

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

vs.

CLARK COUNTY DISTRICT
COURT, THE HONORABLE
ELIZABETH GONZALEZ,
DISTRICT JUDGE,
DEPARTMENT 11,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Electronically Filed
Aug 06 2013 10:28 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Sup. Ct. Case No. 63444

District Court Case No.
A-10-627691

**REAL PARTY IN INTEREST,
STEVEN C. JACOBS' APPENDIX
TO ANSWER TO EMERGENCY
PETITION FOR WRIT OF
PROHIBITION OR MANDAMUS
TO PROTECT
PRIVILEGED DOCUMENTS**

VOLUME II OF II

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Transcript of Hearing on Las Vegas Sands Corp.'s Motion for Sanctions for Violation of the Court's Interim Order and Additional Relief on Order Shortening Time	10/06/2011	II	APP000330-364

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice, and that on this 5th day of August, 2013, I efiled and sent via email and United States Mail, postage prepaid, a true and correct copy of the above and foregoing **REAL PARTY IN INTEREST, STEVEN C. JACOBS' APPENDIX TO ANSWER TO EMERGENCY PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIVILEGED DOCUMENTS (VOLUME II OF II)** properly addressed to the following:

J. Stephen Peek, Esq.
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SERVED VIA HAND-DELIVERY ON AUGUST 6, 2013

The Honorable Elizabeth Gonzalez
Eighth Judicial District Court, Dept. XI
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Kimberly Peets
An employee of Pisanelli Bice, PLLC

Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
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CLERK OF THE COURT

MOT
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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS SANDS CORP., a Nevada
corporation,

Plaintiff,

v.

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


Defendants.

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

**MOTION FOR SANCTIONS FOR
VIOLATION OF THE COURT'S
INTERIM ORDER AND ADDITIONAL
RELIEF ON ORDER SHORTENING
TIME**

Plaintiff Las Vegas Sands Corp. ("LVSC") hereby submits its Motion for Sanctions for Violation of the Court's Interim Order and Additional Relief against Defendants Steven C. Jacobs and Vagus Group, Inc. ("Motion") upon an order shortening time. This Motion is based upon the following Memorandum of Points and Authorities, the Exhibits attached hereto, the papers and pleadings on file herein, and any oral argument the Court may allow.

DATED September 26, 2011.


J. Stephen Peek, Esq.
Brian G. Anderson, Esq.
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Attorneys for Plaintiff

Holland & Hart LLP
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ORDER SHORTENING TIME

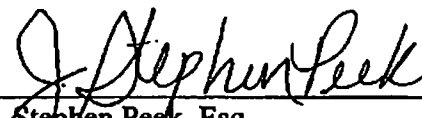
Upon the application of Plaintiff Las Vegas Sands Corp. ("LVSC") for an Order Shortening Time to hear its Motion for Sanctions for Violation of the Court's Interim Order and Additional Relief (the "Motion"), and good cause appearing therefore,

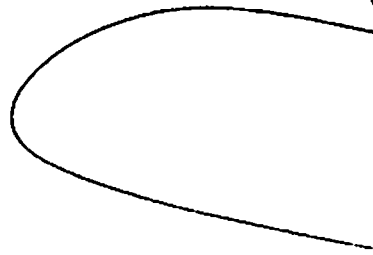
IT IS HEREBY ORDERED that LVSC's request for an Order Shortening Time to hear the Motion is granted, and said Motion shall be heard on the 4th day of Feb, 2011, at the hour of 9⁰⁰ a.m./p.m.

DATED this ___ day of September, 2011.


DISTRICT COURT JUDGE

Submitted by:


J. Stephen Peek, Esq.
Brian G. Anderson, Esq.
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
Attorneys for Plaintiff



1 **APPLICATION FOR ORDER SHORTENING TIME**

2 Pursuant to EDCR 2.26 and the Declaration of J. Stephen Peck, Esq. below, Plaintiff Las
3 Vegas Sands Corp. ("LVSC") hereby moves for an order shortening time for hearing its Motion
4 for Sanctions for Violation of the Court's Interim Order and Additional Relief (the "Motion").

5 After Defendant Steve Jacobs' ("Jacobs") prior counsel recently revealed that Jacobs was
6 in possession of approximately eleven gigabytes of documents, belonging to LVSC and its
7 subsidiaries which include attorney-client privileged communications between LVSC and its
8 counsel. LVSC promptly demanded that Jacobs immediately return all such documents and not
9 provide them to third parties, and that his counsel Campbell & Williams refrain from reviewing
10 the documents. Jacobs' counsel Campbell & Williams, for their part, did confirm that they
11 would "*agree not to produce the documents in this litigation* until the issue is resolved by the
12 Court. Additionally, *our firm will continue to refrain from reviewing the documents* so as not
13 to create any issues regarding the documents containing communications with attorneys." However,
14 Jacobs refused to return the documents to LVSC and refused to agree not to provide
15 such stolen documents to third parties. Soon after Mr. Campbell sent his letter, Jacobs retained
16 the law firm of Pisanelli Bice PLLC to replace Campbell & Williams. However, and as more
17 fully discussed below, Pisanelli Bice ignores the representations of Jacobs' former counsel and
18 has reviewed and disclosed additional stolen documents. These actions are in direct violation of
19 this Court's Interim Order.

20 In light of Jacobs' blatant refusal to return or protect the eleven gigabytes of documents
21 stolen from LVSC and its subsidiaries, on September 16, 2011 LVSC submitted a Motion for
22 Temporary Restraining Order and Preliminary Injunction with this Court. On September 20,
23 2011, the Parties were heard by this Court on LVSC's Motion, after which the Court granted a
24 limited temporary restraining order in the form of an interim order (the "Interim Order")
25 prohibiting Defendants and their related parties from disseminating documents to anyone other
26 than their new lawyers. The Court further directed LVSC to address a carve-out of the stay in a
27 separate petition to the Nevada Supreme Court. The Court further provided that the Interim
28 Order would expire in two weeks' time on October 4, 2011.

1 After obtaining interim relief and guidance from this Court, on September 26, 2011
2 LVSC filed an Emergency Petition for Writ of Mandamus with the Nevada Supreme Court
3 seeking a carve out from the stay. In direct contrast to the representations of his prior counsel,
4 on the evening of Friday, September 23, 2011, Pisanelli Bice emailed supplemental discovery
5 disclosures to counsel for LVSC and SCL. In doing so, they identified stolen documents that
6 Jacobs intends to submit into evidence at the upcoming public evidentiary hearing, allowing for
7 dissemination to third parties. The identified documents include correspondence from LVSC's
8 general counsel, CFO, and other high ranking employees who were privy to confidential
9 information. Jacobs and his new counsel were well aware that LVSC was in the process of filing
10 an Emergency Writ as an initial, emergency step in seeking permanent relief from this Court
11 against Jacobs' misuse of and failure to return LVSC's stolen documents. Rather than allow
12 adjudication of LVSC's claim for return of its property, Jacobs and his counsel seek to use and
13 publish LVSC's stolen documents in violation of the Interim Order.

14 LVSC is now forced to return to this Court seeking immediate relief from further
15 dissemination or use of documents stolen by Jacobs from LVSC. Defendants' recent actions
16 have compounded the harm already inflicted upon LVSC by them. Accordingly, LVSC moves
17 this Court for (1) sanctions against Defendants for violation of the Interim Order; (2) a
18 permanent injunction enjoining the Defendants and their counsel from reviewing or disclosing to
19 any third parties any documents belonging to LVSC or its subsidiaries; (3) an order prohibiting
20 Defendants from disclosing, referencing, or using any documents, belonging to LVSC or its
21 subsidiaries, in other court proceedings, including the November 21, 2011 evidentiary hearing in
22 case A627691; and (4) return of all documents belonging to LVSC or its subsidiaries, along with
23 any copies of such documents.

24 Based on the urgent nature and continued threat of additional harm, LVSC respectfully
25 requests that this Court hear its Motion on an order shortening time as soon as possible.

26 DATED September 26, 2011.

27 
28 J. Stephen Peek, Esq.
Attorney for Las Vegas Sands Corp.

**DECLARATION OF J. STEPHEN PEEK, ESQ. IN SUPPORT OF
APPLICATION FOR ORDER SHORTENING TIME**

I, J. Stephen Peek, Esq., hereby declare as follows:

1. I am a partner with the law firm of Holland & Hart, LLP, counsel for Plaintiff Las Vegas Sands Corp. ("LVSC"). I am duly admitted to practice law in the State of Nevada. I have personal knowledge of the matters stated herein and would be competent to testify thereon if called upon to do so.

2. There exists good cause exists for LVSC's Motion for Sanctions for Violations of this Court's Interim Order on shortened time.

3. After Defendant Steve Jacobs' ("Jacobs") prior counsel recently revealed that Jacobs was in possession of approximately 11 gigabytes of documents, which include documents containing attorney-client privileged communications between LVSC and its counsel, LVSC demanded that Jacobs immediately return all such documents and not provide them to third parties.

4. However, Jacobs refused to return the documents to LVSC and, further, refuses to commit to nondisclosure of such stolen documents to third parties.

5. On August 3, 2011, Jacobs' prior counsel, Campbell & Williams, confirmed their *"agree[ment] not to produce the documents in this litigation* until the issue is resolved by the Court. Additionally, *our firm will continue to refrain from reviewing the documents* so as not to create any issues regarding the documents containing communications with attorneys."

6. Soon after Mr. Campbell sent his letter, Jacobs retained the law firm of Pisanelli Bice PLLC to replace Campbell & Williams.

7. On September 20, 2011, the parties appeared before this Court on LVSC's Motion for Temporary Restraining Order and Preliminary Injunction, or in the Alternative, for Protective Order.

8. The Court granted a limited temporary restraining order in the form of an interim order (the "Interim Order"), whereby Defendants and their related parties were prohibited from disseminating documents to anyone other than their lawyers. The Court directed LVSC to

1 address a carve out of the stay in the separate action and noted the Interim Order would expire in
2 two weeks.

3 9. LVSC has worked diligently to address the stay with the Nevada Supreme Court
4 in the separate action and filed an emergency petition on September 26, 2011.

5 10. However, within four days of this Court's hearing, Jacobs served a supplemental
6 disclosure of documents to LVSC, identifying a number of documents that Jacobs improperly
7 obtained from LVSC and/or its indirect subsidiaries.

8 11. Jacobs identified the documents as correspondence with in-house counsel for
9 LVSC and/or senior executives of LVSC. Moreover, Jacobs intends to use the stolen documents
10 in a public evidentiary hearing in a separate matter. Accordingly, Jacobs and his new counsel
11 have shown blatant disregard for this Court's Interim Order and for the commitment of Jacobs'
12 prior counsel not to review documents.

13 12. By contrast, LVSC has complied with this Court's request that LVSC petition the
14 Nevada Supreme Court for clarification, or a carve-out, of its stay order. However, in light of
15 Defendants' recent conduct, LVSC is now forced to return to this Court, as the already
16 experienced by LVSC has been and continues to be compounded.

17 13. Accordingly, LVSC moves this Court for sanctions and additional relief against
18 Defendants for violation of the Court's Interim Order, as set forth in this Motion.

19 14. Based on the urgent nature and continued harm to LVSC from Jacobs' wholesale
20 disregard for this Court's recent Interim Order, LVSC respectfully requests that this Court hear
21 its Motion on an order shortening time as soon as possible.

22 15. I declare under penalty of perjury under the laws of the State of Nevada that the
23 foregoing is true and correct.

24 DATED this 26th day of September, 2011.

25 
26 J. STEPHEN PEEK
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Jacobs' former counsel recently disclosed to LVSC that Jacobs had in his possession
5 approximately eleven gigabytes of documents taken from LVSC and/or its indirect subsidiaries,
6 SCL and/pr VML, including documents that Jacobs admitted were subject to the attorney-client
7 privilege. LVSC immediately demanded that Jacobs return the stolen documents stolen by
8 Jacobs; however, Jacobs refused to return any documents to LVSC. However, Jacobs' new
9 counsel, Pisanelli Bice, ignores the representations of his former counsel and has reviewed and
10 disclosed additional stolen documents. These actions are in direct violation of this Court's
11 Interim Order.

12 Due to the nature of Defendants' consultancy with LVSC, and Jacobs' tenure as CEO of
13 SCL, Jacobs naturally became privy to attorney-client privileged, confidential, and other
14 sensitive information belonging to LVSC. Because Jacobs refuses to return the information he
15 stole upon his departure from LVSC, LVSC was forced to file this action for theft and
16 conversion of its property and misappropriation of trade secrets. LVSC immediately sought
17 injunctive relief, which this Court granted in part in the form of a two-week interim order
18 ("Interim Order") prohibiting Defendants from disseminating stolen documents except to their
19 attorneys. During this time, at the direction of this Court LVSC was to seek from the Nevada
20 Supreme Court a carve out from the otherwise applicable stay, which would permit this Court to
21 address the theft of LVSC's documents by Jacobs.

22 However, Jacobs refused to abide by the Court's interim order. While LVSC was
23 preparing to file its Emergency Writ with the Nevada Supreme Court, Jacobs and his counsel
24 were identifying approximately one thousand pages of such stolen documents in a supplemental
25 disclosure submission, as well as in a witness and exhibit list for the November 21, 2011
26 evidentiary hearing, both received by LVSC Friday evening, September 23, 2011. Jacobs'
27 identification, disclosure and use of such documents violates this Court's Interim Order.

1 Based upon Jacobs' misconduct and blatant refusal to protect the wrongfully obtained
2 documents from disclosure, , LVSC moves this Court for (1) sanctions against Defendants for
3 violation of this Court's Interim Order; (2) a permanent injunction enjoining Defendants and
4 their counsel from reviewing or disclosing to any third parties any documents belonging to
5 LVSC or its subsidiaries; (3) an order preventing Defendants' supplemental discovery
6 disclosures from disclosure at the November 21, 2011 evidentiary hearing; and (4) return by
7 Jacobs to LVSC of all documents belonging to LVSC or its subsidiaries, along with any copies
8 of such documents.

9 II.

10 STATEMENT OF FACTS/PROCEDURAL HISTORY

11 On August 3, 2011, Jacobs' prior counsel admitted Jacobs was in possession of eleven
12 gigabytes of LVSC's data, including documents containing attorney-client correspondence, all of
13 which he refused to return. See August 3, 2011 letter as Exhibit A. Specifically, "[w]hile Steve
14 is unable to 'return' the documents to [LVSC], *we agreed not to produce the documents in this*
15 *litigation* until the issue is resolved by the Court. Additionally, *our firm will continue to refrain*
16 *from reviewing the documents* so as not to create any issues regarding the documents containing
17 communications with attorneys." *Id.* (emphasis added).

18 Jacobs came into possession of these sensitive and privileged documents through his
19 consultancy with LVSC and/or as a senior executive of SCL and VML and a corporate fiduciary,
20 Jacobs had ready access to privileged, confidential, and other sensitive information belonging to
21 LVSC. See Kenneth J. Kay Declaration attached as Exhibit B. It is this information that was
22 wrongfully taken by Jacobs. Despite repeated requests, Jacobs has refused to return the
23 documents. Accordingly, LVSC was forced to file this action for conversion of its property and
24 misappropriation of trade secrets. See Complaint.

25 LVSC recently sought injunctive relief and return of its stolen property and documents by
26 filing a Motion for Temporary Restraining Order. On September 20, 2011, LVSC appeared
27 before the Court in connection with the TRO, seeking return of its stolen documents due to the
28 immediate risk that Jacobs would disclose LVSC company documents that contain confidential

1 and sensitive information and/or continue his review and potentially disclose and disseminate
2 documents subject to the attorney-client privilege.

3 The Court granted LVSC's request for TRO in the form of an interim order ("Interim
4 Order") whereby Defendants and their related parties were prohibited from disseminating the
5 eleven gigabytes of documents to anyone other than their lawyers. See LVSC's Proposed
6 Interim Order attached hereto as Exhibit C. The Court further directed LVSC to seek a carve-
7 out of the stay in a separate action (A627691) with the Nevada Supreme Court and noted that
8 that the Interim Order would expire in two weeks, which *may* allow the Nevada Supreme Court
9 time to address a carve out of the stay in the separate action.

10 On September 23, 2011, at about 7:45 p.m., Jacobs' new counsel at Pisanelli Bice LLP
11 served supplemental discovery disclosures to counsel for LVSC and SCL. See 9/23/11 email and
12 First Supplemental Disclosure attached hereto as Exhibit D. The documents identified in the
13 supplemental disclosures clearly show Jacobs' new counsel has reviewed some of the stolen
14 documents and that he is not prepared to abide by the representations made by Jacobs' former
15 counsel that counsel would not review such documents. *Id.*

16 In his supplemental disclosure Jacobs has identified a range of documents which could
17 have only been obtained through his wrongful retention of documents following his employment.
18 For examples, Jacobs has identified correspondence to/from LVSC's chief financial officer,
19 general counsel, and a host of other documents dated during the period of his employment. See
20 *id.* Jacobs' recent disclosures demonstrate not only that he possesses LVSC's wrongfully
21 converted property, but also that he intends to publicly disclose stolen documents in the
22 upcoming evidentiary hearing in the separate case on November 21, 2011. Jacobs has no legal
23 right to this property, and despite the representations of Jacobs' prior counsel, improper review
24 of documents, including without limitation, review of attorney-client privileged documents
25 wrongfully retained by Jacobs, continues.

26 While LVSC has been preparing its Emergency Petition for Writ of Mandamus, which
27 was filed with the Nevada Supreme Court on September 26, 2011, Jacobs has been misusing the
28 very documents whose return LVSC seeks. LVSC's concern that Jacobs would wrongfully

1 disclose LVSC's documents, the same documents LVSC has diligently sought to protect and
2 have returned, has now come to fruition. Accordingly, LVSC seeks the following relief: (1)
3 sanctions against Defendants for violation of this Court's Interim Order; (2) a permanent
4 injunction enjoining Defendants and their counsel from disclosing to any third parties any
5 documents belonging to LVSC or its subsidiaries; (3) an order prohibiting Defendants from
6 disclosing, referencing, or using any documents, or information therein, belonging to LVSC or
7 its subsidiaries in other court proceedings, including the November 21, 2011 evidentiary
8 hearing; and (4) return by Jacobs to LVSC of all documents belonging to LVSC or its
9 subsidiaries, along with any copies of such documents.

10 III.

11 LEGAL ARGUMENT

12 "[D]istrict judges of this state have the explicit authority to impose sanctions upon parties
13 for failing to comply" with judicial orders. *City of Sparks v. Second Judicial Dist. Court*, 112
14 Nev. 952, 920 P.2d 1014 (1996). Litigants have an obligation to "take all the reasonable steps
15 within [their] power to insure compliance with such a court order." *Shuffler v. Heritage Bank*,
16 720 F. 2d 1141, 1146 (9th Cir. 1983). In determining sanctions, district courts are directed to
17 determine the appropriate sanctions for a party's violation. *Leyva v. Nat'l Default Servicing*
18 *Corp.*, 255 P.3d 1275 (Nev. 2011).

19 Here, as described above, Jacobs has reversed course from the representations of his prior
20 counsel and has violated the Court's Interim Order just four days after the Court issued it,
21 showing his blatant disregard for this Court and for privileged and confidential nature of the
22 information and documents that he wrongfully obtained from LVSC and its indirect subsidiaries.
23 By contrast, LVSC has petitioned the Nevada Supreme Court for clarification of the scope of its
24 stay order and attempted to negotiate an agreeable ESI Protocol, as this Court requested. In light
25 of the willful nature of Jacobs' violation of this Court's Interim Order, it is clear that immediate
26 action is necessary to prevent additional irreparable harm to LVSC. Although more severe
27 sanctions are rightfully within this Court's discretion, LVSC maintains that the appropriate
28 sanction here is for an order prohibiting Defendants' disclosure, reference, or use of any

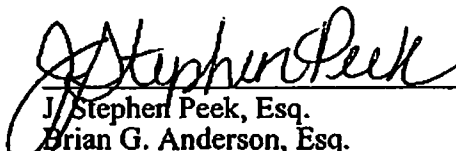
1 documents, or information therein, belonging to LVSC or its subsidiaries in other court
2 proceedings, including the November 21, 2011 evidentiary hearing; a permanent injunction
3 enjoining any review or disclosure of the documents by Jacobs or any affiliate or representative;
4 and an order that Jacobs return to LVSC of all documents, and any copies thereof, belonging to
5 LVSC or its subsidiaries.

6 IV.

7 CONCLUSION

8 Based on the foregoing, LVSC requests the Court (1) impose sanctions against
9 Defendants for violation of this Court's Interim Order; (2) grant a permanent injunction
10 enjoining Defendants and their counsel from reviewing any documents and from disclosing to
11 any third parties any documents belonging to LVSC or its subsidiaries; (3) issue an order
12 prohibiting Defendants from disclosing, referencing, or using any documents, or information
13 therein, belonging to LVSC or its subsidiaries in other court proceedings, including the
14 November 21, 2011 evidentiary hearing; and (4) order the return by Jacobs to LVSC of all
15 documents belonging to LVSC or its subsidiaries, along with any copies of such documents.

16 DATED September 26, 2011.

17 
18 J. Stephen Peek, Esq.
19 Brian G. Anderson, Esq.
20 Holland & Hart LLP
21 9555 Hillwood Drive, 2nd Floor
22 Las Vegas, Nevada 89134

23 *Attorneys for Plaintiff*
24
25
26
27
28

EXHIBIT A



CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

VIA E-MAIL

August 3, 2011

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

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

Dear Justin:

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

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

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

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

APP000256

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

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

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

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

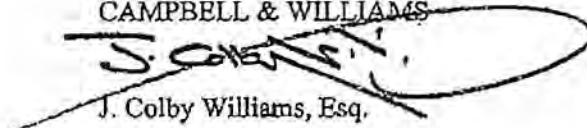
5. While Steve is unable to "return" the documents to Defendants, we agreed not to produce the documents in this litigation until the issue is resolved by the Court. Additionally, our firm will continue to refrain from reviewing the documents so as not to create any issues regarding the documents containing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

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

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

Very truly yours,

CAMPBELL & WILLIAMS


J. Colby Williams, Esq.

JCW/

APP000257

EXHIBIT B

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DECLARATION OF KENNETH J. KAY

I, KENNETH J. KAY, under penalty of perjury, state as follows:

1. I have personal knowledge of the matters set forth in this Declaration except as to those matters stated upon information and belief, and I believe those matters to be true.

2. I am at least 18 years of age and am competent to testify to the matters stated in this Declaration.

3. I currently serve as Executive Vice President and Chief Financial Officer for Las Vegas Sands Corp. ("LVSC"). I have worked for LVSC from December 2008 to present.

4. In or about March 2009, Vagus Group, Inc. ("Vagus") and LVSC entered into a consulting agreement (the "Vagus Consulting Agreement") with Vagus and Steve Jacobs to provide certain management and consulting services to LVSC.

5. I interacted on a regular basis with Steve Jacobs and others at Vagus regarding their consulting work for LVSC.

6. During the course and scope of the Vagus Consulting Agreement, Vagus and Jacobs obtained documents and information that are confidential, proprietary and/or subject to the attorney-client privilege.

7. After Jacobs became the CEO of Venetian Macau Limited ("VML") and later CEO of Sands China Ltd. ("Sands China"), I frequently interacted with Jacobs, especially during the negotiations of the initial public offering for Sands China.

8. During that time, I am aware that Jacobs obtained LVSC documents and information that were confidential, proprietary and/or subject to the attorney-client privilege and provided Jacobs with such information and documentation myself on many occasions.

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

DATED this 8th day of SEPTEMBER, 2011.


KENNETH J. KAY

EXHIBIT C

1 **ORDR**

2 J. Stephen Peek, Esq.
3 Nevada Bar No. 1759
4 Brian G. Anderson, Esq.
5 Nevada Bar No. 10500
6 HOLLAND & HART LLP
7 9555 Hillwood Drive, 2nd Floor
8 Las Vegas, Nevada 89134
9 (702) 669-4600
10 (702) 669-4650 – fax
11 speek@hollandhart.com
12 bganderson@hollandhart.com

13 *Attorneys for Plaintiff*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

18 Plaintiff,

19 v.

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

24 Defendants.

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

INTERIM ORDER

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

1 the issuance of an Interim Order. Therefore,

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

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

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

15 DATED this _____ day of September, 2011.

16
17 _____
DISTRICT COURT JUDGE

18
19 Respectfully submitted by:

Approved to form/content:

20 DATED this ____ day of September, 2011

DATED this ____ day of September, 2011

21 **HOLLAND & HART LLP**

PISANELLI BICE PLLC

22
23 _____
24 J. Stephen Peek, Esq.
25 Brian G. Anderson, Esq.
26 9555 Hillwood Drive, Second Floor
27 Las Vegas, Nevada 89134

Attorneys for Plaintiff

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

Attorneys for Defendants

EXHIBIT D

Brian Anderson

From: Kimberly Peets [kap@pisanellibice.com]
Sent: Friday, September 23, 2011 7:47 PM
To: pglaser@glaserweil.com; sma@glaserweil.com; asedlock@glaserweil.com; Steve Peek; Justin Jones; Brian Anderson
Cc: James Pisanelli; Todd Bice; Debra Spinelli; Sarah Elsdon
Subject: Jacobs v. Sands
Attachments: Jacobs First Supplemental Disclosures.pdf; Jacobs Witness & Exhibit List for Evidentiary Hearing.pdf

Attached please find (1) Plaintiff Steven Jacobs' Witness and Exhibit List for the Evidentiary Hearing on November 21, 2011, and (2) Plaintiff Steven Jacobs' First Supplemental Disclosures in the above-referenced matter. A disk containing the documents listed in the First Supplemental Disclosures has been sent to you via regular mail.

Thank you,

Kim

Kimberly A. Peets
Legal Assistant to James J. Pisanelli
and Debra L. Spinelli
PISANELLI BICE PLLC
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169
tel 702.214.2113
fax 702.214.2101

 Please consider the environment before printing.

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

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

1 **ROC**

2 J. Stephen Peek, Esq.
3 Nevada Bar No. 1759
4 Brian G. Anderson, Esq.
5 Nevada Bar No. 10500
6 HOLLAND & HART LLP
7 9555 Hillwood Drive, 2nd Floor
8 Las Vegas, Nevada 89134
9 (702) 669-4600
10 (702) 669-4650 – fax
11 speek@hollandhart.com
12 bganderson@hollandhart.com

13 *Attorneys for Plaintiff*

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

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

18 Plaintiff,

19 v.

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

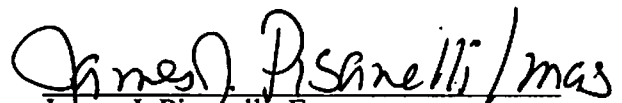
24 Defendants.

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

Date: October 4, 2011
Time: 9:00 a.m.

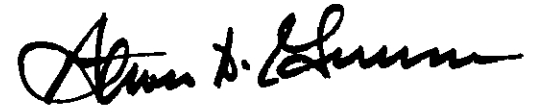
RECEIPT OF COPY

25 Receipt of a filed stamped copy of *Motion for Sanctions for Violation of the Court's*
26 *Interim Order and Additional Relief on Order Shortening Time* is hereby acknowledged this
27 28th day of September, 2011:

28 

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

Attorney for Defendants



CLERK OF THE COURT

1 **NEOJ**

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

2 JJP@pisanellibice.com

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

3 TLB@pisanellibice.com

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

4 DLS@pisanellibice.com

PISANELLI BICE PLLC

5 3883 Howard Hughes Parkway, Suite 800

Las Vegas, Nevada 89169

6 Telephone: (702) 214-2100

Facsimile: (702) 214-2101

7 Attorneys for Plaintiff Steven C. Jacobs

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 LAS VEGAS SANDS CORP., a Nevada
11 corporation,

12 Plaintiff,

13 v.

14 STEVEN C. JACOBS, an individual;
VAGUS GROUP, INC., a Delaware
15 corporation,

16 Defendants.

Case No.: A-11-648484

Dept. No.: XI

**NOTICE OF ENTRY OF INTERIM
ORDER**

17 PLEASE TAKE NOTICE that an "Interim Order" was entered in the above-captioned
18 matter on September 29, 2011, a true and correct copy of which is attached hereto.

19 DATED this 30th day of September, 2011.

20 PISANELLI BICE PLLC

21 By: /s/ James J. Pisanelli

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

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

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

3883 Howard Hughes Parkway, Suite 800

24 Las Vegas, Nevada 89169

25 Attorneys for Plaintiff Steven C. Jacobs

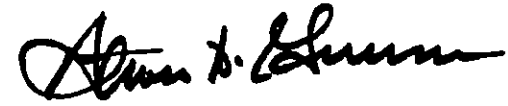
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 30th day of September, 2011, I caused to be sent via United States Mail, postage prepaid, true and correct copies of the above and foregoing **NOTICE OF ENTRY OF ORDER** properly addressed to the following:

Patricia Glaser, Esq.
Stephen Ma, Esq.
Andrew D. Sedlock, Esq.
GLASER WEIL
3763 Howard Hughes Parkway, Suite 300
Las Vegas, NV 89169
pglaser@glaserweil.com
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asedlock@glaserweil.com

J. Stephen Peek, Esq.
Justin C. Jones, Esq.
Brian G. Anderson, Esq.
HOLLAND & HART
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speek@hollandhart.com
jcjones@hollandhart.com
bganderson@hollandhart.com

/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC



CLERK OF THE COURT

1 **ORDR**

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

2 JJP@pisanellibice.com

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4 DLS@pisanellibice.com

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6 Telephone: (702) 214-2100

Facsimile: (702) 214-2101

7 Attorneys for Steven C. Jacobs and Vagus Group, Inc.

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 **LAS VEGAS SANDS CORP., a Nevada**
11 **corporation,**

12 **Plaintiff,**

13 **v.**

14 **STEVEN C. JACOBS, an individual;**
15 **VAGUS GROUP, INC., a Delaware**
16 **corporation; DOES I through X and ROE**
17 **CORPORATIONS XI through XX;**

18 **Defendants**

Case No.: A-11-648484-B

Dept. No.: XI

INTERIM ORDER

18 Plaintiff Las Vegas Sands Corp.'s ("LVSC") Application for Temporary Restraining Order
19 and Motion for Preliminary Injunction or in the Alternative for Protective Order ("Application")
20 came before the Court for hearing at 1:15 p.m., on September 20, 2011. J. Stephen Peek, Esq.,
21 and Brian G. Anderson, Esq., of the law firm Holland & Hart LLP, appeared on behalf of LVSC.
22 James J. Pisanelli, Esq., and Debra L. Spinelli, Esq., of the law firm PISANELLI BICE PLLC,
23 appeared on behalf of Defendants Steven C. Jacobs ("Jacobs") and Vagus Group, Inc. ("Vagus")
24 (collective "Defendants").¹ The Court considered the papers filed on behalf of the parties and the
25 oral argument of counsel, and good cause appearing therefor:
26

27
28 ¹ Patricia L. Glaser, Esq., of the law firm Glaser Weil Fink Jacobs Howard Avchen &
Shapiro LLP was in the audience but made no formal appearance on behalf of Sands China Ltd.
("Sands China").

STATES

THE COURT HEREBY FINDS AS FOLLOWS:

(1) The issues raised in the Application in the instant, above-referenced action appears to be an issue that the Parties have been dealing with for a year in the first, companion action, *Steven C. Jacobs v. Las Vegas Sands Corp., et al.*, Case No. A-627691, also pending before this Court (the "First Action");

(2) After Sands China sought and received a writ from the Supreme Court of Nevada on the issue of personal jurisdiction in the First Action, the Supreme Court stayed the First Action pending an evidentiary hearing on personal jurisdiction over Sands China;

(3) This Court has previously advised LVSC that it cannot take any action in the First Action because of the stay, and suggested that LVSC seek clarification and/or move the Supreme Court to modify the stay so the Court may be permitted to address the discovery dispute without violating the stay;

(4) LVSC did not seek the suggested relief from the Supreme Court, but instead commenced the instant action, and simultaneously filed the Ex Parte Application for an injunction (which is essentially a motion for protective order on the discovery dispute in the First Action).

In light of the above findings, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that relief should be granted through the issuance of an Interim Order as follows:

(1) For a period of fourteen (14) days, from the date of the hearing up to and until ~~Friday, November 4, 2011~~ ^{October}, Defendants shall not disseminate to any third party the documents that Plaintiff believes are not rightfully in the possession of Jacobs and/or Vagus Group;

(2) During that time frame, Counsel for Jacobs and Vagus Group are permitted to review the documents and take any other action related to the documents (in accordance with the Nevada Rules of Professional Responsibility) ~~but for~~ ^{except} dissemination to third parties;

(3) This Order shall remain in full force and effect until October 4, 2011, and will not be extended.

PISANELLI BICE PLLC
3883 HOWARD HUGHES PARKWAY, SUITE 800
LAS VEGAS, NEVADA 89169

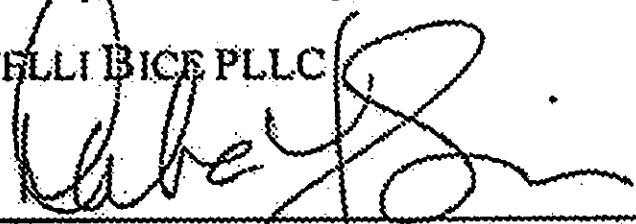
1 THE COURT FURTHER ADVISED LVSI to seek relief from the Supreme Court related
2 to the stay issued in the First Action so that this discovery dispute can be addressed properly in
3 that Action.

4 DATED: September 29, 2011

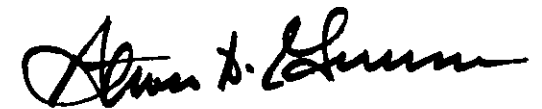
5
6
7 THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT
8

9 Respectfully submitted by:

10 PISANELLI BICE PLLC

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

15 Attorneys for Steven C. Jacobs and Vagus Group, Inc.
16
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28



CLERK OF THE COURT

OPP

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

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DLS@pisanellibice.com

PISANELLI BICE PLLC

3883 Howard Hughes Parkway, Suite 800

Las Vegas, Nevada 89169

Attorneys for Steven C. Jacobs & Vagus Group, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS SANDS CORP., a Nevada
corporation,

Plaintiff,

v.

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

Defendants.

Case No.: A-11-648484-B

Dept. No.: XI

**STEVEN C. JACOBS' AND VAGUS
GROUP, INC.'S OPPOSITION TO
LAS VEGAS SANDS CORP.'S
MOTION FOR SANCTIONS AND
COUNTERMOTION FOR SANCTIONS**

Date of Hearing: October 5, 2011

Time of Hearing: 9:00 a.m.

I. INTRODUCTION¹

Yes, Steven C. Jacobs ("Jacobs") has new counsel. This may be the only true, non-hyperbolic statement in Las Vegas Sands Corp.'s ("LVSC") 11-page, hastily written Motion

¹ Prior to filing this instant Opposition, LVSC filed a Reply in support of its Motion for Sanctions. In light of the timing, Jacobs is unsure exactly what LVSC is "replying" to. Only a brief glance at the latest rogue filing by LVSC reveals that although the initial Motion recited only two cases for authority related to this Court's discretion to order sanctions, the "reply" is 12 pages of various new legal authority and arguments. At first glance, none of the new authority or arguments appears to advance the sanction debate, but rather are designed to obtain the very same protective order repeatedly denied. As further evidence of this motive, the "reply" includes a section that asks for the very same relief it sought in its TRO Application, and asks for the relief "independent" of any [alleged] violation of the interim order.

Obviously, Jacobs and Vagus Group do not have sufficient time to address substantively the new issues raised in LVSC's "reply," and respectfully request that the "reply" be stricken and its new arguments disregarded. Should, however, the Court wish Jacobs and Vagus Group to address these issues, Jacobs and Vagus Group will, of course, do so.

1 for Sanctions, which includes a recklessly drafted sworn affidavit of an officer of this Court. The
2 rest of the Motion is replete with histrionics, overstatements, and misstatements, including about
3 the relief granted by this Court. The intended audience for LVSC's latest motion could not truly
4 have been this Court. Maybe the intended audience was LVSC's Chairman and CEO, Sheldon
5 Adelson ("Adelson"). Or maybe it was the press, always eager to key in on Adelson and LVSC's
6 penchant for not-so-nice litigation tactics.

7 Eager to paint Adelson or one of his companies as the victim, LVSC spins a tall story, to
8 say the least, regarding the documents at issue. What is clear from the very documents LVSC has
9 put into the public records in this case is that LVSC, *and* its counsel, *and* its subsidiary, Sands
10 China, Ltd. ("Sands China") have known about Jacobs' documents and records for months and
11 months. Until now, they have sat content and silent, offering not so much as a letter to this Court
12 seeking relief. Suddenly, those same documents were transformed into "stolen documents" that
13 LVSC only "recently" learned about. LVSC and Sands China claim that they have now been
14 "compelled" to take "immediate action" to protect their interests. The truth, of course, is that they
15 took action only after they learned that Jacobs retained new counsel. Needless to say, the timing
16 of LVSC's and Sands China's hysteria is suspect.

17 To support its dramatic maneuvering, and without any facts whatsoever – because there
18 are none – LVSC and Sands China have all but directly stated that "new counsel" appeared for
19 Jacobs because of the "stolen documents" and because new counsel has no qualms acting
20 unethically. This is utterly untrue, no matter how many times LVSC repeats it in a brief or
21 recklessly utters the same in open Court.

22 Setting aside the drama and lies, the motion before the Court simply is whether Jacobs and
23 Vagus Group, Inc. ("Vagus Group") should be sanctioned for allegedly violating an order of this
24 Court because Jacobs – not Vagus Group – purportedly identified "stolen documents" on their
25 exhibit list for the evidentiary hearing taking place in the primary action, A627691, pending
26 before this same Court (the "First Action"). The Interim Order, however, states only that Jacobs
27 and Vagus Group "shall not disseminate to any third party the documents that Plaintiff believes
28 are not rightfully in the possession of Jacobs and/or Vagus Group" during the fourteen day period

1 of September 20, 2011 to October 4, 2011. Neither Jacobs nor Vagus Group has disseminated the
2 subject documents to any third party in violation of the Interim Order. And, neither has Jacobs
3 "new counsel."

4 Of course, eager to overreach, LVSC asks for a permanent injunction for the immediate
5 return of the documents (though the Court already stated that this request was a discovery issue in
6 the First Action, which is stayed), and, of course, an order prohibiting Jacobs from using any of
7 his documents during the evidentiary hearing in *another action*.² The plain fact is, Jacobs and
8 Vagus Group did not violate the Interim Order and therefore LVSC is not entitled to any
9 sanctions. Indeed, LVSC should be sanctioned for filing a meritless motion and forcing Jacobs
10 and Vagus Group to respond to all of this nonsense. Moreover, LVSC and its counsel should be
11 cautioned for its purposefully reckless statements and should be made to apologize to the Court,
12 Jacobs, and his "new counsel" on the record and in writing.

13 II. FACTUAL AND PROCEDURAL HISTORY

14 A. The Debate Over Personal Jurisdiction In The First Action.

15 As all involved in the First Action know, the issue of whether this Court has personal
16 jurisdiction over Sands China has been briefed and argued in the district court and at the Supreme
17 Court. In February and March 2011, Jacobs *and* Sands China attached exhibits to their respective
18 briefs, and they were filed in the public record. (Jacobs' Opp'n to Sands China's Mot. to Dismiss
19 for Lack of Personal Juris., filed on Feb. 9, 2011, on file with the Court; Sands China's Reply,
20 filed on Feb. 28, 2011, on file with the Court.) The parties discussed the exhibits at length during
21 the hearing on this matter held on March 15, 2011. As a result of Sands China's appeal, the
22 parties briefed the issue again, and the same briefs and exhibits were part of the record considered
23 by the Supreme Court. The Supreme Court subsequently ordered an evidentiary hearing on the
24 issue of personal jurisdiction, staying all matters not related to the jurisdictional issue until after
25

26 ² During the September 20, 2011 hearing, Mr. Peek admitted that this current Second
27 Action was only filed because of the stay in the First Action. When the Court stated that the
28 claims looked more like counterclaims, Peek agreed. This, of course, is entirely improper and
subjects LVSC and Peek to Rule 11 sanctions. Knowing that LVSC acted improperly by filing
the Second Action to get around the stay, LVSC spins a different tale in its papers to the Supreme
Court.

1 the evidentiary hearing. (Supreme Court Order, dated Aug. 26, 2011, on file with the Court.)
2 Adhering to the High Court's mandate, this Court set an evidentiary hearing for November 21,
3 2011, and ordered the parties to exchange witness and exhibit lists on or before September 23,
4 2011. (Decl. of James. J. Pisanelli ("Pisanelli Decl.") ¶ 3, attached hereto as Ex. 1.)

5 On September 13, 2011, LVSC filed two discovery motions and a motion for leave to
6 amend its Counterclaim in the First Action. The Court told LVSC in no uncertain terms that she
7 could not take action on the motions because of the Supreme Court stay and that LVSC should
8 seek a clarification of the stay if it wanted the motions heard. Instead of doing so, LVSC
9 commenced the Second Action, the instant action, seeking the very same relief it sought in the
10 discovery motions in the First Action. This did not go unnoticed by Jacobs or the Court, and was
11 even admitted to be true by LVSC's counsel. (Sept. 20, 2011 Hrg. Trans., 20:10-21:8, attached
12 hereto as Ex. 2.) However, the Court gave LVSC two weeks to do what it should have done
13 before – seek clarification of or relief from the stay. (*Id.* 23:7-22.) Finally, after being told twice
14 and commencing a rogue action, LVSC sought emergency relief from the Supreme Court.
15 (Pisanelli Decl. ¶¶ 5-7.)

16 **B. The Court's Actual Interim Order.**

17 During the September 20, 2011 hearing, the Court entered an oral interim order. Instead
18 of preparing a proposed order that actually reflected the Court's statements and order, LVSC
19 prepared a proposed order that reflected its own desires and, of course, overreached. (*Compare*
20 Ex. 2, Sept. 20, 2011 Hrg, Trans., *with* LVSC's Proposed Interim Order, attached hereto as Ex. 3.)
21 Jacobs presented the Court with a competing order, which was entered on September 29, 2011,
22 with some minor changes. (Interim Order, attached hereto as Ex. 4.) The Interim Order, entered
23 on September 29, 2011, reflects the Court's actual decision, and provides as follows:

24 (1) For a period of fourteen (14) days, from the date of the
25 hearing [September 20, 2011] up to and until October 4, 2011,
26 Defendants shall not disseminate to any third party the documents
that Plaintiff believes are not rightfully in the possession of Jacobs
and/or Vagus Group;

27 (*Id.*) In addition, the Interim Order expressly allows Jacobs and Vagus Group's "new counsel" to
28 review the subject documents:

(2) During that time frame, Counsel for Jacobs and Vagus Group are permitted to review the documents and take any other action related to the documents (in accordance with the Nevada Rules of Professional Responsibility) but for dissemination to third parties;

(*Id.*)

C. **Jacob's Includes All Of The Exhibits To The Original Briefs On Its Exhibit List For The Evidentiary Hearing On Jurisdiction.**

Switching back to the First Action (and further demonstration of the impropriety of this Second Action), as ordered by this Court, on September 23, 2011, Jacobs prepared and served on opposing parties its witness and exhibit list for the evidentiary hearing. (Jacobs' Witness & Ex. List, attached hereto as Ex. 5.)³ Jacobs identified his potential exhibits by Bates numbers.

(*Id.*) And, consistent with the rules of civil procedure, Jacobs prepared and served a supplemental 16.1 disclosure. (Jacobs' Supp. Discl., attached hereto as Ex. 7.) This supplemental disclosure included some new documents found on the internet (most from LVSC's and Sands China's websites) and documents that the parties, Sands China included, already provided to this Court as exhibits to their respective briefs on personal jurisdiction in early 2011 (some of which can also be found on the internet on sites other than Wiznet). (*Id.*; Pisanelli Decl. ¶ 9.) Indeed, not only have these exhibits already been produced and discussed at length, but they are already a matter of public record and have been for approximately seven months, without one word of objection from LVSC or Sands China.⁴ (Pisanelli Decl. ¶¶ 9-10.) Of particular interest, and irony, is the fact that Sands China also listed the same records LVSC complains about in its own exhibit list. Jacobs awaits LVSC's motion for sanctions against Sands China.

³ Although LVSC complains about receiving Jacobs' witness and exhibit list at 7:45 p.m., it must be noted that Sands China did not serve their witness and exhibit list until hours later. (Sands China's Witness and Ex. List, with accompanying e-mail, attached hereto as Ex. 6.)

⁴ Jacobs identified the previously used documents in a supplemental disclosure because, although already discussed and utilized in this action, the documents were never Bates-stamped for ease of identification and disclosed in a supplemental disclosure. Failure to supplement disclosures could result in preclusion for an evidentiary hearing or trial, pursuant to NRCP 37(c)(1). In addition, identifying documents by Bates-numbers in an exhibit list is a normal and routine process (despite the fact that Sands China opted not to adhere to this procedure, instead requiring Jacobs to sift through thousands of disclosures to find those that appear on Sands China's exhibit list).

1 **III. DISCUSSION**

2 **A. Neither Jacobs Nor His Counsel Violated The Interim Order.**

3 LVSC accuses Jacobs and his "new counsel" of various things that they have not actually
4 done, and complains that these manufactured fictions constitute violations of this Court's Interim
5 Order. LVSC's complaint boils down to essentially two accusations: (1) "new counsel" has
6 "reviewed . . . additional stolen documents;" and (2) Jacobs and "his counsel" "identif[ied] one
7 thousand pages of such stolen documents in a supplemental disclosure and in a witness and
8 exhibit list for the November 21, 2011 evidentiary hearing." (*E.g.*, Mot. 7:10-11, 26-27.) Of
9 course, LVSC has argued that each of these actions is "in direct violation of this Court's Interim
10 Order." (*Id.*) With pleasure, Jacobs and his "new counsel" respond to each baseless accusation in
11 turn. To be clear, LVSC accuses Jacobs and his "new counsel" of things they have not done, but
12 none of what Jacobs or his "new counsel" actually have done is a violation of this Court's Interim
13 Order.

14 **1. *Jacobs' new counsel, Pisanelli Bice, has not reviewed "additional stolen***
15 ***documents"***

16 There can be absolutely no debate that the Interim Order actually entered by this Court
17 expressly provides that "Counsel for Jacobs and Vagus Group *are permitted to review the*
18 *documents* and take any other action related to the documents (in accordance with the Nevada
19 Rules of Professional Responsibility) but for dissemination to third parties." (Ex. 4.) Thus, if
20 Pisanelli Bice did as LVSC claims, they would not have acted in violation of the Interim Order.

21 However, well aware of the August 2011 representation by Jacobs' prior counsel, Jacobs'
22 "new counsel" has abided by the agreement and not reviewed any "additional documents."
23 (Pisanelli Decl. ¶ 11.) LVSC's entire Motion is premised on false, baseless allegations to the
24 contrary:

- 25 • "Jacobs' [former] counsel, Campbell & Williams, for their
26 part, did confirm" that they would cease review of and not produce
27 any of the subject documents until the issue was resolved. But,
28 "soon after. . . Jacobs retained the law firm of Pisanelli Bice to
replace Campbell & Williams . . . [and] Pisanelli Bice ignores the
representations of Jacobs' former counsel." (Mot. 3:10-18; Peek
Decl. ¶¶ 5, 6.) Wrong.

1 • "In direct contrast to the representations of his prior
counselPisanelli Bice emailed supplemental disclosures"
(Mot. 4:3-5.) Wrong.

2 • "Jacobs' new counsel, Pisanelli Bice, ignores the
3 representations of [Jacobs'] former counsel" (Mot. 7:8-10.)
Wrong.

4 • "Jacobs' new counsel . . . is not prepared to abide by the
5 representations made by Jacobs' former counsel"
(Mot. 9:13-15.) Wrong.

6 • "[D]espite the representations of Jacobs' prior counsel,
7 [Jacobs and/or his new counsel have] improper[ly] review[ed]
8 documents" (Mot. 9:23-24.) Wrong.

9 • "Jacobs has reversed course from the representations of his
prior counsel" (Mot. 10:19-20.) And, wrong.

10 All of the above accusations must be immediately withdrawn and an apology – in writing
11 and on the record – must be ordered from LVSC and its counsel (the affiant) to the Court, Jacobs
12 and his "new counsel" and necessarily in that order

13 It is more than apparent that LVSC failed to read the documents listed on Jacobs' witness
14 list and supplemental disclosure. Had they read the documents and been thoughtful of the
15 proceedings to date, they would have known that none of the "new" documents are new at all.
16 Since they are one and the same counsel who filed the briefs, argued the briefs, and worked on
17 this case from its commencement, there is absolutely no excuse for their lack of institutional
18 memory.

19 It cannot not go unmentioned – indeed, it must be screamed from the rooftops – that in
20 Sands China's own witness and exhibit list for the evidentiary hearing, Sands China identifies as
21 possible exhibits a "Copy of Exhibits 1 through 15 of Plaintiff's Opposition to SCL's Motion to
22 Dismiss." (Ex. 6, ¶ 8) Sands China did not identify any documents on its exhibit list by Bates
23 number (as is both proper and efficient), but Sands China did disclose the very same documents
24 about which its parent company (only now) complains.⁵ If sanctions are going to issue, it should
25

26 ⁵ Sands China did not formally appear in this Second Action; rather its counsel just
27 appeared at the TRO hearing desperately wanting to speak. However, Sands China makes these
28 same baseless arguments and accusations in the Motion in Limine it filed in the First Action. In
other words, Sands China seeks to preclude Jacobs from offering into evidence exhibits that
appear on its own exhibit list, some of which Sands China offered into the public record in the
first instance, *infra*, and exhibits that neither LVSC nor Sands China ever objected to or sought to

1 not be against Jacobs, but against LVSC for the "games" they are playing – which is what this
2 entire Second Action is all about. (Ex. 2, Sept. 20, 2011 Hrg. Trans., 12:1-13:1, 22:23-23:6.)

3 **2. Neither Jacobs nor new counsel, Pisanelli Bice, identified one thousand**
4 **pages of allegedly "stolen documents" in a supplemental disclosure and**
5 **in the exhibit list for the November evidentiary hearing.**

6 LVSC accuses Jacobs of identifying "one thousand pages" of these purportedly "stolen"
7 documents on his exhibit list and supplemental disclosure. Jacobs' exhibit list included the
8 following documents, which may or may not equal one thousand pages:

- 9 • 26 documents printed from the internet;
- 10 • 12 documents from Jacobs' initial disclosures, served back in May 2011;
- 11 • 10 documents that comprise the exhibits to Jacobs' Opposition to Sands
12 China's Motion to Dismiss for Lack of Personal Jurisdiction, filed and
13 made part of the public record on February 9, 2011, without any objection
14 – in writing, orally, or even at the hearing – by LVSC or Sands China;
- 15 • Most ironically, 2 documents that comprise the exhibits to Sands China's
16 Reply in Support of its Motion to Dismiss for Lack of Personal
17 Jurisdiction, filed and made a part of the public record on February 28,
18 2011; and
- 19 • 2 new documents (*i.e.*, a letter terminating Jacobs' employment and one of
20 Jacobs' pay stubs.

21 In short, the "additional" documents came from the internet, but for two documents that
22 no one can argue with a straight face are not properly in Jacobs' possession (*i.e.*, termination letter
23 and pay stub). LVSC (and Sands China) either did not realize this fact or they decided that it
24 sounded better to argue dramatic non-truths. In any event, all know that the crux of LVSC's
25 concern is five or six emails, which have been in the public record (some affirmatively injected
26 into the public record by Sands China) for nearly a year without objection. LVSC waived any
27 arguments regarding privilege or other protection.

28 withdraw from the public record. These shenanigans would be laughable if they were not
embedded in LVSC's and Sands China's counsels' own ethical lapses.

1 A court "will grant no greater protection to those who assert the privilege than their own
2 precautions warrant." *The Navajo Nation v. Peabody Hldg. Co.*, 255 F.R.D. 37, 45 (D.D.C. 2009)
3 (citation omitted). "Therefore, the party claiming privilege must prevent the introduction of
4 privileged material into the public record." *Id.* It follows, then, that a privilege and/or protection
5 is "waived by placing privileged matters in controversy or by explicitly turning over privileged
6 documents." *Ideal Elec. Co. v. Flowserve Corp.*, 230 F.R.D. 603, 610 (D. Nev. 2005); *United*
7 *States v. Zimmerman*, 120 F. App'x 15, 17 (9th Cir. 2004) ("[T]o the extent the letter was ever
8 protected by attorney-client privilege, the privilege was waived by disclosure."). In addition, if
9 purportedly protected documents are disclosed by a third party, the complaining party must
10 promptly "pursue all reasonable means of preserving the confidentiality of the privileged matter."
11 *United States v. SDI Future Health, Inc.*, 464 F. Supp. 2d 1027, 1041 (D. Nev. 2006); *United*
12 *States v. de la Jara*, 973 F.2d 746 (9th Cir.1992) (holding that failure to recover purportedly
13 privileged/confidential documents for six months after notice, the party allowed "the mantle of
14 confidentiality which once protected the documents" to be "irretrievably breached," and thereby
15 waived any privilege or protection).

16 Here, Jacobs offered various documents and emails as exhibits to its Opposition to Sands
17 China's Motion to Dismiss for Lack of Personal Jurisdiction. (Jacobs' Opp'n, on file with the
18 Court.) These documents were put into the public record, without any objection by LVSC or its
19 subsidiary, Sands China. Indeed, Sands China affirmatively inserted into the public record emails
20 and other documents, when it attached them as exhibits to its Reply in Support of its Motion to
21 Dismiss. (Sands China's Reply, on file with the Court.) Eight months have since passed and,
22 LVSC's Motion for Sanctions is the very first time LVSC complains about any documents or
23 seeks relief related to any documents in Jacobs' possession. This very late argument has been
24 waived by both affirmatively inserting purportedly protected documents in the record and by
25 failing to object or try to retrieve – for over eight months – any documents Jacobs possesses
26 including, but not limited to, the documents attached as exhibits to his Opposition to Sands
27 China's Motion to Dismiss.

1 Back to the issue presently before the Court, although LVSC claims that there are "new"
2 and "additional" privileged and/or protected documents in Jacobs' exhibit list and supplemental
3 disclosure, this is untrue. LVSC cannot run from the public record. Jacobs merely Bates-
4 numbered and listed in Jacobs' exhibit list and accompanying supplemental disclosure these
5 already-in-the-public record documents.

6 **B. LVSC And Sands China Belatedly Seek The Same Relief On Different Fronts.**

7 Rather tellingly, LVSC seeks much of the same relief via this hyped-up sanctions motion
8 that it sought in its Application for Temporary Restraining Order. As the Court noted during the
9 September 20, 2011 hearing on LVSC's Application, the issue is a discovery matter in the First
10 Action, which has been stayed by the Supreme Court. Inasmuch as LVSC belatedly sought relief
11 from the Supreme Court related to the stay, LVSC is forced to seek alternative relief during the
12 two week period and in the event LVSC's belated request is denied. So, LVSC filed a sanctions
13 motion in the Second Action, and Sands China filed a motion in limine to be heard on an order
14 shortening time in the First Action on the same set of manufactured facts and false allegations.

15 Despite the two-front attack, the Sands parties request the same relief: (1) stop Jacobs
16 from reviewing the documents he possesses related to either the First or Second Action,
17 (2) preclude Jacobs from using the damning documents against them in the First Action on either
18 the jurisdictional issue or any other issue; and (3) order Jacobs to return the documents. The
19 main, unavoidable focus: stop Jacobs from using the documents he has long possessed against
20 any Sands entity ever. That Sands is fearful of the substance of those documents is more than
21 apparent, but it does not make the sanctions motion proper.

22 LVSC's game is dreadfully obvious. It was forced to withdraw its discovery motions in
23 the First Action because of the stay, and it was only awarded two weeks of limited relief via the
24 Interim Order in the "separate" Second Action. So LVSC trumped up a claim in the Second
25 Action that the Interim Order had been violated in order to get the protective order in the First
26 Action. This is wholly improper and cannot be permitted, especially in the form of a sanction
27 against Jacobs. Further, this manufactured self-serving complexity demonstrates why claim
28

1 splitting is impermissible. LVSC's last minute litigation tactics should not be condoned simply
2 because LVSC did not want to ask the Supreme Court for relief from the stay.

3 C. **Jacobs Is Entitled To Recover His Fees And Costs In Having To Respond To**
4 **LVSC's Baseless Motion.**

5 For the reasons stated above, LVSC is not entitled to the sanctions it seeks. Its motion
6 was, from the outset, a waste of time. This Court has broad discretion to require the moving party
7 of a failed motion to pay the prevailing party's fees and costs. NRCP 37(b) (providing a non-
8 exhaustive list of possible orders); NRCP 37(a)(4)(B) ("[I]f the motion is denied, the court . . .
9 shall, after affording an opportunity to be heard, require the moving party or the attorney filing the
10 motion or both of them to pay to the party . . . who opposed the motion the reasonable expenses
11 incurred in opposing the motion, including attorney's fees, unless the court finds that the making
12 of the motion was substantially justified or that other circumstances make an award of expenses
13 unjust."). Had LVSC just looked at the record (assuming LVSC did not file the Motion regardless
14 of the record and its lack of merit), LVSC would have seen that the emails that caused this entire
15 ruckus have been a part of the public record for months, without any objection. There is no
16 justification, much less a "substantial[] justif[ication]" for the filing of LVSC's meritless,
17 hyperbolic, motion full of false accusations. LVSC should be required to compensate Jacobs for
18 his counsel's time and expense in having to oppose its motion.

19 IV. **CONCLUSION**

20 In light of the foregoing, LVSC's Motion for Sanctions should be denied, LVSC and its
21 counsel should be ordered to apologize to Jacobs and his "new counsel, Pisanelli Bice" in
22 the record and in writing for the false, and unsupportable accusations of misconduct, and LVSC
23
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28

1 should be ordered to pay Jacobs' fees and costs associated with having to defend the baseless
2 Motion.

3 DATED this 3rd day of October, 2011.

4 PISANELLI BICE PLLC

5
6 By: /s/ Debra L. Spinelli
7 James J. Pisanelli, Esq., Bar No. 4027
8 Todd L. Bice, Esq., Bar No. 4534
9 Debra L. Spinelli, Esq., Bar No. 9695
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169

10 Attorneys for Steven C. Jacobs & Vagus Group, Inc.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 3rd day of October, 2011, I caused to be sent via email and United States Mail, postage prepaid, true and correct copies of the above and foregoing **STEVEN C. JACOBS' AND VAGUS GROUP, INC.'S OPPOSITION TO LAS VEGAS SANDS CORP.'S MOTION FOR SANCTIONS** properly addressed to the following:

Patricia Glaser, Esq.
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/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC

EXHIBIT 1

DECL

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Attorneys for Steven C. Jacobs & Vagus Group, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS SANDS CORP., a Nevada
corporation,

Plaintiff,

v.

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

Defendants.

Case No.: A-11-648484-B

Dept. No.: XI

**DECLARATION OF JAMES J.
PISANELLI, ESQ. IN SUPPORT OF
STEVEN C. JACOBS' AND VAGUS
GROUP, INC.'S OPPOSITION TO
LAS VEGAS SANDS CORP.'S
MOTION FOR SANCTIONS AND
COUNTERMOTION FOR SANCTIONS**

Date of Hearing: October 5, 2011

Time of Hearing: 9:00 a.m.

I, JAMES J. PISANELLI, ESQ., declare as follows:

1. I am a resident of the State of Nevada, and a partner with the law firm of PISANELLI BICE PLLC, counsel for Steven C. Jacobs and Vagus Group, Inc., Defendants in the above-entitled action (the "Second Action"). Mr. Jacobs is the Plaintiff in the first and primary action styled Stephen C. Jacobs v. Las Vegas Sands Corp. ("LVSC") and Sands China, Ltd. ("Sands China"), Case No. A-10-627691, pending in this very same Court (the "First Action").

2. I make this declaration in support of Steven C. Jacobs' and Vagus Group, Inc.'s Opposition to Las Vegas Sands Corp.'s Motion For Sanctions; and Countermotion for Sanctions ("Opposition"). I have personal knowledge of the following, and can and do competently testify thereto.

1 3. Pursuant to the Supreme Court of Nevada's mandate, this Court set an evidentiary
2 hearing for November 21, 2011, and ordered the parties to exchange witness and exhibit lists for
3 that evidentiary hearing by on or before September 23, 2011.

4 4. I appeared before the Court for a status hearing in the First Action. During that
5 hearing, this Court advised LVSC counsel, Justin Jones, Esq., of the law firm of Holland & Hart
6 that the Court did not believe it could rule on LVSC's three recently filed motions because of the
7 Supreme Court stay. This Court also told LVSC's counsel that it should seek a clarification or
8 relief from the stay from the Supreme Court.

9 5. Instead of doing so, LVSC commenced the Second Action, asserting as affirmative
10 claims for relief the claims it intended to offer in an amended counterclaim, and filed an
11 Application for a Temporary Restraining Order ("TRO Application") on an order shortening time
12 (also in the Second Action).

13 6. At the September 20, 2011 hearing on LVSC's TRO Application in the Second
14 Action, this Court granted LVSC interim relief, and gave LVSC two weeks to do what it should
15 have done before – seek clarification or relief from the stay from the Supreme Court.

16 7. Finally, after being told twice and after commencing a rogue action, LVSC sought
17 emergency relief from the Supreme Court.

18 8. Pursuant to this Court's directive in the First Action, my office prepared a witness
19 and exhibit list for the evidentiary hearing on personal jurisdiction and, with it, a supplemental
20 16.1 disclosure.

21 9. The supplemental disclosure included some new documents found on the internet
22 (most from LVSC's and Sands China's websites) and documents that the parties, Sands China
23 included, already provided to this Court as exhibits to their respective briefs on personal
24 jurisdiction in early 2011 (some of which can also be found on the internet on sites other than
25 Wiznet). The exhibits to the various briefs related to personal jurisdiction were already produced
26 and discussed at length, and are a matter of public record and have been for approximately seven
27 months.

28 10. Neither LVSC nor Sands China ever objected.

1 11. I and my firm are aware of and have abided by the representations of Mr. Jacobs'
2 prior counsel, the law firm of Campbell & Williams, regarding Mr. Jacobs' documents. Neither I
3 nor my law firm has reviewed any "additional documents" that Mr. Jacobs has long possessed.

4 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
5 is true and correct and that I signed this Declaration on October 3, 2011.

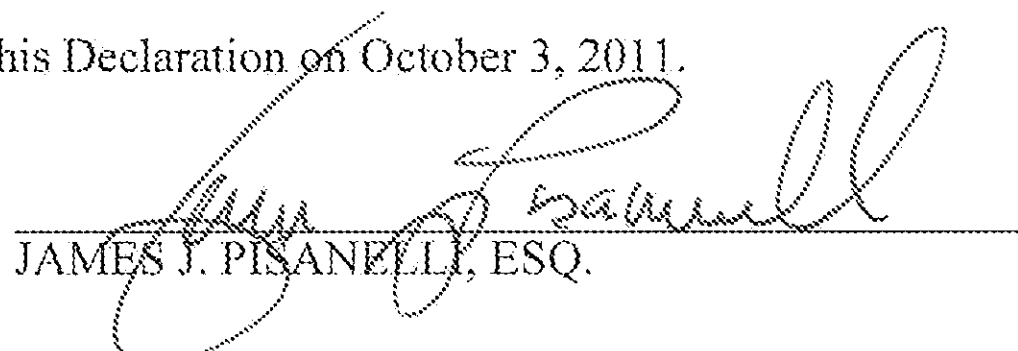
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8 JAMES J. PISANELLI, ESQ.
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EXHIBIT 2

ORIGINAL

COPY

Adam D. Schuman

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

LAS VEGAS SANDS CORP.

Plaintiff

vs.

STEVEN C. JACOBS, et al.

Defendants
.....

CASE NO. A-648484

DEPT. NO. XI

Transcript of
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON APPLICATION FOR TRO

SEPTEMBER 20, 2011

APPEARANCES:

FOR THE PLAINTIFFS:

J. STEPHEN PEEK, ESQ.

FOR THE DEFENDANTS:

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

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

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

RECEIVED
SEP 26 2011
CLERK OF THE COURT

1 MR. PISANELLI: It comes as no coincidence to anyone
2 that we see Sands China counsel sitting in the front row.
3 THE COURT: Well, in the audience. She's behind the
4 bar.
5 MR. PISANELLI: Front row of the audience. My
6 question would be why isn't she sitting at the table. Because
7 that's really who this real party in interest is.
8 THE COURT: You know why that is. You know exactly
9 why, Mr. Pisanelli.
10 MR. PISANELLI: I do indeed.
11 THE COURT: So say it for the record.
12 MR. PISANELLI: So the Sands China can't be claimed
13 to have come into this court and thereby subject themselves to
14 jurisdiction.
15 THE COURT: Because they don't want to ask for
16 affirmative relief --
17 MR. PISANELLI: Right.
18 THE COURT: -- and subject themselves to --
19 MR. PISANELLI: So they have the parent corporation,
20 Las Vegas Sands --
21 THE COURT: So they're playing a game.
22 MR. PISANELLI: -- their affiliate, as a shell.
23 Instead of coming in to accomplish what it wants, they use a
24 corporate shell to try and get the same relief and get the
25 same benefit. And Your Honor saw through it even faster than

1 I did.

2 The last point I'll make, Your Honor, is this. We
3 have rules that govern what we do as parties and as lawyers.
4 We have rules of professional responsibility, we have rules of
5 evidence, we have rules of procedure. Those rules govern any
6 situation that is possibly raised by this issue. If at the
7 end of the day either I or Campbell & Williams or my client is
8 in possession of a document that should be returned, the rules
9 say how, in what manner that action shall occur. And the
10 rules also have some teeth to them, Your Honor. They say if
11 you don't follow them there are consequences that Your Honor
12 will be empowered to exercise as you deem appropriate in order
13 to insure that justice is carried out.

14 We don't come to Your Honor to say, Judge, we filed
15 a request for production of documents and we'd like a
16 mandatory injunction telling the other side to produce the
17 records we've asked for. That's not what you do. You have
18 rules that tell you what to do when you want to do things in a
19 discovery process, and we have consequences if we don't follow
20 those rules. You don't come in and say, forget all the other
21 rules, I'm in this precarious position because of the stay or
22 because it's better news if it's a TRO or whatever the excuse
23 will be. A TRO is not the proper method to deal with these
24 issues. We already have rules in place. I know what they
25 are. I will follow them.

1 I'm going to do.

2 THE COURT: And you're not intending to do that, are
3 you?

4 MR. PISANELLI: No. And that is my point. Ask me
5 the --

6 THE COURT: See, he says, no harm, no foul.

7 MR. PISANELLI: -- ask me the question, and I'll
8 give them an answer. But to have an injunction imposed
9 against our client in a case that they're clearly trying in
10 the press, Your Honor, is an unfair thing.

11 MR. PEEK: Your Honor, I --

12 THE COURT: Gentlemen. Gentlemen. This is really
13 easy. Mr. Pisanelli and his client aren't going to disperse
14 these documents to any third party.

15 MR. PEEK: Disseminate to any third party.

16 THE COURT: Disseminate. And if you'd ask them
17 that, he said he would have done it. But because of the --

18 MR. PEEK: Your Honor, I --

19 THE COURT: Wait. Wait. I'm not finished.

20 MR. PEEK: I understood at the hearing on Friday
21 that he was asked that. I thought that that's what happened
22 with Mr. Jones and Mr. Maw, who were here.

23 THE COURT: I don't think that's what happened.

24 MR. PEEK: I --

25 THE COURT: I know that Ms. Glaser's saying that's

1 what happened, but that's not what I think happened.

2 Ms. Glaser, it's probably not a good idea, given the
3 game that's being played right here, if you say anything.

4 MR. PEEK: There's no game here, Your Honor. This
5 is not about gamesmanship.

6 THE COURT: If you say so, Mr. Peek.

7 So the reason I'm giving you this relief on this is
8 because it will take you two weeks to get the Supreme Court to
9 carve out this issue from the stay. I'm not inclined to
10 extend it beyond the two weeks.

11 MR. PEEK: I get that, Your Honor.

12 THE COURT: It's real easy to say, Dear Supreme
13 Court, this issue is -- the stay is overbroad, we need you to
14 narrow the stay, can you please let us do something. Because
15 it's silly to make you file a new action and pay my \$1500
16 filing fee in Business Court, which is okay, they appreciate
17 it at the General Fund of the County. But, you know, it's --

18 MR. PEEK: We're always -- we're all about helping
19 the General Fund of the County, Your Honor.

20 THE COURT: -- silly. It's silly.

21 MR. PEEK: I get that, Your Honor.

22 THE COURT: So --

23 MR. PISANELLI: Your Honor, one point. I just have
24 to tell you and make the record. I'm highly offended by the
25 circumstances in which this was brought. The fact that my

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

9/25/11

DATE

EXHIBIT 3

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September 26, 2011

VIA HAND DELIVERY

Daniel Kutinac, JEA to
District Court Dept. XI
Regional Justice Center
200 Lewis Avenue, 14th Floor
Las Vegas, Nevada 89169

VIA FACSIMILE ONLY: 214-2101

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

Re: Las Vegas Sands Corp. v. Jacobs, et al.
Case No. A-11-648484-B

Dear Mr. Kutinac:

Please find Las Vegas Sands Corp.'s ("LVSC") proposed Interim Order from the hearing on LVSC's *ex parte* Motion for Temporary Restraining Order on September 20, 2011. We have circulated a draft to opposing counsel, but have been unable to reach an agreement on its terms. Given the limited duration of the Court's Interim Order, we have submitted our proposed draft order independently, for consideration by the Court.

It is my understanding that Pisanelli Bice will be submitting a competing order as well.

Sincerely,



Brian G. Anderson
of Holland & Hart LLP

BGA/dmb
Enclosure

5242411_1.DOCX

ORDR

J. Stephen Peek, Esq.
 Nevada Bar No. 1759
 Brian G. Anderson, Esq.
 Nevada Bar No. 10500
 HOLLAND & HART LLP
 9555 Hillwood Drive, 2nd Floor
 Las Vegas, Nevada 89134
 (702) 669-4600
 (702) 669-4650 – fax
speek@hollandhart.com
bganderson@hollandhart.com

Attorneys for Plaintiff

DISTRICT COURT**CLARK COUNTY, NEVADA**

LAS VEGAS SANDS CORP., a Nevada
 corporation,

Plaintiff,

v.

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

Defendants.

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

INTERIM ORDER

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

1 the issuance of an Interim Order. Therefore,

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

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

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

15 DATED this _____ day of September, 2011.

16
17 DISTRICT COURT JUDGE

18
19 Respectfully submitted by:

20 DATED this ____ day of September, 2011

21 **HOLLAND & HART LLP**

22 

23 J. Stephen Peek, Esq.
24 Brian G. Anderson, Esq.
25 9555 Hillwood Drive, Second Floor
26 Las Vegas, Nevada 89134

27 *Attorneys for Plaintiff*

EXHIBIT 4



CLERK OF THE COURT

ORDR

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

JJP@pisanellibice.com

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Facsimile: (702) 214-2101

Attorneys for Steven C. Jacobs and Vagus Group, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

**LAS VEGAS SANDS CORP., a Nevada
corporation,**

Plaintiff,

v.

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

Defendants

Case No.: A-11-648484-B

Dept. No.: XI

INTERIM ORDER

Plaintiff Las Vegas Sands Corp.'s ("LVSC") Application for Temporary Restraining Order and Motion for Preliminary Injunction or in the Alternative for Protective Order ("Application") came before the Court for hearing at 1:15 p.m., on September 20, 2011. J. Stephen Peek, Esq., and Brian G. Anderson, Esq., of the law firm Holland & Hart LLP, appeared on behalf of LVSC. James J. Pisanelli, Esq., and Debra L. Spinelli, Esq., of the law firm PISANELLI BICE PLLC, appeared on behalf of Defendants Steven C. Jacobs ("Jacobs") and Vagus Group, Inc. ("Vagus") (collective "Defendants").¹ The Court considered the papers filed on behalf of the parties and the oral argument of counsel, and good cause appearing therefor:

¹ Patricia L. Glaser, Esq., of the law firm Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP was in the audience but made no formal appearance on behalf of Sands China Ltd. ("Sands China").

12
STATES

1 THE COURT HEREBY FINDS AS FOLLOWS:

2 (1) The issues raised in the Application in the instant, above-referenced action appears
3 to be an issue that the Parties have been dealing with for a year in the first, companion action,
4 *Steven C. Jacobs v. Las Vegas Sands Corp., et al.*, Case No. A-627691, also pending before this
5 Court (the "First Action");

6 (2) After Sands China sought and received a writ from the Supreme Court of Nevada
7 on the issue of personal jurisdiction in the First Action, the Supreme Court stayed the First Action
8 pending an evidentiary hearing on personal jurisdiction over Sands China;

9 (3) This Court has previously advised LVSC that it cannot take any action in the First
10 Action because of the stay, and suggested that LVSC seek clarification and/or move the Supreme
11 Court to modify the stay so the Court may be permitted to address the discovery dispute without
12 violating the stay;

13 (4) LVSC did not seek the suggested relief from the Supreme Court, but instead
14 commenced the instant action, and simultaneously filed the Ex Parte Application for an injunction
15 (which is essentially a motion for protective order on the discovery dispute in the First Action).

16 In light of the above findings, IT IS HEREBY ORDERED, ADJUDGED, AND
17 DECREED that relief should be granted through the issuance of an Interim Order as follows:

18 (1) For a period of fourteen (14) days, from the date of the hearing up to and until
19 ~~Friday, November 4, 2011~~ ^{October}, Defendants shall not disseminate to any third party the documents that
20 Plaintiff believes are not rightfully in the possession of Jacobs and/or Vagus Group;

21 (2) During that time frame, Counsel for Jacobs and Vagus Group are permitted to
22 review the documents and take any other action related to the documents (in accordance with the
23 Nevada Rules of Professional Responsibility) ~~but for~~ ^{except} dissemination to third parties;


24 (3) This Order shall remain in full force and effect until October 4, 2011, and will not
25 be extended.

PISANELLI BICE PLLC
3883 HOWARD HUGHES PARKWAY, SUITE 800
LAS VEGAS, NEVADA 89169

1 THE COURT FURTHER ADVISED LVSI to seek relief from the Supreme Court related
2 to the stay issued in the First Action so that this discovery dispute can be addressed properly in
3 that Action.

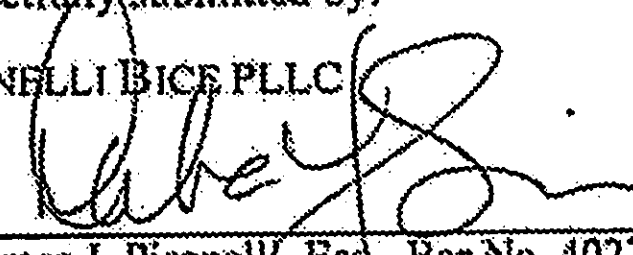
4 DATED: September 29, 2011

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THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

PISANELLI BICE PLLC

By: 
James J. Pisanelli, Esq., Bar No. 4027
Todd L. Bice, Esq., Bar No. 4534
Debra L. Spinelli, Esq., Bar No. 9695
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169

Attorneys for Steven C. Jacobs and Vagus Group, Inc.

EXHIBIT 5

LIST

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

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TLB@pisanellibice.com

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3883 Howard Hughes Parkway, Suite 800

Las Vegas, Nevada 89169

Telephone: (702) 214-2100

Facsimile: (702) 214-2101

Attorneys for Plaintiff Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

Case No.: A-10-627691

Dept. No.: XI

**PLAINTIFF STEVEN C. JACOBS'
WITNESS AND EXHIBIT LIST FOR
THE EVIDENTIARY HEARING ON
NOVEMBER 21, 2011**

AND RELATED CLAIMS

Plaintiff Steven Jacobs ("Jacobs") hereby identifies witnesses and exhibits for the evidentiary hearing currently scheduled for November 21, 2011, at 9:00 a.m., in the above-referenced Court, the following:

A. WITNESSES

1. Michael A. Leven
c/o Holland & Hart
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134

and c/o Glaser Weil Fink Jacobs
Howard Avchen & Shapiro
3763 Howard Hughes Parkway, Suite 300
Las Vegas, NV 89169

1 Mr. Levin simultaneously served as President and COO of Las Vegas Sands Corp.
2 ("LVSC") and CEO of Sands China Ltd. ("Sands China") (among other titles) and is expected to
3 testify as to his activities in Nevada on behalf of Sands China, the transfer of funds from Sands
4 China to Nevada, and directives given from Nevada for activities and operations in Macau
5 including directives from Sheldon G. Adelson.

- 6 2. Sheldon G. Adelson
7 c/o Holland & Hart
8 9555 Hillwood Drive, Second Floor
9 Las Vegas, NV 89134
10 and c/o Glaser Weil Fink Jacobs
11 Howard Avchen & Shapiro
12 3763 Howard Hughes Parkway, Suite 300
13 Las Vegas, NV 89169

11 Mr. Adelson simultaneously serves as Chairman of the Board of Directors and CEO of
12 LVSC and Chairman of the Board of Directors of Sands China and is expected to testify as to his
13 activities in Nevada on behalf of Sands China, the transfer of funds from Sands China to Nevada,
14 and directives he gave from Nevada for activities and operations in Macau.

- 15 3. Kenneth J. Kay
16 c/o Holland & Hart
17 9555 Hillwood Drive, Second Floor
18 Las Vegas, NV 89134
19 and c/o Glaser Weil Fink Jacobs
20 Howard Avchen & Shapiro
21 3763 Howard Hughes Parkway, Suite 300
22 Las Vegas, NV 89169

21 Mr. Kay is LVSC's Executive Vice President and CFO and is expected to testify as to his
22 activities in the funding efforts for Sands China, and directives given by Mr. Adelson, Mr. Leven
23 and other Nevada-based executives for activities and operations in Macau.

- 24 4. Robert G. Goldstein
25 c/o Holland & Hart
26 9555 Hillwood Drive, Second Floor
27 Las Vegas, NV 89134
28 and c/o Glaser Weil Fink Jacobs
Howard Avchen & Shapiro
3763 Howard Hughes Parkway, Suite 300
Las Vegas, NV 89169

1 Mr. Goldstein is LVSC's President of Global Gaming Operations and is expected to testify
2 as to his role in international marketing and development for Sands China, and directives given by
3 Mr. Adelson, Mr. Leven and other Nevada-based executives for activities and operations in
4 Macau.

- 5 5. Larry Chu
6 c/o Holland & Hart
7 9555 Hillwood Drive, Second Floor
8 Las Vegas, NV 89134
9
10 and c/o Glaser Weil Fink Jacobs
11 Howard Avchen & Shapiro
12 3763 Howard Hughes Parkway, Suite 300
13 Las Vegas, NV 89169

14 Mr. Chu is the Senior Vice-President of international marketing for LVSC and is expected
15 to testify as to international marketing for Sands China, as well as directives given from Nevada
16 for activities and operations in Macau relating to joint marketing efforts and sharing of customers.

17 6. NRCP 30(b)(6) designees for LVSC and Sands China in the event that the above
18 witnesses claim a lack of memory or knowledge concerning activities within their authority;

- 19 7. Plaintiff Steven Jacobs
20 c/o Pisanelli Bice PLLC
21 3883 Howard Hughes Parkway, Suite 800
22 Las Vegas, NV 89169

23 Mr. Jacobs is expected to testify as to his activities in Nevada on behalf of Sands China,
24 the transfer of funds from Sands China to Nevada, directives he was given from Nevada
25 executives for activities and operations in Macau, including directives from Mr. Adelson and
26 Mr. Leven.

- 27 8. Any and all witnesses identified by any and all other parties to this action.

28 **B. EXHIBITS**

1. Sands China's Equity Award Plan (Bates Nos. SJ000028-SJ000066);
2. Agreement for Services by and between Venetian Macau Limited and Steven
Jacobs, effective May 1, 2009 (Bates Nos. SJ000001-SJ000003);
3. Correspondence from Venetian Macau Limited to Steven Jacobs, dated June 16,
2009 (Bates Nos. SJ000004-SJ000006);

1 4. Correspondence from Sheldon Adelson to Steven Jacobs, dated June 24, 2009, and
2 attached Nonqualified Stock Option Agreement (Bates Nos. SJ000007-SJ000014);

3 5. Correspondence from Venetian Macau Limited to Steven Jacobs, dated July 3,
4 2009 (Bates Nos. SJ000015-SJ000016);

5 6. Steven Jacobs – Offer Terms and Conditions, dated August 3, 2009 (Bates
6 No. SJ000017);

7 7. Email string by and between Gayle Hyman, Michael Leven, and Steven Jacobs,
8 dated August 6, 2009 (Bates No. SJ000018);

9 8. Email from Gayle Hyman to Steven Jacobs and Bonnie Bruce, dated August 7,
10 2009, and attached SEC identification form (Bates Nos. SJ000019-SJ000024);

11 9. SEC Form 3, filed September 14, 2009 (Bates Nos. SJ000025-SJ000027);

12 10. Sands China's Global Offering, dated November 16, 2009 (Bates
13 Nos. SJ000287-SJ000320);

14 11. Sands China's Global Offering, dated November 16, 2009 (Bates
15 Nos. SJ000321-SJ000762);

16 12. LVSC's Annual Report 2010 (Bates Nos. SJ000763-SJ000926);

17 13. Email string by and between Timothy Baker, Steven Jacobs, Stephen Weaver,
18 Michael Leven, Joe Manzella, Paul Gunderson, Ines Ho Pereira, dated October 29, 2009 through
19 January 6, 2010 (Bates No. SJ000927);

20 14. Bally Technologies Press Release article entitled, Bally Technologies Awarded
21 Enterprise-wide Systems Contract with Galaxy Entertainment Group in Macau to Provide an
22 Array of System, Server-Based Technology, dated January 6, 2010 (Bates
23 Nos. SJ000928-SJ000929);

24 15. Email string by and between Steven Jacobs and Michael Leven, dated March 5-6,
25 2010 (Bates No. SJ000930);

26 16. Email string by and between Steven Jacobs and Kenneth Kay, dated March 18,
27 2010 (Bates No. SJ000931);

28

1 17. LVSC's Form 10-Q quarterly report for the period ending March 31, 2010 (Bates
2 Nos. SJ000132-SJ000197);

3 18. Email from Luis Melo to Sheldon Adelson, Steven Jacobs, Rachel Chiang, Irwin
4 Siegel, David Turnbull, Jeffery Schwatz, Iain Bruce, Stephen Weaver, Michael Leven, Kenneth
5 Kay, Benjamin Toh, Al Gonzalez, Gayle Hyman, Amy Ho, and other undisclosed witnesses,
6 dated April 10, 2010 (Bates Nos. SJ000932-SJ000933);

7 19. Sands China's Retirement of Executive Director, dated April 10, 2010 (Bates
8 No. SJ000934);

9 20. Sands China's Agenda for April 13/14, 2010 Board Meeting (Bates
10 No. SJ000935);

11 21. Sands China's Written Resolution of the Remuneration Committee of the Board of
12 Directors of the Company, dated May 10, 2010 (Bates Nos. SJ000198-SJ000201);

13 22. Email from Kim McCabe to Steve Jacobs and Christine Hu, dated June 17, 2010
14 (Bates Nos. SJ000936-SJ000941);

15 23. Correspondence from Toh Hup Hock to Steven Jacobs, dated July 7, 2010 (Bates
16 Nos. SJ000202-SJ000209);

17 24. Sands China's Removal of Chief Executive Officer and Executive Director, dated
18 July 23, 2010 (Bates No. SJ000942);

19 25. Correspondence from Sheldon Adelson to Steve Jacobs, dated July 23, 2010
20 (Bates No. SJ001176);

21 26. Sands China's Appointment of Executive Director, dated July 28, 2010 (Bates
22 Nos. SJ000943-SJ000944);

23 27. LVSC's Q2 2010 Earnings Call Transcript, dated July 28, 2010 (Bates
24 Nos. SJ000945-SJ000952);

25 28. Sands China's Announcement of Interim Results for the six months ending
26 June 30, 2010 (Bates Nos. SJ000953-SJ000981);

27 29. LVSC's Form 8-K for the period ending September 14, 2010 (Bates
28 Nos. SJ000210-SJ000278);

1 30. Sands China's Appointment of Alternate Director, dated March 1, 2011 (Bates
2 Nos. SJ000982-SJ000983);

3 31. Email from David Law to Christine Hu, Luis Melo, Jeffrey Poon, Kerwin Kwok,
4 and Benjamin Toh, dated May 12, 2010 (Bates No. SJ000984);

5 32. Sands China's Appointment of Executive Director and Chief Executive Officer
6 Re-Designation of Executive Director as Non-Executive Director, dated July 27, 2011 (Bates
7 Nos. SJ000985-SJ000988);

8 33. Sands China's Date of Board Meeting, dated August 17, 2011 (Bates
9 No. SJ000989);

10 34. Sands China's payment voucher no. 16470 for Steven Jacobs, for period ending
11 August 31, 2010 (Bates No. SJ000990);

12 35. Summons and Affidavit of David R. Groover regarding service of process on
13 Sands China Ltd., filed on October 28, 2010 (Bates Nos. SJ000991-SJ000993);

14 36. Sands China's 2011 Interim Report (Bates Nos. SJ000994-SJ001053);

15 37. Website printout (printed on January 26, 2011) identifying Sands China's
16 "Corporate Governance," (http://www.sandschinaltd.com/sands/en/corporate_governance/)
17 (Bates No. SJ001054);

18 38. Website printout (printed on January 29, 2011) regarding Sheldon Gary Adelson,
19 ([http://www.sandschinaltd.com/sands/en/corporate_governance/directors/Sheldon Gary Adelson.](http://www.sandschinaltd.com/sands/en/corporate_governance/directors/Sheldon_Gary_Adelson.html)
20 [html](http://www.sandschinaltd.com/sands/en/corporate_governance/directors/Sheldon_Gary_Adelson.html)) (Bates No. SJ001055);

21 39. Website printout (printed on January 26, 2011) regarding Michael Alan Leven,
22 ([http://www.sandschinaltd.com/sands/en/corporate_governance/directors/Michael A Leven.html](http://www.sandschinaltd.com/sands/en/corporate_governance/directors/Michael_A_Leven.html))
23 (Bates No. SJ001056);

24 40. Website printout (printed on January 29, 2011) identifying LVSI's Board of
25 Directors, (http://www.lasvegassands.com/LasVegasSands/Corporate_Overview/Leadership.aspx)
26 (Bates Nos. SJ001057-SJ0001060);

27 41. LVSC's Letter from the Chairman, Notice of Annual Meeting, and Proxy
28 Statement dated April 29, 2011 (Bates Nos. SJ001061-SJ0001128);

1 42. Website printout (printed on September 23, 2011) identifying worldwide map of
2 properties, (<http://www.lasvegassands.com>) (Bates Nos. SJ001129-SJ0001130);

3 43. Website printout (printed on September 23, 2011) identifying LVSI's "About Us"
4 article, (http://www.lasvegassands.com/LasVegasSands/Corporate_Overview/About_Us.aspx)
5 (Bates No. SJ001131);

6 44. Website printout (printed on September 23, 2011) identifying LVSI's properties,
7 (http://www.lasvegassands.com/LasVegasSands/Our_Properties/At_a_Glance.aspx) (Bates
8 Nos. SJ001032-SJ0001133);

9 45. Website printout (printed on September 23, 2011) identifying LVSI's Press
10 Releases of 2011 Press Releases, (<http://www.investor.lasvegassands.com/releases.cfm>) (Bates
11 Nos. SJ001134-SJ0001136);

12 46. Website printout(printed on September 23, 2011) identifying LVSI's Management,
13 (<http://www.investor.lasvegassands.com/management.cfm>) (Bates Nos. SJ001137-SJ0001141);

14 47. Website printout (printed on September 22, 2011) identifying LVSI's Board of
15 Directors, (http://www.lasvegassands.com/LasVegasSands/Corporate_Overview/Leadership.aspx)
16 (Bates Nos. SJ001142-SJ0001145);

17 48. Website printout (printed on September 22, 2011) identifying Sands China's
18 "Corporate Governance," (http://www.sandschinaltd.com/sands/en/corporate_governance/)
19 (Bates No. SJ001146);

20 49. Website printout (printed on September 22, 2011) regarding Sheldon Gary
21 Adelson,
22 ([http://www.sandschinaltd.com/sands/en/corporate_governance/directors/Sheldon_Gary_Adelson.](http://www.sandschinaltd.com/sands/en/corporate_governance/directors/Sheldon_Gary_Adelson.html)
23 [html](http://www.sandschinaltd.com/sands/en/corporate_governance/directors/Sheldon_Gary_Adelson.html)) (Bates No. SJ001147);

24 50. Website printout (printed on September 22, 2011) regarding Michael Alan Leven
25 (http://www.sandschinaltd.com/sands/en/corporate_governance/directors/Mike_A_Leven.html)
26 (Bates No. SJ001148);

27 51. LVSC's Code of Business Conduct and Ethics (Bates Nos. SJ001149-SJ001162);
28

1 52. LVSC's Board of Directors Corporate Governance Guidelines (Bates
2 Nos. SJ001163-SJ001175);

3 53. Any and all documents produced/discovered in response to the discovery requested
4 by Jacobs in his pending Motion to Conduct Jurisdictional Discovery, filed on September 21,
5 2011 (per this Court's request), and set to be heard on October 27, 2011, at 9:00 a.m.; and

6 54. Any and all documents identified by any and all other parties to this action.

7 DATED this 23rd day of September, 2011.

8 PISANELLI BICE PLLC

9
10 By: 

James J. Risanelli, Esq., Bar No. 4027
Todd L. Bice, Esq., Bar No. 4534
Debra L. Spinelli, Esq., Bar No. 9695
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169

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13 Attorneys for Plaintiff Steven C. Jacobs
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 23rd day of September, 2011, I caused to be sent via email and United States Mail, postage prepaid, true and correct copies of the above and foregoing PLAINTIFF STEVEN C. JACOBS' WITNESS AND EXHIBIT LIST FOR THE EVIDENTIARY HEARING ON NOVEMBER 21, 2011 properly addressed to the following:

Patricia Glaser, Esq.
Stephen Ma, Esq.
Andrew D. Sedlock, Esq.
GLASER WEIL
3763 Howard Hughes Parkway, Suite 300
Las Vegas, NV 89169
pglaser@glaserweil.com
sma@glaserweil.com
asedlock@glaserweil.com

J. Stephen Peek, Esq.
Justin C. Jones, Esq.
Brian G. Anderson, Esq.
HOLLAND & HART
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134
speek@hollandhart.com
icjones@hollandhart.com
bganderson@hollandhart.com


An employee of PISANELLI BICE PLLC

PISANELLI BICE PLLC
3883 HOWARD HUGHES PARKWAY, SUITE 800
LAS VEGAS, NEVADA 89169

EXHIBIT 6

From: Andrew Sedlock [<mailto:asedlock@glaserweil.com>]
Sent: Friday, September 23, 2011 10:29 PM
To: 'jcw@campbellandwilliams.com'; 'djc@campbellandwilliams.com'; James Pisanelli
Cc: Stephen Ma
Subject: Sands China Ltd. Disclosure of Witnesses and Documents for Evidentiary Hearing

Gentlemen,

Attached please find Sands China Ltd.'s Witness and Document List for the November 21, 2011 Evidentiary Hearing.

Thank you,

Andrew Sedlock

1 PATRICIA L. GLASER
Pro Hac Vice Admitted
2 STEPHEN Y. MA
Pro Hac Vice Admitted
3 ANDREW SEDLOCK
State Bar No. 9183
4 GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP
5 3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169
6 Telephone: (702) 650-7900
Facsimile: (702) 650-7950
7
8 Attorneys for Defendant
Sands China, Ltd.

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 STEVEN C. JACOBS,
12 Plaintiff,
13 v.
14 LAS VEGAS SANDS CORP., a Nevada
corporation; SANDS CHINA LTD., a Cayman
15 Islands corporation; DOES I-X; and ROE
CORPORATIONS I-X, inclusive,
16 Defendants.

CASE NO.: A627691

Dept. No.: XI

**SANDS CHINA LTD.'S DISCLOSURE OF
WITNESSES AND DOCUMENTS FOR
EVIDENTIARY HEARING RELATING
TO PERSONAL JURISDICTION**

18 LAS VEGAS SANDS CORP., a Nevada
corporation,
19 Cross-Complainant,
20 v.
21 STEVEN C. JACOBS,
22 Cross-Defendants.

24 DEFENDANT SANDS CHINA LTD ("SCL") by and through its attorneys of record, Glaser
25 Weil Fink Jacobs Howard Avchen & Shapiro LLP ("Glaser Weil"), hereby submits its
26 DISCLOSURE OF WITNESSES AND DOCUMENTS FOR EVIDENTIARY HEARING
27 RELATING TO PERSONAL JURISDICTION.
28

SANDS CHINA LTD.'S DISCLOSURE OF WITNESSES AND DOCUMENTS FOR EVIDENTIARY HEARING
RELATING TO PERSONAL JURISDICTION

1 **I. WITNESSES**

2 Pursuant to the Court's Order issued September 1, 2011, SCL identifies the following
3 witnesses for the evidentiary hearing scheduled to be held beginning on November 21, 2011 (the
4 "Jurisdictional Hearing"):

5 **A. FACT WITNESSES**

6 1. Plaintiff Steven C. Jacobs
7 c/o Pisanelli Bice
8 3883 Howard Hughes Parkway,
9 Suite 300
Las Vegas, Nevada 89169
(702) 214-2100

10 Mr. Jacobs is expected to testify to matters set forth in his affidavit submitted in opposition
11 to SCL's Motion to Dismiss for Lack of Personal Jurisdiction, Or In The Alternative, Failure to Join
12 an Indispensable Party (the "Motion to Dismiss"), which was previously filed with the Court on
13 February 9, 2011.

14 2. Dylan J. Williams
15 Sands China, Ltd.
16 c/o Glaser Weil
17 3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169
(702) 650-7900

18 Mr. Williams is expected to testify to facts set forth in support of SCL's Motion to Dismiss,
19 including but not limited to (1) SCL's legal and operational independence from Las Vegas Sands
20 Corp. ("LVSC"), (2) the management and operation of the SCL Board of Directors, (3) the
21 LVSC/SCL Shared Services Agreement, and (4) LVSC/SCL Deed of Non-Compete Undertaking.

22 3. Kevin Clayton
23 Venetian Macau Limited
24 c/o Glaser Weil
25 3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169
(702) 650-7900

26 Mr. Clayton is expected to testify to facts set forth in support of SCL's Motion to Dismiss,
27 including but not limited to (1) SCL's legal and operational independence from Las Vegas Sands
28 Corp. ("LVSC"), (2) the management and operation of the SCL Board of Directors, (3) the

1 LVSC/SCL Shared Services Agreement, and (4) LVSC/SCL Deed of Non-Compete Undertaking.

2 4. Sheryl Marin
3 Venetian Macau Limited
4 c/o Glaser Weil
5 3763 Howard Hughes Parkway, Suite 300
6 Las Vegas, Nevada 89169
7 (702) 650-7900

8 Ms. Marin is expected to testify regarding the Inter-Company Accounting Advice
9 transactions involving Venetian Macau Limited ("VML").

10 SCL reserves the right to call as witnesses any additional person who is or has been
11 identified by any other party to this action as a person having knowledge of the facts and
12 circumstances relating to the matter of jurisdiction at issue at the evidentiary hearing. Further, SCL
13 reserves the right to amend and/or supplement this disclosure, including but not limited to witnesses
14 necessary to rebut witnesses or evidence presented by Plaintiff in connection with the Jurisdictional
15 Hearing. By its designation of the above witnesses, SCL does not waive any rights and objections,
16 including but not limited to attorney-client privilege and work product privilege.

17 **B. EXPERT WITNESSES**

18 1. Christopher J. Howe
19 The Anglo-Chinese Investment Company Ltd.
20 c/o Glaser Weil
21 3763 Howard Hughes Parkway, Suite 300
22 Las Vegas, Nevada 89169
23 (702) 650-7900

24 Mr. Howe is expected to provide expert testimony regarding The Listing Rules of The Stock
25 Exchange of Hong Kong Limited (the "HKEx Rules"), including but not limited to requirements
26 under the HKEx Rules of operational independence from foreign affiliates.

27 2. Neal Klegerman
28 Emmel & Klegerman P.C.
c/o Glaser Weil
3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169
(702) 650-7900

Mr. Klegerman is expected to provide expert testimony regarding corporate governance
issues, including but not limited to the relationship between a parent company and its foreign

1 subsidiaries.

2 SCL reserves the right to call as expert witnesses any additional person who is or has been
3 identified by any other party to this action as a person having knowledge of the facts and
4 circumstances relating to the matter of jurisdiction at issue at the evidentiary hearing. Further, SCL
5 reserves the right to amend and/or supplement this disclosure, including but not limited to expert
6 witnesses necessary to rebut witnesses or evidence presented by Plaintiff in connection with the
7 Jurisdictional Hearing. Additionally, SCL reserves the right to designate and call as additional
8 witnesses any experts who are now or hereinafter designated and have formed opinions with regard
9 to the matters at issue, such persons who are identified as having knowledge of relevant facts, and
10 rebuttal and impeachment witnesses.

11 **II. DOCUMENTS**

12 SCL intends to introduce as evidence the following documents at the Jurisdictional Hearing:

- 13 1. SCL Initial Offering Document dated November 30, 2009, previously attached as
14 Exhibit A to SCL's Motion to Dismiss.
- 15 2. LVSC/SCL Shared Services Agreement dated November 8, 2009.
- 16 3. LVSC/SCL Deed of Non-Compete Undertakings dated November 8, 2009,
17 previously attached as Exhibit B to SCL's Motion to Dismiss.
- 18 4. Section 8 of HKEx Rules, previously attached as Exhibit B to SCL's Reply in
19 support of Motion to Dismiss.
- 20 5. SCL Board of Directors Corporate Governance Guidelines.
- 21 6. SCL Memorandum and Articles of Association dated November 30, 2009.
- 22 7. Affidavit of Steven C. Jacobs in support of Plaintiff's Opposition to SCL's Motion to
23 Dismiss.
- 24 8. Copy of Exhibits 1 through 15 to Plaintiff's Opposition to SCL's Motion to Dismiss.
- 25 9. Affidavit of David Law and attached UPS Record of Delivery, as attached to SCL's
26 Reply in Support of Motion to Dismiss.
- 27 10. Affidavit of Patricia Green, attached to SCL's Reply in Support of Motion to
28 Dismiss.

11. Affidavit of Jennifer Ono, attached to SCL's Reply in Support of Motion to Dismiss.
12. Affidavit of Jason Anderson, attached to SCL's Reply in Support of Motion to Dismiss.
13. Redacted example of correspondence from VML to LV Cage.
14. Redacted example of IAA Transmittal Form.
15. Redacted example of Authorization Letter of Account Holder at VML.
16. Redacted example of Front Money Deposit Slip from VML.
17. Redacted example of Front Money Withdrawal from VML.
18. Redacted example of LV Redemption Voucher.
19. Redacted example of LV Front Money Deposit Voucher.

SCL reserves the right to amend and/or supplement this disclosure regarding documentary evidence, including but not limited to documents necessary to rebut evidence presented by Plaintiff at the Jurisdictional Hearing. SCL further reserves the right to use any document produced by any other party prior to the evidentiary hearing relevant to the issue of general personal jurisdiction over SCL.

DATED this 23rd day of September, 2011

GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP

By: 

PATRICIA L. GLASER
Pro Hac Vice Admitted
STEPHEN Y. MA
Pro Hac Vice Admitted
ANDREW SEDLOCK
State Bar No. 9183
GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP
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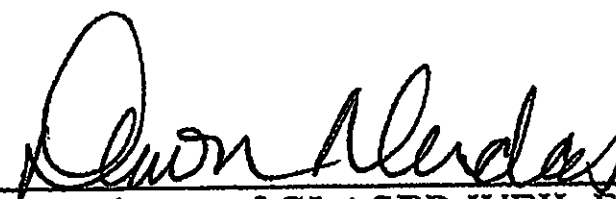
Attorneys for Defendant
Sands China, Ltd.

CERTIFICATE OF MAILING

I hereby certify that I am an employee of GLASER WEIL FINK JACOBS HOWARD AVCHEN & SHAPIRO LLP, and on September 23, 2011, I deposited a true and correct copy of the foregoing SANDS CHINA LTD.'S DISCLOSURE OF WITNESSES AND DOCUMENTS FOR EVIDENTIARY HEARING RELATING TO PERSONAL JURISDICTION via U.S. Mail at Las Vegas, Nevada, in a sealed envelope upon which first class postage was prepaid and addressed to the following:

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

Donald J. Campbell, Esq.
J. Colby Williams, Esq.
CAMPBELL & WILLIAMS
700 South Seventh Street
Las Vegas, NV 89101



An Employee of GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP

EXHIBIT 7

16.1

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

JJP@pisanellibice.com

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

TLB@pisanellibice.com

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

DLS@pisanellibice.com

PISANELLI BICE PLLC

3883 Howard Hughes Parkway, Suite 800

Las Vegas, Nevada 89169

Telephone: (702) 214-2100

Facsimile: (702) 214-2101

Attorneys for Plaintiff Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

Case No.: A-10-627691

Dept. No.: XI

**PLAINTIFF STEVEN C. JACOBS'
FIRST SUPPLEMENTAL
DISCLOSURES**

AND RELATED CLAIMS

Pursuant to Nevada Rules of Civil Procedure 16.1, Plaintiff Steven Jacobs ("Jacobs")
hereby supplements his list of documents, as follows:

1. Sands China's Global Offering, dated November 16, 2009 (Bates Nos. SJ000287-SJ000320);
2. Sands China's Global Offering, dated November 16, 2009 (Bates Nos. SJ000321-SJ000762);
3. LVSC's Annual Report 2010 (Bates Nos. SJ000763-SJ000926);

1 4. Email string by and between Timothy Baker, Steven Jacobs, Stephen Weaver,
2 Michael Leven, Joe Manzella, Paul Gunderson, Ines Ho Pereira, dated October 29, 2009 through
3 January 6, 2010 (Bates No. SJ000927);

4 5. Bally Technologies Press Release article entitled, Bally Technologies Awarded
5 Enterprise-wide Systems Contract with Galaxy Entertainment Group in Macau to Provide an
6 Array of System, Server-Based Technology, dated January 6, 2010 (Bates Nos. SJ000928-
7 SJ000929);

8 6. Email string by and between Steven Jacobs and Michael Leven, dated March 5-6,
9 2010 (Bates No. SJ000930);

10 7. Email string by and between Steven Jacobs and Kenneth Kay, dated March 18,
11 2010 (Bates No. SJ000931);

12 8. Email from Luis Melo to Sheldon Adelson, Steven Jacobs, Rachel Chiang, Irwin
13 Siegel, David Turnbull, Jeffery Schwatz, Iain Bruce, Stephen Weaver, Michael Leven, Kenneth
14 Kay, Benjamin Toh, Al Gonzalez, Gayle Hyman, Amy Ho, and other undisclosed witnesses,
15 dated April 10, 2010 (Bates Nos. SJ000932-SJ000933);

16 9. Sands China's Retirement of Executive Director, dated April 10, 2010 (Bates
17 No. SJ000934);

18 10. Sands China's Agenda for April 13/14, 2010 Board Meeting (Bates
19 No. SJ000935);

20 11. Email from Kim McCabe to Steve Jacobs and Christine Hu, dated June 17, 2010
21 (Bates Nos. SJ000936-SJ000941);

22 12. Sands China's Removal of Chief Executive Officer and Executive Director, dated
23 July 23, 2010 (Bates No. SJ000942);

24 13. Sands China's Appointment of Executive Director, dated July 28, 2010 (Bates
25 Nos. SJ000943-SJ000944);

26 14. LVSC's Q2 2010 Earnings Call Transcript, dated July 28, 2010 (Bates
27 Nos. SJ000945-SJ000952);

28

1 15. Sands China's Announcement of Interim Results for the six months ending June
2 30, 2010 (Bates Nos. SJ000953-SJ000981);

3 16. Sands China's Appointment of Alternate Director, dated March 1, 2011 (Bates
4 Nos. SJ000982-SJ000983);

5 17. Email from David Law to Christine Hu, Luis Melo, Jeffrey Poon, Kerwin Kwok,
6 and Benjamin Toh, dated May 12, 2010 (Bates No. SJ000984);

7 18. Sands China's Appointment of Executive Director and Chief Executive Officer
8 Re-Designation of Executive Director as Non-Executive Director, dated July 27, 2011 (Bates
9 Nos. SJ000985-SJ000988);

10 19. Sands China's Date of Board Meeting, dated August 17, 2011 (Bates
11 No. SJ000989);

12 20. Sands China's payment voucher no. 16470 for Steven Jacobs, for period ending
13 August 31, 2010 (Bates No. SJ000990);

14 21. Summons and Affidavit of David R. Groover regarding service of process on
15 Sands China Ltd., filed on October 28, 2010 (Bates Nos. SJ000991-SJ000993);

16 22. Sands China's 2011 Interim Report (Bates Nos. SJ000994-SJ001053);

17 23. Website printout (printed on January 26, 2011) identifying Sands China's
18 "Corporate Governance," (http://www.sandschinaltd.com/sands/en/corporate_governance/)
19 (Bates No. SJ001054);

20 24. Website printout (printed on January 29, 2011) regarding Sheldon Gary Adelson,
21 ([http://www.sandschinaltd.com/sands/en/corporate_governance/directors/Sheldon_Gary_Adelson.](http://www.sandschinaltd.com/sands/en/corporate_governance/directors/Sheldon_Gary_Adelson.html)
22 [html](http://www.sandschinaltd.com/sands/en/corporate_governance/directors/Sheldon_Gary_Adelson.html)) (Bates No. SJ001055);

23 25. Website printout (printed on January 26, 2011) regarding Michael Alan Leven,
24 (http://www.sandschinaltd.com/sands/en/corporate_governance/directors/Michael_A_Leven.html)
25 (Bates No. SJ001056);

26 26. Website printout (printed on January 29, 2011) identifying LVSI's Board of
27 Directors, (http://www.lasvegassands.com/LasVegasSands/Corporate_Overview/Leadership.aspx)
28 (Bates Nos. SJ001057-SJ0001060);

1 27. LVSC's Letter from the Chairman, Notice of Annual Meeting, and Proxy
2 Statement dated April 29, 2011 (Bates Nos. SJ001061-SJ0001128);

3 28. Website printout (printed on September 23, 2011) identifying worldwide map of
4 properties, (<http://www.lasvegassands.com>) (Bates Nos. SJ001129-SJ0001130);

5 29. Website printout (printed on September 23, 2011) identifying LVSI's "About Us"
6 article, (http://www.lasvegassands.com/LasVegasSands/Corporate_Overview/About_Us.aspx)
7 (Bates No. SJ001131);

8 30. Website printout (printed on September 23, 2011) identifying LVSI's properties,
9 (http://www.lasvegassands.com/LasVegasSands/Our_Properties/At_a_Glance.aspx) (Bates Nos.
10 SJ001032-SJ0001133);

11 31. Website printout (printed on September 23, 2011) identifying LVSI's Press
12 Releases of 2011 Press Releases, (<http://www.investor.lasvegassands.com/releases.cfm>) (Bates
13 Nos. SJ001134-SJ0001136);

14 32. Website printout(printed on September 23, 2011) identifying LVSI's Management,
15 (<http://www.investor.lasvegassands.com/management.cfm>) (Bates Nos. SJ001137-SJ0001141);

16 33. Website printout (printed on September 22, 2011) identifying LVSI's Board of
17 Directors, (http://www.lasvegassands.com/LasVegasSands/Corporate_Overview/Leadership.aspx)
18 (Bates Nos. SJ001142-SJ0001145);

19 34. Website printout (printed on September 22, 2011) identifying Sands China's
20 "Corporate Governance," (http://www.sandschinaltd.com/sands/en/corporate_governance/)
21 (Bates No. SJ001146);

22 35. Website printout (printed on September 22, 2011) regarding Sheldon Gary
23 Adelson,
24 ([http://www.sandschinaltd.com/sands/en/corporate_governance/directors/Sheldon_Gary_Adelson.](http://www.sandschinaltd.com/sands/en/corporate_governance/directors/Sheldon_Gary_Adelson.html)
25 [html](http://www.sandschinaltd.com/sands/en/corporate_governance/directors/Sheldon_Gary_Adelson.html)) (Bates No. SJ001147);

26 36. Website printout (printed on September 22, 2011) regarding Michael Alan Leven
27 (http://www.sandschinaltd.com/sands/en/corporate_governance/directors/Mike_A_Leven.html)
28 (Bates No. SJ001148);

- 1 37. LVSC's Code of Business Conduct and Ethics (Bates Nos. SJ001149-SJ001162);
2 38. LVSC's Board of Directors Corporate Governance Guidelines (Bates Nos.
3 SJ001163-SJ001175);
4 39. Correspondence from Sheldon Adelson to Steven Jacobs, dated July 23, 2010
5 (Bates No. SJ001176); and
6 40. Any and all documents identified by any and all other parties to this action.

7 Plaintiff reserves the right to amend and/or supplement this list of documents as discovery
8 continues.

9 DATED this 23rd day of September, 2011.

10 PISANELLI BICE PLLC

11
12 By: 

13 James J. Pisanelli, Esq., Bar No. 4027
14 Todd L. Bice, Esq., Bar No. 4534
15 Debra L. Spinelli, Esq., Bar No. 9695
16 3883 Howard Hughes Parkway, Suite 800
17 Las Vegas, Nevada 89169


18 Attorneys for Plaintiff Steven C. Jacobs
19
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 23rd day of September, 2011, I caused to be sent via email and United States Mail, postage prepaid, true and correct copies of the above and foregoing PLAINTIFF STEVEN C. JACOBS' FIRST SUPPLEMENTAL DISCLOSURES properly addressed to the following:

Patricia Glaser, Esq.
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Andrew D. Sedlock, Esq.
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sma@glaserweil.com
asedlock@glaserweil.com

J. Stephen Peek, Esq.
Justin C. Jones, Esq.
Brian G. Anderson, Esq.
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jcjones@hollandhart.com
bganderson@hollandhart.com


An employee of PISANELLI BICE PLLC

PISANELLI BICE PLLC
3883 HOWARD HUGHES PARKWAY, SUITE 800
LAS VEGAS, NEVADA 89169

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS SANDS CORP.,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK;
AND THE HONORABLE ELIZABETH
GOFF GONZALEZ, DISTRICT JUDGE,
Respondents,
and
STEVEN C. JACOBS,
Real Party in Interest.

No. 59265

FILED

OCT 04 2011

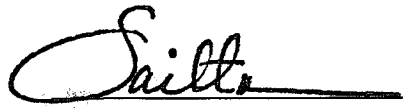
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

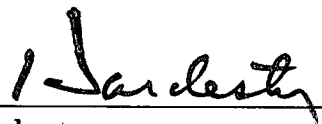
ORDER DENYING PETITION FOR WRIT OF MANDAMUS

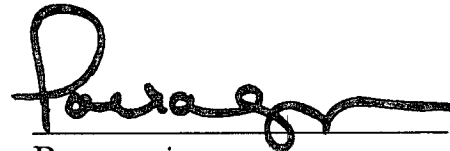
Petitioner asks this court to issue an extraordinary writ “providing for partial relief, or a carve out, from the stay [issued by this court in Docket No. 58294] to allow the District Court jurisdiction to address [petitioner’s] motions” against real party in interest in that matter. (Petition 14.) Petitioner acknowledges, however, that those motions have been withdrawn. (Petition 4; Petitioner’s Appendix 13-16.) Petitioner’s use of extraordinary writ relief in this context is inappropriate. NRS 34.160; NRS 34.170 (describing when mandamus is an available remedy). Moreover, to the extent that this petition could possibly be construed as seeking writ relief from this court directed to the new district court action filed by petitioner, petitioner provides no documentation whatsoever indicating that the district court has refused to

act. NRAP 21(a)(4). We admonish petitioner and caution it that seeking writ relief under similar circumstances in the future will be viewed by this court as sanctionable conduct. Accordingly, we

ORDER the petition DENIED.


Saitta, C.J.


Hardesty, J.


Parraguirre, J.

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Holland & Hart LLP/Las Vegas
Pisanelli Bice, PLLC
Eighth District Court Clerk

ORIGINAL

Alvin D. Quinn

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

LAS VEGAS SANDS CORP.

Plaintiff

vs.

STEVEN C. JACOBS, et al.

Defendants

And related cases and parties

CASE NO. A-648484
A-627691

DEPT. NO. XI

Transcript of
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON PLAINTIFF'S MOTION FOR SANCTIONS

TUESDAY, OCTOBER 4, 2011

APPEARANCES:

FOR THE PLAINTIFFS:

J. STEPHEN PEEK, ESQ.
BRIAN ANDERSON, ESQ.
STEPHEN MA, ESQ.

FOR THE DEFENDANTS:

JAMES J. PISANELLI, ESQ.
DEBRA SPINELLI, 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
OCT 6 2011
CLERK OF THE COURT
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APP000330

1 LAS VEGAS, NEVADA, TUESDAY, OCTOBER 4, 2011, 9:31 A.M.

2 (Court was called to order)

3 THE COURT: Las Vegas Sands versus Jacobs.

4 Good morning, all.

5 MR. PEEK: Good morning, Your Honor.

6 THE COURT: I got the reply before I got the
7 opposition, but I did have an opportunity to review both.

8 Mr. Anderson, you're on the wrong side of the room.
9 Oh. No. They're plaintiffs in this case.

10 MR. PEEK: We're plaintiff in this case, Your Honor,
11 so I think that he actually did sit on the right --

12 MR. PISANELLI: My fault. I forgot.

13 MR. PEEK: Jim is used to being plaintiff, I know.

14 THE COURT: Before you start your argument may I
15 make an inquiry of you.

16 MR. PEEK: And I'll give you the answer, because we
17 just checked.

18 THE COURT: And what'd they say?

19 MR. PEEK: We checked with the Clerk's Office, and
20 all we are told is, yes, it has been filed, but, no, there has
21 been no action taken on the emergency writ that we have filed.

22 THE COURT: The Clerk's Office you're referring to
23 is not the District Court Clerk's Office?

24 MR. PEEK: Correct, Your Honor. It is the Nevada
25 Supreme Court Clerk's Office. We checked this morning, as I

1 anticipated that the Court would ask that question, which is a
2 very good question and one that I am anxious to also
3 understand. And we were told that, yes, they had received the
4 writ last Monday, the --

5 THE COURT: The emergency writ.

6 MR. PEEK: The emergency writ, the 26th. They at
7 least acknowledged that it was an emergency writ, that it had
8 been filed with them, and that there had been no action taken
9 on the emergency writ in the Supreme Court.

10 THE COURT: Okay. Thank you, Mr. Peek.

11 MR. PEEK: Thank you, Your Honor.

12 THE COURT: Would you like to argue now?

13 MR. PEEK: I would like to argue, Your Honor. And,
14 yes, I did file a reply before Mr. Pisanelli had filed his
15 opposition, and I know the Court has read it. And the reason
16 why I did file the reply is that anticipation of the arguments
17 and the fact that I wanted the Court to at least see what our
18 reply would be to what I anticipated the opposition was, and I
19 think I anticipated the opposition very well and did reply to
20 the opposition that was filed.

21 Let me go back with some of the history of this
22 case.

23 THE COURT: In other words, you guessed what Mr.
24 Pisanelli was going to say. And you did a pretty accurate
25 job.

1 MR. PEEK: I did my best, Your Honor. And I did
2 have some very good help from Mr. Anderson, as well, in
3 anticipating that argument.

4 But that said, I want to -- I want to go back,
5 because there's a lot of outrage and a lot of indignation
6 expressed in the opposition. And I get that. I understand
7 the outrage and the indignation. But I think it's misplaced,
8 because what we have here is -- if you go back to November of
9 2010 -- and Mr. Pisanelli brought this up to us at the last
10 hearing, on the 20th -- what we have in November 2010 is a
11 request from Mr. Jacobs to turn over to us documents that he
12 had improperly obtained during the course of his employment at
13 VML, Sands China Limited. And their response was that we have
14 these reports and we'll return those. But nowhere within the
15 body of any of those letters is there an acknowledgement that
16 he had 11 gigabytes of data.

17 And, Your Honor, I checked on what 11 gigabytes of
18 data is -- or actually Mr. Anderson did -- and what I was
19 told, 11 gigabytes of data, if you were to translate that into
20 just Word documents at about nine and a half pages apiece, it
21 comes out to over 700,000 pages. If there were emails alone
22 at one and a half pages per email, it comes out to over a
23 million pages of documents. So this isn't a small amount of
24 documents that Mr. Jacobs has.

25 And, yes, we know that Mr. Jacobs did disclose a

1 very small amount of documents in his oppositions to the two
2 motions to dismiss, but it wasn't until sometime in the summer
3 of 2011 that for first time did Mr. Jacobs advise us through
4 his counsel that he had 11 gigabytes of our data that he had
5 received during the time -- claimed that he'd received during
6 the ordinary course of his business. And we said, no, you
7 didn't receive it in the ordinary course and, if you did, you
8 were required to return it as per the employment guidelines of
9 VML and SCL, as well as the guidelines that were imposed upon
10 your consultancy agreement at Vagus, you should have returned
11 all those documents.

12 So what do the rules tell us? The rules tell us
13 that when you have notice, when you are told or you have
14 reason to believe that you had come into possession of
15 documents that were improperly obtained, whether you make that
16 judgment yourself or whether you are told by opposing counsel
17 that the documents that you obtained were obtained improperly,
18 what are you supposed to do under the rules? You are to, one,
19 cease your review of the documents; you are to notify opposing
20 counsel that you have those documents; and then the third
21 thing is that you're supposed to return those.

22 I get in this case that we are -- we're trying to
23 deal with the return of the documents. We certainly had from
24 Mr. Williams his expression to us of a notification, I have
25 11 gigabytes. When we said, they're improperly obtained, we

1 had from him an acknowledgement that he would cease the review
2 of those documents.

3 And so that's where we got brought up to at least
4 sometime in early September. And we had an agreement with the
5 prior counsel that we would establish -- that they would not
6 review the documents until such time as this Court could
7 determine whether or not those documents were improperly in
8 the hands of Mr. Jacobs and improperly now in the hands of his
9 counsel, Colby & Williams [sic]. We know what happened to
10 that process. It became frustrated as a result of the Supreme
11 Court's stay on the eve of our effort to implement that
12 agreement that we had reached with opposing counsel.

13 So now we are faced with a situation where those
14 documents, albeit ones that were previously disclosed in
15 oppositions to motions for -- motions to dismiss and before we
16 knew about the existence of the 11 gigabytes of data that he
17 had that are now attempted to be used by Mr. Jacobs.

18 So what do we know about some of those documents?
19 We know that in those disclosures that the emails that he
20 attached to the motions to dismiss are part of -- at least two
21 of them are part of a long email chain which includes
22 attorney-client privileged communications, but only one of
23 those long email chains is attached to the opposition.

24 Now, in order to get to the root of that email chain
25 one has to look at the other emails associated with that,

1 which are the attorney-client privileged communications.

2 THE COURT: And, Mr. Peek, you're not contending
3 that at the time Mr. Jacobs was an employee of the Macau
4 entity that he shouldn't be receiving those emails. He
5 received them in the course of his job duties. Your position
6 is that once he left his employment he should not have
7 retained those.

8 MR. PEEK: Actually, Your Honor, I had two positions
9 with respect to that. I would agree with the Court that
10 during the course of his employment he would have received
11 some of those emails, and I agree with the Court that it's my
12 position that those emails that he was rightfully the
13 recipient of, in other words, he was copied, he was the
14 addressee, or he was the author of, that those came into his
15 possession during the course of his employment.

16 What I also believe, Your Honor, but I don't have --
17 because I don't have the 11 gigabytes of data to identify or
18 to evaluate is I also believe that he is in possession of
19 documents that he was not the recipient, the addressee, or the
20 sender.

21 THE COURT: So you're saying there are two classes
22 of documents.

23 MR. PEEK: There are two classes of documents.

24 The other thing that I know, Your Honor, is at or
25 about the time -- and this would be something that we would

1 have vetted had we had a hearing --

2 THE COURT: As part of the discovery dispute in the
3 other case.

4 MR. PEEK: -- the process, whether it be in this
5 case or the other one, the first case, is that there -- I
6 believe that this data was downloaded, whether it be onto a
7 thumb drive or a hard drive or some disk, at or about the time
8 that Mr. Jacobs left the employment. In other words, this
9 isn't something that he was -- during the course of his
10 employment had a computer where, okay, here's data coming to
11 me and it's -- I'm sending it on to Vagus, I'm sending it on
12 someplace. You had to actually physically go in at or about
13 the time of the termination in July of 2010 and download that
14 information, because it was on his computer that was locked up
15 on the day of his termination. So before he's terminated he
16 has to, again, go into our system, insert some device, and
17 then copy these one million pages of emails or a combination
18 of emails and Word documents or Excel spreadsheets onto a
19 thumb drive or some other device to copy and take with him
20 when he left. This is not something that, I've got a laptop
21 and they're on my laptop and I walk out the door with them on
22 my laptop. This is something where they're on his desktop and
23 he has to insert and take with him.

24 So I hope that answers the Court's question.

25 THE COURT: I understand what you're saying. My

1 concern as I have expressed it repeatedly since before this
2 case was filed is this is really a discovery dispute in the
3 case I'm not allowed to do anything on.

4 MR. PEEK: And, Your Honor, I get that. So what
5 have I at least attempted to do? I saw in Mr. Pisanelli's
6 opposition a statement by Mr. Pisanelli that, oh, I'm just
7 going to honor the agreement that you reached with Campbell &
8 Williams. And the agreement that I had reached with Campbell
9 & Williams is set forth in the August correspondence, which is
10 -- from Mr. Williams, is that I will not review any of the
11 documents in the 11 gigabytes of data until this issue is
12 resolved by the Court.

13 So when I came before you on the 20th I received, of
14 course, the same indignation and outrage that you see now from
15 Mr. Pisanelli. And I get that. But I didn't get a commitment
16 from Mr. Pisanelli on the 20th of September that, I will not
17 at any time ever review these documents until this issue is
18 decided by this Court. In fact, what I saw from the
19 transcript -- I read it -- was the Court said to Mr. Pisanelli
20 is that he would be allowed to review those documents. That's
21 what the Court said.

22 THE COURT: That's what I said.

23 MR. PEEK: That is inconsistent, Your Honor, with at
24 least the cease, notify, and return. That is inconsistent
25 with what I pointed out or the rules of professional

1 responsibility and the cases that I cited, whether it's the
2 Bert Hill, the Zahodnik, or the Maldonado case out of New
3 Jersey. Each of those say is that when you're notified that
4 those documents are improperly in the possession of your
5 client you cease, you notify, and return. I get the return is
6 going to maybe be the province of the Court as to whether or
7 not it's something that this Court would order. But until
8 that happens there's a violation of those rules. You don't
9 get to make the determination, as Mr. Pisanelli seems to
10 argue, that they're rightfully in my possession, I don't care
11 what you say, they're rightfully in my possession, or, that I
12 am --

13 THE COURT: Mr. Peek, some of them are rightfully in
14 his possession. The ones to which Mr. Jacobs was an addressee
15 or a recipient are likely rightfully in his possession
16 regardless of how he came into possession of those.

17 MR. PEEK: I disagree with the Court, but I get what
18 the Court is saying. But I disagree with the Court.

19 THE COURT: There is clearly a class of information
20 that are alleging that should be treated differently. And I
21 recognize that. And if at some point in time I am authorized
22 to deal with the discovery dispute that had been teed up for
23 last summer, I would have been happy to deal with it. But I
24 recognize that what Mr. Williams suggested was probably the
25 appropriate protocol.

1 MR. PEEK: And we're all trying to do that. But
2 what we're faced with now is I tried to get the same agreement
3 from Mr. Pisanelli, because I saw in his papers that he said,
4 I'm going to honor it. So I spoke to -- I sent him an email
5 last night, and I spoke to him this morning about can I have
6 the same agreement with you that I had with Mr. Williams,
7 which is that you will not look at these documents until such
8 time as the Court makes a determination as to whether or not
9 you have proper -- you're properly in possession of them and
10 you can properly use them. And I got the answer that, I can't
11 commit to that and I also can't commit to the fact to whether
12 or not my client will disseminate them.

13 So I am now stuck with a position that the Court has
14 ordered, and I have an expiration date of today.

15 THE COURT: Yep.

16 MR. PEEK: I have documents that are now put -- put
17 more into the public domain with now disclosures, and I don't
18 have an agreement that he will not review those, will not
19 disseminate those documents until this Court can make a
20 determination.

21 THE COURT: Which I'm not allowed to do, because the
22 case is stayed.

23 MR. PEEK: I get that you're not allowed -- you say
24 you're not allowed to do it. But that's why I'm here in this
25 case, Your Honor. And I know you don't like this case because

1 you think, as Mr. Pisanelli points out, that it is my effort
2 to --

3 THE COURT: It's a game.

4 MR. PEEK: I understand you say it's a game. What
5 am I supposed to do, Your Honor?

6 THE COURT: Ask the Nevada Supreme Court to clarify
7 the --

8 MR. PEEK: I have asked the Nevada Supreme Court,
9 and now here's what I'm faced with, Your Honor, is I have an
10 order that is expiring. And I respectfully disagree with the
11 Court that Mr. Jacobs is rightfully entitled to documents in
12 which he is a recipient, an addressee, or an author of those
13 documents if they were improperly taken at the termination of
14 his employment. He may be entitled to them in discovery, but
15 he doesn't get to take them. That's what the cases that we
16 cited say to you. That's what the rules of professional
17 responsibility say to you. You don't get to go in and
18 download 11 gigabytes of data of a company from which you have
19 now been terminated and say, they came into my possession
20 rightfully during the time I was employed so now, even though
21 I'm obligated to return them, I get to take them. And that's
22 what happened, we believe, in this case.

23 So I get that Mr. Pisanelli is not going to commit
24 to that. I get that maybe this Court isn't going to do
25 anything until the Supreme Court allows, but I'm trying to get

1 some kind of relief from this Court, Your Honor, to prevent
2 the further review and the further dissemination of the
3 documents that he obtained improperly.

4 THE COURT: Okay.

5 MR. PEEK: And I don't have any other opportunity to
6 do that other than in this, Your Honor --

7 THE COURT: I understand.

8 MR. PEEK: -- and the rules which certainly Mr.
9 Pisanelli says he will be bound by them, but I don't have that
10 full commitment from him.

11 THE COURT: Mr. Peek, I recognize you are in a very
12 difficult position given the stay order by the Nevada Supreme
13 Court, which was why I gave a 14-day interim order even though
14 I think this entire case is improper. But that's a whole
15 different issue.

16 So let me hear from Mr. Pisanelli.

17 MR. PEEK: Thank you, Your Honor.

18 THE COURT: And perhaps we will work this out.

19 MR. PEEK: Trying to, Your Honor.

20 THE COURT: Because I'm trying not to violate a stay
21 order.

22 MR. PISANELLI: So when he asks you, what am I
23 supposed to do, I guess we can read from his actions that the
24 best he could come up with was a sanctions motion against me,
25 a sanctions motions that's premised on words like "unethical

1 conduct," like words from Ms. Glaser, who says that I have "no
2 compunction with violating basic ethical and professional
3 standards." Attack me because I -- as you recall last week,
4 didn't have the transcript, but you recall, I'm sure, as well
5 as I do last week sitting at this table they said that I have
6 read through the documents, I've attached, do you recall,
7 thousands of pages of additional documents in my witness and
8 exhibit list and therefore we find ourselves here today on the
9 sanctions motion. All of this hysteria and drama was
10 presented to you simply on the scheduling of today and a
11 scheduling of Ms. Glaser's parallel motion in the main case,
12 all based upon the fact that I had the audacity, they said, to
13 read documents and to put -- identify them in our exhibit
14 list. Sanction me, they ask you, because what else can I do,
15 Judge, the Supreme Court's not listening to me. So that's
16 what brings us here today.

17 I will get to how outrageous those allegations are,
18 how reckless both Mr. Peek and Ms. Glaser have been in making
19 them in a moment. But I have to touch upon a point that you
20 just made, Judge, that this is the same TRO that he asked for
21 a couple weeks ago. It's even the same authority that he's
22 coming forward with you and asking for relief that he's not
23 entitled to. Your Honor said it then, and you've said it now,
24 and you have left no question for any of us, including Team
25 Sands in the back of the room, that this is a game and this is

1 an inappropriate action and it's an attempt to get around the
2 Supreme Court's order. There's no way around that conclusion.
3 As a matter of fact, with all due respect to you, Your Honor,
4 no one in this room needed to hear you say it. We all knew it
5 before we walked into this room what was going on. And --
6 THE COURT: -- works better if I say it on the
7 record.
8 MR. PISANELLI: It does indeed. It certainly helps
9 me. And let there be no mistake about it --
10 THE COURT: Well, I'm trying to make sure the
11 Supreme Court understands.
12 MR. PISANELLI: Fair. Fair. But --
13 THE COURT: Somebody might give them a copy of the
14 transcript.
15 MR. PISANELLI: I'll write that note down. That's
16 not a bad idea.
17 MR. PEEK: Mr. Anderson took note of that, Your
18 Honor.
19 THE COURT: Yeah.
20 MR. PEEK: The same frustration that you have that
21 we have.
22 MR. PISANELLI: Let me also point Your Honor to the
23 other not so subtle game that's going on before you that is so
24 disrespectful as really to be shocking to the conscience,
25 especially for out-of-state counsel. We continue to have this

1 shill issue going on with Las Vegas Sands coming in here
2 claiming to be the aggrieved party while Sands Macau or Sands
3 China sits in the back of the room. Last time it was Ms.
4 Glaser in the front row. Now we have Mr. Ma in the back row.
5 What's interesting about him being here, Your Honor, is this
6 reply brief. When I get a reply brief filed before I file my
7 opposition, of course, the first question in our entire office
8 was, reply to what.

9 THE COURT: Who leaked it. Yeah, who leaked it.

10 MR. PISANELLI: Yeah. Yeah. What are you replying
11 to? I didn't even have to ask who leaked it, because while
12 Mr. Anderson and Mr. Peek pat themselves on the back for
13 having predicted our argument, I can tell you they address our
14 argument on page 10 from line 13 to 26. That's it.
15 Everything else in this 12-page brief is new. And guess where
16 it came from? It is Ms. Glaser and Mr. Ma's brief that we
17 have to oppose on Friday. There's times when it's cut and
18 paste, even the same highlights, the same commas, the same
19 citations. So what we have is again the right hand talking to
20 the left hand, we have other arguments you should have put
21 into that other case that we don't want to pretend that we're
22 participating in, so file a reply brief.

23 I would have respected both sets of counsel more if
24 they were just up front and called it what it is, a new brief
25 or a supplemental brief. That was objective -- clearly

1 objective number one, that we needed to hear Sands China's
2 position through this reply brief, and so they filed it
3 through Mr. Peek. Now, the other objective is they realized
4 what they had done in their opening briefs and they'd realized
5 what they'd done when they stood in this courtroom accusing us
6 of ethical violations.

7 This is what we have, very clearly, without debate.
8 Remember I told you -- and the bailiff even stood up because I
9 raised my voice a little too much -- that it was all on the
10 Internet and that -- and I predicted they would withdraw their
11 motions if they had any integrity. Do you recall that, Your
12 Honor? Well, this is what I was talking about. They filed a
13 motion and they stood up here and looked you in the eye and
14 called me unethical for attaching more emails, more records
15 from what they characterize as the stolen records. I told
16 them they're wrong, they should read them, and Ms. Glaser
17 shouted over my voice, that's untrue, that's untrue.

18 Well, they have -- now this reply brief clearly
19 shows they figured out what happened. Our exhibits are from
20 the Internet, their Website. Our exhibits are also from the
21 opposition that Campbell & Williams filed to the motion to
22 dismiss. That's really the set of emails that they're
23 complaining about and screaming about that they wanted me
24 sanctioned for and even Mr. Peek still holds onto tightly with
25 those 13 lines of text in his reply brief. But what they

1 forgot, Your Honor, is that Sands China listed the same
2 records.

3 So when they come in here asking you to sanction me
4 for listing records in an exhibit list, the same records Mr.
5 Ma listed in his exhibit list, I sarcastically, but with some
6 element of truth, have to ask Mr. Peek is he going to ask that
7 Mr. Ma be sanctioned, that Sands China be sanctioned for doing
8 exactly what I did. The hysteria and the drama was all
9 because they didn't read what we had listed. And so I'm
10 mixing a couple of issues here, and I'll do my best to clarify
11 it.

12 We have on the one hand an ill-founded and reckless
13 motion to begin with on sanctions. If there is anything that
14 is legitimate for you to consider in this rogue case, it's
15 whether I have done anything unethical. And the totality of
16 actions that they complain about was my witness and exhibit
17 list and the very outrageous behavior of Bates numbering the
18 documents from the witness exhibit list so that when we are in
19 this evidentiary hearing we would have a basis for identifying
20 those documents.

21 THE COURT: Because we have a rule that requires you
22 do that in the Eighth Judicial District.

23 MR. PISANELLI: We do indeed. And so having them
24 complain -- by the way, it shouldn't be lost in this debate
25 when Mr. Peek continues to hold onto this issue about the

1 documents that are in the public record, on the Internet,
2 anyone in the public can come up and look at them, they have
3 been there since the spring. Is it April, I think it was on
4 file. I didn't see an objection in the record of this case
5 against Campbell & Williams or Mr. Jacobs when their
6 opposition was filed. I didn't see anyone object when Mr. Ma
7 submitted -- and Glaser Weil submitted documents attached to
8 their own brief, and I didn't see since April 2, the day we
9 got this ridiculous motion, anyone objecting that those
10 documents were in the public record. The first time all this
11 hysterical and dramatic nonsense was raised was in this motion
12 for a sanction. That was the first time they complained about
13 it. How dare Pisanelli Bice put in their witness and exhibit
14 list documents that they have known about have been in the
15 record for seven, eight, nine months, whatever it has been.
16 It really was a manufactured sham, like this entire case is,
17 and it's been outrageous.

18 I have said without sarcasm, Your Honor, that I
19 demanded from Ms. Glaser and from Mr. Peek that they stand up
20 in the same courtroom where they accused me and my colleagues
21 of unethical conduct, they stand in this same courtroom and
22 tell you they were wrong, apologize to you for providing false
23 information and allegations to you, and apologize to Mr.
24 Jacobs for the false and reckless allegations that they've
25 made about him. You recall they love throwing -- so

1 comfortable with this word "stolen records." Now we have Mr.
2 Peek, understanding that he has probably been far, far too
3 reckless with that phrase, we're starting to see him say
4 "improperly obtained." We're seeing at least some pullback
5 from one of the lawyers on this concept of stolen records.

6 Mr. Jacobs is entitled to an apology, as well. And
7 Ms. Glaser, more than anyone, needs to come into this
8 courtroom and apologize to you and to Mr. Jacobs, as she has
9 in her brief, which we'll respond to on Friday, "criminal
10 conduct" is what she characterizes it.

11 So I can't wait for the debate when we talk about
12 these stolen records, when we see all of the extraordinary
13 effort that this company went to when they escorted Mr. Jacobs
14 out of their premises and figuratively out of the country. I
15 can't wait for them to tell you how hard they worked to make
16 sure that they were retrieving any documents in his computers.
17 I can't wait to see that evidence. I can wait to see the
18 letters, I can't wait to see the complaints, I can't wait to
19 see the TROs, I can't wait to see the motions for sanctions, I
20 can't wait to see any of it. But you know what we're all
21 going to find, Your Honor, the very first time they petitioned
22 the Court on anything having to do with these things is this
23 ridiculous sanction motion against me and my firm today.
24 That's the first time. They've known about all of these
25 records that were properly in the possession of Mr. Jacobs for

1 a year, and now they start labelling it, either for the press
2 or for Mr. Adelson or maybe to even taint you, start calling
3 them "stolen records." And it is a fraud upon this Court,
4 because everyone associated with this case knows that nothing
5 has been stolen, and it is time to start addressing this
6 reckless name calling. If not for the litigation privilege,
7 there would be people being sued left and right over the
8 behavior of the lawyers in this case.

9 THE COURT: Can I ask you a question, Mr. Pisanelli.

10 MR. PISANELLI: Yes, ma'am.

11 THE COURT: Mr. Williams in an email that was
12 authored on July 8th in the other case, clearly in the other
13 case, which is, for the record, Case Number A-627691,
14 addressed a procedure which, if I was allowed to do something
15 with respect to that case, I might say was an appropriate
16 procedure to follow.

17 MR. PISANELLI: Right.

18 THE COURT: What is your position related to that
19 procedure?

20 MR. PISANELLI: My position -- Mr. Peek tells you a
21 moment ago, and I wanted to bang my head on the table
22 listening to it, that -- he says, we are all trying to do
23 that, that's the proposal you're talking about, and that he
24 said that I will not agree. I'll tell you exactly what I told
25 him. I said that that is, as you said, as reasonable a

1 protocol as there is available, you want the extreme, Steve,
2 you want me to give it all back to you, and that's not going
3 to happen, we'll respectfully disagree on what the law is,
4 maybe you can fairly say I want the opposite extreme, I want
5 to start discovery and we'll give you mirror of it and let's
6 go into this case. And so the protocol seems to address
7 everyone's concerns.

8 What I told him I would not agree to do is to give
9 him a promise not to review anything and do anything and sit
10 on my hands waiting for them to do something. That protocol,
11 as you see, Your Honor, in my best recollection is several
12 months old now.

13 THE COURT: July 8th, 2011.

14 MR. PISANELLI: Yeah. Several months old. And you
15 don't have in the record, because it doesn't exist, anyone
16 from Sands China, anyone from LVSC accepting it. If they step
17 up and say, this is workable, let's get it done so we can
18 resolve all of the documents document by document, then we can
19 have all of the records available for everyone to use at the
20 evidentiary hearing and the remainder of the case. I will
21 not, however, handcuff myself and Mr. Jacobs and say, yes, you
22 get all the relief you want because I won't read them forever,
23 and then sit on their hands and never take any action to get
24 it resolved.

25 THE COURT: And you understand, Mr. Pisanelli,

1 though, that there is a risk to you that if you review those
2 records and I find that there are certain records that are
3 clearly inappropriately obtained that are attorney-client
4 privileged that your client should not have had in their
5 possession, it may result in your disqualification.

6 MR. PISANELLI: I understand the rules governing the
7 issue, Your Honor. And I'll tell, as I said in my briefs, I
8 have not reviewed anything other than the public record, not a
9 single additional document. And you would have thought that
10 Mr. Peek and Ms. Glaser would have at least asked me that
11 question before they stood up in this court and accused me of
12 having no compunction for violating ethical standards and
13 rules and all of the other nonsense that we heard.

14 So I understand your point. I've researched it, and
15 I wholeheartedly disagree with what Mr. Peek has to say about
16 what is appropriate protocol. I also find that -- it
17 compelling, to say the least, that all he ever does in this
18 case is try and get the totality of the relief that he has
19 asked through TROs, through sanctions and otherwise, but never
20 once addresses that protocol with you. Never once. And
21 there's a reason why, Your Honor. Because they don't want
22 that protocol because it is going to necessarily result in
23 most or all -- and I firmly believe the answer is all -- every
24 single document will remain where they're at. For Mr. Peek to
25 stand up here and give you this long speech about pre

1 termination Mr. Jacobs had to reach in with a thumb drive or
2 otherwise and take documents out. Where is this coming from?
3 Evidence? Declarations? Tell us where is this come from
4 where he has -- he knows where everything happened. Did they
5 go back and reconstruct Mr. Jacobs's hard drives or
6 activities? I suspect they know exactly every single document
7 he has. I have little doubt in my mind they have
8 reconstructed every moment of Mr. Jacobs's existence from a
9 computer-life standpoint and know every single thing he had
10 and every single thing he currently possesses. The act
11 worried and we don't know really is suspect. Let me leave it
12 at that.

13 And, so you know, getting back to your question,
14 Your Honor, this is a protocol that we can live with, and I'll
15 start it today if I get Sands China -- Mr. Ma's here, he can
16 stand up, unless he's terrified of what'll happen if he speaks
17 in this case -- and we've got Mr. Peek, stand up, let's start
18 talking about this issue and getting this resolved, because it
19 will be very, very unfair to us to find ourselves in November
20 not able to either review or use those documents in that
21 hearing simply because Sands China and Las Vegas Sands sat on
22 their hands and took the benefit of either the risk associated
23 with this analysis or the fact that I would have agreed and
24 given them a blank check to say, no, I won't do anything until
25 you actually move. That's unfair. And so stand up and let's

1 get it resolved. And that's what I'm prepared to do.

2 But it cannot be lost --

3 THE COURT: Especially since I've told you I'm not
4 moving your hearing on November 21st.

5 MR. PISANELLI: That was actually my last point of
6 why it really should be done.

7 MR. PEEK: Do you want me to stand up now, Your
8 Honor, or wait till he's finished?

9 THE COURT: Wait till he's finished, Mr. Peek.

10 MR. PISANELLI: Yeah. I would request that you wait
11 till I'm finished.

12 MR. PEEK: Okay. I just --

13 MR. PISANELLI: And so with all of that said, Your
14 Honor, these are all issues for the other case. The more we
15 entertain these issues, the more Mr. Peek and his team and Las
16 Vegas Sands becomes empowered to play this game. This is a
17 game and a fraud and a sham. They know that these are
18 discovery disputes. They know that this case has no merit
19 whatsoever, and they continue to recycle these old tired
20 arguments and these old tired allegations.

21 I would ask Your Honor give no relief. You've
22 already given some relief, which you acknowledged to us today,
23 and I think you did the first time around, that Las Vegas
24 Sands really wasn't entitled to what they got in the first
25 place, and I'll ask you let's not do anything else in this

1 case and give it more life than it's entitled to.

2 We have, I believe, two options available to us.
3 One is the Supreme Court, which Mr. Peek went to. He filed
4 his petition, accused me of unethical conduct in that
5 petition, too, because of my witness list. But I think it's
6 also an evidence issue before you relating to the
7 jurisdictional hearing. So, you know, I may be stretching it
8 to the limits for your comfort, but I think we can address
9 this issue in the context of jurisdictional -- the
10 jurisdictional analysis, because I think those documents will
11 go to the heart of what we're debating about. And so if we
12 resolve it in the context of jurisdiction, I think we're well
13 within the bounds of what the Supreme Court told us to do. I
14 offer that as a suggestion to get this -- get the real case
15 moving and stop this nonsense in coming into this phony case.

16 THE COURT: Thank you.

17 Mr. Peek.

18 MR. PEEK: So there's no mistake about the
19 discussion that I had with Mr. Pisanelli, and I think he
20 accurately identified where we reached disagreement, and where
21 we reached disagreement is his ability absent a Court
22 determination on -- and I'll use the words "stolen documents"
23 as I'm backing away from it, improper documents, however you
24 want to identify it, that Mr. Pisanelli, so long as until the
25 Court decides this you will not review, you will not

1 disseminate, then I am okay with the protocol that you propose
2 -- or that Mr. Williams proposed, we can give the documents --
3 a copy of the documents to a third party vendor so that we can
4 at least look at what it is that contained within the universe
5 of those documents and identify what's contained within the
6 universe of those documents that is privileged, that you
7 should not have, although we contend he shouldn't have any of
8 it, what is covered by the Data Privacy Act, what is covered
9 by trade secrets, what is covered by propriety and identify
10 all of those. I said, I'm happy to do that and go forward
11 with that protocol, but I want at least an assurance that
12 during that period of time until that's resolved by the Court
13 that you not look at those documents. That's where it broke
14 down.

15 But -- so I guess I want to go back, Your Honor,
16 because we can't seem to agree with Mr. Pisanelli and Jacobs
17 that he will refrain from reviewing and using 11 gigabytes of
18 data, that creates the reason for our being here today. That
19 creates the imminent risk that they will continue to review
20 and disseminate. So long as that exists, that there's that
21 dissemination, that there's this review of the documents, I'm
22 going to stand before you, I'm going to stand before the
23 Supreme Court, and I'm going to yell from the rooftops, I need
24 relief. I'm going to continue to do that, Your Honor.

25 They're not entitled to keep or use the documents.

1 They are the company's property. How do we know that? We
2 know certainly from the Vagus agreement, we know from the
3 Sands China policies, we know from the Las Vegas Sands
4 policies. So retention of the documents after termination,
5 Your Honor, the cases tell us breaches the agreement as well
6 as statutory and common-law duties. Zahodnik tells us that.
7 Zahodnik tells us that it is improper for an employee to
8 retain the documents obtained during employment and disclosure
9 to his counsel, particularly so when those documents include
10 attorney-client privilege and trade secret information. It
11 makes it even more critical to us.

12 I can't get that commitment from Mr. Pisanelli to do
13 that. So the important issue I think for us is what do we do
14 going forward for Jacobs and Vagus and counsel to commit to us
15 -- can I get that commitment from them. If I don't, what
16 relief do I have? So in similar circumstances where that
17 party or their counsel have improperly obtained documents
18 belonging to an adversary without the consent of the
19 adversary, Las Vegas Sands, the courts have consistently
20 required the recipient to cease the review, and in some
21 circumstances have at least required the return, and in many
22 circumstances have even said, you cannot not only use them,
23 but if you -- you can't even get them from the other side, you
24 can't get discovery of those very same documents. We have the
25 cases of Castalano and Bert Hill we cited to you.

1 The 11 gigabytes of data, Your Honor, we all know
2 does contain privileged information. Mr. Williams
3 acknowledged that. Mr. Williams said in his correspondence to
4 us, my initial review is there are attorney-client documents
5 so when I saw that I ceased the review and because of the risk
6 that I might inadvertently look at those I'm not going to look
7 at any of the 11 gigabytes of data. So did Mr. Pisanelli say,
8 as I start looking through this and do I do search terms and
9 do I exclude from my search terms the names of who the counsel
10 are or were, does he know who all the counsel are or were, or
11 is he just going to start looking through the data and just
12 flip through it page by page? And when he comes across a
13 document that is clearly attorney-client, he's looked at it.
14 That's what we don't want to have happen here.

15 So all of this outrage and indignation about what
16 happened before and what has happened over the course of the
17 last four or five months about what we have and have not done,
18 he doesn't have the same institution memory that I have,
19 because we have been working with Mr. Williams to resolve
20 these issues. We filed on September 13th in this case a
21 motion to amend and a motion for protective order to seek to
22 resolve, as we had told Mr. Williams we would do, the issue of
23 the entitlement to those documents and whether those documents
24 had or had not been improperly obtained by Mr. Jacobs. And,
25 of course, we know what happened with that motion we filed on

1 September 13. There was a hearing on the 16th, on Friday, the
2 16th, and the Court said to Mr. Jones, who filed that and
3 stood here with Mr. Pisanelli, gentlemen, I cannot address
4 this issue.

5 So to stand there and say we haven't -- we, Las
6 Vegas Sands, hasn't taken the steps necessary, we have, Your
7 Honor. We've had the meet and confers with Mr. Williams, had
8 the meet and confers with Mr. Pisanelli, and what we can't get
9 resolved is the fact that they will not review any of the
10 documents until this Court has made a determination as to
11 whether it is or is not proper to do so under the rules of
12 discovery and the rules of professional conduct. Thank you.

13 THE COURT: Thank you.

14 The motion is denied. There's no violation of the
15 order I issued which I characterized as an interim order in
16 the hopes that the Nevada Supreme Court would take some action
17 to modify the stay order they have entered in this case.

18 To the extent permitted under the stay order, the
19 Court will address the use of the documents in the
20 jurisdictional discovery hearing -- in the jurisdictional
21 discovery before the evidentiary hearing on the jurisdictional
22 issues that the Supreme Court has ordered in Case Number
23 A-627691.

24 Given the Court's inability to resolve what is truly
25 a discovery dispute in Case A-627691, the Court is limited in

1 what it may do. As I have told you, my belief is this case is
2 purely a discovery dispute. As a result, I am dismissing this
3 case without prejudice for you to pursue it as a discovery
4 dispute related to the jurisdictional evidentiary hearing
5 issue.

6 I am also going to now call Case Number A-627691,
7 which requires Mr. Ma to stand up and come close, since I'm
8 calling the case that he's actually appearing in.

9 Gentlemen --

10 MR. PISANELLI: Are both cases still open, Your
11 Honor?

12 MR. PEEK: Do you want me to move to the other side
13 of the room?

14 THE COURT: No. I want you guys to stay there.

15 Mr. Ma, come this way, please. I need you to
16 appear, because I'm calling the case that you're actually
17 appearing in.

18 Good morning, Mr. Ma. It's so nice of you to be
19 here.

20 MR. MA: Good morning, Your Honor.

21 THE COURT: Because --

22 MR. MA: And I do want to make sure I'm making my
23 appearance for the earlier-filed case, as opposed to the
24 second case.

25 THE COURT: Only on the earlier-filed case, which is

1 why I said that was calling that case now.

2 Because of the issue related to the discovery
3 dispute in A-627691 and the inability of the Nevada Supreme
4 Court to address the issue related to the stay that was
5 presented to it on an emergency petition for extraordinary
6 relief, I am going to vacate the November 21st hearing. That
7 will require us to go through a process that will be longer
8 than what we would anticipate to resolve what I'm going to
9 treat, at least as much as I can, as a discovery dispute
10 related to the jurisdictional discovery which has been raised
11 in a motion in limine. To the extent we set up a protocol for
12 the examination of documents as a result of that motion in
13 limine, we will do so, or you could all agree to it. But,
14 knowing how long it takes for those ESI issues to be resolved,
15 there is no way that you will be able to be ready for a
16 hearing on November 21st. So, despite my best efforts to make
17 sure we were able to do this, we are unable to accomplish that
18 hearing in the time scheduled, and I'm going to unfortunately
19 grant Mr. Pisanelli's request from a month ago to vacate that
20 hearing.

21 So we'll talk about rescheduling when I see you at
22 the motion in limine hearing and hopefully set up a protocol
23 and --

24 MR. PEEK: That's on the 13th, Your Honor, as I
25 recall.

1 MR. PISANELLI: Your Honor, on the case you just
2 dismissed pending before you and --

3 THE COURT: Wait. Mr. Ma has to now step back,
4 because he can't appear on that case.

5 MR. MA: Thank you, Your Honor.

6 THE COURT: A-648484.

7 MR. PISANELLI: -- pending before you in particular
8 on this ill-advised --

9 THE COURT: I dismissed this case.

10 MR. PISANELLI: -- motion for sanctions against us
11 we have requested that we be reimbursed for fees. In light of
12 the fact that the entire action was a sham, I think it's all
13 the more compelling that fees be awarded under these
14 circumstances.

15 THE COURT: You can make a separate motion in that
16 case if you feel it is appropriate. I will tell you that you
17 know it is rare for me to award fees, especially when somebody
18 is put in the difficult position by the Nevada Supreme Court,
19 as opposed to some of the rest of us. But I agree with you
20 there are some issues, and I may give fees, but you'll have to
21 file a separate motion. I'm not going to do it just on what
22 you asked for in your opposition that everybody got last
23 night, I got this morning.

24 MR. PISANELLI: A fair point on the difficulty
25 offered by the Supreme Court. My focus is on these reckless

1 allegations of misconduct that --
2 THE COURT: I understand.
3 MR. PISANELLI: -- that had no foundation whatsoever
4 that we had to oppose. So I'll file a separate petition.
5 Thank you.
6 THE COURT: And it'll be in the normal course, and
7 we'll deal with it some day later.
8 MR. PISANELLI: Very well. Thank you.
9 THE COURT: Mr. Peek, good luck with the Nevada
10 Supreme Court, but I will try to the extent it is possible,
11 since you presented this as a potential issue, to deal with it
12 in the context of the jurisdictional discovery issue.
13 MR. PEEK: Thank you, Your Honor. And I appreciate
14 Mr. Pisanelli's invitation, as well, to the Court to allow it
15 to be heard in the ordinary course of that jurisdictional
16 dispute.
17 THE COURT: We'll see how it works out, though.
18 MR. PEEK: Thank you, Your Honor.
19 THE COURT: Okay. Goodbye.
20 THE PROCEEDINGS CONCLUDED AT 10:17 A.M.
21 * * * * *
22
23
24
25

CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt
FLORENCE HOYT, TRANSCRIBER

10/4/11

DATE



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

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

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

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

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



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

Not surprisingly, it seems that many of these non-privileged communications may go to the very heart of this case. (*See, e.g.*, SJACOBS00082684 ("Stock Options.msg").) As SCL well knows, a communication is only privileged if it "is in furtherance of the rendition of professional legal services to the client . . ." NRS 49.055. In other words, "while discussions between executives of legal advice should be privileged, conversations between executives about company business policies and evaluations are not." *Wilstein v. San 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 Peek, Esq. (via e-mail only)
Brad D. Brian, Esq. (via e-mail only)
Henry Weissmann, Esq. (via e-mail only)
John Owens, Esq. (via e-mail only)

APP000370

DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,)	
)	
Plaintiff,)	
)	
vs.)	CASE NO. A-10-627691
)	
LAS VEGAS SANDS CORP., a)	
Nevada corporation; SANDS)	
CHINA LTD., a Cayman Islands)	
corporation; DOES I through)	
X; and ROE CORPORATIONS I)	
through X,)	
)	
Defendants.)	
_____)	
)	
AND RELATED CLAIMS)	
_____)	

VIDEOTAPE AND ORAL DEPOSITION OF MICHAEL LEVEN

VOLUME II

PAGES 268-456

LAS VEGAS, NEVADA

FRIDAY, FEBRUARY 1, 2013

REPORTED BY: CARRE LEWIS, CCR NO. 497

JOB NO. 173048

APP000371

1 DEPOSITION OF MICHAEL LEVEN,
2 taken at 3883 Howard Hughes Parkway, Suite 800,
3 Las Vegas, Nevada, on Friday, February 1, 2013, at
4 11:24 a.m., before Carre Lewis, Certified Court
5 Reporter, in and for the State of Nevada.

6
7 APPEARANCES:

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7 The Videographer:

8 Litigation Services

By: Benjamin Russell

9 3770 Howard Hughes Parkway, Suite 300

Las Vegas, Nevada 89169

10 (702) 314-7200

11 Also Present:

12 Steven Jacobs

13

14

15

16

17

18

19

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24

25

I N D E X

WITNESS: MICHAEL LEVEN

EXAMINATION

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By Mr. Bice

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1 LAS VEGAS, NEVADA; FRIDAY, FEBRUARY 1, 2013;

2 11:24 A.M.

3 -oOo-

4 THE VIDEOGRAPHER: This is the beginning of

5 Videotape Number 1 in the deposition of Michael 11:24:10

6 Leven in the matter of Jacobs versus Las Vegas Sands

7 Corporation, held at Pisanelli Bice at 3883 Howard

8 Hughes Parkway, Suite 800, Las Vegas, Nevada 89169

9 on the 1st of February, 2013 at approximately

10 11:28 a.m. 11:24:33

11 The court reporter is Carre Lewis. I am

12 Benjamin Russell, the videographer, an employee of

13 Litigation Services.

14 This deposition is being videotaped at all

15 times unless specified to go off the record. 11:24:45

16 Would all present please identify

17 themselves, beginning with the witness

18 THE WITNESS: Michael Leven.

19 MR. PEEK: Stephen Peek representing Sands

20 China Limited and Las Vegas Sands Corp. 11:25:00

21 MR. JONES: Mark Jones on behalf of Sands

22 China Limited.

23 MR. RAFAELSON: Ira Rafaelson on behalf of

24 Las Vegas Sands Corp.

25 MR. ALDRIAN: Eric Aldrian on behalf of 11:25:05

1 Mr. Schwartz?

2 A. No.

3 Q. Did you have any subsequent conversations
4 from -- with Mr. Schwartz subsequent to this?

5 A. I don't remember. 02:34:28

6 Q. Is it your belief that you received this
7 e-mail in your capacity as advisor to the Sands
8 China board?

9 A. This e-mail came from Mr. Schwartz, and I
10 assume it was in reference to Sands China. 02:34:45

11 Q. In your capacity as Sands China board
12 member -- or special advisor to the Sands China
13 board, did you ask Mr. Schwartz to speak to
14 Mr. Jacobs?

15 A. I don't recall doing that. 02:35:02

16 (Exhibit 35 marked.)

17 BY MR. BICE:

18 Q. I show you what's been marked as
19 Exhibit 35, Mr. Leven.

20 This is a continuation on of the e-mail 02:35:35
21 string I showed you in Exhibit 34, so you can look
22 at the first two entries. Let me know when you have
23 done so.

24 A. Uh-huh.

25 Q. Okay. The first e-mail you sent is on 02:35:59

1 July 6 at 5:13 a.m. It says: "Of course, you can
2 try. As Yogi says, it's never over till it's over."

3 Do you see that?

4 A. Uh-huh.

5 Q. Was that true? Was the decision not over 02:36:14
6 at that point in time?

7 A. I think.

8 MR. PEEK: Just a simple yes or no.

9 THE WITNESS: Possibly.

10 BY MR. BICE: 02:36:31

11 Q. Okay. How is it possibly yes and possibly
12 no, then?

13 A. There may have been a chance to -- to
14 recover. But this is what I'm saying to Jeff
15 Schwartz, but it would have been difficult. 02:36:42

16 Q. Do you -- did you ever have any follow-up
17 conversation with Jeff Schwartz about his making an
18 attempt?

19 A. I don't recall.

20 Q. Now, you copied -- on the next e-mail up, 02:36:57
21 you had copied -- well, strike that.

22 In the e-mail below where Mr. Schwartz
23 writes "Such a shame," do you recall whether you had
24 any conversation with him about what that -- what he
25 meant by that? 02:37:11

1 MR. PEEK: Don't answer that.

2 BY MR. BICE:

3 Q. In the first e-mail on the page, Mr. Leven,
4 it says: "By the way, this is a perfect example of
5 how Steve works." 02:37:27

6 Do you see that?

7 A. Yes.

8 Q. When you sent this e-mail on July 6 of 2010
9 to Mr. Schwartz and copied Mr. Kay on it and
10 blind-copied Mr. Adelson on it, in what capacity 02:37:41
11 were you sending such an e-mail?

12 A. This is the same -- the same capacity that
13 I sent all these e-mails about.

14 Q. Is that in both?

15 A. This -- this involved -- this involved both 02:38:00
16 the Sands China board and Las Vegas Sands'
17 interests.

18 Q. Okay. Is that why Mr. Kay is copied on
19 this?

20 A. Yes. 02:38:14

21 Q. So in the statement where you say he
22 believes he reports to the board, not the chair, are
23 you referencing the Sands China board or the LVSC
24 board?

25 A. The Sands China board and the chair of both 02:38:44

1 Sands China -- the Sands China board and the chair
2 of Sands China.

3 Q. Okay.

4 (Exhibit 36 marked.)

5 MR. PEEK: We'll take a break in a couple 02:39:35
6 minutes.

7 THE WITNESS: Okay.

8 Okay.

9 BY MR. BICE:

10 Q. Okay. Starting at the bottom of the 02:40:20
11 Exhibit 36, Mr. Leven, do you have any reason to
12 believe this is not an e-mail you sent where it says
13 "SGA okay"?

14 A. No, I believe I sent it.

15 Q. Okay. "He wants me to talk to Turnbull." 02:40:36
16 And that's David Turnbull, correct?

17 A. Absolutely.

18 Q. Okay. And again, you were having your
19 communications with Mr. Turnbull in what capacity?

20 A. As an advisor to the board. 02:40:51

21 Q. Okay. You also say in there -- you said:
22 "Spoke to Rob"?

23 A. Uh-huh.

24 Q. Would that be Mr. Goldstein?

25 A. Correct. 02:41:00

1 MR. JONES: Thank you.

2 THE VIDEOGRAPHER: Going off the record at
3 5:14 p.m.

4 (Deposition concluded at 5:14 p.m.)

5 -oOo-

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1 CERTIFICATE OF DEPONENT

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17 I, Michael Leven, deponent herein, do hereby
18 certify and declare the within and foregoing
19 transcription to be my deposition in said action;
20 under penalty of perjury; that I have read,
21 corrected and do hereby affix my signature to said
22 deposition.

23 Michael Leven, Deponent

24 Date

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
3) SS:
4 COUNTY OF CLARK)

5 I, Carre Lewis, a duly commissioned and licensed
6 Court Reporter, Clark County, State of Nevada, do
7 hereby certify: That I reported the taking of the
8 deposition of the witness, Michael Leven, commencing
9 on Friday, February 1, 2013, at 11:24 a.m.

10 That prior to being examined, the witness was,
11 by me, duly sworn to testify to the truth. That I
12 thereafter transcribed my said shorthand notes into
13 typewriting and that the typewritten transcript of
14 said deposition is a complete, true and accurate
15 transcription of said shorthand notes.

16 I further certify that I am not a relative or
17 employee of an attorney or counsel of any of the
18 parties, nor a relative or employee of an attorney
19 or counsel involved in said action, nor a person
20 financially interested in the action.

21 IN WITNESS HEREOF, I have hereunto set my hand,
22 in my office, in the County of Clark, State of
23 Nevada, this 10th day of February 2013.

24 
25 CARRE LEWIS, CCR NO. 497

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTION TO STAY ORDER

THURSDAY, JUNE 27, 2013

APPEARANCES:

FOR THE PLAINTIFF:	TODD BICE, ESQ.
	ERIC ALDRIAN, ESQ.
	DEBRA SPINELLI, ESQ.

FOR THE DEFENDANTS:	J. STEPHEN PEEK, ESQ.
	JON RANDALL JONES, ESQ.
	MARK JONES, 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.

APP000388

1 LAS VEGAS, NEVADA, THURSDAY, JUNE 27, 2013, 8:16 A.M.

2 (Court was called to order)

3 THE COURT: Good morning, gentlemen. Who's on the
4 telephone?

5 MR. PEEK: Stephen Peek, Your Honor. Good morning.

6 THE COURT: Mr. Peek, good morning. Do you plan to
7 argue today, or is Mr. Mark Jones and Mr. Randall Jones
8 arguing?

9 MR. PEEK: Mr. Randall Jones will be arguing. I
10 will certainly [inaudible] because I represent Las Vegas
11 Sands, but I join in whatever arguments Mr. Jones makes.

12 THE COURT: Well, here's the issue. Since you're on
13 the telephone up at the bench, you may not be able to hear
14 them as well unless I make them come stand at the bench. So
15 I'm trying to evaluate whether I make them pick up all their
16 crap and come up here, because they've got very organized
17 stacks today.

18 MR. PEEK: Your Honor, don't make them come up to
19 the bench and interfere with their argument. I'll do my best
20 to try and listen.

21 THE COURT: All right. Mr. Randall Jones, it looks
22 like you're arguing the motion this morning.

23 MR. RANDALL JONES: I am, Your Honor.

24 THE COURT: Okay. Good morning.

25 MR. RANDALL JONES: I'll be honored. For the

1 that he was not entitled to, that was not something that he
2 got in the ordinary course of his business and took it so that
3 he could use it against his former employer. Some of that
4 information, a small portion of it he probably did have access
5 to and did get before he knew he was going to be terminated.
6 But, Judge --

7 THE COURT: So can I ask you a question, Mr. Jones.
8 Because, you know, Ms. Glaser sends this letter, it's the
9 first letter she sends in the case, it's dated November 23rd
10 2010, and she says, "We have reason to believe based on
11 conversations with existing and former employees and," this is
12 the part that leads me to believe there's more to this,
13 "consultants for the company that Mr. Jacobs has stolen
14 company property." Well, that's been known to me a long time
15 ago, and I've asked about this repeatedly, that somebody had
16 done a forensic investigation of what had been taken from the
17 computer. I then learned that -- not as part of this case,
18 somebody tells me eventually that, well, yeah, we have a drive
19 that we took and it was done by the people over in Macau and
20 then we carried it back. You had a forensic consultant. You
21 know what he downloaded. It's not that hard to come in
22 sometime shortly after Ms. Glaser sends a letter, November
23 23rd, 2010, Mr. Campbell sends a response on November 30th,
24 2010, Ms. Glaser sends another letter December 3rd, 2010, and
25 then Mr. Campbell sends another response January 11th, 2011.

1 If it was really that your forensic consultant had done an
2 analysis and believed that Mr. Jacobs had stolen information,
3 I would have anticipated sometime in that early time frame I
4 would have seen a report from the forensic analysis, who would
5 have said, gosh, look, Judge, this is all he stole. To date I
6 still haven't seen it. This is now June 2013.

7 MR. RANDALL JONES: And, Your Honor, I think you --
8 your point makes the point, that if we would have believed at
9 that time that Mr. Jacobs would have taken 44 gigabytes or
10 11 gigabytes -- I read all those letters and I've seen all the
11 correspondence -- if we would have believed that he would have
12 taken that, we would have taken action. What you -- and I
13 know it's in this letter --

14 THE COURT: You did take action. You filed a
15 separate lawsuit. I then told Mr. Jones I didn't think it was
16 an appropriate second lawsuit. The reason he filed it was
17 because of the stay the Nevada Supreme Court had issued in
18 Case Number 58294. He then took an appeal of the dismissal of
19 that lawsuit, and the Supreme Court -- I don't remember if it
20 was a writ or an appeal, but the Supreme Court scolded him,
21 and I apologized to him myself because I had thought it was an
22 inappropriate tactic to file a separate suit in this discovery
23 dispute about that issue. So there's a lot of history. We've
24 been dealing with this issue for a while. But all of a sudden
25 it comes to a head and now you're asking for a writ right

1 Under the particular circumstances of this case,
2 which has a tortured history, given the pending writ issued in
3 the Supreme Court Case Number 58294, the lengthy delay in
4 addressing this particular issue, the Court declines to issue
5 a stay and will proceed with the evidentiary hearing ordered
6 to be conducted pursuant to the writ of mandamus issued in
7 Case Number 582984 beginning on July 16th, unless the Nevada
8 Supreme Court tells me otherwise.

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

10 MR. BICE: Thank you, Your Honor.

11 THE COURT: Good luck. Have a nice day.

12 MR. BICE: We will get you an order today, Your
13 Honor.

14 THE PROCEEDINGS CONCLUDED AT 9:21 A.M.

15 * * * * *

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**

7/2/13

FLORENCE HOYT, TRANSCRIBER

DATE