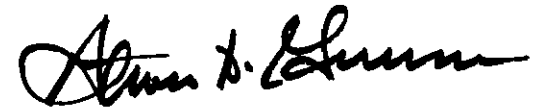


EXHIBIT 11

EXHIBIT 11



CLERK OF THE COURT

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 NRCP 37 SANCTIONS**

Hearing Date:

Hearing Time:

Pursuant to NRCP 37, Plaintiff Steven C. Jacobs ("Jacobs") moves for sanctions against Defendants Las Vegas Sands Corp. ("LVSC") and Sands China Ltd. ("Sands China") due to their egregious and ongoing discovery abuses. This Court has already documented their concealment of the existence and location of evidence. This Motion seeks Rule 37 sanctions not only for that outrageous misconduct, but also because LVSC and Sands China's discovery obstruction is ongoing to this very day. Indeed, they recently revealed how they have yet to begin any search for documents in Macau, notwithstanding this Court's explicit directions otherwise many, many months ago. The time to put an end to the obstructionist conduct and sabotaging of the legal

1 process has plainly arrived. Jacobs is submitting a separate motion on an order shortening time to
2 convene an evidentiary hearing and to seek limited discovery to lay bare the magnitude of the
3 pervasive obstructionism. The purpose of this limited discovery is a search for the truth. And,
4 because that is precisely what LVSC and Sands China do not want to come out, they have
5 resorted to an ongoing pattern of noncompliance.

6 This Motion is based on Rules 16.1, 26, 34 and 37 of the Nevada Rules of Civil
7 Procedure, and the following Memorandum of Points and Authorities, any and all exhibits
8 thereto, the papers and pleadings on file herein, and any oral argument this Court may consider.

9 DATED this 21st day of November, 2012.

10 PISANELLI BICE PLLC

11 By: /s/ Todd L. Bice
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NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned counsel will appear at Clark County Regional Justice Center, Eighth Judicial District Court, Las Vegas, Nevada, on the 27 day of December, 2012, at 8:30.m., in Department XI, or as soon thereafter as counsel may be heard, to bring this **PLAINTIFF STEVEN C. JACOBS' MOTION FOR NRCP 37 SANCTIONS** on for hearing.

DATED 21st day of November, 2012.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice
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MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

A. Sands China Has Not Even Begun its Search for Documents Responsive to Jurisdictional Discovery.

A party exposed for concealing evidence and misrepresenting related facts directly to the Court might consider making a forthright effort at actual compliance going forward. But such is not the case for LVSC and Sands China. The proof is in their recent revelation of how they have yet to undertake the search for documents in Macau. For whatever misguided reason – apparently recognizing that they cannot win on the merits if they complied with their obligations – LVSC and Sands China have continued down the path of noncompliance.

Initially, Jacobs thought this was a casual comment at the October 30, 2012, status check. Counsel for LVSC and Sands China said:

We will be going to Macau to begin that review as to whether or not there are any documents over in Macau. You've got to get there to be able to find that out.

(Ex. 1, Hr'g Tr., Oct. 30, 2012, 12:12-14.) Immediately after that status check, Jacobs' counsel sought clarification, asking if Defendants had actually failed still to conduct any review of the documents in Macau. As this Court surely recalls, back in May of this year, it expressly rejected Sands China's attempt to sequence discovery so as to put off its obligations to provide jurisdictional discovery. Incredibly, despite the passage of months, Sands China responded to this simple inquiry with a defensive excuse claiming that the parties need to have a meet and confer: "[W]e need to reach an agreement during the meeting as to the **custodians for whom information should be reviewed** and the search terms to be used to identify potentially responsive jurisdictional information from those custodians." (Ex. 2, E-mail dated Oct. 30, 2012 (emphasis added).) Hardly. This Court told LVSC and Sands China months ago that they were required to comply with their discovery obligations. Sands China's then-counsel, Brad Brian, assured this Court as to how they had "gotten the message" and were now going to work diligently to comply with their outstanding discovery obligations. But now, despite this Court's

1 prior admonishments and Defendants' assurances, LVSC and Sands China confirmed that they
2 have done nothing despite this Court's rejection of their previous excuses.

3 There can be no justification for this renewed tactic of delay, obstruction, and
4 concealment. With this Court's explicit approval, Jacobs served jurisdictional discovery in
5 September of 2011. This Court expressly rejected Sands China's claims that it did not have to
6 review and produce documents from Macau. Furthermore, this Court subsequently ruled that
7 Sands China and LVSC could not hide behind the Macau Personal Data Privacy Act. Yet, Sands
8 China and LVSC apparently have done nothing to remedy their noncompliance. Instead, they
9 brazenly reaffirmed it by now suggesting that at some point in the future they will go to Macau to
10 "start" reviewing documents. As if it were not already established by their past misconduct, both
11 Sands China and LVSC have demonstrated that they have no compulsion about defying the Rules
12 of Civil Procedure and this Court's orders. The game of obstruction continues.

13 **B. Defendants Have Already Been Exposed as Concealing Evidence From Macau**
14 **That They Have Had in Their Possession for Over Two Years.**

15 Of course, this most recent noncompliance comes on the heels of Defendants' long
16 concealment of electronic files in Las Vegas that both LVSC and Sands China hid from Jacobs
17 and this Court. Because past misconduct is relevant in establishing sanctions going forward, this
18 Court's prior findings of noncompliance and concealment by LVSC and Sands China bear noting,
19 albeit briefly:

20 (1) LVSC received a hard drive on or about August 16, 2010 containing ghost images
21 of three of Jacobs' computers created on July 26 and July 27, 2010, and PST files of Jacobs'
22 e-mails created on August 5, 2010. (Defs.' Statement Regarding Data Transfers, dated July 2,
23 2012, 2:22-3:7, on file with the Court.) Not only did they not disclose the existence of these
24 documents, LVSC and Sands China flatly misled this Court into believing that these documents
25 were located only in Macau, which is why they had not been reviewed and produced.

26 (2) Another data storage device was believed to be brought from Macau by LVSC's
27 Deputy General Counsel in November 2010, but has now been misplaced and the data not
28 produced. (*Id.* at 3:17-20, 6:24-27.) Once again, Defendants knowingly concealed the possession

1 of this information, and both this Court and Jacobs were misled into believing that the documents
2 were only in Macau.

3 (3) LVSC received additional hard drives from Macau in March 2011. One contained
4 images of hard drives of computers used by two employees in Macau and the other contained
5 images of hard drives used by three other employees in Macau and two PST files containing
6 Jacobs' e-mails from 2009 and 2010. (*Id.* at 4:17-23). LVSC and Sands China again concealed
7 these facts from the Court and Jacobs.

8 (4) E-mails of two employees in Macau were automatically transmitted to Ms. Hyman
9 in Las Vegas, a fact not disclosed to Jacobs or this Court. Once again, LVSC and Sands China
10 failed to in any way search or produce these documents as they have long been required to do.

11 (5) Also, once it was uncovered that Sands China and LVSC were failing to produce
12 documents on the basis that they were located in Macau, this Court rejected their attempts to
13 sequence discovery and directed their compliance.

14 As this Court may recall, once the lack of forthright disclosure began to emerge, counsel
15 assured this Court that they were going to double their efforts and promptly undertake
16 compliance. (Ex. 3, Hr'g Tr. June 28, 2012, 11:24-12:5 ("Mr. Brian: . . . But on the other issues,
17 we have been dealing with this diligently, as competently as we know how to try to move this
18 case forward. We met with the client last night. We are going to double and redouble our efforts
19 to move this thing along").) Defendants assured this Court that they were going to add
20 manpower to review the documents and promptly comply with this Court's orders. But tellingly,
21 even after the Court sanctioned Defendants for their conduct in violation of EDCR 7.60, LVSC
22 and Sands China have still to this day conducted no search of numerous electronic files both in
23 Macau and Las Vegas.

24 II. ANALYSIS

25 A. Defendants' Conduct, Both Past and Present, Mandates Severe Sanctions.

26 There are many grounds upon which this Court must impose severe sanctions on both
27 LVSC and Sands China. Rule 37 "authorizes the court to impose sanctions in the form of
28 attorneys' fees and costs for a party's failure to comply with court orders or to participate in

1 discovery." *Chandler v. Daly*, No. 06–2742 B/P, 2008 WL 2357673 (W.D. Tenn. June 4, 2008).¹
2 Specifically, the Court may impose "appropriate sanctions" against "[a] party that without
3 substantial justification fails to disclose information required by Rule 16.1 . . . or 26(e)(1), or to
4 amend a prior response to discovery as required by Rule 26(e)(2)." NRCP 37(c)(1). Also, the
5 Court may issue sanctions for "willful noncompliance with a discovery order of the court." *See*
6 *also Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990). Such
7 sanctions may include "[a]n order that the matters regarding which the order was made or any
8 other designated facts shall be taken to be established for purposes of the action in accordance
9 with the claim of the party obtaining the order." NRCP 37(b)(2)(A).

10 Moreover, "it is clear that courts have broadly interpreted the authority granted by
11 Rule 37(b)(2) to permit sanctions for failures to obey a wide variety of orders intended to permit
12 discovery." *Victor Stanley, Inc. v. Creative Pipe, Inc.*, 269 F.R.D. 497, 520 (D. Md. 2010) (listing
13 cases). For example, courts have imposed sanctions for violation a preservation order and ESI
14 protocol, as well as a court's "express oral admonition." *See, e.g., id.* (finding that Federal
15 Rule 37(b)(2) applied to the court's preservation order and ESI protocol); *Young*, 106 Nev. at 92,
16 787 P.2d at 779 ("[A] court's express oral admonition . . . suffices to constitute an order to provide
17 or permit discovery under NRCP 37(b)(2).").

18 As the court in *Victor Stanley, Inc.* explained:

19 On its face, Rule 37(b)(2) permits sanctions for disobedience of "an
20 order to *provide or permit discovery*, including an order under
21 Rule 26(f), 35, or 37(a). The rule does not define what is meant by
22 "provide or permit" discovery, but the advisory committee's notes to
23 Rule 37 reflect that subsection (b) was amended in 1970 to broaden
24 the ability of a court to sanction for a violation of discovery. The
25 Advisory Committee observed that "[v]arious rules authorize orders
26 for discovery – *e.g.*, Rule 35(b)(1), Rule 26(c) as revised,
27 Rule 37(d). Rule 37(b)(2) should provide comprehensively for
28 enforcement of all these orders.

269 F.R.D. at 519 (emphasis in original). In the end, that court concluded:

27 ¹ "[F]ederal decisions involving the Federal Rules of Civil Procedure provide persuasive
28 authority when [the Nevada Supreme Court] examines its rules." *Nelson v. Heer*, 121 Nev. 832,
834, 122 P.3d 1252, 1253 (2005).

[T]his Court has the authority to impose Rule 37(b)(2) sanctions, if otherwise appropriate, for violations of a Court-issued preservation order, even if that order does not actually order the actual production of the evidence to be preserved. Additionally, of course, the Court's authority to impose Rule 37(b)(2) sanctions for violation of its serial orders to actually produce ESI, is equally clear.

Id. at 520.

In addition to Rule 37, the Court has "inherent equitable powers" to impose sanctions for "abusive litigation practices." *Id.* (citing *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 916 (9th Cir. 1987)) (citations omitted); *see also GNLV Corp. v. Serv. Control Corp.*, 111 Nev. 866, 869, 900 P.2d 323, 325 (1995) (noting that courts have the inherent authority to impose discovery sanctions "where the adversary process has been halted by the actions of the unresponsive party."). As the Nevada Supreme Court explained, "[l]itigants and attorneys alike should be aware that these [inherent] powers may permit sanctions for discovery and other litigation abuses not specifically proscribed by statute." *Young*, 106 Nev. at 92, 787 P.2d at 779.

1. Defendants employ deceit and delay to obstruct jurisdictional discovery.

In addressing types of sanctions that are appropriate, courts rightly examine the totality of the party's conduct. *See, e.g., Young*, 106 Nev. at 92, 787 P.2d at 780 (noting that sanctions "should be imposed only after thoughtful consideration of all the factors involved in a particular case."). Because this Court is highly familiar with Defendants' past concealment, Jacobs will only summarize that conduct as a prelude to LVSC and Sands China's ongoing noncompliance.

For eleven months, LVSC and Sands China knew of the Macau data housed in Las Vegas but, rather than tell this Court and Jacobs the truth, they lied to both and failed to produce the documents that they had long possessed in response to Jacobs' jurisdictional discovery requests. This fraud upon the Court and upon Jacobs was in addition to their purposeful refusal to even search for responsive documents in Macau. Defendants also intentionally withheld information that confirmed their failure to preserve evidence, all the while arguing for sanctions against Jacobs, claiming that he had not adequately preserved his ESI.

And while they concealed these critical facts, LVSC and Sands China clamored for the expedited scheduling of the jurisdictional hearing, representing to the Court that they *have fully*

1 *complied with their discovery obligations.* (Ex. 4, Hr'g Tr. May 24, 2012, 10:21-25; 12:4-6.)

2 When discussing this ruse at this Court's sanctions hearing, LVSC's counsel had to acknowledge
3 their plan to obtain a jurisdictional ruling without the truth coming to light:

4 Q . . . When Ms. Glaser was telling Her Honor, please, please don't
5 continue the date, today's the disclosure date, you knew standing at
6 Her Honor's desk that all of the Jacobs emails sitting on Las Vegas
Boulevard had not been produced to the plaintiffs, didn't you?

7 A Yes.

8 Q And you didn't say a word to Her Honor in response to Patty
9 Glaser's plea that the evidentiary hearing go forward without the
disclosure or even the identification of a hundred thousand-plus
emails sitting at Las Vegas Sands here in Las Vegas. You didn't say
a word.

10 A I didn't, Mr. Pisanelli. . . .

11
12 (Ex. 5, Hr'g Tr., Sept. 12, 2012, 79:13-24.) Indeed, LVSC falsely represented that "we don't have
13 documents on our server related to Mr. Jacobs," even though LVSC had Jacobs' electronic files
14 uploaded onto their servers in approximately August 2010 and counsel had been reviewing them
15 the entire time. (*Id.* at 129:21-25.)

16 Even when their deception started to unravel, LVSC and Sands China sought to push
17 forward and obtain a jurisdictional ruling before the magnitude of their misconduct was exposed:
18 "we, too, feel very strongly that the hearing should go forward as planned on June 25th or 26th."
19 (Ex. 4, Hr'g Tr., May 24, 2012, 12:4-6.) Their plan – to obtain a ruling from this Court without
20 ever revealing their deception – was a direct assault upon the litigation process, with a litigant
21 seeking to obtain a ruling based upon a knowingly distorted evidentiary picture. Contrary to the
22 beliefs of LVSC and Sands China, they do not have the right to pick and choose what to disclose
23 and when to disclose discoverable materials. Both LVSC and Sands China were obligated under
24 the Nevada Rules of Civil Procedure, this Court's ESI Protocol, and this Court's explicit directives
25 to produce discoverable documents, including those purportedly located in Macau.

26 But even this Court's explicit findings as to LVSC's and Sands China's deception and
27 noncompliance relative to the documents located in Las Vegas has not proved a sufficient
28 incentive to detour them from their preferred path. Despite this Court's admonishment in May of

1 this year that they were not permitted to sequence discovery by not searching for records in
2 Macau, Sands China and LVSC now acknowledge that *to this day* they have failed to conduct any
3 review of documentation in Macau to comply with this Court's orders and Jacobs' jurisdictional
4 discovery requests.

5 **B. The Court Must Impose Sanctions that Deprive Defendants of the Benefits of**
6 **Their Misconduct.**

7 "Fundamental notions of fairness and due process require that discovery sanctions be just
8 and that sanctions relate to the specific conduct at issue." *GNLV Corp.*, 111 Nev. at 870, 900 P.2d
9 at 325 (citing *Young*, 106 Nev. at 92, 787 P.2d at 779–80). As courts recognize, the minimum
10 sanctions that a court must impose is one that deprives the wrongdoer of the benefits of their
11 misconduct. *See Burnet v. Spokane Ambulance*, 933 P.2d 1036, 1041 (Wash. 1997) (*en banc*)
12 ("The purpose of sanctions generally are to deter, punish, to compensate, to educate, and *to*
13 *ensure that the wrongdoer does not profit from the wrongdoing.*") (emphasis added); *Woo v.*
14 *Lien*, No. A094960, 2002 WL 31194374, 6 (Cal. Ct. App., Oct. 2, 2002) (upholding trial court's
15 imposition of sanctions because not doing so "would allow the abuser to benefit from its
16 actions."). Otherwise, the law would perversely incentivize wealthy litigants to simply conceal
17 evidence and obstruct the litigation process if they thought that all it would cost them are some
18 attorneys' fees.

19 For that reason, Rule 37 expressly contemplates an order that (A) "*designated facts shall*
20 *be taken to be established for the purposes of the action in accordance with the claim of the*
21 *party obtaining the order;*" (B) "refus[e] to allow the disobedient party to support or oppose
22 designated claims or defenses, or prohibiting that party from introducing designated matters in
23 evidence;" [or] (C) "strike out pleadings or parts thereof . . . , or dismissing the action or
24 proceeding or any part thereof, or rendering a judgment by default against the disobedient
25 party" NRCP 37(b)(2) (emphasis added); *see also* NRCP 37(c)(1) (noting that sanctions
26 under that Rule may include any of the actions authorized under Rule 37(b)(2)).

27 At the same time, "[t]here is no indication in Rule 37 that this list of sanctions was
28 intended to be exhaustive." *J. M. Cleminshaw Co. v. City of Norwich*, 93 F.R.D. 338, 355

(D. Conn. 1981). The language "suggests that, under that rule, a court possesses the authority to fashion any of a range of appropriate orders to enforce compliance with the requirements of pre-trial discovery." *Id.* (citing *Flaks v. Koegel*, 504 F.2d 702, 707 (2d Cir. 1974) (noting the discretionary nature of discovery sanctions)). In other words, a court may fashion any form of sanction that meets the purpose of sanctions, which is "to ensure that a party does not benefit from its failure to comply, and to deter those who might be tempted to such conduct in the absence of such a deterrent." *Starlight Int'l Inc. v. Herlihy*, 186 F.R.D. 626, 647 (D. Kan. 1999).

Thus, "by imposing certain types of sanctions, the Court can prevent frustration of the discovery process by giving the frustrated party or parties the benefit of an inference that the deposition would have yielded evidence favorable to its position—or at least unfavorable to that defendant." *See In re ClassicStar Mare Lease Litig.*, (multiple Civ. Action Nos.) 2012 WL 1190888 (E.D. Ky. Apr. 9, 2012). Ultimately, "[s]election of a particular sanction for discovery abuses under NRCP 37 is generally a matter committed to the sound discretion of the district court." *Stubli v. Big D Int'l Trucks, Inc.*, 107 Nev. 309, 312, 810 P.2d 785, 787 (1991); *see also GNLV Corp.*, 111 Nev. at 866, 900 P.2d at 325 (noting the decision to impose discovery sanctions is "within the power of the district court and the [Nevada Supreme Court] will not reverse the particular sanctions imposed absent a showing of abuse of discretion.")

LVSC and Sands China have successfully sabotaged Jacobs' prosecution of this action and have ground this case to a virtual standstill. They have done this by successfully exploiting the merits stay pending what was to be a prompt resolution of the jurisdictional question as to Sands China. Yet, they have ensured that there is no resolution of the jurisdictional question by obstructing discovery, concealing the existence of evidence, and flatly failing to conduct any search for information in Macau. These Defendants cannot be allowed to continue to profit from their intentional noncompliance and obstruction. The only way to deprive LVSC and Sands China of the benefits of their improper tactics is to strike Sands China's defense of personal jurisdiction, impose substantive and adverse inferences from their intentional failure to produce documents, and allow Jacobs to proceed with the merits of his case. Anything short of this results in a reward for LVSC's and Sands China's ongoing disregard of this Court's orders.

1 ***1. Sands China can no longer be allowed to contest jurisdiction and profit***
2 ***from its misconduct.***

3 Considering Sands China's knowing participation in the deception of this Court as well as
4 its recent admissions that it has yet to even begin searching documents in Macau, a finding of
5 personal jurisdiction over Sands China is a minimal sanction to be imposed. Instructive is
6 *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxities de Guinee*, 456 U.S. 694 (1982).
7 There, a plaintiff filed suit against several foreign insurance companies for indemnification. A
8 group of defendants objected, claiming the federal court did not have personal jurisdiction over
9 them. The court then authorized discovery to determine whether the defendants had sufficient
10 minimum contacts with the forum to establish personal jurisdiction.

11 Despite claiming lack of personal jurisdiction, and thus giving rise to the need for
12 jurisdictional discovery, the defendants made no real efforts to participate in the jurisdictional
13 discovery. First, they objected to the plaintiff's discovery requests. Then, after the district court
14 overruled their objections, the defendants failed to produce or even identify documents responsive
15 to the plaintiff's discovery requests. Finally, after several admonitions and orders from the court,
16 the defendants made approximately four-million documents available to the plaintiff at their
17 offices in London, England. Not amused, the court warned the defendants that if they did not
18 produce their documents to the plaintiff within 60 days, "[it was] going to assume, under Rule of
19 Civil Procedure 37(b), subsection 2(A), that there is jurisdiction." *Id.* at 699. Then, after 60 days
20 passed without production, the court imposed the threatened sanction, finding that "for the
21 purpose of this litigation the [defendants] are subject to the *in personam* jurisdiction of [that]
22 court due to their business contacts with [that forum state]." *Id.*

23 On appeal, the Third Circuit affirmed the jurisdictional holding, "relying entirely upon the
24 validity of the sanction." *Id.* at 701. The United States Supreme Court's analysis was more
25 extensive. As a starting point, the Court noted that "[b]ecause the requirement of personal
26 jurisdiction represents first of all an individual right, it can, like other such rights, be waived."
27 *Id.* at 703. According to the Court, "[t]he expression of legal rights is often subject to certain
28 procedural rules: The failure to follow those rules may well result in a curtailment of those
rights." *Id.* at 704. For instance, "the failure to enter a timely objection to personal jurisdiction

1 constitutes, under Rule 12(h)(1), a waiver of the objection." *Id.* at 705. "A sanction under
2 Rule 37(b)(2)(A) consisting of a finding of personal jurisdiction has precisely the same effect
3 [and] creates no more of a due process problem than a Rule 12 waiver." *Id.*

4 The Court then expounded, "Rule 37(b)(2) contains two standards – one general and one
5 specific." *Id.* at 707. "First, any sanction must be 'just'; second, the sanction must be specifically
6 related to the particular 'claim' which was at issue in the order to provide discovery." *Id.*

7 Turning to the facts of that case, the Court found that the district court's sanction was
8 "just." In particular, the Court explained that the defendants had repeatedly refused to produce
9 documents to the plaintiff, despite being ordered to do so by the district court. The Court also
10 considered other factors of "justness," such as the fact that the defendants agreed to comply with
11 the court orders but did not, the fact that the court found as alternative grounds that personal
12 jurisdiction did exist over the defendants, and the fact that the district warned the defendants that
13 such a sanction would issue but for the defendants' participation in jurisdictional discovery.

14 On the second standard, the Court found that the sanction was specifically related to the
15 claim at issue in the discovery order. Specifically, the Court explained:

16 [The plaintiff] was seeking through discovery to respond to [the
17 defendants'] contention that the [d]istrict [c]ourt did not have
18 personal jurisdiction. Having put the issue in question, [the
19 defendants] did not have the option of blocking the reasonable
20 attempt of [the plaintiff] to meet its burden of proof.

21 *Id.* at 708–09. The Court explained:

22 Because of [the defendants'] failure to comply with the discovery
23 orders, [the plaintiff] was unable to establish the full extent of the
24 contacts between [the defendants] and [the forum state], the critical
25 issue in proving personal jurisdiction. [The defendants'] failure to
26 supply the requested information as to its contacts with [the forum
27 state] supports "the presumption that the refusal to produce
28 evidence was but an admission of the want of merit in the asserted
defense.

Id. at 709.

26 Ultimately, the Court concluded that the district court was justified when it "took as
27 established the facts – contacts with the forum state – that the plaintiff was seeking to establish
28 through discovery." *Id.* According to the Court, the fact "[t]hat a particular legal consequence –

1 personal jurisdiction of the court of the defendants – follow[ed] from this, [did] not in any way
2 affect the appropriateness of the sanction." *Id.*

3 In another case, relying on the legal authority of *Insurance Corp. of Ireland*, a federal
4 district court struck a defendant's defenses of lack of personal jurisdiction and forum non
5 conveniens. *Bayoil, S.A. v. Polembros Shipping Ltd.*, 196 F.R.D. 479 (S.D.Tx. 2000). In that
6 case, the plaintiff sought sanctions because "documents were not produced and [defendants] lied."
7 *Id.* at 481. The court granted plaintiff's motion and struck the defenses of lack of personal
8 jurisdiction and forum non conveniens as defendants "have engaged in a pattern of obfuscatory,
9 misleading, and untruthful conduct." *Id.* at 483.

10 The instant case mirrors *Insurance Corp. of Ireland* in many ways. First, like the
11 defendants in that case, Sands China objected to the Court's personal jurisdiction, thereby
12 requiring Jacobs to conduct jurisdictional discovery. Then, despite being the reason for the
13 jurisdictional discovery, it failed to produce documents to Jacobs that would likely establish the
14 Court's personal jurisdiction over the company. In truth, the conduct here is even more egregious.
15 Sands China and its parent (LVSC) falsely told this Court that they could not produce, or even
16 review documents in the United States despite that fact that they had clandestinely been reviewing
17 these documents all along. Defendants also represented to the Court they had complied with their
18 discovery obligations, knowing full well that they had knowingly concealed the existence of
19 evidence in the United States and have not even reviewed documents in Macau. In other words,
20 whereas the defendants in *Insurance Corp. of Ireland* simply refused to obey the district court's
21 discovery orders, Sands China and LVSC affirmatively misled the Court regarding their
22 noncompliance.

23 Also, just like in *Insurance Corp. of Ireland*, there are separate, evidentiary grounds
24 establishing this Court's personal jurisdiction over Sands China. That is, in April 2011, the
25 directors and executives of LVSC held a meeting in Las Vegas to consider Sands China'
26 attorneys' advice that the MDPA prevented Sands China from producing documents in the United
27 States. (See Ex. 6, Dep. Tr. of Manjit Singh, 91:1-93:15, 219:2-220:5; Ex. 5, Hr'g Tr., Sept. 12,
28

1 2012, 106:14-108:7.) As a result of that meeting, LVSC implemented a new corporate policy
2 forbidding the transfer of information out of Macau. From this, the Court concluded:

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

6 (Ex. 7, Decision and Order ¶ 29.) Stated differently, the Court has already determined that LVSC
7 directed Sands China not to produce any documents from Macau in order to prevent the
8 disclosure of Jacobs' information in this case. (*See id.*) This demonstration of LVSC's control
9 over Sands China, in and of itself, establishes the Court's personal jurisdiction over Sands China.²
10 *See Hosp. Corp. of Am. v. Second Jud. Dist. Ct. In & For Cnty. of Washoe*, 112 Nev. 1159, 1160,
11 924 P.2d 725 (1996) (noting that "evidence of agency or control by the parent corporation[]" may
12 establish personal jurisdiction over subsidiary corporations).

13 As in the case of *Bayoil, S.A.*, LVSC and Sands China have engaged in "a pattern of
14 obfuscatory, misleading, and untruthful conduct." So, because of their misrepresentations, this
15 Court did not even know the magnitude of their deception and discovery abuses. Due to
16 Defendants' egregious discovery abuses, Jacobs is entitled to findings establishing personal
17 jurisdiction.

18 **2. The Court should also impose additional evidentiary sanctions against**
19 **LVSC and Sands China for their fraud.**

20 Nor can LVSC be allowed to deflect responsibility for the ongoing obstruction by
21 claiming that Sands China is in control of the documents in Macau. As this Court knows from the
22 very commencement of this case, just as soon as LVSC's executives in Las Vegas wanted
23 documents from Macau, they were transported to Las Vegas without restriction. It is LVSC's
24

25 ² Moreover, Defendants' counsel testified that it was his intention that *LVSC*, not
26 *Sands China*, would produce the data in Las Vegas originating from Macau once they had
27 resolved the purported issue with the Macau Data Privacy Act. (Ex. 8, Hr'g Tr., Sept. 11,
28 2012, 145:23-146:12.) Sands China's former counsel testified that as of June 2011, she
understood LVSC's counsel was reviewing documents in connection with LVSC's production of
documents in LVSC's possession in Las Vegas but that Sands China was not producing
documents as they were in Macau. (*Id.* at 51:15-52:4.)

1 executives that have controlled these obstructionist activities and repeated noncompliance, which
2 is the point of Jacobs' request for an evidentiary hearing and limited discovery relating to such a
3 hearing. With it, Jacobs will establish that it is LVSC that has directed and controlled the deceit
4 against this Court and purposeful noncompliance with discovery. At the evidentiary hearing,
5 Jacobs will show his entitlement to additional substantive evidentiary sanctions and inferences
6 that this Court should impose to deprive LVSC of the benefits of its oversight of the
7 noncompliance and purposeful delay.

8 **3. *Jacobs is also entitled to an additional award of fees and costs.***

9 As this Court can well imagine, Jacobs has incurred significant attorneys' fees and costs
10 associated with the constant delays which LVSC and Sands China have engendered through their
11 noncompliance. These fees and costs are in addition to those previously awarded by this Court
12 relative to the sanctions hearing. Because LVSC and Sands China have necessitated the bringing
13 of this Motion, Jacobs is entitled to an award of further fees and costs pursuant to NRCP 37 and
14 will ask this Court for an award of those amounts at the close of the requested evidentiary hearing
15 on sanctions.

16 **III. CONCLUSION**

17 Jacobs requests this Court enter findings establishing personal jurisdiction over Sands
18 China. Both Sands China and LVSC have profited long enough by their intentional
19 noncompliance. Additionally, this Court must impose further evidentiary sanctions relative to the
20 Defendants' involvement in this sham. Otherwise, LVSC and Sands China will be rewarded for
21 their misconduct, including the fact that they have profited by their near permanent delaying of
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Jacobs' case. Finally, Jacobs is entitled to an additional reward of attorneys' fees and costs incurred in bringing this motion.

DATED this 21st day of November, 2012.

PISANELLI BICE PLLC

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

Attorneys for Plaintiff Steven C. Jacobs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 21st day of November, 2012, 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 NRCP 37 SANCTIONS** properly addressed to the following:

J. Stephen Peek, Esq.
HOLLAND & HART
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134
speek@hollandhart.com

J. Randall Jones, Esq.
Mark M. Jones, Esq.
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m.jones@kempjones.com

/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC

EXHIBIT 10

EXHIBIT 10

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.

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,

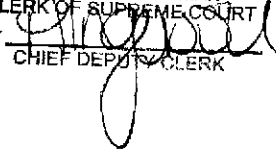
and

STEVEN C. JACOBS,
Real Party in Interest.

No. 62944

FILED

AUG 07 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

Original petition for a writ of prohibition or mandamus challenging a district court order finding that petitioners violated a discovery order and scheduling an evidentiary hearing to determine appropriate sanctions.

Petition denied.

Morris Law Group and Steve L. Morris and Rosa Solis-Rainey, Las Vegas; Kemp, Jones & Coulthard, LLP, and J. Randall Jones and Mark M. Jones, Las Vegas; Holland & Hart LLP and J. Stephen Peek and Robert J. Cassity, Las Vegas,
for Petitioners.

Pisanelli Bice PLLC and Todd L. Bice, James J. Pisanelli, and Debra L. Spinelli, Las Vegas,
for Real Party in Interest.

BEFORE THE COURT EN BANC.¹

OPINION

By the Court, GIBBONS, C.J.:

In this opinion, we consider whether a Nevada district court may properly issue a discovery order that compels a litigant to violate a foreign international privacy statute. We conclude that the mere existence of an applicable foreign international privacy statute does not itself preclude Nevada district courts from ordering foreign parties to comply with Nevada discovery rules. Thus, civil litigants may not utilize foreign international privacy statutes as a shield to excuse their compliance with discovery obligations in Nevada courts. Rather, the existence of an international privacy statute is relevant to a district court's sanctions analysis if the court's discovery order is disobeyed. Here, the district court properly employed this framework when it found that the existence of a foreign international privacy statute did not excuse petitioners from complying with the district court's discovery order. And because the district court has not yet held the hearing to determine if, and the extent to which, sanctions may be warranted, our intervention at this juncture would be inappropriate. We therefore deny this writ petition.

¹The Honorable Kristina Pickering and the Honorable Ron Parraguirre, Justices, voluntarily recused themselves from participation in the decision of this matter.

FACTS AND PROCEDURAL HISTORY

This matter arises out of real party in interest Steven C. Jacobs's termination as president and chief executive officer of petitioner Sands China. After his termination, Jacobs filed a complaint against petitioners Las Vegas Sands Corp. (LVSC) and Sands China Ltd., as well as nonparty to this writ petition, Sheldon Adelson, the chief executive officer of LVSC (collectively, Sands). Jacobs alleged that Sands breached his employment contract by refusing to award him promised stock options, among other things.

Almost three years ago, this court granted a petition for a writ of mandamus filed by Sands China and directed the district court to hold an evidentiary hearing and issue findings as to whether Sands China is subject to personal jurisdiction in Nevada. *See Sands China Ltd. v. Eighth Judicial Dist. Court*, Docket No. 58294 (Order Granting Petition for Writ of Mandamus, August 26, 2011). Due to a string of jurisdictional discovery disputes that have arisen since that order was issued, the district court has yet to hold the hearing.

Throughout jurisdictional discovery, Sands China has maintained that it cannot disclose any documents containing personal information that are located in Macau due to restrictions within the Macau Personal Data Protection Act (MPDPA). Approximately 11 months into jurisdictional discovery, however, Sands disclosed for the first time that, notwithstanding the MPDPA's prohibitions, a large number of documents contained on hard drives used by Jacobs and copies of Jacobs's emails had been transported from Sands China in Macau to LVSC in the

United States.² In response to Sands's revelation, the district court sua sponte ordered a sanctions hearing. Based on testimony at that hearing, the district court determined that the transferred documents were knowingly transferred to LVSC's in-house counsel in Las Vegas and that the data was then placed on a server at LVSC's Las Vegas property. The district court also found that both in-house and outside counsel were aware of the existence of the transferred documents but had been concealing the transfer from the district court.

Based on these findings, the district court found that Sands's failure to disclose the transferred documents was "repetitive and abusive," deliberate, done in order to stall jurisdictional discovery, and led to unnecessary motion practice and a multitude of needless hearings. The district court issued an order in September 2012 that, among other things, precluded Sands from raising the MPDPA "as an objection or as a defense to admission, disclosure or production of any documents." Sands did not challenge this sanctions order in this court.

Subsequently, Sands filed a report detailing its Macau-related document production. Sands's report indicated that, with respect to all of the documents that it had produced from Macau, it had redacted personal data contained in the documents based on MPDPA restrictions prior to providing the documents to Jacobs. In response to Sands's redactions

²Sands stated that the presence of the documents in the United States was not disclosed at an earlier time because the documents were brought to the United States mistakenly, and Sands had been seeking guidance from the Macau authorities on whether they could be disclosed under the MPDPA.

based on the MPDPA, Jacobs moved for NRCP 37 sanctions, arguing that Sands had violated the district court's September 2012 order.

The district court held a hearing on Jacobs's motion for sanctions, at which the court stated that the redactions appeared to violate the September 2012 order. In its defense, Sands argued that the September 2012 order had prohibited it from raising the MPDPA as an objection or defense to "admission, disclosure or production" of documents, but not as a basis for *redacting* documents. The district court disagreed with Sands's interpretation of the sanctions order, noting:

I certainly understand [the Macau government has] raised issues with you. But as a sanction for the inappropriate conduct that's happened in this case, in this case you've lost the ability to use that as a defense. I know that there may be some balancing that I do when I'm looking at appropriate sanctions under the Rule 37 standard as to why your client may have chosen to use that method to violate my order. And I'll balance that and I'll look at it and I'll consider those issues.

Based on the above findings, the district court entered an order concluding that Jacobs had "made a prima facie showing as to a violation of [the district] [c]ourt's orders which warrants an evidentiary hearing" regarding whether and the extent to which NRCP 37 sanctions were warranted. The district court set an evidentiary hearing, but before this hearing was held, Sands filed this writ petition, asking that this court direct the district court to vacate its order setting the evidentiary hearing.

DISCUSSION

A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion. *Aspen Fin. Servs., Inc. v. Eighth Judicial Dist.*

Court, 128 Nev. ___, ___, 289 P.3d 201, 204 (2012). A writ of prohibition may be warranted when the district court exceeds its jurisdiction. *Id.* Although a writ of prohibition is a more appropriate remedy for the prevention of improper discovery, writ relief is generally unavailable to review discovery orders. *Id.*; see also *Valley Health Sys., L.L.C. v. Eighth Judicial Dist. Court*, 127 Nev. ___, ___, 252 P.3d 676, 679 (2011) (providing that exceptions to this general rule exist when (1) the trial court issues a blanket discovery order without regard to relevance, or (2) a discovery order requires disclosure of privileged information). Nevertheless, “in certain cases, consideration of a writ petition raising a discovery issue may be appropriate if an important issue of law needs clarification and public policy is served by this court’s invocation of its original jurisdiction” *Aspen Fin. Servs., Inc. v. Eighth Judicial Dist. Court*, 129 Nev. ___, ___, 313 P.3d 875, 878 (2013) (internal quotation marks omitted). “The burden is on the petitioner to demonstrate that extraordinary relief is warranted.” *Valley Health*, 127 Nev. at ___, 252 P.3d at 678.

In its writ petition, Sands argues generally that this court’s intervention is warranted because the district court has improperly subjected Sands to discovery sanctions based solely on Sands’s attempts to comply with the MPDPA. Sands has not persuasively argued that either of this court’s two generally recognized exceptions for entertaining a writ petition challenging a discovery order apply. See *Valley Health*, 127 Nev. at ___, 252 P.3d at 679. Nevertheless, the question of whether a Nevada district court may effectively force a litigant to choose between violating a discovery order or a foreign privacy statute raises public policy concerns and presents an important issue of law that has relevance beyond the

parties to the underlying litigation and cannot be adequately addressed on appeal. Therefore, we elect to entertain the petition. See *Aspen Fin. Servs.*, 129 Nev. at ___, 313 P.3d at 878.

Foreign international privacy statutes cannot be used by litigants to circumvent Nevada discovery rules, but should be considered in a district court's sanctions analysis

The intersection between Nevada discovery rules and international privacy laws is an issue of first impression in Nevada. The Nevada Rules of Civil Procedure authorize parties to discover any nonprivileged evidence that is relevant to any claims or defenses at issue in a given action. NRCP 26(b)(1). On the other hand, many foreign nations have created nondisclosure laws that prohibit international entities from producing various types of documents in litigation. See generally Note, *Foreign Nondisclosure Laws and Domestic Discovery Orders in Antitrust Litigation*, 88 Yale L.J. 612 (1979).

The United States Supreme Court has evaluated the intersection between these two competing interests and determined that such a privacy statute does not, by itself, excuse a party from complying with a discovery order. See *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court*, 482 U.S. 522, 544 n.29 (1987) ("It is well settled that such statutes do not deprive an American court of the power to order a party subject to its jurisdiction to produce evidence even though the act of production may violate that statute." (citing *Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers*, 357 U.S. 197, 204-06 (1958))). Generally, courts in similar situations have considered a variety of factors, including (1) "the importance to the investigation or litigation of the documents or other information requested"; (2) "the degree of specificity of the request"; (3) "whether the information originated in the

United States”; (4) “the availability of alternative means of securing the information”; and (5) “the extent to which noncompliance with the request would undermine important interests of the United States, or compliance with the request would undermine important interests of the state where the information is located.” Restatement (Third) of Foreign Relations Law § 442(1)(c) (1987); *see also Linde v. Arab Bank, PLC*, 269 F.R.D. 186, 193 (E.D.N.Y. 2010). But there is some disagreement as to when courts should evaluate such factors.

Some jurisdictions, including the United States Court of Appeals for the Second Circuit, generally evaluate these factors both when deciding whether to issue an order compelling production of documents located in a foreign nation and when issuing sanctions for noncompliance of that order. *Linde*, 269 F.R.D. at 196.³

The United States Court of Appeals for the Tenth Circuit has espoused an approach in which a court’s analysis of the foreign law issue is only relevant to the imposition of sanctions for a party’s disobedience, and not in evaluating whether to issue the discovery order. *Arthur Andersen & Co. v. Finesilver*, 546 F.2d 338, 341-42 (10th Cir. 1976). The Tenth Circuit noted that in *Societe Internationale*, the Supreme Court

³Even within the Second Circuit, there is some uncertainty as to when a court should apply these factors. *See In re Parmalat Sec. Litig.*, 239 F.R.D. 361, 362 (S.D.N.Y. 2006) (“[T]he modern trend holds that the mere existence of foreign blocking statutes does not prevent a U.S. court from ordering discovery although it may be more important to the question of sanctions in the event that a discovery order is disobeyed by reason of a blocking statute.” (quoting *In re Auction Houses Antitrust Litig.*, 196 F.R.D. 444, 446 (S.D.N.Y. 2000))).

stated that a party's reasons for failing to comply with a production order "can hardly affect the fact of noncompliance and are relevant only to the path which the [d]istrict [c]ourt might follow in dealing with [the party's] failure to comply." *Id.* at 341 (quoting *Societe Internationale*, 357 U.S. at 208). Based on this language, the Tenth Circuit determined that a court should only consider the foreign privacy law when determining if sanctions are appropriate. *Id.*; see also Wright, *Discovery*, 35 F.R.D. 39, 81 (1964) ("The effect of those laws is considered in determining what sanction to impose for noncompliance with the order, rather than regarded as a reason for refusing to order production").

In our view, the Tenth Circuit's approach is more in line with Supreme Court precedent.⁴ See, e.g., *Arthur Andersen*, 546 F.2d at 341-42; *In re Westinghouse Elec. Corp. Uranium Contracts Litig.*, 563 F.2d 992, 997 (10th Cir. 1977); Timothy G. Smith, Note, *Discovery of Documents Located Abroad in U.S. Antitrust Litigation: Recent Developments in the Law Concerning the Foreign Illegality Excuse for Non-Production*, 14 Va. J. Int'l L., 747, 753 (1974) (noting that Second Circuit cases failed to observe the Supreme Court's distinction between a court's power to compel discovery and the appropriate sanctions if a party failed to comply). We

⁴That is not to say that Nevada courts should never consider a foreign privacy statute in issuing a discovery order. Certainly, a district court has wide discretion to consider a number of factors in deciding whether to limit discovery that is either unduly burdensome or obtainable from some other sources. NRCP 26(b)(2). Thus, it would be well within the district court's discretion to account for such a foreign law in its analysis, but we decline to adopt the Second Circuit's requirement of a full multifactor analysis in ordering the production of such documents.

are persuaded by the Tenth Circuit's approach, and conclude that the mere presence of a foreign international privacy statute itself does not preclude Nevada courts from ordering foreign parties to comply with Nevada discovery rules. Rather, the existence of an international privacy statute is relevant to the district court's sanctions analysis in the event that its order is disobeyed. *Arthur Andersen*, 546 F.2d at 341-42.

Here, Sands argues that the district court never purported to balance any of the relevant factors before concluding that its MPDPA redactions were sanctionable. But in our view, the district court has yet to have that opportunity. The district court has properly indicated that it would "balance" Sands's desire to comply with the MPDPA with other factors at the yet-to-be-held sanctions hearing. Thus, Sands has not satisfied its burden of demonstrating that the district court exceeded its jurisdiction or arbitrarily or capriciously exercised its discretion. *Aspen Fin. Servs.*, 128 Nev. at ___, 289 P.3d at 204; *Valley Health*, 127 Nev. at ___, 252 P.3d at 678. Because we are confident that the district court will evaluate the relevant factors noted above in determining what sanctions, if any, are appropriate when it eventually holds the evidentiary hearing, we decline to preempt the district court's consideration of these issues by entertaining the additional arguments raised in Sands's writ petition.⁵

⁵The majority of Sands's briefing argues that the district court improperly (1) ordered discovery of documents that had no relevance to the issue of personal jurisdiction, and (2) concluded that Sands violated the technical wording of the September 2012 sanctions order. Although this first contention arguably falls within *Valley Health's* first exception, see 127 Nev. at ___, 252 P.3d at 679, the documentation accompanying Sands's writ petition does not clearly support the contention. *Id.* at ___,
continued on next page . . .


CONCLUSION

Having considered the parties' filings and the attached documents, we conclude that our intervention by extraordinary relief is not warranted. Specifically, we conclude that the mere presence of a foreign international privacy statute does not itself preclude Nevada district courts from ordering litigants to comply with Nevada discovery rules. Rather, the existence of such a statute becomes relevant to the district court's sanctions analysis in the event that its discovery order is disobeyed. Here, to the extent that the challenged order declined to excuse petitioners for their noncompliance with the district court's previous order, the district court did not act in excess of its jurisdiction or arbitrarily or capriciously. And because the district court properly indicated that it intended to "balance" Sands's desire to comply with the foreign privacy law in determining whether discovery sanctions are warranted, our intervention at this time would inappropriately preempt


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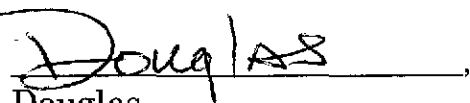
252 P.3d at 678 ("The burden is on the petitioner to demonstrate that extraordinary relief is warranted."). In fact, the district court specifically noted that Sands may withhold all documents that were only relevant to merits discovery and thus irrelevant to the district court's jurisdiction over Sands China. Sands's second contention does not fall within either of *Valley Health's* two exceptions, and Sands does not argue otherwise. *Id.* at ___, 252 P.3d at 679. Further, neither issue raises public policy concerns or presents an important issue of law that has relevance beyond the parties to the underlying litigation. *Aspen Fin. Servs.*, 129 Nev. at ___, 313 P.3d at 878. As a result, we decline to entertain Sands's remaining arguments.


the district court's planned hearing. As a result, we deny Sands's petition for a writ of prohibition or mandamus.


Gibbons C.J.

We concur:


Hardesty J.


Douglas J.


Saitta J.

CHERRY, J., concurring in the result:

I agree with the majority that our intervention by extraordinary relief is not warranted at this time. However, I do not believe that a lengthy opinion by four members of this court on the conduct leading up to the sanctions hearing, or on the factors that the district court should consider when exercising its discretion in imposing future sanctions, is necessary or appropriate at this juncture of this case, when a thorough and fact-finding evidentiary hearing has not yet been conducted by the district court.

It is premature for this court to anticipate, project, or predict the totality of findings that the district court may make after the conclusion of any evidentiary hearing. At such time as findings of fact and conclusions of law are finalized by the district court, then—and only then—should an appropriate disposition be rendered in the form of a published opinion and made public.

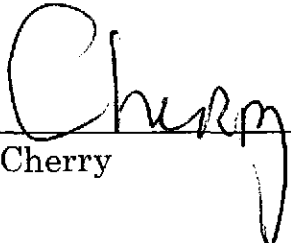
 J.
Cherry

EXHIBIT 9

EXHIBIT 9

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants
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CASE NO. A-627691

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING RE MOTION FOR SANCTIONS - DAY 5

MONDAY, MARCH 2, 2015

APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.
TODD BICE, ESQ.
DEBRA L. SPINELLI, ESQ.
JORDAN T. SMITH, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
JON RANDALL JONES, ESQ.
IAN P. MCGINN, ESQ.
STEVE L. MORRIS, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 MR. SMITH: Plaintiff's.
2 THE CLERK: 216.
3 MR. SMITH: Thank you.
4 THE COURT: Oh, wow. So you are stipulating to
5 the admission of 216 and 355 through 375, along with any A
6 numbers necessary?
7 MR. MCGINN: 374.
8 THE COURT: 374. Is that accurate? I heard a yes
9 from both sides. Yes, Judge, that's great.
10 MR. SMITH: Yes, Judge, that's great.
11 THE COURT: Okay. Any additional stipulations that
12 you want to give me?
13 MR. RANDALL JONES: I, again just gave something to
14 Mr. Bice that he hasn't had a chance to look at. If he will
15 stipulate to the admission of these documents as replacement
16 documents, then I won't have to file this motion.
17 MR. BICE: No, they're going to have to file --
18 this is a motion to strike, as I understand it.
19 MR. RANDALL JONES: Well, I'll withdraw the motion
20 to strike.
21 MR. BICE: Okay.
22 MR. RANDALL JONES: The exhibits can stay in. I
23 don't have a problem with that. But I just want -- I want
24 agreement that the replacement documents be admitted.
25 THE COURT: How about you guys talk about that

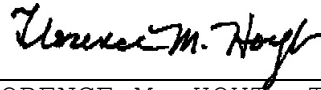
CERTIFICATION

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

A handwritten signature in black ink, appearing to read "Florence M. Hoyt", written in a cursive style.

FLORENCE M. HOYT, TRANSCRIBER

DATE RECEIVED	SCL NO.	BATES RANGE	# OF DOCS PRODUCED**
1/2/2013	SCL003 and SCL004	SCL003: SCL00100101-320 SCL004: SCL00100321-1823	371
1/4/2013	SCL005, SCL006, SCL007	SCL005: SCL00101824-109852 SCL006: SCL00109853-118707 SCL007: SCL00118708-123989	4336
1/7/2013	SCL008	SCL00123990-127419	488
1/11/2013	SCL009	SCL00127420-128007	41
1/14/2013	SCL010	SCL00128008-128229	48
1/23/2013	SCL011	SCL00128230-129928	181
1/25/2013	Repl Prod01	Various Bates Nos. between: SCL00101824-110285	517
1/28/2013	SCL012 and SCL013	SCL012: SCL00129929-130740 SCL013: SCL00130741-131854	208
1/29/2013	Repl Prod02	Various Bates Nos. between: SCL00100321-130178	369
2/6/2013	Repl Prod03	Various Bates Nos. between: SCL00100101-131708	1330
2/25/2013	Repl Prod04 & Repl Prod05	04 - Various Bates Nos. between: SCL00100577- 126993 05 - SCL00101779; 101795; 101799; 101801-02	91
2/25/2013	SCL Suppl. Prod01	Various Bates #'s Additional context for redacted documents	109
4/12/2013	SCL014	SCL00131855-145644	1733
4/12/2013	Repl Prod06	Various Bates Nos. between: SCL00100846-126903	10
6/27/2013	SCL015	SCL00145645-171053	2394
8/20/2013	SCL016	SCL00171054-171077	12
11/14/2014	SCL017	SCL00171078-171194	22
11/14/2014	Repl Prod07	Various Bates Nos. between: SCL00100105-131739	1206
1/6/2015	SCL018	SCL00171195-213678	7626
1/23/2015	Repl Prod08	Various Bates Nos. between: SCL00171769-213649	569

** The parties agree that at least 7,904 documents produced by SCL still contain redactions pursuant to the MPDPA.

EXHIBIT 8

EXHIBIT 8

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

EVIDENTIARY HEARING RE MOTION FOR SANCTIONS - DAY 2

TUESDAY, FEBRUARY 10, 2015

APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.
TODD BICE, ESQ.
DEBRA L. SPINELLI, ESQ.
JORDAN T. SMITH, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
JON RANDALL JONES, ESQ.
MARK JONES, ESQ.
IAN P. MCGINN, ESQ.
STEVE L. MORRIS, ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 this process.

2 Q So during both the initial engagement work where we
3 were doing the hash code comparisons to find documents in the
4 U.S. and in the second phase where we were finding other
5 documents that were candidate duplicates we were supporting
6 that work in the United States, as well. So the process in
7 the second iteration is that we would provide the metadata --
8 we brought the metadata to Macau so we could do the searches.
9 We found the candidate duplicates. Although we couldn't look
10 at Macau documents in the United States from the United
11 States, we could look at documents in the United States from
12 Macau. So we set up a connection from our systems in Macau to
13 the U.S. systems so that the documents in Macau could be
14 reviewed by Macau attorneys who could also then look at the
15 candidate document in the United States and determine if it
16 was in fact a duplicate. And once they had tagged those
17 documents as being actual duplicates the document identifiers
18 were then sent back to the United States so that those
19 documents in the United States could be produced here in the
20 United States.

21 Q So then in connection with that process do you know
22 the total number of documents that were ultimately searched in
23 order to try to find all available duplicates?

24 A So we were instructed to use any and all means
25 available to us and any and all data available to us to

1 attempt to find duplicates, so we ultimately searched
2 approximately three and a half terabytes of data, about
3 24 million documents, trying to find duplicates of the
4 documents from Macau.

5 Q All right. In connection with this effort that
6 you've just described to Judge Gonzalez how much was the total
7 bill that FTI charged VML or Venetian Macau Limited?

8 MR. PISANELLI: Objection, Your Honor. Lack of
9 foundation. It sounds like a best evidence rule. The bills
10 would be the best way to see what was charged.

11 THE COURT: Overruled.

12 THE WITNESS: The total on the VML engagement to
13 date is about 2.4 million.

14 BY MR. RANDALL JONES:

15 Q And why would you know that number? Are you
16 involved in the billing process?

17 A As the managing director I review some of the bills
18 and I approve all the scope of work. So I'm required to keep
19 track of the total billing.

20 Q All right. Do you know what Las Vegas Sands has
21 been charged as a total bill to date as a result of the
22 searches that have been performed on the Las Vegas Sands
23 documents for the Jacobs case?

24 A So I need to clarify. The work that was done for
25 the VML engagement to find duplicate documents was charged to

1 reviewed, this is how many documents have been tagged a
2 certain way, and these are the documents we propose to
3 produce, this list of documents.

4 Q Do you know those numbers, how many reviewed?

5 A I do not know the exact numbers. About 70,000
6 documents were keyed up for review ultimately.

7 Q How many tagged as relevant?

8 A I believe about 15,000 were tagged as relevant.

9 Q d how many redacted?

10 A It's a complex question, because there were
11 redactions that were then matched to documents in the U.S. and
12 actually were produced redacted. I don't recall the exact
13 number, about 25 percent of the total.

14 Q And that's not my question. You anticipated where I
15 was going, and it was a vague question. Of the documents that
16 were hit or tagged as relevant, pre replacement, how many of
17 those documents were redacted? 15,000 or so were relevant,
18 how many redacted?

19 A So in the work flow during the identification of the
20 documents to be cued up for a review, the initial selection,
21 that was the point where we did the hash code analysis and
22 transmitted the hash codes to the United States so the
23 documents could be reviewed in the United States. Any
24 document that was reviewed in the United States was not
25 reviewed in Macau. So they was have been removed from the

1 population in Macau completely. They would have been reviewed
2 and produced here.

3 Q So the 15,000 number are only documents reviewed in
4 Macau?

5 A My understanding is it was about 15,000 total
6 documents were produced either from the United States in the
7 first iteration by hash code in the United States in the
8 second iteration by duplicate matching or out of Macau with
9 redaction.

10 Q All right. With that whole process pre replacement
11 exercise, how many documents were redacted?

12 MR. RANDALL JONES: And, counsel, could you just
13 define re-replacement and what you mean by that. I'm just not
14 sure I'm following.

15 BY MR. PISANELLI:

16 Q Do you know what I mean by that?

17 A I believe that you mean the second iteration where
18 we did the more extensive duplicate match.

19 Q Sure. And then counsel's objection therefore is
20 well founded.

21 MR. RANDALL JONES: I'm going to object --

22 THE COURT: Could you explain. The objection is
23 sustained.

24 MR. PISANELLI: I sustained, as well. Being vague
25 since the witness didn't know what I was talking about.

1 MR. PISANELLI: Maybe we should plan on closing on
2 Thursday morning.

3 THE COURT: Yes.

4 MR. PEEK: We're just trying to be realistic, Your
5 Honor.

6 MR. BICE: Are there going to be any other
7 witnesses?

8 MR. PEEK: I wasn't trying to be cute with the
9 remark of two hours.

10 THE COURT: No. I mean, Mr. Peek, you're absolutely
11 right. And I appreciate you bringing it to my attention how
12 poor at managing your time I am. I try so hard to let you
13 guys be efficient, and I fail miserably every time you're
14 here.

15 MR. PEEK: I have no criticism of the Court, Your
16 Honor. I may not like your decisions all the time, but I have
17 no criticism of the rest of it.

18 THE COURT: My work ethic's not a problem for you.

19 MR. PEEK: Your work ethic is not an issue, Your
20 Honor.

21 THE COURT: Anything else? Goodnight. 1:00 p.m.
22 tomorrow.

23 (Court recessed at 5:30 p.m., until the following day,
24 Wednesday, February 11, 2015, at 1:00 p.m.)

25 * * * * *

CERTIFICATION

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

AFFIRMATION

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

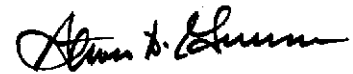
FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

EXHIBIT 7

EXHIBIT 7



CLERK OF THE COURT

1 ORDER

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4 STEVEN C. JACOBS,

5 Plaintiff,

6 v.

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

11 Defendants.

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

**ORDER REGARDING PLAINTIFF
STEVEN C. JACOBS' RENEWED
MOTION FOR NRCP 37 SANCTIONS
ON ORDER SHORTENING TIME**

Date: February 28, 2013

Time: 10:00 a.m.

12 AND ALL RELATED MATTERS.

13
14 Presently before this Court is Steven C. Jacobs' Renewed Motion for NRCP 37
15 Sanctions on Order Shortening Time ("Renewed Motion"). James J. Pisanelli, Esq. and Todd
16 L. Bice, Esq. of the law firm PISANELLI BICE PLLC, appeared on behalf of Plaintiff Steven
17 C. Jacobs ("Jacobs"). J. Stephen Peek, Esq., of the law firm Holland & Hart LLP, appeared on
18 behalf of Defendants Las Vegas Sands Corp. ("LVSC") and Sands China Ltd. ("Sands
19 China"). J. Randall Jones, Esq. and Mark M. Jones, Esq., of the law firm Kemp Jones &
20 Coulthard, LLP, and Michael E. Lackey, Jr., of the law firm Mayer Brown LLP, appeared on
21 behalf of Defendant Sands China. The Court considered the papers on file and the oral
22 argument of counsel finds as follows:

23 1. On September 14, 2012, this Court entered its Sanctions Order. One of the
24 sanctions imposed is that neither Defendant is permitted to raise the Macau Personal Data
25 Protection Act ("MPDPA") as "an objection or as a defense to admission, disclosure or
26 production of any documents."

CLERK OF THE COURT

MAR 27 2013

RECEIVED

33

1 2. On December 18, 2012, this Court held a hearing and subsequently entered an
2 order requiring Sands China to produce all information in its possession, custody or control
3 that is relevant to jurisdictional discovery, including ESI, no later than January 4, 2013.

4 3. By January 4, 2013, Sands China produced what it maintains are all responsive
5 documents. On January 8, 2013, Sands China filed a status report with this Court representing
6 that it had complied with the Court's December 18 Order.

7 4. On February 8, 2013, Jacobs filed his Renewed Motion for Sanctions asserting
8 that Sands China had not complied with the December 18, 2012 Order and the September 14,
9 2012 Sanctions Order.

10 BASED UPON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND
11 DECREED that:

12 1. Jacobs has made a prima facie showing as to a violation of this Court's orders
13 which warrants an evidentiary hearing;

14 2. Sands China violated this Court's September 14, 2012 order by redacting
15 personal data from its January 4, 2013 document production based upon the MPDPA and,
16 therefore, an evidentiary hearing on the Renewed Motion shall commence on May 13, 2013 at
17 1:00 p.m. to determine the degree of willfulness related to those redactions and the prejudice, if
18 any, suffered by Jacobs; and,

19 2. By April 12, 2013, LVSC and Sands China shall search and produce the records
20 of all twenty (20) custodians identified on Exhibit 6 to the Renewed Motion for documents that
21 are relevant to jurisdictional discovery, which includes documents that are responsive to
22 Plaintiff's discovery requests as permitted by this Court's March 8, 2012 Order. Following the
23 search, and to the extent there are privilege issues with respect to those documents or the
24 documents are responsive to merit-based discovery but not jurisdictional discovery, LVSC and
25 Sands China may appropriately redact documents and provide a privilege log in compliance
26 with Nevada law¹ for any and all documents withheld or redacted based upon privilege or
27

28 ¹ For each communication or document, the party withholding a document shall

1 because the documents are only relevant to merits-based discovery. But as previously ordered,
2 LVSC and Sands China are precluded from redacting or withholding documents based upon the
3 MPDPA.

4 DATED: 29 March 2013

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6 
7 ELIZABETH GONZALEZ
8 EIGHTH JUDICIAL DISTRICT COURT
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25 specifically identify the author (and their capacity) of the document; the date on which
26 the document was created; a brief summary of the subject matter of the document; if the
27 document is a communication -- the recipient, sender and all others (and their respective
28 capacities) provided with a copy of the document; other individuals with access to the
document (and their respective capacities); the type of document; the purpose for
creation of the document; and a detailed, specific explanation as to why the document is
privileged or otherwise immune from discovery.

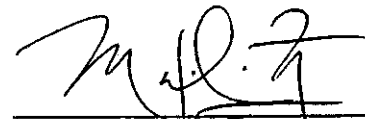
CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, I mailed a copy of the ORDER REGARDING PLAINTIFF STEVEN C. JACOBS' RENEWED MOTION FOR NRCP 37 SANCTIONS ON ORDER SHORTENING TIME, or placed a copy in the attorney's folder, to:

James J. Pisanelli, Esq., Todd L. Bice, Esq. and Debra L. Spinelli, Esq. (Pisanelli Bice)
Attorneys for Plaintiff

J. Stephen Peek, Esq. and Robert J. Cassity, Esq. (Holland & Hart)
Attorneys for Las Vegas Sands Corp. and Sands China, Ltd.

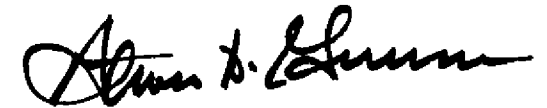
J. Randall Jones, Esq. and Mark M. Jones, Esq. (Kemp Jones & Coulthard)
Attorneys for Sands China, Ltd.



Maximilien D. Fetaz

EXHIBIT 6

EXHIBIT 6



CLERK OF THE COURT

REPT

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Attorneys for Sands China, Ltd.

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

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

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

13 **A. The Recruitment of Macau Lawyers to Review Documents**

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

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

28 ///

1 **B. The Selection of an Additional Vendor**

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

9 Accordingly, on December 19, 2012, SCL engaged another vendor, FTI, to assume most
10 of the technical aspects of the review and redaction process. Between December 19 and January
11 4, FTI not only re-processed all data that the initial vendor had processed, but also logged more
12 than 500 hours in processing additional data, training reviewers and redacting responsive
13 documents—all at a cost of more than \$400,000.

14 **C. The Identification of Relevant Search Terms and Custodians**

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

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

24 ... We met for hours with his prior counsel explaining over
25 and over to the extent it was even needed if we’re talking about the
26 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.

27

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

28 ² *Id.*

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

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

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

21 This procedure comports with “best practices” in electronic discovery. The Sedona
22 Principles instruct parties responding to discovery requests to “define the scope of the
23 electronically-stored information needed to appropriately and fairly address the issues in the case
24 and to avoid unreasonable overbreadth, burden, and cost.” The Sedona Conference, Sedona
25 Principles Addressing Electronic Document Production, Cmt. 4.b (2d ed. 2007) (“Sedona
26

27 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.

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

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

1 documents.

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

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

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

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

18 **F. Ongoing Quality Control Review**

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

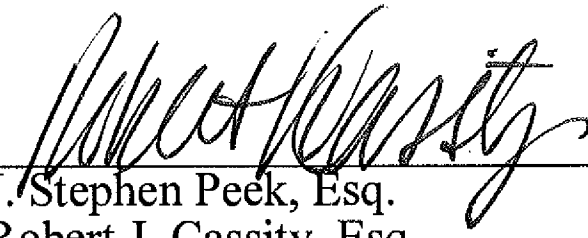
27
28 ⁵ The reviewers designated redactions based on the MPDPA as “Personal Redactions” and redactions based on the attorney-client privilege as “Privileged.”

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

3 **III. CONCLUSION**

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

10 DATED January 8, 2013.

11 
12 J. Stephen Peek, Esq.
13 Robert J. Cassity, Esq.
14 Holland & Hart LLP
15 9555 Hillwood Drive, 2nd Floor
16 Las Vegas, Nevada 89134

17 *Attorneys for Las Vegas Sands Corp. and Sands*
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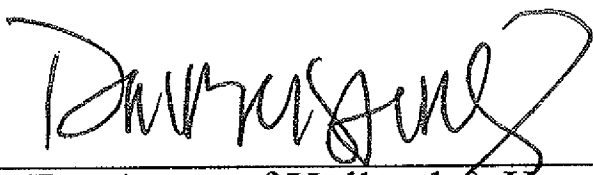
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

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:

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Debra L. Spinelli, Esq.
Todd L. Bice, Esq.
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Attorney for Plaintiff


An Employee of Holland & Hart LLP

Dineen Bergsing

From: Dineen Bergsing
Sent: Tuesday, January 08, 2013 1:35 PM
To: JAMES J PISANELLI; dls@pisanellibice.com; tlb@pisanellibice.com; Kimberly Peets; see@pisanellibice.com
Subject: LV Sands/Jacobs - Sands China's Report on its Compliance with the Court's Ruling of December 18, 2012
Attachments: 1801_001

Please see attached Sands China's Report on its Compliance with the Court's Ruling of December 18, 2012. A copy to follow by mail.

Dineen M. Bergsing

*Legal Assistant to J. Stephen Peek,
Justin C. Jones, David J. Freeman
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CONFIDENTIALITY NOTICE: This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this e-mail. Thank you.

EXHIBIT A

Alan D. Quinn

CLERK OF THE COURT

TRAN

COPY

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants
.....

CASE NO. A-627691

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS FOR PROTECTIVE ORDER AND SANCTIONS

TUESDAY, DECEMBER 18, 2012

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

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

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

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Las Vegas, Nevada 89146

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CLERK OF THE COURT

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

2 (Court was called to order)

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

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

7 THE COURT: Sure.

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

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

14 THE COURT: Any objection?

15 MR. BICE: No.

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

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

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

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

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

1 is maybe the protective order -- the first protective order
2 motion filed. But I don't know if the Court wants to do that
3 or not.

4 MR. PISANELLI: That's a convenient way for the
5 defendants to jump in front of an argument, but --

6 THE COURT: Actually, I want to do that way. And
7 you're going to be surprised why after the argument.

8 MR. PISANELLI: All right.

9 THE COURT: Mr. Jones.

10 MR. RANDALL JONES: I hope not pleasantly, Your
11 Honor.

12 THE COURT: Well, do you want to read my note?

13 MR. RANDALL JONES: Your Honor, I wouldn't mind
14 reading your note.

15 THE COURT: No, that's okay, Mr. Jones.

16 MR. RANDALL JONES: It might help sharpen my
17 argument.

18 THE COURT: It's all right. You're in trial in the
19 other department, so --

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

21 THE COURT: -- let's argue the motion for protective
22 order on the search of data in Macau.

23 MR. RANDALL JONES: Yes, Your Honor. As you know,
24 obviously I don't have the full -- well, have not been
25 involved in this case for very long, so the history has been

1 created before my time. And I've done my best to try to get
2 up to speed with that history in connection with these motions
3 and just in general tried to become familiar with this case.

4 I think I would start by talking a little bit about
5 that history and why we feel that that motion is appropriate.
6 And I guess the first order of that history would be a letter
7 that was sent back by defendants' counsel in May to the
8 plaintiffs, talking about the search parameters and what they
9 believe would be the appropriate way to do this process. And
10 I want to mention this because I think it is important as
11 relates to -- for this overall process and the relationship
12 with the motion for sanctions. And in that letter not only
13 did the defense counsel spell out what we intended to do, but
14 also made comment about willingness to meet and confer. So
15 that's sort of the first part of that process.

16 And the next part of the process was the joint case
17 conference statement, which also spelled out in great detail
18 and I think there's somewhat seven different points that were
19 spelled out about the process that the defense intended to
20 take in trying to comply with the discovery. And that spelled
21 out very specifically that we would look first at the -- our
22 client's, Jacobs's ESI information in the U.S. And again, the
23 whole point of this is, as far as we know, the best
24 information we have is that that's a ghost copy of what was
25 created in Macau. So presumably it's no different than what's

1 in Macau in the first instance. So we spelled that out and
2 said that's what we're going to do, then we're going to look
3 all -- of course, all the Las Vegas Sands information and
4 start producing that as quickly as we can.

5 And then there is a hearing the next day, June 28th,
6 where this two-step approach was spelled out to the Court and
7 counsel and was consistent with what was in the case
8 conference statement.

9 Then there's a July 30th letter which reinstated --
10 or, excuse me, reiterated that the defendants would review all
11 of the U.S. ESI first and then focus on Macau, and there was
12 some -- this wasn't just done, Your Honor, to try to delay
13 things. And I say that, Your Honor, because I have been
14 involved in discovery where you're talking about not just out
15 of the state, but out of the country. And this is a unique
16 circumstance. Certainly I would hope the Court would take
17 into account that we are dealing with the sovereign government
18 that may have a different idea of what we can and can't do.
19 So the idea was to let's look at that stuff first, the
20 information we have on the ghost hard drive here in the U.S.
21 and whatever we have we produce that, and then we go look at
22 what we know is going to be more of an issue in Macau.

23 And then, of course -- and I want to make sure to
24 point out that they've made some comments about this so-called
25 staggered approach which the Court said, no, you can't have

1 the staggered approach.

2 THE COURT: I've been saying that for a year and a
3 half already.

4 MR. RANDALL JONES: Absolutely. And, Your Honor,
5 you defined what a staggered approach was. Well, based on
6 what I've read in the file and your rulings, a staggered
7 approach was what we initially said, look, let's get the
8 plaintiff's ESI from the plaintiff, from Mr. Jacobs --

9 THE COURT: Every time someone brought that up I
10 said no.

11 MR. RANDALL JONES: Absolutely. And we understand
12 that. That is not what we are saying we are doing.

13 THE COURT: No, I know. Now you're saying, we want
14 to search what we have access to in the United States without
15 dealing with the Macau Data Privacy Act and then, depending
16 upon what we find, we may look at the stuff in Macau.

17 MR. RANDALL JONES: No, actually I don't think
18 that's what we're saying. That's not my understanding of what
19 we're -- in fact, that's not my understanding --

20 THE COURT: That's how I read this.

21 MR. RANDALL JONES: -- of what we're doing. In
22 fact, that -- I will tell the Court that is not what we were
23 doing. What we were doing was trying to make sure, especially
24 after the hearing in September, that we got access to the
25 Macau information. But we have to do it the way they let us

1 do it.

2 And so what happened after that hearing, we were
3 retained, Mr. Lackey's firm was retained, and action started
4 right away. This was within weeks of that hearing, Your
5 Honor. New counsel was brought in. The reason we were
6 brought in was to try to make sure that we complied with what
7 you wanted us to do. And, Your Honor, I've been practicing
8 here a long time and I've known you both in private practice
9 and on the bench, and I would hope the Court would understand
10 that we take our -- not only our oath, but our obligation on
11 discovery very, very seriously.

12 THE COURT: Oh, I have no doubt about that, Mr.
13 Jones. That's not the issue. The issue is not you or your
14 firm's credibility or Mr. Lackey or Mr. Peek or any of the
15 attorneys at this point. The issue is a -- what appears to be
16 an approach by the client to avoid discovery obligations that
17 I have had in place since before the stay.

18 MR. RANDALL JONES: And, Your Honor, I understand
19 that's your concern. And I understood that before you said
20 that just now. And I understand why that's your concern. I
21 have tried to make sure that I understand the history of this
22 case. And I will tell you the client understands the concern.
23 That's why new counsel this far along in the case was brought
24 in.

25 THE COURT: Third new counsel.

1 MR. RANDALL JONES: Understood. And we all hope the
2 lasting counsel. And a major part of that decision was to
3 make sure that any errors or issues that the Court was
4 concerned about in the past are addressed and addressed
5 appropriately. So with that in mind our firm was retained. I
6 was just about to start my jury trial, and so my brother Mark
7 Jones was tasked, with Mr. Lackey -- this was within weeks of
8 us being retained -- of flying to Macau and addressing the
9 issue directly. And we didn't know what we were going to find
10 out when we got there. We were going there to try to see what
11 we could do immediately. And so -- and, again, I hope the
12 Court appreciates that there's two different issues here. One
13 is -- from my perspective one is a party trying to hide behind
14 the law of another country or another state, for that matter,
15 to thwart the discovery process. That's one issue. The other
16 issue is also trying to make sure that if you have to deal
17 with the laws of another country you're in compliance with
18 those laws.

19 So to the extent the Court was concerned that the
20 OPDP law was being used to try to block discovery, that, I
21 will tell this Court in open court on the record as an officer of
22 the Court, is not what we are trying to do at this point. If
23 it was ever -- and I certainly don't believe it was ever being
24 done, but I will tell the Court to the extent there was some
25 miscommunication or misunderstanding of what our rights and

1 obligations were, two lawyers went to Macau to try to
2 straighten that out. And when they got there they were
3 informed of certain things. And I want to make sure the
4 Court's aware of the fact that before Mark Jones went to Macau
5 he sent an email again saying, look, we want to know what --
6 we want to meet with you, we want to talk to you before -- on
7 going -- this was mentioned in court the week before, I
8 believe, on going to Macau, I want to talk to you all to make
9 sure that we're all on the same page at least as to whether or
10 not you have different terms -- search terms or parameters
11 that you want us to look at, this is what we think we should
12 be doing. And I think it's important to the Court.

13 We tried to meet and confer with them over the
14 summer, before our firms were involved, but still, the record
15 is clear. We tried to meet with them on a couple of occasions
16 and ask them about what search terms they wanted to use to try
17 to expand the ESI discovery, and -- both in terms of names and
18 search terms. And they didn't meet with us. And so we
19 expanded those search terms on our own and made them broader
20 than what were initially spelled out. So that's -- and, Your
21 Honor, those are the facts as I understand them, that there's
22 documentation to that effect in the file. So I have every
23 reason to believe it's true.

24 So then before Mark Jones and Mike Lackey go to
25 Macau an email is sent, said, let us know, we're going. And

1 we get no response. They go there and they have a discussion.
2 They are told for the first time that, no, Macanese lawyers
3 can look at this information. And by the way, finally -- we
4 don't know this until November 29th. We've talked to the
5 Court, we sent the information to the Court. We are informed
6 that we can have the Macanese lawyers look at this information
7 and they can do the searches and to the extent there's any
8 personal data that may be redacted. Our hope is that because
9 it's Mr. Jacobs's ESI that there will be very little, if any,
10 personal data that's going to be redacted. But we believe
11 within the next week or two we're going to start getting
12 production. And as we get it, whatever we get, if it is
13 redacted, we're going to immediately produce it to the other
14 side. And to the extent it's redacted we will address that as
15 quickly as we can with the other side to see if there's any
16 way to address that issue with the Macanese government and --
17 assuming there's even a concern, depending on the type of
18 information that appears to be redacted. So, Your Honor, we
19 are trying to make sure we do what you want us to do.

20 But we have to try to -- and we did read your order
21 as saying that we don't have to try to comply with the laws of
22 another country. We can't use those laws inappropriately to
23 simply block discovery, and we're not trying to do that. But
24 we do have to try to comply with those laws. And I can't
25 believe this Court would ever issue an order that says you

1 have to violate the laws of another country in order to
2 produce documents here.

3 THE COURT: You already violated those laws, Mr.
4 Randall --

5 MR. RANDALL JONES: No.

6 THE COURT: -- Mr. Jones, Randall Jones. Sorry,
7 Randall.

8 MR. RANDALL JONES: That's all right. And we don't
9 want to compound the error. And I can't believe this Court
10 would want us to do that.

11 And so the question is -- we've done everything
12 else. We've produced 150,000 pages of documents since June.
13 We have spent an ungodly amount of money trying to make sure
14 we do this. So all we're asking this Court to is to allow us
15 to say, let's look at this information first -- and I know the
16 Court's impatient with this process, and I understand.

17 THE COURT: You know what, Mr. Jones, I'm not
18 impatient with this process. I am under a writ from the
19 Nevada Supreme Court to conduct an evidentiary hearing on
20 certain limited issues and enter findings of fact and
21 conclusions so that the Nevada Supreme Court can make some
22 additional conclusions related to the writ that is pending. I
23 am unable to accomplish what I have been ordered to do by the
24 Nevada Supreme Court in large part because of discovery
25 issues.

1 MR. RANDALL JONES: I understand. And I also
2 understand that this Court issued an order that said what the
3 parameters of discovery were going to be. And based on those
4 parameters we believe we are in compliance, with the exception
5 of the Macau ESI, which we're working on trying to get to the
6 Court.

7 So I guess I would ask this Court, well, Your Honor,
8 again, you know, we referenced the Sedona Principles. We're
9 in a -- somewhat of a brave new world as it relates to
10 discovery. That's -- electronic discovery is still new
11 territory in a lot of respects. And that's why you have
12 things like the Sedona Principles that are out there to try to
13 give litigants and the Court some guidance about this process.
14 And, you know, proportionality is a -- one of the principles
15 that is expressed in Sedona, and it relates to electronic
16 discovery.

17 THE COURT: Since you've mentioned the Sedona
18 Principles, Mr. Jones, has your client made an attempt to
19 obtain a protective order that is agreeable to the Macau
20 Government for the production of the information that would
21 otherwise be discoverable in this case?

22 MR. RANDALL JONES: No, Your Honor. And I'll tell
23 you why in a minute.

24 THE COURT: I asked that question a year and a half
25 ago. I asked the same question, and we still haven't done it.

1 MR. RANDALL JONES: And here's why. Because we are
2 hoping to be able to produce all the information that is in
3 Macau in that ESI. And, Your Honor, again, that's a ghost
4 image. And I know the Court is familiar -- more familiar
5 probably than most courts in this jurisdiction about
6 electronic discovery. So if it's a ghost image --

7 THE COURT: And Data Privacy Acts.

8 MR. RANDALL JONES: And Data Privacy Act. And a
9 ghost image is just that. It should be duplicative of what is
10 already here in the U.S. which has been produced. And, again,
11 there's a limit to what this Court has ordered to be produced
12 in this jurisdictional discovery. So the point is we believe
13 that this redundant. But, irrespective of that, a great deal
14 of time and expense has been incurred since September. Some
15 of these things should have been done before. What we're
16 asking this Court is to say, look -- we got to a point in
17 September where the Court made some findings, and the Court
18 made those findings based upon the information available to it
19 up to that point in time. We're trying to move forward. And
20 so since that time actions have been taken to try to make sure
21 we comply with the Court's order as it relates to the Macau
22 documents.

23 So if you expand the search terms -- remember, Your
24 Honor, in Sands China we're talking about -- the claim as
25 relates to Sands China is about an option agreement. The

1 search terms that we have used to try to find documents all
2 seem to be related to information that in fact is
3 overexpansive beyond what would be contacts that Sands China
4 might have with the United States, in particular with Nevada.
5 So we're essentially, we believe, getting a substantial amount
6 of overinclusive documents.

7 Let me just give you an example. In the depositions
8 two documents were used in Mr. Adelson's deposition of the
9 200,000 documents that have been discovered, and I think 19
10 were used in either in Mr. Goldstein or Mr. Leven's
11 deposition, I can't remember, but one of those two. But the
12 point is, Your Honor, is that we have been trying to
13 accomplish this discovery, and we believe that the Court has
14 set limits on what this discovery is. In fact, your order
15 says what the limits of discovery are. And so our --

16 THE COURT: You're referring to the March 8th, 2012,
17 order?

18 MR. RANDALL JONES: That's correct, Your Honor. And
19 so I guess I would ask the Court some questions to help us try
20 to understand where the Court has a concern that we are not in
21 compliance or at least attempting to comply and why the
22 parameters should be expanded beyond Mr. Jacobs's ESI in
23 Macau. We've given them everything we have in Las Vegas,
24 including the ghost image information of the Jacobs ESI. What
25 possibly could we expect to find with respect to contacts with

1 Nevada in Macau in the ESI of other people that would not be
2 duplicative of what is found in the Las Vegas Sands ESI that's
3 already been produced. And we haven't seen any indication
4 from the plaintiff that there is such information that they
5 expect to find or that they have not had full discovery.

6 We have answered their discovery, their requests to
7 produce. We've laid out, what we've answered, in our brief.
8 So, Your Honor, again, we don't know how -- and I guess under
9 Rule 26, you know, the rule itself provides that --
10 26(b) (2) (1) unreasonable -- discovery is limited is
11 unreasonable, cumulative, or duplicate documents. We believe
12 that to the extent -- and we're doing this anyway with the
13 Macau ESI, we're still producing that -- the party seeking
14 discovery has had an ample opportunity to discover and to
15 obtain the information sought. And we think that that has
16 been the case here. And, (3), the discovery is truly
17 burdensome or expensive, taking into account all the needs of
18 the case, the amount in controversy, and the limits of
19 resources and importance of the issues.

20 So here, Your Honor, we don't see the need -- and we
21 don't believe the need has been spelled out by the plaintiffs
22 as to why they need to go beyond the Macau ESI of Mr. Jacobs
23 in this discovery.

24 Now, the timing is a different issue. And we
25 certainly wish it could have been faster. And counsel

1 involved in this case at this point in time are doing
2 everything they can to try to make sure that it happens in
3 short order. We've told the Court we believe -- we think
4 we're going to have all this information with the extent
5 of possibly any personal information being redacted by
6 January 15th. But we hope to start having some of this
7 information within the next week. And as soon as we get it
8 we're going to start rolling it out.

9 So, Your Honor, we would ask that the Court have
10 some proportionality with respect to how far the Court goes in
11 allowing this discovery in Macau. And it further complicates
12 the case. We've got to then ask for information beyond Mr.
13 Jacobs's ESI which we don't see any grounds to --

14 (Pause in the proceedings)

15 MR. RANDALL JONES: And, Your Honor, and Mr. Peek is
16 helping me out here because, again, I'm trying to catch up
17 with all the information. You'd asked a question about a
18 protective order and whether there had been one asked for.
19 It's in Exhibit Y to our motion. The Macanese Government does
20 specifically reference page 18, also mentioned the, quote,
21 "protective order," and the related Jacobs litigation is
22 sufficiently protected in compliance with the guidelines
23 defined by the Personal Data Protection Act, Article 20,
24 Item 2.

25 So there has been such a request, and the Macanese

1 Government has apparently -- and this was something I was not
2 aware of digging through all of these exhibits, didn't find
3 this reference on page 18, so I was not aware of that. But
4 that has been addressed by the Macanese Government.

5 So I guess the biggest point is, Your Honor, is that
6 we would ask the Court to consider the proportionality of the
7 need for this information versus the burden and especially in
8 the limited scope that the Court has ordered in this
9 particular case.

10 So with that, Your Honor, if you have any questions,
11 I would do my best to answer them.

12 THE COURT: Thank you.

13 THE COURT: Mr. Pisanelli.

14 MR. PISANELLI: Thank you, Your Honor. I'm going to
15 do my best to exercise some restraint here, both in my
16 emotions over what I just heard and understanding that we're
17 talking about just a protective order so far.

18 First let me take an opportunity to correct Counsel,
19 because I know he's not intentionally trying to mislead you.
20 He is the newest person at the desk and clearly doesn't know
21 the real history of what happened. When he suggests to you
22 that we did not meet and confer in the summer or in the spring
23 or the fall or last winter or two years ago, he's mistaken.
24 Even in the circumstance in which he was referring me met for
25 hours with his prior counsel explaining over and over to the

1 extent it was even needed if we're talking about the
2 custodians that they didn't know about in Macau, they needed
3 only look to Colby Williams's letter giving them 20 custodians
4 that we want that they've known for two years. And the
5 suggestion that they don't know what to do here, if that's
6 what their client is telling Mr. Jones now, is something short
7 of the real truth.

8 Counsel also tells you something that needs to be
9 corrected. When he tells you that they have produced hundreds
10 of thousands or 150,000, I can't remember the number, of
11 documents and they're really working hard, remember we're
12 talking about Sands China here, Your Honor. They've produced
13 15 documents, 55 pages. That's what Sands China has produced.
14 So let's not get lost in them patting themselves on the back
15 over a two-and-a-half-million-dollar bill, they say, with the
16 all the hard work they did. Apparently that two and a half
17 million dollars was spent on obstructing discovery, not
18 actually finding.

19 And now this concept that will take us through the
20 entire motion about redundancy and the very limited nature of
21 discovery. I have to question whether Sands China has an
22 order that no one else in this Court has seen. The have taken
23 an approach in this motion and again in the presentation to
24 you this morning that the only thing they're obligated to do
25 is look at Steve Jacobs's ESI that is located in Macau

1 because, as they say, they have a ghost image here and why
2 produce it twice.

3 Well, there's so much wrong with that statement.
4 First of all, there's nothing in the Court's order that says
5 that this jurisdictional discovery is limited to Steve Jacobs.
6 And why would it be, Your Honor?

7 THE COURT: You're talking about the March 8th
8 order?

9 MR. PISANELLI: Yes.

10 THE COURT: The order related to certain depositions
11 that you noticed and what documents I was going to require be
12 produced related to those depositions.

13 MR. PISANELLI: Right. And in that order Your Honor
14 said that the discovery that Sands China was obligated to give
15 us had a time restriction on it, and the time restriction was
16 after Mr. Jacobs's termination up to the filing of the
17 complaint. Which one might then question, well, why in the
18 world would you limit your discovery to just Steve Jacobs's
19 ESI when the Court ordered discovery that occurred after he
20 wasn't even at the company anymore, is there even possibly a
21 reasonable interpretation from your words to say that, we
22 thought that all we needed to look for was the deduplication
23 -- the product of the deduplication to make sure we had all of
24 Steve Jacobs's ESI.

25 Recall this. Another handicap of Mr. Jones, because

1 he wasn't here. Henry Weissman stood before you on this exact
2 topic. This is what inspired Your Honor to make the no
3 staggering remark that is quoted in our reply at page 5. He
4 said, why would we produce the same document twice, we want to
5 get, he said -- and now I'm paraphrasing, that was a quote I
6 just gave you -- he said, we will get Steve Jacobs's ESI and
7 then we'll figure out what we have that he didn't already give
8 to us. And that's when Your Honor let him know the rules of
9 this Court, the rules of Nevada and how you govern discovery,
10 and you were very clear and unequivocal when you said, no,
11 that's not what you do, Mr. Weissman, quote, "We do not
12 stagger discovery obligations, period, end of story."

13 And so what Sands China did through the revolving
14 door of counsel that has come in this courtroom is did exactly
15 what Henry Weissman said he wanted to do and the exact
16 opposite of what you told them to do. They staggered
17 discovery, and now come in here hat in hand saying, well, we
18 thought this was a limited exercise of deduplication, Your
19 Honor, oh, we're so sorry, we thought this was all you
20 actually asked of us and it has cost us so much money to do
21 this. It really is an unbelievable position for Sands China
22 to take to come in here and tell you that they thought when
23 you said, we do not stagger, you meant we do stagger and go
24 ahead and just do your deduplication process. There isn't a
25 believable aspect of this position that they're sending -- or

1 saying to you.

2 Now we hear some new defenses from them. For the
3 first time we hear them say, Your Honor, we're not allowed to
4 review our own records and we would ask you to be
5 proportionate, I think that was the word, and not make us
6 violate some other country's laws. Again, I can't imagine
7 Sands China didn't hear your message loud and clear from the
8 sanctions hearing when you said, Sands China, you will no
9 longer be hiding behind the Macau PDPA. You were very clear
10 that not because of anything from a discovery perspective --
11 that's what we're here to do today, the Rule 37 motion has to
12 do with discovery issues. This was because of a lack of
13 candor to this Court, a lack of candor which Your Honor found,
14 as I understand it, to be directed and orchestrated from the
15 management offices of Las Vegas Sands on Las Vegas Boulevard.
16 You cannot hide behind the Macau Personal Data Privacy Act.

17 And what is the theme today? Your Honor, the Macau
18 Personal Data Privacy Act prohibits us from producing these
19 records, you wouldn't possibly tell us to do something in
20 violation of that order, would you, they say. We are not
21 permitted, they say for the first time, to even review our own
22 records. Can you imagine, Your Honor, the position that
23 they're offering? We need government approval to review our
24 own records in Macau. So the obviously, admittedly somewhat
25 sarcastic question I would ask is, how in the world do you run

1 your business in Macau if you need government permission to
2 look at your own records.

3 Rhetorical as it may be, let's just look at
4 something far more specific. Sheldon Adelson and Mike
5 Kostrinsky both gave us a little peek behind the curtain.
6 There has been a free flow of information from Macau to Las
7 Vegas Boulevard since the inception of the Macau enterprise.
8 Every single thing Mike Kostrinsky ever wanted he got.
9 Sheldon Adelson has information coming on a daily basis to his
10 office on Las Vegas Boulevard until one thing happened. And
11 Your Honor saw right through it and referenced it in your
12 order. The discovery in this case and perhaps the discovery
13 in a criminal investigation, that's when they said, oh, we
14 can't review our records in Macau, with a wink and a nod,
15 we've actually been doing it from day one, but now to comply
16 with discovery we're not permitted to do that. It is contrary
17 to what the record in this case tells us.

18 And you know what else it's contrary to, Your Honor,
19 what the prior counsel told us. You saw in our papers that
20 Steve Ma told us in June of 2011 -- I'm sorry, wrong date --
21 that Steve Ma told us that he was -- in June 2012 that he was
22 gathering and reviewing documents for CSL, gathering and
23 reviewing, he said in a letter to us. And then he said he
24 would produce them on a rolling basis. He did, all of those
25 15 staggering documents that we got.

1 Then Patty Glaser came in this courtroom and she
2 said to Your Honor, we sent a team of lawyers to do it, that's
3 a fact. Remember, she was very emphatic. We had a little bit
4 of a confrontation at the time. That's a fact. She may have
5 even been pointing her finger at me when she said it. We
6 spent a lot of money, the client's money, we sent lawyers to
7 Macau to review documents in Macau. Your Honor that is
8 irreconcilable with what they're saying now. Patty Glaser and
9 Steve Ma say not only that they can and they will, but they
10 had reviewed Macau documents. And now the newest team comes
11 in and says, we're handcuffed and not permitted to.

12 THE COURT: Well, but you know they took -- you know
13 they reviewed Macau documents because Mr. Kostrinsky carried
14 them back.

15 MR. PISANELLI: That's part of my sanction motion.

16 THE COURT: I mean, we know.

17 MR. PISANELLI: So I'm beating this drum here
18 because it is just outrageous to me. I will wrap it up. I
19 understand your point. But it's outrageous that this company
20 would come in here and as soon as this group of lawyers takes
21 a turn, that admits something they're not supposed to,
22 produces a piece of paper the Sands management didn't want to
23 get out of their hands, my prediction is we're going to see a
24 new team here. Because every single time someone stands up
25 and tries or at least promises you that they'll start doing a

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

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

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

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

8 THE COURT: Thank you.

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

11 THE COURT: Thank you.

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

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

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

1 the videotape.

2 MR. PEEK: Your Honor, can we have some
3 clarification?

4 THE COURT: Yes.

5 MR. PEEK: And here's the challenge that we have, is
6 you're telling us to produce all of the documents that are
7 responsive to the requests for production, and --

8 THE COURT: If a motion is renewed, Mr. Peek, and
9 there is an impediment to production which Sands China
10 believes relates to the Macau Data Privacy Act, when I make
11 determinations under Rule 37 I will take into account the
12 limitations that you believe exist related to the Macau Data
13 Privacy Act. But, believe me, given the past history of this
14 case there seems to be different treatment of the Macau Data
15 Privacy Act at different times.

16 MR. PEEK: Your Honor, I appreciate what we went
17 through in September. I appreciate what the Court's ruling
18 was. And I think Mr. Jones has certainly made it clear how
19 serious we take this. The motion for protective order
20 certainly goes to who are the custodians, what are the search
21 terms --

22 THE COURT: Your motion for protective order is
23 really broad. Your motion for protective order says, "For the
24 foregoing reasons Sands China urges the Court to enter an
25 order providing that SCL has no obligation to search the ESI

1 in Macau of custodians other than Jacobs or to use any more
2 expansive search terms on the Jacobs ESI in Macau that was
3 used to search the Jacobs's ESI that was transferred to the
4 United States in 2010."

5 The answer is no. Denied.

6 MR. PEEK: Okay. I'll let --

7 MR. PISANELLI: Your Honor, on the Rule 37 issue of
8 whether there's an order --

9 THE COURT: Hold on a second, Mr. Pisanelli. Let me
10 go back to Randall Jones.

11 MR. PISANELLI: Okay.

12 THE COURT: Not Jim Randall, Randall Jones.

13 MR. RANDALL JONES: Thank you, Your Honor. I do
14 want to make clear because of what was said there's never been
15 said and if it was misstated by me, then I want to make sure
16 it's clear on the record. It's never been our position that
17 our client can't look at the documents. The issue is whether
18 or not we can take certain information -- our client is
19 allowed to take certain information out of the country. And
20 so I just want to make sure that's clear on the record. Our
21 client can look at the documents, and our client's Macanese,
22 we've just found out, can look at the documents. And from
23 there it becomes more complicated. So I just want to make
24 sure that's clear to the Court.

25 We understand what you're saying, and we will

1 continue to do our best to try to comply with the Court's
2 orders as best we can. And that's -- and I hope the Court
3 does appreciate this is a complicated situation, and we -- I
4 can -- I'll just tell you again, Your Honor, we're trying to
5 make sure that we -- the lawyers and our client comply with
6 your discovery.

7 THE COURT: I understand.

8 MR. PEEK: Yeah. We need to have redactions as part
9 of that, as well, as that's -- I understood --

10 THE COURT: I didn't say you couldn't have
11 redactions.

12 MR. PEEK: That's what I thought.

13 THE COURT: I didn't say you couldn't have privilege
14 logs. I didn't say any of that, Mr. Peek.

15 MR. RANDALL JONES: As I understand it, Your Honor,
16 you said we can still otherwise comply with the law as we
17 believe we should and then you ultimately make the call as to
18 whether or not we have appropriately done that.

19 MR. PISANELLI: We will indeed --

20 THE COURT: I assume there will be a motion if there
21 is a substantial lack of information that is provided.

22 MR. PISANELLI: So, Your Honor, on this issue of the
23 Court order, we're saying it again. As part of your sanction
24 order you were very clear and you said that they're not hiding
25 behind that anymore.

1 THE COURT: I did.

2 MR. PISANELLI: And they're giving us a precursor
3 that they don't hear you, they just never hear you.

4 THE COURT: Well, Mr. Pisanelli, I've entered
5 orders, I've now entered an order that says on January 4th
6 they're going to produce the information. They're either
7 going to produced it or they're not. And if they produce
8 information that you think is insufficient, you will then have
9 a meet and confer. And then if you believe they are in
10 violation of my orders, and I include that term as a multiple
11 order, then you're going to do something.

12 MR. PISANELLI: I will. I want --

13 THE COURT: And then I'll have a hearing.

14 MR. PISANELLI: I will. I want to make this one
15 point, because you've made a statement that they have not yet
16 violated an order, and that's of concern to me.

17 THE COURT: Well, they've violated numerous orders.
18 They haven't violated an order that actually requires them to
19 produce information. I have said it, we discussed it at the
20 Rule 16 conference, I've had people tell me how they're
21 complying, I've had people tell me how they're complying
22 differently, I've had people tell me how they tried to comply
23 but now apparently they're in violation of law. I mean, I've
24 had a lot of things. But we've never actually entered a
25 written order that says, please produce the ESI that's in

1 Macau within two weeks.

2 MR. PISANELLI: Well, you haven't entered anything
3 that specific, but you have entered an order that calls for
4 ESI protocol that calls for this production --

5 THE COURT: I know.

6 MR. PISANELLI: -- and you directed from this bench,
7 which is no different than an order, for them to create a log
8 --

9 THE COURT: Nevada Supreme Court thinks written
10 orders are really important. So we're going to have a written
11 order this time, Mr. Pisanelli --

12 MR. PISANELLI: We are indeed. But --

13 THE COURT: -- especially since I am under a limited
14 stay which only permits me to deal with jurisdictional
15 information, which I've been trying to get to for a year and a
16 half.

17 MR. PISANELLI: As have we.

18 THE COURT: And I have a note that says, "Find a
19 place for the Sands-Jacobs evidentiary hearing." But I can't
20 find a place for you until you actually have your discovery
21 done or at least close to done.

22 MR. PISANELLI: I will remind Her Honor and the
23 battery of lawyers de jure [sic] that Your Honor told this
24 team I think a year and a half ago, create --

25 THE COURT: Well, it wasn't this team, it was a

1 different team.

2 MR. PEEK: Your Honor, I certainly appreciate Mr.
3 Pisanelli's remarks about how he wants to characterize what
4 the Court's order was.

5 THE COURT: Okay.

6 MR. PEEK: And I certainly disagree.

7 THE COURT: Okay. Will you stop arguing about this.
8 I've ruled.

9 MR. PEEK: I'm happy to do that.

10 THE COURT: I now want to go to your motion for
11 protective order on the videotaping of the deposition. That's
12 your motion, Mr. Bice's motion.

13 MR. BICE: This our motion. It's actually not a
14 videotaping of the deposition, Your Honor. It's a videotaping
15 of opposing counsel --

16 THE COURT: No, I know, Mr. Bice.

17 MR. BICE: -- which is what this is, without any
18 Court authorization, without seeking any leave of the Court to
19 do so. You know, Your Honor, we've submitted our motion, we
20 went over the history of this. I didn't receive any written
21 opposition. I don't know if the Court has received a written
22 opposition from them or not.

23 THE COURT: I don't remember.

24 MR. BICE: The point here is, Your Honor, Rule 30 --
25 we have been videotaping all of the depositions without any

1 issues, and then we got this claim by Mr. Peek that, well, we
2 want the videotape -- we want to put a camera behind the
3 witness, I guess, from the other side of themselves and
4 videotape you and your client during these depositions.

5 We objected to that. We told them, you know, you
6 want to do that, you have to get permission of the Court to do
7 that. Their position was now we're going to do it anyway. We
8 thought that that issue was sort of -- they dropped it with
9 the Mr. Leven deposition as long as I would move up his
10 deposition by a half an hour. And then we found out because
11 we got a cross-notice of deposition dropped in the mail to us
12 that says that they're going to videotape opposing counsel
13 during the deposition.

14 As we cite the caselaw to Your Honor, The Federal
15 Courts under the exact same rule have said that that's
16 inappropriate. They have sought any leave of the Court, so we
17 ask the Court to enter a protective order. This is, with all
18 due respect --

19 THE COURT: Thank you.

20 MR. BICE: -- it's simply harassment.

21 THE COURT: Mr. Mark Jones.

22 MR. MARK JONES: Thank you, Your Honor.

23 This was on an order shortening time, so, if I -- if
24 I may address it, we did not file any written opposition.

25 Your Honor, I'd like to emphasize one statement, and

1 that is the first sentence of plaintiff's motion for
2 protective order, because that's really what this is all
3 about. It says, "The games, harassment, and unprofessional
4 conduct continue." And, Your Honor, I want to tell you that I
5 do not play games in my practice. I do not need to play
6 games. One of the games that Mr. Bice believes that I am
7 playing is with the timing. There's a lot going on with this
8 case, Your Honor, and it got filed -- when it got filed there
9 was no --

10 THE COURT: And the CityCenter case, which you guys
11 got dragged into, too.

12 MR. MARK JONES: The point is that I received an
13 email from Mr. Bice that a colleague and I read about the
14 protocol of the counsel. One of the first things we filed --
15 I've already talked to them about it and apologized. If I'm
16 going to apologize for anything it's only that we did not
17 email it to him. I think that was my assistant's fault. I
18 didn't know anything about it, Your Honor, and just realized
19 last night when Mr. Bice was talking about it. And we
20 appreciate an extension that he had given us recently. And,
21 of course, we in the normal course expect to get extensions
22 back as they may ask for them on their end.

23 Now, as to the merits of the motion, yes, this was
24 filed and served right before the deposition, but you don't
25 hear them say it is late. And in fact it is not late, Your

1 Honor. It is timely filed under Rule 30, NRCP Rule 30, and
2 that is that a cross-notice such as the one we had filed must
3 be served upon five days' notice. And it was.

4 They say in their motion that a party needs leave of
5 the Court to tape other parties or counsel. They cite to two
6 Federal Court cases in FRCP with regard to that. The two
7 cases are distinguishable. And in the Langsea [phonetic] case
8 Mr. Adelson actually walked into a deposition, they've cited
9 to that, with his own videographer with no prior notice. The
10 Posorive [phonetic] case, in that case the plaintiff deponent
11 brought his own camera to tape a deposition in violation of
12 the court's explicit order prohibiting him to do so. Again,
13 we think that those two cases are distinguishable. It's a
14 federal -- they're federal rulings with regard to the Federal
15 Court Rule, FRCP 30, and we think that there's is a
16 significant difference in NRCP 30 and Nevada law with regard
17 to that.

18 THE COURT: So can I interrupt you. Why do you
19 think that it's appropriate in this particular case to depart
20 from our long history in Nevada of only having the camera on
21 the deponent? The only time I remember attorneys ever being
22 on camera in a deposition was when they introduced themselves.
23 And then it would go back to the deponent.

24 MR. MARK JONES: Your Honor, thank you. To answer
25 that I would now go a little bit out of order. I was going to

1 get to the why. The genus of this is -- and I would
2 characterize my involvement in coming into this case as an
3 extremely contentious matter. I think that's fair to say.
4 And I would estimate that I have taken -- excuse me, called
5 the Court perhaps two times in my -- average in my career,
6 every couple years. To my recollection, in this case the
7 Court has been called I think about an average of twice for
8 each deposition that has been taken.

9 The cross-notice stems from the Sheldon Adelson
10 deposition and, frankly, the smirking and we would submit very
11 inappropriate engaging of counsel with Mr. Adelson. And I
12 wasn't there. Mr. Peek was, though. He's prepared to back me
13 up on what exactly happened there, if the Court wants him to
14 do that.

15 I'd like to back up one -- if that answers your
16 question, I'd like to back up one minute to discuss NRCP 30,
17 which is I think very important here, Your Honor. First of
18 all, we found nothing in the rule and no caselaw holding that
19 leave of the court is required for such a cross-notice under
20 the circumstances. And I want to read to you from NRCP
21 30(b)(4), which has a very enlightening statement it about
22 three fourths of the way down. And it says, "The appearance
23 or demeanor of deponents or attorneys shall not be distorted
24 through camera or sound recording techniques." Why do they
25 include attorneys in that? That's right in the rule, Your

1 Honor. Again, we found nothing to say that this cannot take
2 place.

3 And why are we doing this really? Your Honor, we
4 would submit this. It's a safeguard to assure that this
5 behavior does not happen again. We'd ask that you consider
6 that in court or in trial there is a judicial officer that is
7 monitoring and regulating order and monitoring such
8 proceedings. And a court at trial that kind of behavior does
9 not exist. The courts won't put up with that. Unfortunately,
10 under the circumstances with the contentiousness, we believe
11 and would submit that such a cross-notice would do the same.
12 We think that it is harassing of professional conduct. And I
13 don't know about the other -- I can't remember the last time I
14 was called unprofessional, Your Honor, but welcome to this
15 case.

16 We also, Your Honor, are bearing the cost -- we
17 would bear the cost of the videographer, and we don't submit
18 this puts any additional burden upon Mr. Jacobs.

19 And lastly, at the end of the motion they say that
20 we've resorted to harassment in trying to intimidate our
21 opponents because we can win any legitimate debates. This
22 cross-notice isn't oppressive or harassing, Your Honor. I
23 can't imagine having -- or Mr. Bice or Mr. Pisanelli being
24 intimidated by having a camera on them. And it keeps
25 professionalism in the depositions. It's almost like having

1 Your Honor sitting there and reminding everybody during the
2 deposition if they behave and they act professionally and they
3 don't engage, what's the problem? And if they don't, we
4 submit that a deposition can be used for any purpose at the
5 time of trial, and we'll see what -- whether or not we might
6 we able to use it at the time of trial.

7 In sum, it's a motion for protective order. And we
8 would submit, of what? We don't find anything that says that
9 you have to ask leave of the court within the rule. We think
10 the cases are distinguishable that they cited. We don't think
11 that Mr. Bice or Mr. Pisanelli will be intimidated in
12 deposition. And we think it's within accordance of the rules,
13 and we're paying for it.

14 And finally, if the Court says that leave is
15 required under some long-standing rule, we're asking for it
16 now.

17 THE COURT: Thank you.

18 The motion is granted. Only under unusual
19 circumstances would the Court issue permission to videotape
20 counsel who are taking the deposition. The audio record of
21 the videotape does certainly provide a basis for protecting
22 against misconduct of counsel. If for some reason you believe
23 there is in fact misconduct, as opposed to a facial expression
24 that someone takes exception to, I would be happy to
25 reconsider on a case-by-case basis permitting the camera to be

1 on counsel.

2 All right. Goodbye.

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

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

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

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

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CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt
FLORENCE HOYT, TRANSCRIBER

12/30/12

DATE

EXHIBIT B

To whom this may concern,

The abovementioned official letter has been well received.

This is in connection with the letter from your company (Venetian Macau Limited) stating that the local court in Nevada, US would be trying a civil case (Proceedings No.: A627691-B) involving Steven C. Jacob and Sands China Limited (hereinafter referred to as "SCL") with "Steven C. Jacob v. Las Vegas Sands Corp.; Sands China Ltd; Sheldon G. Adelson, et al." as the case name. In order to deliberate on whether it has jurisdiction over the abovementioned case, the court has requested SCL to provide information evidencing its relationship with "Las Vegas Sands Corporation" (hereinafter referred to as "LVSC"). Since your company believes that there may be documents in Macau which are significant to SCL's preparation of its own defense in the abovementioned case, your company intends to engage a lawyer in Macau, and to engage a law firm in Hong Kong which shall collaborate with that lawyer in inspecting the documents and information at your company's headquarters in Macau through the signing and provision of a contract of service. Your company believes that the abovementioned acts of document inspection and the treatment of personal data in connection therewith comply with the stipulations of Article 6, Item (5) of Macau's *Personal Data Protection Act* (Act 8/2005), and accordingly shall give notice to our Office pursuant to Article 21, No. 1 of that Act, or, in cases where our Office deems that a notice shall not be given, request the granting of permission by our Office in accordance with the stipulations of Article 22, No. 1, Item (4)¹ of that Act. As a public authority as defined under Article 79, No. 3 of the *Macau Civil Code* and the *Personal Data Protection Act*, our Office is responsible for monitoring and coordinating the compliance with and implementation of the *Personal Data Protection Act* by virtue of the responsibilities conferred upon it by Chief Executive's Dispatch No. 83/2007 and Dispatch No. 6/2010.

Pursuant to the stipulations of Article 4, No. 1, Items (5) and (6) of the *Personal Data Protection Act*, the "entity responsible for processing personal data" refers to "*a natural person or legal person, public entity, department or any other body which decides, individually or jointly with others, upon the purposes and means of the processing of personal data*", while

¹ The original version of the incoming letter reads "*nos termos do disposto na alínea 4) do artigo 22.º da Lei 8/2005.*"

“subcontractor” refers to “a natural person or legal person, public entity, department or any other body which is authorized by an entity responsible for processing personal data to process personal data.”

In accordance with the content specified in the letter from your company, your company intends to inspect the documents and information at your company’s headquarters through engaging a lawyer in Macau and a law firm in Hong Kong which shall collaborate on such inspection, in order to provide evidence of the relationship between SCL and LVSC. It is thus clear that your company has the control and decision rights regarding the processing of the abovementioned information, including the decision of engaging a lawyer in Macau and a law firm in Hong Kong which shall collaborate to inspect such documents and information. Consequently, your company is an entity responsible for processing personal data, while the lawyer in Macau and the law firm in Hong Kong, which are authorized, are subcontractors.

It should be noted that, based upon the fact that your company has authorized a law firm in Hong Kong to inspect documents containing personal data, as well as the fact that the specimen contract intended to be signed with the law firm in Hong Kong as provided by your company indicates that the services to be provided by such law firm shall include “defining the scope of the document disclosure requirements relating to the civil proceedings filed by Steven C. Jacob against Las Vegas Sands Corp. and Sands China Limited with the local court in Nevada, US and making responses thereto; and inspecting and analyzing all relevant documents under a mechanism complying with Macau’s laws (including but not limited to Macau’s *Personal Data Protection Act* (Act 8/2005)),” our Office deems that the information relating to the documents containing personal data entailed in this case which an institution registered outside Macau has been authorized to inspect has been transferred to places outside Macau (including Hong Kong), and that under such circumstances, your company shall be allowed to proceed only when the stipulations of Article 19 or 20 of the *Personal Data Protection Act* are observed.

In view of the stipulations of Articles 19 and 20 of the *Personal Data Protection Act*, our Office deems that your company may only authorize a law firm in Hong Kong to inspect relevant documents subject to compliance with the stipulations of Article 20, No. 1, Item (1) or (2) of that

Act and upon giving notice to our Office. However, since your company has provided our Office with no information evidencing that your company has obtained the express consent of the parties relating to such information, nor any contract of employment signed between your company and its employees or such information as contracts signed between your company and its clients, our Office cannot deem that your company's authorization of a law firm in Hong Kong to inspect relevant documents complies with relevant stipulations of the *Personal Data Protection Act*.

In addition, the letter from your company states that it thereby notifies our Office of its act of engaging a lawyer for document inspection pursuant to the stipulations of Article 21, No. 1 of the *Personal Data Protection Act*, but that in cases where our Office deems that a notice shall not be given, it shall request the granting of permission by our Office in accordance with the stipulations of Article 22, No. 1, Item (4)² of that Act.

Article 21, No. 1 of the *Personal Data Protection Act* stipulates the following: "*The entity responsible for processing personal data or its representative (if any) shall notify the public authority in writing, within 8 days from the commencement of processing, of one or a series of totally or partially automated processing operations intended to achieve one or more interconnected purposes.*" The situations in which notification is exempted are stipulated in No. 2 and No. 4 of that Article.

In view of the abovementioned legal stipulations, it is clear that the responsible entity shall give notifications and make declarations based upon the various purposes of personal data processing, rather than in connection with discrete, individual operations of personal data processing. In this case, as an entity responsible for processing personal data, your company shall give notifications and make declarations with respect to automated processing with one or more interconnected purposes, and shall not notify our Office of merely one of the procedures (i.e. engaging a lawyer to inspect information) within an individual activity. Moreover, your company has not provided the information necessary for notification and declaration, such as an indication of the types of information being processed, in accordance with the stipulations of

² The original version of the incoming letter reads "*nos termos do disposto na alínea 4) do artigo 22.º da Lei 8/2005.*"

Article 23 of the *Personal Data Protection Act*. Therefore, our Office cannot regard your company's previous letter as a fulfillment of its notification obligations.

Further, Article 22, No. 1, Item (4) of the *Personal Data Protection Act* stipulates that the use of personal data for purposes other than those of data collection shall be subject to permission by our Office. No inconsistency therefore exists between the notification obligations as stipulated in Article 21, No. 1 the *Personal Data Protection Act* and the application for permission as stipulated in Article 22, where the two Articles are concerned with different treatments of personal data. Consequently, an application for permission shall be directed to our Office pursuant to the stipulations of Article 22, No. 1, Item (4) and Article 23 of that Act in cases where personal data are used for purposes other than those of data collection, notwithstanding the fact that your company has effected notification and declaration with our Office in accordance with Article 21, No. 1 of that Act. Given that your company has provided neither sufficient information nor an account of the original purposes of data collection or the necessity of using personal data for purposes other than those of data collection, our Office cannot examine or approve the application for permission.

Based upon the foregoing, our Office shall archive your company's previous notification, declaration and application for permission, and we hereby recommend that your company re-examine its personal data processing situation, clearly define its need to fulfill notification and declaration obligations and to apply for permission, and provide our Office with statutory information for our examination and approval pursuant to the stipulations of Article 23 of the *Personal Data Protection Act*. Notifications and declarations may be effected and applications for permission may be made through submitting to us a *Declaration of Personal Data Processing*, which can be downloaded from the website of our Office (<http://www.gdp.gov.mo>).

Should your company wish to appeal against the decision of our Office, an objection may be directed to our Office within 15 days upon receipt of this official letter of reply in accordance with the stipulations of Article 149 of the *Approved Code of Administrative Procedures* (Decree-Law No. 57/99/M of October 11); alternatively, an optional hierarchical appeal may be lodged to

the Chief Executive within the designated period for filing a judicial appeal in connection with relevant acts in accordance with the stipulations of Articles 155 and 156 of that Decree-Law.

In addition, your company may also file a judicial appeal with the Administrative Court within the period as stipulated in Article 25 of the *Approved Code of Administrative Proceedings* (Decree-Law No. 110/99/M of December 13).

Yours faithfully,

EXHIBIT C

CUSTODIANS AND SEARCH TERMS FOR MACAU REVIEW

- All search terms were run on documents using a date limiter of January 1, 2009 to and including October 20, 2010, except for Order ¶ 9 (RFP 6), which was run with the limiters as described in Paragraph 1 below.

1. March 8, 2012 Order ¶ 9 (RFP ¶ 6): Leven's services

Custodian: Steve Jacobs

Search terms:

Search terms for period between 10/14/09 and 7/23/10:

Leven w/25 ((Steve w/3 Jacobs) OR (Jeff* w/3 Schwartz) OR (Irwin w/3 Siegel) OR (Stephen w/3 Weaver) OR (Steve w/3 Weaver) OR (Iain w/3 Bruce) OR (Ian w/3 Bruce) OR (Ferguson w/3 Bruce) OR (Iain w/3 Ferguson) OR (Ian w/3 Ferguson) OR (Chiang w/3 Yun) OR (Rachel w/3 Chiang) OR (Dav* w/3 Turnbull) OR Lionel OR Leonel or Alves OR ((SGA OR Adelson OR Sheldon) AND (SCL OR "Sands China" OR VML OR "Venetian Macau Limited"))) OR ((SCL OR "Sands China") w/10 (board or member* OR director)) OR "leverage strategy" OR (investigation* w/10 (government OR official*)) OR ((Stanley w/3 Ho) w/25 ((Parcel* 6 7) OR (Parcel* 6 pre/1 7) OR (P6 pre/1 7) OR (P6 and 7) OR (Site* 6 and 7) OR (Site* 6 pre/1 7) OR (P6 pre/1 7) OR (P6 and 7))) OR (Starwood) OR (st. w/3 regis*) or "advisor" or ("acting CEO or "interim CEO"))

Search terms for period between 7/23/10 and 10/20/10:

Leven or "acting CEO or "interim CEO"

Custodians: Benjamin Toh, Edward Tracy, Fiona Chan, Gunter Hatt, Kevin Clayton, Matthew Pryor, Stephen Weaver

Search terms:

Search terms for period between 10/14/09 and 7/23/10:

Leven w/25 ((Steve w/3 Jacobs) OR (Jeff* w/3 Schwartz) OR (Irwin w/3 Siegel) OR (Stephen w/3 Weaver) OR (Steve w/3 Weaver) OR (Iain w/3 Bruce) OR (Ian w/3 Bruce) OR (Ferguson w/3 Bruce) OR (Iain w/3 Ferguson) OR (Ian w/3 Ferguson) OR (Chiang w/3 Yun) OR (Rachel w/3 Chiang) OR (Dav* w/3 Turnbull) OR ((SGA OR Adelson OR Sheldon) AND (SCL OR "Sands China" OR VML OR "Venetian Macau Limited"))) OR ((SCL OR "Sands China") w/10 (board or member* OR director)) OR "advisor" OR ("acting CEO OR "interim CEO")) OR Lionel OR Leonel or Alves OR "leverage strategy" OR (investigation* w/10 (government OR official*)) OR ((Stanley w/3 Ho) w/25 ((Parcel* 6 7) OR (Parcel* 6 pre/1 7) OR (P6 pre/1 7) OR (P6 7) OR (Site* 6 7) OR (Site* 6 pre/1 7) OR (P6 pre/1 7))) OR (Starwood) OR (st. w/3 regis*) OR ("acting CEO or "interim CEO"))

Search terms for period between 7/23/10 and 10/20/10:

Leven w/25 ((Steve w/3 Jacobs) OR (Jeff* w/3 Schwartz) OR (Irwin w/3 Siegel) OR (Stephen w/3 Weaver) OR (Steve w/3 Weaver) OR (Iain w/3 Bruce) OR (Ian w/3 Bruce) OR (Ferguson w/3 Bruce) OR (Iain w/3 Ferguson) OR (Ian w/3 Ferguson) OR (Chiang w/3 Yun) OR (Rachel w/3 Chiang) OR (Dav* w/3 Turnbull) OR (Toh w/3 Hock) OR (Ben w/3 Toh) OR (Matthew w/3 Pryor) OR (Peter w/3 Wu) OR (Mark w/3 McWhinnie) OR (David w/3 Sylvester) OR (Andrew w/3 Billany) OR (Ed w/3 Tracy) OR (Edward w/3 Tracy) OR (David w/3 Sisk) OR (David w/3 Fleming) OR (Kevin w/3 Clayton) OR (Jeff* w/3 Poon) OR (Virginia w/3 Lam) OR (Gus w/3 Liem) OR "Venetian Marketing Services" OR (Perry w/3 Lau) OR Alves OR ((SGA OR Adelson OR Sheldon) AND

(SCL OR "Sands China" OR VML OR "Venetian Macau Limited")) OR ("acting CEO OR "interim CEO"))

2. March 8, 2012 Order ¶¶ 10, 16 (RFP ¶ 7 and 20): Funding of Sands China

Custodian: Steve Jacobs

Search terms:

"Venetian Oriental Limited" OR "VOL Credit Agreement" OR ((Alves OR Leonel OR Lionel) w/25 (strata OR "4 seasons" OR condo* OR 4S OR "Four Seasons" OR apartment*)) OR ((BOCI OR "Bank of China") w/35 ("Four Seasons" OR 4S))

Custodians: Edward Tracy, Fiona Chan, Benjamin Toh, Stephen Weaver

Search terms:

Bella OR IPO OR "Venetian Oriental Limited" OR "VOL Credit Agreement" OR ((Alves OR Leonel OR Lionel) w/25 (strata OR "4 seasons" OR condo* OR 4S OR "Four Seasons" OR apartment*)) OR ((BOCI OR "Bank of China") w/35 ("Four Seasons" OR 4S))

3. March 8, 2012 Order ¶¶ 11, 16 (RFP ¶ 8, 16): Base Entertainment

Custodian: Steve Jacobs

Search terms:

"Base Entertainment" OR (Brian w/3 Becker) OR (Scott w/3 Zeiger) OR (Jason w/3 Gastwirth)

Custodians: Edward Tracy, Fiona Chan, Matthew Pryor, Kevin Clayton, Stephen Weaver

Search terms:

"Base Entertainment" OR (Brian w/3 Becker) OR (Scott w/3 Zeiger) OR (Jason w/3 Gastwirth)

4. March 8, 2012 Order ¶¶ 11, 16 (RFP ¶ 18): Bally Technologies

Custodian: Steve Jacobs

Search terms:

Bally OR Merlin OR (Robert w/3 Parente) OR (Ken w/3 Campbell)

Custodians: Edward Tracy, Fiona Chan, Gunter Hatt, Stephen Weaver,

Search terms:

Bally OR Merlin OR (Robert w/3 Parente) OR (Ken w/3 Campbell)

5. March 8, 2012 Order ¶ 12 (RFP ¶ 9): Goldstein's services

Custodian: Steve Jacobs

Search 1 (Phase 2/3):

(Goldstein w/35 ((player w/10 (funding OR credit OR development OR collection)) OR marketing OR promotion OR advertising OR Kwok OR Clayton OR (Steve w/3 Chan)

OR (Ben w/3 Lee) OR (Raymond w/3 Lo) OR (Isabel w/3 Leong) OR (David w/3 Law) OR VIP OR Junket OR (Cheung w/3 Chi) OR (Cheung w/3 Tai) OR (Chi w/3 Tai) OR CCT OR (Charles w/3 Heung) OR VMSL OR SCL OR Sands China)) OR (Goldstein w/25 (Steve Jacobs OR Jeffrey Schwartz OR Irwin Siegel OR Stephen Weaver OR Iain Bruce OR Chiang Yun OR David Turnbull OR Toh Hock OR Ben Toh OR Matthew Pryor OR Ed Tracy OR Edward Tracy OR David Fisk OR David Fleming OR “Venetian Marketing Services”)) or (Charles /4 (Heung or Wah or Keung) OR (VIP* w/5 promoter*) or (“high-roller” or “whale*” w/25 (Macau or Macao)) or ((unlicensed or (no* /3 license*)) w/25 junket) OR 71646 or 530636 or 746600 or 3272980 or 3898206 or 3728791

Custodians: Benjamin Toh, Edward Tracy, Fiona Chan, Kevin Clayton, Matthew Pryor, Stephen Weaver

Search terms:

(Goldstein w/25 ((Steve /3 Jacobs) OR (Jeff* w/3 Schwartz) OR (Irwin w/3 Siegel) OR (Stephen w/3 Weaver) OR (Steve w/3 Weaver) OR (Iain w/3 Bruce) OR (Ian w/3 Bruce) OR (Ferguson w/3 Bruce) OR (Iain w/3 Ferguson) OR (Ian w/3 Ferguson) OR (Chiang w/3 Yun) OR (Rachel w/3 Chiang) OR (Dav* w/3 Turnbull) OR (Toh w/3 Hock) OR (Ben w/3 Toh) OR (Matthew w/3 Pryor) OR (Peter w/3 Wu) OR (Mark w/3 McWhinnie) OR (David w/3 Sylvester) OR (Andrew w/3 Billany) OR (Ed w/3 Tracy) OR (Edward w/3 Tracy) OR (David w/3 Sisk) OR (David w/3 Fleming) OR (Kevin w/3 Clayton) OR (Jeff* w/3 Poon) OR (Virginia w/3 Lam) OR (Gus w/3 Liem) OR “Venetian Marketing Services” OR Perry Lau) OR (Charles /4 (Heung OR Wah OR Keung) OR (VIP* w/5 promoter*)) OR (“high-roller” OR “whale*” w/25 (Macau OR Macao)) Or ((unlicensed OR (no* /3 license*)) w/25 junket) OR 71646 OR 530636 OR 746600 OR 3272980 OR 3898206 OR 3728791

6. March 8, 2012 Order ¶ 13, 15 (RFP ¶ 10, 22): LVSC Services on behalf of SCL

Custodian: Steve Jacobs

Search terms:

(Yvonne w/3 Mao) OR (((Eric w/3 Chiu) OR Yeung) w/25 Hengqin) OR (Chu Kong Shipping) OR CKS OR (basketball w/10 team) OR (Adelson Center) OR (“International Risk” OR IR) OR (collection w/20 (customer OR patron OR junket)) OR Vickers

Custodians: Benjamin Toh, Edward Tracy, Fiona Chan, Stephen Weaver

Search terms:

(Yvonne w/3 Mao) OR (((Eric w/3 Chiu) OR Yeung) w/25 Hengqin) OR (Chu Kong Shipping) OR CKS OR (basketball w/10 team) OR (Adelson Center) OR (“International Risk” OR IR) OR (collection w/20 (customer OR patron OR junket)) OR Vickers

7. March 8, 2012 Order ¶¶ 15(1), 16 (RFP ¶ 11 and 21): Parcels 5 and 6

Custodian: Steve Jacobs

Search terms:

((Parcel* 5 and 6) OR (Parcel* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6) OR (Site* 5 and 6) OR (Site* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6)) AND (Gensler OR KNA OR (Shema w/3 Dougall) OR Manzella OR Pryor OR (Timothy w/3 Baker) OR (Paul w/3 Gunderson))

Custodians: Benjamin Toh, Edward Tracy, Fiona Chan, Kevin Clayton, Matthew Pryor, Stephen Weaver

Search terms:

((Parcel* 5 and 6) OR (Parcel* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6) OR (Site* 5 and 6) OR (Site* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6)) AND (Gensler OR KNA OR (Shema w/3 Dougall) OR Manzella OR Pryor OR (Timothy w/3 Baker) OR (Paul w/3 Gunderson))

8. March 8, 2012 Order ¶ 15(2) (RFP ¶ 12): Recruitment of SCL executives

Custodian: Steve Jacobs

Search terms:

(Spencer Stuart) OR (Tracy w/20 (resume OR interview)) OR (Sisk w/20 (resume OR interview)) OR (Egon Zehnder) OR ((Resume OR Recruit* OR Interview OR Curriculum Vitae OR CV) w/30 (candidate OR executive OR VP OR "Vice president" OR "Chief Operating Officer" OR COO OR "Chief Financial Officer" OR CFO OR "Chief Development Officer" OR CDO))

Custodians: Edward Tracy Fiona Chan, Gunter Hatt, Stephen Weaver,

Search terms:

(Spencer Stuart) OR (Tracy w/20 (resume OR interview)) OR (Sisk w/20 (resume OR interview)) OR ("Egon Zehnder") OR ((Resume OR Recruit* OR Curriculum Vitae OR CV) w/25 (candidate* OR executive* OR VP OR "Vice president" OR "Chief Operating Officer" OR COO OR "Chief Financial Officer" OR CFO OR "Chief Development Officer" OR CDO))

9. March 8, 2012 Order ¶ 15(3) (RFP ¶13): Marketing of Sands China properties

Custodian: Steve Jacobs

Search terms:

"International marketing" OR (Chairman* Club) OR (Rom w/3 Hendler) OR (Larry w/3 Chiu) OR (Kirk w/3 Godby) OR (Matthew w/3 Kenagy) OR (Dennis w/3 Dougherty) OR (Cheung w/3 Chi) OR (Cheung w/3 Tai) OR (Chi w/3 Tai) OR CCT OR (Jack w/3 Lam) OR (Charles w/3 Heung) OR (Heung w/3 Wah Keung) OR "frequency program" OR ("Lotus Night Club" w/10 "VIP") OR (Goldstein w/35 ((Kevin w/3 Clayton) OR (Raymond w/3 Lo) OR (Steve w/3 Chan) OR (Ben w/3 Lee) OR (Kerwin w/3 Kwok)))

Custodians: Fiona Chan, Kevin Clayton, Stephen Weaver, Edward Tracy

Search terms:

"International marketing" OR (Chairman* Club) OR (Rom w/3 Hendler) OR (Larry w/3 Chiu) OR (Kirk w/3 Godby) OR (Matthew w/3 Kenagy) OR (Dennis w/3 Dougherty) OR (Cheung w/3 Chi) OR (Cheung w/3 Tai) OR (Chi w/3 Tai) OR CCT OR (Jack w/3 Lam) OR (Charles w/3 Heung) OR (Heung w/3 Wah Keung) OR "frequency program" OR ("Lotus Night Club" w/10 "VIP") OR (Goldstein w/25 ((Kevin w/3 Clayton) OR (Chris w/3 Barnbeck) OR (Kirk w/3 Godby) OR (Raymond w/3 Lo) OR (Steve w/3 Chan) OR (Ben w/3 Lee) OR (Kerwin w/3 Kwok)))

10. March 8, 2012 Order ¶¶ 15(4), 16 (RFP ¶¶ 14, 19): Harrah's

Custodian: Steve Jacobs

Search terms:

Harrah* OR Loveman

Custodians: Fiona Chan, Stephen Weaver, Edward Tracy

Search terms:

Harrah* OR Loveman

11. March 8, 2012 Order ¶ 15(5) (RFP ¶ 15): Negotiation with SJM

Custodian: Steve Jacobs

Search 1 and 2 (Phase 2/3 and 4):

(SJM OR (Stanley w/3 Ho) OR (Ambrose w/3 So)) w/20 ((Parcel* 7 8) OR (Parcel* 7 pre/1 8) OR (P7 pre/1 8) OR (P7 and 8) OR (Site* 7 and 8) OR (Site* 7 pre/1 8) OR (P7 pre/1 8) OR (P7 and 8) OR (Parcel* 5 and 6) OR (Parcel* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6) OR (Site* 5 and 6) OR (Site* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6))

Custodians: Benjamin Toh, Edward Tracy, Fiona Chan, Stephen Weaver

Search terms:

(SJM OR (Stanley w/3 Ho) OR (Ambrose w/3 So)) w/20 ((Parcel* 7 8) OR (Parcel* 7 pre/1 8) OR (P7 pre/1 8) OR (P7 and 8) OR (Site* 7 and 8) OR (Site* 7 pre/1 8) OR (P7 pre/1 8) OR (P7 and 8) OR (Parcel* 5 and 6) OR (Parcel* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6) OR (Site* 5 and 6) OR (Site* 5 pre/1 6) OR (P5 pre/1 6) OR (P5 and 6))

12. March 8, 2012 Order ¶ 16 (RFP ¶ 17): Cirque du Soleil

Custodian: Steve Jacobs

Search terms:

(Daniel w/3 Lamarre) OR (Jerry w/3 Nadal) OR Zaia OR CDS OR Cirque or (Jason w/3 Gastwirth) OR (Sundust)

Custodians: Edward Tracy, Fiona Chan, Kevin Clayton, Ruth Boston

Search 1 and 2 (Phase 1 and 4):

- (Daniel w/3 Lamarre) OR (Jerry w/3 Nadal) OR (Jason w/3 Gastwirth) OR ((Zaia OR CDS OR Cirque OR Sundust) w/10 (talk* OR communicat* OR discuss* OR refer* OR spoke OR speak*))

EXHIBIT 5

EXHIBIT 5

Alvin D. Quinn

CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants

CASE NO. A-627691

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS FOR PROTECTIVE ORDER AND SANCTIONS

TUESDAY, DECEMBER 18, 2012

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

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

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

CLERK OF THE COURT

JAN 03 2013

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33

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

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

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

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

8 THE COURT: Thank you.

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

11 THE COURT: Thank you.

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

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

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

1 the videotape.

2 MR. PEEK: Your Honor, can we have some
3 clarification?

4 THE COURT: Yes.

5 MR. PEEK: And here's the challenge that we have, is
6 you're telling us to produce all of the documents that are
7 responsive to the requests for production, and --

8 THE COURT: If a motion is renewed, Mr. Peek, and
9 there is an impediment to production which Sands China
10 believes relates to the Macau Data Privacy Act, when I make
11 determinations under Rule 37 I will take into account the
12 limitations that you believe exist related to the Macau Data
13 Privacy Act. But, believe me, given the past history of this
14 case there seems to be different treatment of the Macau Data
15 Privacy Act at different times.

16 MR. PEEK: Your Honor, I appreciate what we went
17 through in September. I appreciate what the Court's ruling
18 was. And I think Mr. Jones has certainly made it clear how
19 serious we take this. The motion for protective order
20 certainly goes to who are the custodians, what are the search
21 terms --

22 THE COURT: Your motion for protective order is
23 really broad. Your motion for protective order says, "For the
24 foregoing reasons Sands China urges the Court to enter an
25 order providing that SCL has no obligation to search the ESI

1 in Macau of custodians other than Jacobs or to use any more
2 expansive search terms on the Jacobs ESI in Macau that was
3 used to search the Jacobs's ESI that was transferred to the
4 United States in 2010."

5 The answer is no. Denied.

6 MR. PEEK: Okay. I'll let --

7 MR. PISANELLI: Your Honor, on the Rule 37 issue of
8 whether there's an order --

9 THE COURT: Hold on a second, Mr. Pisanelli. Let me
10 go back to Randall Jones.

11 MR. PISANELLI: Okay.

12 THE COURT: Not Jim Randall, Randall Jones.

13 MR. RANDALL JONES: Thank you, Your Honor. I do
14 want to make clear because of what was said there's never been
15 said and if it was misstated by me, then I want to make sure
16 it's clear on the record. It's never been our position that
17 our client can't look at the documents. The issue is whether
18 or not we can take certain information -- our client is
19 allowed to take certain information out of the country. And
20 so I just want to make sure that's clear on the record. Our
21 client can look at the documents, and our client's Macanese,
22 we've just found out, can look at the documents. And from
23 there it becomes more complicated. So I just want to make
24 sure that's clear to the Court.

25 We understand what you're saying, and we will

1 continue to do our best to try to comply with the Court's
2 orders as best we can. And that's -- and I hope the Court
3 does appreciate this is a complicated situation, and we -- I
4 can -- I'll just tell you again, Your Honor, we're trying to
5 make sure that we -- the lawyers and our client comply with
6 your discovery.

7 THE COURT: I understand.

8 MR. PEEK: Yeah. We need to have redactions as part
9 of that, as well, as that's -- I understood --

10 THE COURT: I didn't say you couldn't have
11 redactions.

12 MR. PEEK: That's what I thought.

13 THE COURT: I didn't say you couldn't have privilege
14 logs. I didn't say any of that, Mr. Peek.

15 MR. RANDALL JONES: As I understand it, Your Honor,
16 you said we can still otherwise comply with the law as we
17 believe we should and then you ultimately make the call as to
18 whether or not we have appropriately done that.

19 MR. PISANELLI: We will indeed --

20 THE COURT: I assume there will be a motion if there
21 is a substantial lack of information that is provided.

22 MR. PISANELLI: So, Your Honor, on this issue of the
23 Court order, we're saying it again. As part of your sanction
24 order you were very clear and you said that they're not hiding
25 behind that anymore.

1 THE COURT: I did.

2 MR. PISANELLI: And they're giving us a precursor
3 that they don't hear you, they just never hear you.

4 THE COURT: Well, Mr. Pisanelli, I've entered
5 orders, I've now entered an order that says on January 4th
6 they're going to produce the information. They're either
7 going to produced it or they're not. And if they produce
8 information that you think is insufficient, you will then have
9 a meet and confer. And then if you believe they are in
10 violation of my orders, and I include that term as a multiple
11 order, then you're going to do something.

12 MR. PISANELLI: I will. I want --

13 THE COURT: And then I'll have a hearing.

14 MR. PISANELLI: I will. I want to make this one
15 point, because you've made a statement that they have not yet
16 violated an order, and that's of concern to me.

17 THE COURT: Well, they've violated numerous orders.
18 They haven't violated an order that actually requires them to
19 produce information. I have said it, we discussed it at the
20 Rule 16 conference, I've had people tell me how they're
21 complying, I've had people tell me how they're complying
22 differently, I've had people tell me how they tried to comply
23 but now apparently they're in violation of law. I mean, I've
24 had a lot of things. But we've never actually entered a
25 written order that says, please produce the ESI that's in

1 Macau within two weeks.

2 MR. PISANELLI: Well, you haven't entered anything
3 that specific, but you have entered an order that calls for
4 ESI protocol that calls for this production --

5 THE COURT: I know.

6 MR. PISANELLI: -- and you directed from this bench,
7 which is no different than an order, for them to create a log
8 --

9 THE COURT: Nevada Supreme Court thinks written
10 orders are really important. So we're going to have a written
11 order this time, Mr. Pisanelli --

12 MR. PISANELLI: We are indeed. But --

13 THE COURT: -- especially since I am under a limited
14 stay which only permits me to deal with jurisdictional
15 information, which I've been trying to get to for a year and a
16 half.

17 MR. PISANELLI: As have we.

18 THE COURT: And I have a note that says, "Find a
19 place for the Sands-Jacobs evidentiary hearing." But I can't
20 find a place for you until you actually have your discovery
21 done or at least close to done.

22 MR. PISANELLI: I will remind Her Honor and the
23 battery of lawyers de jure [sic] that Your Honor told this
24 team I think a year and a half ago, create --

25 THE COURT: Well, it wasn't this team, it was a

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

12/30/12

DATE

EXHIBIT 4

EXHIBIT 4


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

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

3 **I.**
4 **PROCEDURAL POSTURE**

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

10 **II.**
11 **FINDINGS OF FACT¹**

12 1. Prior to litigation, in approximately August 2010, a ghost image of hard drives
13 of computers used by Steve Jacobs in Macau² and copies of his outlook emails were transferred
14 by way of electronic storage devices (the "transferred data") to Michael Kostrinsky, Esq.,
15 Deputy General Counsel of Las Vegas Sands.³

19 ¹ Counsel for Las Vegas Sands objected on the basis of attorney client privilege to a majority of the
20 questions asked of the counsel who testified during the evidentiary hearing. Almost all of those
21 objections were sustained. While numerous directions not to answer on the basis of attorney client
22 privilege and the attorney work product were made by counsel for Las Vegas Sands, sustained by the
23 Court, and followed by the witnesses, sufficient information was presented through pleadings already in
24 the record and testimony of witnesses without the necessity of the Court drawing inferences related to
25 the assertion of those privileges. See generally, Francis v. Wynn, 127 NAO 60 (2011). The Court also
26 rejects Plaintiff's suggestion that adverse presumptions should be made by the Court as a result of the
27 failure of Las Vegas Sands to present explanatory evidence in its possession and declines to make any
28 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.

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

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

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

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

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

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

17 8. Following the Rule 16 conference with the Court, the parties filed a Joint Status
18 Report on April 22, 2011, in which they agreed that the initial disclosure of documents
19 pursuant to NRCP 16.1 would be made by Sands China and Las Vegas Sands prior to July 1,
20 2011. The MDPA is not mentioned in the Joint Status Report as potentially affecting
21 discovery in this litigation.

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

24 10. Beginning with the motion filed May 17, 2011, Sands China and Las Vegas
25 Sands raised the MDPA as a potential impediment (if not a bar) to production of certain
26 documents.
27
28

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

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

9 13. The transferred data was stored on a Las Vegas Sands shared drive totaling 50 –
10 60 gigabytes of information.

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

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

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

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

20 18. At no time did Las Vegas Sands or Sands China provide a privilege log
21 identifying documents which it contended were protected by the MDPA which was discussed
22 by the Court on June 9, 2011.
23
24
25
26

27 ⁴ While Las Vegas Sands contends that a disclosure was made on June 9, 2011, this is inconsistent with
28 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.

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

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

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

8
9 **III.**
CONCLUSIONS OF LAW

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

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

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

18 25. EDCR Rule 7.60 provides in pertinent part:

19 * * *

20
21 (b) The court may, after notice and an opportunity to be heard, impose upon an
22 attorney or a party any and all sanctions which may, under the facts of the case, be reasonable,
23 including the imposition of fines, costs or attorney's fees when an attorney or a party without
24 just cause:

25 * * *

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

28 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.

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

4 May 26, 2011

5 June 9, 2011

6 July 19, 2011

7 September 20, 2011⁶

8 October 4, 2011⁷

9 October 13, 2011

10 January 3, 2012

11 March 8, 2012

12 May 24, 2012

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

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

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

21 30. The Defendants concealed the existence of the transferred data from this Court.
22
23

24
25 ⁶ This hearing was conducted in a related case, A648484.

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

27 ⁸ While the Court recognizes that several other legal proceedings related to certain allegations made by
28 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.

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

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

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

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

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

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

18 b. There are varying degrees of willfulness demonstrated by the
19 Defendants and their agents ranging from careless nondisclosure to knowing, willful and
20 intentional conduct in concealing the existence of the transferred data and failing to disclose
21 the transferred data to the Court with an intent to prevent the Court ruling on the
22 discoverability for purposes of the jurisdictional proceedings;
23
24
25

26
27 ⁹ The Court recognizes no factors have been provided to guide in the evaluation of sanctions for conduct
28 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.

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

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

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

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

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

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

17 IV.

18 ORDER

19 Therefore the Court makes the following order:

20 a. For purposes of jurisdictional discovery and the evidentiary hearing related to
21 jurisdiction, Las Vegas Sands and Sands China will be precluded from raising the MDPA as an
22 objection or as a defense to admission, disclosure or production of any documents.¹²
23
24
25

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

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

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

4 c. Defendants will make a contribution of \$25,000 to the Legal Aid Center of
5 Southern Nevada.
6

7 d. Reasonable attorneys' fees of Plaintiff will be awarded upon filing an
8 appropriate motion for those fees incurred in conjunction with those portions of the hearings
9 related to the MDPA identified in paragraph 26.
10

11 Dated this 14th day of September, 2012

12 
13 ELIZABETH GONZALEZ
14 District Court Judge

15 Certificate of Service

16 I hereby certify that on or about the date filed, this document was copied through e-
17 mail, or a copy of this Order was placed in the attorney's folder in the Clerk's Office or mailed
18 to the proper person as follows:
19

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

21 Samuel Lionel, Esq. (Lionel Sawyer & Collins)

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

23 James J. Pisanelli, Esq. (Pisanelli Bice)

24 
25 Dan Kutinac
26

27
28 ¹³ This does not prevent the Defendants from raising any other appropriate objection or privilege.

EXHIBIT 3 A

EXHIBIT 3 A

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

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

REGISTER OF ACTIONS

CASE NO. A-10-627691-B

Steven Jacobs, Plaintiff(s) vs. Las Vegas Sands Corp, Defendant §
 (s) §
 §
 §
 §
 §
 §
 §

Case Type: **Business Court**
 Date Filed: **10/20/2010**
 Location: **Department 11**
 Case Number History: **A-10-627691-C**
 Cross-Reference Case Number: **A627691**
 Supreme Court No.: **58740**

PARTY INFORMATION

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

EVENTS & ORDERS OF THE COURT

03/13/2015	Motion to Seal/Redact Records (3:00 AM) (Judicial Officer Gonzalez, Elizabeth) Sands China LTD.'s Motion To Seal Exhibit C To SCL's Memorandum Regarding Plaintiff's Renewed Motion For Sanctions
	Minutes 03/13/2015 3:00 AM

02/12/2015 *Reset by Court to 02/26/2015*

02/26/2015 **Result: Denied**
All Pending Motions (8:30 AM) (Judicial Officer Gonzalez, Elizabeth)
Parties Present
Minutes

03/02/2015 **Result: Matter Heard**
All Pending Motions (10:30 AM) (Judicial Officer Gonzalez, Elizabeth)
Parties Present
Minutes

03/02/2015 **Result: Matter Heard**
Findings of Fact, Conclusions of Law and Judgment
[Proposed] Findings Of Fact And Conclusions Of Law

03/02/2015 **Points and Authorities**
Sands China Limited's Memorandum of Points and Authorities Regarding the Rule of Completeness

03/02/2015 **Points and Authorities**
Sand's China Limited's Memorandum of Points and Authorities Regarding Waiver Under NRS 50.125

03/02/2015 **Filing**
Defendant Sands China LTD.'s Memorandum Regarding Plaintiff's Claim That It Should Be Fined

03/03/2015 **All Pending Motions** (10:00 AM) (Judicial Officer Gonzalez, Elizabeth)
Parties Present
Minutes

03/06/2015 **Result: Decision Made**
Status Check (3:00 AM) (Judicial Officer Gonzalez, Elizabeth)
Status Check: Decision
Minutes

03/06/2015 **Result: Decision Made**
Reporters Transcript
Transcript of Proceedings: Evidentiary Hearing Re Motion for Sanctions - Day 6 (Closing Arguments) Tuesday, March 3, 2015

03/06/2015 **Decision and Order**
Decision and Order

03/06/2015 **Notice of Entry of Decision and Order**
Notice of Entry of Decision and Order

03/09/2015 **Notice**
SCL's Proposed Findings of Fact and Conclusions of Law With Respect to Plaintiff's Renewed Motion for Sanctions

03/11/2015 **Order**
Order on: (1) Plaintiff's Motion to Compel and Find Waiver of Privilege Related to the Vickers Reports on Order Shortening Time (2) Defendant Sands China Ltd.'s Motion to Designate the Vickers Reports as Highly Confidential Documents and (3) Plaintiff's Motion to Set Evidentiary Hearings and Trial on Order Shortening Time

03/11/2015 **Motion to Stay**
Motion to Stay Court's March 6, 2015 Decision and Order and To Continue the Evidentiary Hearing on Jurisdiction Set to Commence April 20, 2015 Pending Defendants' Petition for Writ of Prohibition or Mandamus (Ex Parte Application for Order Shortening Time and Order Thereon)

03/11/2015 **Notice of Entry of Order**
Notice Of Entry Of Order

03/12/2015 **Opposition to Motion**
Plaintiff Steven C. Jacobs' Opposition To Motion To Stay Court's March 6, 2015 Decision And Order And To Continue Evidentiary Hearing Set To Commence April 20, 2015 Pending Defendants' Petition For Writ Of Prohibition Or Mandamus

03/13/2015 **Motion to Seal/Redact Records** (3:00 AM) (Judicial Officer Gonzalez, Elizabeth)
Sands China LTD.'s Motion To Seal Exhibit C To SCL's Memorandum Regarding Plaintiff's Renewed Motion For Sanctions
Minutes

03/13/2015 **Result: Granted**
Motion to Stay (8:15 AM) (Judicial Officer Gonzalez, Elizabeth)
Defendant Sands China Ltd.'s Motion to Stay Court's March 6, 2015 Decision and Order and to Continue the Evidentiary Hearing on Jurisdiction Set to Commence April 20, 2015 Pending Defendants' Petition for Writ of Prohibition or Mandamus (Ex Parte Application for Order Shortening Time and Order Thereon)

04/16/2015 **Result: Denied**
Calendar Call (8:45 AM) (Judicial Officer Gonzalez, Elizabeth)

04/20/2015 **Evidentiary Hearing** (1:30 PM) (Judicial Officer Gonzalez, Elizabeth)

FINANCIAL INFORMATION

	Counter Claimant Las Vegas Sands Corp		
	Total Financial Assessment		2,249.00
	Total Payments and Credits		2,249.00
	Balance Due as of 03/13/2015		0.00
12/29/2010	Transaction Assessment		1,260.00
12/29/2010	Wiznet Receipt # 2010-73284-CCCLK	Las Vegas Sands Corp	(1,260.00)
12/29/2010	Transaction Assessment		223.00
12/29/2010	Wiznet Receipt # 2010-73286-CCCLK	Las Vegas Sands Corp	(223.00)
02/10/2011	Transaction Assessment		3.50
02/10/2011	Wiznet Receipt # 2011-11993-CCCLK	Las Vegas Sands Corp	(3.50)
07/13/2011	Transaction Assessment		3.50
07/13/2011	Wiznet Receipt # 2011-75497-CCCLK	Las Vegas Sands Corp	(3.50)
09/14/2011	Transaction Assessment		3.50
09/14/2011	Wiznet Receipt # 2011-102633-CCCLK	Las Vegas Sands Corp	(3.50)
09/14/2011	Transaction Assessment		3.50
09/14/2011	Wiznet Receipt # 2011-102635-CCCLK	Las Vegas Sands Corp	(3.50)

EXHIBIT 3

A/V Record of Hearing Held on March 13, 2015, submitted on CD to the Nevada Supreme Court, Clerk of Court. A written transcript will be provided immediately upon receipt. An informal translation of the excerpts cited are included below.

Beginning at 9:20:34 a.m.:

THE COURT: The motion to stay is denied.

Here, the court has to only make a prima facie determination at the jurisdictional hearing that is currently scheduled for April 20,

I entered sanctions that are a lesser sanction than in my opinion, do not infringe the due process rights of Sands China Limited given the issues that I identified in the procedural posture portion of my brief.

The timing given a lack of stipulation to the extension of the five year rule or the period of tolling pursuant to the stays prevents me from being able to grant a stay.

Beginning at 9:21:51:

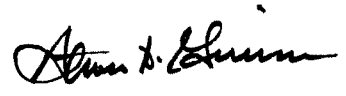
STEVE PEEK: There is a concern with dol . . . giving out the \$250,000 to various legal associations and not being able to get it back in case the Supreme Court does grant that stay. Is the Court interested in at least granting a limited stay as to the payment of those monies

THE COURT: No, I'm not interested in granting any stay. I think the order that was fashioned was one that you were lucky to get on your side.

EXHIBIT 3

EXHIBIT 2

EXHIBIT 2



CLERK OF THE COURT

1 **NOED**

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2 JJP@pisanellibice.com

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6 Telephone: (702) 214-2100

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7 Attorneys for Plaintiff Steven C. Jacobs

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 STEVEN C. JACOBS,

11 Plaintiff,

12 v.

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

16 Defendants.

17 AND RELATED CLAIMS

Case No.: A-10-627691

Dept. No.: XI

**NOTICE OF ENTRY OF DECISION
AND ORDER**

Hearing Date: 02/09-12/2015 and
03/02-03/2015

19 PLEASE TAKE NOTICE that a "Decision and Order" was entered in the above-captioned
20 matter on March 6, 2015, a true and correct copy of which is attached hereto.

21 DATED this 6th day of March, 2015.

22 PISANELLI BICE PLLC

23 By: /s/ Todd L. Bice

James J. Pisanelli, Esq., #4027

Todd L. Bice, Esq., #4534

Debra L. Spinelli, Esq. #9695

400 South 7th Street, Suite 300

Las Vegas, Nevada 89101

Attorneys for Plaintiff Steven C. Jacobs

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 6th day of March, 2015, I caused to be served via the Court's E-Filing system, true and correct copies of the above and foregoing **NOTICE OF ENTRY OF DECISION AND ORDER** properly addressed to the following:

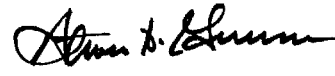
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/s/ Shannon Thomas
An employee of PISANELLI BICE PLLC



CLERK OF THE COURT

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: 02/09-12/2015
and 03/02-03/2015

DECISION AND ORDER

This matter having come on for an evidentiary hearing related to Plaintiff Steven C. Jacobs' ("Jacobs") Renewed Motion for NRCP 37 Sanctions for violating this Court's September 14, 2012 sanctions order¹ before the Honorable Elizabeth Gonzalez beginning on February 9, 2015 and continuing, based upon the availability of the Court and Counsel, until its completion on March 3, 2015; Plaintiff Steven Jacobs ("Jacobs") being present in court and appearing by and through his attorney of record, James J. Pisanelli, Esq., Todd L. Bice, Esq. Debra L. Spinelli, Esq., and Jordan T. Smith, Esq., of the law firm Pisanelli Bice PLLC; Sands China Ltd. ("SCL") appearing by and through its attorney of record J. Stephen Peek, Esq. of

¹ Jacobs filed his motion on February 8, 2013. When hearing Jacobs' motion, the Court determined that "Jacobs ha[d] made a prima facie showing as to a violation of this Court's orders which warrants an evidentiary hearing." (Order Regarding Pl.'s Renewed Mot. for NRCP 37 Sanctions on OST, March 27, 2013, p. 2.) The Court found, "Sands China violated this Court's September 14, 2012 Order by redacting personal data from its January 4, 2013 document production based upon the MPDPA" (Id.) Accordingly, the Court determined that an evidentiary hearing was appropriate. However, before that evidentiary hearing could be held, Sands China sought extraordinary relief before the Nevada Supreme Court, contending that it could not be sanctioned for what it claimed was complying with a foreign law. After the Nevada Supreme Court denied the requested petition for extraordinary relief on August 7, 2014, Las Vegas Sands v. Eighth Judicial District Court, 130 Nev. Adv. Op. 61, 331 P.3d 876, 877 (2014), the evidentiary hearing was scheduled for February 9, 2015. The hearing lasted longer than anticipated and concluded on the sixth day with argument on March 3, 2015.

RECEIVED
MAR 06 2015
CLERK OF THE COURT

1 the law firm Holland & Hart LLP and Randall Jones, Esq., Mark M. Jones, Esq., and Ian P.
2 McGinn, Esq. of the law firm Kemp, Jones & Coulthard, LLP; Defendants Las Vegas Sands
3 Corp. ("LVSC") appearing by and through its attorney of record J. Stephen Peek, Esq. of the
4 law firm Holland & Hart LLP; and Defendant Sheldon G. Adelson ("Adelson") appearing by
5 and through his attorney of record, Steve Morris, Esq. and Rosa Solis Rainey, Esq. of the
6 Morris Law Group; the Court having read and considered the pleadings filed by the parties;
7 reviewed transcripts of prior hearings; having reviewed the evidence admitted during the
8 evidentiary hearing; and having heard and carefully considered the testimony of the witnesses
9 called to testify; the Court having considered the oral and written arguments of counsel, and
10 with the intent of deciding the limited issues before the Court related to appropriate sanctions,
11 if any, pursuant to NRCP 37, related to SCL's decision to produce documents with MDPA
12 redactions in violation of this Court's prior sanctions order² makes the following findings of
13 fact and conclusions of law:

14 **I.**
15 **PROCEDURAL POSTURE**

16 On August 26, 2011, the Nevada Supreme Court issued a stay of certain proceedings in
17 this matter pending the conduct of an evidentiary hearing and decision on jurisdictional issues
18 related to SCL. The Court granted Jacobs request to conduct jurisdictional discovery prior to
19 the evidentiary hearing. The order granting the jurisdictional discovery was ultimately entered
20 on March 8, 2012. Due to numerous discovery disputes and stays³ relating to petitions for
21 extraordinary relief, to date, the Court has been unable to conduct the evidentiary hearing on
22 jurisdiction.

24 ² The Court incorporates certain findings and conclusions made following the September
25 2012 hearing relevant to the issues raised in this second sanctions hearing.

26 ³ The parties have not agreed that the stays issued act as a tolling or extension of the period
27 under NRCP Rule 41e. As such, the Court has informed the parties that, immediately upon the
28 conclusion of the jurisdiction hearing, scheduled to commence on April 20, 2015, it plans to set
the trial of this matter prior to the earliest expiration of the period under NRCP Rule 41e,
October 19, 2015.

1 On February 8, 2013, Plaintiff filed a Renewed Motion for NRCP 37 Sanctions on
2 Order Shortening Time ("Renewed Motion") asserting that SCL had violated the Court's
3 December 18, 2012 Order and its September 14, 2012 Sanctions Order by producing
4 documents with MDPA redactions. In its February 25, 2013 Opposition to that motion, SCL
5 erroneously claimed that the Court had expressly permitted it to redact personal data to comply
6 with the MDPA and identified the steps that had been taken to mitigate the effects of the
7 personal data redactions. SCL explained that LVSC had located 2100 duplicates of the
8 redacted documents in the U.S. and had produced them in unredacted form. In addition, the
9 Macanese lawyers who did the redactions created a redaction log that identified the entity that
10 employed the individuals whose personal data was redacted.

11
12 At a hearing held on February 28, 2013 (and in an Order entered on March 27, 2013),
13 the Court found that SCL had violated its September 14, 2012 order by redacting personal data
14 from its January 4, 2013 production based on the MDPA, and it set a date for a hearing to
15 "determine the degree of willfulness related to those redactions and the prejudice, if any,
16 suffered by Jacobs." (3/27/13 Order at 2:14-18). The Court also ordered SCL to search and
17 produce the documents of all 20 custodians relevant to jurisdictional discovery by April 12,
18 2013. The Order provided that the Defendants "are precluded from redacting or withholding
19 documents based upon the MPDPA." (Id. at 3:2-3).

20 On April 8, 2013, Defendants filed a Writ of Prohibition or Mandamus regarding the
21 Court's March 27, 2013 Order with the Nevada Supreme Court. While that writ was pending,
22 the Court stayed its March 27 Order to the extent that it required the additional production of
23 documents from Macau.

24 After briefing and oral argument, the Supreme Court denied the Petition on August 7,
25 2014. The Court concluded that its intervention would be premature before this Court decided
26 if, or the extent to which, sanctions were warranted. However, the Court outlined a number of
27 factors this Court must consider in deciding "what sanctions, if any, are appropriate" in light of
28 SCL's redaction of personal information from documents it produced out of Macau in January

1 2013. (August 7 Order at 10). Those factors include: “(1) ‘the importance to the investigation
2 or litigation of the documents or other information requested’; (2) ‘the degree of specificity of
3 the request’; (3) ‘whether the information originated in the United States’; (4) ‘the availability
4 of alternative means of securing the information’; and (5) ‘the extent to which noncompliance
5 with the request would undermine important interests of the United States or compliance with
6 the request would undermine importance interests of the state where the information is
7 located.’” *Id.* at 7-8.

8 **II.**

9 **FINDINGS OF FACT**

10 1. SCL is a publicly held Cayman Island corporation, which is listed on the Hong
11 Kong Stock Exchange. SCL’s initial public offering was in November 2009. LVSC owns
12 approximately 70% of SCL’s stock. (3d Am. Compl. ¶ 3).

14 2. SCL’s indirect subsidiary, Venetian Macau Ltd. (“VML”), owns a gaming
15 subconcession in Macau and owns and operates a number of resort and casino properties there.

16 3. Jacobs was SCL’s CEO until he was terminated on or about July 23, 2010. On
17 October 20, 2010, Plaintiff filed this suit against SCL and LVSC.

19 4. SCL moved to dismiss the complaint for (among other things) lack of personal
20 jurisdiction.

21 5. After this Court denied SCL’s motion to dismiss, SCL sought an extraordinary
22 writ in the Nevada Supreme Court. The Nevada Supreme Court issued an Order Granting
23 Petition for Mandamus on August 26, 2011. That Order directed this Court to “revisit the issue
24 of personal jurisdiction” over SCL “by holding an evidentiary hearing and issuing findings
25 regarding general jurisdiction.” The Order further directed this Court to “stay the underlying
26 action, except for matters relating to a determination of personal jurisdiction” until that task was
27 completed. *Id.*
28

1 6. Prior to litigation, in approximately August 2010, certain electronically stored
2 information including a ghost image of hard drives of computers used by Steve Jacobs in Macau
3 and copies of his outlook emails were transferred by way of electronic storage devices (the
4 “transferred data”)⁴ to Michael Kostrinsky, Esq., Deputy General Counsel of LVSC.
5

6 7. Kostrinsky requested this information in anticipation of litigation with Jacobs
7 after learning of receipt of a letter by then general counsel for LVSC from Don Campbell.

8 8. This transferred data was placed on a server at LVSC and was initially reviewed
9 by Kostrinsky.

10 9. The attorneys for SCL at the Glaser Weil firm were aware of the existence of the
11 transferred data on Kostrinsky’s computer from shortly after their retention in November 2010.
12

13 10. The transferred data was reviewed in Kostrinsky’s office by attorneys from
14 Holland & Hart.

15 11. On April 22, 2011, in house counsel for SCL, Anne Salt, participated in the
16 Rule 16 conference by videoconference and responded to inquiry by the Court related to
17 electronically stored information and confirmed preservation of the data.⁵
18

19
20 ⁴ Some of the original devices on which this electronically stored information was
21 transported are in the Court’s evidence vault. Exhibit 217.

22 ⁵ The order scheduling the Rule 16 conference provided in pertinent part:

23 C. The purpose of this conference is to expedite settlement or other appropriate disposition
24 of the case. Counsel/parties in proper person must be prepared to discuss the following:

- 25 (1) status of 16.1 settlement discussions and a review of possible court assistance;
26 (2) alternative dispute resolution appropriate to this case;
27 (3) simplification of issues;
28 (4) the nature and timing of all discovery;
 (5) an estimate of the volume of documents and/or electronic information likely to be
the subject of discovery in the case from parties and nonparties and whether there are
technological means, including but not limited to production of electronic images rather
than paper documents and any associated protocol, that may render document discovery
more manageable at an acceptable cost;

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

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

9 14. Following the Rule 16 conference, no production or other identification of the
10 information from the transferred data was made.⁶
11

12 15. Beginning on May 13, 2011, representatives of VML had a number of
13 communications and meetings with the Macau's Office of Personal Data Protection ("OPDP")
14 regarding the collection, review, and transfer of documents in Macau to respond to discovery
15 requests in this case and subpoenas issued by U.S. government authorities. (SCL Ex. 346).
16

17 16. Beginning with the motion filed May 17, 2011, SCL and LVSC raised the MDPA
18 as a potential impediment to production of certain documents.
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- 22
-
- 23 (6) identify any and all document retention/destruction policies including electronic
24 data;
25 (7) whether the appointment of a special master or receiver is necessary and/or may
26 aid in the prompt disposition of this action;
27 (8) any special case management procedures appropriate to this case;
28 (9) trial setting; and
 (10) other matters as may aid in the prompt disposition of this action.

⁶ Despite the testimony of Jason Ray, it is unclear whether the search terms were ever run
for the custodians for which electronically stored information exists on the transferred data and
what, if any, production was made from the transferred data.

1 17. Sometime after Jacobs commenced this action in October 2010, the United States
2 Securities and Exchange Commission, issued at least one subpoena to LVSC seeking
3 information, some of which was located in Macau.
4

5 18. LVSC's general counsel, Ira Raphaelson, emphasized the seriousness in which
6 LVSC and SCL took their obligations relative to the United States government's requirements.
7 In response, the LVSC Board of Directors voted to vest the "full power of the Board" with
8 LVSC's audit committee. That committee was then empowered to engage the O'Melveny and
9 Myers law firm ("O'Melveny") as legal counsel to address the United States' requests.
10

11 19. Raphaelson recalled conferring with David Fleming, SCL's General Counsel.
12 Raphaelson claims that he wanted to ensure that "maximum access" was given to information
13 that SCL possessed.
14

15 20. As part of Raphaelson's "maximum access" discussion, O'Melveny lawyers from
16 the United States were sent to Macau and given access to SCL's files and servers to conduct
17 searches for information. Raphaelson testified that "a number of consents" were obtained under
18 the MDPA so that O'Melveny would have access to documents and be able to interview
19 executives in Macau. Raphaelson indicated that the company was even willing to provide
20 separate independent legal counsel for any Macau personnel if they so desired. Raphaelson
21 could not recall the number of consents obtained.
22

23 21. One of those Macau executives interviewed by O'Melveny was Ben Toh, SCL's
24 Chief Financial Officer and a member of SCL's Board of Directors. Toh recalled that he was
25 interviewed by the O'Melveny lawyers sometime in 2011. During that interview, he was shown
26 documents. While he could not recall all of the specifics, he did believe that some of the
27
28

1 documents were emails that originated in Macau and what he was shown was in an unredacted
2 form.

3 22. U.S. lawyers were allowed to review unredacted documents in Macau, but the
4 record is incomplete as to what those documents were and whether any of those documents were
5 brought back to the United States. Raphaelson acknowledged that O'Melveny made at least two
6 presentations concerning its review where members of the Nevada Gaming Control Board,
7 gaming regulatory bodies from Pennsylvania and Singapore, and at least one U.S. federal law
8 enforcement official were present. Raphaelson asserted privilege as to the nature of those
9 presentations, except to affirmatively assert that no documents from Macau or any summaries
10 were disclosed.⁷
11

12
13 23. In December 2011, Plaintiff served Requests for Production of Documents
14 ("RFPs") to SCL and LVSC based on the categories of documents the Court had permitted him
15 to discover during jurisdictional discovery.
16

17 24. SCL and LVSC served their respective responses and objections to the RFPs on
18 January 23 and January 30, 2012. (SCL Exs. 302 and 307).

19 25. On March 22, 2012, this Court entered a Stipulated Confidentiality Agreement
20 and Protective Order that, among other things, specifically allowed the parties to redact
21 information to comply with foreign data protection laws, including the MDPA.
22

23 26. At a hearing on June 9, 2012, counsel for SCL represented to the Court that the
24 documents subject to production were in Macau; were not allowed to leave Macau; and, had to
25 be reviewed by counsel for SCL in Macau prior to requesting the OPDP for permission to release
26 those documents for discovery purposes in the United States.
27

28
⁷ The Court anticipates further briefing on this issue.

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

4 28. In contrast to what SCL and LVSC have repeatedly told this Court in the past, the
5 evidence presented at this hearing demonstrates that U.S. lawyers were given access to SCL's
6 Macau data and were allowed to review it and use it for their purposes.

7 29. The transferred data was stored on a LVSC shared drive totaling 50 – 60
8 gigabytes of information.

9 30. Prior to July 2011, LVSC had full and complete access to documents in the
10 possession of SCL in Macau through a network-to-network connection.

11 31. Beginning in approximately July 2011, LVSC access to SCL data changed
12 because of corporate decision-making.

13 32. Prior to the access change, significant amounts of data from Macau related to
14 Jacobs was transported to the United States and reviewed by in house counsel for LVSC and
15 outside counsel, and placed on shared drives at LVSC.

16 33. On June 27, 2012, in a written status report, LVSC and SCL advised the Court
17 that LVSC was in possession of over 100,000 emails and other electronically stored
18 information that had been transferred “in error”.

19 34. In the June 27, 2012 status report, LVSC admits that it did not disclose the
20 existence of the transferred data because it wanted to review the Jacobs electronically stored
21 information.

22 35. On September 14, 2012, this Court entered a Decision and Order (“September
23 2012 Order”) following an evidentiary hearing, stemming from a lack of candor to this Court by
24 SCL and LVSC as to the location of, and their access to, discoverable information, claiming that
25 the MDPA excused their compliance with discovery.
26
27
28

1 36. Based upon the evidence adduced, this Court found in the September 2012 Order
2 that LVSC and SCL's "lack of disclosure appears to the Court to be an attempt to stall discovery,
3 and in particular, the jurisdictional discovery in these proceedings Given the number of
4 occasions the MPDPA and the production of electronically stored information by Defendants
5 was discussed there can be no other conclusion that that the conduct was repetitive and abusive."
6 The Court found "willful and intentional conduct with an intent to prevent" Jacobs and the Court
7 from accessing, and ruling upon, discoverable information in the jurisdictional proceedings. (*Id.*
8

9 37. As an ameliorative sanction, this Court ordered that "[f]or jurisdictional discovery
10 and the evidentiary hearing related to jurisdiction, LVSC and SCL will be precluded from raising
11 the MDPA as an objection or as a defense to admission, disclosure or production of any
12 documents."⁸ They were further sanctioned \$25,000 and required to cover Jacobs' reasonable
13 attorneys' fees. LVSC and SCL "did not challenge" this Court's September 2012 Order – which
14 precluded their use of the MDPA in jurisdictional discovery – with the Nevada Supreme Court.⁹
15

16 38. SCL has continued to identify the MDPA as a basis for not complying with its
17 discovery obligations and has redacted all so-called personal data – the names and personal
18 identifiers including email addresses – on all documents produced from Macau.
19

20 39. Raphaelson could not recall the substance of the input he provided to Fleming
21 concerning compliance with the September 2012 Order.
22

23 40. In October 2012, SCL retained new counsel. SCL's new counsel informed
24 Plaintiff's counsel that they intended to travel to Macau and requested a meet-and-confer
25

26 ⁸ In the September 2012 Order, the Court recognized that this restriction did not prevent
27 the Defendants from raising any other appropriate objection or privilege

28 ⁹ *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 61, 331 P.3d 876, 878
(2014).

1 regarding "the custodians for whom information should be reviewed and the search terms to be
2 used to identify potentially responsive jurisdictional information from those custodians." (SCL
3 Ex. 99).

4
5 41. Fleming testified that he obtained input from not only Raphaelson, but also
6 attorneys Robert Rubenstein, Randall Jones, Mark¹⁰ Jones, Mike Lackey, Wyn Hughes, and
7 Ricardo Silva in determining his course of action. (Day 1, pp. 152-56.) Based upon the input he
8 received, Fleming claims that he made the decision not to comply with the September 2012
9 Order and that the decision is one thus based in "good faith".

10
11 42. Mr. Fleming personally met with the OPDP about a dozen times before the
12 Court's September 14, 2012 Order. (2/9/15 Hearing Tr. at 169:12). He testified that he obtained
13 advice from Macanese lawyers and approached the OPDP "to see how we could overcome what
14 I perceived to be a potential problem in delivering documents which had personal data." (*Id.* at
15 140:5-25). The OPDP took the position that "under no circumstances could data of a personal
16 nature be transmitted to Las Vegas in accordance with any requirement imposed on SCL"
17 without either the consent of the data subject or OPDP's approval. (2/9/15 Hearing Tr. at 141:1-
18 18).

19
20 43. VML made several attempts to secure OPDP's approval, arguing that (as the data
21 controller) it had a legitimate reason for processing personal data to search for responsive
22 documents and for transferring that data outside of Macau. It also suggested that, insofar as this
23 case is concerned, the interests of the data subjects could be protected through a protective order.
24 In letters issued in October 2011 and again in August 8, 2012, the OPDP rejected VML's
25 arguments. It noted that the litigation was not pending in Macau, that VML was not a party to
26
27

28

¹⁰ It appears the transcript inadvertently states "Mike."

1 the litigation, and that VML had no legal obligation to respond. Under those circumstances, the
2 OPDP took the position in its August 8, 2012 letter that VML did not have “the legitimacy” even
3 to process the data, let alone to transfer it. (SCL Ex. 333 at 13, 15). The OPDP also rejected the
4 argument that sufficient protection existed in the U.S. to allow the transfer. *See id.* at 14-15, 19-
5 20. And while the OPDP suggested that data could be transferred with consent of the data
6 subject, it warned that the consent had to be “freely” given, “specific” and “informed” and that,
7 particularly in the employment relationship, it was important to ensure that the data subject was
8 not “influenced by his or her employer” and was able to freely make a choice to consent or not.
9 *Id.* at 10-11.

12 44. After Defendants informed this Court of the 2010 transfer of Jacobs’ data from
13 Macau to LVSC in Las Vegas, Mr. Fleming had series of conversations with the OPDP about the
14 situation. He described the OPDP as being “furious” about the transfer and noted the public
15 statements Macau’s secretary of finance made at about that time stating that under no
16 circumstances should there be any breach of Macau law with respect to data privacy issues and
17 that Macau had a “zero tolerance” policy with respect to such breaches. (*Id.* at 143:14-144:2;
18 2/10/15 Hearing Tr. at 231:14-21). The OPDP opened up an investigation of VML and
19 ultimately fined it for allowing Jacobs’ electronically stored information to be transferred to Las
20 Vegas. (2/10/15 Tr. at 228:13-229:22).

23 45. After a further discussion with the OPDP in or about October 2012, which was
24 attended by U.S. counsel for SCL, and a letter submitted in November 2012, the OPDP
25 eventually stepped back from the position it had taken in August 2012 that precluded VML from
26 even searching documents that contained personal data. The OPDP agreed to allow such
27 searches to take place, so long as Macanese lawyers reviewed the documents that were identified
28

1 as responsive. The OPDP rejected the suggestion that Hong Kong lawyers could do so and
2 reiterated its position that any transfer of personal data would have to be with its consent or the
3 consent of the data subject. (*See* 2/9/2015 Hearing Tr. at 135:13-22). In fact, Mr. Fleming
4 testified that beginning at the end of November 2012 the deputy director of the OPDP "advised
5 us monthly that we were not to transmit data out of Macau unless we had the data subject's
6 consent." (2/9/15 Hearing Tr. at 141:1-18).

8 46. After the September 2012 Order, Macau's OPDP informed SCL that its request to
9 transfer data concerning this litigation was incomplete and was based upon the wrong provisions
10 of the MDPA. (Ex. 102; Day 2, pp. 176-78.) OPDP informed SCL that its request to transfer
11 could not be considered absent corrections and additional information being provided. (*Id.*)

13 47. Fleming concedes that he knew that OPDP considered SCL's requests to be
14 incomplete. Yet, no action was taken to remedy the deficiencies that OPDP noted. (*Id.*) Fleming
15 claimed that there was insufficient time in light of the deadlines set by this Court. Even though
16 SCL was still producing documents as late as January 2015 in redacted form, Fleming concedes
17 SCL had taken no action to address the inadequacies that OPDP had noted in 2012.

19 48. The OPDP also informed SCL that it could pursue available remedies in the
20 Macau courts concerning its desire to transfer data. (Ex. 102.) Fleming acknowledged that he
21 knew of available avenues but he took no action in that regard. This is despite the fact that one
22 of the means in which the MDPA expressly authorizes a transfer of data "for compliance with a
23 legal obligation" "or for the . . . exercise of defence [sic] of legal claims." (Ex. 341.)

25 49. SCL concedes that it did not seek consents from any of its Macau personnel.
26 Fleming's only explanation was to claim that it would be too cumbersome to do so. In prior
27 arguments to this Court, SCL has insisted it could face potential liability if it even sought
28

1 consents because it could be accused of having put pressure on personnel in order to obtain the
2 consent.

3 50. Raphaelson's revelation that "a number of consents" were obtained when LVSC
4 and SCL wanted access to information to address the United States' investigation contradicts the
5 rationale SCL has given for its inaction here. As Toh even acknowledged, he believed that he
6 had granted consent for LVSC to access his personal data pursuant to his employment
7 arrangement. Even though Toh and other SCL executives were the custodians that SCL had
8 been ordered to search for jurisdictional discovery, not a single such consent was sought.
9

10 51. The fact that consents were later obtained from four Nevada residents – Adelson,
11 Goldstein, Leven and Kay – nearly two years after the ordered production is not evidence of
12 good faith. These four executives are United States residents. Their emails are located in
13 Nevada and not even subject to the MDPA, a fact that SCL and LVSC have conceded.
14 Obtaining consents from United States residents while knowingly not seeking consents from
15 Macau personnel – several of whom were actual custodians – is further evidence as to SCL's lack
16 of good faith relative to this Court's orders and its discovery obligations.
17

18 52. Fleming concedes that he received the September 2012 Order, and understood
19 that it prohibited SCL from using the MDPA as a basis for not producing documents. He also
20 understood that the September 2012 Order precluded SCL from using the MDPA as a basis for
21 redacting documents in this litigation. Fleming acknowledged that the order was sufficiently
22 "clear" to him as to what it precluded. (Day 1, pp. 147-48, 150-51; Day 2, p. 179.)
23

24 53. The SCL Board of Directors was never provided a copy of the September 2012
25 Order. (Day 3, pp. 89-93.) Nor was the SCL Board provided copies of this Court's subsequent
26 order requiring production of jurisdictional documents. (Day 3, p. 90.) According to Fleming,
27
28

1 he did not involve the Board in making a decision as to complying with this Court's September
2 2012 Order. Fleming claims that neither the Board nor even the CEO was asked to make a
3 decision on what is now being recast as a serious problem for SCL.¹¹

4
5 54. The Board held no meetings concerning the consequences of noncompliance.
6 (Day 1, pp. 157-58.) Nor did the SCL Board vote or authorize redactions that were in knowing
7 violation of this Court's September 2012 Order. (*Id.* at pp. 166-167.) Further underscoring its
8 attitude concerning this Court's Order, there is no indication that SCL disclosed to any regulatory
9 authorities its conscious decision to violate an order of a United States court. (Day 3, p. 94.)

10
11 55. Although Fleming noted that the MDPA contained potential criminal sanctions,
12 no evidence was presented that the MDPA had ever been enforced in such a fashion or that there
13 was any risk of such sanctions when complying with the orders of a U.S. court. SCL presented
14 no actual evidence that its Board members or officers feared any potential reprisals by complying
15 with this Court's orders.

16
17 56. Fleming acknowledged that SCL had in fact violated the MDPA on at least two
18 prior occasions. One of them involved the large data transfer that SCL and LVSC undertook
19 which was concealed from this Court and had occurred even before Jacobs had commenced this
20 litigation. There were no outstanding court orders compelling the transfer of that data. Yet, for
21 that wholesale transfer, SCL paid a nominal fine, which was roughly equivalent of \$2,500 U.S.
22 dollars. (Day 2, p. 229.) For the other separate violation, SCL was fined the same nominal
23 amount of roughly \$2,500 U.S. dollars. (*Id.*)

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28 ¹¹ Until one business day prior to the hearing, SCL maintained that the identity of the
persons involved in the decision making to violate this Court's September 2012 Order was
privileged. On February 6, 2015, SCL stated that the decision was made by Fleming.

1 57. There are apparently no restrictions upon taking documents or electronically
2 stored information that contain personal data out of Macau as a matter of routine business.
3 When SCL's executives travel, they are not required to surrender that information at the border of
4 Macau, nor do they. According to Fleming, the OPDP has supposedly given authorization –
5 although no such writing or any form of documentation was actually presented – for data to be
6 carried out of Macau in the ordinary course of business. As Fleming conceded, SCL could not
7 run its business without doing so.
8

9 58. SCL's attitude towards compliance with this Court's September 2012 Order stands
10 in sharp contrast with how it claims to have cooperated with "maximum access" relative to
11 United States government investigations.
12

13 59. The prejudice that SCL has inflicted with its noncompliance has been exacerbated
14 by SCL's attempts to benefit from its own noncompliance with the Court's ameliorative sanction.
15

16 60. Despite the entry of this Court's September 2012 Order, SCL continued to cite the
17 MDPA as a basis for its non-review and non-production of documents. This necessitated Jacobs
18 filing his initial Motion for NRCP 37 Sanctions on November 21, 2012.

19 61. On December 4, 2012, SCL filed a motion for a protective order. That motion
20 explained that SCL had just received permission from the OPDP to review documents in Macau
21 and that SCL would be producing documents after they had been reviewed and personal data had
22 been redacted by Macanese lawyers. SCL asked the court to allow it to limit its search to
23 documents for which Jacobs was the custodian, on the ground (among others) that Plaintiff
24 already had whatever documents he needed to make his jurisdictional case and that fundamental
25 principles of fairness and proportionality required the court to limit SCL's production
26 obligations. (SCL Motion for Protective Order at 22-23).
27
28

1 62. The Court held a hearing on December 18, 2012 and ordered SCL to produce all
2 jurisdictional documents no later than January 4, 2013. (Court Minutes, Dec. 18, 2012; Order,
3 Jan. 16, 2013 ("Sands China shall produce all information in its possession, custody, or control
4 that is relevant to jurisdictional discovery, including electronically stored information ('ESI'),
5 within two weeks of the hearing, on or before January 4, 2013").)

7 63. At the same hearing, the Court denied SCL's motion for a protective order and
8 denied Plaintiff's motion for sanctions without prejudice. In ruling on Plaintiff's Rule 37
9 motion, the Court noted that it had never entered an order requiring SCL to produce specific
10 documents and thus any motion for sanctions was premature. (12/18/12 Hearing Tr. at 28:18-
11 19). The Court then ordered SCL to produce all documents relevant to jurisdictional discovery
12 by January 4, 2013. (*Id.* at 24:12-15).

14 64. At the December 18, 2012, hearing, counsel for SCL explained the constraints
15 imposed by the MDPA on transfers of personal data out of Macau:

17 Mr. Randall Jones: The issue is whether or not . . . our client is allowed to take certain
18 information out of the country. And so I just want to make sure that's clear on the record.
19 . . . We will continue to do our best to try to comply with the Court's orders as best we
20 can. . . . I hope the Court does appreciate this is a complicated situation, and . . . we're
21 trying to make sure that we – the lawyers and our client comply with your discovery.

22 The Court: I understand.

23 Mr. Peek: Yeah. We need to have redactions as part of that, as well, as that's—I
24 understood—

25 The Court: I didn't say you couldn't have redactions.

26 Mr. Peek: That's what I thought.

27 The Court: I didn't say you couldn't have privilege logs. I didn't say any of that Mr.
28 Peek.

(12/18/12 Hearing Tr. at 26:17-27:14).

1 65. After the Court denied the Motion for Protective Order, SCL contacted FTI
2 Consulting ("FTI") to handle the technical work in Macau. (2/10/15 Hearing Tr. at 15:9-12). FTI
3 set up a technology-processing center at the Venetian Macau and built a dedicated server to
4 collect, process, and search data. (*Id.* at 17:3-8, 17:15, 71:16-19). Once potentially relevant
5 documents were identified using search terms, approximately two dozen Macanese contract
6 lawyers reviewed the documents for relevance and then redacted all personal information before
7 the redacted documents were transferred to the United States for further processing and
8 production. (*Id.* 103:6-17). The Macanese lawyers were the only ones who were allowed to
9 view the documents in their unredacted form. Neither FTI nor any of SCL's counsel in this
10 action reviewed those documents in unredacted form.
11

12 66. Despite the fact that Jacobs' discovery requests had been pending since 2011,
13 Fleming concedes that he did not even engage lawyers in Macau – who he understood would
14 have to conduct the document review – until after the December 18 hearing. (Day 2,
15 pp. 239-40.)
16

17 67. FTI's project manager for this undertaking was Jason Ray. Ray testified that FTI
18 was "engaged to collect and facilitate in the collection of electronic data for a set list of
19 custodians, to process that data for culling and search analysis, to select documents that were
20 potentially relevant for human review, and to support the human review and ultimate production
21 of those documents from Macau." (Day 2, pp. 14-15, 24.)
22

23 68. The document review was done in the Venetian Macau where FTI set up its
24 technology-processing center. FTI gathered data that was collected by Venetian Macau IT
25 personnel and did some additional data collections from servers, individual computers, laptops,
26
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1 and desk tops of only approximately 6-9 custodians. All of the data was then processed and
2 loaded into FTI's case review tool called "Ringtail." (Day 2, pp. 20, 73-74, 77.)

3 69. FTI was informed by one of SCL's attorneys – Kristina Portner of the law firm
4 Mayer Brown – that FTI was given "explicit authorization" to see the metadata of the documents
5 for purpose of searching and review management. Purportedly, this approval was given by the
6 OPDP. FTI did not communicate with OPDP or see any written authorization. (Day 2, pp. 21-
7 22, 68-69.)

8 70. As a result, FTI could view some personal data that is contained within the
9 metadata even though FTI could not look at documents. Metadata can contain personal data
10 including email addresses, names of senders, names of recipients, and the name of folders where
11 data is stored. (Day 2, pp. 22, 62-64.)

12 71. Ray testified that searches in the Ringtail program are run based upon "search
13 term families," which are groups of individual criteria that are then applied to a data set of
14 documents. Each criterion can have associated with it a Boolean search of any level of
15 complexity. In other words, search term families are built with Boolean search terms. Then, the
16 Boolean search term families are run against the index of data, which produces a search result of
17 relationships that are in the database, and reportable, *i.e.* this document contains one or more
18 criteria from the Boolean search term family. (Day 2, pp. 20, 80-82.)

19 72. Attorneys from Mayer Brown provided FTI with the Boolean search terms to be
20 run against the index. FTI, as an electronically stored information vendor, is not familiar enough
21 with the case to create its own search terms for responsive documents. There is an iterative
22 process reporting with counsel on the results of those searches and the search terms change over
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1 time based upon the results of the search. Searches can be modified to be more or less expansive
2 to generate more or less responsive documents. (Day 2, pp. 20, 81-83, 86.)¹²

3 73. Most often, the Boolean search terms consist of the names of individuals. (Day 2,
4 pp. 82, 89-90, 94, 280.) The significance of this point cannot be understated here since SCL
5 later redacted all of the names from the responsive documents prior to producing them to Jacobs.
6

7 74. While SCL initially claimed that Jacobs had not provided any input on the
8 appropriate search terms, the evidence at the hearing demonstrated otherwise, including that
9 Jacobs had provided additional search terms, some of which SCL incorporated and others which
10 were not included. (Ex. 215.)
11

12 75. The search terms were run in December 2012 and identified approximately
13 70,000 responsive documents for review. (Day 2, p. 93.)

14 76. The review of the documents was conducted in a second conference room at the
15 Venetian Macau because FTI employees and SCL's counsel in this case were purportedly not
16 permitted to see any of the documents that were being reviewed or handled. (Day 2, pp. 20, 112-
17 113.)
18

19 77. SCL's review for relevancy and responsiveness was conducted by Macau
20 attorneys and "Macau citizens." As Ray explained, because SCL had not sought to hire
21 reviewers until a week before Christmas, SCL could not find a sufficient number of "competent
22 Macau lawyers" to conduct the review. (Day 2, pp. 98-103, 106, 143-44, 238.) Thus, non-
23
24

25 ¹² FTI assisted SCL with two productions from Macau. The second production was
26 completed in March/April of 2013. The second search was an expanded search of terms and
27 additional custodians. (Day 2, pp. 88, 148-149.) Jacobs proposed additional search terms for this
28 production. (Day 2, pp. 151-171.) Not all of Jacobs' proposed changes were incorporated. The
documents from the second search were not produced to Jacobs until January 2015. (Day 2,
p. 286.)

1 lawyer paralegals, legal secretaries, and "other people" with supposed "legal knowledge" were
2 used to make relevancy determinations in Macau.¹³ No lawyers involved in this litigation
3 reviewed documents in Macau for relevancy or responsiveness.

4
5 78. The lack of transparency in SCL's procedures is highly problematic. SCL
6 presented no evidence of any training of the so-called Macau reviewers or their qualification to
7 be making relevancy/responsiveness determinations for discovery in a Nevada lawsuit. Ray
8 concedes that FTI did not do any subject matter training for the Macanese reviewers and he did
9 not know if anyone provided any subject matter training. FTI only provided training on how to
10 use the computerized review tool. (Day 2, pp. 98-103, 106.)
11

12 79. Search terms without any substantive review cannot be relied upon to insure
13 responsiveness to discovery requests. The review process of at least a portion of the retrieved
14 data generally provides the transparency necessary for the Court to rely upon the responsiveness
15 of results. Here there is no transparency due to the redactions.¹⁴
16

17
18 ¹³ This revelation is in contrast to Sands China's representations to the Court and to Jacobs
19 made in its so-called "Report on its compliance with the Court's ruling of December 18, 2012."

20 ¹⁴ The Sedona Conference has published its Cooperation Proclamation. The Sedona
21 Conference® Cooperation Proclamation, 10 SEDONA CONF. J. 331 (2009 Supp.). The intent
22 of the proclamation is "to promote open and forthright information sharing, dialogue (internal
23 and external), training, and the development of practical tools to facilitate cooperative,
24 collaborative, transparent discovery."

25 More recently the Sedona Conference has published a cooperation guide which reiterates
26 this principle in part:

27 Finally, a few overarching points: when making decisions unilaterally—before opposing
28 counsel is identified—do so in anticipation of cooperation. Document the reasonable and
good faith efforts you are making to comply with your obligations in a manner that you
can share with opposing counsel once identified, if necessary. All cooperative efforts,
actually, should be transparent so that if opposing counsel does not reciprocate and
motion practice ensues, the court will know the steps you have taken to try to avoid
unnecessary discovery disputes. Lastly, even if your case is already under way, it is never

1 80. As the Macanese reviewers were also redacting the documents at the same time
2 they were reviewing for relevancy and privilege, no one involved in this litigation was allowed to
3 see what in fact was being redacted and what documents were being excluded from the
4 production. (Day 2, pp. 103-104.) According to SCL and Ray, the Macau reviewers were
5 supposed to be redacting information from which the identity of a person could be known, which
6 principally meant person's names were redacted.
7

8 81. Once the review was complete, the redactions were burned onto the document
9 images and then the images and metadata were packaged for production. This production was
10 then sent to Mayer Brown electronically. (Day 2, pp. 113-114, 119.) According to Ray, the
11 Macau reviewers determined that only 15,000 documents out of the some 70,000 documents
12 identified by the search terms were sufficiently relevant/responsive to be produced. (Day 2,
13 p. 110.)
14

15 82. The redaction of all names and personal identifiers from the documents
16 exacerbates an already problematic review process. The lack of transparency – with unidentified
17 Macau reviewers making determinations as to types of documents that should be subject to
18 disclosure – highlights the prejudice from SCL's noncompliance.
19

20 83. The Court can have little confidence in such a nontransparent process. No litigant
21 should be required to accept it, particularly under the circumstances of this case. The redactions
22 made to the documents – eliminating all names and other identifying information about identities
23 – casts doubt as to fairness and thoroughness of the entire search, vetting and production process.
24
25

26 too late to adopt a cooperative approach to fact-finding consistent with the Cooperation
27 Points set forth below.

28 THE SEDONA CONFERENCE® COOPERATION GUIDANCE FOR LITIGATORS & IN-
HOUSE COUNSEL, March 2011 version.

1 Because many of the search terms were in fact names, the veracity and completeness of the
2 search cannot be tested against the documents that were flagged for production as SCL has made
3 it impossible for Jacobs to know the identity of any of the names in the redacted documents.
4 Thus, because several of the search terms are in fact names of people, the search terms
5 themselves are redacted. Such a process is ripe for abuse and fails to meet the standards of
6 fairness for discovery in a Nevada court.
7

8 84. Because in many instances the actual search terms are redacted, Jacobs cannot
9 himself even run searches against the redacted documents.
10

11 85. The Defendants themselves confirmed that redacted documents are effectively
12 useless in terms of evidentiary value, particularly emails since those contain the identity of the
13 sender, recipient and other names, all of which SCL has redacted and made inaccessible.
14

15 86. SCL's continuing misuse of the MDPA in violation of this Court's September
16 2012 Order has perpetuated the already lengthy delay of this action to Jacobs' prejudice. This
17 action has now been pending for over four years and merits discovery has been stayed until this
18 Court is able to resolve SCL's jurisdiction defense.
19

20 87. Fleming acknowledges he knew the effect and what was required by the Court's
21 September 2012 Order. As he testified:
22

23 Q. Okay. And when you saw it did you understand that it precluded you - - or, I'm
24 sorry, it precluded the company from redacting any documents pursuant to the MPDPA?
25

26 MR. RANDALL JONES: Mr. Fleming - -
27

28 THE WITNESS: Yes, of course I did. I told Her Honor exactly that a few minutes ago.
29

30 BY MR. BICE:
31

32 Q. All right. So you were - - you did not misunderstand as to which documents it
33 applied; correct?
34

1 A. Of course not.

2 Q. You know that it applied to all of the documents that were then located in Macau;
3 correct?

4 A. Correct.

5 (Day 1, p. 148.)

6 88. Fleming concedes that he recognized that the September 2012 Order did not
7 permit redactions to be made under the MDPA. Nonetheless, he claimed that he made the
8 decision not to comply with this Court's order and would proceed to make redactions. Fleming
9 then claimed under questioning by SCL that he had been led to believe that redactions were
10 permitted. He claims that he could not recall who told him that this Court had authorized the
11 redactions to be made. Fleming acknowledges that he was going to make the redactions
12 notwithstanding the terms of this Court's September 2012 Order and that this Court's supposed
13 approval of redactions merely gave him more comfort. The Court only gave authorization for
14 redactions based on privilege.
15

16 89. Undue delay in the prosecution of any case is prejudicial, but acutely so here.
17 Witnesses have left LVSC and SCL. As LVSC's own general counsel acknowledges, memories
18 fade with time. One key witness, former SCL Board member, Jeffrey Schwartz, died during this
19 latest delay of this case. Raphaelson was unaware of any attempts to preserve evidence from
20 Schwartz prior to his passing.
21

22 90. The result of the delay has been the permanent loss of evidence in this case, which
23 underscores why a reliable and thorough production of contemporaneous documents is all the
24 more necessary here. This Court resolved the MDPA's use by SCL two years ago. Yet, it
25 continues to be enlisted as a tool of delay and obstruction to this very day.
26
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28

1 91. SCL claims that it has endeavored to mitigate some of the prejudice by searching
2 for and producing some of the relevant/responsive documents in an unredacted form by locating
3 copies that were already outside of Macau.

4 92. On or before January 4, 2013, SCL produced 4,707 documents from Macau
5 consisting of about 27,000 pages. Most of those documents contained personal data redactions.

6 93. After the January 4 production, SCL undertook extensive efforts to locate
7 duplicates of the documents produced from Macau in the United States, so those documents
8 could be produced without MDPA redactions. Among other things, FTI transferred the hash
9 code values of the documents located in Macau (which do not contain personal data) to the
10 United States and searched LVSC's documents for duplicates. (2/10/15 Hearing Tr. at 23:21-
11 24:4). FTI also transferred the documents it had collected in the United States for LVSC to
12 Macau and performed 11 separate search iterations in an attempt to locate documents in the
13 LVSC database that were duplicates of the documents that SCL had located in Macau. (*Id.* at
14 27:8-19, 31:2-20). FTI was able to locate thousands of duplicate documents in the U.S., which
15 were subsequently produced without MDPA redactions in a series of replacement productions.
16 (*Id.*). Jason Ray of FTI estimated that, given a normal schedule and without the complications
17 posed by the MDPA redactions and the attempt to locate duplicates in the U.S., FTI would have
18 charged approximately \$400,000 for the work it did in connection with SCL's January 2013
19 production. The additional work caused the bill to increase to approximately \$2.4 million. (*Id.*
20 at 33:11-13).

21 94. After its initial production in early 2013, SCL later produced "replacement
22 images," *i.e.* unredacted (or less redacted) duplicates of certain documents originally produced
23 redacted from Macau that were later found in the United States. SCL has now produced over
24
25
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28

1 17,500 documents consisting of more than 124,000 pages in response to jurisdictional discovery.
2 Approximately 9,600 of those documents have been produced without any MDPA redactions.

3 95. As noted above, after it produced redacted documents, SCL searched for and
4 found many duplicates. SCL also unredacted portions of the remaining redacted documents after
5 securing consents from Adelson, Leven, Goldstein and Kay.
6

7 96. At least 7,900 documents from SCL's production remain redacted with the names
8 and identities of all participants in those documents removed. At least 7,900 documents – of the
9 15,000 documents, which SCL's Macau reviewers determined were relevant/responsive to
10 jurisdictional discovery from the 70,000 returned by the search terms – remain effectively
11 unproduced to Jacobs due to the redactions. The identity of all participants in those documents
12 remains redacted and they are effectively unusable as confirmed by SCL's own witnesses.
13

14 97. SCL's attempt to locate duplicates of certain of the documents outside of Macau
15 and later production of them in an unredacted form¹⁵ does not mitigate the prejudice to Jacobs.
16 Thousands of documents relevant and responsive to the jurisdictional issue remain unproduced in
17 violation of this Court's September 2012 Order.
18

19 98. There is no cure to the prejudice from this continued nonproduction. According
20 to SCL, it has done everything possible to locate all duplicates that could exist outside of Macau
21 and all documents that are still redacted will remain that way because it is not going to comply
22 with this Court's prior ameliorative sanction, which precluded SCL reliance on the MDPA to
23 avoid production.
24
25
26

27 ¹⁵ The Court applauds SCL's efforts to locate the duplicate documents through the use of
28 hash codes and additional review. Unfortunately given the large number that remain redacted
the prejudice remains.

1 99. The replacement documents SCL was able to locate and produce were not done in
2 a timely fashion. The replacement documents were not produced early enough to be used during
3 jurisdictional discovery depositions, which were completed in early February, 2013.

4 100. The video deposition of former SCL and LVSC Board member, Mike Leven, was
5 played to the Court. Leven was shown a number of the redacted emails and testified he would
6 not have "the slightest idea" what the documents were about or how they pertain to this case
7 because of the redactions. Leven conceded that he could not make heads or tails out of the
8 documents because all of the names and identifying information was missing. (Day 3, pp. 152-
9 154.)
10

11 101. Toh, who testified live via videoconference, confirmed the same. Toh was
12 similarly shown a number of the emails as well as a copy of Board meeting minutes where all the
13 names were redacted. Toh confirmed that he could not recall these events and could not even
14 identify who was involved or to what they necessarily pertained. Again, documents with all of
15 the names redacted, particularly email, are effectively rendered useless from an evidentiary
16 standpoint.
17

18 102. These redacted documents are those that the unidentified Macau reviewers
19 determined were relevant/responsive to jurisdictional discovery. Yet, SCL has effectively
20 destroyed the evidentiary value of all of the redacted documents, particularly the emails, through
21 its willful violation of this Court's September 2012 Order.
22

23 103. SCL's reference to the amount of money it has expended in redacting and
24 searching for duplicates outside of Macau is not evidence of good faith so as to militate against
25 the imposition of serious sanctions. To the contrary, the fact that SCL would expend what it
26 claims are in excess of \$2 million so as to not comply with this Court's September 2012 Order
27
28

1 only highlights how even significant monetary sanctions will not bring SCL to cease its
2 misconduct.

3 104. The evidence elicited from Ray confirms that SCL could have expended at least
4 \$2 million less in discovery costs had it simply complied with this Court's discovery orders.
5 Instead, because of time constraints brought on by its own delays and noncompliance, SCL
6 claims that it incurred an additional \$2 million in expenses with FTI as a product of its efforts to
7 continue to use the MDPA as a shield against discovery in violation of this Court's September
8 2012 Order. (Day 2, pp. 47-50.)
9

10 105. The Court's prior \$25,000 sanction and the additional evidentiary sanctions
11 imposed by the September 2012 Order have proved insufficient to deter SCL from continuing to
12 act in violation of this Court's orders and derogation of Jacobs' rights.
13

14 106. There is evidence that SCL has selectively applied the MDPA over the course of
15 this litigation.
16

17 107. Any finding of fact stated hereinabove that is more appropriately deemed a
18 conclusion of law shall be so deemed.
19

20 **III.** **CONCLUSIONS OF LAW**

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

24 109. The MDPA has been an issue concerning documents, which are the subject of
25 the jurisdictional discovery.

26 110. Following the previous sanctions hearing, the Court concluded after hearing the
27 testimony of witnesses that the transferred data was not brought to the United States in error,
28

1 but was purposefully brought into the United States after a request by LVSC for preservation
2 purposes.

3 111. The transferred data remains relevant to the evidentiary hearing related to
4 jurisdiction, which the Court intends to conduct.

5 112. The change in corporate policy regarding LVSC access to SCL data made
6 during the course of this ongoing litigation was made with intent to prevent the disclosure of
7 the transferred data as well as other data.

8 113. As the transferred data had already been reviewed by counsel, the failure to
9 search this transferred data and produce documents from these data sources without redaction
10 (except for privilege) further belies any claim of good faith.

11 114. The violation of the September 2012 order appears to the Court to be an attempt
12 by SCL to further stall the jurisdictional discovery in these proceedings.

13 115. "Under NRCP 37(b)(2), a district court has discretion to sanction a party for its
14 failure to comply with a discovery order, which includes document production under NRCP
15 16.1." *Clark Co. School Dist. v. Richardson Const. Co.*, 123 Nev. 382, 391; 168 P.3d 87, 93
16 (2007). Sanctions can be imposed "only when there has been willful noncompliance with the
17 discovery order or willful failure to produce documents as required under NRCP 16.1." *Id.*
18 (emphasis added). SCL bears the burden of proof on the issue of willfulness.

19 116. The second factor that must be considered in deciding whether and the extent to
20 which sanctions should be imposed for a violation of a discovery order is the extent to which the
21 violation caused the opposing party to suffer prejudice. *Young v. Johnny Ribiero Bldg. Inc.*, 106
22 Nev. 88, 93, 787 P.2d. 777, 780 (1980). *GNLV Corp. v. Service Control Corp.*, 111 Nev. 866,
23 870; 900 P.2d 323, 325 (1995) ("[f]undamental notions of fairness and due process require that
24 discovery sanctions be just and that sanctions relate to the specific conduct at issue"). Plaintiff
25 bears the burden of showing prejudice.
26
27
28

1 117. The Nevada Supreme Court held that a number of additional factors should be
2 considered in this case, where a party does not comply with a court order on the ground that
3 foreign laws preclude it from doing so. Those factors include: “(1) ‘the importance to the
4 investigation or litigation of the documents or other information requested’; (2) ‘the degree of
5 specificity of the request’; (3) ‘whether the information originated in the United States’; (4) ‘the
6 availability of alternative means of securing the information’; and (5) ‘the extent to which
7 noncompliance with the request would undermine important interests of the United States or
8 compliance with the request would undermine importance interests of the state where the
9 information is located.’”
10

11
12 118. Here, SCL cannot dispute the relevancy of the unproduced documents to the
13 ongoing jurisdictional dispute. Even with questions as to the completeness of the Macanese
14 review, the reviewers deemed these redacted documents to be sufficiently relevant/responsive to
15 be produced regarding jurisdictional discovery. Access to all of the responsive documents is
16 important to the ability of any party to test the adequacy of the search results, a process which
17 has been defeated by the redactions undertaken in violation of this Court's September 2012
18 Order.
19

20 119. Jacobs' jurisdictional discovery requests were specific. The Court had previously
21 ruled upon the scope of Jacobs' jurisdictional discovery requests and approved them. (Order Re:
22 Pl.'s Mot. to Conduct Jurisdictional Discovery & Def.'s Mot. for Clarification, March 8, 2012, on
23 file.); SCL did not present any evidence that Jacobs' discovery requests were not specific or that
24 it somehow did not understand or that these documents were not relevant to those requests.
25 SCL's representative from FTI, Ray, confirmed that the redacted documents were relevant.
26
27
28

1 120. It appears that many of the documents with MDPa redactions originated and are
2 based solely in Macau. However, that fact does not militate against sanctions or their importance
3 to the jurisdictional issues.

4
5 121. At the time of the entry of the September 2012 order— over two years ago — this
6 Court recognized that "[t]he delay and prejudice to the Plaintiff in preparing his case is
7 significant"

8 122. One of the principal sanctions this Court imposed for the misrepresentations and
9 lack of candor continues to be ignored by SCL.
10

11 123. The decision by Fleming on behalf of SCL to violate the Court's previous orders
12 clearly involved his balancing of issues related to the MDPa, business interests in Macau, and
13 Macanese governmental authorities. However, SCL's failure to at a minimum provide
14 supplemental information to the OPDP or to file an appeal with the Macanese courts belies any
15 claim of good faith.
16

17 124. SCL did nothing for over two years regarding OPDP's instructions that SCL's
18 request was defective. SCL provides no explanation for this conscious inaction, which again
19 contradicts its claims that it has been acting in good faith.
20

21 125. The evidence indicates that SCL could obtain consents, but consciously
22 chose not to seek consents from most custodians in this action. Only four consents were
23 obtained and then only well after the deadline for production in January 2013. SCL made no
24 effort at all to obtain consents from the Macau-based custodians.
25
26
27
28

1 126. SCL made a business decision that to violate this Court's September 2012 Order.
2 Its after-the-fact claims of a "good faith" defense do not comport with the actual evidence
3 adduced at the hearing before this Court.¹⁶
4

5 127. Jacobs does not have any "substantially equivalent" means of obtaining the
6 redacted documents. SCL concedes that the thousands of documents, which remain redacted, are
7 located only in Macau and that it has been unable to locate any other source to produce them.
8 Jacobs has no other method of obtaining the personal data identifying the decision-makers,
9 attendees, senders, recipients, of subject(s) of the documents and communications. SCL's
10 redaction logs are of no assistance as they contain only generic descriptions of individuals and
11 Jacobs' jurisdictional theories require that the precise identities of the relevant individuals be
12 known. The redaction logs are in no way "substantially equivalent" substitutes.
13

14 128. SCL admits that at least 7,900 documents from its production remain redacted
15 with the identity of authors, recipients and participants undisclosed and incapable of
16 determination.
17

18 129. The United States has a "substantial" interest in "vindicating the rights of
19 American plaintiffs" and a "vital" interest "in enforcing the judgments of its courts." *Richmark*
20 *Corp.*, 959 F.2d at 1477. "[T]he United States has a substantial interest in fully and fairly
21 adjudicating matters before its courts, [and] [a]chieving that goal is only possible with complete
22 discovery." *Chevron Corp.*, 296 F.R.D. at 206 (internal quotations omitted).
23
24

25
26 ¹⁶ SCL asserted attorney-client privilege as to the input Fleming received from attorneys in
27 forming his "good faith" decision to violate this Court's order. Jacobs maintains that making
28 claims of good faith based upon advice of counsel constitutes a waiver of that advice, because it
goes to whether the claim of "good faith" is legitimate. At this juncture, the Court has drawn no
inference or conclusion on the claim of privilege and its potential waiver. Jacobs may proceed
by way of separate motion on this point if he so chooses.

1 130. When considering Macau's purported interests, the Court must consider
2 "expressions of interest by the foreign state,' 'the significance of disclosure in the regulation . . .
3 of the activity in question,' and 'indications of the foreign state's concern for confidentiality *prior*
4 to the controversy.'" *Richmark Corp.*, 959 F.2d at 1476 (quoting RESTATEMENT (THIRD) OF
5 FOREIGN RELATIONS LAW § 442 cmt. c) (bold added). In the absence of earlier statements of
6 interest, a foreign government can express its interests by formally intervening in an action or
7 filing an amicus brief. *See Chevron Corp.*, 296 F.R.D. at 206-07 (government can intervene);
8 *see also In re Rubber Chem. Antitrust Litig.*, 486 F. Supp. 2d 1078, 1082 & n.2 (N.D. Cal. 2007)
9 (foreign government offering to submit amicus brief as it had done in other matters).

10
11
12 131. Although it has been fined nominal amounts by the OPDP previously, SCL has
13 presented no evidence that it – or its officers and executives – face actual or serious
14 consequences for complying with an order of a United States court. *See In re Air Crash at*
15 *Taipei, Taiwan on Oct. 31, 2000*, 211 F.R.D. at 379.

16
17 132. SCL's exchanges of correspondences with the OPDP are not evidence that SCL
18 faces the threat of serious consequences. In fact, SCL's failure to provide more complete
19 information as requested by OPDP calls this assertion into question.

20 133. The United States has an overwhelming interest in ensuring that its citizens,
21 including Jacobs, receive full and fair discovery to uncover the truth of their judicial claims.
22 Nevada has the same interest.

23
24 134. SCL did not present any evidence of an official statement of the Macanese
25 government outside of, and before, this litigation regarding its interests in preventing SCL's
26 disclosure of personal data. SCL's exchanges of correspondence with the OPDP regarding this
27
28

1 litigation do not express a sovereign interest in the redaction of the personal data in this case and
2 leave open the ability of SCL to provide more complete information for consideration.

3 135. The lack of a true Macanese interest in this personal data is further evidenced by
4 the fact that SCL executives utilize email while travelling; SCL regularly transmits personal data
5 out of Macau during the course of its business; and personal data was reviewed by non-
6 Macanese citizens in response to internal and U.S. regulatory investigations.

7
8 136. SCL's refusal to comply with the Court's September 2012 Order is willful. It is
9 not factually impossible for SCL to produce the documents from Macau in unredacted form, as
10 would be the case if SCL did not possess or control the requested documents. SCL can direct its
11 vendor to remove the redactions. SCL has simply elected not to comply.

12
13 137. SCL's continued use of the MDPA in violation of the Court's September 2012
14 Order is willful and not supported by good faith.

15
16 138. The letters sent to the OPDP do not evidence good faith. SCL's request did not
17 provide the necessary information and were deemed deficient. After learning that its requests
18 were deficient, SCL failed to remedy its inadequate request.

19
20 139. SCL's continued reliance upon the MDPA despite the Court's September 2012
21 Order appears to be a concerted effort at continued delay and obstruction.

22
23 140. The continued use the MDPA has inflicted severe prejudice on Jacobs. He has
24 been denied access to proof, he is unable to determine if he has received all of the discovery to
25 which he is entitled, important witnesses have died or become unavailable, and his day in Court
26 has been interminably delayed.

27
28 141. The law presumes that the delay has imposed severe prejudice upon Jacobs.
Foster v. Dingwall, 126 Nev. Adv. Op. 6, 227 P.3d 1042 (2010) ("continued discovery abuses

1 and failure to comply with the district court's first sanctions order evidences their willful and
2 recalcitrant disregard of the judicial process, which presumably prejudiced" opposing parties.).

3 142. Because the continuing redactions are willful and designed to deprive Jacobs's
4 access to sources of proof – sources, which even SCL's Macau reviewers determined, were
5 relevant to the jurisdictional issues– SCL's conduct gives rise to a presumption that the
6 non-produced evidence is favorable to Jacobs and adverse to SCL. NRS 47.250(3) and (4). SCL
7 has willfully suppressed the information that it has redacted so as to gain advantage. Therefore,
8 the Court presumes (subject to SCL's ability to rebut such presumption) that the concealed
9 evidence would benefit Jacobs and would belie SCL's defense of personal jurisdiction. *Bass-*
10 *Davis v. Davis*, 122 Nev. 442, 134 P.3d 103 (2006) (explaining that adverse presumption arises
11 when evidence has been willfully suppressed with the intent to prejudice an opposing party).

14 143. Nevada Rule of Civil Procedure 37 underscores the basis for sanctions. It
15 authorizes sanctions for "willful noncompliance with a discovery order of the court." *Young v.*
16 *Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990).

18 144. "Fundamental notions of fairness and due process require that discovery sanctions
19 be just and that sanctions relate to the specific conduct at issue." *GNLV Corp.*, 111 Nev. at 870,
20 900 P.2d at 325 (citing *Young*, 106 Nev. at 92, 787 P.2d at 779-80).

22 145. Jacobs is entitled to adverse evidentiary sanctions for the jurisdictional hearing
23 and the Court awards monetary sanctions to avoid further repetition.

24 146. The Supreme Court has announced a number of factors to consider when
25 assessing the propriety of a sanction:

26 The factors a court may properly consider include, but are not limited to, the degree of
27 willfulness of the offending party, the extent to which the non-offending party would be
28 prejudiced by a lesser sanction, the severity of the sanction of dismissal relative to the
severity of the discovery abuse, whether any evidence has been irreparably lost, the

1 feasibility and fairness of alternative, less severe sanctions, such as an order deeming
2 facts relating to improperly withheld or destroyed evidence to be admitted by the
3 offending party, the policy favoring adjudication on the merits, whether sanctions
4 unfairly operate to penalize a party for the misconduct of his or her attorney, and the need
5 to deter both the parties and future litigants from similar abuses.

6 *Young*, 106 Nev. at 93, 787 P.2d at 780.

7 147. In this case, the Court has outlined a number of additional factors this Court must
8 consider in deciding “what sanctions, if any, are appropriate” in light of SCL’s redaction of
9 personal information from documents it produced out of Macau in January 2013. (August 7
10 Order at 10). Those factors include:

11 (1) ‘the importance to the investigation or litigation of the documents or other
12 information requested’; (2) ‘the degree of specificity of the request’; (3) ‘whether the
13 information originated in the United States’; (4) ‘the availability of alternative means of
14 securing the information’; and (5) ‘the extent to which noncompliance with the request
15 would undermine important interests of the United States or compliance with the request
16 would undermine importance interests of the state where the information is located.’

17 *Id.* at 7-8

18 148. The sanctions identified in Part IV are appropriate given SCL’s willful
19 noncompliance, the prejudice to Jacobs from any lesser sanction, the severity and repetitiveness
20 of SCL discovery misconduct in this action, the feasibility and fairness of other available and lesser
21 sanctions, the lack of effect of the Court’s prior sanction, and the need to deter SCL from further
22 discovery abuses during the remainder of the litigation. These sanctions will not penalize SCL
23 for any improprieties of its attorneys because the discovery abuses and use of the MDPA appears
24 to be driven by the client. *Young*, 106 Nev. at 93, 787 P.2d at 780.

25 149. This repeated conduct shows a disregard for this Court’s orders, including the
26 previous ameliorative sanctions order, however, the conduct does not rise to the level of striking
27 the defense of jurisdiction as urged by Plaintiff, striking pleadings as exhibited in the Foster v.
28

1 Dingwall, 227 P.3d 1042 (Nev. 2010) or the entry of default as in Goodyear v. Bahena, 235 P.3d
2 592 (Nev. 2010) cases.

3 150. SCL's ongoing noncompliance is incompatible with and undermines the search
4 for truth. By its September 2012 Order, this Court has already imposed sanctions upon SCL,
5 including precluding it from further using the MDPA as a basis for not complying with its
6 jurisdictional discovery obligations. As the Nevada Supreme Court confirmed, SCL "did not
7 challenge" the September 2012 Order precluding SCL's use of the MPDPA here. *Las Vegas*
8 *Sands v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 61, 331 P.3d 876, 878 (2014).

9 151. The Nevada Supreme Court explained, "the mere presence of a foreign
10 international privacy statute itself does not preclude Nevada courts from ordering foreign parties
11 to comply with Nevada discovery rules. Rather, the existence of an international privacy statute
12 is relevant to the district court's sanctions analysis in the event that its order is disobeyed." *Id.*

13 152. Again, this is not a case where a party is simply disregarding an order to produce
14 documents. SCL has already been sanctioned once, and that sanction was that it could no longer
15 rely upon the MDPA as a basis for noncompliance. That sanction remains binding upon SCL.

16 153. The delay in holding the evidentiary hearing was attributable, not solely to the
17 MDPA redaction issue, but also to the privilege issues surrounding some of the documents
18 Plaintiff took with him when he left Macau and Defendants late decision to review and update
19 the privilege and redaction logs related to those documents prior to the Court completing the
20 review of those documents *in camera*.

21 154. After evaluating the factors in Ribiero v. Young, 106 Nev. 88 (1990) and those
22 provided by the Nevada Supreme Court in this case, the Court finds:
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1 a. The decision by SCL to violate this Court's first sanctions order in failing to
2 produce documents without redaction pursuant to the MDPA to Plaintiff was knowing, willful
3 and intentional conduct with an intent to prevent the Plaintiff access to information discoverable
4 for the jurisdictional proceedings;

5
6 b. The repeated nature of SCL's conduct is further evidence of the intention to
7 disregard this Court's first sanctions order;

8 c. Based upon the evidence currently before the Court it appears that testimonial
9 evidence from at least one witness has been irreparably lost;

10
11 d. There is a public policy to prevent further abuses and deter litigants from
12 concealing discoverable information in an attempt to advance its claims; and

13 e. The delay and prejudice to the Plaintiff in preparing his case is significant,
14 however, a sanction less severe than striking defenses can be fashioned to ameliorate the
15 prejudice.
16

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

20 156. After considering all of the above factors and the evidence presented at the
21 hearing, the Court finds that a combination of sanctions as described in Part IV of this decision is
22 the best way to rectify the undermining of the discovery process caused by SCL's ongoing and
23 continuing violations of this Court's September 2012 Order.
24

25 157. Any conclusion of law stated hereinabove that is more appropriately deemed a
26 finding of fact shall be so deemed.
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IV.

ORDER

Therefore, the Court makes the following order:

a. For purposes of jurisdictional discovery and the evidentiary hearing related to jurisdiction, SCL will be precluded from raising the MDPA as an objection or as a defense to use, admission, disclosure or production of any documents.¹⁷

b. For purposes of jurisdictional discovery and the evidentiary hearing related to jurisdiction, SCL is precluded from contesting that Jacobs's electronically stored information (approx. 40 gigabytes) is rightfully in his possession.¹⁸

c. For purposes of the evidentiary hearing related to jurisdiction, SCL is precluded from calling any witnesses on its own behalf or introducing any evidence on its own behalf. SCL may object to the admission of evidence, arguments of counsel, and to testimony of witnesses during the evidentiary hearing related to jurisdiction; cross-examine witnesses during the evidentiary hearing related to jurisdiction; and, argue the application of the evidence to the law during the opening and closing arguments of the evidentiary hearing related to jurisdiction.

d. During the evidentiary hearing related to jurisdiction, the Court will adversely infer, subject to SCL's ability to rebut that inference (within the evidentiary constraints set forth in the paragraph above), that all documents not produced in conformity with this Court's September 2012 Order are adverse to SCL, would contradict SCL's denials as to personal jurisdiction, and would support Jacobs' assertion of personal jurisdiction over SCL.

¹⁷ This does not prevent SCL from raising any other appropriate objection or privilege.

¹⁸ This does not prevent SCL from raising any other appropriate objection or privilege.

1 e. Within 10 days of entry of this order, SCL will produce to Jacobs the documents
2 identified as a result of a search run using the same custodians and search terms described in
3 Exhibit 213 against the electronically stored information contained in the transferred data, or,
4 alternatively, may reproduce copies of the electronically stored information (in a searchable
5 format) contained in the transferred data to Plaintiff to run his own searches. The only
6 redactions permitted will be for privilege.
7

8 f. For purposes of jurisdictional discovery, Plaintiff may, at his sole discretion and
9 upon five judicial days written notice, retake any previously taken deposition and examine the
10 deponent on the information produced as a result of the preceding paragraph. Plaintiff's
11 reasonable attorney's fees and expenses as well as court reporters, videographers and
12 interpreter expenses for retaking any deposition may be awarded upon application to the Court.
13

14 g. Within 10 days of entry of this order, SCL will make a contribution of \$50,000
15 to the Clark County Law Foundation; \$50,000 to the Legal Aid Center of Southern Nevada;
16 \$50,000 to the Clark County Law Library; \$50,000 to the Sedona Conference; and \$50,000 to
17 the Nevada Bar Foundation. Proof of these contributions must be filed with the Court.
18

19 h. Reasonable attorneys' fees of Plaintiff will be awarded upon filing an
20 appropriate motion for those fees and expenses related to Plaintiff Steven C. Jacobs' ("Jacobs")
21 Renewed Motion for NRCP 37 Sanctions for violating this Court's September 14, 2012
22 sanctions order.
23

24 Dated this 6th day of March, 2015

25
26 
27 ELIZABETH GONZALEZ
28 District Court Judge

1 **Certificate of Service**

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

5
6 J. Stephen Peek, Esq. (Holland & Hart)

7 Randall Jones (Kemp Jones Coulthard)

8 Steve Morris (Morris Law)

9 James J. Pisanelli, Esq. (Pisanelli Bice)

10 and by mail to:

11
12 The Sedona Conference
13 5150 North 16th St, Suite A-215,
14 Phoenix, AZ 85016
Attn: Irina Goldberg

15 Legal Aid Center of Southern Nevada
16 800 South 8th Street
17 Las Vegas, NV 89101

18 Nevada Bar Foundation
19 600 E. Charleston Boulevard
Las Vegas, NV 89104

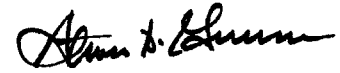
20 Clark County Law Foundation
21 725 South 8th Street
22 Las Vegas, NV 89101

23 Clark County Law Library
24 309 South Third St., Suite 400
25 P.O. Box 557340
26 Las Vegas, NV 89155-7340

27
28 
Dan Kutinac

EXHIBIT 1

EXHIBIT 1



CLERK OF THE COURT

NEOJ

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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.

Case No.: A-10-627691

Dept. No.: XI

NOTICE OF ENTRY OF ORDER

Hearing Date: January 6, 2015

Hearing Time: 8:30 a.m.

AND RELATED CLAIMS

PLEASE TAKE NOTICE that an "Order on: (1) Plaintiff's Motion to Compel and Find
Waiver of Privilege Related to the Vickers Reports on Order Shortening Time (2) Defendant
Sands China Ltd.'s Motion to Designate the Vickers Reports as Highly Confidential Documents

///

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1 and (3) Plaintiff's Motion to Set Evidentiary Hearings and Trial on Order Shortening Time" was
2 entered in the above-captioned matter on March 11, 2015, a true and correct copy of which is
3 attached hereto.

4 DATED this 11th day of March, 2015.

5 PISANELLI BICE PLLC

6 By: /s/ Todd L. Bice
7 James J. Pisanelli, Esq., #4027
8 Todd L. Bice, Esq., #4534
9 Debra L. Spinelli, Esq. #9695
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Attorneys for Plaintiff Steven C. Jacobs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 11th day of March, 2015, I caused to be served via the Court's E-Filing system, true and correct copies of the above and foregoing **NOTICE OF ENTRY OF ORDER** properly addressed to the following:

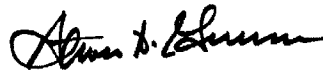
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/s/ Shannon Thomas
An employee of PISANELLI BICE PLLC



CLERK OF THE COURT

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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 ON:

(1) PLAINTIFF'S MOTION TO
COMPEL AND FIND WAIVER OF
PRIVILEGE RELATED TO THE
VICKERS REPORTS ON ORDER
SHORTENING TIME

(2) DEFENDANT SANDS CHINA LTD.'S
MOTION TO DESIGNATE THE
VICKERS REPORTS AS HIGHLY
CONFIDENTIAL DOCUMENTS

AND

(3) PLAINTIFF'S MOTION TO SET
EVIDENTIARY HEARINGS AND
TRIAL ON ORDER SHORTENING
TIME

Hearing Date: January 6, 201⁵

Hearing Time: 8:30 a.m.

There are three Motions before the Court: (1) Plaintiff's Motion to Compel and Find Waiver of Privilege Related to the Vickers Reports on Order Shortening Time; (2) Defendant Sands China Ltd.'s Motion to Designate the Vickers Reports as Highly Confidential Documents; and (3) Plaintiff's Motion to Set Evidentiary Hearings and Trial on Order Shortening Time. James

1 J. Pisanelli, Esq., Todd L. Bice, Esq., Debra L. Spinelli, Esq., and Jordan T. Smith, Esq. of the
2 law firm PISANELLI BICE PLLC appeared on behalf of Plaintiff Steven C. Jacobs ("Jacobs"). J.
3 Stephen Peek, Esq., J. Randall Jones, Esq., Mark M. Jones, Esq., and Ian P. McGinn, Esq.
4 appeared on behalf of Defendant Sands China Ltd. ("Sands China"). Steve L. Morris, Esq.
5 appeared on behalf of Defendant Sheldon G. Adelson ("Adelson"). Having considered the papers
6 filed on behalf of the parties, oral argument of counsel, and being fully informed with good cause
7 appearing, the Court makes the following findings:

8 1. As set forth more fully in the Court's November 5, 2014 Order on Plaintiff's
9 Motion for Release of Document from Advanced Discovery on the Grounds of Waiver, which the
10 Court hereby incorporates into this Order by reference, Sands China knew that Jacobs possessed
11 the Vickers Reports from at least November 23, 2010 and failed to take all reasonable and prompt
12 steps in any jurisdiction to protect its privileges and/or recover the documents. Thus, while Sands
13 China claimed privilege and thus necessitated Jacobs' motion, any claim of privilege was waived
14 as to the two reports that were in Jacobs' possession at the time of Patricia Glaser's November
15 2010 letter.

16 2. The jurisdictional issues related to the production of the Vickers Reports have
17 previously been addressed by the Court. Under the broad discoverability standard, the Vickers
18 Reports appear relevant to establishing jurisdiction over Sands China because the Vickers
19 Reports, and the circumstances surrounding their creation, could demonstrate that Sands China's
20 activities are being controlled and directed from Las Vegas, Nevada and/or by Las Vegas Sands
21 Corporation.

22 3. The evening before the scheduled hearing, Sands China filed a request for
23 evidentiary hearing to resolve issues of privilege and confidentiality related to the Vickers
24 Reports. It is unnecessary for the Court to conduct such an evidentiary hearing, even if the Court
25 were to treat Sands China's request as being timely. The Court will address at a later date
26 whether those reports will be admitted for purposes of the jurisdictional hearing.

27 4. Sands China has convinced the Court that the two Vickers Reports over which
28 privilege has been waived, qualify as confidential documents under the terms of the parties'

1 Stipulated Confidentiality Agreement and Protective Order. However, the documents do not
2 qualify as highly confidential documents.

3 5. None of the Defendants filed an opposition to Jacobs' Motion to Set Evidentiary
4 Hearings and Trial on Order Shortening Time. EDCR 2.20(e).

5 ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as
6 follows:

7 1. Jacobs' Motion to Compel and Find Waiver of Privilege Related to the Vickers
8 Reports on Order Shortening Time is GRANTED.

9 2. Sands China's Motion to Designate the Vickers Reports as Highly Confidential
10 Documents is DENIED. The two Vickers Reports that are the subject of Ms. Glaser's November
11 2010 letter shall be treated as Confidential Information. The documents shall not be treated as
12 Highly Confidential Information and Jacobs' counsel may review the documents for any
13 appropriate purpose.

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1 3. Jacobs' Motion to Set Evidentiary Hearings and Trial on Order Shortening Time is
2 GRANTED IN PART. The date for the sanctions hearing shall be February 9, 2015 and the date
3 for the jurisdictional hearing shall be April 20, 2015. The associated deadlines will be governed
4 by forthcoming Orders Setting Evidentiary Hearings. Due to the merits stay, the Court will not
5 set trial at this time.

6
7 DATED: MARCH 11, 2015



THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT

10 Respectfully submitted by:

11 PISANELLI BICE PLLC



14 James J. Pisanelli, Esq., #4027
15 Todd L. Bice, Esq., #4534
16 Debra L. Spinelli, Esq., #9695
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19 Las Vegas, Nevada 89101

20 *Attorneys for Plaintiff Steven C. Jacobs*

Electronically Filed
Mar 16 2015 01:46 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

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 Motion to Stay
Under NRAP 27(e)**

**Relief Needed
On or Before
March 19, 2015**

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Las Vegas, Nevada 89169
Telephone No.: (702) 385-6000

Attorneys for Petitioners

I. INTRODUCTION: THE GENUINE EMERGENCY THAT PROMPTS THIS MOTION.

On March 6, 2015, the district court issued an order (the "March 6 Sanctions Order") imposing sanctions that are unprecedented in Nevada law by barring a foreign corporation from presenting any witnesses or introducing any evidence in a jurisdictional hearing scheduled to begin in only 35 days (the "April 20 hearing"). The district court imposed these draconian sanctions—which effectively reduce Sands China Ltd. ("SCL") to the status of a gagged participant in its own jurisdictional proceeding—because the company redacted certain personal data from discovery documents in compliance with the laws of its home nation. Furthermore, the district court imposed the sanctions without making any finding that the redacted data was 'important' or 'essential' to the plaintiff's ability to present his case.

The March 6 Sanctions Order goes on to ensure that the April 20 hearing will result in personal jurisdiction being established over SCL, *not by evidentiary fact finding* in which SCL is a participant, but *by sanction* in a hearing in which SCL will be a crippled and substantially gagged participant. As the March 6 Sanctions Order puts it, "**the Court will adversely infer**, subject to SCL's ability to rebut that inference (within the evidentiary constraints set forth in the [sub-] paragraph [c] above) [SCL may not call witnesses or introduce any evidence], that all documents not produced in conformity with this Court's September 2012 order . . . support [Plaintiff] Jacobs' assertion of **personal jurisdiction** over SCL." March 6 Sanctions Order, subparagraph d. Together, these unprecedented excessively punitive evidentiary sanctions will produce an equally unprecedented "show trial," contrary to due process of law, unless this

Court acts to stay compliance with the March 6 Sanctions Order and the April 20 hearing pending review of the order by writ, which SCL will timely request from the Court on or before March 20.

The March 6 Sanctions Order also commands SCL to pay \$250,000 to law-related entities selected by the district court no later than March 20 and file proof of payment with the court. That deadline, which the district court refused to postpone, creates an immediate need for relief in the form of a stay from this Court no later than March 19. March 6 Sanctions Order at 40, subparagraph g.

II. THE DISTRICT COURT DECLINED THE STAY REQUESTED BY THIS MOTION.

As required by Nevada Rule of Appellate Procedure 8, SCL asked the district court to stay its March 6, 2015 Sanctions Order and continue the April 20, 2015 evidentiary hearing to permit SCL to seek review in this Court by writ. The district court considered the motion on March 13, 2015 and denied it. *See* Ex. 3, March 13, 2015 A/V Hrg. Tr.¹ at 9:20:34; Ex. 3A, Docket Entry. In response to SCL's arguments that the Sanctions Order is unfairly and irreparably prejudicial to this foreign defendant, the court remarked, "the order that was fashioned was one that you were lucky to get." Ex. 3 at 9:21:51.

SCL now respectfully asks this Court to stay the district court's March 6 Sanctions Order and the April 20, 2015 evidentiary jurisdictional hearing only long enough to permit SCL to submit, and for the Court to

¹ A printed transcript or written order is not yet available. References to the March 13, 2013 Transcript are to the Official Court Audio/Visual Recording, submitted on a CD to the Supreme Court of Nevada, Clerk of Court.

consider and decide, its forthcoming petition for writ relief. A stay in this case is particularly appropriate because (1) the district court's excessive and punitive sanctions are the result of a foreign entity's effort to comply with both the laws of its home country (which are not reasonably disputed) and excessive discovery obligations imposed on it by the district court and (2) plaintiff could not show and the court did not find that any personal data that SCL redacted to comply with its home country's data privacy law is even relevant to the jurisdictional question the Court directed the district court to resolve in 2011, much less necessary to resolve that question.

III. STATEMENT OF MATERIAL FACTS

On August 27, 2011, three and one-half years ago, this Court directed the district court to hold an evidentiary hearing and issue findings on the issue of personal jurisdiction over Sands China Ltd., a Cayman Islands corporation that is at home in Macau, a Special Administrative Region of the Peoples Republic of China ("SCL"). The evidentiary hearing on jurisdiction over SCL has not yet occurred, but the district court has scheduled it for April 20, 2015 (the "April 20 hearing") Ex. 1, Order, March 11, 2015. However, the district court's March 6 Sanctions Order imposed a severe and unprecedented sanction on SCL for violating its September 14, 2012 order by producing documents from Macau, its home jurisdiction, in a form that complies with the Macau Data Privacy Act. The order says, "**SCL is precluded from calling any witnesses on its own behalf or introducing any evidence on its behalf**" (emphasis added). Ex. 2, March 6 Sanctions Order at 39, subparagraph c.

The district court's September 14, 2012 Order against LVSC and SCL precludes these defendants "from raising the MDPA as an objection or as a

defense to admission, disclosure or production of any documents." Ex. 4, Sept. 14, 2012 Order at 8. On November 21, 2012, plaintiff moved for sanctions, claiming discovery "obstruction" because SCL had not yet searched or produced documents located only in Macau , "notwithstanding this Court's explicit directions otherwise many, many months ago." Ex. 11, Nov. 21, 2012 Mot. at 1. SCL moved for a protective order, and the district court denied both motions. But as to plaintiff's motion for sanctions the court said, "They [SCL] *haven't violated an order* that actually requires them to produce information." Ex. 5, Dec. 18, 2012 Tr. at 28 - 29 (emphasis added). Notwithstanding this acknowledgement, and also acknowledging that "[t]he motion for *sanctions appears to be premature* since I've not previously entered an order requiring that certain information that is electronically stored information in Macau be provided," *id*, the court on December 18, 2012, on the eve of two major internationally recognized holidays, ordered SCL to "produce all information within their possession that is relevant to the jurisdictional discovery [including] electronically stored information. *Within two weeks*." *Id.* at 24 (emphasis added).

Consistent with its understanding from the court's oral statements at the December 18, 2012 hearing, as SCL described to the district court in its January 8, 2013 Report of Compliance, Ex. 6, this foreign defendant conducted the court-ordered search in Macau and produced non-privileged documents responsive to plaintiffs' jurisdictional discovery requests within the time-frame the court ordered with personal data redactions that were *required by* Macanese law.² The district court then

² Defendants searched for and located duplicates of those documents in the United States after SCL's January 4, 2013 production and produced them in unredacted form.

suggested that the plaintiff renew his motion for sanctions, and he immediately did so, claiming that the redactions SCL made to comply with Macanese law violated the district court's September 14, 2014 Order. In response to plaintiff's renewed motion for sanctions, the district court entered an order expressing its intention to convene an evidentiary hearing "to determine the degree of willfulness related to those redactions and the prejudice, if any, suffered by [plaintiff]." Ex. 7, Mar. 27, 2013 Order at 2. The district court's March 27, 2013 Order (still professing that the court was acting for jurisdictional purposes) also required SCL to search again in Macau all of the custodians plaintiff had identified *for his merits discovery*. *Id.* at 2-3, ¶ 2. SCL complied with this directive. All totaled, SCL searched tens of thousands of electronic files and produced thousands of documents with only personal identification data redacted as required by Macau law. Plaintiff was unable to identify in the text of any document information that would be relevant to jurisdiction. SCL spent \$2.4 million to comply with both the discovery ordered by the district court and the law of its home country, Macau.

SCL sought writ relief from this Order because, under Macanese law, it could not produce unredacted documents from Macau without violating Macau civil and criminal laws (the company had already incurred civil sanctions for inadvertently failing to comply with the Macau Personal Data Protection Act). Apr. 8, 2013 Writ Petition (Case No. 62944). On August 7, 2014, this Court denied the petition, primarily because the sanctions hearing had not yet occurred and the petition was premature. Ex. 10, Aug. 7, 2014 Nev. Sup. Ct. Order at 11. Thereafter, the district court entertained proceedings that led to the evidentiary sanctions hearing that produced the March 6, 2015 Order at issue here.

IV. ARGUMENT

Less than one week after the district court issued its March 6 Sanctions Order, SCL asked the district court to stay the Order to permit SCL to seek relief by writ from this Court. The district court considered the motion to stay on March 13, 2015 and denied it. Appearing to read from her pre-prepared decision, the district court reasoned that:

the court has to only make a prima facie determination at the jurisdictional hearing that is currently scheduled for April 20.³ I entered sanctions that are a lesser sanction than in my opinion, do not infringe the due process rights of Sands China Limited given the issues that I identified in the procedural posture portion of my brief. The timing given a lack of stipulation to the extension of the five year rule or the period of tolling pursuant to the stays prevents me from being able to grant a stay.

Ex. 3 at 9:20:34; *see also* Ex. 3A, Dkt. Excerpt ("Result: Denied").

Because SCL will be irreparably harmed by having jurisdiction determined in a hearing in which it is prohibited from introducing evidence *and* by compelled payment of \$250,000 by March 20, SCL asks this Court to stay the March 6 Sanctions Order and the April 20 hearing until the writ petition that it will file by March 20 is disposed of. "In deciding whether to issue a stay," this Court will generally consider: (1) whether the object of the writ will be defeated if the stay is denied, (2) whether

³ This is an incorrect statement of law that will be explained in SCL's forthcoming writ petition. This Court has ordered the district court to hold an evidentiary hearing at which plaintiff has the burden of proving by a preponderance of the evidence that SCL is subject to personal jurisdiction. *Abbott v. District Court*, 107 Nev. 871, 873, 821 P.2d 1043, 1044 (1991); *Boit v. Gar-Tec Products, Inc.*, 967 F.2d 671, 676 (1st Cir. 1992) (plaintiff at an evidentiary hearing must prove personal jurisdiction by a preponderance of the evidence or face dismissal of his or claim).

petitioner will suffer irreparable or serious injury if the stay is denied, (3) whether the real parties in interest will suffer irreparable or serious injury if the stay is granted, and (4) whether petitioner is likely to prevail on the merits of the writ petition. Nev. R. App. Proc. 8(c). Each of these three factors weighs heavily in favor of staying the March 6 Sanctions Order through the conclusion of the writ proceedings.

These issues are important not only to defendants but also to other Nevada companies that have significant investments in Macau or other countries that have similar data privacy laws. Furthermore, how the Nevada courts resolve those issues—whether they do so with appropriate deference to the concerns of foreign governments — may well impact the ability of Nevada companies to continue to make and grow such investments in foreign countries and in Nevada.

A. If a Stay is Not Granted, the Object of this Writ Will be Defeated Inflicting Irreparable or Serious Harm on SCL.

This writ implicates SCL's fundamental constitutional right to due process of law before it may be forced to defend an action in a forum in which it is not at home as a consequence of trying to balance its obligations to comply with the district court's unreasonable discovery demands and the law of its home country, the Macau Personal Data Protection Act. The evidentiary jurisdictional hearing for which the district court's Sanctions Order shackles SCL is set to commence on April 20, 2015. The March 6 Sanctions Order requires SCL to pay \$250,000 to various law-related entities and conduct additional electronic searches by March 20, which could result in re-depositions of four witnesses that plaintiff, but not SCL, may call as witnesses at the April 20 hearing. Unless this Court stays the Sanctions Order before these deadlines arrive, SCL's constitutional right to

due process will be irretrievably lost, and it will have paid \$250,000 that it cannot recover if its writ petition succeeds.⁴ In response to an inquiry of whether the district court would consider "at least granting a limited stay as to the payment of those monies" which once paid cannot be subsequently recovered from the third-party beneficiaries, the court said: "No, I'm not interested in granting any stay. I think the order that was fashioned was one that you were lucky to get on your side." Ex. 3 at 9:21:51.

This Court affirms that a plaintiff has the burden of demonstrating that jurisdiction over a foreign defendant is proper. *Fulbright & Jaworski v. Eighth Jud. Dist. Ct.*, 131 Nev. Adv. Op. 5, __ P.3d __ (2015). To satisfy the requirements of due process, the foreign defendant's "contacts [must be] sufficient to obtain either (1) general jurisdiction, or (2) specific personal jurisdiction *and* it [must be] reasonable to subject the nonresident defendant[] to suit" in the State of Nevada. *Viega GmbH v. Eighth Judicial Dist. Court*, 130 Nev. Adv. Op. 40, 328 P.3d 1152, 1156 (2014) (citations omitted, emphasis added). Due process is not provided by imposing jurisdiction by sanction against a foreign defendant that has insufficient contacts with Nevada to sustain general or specific jurisdiction. Moreover, the United States Supreme Court pointed out that little is needed in the way of discovery to determine where a foreign entity is "at home." *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014). Notwithstanding these authorities, the

⁴ The Court has recognized, as has the Ninth Circuit, that "a constitutional violation may be difficult or impossible to remedy through money damages, [and] such a violation may, by itself, be sufficient to constitute irreparable harm. *City of Sparks v. Sparks Municipal Court*, 129 Nev. ___, ___, 302 P.3d 1118, 1124 (2013).

district court has ignored the law by imposing impossible discovery obligations on SCL so that it may claim jurisdiction over the company, not by evidence consistent with due process but by sanction. This state of affairs begs intervention by writ before more incurable injury is done to SCL.

B. The Real Party in Interest Will Suffer No Harm From A Stay.

Unlike defendants, who would be irreparably harmed if a stay is denied, plaintiff has not demonstrated that a stay of the March 6 Sanctions Order will prejudice him. Other than delay in the proceedings to permit SCL to seek relief from the district court's extraordinarily punitive March 6 Sanctions Order, there is no reasonable basis for Jacobs to claim prejudice. The Court has recognized that "a mere delay in pursuing discovery and litigation normally does not constitute irreparable harm." *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 39 (2004).

During the evidentiary hearing leading to the March 6 Sanctions Order, Jacobs had every opportunity to demonstrate prejudice from having received discovery from Macau with personal data redacted in compliance with Macanese law. He could not do that. He could not present even ONE document relevant to the jurisdictional issue the Court ordered the district court to consider more than three years ago, *not one*. See generally, March 6, 2015 Order (which does not identify any specific prejudice Jacobs has sustained by SCL's observance of the Macau Personal Data Protection Act while producing the documents required by the district court).

Any harm claimed by the "delay" caused by discovery disputes is far outweighed by the benefit of protecting the fundamental rights of SCL to

have all proceedings stayed until the district court's March 6 Sanctions Order can be reviewed by writ and vacated.

C. SCL is Likely to Prevail on the Merits of its Emergency Petition for Writ Relief.

The final factor to be considered – whether SCL will prevail on the merits of the writ petition -- weighs heavily in favor of granting this emergency stay. "When moving for a stay pending an appeal or writ proceedings, a movant does not always have to show a probability of success on the merits, the movant must 'present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.'" *Hansen v. Eighth Judicial Dist. Ct. ex rel County of Clark*, 6 P.3d 982, 987 (Nev. 2000) (quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981)). SCL has demonstrated that the district court's declared intention to hold an evidentiary hearing at which SCL is prohibited from presenting evidence **without any findings that the redacted data is important to this lawsuit or relevant to jurisdiction** is wholly inconsistent with recognized principles of due process, thus tipping all NRAP 8(c) factors in favor of granting the requested stay.

V. CONCLUSION

SCL respectfully asks this Court to grant this emergency motion and stay the district court's March 6, 2016 Decision and Order and the April 20, 2015 Evidentiary Hearing until the sanctions Order can be reviewed by the Court.

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Attorneys for Petitioners

Verification and 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 of record for Sheldon G. Adelson, one of the defendants in the district court action, and SCL for proceedings in this Court.

2. I verify I have read the foregoing EMERGENCY MOTION TO STAY UNDER NRAP 27(e); that the same is true my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true.

3. I certify emergency relief is needed. The district court's March 6, 2015 Sanctions Order prevents defendants from offering any evidence or presenting any witnesses on April 20, 2015 to demonstrate that jurisdiction over Sands China Limited is not proper. The Sanctions Order also compels SCL to pay \$250,000 to various non-party entities by March 20, 2015.

4. The district court this morning refused to stay the Sanction Order pending this Court's consideration of the writ petition, which will be filed by March 20, 2015.

5. **To avoid irreparable harm, this Court must decide the instant emergency motion on or before March 19, 2015,** the deadline by which defendants must complete additional document searches , and pay \$250,0000 to a number of law related entities selected by the district court. If the document searches yield additional documents, at plaintiff's request, upon five judicial days' notice, defendants must also make available a number of executives who have already been deposed on the jurisdictional question. And in any event SCL must appear at the one-sided April 20,

2015 evidentiary hearing at which SCL is prohibited from offering evidence in its own defense and subjected to adverse inferences that thousands of entirely irrelevant documents somehow support plaintiff's jurisdictional theories. Once SCL is sanctioned into this hostile forum, its right to due process on the threshold jurisdictional issue cannot be restored.

6. The names, telephone numbers, and office addresses of the attorneys for the other parties is as follows: The contact information (including telephone number) for the other attorneys in this case is Todd L. Bice, James J. Pisanelli, 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.

7. The attorneys in the preceding paragraph were given notice of this motion at the March 13, 2015 hearing and will be hand-served with a copy of the motion as soon as it is filed.

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

Signed this 16th day of March, 2015.

/s/ STEVE MORRIS
Steve Morris

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **EMERGENCY MOTION TO STAY UNDER NRAP 27(e)** 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

Respondent

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Attorneys for Steven C. Jacobs, Real Party in Interest

DATED this 16th day of March, 2015.

By: /s/ PATRICIA FERRUGIA