

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD., a Cayman Islands  
corporation,

Petitioner,

vs.

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Electronically Filed  
Case Number: 2015-08:23 a.m.  
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District Court Case Number  
A627691-B

**APPENDIX TO  
PETITION FOR WRIT OF  
PROHIBITION OR  
MANDAMUS  
RE MARCH 6, 2015  
SANCTIONS ORDER**

**Volume I of XXXIII  
(PA1 – 209)**

MORRIS LAW GROUP  
Steve Morris, Bar No. 1543  
Rosa Solis-Rainey, Bar No. 7921  
900 Bank of America Plaza  
300 South Fourth Street  
Las Vegas, Nevada 89101

KEMP, JONES & COULTHARD, LLP  
J. Randall Jones, Bar No. 1927  
Mark M. Jones, Esq., Bar No. 267  
3800 Howard Hughes Pkwy, 17<sup>th</sup> Fl.  
Las Vegas, Nevada 89169

HOLLAND & HART LLP  
J. Stephen Peek, Esq., Bar No. 1758  
Robert J. Cassity, Esq., Bar No. 9779  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, Nevada 89134

Attorneys for Petitioner

## **CERTIFICATE OF SERVICE**

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE MARCH 6, 2015 SANCTIONS ORDER Volume I of XXXIII (PA1 – 209)** to be served as indicated below, on the date and to the addressee(s) shown below:

### **VIA HAND DELIVERY (CD)**

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

### **Respondent**

### **VIA ELECTRONIC SERVICE**

James J. Pisanelli  
Todd L. Bice  
Debra Spinelli  
Pisanelli Bice  
400 S. 7th Street, Suite 300  
Las Vegas, NV 89101

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

DATED this 20th day of March, 2015.

By: /s/ PATRICIA FERRUGIA

**APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR  
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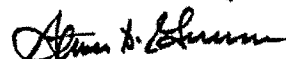
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CLERK OF THE COURT

1 MDSM  
Mark G. Krum, State Bar No. 10913  
2 Andrew D. Sedlock, State Bar No. 9183  
GLASER, WEIL, FINK, JACOBS,  
3 HOWARD & SHAPIRO, LLP  
3763 Howard Hughes Parkway, Suite 300  
4 Las Vegas, Nevada 89169  
Telephone: (702) 650-7900  
5 Facsimile: (702) 650-7950  
email: mkrum@glaserweil.com  
6 asedlock@glaserweil.com

7 *Attorneys for Defendant*  
8 *Sands China Ltd.*

9  
10 DISTRICT COURT  
11 CLARK COUNTY, NEVADA

12 STEVEN C. JACOBS,

13 Plaintiff,

14 v.

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

18 Defendants.  
19

Case No.: A-10-627691-C

Dept. No.: XXV

DEFENDANT SANDS CHINA LTD.'S  
MOTION TO DISMISS FOR LACK OF  
PERSONAL JURISDICTION, OR IN THE  
ALTERNATIVE, PLAINTIFF'S FAILURE  
TO JOIN AN INDISPENSABLE PARTY

DATE OF HEARING:  
TIME OF HEARING:

20 Defendant Sands China Ltd., ("SCL"), by and through its undersigned counsel of record, the  
21 law firm of GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, hereby brings this Motion  
22 to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Plaintiff's Failure to Join an  
23 Indispensable Party (the "Motion").  
24

25 ///

26 ///

27 ///

28 ///


LAW OFFICES  
GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP  
3763 HOWARD HUGHES PARKWAY, SUITE 300  
LAS VEGAS, NEVADA 89169  
(702) 650-7900  
FAX (702) 650-7950

LAW OFFICES  
GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP  
3763 HOWARD HUGHES PARKWAY, SUITE 300  
LAS VEGAS, NEVADA 89169  
(702) 850-7900  
FAX (702) 850-7880

1 This Motion is made pursuant to Nevada Rules of Civil Procedure 12(b)(5)-(6) and 19(b),  
2 and is based on the papers and pleadings on file with this Court, the Memorandum of Points and  
3 Authorities attached hereto, the Affidavit of Anne Salt, and any and all oral arguments this Court  
4 may entertain on the matter.

5 DATED this 22 day of December, 2010.

6  
7 GLASER, WEIL, FINK, JACOBS & SHAPIRO, LLP

8 By:   
9 Mark G. Krum, ESQ.  
10 Nevada Bar No. 10913  
11 Andrew D. Sedlock, ESQ.  
12 Nevada Bar No. 9183  
13 3763 Howard Hughes Parkway, Suite 300  
14 Las Vegas, Nevada 89169

15 *Attorneys for Defendant Sands China Ltd.*


16 **NOTICE OF MOTION**

17 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

18 YOU, and each of you, will please take notice that the undersigned will bring the above and  
19 foregoing MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION, OR IN  
20 THE ALTERNATIVE, PLAINTIFF'S FAILURE TO JOIN AN INDISPENSABLE PARTY  
21 on for hearing before the above-entitled Court on the 1 day of Feb., 2011, at 9:00  
22 a.m. of said day in Department XXI of said Court.

23 DATED this 22 day of December, 2010.

24 GLASER, WEIL, FINK, JACOBS  
25 HOWARD & SHAPIRO, LLP

26 By:   
27 Mark G. Krum, ESQ.  
28 Nevada Bar No. 10913  
Andrew D. Sedlock, ESQ.  
Nevada Bar No. 9183  
3763 Howard Hughes Parkway, Suite 300  
Las Vegas, Nevada 89169

*Attorneys for Defendant Sands China Ltd.*



**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

According to the complaint filed by plaintiff Steven C. Jacobs ("Jacobs" or "Plaintiff"), this action arises from the termination of his employment as President and Chief Executive Officer of defendant Sands China Ltd. ("SCL"), a Cayman Islands company which has a registered office in Hong Kong, maintains its principal place of business in Macau, China and which is neither registered to conduct nor conducts business in Nevada. As to SCL, Plaintiff claims only that his termination did not affect his alleged rights pursuant to an option to purchase SCL stock, that had not vested at the time of his termination. He makes this claim notwithstanding the fact that the document providing for that stock option expressly states that the unvested portion of the stock option "shall expire on the date of termination" of employment. Also by the terms of that document, any disputes regarding the stock option are to be resolved in accordance with the laws of Hong Kong.

Thus, Plaintiff, who neither is nor was a Nevada resident, seeks to litigate against SCL, a party not subject to jurisdiction in Nevada, alleged rights arising from a document that requires that any such claims be resolved by Hong Kong law.

To properly exercise jurisdiction over SCL, due process considerations based on SCL's contacts (if any) with Nevada must be satisfied. SCL's contacts must be systematic and continuous, or directly related to Plaintiff's claims and damages. In this case, Plaintiff cannot establish personal jurisdiction over SCL with either test. Plaintiff may attempt to imply jurisdiction based on the status of defendant Las Vegas Sands Corp. ("LVS"), a Nevada corporation which is SCL's majority shareholder. Such an argument would be unavailing. This Court has recognized that a parent company's domicile does not, without a showing of a "unity of interest," confer jurisdiction on its foreign subsidiaries. SCL is an independent public company, the stock of which is traded on the Stock Exchange of Hong Kong Limited ("HKEx"), and Jacobs cannot make any plausible arguments to the contrary. Simply put, SCL is not subject to this Court's personal jurisdiction, and this action as against SCL therefore should be dismissed.

LAW OFFICES  
GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP  
3753 HOWARD HUGHES PARKWAY, SUITE 300  
LAS VEGAS, NEVADA 89169  
(702) 866-7900  
FAX (702) 866-7990

LAW OFFICES  
GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP  
3750 HOWARD HUGHES PARKWAY, SUITE 300  
LAS VEGAS, NEVADA 89169  
(702) 734-8888  
FAX (702) 930-7850

In the alternative, Plaintiff's Complaint must be dismissed in its entirety because he has failed to join an indispensable party to this action, Venetian Macau Limited ("VML"). Plaintiff is suing primarily based on an allegation that he was improperly terminated. VML employed Plaintiff pursuant to an employment contract, and therefore is a necessary party. Given the nature of Plaintiff's claims, this case cannot properly proceed without VML, and VML would be prejudiced if this case were allowed to proceed in VML's absence. Because VML is a Macau entity with no ties to Nevada, it is outside the reach of this Court's jurisdiction and therefore an indispensable party. Equity requires that this case be dismissed and pursued, if at all, in a forum that properly can exercise personal jurisdiction over VML.

## II. FACTUAL AND PROCEDURAL SUMMARY

### A. SCL Corporate History and Structure

SCL was incorporated in the Cayman Islands on July 15, 2009, at which time it was an indirect wholly owned subsidiary of LVS. *See* Affidavit of Anne Salt (the "Salt Affd") at ¶ 3. Today, SCL is a publically traded company, the stock of which is listed on the HKEx, (HKEx Stock Code # 1928). *Id.* at ¶ 4.

The initial public offering of SCL stock (the "Global Offering") was completed in November 2009, at which time SCL became a publicly traded company. *See* a true and accurate copy of the Global Offering Document, attached to the Salt Affd as Exhibit A. Immediately following the Global Offering, LVS indirectly owned approximately seventy percent (70%) of SCL's outstanding shares. *Id.*, *see also* Ex. A at pp.48, 211.

SCL is party to a reciprocal Non-Competition Deed (the "Deed") with LVS. *Id.* at pp. 213-216; *see also*, a true and correct copy of the Deed, attached to the Salt Affd as Exhibit B. Among other things, the Deed effectively limits SCL's business activities to specific territories and prohibits SCL from conducting business or directing its efforts to Nevada. *Id.* Consistent with the Deed, SCL has not registered to do business in Nevada and has not attempted to do business or direct any business activities towards Nevada or its residents. *See* Salt Aff'd at ¶ 9.

As a HKEx listed company, SCL's Board of Directors (the "Board") is required to (and does) include three independent non-executive directors. *See* Salt Aff'd at ¶ 5; *see also* Ex. A at p. 212.

LAW OFFICES  
GLASSER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP  
3743 HOWARD HUGHES PARKWAY, SUITE 200  
LAS VEGAS, NEVADA 89169  
TEL (702) 882-7800  
FAX (702) 882-7860

1 At the time of the Global Offering, these individuals had no prior relationships with LVS. *Id.* At  
2 the time of the Global Offering, the remaining Board positions consisted of two executive directors,  
3 who also served as SCL's Chief Executive Officer and its Chief Development Officer, and three  
4 non-executive directors. *Id.* Those three non-executive director positions were held by Sheldon  
5 Adelson, Jeffrey Schwartz, and Irwin Siegel, each of whom also sit on LVS' board of directors. *Id.*  
6 SCL's Board, and its Board committees, conduct separate meetings and keep separate minutes. *Id.*  
7 SCL also has its own financial controls, independent bank accounts, tax registration and auditing  
8 systems. *Id.*

9 SCL's three independent non-executive directors have extensive corporate governance and  
10 financial experience, which enables them to review and implement measures to manage any conflict  
11 of interest between LVS and SCL. *Id.* at 212-213. Additionally, SCL's three independent non-  
12 executive directors must approve any Board resolution relating to transactions between LVS and  
13 SCL. *Id.*

14 SCL has full control over its assets to operate its businesses independently of LVS. *Id.* Any  
15 transactions with LVS are negotiated at arms' length and governed by agreements entered into in the  
16 ordinary course of business. *Id.* These ordinary course transactions have included the reciprocal  
17 provision of consulting services in relation to the global procurement of raw materials, furniture,  
18 fixtures and operating supplies, reciprocal transportation and related logistics services and  
19 administrative services, such as regulatory services. *Id.* Moreover, SCL is entitled to contract with  
20 third parties to provide any services it may obtain through or from LVS. *Id.* Lastly, as stated, SCL  
21 maintains financial independence from LVS, with an independent financial auditing system,  
22 dedicated financial accounting personnel, independent bank accounts and tax registration, and a  
23 separate treasury department. *Id.*

24 VML is a Macau incorporated entity that holds a gaming subconcession for the operation of  
25 casino games in Macau<sup>1</sup>. See Ex. A at pp. 85-93. VML owns and operates the Sands Macao and  
26

27 <sup>1</sup> SCL, through a wholly owned intermediary, owns approximately ninety percent (90%) of the issued share capital of  
28 VML, and approximately ten percent (10%) is owned by VML's managing director pursuant to Macau law. See Exhibit  
A at p. 79.

LAW OFFICES  
GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP  
3750 HOWARD HUGHES PARKWAY, SUITE 300  
LAS VEGAS, NEVADA 89169  
(702) 735-0000  
FAX (702) 735-7280

operates the gaming areas in the Venetian Macao-Resort-Hotel and the Plaza Macao<sup>2</sup>. *Id.* at 75. As a subconcessionaire, VML is subject to numerous requirements imposed by the Macau government. *Id.* at 85-93. Specifically, VML must, among other obligations, ensure the proper management and operation of its casinos, and employ the individuals who oversee those procedures. *Id.* As discussed below, Plaintiff was employed by VML.

#### B. Plaintiff's Employment History

Jacobs and VML are parties to a June 16, 2009 Letter of Appointment for Executive, which was signed by Jacobs and by VML's Managing Director. *See* true and accurate copy of June 16, 2009 Letter of Appointment, attached to the Salt Aff'd as Exhibit C. The Letter of Appointment outlined the terms and conditions of Jacobs' employment. *Id.* The Letter of Appointment states that Jacobs would be performing his employment duties in Macau, and that the agreement itself would be governed by Macau law with exclusive jurisdiction over any disputes residing with the Macau courts. *Id.*

After nearly one year of employment, and approximately six months after SCL's Global Offering, the Remuneration Committee of SCL's Board of Directors determined to grant Jacobs an option to purchase 2.5 million shares of SCL stock (the "Stock Option Grant"). *See* a true and accurate copy of the May 10, 2010 SCL Remuneration Committee Minutes, attached to the Salt Aff'd as Exhibit E; *see also* a true and accurate copy of SCL's Equity Award Plan (the "Plan"), attached to the Salt Aff'd as Exhibit G. A letter dated July 7, 2010 executed in Macau by SCL's Executive Vice President and Chief Financial Officer sets forth the terms of the Stock Option Grant (the "Stock Option Grant Letter"). *See* a true and accurate copy of the Stock Option Grant Letter, attached to Salt Aff'd as Exhibit F. The Stock Option Grant Letter states that fifty percent (50%) of the option would vest on January 1, 2011, with the remaining fifty percent (50%) to vest on January 1, 2012. *Id.*

The Stock Option Grant Letter, as well as the Plan, conditioned Jacobs' ability to exercise the SCL option on his continued employment with SCL or its subsidiaries, and automatically terminated

<sup>2</sup> Venetian Cotai Limited ("VCL"), also a Macau entity, owns and operates the hotel portions of the Venetian Macao-Resort-Hotel and the Plaza Macao. *Id.*

LAW OFFICES  
GLAZER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP  
3703 HOWARD HUGHES PARKWAY, SUITE 300  
LAS VEGAS, NEVADA 89169  
(702) 734-0000  
FAX (702) 860-7980

any such rights if Jacobs' employment was terminated before any portion of the option vested. *See* Exs. F & G; *see also* Salt Aff'd at ¶ 14. Specifically, the Stock Option Grant Letter states that if Jacobs' employment was terminated "for any reason other than on account of [Jacobs'] death or by [SCL] or any subsidiary due to disability or for cause, the unvested portion of the Option shall expire on the date of termination..." *Id.*

Additionally, both the Plan and Stock Option Grant Letter specify that the grant of options would not create a contract of employment, and that the Stock Option Grant Letter otherwise did not grant Jacobs any additional rights to compensation or damages in the event his employment was terminated. *Id.* Lastly, consistent with the fact that the shares in SCL subject to the option were listed on the HKEx, the Stock Option Grant Letter and the Plan each state that each shall be governed and construed in accordance with Hong Kong law. *Id.*

VML terminated Jacobs' employment effective July 23, 2010. *See* Salt Aff'd at ¶15. Jacobs responded by filing the present action, which claims that he was wrongfully terminated and, as to SCL, that he remained entitled to exercise the SCL stock option that had been issued previously (notwithstanding the fact that the Stock Option Grant Letter and the Plan both provide that any right to exercise an unvested option is automatically extinguished if employment is terminated).

### III. LEGAL ARGUMENT

#### A. The Court Lacks Personal Jurisdiction Over SCL and Must Dismiss Jacobs' Suit

##### 1. The Motion to Dismiss Standard

The Court must take a two step approach when analyzing whether SCL, as a foreign defendant, is subject to this Court's personal jurisdiction. *See Trump v. District Court*, 109 Nev. 687, 698 (1993). This Court first must determine whether SCL's actions satisfy the requirements of Nevada's long-arm statute, and next must determine whether SCL's contacts with Nevada are such that the exercise of personal jurisdiction would not offend due process considerations. *Id.* Nevada's long-arm statute, NRS 14.065, states that a Nevada court may exercise jurisdiction over a party to a civil action on any basis that satisfies the due process requirements of the Nevada Constitution or the U.S. Constitution. Satisfaction of the due process requirements associated with personal jurisdiction occurs when the non-resident defendant has "certain minimum contacts with the forum

LAW OFFICES  
GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP  
3763 HOWARD HUGHES PARKWAY, SUITE 300  
LAS VEGAS, NEVADA 89169  
(702) 880-7500  
FAX (702) 880-7200

1 such that the maintenance of the suit does not offend traditional notions of fair play and substantial  
2 justice." *See Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 (1984).

3 Personal jurisdiction over SCL in this case may be either "general" or "specific," and further must  
4 found to be subjectively reasonable. *See Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9<sup>th</sup> Cir. 2001).

5 General personal jurisdiction over a foreign defendant occurs where a defendant is held to  
6 answer in a forum for causes of action unrelated to the defendant's forum activities, because the  
7 defendant's activities in the forum are so substantial and continuous that the defendant may be  
8 deemed present in the forum and hence subject to suit. *See Trump*, 109 Nev. at 699. General  
9 jurisdiction will only lie where the level of contact between the defendant and the forum state is  
10 high. *Id.* at 701 (declining to find general jurisdiction over a defendant who did business with a  
11 Nevada resident, but owned no Nevada property, never entered the state, exhibited no persistent  
12 course of conduct with Nevada, and derived no revenues from goods or services provided in  
13 Nevada); *see also Helicopteros*, 466 U.S. at 416 (no general jurisdiction over foreign corporation  
14 even though it sent officers to forum state for negotiation, accepted checks drawn on a local bank,  
15 and sent personnel to the forum state to be trained).

16 Absent general jurisdiction, specific personal jurisdiction over a foreign defendant may be  
17 established only where the cause of action arises from the defendant's contacts with Nevada. *Id.*  
18 The state may exercise specific personal jurisdiction only where a defendant purposefully avails  
19 itself of the privilege of doing business in Nevada or of enjoying the protection of Nevada's laws,  
20 and the cause of action arises from that purposeful contact. *Id.*

21 If a defendant challenges personal jurisdiction, the plaintiff bears the burden to show that the  
22 court's exercise of jurisdiction is proper. *See Firouzbadi v. First Judicial Dist. Ct.*, 110 Nev. 1348,  
23 1352 (1994).

24 Here, Jacobs bears the burden of establishing that this Court has personal jurisdiction over  
25 SCL, a Cayman Islands company with a registered office in Hong Kong and its principal place of  
26 business in Macau, China. Jacobs' sole allegation in the Complaint against SCL is that it failed to  
27 honor his alleged but nonexistent "right" to exercise an unvested option to purchase SCL shares of  
28

LAW OFFICES  
GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP  
3783 HOWARD HUGHES PARKWAY, SUITE 300  
LAS VEGAS, NEVADA 89169  
TEL (702) 550-7390  
FAX (702) 550-7390

1 stock after he was terminated. Jacobs does not identify any other actions by SCL, whether directed  
2 at Nevada or otherwise, that comprise the substance of his claims.

3 As observed above, the Stock Option Grant Letter provides that in the event that a dispute  
4 arises over the terms contained therein, it must be resolved in accordance with Hong Kong law.<sup>3</sup>  
5 Therefore, Jacobs' sole argument for personal jurisdiction over SCL presumably is that LVS owns  
6 70% of the issued and outstanding stock of SCL. However, as explained below, that theory is  
7 legally and factually deficient.

## 8 2. Plaintiff Cannot Establish Specific Jurisdiction Over SCL

9 To determine whether this Court has specific jurisdiction over SCL, it must engage in the  
10 following three-part test to determine whether jurisdiction over SCL comports with due process: (1)  
11 has SCL done some act to purposefully avail itself of the privilege of conducting activities in  
12 Nevada; (2) does the claim arise out of SCL's forum-related activities; and (3) is the exercise of  
13 jurisdiction reasonable? *See Haisten v. Grass Valley Medical Reimbursement Fund, Ltd.*, 784 F.2d  
14 1392, 1396 (9<sup>th</sup> Cir. 1986).

15 These factors look not to the relationship between LVS and SCL, but rather to the actual  
16 actions of SCL and the effect of those actions in Nevada.

17 Therefore, in this case, Jacobs must demonstrate that SCL's actions alleged in the Complaint  
18 were purposefully directed at Nevada, that those actions give rise to his claims and, if both these  
19 criteria are met, that the exercise of jurisdiction is reasonable. Jacobs does not satisfy any of these  
20 criteria. On the contrary, as to SCL, the only action Jacobs alleges is SCL's alleged refusal to allow  
21 him to exercise an option to purchase SCL stock after he was terminated. That one alleged  
22 (in)action has nothing to do with Nevada and, to the point, does not satisfy either of the first two of  
23 the criteria for the exercise of personal jurisdiction.

24 Jacobs alleges that the SCL options were issued in May 2010 while he worked in Macau.  
25 The Stock Option Grant Letter, which is to be interpreted in accordance with Hong Kong law, was  
26 for SCL stock, which is traded exclusively on the HKEx.

27  
28 <sup>3</sup> As also observed above, the Letter of Appointment between Jacobs and VML provides that it is governed by Macau  
law with exclusive jurisdiction residing in the Macau courts.

LAW OFFICES  
GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP  
3785 RONALD REAGAN PARKWAY, SUITE 300  
LAS VEGAS, NEVADA 89119  
(702) 850-7500  
FAX (702) 850-7550

1 Finally, Jacobs cannot reasonably allege any facts indicating that SCL's actions had any  
2 impact on him personally in Nevada. He does not (and cannot truthfully) allege that he was or is a  
3 Nevada resident, much less that he was damaged in any way when domiciled here.

4 However, even if he were somehow able to present such evidence, the Court must still  
5 determine whether exercising jurisdiction over SCL is "reasonable." To determine whether the  
6 exercise of personal jurisdiction is "reasonable," the Court must examine seven factors: (1) the  
7 extent of SCL's purposeful contacts; (2) the burden on SCL of having to defend an action in Nevada;  
8 (3) the extent to which jurisdiction conflicts with SCL's domiciliary country; (4) Nevada's interest in  
9 adjudicating the dispute; (5) which forum is the most efficient for resolving the dispute; (6) Jacobs'  
10 interest in choosing Nevada as a forum; and (7) the existence of alternative forums to adjudicate  
11 Jacobs' claims. See *FDIC v. British-American Ins. Co.*, 828 F.2d 1439, 1442 (9<sup>th</sup> Cir. 1987). Again,  
12 assuming Jacobs could make some argument that SCL should be subject to specific jurisdiction  
13 based on its conduct directed at Nevada, most if not all of these factors weigh in favor of SCL's  
14 dismissal.

15 In reference to the first two factors, SCL has not had any purposeful contacts relating to  
16 Plaintiff in Nevada and, as an entity with its principal place of business in Macau has been and will  
17 continue to be unduly burdened by defending this action in Nevada. Therefore, the first two factors  
18 weigh heavily in SCL's favor. The third and fourth factors are similarly weighted, because this  
19 Court's continued exercise of jurisdiction would significantly conflict with the sovereign Macau  
20 government's interest in protecting its largest business sector. Conversely, SCL's lack of connection  
21 with Nevada significantly minimizes if not eliminates any interest Nevada might have in resolving  
22 any dispute Jacobs has with SCL regarding an option to purchase SCL stock. The last three factors  
23 relate to the application of the previous four, and in reference to Jacobs' choice of forum, that  
24 interest would be tenuous at best. He neither is, nor ever has been, a Nevada resident. Because  
25 nearly all of the actions alleged in the Complaint occurred in Macau, and therefore a vast majority of  
26 the relevant documents and witnesses are found there, litigation in Macau would be significantly  
27 more efficient. Lastly, Macau not only has an available judicial system, it also has a strong interest  
28 in overseeing the conduct of those entities that do business there.



LAW OFFICES  
GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP  
3703 HOWARD HUGHES PARKWAY, SUITE 300  
LAS VEGAS, NEVADA 89169  
(702) 456-7900  
FAX (702) 950-7850

Simply put, there are no factors in this analysis that support the "reasonable" exercise of personal jurisdiction over SCL.

### 3. This Court Cannot Exercise General Jurisdiction Over SCL Due To LVS' Contacts With Nevada

At the outset, courts have routinely held that a parent corporation's ties to the forum state do not, standing alone, establish personal jurisdiction over a subsidiary. *See Fields v. Sedgwick Associated Risks, Ltd.*, 796 F.2d 299, 301-02 (9<sup>th</sup> Cir. 1986). In reference to the establishment of general jurisdiction, a parent corporation or controlling shareholder may be directly involved in the activities of its subsidiaries without conferring, or alternatively being subjected to, jurisdictional liability as long as the involvement is consistent with the entity's investment status. *See Doe*, 248 F.3d at 926 ("Appropriate parental involvement includes: monitoring of the subsidiary's performance, supervision of the subsidiary's finance and capital budget decisions, and articulation of general policies and procedures."); *see also Newman v. Comprehensive Care Corp.*, 794 F.Supp. 1513, 1519 (D. Or. 1992) ("[t]he activities of the parent corporation are irrelevant absent some indication that the formal separation between parent and subsidiary is not scrupulously maintained.").

Therefore, Jacobs would only be able to establish a basis for general jurisdiction over SCL, due to LVS' presence in Nevada, if he could make out a prima facie case that: (1) there was such a unity of interest that separate corporate personalities do not exist, and (2) that failure to disregard those separate entities would result in fraud and injustice. *Id.* In determining whether a unity of interest exists, courts have looked to such factors as co-mingling of funds, treatment of corporate assets as the stockholders own, failure to observe corporate formalities like maintaining board minutes or records, sole ownership of all stock and assets, employment of the same employees, and failure to maintain arm's length relationships among related entities. *See North Arlington Medical Building, Inc. v. Sanchez Construction Co.*, 86 Nev. 515, 522 (1970).

In relation to the present matter, the *AT&T v. Lambert*, 94 F.3d 586 (9<sup>th</sup> Cir. 1996) case provides relevant instruction of the application of this analysis. In *AT&T*, the plaintiff attempted to establish personal jurisdiction over a Belgian parent company due to its involvement with a U.S. subsidiary. In that case, plaintiff presented evidence that the parent (1) received reports regarding

LAW OFFICES  
GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP  
3755 HOWARD HUGHES PARKWAY, SUITE 900  
LAS VEGAS, NEVADA 89169  
(702) 734-0000  
FAX (702) 580-7960

1 the performance of the subsidiary's facilities; (2) held a majority of the seats on the subsidiary's  
2 board; (3) sent representatives to attend the subsidiary's board meetings; (4) included the  
3 subsidiary's earnings on tax returns; (5) made monetary investments in the subsidiary; (6) approved  
4 proposals to terminate the employment contracts of the subsidiary's original owners; and (7)  
5 appointed one of its own board members to serve as the subsidiary's chairman. *Id.* at 590. With this  
6 evidence, the plaintiff attempted to argue that the parent's "domination and control over [the  
7 subsidiary], constituted contacts by which [the parent] purposefully availed itself of the United  
8 States' benefits and protection." *Id.* The court disagreed, saying that the "domination" reflected  
9 nothing more than a normal parent/subsidiary relationship, and that plaintiff had failed to establish  
10 an alter ego relationship required to convey general jurisdiction. *Id.*

11 Here, Jacobs has not made any alter ego allegations in his complaint, or made other  
12 allegations that LVS has abused the corporate form. SCL has its own bank accounts and tax  
13 registration. *See* Ex. A at pp. 212-213. SCL likewise has full control of its own assets to operate its  
14 businesses independently of LVS. *Id.* SCL observes all corporate formalities, including the  
15 maintenance of a Board of Directors, conducting Board and Board committee meetings and keeping  
16 minutes of those meetings. *Id.* Approximately thirty percent (30 %) of SCL's outstanding shares  
17 are owned by third party investors. *Id.* SCL (through VML) employs persons not employed by  
18 LVS to conduct its businesses. *Id.* Any ordinary course transactions between SCL and LVS are  
19 negotiated at arm's length. *Id.* SCL's three independent non-executive directors have extensive  
20 corporate governance and financial experience, which enables them to review and implement  
21 measures to manage any conflict of interest between LVS and SCL. *Id.* Additionally, these  
22 directors must approve any SCL Board of Director's resolution relating to any transaction between  
23 SCL and LVS. *Id.*

24 In sum, the relationship between LVS and SCL is insufficient to confer general jurisdiction  
25 over SCL in this case.

26 ///

27 ///

28

LAW OFFICES  
GLASER, WEIL, FINK, JACOBI, HOWARD & SHAPIRO, LLP  
3782 HOWARD HUGHES PARKWAY, SUITE 300  
LAS VEGAS, NEVADA 89169  
(702) 880-7900  
FAX (702) 880-7890

**B. In the Alternative, Jacobs' Complaint Must be Dismissed For Failure to Join VML**

**1. Legal Standard For Dismissal For Failure to Join an Indispensable Party**

NRCP 19 sets forth the general requirements for determining whether a party is "indispensable," or merely "necessary," as described in 19(a). A "necessary" party is one who is subject to service of process, and in that person's absence, the court cannot accord complete relief among the existing parties. *Id.* An "indispensable" party is an otherwise necessary party who, for jurisdictional reasons, cannot be joined. *Id.* at (b). Once a party has been deemed "indispensable," the court must determine, in equity and good conscience, whether the action should proceed among the existing parties or be dismissed. *See Potts v. Vokits*, 101 Nev. 90 (1985). Rule 19(b) sets forth the following factors for a court to consider prior to dismissal for failure to join an "indispensable" party: (1) the extent to which a judgment rendered in the party's absence might prejudice that party or the existing parties; (2) the extent to which any prejudice could be lessened or avoided by: (a) protective provisions in the judgment; (b) shaping the relief; or (c) other measures; (3) whether a judgment rendered in the party's absence would be adequate; and (4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

A trial court has broad latitude to consider these factors, and both federal and state courts routinely have stated that analysis under these factors is not one of mechanical application of any particular test, but must be read with a pragmatic view in light of the various policy considerations that underlie the rule. *See Occidental Petroleum Corp. v. Buttes Gas & Oil Co.*, 331 F.Supp. 92 (CD Cal. 1971). In this case, Jacobs has chosen to name only LVS and SCL in this lawsuit, even though it relates solely to his employment and alleged wrongful termination thereof. As stated above, Jacobs was directly employed by VML, executed an employment with VML and was paid by VML. Any requested relief related to compensation or determination of benefits necessarily involve VML. However, Jacobs has failed to name VML as a party. VML is an indispensable party, and this Court cannot provide adequate relief without its participation. Because it is unavailable in this suit, meaning not subject to jurisdiction here, this case should be dismissed and brought in an alternative forum, namely, Macau.

LAW OFFICES  
GLASSER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP  
2783 HOWARD HUGHES PARKWAY, SUITE 300  
LAS VEGAS, NEVADA 89169  
(702) 650-7500  
FAX (702) 650-7550

2. As Jacobs' employer and party to his employment contract, VML is Indispensable and this Court must dismiss the present suit in its absence

Jacobs asserts a purported breach of contract claim against SCL. Applying the Rule 19(b) factors to cases involving contractual disputes, courts have held that all contracting parties will generally be necessary and indispensable, pursuant to factors (1) and (3) in the analysis. *See Rojas v. Loewen Group, Int'l.*, 178 FRD 356 (DC PR. 1998)(emphasis added). In a case in which plaintiff investors sued a defendant corporation and various individuals with fraud and breach of contract, the court dismissed the federal action after defendants moved to dismiss for failure to join the actual contracting party. *See Enza, Inc. v. We the People, Inc.*, 838 F.Supp. 975 (ED Pa. 1993). In *Enza*, the court found that the contracting party would have destroyed diversity and was further deemed indispensable since all allegations of contract performance occurred on its behalf and all of the evidence presented lead to the conclusion it was the only other party to the contract that was allegedly breached. *See Enza, Inc.*, 838 F.Supp. at 979; *see also In re Jamuna Real Estate, LLC*, 392 BR 149 (E.D. Pa. 2008)(where plaintiff sought reformation of agreement with non-party, joinder of non-party was required and dismissal warranted if joinder was not possible, because complete relief could not be afforded in its absence, and without adjudication of non-party's rights there was a risk to the existing parties of multiple litigation).

Similarly, when dealing with cases involving disputes between an employee and its employer, courts have held that the employer will be an indispensable party where the existing defendants were able to demonstrate that plaintiff will be unable to seek complete relief among the current parties. *See NLRM v. Doug Neal Mgmt. Co.*, 620 F.2d 1133 (6<sup>th</sup> Cir. 1980); *see also Prestenback v. Employers' Ins. Co.*, 47 FRD 163 (1969 E.D. La.)(in action for negligence, where plaintiff failed to join employer or any of his supervisors although he alleged that damages were at least partly attributed to employer's negligence, employer was deemed indispensable where court could not grant complete relief among those already parties to the lawsuit.). Again, courts cite factors (1) and (3) in the Rule 19(b) analysis as weighing in favor of dismissal in these instances.

As stated above, VML was the other party to Letter of Appointment, his employment agreement. Additionally, Jacobs was paid by VML throughout his tenure. *See Salt Aff'd at ¶ 11;*

LAW OFFICES  
GLASSER, WEIL, FINE, JACOBS, HOWARD & SHAPIRO, LLP  
3755 HOWARD HUGHES PARKWAY, SUITE 300  
LAS VEGAS, NEVADA 89169  
TEL (702) 636-8800  
FAX (702) 636-7880

1 *see also* a true and correct copy of one of Jacobs' pay stubs, attached to the Salt Aff'd as Exhibit D.  
2 VML's status as a party to Jacobs' employment contract makes VML *per se* indispensable in this  
3 matter. This is particularly so in view of Jacobs' purported claims, which relate solely to his  
4 employment and the alleged wrongful termination of that employment. Without VML's  
5 participation, this Court cannot properly determine the scope of the contract(s) at issue in this case,  
6 or whether any contract was breached. This Court therefore will be unable to render complete relief  
7 without VML. However, VML is a Macau entity, and has taken no actions related to this case that  
8 would subject it to the jurisdiction of this Court. VML therefore is both necessary and  
9 indispensable, and this case ought not proceed in its absence.

### 10 3. Equity and good conscience favor dismissal of this case

11 The absence of an indispensable co-party does not automatically require dismissal of a  
12 lawsuit but merely triggers the court's analysis of "whether in equity and good conscience," the  
13 action should proceed without the indispensable party. *See Potts*, 101 Nev. at 95 (1985). Again,  
14 NRCP 19(b) sets forth the four factors for a court to consider prior to dismissal for failure to join an  
15 "indispensable" party: (1) the extent to which a judgment rendered in the party's absence might  
16 prejudice that party or the existing parties; (2) the extent to which any prejudice could be lessened or  
17 avoided by: (a) protective provisions in the judgment; (b) shaping the relief; or (c) other measures;  
18 (3) whether a judgment rendered in the party's absence would be adequate; and (4) whether the  
19 plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

20 As stated above, VML was Jacobs' employer and Jacobs could contend that VML would be  
21 obligated to satisfy all or part of any award issued by the Court. Because VML is a party to the  
22 Letter of Appointment, this Court would be unable to draft a judgment that would not impact VML's  
23 rights as Jacobs' former employer, and VML would be significantly prejudiced by a judgment  
24 rendered in its absence. For example, for this Court to find that Jacobs' employment agreement was  
25 breached in some way, it must make certain findings regarding VML's obligations under and  
26 compliance with the Letter of Appointment. Conversely, because VML is not subject to this Court's  
27 jurisdiction, VML could challenge Jacobs' efforts to enforce any judgment against VML in Macau.  
28

LAW OFFICES  
GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP  
3763 HOWARD HUGHES PARKWAY, SUITE 300  
LAS VEGAS, NEVADA 89169  
(702) 850-7800  
FAX (702) 850-7890

1 This could result in significant prejudice to Jacobs as well, because this Court would be unable to  
2 craft full and fair relief in the event that Jacobs prevails on all his claims.

3 Additionally, a suit in Macau is much more practicable. As discussed above, the vast  
4 majority of the relevant witnesses and documents are currently in Macau. The events supporting  
5 Jacobs' claims took place primarily in Macau, where Jacobs was employed by VML as President  
6 and CEO of SCL.

7 Therefore, forcing this case to move forward in VML's absence, as an indispensable party,  
8 violates the policies of equity and good conscience set forth in NRCP 19(b). In order to avoid  
9 dismissal, Jacobs must demonstrate how he can receive complete relief from the existing parties,  
10 including how SCL and LVS could be liable for a breach of Jacobs' employment contract when  
11 VML and Jacobs were the only contracting parties. Looking only at the allegations in the  
12 Complaint, Jacobs has failed to proffer any satisfactory explanation as to why VML was not named  
13 in this lawsuit. VML's unavailability in Nevada is not a suitable excuse for not naming it. This case  
14 therefore should be dismissed in its entirety.

15 **IV. CONCLUSION**

16 For the foregoing reasons, SCL respectfully requests that the Court grant its motion to  
17 dismiss this action as against SCL due to a lack of personal jurisdiction over SCL or, in the  
18 alternative, dismiss this action in its entirety due to Plaintiff's failure to join VML, which is an  
19 indispensable party.

20 DATED this 22 day of December, 2010.

21  
22 GLASER, WEIL, FINK, JACOBS  
HOWARD & SHAPIRO, LLP

23  
24 By: 

25 Mark G. Krum, ESQ.  
Nevada Bar No. 10913  
Andrew D. Sedlock, ESQ.  
Nevada Bar No. 9183  
3763 Howard Hughes Parkway, Suite 300  
Las Vegas, Nevada 89169

26  
27 *Attorneys for Defendant Sands China Ltd.*  
28

Glaser Weil Fink Jacobs  
Howard & Shapiro LLP  
3763 Howard Hughes Parkway,  
Suite 300  
Las Vegas, NV 89169  
702.650.7900 TEL  
702.650.7950 FAX

1 **AFFD**  
2 Mark G. Krum, State Bar No. 10913  
3 Andrew D. Sedlock, State Bar No. 9183  
4 GLASER, WEIL, FINK, JACOBS,  
5 HOWARD & SHAPIRO, LLP  
6 3763 Howard Hughes Parkway, Suite 300  
7 Las Vegas, Nevada 89169  
8 Telephone: (702) 650-7900  
9 Facsimile: (702) 650-7950  
10 email: mkrum@glaserweil.com  
11 asedlock@glaserweil.com

12 *Attorneys for Defendant*  
13 *Sands China Ltd.*

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DISTRICT COURT  
CLARK COUNTY, NEVADA

12 STEVEN C. JACOBS,  
13 Plaintiff,

14 v.

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

Case No.: A-10-627691-C

Dept. No.: XXV

**AFFIDAVIT OF ANNE SALT IN  
SUPPORT OF DEFENDANT SANDS  
CHINA LTD.'S MOTION TO DISMISS  
FOR LACK OF PERSONAL  
JURISDICTION, OR IN THE  
ALTERNATIVE, PLAINTIFF'S FAILURE  
TO JOIN A NECESSARY PARTY**

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} ss:

23 Anne Maree Salt, being first duly sworn, deposes and states:

24 1. I am the Acting General Counsel and Joint Company Secretary of Sands China Ltd.  
25 ("SCL"). I have personal knowledge of the matters stated herein except those stated upon  
26 information and belief and I am competent to testify thereto.

27 2. I make this Affidavit in support of SCL's Motion to Dismiss for Lack of Personal  
28 Jurisdiction, or in the alternative, for Failure to Join an Indispensable Party.

1           3.     SCL was incorporated in the Cayman Islands on July 15, 2009, at which time it was  
2 an indirect wholly owned subsidiary of Las Vegas Sands Corp. ("LVS").

3           4.     Today, SCL is a publicly traded company, listed on the Stock Exchange of Hong  
4 Kong Limited ("HKEx") (HKEx Stock Code # 1928). The initial public offering of SCL stock (the  
5 "Global Offering") occurred in November 2009. A true and correct copy of the Global Offering  
6 Document is attached hereto as Exhibit "A." Immediately following the Global Offering, LVS  
7 owned approximately seventy percent (70%) of SCL's outstanding shares.

8           5.     As a HKEx-listed company, SCL's Board of Directors (the "Board") is required to  
9 (and does) include three independent directors. See Exhibit "A." At the time of the Global Offering,  
10 these three individuals had no prior relationships with LVS. *Id.* At the time of the Global Offering,  
11 the remaining five Board positions consisted of two executive directors, who also served as SCL's  
12 Chief Executive Officer and Chief Development Officer, and of three non-executive directors who  
13 also sat on the board of LVS, namely, Sheldon Adelson, Jeffrey Schwartz, and Irwin Siegel. *Id.*  
14 SCL's Board, and its Board committees, conduct separate meetings and keep separate minutes. *Id.*  
15 SCL also has established its own organizational structure and financial controls, with independent  
16 bank accounts, tax registration and auditing systems. *Id.*

17          6.     SCL has full control over its assets to operate its businesses independently of LVS.  
18 *Id.* Additionally, SCL utilizes an independent financial auditing system and has its own  
19 independent bank accounts and tax registration, and operates a separate treasury department. *Id.*

20          7.     Venetian Macau Limited ("VML") is a Macau entity that holds a gaming  
21 subconcession issued by the Macau government, and also owns and operates the Sands Macao and  
22 operates the gaming areas in The Venetian Macao-Resort-Hotel® and the Plaza Macao. *Id.* As a  
23 subconcessionaire, VML is subject to numerous requirements imposed by the Macau government.  
24 *Id.* Specifically, VML must, among other obligations, ensure the proper management and operation  
25 of its casinos and the casino games therein, and employ the individuals who oversee those  
26 procedures. *Id.*



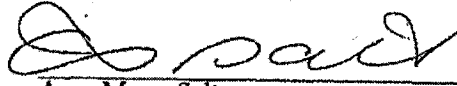
Glaser, Weill, Fink, Jacobs,  
Howard & Shapiro LLP  
3700 Howard Hughes Pkwy.  
Suite 300  
Las Vegas, NV 89169  
702.650.7000 TEL  
702.650.7998 FAX

- 1           8.     SCL and LVS are parties to a reciprocal Non-Competition Deed (the "Deed").  
2 Among other things, the Deed prohibits SCL from conducting business or directing its efforts in  
3 Nevada. Attached hereto as Exhibit "B" is a true and correct copy of the Deed.
- 4           9.     Consistent with the Deed, SCL has not registered to do business in Nevada or  
5 attempted to do business or direct any business activities towards Nevada or its residents.
- 6           10.    Steven Jacobs and VML are parties to a June 16, 2009 Letter of Appointment, which  
7 was executed by Jacobs and the Managing Director of VML. A true and accurate copy of the June  
8 16, 2009 Letter of Appointment is attached hereto as Exhibit "C."
- 9           11.    Jacobs was paid by VML by direct deposit. A true and accurate copy of one of  
10 Jacobs' deposit pay stubs is attached hereto as Exhibit "D."
- 11          12.    On or about May 10, 2010, the Remuneration Committee of the SCL Board  
12 determined to grant Jacobs an option to purchase 2.5 million shares of SCL stock (the "Stock Option  
13 Grant"), as reflected by SCL Remuneration Committee minutes, a true and accurate copy of which  
14 are attached hereto as Exhibit "E."
- 15          13.    A letter dated July 7, 2010, executed in Macau by SCL's Executive Vice President  
16 and Chief Financial Officer, sets forth the terms of the Stock Option Grant. A true and accurate  
17 copy of the Stock Option Grant is attached hereto as Exhibit "F." The Stock Option Grant stated  
18 that 50% of the options would vest on January 1, 2011, with the remaining 50% to vest on January  
19 1, 2012.
- 20          14.    The Stock Option Grant and SCL's Equity Award Plan (the "Plan") each conditioned  
21 Jacobs' ability to exercise the SCL options on his continued employment with SCL or its  
22 subsidiaries, and terminated any such rights if Jacobs were likewise terminated before the options  
23 vested. A true and correct copy of the Plan is attached hereto as Exhibit "G." Specifically, the  
24 Stock Option Grant stated that if Jacobs employment was terminated "for any reason other than on  
25 account of [Jacobs'] death or by [SCL] or any subsidiary due to disability or for cause, the unvested  
26 portion of the Option shall expire on the date of termination..." Additionally, both the Plan and the  
27 Stock Option Grant specify that the option grant would not create a contract of employment between  
28 Jacobs and SCL, and the Stock Option Grant specifies that it did not otherwise grant Jacobs any

Glaser Weil Fink Jacobs  
Howard & Shapiro LLP  
3765 Howard Hughes Pkwy.  
Suite 300  
Las Vegas, NV 89169  
TEL 702.850-7930  
FAX 702.850-7930

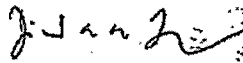
1 additional rights to compensation or damages in the event his employment is terminated. Lastly,  
2 consistent with the fact that the shares in SCL subject to the option were listed on the HKEx, the  
3 Stock Option Grant and the Plan each state that each shall be governed and construed in accordance  
4 with Hong Kong law.

5 15. Jacobs was terminated for cause by VML effective July 23, 2010.

6  
7   
8 Anne Maree Salt

9  
10  
11 CARTÓRIO DO NOTÁRIO PRIVADO  
DIAMANTINO DE OLIVEIRA FERREIRA  
12 Reconheço a assinatura ~~subscrita~~ ANNE MAREE SALT, por confronto  
com a assinatura aposta no Passaporte nº E4026324, emitido em 24  
13 de Março de 2010, pelo Governo da Austrália, cuja pública-forma me  
foi exibida.  
14 Conta nº 92 \$7,00

15 Macau, 21 de Dezembro de 2010  
16 O Notário,  
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LAW OFFICES  
GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP  
3743 HOWARD HUGHES PARKWAY, SUITE 300  
LAS VEGAS, NEVADA 89169  
(702) 650-7500  
FAX (702) 650-7500

**CERTIFICATE OF MAILING**


I hereby certify that I am an employee of GLASER, WEIL, FINK, JACOBS, HOWARD & SHAPIRO, LLP, and on the 22 day of December, 2010, I deposited a true and correct copy of the foregoing **MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION, OR IN THE ALTERNATIVE, PLAINTIFF'S FAILURE TO JOIN AN INDISPENSABLE PARTY** via U.S. Mail at Las Vegas, Nevada, in a sealed envelope upon which first class postage was prepaid and addressed to the following:

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

*Attorneys for Plaintiff*

J. Stephen Peek, Esq.  
Justin C. Jones, Esq.  
HOLLAND & HART LLP  
3800 Howard Hughes Parkway  
10<sup>th</sup> Floor  
Las Vegas, NV 89169

*Attorney for Defendant Las Vegas Sands Corp.*

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

**EXHIBIT "E"**

**EXHIBIT "E"**

**SANDS CHINA LTD.**  
*(Incorporated in the Cayman Islands with limited liability)*  
(the "Company")

**WRITTEN RESOLUTION OF THE REMUNERATION COMMITTEE OF THE BOARD OF  
DIRECTORS OF THE COMPANY (THE "COMMITTEE")**

---

Written resolution of the Committee dated May 10, 2010.

**1. STOCK OPTION GRANT**

- 1.1 IT IS NOTED THAT the Company wishes to grant options to purchase shares in the Company to Mr. Steven Craig Jacobs, the Chief Executive Officer and Executive Director of the Company ("Mr. Jacobs"), in recognition of his contribution and to encourage continuing dedication.
- 1.2 IT IS NOTED THAT, the Committee has determined that it wishes to grant Mr. Jacobs options to purchase 2,500,000 shares in the Company on May 11, 2010.
- 1.3 IT IS HEREBY RESOLVED by the Committee and approved by the Independent Non-Executive Directors that Mr. Jacobs be granted options to purchase 2,500,000 shares in the Company on May 11, 2010.
- 1.4 IT IS HEREBY RESOLVED by the Committee and approved by the Independent Non-Executive Directors that the exercise price per share of each option granted hereunder shall be either the official closing price of the Company's shares as stated in the daily quotation sheets of the Stock Exchange of Hong Kong Limited (the "Stock Exchange") on May 11, 2010, or the average of the official closing price of the Company's shares as stated in the daily quotation sheets of the Stock Exchange for the 5 business days immediately preceding the date of grant, whichever is higher.
- 1.5 IT IS HEREBY RESOLVED by the Committee and approved by the Independent Non-Executive Directors that the validity period of the options granted hereunder shall be ten (10) years.
- 1.6 IT IS HEREBY RESOLVED by the Committee and approved by the Independent Non-Executive Directors that the options granted hereunder to Mr. Jacobs shall and do hereby vest in accordance with the following schedule:

January 1, 2011	January 1, 2012
50%	50%

[Remainder of page intentionally left blank]

David Turnbull

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*Independent Non-executive Director and  
Chairman of the Remuneration Committee*

Iain Bruce



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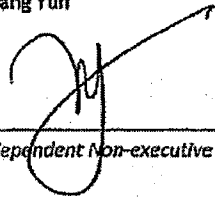
*Independent Non-executive Director and  
member of the Remuneration Committee*

Jeffrey Schwartz

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*Non-executive Director and  
member of the Remuneration Committee*

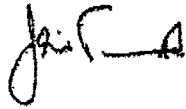
Chiang Yun



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*Independent Non-executive Director*

David Turnbull



---

*Independent Non-executive Director and  
Chairman of the Remuneration Committee*

Iain Bruce

---

*Independent Non-executive Director and  
member of the Remuneration Committee*

Jeffrey Schwartz

---

*Non-executive Director and  
member of the Remuneration Committee*

Chiang Yun

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*Independent Non-executive Director*

PAGE 2 OF 2

WRITTEN RESOLUTION OF THE REMUNERATION COMMITTEE DATED MAY 10, 2010

PA25

David Turnbull

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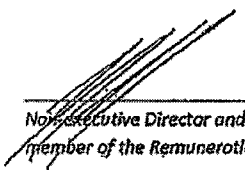
*Independent Non-executive Director and  
Chairman of the Remuneration Committee*

Iain Bruce

---

*Independent Non-executive Director and  
member of the Remuneration Committee*

Jeffrey Schwartz

---

*Non-executive Director and  
member of the Remuneration Committee*

Chiang Yun

---

*Independent Non-executive Director*



**EXHIBIT "F"**

**EXHIBIT "F"**

**金沙中国**  
Sands China Ltd.

July 7, 2010

JACOBS, Steven Craig  
Present

Dear Mr. Jacobs,

**Share Option Grant**

I am glad to advise that in consideration of your contribution and continued services to Sands China Ltd. ("Company"), the Company has granted to you (subject to your acceptance) an option to subscribe for shares in the Company (the "Option") on the following terms:

1. Total Number of Shares

2,500,000 shares of the Company ("Shares")

2. The Subscription Price

HK\$11.83 per Share

3. The Option Period

The Option is exercisable in accordance with the following vesting scale, subject to the Option Terms and Conditions appended to this letter, as in force from time to time.

Time Period	Percentage of Option Exercisable
From 1 January 2011	50%
From 1 January 2012	100%

If you decide to exercise the Option, you are required under the Option Terms and Conditions to give a notice of exercise to the Company (a form of which is appended to this letter as Appendix I).

The Option will lapse on 11 May 2020, to the extent it has not been exercised.

4. Conditions of the Grant

The Option is subject to the Option Terms and Conditions appended to this letter as Appendix II, as in force from time to time.

5. Acceptance of the Option

If you wish to accept this offer of the Option, please sign the duplicate copy of this notice and return it (together with remittance of HK\$1.00) to Joey Cheong (Venetian P1\_LG, Human Resources –

**SANDS CHINA LTD.\***  
Level 28, Three Pacific Place, 1 Queen's Road East, Hong Kong

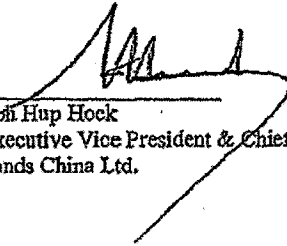
\*Incorporated in the Cayman Islands with limited liability. Stock Code 1928.



Compensation & Benefits Office) of the Company, within 28 days of the date of this letter. If Joey Cheong does not receive the letter and amount (in accordance with this paragraph) within 28 days, you shall be deemed to have declined the grant of the Option.

Save as mentioned above, you are required to hold the Option on terms on which it is granted and to be bound by the provisions as set out in this letter. The Option is personal and is not transferable.

By order of the Board



Foh Hup Hock  
Executive Vice President & Chief Financial Officer  
Sands China Ltd.

I hereby accept the offer of the grant of the Option (as defined above) and enclose HK\$1.00 in cash/by cheque.

Signature of: JACOBS, Steven Craig  
Date :

Received by  
Date:

**SANDS CHINA LTD.**  
Level 28, Three Pacific Place, 1 Queen's Road East, Hong Kong

*\*Incorporated in the Cayman Islands with limited liability. Stock Code 1928.*



# APPENDIX I

## NOTICE OF EXERCISE

### SANDS CHINA LTD.

To: Chief Executive Officer of Sands China Ltd. (the "Company")  
Copy: Mr. Luis Nuno Mesquita de Melo, General Counsel of the Company

I, being the holder of an Option (the "Option") to subscribe for shares ("Shares") in the Company that was granted to and accepted by me in accordance with the grant letter from the Company dated \_\_\_\_\_ (the "Grant Letter"), by this notice exercise that Option in respect of \_\_\_\_\_<sup>1</sup> Shares in the Company subject to that Option in accordance with the Option Terms and Conditions (as appended to the aforesaid grant letter). I confirm that I am vested in my Option as to the shares being purchased hereunder.

[Please tick the appropriate box below:]

- ☐ I hereby request the issue to me of \_\_\_\_\_ Shares in accordance with the Option Terms and Conditions and hereby enclose HK\$ \_\_\_\_\_<sup>2</sup> in cash/by cheque<sup>3</sup>, which is the remittance (the "Remittance") for the full amount of the aggregate subscription price for the Shares in respect of which this notice is given.
- ☐ I hereby request the issue to me of \_\_\_\_\_ Shares in accordance with the Option Terms and Conditions and hereby enclose Shares valued at the Fair Market Value at the time the Option is exercised equal to the exercise price of \_\_\_\_\_<sup>4</sup>, which is for the full amount of the aggregate subscription price for the Shares in respect of which this notice is given.

I agree to accept the Shares on the terms of the Memorandum and Articles of Association of the Company.

Signature .....

Name (in capitals) .....

Address .....

.....

.....

Date .....

<sup>1</sup> Please insert the number of Shares in respect of which you are exercising the Option. Please send this notice of exercise together with the Remittance to Chief Executive Officer of Sands China Ltd., copying the General Counsel.

<sup>2</sup> Please insert the relevant amount (Number of Shares x Subscription Price).

<sup>3</sup> Please delete as appropriate.

<sup>4</sup> Please insert the relevant amount (Number of Shares x Fair Market Value).

### SANDS CHINA LTD.

Level 28, Three Pacific Place, 1 Queen's Road East, Hong Kong

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APPENDIX II

OPTION TERMS AND CONDITIONS

The Company adopted an Equity Award Plan on November 8, 2009 (the "Plan"). The provisions of the Plan are hereby incorporated herein by reference. Except as otherwise expressly set forth herein, the Grant Letter shall be construed in accordance with the provisions of the Plan and any capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan. The Committee shall have the final authority to interpret and construe the Plan and the Grant Letter and to make any and all determinations under them, and its decision shall be binding and conclusive upon the Participant and his legal representative in respect of any questions arising under the Plan or the Grant Letter.

Set forth below are extracts of relevant provisions of the Plan. These extracts are provided for your convenience only. Please refer directly to the Plan for a complete list of terms and conditions. Should there be any variation between the terms listed below and those in the Plan, the Plan shall prevail.

1. **EXERCISABILITY OF THE OPTIONS**

- 1.1 Each Option shall be exercisable only by a Grantee during the Grantee's lifetime, or, if permissible under applicable law, by the Grantee's legal guardian or representative.
- 1.2 An Option may be exercised in whole or in part in the manner as set out in Clauses 2.1 and 4 by the Grantee (or his legal personal representative(s)) giving notice in writing to the Company (a form of which is appended as Appendix I to the Grant Letter) stating that the Option is thereby exercised and specifying the number of Shares to be subscribed. Each such notice must be accompanied by a remittance for the full amount of the aggregate Subscription Price for the Shares in respect of which the notice is given. The Option Price shall be payable (i) in cash and/or Shares valued at the Fair Market Value at the time the Option is exercised (including by means of attestation of ownership of a sufficient number of Shares in lieu of actual delivery of such shares to the Company); (ii) in the discretion of the Committee, either (A) in other property having a fair market value on the date of exercise equal to the Option Price or (B) by delivering to the Committee a copy of irrevocable instructions to a stockbroker to deliver promptly to the Company an amount of loan proceeds, or proceeds from the sale of the Shares subject to the Option, sufficient to pay the Option Price or (iii) by such other method as the Committee may allow. Notwithstanding the foregoing, in no event shall you be permitted to exercise an Option in the manner described in clause (ii) or (iii) of the preceding sentence if the Committee determines that exercising an Option in such manner would violate any other applicable law or the applicable rules and regulations of any securities exchange or inter dealer quotation system on which the securities of the Company or any Subsidiaries are listed or traded.

2. **EFFECT OF TERMINATION OF EMPLOYMENT ON THE OPTIONS**

- 2.1 Subject as hereinafter provided in the Equity Award Plan, the Option may be exercised by the Grantee at any time or times during the Option Period (subject to such vesting scale as set out in the grant letter above) provided that:-
- (i) **Death/Disability:** if the Grantee's employment with the Company and its subsidiaries terminates on account of the Grantee's death or by the Company or any subsidiary due to disability, the unvested portion of the Option shall expire on the date of termination and the

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vested portion of the Option shall remain exercisable by the Grantee through the earlier of (A) the expiration of the Option Period or (B) one year following the date of termination on account of death or disability;

- (ii) **Termination Other than due to Death/Disability or for Cause:** if the Grantee's employment with the Company and its subsidiaries is terminated for any reason other than on account of the Grantee's death or by the Company or any subsidiary due to disability or for cause, the unvested portion of the Option shall expire on the date of termination and the vested portion of the Option shall remain exercisable by the Grantee through the earlier of (A) the expiration of the Option Period or (B) ninety (90) days following such termination;
- (iii) **Termination for Cause:** if the Grantee's employment with the Company and its subsidiaries is terminated by the Company or any subsidiary for cause, both the unvested and the vested portions of the Option shall terminate on the date of such termination;
- (iv) **General Offer:** if a general offer, whether by way of a takeover offer, share repurchase offer or scheme of arrangement or otherwise in like manner is made to all the holders of Shares, or all such holders other than the offeror and/or any person controlled by the offeror and/or any person acting in association or concert with the offeror, the Company shall use all reasonable endeavours to procure that such offer is extended to all the Grantees on the same terms, with appropriate changes, and assuming that they will become, by the vesting and exercise in full of the Options granted to them (whether or not they have become exercisable), shareholders of the Company. If such offer (other than a scheme of arrangement) becomes or is declared unconditional or such scheme of arrangement is formally proposed to the shareholders of the company, a Grantee shall, notwithstanding any other terms on which his Options were granted, be entitled to exercise his Option (to the extent not already exercised) to its full extent or to the extent specified in the Grantee's notice to the Company in exercise of his Option at any time up to the close of such offer or the record date for entitlements under a scheme of arrangement. Subject to the above, an Option (to the extent not already exercised) will lapse automatically on the date on which such offer closes or the record date for entitlements under a scheme of arrangement;
- (v) **Winding up of the Company:** in the event a notice is given by the Company to its members to convene a general meeting for the purposes of considering, and if thought fit, approving a resolution to voluntarily wind-up the Company, the Company shall on the same date as or soon after it despatches such notice to each of its shareholders give notice thereof to all Grantees and thereupon, each Grantee (or in the case of his death, his legal personal representative(s)) shall be entitled to exercise all or any of his Options (to the extent not already exercised) at any time not later than two business days prior to the proposed general meeting of the Company referred to above by giving notice in writing to the Company, accompanied by a remittance for the full amount of the aggregate Subscription Price for the Shares in respect of which the notice is given, whereupon the Company shall as soon as possible and, in any event, no later than the business day immediately prior to the date of the proposed general meeting, allot the relevant Shares to the Grantee credited as fully paid and register the Grantee as holder thereof;
- (vi) **Restructuring/Amalgamation:** if a compromise or arrangement between the Company and its members or creditors is proposed for the purposes of a scheme for the restructuring of the

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Company or its amalgamation with any other companies pursuant to the laws of the jurisdiction in which the Company was incorporated, the Company shall give notice to all the Grantees of the Options on the same day as it gives notice of the meeting to its members or creditors summoning the meeting to consider such a scheme or arrangement and any Grantee may by notice in writing to the Company accompanied by a remittance for the full amount of the aggregate Subscription Price for the Shares in respect of which the notice is given (such notice to be received by the Company not later than two business days prior to the proposed meeting), exercise the Option to its full extent or to the extent specified in the notice and the Company shall as soon as possible in any event no later than the business day immediately prior to the date of the proposed meeting, allot and issue such number of Shares to the Grantee which falls to be issued upon on such exercise of the Option credited as fully paid and register the Grantee as a holder thereof. With effect from the date of such meeting, the rights of all Grantees to exercise their respective Options shall forthwith be suspended. Upon such compromise or arrangement becoming effective, all Options shall, to the extent that they have not been exercised, lapse. If for any reason such compromise or arrangement does not become effective and is terminated or lapses, the rights of Grantees to exercise their respective Options shall with effect from the date of the making of the order by the relevant court be restored in full as if such compromise or arrangement had not been proposed by us.

3. **TRANSFERABILITY**

No Option may be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by a Grantee other than by will or by the laws of descent and distribution and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or any of its subsidiaries; provided that the designation of a beneficiary shall not constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance.

4. **RIGHTS OF SHAREHOLDER**

The Shares to be allotted and issued upon the exercise of an Option will not carry voting rights until completion of the registration of the Grantee (or any other person nominated by the Grantee) as the holder thereof. Subject to the aforesaid, Shares allotted and issued on the exercise of Options will rank pari passu and shall have the same voting, dividend, transfer and other rights, including those arising on liquidation as attached to the other fully paid Shares in issue on the date of issue, save that they will not rank for any dividend or other distribution declared or recommended or resolved to be paid or made by reference to a record date falling on or before the date of issue.

5. **LAPSE OF OPTION**

An Option shall lapse automatically and not be exercisable (to the extent not already exercised) on the earliest of:-

- (i) the expiry of the Option Period;
- (ii) the expiry of any of the periods referred to in Clause 1.3 (i), (ii), (iii), (iv) and (v);
- (iii) the date on which the scheme of arrangement of the Company referred to in Clause 1.3 (vi) becomes effective;

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- (iv) subject to Clause 1.3 (v), the date of commencement of the winding-up of the Company; or
- (v) the date on which the Board shall exercise the Company's right to cancel the Option at any time after the Grantee commits a breach of Clause 1.1 or the Options are cancelled in accordance with Clause 6.

**6. REORGANISATION OF CAPITAL STRUCTURE**

In order to prevent substantial enlargement or dilution of a Grantee's rights in a manner consistent with the purposes of the Equity Award Plan, the committee administering the Equity Award Plan ("Committee") shall make an equitable adjustment or substitution to the number, price or kind of a Share or other consideration subject to such scheme or as otherwise determined by the Committee to be equitable (i) in the event of changes in the outstanding Shares or in the capital structure of the Company by reason of share or extraordinary cash dividends, share splits, reverse share splits, recapitalization, reorganizations, mergers, consolidations, combinations, exchanges, or other relevant changes in capitalization occurring after the date of grant of any Option or (ii) in the event of any change in applicable laws or any change in circumstances which results in or would result in any substantial dilution or enlargement of the rights granted to, or available for, participants, or which otherwise warrant equitable adjustment because it interferes with the intended operation of the Equity Award Plan, provided however, that the manner of any such equitable adjustment shall be determined by the Committee in its sole discretion in compliance with the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited ("Listing Rules") and their decision shall be final and conclusive and binding on the Company and the Grantees.

Notwithstanding the above, in the event of any of the following:

- (i) the Company is merged or consolidated with another corporation or entity and, in connection therewith, consideration is received by shareholders of the Company in a form other than shares or other equity interests of the surviving entity;
- (ii) all or substantially all of the Company's assets are acquired by another person;
- (iii) the reorganization or liquidation of the Company; or
- (iv) the Company shall enter into a written agreement to undergo an event described in paragraphs (i), (ii) or (iii) above,

then the Committee may, in its discretion and upon at least 10 days advance notice to the affected persons, cancel any outstanding Options and cause the holders thereof to be paid, in cash or Shares, or any combination thereof, the value of such Options based upon the price per Share received or to be received by other shareholders of the Company in the event.

**7. CANCELLATION OF OPTIONS**

The Committee may, to the extent consistent with the terms of the Equity Award Plan, waive any conditions or rights under, amend any terms of, or alter, suspend, discontinue, cancel or terminate, any Option theretofore granted or the associated option agreement, prospectively or retroactively, provided that any such waiver, amendment, alteration, suspension, discontinuance, cancellation or termination that would impair the rights of any Grantee or any holder or beneficiary of any Option

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thereof granted shall not to that extent be effective without the consent of the affected Grantee, holder or beneficiary; and provided further that, without shareholder approval, no amendment or modification may reduce the Subscription Price of any Option.

**8. MISCELLANEOUS**

- 8.1 **No Rights to Employment:** The grant of Options and these Terms and Conditions shall not form part of any contract of employment between the Company or any subsidiary and any employee and the rights and obligations of any employee under the terms of his office or employment shall not be affected thereby. No Grantee shall have any additional rights to compensation or damages in consequence of the termination of such office or employment for any reason as a result of the grant of an Option to him.
- 8.2 **No Legal or Equitable Rights:** These Terms and Conditions shall not confer on any person any legal or equitable rights (other than those constituting the Options themselves) against the Company directly or indirectly or give rise to any cause of action at law or in equity against the Company.
- 8.3 **Governing Law:** These Terms and Conditions and Options granted hereunder shall be governed by and construed in accordance with Hong Kong law.

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**EXHIBIT "G"**

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**Sands China Ltd.  
EQUITY AWARD PLAN**

**1. Purpose**

17.03(1)

The purpose of the Plan is to provide a means through which the Company and its Subsidiaries may attract able persons to enter and remain in the employ of the Company and its Subsidiaries, and to provide a means whereby employees, directors and consultants of the Company and its Subsidiaries can acquire and maintain Share ownership, or be paid incentive compensation measured by reference to the value of Shares, thereby strengthening their commitment to the welfare of the Company and its Subsidiaries and promoting an identity of interest between shareholders of the Company and these persons.

So that the appropriate incentive can be provided, this Plan provides for granting Options, Share Appreciation Rights, Restricted Shares, Restricted Share Units, Share Bonuses and Performance Compensation Awards, or any combination of the foregoing.

**2. Definitions**

The following definitions shall be applicable throughout the Plan.

- (a) "Award" means, individually or collectively, any Option, Share Appreciation Right, Restricted Share, Restricted Share Unit, Share Bonus or Performance Compensation Award granted under the Plan.
- (b) "Board" means the Board of Directors of the Company.
- (c) "Business Day" means a day on which the Stock Exchange is open for the business of dealing in securities.
- (d) "Cancelled Shares" means those Shares which were the subject of options which had been granted and accepted under the Plan or any of the other plans but subsequently cancelled. For the avoidance of doubt, "Cancelled Shares" shall exclude "Lapsed Shares"
- (e) "Cause" means the Company or a Subsidiary having "cause" to terminate a Participant's employment or service, as defined in any existing employment, consulting or any other agreement between the Participant and the Company or a Subsidiary or, in the absence of such an employment, consulting or other agreement, upon (i) the determination by the Committee that the Participant has ceased to perform his duties to the Company, or a Subsidiary (other than as a

result of his incapacity due to physical or mental illness or injury), which failure amounts to an intentional and extended neglect of his duties to such party, (ii) the Committee's determination that the Participant has engaged or is about to engage in conduct materially injurious to the Company or a Subsidiary, (iii) the Participant having been convicted of, or pleading guilty or no contest to, a felony or any crime involving as a material element fraud or dishonesty, (iv) the failure of the Participant to follow the lawful instructions of the Board or his direct superiors or (v) in the case of a Participant who is a Non-Employee Director, the Participant ceasing to be a member of the Board in connection with the Participant engaging in any of the activities described in clauses (i) through (iv) above.

(f) "Change in Control" shall, unless in the case of a particular Award where the applicable Award agreement states otherwise or contains a different definition of "Change in Control," be deemed to occur upon:

- (i) the acquisition by any individual, entity or group of beneficial ownership of 50% or more (on a fully diluted basis) of either (A) the then outstanding Shares, taking into account as outstanding for this purpose such Shares issuable upon the exercise of options or warrants, the conversion of convertible shares or debt, and the exercise of any similar right to acquire such Shares (the "Outstanding Company Shares") or (B) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); provided, however, that for purposes of this Plan, the following acquisitions shall not constitute a Change in Control: (I) any acquisition by the Company or any Subsidiary, (II) any acquisition by any employee benefit plan sponsored or maintained by the Company or any Subsidiary, (III) any acquisition by Sheldon G. Adelson ("Adelson") or any Related Party or any group of which Adelson or a Related Party is a member (a "Designated Holder"), (IV) any acquisition which complies with clauses (A) and (B) of subsection (v) of this Section 2(f), (V) in respect of an Award held by a particular Participant, any acquisition by the Participant or any group of persons including the Participant (or any entity controlled by the Participant or any group of persons including the Participant); (ii) individuals who, on the date hereof, constitute the Board (the "Incumbent Directors") cease for any reason to constitute at least a majority of the Board, provided that any person becoming a director subsequent to the date hereof whose election or nomination for election was approved by a vote of at least

two-thirds of the Incumbent Directors then on the Board) shall be an incumbent Director,

- (iii) the dissolution or liquidation of the Company;
  - (iv) the sale, transfer or other disposition of all or substantially all of the business or assets of the Company, other than any such sale, transfer or other disposition to one or more Designated Holders; or
  - (v) the consummation of a reorganization, recapitalization, merger, consolidation, statutory share exchange or similar form of corporate transaction involving the Company that requires the approval of the Company's shareholders, whether for such transaction or the issuance of securities in the transaction (a "Business Combination"), unless immediately following such Business Combination: (A) more than 50% of the total voting power of (x) the entity resulting from such Business Combination (the "Surviving Company"), or (y) if applicable, the ultimate parent entity that directly or indirectly has beneficial ownership of sufficient voting securities eligible to elect a majority of the members of the board of directors (or the analogous governing body) of the Surviving Company (the "Parent Company"), is represented by the Outstanding Company Voting Securities that were outstanding immediately prior to such Business Combination (or, if applicable, is represented by shares into which the Outstanding Company Voting Securities were converted pursuant to such Business Combination), and such voting power among the holders thereof is in substantially the same proportion as the voting power of the Outstanding Company Voting Securities among the holders thereof immediately prior to the Business Combination, and (B) at least a majority of the members of the board of directors (or the analogous governing body) of the Parent Company (or, if there is no Parent Company, the Surviving Company) following the consummation of the Business Combination were Board members at the time of the Board's approval of the execution of the initial agreement providing for such Business Combination.
- (g) "Committee" means (i) the Remuneration Committee or (ii) (x) if no such committee has been appointed by the Board or (y) even if such a committee has been appointed, with respect to the grant of an Award to a Non Employee Director and the administration of such Award, the Board.

- (h) "Company" means Sands China Ltd., an exempted limited liability company incorporated in the Cayman Islands, and any successor thereto.
- (i) "Connected Person" has the meaning ascribed to it in the Listing Rules.
- (j) "Date of Grant" means the date on which an Award is granted, as may be specified in the relevant authorization of such Award or, if there is no such date, the date indicated on the applicable Award agreement.
- (k) "Disability" means, unless in the case of a particular Award the applicable Award agreement states otherwise, the Company or a Subsidiary having cause to terminate a Participant's employment or service on account of "disability," as defined in any existing employment, consulting or other similar agreement between the Participant and the Company or a Subsidiary or, in the absence of such an employment, consulting or other agreement, a condition entitling the Participant to receive benefits under a long-term disability plan of the Company or a Subsidiary or, in the absence of such a plan, the complete and permanent inability by reason of illness or accident to perform the duties of the occupation at which a Participant was employed or served when such disability commenced, as determined by the Committee based upon medical evidence acceptable to it.
- (l) "Effective Date" means November 30, 2009 the date on which the Shares commence listing on the Main Board of the Stock Exchange.
- (m) "Eligible Person" means any (i) individual regularly employed by the Company or a Subsidiary who satisfies all of the requirements of Section 6; provided, however, that no such employee covered by a collective bargaining agreement shall be an Eligible Person unless and to the extent that such eligibility is set forth in such collective bargaining agreement or in an agreement or instrument related thereto; or (ii) director of the Company or a Subsidiary or (iii) consultant or advisor to the Company or a Subsidiary, such individual as set out in (i) to (iii) above having an annual salary of at least HK\$1,162,500 or its equivalent.
- (n) "Fair Market Value", on a given date means (i) if the Shares are listed on the Stock Exchange, the closing sale price reported in the daily quotation sheets of the Stock Exchange on such date, or, if

17.03(2)

there is no such sale on that date, then on the last preceding date on which such a sale was reported; (ii) if the Shares are not listed on any securities exchange but are quoted in an inter-dealer quotation system on a last sale basis, the average between the closing bid price and ask price reported on such date, or, if there is no such sale on that date, then on the last preceding date on which a sale was reported; or (iii) if the Shares are not listed on a securities exchange or quoted in an inter-dealer quotation system on a last sale basis, the amount determined by the Committee to be the fair market value on such date based upon a good faith attempt to value the Shares accurately and computed in accordance with applicable regulations of the Internal Revenue Department.

- (o) "Global Offering" means the global offering of 1,870,000,000 Shares (subject to re-allocation and adjustment) which is described in the section headed "Structure of the Global Offering" in the Prospectus;
- (p) "Lapsed Shares" means those Shares which were the subject of options which had been granted and accepted under this Plan or any of the other plans but subsequently lapsed. For the avoidance of doubt, "Lapsed Shares" shall exclude "Cancelled Shares";
- (q) "Listing Date" means November 30, 2009, the date on which the Shares commence listing on the Main Board of the Stock Exchange;
- (r) "Listing Rules" means the Rules Governing the Listing of Securities on the Stock Exchange (as amended from time to time).
- (s) "Negative Discretion" shall mean the discretion authorized by the Plan to be applied by the Committee to eliminate or reduce the size of a Performance Compensation Award in accordance with Section 11(d)(iv) of the Plan.
- (t) "Non-Employee Director" shall mean a director of the Company who is not also an employee of the Company.
- (u) "Option" means an Award granted under Section 7.
- (v) "Option Agreement" means any agreement between the Company and a Participant who has been granted an Option pursuant to Section 7 which defines the rights and obligations of the parties thereto.
- (w) "Option Period" means the period described in Section 7(c).

- (x) "Option Price" means the exercise price for an Option as described in Section 7(a).
- (y) "Participant" means an Eligible Person who has been selected by the Committee to participate in the Plan and to receive an Award pursuant to Section 6.
- (z) "Performance Compensation Award" shall mean any Award designated by the Committee as a Performance Compensation Award pursuant to Section 11 of the Plan.
- (aa) "Performance Criteria" shall mean the criterion or criteria that the Committee shall select for purposes of establishing the Performance Goal(s) for a Performance Period with respect to any Performance Compensation Award under the Plan. The Performance Criteria that will be used to establish the Performance Goal(s) shall be based on the attainment of specific levels of performance of the Company (or Subsidiary, division or operational unit of the Company) and shall be limited to the following:
  - (i) net earnings or net income (before or after taxes);
  - (ii) basic or diluted earnings per share (before or after taxes);
  - (iii) net revenue or net revenue growth;
  - (iv) gross profit or gross profit growth;
  - (v) net operating profit (before or after taxes);
  - (vi) return measures (including, but not limited to, return on assets, capital, invested capital, equity, or sales);
  - (vii) cash flow (including, but not limited to, operating cash flow, free cash flow, and cash flow return on capital);
  - (viii) earnings before or after taxes, interest, depreciation, amortization and/or rents;
  - (ix) gross or operating margins;
  - (x) productivity ratios;
  - (xi) share price (including, but not limited to, growth measures and total shareholder return);
  - (xii) expense targets;
  - (xiii) margins;



- (xiv) operating efficiency;
- (xv) objective measures of customer satisfaction;
- (xvi) working capital targets;
- (xvii) measures of economic value added; and
- (xviii) inventory control.

Any one or more of the Performance Criterion may be used to measure the performance of the Company and/or a Subsidiary as a whole or any business unit of the Company and/or an Subsidiary or any combination thereof, as the Committee may deem appropriate, or any of the above Performance Criteria as compared to the performance of a group of comparator companies, or published or special index that the Committee, in its sole discretion, deems appropriate, or the Company may select Performance Criterion (xi) above as compared to various share market indices. The Committee also has the authority to provide for accelerated vesting of any Award based on the achievement of Performance Goals pursuant to the Performance Criteria specified in this paragraph.

- (bb) "Performance Formula" shall mean, for a Performance Period, the one or more objective formulas applied against the relevant Performance Goal to determine, with regard to the Performance Compensation Award of a particular Participant, whether all, some portion but less than all, or none of the Performance Compensation Award has been earned for the Performance Period.
- (cc) "Performance Goals" shall mean, for a Performance Period, the one or more goals established by the Committee for the Performance Period based upon the Performance Criteria. The Committee is authorized at any time during the first 90 days of a Performance Period, or at any time thereafter, in its sole and absolute discretion, to adjust or modify the calculation of a Performance Goal for such Performance Period in order to prevent the dilution or enlargement of the rights of Participants based on the following events:
  - (i) asset write-downs,
  - (ii) litigation or claim judgments or settlements,
  - (iii) the effect of changes in tax laws, accounting principles, or other laws or provisions affecting reported results,
  - (iv) any reorganization and restructuring programs,

- (v) extraordinary nonrecurring items and/or in management's discussion and analysis of financial condition and results of operations appearing in the Company's annual report to shareholders for the applicable year,
  - (vi) acquisitions or divestitures,
  - (vii) any other unusual or nonrecurring events,
  - (viii) foreign exchange gains and losses, and
  - (ix) a change in the Company's fiscal year.
- (dd) "Performance Period" shall mean the one or more periods of time, as the Committee may select, over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant's right to and the payment of a Performance Compensation Award.
- (ee) "Plan" means this Equity Award Plan.
- (ff) "Prospectus" means the prospectus of the Company in respect of the Global Offering;
- (gg) "Related Party" means (i) any spouse, child, stepchild, sibling or descendant of Adelson, (ii) any estate of Adelson or any person described in clause (i), (iii) any person who receives a beneficial interest in the Company or any Subsidiary from any estate described in clause (ii) to the extent of such interest, (iv) any executor, personal administrator or trustee who hold such beneficial interest in the Company or any Subsidiary for the benefit of, or as fiduciary for, any person under clauses (i), (ii) or (iii) to the extent of such interest, (v) any corporation, trust or similar entity owned or controlled by Adelson or any person referred to in clause (i), (ii), (iii) or (iv) or for the benefit of any person referred to in clause (i), or (vi) the spouse or issue of one or more of the persons described in clause (i).
- (hh) "Restricted Period" means, with respect to any Award of Restricted Share or any Restricted Share Unit, the period of time determined by the Committee during which such Award is subject to the restrictions set forth in Section 9 or, as applicable, the period of time within which performance is measured for purposes of determining whether an Award has been earned.
- (ii) "Restricted Share Unit" means a hypothetical investment equivalent to one Share granted in connection with an Award made under Section 9.

- (jj) "Restricted Share" means Share(s) issued or transferred to a Participant subject to forfeiture and the other restrictions set forth in Section 9.
- (kk) "Share(s)" means ordinary shares of US\$0.01 each in the capital of the Company or, if there has been a capitalisation issue, rights issue, sub-division or consolidation of shares or reduction of capital in the share capital of the Company, shares forming part of the ordinary equity share capital of the Company of such other nominal amount as shall result from any such capitalisation issue, rights issue, sub-division or consolidation of shares or reduction of capital in the share capital of the Company;
- (ll) "Share Appreciation Right" or "SAR" means an Award granted under Section 8 of the Plan.
- (mm) "Share Bonus" means an Award granted under Section 10 of the Plan.
- (nn) "Shareholder(s)" means shareholder(s) of the Company.
- (oo) "Stock Exchange" means The Stock Exchange of Hong Kong Limited.
- (pp) "Strike Price" means, (i) in the case of a SAR granted in tandem with an Option, the Option Price of the related Option, or (ii) in the case of a SAR granted independent of an Option, the Fair Market Value on the Date of Grant.
- (qq) "Subsidiary" means any subsidiary of the Company as defined under the Listing Rules.
- (rr) "Vested Unit" shall have the meaning ascribed thereto in Section 9(d).

### 3. Effective Date, Duration and Shareholder Approval

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The Plan is effective as of the Effective Date.

The expiration date of the Plan, on and after which no Awards may be granted hereunder, shall be the tenth anniversary of the Effective Date; provided, however, that the administration of the Plan shall continue in effect until all matters relating to Awards previously granted have been settled.

#### 4. Administration

- (a) The Committee shall administer the Plan. The majority of the members of the Committee shall constitute a quorum. The acts of a majority of the members present at any meeting at which a quorum is present or acts approved in writing by a majority of the Committee shall be deemed the acts of the Committee.
- (b) Subject to the provisions of the Plan and applicable law, the Committee shall have the power, and in addition to other express powers and authorizations conferred on the Committee by the Plan, to: (i) designate Participants; (ii) determine the type or types of Awards to be granted to a Participant and to grant such Awards; (iii) determine the number of Shares to be covered by, or with respect to which payments, rights, or other matters are to be calculated in connection with, Awards; (iv) determine the terms and conditions, including performance targets, of any Award; (v) determine whether, to what extent, and under what circumstances, Awards may be settled or exercised in cash, Shares, other securities, other Awards or other property, or canceled, forfeited, or suspended and the method or methods by which Awards may be settled, exercised, canceled, forfeited, or suspended; (vi) determine whether, to what extent, and under what circumstances, the delivery of cash, Shares, other securities, other Options, other property and other amounts payable with respect to an Award shall be deferred either automatically or at the election of the holder thereof or of the Committee; (vii) interpret, administer, reconcile any inconsistency, correct any defect and/or supply any omission in the Plan and any instrument or agreement relating to, or Award granted under, the Plan; (viii) establish, amend, suspend, or waive such rules and regulations; (ix) appoint such agents as it shall deem appropriate for the proper administration of the Plan; and (x) make any other determination and take any other action that the Committee deems necessary or desirable for the administration of the Plan.
- (c) Unless otherwise expressly provided in the Plan, all designations, determinations, interpretations, and other decisions under or with respect to the Plan or any Award or any documents evidencing Awards granted pursuant to the Plan shall be within the sole discretion of the Committee, may be made at any time and shall be final, conclusive and binding upon all parties, including, without limitation, the Company, any Subsidiary, any Participant, any holder or beneficiary of any Award, and any shareholder.
- (d) No member of the Committee shall be liable for any action or determination made in good faith with respect to the Plan or any Award hereunder.

17.03(7)

- (e) Subject to the provisions of the Plan and applicable law, the Committee may delegate to the Chief Executive Officer of the Company the authority to grant Awards under the Plan to any Eligible Person (other than a Non-Employee Director), provided that such grants are consistent with guidelines established by the Committee from time to time.

**5. Grant of Awards; Shares Subject to the Plan**

Subject to Section 4, the Committee may, from time to time, grant Awards of Options, Share Appreciation Rights, Restricted Share, Restricted Share Units, Share Bonuses and/or Performance Compensation Awards to one or more Eligible Persons; provided, however, that:

- (a) Shares shall be deemed to have been used in settlement of Awards whether they are actually delivered or the Fair Market Value equivalent of such shares is paid in cash; provided, however, that Shares delivered (either directly or by means of attestation) in full or partial payment of the Option Price in accordance with Section 7(b) shall be deducted from the number of Shares delivered to the Participant pursuant to such Option for purposes of determining the number of Shares acquired pursuant to the Plan. In accordance with (and without limitation upon) the preceding sentence, if and to the extent an Award under the Plan expires, terminates or is canceled for any reason whatsoever without the Participant having received any benefit therefrom, the shares covered by such Award shall again become available for future Awards under the Plan. For purposes of the foregoing sentence, a Participant shall not be deemed to have received any "benefit" (i) in the case of forfeited Restricted Share Awards by reason of having enjoyed voting rights and dividend rights prior to the date of forfeiture or (ii) in the case of an Award canceled pursuant to Section 5(i) by reason of a new Award being granted in substitution therefor.
- (b) Shares delivered by the Company in settlement of Awards may be authorized and unissued Shares, Shares purchased on the open market or by private purchase, or a combination of the foregoing;
- (c) Subject to Section 13, no individual person may be granted Options, Restricted Shares, Share Bonuses or SARs during the duration of the Plan which, when aggregated with:
  - (i) any Shares issued upon exercise of similar share-based awards under the other plans which have been granted to that Eligible Person, if any;

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- (ii) any Shares which would be issued upon the exercise of outstanding share-based awards under the other plans granted to that Eligible Person, if any; and
- (iii) any Cancelled Shares, cancelled Restricted Shares, Share Bonuses or SARs or like cancelled shares under similar share-based awards under the other plans which had been granted to and accepted by that Eligible Person,

in any 12-month period prior to the Date of Grant, exceed one per cent. of the number of Shares in issue on the Date of Grant;

- (d) If the Committee determines to offer Options, Restricted Shares, Share Bonuses or SARs to an Eligible Person which exceed the limit set out in Section 5(c) above, that grant shall be subject to:
  - (i) the issue of a circular by the Company containing the identity of the Eligible Person, the numbers of and terms of the Options, Restricted Shares, Share Bonuses or SARs to be granted (and other share-based awards previously granted to such persons as described above), and such other information as required by the Listing Rules; and
  - (ii) the approval of the Shareholders in general meeting and/or other requirements prescribed under the Listing Rules from time to time with such Eligible Person and his associates (as defined in the Listing Rules) abstaining from voting; and

Unless otherwise provided in the Listing Rules, the date on which the Committee grants or the date of the meeting at which the Committee resolves to grant the proposed Options to that Eligible Person shall be taken as the Date of Grant for the purpose of determining the Option Price.

17.03(3)

- (e) Unless further approval has been obtained pursuant to Sections 5(f) and/or 5(g) and subject to Section 5(h), as at the Listing Date, the maximum number of Shares in respect of which Options, Restricted Shares, Share Bonuses or SARs or similar share-based awards under the other plans may be granted is 10 per cent of the Shares in issue immediately upon completion of the Global Offering and the Capitalisation Issue (as defined in the Prospectus) (assuming that the Over-allotment Option (as defined in the Prospectus) is not exercised) ("Scheme Limit"). As at the Date of Grant of any proposed grant of Options, Restricted Shares, Share Bonuses or SARs, the maximum number of Shares in respect of which Options, Restricted Shares, Share Bonuses or SARs and other similar share-based awards may be granted is 10 per cent of

the Shares in issue at the Date of Grant less the aggregate of the following Shares as at that Date of Grant:

- (i) the number of Shares which would be issued on the exercise in full of the Options, Restricted Shares, Share Bonuses or SARs or similar share-based awards under the other plans, if any, but not cancelled, lapsed or exercised;
  - (ii) the number of Shares which have been issued and allotted pursuant to the exercise of any Options, Restricted Shares, Share Bonuses or SARs or similar share-based awards under the other plans, if any; and
  - (iii) the number of Cancelled Shares, cancelled Restricted Shares, Share Bonuses or SARs or like cancelled Shares under similar share-based Awards under the other plans, if any.
- (f) Subject to Section 5(h), the issue of a circular by the Company which complies with Rules 17.03(3) and 17.06 of the Listing Rules and the approval of the shareholders of the Company in general meeting and/or such other requirements prescribed under the Listing Rules from time to time, the Scheme Limit may be increased from time to time to 10 per cent. of the Shares then in issue ("New Scheme Limit") as at the date of such shareholders' approval ("New Approval Date"). Thereafter, as at the Date of Grant of any proposed grant of Options, Restricted Shares, Share Bonuses or similar share-based Awards, the maximum number of Shares in respect of which Options, Restricted Shares, Share Bonuses or SARs or similar share-based Awards may be granted is the New Scheme Limit less the aggregate of the following Shares as at that Date of Grant:
- (i) the number of Shares which would be issued on the exercise in full of the Options, Restricted Shares, Share Bonuses or SARs and other share-based awards under the other plans granted on or after the New Approval Date but not cancelled, lapsed or exercised;
  - (ii) the number of Shares which have been issued and allotted pursuant to the exercise of any Options, Restricted Shares, Share Bonuses or SARs or similar share-based awards under the other plans granted on or after the New Approval Date; and
  - (iii) the number of Cancelled Shares cancelled Restricted

Shares, Share Bonuses or SARs or similar share-based awards under the other plans granted on or after the New Approval Date.

- (g) Subject to Section 5(h), the issue of a circular by the Company to its shareholders and the approval of the shareholders of the Company in general meeting in compliance with Rules 17.03(3) and 17.06 of the Listing Rules and/or such other requirements prescribed under the Listing Rules from time to time, the Board may grant Options, Restricted Shares, Share Bonuses or SARs or similar share-based Awards exceeding the Scheme Limit to Eligible Persons specifically identified by the Board.
- (h) Any increase in the Scheme Limit pursuant to Sections 5(f) and 5(g) shall in no event result in the number of Shares which may be issued upon exercise of the Options, Restricted Shares, Share Bonuses or SARs or similar share-based awards under the Plan and the other plans exceeding 30 per cent. of the Shares in issue from time to time.
- (i) Without limiting the generality of the preceding provisions of this Section 5, the Committee may, but solely with the Participant's consent, agree to cancel any Award under the Plan and issue a new Award in substitution therefor upon such terms as the Committee may in its sole discretion determine, provided that the substituted Award satisfies all applicable Plan requirements and the requirements of any stock exchange and stock quotation system on or over which the Shares are listed or traded, as applicable, as of the date such new Award is granted.

#### 6. Eligibility

Participation shall be limited to Eligible Persons who have entered into an Award agreement or who have received written notification from the Committee, or from a person designated by the Committee, that they have been selected to participate in the Plan.

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#### 7. Options

The Committee is authorized to grant one or more Options to any Eligible Person. Each Option so granted shall be subject to the conditions set forth in this Section 7, or to such other conditions as may be reflected in the applicable Option Agreement.

- (a) **Option Price.** The exercise price ("Option Price") per Share for each Option shall be set by the Committee at the time of grant but shall not be less than the highest of:

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- (i) the official closing price of the Shares as stated in the daily quotation sheets of the Stock Exchange on the Date of Grant which must be a Business Day;
- (ii) the average of the official closing price of the Shares as stated in the daily quotation sheets of the Stock Exchange for the 5 Business Days immediately preceding the Date of Grant; and
- (iii) the nominal value of a Share;

provided that for the purpose of determining the Option Price where the Shares have been listed on the Stock Exchange for less than 5 Business Days preceding the Date of Grant, the issue price of the Shares in connection with such listing shall be deemed to be the closing price of the Shares for each Business Day falling within the period before the listing of the Shares on the Stock Exchange.

- (b) **Manner of Exercise and Form of Payment.** No Shares shall be delivered pursuant to any exercise of an Option until payment in full of the Option Price therefor is received by the Company. Options which have become exercisable may be exercised by delivery of written notice of exercise to the Committee or a person designated by the Committee to receive such notice accompanied by payment of the Option Price. The Option Price shall be payable (i) in cash and/or Shares valued at the Fair Market Value at the time the Option is exercised (including by means of attestation of ownership of a sufficient number of Shares in lieu of actual delivery of such shares to the Company); (ii) in the discretion of the Committee, either (A) in other property having a fair market value on the date of exercise equal to the Option Price or (B) by delivering to the Committee a copy of irrevocable instructions to a stockbroker to deliver promptly to the Company an amount of loan proceeds, or proceeds from the sale of the Shares subject to the Option, sufficient to pay the Option Price or (iii) by such other method as the Committee may allow. Notwithstanding the foregoing, in no event shall a Participant be permitted to exercise an Option in the manner described in clause (ii) or (iii) of the preceding sentence if the Committee determines that exercising an Option in such manner would violate any other applicable law or the applicable rules and regulations of any securities exchange or inter dealer quotation system on which the securities of the Company or any Subsidiaries are listed or traded.

The exercise of any Option shall be subject to the Shareholders in general meeting approving any necessary increase in the

authorised share capital of the Company.

- (c) **Vesting, Option Period and Expiration.** Options shall vest and become exercisable in such manner and on such date or dates determined by the Committee and shall expire after such period, not to exceed ten years from the date upon which such Option is deemed to be granted and accepted in accordance with Section 7(d) below, as may be determined by the Committee (the "Option Period"); provided, however, that notwithstanding any vesting dates set by the Committee, the Committee may, in its sole discretion, accelerate the exercisability of any Option, which acceleration shall not affect the terms and conditions of such Option other than with respect to exercisability. If an Option is exercisable in installments, such installments or portions thereof which become exercisable shall remain exercisable until the Option expires.

17.03(5)

- (d) **Option Agreement - Other Terms and Conditions.** Each Option granted under the Plan shall be evidenced by an Option Agreement. Except as specifically provided otherwise in such Option Agreement, each Option granted under the Plan shall be subject to the following terms and conditions:

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- (i) Each Option or portion thereof that is exercisable shall be exercisable for the full amount or for any part thereof.
- (ii) No Shares shall be delivered pursuant to any exercise of an Option until the Company has received full payment of the Option Price therefor. Each Option shall cease to be exercisable, as to any Share, when the Participant purchases the share or exercises a related SAR or when the Option expires.
- (iii) Subject to Section 12(k), Options shall not be transferable by the Participant except by will or the laws of descent and distribution and shall be exercisable during the Participant's lifetime only by him or her.
- (iv) Each Option shall vest and become exercisable by the Participant in accordance with the vesting schedule established by the Committee and set forth in the Option Agreement.
- v) At the time of any exercise of an Option, the Committee may, in its sole discretion, require a Participant to deliver to the Committee a written representation that the Shares to be acquired upon such exercise are to be acquired for investment and not for resale or with a view to the

17.03(17)

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distribution thereof and any other representation deemed necessary by the Committee to ensure compliance with all applicable securities laws. Upon such a request by the Committee, delivery of such representation prior to the delivery of any shares issued upon exercise of an Option shall be a condition precedent to the right of the Participant or such other person to purchase any shares. In the event certificates for Shares are delivered under the Plan with respect to which such investment representation has been obtained, the Committee may cause a legend or legends to be placed on such certificates to make appropriate reference to such representation and to restrict transfer in the absence of compliance with applicable securities laws.

- (vi) An Option Agreement may, but need not, include a provision whereby a Participant may elect, at any time before the termination of the Participant's employment with the Company, to exercise the Option as to any part or all of the Shares subject to the Option prior to the full vesting of the Option. Any unvested Shares so purchased may, subject to law, be subject to a share repurchase option in favor of the Company or to any other restriction the Committee determines to be appropriate.
- (e) **Options to Connected Persons** Subject to Sections 5(d), 5(f), 5(g) and 7(e)(ii), if the Board determines to grant Options to a director, chief executive or substantial shareholder of the Company or any of their respective associates, such grant shall be subject to the approval by the independent non-executive directors of the Company (excluding any independent non-executive director of the Company who is a Participant of the grant in question). 17.04
- (i) If the Committee determines to grant Options to a substantial shareholder or an independent non-executive director of the Company (or any of their respective associates) and that grant would result in the Shares issued and to be issued upon exercise of all share-based Awards already granted and to be granted (including share-based Awards exercised, cancelled and outstanding) to such person under this Plan and the other plans in the 12-month period prior to and including the Date of Grant: (a) representing in aggregate over 0.1 per cent., or such other percentage as may be from time to time provided under the Listing Rules, of the Shares in issue on the Date of Grant; and (b) having an aggregate value, based on the official closing price of the Shares as stated in the daily quotation sheets of the Stock Exchange on the Date of Grant, in excess of HK\$5 million or such other

sum as may be from time to time provided under the Listing Rules, such grant shall be subject to, in addition to the approval of the independent non-executive directors of the Company as referred to under Section 7(e)(i), the issue of a circular by the Company to its shareholders and the approval of the shareholders of the Company in general meeting by way of a poll at which all Connected Persons of the Company shall abstain from voting in favour at the general meeting, and/or such other requirements prescribed under the Listing Rules from time to time. Unless provided otherwise in the Listing Rules, the date of the Committee meeting at which the Committee proposes to grant the proposed Options to that Eligible Person shall be taken as of the Offer Date for the purpose of determining the Option Price.

- (ii) The circular to be issued by the Company to its shareholders pursuant to Section 7(e)(i) shall contain the following information: (a) the details of the number and terms (including the Option Price) of the Options to be granted to each Eligible Person which must be fixed before the shareholders' meeting and the date of the Committee meeting for proposing such further grant shall be taken as the Date of Grant for the purpose of calculating the exercise price of such options; (b) a recommendation from the independent non-executive directors of the Company (excluding any independent non-executive director who is the relevant grantee) to the independent shareholders as to voting; (c) the information required under Rules 17.02(2)(c) and (d) and the disclaimer required under Rule 17.02(4) of the Listing Rules; and (d) the information required under Rule 2.17 of the Listing Rules.

(f) **Voting, Dividend and Other Rights**

No dividends shall be payable in relation to Shares that are the subject of Options that have not been exercised. The Shares to be allotted and issued upon the exercise of an Option shall not carry voting rights until completion of the registration of the Participant (or such other person nominated by the Participant) as the holder thereof. Subject as aforesaid, the Shares to be allotted and issued upon the exercise of an Option shall be subject to all the provisions of the constitutional documents of the Company for the time being in force and shall rank *pari passu* in all respects with and shall have the same voting, dividend, transfer and other rights, including those arising on liquidation of the Company as attached to the fully-paid

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Shares in issue on the date of issue, in particular but without prejudice to the generality of the foregoing, in respect of voting, transfer and other rights, including those arising on a liquidation of the Company and rights in respect of any dividend or other distributions paid or made on or after the date of issue.

(g) Lapse of Option,

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Without prejudice to Sections 13 and 14, an Option shall lapse automatically and not vest (to the extent not already vested) after the earliest of:-

- (i) the expiry of the Option Period;
- (ii) ~~the expiry of any of the periods referred to below:~~

(A) Death/Disability. If the Participant's employment with the Company and its Subsidiaries terminates on account of the Participant's death or by the Company or any Subsidiary due to Disability, the unvested portion of the Option shall expire on the date of termination and the vested portion of the Option shall remain exercisable by the Participant through the earlier of (A) the expiration of the Option Period or (B) one year following the date of termination on account of death or Disability.

~~(B) Termination Other than due to Death/Disability or for Cause.~~ If the Participant's employment with the Company and its Subsidiaries is terminated for any reason other than on account of the Participant's death or by the Company or any Subsidiary due to Disability or for Cause, the unvested portion of the Option shall expire on the date of termination and the vested portion of the Option shall remain exercisable by the Participant through the earlier of (A) the expiration of the Option Period or (B) ninety (90) days following such termination.

(C) Termination for Cause. If the Participant's employment with the Company and its Subsidiaries is terminated by the Company or any Subsidiary for Cause, both the unvested and the vested portions of the Option shall terminate on the date of such termination.

- (D) If a general offer (whether by way of take-over offer, share repurchase offer or scheme of arrangement or otherwise in like manner) is made to all the holders of Shares (or all such holders other than the offeror and/or any person controlled by the offeror and/or any person acting in association or in concert with the offeror), the Company shall use all reasonable endeavours to procure that such offer is extended to all the Participants (on the same terms *mutatis mutandis*, and assuming that they shall become, by the vesting and exercise in full of the Options granted to them, Shareholders). If such offer (other than a scheme of arrangement), having been approved in accordance with applicable laws and regulatory requirements becomes, or is declared unconditional or such scheme of arrangement is formally proposed to the Shareholders, the Participant (or his legal personal representative(s)) shall be entitled to exercise his Option in full (to the extent not already exercised) to its full extent or to the extent specified in the grantee's notice to our Company in exercise of his option at any time up to the close of such offer or the record date for entitlements under a scheme of arrangement. Subject to the above, an option (to the extent not already exercised) will lapse automatically on the date on which such offer closes or the record date for entitlements under a scheme of arrangement;
- (E) if, pursuant to the Companies Law (as amended) of the Cayman Islands, a compromise or arrangement between the Company and its members and/or creditors is proposed for the purposes of or in connection with a scheme for the restructuring of the Company or its amalgamation with any other company or companies, the Company shall give notice thereof to all the Participants (together with a notice of the existence of the provisions of this paragraph) on the same day as it despatches to members and/or creditors of the Company a notice summoning the meeting to consider such a compromise or arrangement, and any Participant may by notice in writing to the Company accompanied by a remittance for the full amount of the aggregate subscription price for the Shares in respect of which the notice is given (such notice to be received by the Company not later than two Business Days prior to

the proposed meeting), exercise the Option to its full extent or to the extent specified in the notice and the Company shall as soon as possible and in any event no later than the Business Day immediately prior to the date of the proposed meeting, allot and issue such number of Shares to the Participant which falls to be issued upon such exercise of the Option credited as fully paid, and register the Participant as a holder thereof. With effect from the date of such meeting, the rights of all Participants to exercise their respective Options shall forthwith be suspended. Upon such compromise or arrangement becoming effective, all Options shall, to the extent that they have not been exercised, lapse. The Board shall endeavour to procure that the Shares issued as a result of the exercise of Options in such circumstances shall for, the purposes of such compromise or arrangement, form part of the issued and outstanding share capital of the Company on the effective date thereof, and that such Shares shall in all respects be subject to such compromise or arrangement. If, for any reason, such compromise or arrangement is not approved by the relevant court (whether upon the terms presented to the relevant court or upon any other terms as may be approved by such court) the rights of the Participants to exercise their respective Options shall, with effect from the date of the making of the order by the relevant court, be restored in full as if such compromise or arrangement had not been proposed by the Company, and no claim shall lie against the Company or any of its officers for any loss or damage sustained by any Participant as a result of the aforesaid suspension; and

- (F) in the event a notice is given by the Company to its Shareholders to convene a general meeting for the purposes of considering, and if thought fit, approving a resolution to voluntarily wind-up the Company, the Company shall on the same date as or soon after it despatches such notice to each member of the Company give notice thereof to all Participants and thereupon, each Participant (or in the case of the death of the Participant, his personal representative(s)) shall be entitled to exercise all or any of his Options at any time not later than two Business Days prior to the proposed general meeting

of the Company by giving notice in writing to the Company, accompanied by a remittance for the full amount of the aggregate Option Price for the Shares in respect of which the notice is given whereupon the Company shall, as soon as possible, and, in any event, no later than the Business Day immediately prior to the date of the proposed general meeting referred to above, allot the relevant Shares to the Participant credited as fully paid and register the Participant as holder thereof.

- (iii) the date on which the scheme of arrangement of the Company referred to in Section 7(g)(ii)(d) becomes effective;
- (iv) the date of commencement of the winding-up of the Company (as determined in accordance with the Companies Law); and
- (v) the date on which the Board shall exercise the Company's right to cancel the Option at any time after the Participant commits a breach of Section 7(d)(iii) or the Options are cancelled in accordance with Section 16.

**(h) Restriction on the Time of Grant of Option**

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For so long as the Shares are listed on the Stock Exchange, the Board shall not grant any Option after a price-sensitive event has occurred or a price-sensitive matter has been the subject of a decision until such price-sensitive information has been announced pursuant to the requirements of the Listing Rules. In particular, no Options shall be granted during the period commencing one month preceding the earlier of:

- (i) the date of the Board meeting (as such date is first notified to the Stock Exchange in accordance with the Listing Rules) for the approval of the Company's annual results, half-year, quarterly or any other interim period (whether or not required under the Listing Rules); and
- (ii) the deadline for the Company to publish an announcement of its results for (i) any year or half-year period in accordance with the Listing Rules, and (ii) where the Company has elected to publish them, any quarterly or any other interim period, and ending on the actual date of the results for such year, half year, quarterly or interim period (as the case may be);



and where the grant of Options is to a director or a "relevant employee" (as defined below), no Option shall be granted:

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- (i) during the period of 60 days immediately preceding the publication date of the annual results or, if shorter, the period from the end of the relevant financial year up to the publication date of the results; and
- (ii) during the period of 30 days immediately preceding the publication date of the quarterly results (if any) and half-year results or, if shorter, the period from the end of the relevant quarterly or half-year period up to the publication date of the results.

"Relevant employee" as used in this paragraph shall include any employee of the Company or a director or employee of a subsidiary or holding company of the Company who, because of such office or employment, is likely to be in possession of unpublished price sensitive information in relation to the Company or its securities.

This Section 7(h) shall apply *mutatis mutandis* to all share-based Awards as if reference to an "Option" refers to such award.

**8. (i) Share Appreciation Rights**

Any Option granted under the Plan may include SARs, either at the Date of Grant or, by subsequent amendment. The Committee also may award SARs to Eligible Persons independent of any Option. A SAR shall be subject to such terms and conditions not inconsistent with the Plan as the Committee shall impose, including, but not limited to, the following:

- (a) **Vesting, Transferability and Expiration.** A SAR granted in connection with an Option shall become exercisable, be transferable and shall expire according to the same vesting schedule, transferability rules and expiration provisions as the corresponding Option. A SAR granted independent of an Option shall become exercisable, be transferable and shall expire in accordance with a vesting schedule, transferability rules and expiration provisions as established by the Committee and reflected in an Award agreement.
- (b) **Automatic exercise.** If on the last day of the Option Period (or in the case of a SAR independent of an option, the period established by the Committee after which the SAR shall expire), the Fair Market Value exceeds the Strike Price, the Participant has not exercised the SAR or the corresponding Option, and neither the SAR nor the

corresponding Option has expired, such SAR shall be deemed to have been exercised by the Participant on such last day and the Company shall make the appropriate payment therefor.

- (c) **Payment.** Upon the exercise of a SAR, the Company shall pay to the Participant an amount equal to the number of shares subject to the SAR multiplied by the excess, if any, of the Fair Market Value of one Share on the exercise date over the Strike Price. The Company shall pay such excess in cash, in Shares valued at Fair Market Value, or any combination thereof, as determined by the Committee. Fractional shares shall be settled in cash.
- (d) **Method of Exercise.** A Participant may exercise a SAR at such time or times as may be determined by the Committee at the time of grant by filing an irrevocable written notice with the Committee or its designee, specifying the number of SARs to be exercised, and the date on which such SARs were awarded.
- (e) **Expiration.** Except as otherwise provided in the case of SARs granted in connection with Options, a SAR shall expire on a date designated by the Committee which is not later than ten years after the Date of Grant of the SAR.

#### 9. **Restricted Shares and Restricted Share Units**

- (a) **Award of Restricted Shares and Restricted Share Units.**
  - (i) The Committee shall have the authority (A) to grant Restricted Shares and Restricted Share Units to Eligible Persons, (B) to issue or transfer Restricted Shares to Participants, and (C) to establish terms, conditions and restrictions applicable to such Restricted Shares and Restricted Share Units, including the Restricted Period, as applicable, which may differ with respect to each grantee, the time or times at which Restricted Shares or Restricted Share Units shall be granted or become vested and the number of shares or units to be covered by each grant.
  - (ii) Each Participant granted Restricted Shares shall execute and deliver to the Company an Award agreement with respect to the Restricted Shares setting forth the restrictions and other terms and conditions applicable to such Restricted Shares. If the Committee determines that the Restricted Shares shall be held in escrow rather than delivered to the Participant pending the release of the applicable restrictions, the Committee may require the Participant to additionally execute and deliver to the Company (A) an escrow

agreement satisfactory to the Committee and (B) the appropriate blank instrument of transfers with respect to the Restricted Shares covered by such agreement. If a Participant shall fail to execute an agreement evidencing an Award of Restricted Shares and, if applicable, an escrow agreement and instrument of transfers, the Award shall be null and void. Subject to the restrictions set forth in Section 9(b), the Participant generally shall have the rights and privileges of a shareholder as to such Restricted Shares, including the right to vote such Restricted Shares. At the discretion of the Committee, cash dividends and dividends with respect to the Restricted Shares may be either currently paid to the Participant or withheld by the Company for the Participant's account, and interest may be credited on the amount of cash dividends withheld at a rate and subject to such terms as determined by the Committee. The cash dividends or dividends so withheld by the Committee and attributable to any Restricted Shares (and earnings thereon, if applicable) shall be distributed to the Participant upon the release of restrictions on such share and, if such share is forfeited, the Participant shall have no right to such cash dividends, dividends or earnings.

- (iii) Upon the grant of Restricted Shares, the register of members shall be updated and the Committee shall cause a share certificate registered in the name of the Participant to be issued and, if it so determines, deposited together with the instrument of transfer with an escrow agent designated by the Committee. If an escrow arrangement is used, the Committee may cause the escrow agent to issue to the Participant a receipt evidencing any share certificate held by it, registered in the name of the Participant.
- (iv) The terms and conditions of a grant of Restricted Share Units shall be reflected in a written Award agreement. No Shares shall be issued at the time a Restricted Share Unit is granted, and the Company will not be required to set aside a fund for the payment of any such Award. At the discretion of the Committee, each Restricted Share Unit (representing one Share) may be credited with cash and dividends paid by the Company in respect of one Share ("Dividend Equivalents"). At the discretion of the Committee, Dividend Equivalents may be either currently paid to the Participant or withheld by the Company for the Participant's account, and interest may be credited on the amount of cash Dividend Equivalents withheld at a rate and subject to such terms as determined by the Committee. Dividend Equivalents

credited to a Participant's account and attributable to any particular Restricted Share Unit (and earnings thereon, if applicable) shall be distributed to the Participant upon settlement of such Restricted Share Unit and, if such Restricted Share Unit is forfeited, the Participant shall have no right to such Dividends Equivalents.

(b) **Restrictions.**

- (i) Restricted Shares awarded to a Participant shall be subject to the following restrictions until the expiration of the Restricted Period, and to such other terms and conditions as may be set forth in the applicable Award agreement: (A) if an escrow arrangement is used, the Participant shall not be entitled to delivery of the share certificate; (B) the shares shall be subject to the restrictions on transferability set forth in the Award agreement; (C) the shares shall be subject to forfeiture to the extent provided in Section 9(d) and the applicable Award agreement; and (D) to the extent such shares are forfeited, the share certificates shall be returned to the Company, and all rights of the Participant to such shares and as a shareholder shall terminate without further obligation on the part of the Company.
  - (ii) Restricted Share Units awarded to any Participant shall be subject to (A) forfeiture until the expiration of the Restricted Period, and satisfaction of any applicable Performance Goals during such period, to the extent provided in the applicable Award agreement, and to the extent such Restricted Share Units are forfeited, all rights of the Participant to such Restricted Share Units shall terminate without further obligation on the part of the Company and (B) such other terms and conditions as may be set forth in the applicable Award agreement.
  - (iii) The Committee shall have the authority to remove any or all of the restrictions on the Restricted Share and Restricted Share Units whenever it may determine that, by reason of changes in applicable laws or other changes in circumstances arising after the date of the Restricted Shares or Restricted Share Units are granted, such action is appropriate.
- (c) **Restricted Period.** The Restricted Period of Restricted Shares and Restricted Share Units shall commence on the Date of Grant and shall expire from time to time as to that part of the Restricted

Shares and Restricted Shares Units indicated in a schedule established by the Committee in the applicable Award agreement.

- (d) **Delivery of Restricted Shares and Settlement of Restricted Share Units.** Upon the expiration of the Restricted Period with respect to any Restricted Shares, the restrictions set forth in Section 9(b) and the applicable Award agreement shall be of no further force or effect with respect to such shares, except as set forth in the applicable Award agreement. If an escrow arrangement is used, upon such expiration, the Company shall deliver to the Participant, or his beneficiary, without charge, the share certificate evidencing Restricted Shares which have not then been forfeited and with respect to which the Restricted Period has expired (to the nearest full share) and any cash dividends or dividends credited to the Participant's account with respect to such Restricted Shares and the interest thereon, if any.

Upon the expiration of the Restricted Period with respect to any outstanding Restricted Share Units, the Company shall deliver to the Participant, or his beneficiary, without charge, one Share for each such outstanding Restricted Share Unit ("Vested Unit") and cash equal to any Dividend Equivalents credited with respect to each such Vested Unit in accordance with Section 9(a)(iv) hereof and the interest thereon, if any; provided, however, that, if explicitly provided in the applicable Award agreement, the Committee may, in its sole discretion, elect to (i) pay cash or part cash and part Shares in lieu of delivering only Shares for Vested Units or (ii) delay the delivery of Shares (or cash or part Shares and part cash, as the case may be) beyond the expiration of the Restricted Period. If a cash payment is made in lieu of delivering Shares, the amount of such payment shall be equal to the Fair Market Value of the Shares as of the date on which the Restricted Period lapsed with respect to such Vested Unit.

- (e) **Share Restrictions.** Each certificate representing Restricted Shares awarded under the Plan shall bear a legend substantially in the form of the following until the lapse of all restrictions with respect to such Shares as well as any other information the Company deems appropriate:

Transfer of this certificate and the shares represented hereby is restricted pursuant to the terms of the Sands China Ltd. Equity Award Plan and a Restricted Share Purchase and Award Agreement, dated as of \_\_\_\_\_, between Sands China Ltd. and \_\_\_\_\_. A copy of such Plan and Agreement is on file at the offices of Sands China Ltd.

Stop transfer orders shall be entered with the Company's transfer agent and registrar against the transfer of legended securities.

**10. Share Bonus Awards**

The Committee may issue unrestricted Shares, or other Awards denominated in Shares, under the Plan to Eligible Persons, alone or in tandem with other Awards, in such amounts and subject to such terms and conditions as the Committee shall from time to time in its sole discretion determine. A Share Bonus Award under the Plan shall be granted as, or in payment of, a bonus, or to provide incentives or recognize special achievements or contributions.

**11. Performance Compensation Awards**

- (a) **General.** The Committee shall have the authority, at the time of grant of any Award described in Sections 7 through 10 (other than Options and Share Appreciation Rights granted with an exercise price or grant price, as the case may be, equal to or greater than the Fair Market Value per Share on the Date of Grant), to designate such Award as a Performance Compensation Award.
- (b) **Eligibility.** The Committee will, in its sole discretion, designate within the first 90 days of a Performance Period, or within the period specified by applicable law or regulation, which Participants will be eligible to receive Performance Compensation Awards in respect of such Performance Period. However, designation of a Participant eligible to receive an Award hereunder for a Performance Period shall not in any manner entitle the Participant to receive payment in respect of any Performance Compensation Award for such Performance Period. The determination as to whether or not such Participant becomes entitled to payment in respect of any Performance Compensation Award shall be decided solely in accordance with the provisions of this Section 11. Moreover, designation of a Participant eligible to receive an Award hereunder for a particular Performance Period shall not require designation of such Participant eligible to receive an Award hereunder in any subsequent Performance Period and designation of one person as a Participant eligible to receive an Award hereunder shall not require designation of any other person as a Participant eligible to receive an Award hereunder in such period or in any other period.
- (c) **Discretion of Committee with Respect to Performance Compensation Awards.** With regard to a particular Performance Period, the Committee shall have full discretion to select the length of such Performance Period, the type(s) of Performance

Compensation Awards to be issued, the Performance Criteria that will be used to establish the Performance Goal(s), the kind(s) and/or level(s) of the Performance Goals(s) that is(are) to apply to the Company and the Performance Formula. Within the first 90 days of a Performance Period, the Committee shall, with regard to the Performance Compensation Awards to be issued for such Performance Period, exercise its discretion with respect to each of the matters enumerated in the immediately preceding sentence of this Section 11(c) and record the same in writing.

(d) **Payment of Performance Compensation Awards**

- (i) **Condition to Receipt of Payment.** Unless otherwise provided in the applicable Award agreement, a Participant must be employed by the Company on the last day of a Performance Period to be eligible for payment in respect of a Performance Compensation Award for such Performance Period.
- (ii) **Limitation.** A Participant shall be eligible to receive payment in respect of a Performance Compensation Award only to the extent that: (A) the Performance Goals for such period are achieved; and (B) the Performance Formula as applied against such Performance Goals determines that all or some portion of such Participant's Performance Award has been earned for the Performance Period.
- (iii) **Certification.** Following the completion of a Performance Period, the Committee shall review and certify in writing whether, and to what extent, the Performance Goals for the Performance Period have been achieved and, if so, calculate and certify in writing that amount of the Performance Compensation Awards earned for the period based upon the Performance Formula. The Committee shall then determine the actual size of each Participant's Performance Compensation Award for the Performance Period and, in so doing, may apply Negative Discretion in accordance with Section 11(d)(iv) hereof, if and when it deems appropriate.
- (iv) **Use of Discretion.** In determining the actual size of an individual Performance Award for a Performance Period, the Committee may reduce or eliminate the amount of the Performance Compensation Award earned under the Performance Formula in the Performance Period through the use of Negative Discretion if, in its sole judgment, such reduction or elimination is appropriate. The Committee shall not have the discretion to (a) grant or provide payment in

respect of Performance Compensation Awards for a Performance Period if the Performance Goals for such Performance Period have not been attained; or (b) increase a Performance Compensation Award above the maximum amount payable under Sections 4(a) or 11(d)(vi) of the Plan.

- (v) **Timing of Award Payments.** Performance Compensation Awards granted for a Performance Period shall be paid to Participants as soon as administratively practicable following completion of the certifications required by this Section 11.
- (vi) **Maximum Award Payable.** Notwithstanding any provision contained in this Plan to the contrary, the maximum Performance Compensation Award payable to any one Participant under the Plan in any 12-month period up to the Date of Grant is 1% of the Shares in issue as of the date of grantor, in the event the Performance Compensation Award is paid in cash, the equivalent cash value thereof on the first or last day of the Performance Period to which such Award relates, as determined by the Committee. Furthermore, any Performance Compensation Award that has been deferred shall not (between the date as of which the Award is deferred and the payment date) increase (A) with respect to Performance Compensation Award that is payable in cash, by a measuring factor for each fiscal year greater than a reasonable rate of interest set by the Committee or (B) with respect to a Performance Compensation Award that is payable in Shares, by an amount greater than the appreciation of a Share from the date such Award is deferred to the payment date.

## 12. General

- (a) **Additional Provisions of an Award.** Awards to a Participant under the Plan also may be subject to such other provisions (whether or not applicable to Awards granted to any other Participant) as the Committee determines appropriate, including, without limitation, provisions to assist the Participant in financing the purchase of Shares upon the exercise of Options, provisions for the forfeiture of or restrictions on resale or other disposition of Shares acquired under any Award, provisions giving the Company the right to repurchase Shares acquired under any Award in the event the Participant elects to dispose of such shares, provisions allowing the Participant to elect to defer the receipt of payment in respect of Awards for a specified period or until a specified event, and provisions to comply with local securities laws and local tax



withholding requirements. Any such provisions shall be reflected in the applicable Award agreement.

- (b) **Privileges of Share Ownership.** Except as otherwise specifically provided in the Plan, no person shall be entitled to the privileges of ownership in respect of Shares which are subject to Awards hereunder until such shares have been issued to that person.
- (c) **Government and Other Regulations.** The obligation of the Company to grant or settle Awards in Shares shall be subject to all applicable laws, rules, and regulations, and to such approvals by governmental agencies as may be required. Notwithstanding any terms or conditions of any Award to the contrary, the Company shall be under no obligation to offer to sell or to sell, and shall be prohibited from offering to sell or selling, any Shares pursuant to an Award made or granted hereunder unless the Company has received an opinion of counsel, satisfactory to the Company, that such shares may be offered or sold without such registration pursuant to an available exemption therefrom and the terms and conditions of such exemption have been fully complied with. If the Shares offered for sale or sold under the Plan are offered or sold pursuant to an exemption from registration under the Companies Ordinance (Cap.32), the Company may restrict the transfer of such shares and may legend the Share certificates representing such shares in such manner as it deems advisable to ensure the availability of any such exemption.
- (d) **Tax Withholding.**
  - (i) A Participant may be required to pay to the Company or any Subsidiary, and the Company or any Subsidiary shall have the right and is hereby authorized to withhold from any Shares or other property deliverable under any Award or from any compensation or other amounts owing to a Participant, the amount (in cash, Shares or other property) of any required income tax withholding and payroll taxes in respect of an Award, its exercise, or any payment or transfer under an Award or under the Plan and to take such other action as may be necessary in the opinion of the Company to satisfy all obligations for the payment of such withholding and taxes.
  - (ii) Without limiting the generality of clause (i) above, the Committee may, in its sole discretion, permit a Participant to satisfy, in whole or in part, the foregoing withholding liability (but no more than the minimum required withholding liability) by (A) the delivery of Shares owned by the Participant

having a Fair Market Value equal to such withholding liability or (B) having the Company withhold from the number of Shares otherwise issuable pursuant to the exercise or settlement of the Award a number of shares with a Fair Market Value equal to such withholding liability.



**Claim to Awards and Employment Rights.** No employee of the Company or a Subsidiary, or other person, shall have any claim or right to be granted an Award under the Plan or, having been selected for the grant of an Award, to be selected for a grant of any other Award. Neither the Plan nor any action taken hereunder shall be construed as giving any Participant any right to be retained in the employ or service of the Company or a Subsidiary.

- (f) **Designation and Change of Beneficiary.** Each Participant may file with the Committee a written designation of one or more persons as the beneficiary who shall be entitled to receive the amounts payable with respect to an Award, if any, due under the Plan upon his death. A Participant may, from time to time, revoke or change his beneficiary designation without the consent of any prior beneficiary by filing a new designation with the Committee. The last such designation received by the Committee shall be controlling; provided, however, that no designation, or change or revocation thereof, shall be effective unless received by the Committee prior to the Participant's death, and in no event shall it be effective as of a date prior to such receipt. If no beneficiary designation is filed by a Participant, the beneficiary shall be deemed to be his or her spouse or, if the Participant is unmarried at the time of death, his or her estate.
- (g) **Payments to Persons Other Than Participants.** If the Committee shall find that any person to whom any amount is payable under the Plan is unable to care for his affairs because of illness or accident, or is a minor, or has died, then any payment due to such person or his estate (unless a prior claim therefor has been made by a duly appointed legal representative) may, if the Committee so directs the Company, be paid to his spouse, child, relative, an institution maintaining or having custody of such person, or any other person deemed by the Committee to be a proper recipient on behalf of such person otherwise entitled to payment. Any such payment shall be a complete discharge of the liability of the Committee and the Company therefor.
- (h) **No Liability of Committee Members.** No member of the Committee shall be personally liable by reason of any contract or other instrument executed by such member or on his behalf in his capacity as a member of the Committee nor for any mistake of

judgment made in good faith, and the Company shall indemnify and hold harmless each member of the Committee and each other employee, officer or director of the Company to whom any duty or power relating to the administration or interpretation of the Plan may be allocated or delegated, against any cost or expense (including counsel fees) or liability (including any sum paid in settlement of a claim) arising out of any act or omission to act in connection with the Plan unless arising out of such person's own fraud or willful bad faith; provided, however, that approval of the Board shall be required for the payment of any amount in settlement of a claim against any such person. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's Articles of Association, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.



**Governing Law.** The Plan shall be governed by and construed in accordance with the laws of Hong Kong Special Administrative Region.

(j)

**Funding.** No provision of the Plan shall require the Company, for the purpose of satisfying any obligations under the Plan, to purchase assets or place any assets in a trust or other entity to which contributions are made or otherwise to segregate any assets, nor shall the Company maintain separate bank accounts, books, records or other evidence of the existence of a segregated or separately maintained or administered fund for such purposes. Participants shall have no rights under the Plan other than as unsecured general creditors of the Company, except that insofar as they may have become entitled to payment of additional compensation by performance of services, they shall have the same rights as other employees under general law.

(k)

**Nontransferability.**

(i)

Each Award shall be exercisable only by a Participant during the Participant's lifetime, or, if permissible under applicable law, by the Participant's legal guardian or representative. No Award may be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by a Participant other than by will or by the laws of descent and distribution and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or an Subsidiary; provided that the designation of a beneficiary shall not

constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance.

- (ii) Notwithstanding the foregoing, subject to compliance with applicable law, the Committee may, in its sole discretion, permit Awards to be transferred by a Participant, without consideration, subject to such rules as the Committee may adopt consistent with any applicable Award agreement to preserve the purposes of the Plan, to:

- (A) any person who is a family member of the Participant, whereby "family member" shall include any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person sharing the employee's household (other than a tenant or employee), a trust in which these persons have more than fifty percent of the beneficial interest, a foundation in which these persons (or the Participant) control the management of assets, and any other entity in which these persons (or the Participant) own more than fifty percent of the voting interests.

(collectively, the "Immediate Family Members");

- (B) a trust solely for the benefit of the Participant and his or her Immediate Family Members;
- (C) a partnership or limited liability company whose only partners or shareholders are the Participant and his or her Immediate Family Members; or
- (D) any other transferee as may be approved either (a) by the Board or the Committee in its sole discretion, or (b) as provided in the applicable Award agreement;

(each transferee described in clauses (A), (B), (C) and (D) above is hereinafter referred to as a "Permitted Transferee"); provided that the Participant gives the Committee advance written notice describing the terms and conditions of the proposed transfer and the Committee notifies the Participant in writing that such a transfer would comply with the requirements of the Plan.

- (iii) The terms of any Award transferred in accordance with the immediately preceding sentence shall apply to the Permitted

Transferee and any reference in the Plan, or in any applicable Award agreement, to a Participant shall be deemed to refer to the Permitted Transferee, except that (A) Permitted Transferees shall not be entitled to transfer any Award, other than by will or the laws of descent and distribution; (B) the Committee or the Company shall not be required to provide any notice to a Permitted Transferee, whether or not such notice is or would otherwise have been required to be given to the Participant under the Plan or otherwise, and (C) the consequences of the termination of the Participant's employment by, or services to, the Company or a Subsidiary under the terms of the Plan and the applicable Award agreement shall continue to be applied with respect to the Participant, including, without limitation, that an Option shall be exercisable by the Permitted Transferee only to the extent, and for the periods, specified in the Plan and the applicable Award agreement.

- (l) **Reliance on Reports.** Each member of the Committee and each member of the Board shall be fully justified in acting or failing to act, as the case may be, and shall not be liable for having so acted or failed to act in good faith, in reliance upon any report made by the independent public accountant of the Company and its Subsidiaries and/or any other information furnished in connection with the Plan by any person or persons other than himself.
- (m) **Relationship to Other Benefits.** No payment under the Plan shall be taken into account in determining any benefits under any pension, retirement, profit sharing, group insurance or other benefit plan of the Company except as otherwise specifically provided in such other plan.
- (n) **Expenses.** The expenses of administering the Plan shall be borne by the Company and Subsidiaries.
- (o) **Pronouns.** Masculine pronouns and other words of masculine gender shall refer to both men and women.
- (p) **Titles and Headings.** The titles and headings of the sections in the Plan are for convenience of reference only, and in the event of any conflict, the text of the Plan, rather than such titles or headings shall control.
- (q) **Termination of Employment.** Unless an applicable Award agreement provides otherwise, for purposes of the Plan a person who transfers from employment or service with the Company to employment or service with a Subsidiary or vice versa shall not be

deemed to have terminated employment or service with the Company or an Subsidiary.

- (r) **Severability.** If any provision of the Plan or any Award agreement is or becomes or is deemed to be invalid, illegal, or unenforceable in any jurisdiction or as to any person or Award, or would disqualify the Plan or any Award under any law deemed applicable by the Committee, such provision shall be construed or deemed amended to conform to the applicable laws, or if it cannot be construed or deemed amended without, in the determination of the Committee, materially altering the intent of the Plan or the Award, such provision shall be stricken as to such jurisdiction, person or Award and the remainder of the Plan and any such Award shall remain in full force and effect.

### 13. Changes in Capital Structure

17.03(13)

With respect to Awards granted under the Plan and any agreements evidencing such Awards, and the maximum number of Shares with respect to which any one person may be granted Awards during any period stated in Sections 5(c) or 11(d)(vi), the Committee shall make an equitable adjustment or substitution, in order to prevent substantial enlargement or dilution of a Participant's rights in a manner consistent with the purposes of the Plan, as to the number, price or kind of a Share or other consideration subject to such Awards or as otherwise determined by the Committee to be equitable (i) in the event of changes in the outstanding Shares or in the capital structure of the Company by reason of share or extraordinary cash dividends, share splits, reverse share splits, recapitalization, reorganizations, mergers, consolidations, combinations, exchanges, or other relevant changes in capitalization occurring after the Date of Grant of any such Award or (ii) in the event of any change in applicable laws or any change in circumstances which results in or would result in any substantial dilution or enlargement of the rights granted to, or available for, Participants, or which otherwise warrant equitable adjustment because it interferes with the intended operation of the Plan; provided, however, that the manner of any such equitable adjustment shall be determined by the Committee in its sole discretion in compliance with the Listing Rules and their decision shall be final and conclusive and binding on the Company and the Participants. Notwithstanding the above, in the event of any of the following:

- (a) The Company is merged or consolidated with another corporation or entity and, in connection therewith, consideration is received by shareholders of the Company in a form other than shares or other equity interests of the surviving entity;

- (b) All or substantially all of the assets of the Company are acquired by another person;
- (c) The reorganization or liquidation of the Company; or
- (d) The Company shall enter into a written agreement to undergo an event described in clauses A, B or C above,

then the Committee may, in its discretion and upon at least 10 days advance notice to the affected persons, cancel any outstanding Awards and cause the holders thereof to be paid, in cash or shares, or any combination thereof, the value of such Awards based upon the price per share of Shares received or to be received by other shareholders of the Company in the event. The terms of this Section 13 may be varied by the Committee in any particular Award agreement.

#### 14. Effect of Change in Control

- (a) Except to the extent provided in a particular Award agreement:
  - (i) In the event of a Change in Control, notwithstanding any provision of the Plan or any applicable Award agreement to the contrary, the Committee may in its discretion provide that all Options and SARs shall become immediately exercisable with respect to 100 percent of the shares subject to such Option or SAR, and/or that the Restricted Period shall expire immediately with respect to 100 percent of such Restricted Shares or Restricted Share Units (including a waiver of any applicable Performance Goals). To the extent practicable, such acceleration of exercisability and expiration of the Restricted Period (as applicable) shall occur in a manner and at a time which allows affected Participants the ability to participate in the Change in Control transaction with respect to the Shares subject to their Awards.
  - (ii) In the event of a Change in Control, all incomplete Performance Periods in effect on the date the Change in Control occurs shall end on the date of such change, and the Committee shall (A) determine the extent to which Performance Goals with respect to each such Award Period have been met based upon such audited or unaudited financial information then available as it deems relevant, (B) cause to be paid to each Participant partial or full Awards with respect to Performance Goals for each such Award Period based upon the Committee's determination of the degree of attainment of Performance Goals, and (C) cause

all previously deferred Awards to be settled in full as soon as possible.

- (b) In addition, in the event of a Change in Control, the Committee may in its discretion and upon at least 10 days' advance notice to the affected persons, cancel any outstanding Awards and pay to the holders thereof, in cash or shares, or any combination thereof, the value of such Awards based upon the price per Share received or to be received by other shareholders of the Company in the event.
- (c) The obligations of the Company under the Plan shall be binding upon any successor corporation or organization resulting from the merger, consolidation or other reorganization of the Company, or upon any successor corporation or organization succeeding to substantially all of the assets and business of the Company. The Company agrees that it will make appropriate provisions for the preservation of Participants' rights under the Plan in any agreement or plan which it may enter into or adopt to effect any such merger, consolidation, reorganization or transfer of assets.

**15. Nonexclusivity of the Plan**

Neither the adoption of this Plan by the Board nor the submission of this Plan to the shareholders of the Company for approval shall be construed as creating any limitations on the power of the Board to adopt such other incentive arrangements as it may deem desirable, including, without limitation, the granting of share options otherwise than under this Plan, and such arrangements may be either applicable generally or only in specific cases.

**16. Amendments and Termination**

- (a) **Amendment and Termination of the Plan.** The Board may amend, alter, suspend, discontinue, or terminate the Plan or any portion thereof at any time; provided, that no such amendment, alteration, suspension, discontinuation or termination shall be made without shareholder approval if such approval is necessary to comply with any tax or regulatory requirement applicable to the Plan (including as necessary to comply with any applicable stock exchange listing requirement) and provided, further, that any such amendment, alteration, suspension, discontinuance or termination that would impair the rights of any Participant or any holder or beneficiary of any Award theretofore granted shall not to that extent be effective without the consent of the affected Participant, holder or beneficiary. The termination date of the Plan, following which no Awards may be granted hereunder, is 10 years from the Listing Date; provided, that such termination shall not affect Awards then

17.03(16)

17.03(18)

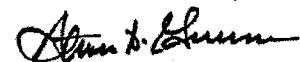


outstanding, and the terms and conditions of the Plan shall continue to apply to such Awards.

- (b) **Amendment of Award Agreements.** The Committee may, to the extent consistent with the terms of any applicable Award agreement, waive any conditions or rights under, amend any terms of, or alter, suspend, discontinue, cancel or terminate, any Award theretofore granted or the associated Award agreement, prospectively or retroactively; provided that any such waiver, amendment, alteration, suspension, discontinuance, cancellation or termination that would impair the rights of any Participant or any holder or beneficiary of any Option theretofore granted shall not to that extent be effective without the consent of the affected Participant, holder or beneficiary; and provided, further, that, without shareholder approval, no amendment or modification may reduce the Option Price of any Option. 17.03(14)
- (c) The Board shall procure that details of this Plan and other plans of the Company and its Subsidiaries are disclosed in the annual reports and interim reports of the Company in compliance with the Listing Rules in force from time to time. The Board shall procure that upon the granting by the Company of an option under the Plan an announcement is published in accordance with Rule 17.06A of the Listing Rules and the next day disclosure returns are published in the circumstances prescribed under Rule 13.25A of the Listing Rules. 17.07

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1 ACOM  
2 CAMPBELL & WILLIAMS  
3 DONALD J. CAMPBELL, ESQ. (#1216)  
4 [djic@campbellandwilliams.com](mailto:djc@campbellandwilliams.com)  
5 J. COLBY WILLIAMS, ESQ. (#5549)  
6 [jcw@campbellandwilliams.com](mailto:jcw@campbellandwilliams.com)  
7 700 South Seventh Street  
8 Las Vegas, Nevada 89101  
9 Telephone: (702) 382-5222  
10 Facsimile: (702) 382-0540

11 *Attorneys for Plaintiff*  
12 *Steven C. Jacobs*

13 DISTRICT COURT  
14 CLARK COUNTY, NEVADA

15 STEVEN C. JACOBS,	)	CASE NO. A-10-627691-C
16	)	DEPT. NO. XI
17 Plaintiff,	)	
18	)	
19 vs.	)	FIRST AMENDED COMPLAINT
20	)	
21 LAS VEGAS SANDS CORP., a Nevada	)	
22 corporation; SANDS CHINA LTD., a Cayman	)	Exempt from Arbitration
23 Islands corporation; SHELDON G. ADELSON,	)	Amount in Excess of \$50,000
24 in his individual and representative capacity,	)	
25 DOES I through X; and ROE CORPORATIONS	)	
26 I through X,	)	
27	)	
28 Defendants.	)	

Plaintiff, for his causes of action against Defendants, alleges and avers as follows:

PARTIES

1. Plaintiff Steven C. Jacobs ("Jacobs") is a citizen of the State of Florida who also maintains a residence in the State of Georgia.

2. Defendant Las Vegas Sands Corp. ("LVSC") is a corporation organized and existing under the laws of the State of Nevada with its principal place of business in Clark County, Nevada.

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CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW  
700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/382-5222  
FAX: 702/382-0540

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1           3. Defendant Sands China Ltd. ("Sands China") is a Cayman Islands corporation and  
2 a majority-owned subsidiary of LVSC through which the latter engaged in certain of the acts and  
3 omissions alleged below. LVSC is the controlling shareholder of Sands China and, thus, has the  
4 ability to exercise control over Sands China's business policies and affairs. Sands China, through  
5 its subsidiary Venetian Macau, S.A. (also known as Venetian Macau Limited ("VML")), is the  
6 holder of a subconcession granted by the Macau government that allows Defendants to conduct  
7 gaming operations in Macau.  
8

9           4. Defendant Sheldon G. Adelson ("Adelson") is a citizen of Nevada. Adelson is the  
10 Chairman of the Board and Chief Executive Officer of LVSC and also acts as the Chairman of the  
11 Board of Sands China.  
12

13           5. The true names and capacities, whether individual, corporate, partnership,  
14 associate or otherwise of Defendants named herein as DOES I through X, inclusive, and ROE  
15 CORPORATIONS I through X, inclusive, and each of them are unknown to Plaintiff at this time,  
16 and he therefore sues said Defendants and each of them by such fictitious names. Plaintiff will  
17 advise this Court and seek leave to amend this Complaint when the names and capacities of each  
18 such Defendants have been ascertained. Plaintiff alleges that each said Defendant herein  
19 designated as a DOE or ROE is responsible in some manner for the events and happenings herein  
20 referred to as hereinafter alleged.  
21

22           6. Each Defendant is the agent of the other Defendants such that each Defendant is  
23 fully liable and responsible for all the acts and omissions of all of the other Defendants as set  
24 forth herein.  
25

26 ....

27 ....

28 ....



CAMPBELL  
S. WILLIAMS  
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/382-6222  
FAX: 702/382-0540

## JURISDICTION AND VENUE

7. The Court has personal jurisdiction over the Defendants and the claims set forth herein pursuant to NRS 14.065 on grounds that such jurisdiction is not inconsistent with the Nevada Constitution or United States Constitution.

8. Venue is proper in this Court pursuant to NRS 13.010 *et seq.* because, among other reasons, LVSC operates its principal place of business in Clark County, Nevada, Sands China engages in a number of systematic and ongoing transactions with LVSC in Nevada, and this action arises out of agreements originating in Clark County, Nevada.

## ALLEGATIONS COMMON TO ALL CLAIMS

### Background

9. LVSC and its subsidiaries develop and operate large integrated resorts worldwide. The company owns properties in Las Vegas, Nevada, Macau (a Special Administrative Region of China), Singapore, and Bethlehem, Pennsylvania.

10. The company's Las Vegas properties consist of The Palazzo Resort Hotel Casino, The Venetian Resort Hotel Casino, and the Sands Expo and Convention Center.

11. Macau, which is located on the South China Sea approximately 37 miles southwest of Hong Kong and was a Portuguese colony for over 400 years, is the largest and fastest growing gaming market in the world. It is the only market in China to offer legalized gaming. In 2004, LVSC opened the Sands Macau, the first Las Vegas-style casino in Macau. Thereafter, LVSC opened the Venetian Macau and the Four Seasons Macau on the Cotai Strip section of Macau where the company has resumed development of additional casino-resort properties.

12. Beginning in or about 2008, LVSC's business (as well as that of its competitors in the gaming industry) was severely and adversely impacted by the global economic downturn. LVSC's problems due to the economy in general were exacerbated when the Chinese government



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

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

1 imposed visa restrictions limiting the number of permitted visits by Chinese nationals to Macau.  
2 Because Chinese nationals make up more than half the patrons of Macau casinos, China's policy  
3 significantly reduced the number of visitors to Macau from mainland China, which adversely  
4 impacted tourism and the gaming industry in Macau.  
5

6 13. As a result of the deteriorating economy, adverse visa developments in Macau,  
7 and related issues, LVSC faced increased cash flow needs which, in turn, threatened to trigger a  
8 breach of the company's maximum leverage ratio covenant in its U.S. credit facilities. The  
9 management of LVSC (which was led at the time by the company's longtime and well-respected  
10 President and Chief Operating Officer ("COO"), William Weidner) and the company's Board of  
11 Directors (which is led by the company's notoriously bellicose Chief Executive Officer and  
12 majority shareholder, Sheldon G. Adelson) engaged in serious disagreements regarding how and  
13 when to obtain liquidity in order to avoid a covenant breach. The disagreements were significant  
14 enough to force the company to form a special committee to address the serious conflicts between  
15 management and Adelson.  
16

17 14. Because Adelson delayed accessing the capital markets, against Weidner's  
18 repeated advice and the advice of LVSC's investment bank, the company was forced to engage in  
19 a number of emergency transactions to raise funds in late 2008 and early 2009. These  
20 transactions included large investments in the company by Adelson through the purchase of  
21 convertible senior notes, preferred shares, and warrants. Additionally, LVSC, which was already  
22 publicly traded on the New York Stock Exchange, conducted a further public offering of the  
23 company's common stock. Finally, LVSC also took measures to preserve company funds, which  
24 included the shelving of various development projects in Las Vegas, Macau, and Pennsylvania.  
25  
26

27 15. Despite the efforts of LVSC to stop its financial hemorrhaging, the company's  
28 stock plummeted to an all-time low closing price of \$1.41 per share on March 9, 2009. Less than



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW  
700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/382-5322  
FAX: 702/382-0540

1 one year earlier, in April 2008, the stock had traded at more than \$80 per share. The all-time low  
2 share price coincided with LVSC's public announcement that William Weidner had left the  
3 company due to his ongoing disagreements with the mercurial Adelson about the management of  
4 the company. Weidner was replaced as President and COO by Michael Leven, a member of  
5 LVSC's Board of Directors.  
6

7 **LVSC Hires Steven Jacobs To Run Its Macau Operations**

8 16. Prior to his elevation to the post of LVSC's President and COO, Mr. Leven had  
9 reached out to Plaintiff Steven Jacobs to discuss with him the identification and evaluation of  
10 various candidates then being considered for the position by LVSC's Board of Directors. Messrs.  
11 Leven and Jacobs had known each other for many years having worked together as executives at  
12 U.S. Franchise Systems in the 1990's and in subsequent business ventures thereafter. After  
13 several outside candidates were interviewed without reaching an agreement, Leven received an  
14 offer from LVSC's board to become the company's President and COO. Leven again reached out  
15 to Jacobs to discuss the opportunity and the conditions under which he should accept the position.  
16 The conditions included but were not limited to Leven's compensation package and a  
17 commitment from Jacobs to join Leven for a period of 90-120 days to "ensure my [Leven's]  
18 success."  
19

20  
21 17. Jacobs travelled to Las Vegas in March 2009 where he met with Leven and  
22 Adelson for several days to review the company's Nevada operations. While in Las Vegas, the  
23 parties agreed to consulting contract between LVSC and Jacobs' company, Vagus Group, Inc.  
24 Jacobs then began working for LVSC restructuring its Las Vegas operations.  
25

26 18. Jacobs, Leven, and Adelson subsequently travelled to Macau to conduct a review  
27 of LVSC's operations in that location. While in Macau, Leven told Jacobs that he wanted to hire  
28 him to run LVSC's Macau operations. Jacobs and Leven returned to Las Vegas after spending



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/392-5222  
FAX: 702/392-0540

1 approximately a week in Macau. Jacobs then spent the bulk of the next 2-3 weeks working on the  
2 Las Vegas restructuring program and also negotiating with Leven regarding the latter's desire to  
3 hire him as a full-time executive with the company and the terms upon which Jacobs would agree  
4 to do so.

5  
6 19. On May 6, 2009, LVSC, through Leven, announced that Jacobs would become the  
7 interim President of Macau Operations. Jacobs was charged with restructuring the financial and  
8 operational aspects of the Macau assets. This included, among other things, lowering operating  
9 costs, developing and implementing new strategies, building new ties with local and national  
10 government officials, and eventually spinning off the Macau assets into a new company to be  
11 taken public on the Hong Kong Stock Exchange.

12  
13 20. Notwithstanding that Jacobs would be spending the majority of his time in Macau  
14 focusing on LVSC's operations in that location, he was also required to perform duties in Las  
15 Vegas including, but not limited to, working with LVSC's Las Vegas staff on reducing costs  
16 within the company's Las Vegas operations, consulting on staffing and delayed opening issues  
17 related to the company's Marina Bay Sands project in Singapore, and participating in meetings of  
18 LVSC's Board of Directors.

19  
20 21. On June 24, 2009, LVSC awarded Jacobs 75,000 stock options in the company to  
21 reward him for his past performance as a LVSC team member and to incentivize him to improve  
22 his future performance as well as that of the company. LVSC and Jacobs executed a written  
23 Nonqualified Stock Option Agreement memorializing the award, which is governed by Nevada  
24 law.

25  
26 22. On or about August 4, 2009, Jacobs received a document from LVSC styled  
27 "Offer Terms and Conditions" (the "Term Sheet") for the position of "President and CEO  
28 Macau[.]" The Term Sheet reflected the terms and conditions of employment that had been



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW  
700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/399-6222  
FAX: 702/399-0940

1 negotiated by Leven and Jacobs while Jacobs was in Las Vegas working under the original  
2 consulting agreement with LVSC and during his subsequent trips back to Las Vegas. The Term  
3 Sheet was signed by Leven on behalf of LVSC on or about August 3, 2009 and faxed to Jacobs in  
4 Macau by Pattie Murray, an LVSC executive assistant located in the company's Las Vegas  
5 offices. Jacobs signed the Term Sheet accepting the offer contained therein and returned a copy  
6 to LVSC. LVSC's Compensation Committee approved Jacobs' contract on or about August 6,  
7 2009.  
8

9 **Jacobs Saves the Titanic**

10 23. The accomplishments for the four quarters over which Jacobs presided created  
11 significant value to the shareholders of LVSC. From an operational perspective, Jacobs and his  
12 team removed over \$365 million of costs from LVSC's Macau operations, repaired strained  
13 relationships with local and national government officials in Macau who would no longer meet  
14 with Adelson due to his rude and obstreperous behavior, and refocused operations on core  
15 businesses to drive operating margins and profits, thereby achieving the highest EBITDA figures  
16 in the history of the company's Macau operations.  
17

18 24. During Jacobs' tenure, LVSC launched major new initiatives to expand its reach  
19 into the mainland frequent and independent traveler marketplace and became the Macau market  
20 share leader in mass and direct VIP table game play. Due in large part to the success of its Macau  
21 operations under Jacobs' direction, LVSC was able to raise over \$4 billion dollars from the  
22 capital markets, spin off its Macau operations into a new company—Sands China—which  
23 became publicly traded on the Hong Kong Stock Exchange in late November 2009, and restart  
24 construction on a previously stalled expansion project on the Cotai Strip known as "Parcels 5 and  
25 6." Indeed, for the second quarter ending June 2010, net revenue from Macau operations  
26  
27  
28



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/382-2822  
FAX: 702/382-0540



1 accounted for approximately 65% of LVSC's total net revenue (i.e., \$1.04 billion USD of a total  
2 \$1.59 billion USD).

3 25. To put matters in perspective, when Jacobs began performing work for the  
4 company in March 2009, LVSC shares were trading at just over \$1.70 per share and its market  
5 cap was approximately \$1.1 billion USD. At the time Jacobs left the company in July 2010,  
6 LVSC shares were over \$28 per share and the market cap was in excess of \$19 billion USD.  
7

8 26. Simply put, Jacobs' performance as the President and Chief Executive Officer of  
9 LVSC's Macau operations was nothing short of remarkable. When members of the company's  
10 Board of Directors asked Leven in February 2010 to assess Jacobs' 2009 job performance, Leven  
11 advised as follows: *"there is no question as to Steve's performance[.] the Titanic hit the*  
12 *iceberg[.] he arrived and not only saved the passengers[.] he saved the ship."* The board  
13 awarded Jacobs his full bonus for 2009. Not more than three months later, in May 2010, in  
14 recognition of his ongoing contributions and outstanding performance, the board awarded Jacobs  
15 an additional 2.5 million stock options in Sands China. The options had an accelerated vesting  
16 period of less than two years. Jacobs, however, would be wrongfully terminated in just two  
17 months.  
18

19  
20 **Jacobs' Conflicts with Adelson**

21 27. Jacobs' performance was all the more remarkable given the repeated and  
22 outrageous demands made upon him by Adelson which included, but were not limited to, the  
23 following:

- 24 a. demands that Jacobs use improper "leverage" against senior  
25 government officials of Macau in order to obtain Strata-Title for  
26 the Four Seasons Apartments in Macau;
- 27 b. demands that Jacobs threaten to withhold Sands China business  
28 from prominent Chinese banks unless they agreed to use influence  
with newly-elected senior government officials of Macau in order



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

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

1 to obtain Strata-Title for the Four Seasons Apartments and  
2 favorable treatment with regards to labor quotas and table limits;

3 c. demands that secret investigations be performed regarding the  
4 business and financial affairs of various high-ranking members of  
5 the Macau government so that any negative information obtained  
6 could be used to exert "leverage" in order to thwart government  
7 regulations/initiatives viewed as adverse to LVSC's interests;

8 d. demands that Sands China continue to use the legal services of  
9 Macau attorney Leonel Alves despite concerns that Mr. Alves'  
10 retention posed serious risks under the criminal provisions of the  
11 United States code commonly known as the Foreign Corrupt  
12 Practices Act ("FCPA"); and

13 e. demands that Jacobs refrain from disclosing truthful and material  
14 information to the Board of Directors of Sands China so that it  
15 could decide if such information relating to material financial  
16 events, corporate governance, and corporate independence should  
17 be disclosed pursuant to regulations of the Hong Kong Stock  
18 Exchange. These issues included, but were not limited to, junkets  
19 and triads, government investigations, Leonel Alves and FCPA  
20 concerns, development issues concerning Parcels 3, 7 and 8, and  
21 the design, delays and cost overruns associated with the  
22 development of Parcels 5 and 6.

23 28. When Jacobs objected to and/or refused to carry out Adelson's illegal demands,  
24 Adelson repeatedly threatened to terminate Jacobs' employment. This is particularly true in  
25 reference to: (i) Jacobs' refusal to comply with Adelson's edict to terminate Sands China's  
26 General Counsel, Luis Melo, and his entire legal department and replace him/it with Leonel Alves  
27 and his team; and (ii) Adelson's refusal to allow Jacobs to present to the Sands China board  
28 information that the company's development of Parcels 5 and 6 was at least 6 months delayed and  
more than \$300 million USD over-budget due to Adelson-mandated designs and accoutrements  
the Sands China management team did not believe would be successful in the local marketplace.

29 29. Jacobs' ongoing disagreements with Adelson came to a head when they were in  
Singapore to attend the grand opening of LVSC's Marina Bay Sands in late June 2010. While in  
Singapore, Jacobs attended several meetings of LVSC executives including Adelson, Leven, Ken



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW  
700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/382-5822  
FAX: 702/382-5840

1 Kay (LVSC's Chief Financial Officer), and others. During these meetings, Jacobs disagreed with  
2 Adelson's and Leven's desire to expand the ballrooms at Parcels 5 and 6, which would add an  
3 incremental cost of approximately \$30 million to a project already significantly over budget when  
4 Sands China's existing facilities were already underutilized. In a separate meeting, Jacobs  
5 disagreed with Adelson's desire to aggressively grow the junket business within Macau as the  
6 margins were low, the decision carried credit risks, and Jacobs was concerned given recent  
7 investigations by Reuters and others alleging LVSC involvement with Chinese organized crime  
8 groups, known as Triads, connected to the junket business. Following these meetings, Jacobs re-  
9 raised the issue about the need to advise the Sands China board of the delays and cost overruns  
10 associated with the development of Parcels 5 and 6 in Macau so that a determination could be  
11 made of whether the information must be disclosed in compliance with Hong Kong Stock  
12 Exchange regulations. Adelson informed Jacobs that he was Chairman of the Board and the  
13 controlling shareholder of Sands China and would "do as I please."

14  
15  
16 30. Recognizing that he owed a fiduciary duty to all of the company's shareholders,  
17 not just Adelson, Jacobs placed the matter relating to the delays and cost overruns associated with  
18 Parcels 5 and 6 on the agenda for the upcoming meeting of the Sands China board. Jacobs  
19 exchanged multiple e-mails with Adelson's longtime personal assistant, Betty Yurcich, in  
20 attempts to obtain Adelson's concurrence with the agenda. Adelson finally relented and allowed  
21 the matter to remain on the agenda, but it would come at a price for Jacobs.  
22

23 31. On July 23, 2010, Jacobs attended a meeting with Leven and LVSC/Sands China  
24 board member, Irwin Siegel, for the ostensible purpose of discussing the upcoming Sands China  
25 board meeting. During the meeting, Leven unceremoniously advised Jacobs that he was being  
26 terminated effective immediately. When Jacobs asked whether the termination was purportedly  
27 "for cause" or not, Leven responded that he was "not sure" but that the severance provisions of  
28



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/385-5222  
FAX: 702/385-0540

1 the Term Sheet would not be honored. Leven then handed Jacobs a terse letter from Adelson  
2 advising him of the termination. The letter was silent on the issue of "cause."

3  
4 32. After the meeting with Leven and Siegel, Jacobs was escorted off the property by  
5 two members of security in public view of many company employees, resort guests, and casino  
6 patrons. Jacobs was not permitted to return to his office to collect his belongings, but was instead  
7 escorted to the border to leave Macau.

8  
9 33. Nearly two weeks later and after an unsuccessful effort to dig up any real "dirt" on  
10 Jacobs, LVSC sent a second letter to Jacobs on VML letterhead which identified 12 pretextual  
11 items that allegedly support a "for cause" termination of his employment. In short, the letter  
12 contends that Jacobs exceeded his authority and—in the height of hypocrisy—failed to keep the  
13 companies' Boards of Directors informed of important business decisions. The reality is that  
14 none of the 12 items, even assuming *arguendo* that some of them are accurate, constitute "cause"  
15 as they simply reflect routine and appropriate actions of a senior executive functioning in the  
16 president and chief executive role of a publicly traded company.

17  
18 34. Within approximately four weeks of Jacobs' termination, Sands China went  
19 forward with Adelson's desire to terminate its General Counsel, Luis Melo, and replace him with  
20 Leonel Alves despite acknowledged disputes within Sands China regarding Alves' employment  
21 with the company. In or about the same time frame, Sands China publicly announced a material  
22 delay in the construction of Parcels 5 and 6 and a cost increase of \$100 million to the project,  
23 thereby acknowledging the correctness of Jacobs' position that such matters must be disclosed.

24  
25 **FIRST CAUSE OF ACTION**

26 **(Breach of Contract - LVSC)**

27 35. Plaintiff restates all preceding and subsequent allegations as though fully set forth  
28 herein.



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/382-0222  
FAX: 702/382-0540

1           36. Jacobs and LVSC are parties to various contracts, including the Term Sheet and  
2 Nonqualified Stock Option Agreement identified herein.

3           37. The Term Sheet provides, in part, that Jacobs would have a 3-year employment  
4 term, that he would earn an annual salary of \$1.3 million plus a 50% bonus upon attainment of  
5 certain goals, and that he would receive 500,000 LVSC stock options (in addition to the  
6 previously awarded 75,000 LVSC options) to vest in stages over three years.

7           38. The Term Sheet further provides that in the event Jacobs was terminated "Not For  
8 Cause," he would be entitled to one year of severance plus accelerated vesting of all his stock  
9 options with a one-year right to exercise the options post-termination.  
10

11           39. Jacobs has performed all of his obligations under the contracts except where  
12 excused.  
13

14           40. LVSC has breached the Term Sheet agreement by purportedly terminating Jacobs  
15 for "cause" when, in reality, the purported bases for Jacobs' termination, as identified in the  
16 belatedly-manufactured August 5, 2010 letter, are pretextual and in no way constitute "cause."

17           41. On September 24, 2010, Jacobs made proper demand upon LVSC to honor his  
18 right to exercise the remaining stock options he had been awarded in the company. The closing  
19 price of LVSC's stock on September 24, 2010 was \$33.63 per share. At the time of filing the  
20 instant action, LVSC's stock was trading at approximately \$38.50 per share. LVSC rejected  
21 Jacobs' demand and, thus, further breached the Term Sheet and the stock option agreement by  
22 failing to honor the vesting and related provisions contained therein based on the pretext that  
23 Jacobs was terminated for "cause."  
24

25           42. LVSC has wrongfully characterized Jacobs' termination as one for "cause" in an  
26 effort to deprive him of contractual benefits to which he is otherwise entitled. As a direct and  
27 proximate result of LVSC's wrongful termination of Jacobs' employment and failure to honor the  
28



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW  
700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE 702/382-8222  
FAX 702/382-0540

1 "Not For Cause" severance provisions contained in the Term Sheet, Jacobs has suffered damages  
2 in an amount to be proven at trial but in excess of \$10,000.

3  
4 **SECOND CAUSE OF ACTION**

5 **(Breach of Contract—LVSC and Sands China Ltd.)**

6 43. Plaintiff incorporates all preceding and subsequent allegations as though fully set  
7 forth herein.

8 44. On or about May 11, 2010, LVSC caused Sands China to grant 2.5 million Sands  
9 China share options to Jacobs. Fifty percent of the options were to vest on January 1, 2011, and  
10 the other fifty percent was to vest on January 1, 2012. The grant is memorialized by a written  
11 agreement between Jacobs and Sands China.

12  
13 45. Pursuant to the Term Sheet agreement between Jacobs and LVSC, Jacobs' stock  
14 options are subject to an accelerated vest in the event he is terminated "Not for Cause." The Term  
15 Sheet further provides Jacobs with a one-year right to exercise the options post-termination.

16 46. Jacobs has performed all his obligations under the contracts except where excused.

17 47. On September 24, 2010, Jacobs made proper demand upon LVSC and Sands  
18 China to honor his right to exercise the remaining 2.5 million stock options he had been awarded  
19 in Sands China. The closing price of Sands China's stock on September 24, 2010 was \$12.86  
20 HKD per share. At the time of filing the instant action, Sands China's stock was trading at  
21 approximately \$15.00 per share. LVSC and Sands China rejected Jacobs' demand and, thus,  
22 further breached the Term Sheet and the Sands China share grant agreement by characterizing  
23 Jacobs' termination as being for "cause" when, in reality, the purported bases for Jacobs'  
24 termination, as identified in the belatedly-manufactured August 5, 2010 letter, are pretextual and  
25 in no way constitute "cause."  
26  
27  
28



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/382-0822  
FAX: 702/382-0540

1 48. LVSC and Sands China have wrongfully characterized Jacobs' termination as one  
2 for "cause" in an effort to deprive him of contractual benefits to which he is otherwise entitled.  
3 As a direct and proximate result of LVSC's and Sands China's actions, Jacobs has suffered  
4 damages in an amount to be proven at trial but in excess of \$10,000.  
5

6 **THIRD CAUSE OF ACTION**

7 **(Breach of the Implied Covenant of Good Faith and Fair Dealing - LVSC)**

8 49. Plaintiff incorporates all preceding and subsequent allegations as though fully set  
9 forth herein.

10 50. All contracts in Nevada contain an implied covenant of good faith and fair dealing.

11 51. The conduct of LVSC described herein including, but not limited to, the improper  
12 and illegal demands made upon Jacobs by Adelson, Adelson's continual undermining of Jacobs'  
13 authority as the President and CEO of LVSC's Macau operations (and subsequently Sands  
14 China), and the wrongful characterization of Jacobs' termination as being for "cause," is  
15 unfaithful to the purpose of the agreements between Jacobs and LVSC and was not within the  
16 reasonable expectations of Jacobs.  
17

18 52. As a direct and proximate result of LVSC's wrongful conduct, Jacobs has suffered  
19 damages in an amount to be proven at trial but in excess of \$10,000.  
20

21 **FOURTH CAUSE OF ACTION**

22 **(Tortious Discharge in Violation of Public Policy - LVSC)**

23 53. Plaintiff incorporates all preceding and subsequent allegations as though fully set  
24 forth herein.

25 54. As an officer of LVSC and an officer and director of Sands China, Jacobs owed a  
26 fiduciary duty to the shareholders of both companies.  
27  
28



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/398-6222  
FAX: 702/398-0540

1           55.     Certain of the improper and illegal demands made upon Jacobs by Adelson as set  
2 forth above would have required Jacobs to engage in conduct that he, in good faith, believed was  
3 illegal. In other instances, the improper and illegal demands would have required Jacobs to  
4 refrain from engaging in conduct required by applicable law. Both forms of demands would have  
5 required Jacobs to violate his fiduciary duties to the shareholders of LVSC and Sands China.

6  
7           56.     LVSC retaliated against Jacobs' by terminating his employment because he (i)  
8 objected to and refused to participate in the illegal conduct requested by Adelson, and (ii)  
9 attempted to engage in conduct that was required by law and favored by public policy. In so  
10 doing, LVSC tortiously discharged Jacobs in violation of public policy.

11  
12           57.     As a direct and proximate result of LVSC's tortious discharge, Jacobs has suffered  
13 damages in an amount to be proven at trial but in excess of \$10,000.

14           58.     LVSC's conduct, which was carried out and/or ratified by managerial level agents  
15 and employees, was done with malice, fraud and oppression, thereby entitling Jacobs to an award  
16 of punitive damages.

17  
18                   FIFTH CAUSE OF ACTION

19                   (Defamation Per Se - Adelson, LVSC, Sands China)

20           59.     Plaintiff incorporates all preceding and subsequent allegations as though fully set  
21 forth herein.

22           60.     On Tuesday March 15, 2011, oral arguments by the respective counsel of Jacobs,  
23 LVSC, and Sands China were presented to the Honorable Elizabeth Gonzalez, Eighth Judicial  
24 District Court Judge. These arguments centered upon the motions of LVSC and Sands China to  
25 have all of the foregoing causes of action, detailed in this complaint, dismissed as to each of them  
26 on the grounds that 1) a necessary and indispensable party had not been named and 2) the Court  
27 lacked jurisdiction over Sands China.  
28



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW  
700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/388-5022  
FAX: 702/388-0540



1           61. Following the 90-minute hearing, the Court denied each of the Defendants'  
2 motions to dismiss the action. The hearing received widespread attention by members of the  
3 media, and particularly by journalists who report on affairs in the business community. Included  
4 among those reporters was Ms. Alexandra Berzon, a Pulitzer Prize winning journalist who  
5 attended the hearing on behalf of her employer, the Wall Street Journal®. The Wall Street  
6 Journal® is generally recognized as one of the most respected and widely read publications in the  
7 world, particularly as to matters pertaining to the economy and associated commercial activities  
8 and endeavors.

10           62. Following the hearing, the Wall Street Journal® published an article in its online  
11 edition styled "Setback for Sands in Macau Suit." That article, which was authored by Ms.  
12 Berzon, reported that Adelson had, via e-mail, made the following statements:

14           *"While I have largely stayed silent on the matter to this point, the recycling of his*  
15           *allegations must be addressed," he said. "We have a substantial list of reasons*  
16           *why Steve Jacobs was fired for cause and interestingly he has not refuted a single*  
17           *one of them. Instead, he has attempted to explain his termination by using outright*  
18           *lies and fabrications which seem to have their origins in delusion."*

19           Adelson's comments to the effect that 1) Jacobs was justifiably fired for "for cause" and  
20 2) Jacobs had resorted to "outright lies and fabrications" in seeking legal redress constituted  
21 defamation per se.

22           63. All of the offending statements made by Adelson concerning Jacobs and identified  
23 in Paragraph 62, *supra*, were 1) false and defamatory; 2) published to a third person or party for  
24 the express intent of republication to a worldwide audience; 3) maliciously published by Adelson  
25 knowing their falsity and/or in reckless disregard of the truth thereof; 4) intended to and did in  
26 fact harm Jacobs' reputation and good name in his trade, business, profession, and customary  
27 corporate office; and 5) were of such a nature that significant economic damages must be  
28 presumed.



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW  
700 SOUTH 58/59TH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/589-5622  
FAX: 702/382-0540

64. Adelson's malicious defamation of Jacobs was made in both his personal as well as his representative capacities as Chairman of the Board of LVSC and as Chairman of the Board of its affiliate, Sands China; both of which ratified and endorsed either explicitly or implicitly Adelson's malicious invective.

65. That all the comments and statements by Adelson as detailed in Paragraph 62, *supra*, were made without justification or legal excuse, and were otherwise not privileged because they did not function as a necessary or useful step in the litigation process and did not otherwise serve its purposes.

66. As a direct and proximate result of Adelson, LVSC, and Sands China's defamation, Jacobs has suffered damages in an amount to be proven at trial but in excess of \$10,000. Moreover, Jacobs is entitled to the imposition of punitive damages against Adelson, LVSC, and Sands China, said imposition not being subject to any statutory limitations under NRS 42.005.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For compensatory damages in excess of Ten Thousand Dollars (\$10,000.00), in an amount to be proven at trial;
2. For punitive damages in excess of Ten Thousand Dollars (\$10,000.00), in an amount to be proven at trial;
3. For pre-judgment and post-judgment interest, as allowed by law;
4. For attorney fees and costs of suit incurred herein, as allowed by law, in an amount to be determined; and

◆ ◆ ◆ ◆



**CAMPBELL  
& WILLIAMS**  
ATTORNEYS AT LAW

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

5. For such other and further relief as the Court may deem just and proper.

DATED this 16th day of March, 2011.

CAMPBELL & WILLIAMS

By /s/ Donald J. Campbell

DONALD J. CAMPBELL, ESQ. (1216)

J. COLBY WILLIAMS, ESQ. (5549)

700 South Seventh Street

Las Vegas, Nevada 89101

Attorneys for Plaintiff

Steven C. Jacobs

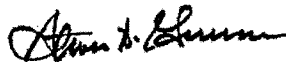


CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/382-9282  
FAX: 702/382-0540

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**ORDR**  
**CAMPBELL & WILLIAMS**  
DONALD J. CAMPBELL, ESQ. (#1216)  
[djc@campbellandwilliams.com](mailto:djc@campbellandwilliams.com)  
J. COLBY WILLIAMS, ESQ. (#5549)  
[icw@campbellandwilliams.com](mailto:icw@campbellandwilliams.com)  
700 South Seventh Street  
Las Vegas, Nevada 89101  
Telephone: (702) 382-5222  
Facsimile: (702) 382-0540

  
CLERK OF THE COURT

*Attorneys for Plaintiff*  
*Steven C. Jacobs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

STEVEN C. JACOBS,	)	CASE NO. A-10-627691-C
	)	DEPT. NO. XI
Plaintiff,	)	
	)	
vs.	)	<b>ORDER DENYING</b>
	)	<b>DEFENDANTS' MOTIONS</b>
LAS VEGAS SANDS CORP., a Nevada	)	<b>TO DISMISS</b>
corporation; SANDS CHINA LTD., a Cayman	)	
Islands corporation; DOES I through X; and	)	
ROE CORPORATIONS I through X,	)	
	)	
Defendants.	)	Hearing Date: March 15, 2011
	)	Hearing Time: 9:00 a.m.

On March 15, 2011, the following matters came on for hearing: (1) Defendant Las Vegas Sands Corp.'s Motion to Dismiss Pursuant to NRCP 12(b)(6) and 19 for Failure to Join an Indispensable Party; and (2) Defendant Sands China, Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, Failure to Join an Indispensable Party; Plaintiff Steven C. Jacobs having been represented by Donald J. Campbell, Esq. and J. Colby Williams, Esq.; Defendant Las Vegas Sands Corp. having been represented by Stephen J. Peek, Esq.; and Defendant Sands China, Ltd. having been represented by Patricia Glaser, Esq.; and the Court having considered all of the

papers and pleadings on file herein as well as the oral argument of the parties, hereby enters the following Order:

The Motions to Dismiss are DENIED for the reasons set forth more fully on the record at the time of hearing.

IT IS FURTHER ORDERED that the mandatory Rule 16 conference with the Court is continued from April 1, 2011 to April 22, 2011 at 9:00 a.m.

DATED this 1<sup>st</sup> day of ~~March~~<sup>April</sup>, 2011.

  
DISTRICT COURT JUDGE

Submitted by:

CAMPBELL & WILLIAMS

By 

DONALD J. CAMPBELL, ESQ. (#1216)  
J. COLBY WILLIAMS, ESQ. (#5549)  
700 South Seventh Street  
Las Vegas, Nevada 89101

*Attorneys for Plaintiff*  
*Steven C. Jacobs*

Approved as to form:

HOLLAND & HART, LLP

By 

STEPHEN J. PEEK, ESQ. (#1758)  
JUSTIN C. JONES, ESQ. (#8519)  
3800 Howard Hughes Pkwy., 10<sup>th</sup> Fl.  
Las Vegas, Nevada 89169

*Attorney for Defendant*  
*Las Vegas Sands Corp.*

GLASER, WEIL, FINK, JACOBS  
HOWARD & SHAPIRO, LLP

By 

PATRICIA GLASER, ESQ. (*pro hac*)  
MARK G. KRUM, ESQ. (#10913)  
3763 Howard Hughes Pkwy., Suite. 300  
Las Vegas, Nevada 89169

*Attorneys for Defendant*  
*Sands China, Ltd.*

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IN THE SUPREME COURT  
OF THE STATE OF NEVADA

SANDS CHINA LTD.,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT  
COURT, in and for the County of Clark,  
STATE OF NEVADA, and the HONORABLE  
ELIZABETH GONZALEZ, District Judge,

Respondents,

and,

STEVEN C. JACOBS,

Real Party in Interest.

Case No.: Electronically Filed  
May 06 2011 08:40 a.m.  
(D.C. No.: A-10-162001-C) Lindeman

PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE,  
WRIT OF PROHIBITION

GLASER WEIL FINK JACOBS  
HOWARD, AVCHEN & SHAPIRO LLP

CAMBELL & WILLIAMS

Patricia L. Glaser, (Pro Hac Vice Admitted)  
Mark G. Krum, State Bar No. 10913  
Andrew D. Sedlock, State Bar No. 9183  
3763 Howard Hughes Parkway, Suite 300  
Las Vegas, Nevada 89169

Donald J. Campbell, State Bar No. 1216  
J. Colby Williams, State Bar No. 5549  
700 South Seventh Street  
Las Vegas, Nevada 89101

*Attorneys for Petitioner*

*Attorneys for Real Party in Interest*

Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

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Howard Avchen & Shapiro LLP

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**PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE,  
WRIT OF PROHIBITION**

Petitioner Sands China Ltd., a Cayman Islands entity, by and through its counsel of record, the law firm of GLASER WEIL FINK JACOBS HOWARD, AVCHEN & SHAPIRO, and pursuant to NRS 34.160, 34.320 and NRAP 21, respectfully petitions the Court for the issuance of a Writ of Mandamus or, in the alternative, a Writ of Prohibition, against the respondents, the Honorable Elizabeth Gonzalez, District Judge of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, directing Judge Gonzalez and the District Court to vacate and modify its Order denying SCL's Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, for Plaintiff's Failure to Join a Necessary Party pursuant to NRCP 12(b)(5)-(6) entered on April 1, 2011 and to compel said District Court to dismiss the action filed by Steven C. Jacobs against SCL in the Eighth Judicial District Court of the State of Nevada, Case No. A-10-627691-C, upon the grounds and for the reasons that the District Court lacks personal jurisdiction over SCL, and prohibiting said District Court from continuing to exercise personal jurisdiction against SCL.

**I.**

**INTRODUCTION**

Petitioner Sands China Ltd. ("Petitioner" or "SCL") is a Cayman Islands corporation that does business exclusively in Macau Special Administrative Region (SAR) of the People's Republic of China ("Macau") and Hong Kong SAR of the People's Republic of China ("Hong Kong"). It is a public company, the stock of which trades on The Stock Exchange of Hong Kong Limited ("HKEx"). SCL is not present in Nevada, and it has not done business here.

Real Party in Interest Steven C. Jacobs ("Jacobs" or "Plaintiff") is not a resident of Nevada, nor was he a Nevada resident when he commenced employment with SCL in Macau. Likewise, Jacobs was not a Nevada resident when he was terminated in Macau from his position with SCL in Macau.

Jacobs nevertheless sued SCL in Nevada, claiming that SCL breached an alleged contract with Jacobs. For his breach of contract claim against SCL, Jacobs alleged that he made a demand on SCL on September 24, 2010 to "honor his [alleged] right to exercise" an option to purchase SCL

1 stock and that SCL rejected his demand and thereby breached a July 7, 2010 letter from SCL to  
2 Jacobs (the "Stock Option Grant Letter"). The Stock Option Grant Letter provides that it is  
3 governed by Hong Kong law.

4 SCL moved to dismiss for lack of personal jurisdiction. In ruling that SCL must answer in  
5 Nevada for a claimed breach in Macau of an alleged contract governed by Hong Kong law, the  
6 District Court failed to observe the requirements for establishing either specific or general  
7 jurisdiction over SCL. The District Court did not make jurisdictional findings. Instead, the District  
8 Court judge merely said at the conclusion of the hearing on SCL's Motion to Dismiss for Lack of  
9 Personal Jurisdiction, or in the Alternative, for Plaintiff's Failure to Join a Necessary Party (the  
10 "Motion") that "there are pervasive contacts with the State of Nevada by activities done in Nevada  
11 by board members of [SCL]."

12 The District Court thus accepted Jacobs' argument that actions taken in Nevada by the non-  
13 executive Chairman of SCL's Board of Directors, Sheldon Adelson ("Adelson"), and by a special  
14 advisor to SCL's Board of Directors, Michael Leven ("Leven"), demonstrated such control by Las  
15 Vegas Sands Corp. ("LVSC") over SCL that those actions should be considered in assessing  
16 whether SCL is subject to general jurisdiction in Nevada. The District Court further concluded that  
17 the alleged actions of Adelson and Leven, who also are officers and directors of LVSC, a Nevada  
18 corporation which is SCL's majority shareholder, were sufficient to satisfy the applicable due  
19 process standards in exercising jurisdiction over SCL.

20 In so ruling, the District Court did not specify the legal standard it applied. This Court has  
21 had only one occasion to address directly the issue of whether (and, if so, when) a parent company's  
22 exercise of control over a subsidiary rises to such a level that the domestic entity's contacts with  
23 Nevada should be considered in determining whether general personal jurisdiction exists over the  
24 foreign affiliate. *See MGM Grand, Inc. v. Eighth Judicial Dist. Court*, 107 Nev. 65 (1991). Further,  
25 in the *MGM Grand* case, this Court limited its discussion to two sentences, as follows:

26 In addition, our review of the record convinces us that Disney exercises no  
27 more control over its subsidiaries than is appropriate for the sole shareholder of a  
28 corporation. Thus, Disney's subsidiaries' contacts may not be counted for  
jurisdictional purposes.

1 *Id.* at 69 (citing *Hargrave v. Fireboard Corp.*, 710 F.2d 1154, 1159-61 (5th Cir.  
2 1983)).

3 This Court, in *MGM Grand*, did not expressly address or analyze the question of whether a  
4 showing of alter ego is required before a corporate affiliate's contacts with Nevada properly are  
5 considered for jurisdictional purposes.

6 As will be discussed below, the prevailing test is that the contacts of a domestic parent (or  
7 other corporate affiliate) should not be considered (or "counted") in analyzing whether general  
8 jurisdiction exists over a foreign subsidiary (or other corporate affiliate) unless a showing of alter  
9 ego has been made. SCL respectfully submits that the law of Nevada should be clarified to employ  
10 that test, which Jacobs did not even attempt to meet.

11 Moreover, even employing a more lenient alternative standard based on whether the control  
12 exercised by the parent over the subsidiary is disproportionate to the parent's financial interest in the  
13 subsidiary, the District Court was compelled by law to dismiss SCL for lack of personal jurisdiction.

14 Finally, the law of Nevada also should be clarified to hold that the mere presence of directors  
15 in Nevada is insufficient to establish general jurisdiction over a foreign corporation.

16 Here, (i) an important issue of law requires clarification, (ii) considerations of sound judicial  
17 economy and administration militate in favor of granting this petition, and (iii) SCL has no "plain,  
18 speedy or adequate remedy" to challenge the District Court's ruling. For these reasons, SCL  
19 respectfully requests that either (a) a Writ of Mandamus be issued under the seal of this Court,  
20 directing the Eighth Judicial District Court of the State of Nevada in and for the County of Clark,  
21 and the Honorable Elizabeth Gonzalez to reverse the Order entered on April 1, 2011 and dismiss the  
22 action against SCL for lack of personal jurisdiction or (b) a Writ of Prohibition be issued under the  
23 seal of this Court to the Eighth Judicial District Court of the State of Nevada in and for the County  
24 of Clark and the Honorable Elizabeth Gonzalez prohibiting the District Court from exercising  
25 personal jurisdiction over SCL.  
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II.

ISSUE PRESENTED

Whether a Writ of Mandamus or Writ of Prohibition should issue against the respondent District Court and Judge prohibiting them from exercising personal jurisdiction over SCL, a foreign entity which has no substantial or continuous and systematic contacts with the State of Nevada, but which is a subsidiary – not an alter ego – of LVSC, a Nevada corporation which exercises a degree of control over SCL commensurate with LVSC's ownership interest in SCL.

III.

RELIEF SOUGHT

1. That a Writ of Mandamus be issued under the seal of this Court directing the Eighth Judicial District Court of the State of Nevada in and for the County of Clark and the Honorable Elizabeth Gonzalez to reverse the Order entered on April 1, 2011 and dismiss the action against SCL for lack of personal jurisdiction;

2. That a Writ of Prohibition be issued under the seal of this Court to the Eighth Judicial District Court of the State of Nevada in and for the County of Clark and the Honorable Elizabeth Gonzalez prohibiting the District Court from exercising personal jurisdiction over SCL.

IV.

STATEMENT OF FACTS

1. SCL was incorporated in the Cayman Islands on July 15, 2009 and maintains its principal place of business in Macao, with additional operations in Hong Kong. *See* true and accurate copy of the Global Offering Document, pp. 75-76, attached as Exhibit A to the Motion.

2. SCL is a publically traded company, the stock of which is listed on HKEx. SCL completed its initial public offering on November 30, 2009. *Id.* at p. 1.

3. SCL subsidiaries own and operate (excluding the Four Seasons Hotel) the Sands Macao, The Venetian Macao-Resort-Hotel ("The Venetian Macao"), and the integrated resort which includes (i) the Four Seasons Hotel; (ii) the Plaza Casino; (iii) the Paiza mansions, the Shoppes at Four Seasons, restaurants and spa; and (iv) a luxury apartment-hotel tower (the "Plaza Macao"). *Id.* at 75. The gaming areas in the Sands Macao, The Venetian Macao, and the Plaza Macao are



1 operated by an SCL subsidiary, Venetian Macau Limited ("VML"), which was granted a  
2 subconcession to operate casino games, as approved and authorized by the Macau government. *Id.*  
3 at 75-93.

4 4. During the relevant time period, SCL's Board of Directors (the "Board") was  
5 comprised of eight (8) directors, including three independent non-executive directors with no prior  
6 relationship to SCL's majority shareholder; two executive (or management) directors; and three  
7 non-executive (or outside) directors who also served on the board of directors of SCL's majority  
8 shareholder, LVSC. *Id.* at pp. 227-232.

9 5. LVSC, a Nevada corporation, is SCL's majority shareholder by virtue of indirectly  
10 owning approximately seventy percent (70%) of SCL's issued stock. *Id.* at pp. 211-216.

11 6. SCL was named as a defendant in a lawsuit brought by Jacobs.

12 7. Jacobs, who neither is nor ever was a Nevada resident, filed his complaint (the  
13 "Complaint") in the Eighth Judicial District Court of Nevada, County of Clark, against SCL and  
14 LVSC on October 20, 2010. A true and accurate copy of the Complaint filed by Jacobs is attached  
15 hereto as **Appendix 1**.

16 8. The Complaint asserted only one cause of action against SCL, for breach of contract.  
17 The Complaint alleged only one contract between Jacobs and SCL, namely, i.e., the Stock Option  
18 Grant Letter, that provided for a grant to Jacobs of an option to purchase 2.5 million shares of SCL  
19 stock, which grant was the subject of a May 11, 2010 "Grant of Share Options" announcement by  
20 the SCL board of directors pursuant to applicable rules of the HKEx. *See* Complaint at ¶ 43. True  
21 and correct copies of the Stock Option Grant Letter and the Grant of Share Options are attached to  
22 the Motion as Exhibits E and F, respectively.

23 9. The Stock Option Grant Letter states that it is governed by and construed in  
24 accordance with Hong Kong law. *See* Exhibit E to the Motion.

25 10. The Stock Option Grant Letter expressly conditioned Jacobs' ability to exercise the  
26 option to purchase SCL stock on Jacobs' continued employment for SCL, and automatically  
27 terminated any such rights if Jacobs' employment for SCL was terminated before any portion of the  
28 option vested. *Id.*

1           11. Jacobs was terminated from his position as President and CEO of SCL on or about  
2 July 23, 2010; well before January 1, 2011, the date on which the first tranche of the option  
3 provided for by the Stock Option Grant Letter was eligible to vest. *See* Complaint at ¶¶ 30, 43; *see*  
4 *also* Exhibit E to the Motion.

5           12. SCL responded to Jacobs' Complaint on December 22, 2010 by filing the Motion<sup>1</sup>.  
6 A true and accurate copy of the Motion, along with the supporting exhibits and affidavits, is  
7 attached hereto as Appendix 2.

8           13. In its Motion, SCL argued that the District Court lacked personal jurisdiction over  
9 SCL due to its lack of contacts with the State of Nevada. *Id.* at pp 7-12.

10           14. In particular, SCL argued that because Jacobs in his claim for breach of contract did  
11 not (and could not truthfully) allege that SCL had performed any actions in Nevada, or affected  
12 Nevada in any way, the District Court had no basis to assert specific personal jurisdiction over SCL.  
13 *Id.* at pp 9-11.

14           15. Additionally, SCL argued that because Jacobs could not demonstrate that SCL had  
15 "substantial or continuous and systematic" contacts with Nevada, Jacobs therefore could not make  
16 the required *prima facie* showing that general personal jurisdiction exists over SCL. *Id.* at 11-12.

17           16. In particular, SCL argued that Jacobs could not make a *prima facie* showing that SCL  
18 had sufficient "substantial or continuous and systematic" contacts with Nevada, as SCL is party to a  
19 reciprocal Non-Competition Deed (the "Deed") with LVSC which limits SCL's business activities  
20 to specific territories in Asia, is further required by The Rules Governing the Listing of Securities of  
21 the HKEx (the "HKEx Rules") to conduct its business in Macau independently and at arm's-length  
22 with LVSC, and also maintains a separate and independent Board, executive management team, and  
23 financial operations. *Id.*; *see also* Global Offering Document at pp. 213-216.

24           17. Thus, because SCL demonstrated that it was not the alter ego of LVSC, the District  
25 Court could not consider LVSC's actions incident to parental control or supervision over SCL to  
26 determine general jurisdiction over SCL. *Id.*

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<sup>1</sup> LVSC also filed a Motion to Dismiss for Plaintiff's Failure to Join a Necessary Party on December 22, 2010.

1 18. Jacobs filed his opposition to the Motion (the "Opposition") on February 9, 2011. A  
2 true and accurate copy of the Opposition, along with the supporting exhibits and affidavits, is  
3 attached hereto as Appendix 3.

4 19. In his Opposition (and at the hearing on the Motion), Jacobs did not address SCL's  
5 arguments regarding specific personal jurisdiction, effectively conceding that the District Court had  
6 no basis to apply specific jurisdiction principles to SCL. *See gen.* Opposition.

7 20. Jacobs also did not dispute the facts set forth in SCL's Motion regarding its separate  
8 business operations, and did not otherwise argue that SCL was the alter ego of LVSC. *Id.*

9 21. Instead, Jacobs argued that actions taken in Nevada by the non-executive Chairman  
10 of SCL's Board, Adelson, and by a special advisor to SCL's Board, Leven, constituted "continuous  
11 and systematic contacts [by SCL] in the forum." *Id.* at p. 2, lines 15-16<sup>2</sup>.

12 22. Adelson also served as Chairman of the Board, Chief Executive Officer and  
13 Treasurer of LVSC, and Leven also served as President and Chief Operating Officer and director of  
14 LVSC. Each held his respective position as a member of, and special advisor to, SCL's Board by  
15 virtue of LVSC's status as SCL's majority shareholder. *See* Global Offering Document, pp. 227-  
16 232.

17 23. SCL filed its reply brief in support of the Motion (the "Reply") on February 28,  
18 2011. A true and accurate copy of the Reply, along with the supporting exhibits and affidavits, is  
19 attached hereto as Appendix 4.

20 24. SCL's Reply demonstrated that the majority of the allegations on which Jacobs relied  
21 in an attempt to make the required *prima facie* showing to justify the exercise of general jurisdiction  
22 over SCL were based on some aspect of SCL's subsidiary relationship with LVSC, and that the  
23 actions allegedly taken in Nevada by Adelson and Leven were directed to SCL in Macau, and were  
24

25  
26  
27 <sup>2</sup> Jacobs also argued that because he served the summons and complaint upon SCL's acting CEO in Nevada, the  
28 "transient jurisdiction" principles set forth in *Burnham v. Superior Court*, 495 U.S. 604 (1990) allowed the District  
Court to properly exercise personal jurisdiction over SCL without a "minimum contacts" analysis. *See* Opposition at pp.  
10-13. The argument in SCL's Reply debunked this proposition, and Jacobs did not raise this argument at the March 15,  
2011 hearing on the Motion, and the District Court did not address this argument, implicitly rejecting it.

1 not actions by SCL directed at Nevada (and thus not invoking the benefits and protections of the  
2 state with the resulting expectation of being haled into court in Nevada). *See gen. Reply.*

3 25. In addition, in support of his general jurisdiction argument, Jacobs alleged that SCL  
4 participated in an intra-corporate bookkeeping system that made casino player funds available in  
5 either Macau or Las Vegas. In fact, SCL showed by way of affidavits, that SCL was not a party to  
6 the process that Jacobs erroneously suggested entailed the actual transfer of funds, and that the  
7 entity in Macau that was a party to the (bookkeeping) process was VML, the casino operator that  
8 holds the Macau gaming subconcession. As SCL demonstrated without contradiction, the funds  
9 were not funds of SCL, the funds were not even funds of VML, but were funds of customers of  
10 VML, and the funds were not transferred. Instead, customer funds that remained in Macau were  
11 made available to VML customers in Las Vegas by VML making an accounting entry of a payable  
12 to Venetian Casino Resort, LLC ("VCR") and VCR making an accounting entry of a receivable  
13 from VML. Because SCL was not a party to any of these activities, Jacobs' contention had nothing  
14 to do with an assertion of jurisdiction over SCL. *Id.* at pp. 5-8; *see also* Affidavits of Jennifer Ong,  
15 Patricia L. Green, and Jason M. Anderson (the "TAA Affidavits") attached to the Reply.

16 26. The hearing for SCL's Motion was held on March 15, 2011, at which counsel for,  
17 Jacobs and SCL presented argument regarding general jurisdiction and Jacobs' counsel proffered  
18 demonstrative aids for the District Court's review (the "Hearing Exhibits"). *See* true and accurate  
19 copies of Jacobs' Hearing Exhibits, attached hereto as Appendix 5.

20 27. After the arguments had been presented, Judge Gonzalez denied the Motion and  
21 stated that "[h]ere there are pervasive contacts with the state of Nevada by activities done in Nevada  
22 by board members of Sands China," thereby ruling that the District Court did have personal  
23 jurisdiction over SCL. *See* a true and accurate copy of the transcript of the March 15, 2011 hearing  
24 (the "Transcript"), p. 62, lines 3-5, attached hereto as Appendix 6.

25 28. A true and accurate copy of the Order denying the Motion is attached hereto as  
26 Appendix 7.

27 29. However, as demonstrated herein, the respondent District Court did not have and  
28 does not have jurisdiction over SCL, because the actions of Adelson and Leven, who on occasion

1 discharged their duties respectively as a member of and special advisor to SCL's Board from their  
2 LVSC offices in Nevada, cannot be considered in the jurisdictional analysis because there was no  
3 evidence of an "alter ego" relationship between LVSC and SCL or, alternatively, a degree and type  
4 of control exercised by LVSC over SCL in excess of what would be expected from a 70% owner.  
5 (Moreover, even if the actions of Adelson and Leven properly were considered in the jurisdictional  
6 analysis, they were actions directed from Nevada to Macau, not actions by or for SCL directed to  
7 Nevada, and therefore cannot serve as a basis for general jurisdiction).

8 30. The respondent District Court and Judge Gonzalez will proceed to try the action now  
9 pending in the court below and render judgment unless prohibited and restrained by a writ of  
10 mandamus and/or prohibition issued by this Court. SCL has no plain, speedy or adequate remedy  
11 by appeal or otherwise for the reason that no appealable order has been entered by the District  
12 Court.

13 V.

14 **POINTS AND AUTHORITIES IN SUPPORT OF PETITION**  
15 **FOR WRITS OF MANDAMUS AND PROHIBITION**

16 **A. INTRODUCTION**

17 In ruling on SCL's Motion, the District Court was required to determine if its exercise of  
18 personal jurisdiction satisfied the due process requirements of the Nevada Constitution and the U.S.  
19 Constitution.

20 Satisfaction of the due process requirements associated with personal jurisdiction occurs  
21 when the non-resident defendant has "certain minimum contacts with the forum such that the  
22 maintenance of the suit does not offend traditional notions of fair play and substantial justice." *See*  
23 *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *see also Helicopteros Nacionales de*  
24 *Columbia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). This is a two-part test which requires evaluating  
25 whether the requisite minimum contacts are present and whether the exercise of jurisdiction is fair.  
26 *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985). Personal jurisdiction may be either  
27 "general" or "specific," and the threshold for satisfying the requirements of general jurisdiction is  
28 substantially higher than the requirements for specific jurisdiction. *See James Wm. Moore, Moore's*

1 *Federal Practice and Procedure* § 1067.5, at 517 (3d ed. 2009) (stating that the requirements to  
2 establish general jurisdiction are higher and foreign defendant's contacts must be sufficiently  
3 continuous and systematic to justify asserting jurisdiction over the defendant based on activities that  
4 did not occur in the forum state).

5 Due process is a central principle in American constitutional jurisprudence, and establishes a  
6 framework for the protection and enforcement of private rights in a manner that does not violate  
7 traditional notions of fair play and substantial justice.

8 If adopted by Nevada's district courts, Judge Gonzalez's ruling that SCL is subject to  
9 general jurisdiction in Nevada will allow litigants such as foreign nationals or traveling  
10 businesspersons who have never set foot in the United States, let alone Nevada, to sue foreign  
11 corporations in Nevada's state courts for any matter whatsoever, including for example a personal  
12 injury sustained in or a dispute over a bill from a hotel operated overseas by a foreign corporation,  
13 provided only that the foreign corporation is a subsidiary of a controlling parent corporation  
14 domiciled in Nevada. Thus, the issues presented in this case are of critical importance to Nevada's  
15 judiciary and Nevada's businesses, including the increasing number of Nevada companies, like  
16 LVSC, with foreign subsidiaries.

17 In the present case, SCL demonstrated that it lacks any contacts with Nevada, apart from its  
18 ongoing relationship with its majority shareholder, LVSC. Jacobs' jurisdictional allegations were  
19 nothing more than actions directed at SCL in Macau taken in Las Vegas by a non-executive director  
20 of and a special advisor to the SCL Board, both of whom are LVSC officers and directors who hold  
21 their SCL Board and advisory positions due to LVSC's status as majority shareholder of SCL.

22 The District Court was compelled by law to dismiss SCL for lack jurisdiction, and by  
23 continuing to improperly exercise personal jurisdiction over SCL it has violated the applicable due  
24 process standards and exceeded the scope of its authority. For the reasons set forth below, SCL  
25 therefore submits that extraordinary relief in the form of a writ of mandamus and/or prohibition  
26 should be granted in this case.

1 **B. PETITIONER IS ENTITLED TO A WRIT DIRECTING THE DISTRICT COURT**  
2 **TO DISMISS THE PENDING ACTION FOR LACK OF PERSONAL JURISDICTION**

3 **a. PROPRIETY OF EXTRAORDINARY RELIEF**

4 Either a writ of mandamus or prohibition may be used to challenge a denial of a motion to  
5 dismiss for lack of personal jurisdiction. See NRS 34.160 and 34.320. SCL acknowledges that this  
6 Court will not exercise its discretion to consider writ petitions that challenge district court orders  
7 denying motions to dismiss except in certain circumstances, including where (i) an important issue  
8 of law requires clarification, (ii) considerations of sound judicial economy and administration  
9 militated in favor of granting such petitions, and (iii) there are no disputed factual issues and,  
10 pursuant to clear authority under a statute or rule, the district court is obligated to dismiss an action.  
11 See *Smith v. Eighth Judicial Dist. Court*, 113 Nev. 1343, 1346 (1997). The interests of judicial  
12 economy, which inspired the *State ex rel. Department of Transportation v. Thompson* rule, will  
13 remain the primary standard by which this Court exercises its discretion. See 99 Nev. 358 (1983).

14 In this case, each of these considerations (and others) weigh heavily and uniformly in favor  
15 of granting the writs sought.

16 **i. SCL is Entitled to a Writ of Mandamus**

17 A Writ of Mandamus is proper when there is no plain, speedy, or adequate remedy in the  
18 ordinary course of law or when this Court must correct an arbitrary or capricious abuse of  
19 discretion. See *Barnes v. Eighth Judicial Dist. Court*, 103 Nev. 679 (1987). This Court has broad  
20 discretion to decide whether to consider a petition for a writ of mandamus, and may entertain such  
21 petitions "when judicial economy and sound judicial administration militate in favor of writ  
22 review." See *Scarbo v. Eighth Judicial Dist. Court*, 125 Nev. Adv. Rep. 12, 14 (2009).  
23 Additionally, this Court may exercise its discretion and entertain a writ petition when an important  
24 issue of law requires clarification, or to compel the lower court or tribunal to take an act that the law  
25 requires. *Id.*; see also *We the People Nevada ex rel. Angle v. Miller*, 124 Nev. Adv. Rep. 75, 79  
26 (2008).  
27  
28

1. SCL has no "plain, speedy, or adequate remedy" to challenge the District Court's ruling

Specifically regarding matters of personal jurisdiction, this Court has held that a district court's failure to quash service or dismiss for lack of personal jurisdiction presents a circumstance where there is in fact no "plain, speedy or adequate remedy available in the ordinary course of law." See *Shapiro v. Pavlikowski*, 98 Nev. 548 (1982); *State ex rel. Dep't of Highways v. Eighth Judicial Dist. Court*, 95 Nev. 715 (1979) (finding that a writ of mandamus is an available tool to challenge a district court's order denying a motion to dismiss).

SCL is challenging the District Court's determination that it can properly exercise personal jurisdiction over SCL. A writ petition is SCL's only tool to address this threshold issue prior to the conclusion of trial and the unnecessary expenditure of significant time and resources by the litigants and the District Court. Therefore, SCL has no plain, speedy or adequate remedy and is entitled to writ relief.

2. *Judicial economy and sound judicial administration support writ review in this case*

In determining whether considerations of judicial economy and administration support review, this Court may take into account the impact the lower court's decision, and in turn, this Court's ruling on the petition, could have on Nevada's residents, the individual litigants, and the judiciary as a whole. See *State v. Babayan*, 106 Nev. 155, 175 (1990). Such petitions should be granted if the result would provide a benefit for those parties. See *Jeep Corp. v. Dist. Court*, 98 Nev. 440, 443 (1982).

Here, the Court should consider what will certainly follow if Nevada's district court judges apply Judge Gonzalez's ruling to matters involving foreign entities. If that occurs, Nevada's courts



1 would be at risk to be inundated with lawsuits brought by every foreign litigant who has a claim  
2 against a foreign entity that is a corporate affiliate of a Nevada company. The costs attendant to  
3 processing such cases would tax an already overburdened court system and require Nevada's  
4 judicial resources to be directed to resolving disputes between parties who and which are neither  
5 domiciled nor do business in Nevada. The costs to Nevada's businesses that do business outside of  
6 Nevada, i.e. subjecting their foreign affiliates to suit here, are likely to adversely impact the number  
7 of companies that incorporate or maintain their principal places of business in Nevada.

8 SCL understands that it is entirely within this Court's discretion to consider this petition, and  
9 that discretion is exercised sparingly. However, in this case, the issues are such that failure to act  
10 may have deleterious effects on the State's judicial system (and economy) as a whole. Therefore,  
11 judicial economy and sound judicial administration strongly support consideration of SCL's writ  
12 petition.

13 3. *An important issue of law regarding personal jurisdiction requires*  
14 *clarification*

15 This Court has had only one occasion to address directly the issue of whether (and, if so,  
16 when) a parent company's exercise of control over a subsidiary rises to such a level that the  
17 domestic entity's contacts with Nevada should be considered in determining whether general  
18 personal jurisdiction exists over the foreign affiliate. *See MGM Grand*, 107 Nev. 65. Further, in the  
19 *MGM Grand* case, this Court limited its discussion to two sentences, as follows:

20 In addition, our review of the record convinces us that Disney exercises no more  
21 control over its subsidiaries than is appropriate for the sole shareholder of a corporation.  
22 Thus, Disney's subsidiaries' contacts may not be counted for jurisdictional purposes.

23 *Id.* at 69 (citing *Hargrave*, 710 F.2d at 1159-61).

24 This Court, in *MGM Grand*, did not expressly address or analyze the question of whether a  
25 showing of alter ego is required before a corporate affiliate's contacts with Nevada would be  
26 "considered" for jurisdictional purposes. Although this Court did cite the 1993 *Hargrave* case in  
27 support of its holding, the court in *Hargrave* discussed "applying a less stringent standard for alter  
28 ego jurisdiction than for alter ego liability," but acknowledged difficulties "in articulating the type

1 and degree of control necessary to ascribe to a parent the activities of its subsidiary." *Hargrave*, 710  
2 F.2d at 1159.

3 Other jurisdictions have addressed the issue directly and definitively and have held that, only  
4 when evidence is presented to show that the foreign entity can be considered an "alter ego" of the  
5 domestic entity pursuant to the forum state's law, can the domestic entity's contacts be considered  
6 in the jurisdictional analysis. See *Doe v. Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001) ("[I]f the  
7 parent and subsidiary are not really separate entities, or one acts as the agent of the other, the local  
8 [entity's] contacts with the forum may be imputed to the foreign [entity]"); see also *Newman v.*  
9 *Comprehensive Care Corp.*, 794 F.Supp. 1513 (D. Or. 1992); *AT&T v. Lambert*, 94 F.3d 586 (9<sup>th</sup>  
10 Cir. 1996).

11 The rationale for requiring a showing of alter ego is found in perhaps the most fundamental  
12 tenet of corporate law, namely, that a corporation (or other legal entity) has a legal identity separate  
13 from its shareholders, officers, directors, members and affiliated entities. See *Yates v. Hendon*, 541  
14 U.S. 1, 63 (2004) (recognizing that a corporation's separate legal status must be respected and only  
15 disregarded when evidence of a "unity of interest" is presented); see also *United States v. Bestfoods*,  
16 524 U.S. 51, 72 (1998) (identifying "general principal of corporate law 'deeply engrained in our  
17 economic and legal systems'" that the acts of a subsidiary may not be imputed to the parent without  
18 clear evidence of an alter ego relationship); 1 W. Fletcher, *Encyclopedia on the Law of Private*  
19 *Corporations*, §§ 25, 28 (1990).

20 For substantially the same reasons, the law in Nevada should be clarified to provide that the  
21 mere presence of directors in the forum state is insufficient to establish general jurisdiction over a  
22 foreign corporation.

23 Nevada's companies, including in particular its gaming companies, are increasingly global in  
24 their scope and often operate through subsidiaries or other related entities in multiple locations  
25 throughout the world. The issue of whether, due to a relationship with a corporation or other  
26 affiliate in Nevada, a litigant can bring a suit in Nevada against a foreign entity (on a theory of  
27 general jurisdiction) based on the presence of a Nevada affiliate, is vitally important to the  
28 companies based in Nevada and to their foreign subsidiaries. In particular, the legal test to be

1 applied in Nevada to determine whether a domestic affiliate's contacts with Nevada will be  
2 considered in assessing whether general jurisdiction exists over foreign affiliates is less than clear.  
3 SCL respectfully submits that this Court should clarify this important issue of law, and that this  
4 petition therefore should be granted.

5 4. *Alternatively, the District Court Was Compelled By Law To Dismiss*  
6 *SCL for Lack of Personal Jurisdiction*

7 A writ of mandamus is proper to compel a party to exercise its judgment and render a  
8 decision where a failure of justice would arise if such a decision is not properly made. *See State ex*  
9 *rel. McGuire v. Wattterman*, 5 Nev. 323, 326 (1869). In this case, the District Court was required as  
10 a matter of law to grant SCL's Motion and dismiss the claim against it based on a lack of personal  
11 jurisdiction. Jacobs did not make a *prima facie* showing of personal jurisdiction and did not present  
12 any evidence that SCL has the requisite "minimum contacts" needed to satisfy the due process  
13 requirements associated with the exercise of personal jurisdiction, no matter whether an alter ego or  
14 lesser standard is employed.

15 However, the District Court failed to follow *MGM Grand*, because Jacobs' allegations  
16 regarding actions allegedly taken in Nevada by Adelson and Leven were consistent with LVSC's  
17 status as seventy percent shareholder of SCL, and should not have been considered in the  
18 jurisdictional analysis. Likewise, the mere presence of directors in the forum state is insufficient to  
19 establish general jurisdiction over a foreign corporation. Finally, the District Court failed to make  
20 the required determination of whether the exercise of personal jurisdiction over SCL (whether based  
21 solely on the activities of Adelson and Leven or some other basis) is reasonable, which it clearly is  
22 not. Therefore, the District Court should be compelled to act and dismiss SCL.

23 ii. SCL is Entitled to a Writ of Prohibition

24 A writ of prohibition is the counterpart to a writ of mandamus, and functions to arrest the  
25 proceedings of a tribunal when such proceedings are without or in excess of the jurisdiction of such  
26 tribunal. *See* NRS 34.320. The object of a writ of prohibition is to restrain inferior courts from  
27 acting without authority of law in cases where wrong, damage and injustice are likely to follow from  
28 such action. *See Attorney General v. Steffen*, 112 Nev. 369, 372 (1996). The fact that an appeal is

1 available from final judgment does not preclude the issuance of a writ of prohibition, "particularly in  
2 circumstances where, as here, the trial court is alleged to have exceeded its jurisdiction and the  
3 challenged order is not appealable.". See *G. & M. Properties v. Second Judicial Dist. Court*, 95  
4 Nev. 301, 304 (1979).

5 Generally, because a writ of prohibition seeks an extraordinary remedy, the Court will  
6 exercise its discretion to consider such a petition only when (1) there is not a plain, speedy and  
7 adequate remedy in the ordinary course of law; (2) there are urgent circumstances; or (3) there are  
8 important legal issues that need clarification in order to promote judicial economy and  
9 administration. See *Cheung v. Eighth Judicial Dist. Court*, 121 Nev. 867 (2005); see also *Silver*  
10 *Peak Mines v. Second Judicial Dist. Court*, 33 Nev. 97, 99 (1910) (finding that a writ of prohibition  
11 ought to issue freely whenever it is necessary for the protection of rights of a litigant and he has no  
12 other plain, speedy and adequate remedy).

13 1. *SCL has established that it has no plain, speedy and adequate remedy*

14 The arguments in Section V(B)(a)(i)(1) apply to this particular factor as well. As it relates  
15 specifically to writs of prohibition, this Court frequently has held that a district court's failure to  
16 quash service or dismiss for lack of personal jurisdiction presents a circumstance where there is no  
17 plain, speedy or adequate remedy available in the ordinary course of law due to the absence of the  
18 availability of an immediate appeal. See *Budget Rent-A-Car v. Eighth Judicial Dist. Court*, 108  
19 Nev. 483, 484 (1992) (finding that district court's erroneous refusal to quash service of process for  
20 lack of personal jurisdiction presented a circumstance where petitioner had "no plain, speedy or  
21 adequate remedy..."); see also *Gojack v. Second Judicial Dist. Court*, 95 Nev. 443 (1979);  
22 *Wolzinger v. Eighth Judicial Dist. Court*, 105 Nev. 160 (1989).

23 Therefore, because SCL cannot immediately appeal the Order entered on April 1, 2011, it  
24 has no plain, speedy or adequate remedy in the ordinary course of law.

25 2. *This petition presents urgent circumstances for SCL if not granted*

26 As stated above, the issue presented in this petition is significant, and this Court's decision  
27 and clarification in further defining the jurisdictional guidelines related to foreign subsidiaries of  
28 Nevada entities would serve both the public's interest and the interest of the judiciary.

1 SCL's petition to the Court for its clarification is particularly urgent, considering the  
2 consequences that will follow if the petition is not granted. For the purposes of a writ petition,  
3 urgency may be shown if a litigant has already requested relief from the lower tribunal, such as a  
4 motion to dismiss for lack of personal jurisdiction, and such claimed injustice will not be cured in  
5 the ordinary course of the judicial proceedings. *See Silver Peak Mines*, 33 Nev. at 99.

6 Here, SCL will be forced to continue to defend the claims made by Jacobs in a forum in  
7 which it is not subject to personal jurisdiction, pursuant to procedural and substantive rules that are  
8 different from those in Hong Kong. Nevertheless, SCL may otherwise gain relief only at the  
9 conclusion of the entire discovery, pretrial and trial process. SCL should not be forced to wait until  
10 after a judgment has been rendered to raise this issue on appeal, only to find out then that the  
11 District Court did not have jurisdiction.

12 The parties to the pending litigation have recently filed a Joint Status Report, which followed  
13 the early case conference held before Judge Gonzalez on April 22, 2011. *See* true and correct copy  
14 of the Joint Status Report attached hereto as **Appendix 8**. According to the Joint Status Report, the  
15 parties "anticipate that LVSC's and SCL's respective disclosures will consist of a high volume of  
16 documents which include Electronically Stored Information (ESI)." *Id.* It further requires the  
17 parties to search for and produce such documents on a rolling basis, with the production to be  
18 completed on July 1, 2011. *Id.* The discovery process in this case has begun, and is expected to be  
19 extremely time consuming over the coming months. SCL will be forced to expend substantial  
20 resources to participate if this Court does not grant the requested relief and order the District Court  
21 to dismiss SCL from this matter.

22 Further, if Jacobs is allowed to maintain his claim against SCL in the District Court, the  
23 parties will likely have to identify and compensate experts in Hong Kong law, which controls the  
24 Stock Option Grant Letter on which Jacobs bases his breach of contract claim against SCL. Judge  
25 Gonzalez specifically anticipated this need at the March 15, 2011 hearing, and stated as follows: "At  
26 some point I assume that we will have experts in Hong Kong law provide information so that an  
27 appropriate decision can be made on the stock option agreement." *See* Transcript at p. 62, lines 8-  
28

11. This expense also would be unnecessary if the District Court had properly dismissed SCL and required Jacobs to litigate his claim in Hong Kong.

For the foregoing reasons, SCL respectfully submits that it has demonstrated that its petition is warranted by urgent circumstances, and should be granted by this Court.

3. *An important issues of law regarding personal jurisdiction requires clarification*

As set forth above in Section V(B)(a)(i)(3), the law in Nevada requires clarification, particularly regarding the determination of personal jurisdiction over foreign entities and the effect of in-forum activities by a parent company or other related person or entity. This Court has had just one opportunity to address this issue. However, it did not determine whether it would follow the majority rule which requires a showing of "alter ego" before a parent company's contacts with Nevada could be considered when determining personal jurisdiction over a foreign subsidiary, or if a lesser standard utilized in other jurisdictions should be adopted by Nevada's courts. Therefore, because clarification is needed in this important area of law, this Court should grant this petition and issue the requested relief.

b. **RELEVANT PRINCIPLES OF GENERAL JURISDICTION**

i. Factors to Determine General Jurisdiction over Foreign Entities

To properly exercise personal jurisdiction over a non-resident defendant, the District Court must determine both that NRS 14.065 is satisfied and that due process is not offended by the exercise of jurisdiction. *See Firouzabadi v. First Judicial Dist. Ct.*, 110 Nev. 1348, 1352 (1994)(citing *Trump v. Dist. Court*, 109 Nev. 687, 698 (1993)). To make this determination, in must conclude that Jacobs had made a prima facie showing that either general or specific<sup>3</sup> jurisdiction exists. *Id.*

<sup>3</sup> As observed above, Jacobs did not respond to or otherwise address SCL's argument regarding the lack of specific personal jurisdiction in his Opposition or during the March 15, 2011 hearing, effectively waiving any argument that the District Court has specific personal jurisdiction in this case. This is consistent with the nature of Jacobs' claim against SCL, which is for breach of contract and based on rights allegedly conferred by the Stock Option Grant Letter, executed in Macau for the option to purchase SCL stock listed on the HKEx.

1 General personal jurisdiction exists "where the defendant's activities in the forum state are  
2 so substantial or continuous and systematic that it may be deemed present in the forum and hence  
3 subject to suit over claims unrelated to its activities there." See *Firouzabadi*, 110 Nev. at 1352; see  
4 also *Gordon et al. v. Greenview Hosp., Inc.*, 300 S.W.3d 635, 648 (Tenn. 2009) ("In order to  
5 warrant the exercise of general jurisdiction over a non-resident defendant, 'the defendant must be  
6 engaged in longstanding business in the forum state, such as marketing or shipping products, or  
7 performing services...'") (internal citation omitted).

8 Thus, general jurisdiction will only lie where the level of contact between the defendant and  
9 the forum state is high. See *Trump*, 109 Nev. at 701 (declining to find general jurisdiction over a  
10 defendant who did business with a Nevada resident, but owned no Nevada property, never entered  
11 the state, exhibited no persistent course of conduct with Nevada, and derived no revenues from  
12 goods or services provided in Nevada); see also *Helicopteros Nacionales de Columbia*, 466 U.S. at  
13 416 (finding that Texas did not have general jurisdiction over a foreign corporation which sent  
14 officers to Texas to negotiate contracts, directed assorted personnel to travel to Texas to train,  
15 transferred funds from a Texas bank, and purchased equipment from a Texas company); *Cabbage v.*  
16 *Merchant*, 744 F.2d 665, 667-68 (9<sup>th</sup> Cir. 1984) (Doctors had insufficient contacts with California  
17 despite a significant number of California residents as patients, use of state health insurance and  
18 regulatory systems, and California-accessible telephone listings); *Gates Learjet Corp. v. Jensen*, 743  
19 F.2d 1325, 1330-31 (9<sup>th</sup> Cir. 1984) (declining to assert general jurisdiction in Arizona over company  
20 which sent representatives to the state on numerous occasions, purchased materials in the state,  
21 solicited an agreement in the state that included an Arizona choice of law and forum provisions and  
22 engaged in continuous communications with Arizona residents).

23 Additionally, insofar as the District Court's basis for denying SCL's Motion was based on  
24 the activities of Adelson and Leven without regard to the degree of control exercised by LVSC over  
25 SCL, the mere presence of directors in the forum state is insufficient to establish general jurisdiction  
26 over a foreign corporation. See *Gordon*, 300 S.W.3d at 649 ("[Appellant's] lawyer has pointed to  
27 no case holding that corporate officers or directors maintaining an office or a residence is sufficient  
28 to establish general jurisdiction over the corporation. And with good reason. A corporation is a

1 distinct legal entity that exists separate from its shareholders, officers and directors.”); *see also*  
2 *Transure, Inc. v. Marsh and McLennan, Inc.*, 766 F.2d 1297, 1299 (9th Cir. 1985) (in denying to  
3 exercise general jurisdiction over a parent corporation due, in part, to allegations that shared  
4 directors for a subsidiary reside in the forum state, finding that “[i]t is entirely appropriate for  
5 directors of a parent company to serve as directors of its subsidiary, and that fact alone may not  
6 serve to expose the parent corporation to liability for its subsidiary’s acts.”). As explained further  
7 below, this view is consistent with the basic tenet of corporate law that recognizes a legal separation  
8 between affiliated entities. If such a rule were not in place, and a court could exercise general  
9 jurisdiction over a corporation in any forum where a director may reside or maintain an office, then  
10 no corporation would risk appointing an outside director who may reside anywhere but the forum in  
11 which the company is actually domiciled or does business.

12 Finally, this Court has held that “[w]hen a challenge to personal jurisdiction is made, the  
13 plaintiff has the burden of introducing competent evidence of essential facts which establish a prima  
14 facie showing that personal jurisdiction exists.” *See Abbott-Interfast v. Eighth Judicial Dist. Court*,  
15 107 Nev. 871, 873 (1991). The required showing of “essential facts” is not satisfied by  
16 unsubstantiated or incorrect factual conclusions or through an affidavit that fails to properly connect  
17 a defendant to the forum or particular transaction. *See McDermond v. Siemens*, 99 Nev. 226, 229  
18 (1980).

19 Thus, Jacobs bore the burden of establishing that this Court has personal jurisdiction over  
20 SCL, a Cayman Islands company with its principal place of business in Macau.

21 Lastly, even if Jacobs were able to establish the essential facts to connect SCL to Nevada,  
22 the District Court’s exercise of jurisdiction must be found to be subjectively reasonable and comport  
23 with traditional notions of fair play and substantial justice. *See Doe*, 248 F.3d at 922.

24 ii. Absent a Showing of Alter Ego, the Majority of Jurisdictions Will Not Impute  
25 the In-Forum Contacts of a Corporation to its Foreign Affiliate For Purposes  
26 of Establishing Personal Jurisdiction

27 As observed above, this Court has had only one opportunity to address the specific issue of  
28 intra-corporate activities as a basis for personal jurisdiction. *See MGM Grand, Inc.*, 107 Nev. at 68-



1 69. In the *MGM Grand* case, this Court upheld the lower court's decision to quash service of  
2 process on a non-resident corporation, the Walt Disney Company ("Disney"). *Id.* This Court began  
3 by finding that Disney's own contacts with Nevada, which "amount[ed] to no more than advertising  
4 and promoting the company's California theme parks, are neither continuous nor systematic," and  
5 were therefore insufficient to convey personal jurisdiction. *Id.* The Court added the following:

6 In addition, our review of the record convinces us that Disney exercises no more  
7 control over its subsidiaries than was appropriate for the sole shareholder of a  
8 corporation. Thus Disney's subsidiary's contacts may not be counted for  
jurisdictional purposes.

9 *Id.* (citing *Hargrave*, 710 F.2d at 1159-61 (finding that mere existence of parent/subsidiary  
10 relationship is insufficient to confer jurisdiction over foreign entity)).

11 Although this Court in *MGM Grand* declined to apply Disney's subsidiaries' forum contacts  
12 to its jurisdictional analysis, it did not specify the standard that should be used to determine whether  
13 (and, if so, when) a parent company's exercise of control over a subsidiary rises to such a level that  
14 the domestic entity's contacts with Nevada should be considered in determining whether general  
15 personal jurisdiction exists over the foreign affiliate.

16 Most jurisdictions that have addressed this issue directly, including the Ninth Circuit Court  
17 of Appeals, have held that contacts between a parent and subsidiary (e.g., presence at or location of  
18 board meetings, shared directors/executives, involvement in personnel decisions, shared financials  
19 and investments, co-marketing efforts, etc.) cannot form the basis for personal jurisdiction over a  
20 non-resident corporate defendant unless those contacts also show that there is such a unity of  
21 interest and ownership that separate personalities of the parent and subsidiary no longer exist, and  
22 that a failure to disregard their separate entities would result in fraud and injustice. *See Doe*, 248  
23 F.3d at 926 ("Nonetheless; 'if the parent and subsidiary are not really separate entities, or one acts as  
24 an agent of the other, the local subsidiary's contacts with the forum may be imputed to the foreign  
25 parent corporation.' An alter ego or agency relationship is typified by parental controls of the  
26 subsidiary's internal affairs or daily operations."); *see also Newman*, 794 F.Supp. at 1519 ("[t]he  
27 activities of the parent corporation are irrelevant absent some indication that the formal separation  
28 between parent and subsidiary is not scrupulously maintained."); *Gordon*, 300 S.W.3d at 652

1 ("[T]he actions of a parent corporation may be attributable to a subsidiary corporation...when the  
2 two corporations are essentially the alter egos of each other."). In this case, neither Jacobs nor the  
3 District Court even addressed this established line of case law.

4 For this Court's consideration, both the *AT&T* and *Gordon* cases are particularly relevant  
5 examples of the application of this principle to a similar fact pattern.

6 In *AT&T*, the plaintiff attempted to establish personal jurisdiction over a Belgian parent  
7 company due to its involvement with a U.S. subsidiary, which it contended demonstrated the  
8 "[parent's] total control over [the subsidiary]" was sufficient to establish an alter ego relationship  
9 and jurisdiction over the foreign entity. *AT&T*, 94 F.3d at 598. In particular, the plaintiff presented  
10 evidence that the parent (1) held a majority of the seats on the subsidiary's board; (2) approved  
11 proposals to terminate the employment contracts of the subsidiary's original owners; (3) directed  
12 financial and business decisions for the subsidiary, including the substantial distribution of cash for  
13 capital investments and development; (4) appointed one of its own board members to serve as the  
14 subsidiary's chairman; and (5) eventually held all of the subsidiary's working capital. *Id.* at 590.

15 With this evidence, the plaintiff attempted to argue that the parent's "domination and control  
16 over [the subsidiary], constituted contacts by which [the parent] purposefully availed itself of the  
17 United States' benefits and protection." *Id.* The court disagreed, saying that in order for the parent's  
18 relationship with the subsidiary to confer personal jurisdiction, there must be a *prima facie* showing  
19 that (1) there is such a unity of interest and ownership that separate personalities of the parent and  
20 subsidiary no longer exist, and (2) failure to disregard their separate entities would result in fraud  
21 and injustice. *Id.* at 591. Further, the court found that the "domination," as alleged by the plaintiff,  
22 reflected nothing more than a normal parent/subsidiary relationship, and that plaintiff had failed to  
23 establish the essential facts required to convey general jurisdiction. *Id.*

24 In *Gordon*, the appellant argued that exercise of general jurisdiction over a foreign  
25 subsidiary was proper because: (1) the subsidiary's directors (who also served as directors of the in-  
26 forum parent company) were domiciled in the forum state and worked out of offices in the forum  
27 state, (2) the subsidiary listed its principal place of business in the forum state in legal filings, and  
28 (3) the subsidiary was wholly owned by the in-forum parent company. *Gordon*, 300 S.W.3d at 650.

1 The court affirmed the trial court's dismissal of the respondent for lack of personal jurisdiction,  
2 finding that "[s]o long as the parent and subsidiary corporations maintain their status as separate and  
3 distinct entities, the presence of one corporation in the forum cannot be attributed to the other." *Id.*  
4 at 651. The court further held that a parent company's involvement with the subsidiary's corporate  
5 performance, finance/budget decisions, general policies and procedures, or complete ownership of  
6 the subsidiary with the same officer and directors does not "demonstrate the kind of 'complete  
7 control' which renders the subsidiary nothing more than an instrumentality...of the parent  
8 corporation." *Id.* at 654. Thus, the court in *Gordon* required the appellant to demonstrate that the  
9 two corporations are the alter egos of each other, and declined to disregard the presumption of  
10 corporate separation unless evidence was submitted of the parent's domination (not merely  
11 involvement) in the day-to-day operations of the subsidiary.

12 In addition to the case law cited in SCL's briefs, the cases Jacobs cited in his Opposition  
13 actually supported SCL's argument that an alter ego determination is necessary to establish personal  
14 jurisdiction over SCL based on its interaction with LVSC. *See Villagomez, et al. v. Rockwood*  
15 *Specialties, Inc.*, 210 S.W.3d 720, 732 (Tx.Ct.App. 2006) (finding that the subsidiaries' contacts  
16 with the forum state cannot be imputed to the corporate defendant, and stating that in order to  
17 ascribe such contacts, plaintiff must prove the parent is the alter ego and controls the internal  
18 business operations and affairs of subsidiary); *see also Striefer et al. v. Cabot Enter., Ltd., et al.*, 231  
19 N.Y.S.2d 750, 754 (1962) (noting that, as a matter of course, corporate entities may not be subjected  
20 to jurisdiction due to the activities of affiliated entities, and distinguishing case at bar by finding that  
21 the corporation was the alter ego of the in-forum entity and was "merely an instrumentality or agent  
22 of [the in-forum entity] through which [it] engaged in business in the State of New York," and  
23 "owed its active existence solely from funds received from [the in-forum entity] and without which  
24 it could not have performed any function whatsoever.").

25 The rule that, absent evidence of an "alter ego" relationship, contacts between a parent and  
26 subsidiary should not be considered in a personal jurisdiction analysis, has its basis in the most  
27 fundamental rule of corporate law, namely, the presumption of legal separation between an entity  
28 and its affiliates, stockholders, officers and directors. *See infra Yates*, 541 U.S. at 63 (a

1 corporation's separate legal status is presumed absent a showing of a "unity of interest."); *Bestfoods*,  
2 524 U.S. at 72 (recognizing legal separation of a corporation and its affiliates as a "general principal  
3 of corporate law"); *Doe*, 248 F.3d at 925 (noting "well established principal of corporate law" that a  
4 corporation and its subsidiary, or subsidiary's agents, are presumed to be separate for liability and  
5 jurisdictional purposes).

6 This rule of law comports with the fundamental notions of substantial justice and fair play as  
7 required by due process, which should be applied in Nevada and should have been applied by the  
8 District Court in this case.

9 iii. Other Jurisdictions Have Declined to Impute Contacts to a Foreign Subsidiary  
10 Unless the In-Forum Parent Exercises A Degree of Control That is  
11 Disproportionate to Its Investment

12 Although courts in most jurisdictions, particularly the Ninth Circuit, have applied a  
13 traditional "alter ego" test to determine whether a corporation's in-forum activity can be imputed to  
14 a foreign affiliate for the purposes of conferring jurisdiction, a minority of courts have utilized an  
15 arguably less rigorous test that examines a parent's level of control in proportion to its investment  
16 level in the foreign subsidiary. This distinction was recognized in *Hargrave*, 710 F.2d at 1159-61  
17 (finding that jurisdiction may be conferred if the parent exercises domination and control "greater  
18 than that normally associated with common ownership and directorship" and recognizing the  
19 possible application of a "less stringent standard for alter ego jurisdiction than for alter ego  
20 liability..."). However, the court in *Hargrave* did find that because the subject entities did maintain  
21 formal corporate separation, and the policymaking authority exercised by the parent "was no more  
22 than that appropriate for a sole shareholder of a corporation," the facts presented were insufficient to  
23 consider the in-forum corporation's contacts to its foreign affiliate for jurisdictional purposes. *Id.*

24 Other courts that have dealt with the issue using the "appropriate level of control" test have  
25 reached the same conclusion in reference to foreign subsidiaries and in-state parent companies. In  
26 *Reul v. Sahara Hotel, Inc.*, the court initially recognized that sole ownership over a subsidiary or the  
27 presence of common directors generally is insufficient to confer jurisdiction, but in that case  
28 evidence was presented showing that there was "more than that amount of control of one

1 corporation over another which mere common ownership and directorship would indicate.” 372  
2 F.Supp 995, 998 (S.D. Tx. 1974). The court in *Reul* did not undertake a specific “alter ego” analysis  
3 or discuss the maintenance of corporate form, but did examine the parental involvement in the  
4 subsidiaries’ business affairs and found that the subject parent corporation controlled substantially  
5 all of the subsidiaries’ corporate and business activities from the forum state and that the  
6 subsidiaries “constitute[d] completely integrated subsidiaries which exist for the convenience of the  
7 parent corporation, its stockholders, officers, and directors.” *Id.* at 1002; *see also Perkins v.*  
8 *Benguet*, 342 U.S. 437, 447-49 (1952) (finding general jurisdiction over forum entity where in-  
9 forum agent held all board meetings, kept company records, maintained employees, opened two  
10 bank accounts, and performed substantially all of the foreign company’s business functions within  
11 the forum state).

12 As will be discussed below, whether this Court applies an “alter ego” analysis to the present  
13 facts, or examines LVSC’s degree of control as SCL’s majority shareholder, the result is the same –  
14 the District Court erred when it denied SCL’s Motion and the exercise of general personal  
15 jurisdiction over SCL is improper and is at odds with the applicable due process requirements.

16 c. **SCL’S STATUS AS A LVSC SUBSIDIARY AND THE ACTIONS OF AN**  
17 **OUTSIDE NON-EXECUTIVE DIRECTOR AND SPECIAL ADVISOR TO**  
18 **THE SCL BOARD ARE INSUFFICIENT TO CONFER GENERAL**  
19 **JURISDICTION**

20 i. The District Court’s Ruling As Stated At The March 15, 2011 Hearing

21 After counsel for Jacobs and SCL presented their oral argument at the March 15, 2011  
22 hearing on the Motion, Judge Gonzalez issued the following ruling from the bench:

23 Here there are pervasive contacts with the State of Nevada by activities done in  
24 Nevada by board members of Sands China. Therefore, while Hong Kong law  
25 may indeed apply to certain issues that are discussed during the progress of this  
26 case, that does not control the jurisdictional issues here. At some point in time I  
27 assume that we will have experts in Hong Kong law provide information so that  
28 an appropriate decision can be made on the stock option agreement. So [SCL’s  
Motion] is denied, and [SCL’s] request to join in [LVSC’s Motion to Dismiss]  
was denied when I denied [it].

See Transcript at p. 62, lines 3-12.

1                   ii.       SCL Is Not the Alter Ego of LVSC

2           To establish a *prima facie* case that there is a unity of interest between two entities, i.e., that  
3 one entity is the alter ego of the other, a plaintiff must include allegations such as co-mingling  
4 funds, misuse of corporate assets as stockholders' own, failure to observe corporate formalities, sole  
5 ownership of all stock and assets, employment of same employees, and failure to maintain an arms'  
6 length relationship. *See Lorenz v. Beltio, Ltd.*, 114 Nev. 795, 808 (1998); *see also North Arlington*  
7 *Medical Bldg., Inc. v. Sanchez Const. Co.*, 86 Nev. 515, 522 (1970); *Mosa v. Wilson-Bates*  
8 *Furniture Co.*, 94 Nev. 521, 524 (1978).

9           In its briefs, SCL established uncontroverted facts in reference to its relationship with LVSC  
10 that definitively demonstrated that SCL and LVSC has diligently maintained separate corporate  
11 forms and are not alter egos of one another, including the following:

12           (i): SCL is a public company, the stock of which is traded on the HKEx. *See gen. Global*  
13 *Offering Document.*

14           (ii): SCL operates its own treasury department, financial controls, independent bank  
15 accounts, tax registration and auditing/accounting systems; *Id.* at pp. 211-232.

16           (iii): SCL's Board, and its Board committees, conduct separate meetings and keep separate  
17 minutes from the meetings and minutes of LVSC; *Id.* at pp. 211-232.

18           (iv): SCL's eight-member Board, at the time Jacobs served as an SCL executive, included  
19 three independent non-executive directors with no prior relationships with LVSC, two executive  
20 management directors who oversaw SCL's corporate functions exclusively from Macau, and three  
21 outside non-executive directors who also served as directors for LVSC, specifically, Adelson,  
22 Jeffrey Schwartz ("Schwartz") and Irwin Siegel ("Siegel"); *Id.*

23           (v): SCL is required by the HKEx Rules to demonstrate that it operates its business  
24 independently of, and at arms' length from LVSC; *see Affidavit of Anne Salt*, attached to Reply;  
25 *see also* true and accurate copy of the HKEx Rules, attached as Exhibit B to the Reply; and

26           (vi): SCL is party to the Deed with LVSC which effectively limits SCL's business activities  
27 to specific territories in Asia and prohibits SCL from conducting business or directing its efforts to  
28 Nevada. *See Global Offering Document*, pp. 213-216.

Jacobs neither disputed the foregoing facts, nor did he argue that SCL was the alter ego of LVSC. Absent a showing of an alter ego relationship, the District Court should not have considered LVSC's contacts with Nevada in determining jurisdiction over SCL, and with the evidence presented, was compelled to grant SCL's Motion and dismiss the case against SCL for lack of personal jurisdiction. Thus, under the prevailing law – which SCL submits should be the clearly articulated law of Nevada – SCL's Motion should have been granted.

iii. The Purported Bases for the Exercise of Personal Jurisdiction

Instead of addressing the facts raised in SCL's briefs, Jacobs made the following allegations in support of his jurisdictional argument:

(i): During Jacobs' tenure as an SCL executive, Adelson and Leven, a non-executive director and special advisor to the SCL Board, respectively, worked out of LVSC's executive offices in Las Vegas, and occasionally attended to SCL business from that location, including: (1) attending a telephonic SCL Board meeting on April 14, 2010 from Las Vegas along with Jacobs, Schwartz and Siegel; (2) recruited potential candidates for SCL senior executive management positions in Macau; (3) directed Jacobs regarding SCL's business in Macau and unspecified involvement with local Macau government officials; (4) directed real estate project development in Macau and developed marketing strategies for a \$2.5 billion SCL development in Macau; and (5) negotiated a possible joint venture for the development and sale of parcels owned by SCL in Macau.

(ii). SCL allegedly participated in transferring casino patron funds from Macau to Las Vegas<sup>4</sup>; and allegedly utilized a system Jacobs identifies as Affiliate Transfer Advice<sup>5</sup> ("ATA") to electronically transfer casino patron funds from Macau to LVSC or its affiliates in Las Vegas. *See* Complaint at ¶¶ 26; *see also* Opposition at pp. 3-9.

<sup>4</sup> Although Jacobs in his Opposition alleged that SCL "had significant funds physically couriered to Nevada," his counsel did not pursue that claim at the March 15, 2011 hearing after SCL demonstrated in its Reply that this allegation was false.

<sup>5</sup> As discussed herein, SCL provided extensive and uncontested evidence that it was not involved in the administration or processing of these bookkeeping transactions regarding casino patron funds, nor were any funds transferred, contrary to Jacobs' allegations.

1 At the March 15, 2011 hearing on the Motion, counsel for Jacobs and SCL discussed the  
2 previous points but did not raise any additional factual issues that had not been addressed in the  
3 parties' briefs.

4 iv. Even Applying the "Control Disproportionate to Investment Status" Standard,  
5 Jacobs Did Not Demonstrate That LVSC's Contacts With Nevada Should Be  
6 Considered in SCL's Jurisdictional Analysis

7 In the event that this Court determines that the arguably less-stringent "control  
8 disproportionate to investment status" test should be used in Nevada, Jacobs allegations, even if  
9 assumed accurate, were insufficient to consider (or "count") LVSC's Nevada contacts in SCL's  
10 jurisdictional analysis.

11 1. *Adelson and Leven's alleged actions are consistent with LVSC's*  
12 *status as majority shareholder*

13 As stated above, Jacobs made several allegations regarding Adelson's and Leven's  
14 involvement with SCL's business and corporate function. Specifically, Jacobs alleged that Adelson  
15 and Leven had (1) attended a telephonic SCL Board meeting from Las Vegas with two other outside  
16 non-executive directors, (2) recruited senior management candidates for SCL, (3) issued directives  
17 regarding SCL's involvement with local Macau government officials, (4) and gave direction  
18 regarding certain large-scale SCL real estate development and possible joint venture projects in  
19 Macau.

20 Neither individually nor collectively were these actions evidence of the exercise of the level  
21 of control required by *Hargrave* and *Reul*, cited above. In both of the cited cases, the court  
22 recognized that in situations where a parent company controls substantially all of the subsidiary's  
23 day-to-day operations, including its finances and means of production or provision of services, and  
24 further presents itself as a single company, it may be treated as such for the purposes of its  
25 subsidiary's jurisdictional analysis. *See Reul*, 372 F.Supp. at 1001-1003 (finding that the parent  
26 company's contacts could be imputed to subsidiaries where the corporate separation was only a  
27 formality and "for all operational purposes [was] one big, albeit well organized, corporation  
28 controlled at the top by [the parent company].").



1 SCL has already set forth facts that establish it is not the alter ego of LVSC, and those facts  
2 are relevant to this analysis as well. Contrary to being "one big, albeit well organized, corporation,"  
3 both LVSC and SCL are actually contractually prohibited by the Deed from engaging in business  
4 activities in each other's primary places of business. See Global Offering Document at pp. 213-216.  
5 Additionally, SCL has an independent Board, maintains and controls its own finances, and is  
6 required by the HKEx Rules to demonstrate its operational independence from LVSC. *Id.* at pp.  
7 211-232; see also Exhibit B to the Reply.

8 Jacobs allegations do not provide any evidence that LVSC, through Adelson and Leven,  
9 exercises "complete control" over SCL. Attendance at Board meetings, recruitment and hiring of  
10 senior executives, directing general policy, including high-level financial and development  
11 decisions, are all appropriate parental actions that do not indicate an excessive level of control  
12 sufficient to apply a parent's contacts to its subsidiary for jurisdictional purposes. See *Hargrave*,  
13 710 F.2d at 1160 (finding that even where parent had "complete authority" over general policy and  
14 financial decisions, its in-forum contacts could not be imputed to the subsidiary for jurisdictional  
15 purposes); see also *Walker v. Newgent*, 583 F.2d 163, 167 (5th Cir. 1978) (noting that 100% stock  
16 ownership and commonality of officers and directors is insufficient to impute contacts to establish  
17 general jurisdiction, and requiring proof of control by parent over internal business operations and  
18 affairs of the subsidiary).

19 Additionally, all of Jacobs' allegations of Adelson's and Leven's actions regarded meetings  
20 and directives issued to Jacobs himself, in his capacity as SCL's President and CEO. See Complaint  
21 at ¶¶ 26; see also Opposition at pp. 3-9. In other words, Adelson's and Leven's alleged actions  
22 involved only high-level corporate functions, and were directed to the individual who occupied the  
23 highest executive position in the company.

24 Finally, and perhaps most fundamentally, in order to satisfy the "substantial or continuous  
25 and systematic" requirements, courts examine a defendant's intentional conduct that is actually  
26 directed at the forum state. See *Kumarelas v. Kumarelas*, 16 F.Supp.2d 1249, 1254 (D. Nev. 1998).  
27 Here, Jacobs' allegations concern directives or actions taken by Adelson and Leven that were  
28 directed at SCL in Macau, not actions taken by SCL directed to Nevada. The alleged actions of

1 Adelson and Leven therefore cannot be used to demonstrate any "substantial or continuous and  
2 systematic" contact necessary for general jurisdiction.

3 Therefore, under no circumstances do Jacobs' allegations regarding Adelson's and Leven's  
4 alleged activity support the District Court's decision to apply LVSC's Nevada contacts to SCL for  
5 the determination of general personal jurisdiction.

6 2. *Jurisdiction over a foreign corporation cannot be based solely on*  
7 *activities of directors in the jurisdiction*

8 The mere presence of directors in the forum state is insufficient to establish general  
9 jurisdiction over a foreign corporation. See *Gordon*, 300 S.W.3d at 649 ("[Appellant's] lawyer has  
10 pointed to no case holding that corporate officers or directors maintaining an office or a residence is  
11 sufficient to establish general jurisdiction over the corporation. And with good reason. A  
12 corporation is a distinct legal entity that exists separate from its shareholders, officers and  
13 directors."). Were the law otherwise, corporations would be subject to jurisdiction in forums in  
14 which they otherwise are not subject to jurisdiction under the applicable due process principles  
15 described above. See *Firouzabadi*, 110 Nev. at 1352. In other words, there is no "director  
16 exception" to the requirements of due process.

17 3. *SCL's alleged participation in an intra-corporate bookkeeping*  
18 *process is insufficient as a matter of law to establish general personal*  
19 *jurisdiction*

20 In his Opposition to SCL's Motion, and again at the March 15, 2011 hearing, Jacobs made  
21 certain (false) allegations that SCL utilized a process, referred to by LVSC as Inter-Company  
22 Accounting Advice<sup>6</sup> ("IAA"), to "move money for customers by transferring funds electronically  
23 from Asia to LVSC or affiliates in Las Vegas." See Opposition at p. 8, lines 8-13. Jacobs' counsel  
24 repeated this allegation at the March 15, 2011 hearing. See Transcript, pp. 54-57.

25  
26  
27 <sup>6</sup> As explained in SCL's Reply, LVSC and VML ceased use of the "Affiliate Transfer Advice" moniker, erroneously  
28 identified by Jacobs, and currently refer to the system as "Inter-Company Accounting Advice," which removed the  
"Transfer" term because it incorrectly suggested that these bookkeeping entries result in the transfer of funds when in  
fact no funds are transferred when such an entry is made. See Affidavit of Patricia L. Green, attached to the Reply.

1 Judge Gonzalez at the hearing apparently recognized correctly that these funds were casino  
2 patron funds, not property of SCL, and recognized that the IAA process did not constitute an actual  
3 transfer of funds, but rather was a bookkeeping exercise used for "marketing" purposes. *Id.* at p. 58,  
4 lines 9-10. As explained below, SCL was not a party to this bookkeeping process. Nonetheless, the  
5 District Court did not make an explicit finding, as supported by SCL's proffered evidence and  
6 Jacobs' own evidence, that SCL has no involvement with the IAA process.

7 The IAA process, set forth in evidence by SCL in its Reply supported by three separate  
8 affidavits and acknowledged by the District Court – accounts for funds on deposit either in Macau  
9 or Las Vegas that belong to patrons and are made available to respective patrons at properties in Las  
10 Vegas or Macau through bookkeeping entries. *See* IAA Affidavits. No funds are transferred when  
11 an IAA entry is made, and the "receiving" entity merely makes the value of the deposited funds  
12 available to the patron. *Id.*

13 However, even if Jacobs' allegations are taken as true, they are still insufficient, either on  
14 their own or analyzed within the "control commensurate with investment status" test, to establish  
15 general jurisdiction over SCL.

16 The IAA process constitutes does not demonstrate that SCL "conducted a 'continuous and  
17 systematic part of its general business' in the forum state," as required to support a finding of  
18 general jurisdiction. *See Fields v. Ramada Inn, Inc.*, 816 F. Supp. 1033, 1036 (E.D. Pa. 1993); *see*  
19 *also Romann v. Geissenberger Man. Corp.*, 865 F. Supp. 255 (E.D. Pa. 1994) (no general  
20 jurisdiction even though defendant made \$230,000 in direct sales to forum state and was qualified to  
21 do business in the forum state); *Arroyo v. The Mountain School, et al.*, 892 N.Y.S.2d 74, 75-76  
22 (2009) (holding that maintaining a business relationship with in-forum entity and even transfers of  
23 funds did not support finding of general jurisdiction, even when defendant had previously invested  
24 nearly \$14 million with in-forum entities and maintained an account in the forum state for the  
25 purpose of receiving wire transfers).

26 Additionally, as discussed above, participation in a parent company's accounting procedures  
27 or marketing efforts is insufficient to show either alter ego or an excessive degree of control. *See*  
28 *Fletcher v. Atex, Inc.*, 68 F.3d 1451, 1459-60 (2d Cir. 1995) (appropriate parental involvement

1 includes overseeing accounting procedures); *Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d  
2 1175, 1177 (9th Cir. 1980) (co-marketing efforts insufficient to demonstrate unity of interest  
3 between entities).

4 Thus, Jacobs' allegations are insufficient, either individually or collectively, under any test  
5 that this Court decides is appropriate, to demonstrate that the District Court can properly exercise  
6 general jurisdiction over SCL.

7 4. *SCL provided uncontroverted evidence that SCL had no involvement*  
8 *in the IAA process, which did not involve the transfer of (player's)*  
9 *funds to or from Nevada*

10 During the March 15, 2011 hearing on SCL's Motion, Jacobs' counsel repeated the  
11 allegations in the Opposition regarding SCL's claimed involvement with the IAA process, and  
12 further alleged that "[t]hese reflected from Sands China players \$68 million in credit deposits and  
13 credits for gambling activities, not just for Sands China play, but for Las Vegas play, as well." See  
14 Transcript, p. 55, lines 4-7. Jacobs' counsel also introduced an exhibit at the hearing which  
15 purported to summarize the contents of a purported ledger (the "Ledger"), attached to Jacobs'  
16 Opposition at Exhibit 14, that Jacobs claimed listed transactions and amounts processed by this  
17 system from February 24, 2007 to March 29, 2010. The exhibit shown at the hearing consisted  
18 simply of the number "\$68 Million," above the term "Sands China," with an arrow pointing to  
19 "LVSC" in Las Vegas. See Jacobs' Hearing Exhibits.

20 In response to Jacobs' claim that SCL routinely transferred casino player funds from Macau  
21 to Las Vegas, SCL provided the District Court with extensive evidence exposing Jacobs' allegations  
22 as completely false and misleading, including three separate affidavits stating, unequivocally, that  
23 (1) SCL was not a party to the IAA process, which is handled on the Macau side by the Macau  
24 gaming license subconcessionaire, VML, (2) that the funds in question were patron funds, and (3)  
25 that the entries described in the Ledger were bookkeeping entries and were not evidence of  
26 electronic transfers. See IAA Affidavits.

27 Thus, SCL had provided the District Court with uncontested affidavits showing that no  
28 funds, either belonging to SCL or gaming patrons, were ever transferred to Nevada, and that VML,

1 not SCL, handled the IAA entries from Macau. Additionally, the Ledger submitted by Jacobs  
2 provided further evidence that VML was involved in the IAA process by identifying VML as the  
3 originating entity, and by including IAA entries from February 4, 2007 – nearly two and a half years  
4 before SCL was even formed. *See* Exhibit 14 to the Opposition; *see also* Global Offering Document  
5 at p. 75.

6 As to the first point, SCL provided three separate affidavits that first noted that LVSC and its  
7 affiliates ceased use of the "Affiliate Transfer Advice" moniker and now refer to the system as  
8 "Inter-Company Accounting Advice ("IAA") and removed the "Transfer" term as it incorrectly  
9 suggested that these transactions result in the transfer of funds when in fact no funds are transferred  
10 when an IAA transaction takes place. *See* IAA Affidavits. Additionally, at the top of each page in  
11 the ledger Jacobs submitted to the District Court as Exhibit 14 to his Opposition, there is a notation  
12 identifying the originating and receiving entity for each IAA transaction. *See* Exhibit 14 to  
13 Opposition. Specifically, the ledger submitted by Jacobs lists IAA transactions beginning on  
14 February 24, 2007. *Id.* It is undisputed that SCL was not formed until July 2009. *See* Global  
15 Offering Document at p. 75. Jacobs thus ascribes to SCL actions that took place more than two  
16 years before SCL even came into being. Consistent with this fact, the "From" entity is not identified  
17 as SCL, but as "Venetian Macau." *See* Exhibit 14 to Opposition. Again, this comports with the  
18 uncontroverted fact that VML holds the Macau gaming subconcession, and is the only entity  
19 authorized to deal, directly or indirectly, with gaming patron funds. *See* Global Offering Document,  
20 pp. 75-93.

21 As to the second and third points, the IAA process identifies transactions where funds on  
22 deposit in Macau at VML that belong to patrons are made available to patrons in Las Vegas through  
23 mere bookkeeping entries. *See* IAA Affidavits. Contrary to what Jacobs alleged, an IAA  
24 transaction does not constitute a transfer of funds owned by either VML or SCL, and no player  
25 funds are transferred. Instead, the patron account is zeroed out at VML by a debit to the patron  
26 account, and a credit entry is made by VML for an account payable to VCR, and a credit is inputted  
27 to the patron account by VCR in Las Vegas and a debit is entered by VCR for a receivable from  
28 VML. *Id.* Simply put, contrary to Jacobs' assertions, an IAA does not constitute a transfer of funds

1 either from or to Nevada and, as relevant to the jurisdictional analysis, do not involve funds owned  
2 or controlled by SCL.

3 In the face of this clear evidence however, the District Court either ignored or misunderstood  
4 the actual facts in this case and accepted Jacobs' allegations as true. To the extent that Jacobs' false  
5 allegations regarding the IAA process formed the basis of the District Court's decision to deny  
6 SCL's Motion, the District Court committed clear error because the uncontroverted evidence  
7 showed that SCL was not a party to the IAA's, which did not entail the transfer of (player) funds, to  
8 or from Nevada, and this Court should order the District Court to reverse its decision and dismiss  
9 SCL from this case for lack of personal jurisdiction.

10 v. The Exercise of Personal Jurisdiction Over SCL is Unreasonable

11 In making its decision to deny SCL's Motion, the District Court made no findings regarding  
12 the reasonableness of the exercise of personal jurisdiction over SCL. The due process requirements  
13 associated with the determination of personal jurisdiction demand that the exercise of personal  
14 jurisdiction must be "reasonable," and must comport with the notions of fair play and substantial  
15 justice. *See FDIC v. British-American Ins. Co.*, 828 F.2d 1439 (9<sup>th</sup> Cir. 1987).

16 To determine whether the exercise of personal jurisdiction is "reasonable," the court must  
17 examine seven factors: (1) the extent of SCL's purposeful contacts; (2) the burden on SCL of having  
18 to defend an action in Nevada; (3) the extent to which jurisdiction conflicts with SCL's domiciliary  
19 country; (4) Nevada's interest in adjudicating the dispute; (5) which forum is the most efficient for  
20 resolving the dispute; (6) Jacobs' interest in choosing Nevada as a forum; and (7) the existence of  
21 alternative forums to adjudicate Jacobs' claims. *See FDIC*, 828 F.2d at 1442.

22 As to the first factor, SCL has no purposeful contacts with Nevada. This fact therefore  
23 weighs in favor of dismissal. In his Opposition, Jacobs conceded that his claims against SCL have  
24 nothing to do with any actions taken in Nevada, when he failed to respond to SCL's argument that  
25 the District Court could not exercise specific personal jurisdiction over SCL. As discussed above,  
26 neither the presence of a controlling shareholder in Nevada, nor the actions taken in Nevada by a  
27 non-executive SCL director and a special advisor to the SCL Board constitute "purposeful" contacts  
28 with Nevada for jurisdictional purposes.

1 In reference to the second factor, SCL is a Cayman Islands company with its registered  
2 office in Hong Kong and its principal place of business in Macau. *See* Global Offering Document at  
3 pp. 75-76. It does no business in Nevada or elsewhere in North America. *Id.* The alleged contract  
4 at issue in Jacobs' claim against SCL was executed in Macau and is governed by Hong Kong law.  
5 *See* Stock Option Grant Letter. SCL will be forced to incur substantial costs to defend this case in  
6 Nevada. Therefore, this factor also weighs heavily in favor of dismissal.

7 The third and fourth factors also show the exercise of jurisdiction over SCL to be  
8 unreasonable. To start, the District Court's continued exercise of jurisdiction over SCL would  
9 significantly conflict with Hong Kong's interest in protecting public companies with stock listed on  
10 the HKEx. Conversely, SCL's and Jacobs' lack of connections with Nevada mean that Nevada has  
11 no interest in resolving any dispute Jacobs has with SCL regarding an option to purchase SCL stock.

12 As to the fifth factor, which forum is the most efficient for resolving the dispute, the  
13 overwhelming majority of evidence and witnesses will be located in Macau and Hong Kong. SCL  
14 is a HKEx listed company, which means that the HKEx Rules regarding stock options, not just the  
15 applicable Hong Kong civil law, will bear upon Jacobs' claim against SCL. Clearly, both Hong  
16 Kong and Macau are decidedly more efficient forums for resolving Jacobs' claims against SCL.

17 Additionally, in specific reference to the fifth factor, the presence of a Hong Kong choice-of-  
18 law provision in the Stock Option Grant Letter weighs strongly in favor of denying the exercise of  
19 jurisdiction in Nevada and requiring Jacobs to litigate his claim against SCL in Macau or Hong  
20 Kong. Courts have concluded that a court may decline to exercise jurisdiction when the chosen law  
21 conflicts with, or is substantially different from that in the forum state, and may therefore be  
22 difficult for the forum court to administer. *See Cubbage*, 744 F.2d at 671. The District Court has  
23 acknowledged that if the case continues in Nevada, experts in Hong Kong law may be required to  
24 assist the parties, and the District Court, with navigating the substantial procedural and substantive  
25 differences between U.S. and Hong Kong law. In particular, Hong Kong law is based on British  
26 law. As such, one fundamental difference (among others, such as the availability of a jury trial)  
27 between litigating pursuant to Hong Kong law as opposed to Nevada law, is that Jacobs is free to  
28 pursue his claim to have retained rights to exercise an option to purchase SCL stock following his

1 termination without fear of having to pay SCL's fees and costs when it prevails. These differences  
2 are not immaterial, and the difficulty presented by implementing Hong Kong law in a Nevada  
3 district court weighs strongly in favor of dismissal.

4 Lastly, Hong Kong and Macau both have an available judicial system, and both have a  
5 strong interest in overseeing the conduct of those entities that list their stock (Hong Kong) and do  
6 business (Macau) there.

7 In whole, each reasonableness factor that the District Court was bound to consider weighed  
8 in favor of granting SCL's Motion and dismissing it from the pending action. The District Court's  
9 exercise of jurisdiction over SCL is unreasonable and would offend the principles of due process if  
10 allowed to continue. Therefore, SCL respectfully requests that this Court grant the requested  
11 extraordinary relief.



Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

VI.

CONCLUSION

The District Court erred in denying SCL's Motion to Dismiss for Lack of Personal Jurisdiction. General jurisdiction does not exist in this case because SCL made no personal or purposeful contacts with Nevada. Specifically, general jurisdiction over SCL cannot be based on its corporate contacts with its majority shareholder, LVSC. Moreover, the exercise of personal jurisdiction in this case would offend the principles of fair play and substantial justice, which the District Court did not consider when making its ruling.

Based upon the foregoing, SCL respectfully requests that this Court issue a Writ to the Eighth Judicial District Court to grant its Motion to Dismiss for Lack of Personal Jurisdiction and to prohibit the District Court from exercising personal jurisdiction, either general or specific, over SCL in this matter.

Dated May 5, 2011.

GLASER WEIL FINK JACOBS HOWARD,  
AVCHEN & SHAPIRO LLP

By: 

Patricia L. Glaser, ESQ.  
Pro Hac Vice Admitted  
Mark G. Krum, ESQ.  
Nevada Bar No. 10913  
Andrew D. Sedlock, ESQ.  
Nevada Bar No. 9183  
3763 Howard Hughes Parkway, Suite 300  
Las Vegas, Nevada 89169

*Attorneys for Petitioner Sands China Ltd.*

Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

VERIFICATION

STATE OF NEVADA )  
COUNTY OF CLARK )ss:

I, Andrew D. Sedlock, being first duly sworn, deposes and states:

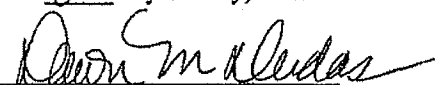
1. I am an attorney with the law firm of GLASER WEIL FINK JACOBS HOWARD, AVCHEN & SHAPIRO LLP, counsel of record for Petitioner, Sands China Ltd. named in the foregoing Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition (the "Petition") and know the contents thereof.

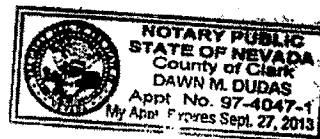
2. The facts stated in the Petition are true of my knowledge, and to those matters that are on information and belief, such matters I believe to be true.

3. I make this verification on behalf of Petitioner Sands China Ltd.

  
Andrew D. Sedlock

Subscribed and sworn to before me  
this 5<sup>th</sup> day of May, 2011

  
NOTARY PUBLIC in and for  
said County and State  
My Commission expires 9-27-13



FILED

MAY 17 2011

CLERK OF COURT

1 MSTY  
2 Patricia L. Glaser, (Pro Hac Vice Admitted)  
3 Mark G. Krum, State Bar No. 10913  
4 Andrew D. Sedlock, State Bar No. 9183  
5 GLASER WEIL FINK JACOBS  
6 HOWARD AVCHEN & SHAPIRO LLP  
7 3763 Howard Hughes Parkway, Suite 300  
8 Las Vegas, Nevada 89169  
9 Telephone: (702) 650-7900  
10 Facsimile: (702) 650-7950  
11 email: pglaser@glaserweil.com  
12 mkrum@glaserweil.com  
13 asedlock@glaserweil.com

14 Attorneys for Defendant  
15 Sands China Ltd.

A-10-627691-B  
MSTY  
Motion to Stay  
1416534



16 DISTRICT COURT  
17 CLARK COUNTY, NEVADA

18 STEVEN C. JACOBS,  
19 Plaintiff,

20 v.

21 LAS VEGAS SANDS CORP., a Nevada  
22 corporation; SANDS CHINA LTD., a Cayman  
23 Island corporation; DOES I through X; and  
24 ROE CORPORATIONS I through X,  
25 Defendants.

Case No.: A-10-627691-C

Dept. No.: XI

DEFENDANT SANDS CHINA LTD.'S  
MOTION TO STAY PROCEEDINGS  
PENDING WRIT PETITION ON ORDER  
SHORTENING TIME

DATE:  
TIME:

FILE WITH  
MASTER CALENDAR

26 ///  
27 ///  
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31 ///

Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro

RECEIVED  
MAY 17 2011  
CLERK OF THE COURT

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PA141

Glaser Weil Fink Jacobs  
Howard Archen & Shapiro LLP

1 Defendant Sands China Ltd. ("SCL" or "Defendant"), respectfully moves this Court, on  
2 shortened time pursuant to EDCR 2.26, to stay the proceedings in this case as against SCL only  
3 pending disposition by the Nevada Supreme Court of SCL's Petition for Writ of Mandamus or in  
4 the Alternative, Writ of Prohibition, filed on May 5, 2011. The Petition for Writ of Mandamus or in  
5 the Alternative, Writ of Prohibition, which has been separately served on this Court and Plaintiff  
6 Steven C. Jacobs ("Jacobs" or "Plaintiff"), demonstrates that (i) an important issue of law requires  
7 clarification, (ii) considerations of sound judicial economy and administration militate in favor of  
8 granting the Petition, and (iii) SCL has no "plain, speedy or adequate remedy" to challenge the  
9 Court's ruling denying SCL's Motion to Dismiss for Lack of Personal Jurisdiction. The Petition for  
10 Writ of Mandamus or in the Alternative, Writ of Prohibition further demonstrated that pursuant to  
11 the applicable law, the Court was required to grant the Motion to Dismiss for Lack of Personal  
12 Jurisdiction and dismiss SCL from the pending litigation. This Motion to Stay Proceedings Pending  
13 Writ Petition (the "Motion to Stay") is made to preserve SCL's due process rights which are the  
14 subject of the Petition, conserve limited judicial resources and prevent the parties (and SCL in  
15 particular) from incurring substantial costs and expenses in proceeding with this case before the  
16 Nevada Supreme Court decides whether to exercise its discretion to consider the Petition for Writ of  
17 Mandamus or in the Alternative, Writ of Prohibition.

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Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

1 This Motion to Stay is made and based on the papers and pleadings on file herein, the  
2 following Memorandum of Points and Authorities attached hereto, the Affidavit of Mark G. Krum,  
3 Esq., the Petition for Writ of Mandamus or in the Alternative, Writ of Prohibition filed with the  
4 Nevada Supreme Court, and any oral argument as may be heard by the Court.

5 DATED this 16th day of May, 2011.

6 GLASER WEIL FINK JACOBS  
7 HOWARD AVCHEN & SHAPIRO LLP

8 By: [Signature]  
9 Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)  
10 Mark G. Krum, Esq. (NBN: 10913)  
11 Andrew D. Sedlock, Esq. (NBN: 9183)  
12 3763 Howard Hughes Pkwy., Ste. 300  
13 Las Vegas, Nevada 89169  
14 Telephone: (702) 650-7900  
15 Facsimile: (702) 650-7950

16 *Attorneys for Defendant Sands China Ltd.*

17 **APPLICATION FOR ORDER SHORTENING TIME**

18 SCL applies for an Order Shortening Time for the hearing on its Motion to Stay Proceedings  
19 Pending Writ Petition based upon the following Affidavit of Mark G. Krum, Esq.

20 DATED this 16th day of May, 2011.

21 GLASER WEIL FINK JACOBS  
22 HOWARD AVCHEN & SHAPIRO LLP

23 By: [Signature]  
24 Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)  
25 Mark G. Krum, Esq. (NBN: 10913)  
26 Andrew D. Sedlock, Esq. (NBN: 9183)  
27 3763 Howard Hughes Pkwy., Ste. 300  
28 Las Vegas, Nevada 89169  
Telephone: (702) 650-7900  
Facsimile: (702) 650-7950

*Attorneys for Defendant Sands China Ltd.*

Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

**AFFIDAVIT OF MARK G. KRUM, ESQ. IN SUPPORT OF APPLICATION  
FOR ORDER SHORTENING TIME**

STATE OF NEVADA        )  
                                  )ss:  
COUNTY OF CLARK        )

I, Mark G. Krum, being first duly sworn, deposes and says as follows:

1. I am a partner with the law firm of GLASER WEIL FINK JACOBS Howard, Avchen & SHAPIRO LLP, counsel of record for Sands China Ltd. ("SCL") in the above-referenced matter. I have personal knowledge of the facts set forth herein, and I am competent to testify thereto if called upon to do so. I make this Affidavit pursuant to EDCR 2.26 in support of SCL's Motion to Stay.

2. This Motion to Stay requests a stay of this case as against SCL only pending disposition by the Nevada Supreme Court of SCL's Petition for Writ of Mandamus or in the Alternative, Writ of Prohibition, filed on May 5, 2011. (A true and accurate copy of the Petition for Writ of Mandamus or in the Alternative, Writ of Prohibition is attached hereto as **Exhibit A.**)

3. On April 22, 2011, the Court held an early case conference with the parties and their respective counsel. The parties filed a Joint Status Report following the hearing on April 22, 2011. (A true and accurate copy of the Joint Status Report is attached hereto as **Exhibit B.**)

4. As addressed by the Court at the April 22, 2011 early case conference and reflected in the Joint Status Report filed on April 22, 2011, the parties "anticipate that LVSC's and SCL's respective disclosures will consist of a high volume of documents which include Electronically Stored Information (ESI)."

5. On May 2, 2011, Jacobs' counsel served his "Initial Identification of ESI Search Terms and Date Ranges" (the "Search Terms"). (A true and accurate copy of the Search Terms attached hereto as **Exhibit C.**) The Search Terms identify nearly two hundred (200) different terms proposed to be searched throughout SCL's entire electronic database, including the email accounts of more than eighty (80) different employees and representatives. At a May 9, 2011 "meet and confer" conference (the "Conference") attended by all counsel, Jacobs' counsel agreed to modify the proposed search terms. However, it is clear that the ultimate proposal will call for an extensive if not exhaustive process of search, retrieval, review and production of ESI by SCL.

Glaser, Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

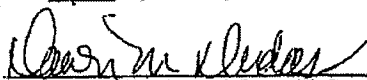
6. Also at the Conference, SCL's counsel advised Jacobs' counsel that a Macau statute [the Macau Personal Data Protection Act (the "Act")] may be an impediment, if not a bar, to SCL retrieving, reviewing and producing certain information and documents, including ESI, that may be subject to Nevada Rule of Civil Procedure ("NRCP") 16 disclosure requirements or that Jacobs may demand be produced. Jacobs' counsel was informed by SCL that this advice was not definitive, and it was accompanied by a suggestion that Jacobs' counsel conduct their own research or engage Macau counsel to do so, so that Jacobs' counsel could develop their own opinions on such issues. In response, Jacobs' counsel advised, among other things, that Jacobs would take the position that American law applied. SCL's counsel understands that advice to be tantamount to an assertion that SCL's obligations under the NRCP, as a defendant in this case, would "trump" SCL's obligations under the Act and therefore require SCL to comply with any order regarding NRCP 16 disclosures or discovery of ESI or other information, even if doing so gave rise to a violation of the Act. Thus, SCL is at risk to be placed in a position whereby it is requested and/or ordered to act in a manner that constitutes or may constitute a violation of the Act.

7. If the Motion to Stay is fully briefed by the parties and heard in the ordinary course, SCL may be required to undertake actions it maintains are in violation of its due process rights, which are the subject of the Petition for Writ of Mandamus or in the Alternative, Writ of Prohibition before the Nevada Supreme Court.

8. It is respectfully submitted that this Court is justified in shortening the time for briefing and hearing on the Motion to Stay and that the Motion to Stay should be set for hearing at the Court's earliest available calendar date.

EXECUTED May 16, 2011.

Subscribed and Sworn to before me on  
this 16<sup>th</sup> day of May, 2011.

  
Notary Public, in and for said County and State.

  
Mark G. Krum, Esq.

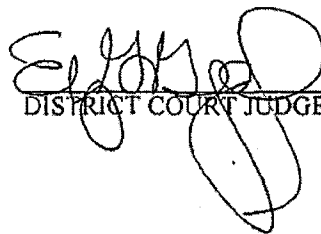


**ORDER SHORTENING TIME**

The Court, having considered Defendant's Application for an Order Shortening Time, the Affidavit of Mark G. Krum, Esq., the Memorandum of Points and Authorities submitted with the Motion to Stay Proceedings Pending Writ Petition, and good cause appearing therefore,

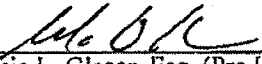
IT IS HEREBY ORDERED that the time for hearing Defendant's Motion to Stay Proceedings Pending Writ Petition is shortened to the 26 day of May, 2011, at the hour of 9:00 a.m. in the above-entitled Court.

DATED this 17 day of May, 2011.

  
DISTRICT COURT JUDGE

Respectfully Submitted by:

GLASER WEIL FINK JACOBS  
HOWARD AVCHEN & SHAPIRO LLC

By:   
Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)  
Mark G. Krum, Esq. (NBN: 10913)  
Andrew D. Sedlock, Esq. (NBN: 9183)  
3763 Howard Hughes Pkwy., Ste. 300  
Las Vegas, Nevada 89169  
Telephone: (702) 650-7900  
Facsimile: (702) 650-7950

*Attorneys for Defendant Sands China Ltd.*

Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

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Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES; and

TO: COUNSEL FOR ALL INTERESTED PARTIES;

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion to Stay Proceedings Pending Writ Petition on Order Shortening Time on for hearing before the above-entitled Court on the \_\_\_\_\_ day of \_\_\_\_\_, 2011, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_.m. on said date, in Department XI, or as soon thereafter as counsel can be heard.

DATED this 16th day of May, 2011.

GLASER WEIL FINK JACOBS  
HOWARD, AVCHEN & SHAPIRO LLP

By: 

Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)  
Mark G. Krum, Esq. (NBN: 10913)  
Andrew D. Sedlock, Esq. (NBN: 9183)  
3763 Howard Hughes Pkwy., Ste. 300  
Las Vegas, Nevada 89169  
Telephone: (702) 650-7900  
Facsimile: (702) 650-7950

*Attorneys for Defendant Sands China Ltd.*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 SCL is a Cayman Islands company that does business exclusively in Macau Special  
4 Administrative Region (SAR) of the People's Republic of China ("Macau") and Hong Kong SAR of  
5 the People's Republic of China ("Hong Kong"). See Ex. A at p. 11. As alleged in Jacobs'  
6 Complaint and claim against SCL for breach of contract, when he was employed in Macau as SCL's  
7 President and Chief Executive Officer, SCL presented Jacobs with a letter (the "Stock Option Grant  
8 Letter") that provided for a grant to Jacobs of an option to purchase 2.5 million shares of SCL stock,  
9 which is listed on The Stock Exchange of Hong Kong Limited ("HKEx") and subject to the HKEx  
10 rules. *Id.* at p. 12. The Stock Option Grant Letter states that it is governed by and construed in  
11 accordance with Hong Kong law. *Id.* The Stock Option Grant Letter also expressly conditioned  
12 Jacobs' ability to exercise the option to purchase SCL stock on Jacobs' continued employment for  
13 SCL, and likewise automatically terminated any such right if Jacobs' employment for SCL was  
14 terminated before any portion of the option vested (which is exactly what occurred). *Id.* at pp. 12-  
15 13.

16 SCL responded to Jacobs' Complaint on December 22, 2010 by filing the Motion to Dismiss  
17 for Lack of Personal Jurisdiction (the "Motion").<sup>1</sup> A hearing was held on March 15, 2011, at which  
18 time the Court denied the Motion and ruled that it could exercise general personal jurisdiction over  
19 SCL due to the actions taken in Nevada by Sheldon Adelson ("Adelson"), a non-executive director  
20 and Chairman of SCL's Board of Directors (the "Board"), and by Michael Leven ("Leven"), a  
21 special advisor to SCL's Board of Directors. Adelson and Leven also are officers and directors of  
22 Las Vegas Sands Corp. ("LVSC"), which is SCL's majority shareholder by virtue of its ownership  
23 of approximately seventy percent (70%) of SCL's outstanding shares. See Ex. A at p. 12. Adelson  
24 and Leven held their respective positions as a member of, and special advisor to, SCL's Board of  
25 Directors by virtue of LVSC's status as SCL's majority shareholder. *Id.*

26  
27 <sup>1</sup> SCL also filed a Motion to Dismiss for Failure to State a Claim on April 20, 2011, which is scheduled for hearing with  
28 this Court on June 9, 2011. That motion was filed without waiver of the rights asserted in the Petition for a Writ of  
Mandamus, or in the Alternative, Writ of Prohibition.

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1 SCL subsequently filed the Petition for Writ of Mandamus or in the Alternative, Writ of  
2 Prohibition (the "Petition"), which requests an Order from the Nevada Supreme Court compelling  
3 this Court to grant the Motion, dismiss SCL from the pending suit and cease the continued exercise  
4 of personal jurisdiction over SCL.

5 These proceedings should be stayed until further direction is received from the Nevada  
6 Supreme Court for a number of reasons, including:

- 7 • The purpose of SCL's Petition is to protect SCL's due process rights and terminate  
8 this Court's exercise of personal jurisdiction over SCL. If the Motion to Stay is  
9 denied, the purpose of the Petition will be defeated at each stage of the litigation,  
10 including the imminent NRCP 16 disclosures and ensuing discovery process, because  
11 SCL will have been subjected to these proceedings in derogation of the due process  
12 rights the Petition seeks to protect;
- 13 • SCL will suffer irreparable or serious harm by the Court's continued exercise of  
14 personal jurisdiction. Absent a stay, SCL will be required to disclose documents and  
15 information that will remain in Jacobs' possession, altering the status quo in a  
16 manner that likely cannot be remedied even if the Petition is granted. Additionally,  
17 due to a Macau data privacy statute, it may be impossible for SCL to comply with  
18 certain NRCP 16 disclosure obligations and with certain discovery requests Jacobs  
19 will propound without violating Macau's data privacy laws, which means that SCL  
20 would be at risk to be required to take actions in this case that may constitute  
21 violations of Macau law to which SCL is subject;
- 22 • Jacobs will suffer no harm if the stay is granted, because a mere delay in the  
23 proceedings is insufficient to demonstrate "irreparable harm;" and
- 24 • SCL is likely to prevail on the merits of its Petition for the reasons detailed herein.

25  
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## II. STATEMENT OF PERTINENT FACTS

The Court is familiar with the facts surrounding Jacobs' claims and jurisdictional contentions regarding Adelson's and Leven's alleged actions taken from their LVSC offices directed at SCL in Macau. The Court likewise is familiar with its ruling denying the Motion and its Order entered April 1, 2011 (the "Order"). See true and accurate copy of the Order, attached hereto as Exhibit D. Therefore, those facts will not be restated here.

Following the entry of the Order, SCL exercised its right to seek extraordinary writ relief from the Nevada Supreme Court by filing the Petition asking the Nevada Supreme Court to intervene in this case and order this Court to grant the Motion, dismiss SCL from the pending lawsuit and cease the improper exercise of personal jurisdiction over SCL. See SCL's Notice of Filing Petition for Extraordinary Writ Relief attached hereto as Exhibit E. This Motion to Stay now seeks to stay the proceeding only against SCL pending disposition of the Petition.

## III. ARGUMENT

### A. Standard of Review.

In ruling on a motion to stay proceedings pending the Nevada Supreme Court's review of a writ petition, the Court should make the following determinations:

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

*Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (explaining that the requirements in NRAP 8(a) apply to writ petitions when the petitioner "seeks to challenge" a decision "issued by the district court") (citing *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948)).

Applying these standards, this Court should stay the proceedings in this case pending the Nevada Supreme Court's disposition of the Petition.

1 **B. The Object of the Petition Will be Defeated Unless A Stay is Granted in the Underlying**  
 2 **Proceedings.**

3 The Nevada Supreme Court has original jurisdiction to issue writs of mandamus. NEV.  
 4 CONST. art. 6 § 4; NRS 34.160. It is entirely within the Supreme Court's discretion to decide  
 5 whether to consider a writ petition, *see Leibowitz v. Eighth Jud. Dist. Ct.*, 119 Nev. 523, 529, 78  
 6 P.3d 515, 519 (2003) (citing NRS 34.170), and the Supreme Court considers various factors in  
 7 deciding whether to exercise this discretion. *See Shapiro*, 98 Nev. at 550 (1982) (holding that the  
 8 Nevada Supreme Court may consider petitions challenging denials of motions to dismiss where (i)  
 9 an important issue of law requires clarification, (ii) considerations of sound judicial economy and  
 10 administration militate in favor of granting the petition, and (iii) the petitioner has no "plain, speedy  
 11 or adequate remedy" to challenge the Court's ruling.

12 However, the Nevada Supreme Court repeatedly has held that both writs of mandamus and  
 13 prohibition are appropriate to challenge rulings on motions to dismiss. *See State ex rel. Dep't of*  
 14 *Highways v. Eighth Judicial Dist. Court*, 95 Nev. 715 (1979) (finding that a writ of mandamus is an  
 15 available tool to challenge a district court's order denying a motion to dismiss); *see also Budget*  
 16 *Rent-A-Car v. Eighth Judicial Dist. Court*, 108 Nev. 483, 484 (1992)

17 Most critically for the purposes of this Motion to Stay, the Nevada Supreme Court has held  
 18 that a district court's failure to quash service or dismiss for lack of personal jurisdiction presents a  
 19 circumstance where there is in fact no "plain, speedy or adequate remedy available in the ordinary  
 20 course of law," and thus necessitates a petition for a writ to halt a trial court's improper exercise of  
 21 personal jurisdiction. *See Shapiro v. Pavlikowski*, 98 Nev. 548 (1982); *State ex rel. Dep't of*  
 22 *Highways v. Eighth Judicial Dist. Court*, 95 Nev. 715 (1979) (finding that a writ of mandamus is an  
 23 available tool to challenge a district court's order denying a motion to dismiss). *Budget Rent-A-Car*  
 24 *v. Eighth Judicial Dist. Court*, 108 Nev. 483, 484 (1992) (finding that district court's erroneous  
 25 refusal to quash service of process for lack of personal jurisdiction presented a circumstance where  
 26 petitioner had "no plain, speedy or adequate remedy..."); *see also Gojack v. Second Judicial Dist.*  
 27 *Court*, 95 Nev. 443 (1979); *Wolzinger v. Eighth Judicial Dist. Court*, 105 Nev. 160 (1989).

28 The willingness of the Nevada Supreme Court to grant writ petitions regarding personal  
 jurisdiction issues reflects the fact that matters concerning the determination of personal jurisdiction

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1 necessarily involve threshold, fundamental due process considerations. *See Int'l Shoe Co. v.*  
2 *Washington*, 326 U.S. 310, 316 (1945); *see also Helicopteros Nacionales de Columbia, S.A. v. Hall*,  
3 466 U.S. 408, 414 (1984). The due process protections at issue in a challenge to personal  
4 jurisdiction guarantee fair process, and protect certain fundamental rights and liberty interests. *See*  
5 *Reno v. Flores*, 507 U.S. 292, 301-302 (1993). Such protections are not merely ancillary to a  
6 litigant's protected rights, but repeatedly have been recognized as "fundamental rights and liberties  
7 which are, objectively, 'deeply rooted in this Nation's history and tradition,'" and are "implicit in  
8 the concept of ordered liberty," such that "neither liberty nor justice would exist if they were  
9 sacrificed." *See Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934).

10 The protection of SCL's fundamental due process rights is central to the scope and purpose  
11 of the Petition, which requests an Order from the Nevada Supreme Court dismissing SCL and  
12 prohibiting any further exercise of personal jurisdiction over SCL. In the absence of personal  
13 jurisdiction, the Court cannot enter or enforce any orders against SCL, and SCL is not subject to  
14 service, discovery requests, or any other demands whatsoever incident to an ongoing litigation. *See*  
15 *Monteverde, et al. v. Selnick*, 223 B.R. 755, 757 (D. Nev. 1998) (ruling that without personal  
16 jurisdiction, the court cannot enter or enforce any orders, even by contempt proceedings). The  
17 ongoing violation of SCL's due process rights through the continued exercise of personal  
18 jurisdiction over SCL gives rise to a need for a stay and shows that the object of the Petition itself  
19 will be defeated if the stay is denied.

20 Here, the issue is not whether Jacobs must sue SCL in Nevada, in federal court or in some  
21 other state. The issue is whether Jacobs must sue SCL in another country, which necessarily will  
22 employ different rules of procedure and, ultimately, a different (non-jury) finder of fact. Every  
23 aspect of the dispute resolution process SCL is entitled to have employed is in jeopardy, from the  
24 present to judgment and appeal. With each step in the litigation process, SCL's rights and the  
25 concept of due process are irreparably undermined. For the same reasons, the object of the Petition  
26 is defeated.

27 The NRCP 16 disclosures and discovery process about to commence illustrates this  
28 phenomenon. Through these processes, SCL will be required to produce documents and

1 information by virtue of application of the NRCP and by the discovery Orders issued by the Court.  
 2 Only a stay will delay subjecting SCL to jurisdiction during the time that this very issue – whether  
 3 SCL is subject to this Court’s jurisdiction – is pending before the Nevada Supreme Court.  
 4 Therefore, to avoid defeating the purpose of the Petition and interfering with SCL’s right to seek  
 5 extraordinary writ relief from the Nevada Supreme Court, this Court should stay these proceedings  
 6 against SCL.

7 **C. SCL Will Suffer Irreparable Harm Unless the Stay is Granted.**

8 The Nevada Supreme Court has stated that when a party can show that when the object of a  
 9 petition or appeal will likely be defeated if a stay is denied, the “irreparable or serious harm” factor  
 10 “will not generally play a significant role in the decision whether to issue the stay.” *See Mikohn*  
 11 *Gaming Corp. v. McCrea*, 120 Nev. 248, 253 (2004). However, if a party can demonstrate that it  
 12 will face irreparable or serious harm if a stay is denied, that should be considered in the stay  
 13 analysis. *Id.*

14 The contract on which Jacobs bases his breach of contract claim against SCL contains a  
 15 Hong Kong choice of law provision. This was recognized by the Court at the March 15, 2011  
 16 hearing, when it anticipated the need to retain experts in Hong Kong law prior to trial.

17 This action going forward against SCL in Nevada instead of Hong Kong (or Macau) will  
 18 affect every stage of the litigation in this case, including the ongoing discovery process. As such,  
 19 merely allowing this case to proceed against SCL during the pendency of the Petition necessarily  
 20 will result in depriving SCL of the rights and protections available for it under Hong Kong law. If  
 21 the Nevada Supreme Court ultimately grants the relief sought by SCL and directs this Court to  
 22 dismiss SCL for lack of personal jurisdiction, how can what has occurred here (whether it be the  
 23 identification of persons with knowledge pursuant to NRCP 16, invasive electronic discovery or  
 24 anything else) be undone? Will Jacobs return or dispose of the documents and information he has  
 25 obtained in the interim? Will his counsel be disqualified so as to insure that such information is not  
 26 put to use unless otherwise properly obtained?<sup>2</sup>

27 \_\_\_\_\_  
 28 <sup>2</sup> Allowing this case to proceed pending a ruling on the Petition may affect the rights of the other parties in this case, as well. Again, Jacobs is now free to pursue discovery and obtain documents and information that may be used in his

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1 In this case, the action is still in the preliminary stages and the discovery process is about to  
 2 commence. However, as addressed by the Court at the April 22, 2011 early case conference and  
 3 codified by the Joint Status Report filed on April 22, 2011, the parties "anticipate that LVSC's and  
 4 SCL's respective disclosures will consist of a high volume of documents which include  
 5 Electronically Stored Information (ESI)." See Ex. B. On May 2, 2011, Jacobs' counsel served his  
 6 Search Terms. See Ex. C. The Search Terms identify nearly two hundred (200) different terms  
 7 proposed to be searched throughout SCL's entire electronic database, including the email accounts  
 8 of more than eighty (80) different employees and representatives in multiple locations in Asia and  
 9 the U.S. *Id.* At a May 9, 2011 "meet and confer" Conference attended by all counsel, Jacobs'  
 10 counsel agreed to modify the proposed Search Terms. See Affidavit of Mark G. Krum ("Krum  
 11 Aff'd"). However, it is clear that the ultimate proposal will call for an extensive if not exhaustive  
 12 process of search, retrieval, review and production of ESI by SCL.

13 Also at the Conference, SCL's counsel advised Jacobs' counsel that the Act may provide an  
 14 impediment, if not a bar, to SCL retrieving, reviewing and producing certain documents and  
 15 information, including ESI that may be subject to NRCP 16 disclosure requirements or that Jacobs  
 16 may demand be produced. See Krum Aff'd. Jacobs' counsel was informed by SCL that this advice  
 17 was not definitive, and it was accompanied by a suggestion that Jacobs' counsel conduct their own  
 18 research or engage Macau counsel to do so, so that Jacobs' counsel could develop their own  
 19 opinions on such issues. *Id.* SCL's counsel also acknowledged that they did not have definitive  
 20 advice or a definitive analysis of such issues at present. *Id.* In response, Jacobs' counsel advised,  
 21 among other things, that Jacobs would take the position that American law applied. *Id.* SCL's  
 22 counsel understands that advice to be tantamount to an assertion that, if Jacobs is entitled to discover  
 23 certain information pursuant to the NRCP, the NRCP would in effect "trump" SCL's obligations

24  
 25  
 26 claims against both SCL and LVSC. If the Petition is granted, and the Nevada Supreme Court agrees that this Court  
 27 cannot exercise jurisdiction over SCL, Jacobs will have the benefit of having obtained information prior to this ruling  
 28 that alter the evidentiary "playing field" that may well be altered in a way that requires this Court to rule on the  
 admissibility of evidence obtained from SCL. Such a ruling would affect the rights of both LVSC and Jacobs.



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1 under the Act and require SCL to comply with the NRCP, notwithstanding the fact that doing so  
2 constituted a violation of the Act. *Id.*

3 Thus, absent a stay, SCL is at risk to be placed in a position whereby it is ordered to act in a  
4 manner that constitutes or may constitute a violation of the Act. Put differently, it may be  
5 impossible for SCL to comply both with its disclosure and discovery obligations in this case without  
6 violating the laws of the jurisdiction in which it primarily conducts business. This potential  
7 circumstance is illustrative of the irreparable harm that could occur if this case is not stayed.

8 Lastly, because SCL has demonstrated that the object of the Petition will be defeated if the  
9 stay is not granted, the irreparable or serious harm factor should not be determinative in whether the  
10 stay is granted. Therefore, because a stay is warranted in this case, SCL respectfully requests that  
11 the Court grant the Motion to Stay.

12 **D. Jacobs Will Suffer No Harm Through A Stay of These Proceedings.**

13 Jacobs will suffer no harm by waiting for the Nevada Supreme Court to decide whether to  
14 consider the Petition. Jacobs' only claimed "harm" that could be caused by the stay would be a  
15 delay in the proceedings, and "a mere delay in pursuing discovery and litigation normally does not  
16 constitute irreparable harm." *See Mikohn*, 120 Nev. at 253. This factor therefore weighs in favor of  
17 granting SCL's Motion to Stay.

18 **E. SCL is Likely to Prevail on the Merits of Their Petition.**

19 The Petition is warranted and should succeed for the following reasons:

20 First, a majority of jurisdictions that have addressed the issue of whether a domestic entity's  
21 in-forum contacts can be attributed to a foreign affiliate for jurisdictional purposes have held that,  
22 only when evidence is presented to show that the foreign entity can be considered an "alter ego" of  
23 the domestic entity pursuant to the forum state's law, can the domestic entity's contacts be  
24 considered in the jurisdictional analysis. *See Doe v. Unocal Corp.*, 248 F.3d 915, 926 (9th Cir.  
25 2001) ("[I]f the parent and subsidiary are not really separate entities, or one acts as the agent of the  
26 other, the local [entity's] contacts with the forum may be imputed to the foreign [entity]"); *see also*  
27 *Newman v. Comprehensive Care Corp.*, 794 F.Supp. 1513 (D. Or. 1992); *AT&T v. Lambert*, 94 F.3d  
28 586 (9th Cir. 1996). The rationale for requiring a showing of alter ego is found in perhaps the most

1 fundamental tenet of corporate law, namely, that a corporation (or other legal entity) has a legal  
2 identity separate from its shareholders, officers, directors, members and affiliated entities.

3 It is undisputed that Jacobs did not introduce any evidence, nor did the Court make any  
4 findings, that SCL is the alter ego of LVSC. If the Nevada Supreme Court adopts the prevailing  
5 standard, the Petition will be granted and an order will be issued to grant the Motion and dismiss  
6 SCL.

7 Second, a minority of jurisdictions that have addressed this issue have held that only when  
8 evidence is presented that shows the in-forum entity exerts a level of control over the foreign entity  
9 that exceeds its investment status in the foreign entity, can the in-forum entity's actions be  
10 considered in the jurisdictional analysis regarding the foreign entity. *See Reul v. Sahara Hotel, Inc.*,  
11 372 F.Supp 995, 998 (S.D. Tx. 1974).

12 Jacobs presented no evidence, and the Court made no findings, that LVSC exerted an  
13 excessive degree of control over SCL, considering LVSC's status as majority shareholder. Thus,  
14 even under this standard, this Court was required to grant the Motion.

15 Third, courts also have consistently held that the presence of directors or officers in the  
16 forum state, and the corresponding performance of their duties, cannot (without a showing of alter  
17 ego or excessive control by the in-forum entity) be used to confer general personal jurisdiction over  
18 a foreign entity. *See Transure, Inc. v. Marsh and McLennan, Inc.*, 766 F.2d 1297, 1299 (9th Cir.  
19 1985) (in denying to exercise general jurisdiction over a parent corporation due, in part, to  
20 allegations that shared directors for a subsidiary reside in the forum state, finding that "[i]t is  
21 entirely appropriate for directors of a parent company to serve as directors of its subsidiary, and that  
22 fact alone may not serve to expose the parent corporation to liability for its subsidiary's acts."); *see*  
23 *also Gordon et al. v. Greenview Hosp., Inc.*, 300 S.W.3d 635, 648 (Tenn. 2009).

24 Insofar as the Court's denial of SCL's Motion was based on the activities of Adelson and  
25 Leven in Nevada without regard to the degree of control exercised by LVSC over SCL, such a  
26 decision is contrary to established due process requirements and the basic tenet of corporate law that  
27 recognizes a legal separation between entities and their officers, directors, shareholders, and  
28 affiliates. Thus, under this analysis as well, this Court was required to grant the Motion.

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1 Finally, and perhaps most fundamentally, in order to satisfy the "substantial or continuous  
2 and systematic" requirements, courts examine a defendant's intentional conduct that is actually  
3 directed at the forum state. *See Kumarelas v. Kumarelas*, 16 F.Supp.2d 1249, 1254 (D. Nev. 1998).

4 In this case, Jacobs' allegations concern actions taken by Adelson and Leven that were  
5 directed at SCL in Macau, not actions taken by SCL directed to Nevada. The alleged actions of  
6 Adelson and Leven therefore cannot be used to demonstrate any "substantial or continuous and  
7 systematic" contact necessary for general jurisdiction. Thus, under this analysis too, the Court  
8 lacked general jurisdiction over SCL and was required to grant the Motion.


9 Because SCL is likely to prevail on the merits of its Petition, this Motion to Stay should be  
10 granted.

#### 11 IV. CONCLUSION

12 For the reasons set forth above, SCL respectfully requests that the Court grant this Motion to  
13 Stay pending disposition by the Nevada Supreme Court of SCL's Petition.

14 Dated this 16th day of May, 2011.

15 GLASER WEIL FINK JACOBS  
16 HOWARD AVCHEN & SHAPIRO LLP

17 By:   
18 Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)  
19 Mark G. Krum, Esq. (NBN: 10913)  
20 Andrew D. Sedlock, Esq. (NBN: 91893)  
21 3763 Howard Hughes Pkwy., Ste. 300  
22 Las Vegas, Nevada 89169  
23 Telephone: (702) 650-7900  
24 Facsimile: (702) 650-7950

25 *Attorneys for Defendant Sands China Ltd.*  
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CLERK OF THE COURT

1 **MSTY**  
2 Patricia L. Glaser, (Pro Hac Vice Admitted)  
3 Andrew D. Sedlock, State Bar No. 9183  
4 GLASER WEIL FINK JACOBS  
5 HOWARD AVCHEN & SHAPIRO LLP  
6 3763 Howard Hughes Parkway, Suite 300  
7 Las Vegas, Nevada 89169  
8 Telephone: (702) 650-7900  
9 Facsimile: (702) 650-7950  
10 email: pglaser@glaserweil.com  
11 asedlock@glaserweil.com

12 *Attorneys for Defendant Sands China Ltd.*

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DISTRICT COURT  
CLARK COUNTY, NEVADA

11 STEVEN C. JACOBS,  
12  
13 Plaintiff,  
14  
15 v.

16 LAS VEGAS SANDS CORP., a Nevada  
17 corporation; SANDS CHINA LTD., a Cayman  
18 Island corporation; DOES I through X; and  
19 ROE CORPORATIONS I through X,  
20  
21 Defendants.

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

DEFENDANT SANDS CHINA LTD.'S  
MOTION TO STAY PROCEEDINGS  
PENDING WRIT PETITION ON ORDER  
SHORTENING TIME

DATE:  
TIME: **FILE WITH  
MASTER CALENDAR**

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Howard Avchen & Shapiro LLP

1 Defendant Sands China Ltd. ("SCL" or "Defendant"), respectfully moves this Court, on  
2 shortened time pursuant to EDCR 2.26, to stay the proceedings in this case as against SCL only  
3 pending disposition by the Nevada Supreme Court of SCL's Petition for Writ of Mandamus or in  
4 the Alternative, Writ of Prohibition (the "Writ Petition"), filed on May 5, 2011. On June 24, 2011,  
5 the Nevada Supreme Court issued an Order Directing Answer to the Writ Petition, stating, among  
6 other things, that SCL's Writ Petition "set forth issues of arguable merit." The Writ Petition  
7 demonstrates that (i) an important issue of law requires clarification, (ii) considerations of sound  
8 judicial economy and administration militate in favor of granting the Writ Petition, and (iii) SCL has  
9 no "plain, speedy or adequate remedy" to challenge the Court's ruling denying SCL's Motion to  
10 Dismiss for Lack of Personal Jurisdiction. This Motion to Stay Proceedings Pending Writ Petition  
11 (the "Motion to Stay") is made to preserve SCL's due process rights which are the subject of the  
12 Writ Petition, conserve limited judicial resources and prevent the parties (and SCL in particular)  
13 from incurring substantial costs and expenses in proceeding with this case before the Nevada  
14 Supreme Court issues its ruling on the Writ Petition.

15 This Motion is made and based on the papers and pleadings on file herein, the following  
16 Memorandum of Points and Authorities, the Affidavits of Andrew D. Sedlock, Esq. and David  
17 Fleming, the Writ Petition previously served on this Court, and any oral argument allowed by the  
18 Court.

19 DATED this 13th day of July, 2011.

20 GLASER WEIL FINK JACOBS  
21 HOWARD AVCHEN & SHAPIRO LLP

22 By: 

23 Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)  
24 Andrew D. Sedlock, Esq. (NBN: 9183)  
25 3763 Howard Hughes Pkwy., Ste. 300  
26 Las Vegas, Nevada 89169  
27 Telephone: (702) 650-7900  
28 Facsimile: (702) 650-7950

*Attorneys for Defendant Sands China Ltd.*

Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

**APPLICATION FOR ORDER SHORTENING TIME**

SCL applies for an Order Shortening Time for the hearing on its Motion to Stay Proceedings Pending Writ Petition based upon the following Affidavit of Andrew D. Sedlock, Esq.

DATED this 13th day of July, 2011.

GLASER WEIL FINK JACOBS  
HOWARD AVCHEN & SHAPIRO LLP

By:

Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)  
Andrew D. Sedlock, Esq. (NBN: 9183)  
3763 Howard Hughes Pkwy., Ste. 300  
Las Vegas, Nevada 89169  
Telephone: (702) 650-7900  
Facsimile: (702) 650-7950

*Attorneys for Defendant Sands China Ltd.*

**AFFIDAVIT OF ANDREW D. SEDLOCK, ESQ. IN SUPPORT OF APPLICATION  
FOR ORDER SHORTENING TIME**

STATE OF NEVADA            )  
                                      )ss:  
COUNTY OF CLARK        )

I, Andrew D. Sedlock, being first duly sworn, deposes and says as follows:

1. I am an associate with the law firm of GLASER WEIL FINK JACOBS HOWARD AVCHEN & SHAPIRO LLP, counsel of record for Sands China Ltd. ("SCL") in the above-referenced matter. I have personal knowledge of the facts set forth herein, and I am competent to testify thereto if called upon to do so. I make this Affidavit pursuant to EDCR 2.26 in support of SCL's Motion to Stay.

2. This Motion requests a stay of this case as against SCL pending disposition by the Nevada Supreme Court of SCL's Writ Petition, filed on May 5, 2011 and served on this Court on May 18, 2011.

3. Shortly after filing and serving the Petition, SCL filed its first Motion to Stay (the "First Motion to Stay") which was denied without prejudice as premature following the hearing with this Court on May 26, 2011. (A true and accurate copy of the Order denying First Motion to Stay is attached hereto as Exhibit A.)

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1           4.     On June 24, 2011, the Nevada Supreme Court issued and served an Order Directing  
2 Answer, which stated that SCL "has set forth issues of arguable merit" in the Petition and further  
3 ordered real party in interest, Steven C. Jacobs ("Jacobs") to file an Answer on or before July 25,  
4 2011. (A true and accurate copy of the Order Directing Answer is attached hereto as **Exhibit B.**)

5           5.     As addressed by the Court at the April 22, 2011 early case conference and reflected  
6 in the Joint Status Report filed on April 22, 2011, the parties previously anticipated "that [Las  
7 Vegas Sands Corp's] LVSC's and SCL's respective disclosures will consist of a high volume of  
8 documents which include Electronically Stored Information (ESI)." (A true and accurate copy of  
9 the April 22, 2011 Joint Status Report is attached hereto as **Exhibit C.**)

10          6.     After receiving Jacobs' "Initial Identification of ESI Search Terms and Date Ranges"  
11 (the "Search Terms"), both SCL and LVSC undertook an analysis of the applicable law of the  
12 jurisdiction, Macau, Special Administrative Region of the People's Republic of China ("Macau"), in  
13 which the overwhelming majority of this information is currently located.

14          7.     SCL's counsel has previously advised Jacobs' counsel that a Macau statute [the  
15 Macau Personal Data Protection Act (the "Macau Act")] may be an impediment, if not a bar, to the  
16 parties retrieving, reviewing and producing certain personal information and documents, including  
17 ESI, that may be subject to Nevada Rule of Civil Procedure ("NRCP") 16 disclosure requirements  
18 or that Jacobs may demand be produced.

19          8.     Counsel for SCL have since undertaken an analysis of the Macau Act as well as met  
20 with the Macau Office for Personal Data Protection (the "Macau OPDP") to determine the most  
21 efficient and compliant method to review and produce ESI currently stored in Macau in compliance  
22 with the Macau Act.

23          9.     The Macau OPDP has confirmed that, SCL's Macau subsidiaries are prohibited from  
24 producing or otherwise transferring ESI or other documents containing personal information, to  
25 anyone outside of Macau (including Jacobs' counsel), unless (i) the data subjects of the document  
26 consent to the transfer of personal data outside of Macau, and/or (ii) the Macau OPDP consents to  
27 such transfer of personal data outside of Macau, depending on the sensitivity of the personal data in  
28 question. In the event consent is given by the data subjects of the relevant documents, SCL's Macau

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1 subsidiaries must still provide notice to the OPDP that consent has been received before the transfer  
2 of data outside of Macau. In order to seek such consent from the data subjects or the Macau OPDP,  
3 SCL will need to conduct a significant amount of work at considerable expense exceeding One  
4 Million Dollars (U.S.) (\$1,000,000.00) based on the information presently available to SCL.

5 10. Currently, SCL has identified potentially responsive documents and ESI ranging  
6 from approximately 2 terabytes (2000 gigabytes) to 13 terabytes (13,000 gigabytes), or more, that  
7 may have to be reviewed in order to comply with the requirements set forth by the Macau OPDP as  
8 discussed above.

9 11. This amount is approximately equivalent to nearly ten percent (10%) of all of the  
10 information currently catalogued on the U.S. Library of Congress' web archives. A true and  
11 accurate copy of the U.S. Library of Congress Web Archive FAQ page,  
12 [www.loc.gov/webarchive/faq](http://www.loc.gov/webarchive/faq), is attached hereto as Exhibit D.

13 12. SCL's counsel has been advised that failure to comply with these requirements could  
14 result in significant civil and/or criminal penalties.

15 13. Pursuant to meet and confer discussions regarding outstanding discovery issues, the  
16 parties have agreed to the foregoing tentative deadlines for the parties to produce responsive  
17 documents in this case:

- 18 • Jacobs: complete production on August 15, 2011
- 19 • LVSC: complete production on August 31, 2011
- 20 • SCL: complete production on August 31, 2011

21 Given the significant amount of work to review and process documents in advance of the foregoing  
22 deadline, SCL would unfairly be required to perform significant work at enormous cost, which will  
23 be unnecessary if the Nevada Supreme Court grants SCL's Writ Petition and rules that the Court  
24 lacks personal jurisdiction over SCL.

25 14. If the Motion to Stay is fully briefed by the parties and heard in the ordinary course,  
26 SCL may be unnecessarily required to undertake actions it maintains are in violation of its due  
27 process rights, which are the subject of the Writ Petition.

28



15. It is respectfully submitted that this Court is justified in shortening the time for briefing and hearing on the Motion to Stay and that the Motion to Stay should be set for hearing at the Court's earliest available calendar date.

EXECUTED July 13, 2011.

Andrew D. Sedlock, Esq.

Subscribed and Sworn to before me on  
this 13th day of July, 2011.

Notary Public, in and for said County and State.



### ORDER SHORTENING TIME

The Court, having considered Defendant's Application for an Order Shortening Time, the Affidavit of Andrew D. Sedlock, Esq., the Memorandum of Points and Authorities submitted with the Motion to Stay Proceedings Pending Writ Petition on Order Shortening Time, and good cause appearing therefore,

IT IS HEREBY ORDERED that the time for hearing Defendant's Motion to Stay Proceedings Pending Writ Petition is shortened to the 19 day of July, 2011, at the hour of 9:00 a.m. in the above-entitled Court.

DATED this \_\_\_\_\_ day of July, 2011.

DISTRICT COURT JUDGE

Respectfully Submitted by:

GLASER WEIL FINK JACOBS  
HOWARD AVCHEN & SHAPIRO LLC

By: Andrew B. Sedlock, Esq. (NBN: 9183)  
3763 Howard Hughes Pkwy., Ste. 300  
Las Vegas, Nevada 89169  
Telephone: (702) 650-7900  
Facsimile: (702) 650-7950

*Attorneys for Defendant Sands China Ltd.*

Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

**NOTICE OF MOTION**

TO: ALL INTERESTED PARTIES; and

TO: COUNSEL FOR ALL INTERESTED PARTIES;

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion to Stay Proceedings Pending Writ Petition on Order Shortening Time on for hearing before the above-entitled Court on the \_\_\_\_\_ day of \_\_\_\_\_, 2011, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_.m. on said date, in Department XI, or as soon thereafter as counsel can be heard.

DATED this 13 day of July, 2011.

GLASER WEIL FINK JACOBS  
HOWARD, AVCHEN & SHAPIRO LLP

By: 

Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)  
Andrew D. Sedlock, Esq. (NBN: 9183)  
3763 Howard Hughes Pkwy., Ste. 300  
Las Vegas, Nevada 89169  
Telephone: (702) 650-7900  
Facsimile: (702) 650-7950

*Attorneys for Defendant Sands China Ltd.*

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Following the denial of SCL's First Motion to Stay, the Nevada Supreme Court issued an Order Directing Answer (the "Order") on June 24, 2011. *See* Ex. B. The Order stated that SCL's Petition "set forth issues of arguable merit and that an answer to the petition is warranted." *Id.* The Order provides a briefing schedule, ordering Jacobs to file his answer to the Writ Petition on or

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1 before July 25, 2011, with SCL's reply due fifteen (15) days after service of Jacobs' answer. *Id.*<sup>1</sup> In  
2 light of the foregoing, SCL respectfully submits this new motion to stay proceedings.

3 Pursuant to the parties' meet and confer discussions regarding outstanding discovery issues,  
4 the parties have tentatively agreed to produce relevant documents in August 2011 subject to further  
5 meet and confer discussions. However, based upon recent input from the Macau OPDP, SCL must  
6 ensure that any such production of documents by its Macau subsidiaries complies with Macau law,  
7 including the Macau Act, which will require that SCL cause its Macau subsidiaries to review an  
8 enormous amount of documents and ESI in order to (i) seek consent from the data subjects that  
9 transfer of personal data outside of Macau is authorized, and/or (ii) seek such consent from the  
10 Macau OPDP, depending on the sensitivity of the personal data at issue.<sup>2</sup> For example, even if a  
11 data subject gives consent, SCL's Macau subsidiaries must still notify the OPDP before transferring  
12 the personal data outside of Macau. In order to perform this significant amount of work by the end  
13 of August 2011, SCL would be unfairly (and perhaps unnecessarily) forced to expend a significant  
14 amount of resources and expenses, exceeding One Million Dollars (\$1,000,000.00), including but  
15 not limited to SCL's outside lawyers traveling to Macau to review and analyze these materials,  
16 hiring outside vendors to process between approximately 2 to 13 terabytes of ESI, or possibly more,  
17 and hiring contract lawyers to travel to Macau to review these materials.

18 As described in greater detail below, a stay is warranted at this time pursuant to the analysis  
19 of the following four factors set forth by Nevada law: (1) the purpose of SCL's Writ Petition, which  
20 is to protect SCL's due process rights and prevent further improper exercise of personal jurisdiction;  
21 (2) SCL will suffer irreparable harm if the stay is denied, including the continued deprivation of due  
22 process rights, the inevitable conflict between Macau's data privacy laws and Nevada's rules  
23

24 <sup>1</sup> Separately, the Nevada Supreme Court now has before it Plaintiff Jacobs' recent Notice of Appeal challenging the  
25 decision of this Court to grant the motion to dismiss Jacobs' defamation claim and the resulting dismissal of former  
26 defendant Sheldon G. Adelson ("Adelson") from the pending lawsuit.

27 <sup>2</sup> Based upon information presently available to SCL, it is unclear whether the Macau OPDP will provide such consent  
28 to produce or otherwise transfer personal data outside of Macau. Even before SCL approaches the OPDP to seek such  
consent, SCL would be required to expend a significant amount of resources and expenses to process and review the  
data at issue in order to identify the potentially personal data subject to the Macau Act. See Affidavit of David Fleming.

1 regarding production of documents, along with the staggering cost of reviewing and producing such  
 2 documents; (3) Jacobs will suffer no harm by the issuance of a stay; and (4) as established by the  
 3 Nevada Supreme Court's recent Order, SCL's Writ Petition has merit and will be ruled upon  
 4 following the submission of the parties' briefs.

5 Therefore, SCL now respectfully requests that this Court stay the proceedings pending the  
 6 disposition of SCL's Writ Petition, which is warranted to protect SCL's due process rights and  
 7 conserve both the parties' and the Court's resources.

## 8 II. STATEMENT OF PERTINENT FACTS

9 While the Court is now familiar with the underlying facts in this case, SCL submits an  
 10 abridged summary of the factual and procedural history preceding this Motion to Stay.

### 11 A. SCL's Writ Petition Regarding its Motion to Dismiss for Lack of Personal 12 Jurisdiction

13 SCL is a Cayman Islands company that does business exclusively in Macau and Hong Kong  
 14 SAR of the People's Republic of China ("Hong Kong"). See Affidavit of Anne Salt ("Salt Aff'd")  
 15 at ¶ 3, attached to SCL's December 22, 2010 Motion to Dismiss.<sup>3</sup> Jacobs' remaining claim against  
 16 SCL, as set forth in his First Amended Complaint ("FAC"), is for breach of contract and alleges that  
 17 while employed in Macau as SCL's President and Chief Executive Officer, SCL presented Jacobs  
 18 with a letter (the "Stock Option Grant Letter") that allegedly provided for a grant to Jacobs of an  
 19 option to purchase 2.5 million shares of SCL stock. See First Amended Complaint at ¶ 44. The  
 20 Stock Option Grant Letter states that it is governed by and construed in accordance with Hong Kong  
 21 law and further conditioned Jacobs' ability to exercise the option to purchase SCL stock on, among  
 22 other things, Jacobs' continued employment for SCL. See true and accurate copy of Stock Option  
 23 Grant Letter, attached to SCL's December 22, 2010 Motion to Dismiss at Exhibit F. Jacobs was  
 24

25  
 26  
 27 <sup>3</sup> SCL is required by the Rules Governing the Listing of Securities of the Stock Exchange of Hong Kong Limited to  
 28 carry on its business independently of, and at arms' length from, its "controlling shareholder," namely, LVSC. See true  
 and accurate copy of the Rules Governing the Listing of Securities of the Stock Exchange of Hong Kong Limited,  
 attached as Exhibit B to SCL's Reply in Support of December 22, 2010 Motion to Dismiss.

1 subsequently terminated before any of his options vested pursuant to the Stock Option Grant Letter.  
2 See Salt Aff'd at ¶ 15.

3 SCL responded to Jacobs' Complaint on December 22, 2010 by filing the Motion to Dismiss  
4 for Lack of Personal Jurisdiction (the "Jurisdiction Motion").<sup>4</sup> The Court denied the Jurisdiction  
5 Motion and ruled that it could exercise general personal jurisdiction over SCL due to the actions  
6 taken in Nevada by Adelson, a non-executive director and Chairman of SCL's Board of Directors  
7 (the "Board"), and by Michael Leven ("Leven"), a special advisor to SCL's Board of Directors. See  
8 Transcript of March 15, 2011 Hearing, p. 62, lines 11-13. Adelson and Leven also are officers and  
9 directors of Las Vegas Sands Corp. ("LVSC"), which is SCL's majority shareholder by virtue of its  
10 ownership of approximately seventy percent (70%) of SCL's outstanding shares. See Salt Aff'd at  
11 ¶¶ 4, 5.

12 SCL subsequently filed the Writ Petition, which requests an Order from the Nevada  
13 Supreme Court compelling this Court to grant the Jurisdiction Motion, dismiss SCL from the  
14 pending suit and cease the continued exercise of personal jurisdiction over SCL. See May 6, 2011  
15 Writ Petition.

16 **B. SCL's Significant Work to Comply With Macau Law In Order to Gather and**  
17 **Produce Documents in this Action**

18 Following the Court's denial of SCL's First Motion to Stay as premature, the parties have  
19 continued to meet and confer regarding the scope of defendants' initial production of documents,  
20 and have tentatively agreed that SCL and LVSC shall complete their respective initial production of  
21 documents on or before August 31, 2011, with Jacobs scheduled to complete his production on or  
22 before August 15, 2011. In anticipation of reviewing and producing documents located in Macau,  
23 SCL's General Counsel and Company Secretary, David Fleming, met with the Macau OPDP to  
24  
25

26  
27 <sup>4</sup> SCL also filed a Motion to Dismiss for Failure to State a Claim on April 20, 2011, which was scheduled for hearing  
28 with this Court on June 9, 2011. That motion was denied in part, as to the breach of contract claims, and granted in part,  
in regard to the defamation claims included in Jacobs' First Amended Complaint.

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1 confirm the proper procedure required by the Macau Act and enforced by the Macau government.

2 See Affidavit of David Fleming (the "Fleming Aff'd").

3 According to the Macau OPDP, production of ESI and other documents stored in Macau will  
4 require strict compliance with relevant Macau law. *Id.* First, SCL's Macau subsidiaries will be  
5 required to review a vast amount of documents and ESI in order to (i) identify and obtain consent  
6 from relevant data subjects before transferring any personal data outside of Macau, and/or (ii) obtain  
7 consent from the Macau OPDP before transferring such personal data outside of Macau, depending  
8 on the sensitivity of the personal data at issue. *Id.* In the event consent is given by the data subjects,  
9 SCL's Macau subsidiaries must still provide notice to the OPDP that consent has been received  
10 before the transfer of data outside of Macau. *Id.*

11 In order to perform this amount of work before the August 31, 2011 deadline, SCL's Macau  
12 subsidiaries must bring several of its outside counsel to Macau to review and analyze this  
13 information after hiring vendors to process between approximately 2 to 13 terabytes of information,  
14 or possibly more. *Id.* Strict protocols must be adhered to in order to ensure that no personal data  
15 leaves Macau in breach of the Macau Act. *Id.* For the Court's perspective, the lowest estimate of 2  
16 terabytes (2000 gigabytes) is equivalent to nearly ten percent (10%) of all of the information  
17 currently catalogued by the U.S. Library of Congress. See Ex. D. It is currently estimated that this  
18 process will cost in excess of One Million Dollars (\$1,000,000.00) to complete. See Fleming Aff'd.  
19 Lastly, SCL has also been informed that the Macau Act and its requirements will be strictly  
20 enforced, and failure to comply may result in civil and criminal penalties. *Id.*

21 SCL now submits its renewed Motion to Stay, which is warranted due to the mounting  
22 burdens posed by the discovery process and the Nevada Supreme Court's recent decision to hear  
23 SCL's Writ Petition challenging the Court's continued exercise of personal jurisdiction over SCL in  
24 derogation of SCL's due process rights.

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### III. ARGUMENT

#### A. The Legal Standard.

In ruling on a motion to stay proceedings pending the Nevada Supreme Court's review of a writ petition, the Court should consider the following factors under Nevada law:

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

*Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000) (explaining that the requirements in NRAP 8(a) apply to writ petitions when the petitioner "seeks to challenge" a decision "issued by the district court") (citing *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948)).

As demonstrated below, the foregoing factors provide the Court with good cause to stay the proceedings in this case pending the Nevada Supreme Court's disposition of the Writ Petition.

#### B. The Object of the Petition Will be Defeated Unless A Stay is Granted in the Underlying Proceedings.

As stated above, the Nevada Supreme Court issued the Order on June 24, 2011 which confirmed that, after its review of the Writ Petition, SCL had "set forth issues of arguable merit and that an answer to the petition is warranted." See Ex. A. The Order further required Jacobs to file an Answer within thirty (30) days of the filing of the Order (or July 25, 2011), with SCL's Reply due fifteen (15) days after service of the Answer. *Id.*

The willingness of the Nevada Supreme Court to consider SCL's Writ Petition regarding personal jurisdiction issues reflects the fact that matters concerning the determination of personal jurisdiction necessarily involve threshold, fundamental due process considerations. See *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); see also *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). As stated in the Writ Petition and in SCL's First Motion to Stay, the due process protections at issue in a challenge to personal jurisdiction are recognized as

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1 "fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and  
2 tradition,'" and are "implicit in the concept of ordered liberty," such that "neither liberty nor justice  
3 would exist if they were sacrificed." See *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934).

4 The Nevada Supreme Court has recognized the arguable merits of the Petition's arguments,  
5 and that SCL may not be subject to personal jurisdiction in this Court. In the absence of personal  
6 jurisdiction, the Court cannot enter or enforce any orders against SCL, and SCL is not subject to  
7 service, discovery requests, or any other demands whatsoever incident to an ongoing litigation. See  
8 *Monteverde, et al. v. Selnick*, 223 B.R. 755, 757 (D. Nev. 1998) (ruling that without personal  
9 jurisdiction, the court cannot enter or enforce any orders, even by contempt proceedings). In the  
10 absence of a stay, the object of the Writ Petition will be defeated as SCL will continue to be subject  
11 to the Court's jurisdiction and any further orders or obligations imposed by the NRCP.

12 While reserving its respective rights as set forth in the Writ Petition, the discovery process  
13 has commenced and the parties have already exchanged initial lists of witnesses, and have continued  
14 the formidable task of identifying and producing relevant documents. A stay is now warranted and  
15 indeed required to avoid any further exercise of personal jurisdiction over SCL before that very  
16 issue is decided by the Nevada Supreme Court.

17 Therefore, to avoid defeating the purpose of the Writ Petition and interfering with the  
18 Nevada Supreme Court's consideration of the arguments set forth in the Writ Petition, this Court  
19 should stay these proceedings against SCL.

#### 20 **C. SCL Will Suffer Irreparable Harm Unless the Stay is Granted.**

21 The Nevada Supreme Court has stated that when a party can demonstrate that it will face  
22 irreparable or serious harm if a stay is denied, that should be considered in the stay analysis. See  
23 *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253 (2004). With the recent filing of the Order  
24 and the Nevada Supreme Court's decision to consider the Writ Petition's meritorious arguments, the  
25 possibility of irreparable harm has now become timely and more tangible.

26 In the absence of a stay, SCL must continue with the ongoing costly and time-consuming  
27 discovery process and will be under an obligation to produce documents and information pursuant  
28 to the discovery requirements set forth in Nevada law. However, if the Nevada Supreme Court



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1 grants the relief requested in the Writ Petition and issues an order dismissing SCL from the lawsuit  
2 at some future date, how can this process be undone? Jacobs will be in possession of information of  
3 which he may otherwise not be entitled to receive, with no mechanism in place to "un-ring the bell."  
4 This affects not only SCL, but the other defendant in this case, LVSC (and possibly Adelson if the  
5 Nevada Supreme Court grants Jacobs' appeal of the Court's Order dismissing the defamation cause  
6 of action against Adelson).<sup>5</sup> Simply put, the harm potentially caused by a failure to grant a stay has  
7 no remedy, and the impact of that harm strongly supports the imposition of a stay as to SCL.

8 In addition to the irreparable harm directly caused by SCL's production of documents and  
9 information in this case is the heavy burden of reviewing and producing the information currently  
10 stored and controlled by SCL's subsidiaries in Macau (which makes up a significant portion of all  
11 information in SCL's possession). As explained above, this herculean task will necessarily involve  
12 the processing of an overwhelming amount of information, after which consent must be given by  
13 each generating user of the relevant document or ESI and/or representatives of the Macau  
14 government before any personal data can be transferred out of Macau. See Fleming Aff'd at ¶ ¶ 5,  
15 6. The sheer cost, in terms of time and resources, of engaging in this process would severely  
16 prejudice SCL, particularly considering the Nevada Supreme Court's possible subsequent ruling that  
17 this Court cannot exercise personal jurisdiction over SCL in this case. Given the due process issues  
18 addressed in the Writ Petition, SCL respectfully requests that this Court stay the proceedings to  
19 avoid causing irreparable harm and further violating SCL's due process rights.

20 **D. Jacobs Will Suffer No Harm Through A Stay of These Proceedings.**

21 Jacobs will suffer no harm by waiting for the Nevada Supreme Court to decide whether to  
22 consider the Writ Petition. Jacobs' only claimed "harm" that could be caused by the stay would be a  
23

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24  
25 <sup>5</sup> Jacobs' recent Notice of Appeal further complicates this matter because if the Nevada Supreme Court subsequently  
26 grants Jacobs' appeal to overturn the Court's dismissal of the defamation claim against Adelson, SCL may be forced to  
27 revisit and perhaps repeat its work to gather, process and review documents and ESI in order to include discovery  
28 regarding the defamation cause of action, that is currently not part of this litigation. Additionally, the scope of discovery  
and discovery obligations of SCL's Chairman of the Board of Directors (Adelson) will also change depending on  
whether Mr. Adelson is a non-party to this litigation (as he is now), or becomes a party (if the Nevada Supreme Court  
grants Jacobs' appeal).

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1 delay in the proceedings, and "a mere delay in pursuing discovery and litigation normally does not  
2 constitute irreparable harm." *See Mikohn*, 120 Nev. at 253. This factor therefore weighs in favor of  
3 granting SCL's Motion to Stay.

4 Additionally, given Jacobs' recent filing of an appeal challenging the Court's decision to  
5 dismiss his defamation claim and Adelson from this case, Jacobs would benefit from a stay while  
6 the Nevada Supreme Court considers Jacobs' appeal.

7 Therefore, as Jacobs will suffer no harm as a result of a stay, SCL's request is warranted and  
8 the Court should issue an order staying this case as to SCL.

9 **E. SCL is Likely to Prevail on the Merits of Their Petition.**

10 The Order filed by the Nevada Supreme Court made clear that it has reviewed the Writ  
11 Petition and found it to be arguably meritorious. In summary, the Writ Petition addresses the  
12 following important issues:

13 First, Nevada should join the majority of jurisdictions which require a showing of alter ego  
14 before a domestic entity's in-forum contacts can be attributed to a foreign affiliate for jurisdictional  
15 purposes. *See Doe v. Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001) ("[I]f the parent and  
16 subsidiary are not really separate entities, or one acts as the agent of the other, the local [entity's]  
17 contacts with the forum may be imputed to the foreign [entity]"); *see also Newman v.*  
18 *Comprehensive Care Corp.*, 794 F.Supp. 1513 (D. Or. 1992); *AT&T v. Lambert*, 94 F.3d 586 (9<sup>th</sup>  
19 Cir. 1996). It is undisputed that Jacobs did not introduce any evidence, nor did the Court make any  
20 findings, that SCL is the alter ego of LVSC. If the Nevada Supreme Court adopts the prevailing  
21 standard, the Writ Petition will be granted and an order will be issued to grant the Motion and  
22 dismiss SCL.

23 Second, a minority of jurisdictions that have addressed this issue have held that only when  
24 evidence is presented that shows the in-forum entity exerts a level of control over the foreign entity  
25 that exceeds its investment status in the foreign entity, can the in-forum entity's actions be  
26 considered in the jurisdictional analysis regarding the foreign entity. *See Reul v. Sahara Hotel, Inc.*,  
27 372 F.Supp 995, 998 (S.D. Tx. 1974). Again, Jacobs presented no evidence, and the Court made no  
28 findings, that LVSC exerted an excessive degree of control over SCL, considering LVSC's status as

majority shareholder. Thus, even adopting a minority standard, the Nevada Supreme Court should grant the Writ Petition and dismiss SCL from this case.

Third, Nevada should join the consensus that the mere presence of directors or officers in the Nevada, and the corresponding performance of their duties, cannot (without a showing of alter ego or excessive control by the in-forum entity) be used to confer general personal jurisdiction over a foreign entity in Nevada. *See Transure, Inc. v. Marsh and McLennan, Inc.*, 766 F.2d 1297, 1299 (9th Cir. 1985). To the extent that the Court's denial of SCL's Motion was based on the activities of Adelson and Leven in Nevada without regard to the degree of control exercised by LVSC over SCL, such a decision is contrary to established due process requirements and the basic tenet of corporate law that recognizes a legal separation between entities and their officers, directors, shareholders, and affiliates. The Nevada Supreme Court should recognize the nearly universal application of this principle and grant the Petition.

Finally, and perhaps most fundamentally, in order to satisfy the "substantial or continuous and systematic" requirements under Nevada law, courts examine a defendant's intentional conduct that is actually directed at the forum state. *See Kumarelas v. Kumarelas*, 16 F.Supp.2d 1249, 1254 (D. Nev. 1998). In this case, Jacobs' allegations concern actions taken by Adelson and Leven that were directed at SCL in Macau, not actions taken by SCL directed to Nevada. The alleged actions of Adelson and Leven therefore cannot be used to demonstrate any "substantial or continuous and systematic" contact necessary for general jurisdiction<sup>6</sup>.

---

<sup>6</sup> To the extent Jacobs attempts to introduce evidence that Adelson and Leven performed their duties as Chairman of the SCL Board of Directors and Special Advisor to the SCL Board of Directors, respectively, from Las Vegas and that SCL allegedly directed or participated in actions with its parent company, LVSC, in Las Vegas, the Writ Petition addresses those arguments as insufficient to establish general personal jurisdiction. First, the presence of directors in the forum state and the discharge of their duties from the forum state is inadequate to confer general personal jurisdiction. *See Gordon et al. v. Greenview Hosp., Inc.*, 300 S.W.3d 635, 648 (Tenn. 2009) (noting that a corporation is separate and distinct from its officers and directors, and declining to find personal jurisdiction based on resulting actions taken by directors in forum state). Second, evidence of SCL's interaction with LVSC or participation in shared services cannot form the basis of general jurisdiction, as such participation or oversight by a parent corporation does not denote alter ego or an "excessive degree of control" as required to apply general personal jurisdiction over a foreign subsidiary. *See Fletcher v. Atex, Inc.*, 68 F.3d 1451, 1459-60 (2d Cir. 1995) (appropriate parental involvement includes overseeing accounting procedures and other corporate functions); *Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1177 (9th Cir. 1980) (co-marketing efforts insufficient to demonstrate unity of interest between entities).

1 Because SCL is likely to prevail on the merits of its Writ Petition, this Motion to Stay should  
2 be granted.

3  
4 **IV. CONCLUSION**

5 For the reasons set forth above, SCL respectfully requests that the Court grant this Motion to  
6 Stay pending disposition by the Nevada Supreme Court of SCL's Writ Petition.

7 Dated this 13th day of July, 2011.

8 GLASER WEIL FINK JACOBS  
9 HOWARD AVCHEN & SHAPIRO LLP

10 By: 

11 Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)  
12 Andrew D. Sedlock, Esq. (NBN: 91893)  
13 3763 Howard Hughes Pkwy., Ste. 300  
14 Las Vegas, Nevada 89169  
15 Telephone: (702) 650-7900  
16 Facsimile: (702) 650-7950

17 *Attorneys for Defendant Sands China Ltd.*

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Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

1 **AFFD**  
2 Patricia L. Glaser, (Pro Hac Vice Admitted)  
3 Andrew D. Sedlock, State Bar No. 9183  
4 GLASER WEIL FINK JACOBS  
5 HOWARD AVCHEN & SHAPIRO LLP  
6 3763 Howard Hughes Parkway, Suite 300  
7 Las Vegas, Nevada 89169  
8 Telephone: (702) 650-7900  
9 Facsimile: (702) 650-7950  
10 email: pglaser@glaserweil.com  
11 asedlock@glaserweil.com  
12  
13 *Attorneys for Defendant Sands China Ltd.*

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DISTRICT COURT  
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,  
Plaintiff,  
v.

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

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

**AFFIDAVIT OF DAVID FLEMING IN  
SUPPORT OF DEFENDANT SANDS  
CHINA LTD.'S MOTION TO STAY  
PROCEEDINGS PENDING WRIT  
PETITION ON ORDER SHORTENING  
TIME**

}  
}ss:  
}

David Fleming, being first duly sworn, deposes and states:

1. I am the General Counsel and Company Secretary of Sands China Ltd. ("SCL"). I have personal knowledge of the matters stated herein except those stated upon information and belief and I am competent to testify thereto.

2. I make this Affidavit in support of SCL's Motion to Stay Proceedings Pending Writ Petition on Order Shortening Time (the "Motion to Stay").

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1           3.     On June 28, 2011, I met with representatives of the Macau government's Office for  
2 Personal Data Protection (the "Macau OPDP") to identify the proper procedures required by Macau  
3 law and enforced by the Macau government, in particular the Personal Data Protection Act (the  
4 "Macau Act"), in connection with SCL's work to gather, review and produce documents.

5           4.     According to the Macau OPDP, production of Electronically Stored Information  
6 ("ESI") and other documents stored in Macau will require strict compliance with relevant Macau  
7 law.

8           5.     For example, in order to comply with the Macau Act, SCL's Macau subsidiaries will  
9 be required to review a vast amount of documents and ESI in order to (i) obtain consent from  
10 relevant data subjects before transferring any personal data outside of Macau, and/or (ii) obtain  
11 consent from the Macau OPDP before transferring such personal data outside of Macau, depending  
12 on the sensitivity of the personal data at issue, as required by the Macau Act.

13           6.     In the event consent is given by the data subjects, SCL's Macau subsidiaries must  
14 still provide notice to the Macau OPDP that consent has been received for the transfer before the  
15 initiation of the transfer of the data outside of Macau. Even before SCL approaches the data  
16 subjects or the Macau OPDP to seek such consent, SCL would be required to expend a significant  
17 amount of resources and expenses to process and review the data at issue in order to identify the  
18 potentially personal data subject to the Macau Act.

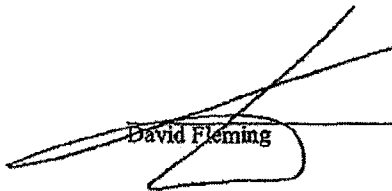
19           7.     In order to perform this amount of work before the tentative August 31, 2011  
20 deadline as discussed with Jacobs' counsel, SCL's Macau subsidiaries will need to bring more than  
21 ten (10) of its outside counsel and ESI consultants to Macau to review, analyze, and process  
22 between approximately 2 to 13 terabytes of information, or possibly more. Strict protocols must be  
23 adhered to in order to ensure that no personal data leaves Macau in violation of the Macau Act.  
24 Based on information provided to SCL by vendors, it is currently estimated that this process will  
25 cost in excess of One Million U.S. Dollars (\$1,000,000.00) to complete.

Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

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8. SCL has also been informed that the Macau Act and its requirements will be strictly enforced by the Macau government, in particular the Macau OPDP, and failure to comply may result in civil and criminal penalties.

9. Nothing in this declaration is intended to be a waiver of any privileges, including but not limited to, the attorney-client privilege and the attorney work product privilege, all of which are expressly reserved.



David Fleming

Subscribed and sworn to before me  
this \_\_\_\_ day of July, 2011

NOTARY PUBLIC in and for

My Commission expires \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA, LTD.

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
in and for the COUNTY OF CLARK and  
THE HONORABLE ELIZABETH GOFF  
GONZALEZ,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

) Supreme Case No. 58294

) Electronically Filed

) Jul 26 2011 10:12 a.m.

) Tracie K. Lindeman

) Clerk of Supreme Court

ANSWER OF REAL PARTY IN INTEREST STEVEN C.  
JACOBS TO PETITION FOR WRIT OF MANDAMUS, OR  
IN THE ALTERNATIVE, WRIT OF PROHIBITION

CAMPBELL & WILLIAMS  
DONALD J. CAMPBELL, ESQ. (1216)  
J. COLBY WILLIAMS, ESQ. (5549)  
700 South Seventh Street  
Las Vegas, Nevada 89101  
Tel. (702) 382-5222  
Fax. (702) 382-0540

Attorneys for Real Party in Interest  
Steven C. Jacobs



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

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

Docket 58294 Document 2011-22432

PA178



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CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

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

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**CAMPBELL  
& WILLIAMS**  
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/398-5222  
FAX: 702/382-0640

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**CAMPBELL  
& WILLIAMS**  
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/382-0228  
FAX: 702/382-0540

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**CAMPBELL  
& WILLIAMS**  
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE 702/388-5222  
FAX 702/388-0540

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**CAMPBELL  
& WILLIAMS**  
ATTORNEYS AT LAW  
700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/682-5522  
FAX: 702/392-0540

1 Pursuant to this Court's June 24, 2011 order, Real Party in Interest Steven C. Jacobs  
2 ("Jacobs") hereby files his Answer to the Petition for Writ of Mandamus, or in the Alternative, Writ  
3 of Prohibition.  
4

5 **INTRODUCTION AND SUMMARY OF ARGUMENT**

6 Pending before the Court is a writ petition by Sands China Ltd. ("SCL"), a Cayman Islands  
7 corporation that conducts gaming operations in Macau, China. SCL's professed grievance  
8 concerns personal jurisdiction. Specifically, SCL is a subsidiary of Las Vegas Sands Corp.  
9 ("LVSC"), a Nevada corporation, and, according to SCL, it has wrongfully been forced to defend  
10 itself in Nevada solely because of LVSC's contacts with Nevada which, as SCL's parent company,  
11 have been imputed to SCL. Both in fact and law alike, however, SCL's protest is groundless.  
12

13 First of all, SCL misrepresents the issue. Jacobs never argued, and the district court did not  
14 find, that SCL is subject to personal jurisdiction in this state because of LVSC's contacts with  
15 Nevada. Rather, Jacobs argued, the district court found, and the record confirms that SCL is  
16 subject to jurisdiction here because of *its own* contacts with Nevada. The supposed issue which  
17 SCL urges this Court to consider, in other words, is a mirage.  
18

19 Not only is SCL's petition misleading, it is incomplete as well. Jacobs asserted two  
20 grounds for personal jurisdiction—"transient" and "general" jurisdiction—but SCL's petition  
21 addresses only the latter. By failing to address the former, SCL has abandoned any objection to  
22 jurisdiction on that basis, thus making it moot whether, in addition, SCL is also amenable to general  
23 personal jurisdiction.  
24

25 In any event, SCL's challenge to general personal jurisdiction quickly collapses under the  
26 weight of adverse law and evidence. At this stage of the case, Jacobs need only make a *prima*  
27 *facie* showing that facts exist to support a finding of personal jurisdiction, and the record abounds  
28



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE 702/388-9222  
FAX: 702/388-0540

1 with evidence sufficient for that purpose. SCL apparently deemed Las Vegas quite a congenial  
2 place to do business, for it routinely conducted operations from Las Vegas and repeatedly  
3 transferred tens of millions of dollars to Las Vegas. Having systematically taken advantage of  
4 Nevada's commercial opportunities and facilities, it is only fair that SCL participate in Nevada's  
5 judicial process too.  
6

### 7 SUMMARY OF FACTS

8 LVSC initially retained Jacobs as a consultant in March 2009 to help restructure its  
9 operations during the global economic meltdown.<sup>1</sup> By May 2009, LVSC had appointed Jacobs as  
10 the head of its gaming operations in Macau, memorializing their relationship in a written agreement  
11 dated August 3, 2009.<sup>2</sup> LVSC ultimately spun off its Macau assets and operations into a new  
12 public company, SCL, which would be traded on the Hong Kong stock exchange. Jacobs was  
13 made President and Chief Executive Officer of SCL, leading the company through its initial public  
14 offering in November 2009 and helping return LVSC and SCL to significantly improved financial  
15 health during his time with Defendants.<sup>3</sup> In March 2010, Michael Leven, LVSC's Chief  
16 Operating Officer, assessed Jacobs' 2009 job performance as follows: "*there is no question as to*  
17 *Steve's performance[;] the Titanic hit the iceberg[;] he arrived and not only saved the*  
18 *passengers[;] he saved the ship.*"<sup>4</sup> Jacobs' tenure, however, came to an abrupt end just months  
19 later on July 23, 2010 when he was terminated at the direction of LVSC's and SCL's Chairman,  
20  
21  
22  
23

24 <sup>1</sup> See Complaint [Appx. 1] at ¶ 16.

25 <sup>2</sup> See Complaint [Appx. 1] at ¶¶ 18; 21.

26 <sup>3</sup> See Complaint [Appx. 1] at ¶¶ 22-24.

27 <sup>4</sup> See Complaint [Appx. 1] at ¶ 25.  
28



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/398-5222  
FAX: 702/382-0540

1 Sheldon G. Adelson.<sup>5</sup> Jacobs thereafter sued LVSC and SCL for breach of contract related to his  
2 employment agreement with LVSC and his respective stock option agreements with LVSC and  
3 SCL, breach of the implied covenant of good faith and fair dealing, and tortious discharge in  
4 violation of public policy.<sup>6</sup> To the extent additional facts are pertinent to this Answer, they will be  
5 discussed in the context of the Argument that follows.  
6

7 **ARGUMENT**

8 **I. SCL MISSTATES THE ISSUE DECIDED BELOW.**

9 SCL depicts the present case as involving a "coattail" assertion of personal jurisdiction on  
10 the ground that, although it has no contacts with Nevada, SCL has nonetheless been compelled to  
11 defend itself here because of LVSC's contacts with Nevada.<sup>7</sup> The Petition then proceeds to snip  
12 these coattails. SCL argues, at considerable length, that most courts do not impute the contacts of  
13 a domestic parent company to its foreign affiliate unless there is an alter ego relationship between  
14 the two entities, while other courts require control by the parent disproportionate to its investment;  
15 and that, since LVSC is neither an alter ego of SCL nor exercises control over SCL disproportionate  
16 to its investment, SCL is not subject to personal jurisdiction in Nevada based on its affiliation with  
17 LVSC.<sup>8</sup>  
18

19  
20 The foregoing issue, according to SCL, is unfinished business left over from *MGM Grand,*  
21 *Inc. v. Eighth Judicial Dist. Ct.*, 107 Nev. 65, 807 P.2d 201 (1991), where this Court held that the  
22

23 <sup>5</sup> See Complaint [Appx. 1] at ¶¶ 26-31.

24 <sup>6</sup> See Complaint [Appx. 1] at ¶¶ 34-57.

25 <sup>7</sup> See Petition 17:17-18 ("SCL demonstrated that it lacks any contacts with Nevada, apart  
26 from its ongoing relationship with its majority shareholder, LVSC").

27 <sup>8</sup> See Petition, pp. 27-37.  
28



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/392-5222  
FAX: 702/392-0340



1 Walt Disney Company was not subject to personal jurisdiction in Nevada based on its subsidiaries'  
2 Nevada contacts, but did not decide whether an alter ego relationship is necessary.<sup>9</sup> Moreover,  
3 SCL characterizes the issue as one of the utmost urgency. Without immediate intervention by this  
4 Court, SCL prophesizes an End-of-Western-Civilization-As-We-Know-It catastrophe, warning  
5 that foreign companies will be subject to process here for any matter whatsoever, "provided only  
6 that the foreign corporation is a subsidiary of a controlling parent corporation domiciled in  
7 Nevada"<sup>10</sup> and that "Nevada's courts would be at risk to be inundated with lawsuits brought by  
8 every foreign litigant who has a claim against a foreign entity that is a corporate affiliate of a  
9 Nevada company."<sup>11</sup> Hence, concludes SCL, "[t]he issue of whether, due to a relationship with a  
10 corporation or other affiliate in Nevada, a litigant can bring a suit in Nevada against a foreign entity  
11 ... based on the presence of a Nevada affiliate, is vitally important to the companies based in  
12 Nevada and to their foreign subsidiaries."<sup>12</sup>

15 But the preceding melodrama—indeed, the entire professed issue—is a myth, a straw man  
16 fabricated by SCL in disregard of the actual issues argued and decided below. As Jacobs explicitly  
17 stated to the district court, he never sought to drag SCL into Nevada on LVSC's coattails. Instead,  
18 he asserted personal jurisdiction over SCL based on *SCL's own* contacts with Nevada.<sup>13</sup> And, as  
19

20 <sup>9</sup> See Petition, pp. 20-21.

21 <sup>10</sup> Petition 17:8-15.

22 <sup>11</sup> Petition 19:28 to 20:2.

23 <sup>12</sup> Petition 21:25-28.

24 <sup>13</sup> See Plaintiff's Opposition to Sands China Ltd.'s Motion to Dismiss for Lack of Personal  
25 Jurisdiction, or in the Alternative, Plaintiff's Failure to Join an Indispensable Party [Appx. 3]  
26 17:23-24 ("Jacobs seeks to establish jurisdiction over SCL *based on its own contacts* with the  
27 forum, not just those attributable to LVSC") (emphasis added).



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/382-8282  
FAX: 702/382-0540

1 the evidence discussed below in Point III demonstrates, SCL is subject to personal jurisdiction  
2 based on *its own* contacts with Nevada. For purposes of the dispute at hand, the affiliation  
3 between SCL and LVSC is the reddest of red herrings, for the outcome would be no different if they  
4 were unrelated entities.  
5

6 SCL, in other words, is attempting to whet this Court's interest with a false portrayal of the  
7 controversy. Such a materially inaccurate presentation undermines the efficacy of writ review.  
8 After all, in order to determine whether a dispute has sufficient legal merit, much less the  
9 extraordinary urgency required for mandamus or prohibition, this Court obviously must have  
10 before it a fair presentation of the issues.<sup>14</sup> Otherwise, the Court would potentially find itself in the  
11 awkward position of discovering, after issuing a writ, that the writ was unwarranted because the  
12 issues were not as represented in the petition. In addition, it is a long-established axiom that  
13 "[a]ppellate courts do not give opinions on moot questions." *Edwards v. City of Reno*, 45 Nev.  
14 135, 143, 198 P. 1090, 1092 (1921). This self-imposed restraint on the squandering of scarce  
15 judicial resources applies with particular force to the purely discretionary exercise of writ review.  
16 *Marquis & Aurbach v. Eighth Judicial Dist. Ct.*, 122 Nev. 1147, 1155, 146 P.3d 1130, 1135 (2006).  
17  
18

19 Whether from the standpoint of docket management, substantive justice, or basic honesty,  
20 the use of tainted bait to fish for writ review, so to speak, should be vigorously discouraged.  
21 Summarily denying such petitions is an essential first step in that direction.  
22  
23  
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26  
27 <sup>14</sup> See NRAP 21(a)(3)(B) (a writ petition must state "the issues presented").  
28



1 **II. BY FAILING TO ADDRESS THE ISSUE ON APPEAL, SCL HAS**  
2 **ABANDONED ANY OBJECTION TO THE EXERCISE OF TRANSIENT**  
3 **PERSONAL JURISDICTION.**

4 During the proceedings below, Jacobs raised two distinct grounds for the exercise of  
5 personal jurisdiction over SCL. One was so-called "transient" personal jurisdiction, *i.e.*, that a  
6 nonresident is amenable to jurisdiction in a state where he or she is physically present and  
7 personally served with process,<sup>15</sup> based on that fact that Michael Leven ("Leven"), SCL's Chief  
8 Executive Officer, was personally served with process in Las Vegas.<sup>16</sup> The other ground was  
9 "general" personal jurisdiction based on SCL's contacts with Nevada, as discussed below in Point

10 **III.**<sup>17</sup> But SCL discusses only the latter basis for jurisdiction, ignoring the former, on the  
11 one-sentence pretext, buried in a footnote, that "SCL's Reply debunked [transient personal  
12 jurisdiction], and Jacobs did not raise this argument at the March 15, 2011 hearing on the Motion,  
13 and the District Court did not address the argument, implicitly rejecting it."<sup>18</sup>  
14  
15

16 <sup>15</sup> See, *e.g.*, *Burnham v. Superior Ct.*, 495 U.S. 604, 110 S.Ct. 2105, 109 L.Ed.2d 631 (1990);  
17 *Cariaga v. Eighth Judicial Dist. Ct.*, 104 Nev. 544, 762 P.2d 886 (1988).

18 <sup>16</sup> See Plaintiff's Opposition to Sands China Ltd.'s Motion to Dismiss for Lack of Personal  
19 Jurisdiction, or in the Alternative, Plaintiff's Failure to Join an Indispensable Party [Appx. 3], pp.  
20 10-13 (citing, for example, *Northern Light Technology, Inc., v. Northern Lights Club*, 236 F.3d 57,  
21 63-64 n.10 (1st Cir. 2001), *cert. denied* 533 U.S. 911, 121 S.Ct. 2263 (2001) (personal service on  
22 president of unincorporated association and foreign corporation in forum state when present as  
23 spectator in legal proceedings was sufficient to obtain personal jurisdiction over both businesses);  
24 *Oyuela v. Seacor Marine (Nigeria), Inc.*, 290 F.Supp.2d 713, 719-20 (E.D.La. 2003) (court  
25 acquired transient jurisdiction over Bahamian company by personal service on its Assistant  
26 Secretary in the forum; "Burnham's reassertion of the general validity of transient jurisdiction  
27 provides no indication that it should apply only to natural persons").

28 <sup>17</sup> See Plaintiff's Opposition to Sands China Ltd.'s Motion to Dismiss for Lack of Personal  
Jurisdiction, or in the Alternative, Plaintiff's Failure to Join an Indispensable Party [Appx. 3], pp.  
13-21.

<sup>18</sup> Petition, p. 14, footnote 2.



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/366-5222  
FAX: 702/366-0540

1 An appellant whose brief fails to provide substantive argument and authority regarding an  
2 issue abandons that issue on appeal. *Wyeth v. Rowatt*, 126 Nev. Adv. Op. 44, 244 P.3d 765, 779  
3 n.9 (2010); *Mainor v. Nault*, 120 Nev. 750, 777, 101 P.3d 308, 326 (2004). This rule applies to  
4 cursory assertions in footnotes such as that offered by SCL. *Browning v. State*, 120 Nev. 347, 361,  
5 91 P.3d 39, 50 (2004). Whatever its reasons for ignoring the alternative basis for jurisdiction over  
6 it, SCL made a deliberate tactical decision to abandon that issue, and must accept the consequences.  
7

8 Furthermore, SCL's rationale for ignoring the issue is entirely unfounded. SCL's boast  
9 that its reply in the district court "debunked" transient personal jurisdiction is as dubious as it is  
10 presumptuous. Some of the precedent it cites is no longer good law,<sup>19</sup> and most is inapplicable.  
11 *C.S.B. Commodities, Inc. v. Urban Trend (HK) Ltd.*, for instance, collects cases which have "come  
12 to the conclusion that service of process on an agent of a foreign corporation is insufficient, *by itself*  
13 to confer personal jurisdiction." 626 F.Supp.2d 837, 850 (N.D. Ill. 2009) (emphasis added).<sup>20</sup> Be  
14 that as it may, transient personal jurisdiction over SCL is *not* based on service upon Leven *by itself*,  
15 without additional circumstances. Leven did not simply happen, by fortuitous accident, to be in  
16 Nevada. He was not, say, the assistant treasurer of a small Nebraska company with no connection  
17 to Nevada, who was served with process while in the security line at McCarran Airport waiting to  
18 change flights to attend his aunt's funeral in San Diego. Leven resides in Las Vegas and, as the  
19  
20  
21

22 <sup>19</sup> For example, *Synthes (U.S.A.) v. G.M. dos Reis Jr. Ind. Com. de Equip. Medico*, 2008 U.S.  
23 Dist. LEXIS 22483, 2008 WL 789925 (S.D. Cal. Mar. 21, 2008) (cited in Defendant Sands China  
24 Ltd.'s Reply in Support of Motion to Dismiss for Lack of Personal Jurisdiction, or in the  
Alternative, Plaintiff's Failure to Join an Indispensable Party [Appx. 4] 9:13-16) was reversed in  
*Synthes (U.S.A.) v. G.M. Dos Reis Jr. Ind. Com de Equip. Medico*, 563 F.3d 1285 (Fed. Cir. 2009).

25 <sup>20</sup> The *C.S.B. Commodities* decision typifies the handful of authorities cited in SCL's reply.  
26 See, e.g., *Golden Scorpio Corp. v. Steel Horse Saloon I*, 2009 U.S. Dist. LEXIS 35949, 2009 WL  
27 976598, at \*3 n.4 (D. Ariz. Apr. 9, 2009) (citing *C.S.B. Commodities*).  
28



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

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

1 company's CEO, operates SCL from an office in Las Vegas.<sup>21</sup> As a practical matter, in other  
2 words, SCL's executive headquarters are located in Las Vegas. Moreover, Leven was served with  
3 process in that very building.<sup>22</sup> Do these additional facts make a difference? Probably so, but  
4 perhaps not. Either way, this much is certain: the question is at least *debatable*. Yet, by failing to  
5 provide analysis and authority addressing it, SCL has prevented this Court from considering the  
6 issue, and has thereby forfeited its right to have the issue resolved in its favor. SCL can hardly  
7 claim victory on an issue it refuses to discuss.  
8

9 Nor is it an excuse that Jacobs' counsel did not raise the issue during the hearing. The  
10 scope of briefs invariably differs from that of oral argument. Briefs tend to be comprehensive,  
11 whereas oral argument, constrained by time limits and the flow of colloquy, tends to be selective  
12 and more focused.<sup>23</sup> If argument during hearings merely reiterated the points already addressed in  
13 writing, indeed, there would be little reason for oral argument. Consequently, a litigant who raises  
14 an issue in pre-hearing papers need not raise it again during oral argument in order for the issue to  
15 be considered on appeal. *Uhrich v. State Farm Fire & Cas. Co.*, 109 Cal.App.4th 598, 135  
16 Cal.Rptr.2d 131, 140 (2003) (fact that liability insurer emphasized policy exclusions rather than  
17 lack of coverage during hearing on its summary judgment motion did not bar insurer from arguing  
18 lack of coverage on appeal because coverage issue was included in insurer's motion papers). This  
19  
20

21 <sup>21</sup> Affidavit of Steven C. Jacobs [Appx. 3, Exh. 1] ¶¶ 8-9. The details of Leven's  
22 systematic work in Las Vegas on behalf of SCL are set forth in Part III, below.

23 <sup>22</sup> See Affidavit of R. David Groover [Appx. 3, Exh. 15].

24 <sup>23</sup> The hearing below illustrates this very point. Because it was SCL's motion, SCL's counsel  
25 argued first and, in so doing, challenged only general jurisdiction. Since Jacobs' counsel was  
26 responding to SCL's argument, he naturally directed his comments accordingly—but not, however,  
27 before stating his assumption that the district court had read, and thus was familiar with, Jacobs'  
28 more complete written opposition. See 3/15/11 Tr. [Appx. 6] 51:14-16.



1 Court, therefore, can consider the issue—or, rather, *could have* considered it had SCL bothered to  
2 address it.

3 Equally flawed, finally, is SCL's assumption that the district court, by not finding transient  
4 personal jurisdiction, rejected it. This illogic is both factually untenable and also legally  
5 immaterial. Factually, it is a non sequitur that ignores the well-settled judicial practice of avoiding  
6 unnecessary issues: if personal jurisdiction exists on one basis, there is no need to consider whether  
7 it can also be sustained, redundantly, on another.<sup>24</sup> Such was the situation here. Because the  
8 district court found general personal jurisdiction over SCL, there was no need to consider transient  
9 personal jurisdiction.  
10

11 But let us assume, for argument's sake, that SCL's mistaken factual premise is correct, *i.e.*,  
12 that the district court implicitly rejected transient personal jurisdiction. Even so, that does not  
13 mean the issue is no longer germane on appeal, for "it is well established that this court may affirm  
14 rulings of the district court on grounds different from those relied upon by the district court."  
15 *Milender v. Marcum*, 110 Nev. 972, 977, 879 P.2d 748, 751 (1994).<sup>25</sup> This is true, in particular,  
16 when the district court reaches the right result *for the wrong reasons*. *Bongiovi v. Sullivan*, 122  
17 Nev. 556, 575 n.44, 138 P.3d 433, 447 n.44 (2006); *Hotel Riviera, Inc. v. Torres*, 97 Nev. 399, 403,  
18  
19

20 <sup>24</sup> See, *e.g.*, *Pakootas v. Teck Cominco Metals, Ltd.*, 452 F.3d 1066, 1076 n.16 (9th Cir. 2006),  
21 *cert. denied*, 552 U.S. 1095, 128 S.Ct. 858, 169 L.Ed.2d 722 (2008) (because specific personal  
22 jurisdiction existed, there was no need to decide whether general personal jurisdiction also existed);  
23 *American Gen. Life Ins. Co. v. Rasche*, 273 F.R.D. 391, 396 n.1 (S.D. Tex. 2011) (same); *Bible*  
24 *Way Church of Our Lord Jesus Christ World Wide, Inc. v. Showell*, 578 F.Supp.2d 164, 168 n.2  
(D.D.C. 2008) (because general personal jurisdiction existed, there was no need to decide whether  
specific personal jurisdiction also existed).

25 <sup>25</sup> See, *e.g.*, *City of Las Vegas v. Lawson*, 126 Nev. Adv. Op. 52, 245 P.3d 1175, 1182 (2010);  
26 *Moon v. McDonald, Carano & Wilson, LLP*, 126 Nev. Adv. Op. 47, 245 P.3d 1138, 1140 n.5  
27 (2010); *State ex rel. State Bd. of Equalization v. Bakst*, 122 Nev. 1403, 1416 n.40, 148 P.3d 717,  
28 726 n.40 (2006)



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/382-5822  
FAX: 702/382-0540

1 632 P.2d 1155, 1158 (1981). If the record allowed (which it does not), this Court could concur  
2 with two of SCL's assertions—i.e., (1) that the district court rejected transient personal jurisdiction,  
3 and (2) that no evidence exists to support general personal jurisdiction—yet conclude that, because  
4 the record supports transient personal jurisdiction despite the district court's implicit finding to the  
5 contrary, the district court correctly denied SCL's motion to dismiss, albeit for the wrong reason.  
6 Because transient personal jurisdiction is thus potentially germane to the disposition of SCL's writ  
7 petition, even under SCL's skewed view of the record, SCL had an obligation to present the issue  
8 before this Court, an obligation violated by SCL's premature declaration of victory.  
9

10 **III. AMPLE EVIDENCE EXISTS IN THE RECORD TO SUSTAIN A *PRIMA FACIE***  
11 **FINDING THAT SCL IS SUBJECT TO GENERAL PERSONAL JURISDICTION**  
12 **IN NEVADA.**

13 **A. SCL Is Subject to General Personal Jurisdiction in Nevada If Its**  
14 **Activities in This State Were Either Substantial, or Continuous and**  
15 **Systematic.**

16 To obtain personal jurisdiction over a non-resident defendant, a plaintiff must show (1) that  
17 the requirements of Nevada's long-arm statute (NRS 14.065) have been satisfied, and (2) that due  
18 process is not offended by the exercise of jurisdiction. *Arbella Mut. Ins. Co. v. Eighth Judicial*  
19 *Dist. Ct.*, 122 Nev. 509, 512, 134 P.3d 710, 712 (2006). However, since Nevada's long-arm statute  
20 extends to the outer reaches of due process,<sup>26</sup> these two tests may be collapsed into one; that is,  
21 whether the exercise of personal jurisdiction offends due process. *Trump v. Eighth Judicial Dist.*  
22 *Ct.*, 109 Nev. 687, 698, 857 P.2d 740, 747 (1993).  
23  
24

25 <sup>26</sup> See NRS 14.065(1) ("[a] court of this state may exercise jurisdiction over a party to a civil  
26 action on any basis not inconsistent with the constitution of this state or the Constitution of the  
27 United States").  
28



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/382-3222  
FAX: 702/382-0540

1 A defendant's contacts with Nevada satisfy due process if either general or specific personal  
2 jurisdiction exists. *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Ct.*, *supra*, 122 Nev. at 512, 134  
3 P.3d at 712. General personal jurisdiction exists if the nonresident's activities in Nevada are so  
4 substantial, or so continuous and systematic, that it is deemed present in and thus subject to suit in  
5 Nevada, even though the claims are unrelated to those activities. *Firouzabadi v. First Judicial*  
6 *Dist. Ct.*, 110 Nev. 1348, 1352, 885 P.2d 616, 619 (1994). A court must also consider whether  
7 requiring the defendant to appear in the action comports with fair play and substantial justice; that  
8 is, whether it would be reasonable. *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Ct.*, *supra*, 122  
9 Nev. at 513, 134 P.3d at 713. But a defendant who has purposely availed himself of benefits in the  
10 forum "must present a compelling case that the presence of some other considerations would  
11 render jurisdiction unreasonable." *Levinson v. Second Judicial Dist. Ct.*, 103 Nev. 404, 408, 742  
12 P.2d 1024, 1026 (1987) (quoting *Burger King v. Rudzewicz*, 471 U.S. 462, 477, 105 S.Ct. 2174,  
13 2184, 85 L.Ed.2d 528 (1985)).

14  
15  
16 The disjunctive test for general personal jurisdiction—whether a nonresident's local  
17 activities are "substantial or continuous and systematic", *Firouzabadi v. First Judicial Dist. Ct.*,  
18 *supra*, 110 Nev. at 1352, 885 P.2d at 619 (emphasis added)—is meant to distinguish, respectively,  
19 significant activities from trivial ones, and habitual from sporadic ones, based upon duration,  
20 frequency and amount. This is common sense as well as common law. After all, the more a  
21 nonresident takes advantage of local markets, the more reasonable it becomes that he or she should  
22 expect to be subject to local courts.

23  
24 What constitutes substantial or continuous and systematic activity is, of course, a  
25 fact-intensive issue whose outcome varies with the circumstances of each case. Clearly, though,  
26 where *all three* components of the test are met by a pattern of repeated transactions (thus  
27  
28





1 systematic) over many years (thus continuous) involving hundreds of thousands of dollars (thus  
2 substantial), general personal jurisdiction exists. *See, e.g., Theo. H. Davies & Co. v. Republic of*  
3 *Marshall Islands*, 174 F.3d 969, 974-75 (9th Cir. 1998) (defendant made repeated purchases from  
4 providers in the state over a period of roughly a decade, including three transactions in the amounts  
5 of \$206,887.00, \$265,800.00 and \$1,187,612.00); *Michigan Nat'l Bank v. Quality Dinette, Inc.*,  
6 888 F.2d 462, 466 (6th Cir. 1989) (defendant retained independent sales representative in state,  
7 conducted mail order solicitations of state businesses, and made more than 400 in-state sales  
8 totaling more \$625,000 in 1986-87, including at least one sale each month during those two years).  
9 As will be discussed below, SCL's business activities in Nevada are systematic *and* continuous *and*  
10 substantial. Under these circumstances, there is nothing remotely unreasonable about requiring  
11 SCL to defend itself here.  
12

13  
14 **B. Jacobs Introduced More Than Enough Evidence to Satisfy His *Prima***  
15 ***Facie* Burden of Demonstrating that SCL's Activities in Nevada Are**  
16 **Substantial, Continuous and Systematic.**

17 Where, as here, a pretrial motion challenging personal jurisdiction is decided without an  
18 evidentiary hearing, the plaintiff need only make a *prima facie* showing of jurisdictional facts, and  
19 the plaintiff's facts must be taken as true. *Tuxedo Int'l Inc. v. Rosenberg*, 127 Nev. Adv. Op. 2, 251  
20 P.3d 690, 692 n.3 (2011); *Trump v. Eighth Judicial Dist. Ct., supra*, 109 Nev. at 692-93, 857 P.2d at  
21 743-44. Such, therefore, is Jacobs' minimal burden and the presumption of credibility to which his  
22 evidence is entitled in the present case.

23 Did Jacobs satisfy this burden? The district court so found, and the record so confirms—in  
24 abundance. For present purposes, there is no need to belabor all the evidence, for two aspects  
25 alone suffice to demonstrate, far beyond the threshold of mere *prima facie* proof, that SCL's  
26 activities in Nevada are substantial, continuous and systematic: (1) the operation of SCL's business  
27



1 from its de facto executive headquarters in Las Vegas, and (2) SCL's systematic transfer of tens of  
2 millions of dollars to Las Vegas.<sup>27</sup>

3  
4 1. *SCL Regularly Conducts Business from its De Facto  
Executive Headquarters in Las Vegas.*

5 Sheldon G. Adelson ("Adelson") is the Chairman of SCL's Board of Directors; Leven is its  
6 Chief Executive Officer and Executive Director.<sup>28</sup> Adelson and Leven both reside in Las Vegas,  
7 Nevada. They also work in Las Vegas; specifically, in the executive offices of the Venetian  
8 Resort-Hotel-Casino.<sup>29</sup> Adelson and Leven routinely conduct SCL business from there.<sup>30</sup> From  
9 the Las Vegas office, they recruited and interviewed executives to work for SCL, worked on  
10 marketing strategies to increase foot traffic to the retail mall areas in SCL properties, supervised the  
11 site design and development of two SCL projects, and negotiated the potential sale of other SCL  
12 properties.<sup>31</sup> In addition, while Jacobs was President of SCL, Adelson instructed him to withhold  
13 SCL business from certain banks unless they agreed to exert their influence with Macau officials to  
14 obtain various advantages for SCL, directed him to have investigative reports prepared on  
15 government officials and junket representatives, and ordered that SCL use the legal services of a  
16  
17  
18

19 <sup>27</sup> Omitted from this synopsis, though undoubtedly germane to the jurisdiction question, are  
20 SCL's numerous transactions with Nevada companies, SCL board meetings in Las Vegas, and the  
21 many SCL business meetings which Jacobs, during his tenure with the company, attended in Las  
Vegas. See Affidavit of Steven C. Jacobs [Appx. 3, Exh. 1] ¶¶ 9, 11-13.

22 <sup>28</sup> Affidavit of Steven C. Jacobs [Appx. 3, Exh. 1] ¶¶ 6-7. (Leven was appointed SCL's  
23 Chief Executive Officer on July 23, 2010, after Jacobs' termination, and Executive Director of  
SCL's Board on July 27, 2010. Before then, he served as special advisor to SCL's Board. *Id.*).

24 <sup>29</sup> Affidavit of Steven C. Jacobs [Appx. 3, Exh. 1] ¶ 8.

25 <sup>30</sup> Affidavit of Steven C. Jacobs [Appx. 3, Exh. 1] ¶ 9.

26 <sup>31</sup> Affidavit of Steven C. Jacobs [Appx. 3, Exh. 1] ¶ 10.



1 specific Macau attorney—all of this, again, from Las Vegas.<sup>32</sup> By any standard, these activities  
2 were continuous and systematic.

3  
4 SCL's efforts to explain away these facts are unavailing. A common refrain throughout the  
5 petition is SCL's insistence that "the *mere presence* of directors in the forum state is insufficient to  
6 establish general jurisdiction over a foreign corporation."<sup>33</sup> Perhaps, but that is not the situation  
7 here. Leven, first of all, was not simply a director; he also became SCL's Chief Executive Officer.  
8 More importantly, the significance of Adelson and Leven's role is not their *mere presence in Las*  
9 *Vegas*, but their *active and regular management of SCL from Las Vegas*.

10 SCL emphasizes that Adelson holds the position of a non-executive director, and that Leven  
11 was only a special advisor until after Jacobs' ouster.<sup>34</sup> But a court should examine the "economic  
12 reality" of a defendant's activities when determining whether a reasonable basis for general  
13 personal jurisdiction exists,<sup>35</sup> whereas SCL's focus upon Adelson's and Leven's *titles* promotes  
14 form over substance, a fallacy this Court has repeatedly refused to endorse.<sup>36</sup> In particular, this  
15 Court has wisely rejected the "artificial classification of [persons] by title" which SCL advocates.<sup>37</sup>  
16 It makes no difference what Adelson and Leven were *called*. What matters is what they *did*. And  
17  
18

19 <sup>32</sup> Affidavit of Steven C. Jacobs [Appx. 3, Exh. 1] ¶ 10.

20 <sup>33</sup> Petition 22:18-20, 26:25-26, 37:8-9 (emphasis added).

21 <sup>34</sup> See, e.g., Petition 34:10-11, 41:27-28.

22 <sup>35</sup> *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1331 (9th Cir. 1984).

23 <sup>36</sup> See, e.g., *Marcuse v. Del Webb Communities, Inc.*, 123 Nev. 278, 285, 163 P.3d 462, 467  
24 (2007); *Brad Assocs. v. Nevada Fed. Fin. Corp.*, 109 Nev. 145, 149, 848 P.2d 1064, 1067 (1993).

25 <sup>37</sup> See *Borger v. Eighth Judicial Dist. Ct.*, 120 Nev. 1021, 1027-28, 102 P.3d 600, 605 (2004)  
26 (admissibility of expert testimony "is governed by the scope of the witness' knowledge and not the  
27 artificial classification of the witness by title") (quoting *Marshall v. Yale Podiatry Group*, 5 Conn.  
28 App. 5, 496 A.2d 529, 531 (1985)).



1 what they did, insofar as the evidence shows, is to micromanage SCL: they determined whom SCL  
2 should hire and retain as counsel, whom to favor with SCL's business and how to expand it, how to  
3 design SCL properties and under what terms to sell them, etc. This was hands-on, elbow-deep  
4 management at its most intrusive, all of it from Las Vegas.

5  
6 Such detailed control contradicts SCL's assertion that Adelson's and Leven's activities are  
7 consistent with LVSC's status as a majority shareholder.<sup>38</sup> The objection is, moreover, immaterial  
8 even if true, for it acknowledges only *half* of the evidence; namely, that Adelson and Leven are  
9 directors of LVSC. Yes, but they are also directors (and, in Leven's case, CEO) of SCL as well.  
10 This defect in SCL's reasoning is dramatically apparent in its non sequitur that, because LVSC did  
11 not have the requisite control, Adelson's and Leven's actions while acting for SCL cannot be  
12 considered.<sup>39</sup> The entire line of argument, in any event, is misplaced because, as explained earlier,  
13 it attacks a straw man (the phantom notion of "coattails" jurisdiction) which Jacobs never asserted  
14 and is not before this Court.

15  
16 The final arrow in SCL's quiver regarding Adelson's and Leven's activities likewise falls far  
17 short of the mark. SCL argues that activities *in* the forum are not enough to support general  
18 personal jurisdiction, that conduct must be directed *at* the forum.<sup>40</sup> But the law is otherwise. SCL  
19 relies on a case which involved a claim of *specific* rather than general personal jurisdiction.<sup>41</sup>  
20 Furthermore, in the excerpt cited by SCL, the court held that actions directed at the forum are

21  
22 <sup>38</sup> See Petition 22:15-18.

23 <sup>39</sup> Petition 15:28 to 16:4.

24 <sup>40</sup> Petition 36:24-28.

25 <sup>41</sup> See *Kumarelas v. Kumarelas*, 16 F.Supp.2d 1249, 1253 (D. Nev. 1998) ("plaintiff is not  
26 claiming that this court has general jurisdiction over defendant but rather that this court has specific  
27 jurisdiction over defendant").



1 sufficient, but not necessary, to support personal jurisdiction.<sup>42</sup> To the contrary, the remarks cited  
2 by SCL refer to the "purposeful availment" test for "minimum contacts" due process,<sup>43</sup> under which  
3 "a plaintiff may show either that a defendant purposefully availed himself of the privilege of  
4 conducting activities within the forum or that a defendant purposefully directed his activities  
5 toward the forum." *Pat Clark Sports, Inc. v. Champion Trailers, Inc.*, 487 F.Supp. 2d 1172, 1177  
6 (D. Nev. 2007) (emphasis added). Note the half of this alternative test omitted by SCL: "activities  
7 within the forum".<sup>44</sup> That, of course, aptly describes SCL's de facto executive headquarters in Las  
8 Vegas.  
9

10  
11 **2. SCL Regularly Transfers Millions of Dollars to and from  
Las Vegas in Furtherance of Its Business.**

12 SCL periodically uses so-called "Affiliate Transfer Advices" to transmit its customers'  
13 funds electronically to LVSC or its affiliates in Las Vegas. The sums are significant (e.g., USD  
14 \$2,000,000.00; \$2,080,100.00; \$1,902,900.00).<sup>45</sup> All in all, these transfers total nearly USD \$70  
15 million over a three-year period.<sup>46</sup> During the hearing below, SCL's counsel defended these  
16

17  
18 <sup>42</sup> *Kumarelas*, 16 F.Supp.2d at 1253 ("in tort cases, jurisdiction may attach if the defendant's  
conduct is aimed at or has an effect in the forum state").

19 <sup>43</sup> The purposeful availment prong of minimum contacts requires a qualitative evaluation of  
20 the defendant's contact with the forum state in order to determine whether "[the defendant's]  
conduct and connection with the forum State are such that [the defendant] should reasonably  
21 anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S.  
286, 297, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980).  
22

23 <sup>44</sup> See, e.g., *Gator.Com Corp. v. L.L. Bean, Inc.*, 341 F.3d 1072, 1079 (9th Cir. 2003),  
*dismissed on reh'g en banc*, 398 F.3d 1125 (9th Cir. 2005) (general jurisdiction existed because  
24 nonresident defendant "deliberately and purposefully availed itself, on a very large scale, of the  
benefits of doing business within the state") (emphasis added).  
25

26 <sup>45</sup> Affidavit of Steven C. Jacobs [Appx. 3, Exh. 1] ¶ 14 & *id.* Exh. 14.

27 <sup>46</sup> Affidavit of Steven C. Jacobs [Appx. 3, Exh. 1] ¶ 14 & *id.* Exh. 14; Appx. 5.  
28



1 transactions as "a good business practice" for the convenience of SCL customers, thereby  
2 "facilitating somebody who wants to gamble in Las Vegas and somebody who might want to  
3 gamble in China."<sup>47</sup> The legitimacy of these transactions is not in question here as that issue will  
4 be reviewed and decided elsewhere. Their intent, regularity, magnitude and destination, however,  
5 are.

6  
7 The intent of these transactions is self-evident. As SCL's counsel admitted, they are meant  
8 to promote SCL's business interests. Keeping customers and financiers happy, after all, keeps  
9 them gambling, which, in turn, keeps the profits flowing into SCL's coffers. Hence these  
10 transactions may, indeed, be "a good business practice". And, because they are a *practice*, they  
11 are, by definition, regular.<sup>48</sup>

12  
13 Their magnitude too is manifest: millions upon millions of dollars, transfer after transfer,  
14 adds up to serious money.

15 The *destination* of these funds is a topic that inspires SCL's impassioned flimflammy.  
16 SCL chides Jacobs for using an outdated "moniker".<sup>49</sup> According to SCL, these transactions are no  
17 longer called an "Affiliate Transfer Advice". Their new label is "Inter-Company Accounting  
18 Advice" to correct the misimpression that a transfer of funds from Macau to Las Vegas occurs.  
19 Instead, funds on deposit in Macau are merely "made available" in Las Vegas through a series of  
20

21  
22  
23  
24 <sup>47</sup> 3/15/11 Tr. [Appx. 6] 57:23-25, 58:11, 58:20-24.

25 <sup>48</sup> See Affidavit of Jason M. Anderson [Appx. 4] ¶ 6 (inter-affiliate accounting adjustments  
26 occur every 30 days).

27 <sup>49</sup> Petition 37:27, 40:7-8.



1 debits and credits; the patron's account is debited in Macau and credited in Las Vegas.<sup>50</sup> Money is  
2 thus magically "available" in Las Vegas without leaving Macau.

3  
4 This "moniker" rationale again exalts form over substance, but here the fallacy is aggravated  
5 by impudence on steroids. SCL's house-of-cards contrivance to mask the millions of Macau  
6 dollars "available" in Las Vegas exemplifies the verbal obfuscation denounced by courts as "antics  
7 with semantics".<sup>51</sup> It is an insultingly transparent charade which did not fool the district court and  
8 remains equally implausible on appeal. Its problem, in a nutshell, is that it fails the common sense  
9 "duck" test, *i.e.*, "if it walks like a duck, quacks like a duck, and swims like a duck, it's a duck."<sup>52</sup>  
10 Had SCL physically carted suitcases full of currency into Nevada, it presumably would not deny  
11 that a "transfer" of funds took place. Its quibble that the identical result was achieved by  
12 transmitting electronic blips rather than paper strips is a distinction without a difference, for  
13 entering electronic debits and corresponding credits is precisely how an electronic funds *transfer*  
14 occurs. See 15 U.S.C. § 1693a(6); *Brooke Credit Corp. v. Buckeye Ins. Ctr.*, 563 F.Supp.2d 1205,  
15 1207 (D. Kan. 2008) (franchisor performed accounting services for franchisees, which included  
16 making "electronic funds transfers to credit and debit various accounts") (emphasis added). SCL's  
17 own affidavits admit that the debit-credit differentials "are settled by wire transfer",<sup>53</sup> and, during  
18  
19  
20

21  
22 <sup>50</sup> See Petition 40:22-28.

23 <sup>51</sup> *Brown v. Lumbermens Mut. Cas. Co.*, 285 N.C. 313, 204 S.E.2d 829, 833 (1974).

24 <sup>52</sup> See, e.g., *Lake v. Neal*, 585 F.3d 1059, 1059 (7th Cir. 2009), *cert. denied*, \_\_\_ U.S. \_\_\_, 130  
25 S.Ct. 3296, 176 L.Ed.2d 1187 (2010); *People v. Monjaras*, 164 Cal.App.4th 1432, 79 Cal.Rptr.3d  
26 926, 929 (2008). As this Court succinctly observed in *Wolff v. Wolff*, 112 Nev. 1355, 1363, 929  
P.2d 916, 921 (1996), "[c]alling a duck a horse does not change the fact it is still a duck."

27 <sup>53</sup> Affidavit of Jason M. Anderson [Appx. 4] ¶ 8 (emphasis added).



1 oral argument, even SCL's counsel stated that the money "is transferred" to and from Las Vegas.<sup>54</sup>  
2 These transfers constitute a significant forum contact when considering the jurisdiction question.  
3 See, e.g., *Provident Nat. Bank v. California Federal Sav. & Loan Ass'n*, 819 F.2d 434 (3d Cir.  
4 1987).

5  
6 In *Provident*, the defendant bank was headquartered in California, maintained no  
7 Pennsylvania offices, employees, agents, mailing address, or telephone number, and it neither  
8 advertised nor paid taxes in Pennsylvania. *Id.* at 438. Notwithstanding the foregoing, the Third  
9 Circuit Court of Appeals held that Pennsylvania could exercise general jurisdiction over the  
10 California bank given that it routinely transferred funds into a Pennsylvania account maintained by  
11 a different bank. *Id.* It did not matter that these daily transfers comprised a miniscule portion of  
12 the California bank's business as they still constituted "substantial, ongoing, and systematic activity  
13 in Pennsylvania." *Id.* The same can certainly be said here as SCL's wire transfers are in  
14 substantial amounts and occur frequently enough to constitute systematic and continuous contact  
15 with the State of Nevada.  
16

17 SCL also insists that it did not transfer the funds, but instead its subsidiary, Venetian Macau  
18 Limited ("VML") performed these actions. On its face, this upstream transfer from SCL's  
19 subsidiary to SCL's parent, which somehow conveniently leapfrogs over the intermediary (SCL  
20 itself), exhibits all the earmarks of simply another none-too-subtle subterfuge meant to disguise the  
21 substance of the transaction.<sup>55</sup> Furthermore, the objection mistakes the burden of proof. As  
22

23  
24 <sup>54</sup> 3/15/11 Tr. [Appx. 6] 57:20-21.

25 <sup>55</sup> SCL explains it on the ground that VML, as the gaming subconcessionaire, is the sole entity  
26 allowed to deal with patrons' funds under Macau law. See Petition 40:19-20. Perhaps, but creating  
27 superficial appearances to conceal the reality of transactions, in order to circumvent government  
28 regulations while seeming to obey them, is a time-honored artifice in the corporate world.





1 noted earlier, Jacobs need only make a *prima facie* showing of facts to support personal  
2 jurisdiction. *Trump v. Eighth Judicial Dist. Ct.*, *supra*, 109 Nev. at 692-93, 857 P.2d at 743-44.  
3 Having been SCL's President and CEO, Jacobs has attested that SCL transfers the funds to Las  
4 Vegas.<sup>56</sup> This, for present purposes, is dispositive, for it is more than enough to establish, *prima*  
5 *facie*, that SCL does, in fact, transfer these funds to Las Vegas. Hence it makes no difference that  
6 SCL's witnesses state otherwise; such a conflict merely goes to the *weight* of the evidence, an  
7 inquiry that is premature at the present stage of the case.

9 SCL, in short, methodically moves millions of dollars to Las Vegas to ingratiate itself with  
10 its patrons. Bear in mind, moreover, that this trans-Pacific financial current flows both ways:<sup>57</sup>  
11 funds are also transferred *from* Las Vegas in order to facilitate gambling in Macau.<sup>58</sup> In this  
12 fashion, SCL *doubly* benefits from its contacts with Las Vegas: by transferring funds *to* Las Vegas,  
13 it keeps its patrons happy; by transferring funds *from* Las Vegas, it keeps them solvent. Both  
14 streams, of course, lead to the same end, *i.e.*, lining SCL's pockets. There is nothing necessarily  
15 sinister in this. It may well be, as SCL's counsel correctly noted, simply a good business practice.  
16 But to deny, in the face of this practice, that SCL's contacts with Nevada are substantial, continuous  
17 and systematic is utter nonsense.

19 The cases cited by SCL do not support a contrary conclusion. One of them is no longer  
20 good law,<sup>59</sup> and the others are factually distinguishable. *Fields v. Ramada Inn, Inc.*, 816 F.Supp.

23 <sup>56</sup> Affidavit of Steven C. Jacobs [Appx. 3, Exh. 1] ¶ 14.

24 <sup>57</sup> Affidavit of Jennifer Ono [Appx. 4] ¶ 6.

25 <sup>58</sup> 3/15/11 Tr. [Appx. 6] 57:24-25.

26 <sup>59</sup> *Romann v. Geissenberger Mfg. Corp.*, 865 F.Supp. 255 (E.D. Pa. 1994) (cited at Petition  
27 38:19-21), was abrogated by the court that originally decided it. *See Eagle Traffic Control, Inc. v.*



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

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

1 1033 (E.D. Pa. 1993), for example, held that merely advertising in the forum, without more, is an  
2 insufficient contact. *See Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119, 1126 (W.D.  
3 Pa. 1997) (*Fields* was inapplicable because the defendant in *Zippo* "has done more than advertise"  
4 in the forum). SCL's contacts with Nevada include connections far more entrenched and  
5 substantial than simple advertising from afar—not only its financial transactions, but also its use of  
6 Las Vegas facilities as its executive headquarters, discussed earlier, for "it is the cumulative  
7 significance of all the activities conducted in the jurisdiction rather than the isolated effect of any  
8 single activity that is determinative." *Abbott v. Second Judicial Dist. Ct.*, 90 Nev. 321, 324, 526  
9 P.2d 75, 76 (1974).

11 Inapplicable for the same reason is *Arroyo v. Mountain School*, 68 A.D.3d 603, 892  
12 N.Y.S.2d 74 (2009), which involved circumstances radically dissimilar from those in the present  
13 case. *Arroyo* was an action against a Vermont school for injuries sustained on the school  
14 premises. The plaintiff relied on the fact that the school had approximately \$14 million invested  
15 with New York firms as a basis for personal jurisdiction in New York. The court disagreed.  
16 Noting New York's unique role as a global financial nerve-center, and the school's lack of other  
17 substantial contacts with New York, it held that "[t]he investment of money in New York cannot  
18 alone be considered a form of 'doing business' for the purpose of [New York's long-arm statute]; if  
19 it were, then almost every company in the country would be subject to New York's jurisdiction."  
20 892 N.Y.S.2d at 75 (internal quotation marks omitted). The latter rationale, and the facts which  
21 engendered it, have no pertinence here.

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27 *James Julian, Inc.*, 933 F.Supp. 1251, 1256 (E.D. Pa. 1996).



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/382-5822  
FAX: 702/382-0540

1           C.    SCL Has Not Made a Plausible Showing, Much Less a Compelling  
2                   One, that Other Considerations Render the Exercise of Jurisdiction  
3                   Unreasonable.

4           SCL correctly identifies the factors considered in determining whether personal jurisdiction  
5 is reasonable: (1) the extent of a defendant's purposeful contacts with the forum, (2) the burden on  
6 the defendant in defending in the forum, (3) the extent of any conflict with the sovereignty of the  
7 defendant's state, (4) the forum's interest in adjudicating the dispute, (5) the most efficient judicial  
8 resolution of the controversy, (6) the importance of the forum to the plaintiff's interest in  
9 convenient and effective relief, and (7) the existence of an alternative forum. *Harris Rutsky & Co.*  
10 *Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1132 (9th Cir. 2003). But there is no  
11 justifiable basis for SCL's attempts to stretch the facts in order to tilt these criteria in its favor.  
12

13           The blanket assertion, regarding the first criterion, that "SCL has *no* purposeful contacts  
14 with Nevada"<sup>60</sup> is flagrantly false. As demonstrated above, SCL's purposeful contacts with  
15 Nevada are persistent, extensive and substantial.

16           Nor will SCL be unduly burdened by litigating in Nevada. Its two top executives live and  
17 work here, and it regularly operates its business from here. Nevada can hardly be a congenial  
18 place to conduct business and, at the same time, an onerous place to defend actions arising from that  
19 business.  
20

21           SCL invokes the specter of a conflict with Hong Kong sovereignty because of Hong Kong's  
22 interest in governing companies whose stock is listed on the Hong Kong Stock Exchange. But this  
23 supposed conflict is illusory. The controversy here is not a securities fraud claim, but a private  
24 contract dispute. In this context, it makes no difference where SCL's stock happens to be listed.  
25

26 \_\_\_\_\_  
27 <sup>60</sup>       Petition 41:22-23 (emphasis added).  
28



1 Hong Kong thus has little interest in the matter. The sovereignty argument, moreover, cuts both  
2 ways. SCL, after all, is not the sole defendant. LVSC, a Nevada corporation, is also a defendant.  
3 Nevada, accordingly, has at least as great an interest as Hong Kong, if not greater.  
4

5 That, in turn, implicates the fourth criterion, *i.e.*, the forum's interest in deciding the dispute.  
6 Nevada has a vital interest in the conduct of its gaming licensees, of which LVSC is one. Nevada's  
7 gaming laws, moreover, and thus its interests extend to LVSC's foreign gaming operations in  
8 Macau, as SCL itself has admitted.<sup>61</sup> Jacobs has raised gravely serious questions regarding the  
9 conduct of LVSC, SCL and their senior management. Clearly, therefore, Nevada has a paramount  
10 interest in the adjudication of this dispute.  
11

12 Nevada is also the most efficient forum to resolve this dispute, for the bulk of Jacobs' claims  
13 stem from his contractual relationships with Nevada-based LVSC. It is also the most convenient  
14 forum for Defendants since SCL has its own substantial ties to the State and LVSC is headquartered  
15 here. Although Jacobs' stock option agreement with SCL includes a Hong Kong choice-of-law  
16 provision, SCL has not identified any substantive conflict between Nevada and Hong Kong law.<sup>62</sup>  
17 Even if such a conflict existed, moreover, Nevada courts are perfectly capable of applying Hong  
18 Kong law. *See* NRCP 44.1. Hence there is "no connection between the parties' choice-of-law  
19 provision and the issue of reasonableness" because "a court can exercise jurisdiction, and at the  
20

21 <sup>61</sup> *See* SCL prospectus [Appx. 3, Exh. 3], p. 43.

22 <sup>62</sup> SCL's discussion of *procedural* differences, such as the absence of a jury under Hong Kong  
23 law (*see* Petition 42:24-27) misstates the scope and effect of the choice-of-law provision, which  
24 recites that *interpretation of the agreement* is to be governed by Hong Kong law. *See* Appx. 2  
25 (Part 2), Exh. C] ¶ 14. It does not, and legally could not, bind the interpreting court to adopt the  
26 *judicial procedures* of Hong Kong law. To the extent SCL's Petition also takes a passing swipe at  
27 the substantive viability of Jacobs' contract claim against SCL (*see* Petition at 12:16-13:4), Jacobs  
28 would note that the district court denied SCL's subsequent efforts to have this claim dismissed.  
*See* Order Denying SCL's Motion to Dismiss Plaintiff's Second Cause of Action dated 7/6/11.



1 same time, apply the law of another [jurisdiction]." *Card Player Media, LLC v. The Waat Corp.*,  
2 2009 WL 948650, at \*4 (D. Nev. Apr. 6, 2009). The district court's ability to apply choice-of-law  
3 rules, indeed, further undermines SCL's misplaced emphasis on Hong Kong sovereignty, for any  
4 conflicting sovereignty interests can be accommodated through choice-of-law rules, thus rendering  
5 that factor one of little importance in assessing reasonableness. *Allstar Marketing Group, LLC v.*  
6 *Your Store Online, LLC*, 666 F.Supp.2d 1109, 1125 (C.D. Cal. 2009).

8 Because Nevada is the most efficient forum to resolve this dispute, having the Nevada  
9 courts adjudicate it is also important to Jacobs' interest in convenient and effective relief.  
10 Otherwise, as SCL would undoubtedly prefer as a tactical coup of attrition, Jacobs would be forced  
11 to litigate his claims on the other side of the globe. Finally, SCL acknowledges that Nevada has a  
12 competent legal system with a strong interest in the controversy.<sup>63</sup>

14 On this record, SCL cannot satisfy, and has not satisfied, its burden of proving that  
15 Nevada's exercise of personal jurisdiction over it is unreasonable.

16 **D. Jacobs Has Requested the Opportunity to Conduct Jurisdictional**  
17 **Discovery, If Necessary.**

18 Courts have frequently held that the party opposing a jurisdictional challenge is entitled to  
19 conduct discovery regarding jurisdiction "where pertinent facts bearing on the question of  
20 jurisdiction are controverted or where a more satisfactory showing of the facts is necessary." *Laub*  
21 *v. U.S. Dept. of Interior*, 342 F.2d 1080, 1093 (9th Cir. 2003). Jacobs obviously agrees with the  
22 district court that he has already satisfied his burden of making a *prima facie* showing of  
23 jurisdiction over SCL based on the evidence adduced to date. If, however, this Court determines  
24 that additional information on SCL's contacts with Nevada is necessary to determine whether the  
25

26  
27 <sup>63</sup> See Petition 43:4-6.



1 district court may properly assert jurisdiction over the company, Jacobs hereby renews his request  
2 that he be given the opportunity to conduct jurisdictional discovery.<sup>64</sup>  
3


4 CONCLUSION

5 For the reasons set forth above, this Court should deny SCL's writ petition.

6 DATED this 25th day of July, 2011.

7 Respectfully submitted,

8 CAMPBELL & WILLIAMS

9  
10 By   
11 DONALD K. CAMPBELL, ESQ. (#1216)  
12 J. COLBY WILLIAMS, ESQ. (#5549)  
13 700 South Seventh Street  
14 Las Vegas, Nevada 89101  
15 Tel. (702) 382-5222  
16 Fax. (702) 382-0540

17 Attorneys for Real Party in Interest  
18 Steven C. Jacobs  
19  
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27 <sup>64</sup> See Plaintiff's Opposition to Sands China Ltd.'s Motion to Dismiss for Lack of Personal  
28 Jurisdiction, or in the Alternative, Plaintiff's Failure to Join an Indispensable Party [Appx. 3], p. 21.



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

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

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Nancy A. Gregory  
An employee of Campbell & Williams