⁹

3 **1. Defendants fail to establish a privilege over documents with no author.**

4 Defendants contend that "virtually all" of the documents with no identified author are
5 attachments and the parent email has an identified author. First, "virtually all" is not all of the
6 entries. Defendants concede there are entries that are not attachments and which do not identify
7 authors. They make no effort to substantiate its privilege assertions as to these entries.

8 Second, even for attachments to emails, those documents must have an author. It cannot
9 be presumed that the author of the email is also the author of an attachment. More importantly,
10 an attachment does not become privileged simply because it is attached to a supposedly privileged
11 email. *Fojtasek v. NCL (Bahamas) Ltd.*, 262 F.R.D. 650, 660 (S.D.Fl. 2009); *Spiniello*
12 *Companies v. Hartford Fire Ins. Co.*, Case No. 07-cv-2689, *2 (D.N.J. July 14, 2008) (explaining
13 that each attachment itself must be privileged and simply attaching something to a privileged
14 communication will not make the attachment privileged).

15 The law requires Defendants' privilege log to be sufficiently detailed so a court may
16 ascertain whether or not the document is covered by attorney-client privilege. The failure to
17 identify the author in and of itself defeats a claim of privilege. *See SmithKline Beecham Corp. v.*
18 *Apotex Corp.*, 232 F.R.D. 467, 475-76 (E.D.Pa. 2005) (compelling production of documents for
19 which the party identified no author but rather generally referred to one of plaintiff's departments,
20 e.g. "member of SB corporate affairs department").

21 **2. Defendants fail to establish a privilege over documents with no recipient.**

22 Defendants also claim that "almost all" entries in this category are meeting notices.
23 Again, "almost all" is not *all* and Defendants have conceded the privilege log contains
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26 ⁹ Of course, if this Court agrees with Jacobs that he is entitled to use the documents because
27 he is either within the circle of those authorized to view the documents or there was a waiver due
28 to the fact that Defendants failed to take any steps, let alone reasonable ones, to retrieve the
documents once they decided to claim he was outside of the permitted circle, then the Court
would not need to address each individual category.

1 communications with no recipient. They also fail to explain how a meeting notice is an attorney-
2 client communication.

3 **3. *Defendants fail to establish a privilege over documents where an attorney***
4 ***is only identified in the "other names" category.***

5 LVSC's and Sands China's excuse for withholding documents where an attorney is only
6 listed in the "other names" category rests on the unsubstantiated assertion that an attorney-client
7 communication is discussed somewhere in the body of an email string so redactions are needed.
8 Of course, the Court would expect every document in this category to state "redaction needed,"
9 but this is not the case.

10 Then, in a footnote, Defendants gloss over Jacobs' argument that communications with
11 in-house attorneys are not necessarily privileged as those attorneys may have been copied on
12 communications for business, not legal, reasons. Defendants accuse Jacobs of speculating, but do
13 nothing to substantiate the claim of privilege. Simply put, as Defendants have not satisfied their
14 burden of providing sufficient information to establish a privilege, Jacobs cannot examine the
15 assertions in detail. LVSC and Sands China have failed to carry their burden of establishing a
16 privilege for all documents where an attorney is only identified in the "Other Names" category.

17 **4. *Defendants fail to establish a privilege over documents where only the***
18 ***"legal department" is identified, but no specific attorney identified.***

19 For those documents that identify only the "Legal Department," LVSC and Sands China
20 assert, with no support, that the email communications are discussing advice of an attorney but
21 that a specific attorney is not identified in the communication. Defendants' excuse begs the
22 question of how they know it is legal advice if it is unknown who is giving the advice. The
23 failure to identify the specific attorney with whom a purported attorney-client communication is
24 grounds for production of those documents, as Defendants have failed to provide sufficient detail
25 to examine the privilege assertion. *SmithKline Beecham Corp. v. Apotex Corp.*, 232 F.R.D. 467,
26 477 (E.D.Pa. 2005).

1 **5. Defendants fail to establish a privilege over documents sent to third**
2 **parties.**

3 Again, staying true to course, Defendants do not address any specific entries on the
4 privilege log with third parties, instead only generally referencing those entries involving
5 individuals at Goldman Sachs or PriceWaterhouseCoopers. They have not even attempted to
6 substantiate their assertions of privilege as to communications with other third parties.

7 With respect to Goldman Sachs and PriceWaterhouseCoopers, the inclusion of these third
8 parties on communications waives any claim of privilege. *Blanchard v. Edgemark Financial*
9 *Corp.*, 192 F.R.D. 233, 237 (N.D. Ill. 2000) (explaining the attorney-client privilege does not
10 extend to documents sent to a client's investment banker where the communications were not
11 made to assist counsel in rendering legal advice, but instead to further a transaction in which the
12 client and the investment bank shared only a financial interest and not a legal interest);
13 *FSP Stallion I, LLC v. Luce*, Case No. 2:08-cv-01155-PMP-PAL, 2010 WL 3895914, *21
14 (D.Nev. Sept. 30, 2010) (rejecting the argument that the common interest doctrine precludes the
15 production of communications with the party's investment banker as "The common interest
16 doctrine does not extend to communications about a joint business or financial transaction, merely
17 because the parties share an interest in seeing the transaction is legally appropriate.").¹⁰

18 **6. Defendants fail to establish a privilege over documents withheld on the**
19 **grounds of work-product doctrine.**

20 LVSC and Sands China also ask this Court to extend the work product privilege beyond
21 its purpose. They seek to withhold documents on the basis of such a privilege even though Jacobs
22 is not an adversary in those unrelated matters. Indeed, they have not even identified those matters
23 in their privilege log, making it impossible for the Court to address the merits of their assertion.
24 Once again, their studied failure to satisfy their burden of proof forecloses any claim of privilege.

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26 ¹⁰ Defendants' reliance on *Calvin Klein Trademark Trust v. Wachner* for their position that
27 such communications retain privilege is misplaced as the *Wachner* case is not on point. In
28 *Wachner*, the court reasoned that the role of the investment banking firm was more akin to that of
an accountant. *Calvin Klein Trademark Trust v. Wachner*, 124 F. Supp. 2d 207, 209 (S.D.N.Y.
2000). Defendants have made no such showing in this case.

7. ***Defendants fail to establish a privilege over documents withheld on the grounds of accountant-client privilege.***

Pursuant to NRS 49.135, an "Accountant" for purposes of establishing an accountant-client privilege is "a person certified or registered as a public accountant under chapter 628 of NRS who holds a live permit." Defendants contend the documents withheld on the grounds of accountant-client privilege are communications by or involving Kenneth Kay, Jason Anderson, Stephanie Marz, and/or David Pitney, "all of whom are CPAs."

However, the Nevada State Board of Accountancy's website indicates Kay is not a certified or registered public accountant with the State of Nevada. Both Anderson and Pitney did at one time possess CPA licenses in Nevada, but have since surrendered them. Marz is listed as having a CPA license with the State of Nevada, but Marz is listed in the "other names" category of one entry, which is entirely insufficient to establish privilege. Marz is listed as an author, recipient or copied on two other emails, but again Defendants have not substantiated their claims of privilege by identifying by subject the "professional accounting services" facilitated. See NRS 49.185.

8. ***Defendants fail to establish a privilege over documents withheld on the grounds of gaming regulatory privilege.***

LVSC and Sands China save the best for last. They now attempt to assert the confidentiality provision in the subconcession contract between Venetian Macau S.A. and Galaxy Casino Company Limited as the basis of a "gaming regulatory privilege." But of course, a contract's confidentiality provision does not serve as a bar, much less a privilege, precluding the production of discoverable documents. *In re C.R. Bard, Inc. Pelvic Repair Systems Products Liability Litigation*, 287 F.R.D. 377, 384 (S.D.W.V. 2012); *Nat'l Union Fire Ins. Co. v. Porter Hayden Co.*, Case No. CCB-03-3408, 2012 WL 628493, *2 (D.Md. Feb. 24, 2012) ("There is no privilege for documents merely because they are subject to a confidentiality agreement, and confidentiality agreements do not necessarily bar discovery that is otherwise permissible and relevant."); *Gardiner v. Kelowna Flightcraft, Ltd.*, 2011 WL 1990564, *1 (S.D. Ohio, May 23, 2011); *In re Continental Ins. Co.*, 994 S.W.2d 423, 425 (Tx. Ct. App. 1999) ("Individuals cannot protect relevant information from discovery by confidentiality provisions in contracts . . .").

1 They then claim that NRS 49.025 supports this assertion of privilege. NRS 49.025 simply
2 provides:

3 1. A person making a return or report required by law to be
4 made has a privilege to refuse to disclose and to prevent any other
5 person from disclosing the return or report, if the law requiring it to
6 be made so provides.

7 2. A public officer or agency to whom a return or report is
8 required by law to be made has a privilege to refuse to disclose the
9 return or report if the law requiring it to be made so provides.

10 3. No privilege exists under this section in actions involving
11 false statements or fraud in the return or report or when the report is
12 contained in health care records furnished in accordance with the
13 provisions of NRS 629.061.

14 NRS 49.025 makes no mention of confidentiality provisions in contracts between non-
15 governmental entities.

16 Next, LVSC and Sands China assert Singapore's "Official Secrets Act," by referencing a
17 statute contained on a foreign website. Even assuming this Official Secrets Act is valid, existing
18 and enforceable (none of which Defendants have shown), by its own terms it only applies to
19 "official secrets." Defendants fail to explain how a communication that has already been revealed
20 to Jacobs in the course of his employment in Macau (not Singapore) is an "official secret of
21 Singapore." The simple fact is that LVSC and Sands China have sought to manufacture
22 nonexistent gaming regulatory privileges out of thin air.

23 **IV. CONCLUSION**

24 Jacobs has openly and adversely possessed the documents in question since the date of his
25 termination. In fact, as early as November 2010, Jacobs' counsel reiterated his possession and
26 intent to use these documents in the prosecution and defense of this litigation. Jacobs is within
27 the circle of those entitled to view the documents without there being a waiver. LVSC and Sands
28 China knew this fact, which likely explains why month after month passed with no motion filed
with this Court. Only when the perceived opportunity for a litigation tactic arose did they seek to
spring into action. But of course if, as they now contend, Jacobs is outside the class
of people entitled to possess and review the documents, then his long-standing possession without

1 reasonable action from Defendants to retrieve those documents constitutes a complete waiver.
2 Either way, Jacobs' motion must be granted.

3 DATED this 8th day of April, 2013.

4 PISANELLI BICE PLLC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 8th day of April, 2013, I caused to be sent via e-mail and electronic service true and correct copies of the above and foregoing **STEVEN C. JACOBS' REPLY IN SUPPORT OF MOTION TO RETURN REMAINING DOCUMENTS FROM ADVANCED DISCOVERY** properly addressed to the following:

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EXHIBIT 1

Steve Jacobs
Offer Terms and Conditions

-
1. Position: President and CEO Macau, listed company (ListCo)
 - a. Reporting into President and COO LVS or CEO/Chairman LVS
 - b. All staff to be direct reports, including EVP/President, Asia Development
 2. Term: 3 years
 3. Base Salary and Annual Bonus
 - a. 1.3 M base (USD)
 - b. 50% bonus
 - i. 25% Achieving annual EBITDAR Performance as submitted and approved by the BOD for Macau
 - ii. 25% Individual Objectives to be mutually agreed on an annual basis
 4. Equity
 - a. 500,000 options in LVS to be granted date of hire at FMV. Should there be an IPO of Macau, LVS options to be converted at IPO into sufficient numbers of ListCo options such that the aggregate FMV of ListCo at the IPO list price is equal to the aggregate FMV of the LVS stock being converted. Conversion to be tax free.
 - b. Vesting
 - i. 250,000 shares vest Jan 1, 2010
 - ii. 125,000 shares vest Jan 1, 2011
 - iii. 125,000 shares vest Jan 1, 2012
 5. Expat package
 - a. 10,000 one time fee to cover moving expense from Atlanta to HK
 - b. Housing Allowance: 12,000 per month, company pays deposits (if required)
 - c. Repatriation: Business airfare for employee and dependants, one 20 foot container, company to pay termination fees (if any)
 - d. Employee agrees to apply for Full Time Resident Status.
 6. Expense reimbursement/ Business Travel
 - a. Full reimbursement of expenses necessary to conduct business and in keeping with company and IRS policy
 - b. Business travel: Business class or above subject to prevailing company policy
 7. Employee Benefit Plan: Participation in any established plan(s) for senior executives
 8. Vacation and Holidays: 4 weeks per annum, with right to carry over should business demands prevent use
 9. Change of Control: Provision to accelerate vest and terminate not for cause should Sheldon or Miri not be in control of company
 10. Termination:
 - a. For Cause - Standard Language
 - b. Not For Cause - 1 Year severance, accelerated vest. Right to exercise for 1 year post termination.

SJ000017

EXHIBIT 2

DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

vs.

CASE NO. A-10-627691

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

Defendants.

AND RELATED CLAIMS

VIDEOTAPE AND ORAL DEPOSITION OF MICHAEL LEVEN

VOLUME II

PAGES 268-456

LAS VEGAS, NEVADA

FRIDAY, FEBRUARY 1, 2013

REPORTED BY: CARRE LEWIS, CCR NO. 497

JOB NO. 173048

1 DEPOSITION OF MICHAEL LEVEN,
2 taken at 3883 Howard Hughes Parkway, Suite 800,
3 Las Vegas, Nevada, on Friday, February 1, 2013, at
4 11:24 a.m., before Carre Lewis, Certified Court
5 Reporter, in and for the State of Nevada.
6

7 APPEARANCES:

8 For the Plaintiff:

9 PISANELLI BICE, PLLC
10 BY: TODD BICE, ESQ.
11 BY: ERIC T. ALDRIAN, ESQ.
12 3883 Howard Hughes Parkway, Suite 800
13 Las Vegas, Nevada 89169
14 (702) 214-2100
15 tlb@pisanellibice.com
16 see@pisanellibice.com
17 eta@pisanellibice.com

18 For Las Vegas Sands and Sands China Limited:

19 HOLLAND & HART LLP
20 BY: STEPHEN PEEK, ESQ.
21 9555 Hillwood Drive, 2nd Floor
22 Las Vegas, NV 89169
23 (702) 669-4600
24 speak@hollandandhart.com
25

For Sands China Limited:

26 KEMP, JONES & COULTHARD, LLP
27 BY: MARK JONES, ESQ.
28 3800 Howard Hughes Parkway, 17th Floor
29 Las Vegas, Nevada 89169
30 (702) 385-6000
31 m.jones@kempjones.com

1 APPEARANCES (continued):

2 For Sheldon Adelson, Las Vegas Sands:

3 LAS VEGAS SANDS CORP.

BY: IRA H. RAPHAELSON, ESQ.

4 GLOBAL GENERAL COUNSEL

3355 Las Vegas Boulevard South

5 Las Vegas, Nevada 89109

(702) 733-5503

6 ira.raphaelson2lasvegassands.com

7 The Videographer:

8 Litigation Services

By: Benjamin Russell

9 3770 Howard Hughes Parkway, Suite 300

Las Vegas, Nevada 89169

10 (702) 314-7200

11 Also Present:

12 Steven Jacobs

13
14
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24
25
LITIGATION SERVICES & TECHNOLOGIES - (702) 648-2595

I N D E X

WITNESS: MICHAEL LEVEN

EXAMINATION

PAGE

By Mr. Bice

278

1	Michael Leven		
2	Jacobs vs. Sands		
3	Friday, February 1, 2013		
4	Carre Lewis, CCR No. 497		
5	E X H I B I T S		
6	NUMBER		PAGE
7	Exhibit 11	E-Mail; LVS00235110	279
8	Exhibit 12	Steve Jacobs Offer Terms and Conditions; LVS00133027	285
9	Exhibit 13	E-Mail String; LVS00127168	286
10	Exhibit 14	E-Mail String; LVS00127504	291
11		- 507	
12	Exhibit 15	E-Mail String; LVS0012429	297
13	Exhibit 16	E-Mail String; LVS00141709	299
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15	Exhibit 17	E-Mail; LVS00122895	308
16	Exhibit 18	E-Mail String; LVS00131020	309
17	Exhibit 19	E-Mail and Attachment; LVS00117282 - 283	314
18	Exhibit 20	E-Mail String; LVS00113708	322
19	Exhibit 21	E-Mail String; LVS00112863	327
20	Exhibit 22	E-Mail; LVS00123649	328
21	Exhibit 23	E-Mail String; LVS00117303	330
22	Exhibit 24	E-Mail String; LVS00112588	331
23	Exhibit 25	E-Mail String; LVS00104216	336
24	Exhibit 26	E-Mail String; LVS00117292 - 293	340
25			

1 Q. Do you recall whether Mr. Dumont -- other
2 than advising you, did he play any other role in the
3 exorcism strategy that you reference in the e-mail?

4 A. I don't think so.

5 (Exhibit 12 marked.)

11:35:49

6 BY MR. BICE:

7 Q. Show you what's been marked as Exhibit 12,
8 give you a moment to look at it. Let me know when
9 you're done.

10 A. Okay.

11:35:59

11 Q. All right. Do you recognize the initials
12 on the bottom of this page --

13 A. Yes.

14 Q. -- or the handwriting?

15 A. Yes.

11:36:26

16 Q. Can you tell me what it says?

17 A. It says: "Okay. M. Leven, August 3,
18 2009."

19 Q. Is this -- is that something you wrote?

20 A. Yes.

11:36:34

21 Q. In what capacity were you acting when you
22 wrote that on 8/3 of '09?

23 A. I was acting in the capacity of president/
24 chief operating officer of Las Vegas Sands Corp.

25 Q. Was there anyone else involved on behalf of

11:36:58

1 Las Vegas Sands Corporation in approving this
2 document?

3 A. Yes.

4 Q. And who was that?

5 A. Mr. Adelson. 11:37:06

6 Q. Anyone else?

7 A. No.

8 Q. When you signed off on this document, did
9 you do so in Las Vegas?

10 A. I don't remember where I signed off on it. 11:37:26

11 Q. Okay. What about Mr. Adelson? Do you know
12 where he signed off on that?

13 A. Well, he didn't sign off on it.

14 Q. Okay.

15 A. He approved it. 11:37:37

16 Q. All right. When he approved it, do you
17 know where he was at?

18 A. He was in Las Vegas when he approved it.

19 Q. Do you know approximately the time frame in
20 which he approved it since yours is signed on 8/3 of 11:37:51
21 '09?

22 A. I -- I don't remember exactly.

23 Q. Did his approval predate yours?

24 A. Certainly.

25 (Exhibit 13 marked.) 11:38:38

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MR. JONES: Thank you.

THE VIDEOGRAPHER: Going off the record at
5:14 p.m.

(Deposition concluded at 5:14 p.m.)

-oOo-

CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE	REASON
------	------	--------	--------

* * * * *

I, Michael Leven, deponent herein, do hereby
certify and declare the within and foregoing
transcription to be my deposition in said action;
under penalty of perjury; that I have read,
corrected and do hereby affix my signature to said
deposition.

Michael Leven, Deponent

Date

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
) SS:
3 COUNTY OF CLARK)

4 I, Carre Lewis, a duly commissioned and licensed
5 Court Reporter, Clark County, State of Nevada, do
6 hereby certify: That I reported the taking of the
7 deposition of the witness, Michael Leven, commencing
8 on Friday, February 1, 2013, at 11:24 a.m.

9 That prior to being examined, the witness was,
10 by me, duly sworn to testify to the truth. That I
11 thereafter transcribed my said shorthand notes into
12 typewriting and that the typewritten transcript of
13 said deposition is a complete, true and accurate
14 transcription of said shorthand notes.

15 I further certify that I am not a relative or
16 employee of an attorney or counsel of any of the
17 parties, nor a relative or employee of an attorney
18 or counsel involved in said action, nor a person
19 financially interested in the action.

20 IN WITNESS HEREOF, I have hereunto set my hand,
21 in my office, in the County of Clark, State of
22 Nevada, this 10th day of February 2013.

23
24
25 CARRE LEWIS, CCR NO. 497

EXHIBIT 3

Table of Contents

UNITED STATES SECURITIES & EXCHANGE COMMISSION
Washington, D.C. 20549**Form 10-Q**

- ☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2010

- ☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission file number 001-32373

LAS VEGAS SANDS CORP.

(Exact name of registrant as specified in its charter)

Nevada

*(State or other jurisdiction of
incorporation or organization)*

27-0099920

*(I.R.S. Employer
Identification No.)*

3355 Las Vegas Boulevard South
Las Vegas, Nevada

(Address of principal executive offices)

89109

(Zip Code)

(702) 414-1000

(Registrant's telephone number, including area code)

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Table of Contents

LAS VEGAS SANDS CORP.

ITEM 6 — EXHIBITS

List of Exhibits

Exhibit No.	Description of Document
10.1	Employment Offer Terms and Conditions, agreed on August 3, 2009, by Steve Jacobs and the Company.
31.1	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of Chief Executive Officer of Las Vegas Sands Corp. pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of Chief Financial Officer of Las Vegas Sands Corp. pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

EXHI

Steve Jacobs
Offer Terms and Conditions

1. Position: President and CEO Macau, listed company (ListCo)
 - a. Reporting into President and COO LVS or CEO/Chairman LVS
 - b. All staff to be direct reports, including EVP/President, Asia Development
2. Term: 3 years
3. Base Salary and Annual Bonus
 - a. 1.3 M base (USD)
 - b. 50% bonus
 - i. 25% Achieving annual EBITDAR Performance as submitted and approved by the BOD for M
 - ii. 25% Individual Objectives to be mutually agreed on an annual basis
4. Equity
 - a. 500,000 options in LVS to be granted date of hire at FMV. Should there be an IPO of Macau, LVS options converted at IPO into sufficient numbers of ListCo options such that the aggregate FMV of ListCo at the price is equal to the aggregate FMV of the LVS stock being converted. Conversion to be tax free.
 - b. Vesting
 - i. 250,000 shares vest Jan 1, 2010
 - ii. 125,000 shares vest Jan 1, 2011
 - iii. 125,000 shares vest Jan 1, 2012
5. Expat Package
 - a. 10,000 one time fee to cover moving expenses from Atlanta to HK
 - b. Housing Allowance: 12,000 per month, company pays deposit (if required)
 - c. Repatriation: Business airfare for employee and dependents, one 20 foot container, company to pay term fees (if any)
 - d. Employee agrees to apply for Full Time Resident Status.
6. Expense reimbursement/ Business Travel
 - a. Full reimbursement of expenses necessary to conduct business in keeping with company and IRS policy
 - b. Business travel: Business class or above subject to prevailing company policy
7. Employee Benefit Plan: Participation in any established plan(s) for senior executives
8. Vacation and Holidays: 4 weeks per annum, with right to carry over should business demands prevent use
9. Change of Control: Provision to accelerate vest and terminate not for cause should Sheldon or Miri not be in control company
10. Termination:
 - a. For Cause — Standard Language

b. Not For Cause — 1 Year severance, accelerated vest. Right to exercise for 1 year post termination.

Agreed, August

EXHIBIT 4

**Glaser Weil Fink Jacobs
Howard & Shapiro LLP**

10250 Constellation Blvd.
19th Floor
Los Angeles, CA 90067
310.553.3000 TEL
310.556.2820 FAX

November 23, 2010

Direct Dial
(310) 282-8217
Email
Pjglaser@glaserweil.com

VIA FACSIMILE TRANSMISSION AND U.S. MAIL

Donald Campbell, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, NV 88101

Re: Las Vegas Sands Corp., et al. adv. Jacobs

Dear Mr. Campbell:

This law firm represents Sands China Ltd. together with its subsidiaries (the "Company"). While we will be responding in due course to what we believe, to be kind, an ill-advised complaint filed in the above referenced matter, we address here a matter of immediate concern to our client. We have reason to believe, based on conversations with existing and former employees and consultants for the Company, that Mr. Jacobs has stolen Company property including but not limited to three reports he, while working for the Company, received from Mr. Steve Vickers of International Risk Ltd.

We urge Mr. Jacobs to avoid the "I don't know what you're talking about" charade and return such reports (and any copies thereof) of which most if not all, have been watermarked. Of course, to the extent he has other Company property, such property must also be returned immediately. If we do not receive the reports within the next five (5) business days, we will be forced to seek Court Intervention either in Las Vegas or Macau.

On a related matter, we hereby demand and advise Mr. Jacobs (and any consulting company with which he is or was associated) to retain all of his/their files and his wife's files related to the Company and Las Vegas Sands Corp. Also, we remind Mr. Jacobs and his wife to preserve (a) all electronic mail and information about electronic mail (including message contents, header information, and logs of electronic mail system usage including both personal and business electronic mail accounts); (b) all databases (including all records and fields and structural information in such databases); (c) all logs of activity on computer systems that may have been used to process or store electronic data; (d) all word processing files and file.

Donald Campbell, Esq.
Campbell & Williams
November 23, 2010
Page 2

fragments; and (e) all other electronic data in each case relating to the Company or Las Vegas Sands Corp.

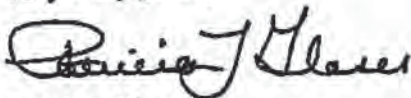
To minimize the risk of spoliation of relevant electronic documents, Mr. Jacobs (and any consulting company with which he is or was associated) and his wife should not modify or delete any electronic data files relating to the Company or Las Vegas Sands Corp. that are maintained on on-line storage and/or direct access storage devices unless a true and correct copy of each such electronic data file has been made and steps taken to ensure that such copy will be preserved and accessible.

Obviously, no one should alter or erase such electronic data and should not perform any other procedures (such as data compression and disc de-fragmentation or optimization routines) that may impact such data on any stand-alone computers and/or network workstations unless a true and correct copy has been made of such active files and of completely restored versions of such deleted electronic files and fragments and unless copies have been made of all directory listings (including hidden files) for all directories and subdirectories containing such files, and unless arrangements have been made to preserve copies.

Finally, any and all steps necessary to preserve relevant evidence created subsequent to this letter should be taken.

This letter is written without waiver of or prejudice to any and all of our client's rights and remedies.

Very truly yours,



Patricia Glaser
of GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP

PLG:jam

722356_2.DOC

EXHIBIT 5



CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

VIA FACSIMILE

November 30, 2010

Patricia Glaser, Esq.
Glaser Weil Fink Jacobs
Howard & Shapiro
10250 Constellation Blvd.
Los Angeles, California 90067

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

Dear Ms. Glaser:

We are in receipt of your letter dated November 23, 2010, which was received shortly before the Thanksgiving Holiday. Before turning to the substance contained therein, let me begin by stating "nice to meet you, too."

Moving on . . . please be advised that my firm and I have been consumed in another piece of commercial litigation that has been proceeding on an expedited basis with a myriad of court hearings and deadlines throughout the month of November and continuing into December. You may confirm the existence and breakneck pace of the litigation about which I speak with your local counsel, Stephen Peek and Justin Jones, as they represent one of the parties in the action. As such, I have not had an opportunity to address the contents of your letter with my client, Mr. Jacobs. I do, however, anticipate being able to discuss this matter with him in detail early next week.

Meanwhile, you may assist us in avoiding your self-coined "I don't know what you're talking about" charade" by describing in more detail the "three reports" referenced in your letter. It has been our experience that wrongfully terminated corporate executives are often—and properly—in possession of a multitude of documents received during the ordinary course of their employment. Contrary to the allegations contained in your letter, that does not mean the documents were "stolen." Thus, in order to determine whether Mr. Jacobs possesses the reports you want "returned immediately," it would help to know exactly what you are talking about.

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-8222
FAX: 702/382-0540

Patricia Glaser, Esq.
November 30, 2010
Page 2

Finally, insofar as Mr. Jacobs is in possession of any other documents or evidence related to Sands China, Ltd. and Las Vegas Sands, Corp. we have previously instructed him, as we instruct any client, to preserve all such materials in whatever form they exist.

This letter is written without waiver of or prejudice to any and all of our client's rights and remedies.

Very truly yours,

CAMPBELL & WILLIAMS


Donald J. Campbell, Esq.

DJC:mp

EXHIBIT 6

**Glaser Weil Fink Jacobs
Howard & Shapiro LLP**

10250 Constellation Blvd.
19th Floor
Los Angeles, CA 90087
310.553.3000 TEL
310.556.2920 FAX

December 3, 2010

Direct Dial
(310) 282-6217
Email
Pglaser@glaserweil.com

VIA FACSIMILE TRANSMISSION AND U.S. MAIL

Donald Campbell, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, NV 88101

Re: Las Vegas Sands Corp., et al. adv. Jacobs

Dear Mr. Campbell:

We received your November 30, 2010 letter, and appreciate the exigencies of a big caseload; however, we trust that you now have had sufficient time to discuss the matters addressed in our prior letter with your client.

Additionally, we presume that after speaking with your client, you are now well aware of the specific identity and content of the reports from Mr. Steve Vickers referenced in my prior letter, and require no further explanation. As you can now assuredly appreciate, these reports are far from ministerial and are not those you improperly characterized as merely "documents received during the ordinary course of [Jacobs] employment." This information is the sole property of your client's former employer and must be returned immediately.

To the extent that you need any further clarification, your client has improperly acquired, and must now return, the report detailing the investigation commissioned from Mr. Vickers regarding certain Macau government officials, as well as the two reports relating to the background investigations of Cheung Chi Tai and Heung Wah Keong.


As stated in my prior letter, these reports have been watermarked to identify your client as the recipient, and your client has wrongfully obtained these reports in direct contravention of our client's rights. We do not wish to argue with you at this time about the particulars of how or why your client is in possession of these reports, but only demand that they be returned immediately, along with any and all copies.

Donald Campbell, Esq.
Campbell & Williams
December 3, 2010
Page 2

Finally, we appreciate your assurances that your client is preserving all relevant information in this case, and we expect that such preservation will extend to all evidence created subsequent to the receipt of this letter.

This letter is written without waiver of or prejudice to any and all of our client's rights and remedies.

Very truly yours,



Patricia Glaser
of GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP

PLG:jam

723025_1.DOC

EXHIBIT 7



CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

VIA FACSIMILE

December 9, 2010

Patricia Glaser, Esq.
Glaser Weil Fink Jacobs
Howard & Shapiro
10250 Constellation Blvd.
Los Angeles, California 90067

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

Dear Ms. Glaser:

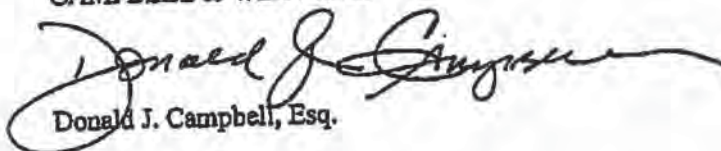
I have now had an opportunity to discuss your request on behalf of Sands China Ltd. ("Sands China") that our client, Mr. Steve Jacobs, return certain documents identified in your previous letters dated November 23 and December 3, 2010.

While we obviously disagree with your characterizations that Mr. Jacobs "stole" or "improperly acquired" any Sands China property, we have been able to confirm that he is in possession of the "report" on certain Macau government officials as well as a "background investigation" on Cheung Chi Tai. Mr. Jacobs is presently unsure whether he has any background investigation related to Heung Wah Keong, but he will search his files to determine if that is the case. Accordingly, we have asked Mr. Jacobs to return any originals of the foregoing reports and investigations. Please advise if these materials should be sent to your attention or elsewhere. Mr. Jacobs will be returning to the country late next week, and will send the documents on Friday by overnight courier to the location you direct.

This letter is written without waiver of or prejudice to any and all of our client's rights and remedies. On a personal note, I wish you the best during this Holiday Season.

Very truly yours,

CAMPBELL & WILLIAMS


Donald J. Campbell, Esq.

DJC:mp

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/388-8222
FAX: 702/388-0540

EXHIBIT 8

**Glaser Weil Fink Jacobs
Howard & Shapiro LLP**

10250 Constellation Blvd.
19th Floor
Los Angeles, CA 90067
310.553.3000 TEL
310.556.2820 FAX

December 13, 2010

Direct Dial
(310) 282-6217
Email
Pglaser@glaserweil.com

VIA FACSIMILE TRANSMISSION AND U.S. MAIL

Donald Campbell, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, NV 88101

Re: Las Vegas Sands Corp., et al. adv. Jacobs

Dear Mr. Campbell:

We received your December 9, 2010 letter, and understand that your client will provide us with the reports concerning the Macau government officials and Mr. Cheung Chi Tai, and will also provide us with the Heung Wah Keong report once he has located it in his files. We have little doubt that your client is in possession of the Heung Wah Keong report, and we expect to receive that information in a timely manner. Please forward all reports to my attention at the address listed above.

Additionally, we would like to clarify once again, that we expect your client to provide the original reports, along with any copies he may have made. Your letter states that you "have asked Mr. Jacobs to return any originals of the foregoing reports and investigations," indicating by omission that your client intends to retain the copies he has in his possession. Please be advised again that these reports, along with copies in any format, are the sole property of our client and must also be returned immediately.

We trust that this clears up any remaining questions you may have regarding our demand, and we anticipate your client's prompt compliance. This letter is written without waiver of or prejudice to any and all of our client's rights and remedies.

Very truly yours,



Patricia Glaser
of GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP

PLG:jam

TTT MERITAS LAW FIRMS WORLDWIDE

SANDS CHINA 3RD LTR TO DONALD CAMPBELL V2.doc

EXHIBIT 9

**Glaser Weil Fink Jacobs
Howard Avchen & Shapiro LLP.**

3783 Howard Hughes Parkway
10250 Constellation Blvd.
18th Floor
Los Angeles, CA 90067
310.553.3000 TEL
310.556.2920 FAX

Direct Dial
(310) 282-6217
Email
Pgiesen@glaserweil.com

January 7, 2011

VIA FACSIMILE TRANSMISSION AND U.S. MAIL

Donald Campbell, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, NV 88101

Re: Las Vegas Sands Corp., et al. adv. Jacobs
Clark County District Court Case No.: A10-627691

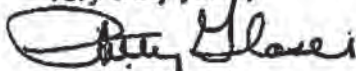
Dear Mr. Campbell:

This letter follows up on our letter of December 13, 2010. Since that letter, we received a UPS package which enclosed what appear to be original reports concerning Macau officials and Mr. Cheung Chi Tai, but which included no cover letter nor the Heung Wah Keong report.

As we said in our letter of December 13, 2010, and as we communicated to you previously, we expect Mr. Jacobs to return to us all original reports, as well as any copies. We therefore reiterate our prior requests that all original reports of the type about which we have corresponded be returned to us, that all copies be returned to us or destroyed and that you confirm in writing that these steps have been completed. Finally, we reiterate our original request that Mr. Jacobs return any other property of Sands China Ltd. or its subsidiaries that he now possesses.

This letter is written without waiver of or prejudice to any and all of our client's rights and remedies.

Very truly yours,



Patricia Glaser
of GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP

PLG:dd

 MERITAS LAW FIRMS WORLDWIDE

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EXHIBIT 10