EXHIBIT C

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DISTRICT COURT
CLARK COUNTY, NEVADA
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STEVEN JACOBS
Plaintiff

vs.

LAS VEGAS SANDS CORP., et al.
Defendants

CASE NO. A-627691

DEPT. NO. XI

Transcript of Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON 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:
JILL HAWKINS
District Court

TRANSCRIPTION BY:
FLORENCE HOYT
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Proceedings recorded by audio-visual recording, transcript produced by transcription service.

(3)

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

(Court was called to order)

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

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

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

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

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

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

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

MR. RANDALL JONES: I am, Your Honor.

THE COURT: Okay. Good morning.

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

record, Your Honor, Randall Jones and Mark Jones on behalf of Sands China Limited.

THE COURT: And did you get the opposition from Mr. Pisanelli and Mr. Bice last night?

MR. RANDALL JONES: I did, Your Honor.

THE COURT: It's rather long.

MR. RANDALL JONES: It was rather long, and I have an expert witness on the stand, so it made for some enjoyable reading after preparing my deal with my expert's cross.

THE COURT: But it's a bench trial.

MR. RANDALL JONES: But it is a bench trial. And it's Tim Morris, so it's pretty straightforward.

THE COURT: Okay.

MR. RANDALL JONES: He is a good witness, so --

Judge, you know, you've had the history of this case for its entirety, and I've only been involved for about eight months now, nine months. Having said that, the invective and ad hominem rhetoric and attacks of the plaintiff, you know, I don't think they -- and I would ask the Court for some feedback on this, because I don't know that that helps the process, Judge.

THE COURT: It interferes with the process.

MR. RANDALL JONES: Well, I appreciate you saying that, because I have been doing this --

THE COURT: In fact, I'm appointing a committee to

assist us in dealing with professionalism and collegiality in the courtroom, because many of the judges are concerned, and it's been an issue at a bench/bar meeting. So that's one of the things we've talked about, is the effectiveness to litigators of those kind of attacks. I've seen it forever. I know for some people it's part of the process. It doesn't affect me. This case has some ugly history to it, which means that the entire history of this case has been surrounded in those attacks from both sides prior to your involvement. And I am concerned with it. I tell counsel when it's used, doesn't impact me on this case. I've stopped saying it because I've said it so many times. I take everything you guys take with a grain of salt, and I just get through it. Because my job is to try and make a determination that is based on the facts and not based on the personality, not based on the personal attacks, not based on what you guys are doing, but what really needs to be done to get this case to its decision-making point. That's what I'm supposed to do.

MR. RANDALL JONES: And I appreciate that, Your Honor. The reason I bring that up before I get into the merits of this argument is because -- and I've known Mr. Bice and Mr. Pisanelli for a long time, but you cannot attack the parties the way they do and without -- they are at best indirectly attacking counsel with some of these I think very personal and inappropriate comments. And they know better

than that. And I have to tell the Court I take offense to that, and I would hope that this Court recognizes that my firm -- and I certainly believe Mr. Peek would not be a part of that, and Mayer Brown has been at least -- in everything we have done they have been as straightforward as any firm I've ever dealt with. So with that --

THE COURT: Well, but they're the fourth California firm on this case now.

MR. RANDALL JONES: And, Your Honor --

THE COURT: Third or fourth. Mr. Peek, is it third or fourth?

MR. RANDALL JONES: I think it's third.

THE COURT: Maybe it's only third.

MR. RANDALL JONES: But, Your Honor, you know, there's a long history here. But, again, Mayer Brown is involved in this case, too, because there's -- at this point the Court has ordered a lot of documents to be produced and, well, as a result of some of the orders, a lot of documents have had to be produced. So I'll put it that way. And our firm does not have the capability of doing that, and they have the expertise and the manpower to help in that process. So it's been -- it's been a critical part of the process to produce what we've been able to produce thus far. And so I want to just mention that as a backdrop, because I think that goes to ultimately the crux of this issue, where we are. I

will tell the Court --

THE COURT: Why? Why do you think that goes to the crux of this issue? Because I don't see it that way, so --

MR. RANDALL JONES: Well, because, Your Honor, there's been these issues that certainly since Mayer Brown and our firm have been involved that we have not candidly pursuant to our obligations to the Court produced the documents that are required to be produced by your orders. And I have -- I will tell you I have certainly attempted to do that to the best of my ability while zealously protecting what I believe is the most sacrosanct obligation I have in the law to protect attorney-client privilege. And so it has put us in a difficult conundrum, wanting to make sure we get you what you want us to give while making sure we do everything we believe we have to do to protect that kind of a privilege. And sometimes those things are in conflict.

THE COURT: True.

MR. RANDALL JONES: And it's certainly not any attempt, in spite of what Mr. Bice says and what Mr. Pisanelli says, to thwart the process inappropriately, obstruct the process, or frustrate what you want to get done. I understand that you want to have this hearing as soon as possible. And if you'll recall, Mr. Bice would ask the question by you at the last hearing, when would you like --

THE COURT: He said November.

MR. RANDALL JONES: He did. He said, I believe, September or November. So, you know, this Court has been the authority that has said, no, we're going to do it sooner. When you made that statement, however, there was this pending issue. And you gave -- as I recall, you gave Mr. Bice the option, do you want to go forward with the hearing on the 16th of July --

THE COURT: No, I didn't give him an option. I told him it didn't matter on his Rule 37 sanctions, because I'm not going to -- probably it is highly unlikely I would give the evidentiary sanction that he's asking for, which is you can't raise the jurisdictional issues anymore, you've waived it. I'm not going to give that one.

MR. RANDALL JONES: Actually, what I was referring to, Your Honor, was the documents, the documents that are the subject of the second writ. Do you want those documents first, you want to wait for that writ to be over, and that was my recollection.

THE COURT: Those were the Macanese documents.

MR. RANDALL JONES: Right.

THE COURT: And those relate to the Rule 37 motion.

MR. RANDALL JONES: That's true. But I understood you to be saying you want those -- you want to wait --

THE COURT: Well, that wasn't what I was saying, Mr. Jones.

MR. RANDALL JONES: Well, then I misunderstood.

In any event, Your Honor, this is a little different issue. In fact, it's a significantly different issue in the sense that these documents have been identified as privileged. The vast majority of them are attorney-client privilege. There's some work product privilege mixed in there, and there is a little bit of a privilege related to third-party litigation and a little bit of accounting-client privilege. But the vast majority of it is attorney-client privilege or work product. And so we are faced with a situation -- I will tell the Court in open court as an officer of the court that my client very much wants to proceed on July 16th. So the Hobson's choice that we have is do we proceed on that date if those documents have to be produced. And given that option, we cannot agree to that. We have to do everything in our power to protect that privilege. So that's why we're here asking for the stay.

Your Honor, I think you probably know, in fact I've been in matters where you've been involved, I'm not afraid to try a case. I'm -- actually, part of me is very anxious to get this to trial and see what Mr. Jacobs has to say. And I'm sure that --

THE COURT: But before I can get to trial I have to have the evidentiary hearing on the jurisdictional issues and issue findings of fact and conclusions of law stating the

basis for my decision following that hearing and then to stay the action as set forth in this order until after the entry of those -- oh. I'm sorry. The action's been stayed now for three years.

MR. RANDALL JONES: Your Honor, I misspoke. What I meant, I'm very anxious to get to the evidentiary hearing, because it is our belief, in spite of what the plaintiff says, that there is no jurisdiction over Las Vegas Sands -- excuse me, Sands China Limited. But my point is I'm very anxious to get to that jurisdictional hearing so we can have it resolved, as well. But I cannot do that and I cannot advise my client to do that while we have this privilege issue pending. And so, you know, when you look at the issues, I believe we meet all the factors of Hansen. I've, you know, read their brief. I know -- I know you. You're very conscientious about reading these things, so I'm sure you've read every word of theirs. We -- obviously the parties see Hansen very differently in terms of its effect.

THE COURT: Can I ask you a question.

MR. RANDALL JONES: Absolutely, Your Honor.

THE COURT: And you know there's a reason I'm asking this, and it may not be the one that's obvious to everybody in the room. Right now we have how many writs on this case? We have two. We have the Justin Jones document writ. It's been up there for how long?

MR. RANDALL JONES: A long time.

THE COURT: And we have the Macanese documents writ, which has been up there for maybe six months now.

MR. RANDALL JONES: Actually about three months, I think. It's only about three.

THE COURT: And then the writ which was Number 58294, that was issue, and so it's no long a writ --

MR. RANDALL JONES: Right.

THE COURT: -- because it's already been resolved. Are there any other writs currently pending before the Nevada Supreme Court on this case? Mr. Bice is saying yes, and I don't think there are.

MR. RANDALL JONES: Other than the one that relates to the privileged documents --

THE COURT: Justin Jones, Macanese. You haven't gone up on the privileged documents yet, have you?

MR. RANDALL JONES: We've filed a writ, because we had to file a writ before you asked for the stay.

THE COURT: Oh. So you've already filed this writ?

MR. RANDALL JONES: Yes.

THE COURT: You didn't serve me.

Oh. Did I? Oh. Apparently you did serve me and I just haven't seen it because I'm in trial.

MR. RANDALL JONES: Okay. Well, I am, too, so I was a little nervous about that myself. But that was my

understanding.

THE COURT: Hold on a second. All right. Good job. You sent it on Friday. Okay. I didn't realize I had it. I'm sorry. I was in trial.

MR. RANDALL JONES: That's okay, Your Honor. Because all I can tell you is I had a bit of a scare myself, so --

THE COURT: So we have three writs that are pending, one that's resolved.

MR. RANDALL JONES: Yes. And --

THE COURT: The longest writ that's pending, it's been a year, almost a year, nine months?

MR. RANDALL JONES: Probably, yeah.

THE COURT: Okay.

MR. RANDALL JONES: And Your Honor, let me put it this way. I understand the Court's frustration, and I say that -- by way of example, I have another case in front of Judge Scann where I'm in the opposite position of this and delay is very frustrating to my client. But the Supreme Court has seen fit to grant -- accept a writ, and it's been up there for a long time, probably over a year. And during that time period -- and I know that the judge was very reluctant to grant the stay, as well. I've had the same situation happen to me in front of Judge Denton where we had -- we were days from a trial, days from a jury trial in front of Judge Denton

when a writ was accepted. And there were -- just like this, it was a very big case, a lot of money involved. And it took over a year for that writ to be even heard, let alone decided. We ultimately had it decided in our favor, and we finally got to go to trial. But it caused a great deal of delay which was very prejudicial to my client from a standpoint of money involved. And there was property, a big piece of commercial property that was involved that was in a foreclosure state and they would have to pay for it, to maintain it. It was a very big problem. But the Supreme Court felt there was an issue that needed to be looked at.

And so, you know, I'll go back to one of my first points. We're talking about attorney-client privilege here. It is my belief that that is, you know, one of the most sacred things that lawyers have in their -- within their custody, to protect that interest. So we're simply here asking you to see if this writ's accepted. If it's not accepted, it becomes a moot point. And that may take a while. It may take 30 days to find out one way -- if it's accepted. It typically -- and you have probably more experience with this than I do, but typically you get a yes or no whether we're going to accept it or not in a relatively short period of time.

THE COURT: Usually within two weeks.

MR. RANDALL JONES: And that's been my -- that's what I say. Thirty days is --

THE COURT: But not always.

MR. RANDALL JONES: But not always. So that's why -- 30 days in my experience is sort of the outside time period, although I've had them go six weeks before they got accepted or rejected. And so --

THE COURT: It's not really they're accepted or rejected, they order a response.

MR. RANDALL JONES: That's my terminology. But if they don't order a response, then we all understand what that means, and we can proceed.

And let me just make one other point. As I said earlier, when you asked Mr. Bice, when do you want to do this, he didn't say, I want to do this in the middle of July. Now he comes back in his reply -- or his opposition and says, we will be horribly prejudiced, this is going to be further -- all the ad hominem and invective attacks that they can make on us about how badly this is going to prejudice them, where we may be out -- two to three to four weeks out before we know one way or the other if the Supreme Court thinks this is an appropriate thing to do, to accept this writ, latest writ. That's nowhere near even September, his earliest date. So it somewhat defies --

THE COURT: But just because he has those dates doesn't mean I do.

MR. RANDALL JONES: Well, Judge, I'm not

addressing --

THE COURT: In fact, I don't.

MR. RANDALL JONES: I'm not suggesting at all --

THE COURT: I didn't have those dates. I mean, I have CityCenter I've got to try, Mr. Jones. And once I start that, then you are waiting two years or, depending on what they get it down to, 18 months until I finish that. And I don't have time to do an evidentiary hearing. I have a spot. You guys are ready to do this. We have issues that have been discussed in this particular case, which is the one you're discussing now that is the subject of your latest writ, since Ms. Glaser was involved in the case, since her first appearance. This isn't a new issue. I've asked for people to brief this issue for a long time. We finally got to the point where it was framed, I reframed the issue myself because I didn't think it was framed appropriately. I issued an order. I understand you don't like my -- or your client's not happy with my order and they want to challenge it, and that's okay. That doesn't bother me. It's perfectly appropriate for you to be able to take that avenue.

The question is, given the time constraints that are placed upon a district judge and an order that I have a writ -- a writ that I have from the Nevada Supreme Court from 2011 requiring me to do certain things, how do I balance that. That's really the issue, Mr. Jones.

MR. RANDALL JONES: And I think -- I think you have -- I understand the way you've framed the issue, I can appreciate that. But you're under a directive to get this done and have this hearing. But who gave you that directive?

THE COURT: That would be the Nevada Supreme Court --

MR. RANDALL JONES: Exactly. And so --

THE COURT: In their writ of mandamus issued on August 26, 2011.

MR. RANDALL JONES: So if the Supreme Court accepts this latest writ and says this is a meritorious writ to hear, to hear, then they will be telling you, as well as the litigants, that this is an issue that they would like to have decided before the jurisdictional evidentiary hearing. So, my words, it will in effect let you off the hook from this mandate that you are otherwise feeling pressure from. And I understand that.

THE COURT: Because I've been pushing everybody in this case since this order was entered to get ready.

MR. RANDALL JONES: And I understand the pressure you feel to push us, because you want to make sure the Supreme Court knows that you're not the one that is causing the delay here. There have been from our perspective appropriate reasons why this is where it is. And we believe that the plaintiff is every much to blame for some of the delays that

has occurred -- that have occurred as are the defendants.

So, again, getting back to my point, if the Supreme Court is the one that has essentially given you the directive to have this hearing and have it as quickly as possible, then doesn't it make sense to have the Supreme Court look at this issue to -- because we've got a couple weeks, probably --

THE COURT: And by "issue," I would think that meant a motion to stay filed with them, as opposed to me making that determination. Because I'll probably deny your stay, and then if they think it's that important, then you will get an earlier answer to your issue on whether they're accepting the writ by sending the motion to stay up to them.

MR. RANDALL JONES: I understand -- I understand the point you make, Your Honor. As you -- well, not probably. As I know you are aware, we are required to ask you first.

THE COURT: I know.

MR. RANDALL JONES: And we are here to ask you, and we believe, in spite of the fact that you are under this pressure and in spite of the fact that you're, as you've expressed, concerned that you let the Supreme Court know that you're doing everything you can to make this happen as soon as possible, we believe that there are legitimate, appropriate grounds for you to issue the stay, that, irrespective of your -- the pressure you feel from the Supreme Court, which is understandable, I don't envy your position -- but, having said

that, if this is a meritorious motion, if you believe it's a meritorious motion under Hansen, then you should grant it.

And if I may, then, I would like to briefly walk through Hansen

THE COURT: Okay.

MR. RANDALL JONES: I don't need a whole lot of time. Is there irreparable harm -- well, will the object of the writ be defeated if the stay is denied? Well, of course it will. I mean -- and if you have any questions about that, I would be happy to try to respond to them. But it seems to me self evident that if the stay is denied and we go forward they get the documents, and there's -- the writ is moot. So that factor in Hansen, I don't see how it cannot be met by us in this instance. And if the Court has any disagreement with that, I'd be happy to try to respond.

The next factor, will the petitioner suffer irreparable harm if the stay is denied? If in fact these are privileged documents that the counsel for the plaintiff does not have a right to see, the caselaw is clear. They've cited some cases that are not even close to being on point with respect to privileged documents that were under a confidentiality. Those did not involved attorney-client privileged documents that the other side got access to. And where you have a confidentiality provision it says, oh, well, they can see them, but they can't disseminate them, well, then

there is no harm, no foul. That's not this case. This case is a situation where there are attorney-client privileged documents, and if they're put into the hands of opposing counsel's [sic] lawyers, then we are irreparably harmed. And the Wardlaw [phonetic], the Nevada Supreme Court case, is right on point on that subject. So we meet the Hansen Factor Number 2 on its face.

The third factor, whether the real party in interest, Mr. Jacobs, will suffer irreparable harm if the stay is granted. Well, Your Honor, he can't -- by his counsel's own statement to you in this courtroom a couple of weeks ago, he said the earliest he was willing to go or wanted to go to this hearing was September. And I understand your point about calendars, but I will say this. Having been involved in the CityCenter case a bit, for a period of time myself, interesting experience, I don't envy the Court at this point; but, having said that, that case has lots of -- how should I put this -- lots of jogs and turns and detours.

THE COURT: It has more writs than you had in this case, some of which have been pending longer than your writs in this case.

MR. RANDALL JONES: So the fact that you have set aside that time, I know that right now you were supposed to be deep into CityCenter but for some other things that happened in that case. So we all know that things can change. And so,

you know, for the Court to say, you know, I cannot do this in the near future, in September or November, I appreciate your current calendar, but things can change. And I have great faith in your ability to juggle your calendar. I have seen you do it before, so I know you can do it again.

THE COURT: Thank you, Mr. Jones.

MR. RANDALL JONES: You're welcome, Your Honor.

THE COURT: I appreciate that.

MR. RANDALL JONES: So irreparable harm? Obviously not. If they were willing to go forward with this hearing in September, then a couple of weeks to find out if the Supreme Court's going to accept the stay, in my terms, or request a response is not and cannot be by definition irreparable harm based upon counsel's own statement to this Court.

Secondly, it will cause arguably irreparable harm to the plaintiff unless the plaintiff doesn't have a problem this deep into the case getting new counsel if the writ is accepted and the Supreme Court says that those documents were privileged and should not have been given to the plaintiff's counsel, because they will be disqualified. And I have yet to hear them acknowledge in open court they would not be disqualified. And I actually would be very surprised if they did, because we have on the record Mr. Williams's emails when this issue came to the fore as far as we're concerned where he said, oh, yeah, we aren't going to look at those anymore

because we don't want to violate the attorney-client privilege. So prior counsel certainly understood the concern here. So it sort of defies logic to me that Mr. Bice and Mr. Pisanelli would say, yeah, let us have that stuff and if we lose the writ no big deal because then we've got a mistrial and a disqualification of counsel, and the harm to my client I think is incalculable.

Finally, is the petitioner likely to prevail? Again, if you look at Hansen, it's on page 12 of brief at lines 21 to 25. It talks about the likelihood of success where you have a case like this, where you have a case of first impression, this control or class of persons like you've ruled in your decision about these documents, that Mr. Jacobs fell within this class of people, therefore he not only has access to them, but then he could use them with his counsel. That --

THE COURT: He cannot waive that privilege.

MR. RANDALL JONES: And that's --

THE COURT: And I've specifically said that.

MR. RANDALL JONES: You did. And that's important, because that --

THE COURT: I know.

MR. RANDALL JONES: -- that is a issue of first impression in this state, is a very important issue that will likely affect other cases in the future and give us all

direction so you don't have to worry about this again and worry about writ petitions and what your orders should be or shouldn't they be. So we meet that factor under Hansen.

So, Judge, if we have a meritorious position -- and I understand the temptation to say, I'm going to punt this, because the Supreme Court has --

THE COURT: I'm not going to punt it. I'm going to let you ask them, because that way they'll pay attention to your writ, and if they're going to do something, they're going to do something. It's what I do on all these big ones if I can't narrowly tailor a stay. I can't narrowly tailor a stay given what you're asking me. You're asking me to stay the whole evidentiary hearing process. With the Justin Jones documents I could narrowly tailor a stay --

MR. RANDALL JONES: Well, Your Honor --

THE COURT: -- with the Macanese documents I could narrowly tailor a stay. With this evidentiary hearing I can't narrowly tailor a stay with respect to these documents, because these are what have been what has been driving the entire jurisdictional discovery issue since Ms. Glaser was in this case.

MR. RANDALL JONES: Well, let me just ask the Court a question about that, because you raise a very interesting point. We believe the Court can fashion a stay that will allow us to proceed.

THE COURT: How?

MR. RANDALL JONES: By saying, these documents will not be allowed at the evidentiary hearing, just like the Macanese documents. And, by the way, how do they know -- these are privileged documents. How do they know these have anything to do with jurisdiction? How do they know that? They cannot know that. There's 11,000 out of hundreds of thousands of documents, and they bring up an issue and say, well, hey, you're redacting the whole document when you admitted that only part of it is privileged. Well, that's because we cannot get through Advance Discovery them to partially redact a document, or we would have done it.

THE COURT: Well, there's this stuff that used to be called redacting tape that you use.

MR. RANDALL JONES: We don't get to do that, Your Honor. So we don't disagree with you. What we're telling you --

THE COURT: What do you mean?

MR. RANDALL JONES: -- we -- it's my understanding that Advance Discovery does not have the means -- and if there's a way to do this, then certainly we would be happy to look into it. But it's my understanding --

And, Mark, if you have a different understanding, or Steve Peek, if you have a different understanding, please let me know.

But it's my understanding that we cannot get Advance Discovery to partially redact any of these 11,000 documents.

THE COURT: Okay. So what they do is they print a document, a page, you take redacting tape, you redact, they scan the document in. It has a new Bates number because it's a different document than the one that was originally in their system, and then it gets produced in the redacted form.

MR. RANDALL JONES: Your Honor, I --

THE COURT: That's the way we used to do it.

MR. RANDALL JONES: I still do it that way. I'm not telling you I couldn't do it. It's my understanding they either can't or won't do it or haven't done it, that that's what the information we're getting. So, again, if Mr. Peek has different information, then I certainly don't want to misstate that to the Court. But that's my understanding.

THE COURT: Well, it's like the discussions that Mr. Mark Jones and I talked about on Tuesday about certain of the exhibits to depositions that were designated as confidential and how to work through that redaction process, and we negotiated as part of that hearing what would be redacted from those documents and treated differently than the other parts of the documents. And I assume that will be done by hand, because those are documents not in the possession of Advance Discovery. So it's not impossible to do it, it just requires manual labor.

MR. RANDALL JONES: And from what I've been told --

MR. PEEK: Your Honor, this is Steve Peek. We were not permitted to do it under the protocols, as well as by plaintiff, to print out a document and then take that document and redact it. We were not permitted to do that.

THE COURT: So how are you looking at the Advance Discovery documents?

MR. PEEK: We only looked at them electronically, Your Honor. We're not permitted to print them out.

THE COURT: So they were all delivered to you electronically, and you say, gosh, we've looked at this, we want to redact the person's personal identifying information in the second paragraph of that document. And you're telling me that the redaction then comes back as the entire document?

MR. PEEK: Your Honor, those were conversations and discussions that took place last fall as we were doing that, and plaintiffs would not permit us to go forward and to print out that type of a document and make this kind of a redaction. So we were forced into just redacting --

THE COURT: I'm not asking --

MR. PEEK: -- the entire document.

THE COURT: I'm not asking if plaintiffs allowed you to do it. I'm asking if when you tell Advance Discovery, we want to redact this personal identifying information in the second paragraph of this page, they tell you, we can't do

that.

MR. RANDALL JONES: That --

MR. PEEK: Your Honor, that's the conversation that I don't know took place, whether that's -- but certainly, you know, without asking Advance Discovery now, I can't answer whether or not we could do that. Intuitively it something that makes sense to me, that, yes, we could have said to them, you know, can you do this, and I imagine that they themselves maybe could have printed it out and put it back in. I don't know that. All I know is we were not permitted to make the kinds of redactions that you're describing to us under the protocols that we had with the Court as well as the plaintiff.

THE COURT: Well, whether it was you or Advance Discovery, the redaction could have been done in that fashion; right?

MR. PEEK: Not under the protocols, Your Honor. Actually physically possible to do it? I assume it's physically possible to do it, Your Honor. But was it permitted under the protocols? It was not. And it required the consent of both Advance Discovery and the plaintiff to be able to do that.

MR. RANDALL JONES: What I have been told, Your Honor, is that there's a -- the platform, essentially the program that Advance Discovery has under the protocol won't allow us to do that. But we have given them a privilege log

that talks about what these privileges are on those documents. So, you know, my -- getting back to my point is that there is a way to fashion a stay that relates to those documents. And there's been -- they cannot, unless they've looked at the documents, know that they have anything to do with jurisdictional discovery or that they have --

THE COURT: Well, but the only way such a stay will work, Mr. Jones, is if Mr. Jacobs doesn't testify. Because the whole point of this entire exercise, as I have said, Mr. Jacobs will not be deposed until his counsel have the opportunity to review the documents and prep him or until somebody in Carson City says he's never getting to show those to his lawyer. And you have said you don't want to take his depo anymore, but you intend to call him at the hearing. That's great. That's fine. But he's going to look at his documents, and his counsel's going to look at his documents before he has to testify.

MR. RANDALL JONES: The only point I would make in response to that, Your Honor, is that he will be under no disadvantage compared to us in terms of these documents, because we won't obviously be using any of these documents offensively against him, because we obviously would then be violating the very privilege.

THE COURT: You are absolutely able to review those documents and help formulate your strategy of examination,

because they're privileged with your client. You don't have to release the contents of them, but you are absolutely able to review those documents, formulate a plan, and then execute that plan.

MR. RANDALL JONES: I understand your point.

THE COURT: Okay. What else?

MR. RANDALL JONES: Your Honor, I don't want to belabor the issue. I think that -- I think you've made your position clear. We think that the Court can appropriately fashion a limited stay like you did with the Macanese documents that will not prejudice Mr. Jacobs. But, more importantly, by counsel's own admission a delay of some two to three, four weeks even would certainly not be any prejudice to them, since they were suggesting that the earliest they would be prepared to go forward with an evidentiary hearing was September.

THE COURT: Well, except I've got to try Bob Eisenberg and Kirk Lenhard's airport condemnation case for four weeks in September.

MR. RANDALL JONES: Your Honor, I --

THE COURT: And then I've got to try everybody else's case in November, including the Pisanelli Bice firm, which is booked for a bench trial from December 9th to the end of the year. And so that's my problem, Mr. Jones. My problem is I'm trying to do all of my cases, manage the CityCenter

case, and accomplish things that I am requested to do by the Nevada Supreme Court.

MR. RANDALL JONES: I understand that. Obviously I can't control your calendar. I know that you have limited control over it yourself.

THE COURT: I try the best I can, but thank you.

Mr. Peek, may I ask you a question before Mr. Bice gets up.

MR. PEEK: Yes, Your Honor.

THE COURT: Do you recall the approximate date on which the protocol with Advance Discovery was entered? I'm looking for the order, and I don't see it. I thought it was in the early fall.

MR. PEEK: No, Your Honor, it would not have been in the early fall. We began the discussions and then finally ended the discussions at the end of 2011. And the last hearing that we had on this was in January 2012.

THE COURT: When was the order entered on the protocol?

MR. PEEK: I don't know that, Your Honor, but it would have been probably in the late winter, early spring of 2011, 2012.

THE COURT: Now I'm going to go to Ms. Spinelli to see if she can give me any better date. Because I'm looking for it on the computer.

MS. SPINELLI: Your Honor, there is no written order. It was an agreed-upon protocol between myself and MTO, and there is letters and emails with Advance Discovery because of the court orders, because it's the Court-ordered vendor.

THE COURT: Okay. So I didn't enter a protocol, MR. Peek.

MR. PEEK: Your Honor, I beg to differ with Ms. Spinelli. I think that there was an order entered on those issues. But, you know, she certainly has the -- a good memory, too, so I -- I'm not at my computer. I'm actually driving to physical therapy, so --

THE COURT: Well, I hope you're okay, Mr. Peek.

MR. PEEK: Oh, I'm fine, Your Honor. I -- just followup to knee surgery.

THE COURT: All right.

MS. SPINELLI: Your Honor, in January of 2012 you did enter an order related to Mr. Jacobs's motion for protective order on his documents, and then after that we negotiated with MTO the protocol.

THE COURT: I found it.

MR. PEEK: Thank you. I --

THE COURT: It is extensively interlineated by me.

MR. PEEK: Yes.

THE COURT: Hold on a second, Mr. Bice. Let me --

MR. BICE: Not a problem, Your Honor.

(Pause in the proceedings)

THE COURT: I signed it on December 7th, 2011. It has no procedure for redactions in the protocol.

All right. Mr. Bice.

MR. BICE: Thank you, Your Honor. Every time we come to court anymore Las Vegas Sands and Sands China has a story about how they are the victim, they are always the victim, they are the victim of ad hominem attacks now, they are the victim of aggressive brief writing. I've never seen a litigant suffer as much as Las Vegas Sands and Sands China have at the hands of their opponent. And that's because we hear that story because it just isn't true. Look at the status of this case, and you know why this case is in the status that it is in. And the responsibility of that rests to my right.

Let's be clear about what is going on and what has been always going on in this case. Sands China came to you and said, you know, we didn't have -- we didn't have any contacts with the state of Nevada. Court rejected that. They took it up to the Supreme Court, told them the same story, and said, we need an evidentiary hearing on this. And then after that happened they have done everything, legitimate and illegitimate, to make that day not happen. And pretending like they didn't is never going to make it go away. So we can all come in and we can get on our -- we can get on this

pedestal and proclaim ourselves all victims, but that isn't true.

Let's look at what they're asking you to do yet again, grant us another stay so that we'll inevitably postpone this hearing. Mr. Jones says that I came to you -- you know, I think this is just so telling of what we hear --

THE COURT: No, you guys didn't come to me. I ordered you in here to tell me when to come, and then you negotiated another date because you didn't want to come when I told you to come.

MR. BICE: Right.

THE COURT: And then we came up with another date, and then I said, hey, we're going to set an evidentiary hearing, and somebody said, November, and I laughed.

MR. BICE: Right. I actually said that -- but, according to Mr. Jones, what I said is the earliest I was going to be available was September or November. Don't think those were my words, Your Honor. I think what we said was that we were available then. We never said that was the earliest. We know your schedule, and we know our own schedule. And because of this Court's setting of hearing I've had to cancel two trips because of that. And that's fine. I'm not complaining. We accommodate people's schedules. But then to come and represent to you, oh, well, Mr. Bice said they weren't even going to be ready before September so they

suffer no prejudice here by yet more and more delay, is utter nonsense.

Then he goes on to say, we don't get any advantage, we don't get any advantage by Mr. Jacobs's counsel not having access to 11,000 documents that Mr. Jacobs has had and, as you so rightly point out, have been at issue since Ms. Glaser was in this case. And what is it that Ms. Glaser did relative to this issue? Well, the history on that we've already discussed extensively, and it was much of nothing.

So when we come in here and we tell the Court, there's no prejudice to Mr. Jacobs, there's no harm here to him -- this case is three years old nearly, and, as we point out, evidence is being lost, memories are facing, and witnesses are going to be allowed to claim now, Your Honor, they're going to say, oh, you know, I just can't remember those events, too long ago. And they've already admitted to you on at least one occasion, and I suspect it's going to end up being more once we get into the discovery, is that they have, quote, "misplaced" certain documents, hard drives. As their IT director admitted, how conveniently Mr. Jacobs's hard drive, the one he used in Macau, was scrubbed and all they preserved of it was a ghost image, which he acknowledged will never show what might have been deleted from it shortly before the ghost image was created because a ghost image doesn't preserve that sort of data. So these investigative reports --

if it weren't for the fact that Mr. Jacobs had then, no doubt they would be claimed to have never existed.

But that takes us, Your Honor, to their actual request being made to you, and that is let's stay this case yet again and if we can't -- and if we can have a stay, well, we want to proceed with the evidentiary hearing. Well, of course they want to proceed with the evidentiary hearing under those circumstances. They can deprive Mr. Jacobs of the access to proof, and they can deprive Mr. Jacobs of fair representation because, as you aptly point out, they have no doubt studied these privileged documents in great detail.

And let me just address this issue about, well, we couldn't redact these documents and produce the nonprivileged information to Mr. Jacobs's counsel. Who -- they claim these are their documents; right? They have all these documents in their files and in their system. They know every one of these documents. They put them on a privilege log. They're telling you -- regardless of Advance Discovery's systems and protocols they're telling you they couldn't go into their own files, pull them out, redact them, and produce them? Of course they could have done that. They didn't want to do it, because the end objective isn't to produce, as has been demonstrated hearing after hearing after hearing when we have been over here.

So turning to the tests for a stay -- and I'm not

going to belabor it, because I think you've indicated what your view is on this. What I would ask this Court to do, however, is focus upon the one factor that is apparent here, and that's the prejudice to Mr. Jacobs. Mr. Jones says, well, what's the harm in letting the Supreme Court process this writ application. Well, Your Honor, the Supreme Court does the following on these writ applications. They simply look at them in a fashion where there is no opposition and they decide whether or not on the face of it there is arguable merit. That's the only criteria that one has to meet to order a responsive brief. And I can rest assured anyone uses the word "disclosure of attorney-client privileged information" and all the rhetoric that we've seen out of the Sands and Sands China, despite the passage of years while Mr. Jacobs has been in possession of this information, there is no doubt in my mind that the Nevada Supreme Court -- just like there's no doubt in Mr. Jones's mind that the Nevada Supreme Court is going to tell us to file a response. And that process is going to then drag on for month after month after month, and it will be a minimum of 12 months, more likely 18, before they get around to resolving those writ proceedings. And they know it. And to come in here and act like, oh, it's only going to be a few weeks, I don't think is being straight with the Court.

So that being the status, the question for you is basically this. Is Mr. Jacobs going to be harmed by yet

another 18-month or more delay in his case -- or 12 months? Let's be generous. Let's just say they're going to act quickly and it's only going to be 12 months. Can a litigant expect to be harmed by his case being delayed for four years after the date of filing without any merits discovery, without the preservation of evidence, all the while their executives disappear, they're firing them seemingly left and right, those that had a lot of knowledge about this, we're going to have considerable difficulty tracking them down and preserving their testimony, what they will be able to recall, and, of course, Your Honor, a lot of times witnesses don't want to get involved, and, of course, with the passage of time it becomes much easier to claim, I don't remember. Far more convenient to claim, I don't remember.

So the harm to Mr. Jacobs is not imagined, it's not speculative, it is real, and it is intolerable. No litigant should have to endure what has gone on at the hands of these defendants. If you were to grant a stay of that -- of that writ which would necessarily then delay the evidentiary hearing, there will be no end in sight for this case. Their position is, of course, well, you just grant us a stay and hold the hearing anyway and give us all of the advantages so we not only -- we not only get the stay, we actually profit from the nonproduction because we can use that information. Sure, he's -- Mr. Jones isn't going to show up in court and

he's not going to wave the documents around that he claims are privileged, but of course he's going to use them and he's going to have knowledge of the information and he's going to use it to his advantage.

They say -- Mr. Jones says, well, how could we possibly have any knowledge that any of these documents would be relevant to jurisdiction. Well, there's one really easy way to know that many of them would be relevant to jurisdiction, that's look at their privilege log. Because what it shows is Las Vegas Sands's lawyers here in Las Vegas giving an awful lot of, by appearances at least, direction and doing an awful lot of work for Sands China in Macau. That's what it certainly looks like to us to the extent one can decipher this privilege log which has now grown to I think about 6,000 pages in total.

So we are severely prejudiced. But I disagree with Mr. Jones. He comes in with the conclusory assertion that, well, it's obvious, the object of the writ is defeated if you don't grant the stay. It's certainly not obvious to us. He says that we don't cite you any authority for this proposition, and he says that the cases that we cite don't deal with attorney-client privilege. I would just point the Court to page 11 of our opposition, where we cite two specific cases on this exact issue dealing with attorney-client privilege and parties saying, well, we need a stay pending

review of that. And the Court said, no, further delay of the production would harm the respondent and potentially delay discovery in the proceedings in this action. Well, there's no doubt it's going to delay the proceedings of this action, which, I know Mr. Jones will protest, I think that is his client's end objective and has been since the inception of this case.

We then turn, Your Honor, to the issue about the harm to Sands China and to Las Vegas Sands. What's the harm to them? They say, well, this evidence might be used against us and if it's later determined that in fact we couldn't have access to it we will be harmed. Well, every case, Your Honor, there are claims that evidence was admitted that shouldn't have been admitted. That could be dealt with in the ordinary process of challenging.

And again, Your Honor, I make this point only because I think it demonstrates the harm to Jacobs relative to what is really going on here. There isn't at the end of the day going to be a serious debate about whether or not Sands China is going to be in this case or not. As we point out to you, the minute that the merits stay is lifted we are going to amend the complaint and we are going to sue them for abuse of process, and we are going to sue Sands China and Las Vegas Sands for the misconduct that they engaged in for three years in hiding evidence, destroying evidence, misrepresenting to us

the status of evidence, misrepresenting to you the status of the evidence, and just other outright deception that occurred for as long as it occurred.

So we can all pretend like this evidentiary hearing is going to be the end of this matter. Sands China is going to be in this case, and that's why I say to this Court if you were going to entertain a stay, if the Court was going to, at a minimum it must be conditioned, as we point out in our opposition, upon merits discovery being allowed to proceed so that we can preserve evidence. That is grossly unfair to have this case frozen in time as it is. I mean, Las Vegas Sands Corp., Your Honor, doesn't even dispute that it's in this case and that it will be, and yet it has been benefitting from this stay and hiding behind it now for two years. Sands China is going to be in this case, and acting like they're not is not going -- is make believe.

So if the Court were inclined to grant a stay, I would ask the Court to condition it upon merits discovery proceeding so that we can preserve evidence. That will at least mitigate some of the harm to Mr. Jacobs. And if the Court doesn't think it has that authority -- I dispute that, but if the Court was of the view it didn't, then at a minimum it should be telling the Supreme Court that that is what its view is, that this merits stay has become a tool of abuse at the hands of the defendants and Mr. Jacobs should not continue

to be unduly and unfairly prejudiced while they want to contest documents that have been in his possession since before he departed and, by the way, they knew it. You know, when they first came to us on this issue they kept secret from you and from us about all of the documents that they had transported over here and their clandestine review of them. So to say, we didn't know until July of 2011 what Mr. Jacobs had, we don't believe that that is remotely true, and I would point out to the Court you've never seen a single affidavit signed by a single executive or lawyer on behalf of these defendants saying, we didn't know what he had. Ms. Glaser's letters to us early on, as you know, long before the Jones counsel was in here, acknowledged that they had a lot of information about what he had and they were very concerned about some investigative reports. They were right to be concerned about them.

THE COURT: And those were returned long, long ago.

MR. BICE: Oh. Those -- no, the originals were returned.

THE COURT: Right. The originals of them.

MR. BICE: We have made it clear -- Mr. Jacobs and --

THE COURT: Kept a copy, right.

MR. BICE: We've made it clear they're not getting anything back from us.

THE COURT: But those originals were returned.

MR. BICE: That's right.

THE COURT: Okay.

MR. BICE: And that, Your Honor, we never heard another word from them. And this supposed severe, extreme, outrageous prejudice, the highest privilege that Mr. Jones knows of, silence month after month after month despite, Your Honor, them knowing full well what we had. Because, as we know, they had shipped it all over here and were looking at it themselves and just didn't tell you or us.

So on those grounds, Your Honor, the stay should be denied. If you were inclined to grant a stay, we would ask you -- we would implore you to condition it upon the merits stay being lifted so that we could proceed to preserve evidence. Because even Mr. Jones knows this is -- this matter isn't going to be resolved in a few weeks; it's going to be resolved in many, many months.

THE COURT: Thank you.

Mr. Peek, did you want to say anything before Mr. Randall Jones gets back up?

MR. PEEK: No, Your Honor. I'm fine with what Mr. Jones has already presented to you.

THE COURT: Thank you.

MR. RANDALL JONES: Well, Your Honor, I know Mr. Bice likes to say that I'm new to the case, I don't know what

I'm talking about; but I've tried to do my best to read the record and see what happened before we got involved, and I feel fairly confident that I have actually done that. And I categorically disagree with his continued statement that we knew all about the documents. The letters belie his statement.

THE COURT: So how can you explain the drive that was brought from Macau to the U.S. by a Sands employee, worked on by Sands employees, and everybody knew exactly what was on that drive, because they copied it off of Mr. Jacobs's computer in Macau?

MR. RANDALL JONES: Your Honor, let me -- let me just I guess ask you this question in response to your question. Why would my client think that an executive who is terminated, then goes and downloads hundreds of -- or gigabytes, 44-some-odd gigabytes of documents when he's leaving the employment -- what's going on here, Judge, is this employee -- this is the real story. We're looking forward to it coming out, too. I'm sure Las Vegas Sands is. The employee was getting fired. He knew he was getting fired, and he did what a lot of employees do when they're getting fired. He went and took a whole bunch of documents. We know what they say happened. We have a different position, Judge. And just because Mr. Bice says it doesn't make it true. We believe that Mr. Jacobs went in there and took information

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

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

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

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

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

before the evidentiary hearing?

MR. RANDALL JONES: Well, Your Honor, we had to get a ruling before we could ask for a writ.

THE COURT: Well, you had to file a motion first.

MR. RANDALL JONES: That's true. But let me go back to your point. There's --

THE COURT: It's not me who was causing the delay, Mr. Jones.

MR. RANDALL JONES: There's a year time frame between when we asked for that information in the discovery and the original letters. As you pointed out, there were three documents that we were aware of. Mr. Campbell does not say -- or Mr. Williams does not say, we've got thousands and thousands of pages of documents. This Court is making an assumption, there's no evidence to support this --

THE COURT: Correct, there's no evidence. Just her letter.

MR. RANDALL JONES: -- making an assumption that we knew that he had copied 44 gigabytes or some magnitude of documents of that nature back in 2010. There's no evidence whatsoever to support that. We did say, we think you've got some information. He said, I've got three things, I'll give you back -- actually, as I recall, I'll give you back two of them. He only gave back two of the three reports. But it was only -- and a year later, that's when -- okay, we now -- looks

like we've got -- there may be more that he took. And that's when this whole thing came up. And we -- if you look at the time frame when that came up in the summer of 2011 until the ruling was done in December of 2011 you just referred to there were meet and confers, there were letters going back and forth, there were hearings. So we acted timely and appropriately when we became aware of the magnitude of the documents that we believe he took.

So, Your Honor, I could only go on the evidence that's been adduced to date. I don't want to speculate, and I would certainly ask the Court not to speculate. I know Mr. Bice is speculating all over the place about what we knew and when we knew it, but that's not evidence. So the fact of the matter is that Mr. Bice is stating things that he thinks are true. That does not make it so, certainly not in a court of law.

And I do want to address one other issue, and I should have caught this earlier. This issue about the redacted documents and that we could have done it, it's my understanding -- and I really didn't put the two and two together about this point -- we have looked at the documents that we have that have been produced otherwise to see if there's anything in there that is not privileged that we can produce or redact it. So if it was relevant to the jurisdictional discovery, it's my understanding that that

information has been provided through the productions that we've already done of duplicate documents that we do have. So that is my understanding.

So your whole point about why can't you print it out, regardless of the protocol, it's my understanding that the Mayer Brown firm has done that to the greatest extent possible and has partially redacted those documents where we have found things that relate to this jurisdictional discovery that are in the Sands China -- excuse me, in the Las Vegas Sands documents. So I apologize that I missed that point.

And, you know, the fact that -- I don't know what the relevance is. They tell the Court -- they threaten us they're going to file an abuse of process. This is just more of the same whole process of --

THE COURT: First they've got to get me to agree to let them amend.

MR. RANDALL JONES: You know, Judge, again, I don't think that has any place.

THE COURT: Or maybe not, because I don't think Sands China has ever filed an answer. So maybe not.

MR. RANDALL JONES: And what place does that have in this particular motion?

THE COURT: It has no place.

MR. RANDALL JONES: We -- you know, he is convinced --

THE COURT: I read the footnotes, so I read it --

MR. RANDALL JONES: Well, he's -- and I read it, too, Your Honor. He's convinced that they're going to win the jurisdictional argument. Well, just for the record, we're just as convinced that they're not. So, you know --

THE COURT: Okay.

MR. RANDALL JONES: -- lawyers have strong feelings about their case, and, you know, God bless him for that. I don't -- I want to make a point on the record. He said, I told you Mr. Bice said at the earliest date was September. My recollection of what I said is the earliest date he offered was in September. And if I did say that, I misspoke. The earliest time I heard that he said he -- that he offered up was September. He didn't offer -- I can say -- and I'm very confident if he wants to go look in the record, I can say, I don't remember him saying July, and I certainly --

THE COURT: None of you were happy about July.

MR. RANDALL JONES: I didn't hear him say August, Judge. I did recall him saying September, and I did recall him saying November. So if that's the case, if he was so anxious, he certainly could have -- there's nothing aware of that would have precluded him from saying, I'm ready to go, Judge, give me a week, two weeks, three weeks, I'm going to be there. He didn't do that.

THE COURT: Or pull a Steve Morris and say, I'm

ready to go, could I go tomorrow, Judge.

MR. RANDALL JONES: Well, I'm not quite as young and spry as Mr. Morris, but I try to be ready when the Court says I should be ready. In this case, Your Honor, we will be ready, but we believe that a stay is appropriate, at least a limited stay with respect to the 11,000 or so documents that are privileged. That is -- and I understand Mr. Bice disagrees with me that that's an important privilege to protect, but I believe if the shoe was on the other foot Mr. Bice would just as zealously protect that privilege for his client. And that's all we're trying to do, Judge. We think that's -- it's a critical thing to do, and we think that it's an important issue that has not been decided by the Supreme Court, and we ask you to stay it now. If they don't think the stay should be given, they could certainly ask the Supreme Court to lift it. So, you know, there's other ways to do that. But if we meet Hansen, which I believe we do, then this Court ought to grant that stay.

THE COURT: Thank you.

The motion for stay is denied. While I certainly understand the importance and sanctity of the attorney-client privilege, here the privilege is not the issue. The issue is whether Jacobs's counsel under a confidentiality order can review documents that Jacobs had possession of in the context of his position of president of Sands China.

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

MR. RANDALL JONES: Thank you, Your Honor.

MR. BICE: Thank you, Your Honor.

THE COURT: Good luck. Have a nice day.

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

THE PROCEEDINGS CONCLUDED AT 9:21 A.M.

* * * * *

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

7/2/13
DATE

EXHIBIT B

EXHIBIT B

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND ALL RELATED MATTERS.

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

Date: n/a
Time: n/a

DEFENDANTS' JOINT STATUS REPORT

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Defendants Las Vegas Sands Corporation ("LVSC") and Sands China Limited ("SCL") respectfully file the following Joint Status Report in advance of the status check scheduled by the Court for June 18, 2013.

In its May 30, 2013 Order, the Court asked for a status report with respect to (1) the scheduling of the jurisdictional hearing and (2) the competing proposed orders on Plaintiff's Motion to Return Remaining Documents from Advanced Discovery ("Plaintiff's Motion to Return Documents"). In short, on (1) SCL stands ready to proceed with the jurisdictional hearing at the Court's convenience; as described below, Defendants believe that all discovery that is necessary for that hearing has been accomplished. All that remains is for Plaintiff to identify the jurisdictional theories on which he intends to proceed and the parties to brief those theories and then designate witnesses and exhibits in light of any factual issues that remain. On (2), Defendants have already provided the Court with their explanation of why they believe Plaintiff's proposed order should not be entered. A copy of that submission is attached hereto as **Exhibit "A"** for the Court's convenience. In addition, on June 12, 2013, Defendants filed the Surreply that the Court allowed in its May 17, 2013 Order, and would urge the Court to reconsider its decision on Plaintiff's Motion to Return Documents in light of that Surreply.

I. Discovery Has Been Essentially Completed.

Prior to April 12, 2013, LVSC and SCL had together produced close to 200,000 pages of documents in response to the jurisdictional discovery the Court permitted in its March 8, 2012 Order. In its March 27, 2013 Order, the Court required SCL, in addition, to "search and produce the records of all twenty (20) custodians" that Plaintiff had identified "for documents that are relevant to jurisdictional discovery." When Defendants filed a writ petition to the Nevada Supreme Court challenging various aspects of the March 27 Order, the Court stayed its order with respect to documents in Macau, but declined to stay the Order to the extent that it required production of documents on any of the electronic storage devices brought into the United States that were referenced at the September 2012 sanctions hearing.

On April 12, 2013, Defendants produced an additional 1,733 documents (comprising over 13,000 pages) responsive to Plaintiff's jurisdictional discovery requests. Those documents were

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produced from three sources: (1) the data transferred to the United States as referenced at the September hearing; (2) documents maintained in Hong Kong and Singapore by four of the identified custodians (SCL's three independent directors and one Marina Bay Sands employee); and (3) documents identified through a search of the relevant custodians' files in Macau[1] that were then electronically matched to documents that existed in the United States. All of these documents were produced in unredacted form, because Macau's data privacy laws do not apply to them. Defendants are in the process of preparing a log for thousands of documents that were withheld from the April 12, 2013 production on privilege grounds.[2] That log should be ready shortly. Some of the documents that were initially withheld will be declassified as a result of the privilege review and others will be produced with privileged material redacted.

In addition to producing over 210,000 pages of documents, Defendants made four of their senior officers (Messrs. Adelson, Leven, Goldstein and Kay) available for deposition. Plaintiff deposed three of these executives for two days each.

Defendants' extensive document production and the depositions Plaintiff took give him more than he needs to make whatever jurisdictional arguments he wants to make. As the Court is aware, Defendants have filed two writ petitions, which the Nevada Supreme Court has accepted, related to the Court's 2013 rulings. One, which is now fully briefed, involves a handful of privileged documents that Justin Jones used to refresh his recollection about the timeline of events before testifying at the September 2012 sanctions hearing. These documents are unrelated to any jurisdictional issue. The second writ petition involves (among other things) whether Defendants were properly required to produce unredacted documents from Macau pursuant to the Court's December 18, 2012 and March 27, 2013 Orders. Defendants' reply in support of that writ is currently due on June 20. Although Defendants' second writ petition does involve documents that may be responsive to Plaintiff's jurisdictional discovery requests, Plaintiff has made no

[1] SCL had identified those documents in Macau before the Court entered its stay, which enabled SCL to avoid the dilemma of deciding whether to comply with the Court's Order by producing those documents in unredacted form or to comply with Macau's data privacy laws by redacting personal information from those documents.

[2] One of the custodians whose data was searched was Luis Melo, who was formerly SCL's general counsel.

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showing that the personal data on the documents already produced in redacted form and the other Macau documents that have not yet been produced as a result of this Court's stay order are both relevant to a cognizable jurisdictional theory and non-cumulative.[3] Accordingly, Plaintiff should be able to proceed whether he has these documents or not.

Defendants also intend to file a writ petition with the Nevada Supreme Court if the Court enters an order granting Plaintiff's Motion to Return Documents. Once again, Plaintiff has made no showing that any of the privileged documents that are the subject of Plaintiff's Motion are both relevant to a cognizable jurisdictional theory and non-cumulative in light of the thousands of documents and other evidence that Plaintiff already has in his possession. Accordingly, there is no reason to postpone the jurisdictional hearing until that issue is finally resolved.

Defendants are not aware of any other outstanding issues raised by Plaintiff's discovery requests.[4] As the Court will recall, SCL sought to take Jacobs' deposition before the evidentiary hearing. The Court stated that the deposition could proceed, but only after all of the issues as to what documents Jacobs and his counsel are entitled to review are resolved. Although SCL would still like to take Jacobs' deposition before the hearing, it is willing to forego the opportunity to do so if necessary to avoid further delays in scheduling the jurisdictional hearing.[5]

II. SCL Is Ready To Proceed.

SCL is ready to proceed with the jurisdictional hearing at the Court's convenience. However, in advance of that hearing, Plaintiff should be required to provide an explanation of the jurisdictional theories he intends to rely upon. Over the course of the past two years Plaintiff has offered or alluded to a variety of different theories of general jurisdiction, including claiming (1)

[3] To date, Defendants have produced a total of 31,393 documents in response to Plaintiff's jurisdictional requests for production. Of that total, 2,482 or roughly 8% were produced with personal data redacted in order to comply with Macau's data privacy laws.

[4] Plaintiff has raised some issues regarding Defendants' confidentiality designations pursuant to the Protective Order. As required by that Order, Defendants filed a motion on May 21, 2013 seeking confirmation of disputed confidentiality designations Defendants made with respect to the second day of the Adelson deposition. Defendants also conducted a review and de-designated approximately 12,000 documents that had previously been designated confidential. Plaintiff's counsel recently sent a letter objecting to a handful of other designations; the parties will meet and confer about these designations, and Defendants will file a motion to the extent that the parties cannot agree. However, these issues should not affect the timing of the hearing.

[5] SCL reserves the right to call Jacobs as a witness at the jurisdictional hearing.

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that SCL is LVSC's alter ego, (2) that SCL's de facto executive headquarters is in Las Vegas, (3) that LVSC acted as SCL's agent in carrying out specific tasks in Nevada, and (4) that LVSC acts generally as SCL's agent and that LVSC's jurisdictional contacts can therefore be attributed to SCL. Plaintiff has also raised a specific jurisdiction theory, arguing that the decision to terminate him was made in Nevada and therefore the Court has specific jurisdiction over his breach of contract claim against SCL.[6]

Before the parties and the Court invest further effort in preparing for a jurisdictional hearing, Plaintiff should be required to state which of these theories he intends to pursue and whether he has any additional jurisdictional theories. SCL believes that a number of these theories (assuming Plaintiff still intends to pursue them) could be eliminated as a matter of law, thus enabling the Court to streamline the evidentiary hearing. Furthermore, an identification of Plaintiff's theories will enable the parties to more efficiently identify their witnesses and exhibits prior to the hearing.

Accordingly, SCL urges the Court to set a briefing schedule under which (1) Plaintiff would first identify the jurisdictional theories he intends to pursue and explain in general terms the factual basis for his assertion that there is jurisdiction over SCL under those theories, (2) SCL would then have an opportunity to move for summary judgment with respect to some or all of those theories and, to the extent there are factual issues, to explain its view of the requirements

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[6] Plaintiff also advanced a theory of "transient" jurisdiction, which the Nevada Supreme Court directed this Court to consider after it decides whether the Court has general jurisdiction over SCL. Because this theory does not involve any factual issues, it will not be the subject of the evidentiary hearing.

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Plaintiff must meet in order to prove his theories, and (3) the Court can then hear argument and rule on the legal issues, narrowing (or eliminating) the factual issues to be presented at the evidentiary hearing.

DATED June 14, 2013.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on June 14, 2013, I served a true and correct copy of the foregoing **DEFENDANTS' JOINT STATUS REPORT** via e-mail and by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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Dineen Bergsing

From: Dineen Bergsing
Sent: Friday, June 14, 2013 2:50 PM
To: James Pisanelli; Debra Spinelli; Todd Bice; 'Kimberly Peets'; Sarah Elsden
Subject: LV Sands/Jacobs - Defendants' Joint Status Report
Attachments: 1100_001

Please see attached Defendants' Joint Status Report. A copy to follow by mail.

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DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN C. JACOBS, Plaintiff, v. LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; SHELDON G. ADELSON, in his individual and representative capacity; DOES I-X; and ROE CORPORATIONS I-X, Defendants. AND ALL RELATED MATTERS.	CASE NO.: A627691-B DEPT NO.: XI **MEMORANDUM IN SUPPORT OF PROPOSED DRAFT ORDER ON PLAINTIFF STEVEN C. JACOBS' MOTION TO RETURN REMAINING DOCUMENTS FROM ADVANCED DISCOVERY**

Defendants LAS VEGAS SANDS CORP. ("LVS") and SANDS CHINA LTD. ("SCL") (collectively, "Defendants"), by and through their undersigned counsel, submit this Memorandum In Support of Proposed Draft Order on Plaintiff Steven C. Jacobs' Motion to Return Remaining Documents from Advanced Discovery. This Memorandum is provided

pursuant to the following memorandum of points and authorities, and the papers and pleadings on file herein.

DATED this 24th day of May, 2013.

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MEMORANDUM OF POINTS AND AUTHORITIES

The purpose of this Memorandum is in furtherance of Defendants' cover letter to a competing order submitted to the Court (and copied on Plaintiff's counsel) on May 23, 2013, regarding Plaintiffs' Motion to Return Remaining Documents from Advanced Discovery. *See* Cover Letter, dated May 23, 2013, and Proposed Order, attached hereto as Exhibits A and B, respectively. The Proposed Order was a competing order to Plaintiff's proposed Order, attached hereto as Exhibit C ("Plaintiff's Order"). After Defendants submitted the Cover Letter and Proposed Order, Defendants received the Court's Journal Entry denying Defendants' Motion to Strike Plaintiff's Reply in support of that motion, but allowing Defendants to file a Surreply. The Defendants appreciate the opportunity to file a Surreply and will do so by the deadline the Court set.

Although Defendants urge the Court to postpone entry of either the Proposed Order or the Plaintiff's Order pending the filing of that Surreply, here, in brief, are the key reasons why Defendants contend that the Plaintiff's Order should be revised – even assuming that the Court continues to adhere to its decision to grant Plaintiff's motion.

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In ¶ 3 of Plaintiff's Order, Plaintiff states that all of the documents in question were documents that "Jacobs authored, was a recipient of, or otherwise possessed in the course and scope of his employment." Defendants submit that this is an inaccurate factual statement. Defendants contend that Jacobs downloaded a large quantity of documents before he was terminated and that he did not in fact possess those documents "in the course and scope of his employment." In any event, this is a factual dispute that cannot be resolved on the current record. On the other hand, ¶ 3 of Defendants' Proposed Order suggests a more neutral treatment, providing that "[t]hese are documents that Jacobs either authored, was a recipient of, or otherwise had access to during the period of his employment."

In ¶ 6 of Plaintiff's Order, Plaintiff has included a reference to the September 14, 2012, Order suggesting that the Court's ruling precluding Defendants from claiming that Jacobs stole the documents for purposes of jurisdictional discovery and the evidentiary hearing on jurisdiction is somehow relevant to the issue of Jacobs' right to use the privileged documents. This was an issue first raised in Plaintiffs' Reply, in a footnote. Defendants submit that the September 14 Order has no bearing on the current motion, particularly in light of the footnote in the September 14 Order in which the Court specifically preserved Defendants' right to raise other objections, including privilege. Accordingly, Defendants version of ¶ 6 in their Proposed Order deletes that reference.

In ¶ 7 of Plaintiff's Order, Plaintiff seeks to re-characterize his own motion. Defendants' Proposed Order recommends deleting that paragraph.

In ¶ 8 of Plaintiff's Order (which revises Plaintiff's ¶ 9), Defendants add the Court's statement in its Journal Entry ruling on the motion that the Court "agrees that any privilege related to these documents in fact belongs to Defendants." Plaintiff's Order omits that statement.

Finally, Defendants' Proposed Order omits ¶11 from Plaintiff's Order, which is confusing because his own proposed order says that the Court is not ruling on the question of whether the documents are in fact privileged or whether there was a waiver. To the extent that ¶

11 is intended as a ruling in Plaintiff's favor on the new argument raised in his Reply, Defendants will respond to that argument in their Surreply.

DATED this 24th day of May, 2013.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on May 24th, 2013, I served a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF PROPOSED DRAFT ORDER ON PLAINTIFF STEVEN C. JACOBS' MOTION TO RETURN REMAINING DOCUMENTS FROM ADVANCED DISCOVERY** via e-mail and by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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May 23, 2013

VIA HAND DELIVERY
Honorable Elizabeth Gonzalez
Regional Justice Center, Department 11
200 Lewis Avenue
Las Vegas, Nevada 89115

Re: Jacobs v. Las Vegas Sands Corp. et al.
Case No. A-10-627691
Proposed Competing Order Regarding Motion to Return Remaining Documents from Advanced Discovery

Dear Judge Gonzalez:

Plaintiff and Defendants were unable to come to an agreement as to the form and content of the proposed Order on Plaintiff Steven C. Jacobs' Motion to Return Remaining Documents from Advanced Discovery. Enclosed is Defendants' competing proposed Order for consideration and execution by this Court.

Defendants were compelled to provide a competing Order based upon a number of issues which it will outline in a letter to the Court tomorrow. Thank you for your attention to this matter.

Sincerely,

J. Randall Jones, Esq.

cc: James J. Pisanelli, Esq. (via email)
Todd L. Bice, Esq. (via email)
Jennifer L. Baster, Esq. (via email)

Encl.

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DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND ALL RELATED MATTERS.

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

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

Hearing Date: April 12, 2013

Hearing Time: In Chambers

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

THE COURT HEREBY STATES as follows:

1. At issue are documents that Jacobs took with him when he was terminated on July 23, 2010.

2. Amongst these documents were documents over which Defendants claim an attorney-client or other form of privilege.

3. These are documents that Jacobs either authored, was a recipient of, or otherwise had access to during the period of his employment.

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

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

6. Based upon these assertions of privilege, Defendants contend that Jacobs cannot provide these documents to his counsel and cannot use them in the litigation even if they relate to the claims, defenses or counterclaims asserted in this action.

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

8. The Court notes a split of authority as to who is the client under such circumstances. *See Montgomery v. Etrepid Techs. LLC*, 548 F. Supp. 2d 1175 (D. Nev. 2008).

However, the Court agrees that any privilege related to these documents in fact belongs to Defendants.

9. The Court does not need to address (at this time) the question of whether any of the particular documents identified by the Defendants are subject to some privilege (a contention which Jacobs disputes), or whether Defendants waived the privilege. Instead, the question presently before this Court is whether Jacobs is among the class of persons legally allowed to view those documents and use them in the prosecution of his claims and to rebut the Defendants' affirmative defenses and counterclaim, as these were documents that the former executive authored, received and/or had access to during his tenure.

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

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

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

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

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

///

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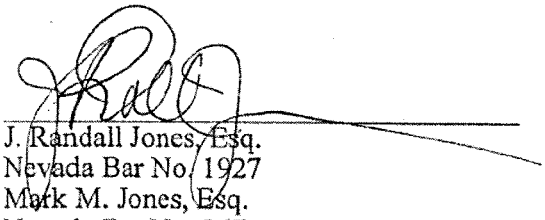
3. This Order is stayed for a period of ten days to allow Defendants to seek relief from the Nevada Supreme Court.

DATED: _____

_____
THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT

Submitted by:

KEMP, JONES & COULTHARD



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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS, Plaintiff, v. LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; DOES I through X; and ROE CORPORATIONS I through X, Defendants. AND RELATED CLAIMS	Case No.: A-10-627691 Dept. No.: XI **ORDER ON PLAINTIFF STEVEN C. JACOBS' MOTION TO RETURN REMAINING DOCUMENTS FROM ADVANCED DISCOVERY** Hearing Date: April 12, 2013 Hearing Time: In Chambers

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

THE COURT HEREBY STATES as follows:

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

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

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

4. Jacobs' present Motion does not seek to compel the Defendants to produce anything. The documents at issue are all presently within his possession, custody and control.

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

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

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

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

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

10. The Court does not need to address (at this time) the question of whether any of the particular documents identified by the Defendants are subject to some privilege (a contention which Jacobs disputes), or whether Jacobs has the power to assert or waive any particular privileges that may belong to the Defendants (a position which the Defendants' dispute). Instead,

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the question presently before this Court is whether Jacobs, as a former executive who is currently in possession, custody and control of the documents and was before his termination, is among the class of persons legally allowed to view those documents and use them in the prosecution of his claims and to rebut the Defendants' affirmative defenses and counterclaim, as these were documents that the former executive authored, received and/or possessed, both during and after his tenure.

11. The burden is upon the proponent of a privilege to substantiate the basis for the privilege as well as to establish that there has been no waiver. *Granite Partners v. Bear, Stearns & Co., Inc.*, 184 F.R.D. 49, 52 (S.D.N.Y. 1999) ("The party seeking to assert a claim of privilege has the burden of demonstrating both that the privilege exists and that it has not been waived."). Here, the Court finds that the Defendants have failed to sustain that burden with respect to the documents in question, those documents presently being in Jacobs' custody since before his termination on July 23, 2010.

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

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

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

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

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

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

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

DATED: _____

_____
THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

PISANELLI BICE PLLC

By:_____
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EXHIBIT A

EXHIBIT A

MOT
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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND RELATED CLAIMS

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

PLAINTIFF STEVEN C. JACOBS' MOTION FOR PROTECTIVE ORDER, *OR* ALTERNATIVELY, MOTION TO COMPEL PRODUCTION OF DOCUMENTS ON ORDER SHORTENING TIME

Hearing Date:

Hearing Time:

Plaintiff Steven C. Jacobs ("Jacobs") moves for a protective order in the face of Defendant Sands China, Ltd.'s ("Sands China") inconsistencies and continuing noncompliance with court orders. In the same breath that it insists no discovery should be had as to jurisdiction, Sands China claims an entitlement to take Jacobs' deposition with no express order or explanation as to how it could plausibly be relevant in the face of this Court's existing rulings. After all, this Court's sanctions order precludes it from claiming that Jacobs is not rightfully in possession of his documents, which was the sole basis for Sands China's original claimed right to depose him despite never moving this Court for permission (as Defendants insist Jacobs must do). Just as it has done throughout this case by concealing evidence and ignoring this Court's orders,

Sands China seeks an unleveled playing field by its open noncompliance on the production of documents. Sands China refuses to let Jacobs see evidence, but then asserts that it should be allowed to depose him with the blinders that Sands China has knowingly and purposefully created. The law is squarely contrary to Sands China's ongoing strategy.

A party is not entitled to conceal and withhold evidence hoping to obtain an advantage when they depose witnesses. Courts routinely enter protective orders halting such ambush tactics until the party obligated to produce documents complies. This ensures that the witnesses may be properly prepared and their counsel not unfairly prejudiced. But, of course, prejudicing Jacobs has been Defendants' strategy since day one.

Because Jacobs' deposition is scheduled to begin on February 12, 2013, he asks this Court to address this Motion on an order shortening time. This Motion is supported by the accompanying Memorandum of Points and Authorities, any and all exhibits attached thereto, including the attached Declaration of Todd L. Bice, Esq., the papers and pleadings on file herein, and any oral argument this Court may consider.

DATED this 5th day of February, 2013.

PISANELLI BICE PLLC

By: _____

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ORDER SHORTENING TIME

Before this Court is the Request for an Order Shortening Time accompanied by the Declaration of counsel. Good cause appearing, the undersigned counsel will appear at Clark County Regional Justice Center, Eighth Judicial District Court, Las Vegas, Nevada, on the 8th day of February, 2013, at 8:30 a.m., in Department XI, or as soon thereafter as counsel may be heard, to bring this **PLAINTIFF STEVEN C. JACOBS' MOTION FOR PROTECTIVE ORDER, *OR* ALTERNATIVELY MOTION TO COMPEL PRODUCTION OF DOCUMENTS ON ORDER SHORTENING TIME** on for hearing.

DATED: February 5, 2013

DISTRICT COURT JUDGE

Respectfully submitted by:

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DECLARATION OF TODD L. BICE, ESQ. IN SUPPORT OF PLAINTIFF STEVEN C. JACOBS' MOTION FOR PROTECTIVE ORDER, *OR* ALTERNATIVELY MOTION TO COMPEL PRODUCTION OF DOCUMENTS ON ORDER SHORTENING TIME

I, TODD L. BICE, Esq., being first duly sworn, hereby declare as follows:

1. I am one of the attorneys representing Plaintiff Steven C. Jacobs ("Jacobs") in the action styled *Steven C. Jacobs v. Las Vegas Sands Corp., et al.*, Case No. A656710, pending before this Court. I make this Declaration in support of Plaintiff Steven C. Jacobs' Motion For Protective Order, *Or* Alternatively Motion To Compel Production Of Documents On Order Shortening Time (the "Motion"). I have personal knowledge of the facts stated herein and I am competent to testify to those facts.

2. On January 29, 2013, I attended this Court's hearing on Jacobs' Motion to Compel Deposition Testimony, and Defendants Las Vegas Sands Corp.'s ("LVSC") and Sands China Ltd.'s ("Sands China") Motion for Stay of Order Granting Motion to Compel Documents Used by Witness to Refresh Recollection. During that hearing, J. Stephen Peek, counsel for LVSC and Sands China, argued to this Court that my deposition questions to Kenneth Kay, among other witnesses, were outside of the scope of this Court's prior orders regarding jurisdictional discovery.

3. Later that day, Mark Jones, also counsel for Sands China, e-mailed my office to schedule Mr. Jacobs' deposition purportedly for purposes of jurisdictional discovery. Mr. Jones indicated that Mr. Jacobs' deposition would take one and a half days (although he was not willing to limit it), and suggested the deposition begin on February 12, 2013.

4. Given Sands China's position concerning the limited scope of jurisdictional discovery articulated both to this Court and to the Nevada Supreme Court, and the fact that Sands China has insisted that no deposition may proceed absent an express order from this Court, Sands China's positions are wholly inconsistent. The very deposition that Sands China wants to take violates not only its own claims related to the Supreme Court's stay, but also this Court's orders as well. Simply put, because Defendants' witnesses have been deposed, Defendants claim a right to depose Jacobs even though they have articulated no legal basis for doing so.

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5. Sands China's attempt to depose Jacobs prior to its production of documents and actual compliance with this Court's orders is also contrary to law. Despite this Court's ruling that Jacobs is rightfully in possession of his ESI and any argument to the contrary is precluded, Sands China continues to withhold production and refuses to release those documents back to Jacobs so he may prepare for his deposition, even documents where Jacobs is the author or recipient. (Ex. 1, samples of Sands China's privilege log.) In other words, Sands China and its counsel seek to gain an unfair advantage by reviewing information, but then depriving Jacobs and his counsel from reviewing that information to prepare for Jacobs' deposition, notwithstanding this Court's ruling against Sands China's attempts to manufacture such an unleveled playing field.

6. This is on top of the fact that Sands China has intentionally subverted and defied this Court's orders concerning the production of documents from Macau, which Jacobs and his counsel are entitled to review to prepare for any deposition that would be within the scope of this Court's ruling on jurisdiction. But, once again, Sands China hopes to cheat the system. It refuses to comply with this Court's order so as to deprive Jacobs access while its representatives simultaneously claim that they should be permitted to depose Jacobs for their own ends. Indeed, Sands China seems to have forgotten the position of its own counsel concerning the inappropriateness of such tactics. (*See* Ex. 2, Hr'g. Tr. dated Oct. 13, 2011, 100:13-16 (Mr. Peek: "Why I have a little bit of a concern here is that the issue of a substantive deposition of Mr. Jacobs on jurisdiction would normally follow after the review of all of the documents.").)

7. As such, Jacobs is entitled to a protective order precluding his deposition from proceeding until: (1) Sands China obtains an actual order from this Court permitting a deposition after demonstrating what may be germane to the issues of personal jurisdiction over Sands China in the face of this Court's rulings; and (2) Jacobs is given access to all documents so that he and his counsel may properly prepare and not be unfairly prejudiced by Sands China's intentional noncompliance with this Court's orders. The law simply does not allow a litigant to conceal evidence to try and gain an unfair advantage by deposing witnesses without producing the records.

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8. Jacobs' deposition is scheduled for February 12, 2013. We thus ask this Court for an order shortening time so that the issue of whether Mr. Jacobs must be deposed, and if so, the proper scope of the deposition and whether he can adequately prepare for the deposition prior to the scheduled date of his deposition by reviewing documents Sands China has yet to produce.

9. I certify that this Motion is not brought for any improper purpose.

I declare under the penalties and perjury of the laws in the state of Nevada that the foregoing is true and correct.

Dated this 5th day of February, 2013.

/s/ Todd L. Bice
TODD L. BICE, ESQ.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

It is unnecessary for Jacobs to recount the extreme resistance and obstacles encountered in his efforts to obtain jurisdictional discovery from Sands China. It suffices to note that the campaign continues, as evidenced by Sands China's latest claim to the Nevada Supreme Court that the stay pending an evidentiary hearing somehow prevents Jacobs from conducting discovery for that hearing. (*See* Ex. 3, Emergency Petition for Writ, 28.) Sands China also protested to this Court that "Jacobs' requested discovery [was] irrelevant to this Court's determination of personal jurisdiction, and allowing such discovery would have no bearing on the outcome of the evidentiary hearing . . . ." (Ex. 4, Sands China's Opp'n to Mot. to Conduct Juris. Discovery, 10:12-11:1; *see also id.,* 5:23-25 (Sands China arguing that jurisdictional discovery was unnecessary because "such [would not] produce evidence of additional facts supporting jurisdiction.").)

This Court, of course, disagreed and ruled that Jacobs is entitled to jurisdictional discovery directed at things such as:

> (1) "the work [LVSC employees] performed for Sands China, and work [they] performed on behalf of or directly for Sands China while acting as an employee, officer, or director of LVSC, during the time period of January 1, 2009, to October 20, 2010;" and
>
> (2) "the process of the decision making, the who, what, where, when, how" behind Jacobs' termination.

(Ex. 5, Order re: Jurisdictional Discovery dated Mar. 8, 2012, 2:5-5:10; Ex. 6, Hr'g. Tr., Dec. 6, 2012, 27:14-28:1.)

Once this Court ruled that Jacobs could conduct certain jurisdictional discovery, which included the depositions of Sheldon Adelson, Michael Leven, Robert Goldstein, and Kenneth Kay, Sands China changed its tune. In true *quid pro quo* fashion, it claimed that it wanted to take Jacobs' deposition, although it made no actual motion or showing of how it was entitled to conduct such discovery or how it would relate to jurisdiction. This is the rationale Sands China gave:

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> We would like to take the deposition of Mr. Jacobs for that discrete subject matter related to when he -- what he came into possession, how he came into possession of it, when he came into possession of it, what he did with it, where did it get stored, what thumb drive.

(*See* Ex. 2, Hr'g. Tr. dated Oct. 13, 2011, 99:20-100:2.)

Recall, at that point, Sands China claimed that Jacobs "stole" documents from Sands China and therefore should be precluded from using those documents during the Court's evidentiary hearing on personal jurisdiction. (*See generally id.*) Also, Sands China's counsel represented that it may also want to take Jacobs' "substantive deposition" for purposes of jurisdictional discovery. (*Id.*, 100:14-15.) Without specifically ruling on the propriety of that issue, the Court said that if Sands China thought Jacobs' deposition was "appropriate," it could depose him "related to all issues that are the subject of the issues that are currently not stayed." (*Id.*, 100:5-6.) Tellingly, Sands China never moved for any order allowing such a deposition.

Although Sands China pretends now that the Court gave it carte blanche to depose Jacobs on any issue Sands China deemed "appropriate," by its own account, the "broader issue" for Jacobs' deposition was to support Sands China's claim that Jacobs was in wrongful possession of ESI and documents from his tenure in Macau. (*Id.*, 101:9-15.) Until that issue was determined, Sands China claimed it had the right to review and assert privilege over any document in Jacobs' possession. Without conceding Sands China's privilege over documents he possessed, Jacobs ultimately agreed to a protocol whereby Sands China was able to review the documents in his possession, and then designate documents it wanted to claim Jacobs' counsel could not review on the basis of privilege.

Of course, all that changed with this Court's September 14, 2012 sanctions order. This Court ordered that "[f]or purposes of jurisdictional discovery and the evidentiary hearing related to jurisdiction, Las Vegas Sands and Sands China are precluded from contesting that Jacobs[']s ESI (approx. 40 gigabytes) is not rightfully in his possession." (Ex. 7, Decision & Order dated Sept. 14, 2012 ("Decision & Order"), 9:1-3.) Not only did the Court's sanction preclude Sands China from claiming that Jacobs could not use his own documents, it defeated the proffered reason why Sands China claimed it was entitled to depose Jacobs.

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But this Court's ruling has not dissuaded Sands China from continuing to withhold evidence and not comply with its discovery obligations. Initially, Sands China refused to release a whole host of documents to Jacobs, producing a 3,090-page privilege log for Jacobs' documents and continually claiming that Jacobs could not use them in jurisdictional discovery. Demonstrating the lengths to which it would go, Sands China claimed privilege and/or protection over documents that had no authors or recipients, as well as communications between non-attorneys and even third-parties. (*See* Ex. 8, Spinelli Ltr. dated Oct. 9, 2012; Ex. 1, samples of Sands China's privilege log.) Naturally, Jacobs objected to Sands China's maneuver and identified numerous deficiencies contained in Defendants' privilege log. In response and consistent with Defendants' tactics, Sands China produced a "revised," 1,773-page privilege log that repeats most – if not all – of the same deficiencies in a vain attempt to withhold evidence from Jacobs and his counsel.

And Sands China is keen to the prejudice it hopes to inflict through this improper maneuver. The point was expressly discussed when Sands China first raised the prospect of a Jacobs deposition:

> MR. PISANELLI: I feel -- I feel compelled only to make a reservation on the record, you don't have to rule on it, that if the decision after thought, as we heard, is to depose Mr. Jacobs before we have gotten through this ESI exchange and before I can and will go through and start studying it myself, I will reserve the right to come back to you for a protective order, because I do I think it --
>
> THE COURT: Sure. I'm not stopping anybody --
>
> MR. PISANELLI: -- will be inherently unfair to have him deposed --
>
> THE COURT: -- from filing motions for protective order or anything. I assume you will file whatever is appropriate if you think it's appropriate. . . .

(*See* Ex. 2, Hr'g. Tr. dated Oct. 13, 2011, 106:13-25.)

But this is hardly Sands China's only attempted ambush. It also has sought to prejudice Jacobs through its intentional defiance of this Court's order to produce responsive documents no later than January 4, 2013. That command is on top of the Court's sanctions order precluding

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Sands China from employing the Macau Personal Data Privacy Act ("MPDPA") to avoid its production obligations. But once again, Sands China cannot be bothered with compliance.

On the designated day, January 4, 2013, Sands China demonstrated its utter contempt for this Court's rulings. It executed a document dump on Jacobs, with every document redacted under the auspices of the MPDPA – the very redactions this Court precluded – which rendered the documents wholly unintelligible. (*See* Ex. 9, samples of Sands China's redactions.) In truth, Sands China could have produced blank pieces of paper and been just as much in [non]compliance with this Court's order.

But it was not enough for Sands China to simply sabotage this Court's ruling. No, Sands China then had the audacity to file a report with this Court representing that it had forthrightly complied with its discovery obligation and had completed its duties under the Court's order by producing documents on January 4, 2013. (*See generally* Ex. 10, Sands China's Rpt. on its Compliance with the Court's Ruling of Dec. 18, 2012.) Reminiscent of the recent past, Sands China actually represented to this Court that it fulfilled its discovery obligations and had nothing left to produce. Sands China made this representation with full knowledge that it had purposefully produced documents that were unintelligible and worthless.

As if there could be some honest debate, the recent deposition of Michael Leven exposes Sands China's utter contempt. Jacobs showed Leven the above samples from Sands China's production and asked Leven questions about the documents. Leven's reaction was telling and swift: He openly conceded that the documents were redacted to the point he could not make heads or tails out of them. In fact, the documents are so indecipherable that he could not even identify their general nature or subject matter, let alone their substance and how they might relate to personal jurisdiction.[1]

In other words, Sands China has again obstructed discovery to prejudice Jacobs and obtain an unfair advantage. Sands China knows full well that Jacobs is entitled to review the compelled

[1] The old adage that "a picture is worth a thousand words" was never truer than with respect to Leven's facial expressions upon reviewing these ridiculous redactions. Jacobs will supplement this Motion with excerpts of the videotaped deposition showing Leven's reaction to these redactions upon receipt of the video.

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documents to prepare for his deposition. But, subverting this Court's ruling, Sands China knowingly produced documents in a state of utterly uselessness. That is, they are useless for Jacobs. Sands China and its counsel have had the advantage of reviewing the documents and then redacting them for their own strategic advantage. So, they get to know the information but Jacobs does not. The law is plainly otherwise and the time to deal with Sands China's campaign of obstruction has arrived.

II. DISCUSSION

A. Sands China Has Made No Showing Of An Entitlement To Take A Plaintiff's Deposition For Limited Purposes Of Jurisdictional Discovery.

To begin, Jacobs cannot help but point out the obvious inconsistencies taken by Sands China. Sands China seems to have forgotten how it insisted to this Court that "a request for jurisdictional discovery must be denied if the ***plaintiff*** fails to demonstrate that such discovery will produce evidence of additional facts supporting jurisdiction." (*See* Ex. 4, Opp'n to Mot. to Conduct Juris. Discovery, 3:1-6 (quoting *Laub v. US. Dept. of Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003)) (emphasis added). In other words, "to get jurisdictional discovery a ***plaintiff*** must have at least a good faith belief that such discovery will enable it to show that the court has personal jurisdiction over the defendant." *Caribbean Broad. Sys., Ltd. v. Cable & Wireless PLC*, 148 F.3d 1080, 1090 (D.C. Cir. 1998) (emphasis added) (denying jurisdictional discovery when plaintiff "did not allege any facts remotely suggesting that [the defendant] had any connection to the District of Columbia"). "[A] ***plaintiff*** must make a detailed showing of what discovery it wishes to conduct or what results it thinks such discovery would produce." *Atlantigas Corp. v. Nisource, Inc.*, 290 F. Supp. 2d 34, 53 (D.D.C. 2003) (emphasis added). "Where there is no showing of how jurisdictional discovery would help ***plaintiff*** discover anything new, it is inappropriate to subject defendants to the burden and expense of discovery." *NBC-USA Hous., Inc. Twenty-Six v. Donovan*, 741 F. Supp. 2d 55, 60 (D.D.C. 2010) (emphasis added).

The point is simple: Because the ***plaintiff*** bears the burden, the ***plaintiff*** is entitled to conduct jurisdictional discovery. The same is not true of a defendant who simply wants to conduct discovery as a tit for tat. As one court put it:

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> It is well-settled that it is the plaintiffs who bear the burden of establishing both personal jurisdiction and subject matter jurisdiction, and it is, typically, the plaintiff who seeks such jurisdictional discovery in an attempt to avoid dismissal of its case.

Titan Atlas Mfg., Inc. v. Sisk, Case No. 1:11CV00012, 2011 WL 2893092 (W.D. Va. July 15, 2011).

When the Court considers the law, it becomes easy to understand why Sands China has never made any formal form of motion. It has not and cannot "demonstrate that [Jacobs' deposition] will produce evidence of additional facts supporting jurisdiction." *See Laub*, 342 F.3d at 1093. It has no "good faith belief that [Jacobs' deposition] will enable it to show that the court [does not have] personal jurisdiction over [it]." *See Caribbean Broad. Sys., Ltd.*, 148 F.3d at 1090. It has not made "a showing of how jurisdictional discovery would help [Sands China] discover anything new." *NBC-USA Hous., Inc. Twenty-Six*, 741 F. Supp. 2d at 60. The real reason Sands China wants to take Jacobs' deposition is because it wants to conduct merits discovery at the same time it cries that such discovery is inappropriate.[2]

The one rationale that Sands China originally offered – that Jacobs' testimony regarding the possession of his ESI could be relevant to personal jurisdiction – can no longer serve as a justification. That possibility disappeared on September 14, 2012, when this Court found that, "[f]or purposes of jurisdictional discovery and the evidentiary hearing related to jurisdiction, Las Vegas Sands and Sands China are precluded from contesting that Jacobs[']s ESI (approx. 40 gigabytes) is not rightfully in his possession." (Ex. 7, Decision & Order, 9:1-3.) That is to say, because Sands China can no longer contest Jacobs' possession of his documents "[f]or purposes of jurisdictional discovery and the evidentiary hearing related to jurisdiction," the issue no longer "relates to the determination of personal jurisdiction" and is therefore stayed by the Nevada Supreme Court. (*See* Ex. 11, Order Granting Writ Petition, 3 (Nevada Supreme Court staying the action "except for matters relating to the determination of personal jurisdiction.").)

Sands China pointed out that Jacobs must demonstrate the appropriateness of jurisdictional discovery in order to conduct any. That burden is, of course, a two-way street.

---

[2] After telling this Court that it was unreasonable for Jacobs to depose witnesses for more than one day, Sands China now tells Jacobs that his deposition may take up to three days, beginning at 6:00 a.m. to 7:00 a.m. and ending at 8:00 p.m. (Ex. 12, M. Jones e-mail dated Jan.29, 2013.)

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Sands China must similarly make a showing to obtain such discovery, something it has not even attempted to do, knowing full well that it could never satisfy the required standard. Absent such a showing, Sands China must live with the same "stay" it insists has served as a constant restriction on Jacobs' discovery.

B. Any Deposition Is Improper Based Upon Defendants' Withholding Of Evidence and Noncompliance With This Court's Orders.

Even if this Court were to ignore Sands China's lack of an actual motion and valid legal bases for conducting a jurisdictional deposition of Jacobs, it cannot ignore Sands China's open defiance of this Court's orders. Indeed, the law presupposes that all witnesses may review documents to prepare for his or her deposition. *See* NRS 50.125(1) (recognizing that a witness may "use[ ] a writing to refresh his or her memory, either before or while testifying"); *see also Hogan v. DC Comics*, 96-CV-1749, 1997 WL 570871 (N.D.N.Y. Sept. 9, 1997) (postponing a deposition until the deposing party produced all of the deponent's documents in its possession because "his own notes may refresh his recollection of events, and he is clearly entitled to same prior to his deposition"). The witness also is not limited to his own documents: "A witness may refresh his recollection from any documents." *The Mandu*, 11 F. Supp. 845, 848 (E.D.N.Y. 1935).

The rule applies to Jacobs' attorneys as well. "***A lawyer, of course, has the right, if not the duty, to prepare a client for a deposition.***" *Hall v. Clifton Precision*, 150 F.R.D. 525, 528 (E.D. Pa. 1993) (emphasis added). Indeed, Jacobs' attorneys are obligated under Nevada's Rules of Professional Conduct to provide Jacobs with "competent representation," which "requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Nev. R. Prof. Conduct 1.1; *see also Upjohn Co. v. United States*, 449 U.S. 383, 391, (1981) ("A lawyer should be fully informed of all the facts of the matter he is handling in order for his client to obtain the full advantage of our legal system.").

It goes without saying that Jacobs' attorneys are hamstrung in providing such representation if they are precluded access to Jacobs' own documents so as to prejudice Jacobs from preparing for his deposition. *See Costa v. AFGO Mech. Services, Inc.*, 237 F.R.D. 21, 24

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(E.D.N.Y. 2006) ("Rule 26(b)(3) provides for the discovery of a party's statements as of right, including both oral and written statements, and rarely do courts authorize the taking of party depositions prior to the production of documents."); *Babyage.com, Inc. v. Toys "R" Us, Inc.*, 458 F. Supp. 2d 263, 266 (E.D. Pa. 2006) ("Statements constituting substantive evidence are discoverable by the persons or parties who made the statements prior to their depositions."). Indeed, Sands China acknowledged the prejudice, which is obviously why it has undertaken this tactic. (*See* Ex. 2, Hr'g. Tr. dated Oct. 13, 2011, 100:13-16 (Mr. Peek: "Why I have a little bit of a concern here is that the issue of a substantive deposition of Mr. Jacobs on jurisdiction would normally follow after the review of all of the documents.").) Fairness demands that Jacobs' attorneys be allowed to defend his deposition on level ground with the attorneys taking it. *See Meyer v. Second Jud. Dist. Ct. In & For Washoe Cnty.*, 95 Nev. 176, 181, 591 P.2d 259, 263 (1979) (noting that the rules of civil procedure "contemplate that there be full and equal mutual discovery in advance of trial so as to prevent surprise, prejudice and perjury").

Moreover, and perhaps most importantly, precluding Jacobs' attorneys from reviewing all of his documents violates Jacobs' fundamental right to legal representation. *See Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 315 (1985) (recognizing "the principle that the First Amendment rights to petition, association and speech protect efforts by organizations and individuals to obtain effective legal representation of their constituents or themselves"). Jacobs has the right "***to freely and fully confer and confide in one having knowledge of the law, and skilled in its practice, in order that the former may have adequate advice and a proper defense.***" *People ex rel. Dept. of Corps. v. SpeeDee Oil Change Sys., Inc.*, 980 P.2d 371, 378 (Cal. 1999) (emphasis added). However, Sands China's withholding of documents, including documents that were in Jacobs' possession and documents that this Court has already found that Sands China may not deprive him from using in this Court's jurisdictional hearing, violates this fundamental right by preventing him from "freely and full[y] confer[ing] and confide[ing]" with his attorneys. *See id.*

This problem is exacerbated by Sands China's latest stunt and intentional noncompliance of this Court's order that Sands China produce all jurisdictional documents by no later than

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January 4, 2013. This would have provided Jacobs with ample time to review the documents in preparation for any deposition. But Sands China's own witnesses openly acknowledge that the documents it produced are utterly unintelligible and worthless. No one can make heads or tails of them in the face of the ridiculous redactions that Sands China undertook so as to stymy compliance with this Court's rulings. This is not a litigant engaged in an honest attempt at complying with this Court's orders. This is a litigant that knows few bounds, as evidenced by their intentional misrepresentations as to the location and existence of evidence for the last two years. Sands China is not entitled to one-sided discovery. It was ordered to produce records and intentionally failed to comply. The law does not allow it to avoid its obligation to provide evidence so as to create an unfair playing field to the prejudice of their opponent. *See United States v. Procter & Gamble Co.*, 356 U.S. 677, 682 (1958) ("Modern instruments of discovery . . . [and] pretrial procedures make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.").

III. CONCLUSION

Sands China again treats discovery as a one-way street. Although it has never made any showing as to why it would be entitled to depose Jacobs as part of jurisdictional discovery – something for which it bears no burden – it insists that it is entitled to take his deposition on a broad range of subjects, all the while it seeks to stymy Jacobs' discovery. Sands China insisted that Jacobs make a showing so as to conduct jurisdictional discovery under the terms of the existing stay. That same standard applies to Sands China, and it noticeably has not and cannot comply.

Regardless, Sands China's latest tactic of withholding documents to preclude Jacobs and his counsel from appearing for a fair deposition, as well as sabotaging this Court's ordered production through incomprehensible redactions, cannot go ignored. The law entitles Jacobs and his counsel access to evidence in order to properly prepare witnesses. Sands China is knowingly and intentionally violating that fundamental principle by withholding documents with baseless claims of privilege in violation of this Court's order, as well as open defiance of its obligation to produce all jurisdictional documents no later than January 4, 2013. It is time to end Sands China's

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illegitimate tactics. Accordingly, Jacobs asks this Court for entry of a protective order precluding his deposition due to the unfair prejudice that Sands China has orchestrated through its noncompliance with this Court's orders.

DATED this 5th day of February, 2013.

PISANELLI BICE PLLC

By: _____
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LAS VEGAS, NEVADA 89169

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 5th day of February, 2013, I caused to be sent via e-mail and United States Mail, postage prepaid, true and correct copies of the above and foregoing **PLAINTIFF STEVEN C. JACOBS' MOTION FOR PROTECTIVE ORDER, *OR* ALTERNATIVE MOTION TO COMPEL PRODUCTION OF DOCUMENTS ON ORDER SHORTENING TIME** properly addressed to the following:

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EXHIBIT 1

Privilege Log for Relativity Review of Jacobs' ESI
11/30/12

Control Number	Beg Attach	End Attach	Doc Type	Application	Date Time Master	Author / From	To	CC	BCC	Other Names	Privilege Type	Redaction Needed in Family Range	Title / Subject
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SJACOBS [illegible]	SJACOBS [illegible]	SJACOBS [illegible]	Email	OUTLOOK_MSG	[illegible] 12:21 PM	Jacobs, Steve[/O=FIRST ORGANIZATION/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=STEVE.JACOBS]	Melo, Luis[luis.melo@[illegible].com.mx]				Attorney Client		Re: Security
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Privilege Log for Relativity Review of Jacobs' ESI
[illegible]

Control Number	Beg Attach	End Attach	Doc Type	Application	Date Time Master	Author / From	To	CC	BCC	Other Names	Privilege Type	Redaction Needed in Family Range	Title / Subject
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SJACOBS 00022317	SJACOBS 00022317	SJACOBS 00022317	Email	OUTLOOK_MSG	[illegible]		Rubenstein, Robert[Robert.Rubenstein@venetian.com]; Melo, Luis[luis.melo@venetian.com.mo]	Toh, Benjamin[benjamin.toh@venetian.com.mo]; Gonzalez, [illegible][[illegible]@venetian.com]			Attorney Client		RE: Letter of Termination (legal opinion)
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SJACOBS 00022587	SJACOBS 00022587	SJACOBS 00022587	Email	OUTLOOK_MSG	[illegible]		Goldstein, Robert[rob.goldstein@venetian.com]				Attorney Client		RE: Lee Chi Ming (legal advice)
SJACOBS 00022593	SJACOBS 00022593	SJACOBS 00022593	Email	OUTLOOK_MSG	[illegible]		Chan, Steve[steve.chan@venetian.com.mo]; Hu, Christine[christine.hu@venetian.com.mo]	Macomber, Dean[dean.macomber@venetian.com.mo]; Karoul, Steve[Steve.Karoul@MarinaBaySands.com]; Melo, Luis[luis.melo@venetian.com.mo]; DeAngelo, Len[Len.DeAngelo@MarinaBaySands.com]; Toh, Benjamin[benjamin.toh@venetian.com.mo]			Attorney Client		RE: UP Junket Agreements
SJACOBS [illegible]	SJACOBS [illegible]	SJACOBS [illegible]	Email	OUTLOOK_MSG	[illegible] 12:43	System Administrator[ ]	Hall, Gunther[gunther.hall@venetian.com.mo]				Attorney Client	Needed	Undeliverable: RE: WINS case
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EXHIBIT 2

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON SANDS CHINA'S MOTION IN LIMINE AND MOTION FOR CLARIFICATION OF ORDER

THURSDAY, OCTOBER 13, 2011

APPEARANCES:

FOR THE PLAINTIFF:	JAMES J. PISANELLI, ESQ. TODD BICE, ESQ. DEBRA SPINELLI, ESQ.
FOR THE DEFENDANTS:	J. STEPHEN PEEK, ESQ. PATRICIA GLASER, 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.

LAS VEGAS, NEVADA, THURSDAY, OCTOBER 13, 2011, 9:00 A.M.

(Court was called to order)

THE COURT: That takes me to Jacobs versus Sands. And I assume that everybody in the courtroom is here as a interested observer, because otherwise I have things on the calendar I don't know about it.

MS. GLASER: Good morning, Your Honor. Patricia Glaser for Sands China.

MR. PEEK: And Stephen Peek for Las Vegas Sands Corp., Your Honor.

MR. PISANELLI: Good morning, Your Honor. James Pisanelli on behalf of plaintiff, Mr. Jacobs.

MR. BICE: Todd Bice on behalf of plaintiff, Your Honor.

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

THE COURT: Okay. Let's start with the motion in limine.

MS. GLASER: May I?

THE COURT: Please.

MS. GLASER: Thank you. Good morning, Your Honor, again.

THE COURT: Good morning.

MS. GLASER: Your Honor, it's actually a little bit of a dilemma that we're here on today. We think that there

them. We're going to have that big global debate again. And so I would like to conduct discovery and take Ms. Glaser up on her offer of their IT folks and find out what exactly they know about what they've been doing, et cetera, et cetera, et cetera.

THE COURT: Okay. Since we are stayed and limited to purely discovery related to this jurisdictional issue which the Supreme Court has given me a writ ordering me to do certain things, I am not going to compel what would typically be Rule 16 disclosures related to that. I am going to require you to serve an interrogatory to identify those folks, or, alternatively, you may identify them through a 30(b)(6) deposition notice.

MR. PISANELLI: Will do.

THE COURT: Next?

MR. PEEK: Well, similarly, Your Honor, there's the corresponding -- I don't know whether Las Vegas Sands is entitled to be involved in this process, because --

THE COURT: I'm not clear, either.

MR. PEEK: Yeah. But certainly I'll speak for Las Vegas Sands, and Ms. Glaser can speak for herself, and it may get to the same point, is that we would want to take the deposition of Mr. Jacobs for that discrete subject matter related to when he -- what he came into possession, how he came into possession of it, when he came into possession of

it, what he did with it, where did it get stored, what thumb drive.

THE COURT: How about I say it this way? I believe Mr. Jacobs should be deposed if you think it's appropriate, or Ms. Glaser did, related to all issues that are the subject of the issues that are currently not stayed, rather than deposing him on four separate occasions on sub issues. And that would be the same for every witness. I would prefer to have each individual not inconvenienced overly and to try and consolidate all of the issues for their deposition at one time, because it's just polite and well-mannered practice.

MR. PEEK: The only reason I would -- I would agree with that under normal circumstances. Why I have a little bit of a concern here is that the issue of a substantive deposition of Mr. Jacobs on jurisdiction would normally follow after the review of all of the documents. One would want, I think perhaps -- and I'm not saying this is what Ms. Glaser will do -- that the issues of how he came into possession of those might be taken -- or learned or discovered earlier than that substantive deposition. And I'm not trying to take two depositions. I agree with the Court. I don't want to inconvenience Mr. Jacobs. But we'll --

THE COURT: I understand what you're saying, but I really don't think Mr. Jacobs's testimony is relevant to the privileges that are going to be asserted after those folks

review the 11 gigs or so of documents. There's going to be somebody who says that the document violates the Macau Privacy Act by it being removed from Macau, there's going to be an objection that says it might be attorney work product, there might be an objection that says it's an accountant-client privilege, it might be an attorney-client privilege, or it might be a trade secret. I think that's the entire universe of --

MR. PEEK: No. There's one more, Your Honor.

THE COURT: What is it?

MR. PEEK: You came into the possession of them wrongfully.

THE COURT: That's the broader issue.

MR. PEEK: That's the broader issue, and it's certainly --

THE COURT: I am merely at this point in time on the 11 gigs looking for the privilege issues.

MR. PEEK: Correct. But in order to get to that last, much broader issue of did you come into possession of them in a manner that I don't consider proper, that would be the subject of, as I said, how, when, what, where did you get -- come into the possession.

THE COURT: I am not seeing -- that discussion, which I certainly understand we will have, I do not see that at the same time as my decision on the what I'm characterizing

THE CLERK: I can do that, Judge.

MR. PEEK: And I think we've actually done that, Your Honor, by a pleading.

THE COURT: But the Clerk's Office doesn't vacate them. I have to tell them.

MR. PEEK: I know. So I wanted to just have it here clear that --

THE COURT: All right.

MR. PEEK: -- those are the ones you asked us to withdraw and we did withdraw.

THE COURT: What else can I do to help you, since I am now through my four agenda items and it's 11:25?

MR. PISANELLI: I feel -- I feel compelled only to make a reservation on the record, you don't have to rule on it, that if the decision after thought, as we heard, is to depose Mr. Jacobs before we have gotten through this ESI exchange and before I can and will go through and start studying it myself, I will reserve the right to come back to you for a protective order, because I do I think it --

THE COURT: Sure. I'm not stopping anybody --

MR. PISANELLI: -- will be inherently unfair to have him deposed --

THE COURT: -- from filing motions for protective order or anything. I assume you will file whatever is appropriate if you think it's appropriate. I just have a

general policy that it is appreciated by witnesses to only have to be deposed once. And if you can finish him in one sitting, great. If it takes more than one sitting and you're doing your best and not harassing him, okay, we all understand and we try and work together.

I also really like it when counsel can work together, although I know that doesn't always happen.

Anything else?

MR. PEEK: I was just going to say we agree with Mr. Pisanelli that we all are going to reserve whatever we have. So it goes without saying. We'll work on this.

MS. GLASER: Thank you for your time, Your Honor.

THE COURT: Anything else?

MR. PISANELLI: Nope.

THE COURT: All right.

(Off-record colloquy)

THE PROCEEDINGS CONCLUDED AT 11:27 A.M.

* * * * *

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

10/17/11

FLORENCE HOYT, TRANSCRIBER — DATE

EXHIBIT 3

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

vs.

CLARK COUNTY DISTRICT COURT, THE HONORABLE ELIZABETH GONZALEZ, DISTRICT JUDGE, DEPT. 11,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Case Number:

District Court Case Number
A627691-B

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

RELIEF IS REQUESTED ON OR BEFORE FEBRUARY 4, 2013

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Attorneys for Petitioners

Rule 26.1 Disclosure

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

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

MORRIS LAW GROUP

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Las Vegas, Nevada 89134

Attorneys for Petitioners

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Cases **Page No.:**

Rules and Statutes

Other Authorities

I. INTRODUCTION

A. The Discovery Order That Gives Rise to this Petition for Extraordinary Relief.

On January 18, 2013, the district court entered a Discovery Order compelling defendants to produce documents that are indisputably privileged and/or protected by the work product doctrine. The court held that the privileged documents must be produced because a former lawyer for one of the defendants had previously looked at the documents to refresh his memory about the dates of past events when the court compelled him to testify at a hearing in September 2012.

The court based its order on Nev. Rev. Stat. 50.125, which provides that documents used by a testifying witness to refresh his recollection in advance of the hearing can be produced "at the hearing" to test the witness's credibility through cross examination. Yet the court ordered the privileged documents to be produced not "at the hearing" and not for cross-examination, but as part of discovery long after the witness had testified, the hearing had concluded and a final ruling had issued—*i.e.*, at a time when the Rule could not possibly serve its intended purpose. Furthermore, in so doing, the court departed from the decisions of federal courts holding that the federal analog of Nev. Rev. Stat. 50.125 is not an absolute rule of discovery, but a rule of evidence requiring a careful balancing of competing interests.

The district court ordered the privileged documents to be produced within 10 days (by February 4, 2013). Hence, this Emergency Petition.[1]

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[1] Defendants filed a motion for a stay pending the outcome of this Petition in the district court. The court has set January 29 as the hearing date on that motion.

B. This Court's Precedents Addressing Improper Discovery Orders Support Writ Review of the District Court's Discovery Order.

A writ of prohibition is the proper "remedy for the prevention of improper discovery," *Wardleigh v. Dist. Ct.*, 111 Nev. 345, 350, 891 P.2d 1180 (1995), as is mandamus to vacate a discovery order that compels the disclosure of privileged information. *Valley Health Sys. v. Dist. Ct.*, 127 Nev.___, 252 P.3d 676, 678–79 (2011). There is no doubt that the discovery of defendants' privileged information the district court ordered is improper. There is also no doubt that the defendants do not have an adequate remedy at law to deal with this aberrant order other than to seek extraordinary relief from this Court. If defendants are compelled to produce the indisputably privileged documents the district court has ordered them to relinquish by February 4, the documents "would irretrievably lose [their] confidential and privileged quality and petitioners would have no effective remedy, even by a later appeal." *Wardleigh*, 111 Nev. at 350–51. Once privileged information has been disclosed, "there would be no adequate remedy at law that could restore the privileged nature of the information, because once such information is disclosed, it is irretrievable." *Valley Health Sys.*, 252 P.3d at 679.

C. The Discovery Order Is an Unprecedented Application of a Rule of Evidence for Testimonial Purposes to Compel Post-hearing General Discovery of Privileged Information.

This Petition also presents important questions of first impression concerning the proper application of Nev. Rev. Stat. 50.125. Nev. Rev. Stat. 50.125 is a rule of evidence, limited by its language to live testimony at a hearing. It is not a rule of general discovery. Nev. Rev. Stat. 50.125 says that "[i]f a witness uses a writing to refresh his or her memory, either before or while testifying, an adverse party is entitled" to have the

writing "produced at the hearing," to "inspect it," "to cross-examine the witness thereon" and to "introduce in evidence those portions which relate to the testimony of the witness for the purpose of affecting the witness's credibility."

In this case, the witness was Justin Jones, a prominent lawyer for one of the defendants, who appeared at the district court's direction as a witness at a sanctions hearing that occurred and concluded months ago. Jones, who had not worked on the case for a year and was in the middle of a heated political campaign, testified that he had reviewed certain internal privileged documents before the hearing to refresh his recollection concerning the dates of certain events in the preceding year. Although plaintiff's counsel cross-examined and asked him to identify the documents he had used to refresh his memory, counsel did not challenge Jones's credibility on the dates of events he testified to, nor did plaintiff's counsel ask the court "before or while" [Jones was] testifying," to have any writing he used "to refresh his memory" produced at the hearing. Instead, plaintiff waited until two months later, after the sanctions hearing was over and the district court had ruled, to demand production of the privileged documents in discovery—claiming that he was entitled to them under Nev. Rev. Stat. 50.125, even though the witness's credibility was no longer even arguably at issue.

D. This Petition Presents Issues That Are Important to the Bench and Bar and to the Fair and Efficient Administration of Justice in Nevada.

The first issue is whether, as plaintiff contended and the district court held, Nev. Rev. Stat. 50.125 creates a no-exceptions rule of discovery for any document that a witness may review before testifying, regardless of whether a time-honored evidentiary privilege otherwise protects the

document from disclosure. Rule 612 of the Federal Rules of Evidence, which served as the model for Nev. Rev. Stat. 50.125, has not been interpreted in such an absolute fashion: federal courts have consistently applied a balancing test to decide whether an adverse party is entitled to examine privileged documents that a witness used to refresh his or her recollection before testifying. That same balancing test should have been applied here and, if it had been, the plaintiff's motion to compel would have been denied and the defendants' privileges and attorney work product preserved.

The second issue is whether Nev. Rev. Stat. 50.125 can be used to compel the production of documents post-hearing—after the witness has completed testifying and his credibility has been assessed. By its plain terms, Nev. Rev. Stat. 50.125 is a rule of evidence, not a rule of discovery. Its purpose is to assist the finder of fact at the hearing to assess witness credibility. Accordingly, the rule only empowers the court to make orders for disclosure at the hearing. Here, however, the January 18 Discovery Order compels the disclosure of privileged information long after the hearing's conclusion and the district court's ruling. Thus, the documents, if produced on February 4, would not assist the district court in assessing witness Jones's credibility last September; the hearing is history. Disclosure now would give the plaintiff discovery on highly sensitive, privileged materials and attorney work product—mental impressions, for example--that go to the merits of the case. Thus, the district court has torn Nev. Rev. Stat. 50.125 from its moorings in the law of evidence, transforming it into a free-ranging vessel for fishing expeditions in discovery, which this Court should interdict before disclosure of this protected information becomes prejudicially "irretrievable." *Valley Health Sys., supra,* 256 P.3d at 679.

Third, the district court's January 18 Discovery Order raises serious issues concerning the enforcement of this Court's limited remand Order of August 26, 2011, which stayed all proceedings until the district court decides the threshold question of whether it has personal jurisdiction over one of the defendants, Sands China, Ltd. ("SCL"), a foreign corporation. Following remand, the district court allowed plaintiff to engage in massive "jurisdictional" discovery. Even if that discovery were deemed to be within the scope of this Court's August 26, 2011 Order, the district court's January 18 Discovery Order is not because it compels the defendants to produce privileged documents without any finding that the documents are relevant to jurisdiction over SCL. That the January 18 Discovery Order disregards both the letter and the spirit of this Court's August 2011 Order is enough, in and of itself, to warrant the extraordinary relief sought herein.

II. ISSUES PRESENTED BY THIS WRIT PETITION

(1) Whether Nev. Rev. Stat. 50.125 is an absolute rule that mandates the forfeiture of all privileges in all cases in which a witness uses any part of a privileged document to refresh his or her memory before testifying, or whether the courts must balance the adverse party's interests in challenging the witness' credibility under Nev. Rev. Stat. 50.125 against the public and private interests served by the privilege based on the facts of the particular case;

(2) Whether Nev. Rev. Stat. 50.125, which governs the testimony of witnesses at a hearing and limits the types of orders a court may enter to those affecting that testimony, may be used as a tool for obtaining discovery after the relevant hearing has been concluded; and

(3) Whether the district court acted beyond the scope of the authority afforded to it by this Court's August 26, 2011 Order when it compelled production of documents without any finding that those documents were necessary or even relevant to the issue of whether the court had personal jurisdiction over SCL.

III. STATEMENT OF FACTS SUPPORTING EXTRAORDINARY RELIEF

Plaintiff and Real Party in Interest Steven C. Jacobs was formerly the Chief Executive Officer of SCL, which does business exclusively in the Macau Special Administrative Region of the People's Republic of China ("Macau") and in Hong Kong. In July 2010, Jacobs was terminated as SCL's CEO. Shortly thereafter, he filed this lawsuit against LVSC and SCL, alleging that he had been wrongfully terminated and that SCL had breached contractual obligations it purportedly owed him by refusing to honor his claimed right to exercise certain stock options. LVSC/SCL Appendix at LVSC/SCL0001-18.

SCL moved to dismiss Jacobs' breach of contract claim against it for (among other things) lack of personal jurisdiction. Jacobs argued in response that SCL's "de facto executive headquarters" was and is in Las Vegas, where its majority shareholder (LVSC) is headquartered, and that SCL is therefore subject to the general jurisdiction of the Nevada courts. *See, e.g.*, LVSC/SCL0087.[2] The district court denied SCL's motion to dismiss, holding that plaintiff had met his burden of showing general jurisdiction. LVSC/SCL0021-22. SCL then sought an extraordinary writ in this Court, arguing that the district court had improperly predicated

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[2] Jacobs also argued that the court had jurisdiction over SCL because he served the summons and complaint on SCL's then-acting CEO, Michael Leven, when Mr. Leven happened to be in Las Vegas. LVSC/SCL0080.

jurisdiction over SCL on LVSC's contacts with the forum. LVSC/SCL0023, 31.

On August 26, 2011, this Court issued an Order Granting Petition for Writ of Mandamus, in which it "direct[ed] the district court to revisit the issue of personal jurisdiction" over SCL "by holding an evidentiary hearing and issuing findings regarding general jurisdiction." LVSC/SCL0128. The Court further directed the district court to "stay the underlying action, except for matters relating to a determination of personal jurisdiction, until a decision on that issue has been entered." *Id.*

After this Court issued its August 26 Order, the district court set a hearing date, but then vacated that date when Jacobs sought what he described as "narrowly confine[d]" discovery on the issue of jurisdiction. LVSC/SCL0149; LVSC/SCL0184. Over defendants' objection, the court granted plaintiff's request to take depositions of four senior LVSC executives and ordered defendants to produce eleven categories of documents (LVSC/SCL0170-76); the court also allowed plaintiff to pursue a number of new jurisdictional arguments, including the never-before-raised argument that the court had specific jurisdiction over his breach of contract claim against SCL.[3] LVSC/SCL0185-86. The "narrowly confined" discovery the court allowed continues to lurch along so that the hearing

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[3] Plaintiff offered a new general jurisdiction theory as well, claiming that LVSC acted as SCL's agent, both in Nevada and elsewhere — a theory that would require plaintiff to prove that the subsidiary somehow directed and controlled the parent company. LVSC/SCL0186-88. The district court has so far refused even to attempt to sort out plaintiff's often conflicting theories, while at the same time ordering more and more discovery that is irrelevant to any viable theory of jurisdiction.

this Court ordered the district court to hold more than a year ago has not been scheduled.[4]

In September 2012, the district court *sua sponte* convened what turned into a three-day hearing to determine whether defendants should be sanctioned for not disclosing to the court, prior to June 2012, that electronically stored information ("ESI") for which Jacobs was the custodian had been transferred from SCL in Macau to LVSC in Las Vegas in 2010, shortly after Jacobs was terminated. At various points in the litigation, counsel for SCL had advised the district court that its ability to produce documents that were located in Macau was significantly constrained by its obligation to comply with Macau's strict data privacy laws. The district court took the view that, when making these statements, defendants should have specifically disclosed the fact that Jacobs' ESI had already been transferred to the United States and would therefore not be subject to Macau's Personal Data Protection Act ("MPDPA").[5] LVSC/SCL0361-64.

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[4] By the beginning of December, Defendants had produced approximately 168,000 pages of documents in response to plaintiff's jurisdictional requests at a cost of more than $2.3 million. LVSC/SCL0407. SCL produced over 27,000 pages of documents, after a December 18, 2012 hearing at which the court ordered SCL to search for and produce documents by January 4, 2013. LVSC/SCL0510. Defendants have produced all four witnesses plaintiff designated (including the Chairman of SCL and Chairman/CEO of LVSC, Sheldon Adelson) for depositions, but the court recently ordered those witnesses to sit for additional deposition days, notwithstanding defendants' objection that plaintiff was using the depositions to inquire into the merits, rather than into the limited question of jurisdiction. LVSC/SCL0458-60.

[5] Defendants argued that they had no obligation to disclose prior to June 2012, when they did so voluntarily in light of advice SCL received on May 28, 2012 from the Macau Office for Personal Data Protection ("OPDP") that ESI that had already been transferred to the United States could be produced without complying with the MPDPA. LVSC/SCL0267-75.

The district court directed certain defense counsel to appear and to testify as witnesses at the sanctions hearing, which was held on September 10-12, 2012. LVSC/SCL0357. Justin Jones, a partner in the law firm of Holland & Hart, was one of the witnesses called by the court. LVSC/SCL0280-353. Mr. Jones testified that he had been involved in the case for about a year, from October or November 2010 until the end of September 2011. LVSC/SCL0285-86. During that time, Holland & Hart had represented only LVSC. LVSC/SCL0286.

Mr. Jones was first questioned by the district court itself. The court asked about statements Mr. Jones had made at a court hearing in July 2011 to the effect that he was prohibited by the MPDPA from reviewing SCL documents in Macau because he did not represent either SCL or its operating subsidiary, Venetian Macau Limited ("VML").[6] LVSC/SCL0282-83. The court also questioned Mr. Jones about the fact that in May 2011 he had reviewed some of the Jacobs ESI that had been transferred to the United States in LVSC's offices in Las Vegas. LVSC/SCL0281-82. During the court's own examination, counsel for defendants raised a number of objections based on attorney-client privilege and work product, which the court sustained. *Id.*

After the district court completed its questioning, it permitted plaintiff's counsel to cross-examine Mr. Jones. LVSC/SCL0285-352. Plaintiff's counsel asked a series of questions about Mr. Jones' review of Jacobs' ESI in Las Vegas, many of which drew objections on privilege or

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[6] This statement was made *before* this Court's August 26, 2011 Order and did not concern the issue of personal jurisdiction. As defendants noted in a Statement filed before the sanctions hearing, this Court's Order precluded the district court from imposing sanctions "for conduct that does not directly relate to jurisdiction." LVSC/SCL0253 at n.2.

work product grounds, which the court sustained. LVSC/SCL0285-301. Plaintiff's counsel then took a new tack, noting that Mr. Jones had been "pretty precise on the date" that he had reviewed that ESI and asking whether he had reviewed billing records before testifying. LVSC/SCL0301-02. Mr. Jones, who had not worked on the case for a year and was at that point engaged in a hotly-contested race for the state Senate, testified that he had reviewed certain billing records to refresh his recollection about the timing of events in the case. He was then asked whether he had reviewed anything else before testifying. Mr. Jones said that he had reviewed some emails "that refreshed my recollection as to the timing of events in this case." LVSC/SCL0303.

In response to questions from plaintiff's counsel, Mr. Jones testified that he had reviewed 10-15 emails in preparation for his testimony. LVSC/SCL0304. When plaintiff's counsel asked him to identify the emails, SCL's counsel objected on the assumption that plaintiff would next be asking Mr. Jones to produce the documents. He argued that the ordinary rules relating to documents used to refresh a witness' recollection should not apply where opposing counsel was being allowed to cross-examine a lawyer for one of the parties and the documents in question were protected by privilege or work product. LVSC/SCL0305-06. The court overruled the objection, on the ground that all plaintiff's counsel was asking for at that point was an identification of the documents in question. LVSC/SCL0306. The court then told Mr. Jones to identify the emails by author and approximate date, in order to avoid any privilege waiver. LVSC/SCL0307-09.

Mr. Jones testified that all of the emails were between himself and other counsel, either in-house or outside, for the defendants.

LVSC/SCL0310-13. He also testified that he could not provide any more information about the emails without risking a waiver of privilege or work product protection. LVSC/SCL0313-14. Plaintiff's counsel then asked the court to order the documents Mr. Jones had reviewed to be segregated; the court declined to do so. LVSC/SCL0314-15. Plaintiff's counsel did not, however, ask for the documents to be produced so he could use them to cross-examine Mr. Jones, nor did he suggest at any point that Mr. Jones had inaccurately recalled the time-line of relevant events, such as when he reviewed the Jacobs ESI in Las Vegas.

On September 14, 2012, the district court issued a Decision and Order imposing certain sanctions on the defendants for failing to disclose at an earlier point in time the fact that Jacobs ESI had been transferred to the United States. LVSC/SCL0357-65.[7] The Decision and Order did not mention Mr. Jones' testimony.

Two months after the district court ruled, plaintiff asked defendants to produce the documents Mr. Jones had used to refresh his recollection before the September 2012 hearing. When defendants refused to do so, plaintiff filed a motion to compel. LVSC/SCL0366. Plaintiff did not deny that the documents he sought would ordinarily be protected from discovery by the work product doctrine or attorney-client privilege. Nor did he attempt to show that he had any need for the documents in question

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[7] The court held that, for purposes of jurisdictional discovery and the evidentiary hearing on jurisdiction, defendants could not invoke the MPDPA as a defense to the admission, disclosure or production of any document and could not argue that ESI that Jacobs had taken when he left Macau was not rightfully in his possession. The court also imposed monetary sanctions in the form of a legal aid contribution (which defendants have paid) and an award of attorneys' fees plaintiff had expended on MPDPA issues (which plaintiff has yet to seek). LVSC/SCL0364-65.

or that they were likely to be relevant to jurisdiction. Instead, plaintiff based his motion to compel solely on the theory that Nev. Rev. Stat. 50.125 gave him an absolute right to production of any documents any witness may have used to refresh his recollection on any matter, however relevant (or immaterial) the witness's recollection may be. LVSC/SCL0375-77.

Defendants filed an opposition to plaintiff's motion on December 6. LVSC/SCL0431. In their opposition, defendants demonstrated (i) that plaintiff's automatic-forfeiture theory was contrary to law; (ii) that under the circumstances of the case the undisputed protections of the attorney-client privilege and work-product doctrine outweighed any interest plaintiff may have had in testing Mr. Jones' recollection; and (iii) that Nev. Rev. Stat. 50.125 did not give plaintiff the right to take discovery after the relevant hearing had concluded and after the sanctions order had been issued. LVSC/SCL0433-42.

The district court did not hear argument on plaintiff's motion to compel. On January 17, 2013, the district court entered an Order adopting verbatim a proposed order submitted by plaintiff (referred to herein as the "Discovery Order"). LVSC/SCL0569-71. The Discovery Order commands defendants to "produce all documents Justin Jones reviewed in preparation for testifying at the evidentiary hearing" within 10 days of notice of entry of the Order or by February 4, 2013. LVSC/SCL0571-72. The Discovery Order is not limited to the documents or portions of documents that actually refreshed Mr. Jones' recollection. Nor does it allow Petitioners to redact any portions of the documents that were not related to Mr. Jones' testimony. The documents defendants were ordered to produce "include, but are not limited to, Jones' billing entries for the third week in May and end of August or early September 2011, and approximately ten to fifteen

emails dated May, August, or September of 2011." LVSC/SCL0570, ¶ 3. Those emails are described as including "an email from J. Stephen Peek [defendants' lead trial counsel] to Jones in May 2011" and "emails from Jones to Peek, counsel from Glaser Weil [prior counsel for SCL], and in-house counsel." *Id.*

IV. STATEMENT OF REASONS THE WRIT SHOULD ISSUE

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

Writ relief is available where the petitioner has no "plain, speedy and adequate remedy in the ordinary course of law." Nev. Rev. Stat. § 34.330. Prohibition is the proper "remedy for the prevention of improper discovery," *Wardleigh*, 111 Nev. at 350, 891 P.2d at 1183, because discovery orders are not immediately appealable and therefore the affected party does not have a plain, speedy, or adequate remedy at law to prevent disclosure. "Because mandamus is an extraordinary remedy, a writ will not issue if the petitioner has a plain, speedy and adequate remedy at law." *Valley Health Sys.*, 252 P.3d at 678 (quoting *Millen v. Dist. Ct.*, 122 Nev. 1245, 1250–51, 148 P.3d 694, 698 (2006)). That principle applies with special force in cases where, as here, a district court order "requires disclosure of privileged information." *Club Vista Fin. Servs., LLC v. Eighth Judicial Dist. Ct.*, 128 Nev. ___, 276 P.3d 246, 249 (2012). "If improper discovery were allowed" in such a case, "the assertedly privileged information would irretrievably lose its confidential and privileged quality and petitioners would have no effective remedy, even by a later appeal." *Id.* (quoting *Wardleigh*, 111 Nev. at 350-51, 891 P.2d at 1183-84). That is certainly true here, where appeal in the normal course "would not remedy" the

"improper disclosure of" information that is privileged and protected by the work product doctrine.

It is also true that, "the consideration of an extraordinary writ is often justified 'where an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction.'" *Sonia F. v. Eighth Judicial Dist. Ct.*, 125 Nev. 495, 498, 215 P.3d 705, 707 (2009) (citation omitted). This Petition concerns important issues of law this Court has never decided — and a district court order based on an extreme theory that this Court has never adopted.

This Court has never considered the relationship between Nev. Rev. Stat. 50.125 and the attorney-client privilege (codified at Nev. Rev. Stat. 49.095). In *Means v. State*, 120 Nev. 1001, 103 P.3d 25 (2004), the Court did consider the interplay between Nev. Rev. Stat. 50.125 and the work-product doctrine, but in very different circumstances than those here. First, in *Means*, the party seeking the production of an attorney's notes made a request for the notes while the attorney was still testifying as a witness at a hearing. *Id.* at 1006, 103 P.3d at 29. In these circumstances, the request was properly made under Nev. Rev. Stat. 50.125, which applies to documents relevant to witness credibility at hearings. By contrast, plaintiff here did not request the privileged documents until months after the witness had completed his testimony, when Nev. Rev. Stat. 50.125 was no longer relevant.

In *Means*, any work product protection was at best weakened and was perhaps inapplicable because the party seeking production of the documents was the lawyer-witness' former client. This case, by contrast, presents what is likely to be the much more common scenario where there is a discovery dispute among adverse parties in civil litigation. The Court

expressly stated that this common scenario was not "at hand" in *Means*, but it is squarely presented here. 120 Nev. at 1010, 103 P.3d at 31. This case is one in which "[t]he work-product doctrine is most commonly and appropriately invoked," *id.*, and the Court's guidance is sorely needed.

The need for guidance from this Court is particularly acute because the district court's Discovery Order rests on an extreme automatic-forfeiture theory that this Court has never endorsed. The ramifications of the Discovery Order are far-reaching and drastic: it adopts an all-encompassing, absolute rule that would require the forfeiture of all privileges in any proceeding in which any witness reviews any part of a privileged communication to refresh his or her memory. The district court's theory would preclude consideration or balancing of the public and private interests that would be lost if the privilege is destroyed, and it would operate without regard to the circumstances of the testimony or the case.

The policy interests undermined by the district court's Discovery Order are worth preserving: "The attorney-client privilege is the oldest of the privileges for confidential communications known to the common law." *Goyak v. Private Consulting Grp.*, No. A558299, 2011 WL 4427745 (Nev. Dist. Ct. Aug. 16, 2011) (quoting *Tahoe Regional Planning Agency v. McKay*, 769 F.2d 534,540 (9th Cir. 1985) (citations omitted). The privilege shields confidential communications "to encourage 'full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice.' " *Premiere Digital Access, Inc. v. Cent. Tel. Co.*, 360 F. Supp. 2d 1168, 1172 (D. Nev. 2005) (*citing Upjohn Co. v. United States*, 449 U.S. 383, 388 (1981)).

Likewise, the work-product doctrine of Nev. R. Civ. P. 26(b)(3) serves the interests of parties and the broader interests of impartial justice. It gives attorneys the "free[dom] from unnecessary intrusion by opposing parties and their counsel" they need to adequately "protect their clients' interests." *Hickman v. Taylor*, 329 U.S. 495, 510-11 (1947). The doctrine confers absolute protection "against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation." Nev. R. Civ. P. 26(b)(3); *see Wardleigh*, 111 Nev. at 359, 891 P.2d at 1189 (holding that "opinion" work product is "not discoverable under any circumstances"). Even non-opinion "ordinary" work product may be disclosed "only upon a showing that the party seeking discovery has substantial need of the materials . . . and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means." Nev. R. Civ. P. 26(b)(3).

This case also implicates the conduct of proceedings in which a party's outside counsel has been *required* to testify. This Court has justifiably stated that it is "wholeheartedly concerned with this vehicle of discovery." *Club Vista*, 276 P.3d at 250. In those "remarkable" circumstances in which a party is allowed to depose the opposing party's counsel, the Court has instructed district courts "to ensure that the parties avoid improper disclosure of protected information." *Id*. The Discovery Order ***compels***, rather than avoids, the "improper disclosure of protected information," providing further reason for this Court's review.

All of the important public and private interests described above are at risk if the Discovery Order is allowed to stand. Worse still, the district court's theory would reach beyond the attorney-client privilege and

the work-product doctrine, as it extends to *all* privileges in all proceedings. This Court's immediate intervention will thus provide necessary "clarification" on "important issue[s] of law" and serve critical "public policy" interests. *Sonia F.*, 125 Nev. at 498, 215 P.3d at 707.

B. The District Court's Order Fashions an Extreme Automatic-Forfeiture Theory That is Contrary to Law.

1. The District Court Ignored the Statutory Protections for Attorney-Client Communications and Work Product.

The Discovery Order's extreme and expansive theory rests on a single sentence: the district court's observation that "neither the attorney-client privilege nor the work-product doctrine" appears as an express exception in Nev. Rev. Stat. 50.125. LVSC/SCL0570, ¶ 8. That sentence improperly looks at Nev. Rev. Stat. 50.125 in a vacuum, without regard to its statutory context.

There was no need for the legislature to expressly reiterate and preserve all of the many evidentiary privileges in Nev. Rev. Stat. 50.125. Chapter 49 of the Code already codifies the various privileges, and Nev. Rev. Stat. 49.095 in particular enshrines the attorney-client privilege. Nev. Rev. Stat. 47.020 expressly states that those privileges apply "at all stages of all proceedings" except in special proceedings (like extradition hearings) where the normal rules of civil procedure do not apply. Nev. Rev. Stat. § 47.020. Further, Nev. R. Civ. P. 26(b)(3) expressly exempts work product from the discovery process, and confers absolute protection on opinion work product.

The proper question, then, is not whether Nev. Rev. Stat. 50.125 expressly *preserves* privileges but instead whether the legislature intended Nev. Rev. Stat. 50.125 to *abrogate* all the established privileges that are expressly preserved by Nev. Rev. Stat. 47.020 and Nev. R. Civ. P. 26(b)(3).

The fact that Nev. Rev. Stat. 50.125 says nothing one way or the other about privilege cuts *against* the district court's extreme theory, not for it. After all, one could just as easily say that the attorney-client privilege statute (Nev. Rev. Stat. 49.095) does not list Nev. Rev. Stat. 50.125 as an exception to the rule of privilege, and that Nev. R. Civ. P. 26(b)(3) does not recognize any exceptions to its absolute protection of opinion work product. From that perspective, one would conclude that privileged materials should *never* be disclosed. The governing statutes must be read together, not in isolation.

The proper approach for reconciling the various statutes and resolving the apparent conflict between them is to balance the competing interests they serve on a case-by-case basis. That is exactly the course taken by the federal courts, which have already confronted the question presented here. This Court has recognized that "federal decisions involving the Federal Rules of Civil Procedure provide persuasive authority when this court examines its rules." *Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2006). In particular, the legislature modeled Nev. Rev. Stat. 50.125 on FRE 612. Nev. Rev. Stat. § 50.125 Sub-committee cmt.[8] Thus, plaintiff correctly admitted below that "[c]ase law discussing Federal

[8] There is a slight difference in text, but it does not affect the outcome. FRE 612 contains a clause stating that its provisions apply "if the court decides that justice requires the [adverse] party to have those options" when a witness reviews a writing before testifying. Nev. Rev. Stat. 50.125 does not contain that clause, because it was based on a draft of FRE 612 rather than the final version. But that clause says nothing about any privilege; rather, it addresses the separate issue of how to deal with materials reviewed before a hearing, as opposed to materials reviewed while the witness is on the stand. More fundamentally, it would be untenable to contend that the Nevada legislature, when it adopted the then-current draft of a federal Rule, somehow intended a massive deviation from federal law.

Rule of Evidence 612 is instructive" on the issues presented by his motion. LVSC/SCL0376.

Yet those federal authorities have not endorsed the extreme automatic-forfeiture rule adopted by the district court here. To the contrary, the House Judiciary Committee's Notes to FRE 612 plainly state Congress' intent "***that nothing in the Rule be construed as barring the assertion of a privilege with respect to writings used by a witness to refresh his memory.***" (Emphasis added). Likewise, the case law applying FRE 612 does not adopt the district court's automatic-forfeiture theory; rather, federal courts have recognized that they have discretion on a case-by-case basis to balance the adverse party's need for the testimony against the important public interests in protecting privileged documents. As one treatise puts it, "Rule 612 sometimes conflicts with privilege law but does not describe how that conflict should be resolved," so "it is appropriate for the courts to resolve the conflict by balancing the competing principles underlying both Rule 612 and privilege law." Wright & Gold, *Federal Practice and Procedure* § 6188.

To illustrate, consider a recent decision of the federal district court here in Nevada: *Server Tech., Inc. v. American Power Conversion Corp.*, No. 3:06-CV-698-LRH, 2011 WL 1447620 (D. Nev. April 14, 2011). The court in that case acknowledged the "potential conflict" between FRE 612 and the protections afforded to privileged documents. *Id.* at *7. Like the district court here, it recognized that FRE 612 (like its Nevada analog Nev. Rev. Stat. 50.125) "does not expressly exempt privileged matter from disclosure." *Id.* at *6 (quotations omitted). But, far from taking the extreme automatic-forfeiture approach taken by the district court here, the court in *Server Tech* reached the exact opposite conclusion, holding that "FRE 612

does ***not*** mandate the disclosure of documents used to refresh a witness's recollection prior to . . . testimony." *Id.* at *11 (emphasis added).

As the court explained, Rule 612 gives courts discretion to balance the interest in disclosure against the need to protect confidentiality. *Id.* While observing that the federal courts have differed on the precise factors to balance, the *Server Tech* court concluded "that production of the [disputed document] is not required" regardless of which federal test was employed. *Id.; see also Ehrlich v. Howe*, 848 F. Supp. 482, 493 (S.D.N.Y. 1994) ("The potential for conflict [that] exists between Rule 612 . . . and the work-product privilege is resolved by the courts ***on a case-by-case basis*** by balancing the competing interests in the need for full disclosure and the need to protect the integrity of the adversary system protected by the work-product rule." *Id.* at 493 (emphasis added and internal quotations omitted). Here, the district court erred by failing even to attempt the same case-by-case balancing between competing statutes that the federal courts have applied, and by instead adopting the extreme view that Nev. Rev. Stat. 50.125 trumps all privileges in all cases without regard to the circumstances.

2. The Discovery Order Fails the Balancing Test the Law Requires.

In this case, balancing the competing interests for and against disclosure has only one possible outcome: as a matter of law, any balance would favor the privilege.

At issue here are obviously protected communications by and between trial counsel, including core "opinion" work product and attorney-client communications. For all of the reasons outlined above, these protections are critical to the functioning of our adversary system and

cannot be abrogated absent a compelling need to do so. But here there is *no* need, let alone a ***compelling*** need, for production of the documents.

Nev. Rev. Stat. 50.125 was designed to ensure that the adverse party has a full and fair opportunity to test the witness' credibility when the witness' testimony is based on recollection that was refreshed by examining particular writings. But by the time the district court entered its Discovery Order, there was no longer any need — or indeed any opportunity — to test Mr. Jones' credibility. The hearing was already over and the district court had already ruled there is no reason to believe that Mr. Jones will ever be called to testify again about the timing issues on which his recollection was refreshed.

Indeed, even ***during*** the hearing, no purpose would have been served by requiring production of the documents, because there was no question concerning the accuracy of Mr. Jones' recollection of the time-line of events and therefore no need for plaintiffs' counsel to review the documents in order to challenge his credibility. Under similar circumstances, federal courts have refused to require production of documents under FRE 612. *See, e.g., Hiskett v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 408 (D. Kan. 1998) (rejecting motion to compel discovery where the witness used the documents to refresh her recollection "as to when two employees left" the defendant's employ, and thus "had minimal impact upon her testimony"). Indeed, in *Laborers Local 17 Health Benefit Fund v. Philip Morris, Inc.*, No. 97CIV.4550 (SAS)(MHD), 1998 WL 414933, at *4-5 (S.D.N.Y. July 23, 1998), the court rejected as "meritless" and "plainly inadequate" the argument that a party had waived privilege and work-product protection when a witness reviewed a protected document before

a deposition, because the document had merely been used to refresh the witness' recollection about the "particular time frame" of a meeting.

C. The District Court's Automatic-Forfeiture Theory is Not Supported by This Court's Decision in *Means v. State*.

This Court considered Nev. Rev. Stat. 50.125 in *Means*, but limited its conclusions to the unique circumstances of that case. In the district court in this case, plaintiff tried to extend *Means* beyond its express limits, citing a snippet of the opinion — where the Court stated that "the work-product doctrine is not an exception to the inspection rights conferred in NRS 50.125" — for the proposition that Nev. Rev. Stat. 50.125 mandates an automatic-forfeiture rule for all cases. LVSC/SCL0570, ¶¶ 7, 8. That argument does not reflect this Court's ruling in *Means*.

In the same sentence that plaintiff here relies on, the Court in *Means* made clear that its holding was limited to the specific facts before it, explaining that the work-product doctrine "does not shield an attorney from having to disclose his notes ***to his former client*** when the attorney, in giving testimony, has refreshed his memory with the notes." 120 Nev. at 1010, 103 P.3d at 31 (emphasis added). That the party seeking production of the documents under Nev. Rev. Stat. 50.125 was the witness' former client is a critical distinction, *and* he sought production of his attorney's notes at the next hearing, not months later, as plaintiff is doing in this case. There was no attorney-client privilege at issue in *Means* because the client was seeking disclosure. Here, by contrast, plaintiff is an adverse party who is attempting to compel disclosure of attorney-client communications despite the fact that the client did nothing to waive the privilege, which the legislature has mandated shall apply at "all stages of all proceedings." After all, it was not LVSC's idea to put its former attorney on the stand; the

court directed him to appear and answer the court's (and plaintiff's) questions.

While the party opposing disclosure in *Means* did assert a work product objection, that objection was weakened in the unusual attorney-client dispute scenario that was before the court. The work-product doctrine is intended to protect against the disclosure of work product to an adversary. As the U.S. Supreme Court has explained, in our system of justice "it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion ***by opposing parties and their counsel***" so they can "protect their clients' interests." *Hickman*, 329 U.S. at 510-11 (emphasis added). Similarly, the codification of the work-product doctrine in Nev. R. Civ. P. 26(b)(3) prevents one "party" from obtaining materials "prepared in anticipation of litigation or for trial by or for ***another party***." (Emphasis added.) The client in *Means* argued that his former attorney "could not invoke the work product privilege" at all because, as the client, he "[wa]s not and cannot be an opposing party within the meaning of the rule." 120 Nev. at 1007, 103 P.3d at 29. Further, the work-product doctrine is intended to help attorneys "protect their clients' interests," *Hickman*, 329 U.S. at 511, and in *Means*, the client's interests favored disclosure, unlike this case.

In light of those special circumstances, the Court expressly distinguished the attorney-client dispute in *Means* from the situation presented here (a dispute between opposing parties). As the Court explained, "[m]ost federal authority addresses attorney files and the work-product doctrine in the context of opposing a demand for disclosure made by counsel representing a party adverse to the client, rather than the former client." 120 Nev. at 1009, 103 P.3d at 30. Indeed, the Court recognized that

"[t]he work-product doctrine is most commonly and appropriately invoked" in disputes between opposing parties and made a point of explaining that such a dispute was not "at hand" in *Means*. *Id.* at 1010, 103 P.3d at 31.

The present case involves a classic dispute between opposing parties that was absent in *Means*. The defendants and their attorneys are united: they seek to protect against "intrusion by opposing parties and their counsel." *Hickman*, 329 U.S. at 510. Defense counsel's responsibility to "protect their clients' interests" (*id.* at 511) cuts squarely ***against*** disclosure, not ***for*** disclosure, as was the case in *Means*. The situation here is precisely the one in which "[t]he work-product doctrine is most commonly and appropriately invoked" (*id.*) and it is the one that was not "at hand" in *Means*. *Means*, 120 Nev. at 1009, 103 P.3d at 31.[9]

The district court's theory would render most of the carefully crafted opinion in *Means* completely superfluous. The Court laid out at length the unusual fact setting before it, carefully distinguished that situation from the more common litigation scenario presented here, and clearly limited its holding (that "Means was entitled under the statute . . . to see the notes") to the specific "circumstance" before it. 120 Nev. at 1010, 103 P.3d at 31. The district court's absolute rule is antithetical to this Court's carefully limited, case-specific approach.

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[9] As a further distinction, the party seeking disclosure in *Means* moved promptly at the hearing "to inspect" the documents his former lawyer was reviewing while testifying "and to have them introduced as evidence." *Id.* at 1006, 103 P.3d at 29. The Court ordered disclosure for use in the limited context of re-trying the denial of post-conviction relief. Here, by contrast, the district court erroneously ordered disclosure two months after the hearing and after it had issued its order regarding sanctions. *See* Section D below.

D. The District Court's Order Improperly Transforms Nev. Rev. Stat. 50.125 From a Limited Rule of Evidence Into an Open-Ended "Fishing License" for Discovery.

In addition to erroneously turning Nev. Rev. Stat. 50.125 into a sweeping abrogation of privileges, the district court compounded its error by drastically expanding the statute beyond its express limitations. Nev. Rev. Stat. 50.125 limits the relief that "an adverse party" like plaintiff is "entitled" to request "[i]f a witness uses a writing to refresh his or her memory, either before or while testifying." Nev. Rev. Stat. § 50.125(1). First, the adverse party may have the writing "produced at the hearing." *Id.* § 50.125(1)(a). Second, the adverse party can ask to "inspect" the writing and "cross-examine the witness thereon." *Id.* § 50.125(1)(b)-(c). Finally, the adverse party may "introduce in evidence those portions which relate to the testimony of the witness for the purpose of affecting the witness's credibility." *Id.* § 50.125(1)(d).

As the statutory language makes clear, Nev. Rev. Stat. 50.125 is a rule of evidence, not a rule of discovery. At a given hearing, a witness is free to testify if he or she has refreshed his or her memory with a writing, but the adverse party may be allowed to use the same writing in cross-examination and in evidence at the hearing, so the fact finder at that hearing can assess the witness's credibility.

The remaining provisions of Nev. Rev. Stat. 50.125 confirm its limited scope, geared narrowly to specific testimony at a specific hearing. If the party adverse to the witness seeks to obtain or use the writing at the hearing, subsection (2) allows the other side to respond "that the writing contains matters not related to the subject matter of the testimony." Nev. Rev. Stat. § 50.125(2). The judge must then "examine the writing in chambers" and "excise any portions not so related." *Id.* Thus, disclosure is

limited to the "portions" of the document that actually affect the hearing testimony. Subsection (3) gives the judge discretion to make other orders related to the hearing (such as striking the testimony or declaring a mistrial) but only "[i]f a writing is not produced or delivered pursuant to order under this section": that is, an order under subsections (1) and (2).

The district court's Discovery Order purports to rely on Nev. Rev. Stat. 50.125, but is contrary to the express terms of the statute. It did not order that the documents in question be produced "at the hearing" under Nev. Rev. Stat. 50.125(1)(a). It did not allow plaintiff to "inspect" the documents or "cross-examine the witness" on them at the hearing under Nev. Rev. Stat. 50.125(1)(b) or (c). And it did not permit plaintiff to "introduce" any portions of any document "in evidence" under Nev. Rev. Stat. 50.125(1)(d). Indeed, none of the orders permitted by Nev. Rev. Stat. 50.125 was possible: the witness had long since been excused, the hearing had long since ended, and the district court had already ruled.

Instead of entering an order governing the presentation of evidence and cross-examination ***at the hearing,*** the district court simply ordered defendants to hand the privileged materials to plaintiff without limitation, for use outside of the hearing. The Discovery Order compels the production of "all documents Justin Jones *reviewed* in preparation for testifying at the evidentiary hearing" — not just the documents that refreshed Mr. Jones' recollection for the hearing. LVSC/SCL0570, ¶ 2 (emphasis added). Nor is it limited to the "portions" of documents that were actually related to the hearing testimony, as Nev. Rev. Stat. 50.125(1)(d) and (2) require.

As a result, the district court's Discovery Order undertakes a radical transformation of the statute. It turns Nev. Rev. Stat. 50.125 into an

unlimited license for litigants to compel discovery and launch open-ended fishing expeditions that can go far outside the limited hearing context that Nev. Rev. Stat. 50.125 addresses. As the district court put it, "once a document is used by a witness to refresh his recollection, then that document is subject to discovery" without limitation. LVSC/SCL0570, ¶¶ 7, 8.

That is not what Nev. Rev. Stat. 50.125 is. Section 50.125 is a rule of evidence that governs the conduct of hearings. It appears in title 4 of the Revised Statutes, titled "Witnesses and Evidence"; within that title, it is part of chapter 50 ("Witnesses") and falls under the heading "Examination of Witnesses." Nev. Rev. Stat. 50.125 does not appear in the Rules of Civil Procedure, and it is not one of the discovery tools set forth there. Further, the statute does not make any document "subject to discovery" as the district court wrongly decided. Rather, it limits the adverse party's rights to having the relevant portions of the document "produced ***at the hearing***" for inspection, cross-examination, and introduction into evidence, solely "for the purpose of affecting the witness's credibility." (Emphasis added).

As with the choice between an automatic-forfeiture rule and a balance of competing interests, "[c]ase law discussing Federal Rule of Evidence 612 is instructive" on the scope of Nev. Rev. Stat. 50.125. And on this issue as well, that federal case law refutes the district court's theory. FRE 612 (like its Nevada counterpart Nev. Rev. Stat. 50.125) "is a rule of evidence, not a rule of discovery." *Aguinaga v. John Morrell & Co.*, 112 F.R.D. 671, 683 (D. Kan. 1986). Thus, "Rule 612 is not a vehicle for a plenary search for contradictory or rebutting evidence that may be in a file but

rather is a means to reawaken recollection of the witness." *United States v. Sheffield*, 55 F.3d 341, 343 (8th Cir. 1995).

E. The Discovery Order Violates this Court's Order Staying the Action Except for Matters Relating to Personal Jurisdiction.

Yet another reason for granting extraordinary relief is that the district court's Discovery Order violates the plain terms of the stay this Court imposed in its August 26, 2011 Order. That Order stayed the underlying action "except for matters relating to a determination of personal jurisdiction." LVSC/SCL0128. Even assuming that it was permissible for the district court to hold a hearing on sanctions (which defendants do not concede), the court's decision to compel production of the documents Mr. Jones used to refresh his recollection was clearly outside the scope of the district court's authority on remand.

Plaintiff did not assert, nor did the court find, that Mr. Jones' testimony (and more specifically, his refreshed memory regarding certain dates) has any bearing on the question of personal jurisdiction. Nor is there any claim that the documents in question have any relevance to personal jurisdiction. On the contrary, Mr. Jones' testimony, including his refreshed memory, was simply a tangent that had no impact on the sanctions hearing, which was itself a tangent to the jurisdictional inquiry. Enough is enough. Given the limitations this Court imposed on the district court in August 2011, there was no even conceivable basis for the district court to grant plaintiffs' motion to compel.

V. CONCLUSION

Petitioners respectfully request that this Court grant the Petition and (1) clarify that a witness's use of documents to refresh his or her memory does not result in an automatic forfeiture of all privileges; (2)

declare that Nev. Rev. Stat. 50.125 does not give courts authority to order production of documents after the relevant hearing has been concluded, and (3) direct the district court to set aside its erroneous Order.

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NRAP 27(E) CERTIFICATE OF NEED FOR EMERGENCY RELIEF

I, Steve Morris, declare as follows:

1. I am a lawyer with Morris Law Group, counsel for Petitioners Las Vegas Sands Corp. ("LVSC") and Sands China Ltd. ("SCL").

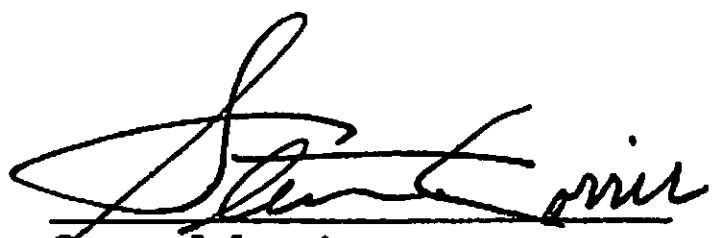
2. I certify that the relief requested in this Petition is needed on an emergency basis. Unless the district court's order is reversed, Petitioners will suffer immediate and irreparable harm and their privileges will be impaired.

3. As explained in this Petition, urgency of immediate review is present because the district court's order requires Petitioners to produce privileged documents by February 4, 2013. Defendants have filed a motion for a stay of that order in the district court, which is scheduled to be heard on January 29, 2013.

4. The contact information (including telephone number) for the other attorneys in this case is James J. Pisanelli, Todd L. Bice, Debra Spinelli, Pisanelli Bice, 3883 Howard Hughes Parkway, Suite 800, Las Vegas, Nevada 89169, Telephone No.: (702) 214-2100, attorneys for Steven C. Jacobs, Real Party in Interest. Opposing counsel were notified that Petitioners would be challenging the district court's order by writ, and have been e-served with a copy of this Petition concurrently with its submission to this Court.

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

Signed this 23rd day of January, 2013.



Steve Morris

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this **EMERGENCY PETITION FOR EXTRAORDINARY WRIT RELIEF UNDER NRAP 21(a)(6)**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Nev. R. App. P. 28(e), which requires every section of the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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VERIFICATION

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

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

Robert Rubenstein

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **EMERGENCY PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIVILEGED DOCUMENTS** to be served as indicated below, on the date and to the addressee(s) shown below:

VIA HAND DELIVERY ON 1/24/13
Judge Elizabeth Gonzalez
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent

VIA ELECTRONIC AND U.S. MAIL
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Todd L. Bice
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Pisanelli Bice
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Attorneys for Steven C. Jacobs, Real Party in Interest

DATED this 23rd day of January, 2013.

By: /s/ PATRICIA FERRUGIA

EXHIBIT 4

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS, Plaintiff, v. LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Island corporation; DOES I through X; and ROE CORPORATIONS I through X, Defendants.	Case No.: A-10-627691-C Dept. No.: XI **DEFENDANT SANDS CHINA LTD.'S OPPOSITION TO PLAINTIFF'S MOTION TO CONDUCT JURISDICTIONAL DISCOVERY ON ORDER SHORTENING TIME** DATE OF HEARING: 9/27/2011 TIME OF HEARING: 9:00 A.M.

Defendant Sands China Ltd. ("SCL" or "Defendant"), by and through its attorneys of record, Glaser, Weil, Fink, Jacobs, Howard, Avchen & Shapiro LLP, hereby files its Opposition to Plaintiff's Motion to Conduct Jurisdictional Discovery on shortened time.

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This Opposition is made and based on the papers and pleadings on file herein, the following Memorandum of Points and Authorities, and any oral argument allowed by the Court.

DATED September 26, 2011.

GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP

By: _____

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

By his actions, Jacobs has now revealed his true colors and made perfectly clear that he and his lawyer have every intention to make improper use of documents stolen by Jacobs. On September 23, 2011, Jacobs served his Witness and Exhibit List for the Evidentiary Hearing on November 21, 2011, which identified numerous documents taken from SCL, and its parent company, Las Vegas Sands Corp. ("LVSC"). By this disclosure, Jacobs, through his counsel, has now announced that he intends to fully disclose and use these stolen materials, which contain privileged and confidential information, as evidence at the Evidentiary Hearing. This attempted use of stolen documents is a blatant violation of Nevada's Rules of Professional Conduct, as well as a violation of Jacobs' own obligations to maintain confidentiality. Jacobs' violations fully support the denial of his Motion to Conduct Jurisdictional Discovery, and warrant the granting of SCL's separate concurrently filed Motion *in Limine* to exclude the use of the stolen documents in connection with the Evidentiary Hearing to determine personal jurisdiction.

In addition, Jacobs' motion for jurisdictional discovery must be denied in full because it ignores both the established law governing jurisdictional discovery as well as the Nevada Supreme Court's recent August 26, 2011 Order Granting Petition for Writ of Mandamus (the "Writ Order").

Under the established legal standard, a request for jurisdictional discovery must be denied if the plaintiff fails to demonstrate that such discovery will produce evidence of additional facts supporting jurisdiction. *Laub v. U.S. Dept. of Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003); *see also Hallet v. Morgan*, 287 F.3d 1193, 1212 (9th Cir. 2002) (jurisdictional discovery properly denied when allowing such discovery would have no impact on the outcome of the jurisdictional analysis). Despite the above legal standard, Jacobs seeks two types jurisdictional discovery – in the form of 20 categories that are both harassing and overbroad – that are irrelevant to this Court's analysis as to whether it has general personal jurisdiction over SCL.

The first type of jurisdictional discovery sought by Jacobs is evidence relating to the purported actions of the representatives of Las Vegas Sands Corp. ("LVSC"), which is SCL's domestic parent company.[1] As demonstrated by SCL's successful Writ Petition to the Nevada Supreme Court and the recent ruling by the U.S. Supreme Court in *Goodyear v. Brown*, 131 S. Ct. 2846 (2011), in the absence of a showing of alter ego between LVSC and SCL – which Jacobs does not even allege, much less prove – the actions of LVSC's representatives cannot be used to establish general personal jurisdiction over SCL, even if they also serve as representatives of SCL. In the context of a foreign subsidiary and a domestic parent corporation, both the United States Supreme Court and a substantial majority of jurisdictions require evidence that the two entities are alter egos of each other before general personal jurisdiction can be applied to the foreign subsidiary. *See Goodyear*, 131 S. Ct. at 2857 (U.S. Supreme Court declined to impute the domestic parent's activities to the foreign subsidiary defendant); *AT&T v. Lambert*, 94 F.3d 586, 596-99 (9th Cir. 1996) (declining to assert general personal jurisdiction over foreign subsidiary where in-forum parent held a majority of seats on subsidiary's board, approved subsidiary's hiring decisions,

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[1] Such discovery sought by Jacobs (Category Nos. 1-13 and 15-20), includes depositions and documents regarding the activities of Michael Leven (LVSC's President and COO and a special advisor to the SCL Board during the relevant time period), Sheldon Adelson (LVSC's Chairman and CEO, as well as SCL's Chairman), Kenneth Kay (LVSC's CFO), Robert Goldstein (LVSC's President of Global Gaming Operations), and other LVSC representatives allegedly engaged in business in Nevada.

directed subsidiary's financial and business decisions, and appointed one of its own board members to serve as subsidiary's chairman).

In accordance with the foregoing legal authority, the Nevada Supreme Court granted in part SCL's Writ Petition and ruled as follows:

> In MGM Grand, Inc. v. District Court, 107 Nev. 65, 807 P.2d 201 (1991), we held that jurisdiction over a nonresident corporation could not be premised on that corporation's status as a parent to a Nevada corporation. Similarly, the United States Supreme Court in Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846 (2011), considered whether jurisdiction over foreign subsidiaries of a U.S. parent corporation was proper by looking only to the subsidiaries' conduct; the Court suggested that including the parent's contacts would be, in effect, the same as piercing the corporate veil. Based on the record before us, it is impossible to determine if the district court in fact relied on the Nevada parent corporation's contacts in this state in exercising jurisdiction over the foreign subsidiary.

See Writ Order at pp. 2, 3.[2]

As such, Jacobs' requests to take discovery regarding SCL's alleged contacts in Nevada by virtue of its status as a foreign subsidiary of LVSC blatantly ignores the Writ Order, as well as the established legal authority set forth in SCL's Writ Petition papers demonstrating that, absent a showing of alter ego, LVSC's alleged interaction with SCL and participation in SCL's corporate and business operations are insufficient as a matter of law to establish general personal jurisdiction. Simply put, LVSC's contacts with its subsidiary are entirely valid, and irrelevant to the Court's personal jurisdiction analysis because Jacobs does not (and cannot) offer any evidence that SCL and LVSC are alter egos.

The second type of jurisdictional discovery sought by Jacobs relates to the Inter-Company Accounting Advice ("IAA") involving LVSC and Venetian Macau Limited ("VML"). As set forth

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[2] The Writ Order also ordered the District Court to review the possible application of "transient jurisdiction" principles if it "determines that general personal jurisdiction is lacking." *See* Writ Order at p. 3. As this Court is aware, SCL fully addressed the transient jurisdiction issue in its Reply in Support of Motion to Dismiss for Lack of Personal Jurisdiction, and clearly demonstrated that transient jurisdiction is inapplicable to foreign corporations such as SCL. *See Burnham v. Superior Court*, 495 U.S. 604, 610 n.1 (1990)(declining to apply transient jurisdiction principles to corporate entities and expressly reserving its application to natural persons).

in the successful Writ Petition before the Nevada Supreme Court, SCL demonstrated, through uncontested affidavits and Jacobs' own proffered evidence, that Jacobs' allegation that SCL regularly transfers its customers' funds to and from Las Vegas was demonstrably false. (Writ Petition at pp. 37-38). In addition to demonstrating that the funds in question are not transferred at all (but instead are entered as intra-company bookkeeping entries pursuant to the IAA), the Court was provided with *undisputed* evidence that this process is handled in Macau not by SCL, but by its subsidiary VML. (Writ Petition at p. 38). Not surprisingly, even Jacobs' own evidence identifies *VML (not SCL)* as the originating/receiving party in Macau, and also clearly demonstrates that he is attempting to attribute actions to SCL that took place more than two years before it came into existence. (Answer at p. 16, Ex. 14 to Jacobs' Opposition to the Motion).

Even assuming *arguendo* that such allegations were true (and SCL has shown that they are not), Jacobs' allegations regarding the IAA process are inadequate as a matter of law to establish general personal jurisdiction over SCL. Courts have consistently held that co-operation between a domestic parent company and its foreign subsidiary are insufficient to trigger general personal jurisdiction over the foreign subsidiary. *See Fletcher v. Atex, Inc.*, 68 F.3d 1451, 1459-60 (2d Cir. 1995) (co-participation in accounting procedures is insufficient to establish general jurisdiction); *Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1177 (9th Cir. 1980) (cooperative marketing or promotional efforts inadequate to establish general personal jurisdiction); *Romann v. Geissenberger Mfg. Corp.*, 865 F. Supp. 255, 260-61 (E.D. Pa. 1994) (no general jurisdiction even though defendant made $230,000 in direct sales to forum state and was qualified to do business in forum state).

In sum, neither the actions of LVSC's representatives as SCL's parent corporation nor the IAA process can provide a basis for general personal jurisdiction over SCL. Accordingly, Jacobs fails to demonstrate in any way how the discovery he seeks will be relevant to the Court's determination of general personal jurisdiction over SCL. Simply put, Jacobs has overreached by suing SCL in Nevada, which has no involvement or interest whatsoever in his claims of ongoing rights under the stock option agreement governed by Hong Kong law. His request for jurisdictional

discovery is simply more overreaching, and a blatant disregard for the Court's Interim Order as well as the established rules of professional responsibility.

II. LEGAL ARGUMENT

A. Legal Standard to Determine Availability and Scope of Jurisdictional Discovery

In order to seek jurisdictional discovery, a requesting plaintiff must present factual allegations that demonstrate "with reasonable particularity" the existence of the requisite contacts between the foreign defendant and the forum state.[3] *See Mellon Bank (E.) PSFS, Nat'l Ass'n v. Farino,* 960 F.2d 1217, 1223 (3d Cir. 1992); *see also Teracom v. Valley Nat. Bank*, 49 F.3d 555, 562 (9th Cir. 1995)(where plaintiff's jurisdictional claim is "attenuated and based on bare allegations in the face of specific denials made by the defendants, the Court ***need not permit even limited discovery***...")(emphasis added). A plaintiff may not, however, undertake a fishing expedition based only upon bare allegations, under the guise of jurisdictional discovery. *See Belden Techs., Inc. v. LS Corp.,* 626 F. Supp. 2d 448, 459 (D. Del. 2009); *AT&T Corp. v. Dataway Inc.*, 2008 U.S. Dist. LEXIS 117072, *6 (N.D. Cal. Sept. 18, 2008) (denying attempt to conduct discovery that exceeded the scope of the proceeding and sought information that related to the merits of the underlying lawsuit).

Likewise, the determination of relevance in regard to jurisdictional discovery turns on an analysis of whether the information sought would have any bearing on the court's analysis of personal jurisdiction. *See Patent Rights Protection Group, LLC v. Video Gaming Tech., Inc.*, 603 F.3d 1364, 1371 (Fed. Cir. 2010); *see also Laub v. U.S. Dept. of Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003); *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 430 n. 24 (9th Cir.

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[3] Jacobs will likely argue that such particularity is unnecessary in cases involving corporate defendants, as evidenced by his citations to cases such as *Metcalfe v. Renaissance Marine, Inc.*, 566 F.3d 324 (3d Cir. 2009) and *Bowers v. Wurzburg*, 501 S.E.2d 479 (W. Va. 1998), but both cases limit their holdings to instances where the plaintiff "is a total stranger to [the corporate defendant]" *Metcalfe*, 556 F.3d at 336; *Bowers*, 501 S.E.2d at 488. In this case, Plaintiff's claims are based solely on his employment as SCL's CEO. Plaintiff is certainly no "stranger" to either SCL or its parent, LVSC, and cannot now claim that he is unable to describe the basis for his jurisdictional discovery requests.

1977)(denial of request to conduct jurisdictional discovery is warranted "when it is clear that further discovery would not demonstrate facts sufficient to constitute a basis for jurisdiction."); *Hallet v. Morgan*, 287 F.3d 1193, 1212 (9th Cir. 2002)(no abuse of discretion to deny jurisdictional discovery when allowing such discovery would have no impact on the outcome of the jurisdictional analysis).

As fully explained below, Jacobs cannot offer any plausible basis for his requests for jurisdictional discovery, as each and every request is either irrelevant to the determination of personal jurisdiction as a matter of law, or has been repeatedly and incontestably demonstrated to be false and immaterial to the jurisdictional analysis. Jacob's Motion is therefore improper in its entirety and should be denied in full.

B. Jacobs' Requests for Jurisdictional Discovery Regarding LVSC's Corporate and Operational Involvement With SCL Are Irrelevant to This Court's Jurisdictional Analysis

In Jacobs' Motion, a substantial majority of his requested topics for jurisdictional discovery (Request Nos. 1-13, 15-20) deal with LVSC's alleged interaction with SCL and participation in SCL's corporate and business operations. In making these requests, Jacobs ignored the language in the Nevada Supreme Court's August 29, 2011 Order (the "Writ Order") which held that such activities are insufficient as a matter of law to establish general personal jurisdiction, absent a showing of alter ego. Specifically, the Writ Order stated as follows:

> In MGM Grand, Inc. v. District Court, 107 Nev. 65, 807 P.2d 201 (1991), we held that jurisdiction over a nonresident corporation could not be premised on that corporation's status as a parent to a Nevada corporation. Similarly, the United States Supreme Court in Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846 (2011), considered whether jurisdiction over foreign subsidiaries of a U.S. parent corporation was proper by looking only to the subsidiaries' conduct; the Court suggested that including the parent's contacts would be, in effect, the same as piercing the corporate veil. Based on the record before us, it is impossible to determine if the district court in fact relied on the Nevada parent corporation's contacts in this state in exercising jurisdiction over the foreign subsidiary.
>
> Accordingly, having reviewed the petition, answer, reply, and other documents before this court, we conclude that, based on the summary nature of the district court's order and the holdings of the cases cited above, the petition should be granted, in part.

See Writ Order at pp. 2, 3.

The Nevada Supreme Court's ruling is consistent with the well established – and *uncontested* by Jacobs – legal authority cited in SCL's prior filings with this Court and the Nevada Supreme Court which universally held that normal and expected corporate interactions between a domestic entity and its foreign affiliate do not create a basis for general personal jurisdiction. *See Doe v. Unocal Corp.*, 248 F.3d 915, 916 (9th Cir. 2001) (holding that a local entity's contacts with the forum can only be imputed to the foreign entity if there is evidence of an alter ego relationship); *see also AT&T v. Lambert*, 94 F.3d 586, 596-99 (9th Cir. 1996) (declining to assert general personal jurisdiction over foreign subsidiary where in-forum parent held a majority of seats on subsidiary's board, approved subsidiary's hiring decisions, directed subsidiary's financial and business decisions, and appointed one of its own board members to serve as subsidiary's chairman); *Reul v. Sahara Hotel, Inc.*, 372 F. Supp. 995, 998 (S.D. Tx. 1974) (holding that sole ownership over subsidiary or common directors is insufficient to establish general jurisdiction absent a showing that the parent exerted "more than that amount of control of one corporation over another which mere common ownership and directorship would indicate"); *Gordon et al. v. Greenview Hosp., Inc.*, 300 S.W.3d 635, 649 (Tenn. 2009) (holding that in-forum presence of officers or directors of foreign entity is insufficient to establish general personal jurisdiction).

Under the established legal authority governing jurisdictional discovery, none of Jacobs' proposed topics for discovery are relevant to the jurisdiction inquiry, as each seek information that in the absence of an alter ego claim, is insufficient as a matter of law to the determination of general personal jurisdiction.

Jacobs' requests for jurisdictional discovery regarding SCL and its relationship with its majority shareholder, LVSC, fall into two general sub-groups:

- Request Nos. 1-5, 7-9, 12, and 20: Allegations regarding specific LVSC representatives (including Michael Leven, Sheldon Adelson, Kenneth Kay, and Robert Goldstein) and their alleged actions directed to SCL, undertaken by virtue of their position with LVSC, including discharging duties as board members, participating in joint marketing and development activities, personal contact with

SCL and travel to Macau, and reimbursement/compensation for performance of corporate duties; and

- Request Nos. 6, 10-11, 13, 15-19: Allegations regarding general interaction between LVSC and SCL, including involvement in Board of Directors activities, marketing and development efforts, funding of business operations, and interaction with regulatory authorities.

In both instances, Jacobs cannot establish any basis for these requests, as each are entirely irrelevant to the determination of general personal jurisdiction over SCL.

With regard to the first sub-group, SCL has established that actions taken by individual representatives of a parent corporation cannot be used to base general personal jurisdiction over a foreign subsidiary. This is consistent with fundamental corporate principles, which hold that a corporation and its affiliates are distinct legal entities that exist separate from their respective shareholders, officers and directors. *See Transure v. Marsh and McLennan, Inc.*, 766 F.2d 1297, 1299 (9th Cir. 1985) ("It is entirely appropriate for directors of a parent company to serve as directors of its subsidiary, and that fact alone may not serve to expose parent to liability for its subsidiary's acts.").

Examining the specific nature of the alleged actions, the impact on the personal jurisdiction analysis is unchanged. Jacobs' allegations remain irrelevant as a matter of law because such corporate involvement is inadequate to establish general personal jurisdiction. *See Fletcher v. Atex, Inc.*, 68 F.3d 1451, 1459-60 (2d Cir. 1995) (co-participation in accounting procedures is insufficient to establish general jurisdiction); *Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1177 (9th Cir. 1980) (cooperative marketing or promotional efforts inadequate to establish general personal jurisdiction); *Romann v. Geissenberger Mfg. Corp.*, 865 F. Supp. 255, 260-61 (E.D. Pa. 1994) (no general jurisdiction even though defendant made $230,000 in direct sales to forum state and was qualified to do business in forum state).

The second sub-group of requests, which involves allegations of shared services and joint participation in basic business functions, is similarly inapplicable.[4] The overwhelming weight of authority demonstrates that these allegations, even if true, do not confer general personal jurisdiction over a foreign entity such as SCL. In fact, in the context of a foreign subsidiary and a domestic parent, a majority of jurisdictions require a showing that the two entities are alter egos of each other before such evidence can even be considered in the jurisdictional analysis. *See Doe*, 248 F.3d at 916; *AT&T*, 94 F.3d at 599. As previously stated, this requirement was affirmed by the U.S. Supreme Court in *Goodyear v. Brown*, 131 S. Ct. 2846 (2011).

As a matter of law, each and every one of the above topics are irrelevant to the Court's analysis of general personal jurisdiction over SCL because Jacobs offers no allegation – much any less evidence – that SCL is an alter ego of LVSC.[5]

Therefore, because Jacobs' requested discovery is irrelevant to this Court's determination of general personal jurisdiction, and allowing such discovery would have no bearing on the outcome of

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[4] In particular, Request Nos. 11 and 16 relate to alleged third-party contracts between SCL and Nevada entities, which SCL has previously denied are in existence as supported by the affidavit of its Assistant General Counsel. See Affidavit of Anne Salt. Request No. 19 presumably relates to Jacobs' unsupported claim that because SCL's parent, LVSC, is subject to Nevada's Gaming Control Act, this somehow confers general personal jurisdiction on SCL. In addition to the legally untenable assertion that general personal jurisdiction can be established in every instance where an entity regulated by the Nevada Gaming Commission is a majority shareholder of a foreign corporation, the statute at issue also makes clear that it applies only to Nevada licensees and not foreign subsidiaries. Therefore, not only is the requested evidence non-existent, but irrelevant to the jurisdictional analysis in this case.

[5] In this regard, Jacobs makes no effort to dispute the numerous facts that establish SCL's corporate and operational independence from LVSC, and demonstrates that SCL and LVSC are not alter egos. Such facts include, but are not limited to the following as demonstrated in SCL's prior Writ Petition: (1) SCL's operation as a public company with stock traded on The Stock Exchange of Hong Kong Limited, which requires a demonstration of operational independence, (2) maintenance of an independent treasury department, financial controls, bank accounts and accounting system, (3) an independent Board of Directors with three independent non-executive directors, and (4) the existence of a Non-Competition Deed between LVSC and SCL that prohibits SCL from conducting business or directing efforts to Nevada. (See Writ Petition at p. 33).

the evidentiary hearing, Jacobs' Requests 1-13, and 15-20 should be rejected, and the Motion denied in full.[6]

C. Jacobs' Request for Jurisdictional Discovery on the Inter-Company Accounting Advice (the "IAA") Should be Denied Because Jacobs Cannot Demonstrate That Such Discovery Would Result in Information Relevant to Personal Jurisdiction.

Jacobs' remaining suggested topic set forth in Request No. 14, while anticipated by SCL, is nonetheless disconcerting because it is based on allegations that have repeatedly been proven false and/or irrelevant to the Court's jurisdictional analysis.[7]

These allegations first surfaced in Jacobs' Opposition to SCL's Motion to Dismiss for Lack of Personal Jurisdiction, which included claims that SCL physically transported funds from Macau to Las Vegas and operated a system, known as Inter-company Accounting Advice ("IAA"), which transferred casino patron funds back and forth from Macau to Las Vegas. SCL responded in its Reply brief with an affidavit by the Director of Casino Collections for Venetian Macau Limited ("VML") which made clear that neither SCL nor VML had participated in the physical transfer of funds from Macau to any location. (See Affidavit of Law Seng Chhu, ¶¶ 9-16). Jacobs has provided no response to these statements or evidence to support this allegation.

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[6]Additionally, several of Jacobs' requests, specifically including Request No. 7 (seeking documents regarding travel to and from Macau by Adelson, Leven, Goldstein and any other LVSC representative) and Request No. 20 (all telephone records for Adelson, Leven and Goldstein regarding communications with SCL) are shockingly overbroad and burdensome. These requests are so broadly worded and seek such particularly personal information that they appear solely intended to harass the subjects of the requests, and should be denied outright.

[7] In anticipation of Jacobs' efforts to introduce evidence regarding the IAA process in the course of the November 21, 2011 evidentiary hearing regarding jurisdiction, SCL's disclosure of witnesses and documents for the evidentiary hearing include evidence SCL will use to rebut anticipated testimony from Jacobs. However, as set forth in SCL's disclosures, such evidence should be limited to the scope of facts and issues set forth in SCL's Motion to Dismiss for Lack of Personal Jurisdiction and Jacobs' opposition thereto, which was already presented to the Court and does not require any jurisdictional discovery.

The IAA process is administered in Macau by the only entity authorized to deal with casino player accounts, VML, which holds the gaming subconcession in Macau. See SCL Initial Offering Document, Ex. "A" to SCL Motion to Dismiss; see also Affidavit of Anne Salt, ¶ 9. SCL further demonstrated that Jacobs' own proffered evidence, a redacted IAA account spreadsheet, proved that it is VML, not SCL, that is involved with the IAA process in Macau. Jacobs has offered no response or evidence to support his claim.

Again, in order to demonstrate a basis for jurisdictional discovery, Jacobs must demonstrate that the requested discovery is relevant and would have an impact on the Court's determination of general personal jurisdiction. See, e.g., *Laub*, 342 F.3d at 1093. In regard to Request No. 14, SCL has already proven, through uncontested evidence and Jacobs' own evidence, that SCL has no involvement either with the physical transportation of money from Macau to Las Vegas, or with the IAA process (which is undeniably handled by VML in Macau). In each instance, SCL has demonstrated that the underlying allegations have no basis in fact, and therefore cannot be used as proper topics for jurisdictional discovery. Jacobs' request therefore falls into the "attenuated and based on bare allegations in the face of specific denials" category of jurisdictional claims that are not entitled to jurisdictional discovery.

D. Jacobs Should Be Precluded From Taking Jurisdictional Discovery Because He Is In Possession of Stolen Documents

As addressed more fully in SCL's accompanying Motion *in Limine*, Jacobs and his counsel are currently in possession of documents stolen from both SCL and LVSC, which Jacobs' prior counsel has admitted contain both privileged and confidential information. With the parties' exchange of witnesses and documents on September 23, 2011, Jacobs' counsel has made clear that he intends to use the stolen documents to prepare for the evidentiary hearing scheduled for November 21-22, 2011, and presumably to conduct his requested jurisdictional discovery.

A party's obligation (along with its legal representative) to return improperly acquired documents which contain privileged, confidential and/or proprietary information is well documented, as is the prohibition against using this information in a legal proceeding. *See* ABA Comm. on Ethics and Professional Responsibility, Form Op. 368 (1992) ("Inadvertent Disclosure of

Confidential Materials"). *Accord, Milford Power Ltd. Partnership v. New England Power Co.*, 896 F. Supp. 53, 57 (D. Mass. 1995); *Resolution Trust Corp. v. First of America Bank*, 868 F. Supp. 217, 219, 220 (W.D. Mich. 1994) (ordering destruction of improperly received documents plus all copies and "all notes relating to" it); *see also Zahodnick v. International Business Machines Corp.*, 135 F.3d 911, 915 (4th Cir. 1997) (holding that confidential and/or stolen information cannot be supplied to a third party, even if it is that party's attorney).

These principles are equally applicable when an attorney represents a former employee in a lawsuit against the employer. *See e.g. Nevada Rules of Professional Conduct, Rule 4.4* (stating that "[i]n representing a client, a lawyer shall not . . . use methods of obtaining evidence that violate the legal rights of [a third party]"). Such rights include the right not to have privileged and confidential information disclosed. *See Arnold v. Cargill, Inc.,*, 2004 U.S. Dist. LEXIS 19381, 2004 WL 2203410, at *7 (D. Minn. 2004) (recognizing a corporation's legal "rights to confidentiality and privilege").

It is undisputed that Jacobs' counsel is in possession of documents he obtained from SCL and LVSC without permission and which contain, at the very least, privileged and confidential information. Additionally, Jacobs' counsel has an ethical duty to return these documents, and the Court should preclude the use of such documents in connection with the Evidentiary Hearing.

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III. CONCLUSION

For the reasons set forth above, SCL respectfully requests that the Court deny Jacobs' Motion to Conduct Jurisdictional Discovery in full.

Dated September 26, 2011.

GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP

By: _____

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EXHIBIT 5

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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.

AND RELATED CLAIMS

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

ORDER REGARDING PLAINTIFF STEVEN C. JACOBS' MOTION TO CONDUCT JURISDICTIONAL DISCOVERY and DEFENDANT SANDS CHINA LTD.'s MOTION FOR CLARIFICATION

Date and Time of Hearings:

September 27, 2011 at 4:00 p.m.

October 13, 2011 at 9:00 a.m.

Plaintiff Steven C. Jacobs' ("Jacobs") Motion to Conduct Jurisdictional Discovery ("Motion") came before the Court for hearing at 4:00 p.m. on September 27, 2011. James J. Pisanelli, Esq., and Debra L. Spinelli, Esq., of the law firm PISANELLI BICE PLLC, appeared on behalf of Jacobs. Patricia L. Glaser, Esq., of the law firm Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP, appeared on behalf of Defendant Sands China Ltd. ("Sands China"). J. Stephen Peek, Esq., of the law firm Holland & Hart LLP, appeared on behalf of Defendant

Las Vegas Sands Corp. ("LVSC"). The Court considered the papers filed on behalf of the parties and the oral argument of counsel, and good cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion to Conduct Jurisdictional Discovery is GRANTED IN PART and DENIED IN PART as follows:

1. GRANTED as to the deposition of Michael A. Leven ("Leven"), a Nevada resident, who simultaneously served as President and COO of Las Vegas Sands Corp. ("LVSC") and CEO of Sands China (among other titles), regarding the work he performed for Sands China, and work he performed on behalf of or directly for Sands China while acting as an employee, officer, or director of LVSC, during the time period of January 1, 2009, to October 20, 2010;[1]

2. GRANTED as to the deposition of Sheldon G. Adelson ("Adelson"), a Nevada resident, who simultaneously served as Chairman of the Board of Directors and CEO of LVSC and Chairman of the Board of Directors of Sands China, regarding the work he performed for Sands China, and work he performed on behalf of or directly for Sands China while acting as an employee, officer, or director of LVSC, during the time period of January 1, 2009, to October 20, 2010;

3. GRANTED as to the deposition of Kenneth J. Kay ("Kay"), LVSC's Executive Vice President and CFO, who, upon Plaintiff's information and belief, participated in the funding efforts for Sands China, regarding the work he performed for Sands China, and work he performed on behalf of or directly for Sands China while acting as an employee, officer, or director of LVSC, during the time period of January 1, 2009, to October 20, 2010;

4. GRANTED as to the deposition of Robert G. Goldstein ("Goldstein"), a Nevada resident, and LVSC's President of Global Gaming Operations, who, upon Plaintiff's information and belief, actively participates in international marketing and development for Sands China, regarding the work he performed for Sands China, and work he performed on behalf of or directly for Sands China while acting as an employee, officer, or director of LVSC, during the time period of January 1, 2009, to October 20, 2010;

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[1] This time period was agreed upon and ordered by the Court in the Stipulation and Order Regarding ESI Discovery entered filed on June 23, 2011, and is also relevant to the limited jurisdictional discovery permitted herein.

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5. GRANTED as to a narrowly tailored NRCP 30(b)(6) deposition of Sands China in the event that the witnesses identified above in Paragraphs 1 through 4 lack memory knowledge concerning the relevant topics during the time period of January 1, 2009, to October 20, 2010;

6. GRANTED as to documents that will establish the date, time, and location of each Sands China Board meeting (including the meeting held on April 14, 2010, at 9:00 a.m. Macau Time/April 13, 2010, at 6:00 p.m. Las Vegas time), the location of each Board member, and how they participated in the meeting during the period of January 1, 2009, to October 20, 2010;

7. GRANTED as to documents that reflect the travels to and from Macau/China/Hong Kong by Adelson, Leven, Goldstein, and/or any other LVSC employee for any Sands China related business (including, but not limited to, flight logs, travel itineraries) during the time period of January 1, 2009, to October 20, 2010;

8. DENIED as to the calendars of Adelson, Leven, Goldstein, and/or any other LVSC executive who has had meetings related to Sands China, provided services on behalf of Sands China, and/or travelled to Macau/China/Hong Kong for Sands China business during the time period of January 1, 2009, to October 20, 2010;

9. GRANTED as to documents and/or communications related to Michael Leven's service as CEO of Sands China and/or the Executive Director of Sands China Board of Directors without payment, as reported to Hong Kong securities agencies, during the time period of January 1, 2009, to October 20, 2010;

10. GRANTED as to documents that reflect that the negotiation and execution of the agreements for the funding of Sands China occurred, in whole or in part, in Nevada, during the time period of January 1, 2009, to October 20, 2010;

11. GRANTED as to contracts/agreements that Sands China entered into with entities based in or doing business in Nevada, including, but not limited to, any agreements with BASE Entertainment and Bally Technologies, Inc., during the time period of January 1, 2009, to October 20, 2010;

12. GRANTED as to documents that reflect work Robert Goldstein performed for Sands China, and work he performed on behalf of or directly for Sands China while acting as an

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employee, officer, or director of LVSC, during the time period of January 1, 2009, to October 20, 2010, including (on Plaintiff's information and belief) global gaming and/or international player development efforts, such as active recruitment of VIP players to share between and among LVSC and Sands China properties, and/or player funding;

13. GRANTED as to all agreements for shared services between and among LVSC and Sands China or any of its subsidiaries, including, but not limited to, (1) procurement services agreements; (2) agreements for the sharing of private jets owned or made available by LVSC; and (3) trademark license agreements, during the time period of January 1, 2009, to October 20, 2010;

14. DENIED as to documents that reflect the flow of money/funds from Macau to LVSC, including, but not limited to, (1) the physical couriering of money from Macau to Las Vegas; and (2) the Affiliate Transfer Advice ("ATA"), including all documents that explain the ATA system, its purpose, how it operates, and that reflect the actual transfer of funds;

15. GRANTED as to all documents, memoranda, emails, and/or other correspondence that reflect services performed by LVSC (including LVSC's executives) on behalf of Sands China, including, but not limited to the following areas: (1) site design and development oversight of Parcels 5 and 6; (2) recruitment and interviewing of potential Sands China executives; (3) marketing of Sands China properties, including hiring of outside consultants; (4) negotiation of a possible joint venture between Sands China and Harrah's; and/or (5) the negotiation of the sale of Sands China's interest in sites to Stanley Ho's company, SJM, during the time period of January 1, 2009, to October 20, 2010;

16. GRANTED as to all documents that reflect work performed on behalf of Sands China in Nevada, including, but not limited, documents that reflect communications with BASE Entertainment, Cirque du Soleil, Bally Technologies, Inc., Harrah's, potential lenders for the underwriting of Parcels 5 and 6, located in the Cotai Strip, Macau, and site designers, developers, and specialists for Parcels 5 and 6, during the time period of January 1, 2009 to October 20, 2010;

17. DENIED as to documents, including financial records and back-up, used to calculate any management fees and/or corporate company transfers for services performed and/or provided by LVSC to Sands China, including who performed the services and where those

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services were performed and/or provided, during the time period where there existed any formal or informal shared services agreement;

18. GRANTED as to all documents that reflect reimbursements made to any LVSC executive for work performed or services provided related to Sands China, during the time period of January 1, 2009, to October 20, 2010;

19. GRANTED as to all documents that Sands China provided to Nevada gaming regulators, during the time period of January 1, 2009 to October 20, 2010; and

20. DENIED as to the telephone records for cellular telephones and landlines used by Adelson, Leven, and Goldstein that indicate telephone communications each had with or on behalf of Sands China.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the parties are to abide by the Nevada Rules of Civil Procedure as it relates to the disclosure of experts, if any, for purposes of the evidentiary hearing on personal jurisdiction over Sands China.

In addition, Defendant Sands China's Motion for Clarification of Jurisdictional Discovery Order on Order Shortening Time ("Motion for Clarification") came before the Court for hearing on 9:00 a.m. on October 13, 2011. James J. Pisanelli, Esq., and Debra L. Spinelli, Esq., of the law firm PISANELLI BICE PLLC, appeared on behalf of Jacobs. Patricia L. Glaser, Esq., of the law firm Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP, appeared on behalf of Defendant Sands China, and J. Stephen Peek, Esq., of the law firm Holland & Hart LLP, appeared on behalf of Defendant LVSC. The Court considered the papers filed on behalf of the parties and the oral argument of counsel, and good cause appearing therefor:

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IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion for Clarification is GRANTED IN PART as follows:

1. The parties are only permitted to conduct discovery related to activities that were done for or on behalf of Sands China; and

2. This is an overriding limitation on all of the specific items requested in Jacob's Motion to Conduct Jurisdictional Discovery.

DATED: March 8, 2012

THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

PISANELLI BICE PLLC

By: _____
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Attorneys for Plaintiff Steven C. Jacobs

Approved as to form by:

HOLLAND & HART

By: _____
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Attorneys for Las Vegas Sands Corp.
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EXHIBIT 6

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTION FOR PROTECTIVE ORDER

THURSDAY, DECEMBER 6, 2012

APPEARANCES:

FOR THE PLAINTIFF:	TODD BICE, ESQ. DEBRA SPINELLI, ESQ.
FOR THE DEFENDANTS:	J. STEPHEN PEEK, ESQ. JON RANDALL JONES, ESQ. MARK JONES, ESQ.
COURT RECORDER: JILL HAWKINS District Court	TRANSCRIPTION BY: FLORENCE HOYT Las Vegas, Nevada 89146

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

LAS VEGAS, NEVADA, THURSDAY, DECEMBER 6, 2012, 8:32 A.M.

(Court was called to order)

THE COURT: Now if I could go to Sands-Jacobs, who for some reason some of you thought you were coming at 8:20.

MR. PEEK: Your Honor, I think you did, actually, when we just had the one singular motion say 8:20 for just that one singular motion. I think that's where the confusion arose. But everything else got set at 8:30.

THE COURT: And I'm happy to have you at 8:20, but that means you all have to come at 8:20.

MR. PEEK: Everything else got set at 8:30, so I --

THE COURT: I know it did. That's what I thought until I was told that Sands-Jacobs thought they were going now, they were all sitting at the front tables. And then I came in.

Mr. Jones. Both Mr. Joneses.

MR. MARK JONES: Your Honor, good morning.

MR. RANDALL JONES: Since we had the first motion, I was wondering if we would be -- if it would be appropriate if we addressed the Court first.

THE COURT: If you'd like.

MR. RANDALL JONES: I would like if the Court would like.

THE COURT: Okay.

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

as any other LVSC executives that were having meetings related to Sands China.

Now, with respect to the protective order, I said on Tuesday when I spoke to you that my concern was navigating the stay that the Nevada Supreme Court has told me to enter related to discovery in the jurisdictional portion of this case. As a result, after a lot of briefing we entered the March 8th, 2012, order to govern the discovery in that case.

So while, Mr. Bice, I agree with you that typically we would have a broader discovery, we don't, because I've already limited the discovery in this case based on my interpretation of the stay order the Nevada Supreme Court has issued in the writ that was sent to me.

For that reason I'm going to grant the protective order in part. We are not going to inquire into the substance of any determinations, but the process of the decision making, the who, what, where, when, how, why, and then the implementation of the decision making --

MR. PEEK: Your Honor, you said why. Did you --

THE COURT: Sorry. I didn't mean why. "But not why" is what it says in my notes.

MR. PEEK: Okay. Thank you.

THE COURT: Who, what, where, how, when, and the implementation of those decisions. Because it's not just how a decision was made, it's also how the decision was

implemented.

MR. PEEK: Your Honor, I've allowed all of that examination already.

THE COURT: There have been some issues.

MR. BICE: Well, I disagree that he has, but we'll address --

THE COURT: And I am not going to limit the depositions of the four executives to the one day that has been asked. However, if the depositions become harassing because people are trying to get into the substance of the decision of the termination or the substance of any of the settlement negotiations, those would be inappropriate under the stay that I currently have in place.

Any other questions on that motion before I go to the administrative action issue?

MR. PEEK: Your Honor, I do have some more questions. When you say you're not going to permit the harassment, you're going to allow them to come back?

THE COURT: I am.

MR. PEEK: Is there any limitation at all? Because, Your Honor, with 200,000 pages of documents, one full day for each of them, and this sort of minutia because they want to say "the magnitude" of the contacts, if you will, is important to them, could extend well beyond two days, three days, and four days. I've already been in one day with Mr. Pisanelli

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

12/10/12

FLORENCE HOYT, TRANSCRIBER — DATE

EXHIBIT 7

Electronically Filed
09/14/2012 10:39:25 AM

CLERK OF THE COURT

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN JACOBS, Plaintiff(s), vs LAS VEGAS SANDS CORP, ET AL, Defendants.	**Case No.** 10 A 627691 **Dept. No.** XI **Date of Hearing:** 09/10-12/12

DECISION AND ORDER

This matter having come on for an evidentiary hearing before the Honorable Elizabeth Gonzalez beginning on September 10, 2012 and continuing day to day, based upon the availability of the Court and Counsel, until its completion on September 12, 2012; Plaintiff Steven Jacobs ("Jacobs") being present in court and appearing by and through his attorney of record, James Pisanelli, Esq., Todd Bice, Esq., and Debra Spinelli, Esq. of the law firm of Pisanelli Bice; Defendant Las Vegas Sands appearing by and through its counsel J. Stephen Peek, Esq. of the law firm of Holland & Hart and counsel for purposes of this proceeding, Samuel Lionel, Esq. and Charles McCrea, Esq., of the law firm of Lionel Sawyer & Collins; Defendant Sands China appearing by and through its counsel J. Stephen Peek, Esq. of the law firm of Holland & Hart, Brad D. Brian, Esq., Henry Weissman, Esq., and John B. Owens, Esq. of the law firm of Munger Tolles & Olson and counsel for purposes of this proceeding, Samuel Lionel, Esq. and Charles McCrea, Esq., of the law firm of Lionel Sawyer & Collins; the Court having read and considered the pleadings filed by the parties and the transcripts of prior hearings; having reviewed the evidence admitted during the trial; and having heard and carefully considered the testimony of the witnesses called to testify; the Court having considered the oral and written arguments of counsel, and with the intent of deciding the limited issues before the Court related to lack of candor and nondisclosure of information to

the Court and appropriate sanctions pursuant to EDCR 7.60. The Court makes the following findings of fact and conclusions of law:

I.
PROCEDURAL POSTURE

On August 26, 2011, the Nevada Supreme Court issued a stay of proceedings in this matter pending the conduct of an evidentiary hearing and decision on jurisdictional issues related to Sands China. The Court granted Jacobs request to conduct jurisdictional discovery prior to the evidentiary hearing. The order granting the jurisdictional discovery was ultimately entered on March 8, 2012.

II.
FINDINGS OF FACT[1]

1. Prior to litigation, in approximately August 2010, a ghost image of hard drives of computers used by Steve Jacobs in Macau[2] and copies of his outlook emails were transferred by way of electronic storage devices (the "transferred data") to Michael Kostrinsky, Esq., Deputy General Counsel of Las Vegas Sands.[3]

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[1] Counsel for Las Vegas Sands objected on the basis of attorney client privilege to a majority of the questions asked of the counsel who testified during the evidentiary hearing. Almost all of those objections were sustained. While numerous directions not to answer on the basis of attorney client privilege and the attorney work product were made by counsel for Las Vegas Sands, sustained by the Court, and followed by the witnesses, sufficient information was presented through pleadings already in the record and testimony of witnesses without the necessity of the Court drawing inferences related to the assertion of those privileges. See generally, Francis v. Wynn, 127 NAO 60 (2011). The Court also rejects Plaintiff's suggestion that adverse presumptions should be made by the Court as a result of the failure of Las Vegas Sands to present explanatory evidence in its possession and declines to make any presumptions which might arguably be applicable under NRS Chapter 47.

[2] There is an issue that has been raised regarding the current location of those computers and hard drives from which the ghost image was made. The Court does not in this Order address any issues related to those items.

[3] According to a status report filed by Las Vegas Sands on July 6, 2012, there were other transfers of electronically stored data. Based upon testimony elicited during the evidentiary hearing, counsel was unaware of those transfers prior to the preparation and filing of the status report.

2. Kostrinsky requested this information in anticipation of litigation with Jacobs after learning of receipt of a letter by then general counsel for Las Vegas Sands from Don Campbell.

3. This transferred data was placed on a server at Las Vegas Sands and was initially reviewed by Kostrinsky.

4. The attorneys for Sands China at the Glaser Weil firm were aware of the existence of the transferred data on Kostrinsky's computer from shortly after their retention in November 2010.

5. The transferred data was reviewed in Kostrinsky's office by attorneys from Holland & Hart.

6. On April 22, 2011, in house counsel for Sands China, Anne Salt, participated in the Rule 16 conference by videoconference and responded to inquiry by the Court related to electronically stored information and confirmed preservation of the data.

7. At no time during the Rule 16 conference did Ms. Salt or anyone on behalf of Sands China advise the Court of the potential impact of the Macau Personal Data Privacy Act (MDPA) upon discovery in this litigation.

8. Following the Rule 16 conference with the Court, the parties filed a Joint Status Report on April 22, 2011, in which they agreed that the initial disclosure of documents pursuant to NRCP 16.1 would be made by Sands China and Las Vegas Sands prior to July 1, 2011. The MDPA is not mentioned in the Joint Status Report as potentially affecting discovery in this litigation.

9. Following the Rule 16 conference, no production or other identification of the information from the transferred data was made.

10. Beginning with the motion filed May 17, 2011, Sands China and Las Vegas Sands raised the MDPA as a potential impediment (if not a bar) to production of certain documents.

11. At a hearing on June 9, 2012, counsel for Sands China represented to the Court that the documents subject to production were in Macau; were not allowed to leave Macau; and, had to be reviewed by counsel for Sands China in Macau prior to requesting the Office of Personal Data Protection in Macau for permission to release those documents for discovery purposes in the United States.

12. At the time of the representation made on June 9, 2012, the transferred data had already been copied; the copy removed from Macau; and reviewed in Las Vegas by representatives of Las Vegas Sands.

13. The transferred data was stored on a Las Vegas Sands shared drive totaling 50 – 60 gigabytes of information.

14. Prior to July 2011, Las Vegas Sands had full and complete access to documents in the possession of Sands China in Macau through a network to network connection.

15. Beginning in approximately July 2011, Las Vegas Sands access to Sands China data changed as a result of corporate decision making.

16. Prior to the access change, significant amounts of data from Macau related to Jacobs was transported to the United States and reviewed by in house counsel for Las Vegas Sands and outside counsel, and placed on shared drives at Las Vegas Sands.

17. At no time did Las Vegas Sands or Sands China disclose the existence of this data to the Court.[4]

18. At no time did Las Vegas Sands or Sands China provide a privilege log identifying documents which it contended were protected by the MDPA which was discussed by the Court on June 9, 2011.

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[4] While Las Vegas Sands contends that a disclosure was made on June 9, 2011, this is inconsistent with other actions and statements made to the Court including the June 27, 2012 status report, the June 28, 2012 hearing and the July 6, 2012 status report.

19. For the first time on June 27, 2012, in a written status report, Las Vegas Sands and Sands China advised the Court that Las Vegas Sands was in possession of over 100,000 emails and other ESI that had been transferred "in error".

20. In the June 27, 2012 status report, Las Vegas Sands admits that it did not disclose the existence of the transferred data because it wanted to review the Jacobs ESI.[5]

21. Any finding of fact stated hereinabove that is more appropriately deemed a conclusion of law shall be so deemed.

III.
CONCLUSIONS OF LAW

22. The MDPA and its impact upon production of documents related to discovery has been an issue of serious contention between the parties in motion practice before this Court since May 2011.

23. The MDPA has been an issue with regards to documents, which are the subject of the jurisdictional discovery.

24. At no time prior to June 28, 2012, was the Court informed that a significant amount of the ESI in the form of a ghost image relevant to this litigation had actually been taken out of Macau in July or August of 2010 by way of a portable electronic device.

25. EDCR Rule 7.60 provides in pertinent part:

* * *

(b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:

* * *

(3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.

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[5] The Court notes that there have also been significant issues with the production of information from Jacobs. On appropriate motion the Court will deal with those issues.

26. As a result of the failure to disclose the existence of the transferred data, the Court conducted needless hearings on the following dates which involved (at least in part) the MDPA issues:

May 26, 2011

June 9, 2011

July 19, 2011

September 20, 2011[6]

October 4, 2011[7]

October 13, 2011

January 3, 2012

March 8, 2012

May 24, 2012

27. The Court concludes after hearing the testimony of witnesses that the 100,000 emails and other ESI were not transferred in error, but was purposefully brought into the United States after a request by Las Vegas Sands for preservation purposes.

28. The transferred data is relevant to the evidentiary hearing related to jurisdiction, which the Court intends to conduct.

29. The change in corporate policy regarding Las Vegas Sands access to Sands China data made during the course of this ongoing litigation was made with an intent to prevent the disclosure of the transferred data as well as other data.[8]

30. The Defendants concealed the existence of the transferred data from this Court.

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[6] This hearing was conducted in a related case, A648484.

[7] This hearing was conducted in a related case, A648484.

[8] While the Court recognizes that several other legal proceedings related to certain allegations made by Jacobs were commenced during the course of this litigation including subpoenas from the SEC and DOJ, this does not excuse the failure to disclose the existence of the transferred data; the failure to identify the transferred data on a privilege log, or the failure produce of the transferred data in this matter.

31. As the transferred data had already been reviewed by counsel, the failure to disclose the existence of this transferred data to the Court caused repeated and unnecessary motion practice before this Court.

32. The lack of disclosure appears to the Court to be an attempt by Defendants to stall the discovery, and in particular, the jurisdictional discovery in these proceedings.

33. Given the number of occasions the MDPA and the production of ESI by Defendants was discussed there can be no other conclusions than that the conduct was repetitive and abusive.

34. The conduct however does not rise to the level of striking pleadings as exhibited in the Foster v. Dingwall, 227 P.3d 1042 (Nev. 2010) or the entry of default as in Goodyear v. Bahena, 235 P.3d 592 (Nev. 2010) cases.[9]

35. After evaluating the factors in Ribiero v. Young, 106 Nev. 88 (1990), the Court finds:

a. There are varying degrees of willfulness demonstrated by the Defendants and their agents in failing to disclose the transferred data to Plaintiff ranging from careless nondisclosure to knowing, willful and intentional conduct with an intent to prevent the Plaintiff access to information discoverable for the jurisdictional proceedings;[10]

b. There are varying degrees of willfulness demonstrated by the Defendants and their agents ranging from careless nondisclosure to knowing, willful and intentional conduct in concealing the existence of the transferred data and failing to disclose the transferred data to the Court with an intent to prevent the Court ruling on the discoverability for purposes of the jurisdictional proceedings;

---

[9] The Court recognizes no factors have been provided to guide in the evaluation of sanctions for conduct in violation of EDCR 7.60, but utilizes cases interpreting Rule 37 violations as instructive.

[10] As a result of the stay, the court does not address the discoverability of the transferred data and the effect of the conduct related to the entire case.

c. The repeated nature of Defendants and Defendants' agents conduct in making inaccurate representations over a several month period is further evidence of the intention to deceive the Court;

d. Based upon the evidence currently before the Court it does not appear that any evidence has been irreparably lost;[11]

e. There is a public policy to prevent further abuses and deter litigants from concealing discoverable information and intentionally deceiving the Court in an attempt to advance its claims; and

f. The delay and prejudice to the Plaintiff in preparing his case is significant, however, a sanction less severe than striking claims, defenses or pleadings can be fashioned to ameliorate the prejudice.

36. The Court after evaluation of the evidence and testimony, weighing the factors and evaluating alternative sanctions determines that evidentiary and monetary sanctions are an alternative less severe sanction to address the conduct that has occurred in this matter.

37. Any conclusion of law stated hereinabove that is more appropriately deemed a finding of fact shall be so deemed.

IV.

ORDER

Therefore the Court makes the following order:

a. For purposes of jurisdictional discovery and the evidentiary hearing related to jurisdiction, Las Vegas Sands and Sands China will be precluded from raising the MDPA as an objection or as a defense to admission, disclosure or production of any documents.[12]

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[11] There is an issue that has been raised regarding the current location of those computers and hard drives from which the ghost image was made. The Court does not in this Order address any issues related to those items.

[12] This does not prevent the Defendants from raising any other appropriate objection or privilege.

b. For purposes of jurisdictional discovery and the evidentiary hearing related to jurisdiction, Las Vegas Sands and Sands China are precluded from contesting that Jacobs ESI (approx. 40 gigabytes) is not rightfully in his possession.[13]

c. Defendants will make a contribution of $25,000 to the Legal Aid Center of Southern Nevada.

d. Reasonable attorneys' fees of Plaintiff will be awarded upon filing an appropriate motion for those fees incurred in conjunction with those portions of the hearings related to the MDPA identified in paragraph 26.

Dated this 14th day of September, 2012

ELIZABETH GONZALEZ
District Court Judge

Certificate of Service

I hereby certify that on or about the date filed, this document was copied through e-mail, or a copy of this Order was placed in the attorney's folder in the Clerk's Office or mailed to the proper person as follows:

J. Stephen Peek, Esq. (Holland & Hart)

Samuel Lionel, Esq. (Lionel Sawyer & Collins)

Brad D. Brian Esq. (Munger Tolles & Olson)

James J. Pisanelli, Esq. (Pisanelli Bice)

Dan Kutinac

[13] This does not prevent the Defendants from raising any other appropriate objection or privilege.

EXHIBIT 8

PB | 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).

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).

- 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.").

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

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);
- swirctravel.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

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

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

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

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

Sincerely,

Debra L. Spinelli

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

EXHIBIT 9

SUBMITTED

UNDER

SEAL

PURSUANT

TO

CONFIDENTIALITY

ORDER

EXHIBIT 10

REPT
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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

/

AND ALL RELATED MATTERS.

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

Date: n/a
Time: n/a

DEFENDANT SANDS CHINA LTD'S REPORT ON ITS COMPLIANCE WITH THE COURT'S RULING OF DECEMBER 18, 2012

Defendant Sands China Ltd. ("SCL") hereby provides the Court with a Report of its compliance with the Court's ruling of December 18, 2012. This compliance resulted in the production to Plaintiff of more than 5,000 documents (consisting of more than 27,000 pages) on or before January 4, 2013.

I. THE COURT'S DECEMBER 18, 2012 RULING

After Plaintiff served his jurisdictional discovery requests, Defendants began searching for and producing responsive documents. In this process, the parties eventually reached an impasse on SCL's position that, as to jurisdictional issues, a search of the ESI of custodians other than Plaintiff in Macau would be largely duplicative of LVSC's production.

Accordingly, on December 6, 2012, Defendants filed a motion for a Protective Order seeking the Court's guidance on whether the Macau search would have to include custodians other than Plaintiff. At that time, SCL was proceeding with an ESI search in Macau, but only for documents contained in Plaintiff's own ESI.

At a hearing held on December 18, 2012, the Court denied Defendants' motion and stated that it would enter an order directing SCL to produce all information relevant to jurisdictional discovery:

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

(Dec. 18, 2012 Tr., Ex. A, at 24). In so doing, the Court expressly noted that its ruling did not foreclose SCL from making appropriate redactions. (*Id.*, at 27).

As of January 4, 2013, the above-described order had not yet been entered. Nevertheless, after the hearing, SCL immediately began taking steps to expand its on-going efforts in Macau to comply with the Court's ruling.

II. SCL'S COMPLIANCE WITH THE COURT'S RULING

SCL's production of more than 27,000 pages of documents resulted from an extended process that included seven major stages: (1) the recruitment of additional Macau lawyers to

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assist the existing team in reviewing the documents generated by the expanded search; (2) the engagement of an additional vendor with sufficient expertise, technology and resources to assist SCL in completing the expanded search; (3) the identification of relevant custodians and search terms using accepted principles of electronic discovery; (4) the physical review of all documents retrieved by these search terms to determine responsiveness to Plaintiff's jurisdictional discovery requests; (5) the identification of all "personal data" in responsive documents within the meaning of the Macau Personal Data Protection Act ("MPDPA"); (6) the subsequent redaction of personal data from those identified documents; and (7) a review in the United States for privilege and confidentiality determinations.

To oversee and manage this document production effort (both before and after the Court's December 18, 2012 ruling), SCL engaged the law firm of Mayer Brown LLP, including lawyers from the Firm's Hong Kong office.

A. The Recruitment of Macau Lawyers to Review Documents

The first challenge following the Court's December 18, 2012 ruling was to recruit on short notice and during the holiday season a sufficient number of Macau attorneys to assist in completing the expanded search and review of documents in Macau. As SCL previously informed the Court, on November 29, 2012, the Office of Personal Data Protection ("OPDP") notified SCL that it could not rely on Hong Kong lawyers (or any other non-Macau lawyers) to review or redact Macau documents containing "personal data." (Ex. B). This restriction imposed a significant limitation on the pool of potential reviewers because Macau has fewer than 250 licensed lawyers (excluding trainees and interns), and many of those attorneys work for firms that cannot represent SCL because of pre-existing conflicts. In addition, the required review had to be conducted between December 18, 2012 and January 4, 2013, when Macau had five days of public holidays.

Notwithstanding these limitations, SCL succeeded in recruiting additional Macau lawyers, until, by December 27, 2012, SCL had engaged a total of 22 Macau attorneys to review potentially-responsive documents and redact personal data contained in those documents.

///

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B. The Selection of an Additional Vendor

To complete the discovery directed by the Court, SCL also had to enlist an additional vendor to assist in processing and handling of the significantly increased volume of documents that had to be reviewed and produced. The existing vendor used a software application that repeatedly encountered several technical difficulties in attempting to "de-duplicate" the increased volume of documents and in preserving redactions throughout the production process. By December 19, 2012, SCL concluded that these difficulties would likely prevent the vendor from completing the project by itself.

Accordingly, on December 19, 2012, SCL engaged another vendor, FTI, to assume most of the technical aspects of the review and redaction process. Between December 19 and January 4, FTI not only re-processed all data that the initial vendor had processed, but also logged more than 500 hours in processing additional data, training reviewers and redacting responsive documents—all at a cost of more than $400,000.

C. The Identification of Relevant Search Terms and Custodians

In addition to engaging a qualified vendor and recruiting a sufficient number of reviewers, SCL had to develop a strategy for the expanded search in Macau. In this process, SCL was left to its own devices. As described in earlier court filings, Plaintiff declined to cooperate with Defendants in identifying relevant custodians and search terms in either the United States or Macau.[1] For example, in June 2012, Plaintiff announced to Defendants that they should develop their own lists of search terms and custodians for the U.S. searches, while in October 2012, Plaintiff simply ignored Defendants' request to meet and confer about ESI discovery in Macau.[2]

To be sure, at the December 18, 2012 hearing, Plaintiff asserted for the first time that he had sent a letter *more than two years ago* providing a list of relevant custodians:

> ... We met for hours with his prior counsel explaining over and over to the extent it was even needed if we're talking about the custodians that they didn't know about in Macau, they needed only look to *Colby Williams's letter giving them 20 custodians that we want that they've known for two years.*

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1 *See, e.g.*, Defendants' Opposition to Plaintiff's Motion for Sanctions, at 7-8 and Exhibit BB.

2 *Id.*

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(Dec. 18, 2012 Tr., Ex. A, at 23-24) (emphasis supplied). But this letter merely listed the custodians that Plaintiff claimed were relevant to *merits* discovery, not to jurisdictional discovery. Indeed, Plaintiff sent the letter long before he had even served his jurisdictional discovery requests, and, in any event, the issues in jurisdictional discovery are very different from the merits issues.

With respect to *jurisdictional* discovery, Plaintiff simply declined to participate in any cooperative effort to reach agreement on search terms and custodians. In particular, after serving his jurisdictional discovery requests, Plaintiff never (1) provided Defendants with a proposed list of custodians for jurisdictional discovery; (2) participated with Defendants in finalizing an expanded list of search terms for jurisdictional discovery;[3] or (3) responded to Defendants' October 6, 2012 request to meet and confer about jurisdictional discovery in Macau.[4]

As a result, SCL was forced to make its own determinations of relevant search terms and custodians to comply with the Court's ruling. To this end, SCL first identified eight Macau custodians (in addition to Plaintiff) whose ESI was reasonably likely to contain documents relevant to jurisdictional discovery. (*See* Ex. C, attached to this Report). SCL then utilized (with only minor variations) the same expanded set of search terms that Defendants had unilaterally developed to conduct the jurisdictional searches in the United States—search terms that Plaintiff has never challenged or even asked to review. (Attached to this Report is Exhibit C, which lists the custodians and search terms used by SCL to identify and produce documents relevant to jurisdictional discovery.).

This procedure comports with "best practices" in electronic discovery. The Sedona Principles instruct parties responding to discovery requests to "define the scope of the electronically-stored information needed to appropriately and fairly address the issues in the case and to avoid unreasonable overbreadth, burden, and cost." The Sedona Conference, Sedona Principles Addressing Electronic Document Production, Cmt. 4.b (2d ed. 2007) ("Sedona

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[3] In July and August 2012, Defendants expanded the list of search terms and custodians used for the searches of LVSC's ESI after Plaintiff claimed that LVSC's production was inadequate.

[4] Defendants' Opposition to Plaintiff's Motion for Sanctions, at 7-8 and Exhibit BB.

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Principles"), Cmt. 6.b. This process typically includes "collecting electronically-stored information from repositories used by key individuals," and "defining the information to be collected by applying reasonable selection criteria, including search terms, date restrictions, or folder designations." *Id.*; *see also id.* Cmt. 11.a (instructing that "selective use of keyword searches can be a reasonable approach when dealing with large amounts of electronic data").

Consistent with these principles, the Nevada courts have repeatedly endorsed the use of specified custodians and search terms to govern electronic discovery. *See, e.g., Cannata v. Wyndham Worldwide Corp.*, No. 2:10-cv-00068-PMP-VCF, 2012 WL 528224, at *5 (D. Nev. Feb. 17, 2012) (ordering parties to agree on a final list of search terms and custodians).

The courts have also held that when a party requesting discovery refuses to agree on custodians and search terms, the responding party should develop its own search terms and list of custodians. *See, e.g., Treppel v. Biovail Corp.*, 233 F.R.D. 363, 374 (S.D.N.Y. 2006). In these circumstances, the party requesting discovery effectively waives its objections because it would be unfair to allow the requesting party to refuse to participate in the process of developing a search strategy and then later claim that the strategy was inadequate. *See, e.g., Covad Commc'ns Co. v. Revanet, Inc.*, 258 F.R.D. 5, 14 (D.D.C. 2009).

Thus, in the absence of any meaningful participation by Plaintiff, despite being invited to do so by Defendants, SCL relied on widely-accepted principles of electronic discovery to select a list of custodians and search terms that could reasonably be expected to yield documents relevant to the limited jurisdictional discovery the Court has allowed.

D. The Review and Redaction of Documents

After SCL developed its search strategy, it then applied the designated search terms to the ESI of the relevant custodians. SCL also processed approximately 20,000 pages of hardcopy documents maintained by Plaintiff and the other relevant custodians. Finally, SCL manually reviewed more than 50,000 hardcopy documents maintained by Plaintiff to determine whether they were copies of ESI or otherwise not relevant to any jurisdictional issues. This process yielded a population of more than 26,000 potentially responsive documents. FTI then "tiffed" each of these documents so that the Macau attorneys could redact personal data contained in the

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documents.

In the next step, the Macau attorneys reviewed each of the documents identified as potentially responsive to determine whether the document was, in fact, relevant to jurisdictional discovery and, if so, whether it contained any "personal data" within the meaning of the MPDPA. If the documents did contain "personal data," the reviewers then redacted that personal information.[5]

To complete this process, the attorneys logged more than 1,326 hours over a nine-day period, with several attorneys working up to 20 hours per day and on holidays. In total, the reviewing attorneys billed more than $500,000 to complete the work in Macau.

E. The Privilege Review and Final Preparation of the Documents for Production

After FTI incorporated the redactions into new tiff images to ensure that the redactions could not be removed, the documents were transferred to the United States, where they were reviewed for privilege and confidentiality determinations. After the completion of this review, FTI created a new tiff image endorsed with a Bates number for each document. The new tiff image was then processed to create a new text file for production that omitted the text in the redacted area. The productions provided to Plaintiff contained the tiff images and text files created in the United States.

F. Ongoing Quality Control Review

In addition to the above-described production, SCL is currently undertaking quality control procedures to determine whether there are any documents relevant to jurisdictional discovery that the above review did not capture. For example, on January 7, 2013, the Macau reviewers identified approximately 17 hardcopy documents that had been maintained by some of the relevant custodians and that are arguably relevant to jurisdictional issues. These 17 documents are currently being prepared for transfer to the United States and final production. In addition, SCL is conducting an electronic search of the more than 50,000 hardcopy documents that SCL manually reviewed prior to production. If this electronic search results in the

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[5] The reviewers designated redactions based on the MPDPA as "Personal Redactions" and redactions based on the attorney-client privilege as "Privileged."

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identification of any documents that are arguably relevant to jurisdictional discovery and that have not already been produced, SCL will produce such documents to Plaintiff.

III. CONCLUSION

In this Report, SCL has summarized the document production that it undertook in compliance with the Court's December 18, 2012 ruling. In addition to this production, SCL understands that LVSC has produced the travel records ordered by the Court and that the remaining depositions of Defendants' executives have now been scheduled, leaving only Plaintiff's deposition to be scheduled. Accordingly, SCL believes that, subject to the Court's schedule, a jurisdictional hearing can now be set following the completion of the depositions.

DATED January 8, 2013.

J. Stephen Peek, Esq.
Robert J. Cassity, Esq,
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71 S. Wacker Drive
Chicago, Illinois 60606

Attorneys for Sands China, Ltd.

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on January 8, 2013, I served a true and correct copy of the foregoing **DEFENDANT SANDS CHINA LTD'S REPORT ON ITS COMPLIANCE WITH THE COURT'S RULING OF DECEMBER 18, 2012** via e-mail and by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

James J. Pisanelli, Esq.
Debra L. Spinelli, Esq.
Todd L. Bice, Esq.
Pisanelli & Bice
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169
214-2100
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Attorney for Plaintiff

An Employee of Holland & Hart LLP

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Las Vegas, Nevada 89134

EXHIBIT 11

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD.,
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. 58294

FILED

AUG 26 2011

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

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus or prohibition challenges a district court order denying petitioner's motion to dismiss for lack of personal jurisdiction.

Petitioner asserts that the district court improperly based its exercise of personal jurisdiction on petitioner's status as a subsidiary of a Nevada corporation with common officers and directors. Real party in interest contends that the district court properly determined that he had established a prima facie basis for personal jurisdiction based on the acts taken in Nevada to manage petitioner's operations in Macau.

The district court's order, however, does not state that it has reviewed the matter on a limited basis to determine whether prima facie grounds for personal jurisdiction exist; it simply denies petitioner's motion to dismiss, with no mention of a later determination after consideration of evidence, whether at a hearing before trial or at trial. While the order refers to the district court's comments at oral argument on the motion, the

transcript reflects only that the district court concluded there were "pervasive contacts" between petitioner and Nevada, without specifying any of those contacts. We have therefore found it impossible to determine the basis for the district court's order or whether the district court intended its order to be its final decision regarding jurisdiction or if it intended to consider the matter further after the admission of evidence at trial (or an evidentiary hearing before trial).

In MGM Grand, Inc. v. District Court, 107 Nev. 65, 807 P.2d 201 (1991), we held that jurisdiction over a nonresident corporation could not be premised upon that corporation's status as parent to a Nevada corporation. Similarly, the United States Supreme Court in Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846 (2011), considered whether jurisdiction over foreign subsidiaries of a U.S. parent corporation was proper by looking only to the subsidiaries' conduct; the Court suggested that including the parent's contacts with the forum would be, in effect, the same as piercing the corporate veil. Based on the record before us, it is impossible to determine if the district court in fact relied on the Nevada parent corporation's contacts in this state in exercising jurisdiction over the foreign subsidiary.

Accordingly, having reviewed the petition, answer, reply, and other documents before this court,[1] we conclude that, based on the summary nature of the district court's order and the holdings of the cases

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[1]Petitioner's motion for leave to file a reply in support of its stay motion is granted, and we direct the clerk of this court to detach and file the reply attached to the August 10, 2011, motion. We note that NRAP 27(a)(4) was amended in 2009 to permit a reply in support of a motion without specific leave of this court; thus, no such motion was necessary.

cited above, the petition should be granted, in part. We therefore direct the district court to revisit the issue of personal jurisdiction over petitioner by holding an evidentiary hearing and issuing findings regarding general jurisdiction. If the district court determines that general jurisdiction is lacking, it shall consider whether the doctrine of transient jurisdiction, as set forth in Cariaga v. District Court, 104 Nev. 544, 762 P.2d 886 (1988), permits the exercise of personal jurisdiction over a corporate defendant when a corporate officer is served within the state. We further direct that the district court shall stay the underlying action, except for matters relating to a determination of personal jurisdiction, until a decision on that issue has been entered. We therefore

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to hold an evidentiary hearing on personal jurisdiction, to issue findings of fact and conclusions of law stating the basis for its decision following that hearing, and to stay the action as set forth in this order until after entry of the district court's personal jurisdiction decision.[2]

Saitta, J.
Saitta

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

---

[2]Petitioner's motion for a stay is denied as moot in light of this order.

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Glaser, Weil, Fink, Jacobs, Howard & Shapiro, LLC
Campbell & Williams
Eighth District Court Clerk

EXHIBIT 12

Eric T. Aldrian

From: Mark Jones <m.jones@kempjones.com>
Sent: Tuesday, January 29, 2013 2:55 PM
To: Debra Spinelli
Cc: Steve Peek; Lackey, Jr., Michael E.; Randall Jones; James Pisanelli; Todd Bice; Eric T. Aldrian; Jennifer L. Braster; Erica Bennett
Subject: RE: Steve Jacobs Deposition

Debbie,

We are not going to stipulate that one and a half days, or even two is going to be enough for Mr. Jacobs' jurisdictional deposition; this is simply our best estimate. That said, we wish to be as accommodating as possible and will agree to your proposed schedule on the 12th and 13th to try to get it done by noon on the 13th if you can agree to stay until 8:00 p.m. on the 12th and start at 6:00 to 7:00 a.m. on the 13th if we need to. In any event, we will still reserve the right to take further time if the need arises.

Please advise.

Thanks,

Mark

Mark M. Jones, Esq.

KEMP, JONES & COULTHARD
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Phone (702) 385-6000
Fax (702) 385-6001
m.jones@kempjones.com

From: Debra Spinelli [mailto:dls@pisanellibice.com]
Sent: Monday, January 28, 2013 9:03 PM
To: Mark Jones
Cc: Steve Peek; Lackey, Jr., Michael E.; Randall Jones; James Pisanelli; Todd Bice; Eric T. Aldrian; Jennifer L. Braster; Erica Bennett
Subject: Re: Steve Jacobs Deposition

Mark-

I've been sick with the flu and was out most of last week. So, I've been and still am playing catch up on a number of fronts. Thanks for the reminder email.

Regarding Steve Jacobs' jurisdictional deposition, he'll be in town and available on February 12 and the morning of the 13th -- so a day and a half. Then he has a flight back that afternoon. Let's schedule the deposition then.

Thanks,
Debbie

On Jan 26, 2013, at 5:07 PM, "Mark Jones" <m.jones@kempjones.com> wrote:

> Debbie,
>
> I note that I did not hear back from you yesterday as requested. Please let me know what you want to do with the Jacobs deposition dates.
>
> Thank you,
>
> Mark
>
> Mark M. Jones, Esq.
>
> KEMP, JONES & COULTHARD
> 3800 Howard Hughes Parkway, 17th Floor
> Las Vegas, Nevada 89169
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>
> This e-mail transmission, and any documents, files, or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you are not the intended recipient or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is prohibited. If you have received this transmission in error, please immediately notify us by reply e-mail, by forwarding this to sender, or by telephone at (702) 385-6000, and destroy the original transmission and its attachments without reading or saving them in any manner. Thank you.
>
> ---
>
> **From:** Mark Jones
> **Sent:** Tuesday, January 22, 2013 2:34 PM
> **To:** Debra Spinelli (dls@pisanellibice.com); 'Steve Peek'; Lackey, Jr., Michael E.; Randall Jones
> **Cc:** James Pisanelli (jjp@pisanellibice.com); Todd Bice (tlb@pisanellibice.com); Eric T. Aldrian (eta@pisanellibice.com); Jennifer L. Braster (jlb@pisanellibice.com); Erica Bennett
> **Subject:** FW: Steve Jacobs Deposition
>
> Debbie,
>
> I've discussed your email with Steve. We estimate that 1 & ½ to two days will be required for your client's jurisdictional deposition, so February 12 by itself won't work. If contiguous dates would work best on your end we are available for the 14th and 15th, and any two dates between February 25 and March 1. The alternative would be for you to pick any two of the subject available dates (including February 12) and have Mr. Jacobs come back for the second date, which I am sure would be ordered if a fight ensues.
>
> Please advise what would work best for you by the end of this week.
>
> Thanks,
>
> Mark
>
> Mark M. Jones, Esq.
>
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> 3800 Howard Hughes Parkway, 17th Floor

Las Vegas, Nevada 89169
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IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

vs.

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Electronically Filed
Aug 30 2013 11:40 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Case Number: 63444

District Court Case Number A627691-B

REPLY IN SUPPORT OF EMERGENCY MOTION UNDER NRAP 27(e) TO STAY THE DISTRICT COURT'S JUNE 19, 2013 ORDER PENDING DECISION ON PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIVILEGED DOCUMENTS

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Attorneys for Petitioners

I. INTRODUCTION

Plaintiff Steven C. Jacobs' opposition to defendants' motion for an emergency stay is short on substance but long on invective, unsupported allegations, and distortions of the record. Nowhere in his lengthy diatribe does plaintiff provide the Court with a good reason to vacate the temporary stay this Court entered on June 28, 2013. Plaintiff has not shown that defendants lack a substantial case on the merits. Nor has he demonstrated that his counsel can review and use approximately 11,000 documents that contain defendants' privileged or otherwise protected information without defeating the object of the petition and inflicting irreparable harm on defendants.

Although plaintiff claims *he* will be injured by the stay, he neglects to point out to the Court that his "injury" is entirely self-inflicted. It is not this Court's stay that has interfered with the district court's ability to hold the long-delayed jurisdictional hearing. Instead, the delay in getting to a hearing on jurisdiction over SCL is the product of plaintiff's stubborn refusal to go forward with that hearing unless he has access to defendants' privileged documents, notwithstanding the fact that plaintiff has never made an effort to show a particularized need for *any* of those documents.[1]

---

[1] The nearly two-year delay in setting a new hearing date is directly traceable to plaintiff's scorched-earth discovery tactics. On June 18, 2013, the district court finally set a July 16 date for the evidentiary hearing, remarking that "I need to set the evidentiary hearing so it looks like I'm at least trying to do what the Nevada Supreme Court told me to do two and a half years ago." PA3144. At the same time, however, the court stated that if she stayed the order she intended to enter requiring the turnover of defendants' privileged documents, she would "have to vacate the jurisdictional hearing because [plaintiff] can't go forward without having that information," *id*., although the court had not received any evidence or conducted an inquiry that would support this conclusory statement. Although defendants were eager to go forward with the hearing, that put

Plaintiff's alternative argument—that the stay should be granted only if he is allowed to start taking full-blown merits discovery before the district court decides whether it has jurisdiction over SCL—should also be rejected. In August 2011, this Court directed the district court to stay all proceedings other than those related to jurisdiction and to hold an evidentiary hearing to decide whether it had personal jurisdiction over SCL. That hearing should be held and the shape of this case should be decided before costly and potentially unnecessary merits discovery begins.

II. ARGUMENT

A. Plaintiff Has Not Rebutted Defendants' Showing Of Irreparable Harm.

Plaintiff makes two arguments in support of his assertion that defendants would suffer no harm if the Court were to lift the stay it imposed on June 28. First, he argues (at 15) that defendants effectively conceded the absence of any harm by engaging in an "undisputed pattern of inaction" for almost a year after they supposedly learned that plaintiff had downloaded "multitudes" of privileged documents and was reviewing them to use in this case. As plaintiff well knows, however, there is nothing "undisputed" about the tale he spins in his opposition. In fact, defendants did *not* know that Jacobs had surreptitiously downloaded a vast storehouse of documents, including thousands containing privileged and otherwise protected material, until his lawyer sent an email disclosing that fact on July 8, 2011. *See* PA 34-35, PA 3029-93; PA 3106-36.[2] There is no dispute

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them in the untenable position of being able to proceed only if they relinquished their right to challenge the district court's legally flawed June 19 Order.

[2] The email disclosed for the first time that Jacobs had taken 11 gigabytes of data with him (a figure plaintiff later revised upward to approximately 40 gigabytes), including communications with defendants' in-house

that upon receipt of that email, defendants acted promptly to protect their rights by, among other things, securing a commitment from plaintiff's counsel that he would not review any potentially privileged documents until the district court had an opportunity to decide whether Jacobs had a right to use them. PA 44-45; *see also* PA 5-48.

The district court never resolved the parties' dispute about what defendants knew or supposedly should have guessed before the July 8, 2011 disclosure by plaintiff's counsel. Plaintiff offered his version of events in support of his argument that defendants had waived their privilege claims by supposedly delaying in objecting to Jacobs' retention and use of their privileged documents. But the district court did *not* base its June 19, 2013 Order on that waiver argument. PA 3190 (¶ 10) ("The Court does not need to address (at this time). . . whether Defendants waived the privilege"). Instead, the district court's ruling is based on the pure error of law that the Petition asks this Court to review: plaintiff's notion that even if the documents are privileged and the privilege was not waived, he somehow falls within an undefined special "sphere" of persons who can use the documents against the corporate privilege holders. This Court obviously is not in a position to resolve questions of fact that the district court did not decide.[3] That is particularly true at this preliminary stage,

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attorneys. Plaintiff's former attorney advised defendants that he had "stopped our review of said documents so that the parties could address these issues together." PA44. And he promised to "continue to refrain from reviewing the documents" until the parties could address the issue with the district court "so as not to create any issues regarding the documents containing communications with attorneys." PA45.

[3] The district court did not purport to resolve any factual issues in denying defendants' motion for a stay. Plaintiff quotes (at 15) a confusing snippet from the hearing on that motion, in which the district court suggested that *if* SCL had retained a forensic consultant who had analyzed Jacobs'

where defendants seek only to preserve the status quo while this Court considers their Petition.

Nevertheless, it is worth noting that Jacobs was bound by company policies and fiduciary obligations *not* to take confidential documents (including privileged documents) with him when he left and *not* to disclose those documents to third parties. *See* PA 192-200. Against that background, plaintiff's argument that defendants should have *assumed* that he had taken a large quantity of privileged documents and would use them in the litigation makes no sense. It should also be noted that plaintiff's assertion (at 8) that his counsel "confirmed [plaintiff's] possession of a 'multitude' of [SCL] documents" as early as November 2010 is based on an obvious misreading of the letter plaintiff cites. That letter says only that "corporate executives are often . . . in possession of a multitude of documents." PA31. Plaintiff's lawyer did *not* say that *plaintiff* had taken a "multitude" of documents with him when he left; on the contrary, he pleaded ignorance about what SCL documents his client had in his possession, stating that he had not yet "had an opportunity to address the contents of your letter with my client, Mr. Jacobs." *Id*.[4]

---

computer and concluded that he had stolen a large amount of information, the court would have expected to have seen a report to that effect a long time ago. Pl. App. 147. It is not clear what point the court was trying to make; what is clear, however, is that the court's speculation is not a finding that defendants knew all along that Jacobs had taken a massive amount of privileged documents with him and yet inexplicably failed to take any action to retrieve them for almost a year.

[4] Equally unpersuasive is plaintiff's argument (at 9-10) that defendants should have known early on that Jacobs had taken massive quantities of privileged documents because he attached three emails that had been sent to SCL or LVSC lawyers as exhibits to certain filings. These documents are not privileged; furthermore, that Jacobs had *three* such documents in his possession (two of which were sent to him to advise him about his own

Second, plaintiff contends (at 14-15) that defendants' interests would be fully protected by the requirement in the June 19 Order that all of defendants' privileged documents must be treated as "confidential" under the protective order the court had entered. As demonstrated in our motion to stay, however, the protective order would only prevent Jacobs from disclosing the documents outside of this litigation. He would still have the ability to use the documents *in* the litigation. The very fact that plaintiff's counsel would be permitted to review the documents would defeat the confidentiality that the privilege is designed to maintain, as the opinion in *Chase Manhattan Bank, N.A. v. Turner & Newall, PLC*, 964 F.2d 159 (2d Cir. 1992), demonstrates. There, the Second Circuit held that allowing opposing counsel to review documents as to which privilege had been claimed on an "attorneys' eyes only" basis would not provide adequate protection. The court explained that "[t]he attorney-client privilege prohibits disclosure to adversaries as well as the use of confidential communications as evidence at trial" and thus, "[i]f opposing counsel is allowed access to information arguably protected by the privilege before an adjudication as to whether the privilege applies, a pertinent aspect of confidentiality will be lost." *Id*. at 164, 165. The same analysis applies here.[5]

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compensation and SEC reporting requirements) was hardly enough to alert defendants that he had appropriated thousands of privileged documents that he intended to turn over to his lawyers to use in the litigation.

[5] The cases plaintiff cites (at 14-15) are not to the contrary. The trial courts there denied motions to stay primarily because they concluded that the movants' positions were too weak on the merits to justify a stay. *See Imation Corp. v. Koninklijke Philips Elecs. N.V.*, No. 07–3668 (DWF/AJB), 2009 WL 1766671 (D. Minn. June 22, 2009) (movant failed to show that it was likely to succeed on its claim that four documents did not fall within the boundaries of a magistrate's subject matter waiver ruling that the movant had not bothered to appeal); *Professionals Direct Ins. Co. v. Wiles, Boyle, Burkholder & Bringardner Co., LPA*, No. 2:06-cv-240, 2008 WL 5378362, at *2

B. Any Harm Plaintiff May Suffer Is Self-Inflicted.

Plaintiff complains that he has been and will be injured by this Court's entry of a temporary stay because, shortly after the stay was granted, the district court *sua sponte* vacated the evidentiary hearing on jurisdiction that it had scheduled for July 16-23. But if plaintiff feels aggrieved by the loss of the hearing date, he has no one to blame but himself.

In preparation for the evidentiary hearing, SCL attempted to take Jacobs' deposition. Plaintiff successfully resisted on the theory that he should not have to testify until the privilege dispute was finally resolved and his counsel were able to complete their review of the documents he took with him when he was fired.[6] *See* Exhibit A, Plaintiff Steven C. Jacobs' Motion for Protective Order. When the court called a status hearing in June to consider setting a date for the evidentiary hearing, defendants agreed to forgo Jacobs' deposition so the evidentiary hearing could go forward, but stated that they intended to call Jacobs as a witness at that hearing. *See* Exhibit B, Defs.' Joint Status Report. It was *plaintiff* who insisted that he should not have to testify even about jurisdiction if Jacobs' counsel did not have access to defendants' privileged documents. Accepting that assertion at face value, the district court *sua sponte* vacated the hearing date once this Court entered its stay order. *See* Exhibit C, June 27, 2013 Hrg. Tr. at 26:7-17.

(S.D. Ohio Dec. 24, 2008) (movant was "unlikely to obtain a writ of mandamus" because the underlying state law was well-developed).

[6] At page 2 of his opposition, plaintiff states that the district court "long ago found" that he had not stolen those documents. That is not true. In its September 2012 sanctions order, the court precluded defendants, for purposes of jurisdictional discovery and the jurisdictional hearing, from arguing that the documents were not rightfully in his possession. PA770I & n.13. But the court never made any *finding* that Jacobs in fact had a right to the more than 40 gigabytes of documents he took with him.

Plaintiff never explained to the district court why his counsel would need access to a trove of defendants' privileged documents in order to prepare plaintiff to testify on jurisdictional questions such as whether LVSC exercised day-to-day control over SCL and whether LVSC acted as SCL's agent. As SCL's former CEO, Jacobs should not have needed *any* discovery to testify on these issues. The same is true with respect to Jacobs' specific jurisdiction theory, which he belatedly raised after this Court issued its August 2011 Order: Jacobs does not need to review thousands of defendants' privileged documents to testify about where the stock option agreement he seeks to enforce against SCL was negotiated, was to be performed, and was supposedly breached. In his opposition, plaintiff still has not even tried to explain how defendants' privileged documents are likely to be relevant (let alone necessary) in litigating these or any other jurisdictional issues. Jacobs' assertion on pages 18-19 that the documents are relevant to his claim that he was wrongfully terminated confirms that he wants the documents for purposes of the merits and *not* to establish jurisdiction over SCL.[7]

C. Plaintiff Has Not Rebutted Defendants' Showing That They Have A Substantial Case On The Merits.

Plaintiff also argues that he is likely to prevail on the merits of the issues raised in defendants' Petition. The cases plaintiff cites in support of that argument at pages 18-19 of his opposition are discussed in detail in

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[7] Plaintiff's claim against SCL is only for breach of a stock option agreement extended to him overseas. He has not asserted a wrongful termination claim against SCL and indeed contends that *LVSC* was his employer. For that very reason, plaintiff's assertion (at 6-7) that documents he "uncovered" show that the decision to terminate him was made in Las Vegas is entirely irrelevant to the jurisdictional analysis.

defendants' Petition (at 23-25); we will not burden the Court with repeating those arguments. For the reasons outlined in the Petition, defendants should prevail; at the very least, they have shown that they have a substantial case on the merits.

D. Plaintiff Has Not Shown That The Court's August 2011 Order Should Be Altered.

Plaintiff argues, in the alternative, that if the stay continues in force, then he should be permitted to embark on merits discovery before the district court holds an evidentiary hearing on jurisdiction and decides whether it has jurisdiction over SCL. This Court held otherwise in its August 2011 Order, directing the district court to hold an evidentiary hearing and to make findings on general jurisdiction before proceeding to the merits. PA 3. That Order still makes sense. SCL does business only in Macau and Hong Kong, and plaintiff's claim against SCL is based on a stock option agreement governed by Hong Kong law that was authorized and extended to plaintiff overseas. Unless and until a decision is made that this claim can be litigated against SCL in Nevada, SCL should not be compelled to submit to even more wide-ranging and costly discovery than the district court has already ordered. And it makes no sense to have discovery only of LVSC if plaintiff continues to insist that SCL should be in the case as well.

Contrary to plaintiff's shrill accusations, the fact that the evidentiary hearing has been delayed so long is not the product of any misconduct on defendants' part. There is no basis for plaintiff's accusations that defendants have been "hiding" documents.[8] In point of fact, defendants

[8] Defendants recognize that these allegations are irrelevant to the narrow stay issue that is now before this Court and that the Court is not in a

have produced tens of thousands of pages of documents in response to plaintiff's document requests and have produced four of their senior officers/directors for depositions, three of them on multiple days. It is *plaintiff's* escalating discovery demands, his shifting jurisdictional theories, and his attempts to seek victory through sanctions rather than by proving his jurisdictional theories that has delayed the hearing far beyond what was necessary to ensure that plaintiff has a fair opportunity to present his case. The latest episode, where the court vacated the hearing date based on plaintiff's unsupported claim that he needed access to defendants' privileged documents to properly prepare to testify at the jurisdictional hearing, proves the point.

Plaintiff's conduct strongly suggests that he has no real interest in litigating either jurisdiction or the merits of his case, but rather is primarily focused on ginning up controversy—and publicity—by repeating his baseless allegations of wrongdoing against Sheldon Adelson, the Chairman of both LVSC and SCL. Indeed, even in opposing the stay, plaintiff could not refrain from repeating his assertion that defendants commissioned investigative reports on foreign government officials in Macau that they supposedly "knew would expose them to serious political and legal problems." Pl. Opp. at 9. But, as Mr. Adelson and Michael Leven have explained in unrebutted affidavits submitted in the district court, it was *Jacobs* who secretly commissioned those reports before he was terminated. PA 2859-60; PA 2865-66.

In any event, for the reasons outlined above, the jurisdictional hearing could have gone forward as scheduled notwithstanding this

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position to resolve factual disputes. But defendants cannot allow plaintiff's scurrilous accusations to remain entirely unanswered.

Court's stay of the June 19 Order. That the district court postponed the hearing based on *plaintiff's* objections does not provide a basis for allowing plaintiff to begin merits discovery before he establishes his right to proceed against SCL in this forum.

III. CONCLUSION

For the foregoing reasons and the reasons set forth in defendants' Petition and motion for a stay, defendants respectfully request that this Court continue in full force and effect the temporary stay it entered on June 28, 2013 of the district court's June 19 Order, pending a decision on defendants' Petition.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25(b) and NEFR 9(f), I hereby certify that I am an employee of Morris Law Group; that on this date I electronically filed the foregoing **REPLY IN SUPPORT OF EMERGENCY MOTION UNDER NRAP 27(e) TO STAY THE DISTRICT COURT'S JUNE 19, 2013 ORDER PENDING DECISION ON PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIVILEGED DOCUMENTS** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex). Participants in the case who are registered with Eflex as users will be served by the Eflex system as follows:

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Pursuant to Nev. R. App. P. 25, I caused a copy of the **REPLY IN SUPPORT OF EMERGENCY MOTION UNDER NRAP 27(e) TO STAY THE DISTRICT COURT'S JUNE 19, 2013 ORDER PENDING DECISION ON PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIVILEGED DOCUMENTS** to be hand-delivered on the date and to the addressee(s) shown below:

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

DATED this 29th day of July, 2013.

By: /s/ PATRICIA FERRUGIA