

# EXHIBIT B

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**OPPM**

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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 MOTION FOR STAY  
PENDING WRIT APPLICATION OR,  
ALTERNATIVELY, COUNTERMOTION  
TO LIFT MERITS STAY**

Hearing Date: June 27, 2013

Hearing Time: 8:15 a.m.

**I. INTRODUCTION**

Defendants Las Vegas Sands Corp. ("LVSC") and its subsidiary, Sands China, Ltd. ("Sands China"), ask this Court for yet another stay which will then necessarily postpone the long-delayed jurisdictional hearing. Sands China has consistently sought to undermine that hearing, unless it is held on terms skewed to favor Sands China and LVSC; namely, that Plaintiff Steven C. Jacobs ("Jacobs") not have access to and use of evidence that has long been in his possession. When LVSC and Sands China could no longer misrepresent their way out of producing documents, they turned to their next best option: objecting with claims of relevancy and unsubstantiated claims of privilege. Conveniently, and predictably for them, LVSC and

1 Sands China seek to profit again by depriving Jacobs of use of evidence, pretending to not know  
2 the impact upon the evidentiary hearing that has been endlessly delayed by their false  
3 representations and obstructionism. And how equally convenient for Defendants that they insist  
4 that they can call Jacobs at any evidentiary hearing, claiming the right to examine him before his  
5 counsel has been permitted to review thousands of pages of documents that Jacobs possesses,  
6 again pretending to not recall that this Court previously rejected that very tactic. Respectfully,  
7 few litigants have profited as much from their own misconduct and noncompliance as LVSC and  
8 Sands China. Their latest ploy for more advantage – either depriving Jacobs of using his own  
9 evidence or further delaying the long-postponed evidentiary hearing – must fail.

10 Jacobs has possessed the documents at issue since before his wrongful termination.  
11 Defendants' long-repeated mantra – that he stole these documents – is as disingenuous as it is  
12 unsubstantiated. Conveniently, Sands China has never presented any evidence for this  
13 self-serving conclusion. It is yet another contrivance made to rationalize their concealment  
14 efforts or shift the focus away from its own misconduct. Sands China and LVSC desire further  
15 prejudice to Jacobs and delay, neither of which is defensible. For nearly 24 months, they  
16 stubbornly obstructed jurisdictional discovery, resorting to outright misrepresentations in pursuit  
17 of an illegitimate outcome.

18 Now they come asking for more. They do so despite showing no likelihood of success,  
19 because there is none, let alone that they are the party facing serious prospects of harm if their  
20 request is denied. Rather, this Court's Order and existing protective order adequately secure any  
21 *legitimate* interest that LVSC or Sands China has in these documents. At the same time, further  
22 delay is grossly prejudicial to Jacobs. Expecting any plaintiff to wait more than three years to  
23 even commence basic discovery highlights the old adage that "justice delayed is justice denied."

24 While the record here belies any fair entitlement to a stay, if this Court were to consider  
25 one, it must, at a minimum, only do so on the condition that merits discovery proceed. This case  
26 is nearly three years old with no end in sight. Witnesses are disappearing (or being fired),  
27 memories are fading, evidence is being lost, and the true status of documentary evidence is  
28 unknown and, in several confirmed circumstances, unpreserved. That status quo, which

necessarily follows from the granting of Defendants' present request, is indefensible absent conditions that, in at least some fashion, reduce the clear prejudice to Jacobs. While the Supreme Court directed this Court to enter such a stay, it did not do so with knowledge that LVSC and Sands China would undertake a wholesale deception against this Court concerning the location of, their access to, and their review of relevant documents. Having undertaken that scheme, Defendants deliberately frustrated what the Supreme Court contemplated to be a temporary stay. Because it has become a tool of repeated abuse by LVSC and Sands China, any stay excusing continued noncompliance must be conditioned upon permitting Jacobs to proceed with merits discovery pending Defendants' latest (now the fourth) writ request.

## II. BACKGROUND

### A. Sands China Only Wants An Evidentiary Hearing If It Can Be Had On An Unlevel Playing Field.

Jacobs brought this action on October 20, 2010, because he was wrongfully terminated as part of an orchestrated plan to preclude Jacobs from reporting the improprieties of senior executives with LVSC and Sands China, including those entities' common chairman, Sheldon G. Adelson ("Adelson"). Despite knowing who orchestrated that termination and from where – executives claiming to be acting for Sands China in Las Vegas – Sands China protested this Court's jurisdiction. It claimed to have no contacts with the State of Nevada. This Court rejected that claim, finding general jurisdiction due to Sands China's pervasive Nevada contacts. (Order Granting Pet. for Writ of Mand., dated Aug. 26, 2011, 2, on file with the Court.) Sands China then petitioned the Nevada Supreme Court for a writ of mandamus, repeating its cries of no jurisdictional contacts.

Through its August 26, 2011 Order, the Nevada Supreme Court labeled this Court's findings to be of a "summary nature" and thus incomplete for review. (*Id.*) At the same time, Sands China insisted that it would incur significant financial burdens should it be forced to participate in merits discovery in the face of what it represented to be a meritorious personal jurisdiction defense. The Nevada Supreme Court accepted Sands China's assertion and "instruct[ed] the district court to hold an evidentiary hearing on personal jurisdiction, to issue

1 findings of fact and conclusions of law stating the basis for its decision following that hearing,  
2 and to stay the action as set forth in this order until after entry of the district court's personal  
3 jurisdiction decision." (*Id.* at 3.) Although LVSC was not a party to that petition, it does not  
4 dispute that this is the proper forum for Jacobs' claims against it, and went so far as to assert a  
5 counterclaim, the Supreme Court, without explanation, directed this Court to stay the entirety of  
6 Jacobs' case even as to LVSC. In other words, despite there being not the slightest basis for  
7 delaying Jacobs' rights against LVSC, those rights have been sabotaged through their  
8 manipulation of what was to be a temporary stay.

9 Jacobs need not recite for this Court how LVSC and Sands China abused the  
10 Nevada Supreme Court's instruction, converting it into a tool of paralysis. It suffices to recall  
11 how they concealed and withheld jurisdictional evidence and sabotaged jurisdictional discovery  
12 with their repeated false representations as to the location and their access to evidence as well as  
13 their manipulative (and convenient) application of the Macau Personal Data Privacy Act  
14 ("MPDPA"), a foreign blocking statute.

15 Despite this Court's findings of willful obstruction, that has proved ineffective in diverting  
16 LVSC or Sands China from their determined path. The status quo – where their opponents' case  
17 is perpetually frozen – perfectly suits Defendants.

18 **B. Jacobs Openly Possesses And Announces His Intent To Use Documents That**  
19 **The Defendants Belatedly Claim As Privileged.**

20 From this case's inception, LVSC and Sands China faced a problem: Jacobs possessed  
21 documentary evidence they preferred to keep hidden. While they might be able to misrepresent  
22 the location and their access of their own copies of such evidence, they could not expect Jacobs to  
23 not use his own sources of proof to expose their fiction, both as to jurisdiction and the merits. It  
24 is because of that fact that LVSC and Sands China have continually employed a selective and  
25 strategic memory. Confirming that reality, their present motion's "Facts" section pretends as  
26 though their awareness of Jacobs' documents originated with a July 8, 2011, email from his  
27 former counsel, which was nearly a year after Jacobs' termination. July of 2011 is where  
28

1 Defendants wish the events began because the truth undermines their self-proclaimed need for  
2 "emergency" relief from either this Court or the Nevada Supreme Court.

3 With the benefit of hindsight and forced disclosure, it is apparent that Defendants have  
4 always known of Jacobs' documents. Indeed, they knew before this litigation even commenced.  
5 As this Court now knows (only after Defendants were forced to admit it), they had secretly  
6 transported Jacobs' electronically stored information ("ESI") to Las Vegas in August and  
7 September of 2010. How unremarkable it is, then, that in November of 2010 former counsel for  
8 Sands China proclaimed she "ha[d] reason to believe, based on conversations with existing and  
9 former employees and consultants of the Company,"<sup>1</sup> that Jacobs had "stolen" the documents in  
10 his possession and demanded that Jacobs return them. (Ex. 1, Glaser Ltr. dated Nov. 23, 2010.)

11 Disputing this manufactured assertion – because Sands China knew that Jacobs had  
12 possessed the documents from before his termination – Jacobs' counsel confirmed his possession  
13 of a "multitude" of documents he retained while overseeing LVSC's Macau operations. (Ex. 2,  
14 Campbell Ltr. dated Nov. 30, 2010.) Jacobs rightfully possessed that information, made no  
15 apologies, and disputed that he had stolen anything. (*Id.*) As Jacobs' counsel stated, he was not  
16 giving up any of the documents.

17 In response, Sands China simply reiterated its bold-faced assertion that Jacobs had stolen  
18 property. (Ex. 3, Glaser Ltr. dated Dec. 3, 2010.) But Sands China had to partly show some of its  
19 cards. Confirming that it knew what Jacobs possessed, Sands China chose to focus on three  
20 documents that it feared could get it into serious trouble with Chinese government officials –  
21 three investigative reports on such government officials, as well as individuals suspected of ties  
22 with Chinese organized crime, otherwise known as Triads. (*Id.*) Sands China wanted those  
23 reports back badly, and admitted it.

24 Once again, Jacobs reaffirmed his possession of volumes of documents from his role.  
25 And, Jacobs stated unequivocally the he would not surrender any of them. Instead, Jacobs agreed

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26  
27 <sup>1</sup> Predictably, Sands China has never identified the "existing and former employees and  
28 consultants of the Company" who purportedly informed the company that Jacobs was still in possession  
of his documents – presumably because this information would contradict Defendants' current claim that  
they did not know about Jacobs' possession of documents until July 2011.

1 to return two "originals" of the background investigations, while reiterating that he was keeping  
2 copies for use as evidence in this case. (Ex. 4, Campbell Ltr. dated Jan. 11, 2011.) Thus, since  
3 the end of 2010 – not July 2011 as Defendants pretend – Jacobs has repeatedly confirmed his  
4 possession of the documents in question and of their relevancy to this case as well as of his  
5 intention to use them as proof. And what did Sands China and LVSC do in response to Jacobs'  
6 repeated confirmations? Nothing. Month after month passed with not a word, much less an  
7 action.

8 It is thus apparent why LVSC and Sands China prefer amnesia. But even their  
9 acknowledgement of Colby Williams' July 8, 2011, e-mail undercuts their claims of urgent harm.  
10 There, Jacobs' counsel once again reiterated Jacobs' possession and his entitlement to use  
11 documents "*from attorneys that were sent to Steve during his tenure that are relevant to the*  
12 *claims/defenses in this litigation.*" (See Ex. 5, Williams E-mail dated July 8, 2011 (emphasis  
13 added)). Despite their present self-serving cries of prejudice should Jacobs' counsel review  
14 documents that have been in his possession for over three years now, Sands China and LVSC did  
15 nothing timely except regurgitate the same "stolen" documents mantra they had been asserting  
16 since November of the preceding year.

17 Indeed, it was not until Jacobs' change of counsel in this action later that LVSC and  
18 Sands China sensed an opportunity and suddenly decided that all of the documents – the same  
19 documents that Jacobs had possessed with the Defendants' knowledge for well over a year – were  
20 privileged and/or otherwise protected. Confirming their objective to engender delay whenever  
21 possible, LVSC and Sands China proclaimed that should Jacobs' counsel review any of the  
22 documents (the documents that Jacobs has always possessed), counsel could be subject to claims  
23 of disqualification.

24 **C. Defendants Are Allowed To Review Jacobs' Documents And Then Use Them**  
25 **As An Opportunity To Further Delay And Obstruct.**

26 In hindsight, it is obvious that LVSC and Sands China manipulated both this Court and  
27 Jacobs with their lack of candor. Neither this Court nor Jacobs knew the truth about how his ESI  
28 had already been transferred to the United States before this case even commenced. *Without*

1 *knowing about that deception*, this Court entertained Defendants' claims of privilege and  
2 structured a protocol that allowed Defendants' counsel to review *all* of Jacobs' documents even  
3 before his counsel had a chance to inspect them. But instead of identifying documents that were  
4 unrelated to the claims in this case for which they wanted to assert privilege – the proposal made  
5 in the July 2011 e-mail from Jacobs' counsel as to the only matters for which they believed review  
6 was not appropriate – LVSC and Sands China found yet another opportunity to sabotage the  
7 fact-finding process.

8 After months of delayed review, they claimed privilege and/or protection over some  
9 11,000 documents, resulting in a 3,000 page single-spaced privilege log. (*See* Ex. 6, Spinelli  
10 Ltr. dated Oct. 9, 2012.) While LVSC and Sands China later sought to congratulate themselves  
11 by reducing that log to 1,733 pages, they confirmed their end goal with clear deficiencies. For  
12 instance, they claimed privilege for, among other things, documents with no author or recipient  
13 identified; documents with Jacobs listed as either the author, recipient or copied on; documents  
14 with no attorney identified at all; documents with an attorney only identified in the "other names"  
15 column but is not an author, recipient or copied; documents with no attorney identified at all, but  
16 a generic reference to "legal department" is listed; and documents with no privilege asserted at all,  
17 but the documents are still withheld. (Pl.'s Mot. to Return Remaining Documents from Advanced  
18 Discovery, filed Feb. 15, 2013, 7:10-25, on file with the Court.)

19 But that is not all. Defendants claimed privilege over entire documents while  
20 acknowledging that the entire document was not even privileged. (*Id.* at 7:21-22 (category of  
21 documents identified as "redaction needed" but withheld entirely on that basis).)

22 **D. Jacobs' Counsel Rightly Needs Access To His Documents To Prepare For Any**  
23 **Hearing, Especially Were He A Witness.**

24 It was not enough for Defendants to try to bar counsel's access to Jacobs' documents.  
25 LVSC and Sands China then sought to maneuver themselves to take Jacobs' deposition (under the  
26 false guise of "jurisdictional discovery") without his counsel having access to the very documents  
27  
28



1 that Jacobs possessed.<sup>2</sup> Of course, this attempt came from the same parties who previously  
2 insisted that jurisdictional discovery was unwarranted. (*See generally* Def. Sands China's Opp'n  
3 to Mot. to Conduct Juris. Discovery, filed Oct. 26, 2011, on file with the Court.) The real reason  
4 for wanting to depose Jacobs is as transparent as it is improper.

5 LVSC and Sands China hoped to question and ambush Jacobs before his attorneys could  
6 fulfill their obligations to adequately prepare him. They inadvertently acknowledged as much  
7 during the hearing on Jacobs' Motion for Protective Order, or Alternatively, Motion to Compel  
8 Production of Documents, telling this Court: "Your Honor, in essence we have documents, and  
9 we don't have his memory. We would like to take his deposition." (Ex. 8, Hr'g. Tr. 11:7-9,  
10 Feb. 8, 2013.) Based upon the settled case law providing that a party is entitled to effective  
11 representation of counsel who has access to proper sources of proof, this Court halted this attempt  
12 at gaining an advantage and inflicting more prejudice, ruling:

13 He gets his documents. I said he gets his documents. He needs his  
14 documents. *I'm not letting you take his depo until he has his*  
15 *documents.*

16 (*Id.* at 11:10-12) (emphasis added).

17 **E. The District Court Orders That Jacobs' Counsel May Access Jacobs'**  
18 **Documents And Sets The Long-Awaited Evidentiary Hearing.**

19 After extensive briefing and then re-briefing, this Court subsequently entered its order on  
20 June 19, 2013, ruling that Jacobs' counsel is entitled to view and use his documents for purposes  
21 of this litigation. (Ex. 9, Order dated June 19, 2013, 4:1-8.) This Court found that LVSC and  
22 Sands China had "failed to sustain their burden of demonstrating that Jacobs cannot review and  
23 use documents to which he had access during the period of his employment in this litigation," and  
24 likewise had "failed to sustain their burden of demonstrating that they have privileges that would  
25 attach to the documents relative to Jacobs' review and use of them in this litigation."

26 <sup>2</sup> Of course, Defendants have known what Jacobs has had in his possession for years. As this Court  
27 no doubt recalls, Defendants' attorneys admitted to reviewing a ghost image of Jacobs' hard drive from  
28 Macau as early as May 2011, printing out and showing LVSC's executives the documents they believed  
were "pertinent" to the allegations in Jacobs' Complaint. (Ex. 7, Hr'g. Tr. 128:4-5, Sept. 11, 2012, Vol. 2.)  
And this does not even account for the fact that other counsel, O'Melveny and Myers, had taken the  
documents long before then to review as well. For obvious reasons, it is more than apparent why none of  
these attorneys have ever submitted declarations claiming that they did not know what Jacobs possessed.

1 (*Id.* at 3:10-13, 18-21.) At the same time, this Court safeguarded any legitimate claim for  
2 protection by Defendants by specifying that all such documents (regardless of their nature) would  
3 be treated as confidential pursuant to the Court's protective order, until ordered otherwise. Thus,  
4 the Court held that any debate about privilege and third parties would be preserved for a future  
5 resolution, but Jacobs' counsel could access the documents that he had always possessed and  
6 controlled.

7 With that central and necessary issue addressed, this Court turned to scheduling the  
8 long-awaited evidentiary hearing. As this Court no doubt recalls, Jacobs' counsel expressed  
9 concern about holding the evidentiary hearing despite the "outstanding issue of the . . . motion  
10 for sanctions under Rule 37." (Ex. 10, Hr'g. Tr. 3:4-6, June 18, 2013.) Specifically, Jacobs seeks  
11 evidentiary sanctions based upon Sands China's violation of this Court's December 18, 2012,  
12 Order to "produce all information within their possession that is relevant to the jurisdictional  
13 discovery." (Ex. 11, Hr'g. Tr. 24:15-17, dated Dec. 18, 2012.) Depending on the sanction, an  
14 evidentiary hearing on personal jurisdiction may not even be necessary. Nevertheless, because of  
15 the insufferable delays inflicted by the Defendants and to avoid the continuing prejudice to  
16 Jacobs, this Court promptly set the evidentiary hearing, scheduling it for July 16-23.<sup>3</sup>

17 Despite securing benefits from their repeated obstruction and noncompliance, LVSC and  
18 Sands China just cannot help but maneuver for more. They know, as this Court has already  
19 noted, that a further stay of Jacobs' counsel's access to his documents will necessarily postpone  
20 the evidentiary hearing further. LVSC and Sands China thus hope to profit from anything that  
21 engenders more delay. Indeed, almost three years after filing this action, Jacobs is no closer to  
22 obtaining a resolution of his legal rights. LVSC and Sands China have manipulated what was  
23

24 <sup>3</sup> In Defendants' Reply in Support of [one of their] Writ [Petitions], Nevada Supreme Court Case  
25 No. 62944, Defendants boldly represent that this Court's scheduling of the evidentiary hearing "reflects the  
26 district court's determination (and plaintiff's agreement) that the redacted personal data and additional  
27 searches [which are the subjects of Jacobs' Rule 37 sanctions motion] have no jurisdictional relevance."  
28 This Court can take solace in knowing that it is not the only tribunal to which Defendants will misspeak.  
This Court did not find, and Jacobs certainly never agreed, that Defendants' ongoing abuses related to the  
Macau Personal Data Privacy Act are irrelevant to jurisdiction. To the contrary, Jacobs has simply grown  
tired of Defendants reaping the benefit of delay all the while they flaunt their violations of this Court's  
orders.

1 plainly designed as a *temporary* stay into prolonged paralysis with no end in sight. While that  
2 happens, witnesses disappear, memories erode, and more and more evidence is lost.

3 **III. ARGUMENT**

4 **A. A Stay Is Only Appropriate To Promote Justice; Not To Perpetuate A**  
5 **Long-Standing Injustice.**

6 LVSC and Sands China appear to think that the mere recital of buzz words like "privilege"  
7 and "irreparable harm," and reminders that this Court "has previously granted the same relief  
8 [*i.e.*, a stay] for two discovery orders that are the subject of separate writ petitions," is all that is  
9 needed to gain more delay. (*See* Defs' Mot. at 8:2-4.) Fortunately for Jacobs, the law concerns  
10 itself with actual facts, substance, and real-world consequences; not self-serving labels. The  
11 Nevada Supreme Court identifies four factors to consider when determining whether and when a  
12 stay is appropriate pending a decision on petition for extraordinary relief:

- 13 (1) Whether the object of the appeal or writ petition will be  
14 defeated if the stay is denied;
- 15 (2) Whether appellant/petitioner will suffer irreparable or  
16 serious injury if the stay is denied;
- 17 (3) Whether respondent/real party in interest will suffer  
18 irreparable or serious injury if the stay is granted; and
- (4) Whether appellant/petitioner is likely to prevail on the  
merits in the appeal or writ petition.

19 *Hansen v. Eighth Jud. Dis. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000) (denying the request  
20 for stay). No individual factor predominates, and whether a stay is warranted is within this  
21 Court's broad discretion. *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36,  
22 38 (2004) ("We have not indicated that any one factor carries more weight than the others,  
23 [however,] if one or two factors are especially strong, they may counterbalance other weak  
24 factors."). After weighing the totality of the facts and circumstances of this case, sound judicial  
25 discretion dictates the rejection of further delays manufactured by and for the benefit of LVSC  
26 and Sands China.

1                    *1. The stated object of the writ petition will not be defeated absent a stay.*

2                    LVSC and Sands China claim that a stay and the writ petition will prevent their purported  
3                    privileges from being revealed. This is an inaccurate statement of the facts and a self-serving  
4                    mischaracterization of this Court's Order. All this Court ordered relative to this issue is that  
5                    *Jacobs' counsel* may review documents that Jacobs himself has openly possessed, has had access  
6                    to, and has reviewed both before and after his termination (the latter of which related to this case).  
7                    Despite the long-known and acknowledged fact of Jacobs' review, possession and use in this case,  
8                    this Court put in place more than adequate safeguards to avoid unnecessary disclosure beyond this  
9                    litigation.<sup>4</sup> Indeed, this Court's Order prevents the dissemination of Jacobs' documents beyond his  
10                  legal team, and directs all parties to treat the documents as confidential under the Stipulated  
11                  Confidentiality Agreement and Protective Order entered on March 22, 2012. (Ex. 9, Order dated  
12                  June 19, 2013, 3:18-25.)

13                  Considering what this Court's Order *actually* provides, LVSC and Sands China fail to  
14                  show that the object of their desired writ petition necessarily will be defeated absent a stay.  
15                  *See Hansen*, 116 Nev. at 657, 6 P.3d at 986 (discussing the first factor); *see also Imation Corp. v.*  
16                  *Koninklijke Philips Elecs. N.V.*, Civil No. 07-3668 (DWF/AJB), 2009 WL 1766671 (D. Minn.  
17                  June 22, 2009) (denying motion to stay requiring party to produce otherwise privileged  
18                  documents because the protective order adequately protected the parties and "[f]urther delay of  
19                  their production would harm [the respondent] and potentially delay discovery and the proceedings  
20                  in this action."); *Professionals Direct Ins. Co. v. Wiles, Boyle, Burkholder & Bringardner Co.,*  
21                  *LPA*, 2008 WL 5378362, \*1 (S.D. Ohio Dec. 24, 2008) (denying stay pending appellate court's  
22                  decision on party's writ petition regarding the production of privileged documents because if  
23                  mandamus were ultimately granted, then the privileged documents could be excluded from  
24

25 \_\_\_\_\_  
26 <sup>4</sup> Defendants' stated fear that Jacobs wants to leak everything to the press is ironic considering that it  
27 is Defendants who have issued press releases and made wide-sweeping (not to mention false and  
28 defamatory) statements about Jacobs, his claims, and this case. Of course, Jacobs seeks to use evidence to  
demonstrate Defendants' false statements and Defendants seek to hide the documents to prevent Jacobs  
from revealing the truth.

1 evidence). The limited relief of this Court's Order and the safeguards imposed by this Court in  
2 and of itself defeats the basis for their requested stay.

3 **2. Defendants will not be harmed if the latest request for a stay is denied.**

4 A writ is, by definition, "extraordinary relief" only available when parties have no "plain,  
5 speedy and adequate remedy at law." *See Valley Health Sys., LLC v. Eighth Jud. Dist. Ct.*, 252  
6 P.3d 676, 678 (Nev. 2011). But again, LVSC and Sands China have known about Jacobs'  
7 possession of documents since he was terminated almost three years ago, and they did nothing for  
8 almost one year to assert their supposed privileges. This fact undercuts any cries of harm to  
9 LVSC or Sands China that might traditionally support a stay request.<sup>5</sup> *See Bldg. & Constr.*  
10 *Trades Council of N. Nev. v. State*, 108 Nev. 605, 611, 836 P.2d 633, 637 (1992) ("As an  
11 extraordinary remedy, a writ of mandamus is subject to the doctrine of laches.").

12 If Jacobs' possession and use of his documents were legitimate grounds for emergency  
13 relief, then LVSC and Sands China would not have simply complained with assertions about  
14 stolen documents backed up with nothing but inaction. As another court has aptly summarized  
15 when addressing what a litigant must do in order to assert claims of privilege:

16 [A] reasonable person would not only inform his or her adversary of  
17 the breach of the privilege, but also would seek a judicial  
18 determination of the controversy if his or her adversary took an  
19 opposing stance. ***Merely asserting the privilege to an adversary is not sufficient to protect the privilege*** in these circumstances  
inasmuch as the adversary has possession of the materials claimed  
to be privileged and thus can make use of them.

20 *Bowles v. Nat'l Ass'n of Home Builders*, 224 F.R.D. 246, 254 (D.D.C. 2004) (emphasis added)).

21 Cognizant of what the law truly is on this matter, LVSC and Sands China have to resort to  
22 a revised history, which is devoid of actual dates. Jacobs' 2010 disclosure that he possessed  
23 documents from his tenure with LVSC and that he was using them to support the allegations and  
24 claims in his Complaint was ignored, except for certain politically-charged investigative reports.

25  
26 <sup>5</sup> And, Jacobs' fear that if he lost control of any sources of proof it would conveniently be made to  
27 disappear is hardly unjustified. As this Court knows, LVSC's IT Director, Manjit Singh, has already  
28 revealed that one of the hard drives from Jacobs' computer was "scrubbed" and the data removed. All that  
remains is a "ghost" image which does not reveal any documents that could have been deleted by LVSC or  
Sands China prior to the image's creation. How convenient.

1 LVSC and Sands China's supposed concern over these documents is hardly sincere.  
2 Rather, it is just the latest excuse for delay. If legitimate, they would not have sat idle in  
3 November of 2010 or January of 2011 – when Jacobs confirmed that he still possessed a  
4 "multitude of documents" and was keeping the documents for use as evidence in this case. (Ex. 2,  
5 Campbell Ltr. dated Nov. 30, 2010; Ex. 4, Campbell Ltr. dated Jan. 11, 2011.)

6 Defendants' own inaction for months in the face of Jacobs' review of and declared intent to  
7 use the documents belies any claim of harm or an entitlement to emergency relief. *See Baxter*  
8 *Travenol Labs., Inc. v. Abbott Labs.*, 117 F.R.D. 119, 121 (N.D. Ill. 1987) ("Where prior to the  
9 assertion of the privilege, the documents have been examined and used by the opposing party, it  
10 may be unfair and unrealistic to uphold the privilege.")). Jacobs has possessed, reviewed, and  
11 thoroughly examined the documents that he had (and still has) in his possession when LVSC  
12 wrongfully terminated him.

13 Much of the information in his documents forms and/or supports his rather thorough  
14 factual allegations in his Complaint and have been discussed in various pleadings and testimony  
15 since. It is no accident that these documents, many of which likely are key to Jacobs' allegations  
16 and will reveal the disingenuousness of Defendants' counter-story, are being fought about so  
17 vigorously just when the jurisdictional evidentiary hearing appears to be proceeding after a  
18 two-year abeyance secured by Defendants' obstruction.

19 **3. *Continued delay (i.e., their latest stay request) rewards their***  
20 ***obstructionism and inflicts continuing prejudice on Jacobs.***

21 The clear and substantial prejudice to Jacobs from the entry of yet another stay for LVSC  
22 and Sands China is wholly inequitable. They have already converted what was to be a *temporary*  
23 merits stay into a near two-year reprieve. Now that the day of reckoning draws near through this  
24 Court's scheduling of the evidentiary hearing, LVSC and Sands China are scrambling about for  
25 more delay. In short, this action has been pending for nearly three years and Jacobs remains  
26 unable to pursue his claims to prove that he was wrongfully terminated for refusing to give in to  
27 improper and illegitimate demands. The Nevada Supreme Court has long denounced such delays  
28 in a party's rights. *See Skeen v. Valley Bank of Nev.*, 89 Nev. 301, 303, 511 P.2d 1053, 1054

1 (1973) ("*diligent parties are entitled to be protected against interminable delay and uncertainty*  
2 *as to their legal rights.*" (emphasis added)). There is no basis for either Jacobs or his legal rights  
3 to be treated any differently.

4 Moreover, LVSC and Sands China *cannot* be permitted to profit (yet again) from their  
5 obstructionism and deliberate delay by arguing that *Jacobs* should be forced to choose between  
6 use of the evidence he possesses and believes supports his position on jurisdiction (as well as the  
7 merits) or the acceptance of more delay. *See Eliades-Ledstrom v. Eighth Jud. Dist. Ct.*, 124 Nev.  
8 1464, 238 P.3d 809 (2008) (ruling "district court did not abuse its discretion in denying  
9 Ledstrom's stay motion, particularly in light of the prejudice that they would suffer if an indefinite  
10 stay were granted"); *Gould v. Control Laser Corp.*, 705 F.2d 1340, 1341 (Fed. Cir. 1983)  
11 (recognizing that a stay of an inordinate amount of time can at some point prejudice the parties  
12 sufficiently so as to be unjust); *see also Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936)  
13 (explaining "discretion was abused by a stay of indefinite duration in the absence of a pressing  
14 need").

15 What is particularly offensive is Defendants' apparent attempt to maneuver (yet again) for  
16 a skewed evidentiary hearing. Jacobs' counsel is denied access to Jacobs' own sources of proof,  
17 but Defendants theorize that they should be permitted to examine him at any evidentiary hearing.  
18 This Court rightly rejected this tactic before. (Ex. 8, Hr'g. Tr. 11:10-12, Feb. 8, 2013 ("I'm not  
19 letting you take [Jacobs'] depo until he has his documents.")).

20 Nothing has changed to alter that ruling. The law still presupposes that a witness may  
21 review documents to prepare for his or her deposition. *See* NRS 50.125(1) (recognizing that a  
22 witness may "use[ ] a writing to refresh his or her memory, either before or while testifying"); *see*  
23 *also Hogan v. DC Comics*, No. 96-CV-1749, 1997 WL 570871 (N.D.N.Y. Sept. 9, 1997)  
24 (postponing a deposition until the deposing party produced all of the deponent's documents in its  
25 possession because "his own notes may refresh his recollection of events, and he is clearly  
26 entitled to same prior to his deposition").

1 This Court's previous ruling on the point. It is fully in keeping with the settled principle  
2 that "[a] lawyer, of course, has the right, if not the duty, to prepare a client for a deposition."  
3 *Hall v. Clifton Precision*, 150 F.R.D. 525, 528 (E.D. Pa. 1993) (emphasis added). Jacobs'  
4 attorneys, in fact, are obligated under Nevada's Rules of Professional Conduct to provide Jacobs  
5 with "competent representation," which "requires the legal knowledge, skill, thoroughness and  
6 preparation reasonably necessary for the representation." Nev. R. Prof. Conduct 1.1; *see also*  
7 *Upjohn Co. v. United States*, 449 U.S. 383, 391 (1981) ("A lawyer should be fully informed of all  
8 the facts of the matter his is handling in order for his client to obtain the full advantage of our  
9 legal system.").

10 Predictably, LVSC and Sands China do not want Jacobs' counsel to be fully informed  
11 (evident from Defendants' obvious intent to fight every aspect of document production bit by bit,  
12 and offering new arguments in subsequent motions while feigning ignorance). And they do not  
13 want Jacobs to benefit from his right to informed representation and/or the duty that obligates his  
14 lawyers to so represent him.

15 The impropriety of their desired outcome is all the more egregious when the Court  
16 considers the fact that they made no effort to release non-privileged documents they admit to  
17 including on their privilege log so as to deny Jacobs' counsel access to them. Defendants  
18 acknowledge – as they must since Jacobs produced his documents to a third party vendor and  
19 each document must be accounted for rather than hidden or set aside – that they are withholding  
20 evidence from Jacobs' counsel, some of which even they concede is not privileged. (Defs.' Opp'n  
21 to Mot. to Return Remaining Documents from Advanced Discovery, filed March 8,  
22 2013, 4:22-5:11 (discussing that some documents should be redacted and not entirely withheld,  
23 but claiming that they are hamstrung by the *agreed upon* protocol for Defendants to review (but  
24 not print or copy) Jacobs' documents that had not yet been reviewed by his counsel), on file with  
25 the Court.) Interestingly, since Defendants claim that these documents are theirs, there is  
26 absolutely nothing – other than their penchant to obstruct and delay – stopping LVSC and  
27 Sands China from producing their copies of the documents in redacted form, or advising  
28 Defendants (and this Court) where in their own production the redacted documents appear. Of



1 course they have not done so, because that would provide Jacobs' counsel with access to proof  
2 that they do not want disclosed. This pattern by LVSC and Sands China is as obvious as it is  
3 indefensible.

4 However, neither this pattern and practice nor Defendants' acknowledgement that they are  
5 also seeking to withhold non-privileged documents from Jacobs' counsel says anything about this  
6 Court's current order. The subject documents are documents that have been and remain in Jacobs'  
7 possession, custody, and control, generated and/or received by him during his employment, and  
8 relate to Jacobs' claims that he was wrongfully terminated and terminated in violation of public  
9 policy because, among other things, he was adhering to corporate governance laws and other  
10 principles that Defendants rather than he skirt or fudge. As the former CEO of Sands China, the  
11 issues in dispute are expectedly not the run of the mill you came to work late arguments. Rather,  
12 they go to the heart of ethical and legal principles often discussed with counsel and key  
13 executives. In a nutshell, they not only relate to Jacobs' claims and defenses in this case, they are  
14 the basis for his wrongful termination and they reveal that Defendants' post-termination schpeel  
15 was manufactured after-the-fact hoping to avoid and/or defeat this lawsuit. Defendants'  
16 non-existent, then half-hearted, and now last-minute claim of privilege is insufficient to preclude  
17 Jacobs' counsel from their review and use of Jacobs' documents.

18 **4. *Jacobs is likely to prevail; not the intransigent Defendants.***

19 For the final factor, Defendants repeat their well-worn mantra that because "any privilege  
20 related to [Jacobs'] documents in fact belongs to the Defendants," it is a *fait accompli* that Jacobs  
21 may not use these documents against LVSC or Sands China. (Defs.' Mot. at 13:3-4.) For this  
22 argument, they continue to turn a blind eye to the numerous cases that come closest to addressing  
23 the actual issues presented here: *see, e.g., Willy v. Admin. Review Bd.*, 423 F.3d 483, 499 (5th Cir.  
24 2005) (finding that a former employee, even if a lawyer, "does not forfeit his rights simply  
25 because to prove them he must utilize confidential information. Nor does the client gain the right  
26 to cheat the lawyer by imparting confidences to him."); *Kachmar v. SunGard Data Sys., Inc.*,  
27 109 F.3d 173, 182 (3d Cir. 1997) ("[T]he district court may use a number of equitable measures at  
28 its disposal 'designed to permit the attorney plaintiff to attempt to make the necessary proof while

1 protecting from disclosure client confidences subject to the privilege[, including] the use of  
2 sealing and protective orders, limited admissibility of evidence, orders restricting the use of  
3 testimony in successive proceedings, and, where appropriate, in camera proceedings.”);  
4 *Van Asdale v. Int'l Game Tech.*, 577 F.3d 989 (9th Cir. 2009) (relying on *Willy* and *Kachmar* and  
5 finding that plaintiff-attorney should be allowed to use purportedly privileged documents in  
6 action against former employer, based upon the trial court’s ability to adequately safeguard the  
7 information against unnecessary disclosures above and beyond permitting the plaintiff to use the  
8 proof).

9 Put bluntly, Jacobs was CEO for Sands China. He was involved in all aspects of its  
10 business: he ran operations; directed attorneys; spoke to Sands China board members, spoke to  
11 LVSC executives, and spoke to LVSC board members. He did so much more that cannot be  
12 listed here. But, it is more than clear that when Jacobs was fraudulently terminated, it was for a  
13 reason that Defendants would rather keep from view.

14 Instead of applying the law of the cases that deal with former employees whose job it was  
15 – the job he or she is suing over – to be involved in all operations and legal issues affecting the  
16 company, Defendants cling to *Montgomery v. eTrepid Techs., LLC*, 548 F. Supp. 2d 1175  
17 (D. Nev. 2008), like the action figure G. I. Joe with his legendary kung fu grip. (See  
18 Mot., 12:17-14:19.) Yet their one-size-fits-all form of analysis wholly misses the mark. As this  
19 Court explained in its Order, "the facts of this case are different" from those of *Montgomery*, "and  
20 the Court disagrees with the Defendants' framing of the issue." (Ex.9, Order dated June 18, 2013,  
21 2:23-25.) Instead, this Court found the "more appropriate question [was] whether Jacobs is within  
22 the sphere of persons entitled to review information (assuming it is privileged) that pertains to  
23 Jacobs' tenure that he authored, received and/or possessed, and has retained since July 23, 2010."  
24 (*Id.* at 3:15-17.)

25 On this "more appropriate question," the Court answered in the affirmative, recognizing  
26 the position Jacobs held, the issues he dealt with in that position, his causes of action for wrongful  
27 termination and termination in violation of public policy, and the facts he plead in his Complaint  
28 that provide the basis for Jacobs' belief and claim that he was, in fact and in law, wrongfully

1 terminated and in violation of public policy for doing the right thing when others preferred an  
2 alternate, less forthright course of action.

3 LVSC and Sands China's repeat performance fails to carry their burden of showing a  
4 likelihood of success on the merits. Their attempt to debate a different issue only confirms their  
5 own awareness that on the real question presented, they are on the wrong side of the debate.

6 **B. Any Stay Must Be Conditioned Upon Jacobs Being Allowed To Protect His**  
7 **Rights Through Discovery.**

8 While no stay is appropriate here, if this Court were to consider granting one, it must do so  
9 only under conditions that will, in part, reduce the prejudice to Jacobs. The law is clear of a  
10 court's obligation to impose conditions that will protect the aggrieved party during the pendency  
11 of any stay. *See, Clark v. Clark*, 543 N.W.2d 685, 688 (Minn. Ct. App. 1996) (on considering  
12 writ of prohibition to restrain immediate enforcement of court-ordered changing child custody,  
13 court noted that the "district court has discretion to place conditions on a stay . . ."); *Home Fire*  
14 *Ins. Co. v. Dutcher*, 67 N.W. 766, 769 (Neb. 1896) ("Inasmuch as the allowing of a stay is wholly  
15 a matter of discretion, it follows that the court may, in allowing the stay, affix such conditions as,  
16 in its judgment, are necessary for the protection of the parties."); *see also Aspen Fin. Servs. v.*  
17 *Dist. Ct.*, 289 P.3d 201, 210 (Nev. 2012) (noting that "a stay [with] an indefinite, and likely  
18 protracted, duration . . . would further frustrate the district court's interest in managing its case  
19 load and expeditiously resolving the underlying suit given its complexity for . . .").

20 On the facts of this case, the prejudice from further delay to Jacobs is clear and severe.  
21 Despite commencement of this case in October of 2010, it has gone nowhere, just as LVSC and  
22 Sands China desire. Despite the passage of almost three years, there is no prospect of a trial date.  
23 The testimony of witnesses is not being preserved. Witnesses are disappearing<sup>6</sup> and for those that  
24 can be subsequently located, the passage of time will permit them to claim that their memories

25 <sup>6</sup> Jacobs believes that multiple witnesses have either been terminated from LVSC and Sands China  
26 or have otherwise departed, which will make accessing them all the more difficult. Indeed, Jacobs  
27 believes that two witnesses, the IT Director for LVSC and the IT Director for Sands China, have both been  
28 fired since the commencement of this litigation based upon the facts and circumstances that give rise to the  
claims in this case. And, as recently as yesterday – June 25, 2013 – LVSC announced the departure of its  
CFO, Ken Kay (a witness on both jurisdiction and merits).

1 have faded, whether real or by convenience. This prejudice is exacerbated by the Defendants'  
2 disclosure that they have already "misplaced" and lost evidence in this case. The further  
3 perpetuation of the status quo – the indefinite stay of the fact-finding and truth-preserving  
4 process – will only exacerbate the prejudice that Jacobs has already suffered as a result of  
5 Defendants' noncompliance with their discovery obligations. Accordingly, any stay this Court  
6 would consider must be conditioned upon permitting Jacobs to proceed with merits discovery.  
7 Indeed, LVSC does not even dispute that it is subject to this Court's jurisdiction. It can have no  
8 objection short of admitting that its real objective is to simply procure more delay.

9 The same is true for Sands China. The basis for this Court's original stay – conserving  
10 resources in the face of Sands China's assertion that it had no Nevada contacts – can no longer be  
11 repeated with any semblance of legitimacy.<sup>7</sup> Indeed, the basis for Sands China's request to the  
12 Supreme Court was its assertion that it would be forced to expend a million dollars in complying  
13 with merits discovery. But as this Court now knows, it claims to have spent four times that  
14 amount in concealing and obstructing just the jurisdictional discovery that has occurred to date,  
15 despite the fact that *it* has produced virtually no documents. Whatever the merits of the original  
16 stay, it cannot be seriously suggested that it serves any legitimate purpose now.

17 It has long been the law that "the power to stay proceedings is incidental to the power  
18 inherent in every court to control the disposition of the causes on its docket with economy of time  
19 and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254

20 <sup>7</sup> There can be no doubt that Sands China will be a party to this case. At this point, the merits stay  
21 precludes Jacobs from amending his Complaint. But when that is gone, he will be amending his Complaint  
22 to assert, among other things, claims for abuse of process against both Sands China and LVSC over their  
23 long-standing pattern of deceit and misconduct. Because those actions occurred in the State of Nevada,  
24 Sands China will not be able to continue to pretend as though it has no Nevada contacts. *General*  
*Refactories Co. v. Fireman's Fund Ins. Co.*, 337 F.3d 297, 311 (3rd Cir. 2003) (party can maintain claim  
25 for abuse of process because party filed various motions in an effort to obstruct discovery, "knowingly  
26 made bogus claims of privilege in response to discovery requests, hid documents, and made  
27 misrepresentations to opposing counsel and the court."); *McDonald v. Davis*, Civil No. 2004-93, 2009  
28 WL 580456, at \*12 (March 5, 2009, D.V.I.) ("Examples of conduct that may constitute an abuse of process  
include intentionally withholding critical documents, ignoring court orders, permitting false testimony at  
depositions and misrepresenting facts to opposing counsel and the Court."); *Givens v. Mullikin*, 75 S.W.3d  
383, 402 (Tenn. 2002) (court explained that abuse of process claim lies when "the civil discovery  
procedures are used with the specific and malicious intent to weaken the resolve of the other party"  
because the opponent "may rightfully claim that the procedures were being used 'to accomplish some end  
which is without the regular purview of the process.'"). Sands China knows full well that it is subject to  
jurisdiction in this Court and its pretending otherwise is simply a pretext to garner further delay.

(1936). But of course the flip side is equally true: That same inherent power justifies the lifting of a stay when the facts so warrant. "Logically, the same court that imposes a stay of litigation has the inherent power and discretion to lift the stay." *Canady v. Erbe Elektromedizin GmbH*, 271 F. Supp. 2d 64, 74 (D.D.C. 2002). "When circumstances have changed such that the court's reasons for imposing the stay no longer exist or are inappropriate, the court may lift the stay." *Id.* at 74. "A court may lift the stay if the circumstances supporting the stay have changed such that the stay is no longer appropriate." *Ho Keung Tse v. Apple, Inc.*, 2010 WL 1838691 (N.D. Cal. May 5, 2010).

At this point, there can be little dispute that the original purpose of this Court's stay order is gone. It no longer serves judicial economy; it has become a means of delay and prejudice. *See Landis*, 299 U.S. at 254 (purpose of a stay is to promote "economy of time and effort for itself, for counsel, and for litigants."); NRCP 1 (Nevada's Rules of Civil Procedure "shall be construed and administered to secure a just, speedy, and inexpensive determination of every action."). The stay was to be temporary, lasting only briefly for this Court to hold an evidentiary hearing on personal jurisdiction. Yet, twenty-two months later, Jacobs' rights are frozen in time. And, to be sure, an indefinite stay is what LVSC and Sands China (with their equally infinite resources) want most at this point.

If this Court were inclined to entertain yet another stay request, it must be conditioned upon terms that will mitigate the egregious prejudice to Jacobs. At long last, LVSC and Sands China must be deprived of further rewards for their intentional noncompliance with this Court's orders.

#### IV. CONCLUSION

Sands China has turned its baseless personal jurisdiction defense into a perpetual stalling mechanism, and its parent company, LVSC, has profited from the free ride. They have shown no entitlement to yet another stay which inevitably leads to further delay of Jacobs' day in court. LVSC and Sands China have already gained sufficient advantage from their tactics. It is time to bring them to an end. No stay is justified, especially given the extreme prejudice to Jacobs. No litigant should have to endure nearly three years of stalling tactics and watch as evidence fades

1 into history. Thus, if this Court were to give serious consideration to a stay, it must be  
2 conditioned upon Jacobs being allowed to discovery and thus preserve evidence so that the finder  
3 of fact can later determine who is telling the truth.

4 DATED this 26th day of June, 2013.

5 PISANELLI BICE PLLC

6  
7 By: /s/ Todd L. Bice  
8 James J. Pisanelli, Esq., No. 4027  
9 Todd L. Bice, Esq., No. 4534  
Debra L. Spinelli, Esq., No. 9695  
3883 Howard Hughes Parkway, Suite 800  
Las Vegas, Nevada 89169

10 Attorneys for Plaintiff Steven C. Jacobs

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this  
3 26th day of June, 2013, I caused to be sent via e-mail and United States Mail, postage prepaid,  
4 true and correct copies of the above and foregoing **PLAINTIFF STEVEN C. JACOBS'**  
5 **OPPOSITION TO MOTION FOR STAY PENDING WRIT APPLICATION OR,**  
6 **ALTERNATIVELY, COUNTERMOTION TO LIFT MERITS STAY** properly addressed to  
7 the following:

8 J. Stephen Peek, Esq.  
9 Robert J. Cassity, Esq.  
10 HOLLAND & HART  
11 9555 Hillwood Drive, Second Floor  
12 Las Vegas, NV 89134  
13 [speek@hollandhart.com](mailto:speek@hollandhart.com)  
14 [rcassity@hollandhart.com](mailto:rcassity@hollandhart.com)

15 Michael E. Lackey, Jr., Esq.  
16 MAYER BROWN LLP  
17 1999 K Street, N.W.  
18 Washington, DC 20006  
19 [mlackey@mayerbrown.com](mailto:mlackey@mayerbrown.com)

20 J. Randall Jones, Esq.  
21 Mark M. Jones, Esq.  
22 KEMP, JONES & COULTHARD  
23 3800 Howard Hughes Parkway, 17th Floor  
24 Las Vegas, NV 89169  
25 [r.jones@kempjones.com](mailto:r.jones@kempjones.com)  
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27 Steve Morris, Esq.  
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[rsr@morrislawgroup.com](mailto:rsr@morrislawgroup.com)

/s/ Kimberly Peets  
An employee of PISANELLI BICE PLLC

# **EXHIBIT 1**



**Glaser Weil Fink Jacobs**  
**Howard & Shapiro LLP**

10250 Constellation Blvd.  
19th Floor  
Los Angeles, CA 90067  
310.553.3000 TEL  
310.556.2920 FAX

November 23, 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:

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,

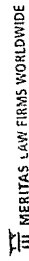
A handwritten signature in cursive script, appearing to read "Patricia J. Glaser".

Patricia Glaser  
of GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP

PLG:jam

Glaser Weil Fink Jacobs  
Howard & Shapiro LLP

10250 Constellation Blvd.  
19th Floor  
Los Angeles, CA 90067



Donald Campbell, Esq.  
Campbell & Williams  
700 South Seventh Street  
Las Vegas, NV 88101

9910185508 CODE

# **EXHIBIT 2**



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: 702/382-0240


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 3**

**Glaser Weil Fink Jacobs  
Howard & Shapiro LLP**

10250 Constellation Blvd.  
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Los Angeles, CA 90067  
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310.556.2920 FAX

December 3, 2010

**Direct Dial**  
(310) 282-6217  
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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.

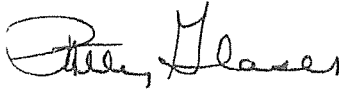


Donald Campbell, Esq.  
Campbell & Williams  
December 3, 2010  
Page 2

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,

A handwritten signature in cursive script, appearing to read "Patricia Glaser".

Patricia Glaser  
of GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP

PLG:jam

Glaser Weil Fink Jacobs  
Howard & Shapiro LLP

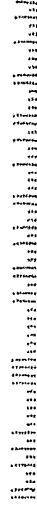
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WILMER HERRITAS LAW FIRMS WORLDWIDE



DONALD CAMPBELL, ESQ.  
CAMPBELL & WILLIAMS  
700 SOUTH SEVENTH STREET  
LAS VEGAS, NV 88101

8910186908 0005



# **EXHIBIT 4**



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

Via E-Mail  
[Pglaser@glaserweil.com](mailto:Pglaser@glaserweil.com)

January 11, 2011

Patricia Glaser  
Glaser, Weil, Fink, Jacobs, et al.  
10250 Constellation Blvd., 19<sup>th</sup> 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: 702/382-5322  
FAX: 702/382-0340

# EXHIBIT 5

---

**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 SPO 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](mailto:jcw@campbellandwilliams.com)

# **EXHIBIT 6**





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).<sup>1</sup> (*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);

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<sup>1</sup> 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 Tropai 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
- prestigehk.com (*see, e.g.*, SJACOBS00046066).
- ubs.com (*see, e.g.*, SJACOBS000 40661)
- 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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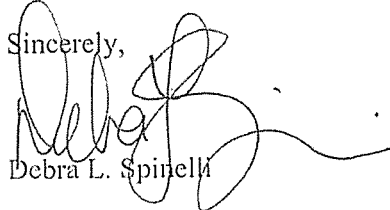
and emails it received from the Macau government are somehow protected from disclosure in this case. (*See id.* ("Document from Macau Govt.pdf"), 84740 (email from joli@macau.ctm.net), 84765 (email from joli@macau.ctm.net)). Not only has SCL failed to establish the existence of a privilege over the documents 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 Peck, 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 7**

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TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

|                                |   |                   |
|--------------------------------|---|-------------------|
| STEVEN JACOBS                  | . |                   |
|                                | . |                   |
| Plaintiff                      | . | CASE NO. A-627691 |
|                                | . |                   |
| vs.                            | . |                   |
|                                | . | DEPT. NO. XI      |
| LAS VEGAS SANDS CORP., et al.. | . |                   |
|                                | . | Transcript of     |
| Defendants                     | . | Proceedings       |
| . . . . .                      | . |                   |

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

COURT'S SANCTION HEARING - DAY 2  
VOLUME II

TUESDAY, SEPTEMBER 11, 2012

APPEARANCES:

|                    |                          |
|--------------------|--------------------------|
| FOR THE PLAINTIFF: | JAMES J. PISANELLI, ESQ. |
|                    | DEBRA SPINELLI, ESQ.     |
|                    | TODD BICE, ESQ.          |

|                     |                       |
|---------------------|-----------------------|
| FOR THE DEFENDANTS: | J. STEPHEN PEEK, ESQ. |
|                     | BRAD D. BRIAN, ESQ.   |
|                     | HENRY WEISSMAN, ESQ.  |
|                     | JOHN OWENS, ESQ.      |

|                    |                      |
|--------------------|----------------------|
| FOR HOLLAND & HART | CHARLES McCREA, ESQ. |
|                    | SAMUEL LIONEL, ESQ.  |

|                     |                 |
|---------------------|-----------------|
| FOR MR. KOSTRINSKY: | DAVID LEE, ESQ. |
|---------------------|-----------------|

|                 |                   |
|-----------------|-------------------|
| COURT RECORDER: | TRANSCRIPTION BY: |
|-----------------|-------------------|

|                |                         |
|----------------|-------------------------|
| JILL HAWKINS   | FLORENCE HOYT           |
| District Court | Las Vegas, Nevada 89146 |

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



1 LAS VEGAS, NEVADA, TUESDAY, SEPTEMBER 11, 2012, 1:18 P.M.

2 (Court was called to order)

3 THE COURT: Mr. Peek, I'd like to remind you you're  
4 still under oath.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: Mr. Bice --

7 MR. BICE: Yes, Your Honor.

8 THE COURT: -- you may continue your examination.

9 MR. BICE: Thank you, Your Honor.

10 CROSS-EXAMINATION (Continued)

11 BY MR. BICE:

12 Q Where we stopped, Mr. Peek, we were talking about  
13 the hearing on May 24. I'll ask you some followup questions  
14 about it. Again, we're on pages -- let's start with pages 9  
15 and 10 of the May 24 hearing.

16 THE COURT: Somebody still has some electronic  
17 device on. Can we turn them all off. Just check and -- it's  
18 okay. It's really funny when it's the marshal's who goes off,  
19 but we've been lucky with this marshal.

20 THE WITNESS: Give me a moment, Mr. Bice.

21 BY MR. BICE:

22 Q Understood.

23 A My iPod is still on. I apologize.

24 I'm there, Mr. Bice.

25 Q Okay. We're, again, at the bottom of page 9 and

1 working with.

2 Q What do you mean by that?

3 A Well, if Gayle would have asked me to look for  
4 something or seeing if something regarding a specific  
5 accusation from Mr. Jacobs was pertinent, I may have printed  
6 something out and showed it to her.

7 Q Did you send any of the hard copies you'd printed  
8 out to outside counsel?

9 A It's possible.

10 Q You don't remember one way or another?

11 A I don't recall what I specifically printed out and  
12 sent to them.

13 Q Okay. But do you recall that you did in fact send  
14 some of them to the outside counsel?

15 A I don't know that for a fact if I sent them the  
16 specific emails that I may have printed out.

17 Q Now, other people were given access to your laptop  
18 to review these emails; is that right?

19 A Well, it was the -- it was the computer that was on  
20 my desk, but yeah, if people wanted to review it they had  
21 access to it.

22 Q Did anyone actually sit at your desk or in your  
23 office with your computer and review the Jacobs emails?

24 A Yes.

25 Q Who?

1                   THE COURT:  Anything else?  You all have a lovely  
2 evening.  
3                   MR. BICE:  Thank you, Your Honor.  
4                   (Court recessed at 5:00 p.m., until the following day  
5                   Wednesday, September 12, 9:00 a.m.)  
6                                   \* \* \* \* \*  
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INDEX

| <u>NAME</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
|-------------|---------------|--------------|-----------------|----------------|
|-------------|---------------|--------------|-----------------|----------------|

THE COURT'S WITNESSES

|                    |    |      |    |    |
|--------------------|----|------|----|----|
| Stephen Peek       |    | 2/56 | 66 | 68 |
| Michael Kostrinsky | 73 | 77   |    |    |

\* \* \*

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

9/12/12

\_\_\_\_\_  
FLORENCE HOYT, TRANSCRIBER

\_\_\_\_\_  
DATE

# **EXHIBIT 8**

**ORIGINAL**

*Steven L. Johnson*

CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\*\*\*\*\*

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants  
.....

CASE NO. A-627691

DEPT. NO. XI

**Transcript of  
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON PLAINTIFF'S MOTION FOR PROTECTIVE ORDER**

FRIDAY, FEBRUARY 8, 2012

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

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

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

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

RECEIVED  
FEB 13 2013  
CLERK OF THE COURT  
*JS*

1 LAS VEGAS, NEVADA, FRIDAY, FEBRUARY 8, 2013, 8:36 A.M.  
2 (Court was called to order)  
3 THE COURT: Since I have Mr. Peek on the phone, is  
4 he going to be arguing?  
5 MR. JONES: Yes, Your Honor.  
6 THE COURT: All right. I need everybody to come up  
7 here, because Mr. Peek's on the phone. Please identify  
8 yourselves as you're walking up here. Bring whatever you want  
9 to bring. Feel free to stand close. I'm not as sick as I was  
10 so --  
11 Mr. Pisanelli, nice to see back among the living.  
12 MR. PISANELLI: Thank you, Your Honor. It's good to  
13 be back.  
14 THE COURT: Good press coverage yesterday. Who was  
15 your mediator?  
16 MR. PISANELLI: Just Stan Hall and I for weeks  
17 working on it.  
18 THE COURT: Wow. That's an amazing accomplishment.  
19 Congratulations.  
20 MR. PISANELLI: Thank you very much. appreciate it.  
21 THE COURT: Mr. Peek, good morning.  
22 MR. PEEK: Good morning, Your Honor. I hope you're  
23 feeling better.  
24 THE COURT: I am. Can everybody please identify  
25 themselves starting with Mr. Jones.



1 MR. PEEK: No, Your Honor. But I am going to -- I  
2 will comment after Mr. Jones argues about the Jacobs  
3 collection that Mr. Bice discussed with you, because he keeps  
4 on forgetting the facts.

5 THE COURT: Then I'm going to Mr. Jones now. All  
6 right.

7 MR. JONES: Your Honor, in essence we have  
8 documents, and we don't have his memory. We would like to  
9 take his deposition.

10 THE COURT: He gets his documents. I said he gets  
11 his documents. He needs his documents. I'm not letting you  
12 take his depo until he has his documents. But clearly you get  
13 to take his deposition to test the jurisdictional issues. But  
14 really, I had an evidentiary hearing about these document  
15 issues and I'm a little frustrated with where we are on them.  
16 Not saying all the documents, but --

17 MR. PEEK: Your Honor, may I comment because I'm the  
18 one who knows more about those documents than Mr. Jones does?

19 THE COURT: Yes, because Mr. Jones, lucky for him,  
20 wasn't here for that evidentiary hearing.

21 MR. PEEK: That's correct, Your Honor.

22 THE COURT: That was when Sam Lionel and Charlie  
23 McCrea were here.

24 MR. PEEK: That is correct. And what Mr. Bice  
25 doesn't tell you, that of the 50 gigabytes of documents that

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

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

5 MR. BICE: Thank you, Your Honor.

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

8 MR. JONES: Thank you.

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

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

13 \* \* \* \* \*

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CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT  
Las Vegas, Nevada 89146

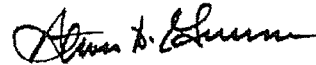
*Florence M. Hoyt*

FLORENCE HOYT, TRANSCRIBER

2/10/13

DATE

# **EXHIBIT 9**



CLERK OF THE COURT

1 **ORDR**

5 **EIGHTH JUDICIAL DISTRICT COURT**

6 **CLARK COUNTY, NEVADA**

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  
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.

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.

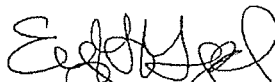
1           THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

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

13  
14 

15 THE HONORABLE ELIZABETH GONZALEZ,  
16 EIGHTH JUDICIAL DISTRICT COURT  
17  
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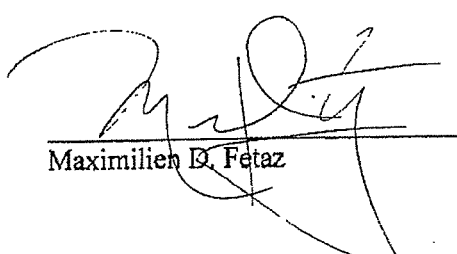
**CERTIFICATE OF SERVICE**

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

# **EXHIBIT 10**

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

|                                |   |                      |
|--------------------------------|---|----------------------|
| STEVEN JACOBS                  | . |                      |
|                                | . |                      |
| Plaintiff                      | . | CASE NO. A-627691    |
|                                | . |                      |
| vs.                            | . |                      |
|                                | . | DEPT. NO. XI         |
| LAS VEGAS SANDS CORP., et al.. | . |                      |
|                                | . |                      |
| Defendants                     | . | <b>Transcript of</b> |
|                                | . | <b>Proceedings</b>   |
| . . . . .                      | . |                      |

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**STATUS CHECK**

TUESDAY, JUNE 18, 2013

APPEARANCES:

|                                |  |
|--------------------------------|--|
| FOR THE PLAINTIFF:             | TODD BICE, ESQ.<br>DEBRA SPINELLI, ESQ.<br>ERIC ALDREN, ESQ.         |
| FOR THE DEFENDANTS:            | J. STEPHEN PEEK, ESQ.<br>JON RANDALL JONES, ESQ.<br>MARK JONES, ESQ. |
| COURT RECORDER:                | TRANSCRIPTION BY:  |
| JILL HAWKINS<br>District Court | FLORENCE HOYT<br>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 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 \* \* \* \* \*

22

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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.

FLORENCE HOYT  
Las Vegas, Nevada 89146

6/19/13

\_\_\_\_\_  
FLORENCE HOYT, TRANSCRIBER

\_\_\_\_\_  
DATE

# **EXHIBIT 11**



TRAN

**COPY**

*Steven D. Levine*

CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\*\*\*\*\*

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants

CASE NO. A-627691

DEPT. NO. XI

Transcript of  
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS FOR PROTECTIVE ORDER AND SANCTIONS

TUESDAY, DECEMBER 18, 2012

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

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

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

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

RECEIVED  
JAN 03 2013  
CLERK OF THE COURT

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

2 (Court was called to order)

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

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

7 THE COURT: Sure.

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

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

14 THE COURT: Any objection?

15 MR. BICE: No.

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

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

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

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

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

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

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

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

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

8 THE COURT: Thank you.

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

11 THE COURT: Thank you.

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

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

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

1 on counsel.

2 All right. Goodbye.

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

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

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

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

18 \* \* \* \* \*

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CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT  
Las Vegas, Nevada 89146

*Florence M. Hoyt*

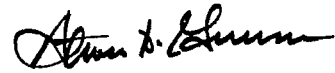
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FLORENCE HOYT, TRANSCRIBER

12/30/12

\_\_\_\_\_  
DATE

# EXHIBIT A

# EXHIBIT A



CLERK OF THE COURT

1 J. Randall Jones, Esq.  
2 Nevada Bar No. 1927  
3 jrj@kempjones.com  
4 Mark M. Jones, Esq.  
5 Nevada Bar No. 267  
6 m.jones@kempjones.com  
7 KEMP, JONES & COULTHARD, LLP  
8 3800 Howard Hughes Parkway, 17th Floor  
9 Las Vegas, Nevada 89169  
10 Attorneys for Sands China, Ltd.

11 J. Stephen Peek, Esq.  
12 Nevada Bar No. 1759  
13 speek@hollandhart.com  
14 Robert J. Cassity, Esq.  
15 Nevada Bar No. 9779  
16 bcassity@hollandhart.com  
17 HOLLAND & HART LLP  
18 9555 Hillwood Drive, 2nd Floor  
19 Las Vegas, Nevada 89134  
20 Attorneys for Las Vegas Sands Corp.  
21 and Sands China, Ltd.

DISTRICT COURT  
CLARK COUNTY, NEVADA

22 STEVEN C. JACOBS,

23 Plaintiff,

24 v.

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

Defendants.

AND ALL RELATED MATTERS.

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

**MOTION FOR STAY OF ORDER  
GRANTING PLAINTIFF'S MOTION  
TO RETURN REMAINING  
DOCUMENTS FROM ADVANCED  
DISCOVERY PENDING  
DEFENDANTS' PETITION FOR WRIT  
OF PROHIBITION OR MANDAMUS**

EX PARTE APPLICATION FOR ORDER  
SHORTENING TIME AND ORDER  
THEREON

Date:  
Time:

FILE WITH  
MASTER CALENDAR

Defendants LAS VEGAS SANDS CORP. ("LVS") and SANDS CHINA LTD. ("SCL")

(collectively, "Defendants"), by and through their undersigned counsel, submit this Motion for  
Stay of Order on Plaintiff's Motion to Return Remaining Documents from Advanced Discovery

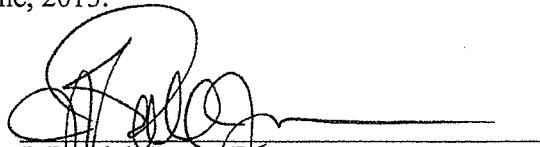
KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kjc@kempjones.com

KEMP, JONES & COULTHARD, LLP  
3800 Howard Hughes Parkway  
Seventeenth Floor  
Las Vegas, Nevada 89169  
(702) 385-6000 • Fax (702) 385-6001  
kjc@kempjones.com

1 pending the disposition of Defendants' Petition for Writ of Prohibition or Mandamus, filed with  
2 the Nevada Supreme Court on June <sup>21</sup>12, 2013. Pursuant to E.D.C.R. 2.26, Defendants also move  
3 for an Order Shortening Time for the hearing on Defendants' Motion for Stay.

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 21<sup>st</sup> day of June, 2013.

7  
8 

9 J. Randall Jones, Esq.  
10 Mark M. Jones, Esq.  
11 Kemp, Jones & Coulthard, LLP  
12 3800 Howard Hughes Pkwy., 17th Floor  
13 Las Vegas, Nevada 89169  
14 Attorneys for Sands China, Ltd.

15 J. Stephen Peek, Esq.  
16 Robert J. Cassity, Esq.  
17 Holland & Hart LLP  
18 9555 Hillwood Drive, 2nd Floor  
19 Las Vegas, Nevada 89134  
20 Attorneys for Las Vegas Sands Corp. and Sands China,  
21 Ltd.

### 22 EX PARTE APPLICATION FOR ORDER SHORTENING TIME

23 Defendants move the Court for an Order shortening the time for hearing on this Motion.  
24 As set forth in the Declaration of J. Randall Jones, Esq. below, good cause exists to hear  
25 Defendants' Motion for Stay of Order Granting Plaintiff's Motion to Return Remaining  
26 Documents from Advanced Discovery Pending the disposition of Defendants' Petition for Writ  
27 of Prohibition or Mandamus by the Supreme Court ("Motion for Stay") on an order shortening  
28 time.

On June 19, 2013, the Court entered an Order granting Plaintiff's Motion to Return  
Remaining Documents from Advanced Discovery ("the June 19 Order"). That Order requires  
the Court's designated e-discovery vendor, Advanced Discovery, to return to Jacobs thousands  
of proprietary and privileged documents and expressly allows Jacobs to turn the documents over



1 to his counsel for use in this litigation. The June 19 Order stays the effect of these directives for  
2 10 days after notice of the entry of such order (which was provided on June 20) to allow  
3 Defendants to petition the Nevada Supreme Court for review by writ, which Defendants have  
4 done, because the June 19 Order erroneously creates an exception to fundamental rules  
5 concerning the control and use of privileged documents.

6 If Defendants' Motion to Stay were heard in the normal course, the 10-day period before  
7 Advanced Discovery releases the documents to Jacobs and his counsel (which ends on July 5,  
8 2013) would expire, and Plaintiff and his counsel would have free rein to review the thousands  
9 of Defendants' privileged documents that are the subject of the June 19 Order and the  
10 Defendants' petition for writ relief in the Nevada Supreme Court. Once that review has taken  
11 place, the documents at issue "would irretrievably lose [their] confidential and privileged  
12 quality and petitioners would have no effective remedy, even by a later appeal." *Wardleigh v.*  
13 *Dist. Ct.*, 111 Nev. 345, 350-51, 891 P.2d 1180, 1183-84 (1995).

14 Under the current timeline, that review could occur before the Supreme Court considers  
15 the Defendants' writ petition that seeks review of the June 19 Order. It is therefore imperative  
16 that this Motion to Stay be heard on an order shortening time so that Defendants' privileges are  
17 not lost before the Supreme Court has an opportunity to consider the subject and so Plaintiff's  
18 counsel are not put in a position where their review of the documents could lead to their  
19 disqualification in this litigation, if the Supreme Court reverses the June 19 Order.

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1 Thus, Defendants respectfully request that the Court set this Motion for hearing on its earliest  
2 available hearing date on or before June 27, 2013.

3 DATED this 21<sup>st</sup> day of June, 2013.

4   
5 J. Randall Jones, Esq.  
6 Mark M. Jones, Esq.  
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17 Ltd.

18 **DECLARATION OF J. RANDALL JONES, ESQ. IN SUPPORT OF**  
19 **EX PARTE APPLICATION FOR ORDER SHORTENING TIME**

20 I, J. RANDALL JONES, ESQ., being duly sworn, state as follows:

21 1. I am one of the attorneys for Defendant Sands China Ltd. ("SCL") in this action.

22 I make this Declaration in support of Defendants' Ex Parte Application for an Order Shortening  
23 Time for the hearing on the instant Motion to Stay. I have personal knowledge of the facts  
24 stated herein, except those facts stated upon information and belief, and as to those facts, I  
25 believe them to be true. I am competent to testify to the matters stated herein.

26 2. Good cause exists to hear Defendants' Motion on an order shortening time. On  
27 June 21, 2013, Defendants filed a Petition for Writ of Prohibition or Mandamus in the Nevada  
28 Supreme Court seeking to vacate this Court's June 19 Order on the ground that the Order  
erroneously recognizes an exception to fundamental rules concerning the control and use of  
privileged documents.

3. If Defendants' Motion to Stay were heard in the normal course, the time for  
Advanced Discovery to release the documents to Jacobs and his counsel would expire, and  
Plaintiff and his counsel would have free rein to review thousands of Defendants' privileged

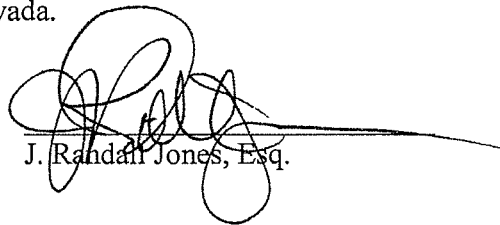
1 documents. Once that review has taken place, it may well be impossible to cure the prejudice  
2 to Defendants, since their opponent and his counsel will have already reviewed the documents.  
3 Further, once the review takes place, Plaintiff's counsel would risk being disqualified in this  
4 litigation if the Supreme Court reverses the June 19 Order.

5 4. Under the current timeline, that review could occur before the Supreme Court  
6 can consider the Defendants' writ petition seeking review of the June 19 Order. It is imperative  
7 that this Motion to Stay be heard on an order shortening time before that deadline arrives so that  
8 Defendants' privileges are not imperiled and Plaintiff's counsel are not put in a position where  
9 their review of the documents could lead to their disqualification in this litigation. As the time  
10 for Advanced Discovery to release the documents will pass before this Court can hear this  
11 Motion to Stay in the normal course, Defendants respectfully request that the Court set this  
12 Motion for hearing on its earliest available hearing date on or before June 27, 2013.

13 5. I make this request for an order shortening time in good faith and not for any  
14 improper purpose. Accordingly, Defendants respectfully request that this Motion to Stay be  
15 heard on shortened time and set for hearing at the Court's earliest available hearing date well in  
16 advance of the July 5, 2013 deadline for Advanced Discovery to release the documents.

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

18 Executed June 21<sup>st</sup>, 2013, in Las Vegas, Nevada.

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28  
  
J. Randall Jones, Esq.

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**ORDER SHORTENING TIME**

Having reviewed Defendants' Ex Parte Application for Order Shortening Time, and good cause appearing,

IT IS HEREBY ORDERED that the **MOTION FOR STAY OF ORDER GRANTING PLAINTIFF'S MOTION TO RETURN REMAINING DOCUMENTS FROM ADVANCED DISCOVERY PENDING DEFENDANTS' PETITION FOR WRIT OF PROHIBITION OR MANDAMUS** shall be heard on shortened time on the <sup>27<sup>th</sup></sup> day of June, 2013, at the hour of 8: 30 (a.m./p.m. in Department XI of the Eighth Judicial District Court.

Dated this 24<sup>th</sup> day of June, 2013.

  
DISTRICT COURT JUDGE

1                   **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
2                   **DEFENDANTS' MOTION FOR STAY OF ORDER GRANTING PLAINTIFF'S**  
3                   **MOTION TO RETURN REMAINING DOCUMENTS FROM ADVANCED**  
4                   **DISCOVERY PENDING DEFENDANTS' PETITION FOR WRIT OF PROHIBITION**  
5                   **OR MANDAMUS**

6                   **I.**

7                   **INTRODUCTION**

8                   The June 19 Order affects thousands of privileged documents that Plaintiff, Steven  
9                   Jacobs, took from Defendants Sands China Limited ("SCL") and its parent company, Las Vegas  
10                  Sands Corp. ("LVSC") in electronic form when he was terminated as CEO of SCL in July 2010.  
11                  It took two years of motion practice, meet-and-confer discussions, and Court hearings for  
12                  Defendants simply to gain access to the documents in order to determine which were privileged.  
13                  The Court appointed Advanced Discovery, a third-party vendor with expertise in electronically  
14                  stored information ("ESI"), to take custody of the documents for that review. After waiting  
15                  several months so Plaintiff could assert his own privilege objections, Defendants then spent  
16                  months reviewing nearly 100,000 electronic files. After that time-consuming, resource-  
17                  intensive and very costly process, Defendants determined that several thousand documents were  
18                  protected by the attorney-client privilege (among other privileges), and prepared a privilege log  
19                  comprising over 11,000 entries in over 1,700 pages.<sup>1</sup>

20                  But at the end of that long journey, the Court did not evaluate any of Defendants'  
21                  objections on the merits. Instead, the Court decided that irrespective of privilege, Plaintiff  
22                  belonged to a privilege-exempt "class of persons" and could disclose the documents to his  
23                  attorneys and use them against Defendants in this litigation. The Court's June 19 Order directs  
24                  Advanced Discovery to release the documents to Plaintiff, subject to a 10-day stay for  
25                  Defendants to petition the Nevada Supreme Court for a writ of prohibition or mandamus.

26                  

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27                  <sup>1</sup> The vast majority of entries on defendants' log are based on the attorney-client privilege. A  
28                  much smaller number are based on the work-product doctrine, as they relate to litigation with  
                  third parties that was pending or anticipated when Jacobs was terminated. A handful assert other  
                  privileges, such as the accountant-client privilege.

1 Defendants have filed that writ petition. The issue presented by this motion is whether  
2 the Court will stay that Order pending the Supreme Court's review of Defendants' petition. The  
3 Court has previously granted the same relief for two discovery orders that are the subject of  
4 separate writ petitions, both of which have been accepted by the Supreme Court.

5 As demonstrated below, the Court should take the same prudent course here. If Plaintiff  
6 and his attorneys are allowed to obtain and review these sensitive, privileged documents, the  
7 purpose of the writ petition would be destroyed. Defendants would be irreparably harmed, and  
8 their attorney-client and work-product privileges would be irretrievably lost. Particularly in  
9 light of the vast number of privileged documents involved, it may well be impossible to cure the  
10 resulting prejudice to Defendants once their opponent and his attorneys review the documents.  
11 Indeed, the Order presents a risk of irreparable harm to *Plaintiff* as well, because Plaintiff's  
12 attorneys would face the risk of disqualification if the Supreme Court decides that they should  
13 not have been allowed to review the documents at issue. Although while the Court may  
14 disagree with Defendants about the merits of the June 19 Order, there can be no doubt that the  
15 Order concerns critical privilege interests, and that it presents important issues of law and public  
16 policy that the Nevada Supreme Court has not decided.

17 Defendants respectfully move this Court to stay its June 19 Order until the Supreme  
18 Court has had an opportunity to make a determination on Defendants' writ petition.

## 19 II.

### 20 PROCEDURAL BACKGROUND

21 On July 8, 2011, Colby Williams (an attorney representing Jacobs at that time) informed  
22 SCL that Jacobs had "electronically transferred to our office a significant number of e-mail  
23 communications he received during his tenure" at SCL, including "a number of e-mails from  
24 various attorneys employed by LVSC and SCL." Pl. Reply Br. Ex. 11. He assured SCL that  
25 Jacobs' attorneys would suspend their review of the e-mails and give LVSC and SCL time to  
26 review the ESI and assert privileges (while reserving the right to contest those objections). *Id.*  
27 After further discussions, Jacobs' attorney "agreed" in writing on August 3, 2011 "not to

28

1 produce the documents in this litigation until the issue [of privilege] is resolved by the Court.”  
2 6/13/13 Def. Sur-reply, Ex. A, at 2 (item no. 5)). He further committed that “our firm will  
3 continue to refrain from reviewing the documents so as not to create any issues regarding the  
4 documents containing communications with attorneys.” *Id.*

5       Thereafter, Defendants filed motions seeking return of the documents and to exclude  
6 them from the upcoming hearing on jurisdiction. After months of meet-and-confer discussions  
7 and conferences before the Court, the Court entered an order on December 7, 2011 establishing  
8 a procedure for Plaintiff and then Defendants to assert their respective privilege objections, and  
9 appointing Advanced Discovery as a vendor to extract the pertinent data from Plaintiff’s  
10 devices and maintain custody of the documents. Plaintiff, however, refused to turn over the  
11 devices, claiming that it was “extremely risky” to turn over “all of this sensitive information”  
12 even under the court’s direction. 3/8/13 Def. Opp. Br. Ex. J (Jan. 3, 2012 Hearing Tr.) at 48.  
13 The court then directed the parties to engage in further meet-and-confer discussions regarding  
14 revisions to the protective order that would accommodate plaintiff’s concerns.

15       The modifications to the protective order were not approved until March 2012, and due  
16 to additional discussions over the exact procedure for releasing the data, Plaintiff did not turn  
17 over his electronic devices to Advanced Discovery until May 17, 2012. Advanced Discovery  
18 then extracted the pertinent data; next, it “screened” the data (using search terms developed by  
19 Plaintiff) to remove data that Plaintiff asserted were personal or privileged.

20       Defendants began their review of the data on July 24, 2012. Notwithstanding the  
21 volume of data involved – over 98,500 files – and the complexity of the review process,  
22 Defendants released 84,000 documents to Plaintiff and provided a draft privilege log within two  
23 months. Thereafter, Defendants released another 3,000 documents and issued a final privilege  
24 log containing over 11,000 entries about two months after that (on December 2, 2012).

25       On February 15, 2013, Plaintiff filed a motion asking the Court to order the wholesale  
26 release of all of the thousands of documents that Defendants had identified as privileged.  
27 Defendants opposed the motion and requested oral argument. The Court denied that request but  
28

1 instructed Defendants to file a supplemental brief. Defendants filed that brief on April 1, and  
2 Plaintiff filed a reply brief on April 8, 2013.

3 On April 12, 2013, the Court issued a minute order stating that it would grant plaintiff's  
4 motion and directing plaintiff to draft an order. The Court acknowledged that "any privilege  
5 related to these documents in fact belongs to the Defendants." Nevertheless, the Court did not  
6 rule on any of Defendants' privilege objections. Instead, it held that plaintiff and his attorneys  
7 could "use the documents for purposes of this litigation."

8 On June 19, 2013, the Court entered its order. The order directs Advanced Discovery to  
9 release the disputed documents to Plaintiff, and it permits Plaintiff and his attorneys to review  
10 the documents and use them in this litigation. The order stays its own effective date for 10 days  
11 after notice of entry (which was provided on June 20) so that Defendants may file a petition for  
12 writ relief with the Nevada Supreme Court. Defendants filed their Petition on June 21, 2013.

### 13 III.

### 14 ARGUMENT

#### 15 A. Legal Standard

16 When evaluating a motion to stay pending the Nevada Supreme Court's review of a writ  
17 petition, the District Court should consider the following factors: (1) whether the object of the  
18 writ petition will be defeated if the stay is denied; (2) whether petitioner will suffer irreparable  
19 or serious injury if the stay is denied; (3) whether the real party in interest will suffer irreparable  
20 or serious injury if the stay is granted; and (4) whether the petitioner is likely to prevail on the  
21 merits of the writ petition. *Hansen v. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000) (the  
22 factors set forth in NRAP 8(a) apply to writ petitions when the petitioner "seeks to challenge" a  
23 decision "issued by the district court"). Each of these factors weighs in favor of the stay  
24 requested here.

#### 25 B. The Object of the Writ Petition Will Be Defeated and Defendants Will Suffer 26 Irreparable Harm if the June 19 Order Is Not Stayed.

27 The primary purpose of Defendants' writ petition is to obtain Supreme Court review of  
28 this Court's ruling that Plaintiff may disclose the thousands of documents at issue to his



1 attorneys and use them against Defendants, without the Court evaluating Defendants'  
2 privileges. It is without question that the object of Defendants' writ petition would be defeated  
3 if the Court's June 19 Order were allowed to go into effect. Upon the release of the documents  
4 to Plaintiff and his attorneys, "the assertedly privileged information would irretrievably lose its  
5 confidential and privileged quality and petitioners would have no effective remedy, even by a  
6 later appeal." *Wardleigh*, 111 Nev. at 350-51, 891 P.2d at 1183-84.

7 The Court's order recognizes the harm inherent in the disclosure of privileged  
8 communications, and tries to limit that harm by stating that plaintiff and his attorneys must  
9 review and use the documents under the terms of the protective order in this case. But the  
10 existence of a protective order does not allow the Court to disregard Defendants' privileges, nor  
11 does it prevent irreparable harm to Defendants. The protective order prevents parties from  
12 disclosing confidential information to outsiders, or using that information outside this litigation.  
13 However, the Court-ordered disclosure of Defendants' privileged documents to Defendants'  
14 adversary, and that adversary's use of those documents *within* the litigation, would still violate  
15 the privilege, and would still wreak irreparable harm on Defendants. See *Chase Manhattan*  
16 *Bank, N.A. v. Turner & Newall, PLC*, 964 F.2d 159 (2d Cir. 1992) (granting writ of mandamus  
17 and vacating discovery order that allowed opposing counsel to review privileged documents,  
18 even though review was governed by an "attorneys'-eyes-only" protective order); *In re Dow*  
19 *Corning Corp.*, 261 F.3d 280, 286 (2d Cir. 2001) (remanding discovery order that had  
20 compelled disclosure of privileged documents and deposition of attorney pursuant to protective  
21 order, and admonishing trial court that "a protective order will not adequately safeguard the  
22 privilege holder's interests such that the attorney-client privilege may be neglected").

23 **C. Plaintiff Has Made No Showing Of Harm if the District Court Grants a Stay; Indeed,**  
24 **A Stay Will Protect Plaintiff.**

25 Unlike Defendants, who would be immensely and irreparably harmed if a stay were  
26 denied, there has been no showing that a stay of the June 19 Order will cause Plaintiff any harm  
27 at all. There has been no showing that any of the specific documents at issue would be  
28 important to the question of personal jurisdiction. Thus, while the Court has set an evidentiary

1 hearing on the jurisdictional matter for July 16, Plaintiff will not suffer any harm if a stay is put  
2 in place to allow the Supreme Court to first decide these important privilege issues.

3 In fact, a stay would *protect* Plaintiff and his attorneys from irreparable harm. If  
4 Plaintiff's attorneys review Defendants' privileged documents (as the June 19 Order would  
5 permit them to do), but the Supreme Court subsequently agrees with Defendants that the review  
6 should not have taken place, Plaintiff's counsel faces a serious risk of disqualification.  
7 Plaintiff's attorneys are well aware of this risk. They could have reviewed the documents at  
8 issue any time after they were retained, because Plaintiff had the documents in his possession.  
9 Instead, Plaintiff's counsel (and his former attorneys) have expressed the understandable  
10 concern that the Court should rule on Defendants' privileges before they proceeded with their  
11 review. The Court has issued its own ruling, but the matter is not settled; rather, it is now  
12 headed to the Nevada Supreme Court. The prudent course would be to allow that Court to  
13 resolve the issue of privilege *before* the release and review of documents goes forward.  
14 Particularly in light of the extensive time, cost and effort that have already gone into protecting  
15 the rights of *both* sides to assert privilege, this is no time to act in haste or without caution.

16 **D. Defendants Have Presented a Substantial Case on the Merits of These Important Legal**  
17 **Questions.**

18 Defendants recognize that the Court ruled against them and do not presume to attempt to  
19 persuade the Court otherwise now. But there is no need for the Court to change its mind in  
20 order to grant a stay pending the outcome of Defendants' Petition. There is at least a reasonable  
21 probability that the Supreme Court will disagree with the Court's analysis and issue the  
22 requested writ relief. In *Hansen*, the Nevada Supreme Court recognized that "when moving for  
23 a stay pending an appeal or writ proceedings, a movant does not always have to show a  
24 probability of success on the merits, [but] the movant must 'present a substantial case on the  
25 merits when a serious legal question is involved and show that the balance of equities weighs  
26 heavily in favor of granting the stay.'" 116 Nev. at 659, 6 P.3d at 987 (citation omitted). As the  
27 preceding sections demonstrate, the balance of equities weigh decisively in favor of a stay.  
28

1 Further, Defendants have presented a substantial case on the merits, and the writ petition  
2 concerns an important question of first impression on an equally important matter of privilege.

3 The Court has correctly recognized that “any privilege related to these documents in fact  
4 belongs to the Defendants.” But the June 19 Order holds that Plaintiff, by virtue of his former  
5 position as CEO and his having taken possession of the documents, falls within an undefined  
6 “class of persons” that may use the documents in litigation against Defendants. Further, the  
7 June 19 Order allows Plaintiff to disclose the documents to his attorneys. While Defendants  
8 and the Court obviously disagree about the merits of that Order, one thing is indisputable: the  
9 Nevada Supreme Court has never considered whether (let alone held that) a corporation’s  
10 former officer or any other “class of persons” may disclose the company’s privileged  
11 documents to his personal attorneys, or use those documents against the company in litigation.

12 It is also clear that the weight of authority in the federal courts holds that displaced  
13 managers like Plaintiff have no authority to use privileged corporate communications against  
14 the company – particularly where, as here, the displaced manager is *suing* the corporation and  
15 thus pursuing personal interests that are directly adverse to the corporation. The U.S. Supreme  
16 Court has stated that “when control of a corporation passes to new management, the authority to  
17 assert and waive the corporation’s attorney-client privilege passes as well.” *Commodity Futures*  
18 *Trading Comm’n v. Weintraub*, 471 U.S. 343, 349 (1985). Thus, “displaced managers” like  
19 plaintiff no longer have control over the privilege “even as to statements that the former  
20 [managers] might have made to counsel.” *Id.* See also *Montgomery v. eTrepid Technologies,*  
21 *LLC*, 548 F. Supp. 2d 1175, 1187 (D. Nev. 2008) (holding that a former officer “may not  
22 access” his former employer’s “attorney-client privileged communications” in his lawsuit  
23 against his former employer).

24 This principle applies whether or not Plaintiff authored, received, or had access to the  
25 privileged communications at bar in his former position as CEO of SCL. The Supreme Court’s  
26 decision in *Weintraub* squarely states that “[d]isplaced managers may not assert the privilege  
27 over the wishes of current managers, *even as to statements that the former [managers] might*  
28

1 *have made* to counsel concerning matters within the scope of their corporate duties.” 471 U.S.  
2 at 348 (emphasis added). See also *Gilday v. Kenra, Ltd.*, No. 1:09-cv-00229-TWP-TAB, 2010  
3 WL 3928593, at \*4 (S.D. Ind. Oct. 4, 2010) (corporation “may assert the attorney-client  
4 privilege against [former employee], even as to privileged documents she accessed during her  
5 employment”); *Davis v. PMA Cos.*, No. CIV-11-359-C, 2012 WL 3922967 (W.D. Okla. Sept. 7,  
6 2012) (corporation’s former president may not “access communications that he once authorized,  
7 received or otherwise participated in while president” because after termination he “is not the  
8 client and has no right to access any privileged communications”).

9 Likewise, it makes no difference that Plaintiff took these privileged communications  
10 with him in electronic form when he was terminated, or that he apparently possesses copies  
11 now. See *In re Marketing Investors Corp.*, 80 S.W.3d 44, 50 (Tex. App. 1998) (“We conclude  
12 the attorney-client privilege applies against” terminated executive notwithstanding his  
13 “possession of the Corporate documents”); *Gilday*, 2010 WL 3928593, at \*1, \*4 (corporation  
14 “may assert the attorney-client privilege against [former employee], even as to privileged  
15 documents she accessed during her employment,” and even though former employee “copied  
16 several documents” and took them prior to termination). While this Court has come out the  
17 other way, it is obvious that there are profound ramifications to its ruling, as it would give  
18 terminated employees the incentive to take privileged documents with them as they leave the  
19 building.

#### 20 IV.

#### 21 CONCLUSION

22 Because (1) the object of the Defendants’ writ petition will be defeated if the Court does  
23 not grant a stay of the June 19 Order; (2) Defendants will suffer irreparable harm if Plaintiff and  
24 his attorneys are allowed to review and use documents without regard to Defendants’ privileges;  
25 (3) Plaintiff will suffer no harm by a stay, and a stay will in fact protect Plaintiff from the risk of  
26 irreparable harm that would result if his attorneys had to be disqualified; and (4) Defendants  
27 have presented a substantial case on the merits of these important legal questions, Defendants  
28

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1 respectfully request that the Court stay the June 19 Order until the Nevada Supreme Court has  
2 had an opportunity to make a determination on Defendants' writ petition.

3 DATED this 21<sup>st</sup> day of June, 2013.

4 

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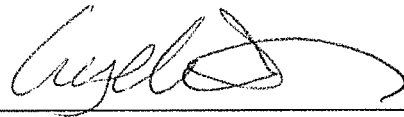
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on this 21 day of June, 2013, I served a true and correct copy of the foregoing **MOTION FOR STAY OF ORDER GRANTING PLAINTIFF'S MOTION TO RETURN REMAINING DOCUMENTS FROM ADVANCED DISCOVERY PENDING DEFENDANTS' PETITION FOR WRIT OF PROHIBITION OR MANDAMUS** via e-mail and by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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An employee of Kemp, Jones & Coulthard

  
CLERK OF THE COURT

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21 and Sands China, Ltd.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

22 STEVEN C. JACOBS,

23 Plaintiff,

24 v.

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

Defendants.

AND ALL RELATED MATTERS.

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

**ERRATA TO MOTION FOR STAY OF  
ORDER GRANTING PLAINTIFF'S  
MOTION TO RETURN REMAINING  
DOCUMENTS FROM ADVANCED  
DISCOVERY PENDING  
DEFENDANTS' PETITION FOR WRIT  
OF PROHIBITION OR MANDAMUS**

Defendants LAS VEGAS SANDS CORP. and SANDS CHINA LTD. (collectively  
"Defendants"), by and through their undersigned counsel, submit this Errata to Motion for Stay  
of Order on Plaintiff's Motion to Return Remaining Documents from Advanced Discovery  
pending the disposition of Defendants' Petition for Writ of Prohibition or Mandamus ("Motion

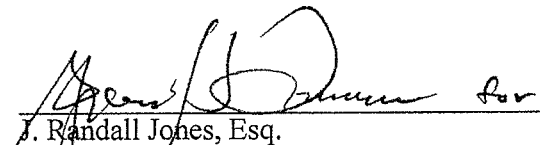
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1 for Stay"). Defendants inadvertently transposed the date on page 2, line 2 as June 12, 2013.

2 The correct date is June 21, 2013.

3 DATED this 24<sup>th</sup> day of June, 2013.

4  
5  for

6 J. Randall Jones, Esq.

7 Mark M. Jones, Esq.

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18 Ltd.



**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b), I certify that on this 24<sup>th</sup> day of June, 2013, I served a true and correct copy of the foregoing **ERRATA TO MOTION FOR STAY OF ORDER GRANTING PLAINTIFF'S MOTION TO RETURN REMAINING DOCUMENTS FROM ADVANCED DISCOVERY PENDING DEFENDANTS' PETITION FOR WRIT OF PROHIBITION OR MANDAMUS** via e-mail and by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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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 AND THE  
HONORABLE ELIZABETH GONZALEZ,  
DISTRICT JUDGE,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Electronically Filed  
Case Number 2013-0820  
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**EMERGENCY  
MOTION UNDER NRAP  
27(e) TO STAY THE  
DISTRICT COURT'S JUNE  
19, 2013 ORDER PENDING  
DECISION ON PETITION  
FOR WRIT OF  
PROHIBITION OR  
MANDAMUS TO  
PROTECT PRIVILEGED  
DOCUMENTS**

**RELIEF REQUESTED BY  
JULY 5, 2013**

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Attorneys for Petitioners

Petitioners Las Vegas Sands Corporation ("LVSC") and Sands China Ltd. ("SCL") (collectively "defendants") move this Court – on an emergency basis under NRAP 27(e) – for a stay pending this Court's consideration of their Emergency Petition for Writ of Prohibition or Mandamus (the "Emergency Petition"), which was filed on June 21, 2013. The Emergency Petition challenges the district court's June 19, 2013 Order directing that more than 11,000 documents that contain defendants' privileged communications and other protected material be turned over to their adversary, plaintiff Steven C. Jacobs, and his counsel on July 5 for use in this litigation. The Emergency Petition has not yet been acted on. As required by NRAP 8, defendants immediately asked the district court to stay its June 19 Order pending disposition of the Emergency Petition. On June 27, 2013, the district court denied that request. If this Court does not grant the requested stay, plaintiff and his counsel will be allowed full access to thousands of defendants' privileged documents on July 5, and the principal object of the Emergency Petition will be defeated.

This Emergency Motion for Stay is made and based on NRAP 8(a)(2), the following Memorandum of Points and Authorities, the Writ Petition filed on June 21, 2013, and the Appendix submitted with the Writ Petition pursuant to NRAP 21(a)(4).

#### **MEMORANDUM OF POINTS AND AUTHORITIES**

The history of the privilege issue raised by the Emergency Petition is detailed in that Petition and will not be repeated here. In short, the dispute arose after SCL learned that Jacobs, its former CEO, had surreptitiously taken approximately 40 gigabytes of the company's electronically-stored information ("ESI") – including documents protected by the company's attorney-client privilege – with him when he was terminated in 2010. After

defendants brought this issue to the district court's attention, the court appointed a third-party vendor to take control of the ESI and then established a detailed protocol for the parties to review the data and make privilege claims. Defendants reviewed more than 98,000 electronic data files and released approximately 87,000 of them to plaintiff. Defendants provided a detailed privilege log identifying approximately 11,000 files as containing communications protected by the attorney-client privilege, work product and other privileges.

The district court acknowledged that "any privilege related to these documents in fact belongs to the Defendants." PA3027. Nevertheless, without reviewing a single document or evaluating the merits of any of defendants' privilege assertions, the court declared that Jacobs was within an undefined "sphere of persons" who have a legal right to use the documents in litigation against the defendants. PA3190. The harm to defendants from this unsupported decision is self-evident: ordering defendants to turn over privileged documents to a former employee for his use in litigation against the company is contrary to law and defeats defendants' privileges without good reason. The decision puts Nevada directly at odds with decisions of the U.S. Supreme Court and Nevada's federal court, which have held that "[d]isplaced managers" like plaintiff have no control over a corporation's privileged communications, "even as to statements that the former [managers] might have made to counsel." *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 349 (1985); *see also Montgomery v. eTreppid Techs., LLC*, 548 F. Supp. 2d 1175, 1183-87 (D. Nev. 2008).

The district court's refusal to stay her privilege-busting June 19 Order to allow this Court to consider the June 21 Emergency Petition is an abuse

of discretion. In denying the stay, the court reasoned that (1) plaintiff "needed" defendants' privileged documents to properly litigate the question of whether the court had personal jurisdiction over SCL and (2) the evidentiary hearing on jurisdiction, which the court put on its calendar only ten days ago for July 16, 2013, should not be postponed any longer.

The Emergency Petition to this Court and the Motion to Stay presented to the district court address how the factors set forth in *Hansen v. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000), weigh in favor of the stay requested here. See Ex. A, Dist. Ct. Mot. to Stay at 10-14. *First*, it cannot be reasonably disputed that the object of the writ petition would be defeated if defendants are required to turn over their privileged documents which are the subject of the petition. See *Wardleigh v. Dist. Ct.*, 111 Nev. 345, 350, 891 P.2d 1180, 1183 (1995); Em. Pet. at 11-30; Ex. A at 11. Unless an emergency stay is granted, the purpose of the writ petition will be frustrated and this Court will be deprived of an opportunity even to consider the important issues of law and public policy raised by the Emergency Petition.

*Second*, there can be no reasonable doubt that the district court's June 19 Order adversely affects critical privilege interests of defendants. An appeal at a later date would not protect defendants' interests. Once lost, their privileges could not be restored.

The June 19 Order recognizes the harm inherent in the disclosure of privileged communications and tries to limit it by requiring plaintiff and his attorneys to treat the documents as confidential under the terms of the protective order in this case. PA3182 (¶14). But that order only prevents parties from disclosing confidential information to outsiders, or using that information outside this litigation. The court-ordered disclosure of defendants' privileged documents to defendants' adversary, and that

adversary's use of those documents *within* the litigation, would still violate the privilege, and would still wreak irreparable harm on defendants. *See Chase Manhattan Bank, N.A. v. Turner & Newall, PLC*, 964 F.2d 159 (2d Cir. 1992); *In re Dow Corning Corp.*, 261 F.3d 280, 286 (2d Cir. 2001) ("a protective order will not adequately safeguard the privilege holder's interests such that the attorney-client privilege may be neglected").

Furthermore, the district court denied the stay so that plaintiff will be able to *use* defendants' privileged documents in the evidentiary hearing scheduled to begin on July 16. But the court has never explained how plaintiff could use those documents without disclosing them to third parties and thus waiving the privilege. In denying the motion for stay, the district court reiterated its view that Jacobs does not have the right to waive the privilege, which belongs to defendants. Given that conclusion, the court's decision to allow Jacobs to use the documents against defendants is inexplicable.

*Third*, unlike defendants, who would be immensely and irreparably harmed if a stay were denied, there has been no showing that a stay of the June 19 Order will cause plaintiff any harm at all. It is true that plaintiff *argued* that his counsel needed access to all of the privileged documents in order to properly present his jurisdictional arguments at the evidentiary hearing now scheduled for July 16. But plaintiff never identified a single document that is likely to be important to the question of personal jurisdiction over SCL and the court never reviewed any of the documents — let alone all 11,000 files included on the privilege log. In fact, plaintiff's own arguments show that he wants the documents because he believes they will support his claims *on the merits* and not because he needs them to prove jurisdiction. PA813-14, PA822-23. The district court's statement in

its June 19 Order that plaintiff could use the documents "in the prosecution of his claims and to rebut the Defendants' affirmative defenses and counterclaim" (PA3182 ¶ 10) reinforces the lack of any connection to the jurisdictional issues.

At the hearing on defendants' motion to stay, the district court suggested that plaintiff would be disadvantaged if his counsel did not have access to defendants' privileged documents because defendants would know the substance of those documents, while plaintiff would not. But that is always true — in the ordinary course, neither side will have access to the other's privileged documents. Furthermore, the court was merely speculating about a purported unfair advantage; there is no reason to believe that plaintiff's ability to argue his jurisdictional case and to rebut defendants' arguments would be impeded in any way by not having access to a vast array of his opponents' privileged documents.

In any event, if the court was convinced that plaintiff actually needed the documents for the hearing (although he made no showing of any such need), the proper solution would have been to vacate the hearing date – and *not* to deny the stay. That the court was suddenly in a hurry to "look like" it was "at least trying" to comply with this Court's August 2011 mandate should not have been allowed to destroy the defendants' good-faith and detailed claim of privilege for the 11,000 documents in issue. PA3144.<sup>1</sup> That is particularly true since plaintiff's counsel suggested

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<sup>1</sup> As he invariably does, plaintiff took the opportunity afforded by the stay motion to heap abuse on defendants and their counsel, accusing them of stalling the evidentiary hearing by supposedly engaging in a campaign to avoid discovery. *See* Ex. B hereto. In fact, the delay is attributable to plaintiff's broad and wholly unnecessary jurisdictional discovery, his repeated and unfounded sanctions motions, and the district court's seeming unwillingness or inability to rein plaintiff's conduct.

September or November for the evidentiary hearing (PA3149), the court itself had delayed entry of an order on plaintiffs' motion for two months, making it impossible for defendants to file their Petition at an earlier point in time, and the court *knew* when it set the hearing date that defendants would be filing the Petition at issue here.

Finally, as demonstrated at length in the Emergency Petition, defendants have presented more than a substantial case on the merits. Ex. A at 12-14. The law does not recognize any "sphere of persons" outside the organization with a legal right to inspect or use a corporation's privileged documents. The district court's order giving a former employee the right to the company's privileged documents is contrary to settled law on attorney-client privilege.



## CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court stay the district court's June 19 Order pending a decision on defendants' Emergency Petition.

MORRIS LAW GROUP

By: /s/ STEVE MORRIS

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Attorneys for Petitioners

## NRAP 27(E) CERTIFICATE OF NEED FOR EMERGENCY RELIEF

I, Steve Morris, declare:

1. I am a lawyer with Morris Law Group, counsel of record for Las Vegas Sands Corp., and Sands China, Ltd.
2. I certify that the relief requested in this Motion is needed on an emergency basis. Unless the district court's order is reversed, Petitioners will suffer immediate and irreparable harm and their privileges will be impaired.
3. As explained in this Motion and the Emergency Petition filed on June 21, 2013, urgency of immediate review is present because the district court's order requires a third-party vendor to release petitioners' privileged documents on July 5, 2013. Petitioners sought a stay from the district court and presented the district court with all arguments advanced in the instant motion. The district court denied the motion to stay today, June 27, 2013.
4. The contact information (including telephone numbers) for the other attorneys in this case is as follows: James J. Pisanelli, Todd Bice, Debra Spinelli, Pisanelli Bice, 3883 Howard Hughes Parkway, Suite 800, Las Vegas, Nevada 89169, (702) 214-2100. Opposing counsel have been notified that Petitioners would be filing an emergency motion to stay the district court's June 19, 2013 order, and have been e-served with a copy of this motion concurrently with its submission to this Court.

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



Steve Morris

## **CERTIFICATE OF 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 **EMERGENCY MOTION UNDER NRAP 27(E) TO FOR STAY THE DISTRICT COURT'S JUNE 19, 2013 ORDER PENDING DECISION ON PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIVILEGED DOCUMENTS** to be hand delivered, in a sealed envelope, on the date and to the addressee(s) shown below:

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

### **Respondent**

Sent electronically and via US Mail:

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**Attorneys for Steven C. Jacobs, Real Party in Interest**

DATED this 27th day of June, 2013.

By: /s/ FIONA INGALLS