the entity eventually named Sands China). Let's be frank, Sands China did not just appear on the date of its incorporation or on the date that the IPO was completed.

All of the events related to the services Jacobs provided beginning in December 2008/January 2009 related to Nevada, and all of the contracts related to, entered into by, and on behalf of Sands China related to Nevada – irrespective of the date of the IPO – are relevant to the question of specific ***and*** general jurisdiction. Sands China's sought after "clarification" must be denied. The previously stipulated and now twice ordered relevant time period must stand.

IV. CONCLUSION

In light of the foregoing, Sands China's motion for "clarification" must be denied in its entirety.

DATED this 12th day of October, 2011.

PISANELLI BICE PLLC

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

Attorneys for Plaintiff Steven C. Jacobs

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 12th day of October, 2011, I caused to be sent via email and United States Mail, postage prepaid, true and correct copies of the above and foregoing **PLAINTIFF STEVEN C. JACOBS' OPPOSITION TO SANDS CHINA LTD.'S MOTION FOR CLARIFICATION OF JURISIDICTIONAL DISCOVERY ORDER** properly addressed to the following:

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

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

/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC

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

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

Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS SANDS CORP., a Nevada corporation, Plaintiff, v. STEVEN C. JACOBS, an individual; VAGUS GROUP, INC., a Delaware corporation; DOES I through X and ROE CORPORATIONS XI through XX; Defendants.	CASE NO.: A-11-648484-B DEPT NO.: XI **INTERIM ORDER**

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

Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

the issuance of an Interim Order. Therefore,

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

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

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

DATED this _____ day of September, 2011.

_____
DISTRICT COURT JUDGE

Respectfully submitted by:

DATED this ____ day of September, 2011

HOLLAND & HART LLP

_____
J. Stephen Peek, Esq.
Brian G. Anderson, Esq.
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Attorneys for Plaintiff

Approved to form/content:

DATED this ___ day of September, 2011

PISANELLI BICE PLLC

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

Attorneys for Defendants

Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

EXHIBIT "D"

EXHIBIT "D"

Andrew Sedlock

From:	Kimberly Peets [kap@pisanellibice.com]
Sent:	Friday, September 23, 2011 7:47 PM
To:	Patricia Glaser; Stephen Ma; Andrew Sedlock; speek@hollandhart.com; jcjones@hollandhart.com; bganderson@hollandhart.com
Cc:	James Pisanelli; Todd Bice; Debra Spinelli; Sarah Elsden
Subject:	Jacobs v. Sands
Attachments:	Jacobs First Supplemental Disclosures.pdf; Jacobs Witness & Exhibit List for Evidentiary Hearing.pdf

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

Thank you,

Kim

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

Please consider the environment before printing.

LIST
James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com
Todd L. Bice, Esq., Bar No. 4534
TLB@pisanellibice.com
Debra L. Spinelli, Esq., Bar No. 9695
DLS@pisanellibice.com
PISANELLI BICE PLLC
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169
Telephone: (702) 214-2100
Facsimile: (702) 214-2101

Attorneys for Plaintiff Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS, Plaintiff, v. LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; DOES I through X; and ROE CORPORATIONS I through X, Defendants. AND RELATED CLAIMS	Case No.: A-10-627691 Dept. No.: XI **PLAINTIFF STEVEN C. JACOBS' WITNESS AND EXHIBIT LIST FOR THE EVIDENTIARY HEARING ON NOVEMBER 21, 2011**

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

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

A. WITNESSES

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

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

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

2. Sheldon G. Adelson
c/o Holland & Hart
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134

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

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

3. Kenneth J. Kay
c/o Holland & Hart
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134

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

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

4. Robert G. Goldstein
c/o Holland & Hart
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134

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

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

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

5. Larry Chu
c/o Holland & Hart
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134

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

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

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

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

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

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

B. EXHIBITS

1. Sands China's Equity Award Plan **(Bates Nos. SJ000028-SJ000066)**;

2. Agreement for Services by and between Venetian Macau Limited and Steven Jacobs, effective May 1, 2009 **(Bates Nos. SJ000001-SJ000003)**;

3. Correspondence from Venetian Macau Limited to Steven Jacobs, dated June 16, 2009 **(Bates Nos. SJ000004-SJ000006)**;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this 23rd day of September, 2011.

PISANELLI BICE PLLC

By: _____

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

Attorneys for Plaintiff Steven C. Jacobs

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

CERTIFICATE OF SERVICE

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

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

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

Kimberly Peets
An employee of PISANELLI BICE PLLC

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

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CLERK OF THE COURT

MOT

Patricia Glaser, Esq. (Pro Hac Vice Admitted)
Stephen Ma, Esq. (Pro Hac Vice Admitted)
Andrew D. Sedlock, Esq. (NBN 9183)
GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP
3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169
Telephone: (702) 650-7900
Facsimile: (702) 650-7950
E-mail:
pglaser@glaserweil.com
sma@glaserweil.com
asedlock@glaserweil.com

Attorneys for Sands China, Ltd.

FILE WITH MASTER CALENDAR

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

LAS VEGAS SANDS CORP., a Nevada corporation,

Counterclaimant,

v.

STEVEN C. JACOBS,

Counterdefendant.

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

SANDS CHINA LTD.'S MOTION FOR CLARIFICATION OF JURISDICTIONAL DISCOVERY ORDER ON ORDER SHORTENING TIME

DATE OF HEARING: 10-13-11
TIME OF HEARING: 9:00am

Sands China Ltd. ("SCL") hereby brings the following Motion for Clarification of Jurisdictional Discovery Order on Order Shortening Time (the "Motion"). This Motion is based upon the attached memorandum of points and authorities, the Affidavit of John Morland, the papers and pleadings on file in this matter, and any oral argument that the Court may allow.

744192.2 10-05-11P02:58 RCVD

DATED this 5th day of October, 2011.

GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP

Patricia Glaser, Esq. (Pro Hac Vice Admitted)
Stephen Ma, Esq. (Pro Hac Vice Admitted)
Andrew D. Sedlock, Esq. (NBN 9183)
3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169
Telephone: (702) 650-7900
Facsimile: (702) 650-7950
E-mail:
pglaser@glaserweil.com
sma@glaserweil.com
asedlock@glaserweil.com

Attorneys for Sands China, Ltd.

APPLICATION FOR ORDER SHORTENING TIME

SCL applies for an Order Shortening Time for the hearing on its Motion for Clarification of Jurisdictional Discovery Order based upon the following Affidavit of Andrew D. Sedlock, Esq.

DATED this 5th day of October 5, 2011.

GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP

By: _____

Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)
Stephen Ma, Esq. (Pro Hac 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 for Clarification of Jurisdictional Discovery Order on Order Shortening Time (the "Motion").

2. This Motion requests an order from the Court to clarify three (3) discreet aspects of the Court's September 27, 2011 order permitting Plaintiff Steven Jacobs ("Plaintiff") to conduct limited jurisdictional discovery (the "Jurisdictional Discovery Order").

3. In the Motion, SCL requests clarification from the Court before it can proceed with the discovery included in the Jurisdictional Discovery Order prior to the upcoming evidentiary hearing.

4. SCL submits that the Motion should be heard on an order shortening time so SCL can obtain the requested clarification of the Jurisdictional Discovery Order with adequate time thereafter to commence and complete jurisdictional discovery in advance of the upcoming evidentiary hearing.

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

EXECUTED October 5, 2011.

Andrew D. Sedlock, Esq.

Subscribed and Sworn to before me on
this 5th day of October, 2011.

Notary Public, in and for said County and State.

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
DAWN M. DUDAS
Appt. No. 97-4067-1
My Appt. Expires Sept. 27, 2013

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 **SANDS CHINA LTD.'S MOTION FOR CLARIFICATION OF JURISDICTIONAL DISCOVERY ORDER ON ORDER SHORTENING TIME**, and good cause appearing therefore,

IT IS HEREBY ORDERED that the time for hearing Defendant's Motion for Clarification of Jurisdictional Discovery Order is shortened to the 13th day of Oct, 2011, at the hour of 9:00 a.m. in the above-entitled Court.

DATED this 6th day of October, 2011.

DISTRICT COURT JUDGE

Respectfully Submitted by:

GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLC

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

Attorneys for Sands China, Ltd

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

YOU, and each of you, will please take notice that the undersigned will bring the above and foregoing **SANDS CHINA LTD.'S MOTION FOR CLARIFICATION OF JURISDICTIONAL DISCOVERY ORDER** on for hearing before the above-entitled Court on the 13th day of Oct, 2011, at 9:00 a.m. of said day in Department XI of said Court.

DATED this 5th day of October 5, 2011.

GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP

Patricia Glaser, Esq. (Pro Hac Vice Admitted)
Stephen Ma, Esq. (Pro Hac Vice Admitted)
Andrew D. Sedlock, Esq. (NBN 9183)
3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169
Telephone: (702) 650-7900
Facsimile: (702) 650-7950
E-mail:
pglaser@glaserweil.com
sma@glaserweil.com
asedlock@glaserweil.com

Attorneys for Sands China, Ltd.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Sands China Ltd. ("SCL") seeks clarification of three discrete aspects of the Court's September 27, 2011 order permitting Plaintiff Steven Jacobs ("Plaintiff") to conduct limited jurisdictional discovery ("Jurisdictional Discovery Order"). First, Plaintiff should not be allowed to depose Messrs. Kay and Goldstein because their activities are irrelevant to Plaintiff's flawed and untenable theory of personal jurisdiction. Kay and Goldstein are employed by Las Vegas Sands Corp. ("LVSC"), not SCL. Plaintiff, however, disclaims any argument that SCL is subject to jurisdiction based on LVSC's activities. Instead, Plaintiff claims that SCL is subject to

personal jurisdiction solely because of SCL's own activities in Nevada, allegedly carried out by Messrs. Adelson and Leven. Although this theory fails as a matter of law, it cannot justify depositions of Kay and Goldstein, who were never employed by SCL.[1]

SCL also seeks clarification of the scope of the documents requested for production. Plaintiff is only entitled to obtain documents relevant to SCL's activities in Nevada. Documents relating to the activities of LVSC, or to SCL's activities overseas, are irrelevant to Plaintiff's untenable theory of personal jurisdiction and should not be produced.

Finally, SCL seeks clarification regarding the start and end date for jurisdictional discovery. Because Plaintiff claims that SCL is subject to personal jurisdiction based on its own operations, discovery about matters that predate SCL's commencement of operations are irrelevant. Similarly irrelevant are activities occurring after Plaintiff's termination.

II. LEGAL ARGUMENT

A. Both Plaintiff's Theory of Jurisdiction and the Nevada Supreme Court's Writ Order Limit the Permissible Scope of Jurisdictional Discovery to Evidence of SCL's Contacts With Nevada

Plaintiff expressly acknowledges that he is *not* alleging personal jurisdiction over SCL by virtue of any conduct of SCL's parent, LVSC, nor is Plaintiff alleging any type of alter ego or agency relationship between SCL and LVSC as the basis for jurisdiction. Plaintiff's Answer (Exh. A), 4:17-5:3. In other words, Plaintiff is *not* alleging that LVSC did anything to create personal jurisdiction over SCL. *Id.* Rather, Plaintiff is alleging that personal jurisdiction exists because *SCL, itself,* has engaged in continuous, systematic operations within Las Vegas independent of LVSC. *Id.* Plaintiff himself best described this distinction in his Answer to SCL's Writ Petition ("Answer") as follows:

> "As Jacobs explicitly stated to the district court, he never sought to drag SCL into Nevada on LVSC's coattails. Instead, he asserted personal jurisdiction over SCL based on SCL's *own* contacts with Nevada. . . . SCL is subject to personal jurisdiction based on *its own* contacts with Nevada. For purposes of this dispute, the affiliation between SCL and LVSC is the reddest of herrings . . . "

[1] Plaintiff's jurisdictional theory fails as a matter of law because it is predicated on conduct directed to Macau, not Nevada, and conduct directed outside the forum cannot, as a matter of law, support jurisdiction within the forum.

Answer (Exh. A), 4:17-5:3 (italics in original).

In its Order granting SCL's Writ Petition ("Writ Order"), the Nevada Supreme Court ordered an evidentiary hearing for the specific purpose of fleshing out the facts underlying Plaintiff's theory that SCL itself has sufficient contacts with Nevada to justify personal jurisdiction. Writ Order (Exh. B), p. 1-2 (" . . . the transcript reflects only that the district court concluded these were 'pervasive contacts' between [SCL] and Nevada, without specifying any of those contacts.").

Consistent with the foregoing, Plaintiff's jurisdictional argument is predicated entirely on the conduct of Adelson and Leven, both of whom were affiliated with SCL. Answer (Exh. A). In particular, Plaintiff contends that Adelson and Leven, in their capacity as a non-executive Director of SCL and Special Adviser to the Board of SCL, respectively, triggered personal jurisdiction over SCL by providing strategic guidance regarding SCL's activities in Macau while standing on Nevada soil. Answer (Exh. A). Plaintiff relies on the actions of Adelson and Leven because of their affiliation with SCL, rather than LVSC.[2]

Accordingly, any jurisdictional discovery should be strictly limited to evidence of SCL's contacts with Nevada, separate and distinct from LVSC's irrelevant contacts with Nevada.[3] In that regard, without waiving prior objections and opposition, SCL is not presently challenging the Court's decision to permit limited, jurisdictional depositions of Adelson and Leven with respect to their conduct in Nevada on behalf of SCL.[4]

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[2] It is *undisputed* that the strategic guidance provided by Adelson and Leven was *directed to and carried out exclusively in Macau*, where SCL is located and conducts all of its operations. As the Nevada Supreme Court clearly recognized when granting SCL's Writ Petition, Plaintiff's theory of jurisdiction is fundamentally and fatally flawed because, *inter alia*, none of the conduct relied upon by Plaintiff was directed to Nevada. Conduct directed outside the forum is insufficient as a matter of law to create jurisdiction within the forum. *See e.g., Kumarelas v. Kumarelas*, 16 F. Supp. 2d 1249, 1254 (D. Nev. 1998); *Gordon v. Greenview Hospital*, 300 S.W.3d 635, 648 (Tenn. 2009). SCL will further develop this fatal flaw in Plaintiff's argument at the appropriate time.

[3] LVSC's contacts with Nevada would only be relevant if Plaintiff were asserting an alter ego theory of jurisdiction, which, as described above, Plaintiff acknowledges is not the case. Answer (Exh. A), 4:17-5:3.

[4] Plaintiff also claims "transient" jurisdiction, but the transient jurisdiction analysis does not require any evidence beyond the proof of service, which is why the Nevada Supreme Court instructed the District Court to consider the transient jurisdiction theory only after adjudication of the general jurisdiction issue. Exh. B. Moreover, as explicated in SCL's prior briefs and Writ

B. The Depositions Of Kay and Goldstein Are Irrelevant to Plaintiff's Theory of Jurisdiction

In its Jurisdictional Discovery Order, the Court permitted Plaintiff to depose not only Adelson and Leven, but also Kay and Goldstein. In contrast to Adelson and Leven, Kay is an employee of LVSC only, and Goldstein is an employee of LVSC and a director of Venetian Macau Limited. *See* Affidavit of John Morland at ¶¶ 4, 5. Therefore, any work performed by Kay and Goldstein, as employees of those domestic entities, could not establish SCL's contacts with Nevada. Indeed, neither Plaintiff's Answer (Exh. A) nor his prior opposition to SCL's motion to dismiss, even mentions Kay and Goldstein in connection with Plaintiff's arguments regarding personal jurisdiction. Instead, both Plaintiff's Answer and Plaintiff's opposition to the motion to dismiss refer only to Adelson and Leven. Therefore, the depositions of Kay and Goldstein are completely irrelevant to Plaintiff's untenable theory of jurisdiction and should not be permitted.

Based on the foregoing, SCL respectfully requests that the Court clarify its Jurisdictional Discovery Order so as to eliminate the depositions of Kay and Goldstein.

C. Plaintiff's Document Requests Must Likewise Be Limited to Evidence of SCL's Contacts With Nevada

The Court's Jurisdictional Discovery Order also permits Plaintiff to obtain documents from SCL. Without waiving any objections and opposition, SCL is not presently challenging the Court's decision to permit jurisdictional document discovery. Rather, SCL is merely seeking clarification that the documents to be produced are appropriately limited to evidence of *SCL's contacts with Nevada*, as articulated by Plaintiff. Conversely, Plaintiff may not obtain documents evidencing LVSC's contacts with Nevada or Macau, nor SCL's contacts with Macau only, all of which are irrelevant to Plaintiff's flawed theory of jurisdiction.[5]

(continued)

Petition, transient jurisdiction is not available for corporate defendants. *See C.S.B. Commodities, Inc. v. Urban Trend, Ltd., et al.*, 626 F. Supp.2d 837, 849-50 (N.D. Ill. 2009); *see also Burnham v. Superior Court*, 495 U.S. 604, 610 n. 1 (1990).

[5] The Court issued its ruling regarding Plaintiff's proposed document requests at the very end of the September 28, 2011 hearing and, therefore, SCL did not have an opportunity to address the ramifications of the Court's ruling, and seek necessary clarification, at that time.

Plaintiff's existing document requests go well beyond information relevant to SCL's contacts with Nevada, and seek the production of voluminous documents having no relationship to Plaintiff's untenable theory of jurisdiction. Exh. C. By way of example, Plaintiff's Document Request No. 15 seeks all documents reflecting services performed by LVSC on behalf of SCL. Exh. C, p. 7. This request reflects precisely the theory of jurisdiction that Plaintiff has expressly disavowed -- jurisdiction predicated on LVSC's contacts with Nevada under an alter ego theory. Answer (Exh. A), 4:17-5:3. LVSC's activities on behalf of SCL have no bearing on SCL's own activities in Nevada, which is Plaintiff's sole theory for the assertion of personal jurisdiction. *Id.* Similarly, Document Request No. 18 (seeking "[a]ll documents that reflect reimbursements made to any LVSC executive for work performed or services provided related to Sands China.") suffers from the same defect. Exh. C. Likewise, many of Plaintiff's other categories of documents (including Document Request Nos. 6, 7, 9, 10, 11, 12, and 13) encompass, in whole or in part, LVSC's conduct and/or SCL's conduct *solely within Macau*, unrelated to Nevada, all of which are irrelevant for purposes of Plaintiff's untenable theory of jurisdiction.[6] Exh. C.

Based on the foregoing, SCL respectfully requests that the Court clarify its Jurisdictional Discovery Order so as to limit all document requests to documents relating to SCL's contacts with Nevada, consistent with Plaintiff's own statement of his jurisdictional theory.

D. Jurisdictional Discovery Should be Limited to the Time Frame Beginning with SCL's Commencement of Operations, and Ending With Jacobs' Departure: November 30, 2009 Through July 23, 2010

Plaintiff's jurisdictional discovery should be limited to November 30, 2009 through July 23, 2010. As stated above, Plaintiff is alleging jurisdiction based upon SCL's alleged "continuous operations" within the State of Nevada. At the risk of stating the obvious, such "continuous operations" cannot occur or exist until operations actually commence. SCL did not commence operations until November 2009, following its initial public offering. The planning activities of *other* entities that preceded the commencement of SCL's operations are not probative of SCL's

[6] Plaintiff's document requests are separately objectionable on several other grounds, including privilege, work product, privacy, over-breadth, oppression, burden, and ambiguity. All such objections are expressly reserved and are not a subject of this Motion.

activities within Nevada. Rather, only the actual operations following the commencement of business are relevant for purposes of determining whether "continuous operations" exist. Therefore, Plaintiff's jurisdictional discovery cannot address the time period before November 30, 2009, at which time SCL commenced operations.

With regard to the end date for jurisdictional discovery, Plaintiff was terminated for cause on July 23, 2010, and that is when Plaintiff's claims accrued. Exh. A, 2:20-21. Events occurring after Plaintiff's departure are necessarily irrelevant to Plaintiff's claims. Therefore, Plaintiff's requested jurisdictional discovery cannot address the time period after July 23, 2010, the date of Plaintiff's termination. In other words, the jurisdictional discovery must be limited to the time period of November 30, 2009 through July 23, 2010.

III. CONCLUSION

Based on the foregoing, the Court should grant this Motion and issue an Order:

1. Excluding the jurisdictional depositions and any other discovery relating to Messrs. Kay and Goldstein;

2. Limiting the scope of jurisdictional document discovery to SCL's contacts with the State of Nevada; and

3. Limiting the scope of jurisdictional discovery to the time period of November 30, 2009 through July 23, 2010.

Dated this 5th day of October, 2011.

GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP

Patricia Glaser, Esq. (Pro Hac Vice Admitted)
Stephen Ma, Esq. (Pro Hac Vice Admitted)
Andrew D. Sedlock, Esq. (NBN 9183)
3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169
Telephone: (702) 650-7900
Facsimile: (702) 650-7950
E-mail:
pglaser@glaserweil.com
sma@glaserweil.com
asedlock@glaserweil.com
Attorneys for Sands China, Ltd.

AFFD
Patricia Glaser, Esq. (Pro Hac Vice Admitted)
Stephen Ma, Esq. (Pro Hac Vice Admitted)
Andrew D. Sedlock, Esq. (NBN 9183)
GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO, LLP
3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169
Telephone: (702) 650-7900
Facsimile: (702) 650-7950
E-mail:
pglaser@glaserweil.com
sma@glaserweil.com
asedlock@glaserweil.com

Attorneys for Sands China, Ltd.

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

LAS VEGAS SANDS CORP., a Nevada corporation,

Counterclaimant,

v.

STEVEN C. JACOBS,

Counterdefendant.

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

Date:
Time:

AFFIDAVIT OF JOHN MORLAND IN SUPPORT OF SANDS CHINA LTD.'S MOTION FOR CLARIFICATION OF JURISDICTIONAL DISCOVERY ORDER

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

John Morland, being first duly sworn, deposes and states:

1. I am the Senior Vice President of Human Resources for Las Vegas Sands Corp. ("LVSC"). I have personal knowledge of the matters stated herein except those stated upon information and belief and I am competent to testify thereto.

2. In my capacity as Senior Vice President of Human Resources for LVSC, I am very familiar with LVSC's employment of both Robert Goldstein ("Goldstein") and Kenneth Kay ("Kay").

3. I make this Affidavit in support of Sands China Ltd.'s ("SCL") Motion for Clarification of Jurisdictional Discovery Order (the "Motion").

4. Goldstein has been the President of Global Gaming Operations at LVSC since January 1, 2011. Goldstein has also been an Executive Vice President of LVSC since July 2009. Prior thereto, Goldstein held other management positions within LVSC. Goldstein has been a director of Venetian Macau Limited since 2002.

5. Kay has been the Chief Financial Officer and an Executive Vice President of LVSC since December 1, 2008. Prior to December 1, 2008, Kay was not employed by LVSC.

6. Nothing in this affidavit 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.

John Morland

Subscribed and sworn to before me
this 14th day of October, 2011

NOTARY PUBLIC in and for

My Commission expires 9/30/14

GAIL TOTH
Notary Public State of Nevada
No. 10-3343-1
My Appt. Exp. September 30, 2014

Glaser Weil Fink Jacobs Howard Avchen Shapiro

EXHIBIT "A"

EXHIBIT "A"

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

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

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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: 702/382-5222
FAX: 702/382-0540

Cases (cont'd)

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: 702/382-5222
FAX: 702/382-0540

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

Pursuant to this Court's June 24, 2011 order, Real Party in Interest Steven C. Jacobs ("Jacobs") hereby files his Answer to the Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition.

INTRODUCTION AND SUMMARY OF ARGUMENT

Pending before the Court is a writ petition by Sands China Ltd. ("SCL"), a Cayman Islands corporation that conducts gaming operations in Macau, China. SCL's professed grievance concerns personal jurisdiction. Specifically, SCL is a subsidiary of Las Vegas Sands Corp. ("LVSC"), a Nevada corporation, and, according to SCL, it has wrongfully been forced to defend itself in Nevada solely because of *LVSC*'s contacts with Nevada which, as SCL's parent company, have been imputed to SCL. Both in fact and law alike, however, SCL's protest is groundless.

First of all, SCL misrepresents the issue. Jacobs never argued, and the district court did not find, that SCL is subject to personal jurisdiction in this state because of *LVSC*'s contacts with Nevada. Rather, Jacobs argued, the district court found, and the record confirms that SCL is subject to jurisdiction here because of *its own* contacts with Nevada. The supposed issue which SCL urges this Court to consider, in other words, is a mirage.

Not only is SCL's petition misleading, it is incomplete as well. Jacobs asserted two grounds for personal jurisdiction—"transient" and "general" jurisdiction—but SCL's petition addresses only the latter. By failing to address the former, SCL has abandoned any objection to jurisdiction on that basis, thus making it moot whether, in addition, SCL is also amenable to general personal jurisdiction.

In any event, SCL's challenge to general personal jurisdiction quickly collapses under the weight of adverse law and evidence. At this stage of the case, Jacobs need only make a *prima facie* showing that facts exist to support a finding of personal jurisdiction, and the record abounds

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

with evidence sufficient for that purpose. SCL apparently deemed Las Vegas quite a congenial place to do business, for it routinely conducted operations from Las Vegas and repeatedly transferred tens of millions of dollars to Las Vegas. Having systematically taken advantage of Nevada's commercial opportunities and facilities, it is only fair that SCL participate in Nevada's judicial process too.

SUMMARY OF FACTS

LVSC initially retained Jacobs as a consultant in March 2009 to help restructure its operations during the global economic meltdown.[1] By May 2009, LVSC had appointed Jacobs as the head of its gaming operations in Macau, memorializing their relationship in a written agreement dated August 3, 2009.[2] LVSC ultimately spun off its Macau assets and operations into a new public company, SCL, which would be traded on the Hong Kong stock exchange. Jacobs was made President and Chief Executive Officer of SCL, leading the company through its initial public offering in November 2009 and helping return LVSC and SCL to significantly improved financial health during his time with Defendants.[3] In March 2010, Michael Leven, LVSC's Chief Operating Officer, assessed Jacobs' 2009 job performance as follows: "*there is no question as to Steve's performance[;] the Titanic hit the iceberg[,] he arrived and not only saved the passengers[,] he saved the ship.*"[4] Jacobs' tenure, however, came to an abrupt end just months later on July 23, 2010 when he was terminated at the direction of LVSC's and SCL's Chairman,

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1 *See* Complaint [**Appx. 1**] at ¶ 16.

2 *See* Complaint [**Appx. 1**] at ¶¶ 18; 21.

3 *See* Complaint [**Appx. 1**] at ¶¶ 22-24.

4 *See* Complaint [**Appx. 1**] at ¶ 25.

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

Sheldon G. Adelson.[5] Jacobs thereafter sued LVSC and SCL for breach of contract related to his employment agreement with LVSC and his respective stock option agreements with LVSC and SCL, breach of the implied covenant of good faith and fair dealing, and tortious discharge in violation of public policy.[6] To the extent additional facts are pertinent to this Answer, they will be discussed in the context of the Argument that follows.

ARGUMENT

I. SCL MISSTATES THE ISSUE DECIDED BELOW.

SCL depicts the present case as involving a "coattail" assertion of personal jurisdiction on the ground that, although it has no contacts with Nevada, SCL has nonetheless been compelled to defend itself here because of LVSC's contacts with Nevada.[7] The Petition then proceeds to snip these coattails. SCL argues, at considerable length, that most courts do not impute the contacts of a domestic parent company to its foreign affiliate unless there is an alter ego relationship between the two entities, while other courts require control by the parent disproportionate to its investment; and that, since LVSC is neither an alter ego of SCL nor exercises control over SCL disproportionate to its investment, SCL is not subject to personal jurisdiction in Nevada based on its affiliation with LVSC.[8]

The foregoing issue, according to SCL, is unfinished business left over from *MGM Grand, Inc. v. Eighth Judicial Dist. Ct.*, 107 Nev. 65, 807 P.2d 201 (1991), where this Court held that the

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[5] *See* Complaint [Appx. 1] at ¶¶ 26-31.

[6] *See* Complaint [Appx. 1] at ¶¶ 34-57.

[7] *See* Petition 17:17-18 ("SCL demonstrated that it lacks any contacts with Nevada, apart from its ongoing relationship with its majority shareholder, LVSC").

[8] *See* Petition, pp. 27-37.

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

Walt Disney Company was not subject to personal jurisdiction in Nevada based on its subsidiaries' Nevada contacts, but did not decide whether an alter ego relationship is necessary.[9] Moreover, SCL characterizes the issue as one of the utmost urgency. Without immediate intervention by this Court, SCL prophesizes an End-of-Western-Civilization-As-We-Know-It catastrophe, warning that foreign companies will be subject to process here for any matter whatsoever, "provided only that the foreign corporation is a subsidiary of a controlling parent corporation domiciled in Nevada"[10] and that "Nevada's courts would be at risk to be inundated with lawsuits brought by every foreign litigant who has a claim against a foreign entity that is a corporate affiliate of a Nevada company."[11] Hence, concludes SCL, "[t]he issue of whether, due to a relationship with a corporation or other affiliate in Nevada, a litigant can bring a suit in Nevada against a foreign entity . . . based on the presence of a Nevada affiliate, is vitally important to the companies based in Nevada and to their foreign subsidiaries."[12]

But the preceding melodrama—indeed, the entire professed issue—is a myth, a straw man fabricated by SCL in disregard of the actual issues argued and decided below. As Jacobs explicitly stated to the district court, he never sought to drag SCL into Nevada on LVSC's coattails. Instead, he asserted personal jurisdiction over SCL based on *SCL's own* contacts with Nevada.[13] And, as

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[9] *See* Petition, pp. 20-21.

[10] Petition 17:8-15.

[11] Petition 19:28 to 20:2.

[12] Petition 21:25-28.

[13] *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] 17:23-24 ("Jacobs seeks to establish jurisdiction over SCL *based on its own contacts* with the forum, not just those attributable to LVSC") (emphasis added).

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

the evidence discussed below in Point III demonstrates, SCL is subject to personal jurisdiction based on *its own* contacts with Nevada. For purposes of the dispute at hand, the affiliation between SCL and LVSC is the reddest of red herrings, for the outcome would be no different if they were unrelated entities.

SCL, in other words, is attempting to whet this Court's interest with a false portrayal of the controversy. Such a materially inaccurate presentation undermines the efficacy of writ review. After all, in order to determine whether a dispute has sufficient legal merit, much less the extraordinary urgency required for mandamus or prohibition, this Court obviously must have before it a fair presentation of the issues.[14] Otherwise, the Court would potentially find itself in the awkward position of discovering, after issuing a writ, that the writ was unwarranted because the issues were not as represented in the petition. In addition, it is a long-established axiom that "[a]ppellate courts do not give opinions on moot questions." *Edwards v. City of Reno*, 45 Nev. 135, 143, 198 P. 1090, 1092 (1921). This self-imposed restraint on the squandering of scarce judicial resources applies with particular force to the purely discretionary exercise of writ review. *Marquis & Aurbach v. Eighth Judicial Dist. Ct.*, 122 Nev. 1147, 1155, 146 P.3d 1130, 1135 (2006).

Whether from the standpoint of docket management, substantive justice, or basic honesty, the use of tainted bait to fish for writ review, so to speak, should be vigorously discouraged. Summarily denying such petitions is an essential first step in that direction.

....

....

[14] *See* NRAP 21(a)(3)(B) (a writ petition must state "the issues presented").

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

II. BY FAILING TO ADDRESS THE ISSUE ON APPEAL, SCL HAS ABANDONED ANY OBJECTION TO THE EXERCISE OF TRANSIENT PERSONAL JURISDICTION.

During the proceedings below, Jacobs raised two distinct grounds for the exercise of personal jurisdiction over SCL. One was so-called "transient" personal jurisdiction, *i.e.*, that a nonresident is amenable to jurisdiction in a state where he or she is physically present and personally served with process,[15] based on that fact that Michael Leven ("Leven"), SCL's Chief Executive Officer, was personally served with process in Las Vegas.[16] The other ground was "general" personal jurisdiction based on SCL's contacts with Nevada, as discussed below in Point III.[17] But SCL discusses only the latter basis for jurisdiction, ignoring the former, on the one-sentence pretext, buried in a footnote, that "SCL's Reply debunked [transient personal jurisdiction], and Jacobs did not raise this argument at the March 15, 2011 hearing on the Motion, and the District Court did not address the argument, implicitly rejecting it."[18]

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[15] *See, e.g., Burnham v. Superior Ct.*, 495 U.S. 604, 110 S.Ct. 2105, 109 L.Ed.2d 631 (1990); *Carlaga v. Eighth Judicial Dist. Ct.*, 104 Nev. 544, 762 P.2d 886 (1988).

[16] *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. 10-13 (citing, for example, *Northern Light Technology, Inc., v. Northern Lights Club*, 236 F.3d 57, 63-64 n.10 (1st Cir. 2001), *cert. denied* 533 U.S. 911, 121 S.Ct. 2263 (2001) (personal service on president of unincorporated association and foreign corporation in forum state when present as spectator in legal proceedings was sufficient to obtain personal jurisdiction over both businesses); *Oyuela v. Seacor Marine (Nigeria), Inc.*, 290 F.Supp.2d 713, 719-20 (E.D.La. 2003) (court acquired transient jurisdiction over Bahamian company by personal service on its Assistant Secretary in the forum; "*Burnham's* reassertion of the general validity of transient jurisdiction provides no indication that it should apply only to natural persons").

[17] *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.

[18] Petition, p. 14, footnote 2.

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

An appellant whose brief fails to provide substantive argument and authority regarding an issue abandons that issue on appeal. *Wyeth v. Rowatt*, 126 Nev. Adv. Op. 44, 244 P.3d 765, 779 n.9 (2010); *Mainor v. Nault*, 120 Nev. 750, 777, 101 P.3d 308, 326 (2004). This rule applies to cursory assertions in footnotes such as that offered by SCL. *Browning v. State*, 120 Nev. 347, 361, 91 P.3d 39, 50 (2004). Whatever its reasons for ignoring the alternative basis for jurisdiction over it, SCL made a deliberate tactical decision to abandon that issue, and must accept the consequences.

Furthermore, SCL's rationale for ignoring the issue is entirely unfounded. SCL's boast that its reply in the district court "debunked" transient personal jurisdiction is as dubious as it is presumptuous. Some of the precedent it cites is no longer good law,[19] and most is inapplicable. *C.S.B. Commodities, Inc. v. Urban Trend (HK) Ltd.*, for instance, collects cases which have "come to the conclusion that service of process on an agent of a foreign corporation is insufficient, *by itself* to confer personal jurisdiction." 626 F.Supp.2d 837, 850 (N.D. Ill. 2009) (emphasis added).[20] Be that as it may, transient personal jurisdiction over SCL is *not* based on service upon Leven *by itself*, without additional circumstances. Leven did not simply happen, by fortuitous accident, to be in Nevada. He was not, say, the assistant treasurer of a small Nebraska company with no connection to Nevada, who was served with process while in the security line at McCarran Airport waiting to change flights to attend his aunt's funeral in San Diego. Leven resides in Las Vegas and, as the

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[19] For example, *Synthes (U.S.A.) v. G.M. dos Reis Jr. Ind. Com. de Equip. Medico*, 2008 U.S. Dist. LEXIS 22483, 2008 WL 789925 (S.D. Cal. Mar. 21, 2008) (cited in Defendant Sands China 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).

[20] The *C.S.B. Commodities* decision typifies the handful of authorities cited in SCL's reply. *See, e.g., Golden Scorpio Corp. v. Steel Horse Saloon I*, 2009 U.S. Dist. LEXIS 35949, 2009 WL 976598, at *3 n.4 (D. Ariz. Apr. 9, 2009) (citing *C.S.B. Commodities*).

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

company's CEO, operates SCL from an office in Las Vegas.[21] As a practical matter, in other words, SCL's executive headquarters are located in Las Vegas. Moreover, Leven was served with process in that very building.[22] Do these additional facts make a difference? Probably so, but perhaps not. Either way, this much is certain: the question is at least *debatable*. Yet, by failing to provide analysis and authority addressing it, SCL has prevented this Court from considering the issue, and has thereby forfeited its right to have the issue resolved in its favor. SCL can hardly claim victory on an issue it refuses to discuss.

Nor is it an excuse that Jacobs' counsel did not raise the issue during the hearing. The scope of briefs invariably differs from that of oral argument. Briefs tend to be comprehensive, whereas oral argument, constrained by time limits and the flow of colloquy, tends to be selective and more focused.[23] If argument during hearings merely reiterated the points already addressed in writing, indeed, there would be little reason for oral argument. Consequently, a litigant who raises an issue in pre-hearing papers need not raise it again during oral argument in order for the issue to be considered on appeal. *Uhrich v. State Farm Fire & Cas. Co.*, 109 Cal.App.4th 598, 135 Cal.Rptr.2d 131, 140 (2003) (fact that liability insurer emphasized policy exclusions rather than lack of coverage during hearing on its summary judgment motion did not bar insurer from arguing lack of coverage on appeal because coverage issue was included in insurer's motion papers). This

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[21] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶¶ 8-9. The details of Leven's systematic work in Las Vegas on behalf of SCL are set forth in Part III, below.

[22] *See* Affidavit of R. David Groover [**Appx. 3, Exh. 15**].

[23] The hearing below illustrates this very point. Because it was SCL's motion, SCL's counsel argued first and, in so doing, challenged only general jurisdiction. Since Jacobs' counsel was responding to SCL's argument, he naturally directed his comments accordingly—but not, however, before stating his assumption that the district court had read, and thus was familiar with, Jacobs' more complete written opposition. *See* 3/15/11 Tr. [**Appx. 6**] 51:14-16.

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

Court, therefore, can consider the issue—or, rather, *could have* considered it had SCL bothered to address it.

Equally flawed, finally, is SCL's assumption that the district court, by not finding transient personal jurisdiction, rejected it. This illogic is both factually untenable and also legally immaterial. Factually, it is a non sequitur that ignores the well-settled judicial practice of avoiding unnecessary issues: if personal jurisdiction exists on one basis, there is no need to consider whether it can also be sustained, redundantly, on another.[24] Such was the situation here. Because the district court found general personal jurisdiction over SCL, there was no need to consider transient personal jurisdiction.

But let us assume, for argument's sake, that SCL's mistaken factual premise is correct, *i.e.*, that the district court implicitly rejected transient personal jurisdiction. Even so, that does not mean the issue is no longer germane on appeal, for "it is well established that this court may affirm rulings of the district court on grounds different from those relied upon by the district court." *Milender v. Marcum*, 110 Nev. 972, 977, 879 P.2d 748, 751 (1994).[25] This is true, in particular, when the district court reaches the right result *for the wrong reasons*. *Bongiovi v. Sullivan*, 122 Nev. 556, 575 n.44, 138 P.3d 433, 447 n.44 (2006); *Hotel Riviera, Inc. v. Torres*, 97 Nev. 399, 403,

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[24] *See, e.g., Pakootas v. Teck Cominco Metals, Ltd.*, 452 F.3d 1066, 1076 n.16 (9th Cir. 2006), *cert. denied*, 552 U.S. 1095, 128 S.Ct. 858, 169 L.Ed.2d 722 (2008) (because specific personal jurisdiction existed, there was no need to decide whether general personal jurisdiction also existed); *American Gen. Life Ins. Co. v. Rasche*, 273 F.R.D. 391, 396 n.1 (S.D. Tex. 2011) (same); *Bible 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] *See, e.g., City of Las Vegas v. Lawson*, 126 Nev. Adv. Op. 52, 245 P.3d 1175, 1182 (2010); *Moon v. McDonald, Carano & Wilson, LLP*, 126 Nev. Adv. Op. 47, 245 P.3d 1138, 1140 n.5 (2010); *State ex rel. State Bd. of Equalization v. Bakst*, 122 Nev. 1403, 1416 n.40, 148 P.3d 717, 726 n.40 (2006)

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

632 P.2d 1155, 1158 (1981). If the record allowed (which it does not), this Court could concur with two of SCL's assertions—*i.e.*, (1) that the district court rejected transient personal jurisdiction, and (2) that no evidence exists to support general personal jurisdiction—yet conclude that, because the record supports transient personal jurisdiction despite the district court's implicit finding to the contrary, the district court correctly denied SCL's motion to dismiss, albeit for the wrong reason. Because transient personal jurisdiction is thus potentially germane to the disposition of SCL's writ petition, even under SCL's skewed view of the record, SCL had an obligation to present the issue before this Court, an obligation violated by SCL's premature declaration of victory.

III. AMPLE EVIDENCE EXISTS IN THE RECORD TO SUSTAIN A *PRIMA FACIE* FINDING THAT SCL IS SUBJECT TO GENERAL PERSONAL JURISDICTION IN NEVADA.

A. SCL Is Subject to General Personal Jurisdiction in Nevada If Its Activities in This State Were Either Substantial, or Continuous and Systematic.

To obtain personal jurisdiction over a non-resident defendant, a plaintiff must show (1) that the requirements of Nevada's long-arm statute (NRS 14.065) have been satisfied, and (2) that due process is not offended by the exercise of jurisdiction. *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Ct.*, 122 Nev. 509, 512, 134 P.3d 710, 712 (2006). However, since Nevada's long-arm statute extends to the outer reaches of due process,[26] these two tests may be collapsed into one; that is, whether the exercise of personal jurisdiction offends due process. *Trump v. Eighth Judicial Dist. Ct.*, 109 Nev. 687, 698, 857 P.2d 740, 747 (1993).

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[26] *See* NRS 14.065(1) ("[a] court of this state may exercise jurisdiction over a party to a civil action on any basis not inconsistent with the constitution of this state or the Constitution of the United States").

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

A defendant's contacts with Nevada satisfy due process if either general or specific personal jurisdiction exists. *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Ct.*, *supra*, 122 Nev. at 512, 134 P.3d at 712. General personal jurisdiction exists if the nonresident's activities in Nevada are so substantial, or so continuous and systematic, that it is deemed present in and thus subject to suit in Nevada, even though the claims are unrelated to those activities. *Firouzabadi v. First Judicial Dist. Ct.*, 110 Nev. 1348, 1352, 885 P.2d 616, 619 (1994). A court must also consider whether requiring the defendant to appear in the action comports with fair play and substantial justice; that is, whether it would be reasonable. *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Ct.*, *supra*, 122 Nev. at 513, 134 P.3d at 713. But a defendant who has purposely availed himself of benefits in the forum "'must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.'" *Levinson v. Second Judicial Dist. Ct.*, 103 Nev. 404, 408, 742 P.2d 1024, 1026 (1987) (quoting *Burger King v. Rudzewicz*, 471 U.S. 462, 477, 105 S.Ct. 2174, 2184, 85 L.Ed.2d 528 (1985)).

The disjunctive test for general personal jurisdiction—whether a nonresident's local activities are "substantial *or* continuous and systematic", *Firouzabadi v. First Judicial Dist. Ct.*, *supra*, 110 Nev. at 1352, 885 P.2d at 619 (emphasis added)—is meant to distinguish, respectively, significant activities from trivial ones, and habitual from sporadic ones, based upon duration, frequency and amount. This is common sense as well as common law. After all, the more a nonresident takes advantage of local markets, the more reasonable it becomes that he or she should expect to be subject to local courts.

What constitutes substantial or continuous and systematic activity is, of course, a fact-intensive issue whose outcome varies with the circumstances of each case. Clearly, though, where *all three* components of the test are met by a pattern of repeated transactions (thus

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

systematic) over many years (thus continuous) involving hundreds of thousands of dollars (thus substantial), general personal jurisdiction exists. *See, e.g., Theo. H. Davies & Co. v. Republic of Marshall Islands*, 174 F.3d 969, 974-75 (9th Cir. 1998) (defendant made repeated purchases from providers in the state over a period of roughly a decade, including three transactions in the amounts of $206,887.00, $265,800.00 and $1,187,612.00); *Michigan Nat'l Bank v. Quality Dinette, Inc.*, 888 F.2d 462, 466 (6th Cir. 1989) (defendant retained independent sales representative in state, conducted mail order solicitations of state businesses, and made more than 400 in-state sales totaling more $625,000 in 1986-87, including at least one sale each month during those two years). As will be discussed below, SCL's business activities in Nevada are systematic *and* continuous *and* substantial. Under these circumstances, there is nothing remotely unreasonable about requiring SCL to defend itself here.

B. Jacobs Introduced More Than Enough Evidence to Satisfy His *Prima Facie* Burden of Demonstrating that SCL's Activities in Nevada Are Substantial, Continuous and Systematic.

Where, as here, a pretrial motion challenging personal jurisdiction is decided without an evidentiary hearing, the plaintiff need only make a *prima facie* showing of jurisdictional facts, and the plaintiff's facts must be taken as true. *Tuxedo Int'l Inc. v. Rosenberg*, 127 Nev. Adv. Op. 2, 251 P.3d 690, 692 n.3 (2011); *Trump v. Eighth Judicial Dist. Ct.*, *supra*, 109 Nev. at 692-93, 857 P.2d at 743-44. Such, therefore, is Jacobs' minimal burden and the presumption of credibility to which his evidence is entitled in the present case.

Did Jacobs satisfy this burden? The district court so found, and the record so confirms—in abundance. For present purposes, there is no need to belabor all the evidence, for two aspects alone suffice to demonstrate, far beyond the threshold of mere *prima facie* proof, that SCL's activities in Nevada are substantial, continuous and systematic: (1) the operation of SCL's business

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

from its de facto executive headquarters in Las Vegas, and (2) SCL's systematic transfer of tens of millions of dollars to Las Vegas.[27]

1. *SCL Regularly Conducts Business from its De Facto Executive Headquarters in Las Vegas.*

Sheldon G. Adelson ("Adelson") is the Chairman of SCL's Board of Directors; Leven is its Chief Executive Officer and Executive Director.[28] Adelson and Leven both reside in Las Vegas, Nevada. They also work in Las Vegas; specifically, in the executive offices of the Venetian Resort-Hotel-Casino.[29] Adelson and Leven routinely conduct SCL business from there.[30] From the Las Vegas office, they recruited and interviewed executives to work for SCL, worked on marketing strategies to increase foot traffic to the retail mall areas in SCL properties, supervised the site design and development of two SCL projects, and negotiated the potential sale of other SCL properties.[31] In addition, while Jacobs was President of SCL, Adelson instructed him to withhold SCL business from certain banks unless they agreed to exert their influence with Macau officials to obtain various advantages for SCL, directed him to have investigative reports prepared on government officials and junket representatives, and ordered that SCL use the legal services of a

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[27] Omitted from this synopsis, though undoubtedly germane to the jurisdiction question, are SCL's numerous transactions with Nevada companies, SCL board meetings in Las Vegas, and the 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.

[28] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶¶ 6-7. (Leven was appointed SCL's 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.*).

[29] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶ 8.

[30] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶ 9.

[31] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶ 10.

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

specific Macau attorney—all of this, again, from Las Vegas.[32] By any standard, these activities were continuous and systematic.

SCL's efforts to explain away these facts are unavailing. A common refrain throughout the petition is SCL's insistence that "the *mere presence* of directors in the forum state is insufficient to establish general jurisdiction over a foreign corporation."[33] Perhaps, but that is not the situation here. Leven, first of all, was not simply a director; he also became SCL's Chief Executive Officer. More importantly, the significance of Adelson and Leven's role is not their *mere presence in* Las Vegas, but their *active and regular management of SCL from* Las Vegas.

SCL emphasizes that Adelson holds the position of a non-executive director, and that Leven was only a special advisor until after Jacobs' ouster.[34] But a court should examine the "economic reality" of a defendant's activities when determining whether a reasonable basis for general personal jurisdiction exists,[35] whereas SCL's focus upon Adelson's and Leven's *titles* promotes form over substance, a fallacy this Court has repeatedly refused to endorse.[36] In particular, this Court has wisely rejected the "artificial classification of [persons] by title" which SCL advocates.[37] It makes no difference what Adelson and Leven were *called*. What matters is what they *did*. And

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[32] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶ 10.

[33] Petition 22:18-20, 26:25-26, 37:8-9 (emphasis added).

[34] *See, e.g.*, Petition 34:10-11, 41:27-28.

[35] *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1331 (9th Cir. 1984).

[36] *See, e.g., Marcuse v. Del Webb Communities, Inc.*, 123 Nev. 278, 285, 163 P.3d 462, 467 (2007); *Brad Assocs. v. Nevada Fed. Fin. Corp.*, 109 Nev. 145, 149, 848 P.2d 1064, 1067 (1993).

[37] *See Borger v. Eighth Judicial Dist. Ct.*, 120 Nev. 1021, 1027-28, 102 P.3d 600, 605 (2004) (admissibility of expert testimony "is governed by the scope of the witness' knowledge and not the artificial classification of the witness by title") (quoting *Marshall v. Yale Podiatry Group*, 5 Conn. App. 5, 496 A.2d 529, 531 (1985)).

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

what they did, insofar as the evidence shows, is to micromanage SCL: they determined whom SCL should hire and retain as counsel, whom to favor with SCL's business and how to expand it, how to design SCL properties and under what terms to sell them, etc. This was hands-on, elbow-deep management at its most intrusive, all of it from Las Vegas.

Such detailed control contradicts SCL's assertion that Adelson's and Leven's activities are consistent with LVSC's status as a majority shareholder.[38] The objection is, moreover, immaterial even if true, for it acknowledges only *half* of the evidence; namely, that Adelson and Leven are directors of LVSC. Yes, but they are also directors (and, in Leven's case, CEO) of *SCL* as well. This defect in SCL's reasoning is dramatically apparent in its non sequitur that, because *LVSC* did not have the requisite control, Adelson's and Leven's actions while acting for *SCL* cannot be considered.[39] The entire line of argument, in any event, is misplaced because, as explained earlier, it attacks a straw man (the phantom notion of "coattails" jurisdiction) which Jacobs never asserted and is not before this Court.

The final arrow in SCL's quiver regarding Adelson's and Leven's activities likewise falls far short of the mark. SCL argues that activities *in* the forum are not enough to support general personal jurisdiction, that conduct must be directed *at* the forum.[40] But the law is otherwise. SCL relies on a case which involved a claim of *specific* rather than general personal jurisdiction.[41] Furthermore, in the excerpt cited by SCL, the court held that actions directed at the forum are

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[38] *See* Petition 22:15-18.

[39] Petition 15:28 to 16:4.

[40] Petition 36:24-28.

[41] *See Kumarelas v. Kumarelas*, 16 F.Supp.2d 1249, 1253 (D. Nev. 1998) ("plaintiff is not claiming that this court has general jurisdiction over defendant but rather that this court has specific jurisdiction over defendant").

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

sufficient, but not *necessary*, to support personal jurisdiction.[42] To the contrary, the remarks cited by SCL refer to the "purposeful availment" test for "minimum contacts" due process,[43] under which "a plaintiff may show *either* that a defendant purposefully availed himself of the privilege of conducting activities within the forum *or* that a defendant purposefully directed his activities toward the forum." *Pat Clark Sports, Inc. v. Champion Trailers, Inc.*, 487 F.Supp. 2d 1172, 1177 (D. Nev. 2007) (emphasis added). Note the half of this alternative test omitted by SCL: "activities *within* the forum".[44] That, of course, aptly describes SCL's de facto executive headquarters in Las Vegas.

2. *SCL Regularly Transfers Millions of Dollars to and from Las Vegas in Furtherance of Its Business.*

SCL periodically uses so-called "Affiliate Transfer Advices" to transmit its customers' funds electronically to LVSC or its affiliates in Las Vegas. The sums are significant (*e.g.*, USD $2,000,000.00; $2,080,100.00; $1,902,900.00).[45] All in all, these transfers total nearly USD *$70 million* over a three-year period.[46] During the hearing below, SCL's counsel defended these

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[42] *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").

[43] The purposeful availment prong of minimum contacts requires a qualitative evaluation of 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 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).

[44] *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 nonresident defendant "deliberately and purposefully availed itself, on a very large scale, of the benefits of doing business *within* the state") (emphasis added).

[45] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶ 14 & *id.* Exh. 14.

[46] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶ 14 & *id.* Exh. 14; **Appx. 5.**

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

transactions as "a good business practice" for the convenience of SCL customers, thereby "facilitating somebody who wants to gamble in Las Vegas and somebody who might want to gamble in China."[47] The legitimacy of these transactions is not in question here as that issue will be reviewed and decided elsewhere. Their intent, regularity, magnitude and destination, however, *are*.

The intent of these transactions is self-evident. As SCL's counsel admitted, they are meant to promote SCL's business interests. Keeping customers and financiers happy, after all, keeps them gambling, which, in turn, keeps the profits flowing into SCL's coffers. Hence these transactions may, indeed, be "a good business practice". And, because they are a *practice*, they are, by definition, regular.[48]

Their magnitude too is manifest: millions upon millions of dollars, transfer after transfer, adds up to serious money.

The *destination* of these funds is a topic that inspires SCL's impassioned flimflammery. SCL chides Jacobs for using an outdated "moniker".[49] According to SCL, these transactions are no longer called an "Affiliate Transfer Advice". Their new label is "Inter-Company Accounting Advice" to correct the misimpression that a transfer of funds from Macau to Las Vegas occurs. Instead, funds on deposit in Macau are merely "made available" in Las Vegas through a series of

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[47] 3/15/11 Tr. [Appx. 6] 57:23-25, 58:11, 58:20-24.

[48] *See* Affidavit of Jason M. Anderson [Appx. 4] ¶ 6 (inter-affiliate accounting adjustments occur every 30 days).

[49] Petition 37:27, 40:7-8.

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

debits and credits; the patron's account is debited in Macau and credited in Las Vegas.[50] Money is thus magically "available" in Las Vegas without leaving Macau.

This "moniker" rationale again exalts form over substance, but here the fallacy is aggravated by impudence on steroids. SCL's house-of-cards contrivance to mask the millions of Macau dollars "available" in Las Vegas exemplifies the verbal obfuscation denounced by courts as "antics with semantics".[51] It is an insultingly transparent charade which did not fool the district court and remains equally implausible on appeal. Its problem, in a nutshell, is that it fails the common sense "duck" test, *i.e.*, "if it walks like a duck, quacks like a duck, and swims like a duck, it's a duck."[52] Had SCL physically carted suitcases full of currency into Nevada, it presumably would not deny that a "transfer" of funds took place. Its quibble that the identical result was achieved by transmitting electronic blips rather than paper strips is a distinction without a difference, for entering electronic debits and corresponding credits is precisely how an electronic funds *transfer* occurs. *See* 15 U.S.C. § 1693a(6); *Brooke Credit Corp. v. Buckeye Ins. Ctr.*, 563 F.Supp.2d 1205, 1207 (D. Kan. 2008) (franchisor performed accounting services for franchisees, which included making "electronic funds transfers *to credit and debit various accounts*") (emphasis added). SCL's own affidavits admit that the debit-credit differentials "are settled by wire *transfer*";[53] and, during

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[50] *See* Petition 40:22-28.

[51] *Brown v. Lumbermens Mut. Cas. Co.*, 285 N.C. 313, 204 S.E.2d 829, 833 (1974).

[52] *See, e.g., Lake v. Neal*, 585 F.3d 1059, 1059 (7th Cir. 2009), *cert. denied*, __ U.S. __, 130 S.Ct. 3296, 176 L.Ed.2d 1187 (2010); *People v. Monjaras*, 164 Cal.App.4th 1432, 79 Cal.Rptr.3d 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."

[53] Affidavit of Jason M. Anderson [**Appx. 4**] ¶ 8 (emphasis added).

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

oral argument, even SCL's counsel stated that the money "is transferred" to and from Las Vegas.[54] These transfers constitute a significant forum contact when considering the jurisdiction question. *See, e.g., Provident Nat. Bank v. California Federal Sav. & Loan Ass'n*, 819 F.2d 434 (3d Cir. 1987).

In *Provident*, the defendant bank was headquartered in California, maintained no Pennsylvania offices, employees, agents, mailing address, or telephone number, and it neither advertised nor paid taxes in Pennsylvania. *Id.* at 438. Notwithstanding the foregoing, the Third Circuit Court of Appeals held that Pennsylvania could exercise general jurisdiction over the California bank given that it routinely transferred funds into a Pennsylvania account maintained by a different bank. *Id.* It did not matter that these daily transfers comprised a miniscule portion of the California bank's business as they still constituted "substantial, ongoing, and systematic activity in Pennsylvania." *Id.* The same can certainly be said here as SCL's wire transfers are in substantial amounts and occur frequently enough to constitute systematic and continuous contact with the State of Nevada.

SCL also insists that *it* did not transfer the funds, but instead its subsidiary, Venetian Macau Limited ("VML") performed these actions. On its face, this upstream transfer from SCL's subsidiary to SCL's parent, which somehow conveniently leapfrogs over the intermediary (SCL itself), exhibits all the earmarks of simply another none-too-subtle subterfuge meant to disguise the substance of the transaction.[55] Furthermore, the objection mistakes the burden of proof. As

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[54] 3/15/11 Tr. [Appx. 6] 57:20-21.

[55] SCL explains it on the ground that VML, as the gaming subconcessionaire, is the sole entity allowed to deal with patrons' funds under Macau law. *See* Petition 40:19-20. Perhaps, but creating superficial appearances to conceal the reality of transactions, in order to circumvent government regulations while seeming to obey them, is a time-honored artifice in the corporate world.

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

noted earlier, Jacobs need only make a *prima facie* showing of facts to support personal jurisdiction. *Trump v. Eighth Judicial Dist. Ct.*, *supra*, 109 Nev. at 692-93, 857 P.2d at 743-44. Having been SCL's President and CEO, Jacobs has attested that *SCL* transfers the funds to Las Vegas.[56] This, for present purposes, is dispositive, for it is more than enough to establish, *prima facie*, that SCL does, in fact, transfer these funds to Las Vegas. Hence it makes no difference that SCL's witnesses state otherwise; such a conflict merely goes to the *weight* of the evidence, an inquiry that is premature at the present stage of the case.

SCL, in short, methodically moves millions of dollars to Las Vegas to ingratiate itself with its patrons. Bear in mind, moreover, that this trans-Pacific financial current flows both ways:[57] funds are also transferred *from* Las Vegas in order to facilitate gambling in Macau.[58] In this fashion, SCL *doubly* benefits from its contacts with Las Vegas: by transferring funds *to* Las Vegas, it keeps its patrons happy; by transferring funds *from* Las Vegas, it keeps them solvent. Both streams, of course, lead to the same end, *i.e.*, lining SCL's pockets. There is nothing necessarily sinister in this. It may well be, as SCL's counsel correctly noted, simply a good business practice. But to deny, in the face of this practice, that SCL's contacts with Nevada are substantial, continuous and systematic is utter nonsense.

The cases cited by SCL do not support a contrary conclusion. One of them is no longer good law,[59] and the others are factually distinguishable. *Fields v. Ramada Inn, Inc.*, 816 F.Supp.

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[56] Affidavit of Steven C. Jacobs [**Appx. 3, Exh. 1**] ¶ 14.

[57] Affidavit of Jennifer Ono [**Appx. 4**] ¶ 6.

[58] 3/15/11 Tr. [**Appx. 6**] 57:24-25.

[59] *Romann v. Geissenberger Mfg. Corp.*, 865 F.Supp. 255 (E.D. Pa. 1994) (cited at Petition 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

1033 (E.D. Pa. 1993), for example, held that merely advertising in the forum, without more, is an insufficient contact. *See Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119, 1126 (W.D. Pa. 1997) (*Fields* was inapplicable because the defendant in *Zippo* "has done more than advertise" in the forum). SCL's contacts with Nevada include connections far more entrenched and substantial than simple advertising from afar—not only its financial transactions, but also its use of Las Vegas facilities as its executive headquarters, discussed earlier, for "it is the cumulative significance of all the activities conducted in the jurisdiction rather than the isolated effect of any single activity that is determinative." *Abbott v. Second Judicial Dist. Ct.*, 90 Nev. 321, 324, 526 P.2d 75, 76 (1974).

Inapplicable for the same reason is *Arroyo v. Mountain School*, 68 A.D.3d 603, 892 N.Y.S.2d 74 (2009), which involved circumstances radically dissimilar from those in the present case. *Arroyo* was an action against a Vermont school for injuries sustained on the school premises. The plaintiff relied on the fact that the school had approximately $14 million invested with New York firms as a basis for personal jurisdiction in New York. The court disagreed. Noting New York's unique role as a global financial nerve-center, and the school's lack of other substantial contacts with New York, it held that "[t]he investment of money in New York cannot alone be considered a form of 'doing business' for the purpose of [New York's long-arm statute]; if it were, then almost every company in the country would be subject to New York's jurisdiction." 892 N.Y.S.2d at 75 (internal quotation marks omitted). The latter rationale, and the facts which engendered it, have no pertinence here.

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 702/382-5222
FAX 702/382-0540

C. SCL Has Not Made a Plausible Showing, Much Less a Compelling One, that Other Considerations Render the Exercise of Jurisdiction Unreasonable.

SCL correctly identifies the factors considered in determining whether personal jurisdiction is reasonable: (1) the extent of a defendant's purposeful contacts with the forum, (2) the burden on the defendant in defending in the forum, (3) the extent of any conflict with the sovereignty of the defendant's state, (4) the forum's interest in adjudicating the dispute, (5) the most efficient judicial resolution of the controversy, (6) the importance of the forum to the plaintiff's interest in convenient and effective relief, and (7) the existence of an alternative forum. *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1132 (9th Cir. 2003). But there is no justifiable basis for SCL's attempts to stretch the facts in order to tilt these criteria in its favor.

The blanket assertion, regarding the first criterion, that "SCL has *no* purposeful contacts with Nevada"[60] is flagrantly false. As demonstrated above, SCL's purposeful contacts with Nevada are persistent, extensive and substantial.

Nor will SCL be unduly burdened by litigating in Nevada. Its two top executives live and work here, and it regularly operates its business from here. Nevada can hardly be a congenial place to conduct business and, at the same time, an onerous place to defend actions arising from that business.

SCL invokes the specter of a conflict with Hong Kong sovereignty because of Hong Kong's interest in governing companies whose stock is listed on the Hong Kong Stock Exchange. But this supposed conflict is illusory. The controversy here is not a securities fraud claim, but a private contract dispute. In this context, it makes no difference where SCL's stock happens to be listed.

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[60] Petition 41:22-23 (emphasis added).

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

Hong Kong thus has little interest in the matter. The sovereignty argument, moreover, cuts both ways. SCL, after all, is not the sole defendant. LVSC, a *Nevada* corporation, is also a defendant. Nevada, accordingly, has at least as great an interest as Hong Kong, if not greater.

That, in turn, implicates the fourth criterion, *i.e.*, the forum's interest in deciding the dispute. Nevada has a vital interest in the conduct of its gaming licensees, of which LVSC is one. Nevada's gaming laws, moreover, and thus its interests extend to LVSC's foreign gaming operations in Macau, as SCL itself has admitted.[61] Jacobs has raised gravely serious questions regarding the conduct of LVSC, SCL and their senior management. Clearly, therefore, Nevada has a paramount interest in the adjudication of this dispute.

Nevada is also the most efficient forum to resolve this dispute, for the bulk of Jacobs' claims stem from his contractual relationships with Nevada-based LVSC. It is also the most convenient forum for Defendants since SCL has its own substantial ties to the State and LVSC is headquartered here. Although Jacobs' stock option agreement with SCL includes a Hong Kong choice-of-law provision, SCL has not identified any substantive conflict between Nevada and Hong Kong law.[62] Even if such a conflict existed, moreover, Nevada courts are perfectly capable of applying Hong Kong law. *See* NRCP 44.1. Hence there is "no connection between the parties' choice-of-law provision and the issue of reasonableness" because "a court can exercise jurisdiction, and at the

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[61] *See* SCL prospectus [**Appx. 3, Exh. 3**], p. 43.

[62] SCL's discussion of *procedural* differences, such as the absence of a jury under Hong Kong law (*see* Petition 42:24-27) misstates the scope and effect of the choice-of-law provision, which recites that *interpretation of the agreement* is to be governed by Hong Kong law. *See* **Appx. 2 (Part 2), Exh. C**] ¶ 14. It does not, and legally could not, bind the interpreting court to adopt the *judicial procedures* of Hong Kong law. To the extent SCL's Petition also takes a passing swipe at the substantive viability of Jacobs' contract claim against SCL (*see* Petition at 12:16 – 13:4), Jacobs 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.

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

same time, apply the law of another [jurisdiction]." *Card Player Media, LLC v. The Waat Corp.*, 2009 WL 948650, at *4 (D. Nev. Apr. 6, 2009). The district court's ability to apply choice-of-law rules, indeed, further undermines SCL's misplaced emphasis on Hong Kong sovereignty, for any conflicting sovereignty interests can be accommodated through choice-of-law rules, thus rendering that factor one of little importance in assessing reasonableness. *Allstar Marketing Group, LLC v. Your Store Online, LLC*, 666 F.Supp.2d 1109, 1125 (C.D. Cal. 2009).

Because Nevada is the most efficient forum to resolve this dispute, having the Nevada courts adjudicate it is also important to Jacobs' interest in convenient and effective relief. Otherwise, as SCL would undoubtedly prefer as a tactical coup of attrition, Jacobs would be forced to litigate his claims on the other side of the globe. Finally, SCL acknowledges that Nevada has a competent legal system with a strong interest in the controversy.[63]

On this record, SCL cannot satisfy, and has not satisfied, its burden of proving that Nevada's exercise of personal jurisdiction over it is unreasonable.

D. Jacobs Has Requested the Opportunity to Conduct Jurisdictional Discovery, If Necessary.

Courts have frequently held that the party opposing a jurisdictional challenge is entitled to conduct discovery regarding jurisdiction "where pertinent facts bearing on the question of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary." *Laub v. U.S. Dept. of Interior*, 342 F.2d 1080, 1093 (9th Cir. 2003). Jacobs obviously agrees with the district court that he has already satisfied his burden of making a *prima facie* showing of jurisdiction over SCL based on the evidence adduced to date. If, however, this Court determines that additional information on SCL's contacts with Nevada is necessary to determine whether the

[63] *See* Petition 43:4-6.

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

district court may properly assert jurisdiction over the company, Jacobs hereby renews his request that he be given the opportunity to conduct jurisdictional discovery.[64]

CONCLUSION

For the reasons set forth above, this Court should deny SCL's writ petition.

DATED this 25th day of July, 2011.

Respectfully submitted,

CAMPBELL & WILLIAMS

By _____
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

[64] *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**], p. 21.

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

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of July, 2011, I served via hand delivery and a true and correct copy of the foregoing **Answer of Real Party in Interest Steven C. Jacobs to Petition for Writ of Mandamus, in the Alternative, Writ of Prohibition** to the following:

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

Glaser Weil Fink Jacobs Howard Avchen & Shapiro, LLP
Patricia Glaser, Esq,
Stephen Ma, Esq.
3763 Howard Hughes Parkway, Suite 300
Las Vegas, NV 89169

Attorneys for Defendant Sands China Ltd.

Holland & Hart, LLP
J. Stephen Peek, Esq.
Justin C. Jones, Esq.
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Attorneys for Defendant Las Vegas Sands Corp.

Nancy A. Gregory
An employee of Campbell & Williams

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

EXHIBIT "B"

EXHIBIT "B"

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 58294

FILED

AUG 26 2011

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

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

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

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

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

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

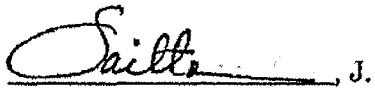
In MGM Grand, Inc. v. District Court, 107 Nev. 65, 807 P.2d 201 (1991), we held that jurisdiction over a nonresident corporation could not be premised upon that corporation's status as parent to a Nevada corporation. Similarly, the United States Supreme Court in Goodyear Dunlop Tires Operations, S.A.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

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

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

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

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



_____, J.
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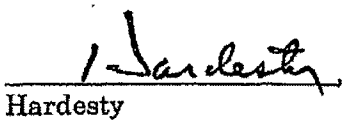

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[2]Petitioner's motion for a stay is denied as moot in light of this order.

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

EXHIBIT "C"

EXHIBIT "C"

MOT
James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com
Todd L. Bice, Esq., Bar No. #4534
TLB@pisanellibice.com
Debra L. Spinelli, Esq., Bar No. 9695
DLS@pisanellibice.com
PISANELLI BICE PLLC
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169
Telephone: (702) 214-2100
Facsimile: (702) 214-2101

Attorneys for Plaintiff Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS, Plaintiff, v. LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; DOES I through X; and ROE CORPORATIONS I through X, Defendants. AND RELATED CLAIMS	Case No.: A-10-627691 Dept. No.: XI **PLAINTIFF'S MOTION TO CONDUCT JURISDICTIONAL DISCOVERY**

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

Based upon writ relief sought by Defendant Sands China, Ltd. ("Sands China") contesting jurisdiction, the Nevada Supreme Court has directed this Court to hold an evidentiary hearing concerning this Court's jurisdiction over Sands China. In anticipation of that hearing, Plaintiff Steven Jacobs ("Jacobs") seeks jurisdictional discovery so as to forestall any claims by Sands China that the evidence of its pervasive contacts with the State of Nevada are somehow lacking or incomplete. Jacobs has already shown this Court that there is more than good reason to believe that Sands China is subject to general jurisdiction here. Because Sands China could not plausibly (and does not even try to) claim that Jacobs' assertion of personal jurisdiction over Sands China is

clearly frivolous, the cases are legion in holding that Jacobs is entitled to conduct expedited jurisdictional discovery in anticipation of the evidentiary hearing.

This Motion is based on the attached Memorandum of Points and Authorities and any additional argument this Court chooses to consider.

DATED this 21st day of September, 2011.

PISANELLI BICE PLLC

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

Attorneys for Plaintiff Steven C. Jacobs

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

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned counsel will appear at Clark County Regional Justice Center, Eighth Judicial District Court, Las Vegas, Nevada, on the __ day of _____, 2011, at __ _.m., in Department XI, or as soon thereafter as counsel may be heard, to bring this **MOTION TO CONDUCT JURISDICTIONAL DISCOVERY** on for hearing.

DATED this 21st day of September, 2011.

PISANELLI BICE PLLC

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

Attorneys for Plaintiff Steven C. Jacobs

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Jacobs will not burden this Court with a full recitation of the facts leading up to this Motion. It suffices to note that Sands China objects to personal jurisdiction in the State of Nevada and convinced the Nevada Supreme Court that an evidentiary hearing concerning the scope of its contacts with this State is warranted. Having fought for such an evidentiary proceeding, Sands China cannot seriously object to expedited jurisdictional discovery which will allow Jacobs to meet his burden and establish a record of Sands China's systematic and pervasive contacts within this State.

Sands China's apparent belief that Jacobs and this Court are limited to whatever evidence they presently possess concerning Sands China's contacts is plainly without merit. Court after court holds that when a defendant seeks an early dismissal on grounds of personal jurisdiction, and the assertion of jurisdiction is not clearly frivolous, then the plaintiff is entitled to conduct jurisdictional discovery prior to any consideration of the jurisdictional objection. And here, Jacobs' claim of personal jurisdiction over Sands China is anything but frivolous.

II. ANALYSIS

Under NRCP 26(a), this Court may order the taking of discovery prior to the filing of a joint case conference report. One of the most oft-cited reasons for permitting early discovery is when a defendant contests a court's personal jurisdiction. The showing needed for a plaintiff to obtain such discovery is quite minimal. All that this Court must conclude to trigger Jacobs' right to such discovery is that his claim of jurisdiction does not appear to be clearly frivolous:

> We have explained that if "the plaintiff's claim is not clearly frivolous [as to the basis for personal jurisdiction] - the district court should ordinarily allow discovery on jurisdiction in order to aid the plaintiff in discharging' [his or her] burden".

Metcalfe v. Renaissance Marine, Inc., 566 F.3d 324, 336 (3d Cir. 2009) (citations omitted) ("Furthermore, we have found jurisdictional discovery particularly appropriate where the defendant is a corporation."); *Pat Clark Sports, Inc. v. Champion Trailers, Inc.*, 487 F. Supp. 2d 1172, 1179 (D. Nev. 2007) (unless it is clearly shown that discovery will not produce evidence of

facts supporting jurisdiction, "court ordinarily should grant discovery regarding jurisdiction where the parties dispute pertinent facts varying on the question of jurisdiction or more facts are needed.").

Indeed, while he has already done so, Jacobs need not establish a *prima facie* case of personal jurisdiction in order to obtain discovery. Rather, all he need show is a "colorable basis" for jurisdiction or "some evidence" for believing that jurisdiction exists. *Calix Networks, Inc. v. Wi-LAN, Inc.*, 2010 WL 3515759 *4 (N.D. Cal. Sept. 8, 2010); *PowerStation, LLC v. Sorenson Research & Dev. Trust*, 2008 WL 5431165, at *2 (D. S.C. Dec. 31, 2008) (where plaintiff offered more than mere speculation and conclusory assertions, jurisdictional discovery warranted as it will "aid this court in determining whether personal jurisdiction exists . . . .").

Courts recognize that the failure to afford the plaintiff jurisdictional discovery when it appears that claims of jurisdiction are not clearly frivolous constitutes an abuse of discretion. *See, e.g., Nuance Cmmcn's, Inc. v. Abbyy Software House*, 626 F.3d 1222, 1237 (Fed. Cir. 2010 (reversing district court for "failure to grant plaintiff jurisdictional discovery because such discovery should ordinarily be granted where the facts bearing upon question of jurisdiction are in dispute"); *Patent Rights Protection Group v. Video Game Tech., Inc.*, 603 F.3d 1354, 1372 (Fed. Cir. 2010) (reversing because plaintiff's request for jurisdictional discovery was not based on a mere hunch and thus "discovery may unearth facts sufficient to support the exercise of personal jurisdiction over one or both of the companies."); *Laub v. U.S. Dept. of Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003) (district court abused discretion by refusing to grant jurisdictional discovery since such discovery should ordinarily be granted when the jurisdictional facts are contested); *Central States, Se & Sw Area Extension Fund v. Phencorp Reinsurance Co.*, 440 F.3d 870, 877-78 (7th Cir. 2006) (finding that district court erred in denying jurisdictional discovery for claims of general jurisdiction, explaining that "it is not surprising that [the plaintiff] can do little more than suggest" certain minimum contacts given the denial of jurisdictional discovery); *Bower v. Wurzburg*, 501 S.E.2d 479, 488 (W.Va. 1998) ("We believe that it is inequitable to require a plaintiff to come forward with 'proper evidence detailing specific facts demonstrating' personal

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

jurisdiction, yet deny him or her access to reasonable jurisdiction discovery through which such evidence may be obtained, particularly in a complex case such as this one.").

Contrary to Sands China's wishes, the law overwhelmingly supports Jacobs' right to engage in jurisdictional discovery so as to rebut Sands China's attempt at an early exit from this case. Thus, consistent with these numerous authorities, Jacobs requests expedited discovery on the following categories in order to obtain evidence and prepare for this Court's scheduled evidentiary hearing:

1. The deposition of Michael A. Leven ("Leven"), a Nevada resident, who simultaneously served as President and COO of Las Vegas Sands Corp. ("LVSC") and CEO of Sands China (among other titles);

2. The deposition of Sheldon G. Adelson ("Adelson"), a Nevada resident, who simultaneously served as Chairman of the Board of Directors and CEO of LVSC and Chairman of the Board of Directors of Sands China;

3. The deposition of Kenneth J. Kay ("Kay"), upon information and belief a Nevada resident, and LVSC's Executive Vice President and CFO, who, upon information and belief, participated in the funding efforts for Sands China;

4. The deposition of Robert G. Goldstein ("Goldstein"), a Nevada resident, and LVSC's President of Global Gaming Operations, who, upon information and belief, actively participates in international marketing and development for Sands China;

5. The deposition of an NRCP 30(b)(6) deponent in the event that the above witnesses claim a lack of memory or knowledge concerning activities within their authority;

6. Documents that will establish the date, time, and location of each Sands China Board meeting (including the meeting held on April 14, 2010, at 9:00 a.m. Macau Time/April 13, 2010, at 6:00 p.m. Las Vegas time), the location of each Board member, and how they participated in the meeting;

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

7. Documents that reflect the travels to and from Macau/China/Hong Kong by Adelson, Leven, Goldstein, and/or any other LVSC's executive for any Sands China related business (including, but not limited to, flight logs, travel itineraries);

8. The calendars of Adelson, Leven, Goldstein, and/or any other LVSC executive who has had meetings related to Sands China, provided services on behalf of Sands China, and/or travelled to Macau/China/Hong Kong for Sands China business;

9. Documents and/or communications related to Michael Leven's service as CEO of Sands China and/or the Executive Director of Sands China Board of Directors without payment, as reported to Hong Kong securities agencies;

10. All documents that reflect that the negotiation and execution of the agreements for the funding of Sands China occurred, in whole or in part, in Nevada;

11. All contracts/agreements that Sands China entered into with entities based in or doing business in Nevada, including, but not limited to, any agreements with BASE Entertainment and Bally Technologies, Inc.;

12. All documents that reflect global gaming and/or international player development efforts, including efforts lead by Rob Goldstein who, upon information and belief, oversees the active recruitment of VIP players to share between and among LVSC and Sands China properties, player funding, and the transfer of player funds.

13. All agreements for shared services between and among LVSC and Sands China or any of its subsidiaries, including, but not limited to, (1) procurement services agreements; (2) agreements for the sharing of private jets owned or made available by LVSC; and (3) trademark license agreements;

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

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

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

16. All documents that reflect work performed on behalf of Sands China in Nevada, including, but not limited, documents that reflect communications with BASE Entertainment, Cirque de Soleil, Bally Technologies, Inc., Harrah's, potential lenders for the underwriting of Parcels 5 and 6, located in the Cotai Strip, Macau, and site designers, developers, and specialists for Parcels 5 and 6;

17. All documents, including financial records and back-up, used to calculate any management fees and/or incorporate company transfers for services performed and/or provided by LVSC to Sands China, including who performed the services and where those services were performed and/or provided, during the time period where there existed any formal or informal shared services agreement;

18. All documents that reflect reimbursements made to any LVSC executive for work performed or services provided related to Sands China;

19. All documents that Sands China provided to Nevada gaming regulators; and

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

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

III. CONCLUSION

The law affords Jacobs the right to conduct jurisdictional discovery in order to meet his burden of establish Sands China's systematic and pervasive contacts with the State of Nevada. In seeking to obtain a hasty dismissal of this case on jurisdictional grounds, Sands China cannot be heard to protest such discovery: Sands China has placed its contacts with the State of Nevada squarely at issue.

DATED this 21st day of September, 2011.

PISANELLI BICE PLLC

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

Attorneys for Plaintiff Steven C. Jacobs

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 21st day of September, 2011, I caused to be sent via email and United States Mail, postage prepaid, true and correct copies of the above and foregoing **PLAINTIFF'S MOTION TO CONDUCT JURISDICTIONAL DISCOVERY** properly addressed to the following:

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

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

/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC

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

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OPP
James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com
Todd L. Bice, Esq., Bar No. 4534
TLB@pisanellibice.com
Debra L. Spinelli, Esq., Bar No. 9695
DLS@pisanellibice.com
PISANELLI BICE PLLC
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169
Telephone: (702) 214-2100
Facsimile: (702) 214-2101

Attorneys for Plaintiff Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS, Plaintiff, v. LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; DOES I through X; and ROE CORPORATIONS I through X, Defendants. AND RELATED CLAIMS	Case No.: A-10-627691 Dept. No.: XI **PLAINTIFF STEVEN C. JACOBS' OPPOSITION TO SANDS CHINA LTD.'S MOTION FOR CLARIFICATION OF JURISIDICTIONAL DISCOVERY ORDER** Hearing Date: October 13, 2011 Hearing Time: 9:00 a.m.

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

I. INTRODUCTION

Sands China Ltd.'s ("Sands China") should have been forthright and labeled its latest motion for exactly what it is: A motion for reconsideration of this Court's order allowing Steve C. Jacobs ("Jacobs") to conduct limited jurisdictional discovery prior to the Supreme Court ordered evidentiary hearing on whether this Court has personal jurisdiction over Sands China. Jacobs' Opposition to this improper motion is simple; there is no need for clarification. To the contrary, the Court was perfectly clear, both before ***and*** after Sands China sought clarification during the hearing.[1] Sands China knows this, but does not like the Court's order. So, without the legal or

[1] Despite claiming that there was no time for Sands China to seek clarification during the hearing, (Mot. 8:27), Sands China did, indeed, do just that. "Ms. Glaser: And, Your Honor, we will -- I must apologize for the clarification, but I need to say it." (Sept. 27, 2011 Hrg. Trans.

factual basis required for reconsideration, Sands China filed a motion for "clarification" seeking yet another do-over.[2]

Jacobs graciously rejects Sands China's repeated, stubborn efforts to define and, indeed, limit his theories of jurisdiction. Jacobs does so for various reasons, the most obvious of which is Sands China's failure to ever once correctly articulate Jacobs' theories, even when it claims to be pulling directly from pleadings or hearing transcripts.[3] Rather than file a motion for supposed clarification, Sands China could have read to the transcript from the Court's September 27, 2011 hearing where Jacobs – not Sands China – explained his theories and positions and this Court – not Sands China – determined the scope of the jurisdictional discovery and the basis therefore. A brief recap, Jacobs' counsel summarized the "debate in November" (the since vacated evidentiary hearing on personal jurisdiction) as including the following categories:

> [1] "general jurisdiction based upon what Sands China does here [in Nevada],"
>
> [2] "general jurisdiction based upon the agency role of Las Vegas Sands and what it performs here on behalf of Sands China,"
>
> [3] "specific jurisdiction of what Sands China did here in relation to the causes of action that was presented to you, and, of course,"
>
> [4] "transient jurisdiction of Sands China."

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LAS VEGAS, NEVADA 89169

("Hrg. Trans."), 46:16-20, attached hereto as Ex. 1.) Sands China's counsel proceeded to explain why she disliked how the order allowed discovery of LVSC employee activities, and the Court stated: "[T]hat is a factual determination that I will make after hearing the evidence at the time of the evidentiary hearing." (*Id.* 47:7-9.) Ms. Glaser persisted: "But the activities that you heard about were in their capacity as supervisory activities." (*Id.* 47:21-23.) The Court made expressly clear its understanding of Sands China's position but still did not rule the way Sands China wanted: "I understand that's your position. That is a factual determination I will make at the time of the evidentiary hearing." (*Id.* 47:24-48:1.)

[2] As just one blatant example of Sands China's true intent, in its Motion, Sands China asks this Court to "clarify its Jurisdictional Discovery Order so to eliminate" certain discovery the Court expressly granted. (Mot. 8:14-15.) It also must be noted that Sands China's motion for "clarification" does not once refer to the transcript from the hearing, nor does it attach the transcript as an exhibit. Of course, the transcript demonstrates that clarification is entirely unnecessary.

[3] No one is asking Sands China to adopt Jacobs' theories, just to stop misstating them. It is wasteful of everyone's time and resources.

(Hrg. Trans. 30:11-19). As if there could be any question, Jacobs again confirmed that "[a]ll of these issues will be debated." (*Id.* 30:19.) For fear of not getting the last word and for fear of what the discovery will reveal, Sands China chose to ignore the above and filed an entire motion for "clarification" on the false premise that the position was never articulated. Although this latest motion by Sands Defendants is an utter waste of time, Jacobs is compelled to respond to set the record straight.

III. DISCUSSION

A. As Everyone But Sands China Knows, One of Jacobs' Theories Of General Jurisdiction Seeks To Explore The Simple Principle Of Agency.

Jacobs has stated that one of his theories of jurisdiction he seeks to explore and present during the evidentiary hearing is "general jurisdiction based upon the agency role of Las Vegas Sands and what it performs here on behalf of Sands China." (Hrg. Trans. 30:11-19). Agency, contacts, and personal jurisdiction is thoroughly supported by law. Indeed, the Nevada Supreme Court has expressly stated that "[t]he contacts of an agent are attributable to the principal in determining whether personal jurisdiction exists." *Trump v. Eighth Judicial Dist. Court of State of Nev. In & For County of Clark*, 109 Nev. 687, 694, 857 P.2d 740, 745 (1993) (citing *Sher v. Johnson*, 911 F.2d 1357, 1362 (9th Cir. 1990); *see also Hillyer v. Overman Silver-Min. Co.*, 6 Nev. 51, 54 (1870) ("A corporation acting through an agent . . . is bound by the acts of such agent just as any other principal would be by the acts of his agent.").[4] Sands China ignored this guiding law when it dogmatically argued that an "alter ego" theory is the only way a parent company's contacts can be imputed to its subsidiary for a minimum contacts analysis. Sands China's persistence did not change the outcome that the law allows.

As stated by Jacobs' counsel during the hearing, "[t]he Ninth Circuit told us the agency test 'is satisfied by a showing that the subsidiary functions as the parent corporation's representative in that it performs services that are sufficiently important to the foreign corporation

[4] It can also not go unsaid that although Sands China refers this Court to case law in footnotes on gratuitous points not relevant to the requested clarification, the body of the Motion is entirely without mention of any case citations. This is because Sands China must ignore the controlling law on agency and jurisdiction in order to make its unsupportable arguments.

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LAS VEGAS, NEVADA 89169

that if it did not have a representative to perform them the corporation's own officials would undertake to perform substantially similar services.'" (Hrg. Trans. 25:10-18 (quoting *Doe v. Unocal Corp.*, 248 F.3d 915, 928 (9th Cir. 2001)). Thus, "'if a subsidiary performs functions that the parent would otherwise have to perform, the subsidiary then functions as merely the incorporated department of its parent. Consequently, the question to ask is not whether the American subsidiaries can formally accept orders for their parent, but rather whether in the truest sense the subsidiary's presence substitutes for the presence of the parent.'" (*Id.* 25:18-25 (quoting *Unocal*, 248 F.3d at 928).

Based upon the law Jacobs offered (and the dearth of law offered by Sands China), this Court granted Jacobs' Motion to Conduct Jurisdictional Discovery so that, among other things, Jacobs can inquire into "whether the people in Las Vegas Sands Corp. are acting as an agent and performing functions that, had they not performed them, people in China for Sands China would have to perform them themselves." (Hrg. Trans. 26:2-5.) If it needed to be clearer, Jacobs' broadly summarized his discovery request, "at least on the general jurisdiction issue[:] we are looking ***not only*** for Sands China and what it did on its own, we're ***also*** looking to see what did Las Vegas Sands Corp. do as an agent for Sands China on circumstances where Sands China would have had to perform these services on their own." (*Id.*, 26:16-21) (emphasis added).

Despite these more than clear statements during the hearing on the discovery Jacobs sought and received, Sands China actually argues – and put in writing – that "Plaintiff expressly acknowledges that he is *not* . . . alleging any type of alter ego or agency relationship between SCL and LVSC as the basis for jurisdiction." (Mot. 6:15-18) (emphasis in original). As seems to be routine, Sands China selects only the words and phrases that seem to support its point, but fails to provide the Court with a complete and thus accurate picture. To fill in the purposefully omitted blanks, before this Court and again to the Supreme Court, Jacobs stated that "Jacobs seeks to establish jurisdiction over SCL based upon its own contacts with the forum, ***not just*** those attributable to LVSC.") (Ex. A to Mot., 4:25-27) (emphasis added). "Not just," meaning "in addition to." This must sound eerily consistent to the words uttered by Jacobs' counsel at the hearing on the motion to conduct jurisdictional discovery and already recited above: "[W]e are

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looking ***not only*** for Sands China and what it did on its own, we're ***also*** looking to see what did Las Vegas Sands Corp. do as an agent for Sands China on circumstances where Sands China would have had to perform these services on their own." (*Id.*, 26:16-21) (emphasis added).

B. <u>This Court Rightly Ordered The Depositions Of Kay and Goldstein.</u>

Though teetering on a precipice of numbing redundancy, because of Jacobs' previously articulated and above-stated theories of jurisdiction, this Court ordered that if individuals "have titles as officers or directors of Sands China, [Jacobs is] going to ask them about the work they did for Sands China. If they did any work on behalf of Sands China while they were acting as employees or officers or directors of Las Vegas Sands, that is also fair game." (Hrg. Trans. 46:6-10.) This flows nicely into Sands China's next logically flawed argument. According to Sands China, this Court's order allowing Jacobs to depose individuals who wear two hats, one for Sands China and once for LVSC (*i.e.*, Adelson and Level), means that Jacobs is only entitled to discover information related to individuals who wear two hats. In other words, Sands China believes LVSC employees without a Sands China title are off-limits.[5] No.

Jacobs informed this Court that Kenneth J. Kay ("Kay") and Robert G. Goldstein ("Goldstein") are solely LVSC employees. (Jacobs' Mot. to Conduct Juris. Discovery, ¶¶ 3-4, on file with the Court.) With respect to Kay, Jacobs stated that Kay was, upon information and belief a Nevada resident, and LVSC's Executive Vice President and CFO, who, also upon information and belief, participated in the funding efforts for Sands China. (*Id.* ¶ 3.) In other words, Jacobs is informed and believes that Kay, as an employee of LVSC, acted on behalf of Sands China. (Hrg. Trans. 19:8-10 ("Mr. Kay, who has been involved in the financing for this entity, financing that occurred, was negotiated, was executed here in Nevada."). Similarly, with respect to Goldstein, Jacobs informed the Court that Goldstein was a Nevada resident, and

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[5] If Sands China missed the law on agency and how it relates to personal jurisdiction, the concept of sub-agency may be altogether lost. Nonetheless, LVSC employees acting on behalf of Sands China need not have a Sands China title for their "sub-agent" acts to be attributable to Sands China for purposes of jurisdiction. *See Greenberg's Estate v. Skurski*, 95 Nev. 736, 739, 602 P.2d 178, 179 (1979) ("A subagent is a person appointed by an agent empowered to do so, to perform functions undertaken by the agent for the principal, but for whose conduct the agent agrees with the principal to be primarily responsible.") (citing Restatement (Second) of Agency s 5(1) (1957)); *see also Young v. Nevada Title Co.*, 103 Nev. 436, 439, 744 P.2d 902, 903 (1987) ("The same person or entity may act as the agent for two parties . . . .").

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LVSC's President of Global Gaming Operations, who, upon Jacobs' information and belief, actively participated in international marketing and development for Sands China. (Jacobs' Mot. to Conduct Juris. Discovery, ¶ 4; Hrg. Trans. 19:10-14 ("Mr. Goldstein, a person who was involved in the international marketing efforts for these VIPs that we've talked about before, and a substantial role in the development of these properties owned and controlled by Sands China.").

Jacobs' counsel clearly stated the intent behind the discovery request with respect to these two deponents:

> We're looking to see what Mr. Goldstein wants to do in connection with this VIP marketing with or without a contract. Is that something that would have to be done out of China if he didn't do it? What about the financing with Mr. Kay? If he's not performing those functions here in Las Vegas for Sands China, would Sands China have to have somebody else on their own payroll doing it?

(26:16-27:4.) With full knowledge that these two deponents are LVSC employees, this Court ordered that Jacobs was permitted to conduct the depositions of Kay and Goldstein, and can inquire into "work done on or - - done for or on behalf of Sands China" irrespective of the fact that they do not simultaneously have a title with Sands China. (*Id.* 43:21-23, *see also id.* 44:11-13.) There is no need for clarification, and no basis for reconsideration.

C. Sands China Asks This Court To Clarify Its Order Regarding Discoverable Documents By Eliminating All Previously-Granted Requests.

Similar to its mistaken position on discovery related to LVSC employees, Sands China believes that all categories of documents that this Court permitted Jacobs to discovery should be "clarified" so as to be eliminated. More specifically, Sands China asks this Court to "limit all document requests relating to SCL's contacts with Nevada," which Sands China (rather unbelievably) claims to be none. (Mot. 9:15-17.) And, rather unremarkably, Sands China asks this Court to eliminate discovery related to every single document request that this Court ordered. (Mot. 9:4, 9, 12.)

For the same reasons articulated above, including Jacobs' actual theories of jurisdiction supported by Nevada law and the discoverability of information through the depositions of Kay

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and Goldstein, the discovery requests granted by this Court are entirely proper and need no clarification.

D. Sands China's Obvious Attempt To Shorten The Relevant Discovery Period Through "Clarification" Must Be Rejected.

Finally, Sands China seeks a "clarification" of the time period for the ordered jurisdictional discovery. Again, no clarification or reconsideration is necessary. This Court ordered that Jacobs is permitted to conduct jurisdictional discovery on Sands China's contacts with Nevada from January 1, 2009 up to and until October 20, 2010 (the date Jacobs filed the Complaint). Sands China may not recall, but the parties, including Sands China, already stipulated that January 1, 2009 to October 30, 2010 was the relevant time period for discovery. (Stipulation & Order re ESI Discovery, dated June 22, 2010, attached hereto as Ex. 2.) Of course, Sands China wants to forget that now, trying instead to shrink the relevant time period by pushing the start date back nearly 11 months (to November 30, 2009) and cutting three months off the back end (to July 23, 2010). Importantly, Jacobs has requested discovery related to theories of general, specific, and transient jurisdiction. (Hrg. Trans. 30:11-19.) Sands China's motive to obtain a shorter "relevant period" is plainly obvious but also unsupported by law.

The focus of general jurisdiction is all of a defendant's contacts with the forum state. *Trump v. Eighth Judicial Dist. Court of State of Nev. In & For County of Clark*, 109 Nev. 687, 699, 857 P.2d 740, 748 (1993) ("General jurisdiction occurs where a defendant is held to answer in a forum for causes of action unrelated to the defendant's forum activities."). In contrast, the focus of specific personal jurisdiction is more narrow, and may be established only where the cause of action arises from the defendant's contacts with the forum. *Id.* Accordingly, the time period for examining a defendant's contacts for the purposing of establishing jurisdiction is slightly different, depending upon which type of jurisdiction a party is seeking to establish. In either case, "[t]he determination of what period [to examine a defendant's contacts with the forum] is reasonable in the context of each case should be left to the court's discretion." *Metro. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 569-70 (2d Cir. 1996) ("The minimum

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contacts inquiry is fact-intensive, and the appropriate period for evaluating a defendant's contacts will vary in individual cases.").

When determining if a court can exercise ***specific*** jurisdiction over a party, courts consider "the defendant's contacts with the forum at the time of the events underlying the dispute . . . ." *Steel v. United States*, 813 F.2d 1545, 1549 (9th Cir. 1987) ("when the events that gave rise to the suit occurred"). However, "[i]n general jurisdiction cases, district courts should examine a defendant's contacts with the forum state over a period that is reasonable under the circumstances-***up to and including the date the suit was filed***" to determine whether a defendant's contacts meet the requirements for general jurisdiction. *Metro. Life Ins. Co.*, 84 F.3d at 569-70 (emphasis added); *accord Harlow v. Children's Hosp.*, 432 F.3d 50, 64-65 (1st Cir. 2005) ("It is settled law that unrelated contacts which occurred after the cause of action arose, but before the suit was filed, may be considered for purposes of the general jurisdiction inquiry."); *see also Pecoraro v. Sky Ranch for Boys, Inc.*, 340 F.3d 558, 562 (8th Cir. 2003) ("Minimum contacts [for general jurisdiction analysis] must exist either at the time the cause of action arose, the time the suit is filed, or within a reasonable period of time immediately prior to the filing of the lawsuit."). *See generally* 4 Wright & Miller, Fed. Prac. & Proc. Civ. § 1067.5 (3d ed.) (discussing general jurisdiction and stating "a court should consider all of a defendant's contacts with the forum state prior to the filing of the lawsuit. . . .").

Working backward and addressing the end date for jurisdictional discovery, it is no surprise that Sands China would like to stop any contacts analysis on the day that the Sands Defendants escorted Jacobs off property and to the ferry – July 23, 2010. Michael Leven subsequently assumed the position of Interim President and CEO when Jacobs was terminated, and, Jacobs is informed and believes that Leven conducted much and many of his Sands China duties from his home state of Nevada. Thus, although Sands China may want to dictate discovery so to eliminate any inquiry into Leven's activities as interim President and CEO of Sands China, because one of Jacobs' theories (indeed, the theory with which this Court agreed) of jurisdiction is general jurisdiction, there is no legal support for Sands China's latest act of desperation to shorten the relevant period of jurisdictional analysis.

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LAS VEGAS, NEVADA 89169

Sands China also seeks to dictate the start date for jurisdictional discovery. Rather than the previously stipulated and ordered date of January 1, 2009, Sands China now believes that the start date for jurisdictional discovery must be the date that Sands China completed its initial IPO: November 30, 2009. To make this argument, Sands China conveniently omits its own corporate history, as well as Jacobs' role in that history. LVSC began discussing the possibility of an IPO of the Macao operations in 2008 as they were on life support and a recapitalization was necessary to avoid a default of their debt covenants. In early 2009, prior to Mr. Jacobs joining LVSC, Mr. Leven shared board documents with him and solicited his input in several key areas. Jacobs' relationship with the Sands Defendants continued from that date until he was escorted off property. Even before Jacobs began to assist the Sands Defendants, there were many steps in the process that culminated in Sands China going public on November 30, 2009; a process which included among other things, the incorporation of Sands China in the Cayman Islands months before, on July 15, 2009. (Aff. of Anne Salt, ¶ 3, attached hereto as Ex. 3.)[6] For instance, prior to the November 30, 2011 completion of the IPO, Sands China and LVSC, on behalf of Sands China, entered into various contracts, most of which likely are relevant to and discoverable on the issue of jurisdiction.[7] In addition, Jacobs is entitled to discover information into any pre-incorporation, predecessor in interest contracts and activities that would constitute contact with Nevada (*e.g.*, work performed on behalf of LISTCO or NEWCO, which all knew was to be

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

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[6] Sands China originally offered Ms. Salt's Affidavit as an exhibit to its Motion to Dismiss for Lack of Personal Jurisdiction, filed on December 22, 2010. Jacobs does not agree with most of Ms. Salt's testimony, and refers the Court to the affidavit for the sole purpose of the testimony Ms. Salt offered in paragraph 3 thereof.

[7] Without even referencing third parties, Sands China and LVSC have entered into contracts that pre-date the completion of the IPO. (*E.g.*, Errata to Sands China's Motion to Dismiss, on file with the Court.) However, there also are various contracts that LVSC entered into on behalf of Sands China prior to the completion of the November 30, 2009 IPO. For instance, prior to the IPO, LVSC entered into an agreement with BASE Entertainment ("BASE"), an entity doing business in Nevada, whereby BASE received free rent in a theater for Parcels 5 and 6 and exclusive rights to brand the Cotai Arena. According to that contract, LVSC was the recipient of funds for the branding of the Cotai Arena despite that the Arena was listed as a Sands China asset on the prospectus.

With just these few examples, it is clear that allowing Sands China to re-trade on a time limitation would render these relevant documents beyond the scope of jurisdictional discovery (which is Sands China's intent).

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

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

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

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

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

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

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

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

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III. CONCLUSION

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

Dated September 26, 2011.

GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP

By: _____

Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)
Stephen Ma, Esq. (Pro Hac Vice Admitted)
Andrew D. Sedlock, Esq. (NBN: 91893)
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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DISTRICT COURT
CLARK COUNTY, NEVADA
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STEVEN JACOBS Plaintiffs vs. LAS VEGAS SANDS CORP., et al. Defendants And related cases and parties	.	CASE NO. A-627691 DEPT. NO. XI **Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON PLAINTIFF'S MOTION TO CONDUCT JURISDICTIONAL DISCOVERY

TUESDAY, SEPTEMBER 27, 2011

APPEARANCES:

FOR THE PLAINTIFFS:	JAMES J. PISANELLI, ESQ. DEBRA SPINELLI, ESQ.
FOR THE DEFENDANTS:	J. STEPHEN PEEK, ESQ. PATRICIA GLASER, ESQ. STEPHEN MA, ESQ.
COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

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

LAS VEGAS, NEVADA, TUESDAY, SEPTEMBER 27, 2011, 4:07 P.M.

(Court was called to order)

THE COURT: All right. Can everybody please identify themselves who's participating in the argument on Jacobs versus Sands.

MR. PISANELLI: Good afternoon, Your Honor. James Pisanelli on behalf of the plaintiff.

MS. GLASER: Good afternoon, Your Honor. Patricia Glaser for Sands China, here only on the issues involving the evidentiary hearing.

MR. PEEK: And good afternoon, Your Honor. Stephen Peek on behalf of Las Vegas Sands Corp.

THE COURT: Okay. I think I have four agenda items, some of which you don't know about. One is each of you has submitted order shortening times, or at least side has submitted order shortening times. One is in the Las Vegas Sands versus Jacobs case, which I haven't signed, and one is in the Jacobs versus Las Vegas Sands case. One's by Ms. Glaser, one's by Mr. Peek. Does anybody want to discuss with me the briefing schedule that we should have before I have to have a conference call like I just did with Mr. Backus and his adverse counsel?

MR. PEEK: Well, Your Honor, I sort of fall in the same trap that you did with Mr. Pisanelli's motion that we're here today on the jurisdictional discovery which, I think was

set on about three days' notice. We're happy with three days' notice.

MR. PISANELLI: Three days' notice on an issue that has no relevancy until November? I'd ask Your Honor to give us the appropriate amount of time to respond to what appears to be --

THE COURT: The motion in limine.

MR. PEEK: I was just talking about my motion.

THE COURT: See, I've got a motion for sanctions, and I've got a motion in limine.

MR. PEEK: Yeah. I --

THE COURT: I've got two different kinds of motions.

MS. GLASER: Actually, the --

MR. PISANELLI: This is all news to me. I haven't seen them.

THE COURT: Oh. Okay.

MS. GLASER: Your Honor, with respect to the motion in limine, which I -- is the only one that I can address, we would like it as quickly as humanly possible. Mr. Pisanelli has been served with a motion in limine. We are asking for -- that the -- no documents stolen by Mr. Jacobs be utilized in connection with anything having to do with the evidentiary hearing. And I think that issue needs to be resolved as soon as possible by Your Honor.

THE COURT: Okay.

MR. PISANELLI: I'll object to --

THE COURT: Well, wait.

MR. PISANELLI: I'm sorry.

THE COURT: Let me go to -- I don't sign OSTs on motions in limine usually. That's the general rule. So let me go to a subset of the situation in this particular case.

Has anybody heard from the Nevada Supreme Court on the emergency petition that Justin Jones was kind enough to take me up on and file?

MS. GLASER: No, Your Honor, we have not.

MR. PEEK: We have not, Your Honor.

THE COURT: It's not your fault.

MR. PEEK: No, it's not, Your Honor.

THE COURT: I'm not saying it's your fault.

MR. PEEK: Your Honor, the motion was just filed, so I didn't expect the Supreme Court to hear it. And I hope you heard about it not from the newspapers as opposed to --

THE COURT: This time it was served on --

MR. PEEK: Good.

THE COURT: -- me as required by the rules, and I looked at it. And I didn't read about it in the paper. So I certainly understand, Ms. Glaser, that you would like to have this heard sooner, rather than later. The issues are integrally interrelated with the issues that are the subject of this what I'm calling a discovery dispute which isn't

before the Nevada Supreme Court, which unfortunately I can't resolve because of the stay that is in place. But in connection with the hearing that is upcoming I can certainly address it as part of that process. But the question's going to be how long are we going to do it, and I'm not going to shorten it to three, four days.

MS. GLASER: Your Honor, I obviously will bow to whatever you want to do in that regard. It clearly needs to be resolved, because we think if you look at the disclosures that were served on us that they intend to -- documents they intend to use, those are documents that were stolen, in our view, I don't think there's a different view from -- by Mr. Jacobs, some of which are attorney-client privileged documents. Your Honor, none of these documents should be utilized in connection with any evidentiary hearing set for November 21.

THE COURT: Mr. Pisanelli, have you seen the motion in limine yet?

MR. PISANELLI: No.

THE COURT: Okay. Assume you get a copy in the next day or so --

MR. PISANELLI: It was served. I haven't seen it.

THE COURT: It looks a lot like this.

MR. PISANELLI: It was served. I just haven't seen it.

MR. PEEK: And mine was also served, Your Honor, on Mr. Pisanelli.

THE COURT: The text of the motion is 12 pages and, gosh, it looks a lot like what we're dealing with on the motion that we dealt with a week ago Friday and the motion we dealt with --

MR. PISANELLI: Sure.

THE COURT: -- Monday?

MR. PEEK: A week ago Tuesday, I think, Your Honor. Maybe Monday.

MS. GLASER: It's actually more restricted, because it only deals with documents in connection with the evidentiary hearing, Your Honor.

THE COURT: Okay.

MR. PISANELLI: Okay.

THE COURT: So it's the same issue that we've been talking about.

MR. PISANELLI: So Ms. Glaser will be surprised, I'm sure, when she says that no one disagrees on what to do or even what we have, we have a lot of disagreement even with the --

THE COURT: I'm not arguing the motion today.

MR. PISANELLI: -- labels that are being thrown around with stolen documents. Understood.

THE COURT: I'm not arguing it. I'm just want to

know how long you think you need to brief it.

MR. PISANELLI: Give me -- I'm leaving town for a mediation tomorrow, so I'm going to be out for the next couple days. So since our hearing doesn't begin until November, I would ask for 10 days.

THE COURT: That means I need a response for you -- from you by next Friday, which is October 7th.

MR. PISANELLI: Okay.

THE COURT: Ms. Glaser, once you get that, how long do you need before you give me a reply brief?

MS. GLASER: The 10th, Your Honor.

THE COURT: That's the Monday. So do you want to have a hearing on October 13th, which is the day Mr. Pisanelli's already scheduled to be here with Mr. Ferrario which you're trying to move? Does that work?

MS. GLASER: Absolutely.

THE COURT: All right.

THE CLERK: What time?

THE COURT: 9:00 o'clock.

THE CLERK: Thank you.

THE COURT: So we have negotiated the first of our issues.

Now with respect to Mr. Peeks sanction motion, Mr. Peek, this I guess is because you believe there has been a violation of the interim order that I entered because I really

think that the Las Vegas Sands versus Jacobs is a subset of the Jacobs versus Sands discovery dispute.

MR. PEEK: I know. And we disagree with the --

THE COURT: I understand.

MR. PEEK: -- the Court on that, so -- but we can certainly agree to disagree.

THE COURT: But it's a violation of the interim order that I entered in that case.

MR. PEEK: That is correct, Your Honor. Because what we found when we saw the disclosures that Mr. Pisanelli submitted in this case --

THE COURT: The Jacobs versus Sands case.

MR. PEEK: -- the Jacobs versus Sand -- what we saw clearly were attorney-client communications.

THE COURT: Okay.

MR. PEEK: And I remember Mr. Pisanelli standing before this Court and talking in his -- about he was not going to violate the rules of professional responsibility, he was not going to violate the Nevada Rules of Civil Procedure so what was the harm and why do we need all this relief. Well, now we know. We also know, Your Honor, and perhaps the Court didn't know this, is that the docket has been closed in the remand to -- from the Nevada Supreme Court to this Court --

THE COURT: I read that in --

MR. PEEK: Yes.

THE COURT: -- the writ petition.

MR. PEEK: So we didn't -- we had to open a docket with the Nevada Supreme Court. We can't go back to that same docket. So --

THE COURT: I was surprised that occurred, since --

MR. PEEK: I was too, Your Honor.

THE COURT: -- they told me to send it back up.

MR. PEEK: I was actually very surprised that that's happened.

THE COURT: I thought I had a Honeycutt issue basically that I was dealing with.

MR. PEEK: That's kind of what I thought, as well, Your Honor, was really a Honeycutt issue. So we had to open a new docket. So we're concerned that we won't be able to get the relief that we want within the two weeks that the Court gave us, and we now have a clear violation of the interim order, well, with respect to the review of attorney-client privileged documents that Mr. Pisanelli told us he wasn't going to look at.

THE COURT: Mr. Pisanelli, just assume with me for a minute that Mr. Peek has a point, whether it's right or not. Just assume he has a point. I know. How long is it going to take you to respond to this one?

MR. PISANELLI: Well, I would say the same. I would hope that between now and the 10 days that I respond that

these two lawyers that are throwing these allegations out will read our disclosures and see that they're all public documents or documents that have actually been submitted in this court or a 16.1 production before they start so loosely throwing these allegations out, and maybe they'll withdraw those motions. If they don't, we'll call them out for all the mistakes they've made in their papers and today, and we'll respond in 10 days.

THE COURT: Okay. Well, here's my concern with that. I had an interim order that was in effect for a period of 14 days from the day I issued it. My order expires on October 4th. I am looking to schedule a hearing prior to that date.

MR. PEEK: And October 4th is Monday.

THE COURT: No, it's a Tuesday.

MR. PEEK: Tuesday?

THE COURT: It's the Tuesday a week from today.

MR. PEEK: I'm happy to do it on Tuesday, Your Honor. Mr. Pisanelli and I are together on Monday on another matter, so I'm happy to do it on Tuesday.

THE COURT: Because you guys --

MR. PISANELLI: Well, since we're doing everything --

THE COURT: -- all have cases together.

MR. PISANELLI: Since we're doing everything at

hyperspeed, Your Honor, I don't think a reply should be a material concern to everyone. So we'll file a brief with you on Monday, and we'll show up on Tuesday.

MS. GLASER: Your Honor, if I might -- again, I'm not involved in that particular motion. If you look at the documents the were on the disclosure --

MR. PISANELLI: This is what we're going to brief, Your Honor.

MS. GLASER: Let me -- let me finish.

MR. PISANELLI: We're going to have the oral argument today?

MS. GLASER: May I finish?

THE COURT: No, we're not going to have an oral argument today.

MS. GLASER: Your Honor --

THE COURT: But I'll listen to Ms. Glaser, because if she wants to tell me to do something in the Las Vegas Sands versus Jacobs case, I will certainly listen to her. But I thought she was going to make a decision not to do anything in that case.

MS. GLASER: I'm not talking that case.

THE COURT: Okay.

MS. GLASER: But I do need to address something that was said by Mr. Pisanelli, and I'd like it to be addressed in the context of the evidentiary hearing, which is of great

concern to us, Your Honor. Your Honor, if you look at -- and I'm strictly limiting my comments to one thing he said. If you look at the disclosures made in connection with the evidentiary hearing, you will see Bates stamp numbers that go all the way past 1100. That means that Mr. Pisanelli and his office and his client have used documents and have literally looked at documents that were taken from us without our permission.

MR. PISANELLI: That is blatantly false --

THE COURT: I'm --

MR. PISANELLI: -- and she says it with nothing to base it on. We have a thing here called an Internet, and if they want to look they'll find all of those new Bates numbers from the Internet.

THE COURT: Okay.

MS. GLASER: That's not true.

THE COURT: Gentlemen, ladies. I am not going to address whether there has or has not been a substantive violation of the interim order or whether that somebody has or had not stolen documents or whether somebody has or has not got documents that are protected by the attorney-client privilege. I'm not going to address that today.

MR. PISANELLI: Fair enough.

THE COURT: And I'm not going to address that in the case called Las Vegas Sands versus Jacobs, because I think

that I'm -- that's part of a discovery dispute that's in Jacobs versus Sands, which the action has been stayed.

MR. PISANELLI: Right.

THE COURT: And luckily, Mr. Justin Jones was kind enough to file an emergency request for relief for the Nevada Supreme Court, which they may do something about.

I am, however, very concerned about the issue which I discussed when Mr. Campbell was still counsel of record and we had our discussion I want to say at the end of August about when we were going to schedule the evidentiary hearing and what had to be done so that I could comply with the writ that was issued to me by the Nevada Supreme Court. And during that original discussion I did have a discussion, and I don't remember who it was that said it first, about whether discovery would be appropriate for jurisdictional issues; because sometimes it is, and when it is it's appropriate to do. And I suggested at that time that counsel get together and see if they could agree. My guess by the fact you're here is that you didn't agree. And the fact that Mr. Pisanelli is new has probably meant that we're here later than we would have been if Mr. Campbell had still been counsel. So --

MS. GLASER: Let me --

THE COURT: -- that's my preface of where I am today with respect to you guys.

MS. GLASER: Understood.

THE COURT: So it's your motion, Ms. Glaser.

MS. GLASER: It's actually --

MR. PISANELLI: Your Honor, it's our motion.

THE COURT: Or no, it's Mr. Pisanelli's motion. Sorry.

MR. PISANELLI: Thank you. Well, in looking forward to the evidentiary hearing, Your Honor, I have to give the defendants credit for their chutzpa. I mean, what are we looking at, the position that they are proffering to you that they would like to present? They asked to be let out of this litigation on grounds of no personal jurisdiction. They asked now in five different contexts that I and my colleagues be blindfolded to the evidence we rightly possess, these very fun and now very tired labels of "stolen" being thrown out there for press purposes or otherwise. They give no evidence whatsoever but for a couple of perfunctory, conclusory, self-serving affidavits and original briefs. They now even go so far, Your Honor, as to offer expert testimony. And they still, with all that said, come in front of you and say, but no other discovery, don't let them have anything else, this is tough enough, I'm assuming they're saying to themselves, to stay out of this jurisdiction with what we know, don't let them get to the real evidence that will govern this issue. I have to ask if they even blush when they make these type of arguments, wanting so much and giving so little.

So we start with a couple of general I think irrefutable principles that we have to deal with and defendants have to come to grips with, one of which they like, right. And that is that we carry this burden. We'll have the debate of whether the burden is one of prima facie evidence because we are pretrial, or whether because of the nature of the evidentiary hearing we're actually going to go to the preponderance. But in any event, we carry the burden, and you're not going to hear me dispute that.

That legal issue in and of itself has very, very strong consequences and it's what leads us to the very substantial body of law dealing with discovery. Because we carry the burden, equity says that we have the right to discovery. And it is a very, very minimal standard that Your Honor has to apply, one that has been characterized as whether our position on jurisdiction over Sands China appears to be clearly frivolous. If you find that our position is clearly frivolous under the Metcalf decision you can say, no need for discovery because I see where this is going and none of this discovery is going to help this concept of a frivolous notion.

And so the question before you today is is our position that Sands China is subject to jurisdiction in this state one that is clearly frivolous? Well, logically of course, as the new person in the case you know where I started, I started reading, right. I started reading a lot

about this very topic, including what Your Honor had to say about it. And Your Honor said that this is not an issue that's clearly frivolous. Matter of fact, Your Honor said that you saw that there were pervasive contacts that Sands China had with this forum. Now, I'll be frank, Your Honor. I'm not altogether clear with what the Supreme Court wrestled with. I'm not. I saw what was before you as evidence. Was testimonial evidence by way of affidavits, it -- there was verified documents before you, as well, there was lot of them. And you read them and you considered them and you balanced the law, and you found pervasive contacts.

So what the Supreme Court didn't see or struggle with, I don't know. All that matters is they told us to come back and have an evidentiary hearing, and that's what we're going to do, and that's all that really matters. But the point is this. In determining whether you can find now that, rather than pervasive, our position is clearly frivolous, you know, do we really need to look beyond what you've already seen and what is in the record today? We have the two top executives of Sands China live here, CEO and at one time the president, and, of course, the chairman, Mr. Adelson. They live here, and not only do they live here but they perform their functions, from what we can see and what's in the record, from Las Vegas. The two top-ranking officials of this company live here and direct this company from Las Vegas.

We know that substantial energy went into designing and developing projects for Sands China here in Las Vegas. We know that they recruit executives for Sands China here in Las Vegas. We know numerous contracts with Las Vegas Sands Corp. for sharing responsibilities, et cetera, that Las Vegas Sands Corp. has been so kind as to say are arm's-length deals. Arm's-length deals. Doesn't matter that it's its parent. They are contracting with the Nevada entity. They're not just contracting with Las Vegas Sands, they're contracting with Bally's, they're negotiating with Harrah's, they're dealing with a company by the name of BASE Entertainment, they're dealing with a company that governs and controls Circ Du Solei. The point is this. They purposely direct their energies into this state with contracts with entities from this state. We'll find out if they're governed by Nevada law and whether they're taking advantage in gaining the protections of Nevada law. But we're filtering it right now, all this evidence already in the record, through this clearly frivolous standard to see if Sands China can rightly say that no discovery should be allowed.

We know we have these ATAs, transfers of $60 million-plus. Saw the boards Mr. Campbell had prepared that he was using to demonstrate that issue. I think it was characterized that this entity is being used as a bank so that their customers, Ms. Glaser's words, could have the convenience of

depositing money in China and walking into a Las Vegas casino and taking that value out here, no different than if I went to Bank of America to deposit my paycheck and then showed up in Dublin to get the same type of benefit of my funds with the banking institute. They don't like the idea of banking, and they say that it's accounting and all that. But nonetheless, right now we're talking about a clearly frivolous standard of whether Sands China should be subject to discovery. So --

THE COURT: And you're only talking about jurisdictional discovery at this point.

MR. PISANELLI: I'm sorry.

THE COURT: Jurisdictional discovery.

MR. PISANELLI: Right. And this is my point, Your Honor. You already know all of these things in this case in relation to our claim that Sands China is subject to jurisdiction here. We are going to have an evidentiary hearing, they have rebutted all of these categories and we are entitled -- because we have the burden and because our position is not clearly frivolous, we have the right to conduct this discovery. That is the simple point that we are making. And court after court has said under circumstances like this, Your Honor, that if we don't -- if we are not permitted to have discovery, it is, in all due respect, an abuse of your discretion. So that's how we get here. Those are the standards that we look at in determining whether

discovery is appropriate.

So let's look at the discovery we're asking for that has got everyone so incensed and exercised here. We're looking really for four depositions. I have a fifth only because I have played the Sands discovery game in the past in my career, and so just as a safety net I put in a 30(b)(6) deposition, as well, in case I get failing memories one after another or lack of preparedness one after another with witnesses coming in and saying, I don't know. But a 30(b)(6) will eliminate that. And so what we're talking about, of course, is those first two people that I mentioned, the highest-ranking officers of Sands China, one currently still holding that position, Mr. Adelson, and the person who took over for Mr. Jacobs as president and acting CEO, Mr. Leven. We know from the evidence before you, Your Honor, that these two gentlemen have as much to do with that company certainly during the relevant time period as anyone anywhere. And so where else would we start this analysis but with the deposition of these two people?

Remember, we're talking in Mr. Jacobs a person who's a low-level employee, we're not talking about a valet parker here; we're talking about a person who held the position of president and CEO having direct daily communications with these two gentlemen. If any -- the three key witnesses in this entire debate I would argue are Mr. Jacobs and these two

gentlemen.

We also offer a request to take the deposition of two people, who at least from what we have seen in our Internet research, it's not altogether clear whether they hold actual titles with Sands China, but we know that they perform substantial service on behalf of these entities and are involved in actions that show Sands China's reach into Nevada. Mr. Kay, who has been involved in the financing for this entity, financing that occurred, was negotiated, was executed here in Nevada. We have Mr. Goldstein, a person who was involved in the international marketing efforts for these VIPs that we've talked about before, and a substantial role in the development of these properties owned and controlled by Sands China.

So to suggest that we are being harassing or overreaching really is a stretch. We have tried to narrowly confine what it is that we want to do, knowing, Your Honor, that you have already told me, no, we're not going to continue this hearing. So my time to prepare for this hearing is valuable. I don't have any interest or even the time, for that matter, to harass Mr. Adelson or harass anyone in that company. I have to get ready for an evidentiary hearing, and that's what I plan on doing, and getting depositions of four people doesn't seem to be an overreach from our perspective, not even -- not even a close call.

The documents -- I could go through them one after another if you'd like, but they speak for themselves. They are documents intended to show that this company is reaching into this state intentionally, it is obtaining the benefit of the laws of this state, and we intend to show that, whether it be through the contracts it has, contracts with its own parent, contracts with other third parties or -- and we also want to show that its primary officers are directing the management and control of that company from the offices here on Las Vegas Boulevard. And you can see item by item, Your Honor, that's what we're doing here. Even the board meetings, we intend to show that these board meetings are being attended by more than two, possibly three, four different directors sitting here in Las Vegas. Are they on the telephone? Of course they're on the telephone. Is it videoconferenced? I don't know. But we have board meetings that doesn't really have a meeting place. but one might even fairly say once we get to the bottom of it the actual meeting is taking place with the chairman, the chairman sitting here. Who's calling who is the point, and shouldn't Your Honor take that into consideration when we determine just how far reaching Sands has been in coming into this jurisdiction.

Of course, the ATAs have been debated before, Your Honor. I was going to say ad nauseam, but we'll say comprehensively the last time we were here. I would like to

get to the heart of it. We see a new defense by Ms. Glaser coming up, trying to distance now Sands China from its own subsidiaries. Sands China indeed wants to be considered an island for all purposes to make sure that you don't hold it responsible for the agency that it offers to its subsidiaries and you don't hold it responsible for the agency it finds in the employees of Las Vegas Sands. And so we want to get to the heart of this banking system for their VIP customers to show once again that allowing these VIPs to deposit money in China and show up here and gamble with that same money is in fact reaching into this state and being afforded the protections of this state.

Now, let's take -- let me take a few minutes to talk about this opposition we received. The opening paragraph is the same stuff -- it took a lot of restraint for me to just call it "stuff," that we just heard about my propensity and willingness to violate ethical standards and on again this very fun term, hoping the press is watching, of "stolen materials." What in the world that has to do with discovery is beyond me. But these are not inexperienced people, they're -- they craftily just cram a sentence at the bottom of this paragraph after trying to taint the well with Your Honor and saying that Jacobs's violations support the denial of jurisdictional discovery. I don't follow that logical leap. It was just a way to get this stolen concept in front of you,

hoping that it's going to have an effect on you in the long term. It obviously has nothing to do with it, and it is indeed a debate that I welcome, and I just can't wait to have it with you, especially with the recklessness that we've seen with this mud slinging and these allegations that are being thrown around.

Now, equally and perhaps even more remarkable is the exercise Sands China offers this Court with what they call clear statements of law. I will correct them as being clear misstatements of law. We start off with this proposition, relying upon the AT&T case. I direct Your Honor, I'll be reading just a very quick quote from page 8 of Ms. Glaser's brief where she says, quote, "Under the established legal authority governing jurisdictional discovery none of Jacobs's proposed topics for discovery are relevant to the jurisdiction inquiry, as each seek information that in the absence of an alter ego claim is insufficient as a matter of law to the determination of general personal jurisdiction." Now, they repeat this statement throughout this brief. Alter ego, alter ego, alter ego, alter ego, alter ego. If we are not presenting and proving alter ego, than the contacts between this parent and its subsidiary are relevant, it's a matter of law, and therefore clearly frivolous discovery, we don't need to do it.

Here is the problem. AT&T does indeed address an

issue of a way to obtain personal jurisdiction of an affiliated company, parent and subsidiary, and it can go in the reverse, right, you can into the jurisdiction of the subsidiary, too, and have this debate about the parent, it doesn't have to be the manner in which we're doing it. But what AT&T does not say, it's Ms. Glaser that says it, is that is the only way. Alter ego is a -- it says in the -- she says, "In the absence of an alter ego claim," we get no discovery because this evidence is insufficient as a matter of law. Well, the Goodyear case cited by our own good Supreme Court here does the exact opposite and takes a look not at alter ego, but what we're supposed to do in all jurisdictional debates, Your Honor, and that is, let's take a look at Sands China and see what Sands China is doing in Nevada. We did not come to this courtroom and we are not going to come in November and have a debate with you to say that Sands China is owned by Las Vegas Sands Corp. and therefore subject to jurisdiction. That is not our position.

THE COURT: Because that would be a loser.

MR. PISANELLI: That would be one I'd never present to you. What I'm presenting to you is this, and this comes from the Doe versus Unical case, which I'll read a very quick quote to you, because I think it's telling, Your Honor. We are going to talk about several different ways that Sands China has knowingly subjected itself to the jurisdiction of

this Court.

Now, on this concept of the exclusive way to do so through alter ego, we see in Doe versus Unical Corp., a Ninth Circuit opinion, 248 F. 3rd 915 (2001), Your Honor, the Ninth Circuit analyzed AT&T and the alter ego theory. That was, coincidentally, Section A of the court's analysis on jurisdiction. Section B was a thing called agency theory. Agency theory, not alter ego. Alter Ego isn't the only way. Alter ego isn't a prerequisite to this type of discovery. Agency theory. The Ninth Circuit told us the agency test "is satisfied by a showing that the subsidiary functions as the parent corporation's representative in that it performs services that are sufficiently important to the foreign corporation that if it did not have a representative to perform them the corporation's own officials would undertake to perform substantially similar services."

Ninth Circuit went on and said, "As the Gallagher court articulated this rule, if a subsidiary performs functions that the parent would otherwise have to perform, the subsidiary then functions as merely the incorporated department of its parent. Consequently, the question to ask is not whether the American subsidiaries can formally accept orders for their parent, but rather whether in the truest sense the subsidiary's presence substitutes for the presence of the parent."

And so we are not saying alter ego. We don't care about alter ego yet, but we do care of whether the people in Las Vegas Sands Corp. are acting as an agent and performing functions that, had they not performed them, people in China for Sands China would have to perform them themselves. And if you look at our discovery request you see that is precisely the nature of the request that we're getting at.

Now, it doesn't end there. We're also simply looking, Your Honor, at what did Sands China do on its own. Did it contract? Did its officers come here to conduct business? Do its officers actually live here to conduct the business of Sands China? In other words, a total review of the context like the court tells us, an in toto review of all the circumstances in which this company is reaching into Nevada.

So my -- in summary at least on the general jurisdiction issue, we are looking not only for Sands China and what it did on its own, we're also looking to see what did Las Vegas Sands Corp. do as an agent for Sands China on circumstances where Sands China would have had to perform these services on their own. And you see we're asking for those type of shared-services contracts. That certainly is going to tell us something. We're looking to see what Mr. Goldstein wants to do in connection with this VIP marketing with or without a contract. Is that something that would have

to be done out of China if he didn't do it? What about the financing with Mr. Kay? If he's not performing those functions here in Las Vegas for Sands China, would Sands China have to have somebody else on their own payroll doing it? These are all relevant to this analysis. And that's what the Ninth Circuit certainly told us in Doe versus Unical.

There's another misstatement of law that was quite disturbing in Ms. Glaser's briefs, that having to do with transient jurisdiction. As Your Honor knows, this is an issue, this is a cloud on the horizon if we need to get to it. Mr. Leven was served. He is a -- he is an executive, he is an officer of Sands China, or certainly was at the time, and he was served here in Las Vegas.

Now, on page 4, in Footnote 2 of Ms. Glaser's brief, she says on line 26, 25-1/2, "As this Court is aware, SCL, Sands China, fully addressed the transient jurisdiction in its reply in support of motion to dismiss for lack of personal jurisdiction, and clearly demonstrated that transient jurisdiction is inapplicable to foreign corporations such as SCL," and she cites the Burnham decision for the United States Supreme Court. Notably, Your Honor, she cites a Supreme Court case that says that this issue is clearly resolved, and this decision she's citing to is Footnote 1 of Burnham, an issue of such great importance the Supreme Court resolved in Footnote 1.

Well, I don't know if Ms. Glaser thought we wouldn't read it, but we read Footnote 1 -- and I tell you, talk about a moment where you're scratching your head -- telling Your Honor that transient jurisdiction doesn't apply to corporations and it's a well-settled principle of law and will have nothing to do with case. What did the Supreme Court say in Footnote 1 that was so telling? Quote, "Even when the cause of action does not arise out of or relate to the foreign corporation's activities in the forum state, due process is not offended by a state subjecting the corporation to its in person -- in personam jurisdiction when there are sufficient contacts between the state and the foreign corporation. Only our holdings supporting that statement, however, involved regular service of summons upon the corporation's president while he was in the foreign state acting in that capacity." So far no rejection.

The Supreme Court went on, "It may be that whatever special rule exists permitting continuous and systematic contacts to support jurisdiction with respect to matters unrelated to activity in the forum applies only to corporations which have never fitted comfortably in jurisdictional regime based upon de facto power over the defendant's person," a question the Supreme Court is posing in it's footnote. It may be, the Supreme Court said.

Well, the Supreme Court went on to say in relation

to the question it was posing, "We express no views on these matters, and for simplicity's sake, until reference to the aspect of contacts-based jurisdiction in our discussion," a decision where the Supreme Court expressly stated no views, Ms. Glaser tells us clearly establishes that transient jurisdiction doesn't apply to corporations. Well, the decision that the Supreme Court was relying upon in that very footnote, Perkins decision, Your Honor, which is as telling as anything we can point to, said, "Today if an authorized representative of a foreign corporation be physically present in the state of the forum and be there engaged in activities appropriate to accepting service or receiving notice on its behalf, we recognize that there is no unfairness in subjecting that corporation to the jurisdiction of the courts of that state through such service of process upon that representative."

In other words, if Mr. Leven goes to the beach in California, not in his capacity as president of Sands China, and he's served there, would that be fair to say that he's subject to jurisdiction -- or the company is subject to the jurisdiction of California? Probably not. He wasn't serving in his function as the officer of that company. But when a process server comes to Las Vegas Boulevard and hands Mr. Leven service of process in his capacity as the president of Sands China, we know that there is nothing unfair about saying

that Sands China now is subject to transient jurisdiction, an issue settled by Footnote 1 in Burnham, I think not, Your Honor. And the point is this. Discovery as to Mr. Leven and his roles and what he does on Las Vegas Boulevard, the function he was serving when he was served is all relevant for transient jurisdiction. Contrary to what Ms. Glaser tells us, transient jurisdiction is very much alive in this case and something that Your Honor is going to be asked to resolve.

THE COURT: And for the record, something I haven't ruled on to this point.

MR. PISANELLI: Right. Understood. So what we have, then, for debate in November general jurisdiction based upon what Sands China does here, general jurisdiction based upon the agency role of Las Vegas Sands and what it performs here on behalf of Sands China, specific jurisdiction of what Sands China did here in relation to the causes of action that was presented to you, and, of course, transient jurisdiction of Sands China. All of these issues will be debated. All of the evidence that we have asked goes directly to these four issues. Sands China can not stand up through Ms. Glaser, through Mr. Adelson, through Mr. Leven, through any of them with a straight face and look you in the eye and say, in light of everything we already know that this type of jurisdiction -- in light of the law governing jurisdiction would be clearly frivolous. They cannot do that with a straight face. And

because they can't do that with a straight face, we are entitled to the discovery that is so regularly given to parties who find themselves, like Mr. Jacobs does, in trying to defend against a challenge of personal jurisdiction.

THE COURT: Thank you.

Ms. Glaser.

MS. GLASER: Your Honor, I'm coming to you with a straight face. In our view in no uncertain terms we think that the Nevada Supreme Court order filed August 26th, 2011, speaks volumes. And what is attempting to be done here is to relitigate issues that have already been determined by the Nevada Supreme Court. And by that I mean -- and I'm looking specifically, starting on page 2, when it discusses the MGM Grand decision and it discusses the Goodyear decision. We came to Your Honor and we made a motion to dismiss for lack of personal jurisdiction. What was presented were facts. The Court, in our view erroneously, but nonetheless, the Court determined that you had enough to rule on, you made a determination, and we took that to the Nevada Supreme Court. When we went to the Nevada Supreme Court, the Nevada Supreme Court said, look, based on the MGM case, and more importantly, I think, Your Honor, the Goodyear case, which is a U.S. Supreme Court 2011 case, considered whether jurisdiction over foreign subsidiaries of a U.S. parent corporation was proper by looking only to the subsidiary's conduct.

The discovery that's being sought here is an attempt to bolster a case that they claim, and I'm using their words, you already -- you purportedly already know, you already know the facts, you already know what is sufficient, and the only question is clarifying it for the Nevada Supreme Court so they're clear on what you meant.

THE COURT: That's not what they told me to do. They told me to conduct an evidentiary hearing.

MS. GLASER: They --

THE COURT: If I've got to conduct an evidentiary hearing, we have to do some more stuff than we've done already.

MS. GLASER: Your Honor, what they're saying is -- but there is certain case law that is the law of the case. They're saying, for example, the fact that Mr. Leven and Mr. Adelson are a -- also officers and directors of Las Vegas Sands and they have a 70 percent subsidiary in China, they have an obligation, a supervisory obligation under the Goodyear case and under the MGM case. There is no question that they have that obligation, and they have a fiduciary obligation to make sure what's going on there they participate in. No question about that. We don't debate that. And the fact that they make a -- they contribute here in connection with what's going on in China, I don't back away from that. I don't hide from that. That's not jurisdiction. That's

performing supervisory responsibilities in their capacity as a parent regarding a subsidiary that's in China. I do not back away from that at all. But to call that jurisdiction, in our judgment, is not only wrong, it's already been decided by -- in my judgment, that part of it has already been decided by the Nevada Supreme Court.

So what is there left in our view? And I want to be very clear about -- by the way, the Burnham case does stand for the proposition -- I urge the Court to take a look at it whenever it's convenient. The Burnham case stands for the proposition that transient jurisdiction can't be established by serving Mr. Leven here in Nevada. And we believe that. We don't back away from that, either.

Now, I want to -- I want to be very clear about this. We think you don't need any discovery at all, and we think it because six months ago -- I'm probably wrong about how much -- many months ago it was, Your Honor, because I don't remember exactly when we were in front of you --

THE COURT: It was about six months ago.

MR. PEEK: March 15th.

MS. GLASER: They're looking for a second bite of the apple after much has been determined, not everything, I acknowledge that you, much as been determined by the Nevada Supreme Court. The Nevada Supreme Court wants clarity as to how Your Honor believes you were able to find jurisdiction,

minimum contacts.

THE COURT: If that's what they wanted, Ms. Glaser, they wouldn't have ordered me to have an evidentiary hearing.

MS. GLASER: Your Honor, I think they want you to either bolster or not be able to bolster what has already been -- the facts that were presented to you. I do believe that. I'm not arguing that you shouldn't have an evidentiary hearing. That would be foolish. The court's asked for that.

THE COURT: Well, they told me to have an evidentiary hearing.

MS. GLASER: Absolutely.

THE COURT: They didn't ask me, they told me.

MS. GLASER: And they didn't tell you, they didn't tell you, by the way, you should order discovery because we always allow discovery in jurisdictional hearings. Your Honor, if you look at the Metcalf case, perfect case and relied upon by the other side. The Metcalf case is -- and I'm going to use a bad example, because it's a stranger case. It's saying, when somebody who is a stranger to the company wants to allege jurisdiction over a parent or a sub they're supposed to get discovery. I don't argue that point. Do you think for a moment the other side could argue that Mr. Jacobs is a stranger? He was the CEO of Sands China. He was not a stranger, he was a member of the board of Sands China. He is not entitled to any discovery, frivolous or otherwise. I

don't care what the standard is, he is not a stranger to these companies at all. And if you look at the Metcalf case, and it's not just the Metcalf case, Your Honor, it's also -- because they cite another one, which stands for exactly the same proposition. Metcalf is a Third Circuit case, 566 F.3d 324. It's a 2009 decision, and it cites and relies on, and I'm proud to say, a West Virginia case, which is where I'm from. And in that West Virginia case unequivocally it's talking about strangers. I don't dispute the fact that -- in this West Virginia case, for the record, Your Honor, is the Bowers case. It's 202 W.Va. 43, and that Bowers case which Metcalf cites is a case, again, over and over again there are instances when -- I've participated in myself, when jurisdictional discovery is appropriate. But it's, for example, if somebody has a car accident in Nevada and wants to sue General Motors here, the Nevada subsidiary, and General Motors in Detroit, somebody says, well, wait a minute, you're entitled to discovery to see if there's sufficient contacts. But there, the guy's a stranger. He had an accident. He doesn't know anything about the internal workings of the company. Jacobs knows everything, and he knows it, and he presented what he had and what he knew, and the Supreme Court said, not enough, before.

And what we're saying to you now is no more discovery and certainly not the kind of discovery that's being

sought here, which is the sun, the moon, and the stars, but the Goodyear case and the MGM case provide that no alter ego, no discovery, period.

Now, I want to talk about the IAA transactions, because I remember sitting here in court, and Your Honor looked at a board that Mr. Campbell put up, and you actually -- I don't know if it's spontaneously, said, "pervasive," I think was the word in the transcript. And I'm saying to you, respectfully, that's a wrong view of what is going on. Mr. Jacobs came to Your Honor under oath and he told Your Honor that money changed hands. We quickly determined that wasn't the case, that Mr. Jacobs either was wrong or not telling the truth. I hope it's simply that he was wrong. He comes and tells Your Honor that. And then we find out what really happens is -- and all of this is nothing more than a bookkeeping entry which case after case, and we cite them in our brief, when you joint marketing, when you have accommodations made between a subsidiary and a parent it is not sufficient for jurisdiction, it's just not.

One of the things they said is -- and I -- this one I love. Your Honor may remember VML. There was a motion to dismiss for lack of a -- failure to join an indispensable party. And Your Honor said what I think is both the truth and the law, I don't have any jurisdiction over VML. You --

THE COURT: Well, I also asked if I let the case go

in Macau if everybody would consent to jurisdiction in Macau, and nobody said yes.

MS. GLASER: No. We said yes.

MR. PEEK: I said yes, as well, Your Honor.

MS. GLASER: They said yes.

THE COURT: You did not say yes --

MR. PEEK: Yes, I did, Your Honor.

THE COURT: -- at the time.

MS. GLASER: Well, let me just tell you. We have always been willing to do that.

MR. PEEK: No. I said -- you go back to that transcript, Your Honor. You'll see that.

MS. GLASER: And in fact there has been prior litigation between American citizens and Sands China in Macau, because that is the appropriate forum. I'm not contesting otherwise. But we haven't changed our tune. VML -- because I want to stick with VML. VML -- I'm supposed -- after we came, I think it was Mr. Peek's motion, made a motion to join VML, you said you didn't have jurisdiction. I think you're clearly right about that. It is VML that is party to all of these IAA transactions. It is the subconcessionaire, it is the entity.

Now, if you want to ignore that, I don't think that's fair. VML is a absolutely appropriate corporate entity in Macau. It has the transactions for IAA. And we've been willing and we'll open our books on that in a second because

that's true. So for them to now say -- gloss over that and pretend VML is not the proper party is just, by the way, turning truth on its head, Your Honor. And that's not fair. You can't have it both ways. VML is the only entity that's involved in those IAA transactions as a matter of fact and as a matter of law.

Now, let me just go on for a couple minutes. In the Goodyear case, Your Honor, Goodyear --

THE COURT: Because I'm breaking in five minutes, because we don't pay overtime.

MS. GLASER: I'll try to finish. There was a filibuster conducted a few moments ago, so I'm stuck with my five minutes.

THE COURT: I understand. You're welcome to come back tomorrow, when Mr. Peek's partner's trial will resume.

MS. GLASER: Your Honor, I am willing to come back any time. That's how strongly we feel about this.

THE COURT: Okay. I understand. It's not like I'm not familiar with these issues --

MS. GLASER: I understand.

THE COURT: -- because I handle these issues in Business Court frequently --

MS. GLASER: I know you do.

THE COURT: -- in similar contexts with international companies, and I'm not sure what the right

answer is, because the Nevada Supreme Court has yet to clarify some of those things.

MS. GLASER: But the Nevada Supreme Court clearly said, and they quoted -- strike that. They didn't quote, they cited Goodyear --

THE COURT: Yes.

MS. GLASER: -- prominently. And that case declined to impute the domestic parent's activities to a foreign subsidiary defendant, recognizing that merging a parent and a sub for jurisdictional purposes requires an inquiry, quote, "comparable to the corporate law question of piercing corporate veil," end of quote.

Here supervisory activities, which was clearly the way it was presented to Your Honor before and what was considered by the -- just as importantly, the Nevada Supreme Court, that's all that's here. And no amount of discovery could or would show to the contrary. They are required, Leven and Adelson are required in their capacity as part of the parent with a 70 percent subsidiary, they are required to exercise their fiduciary duties and engage in supervisory activities. We don't deny that, and we never have. And that's what was presented to Your Honor up the -- excuse the expression, up the yazoo before. And Your Honor heard that, Your Honor made the determination, we think wrongly, but the Nevada Supreme Court says you've got to get the law right and

the facts right. The facts we heard. Now you've got to apply the law to those facts. And that's what I think the evidentiary hearing --

THE COURT: That's not what they said. What they said is, based on the record before them, which is the transcript and a very poorly written order by Mr. Campbell, that they can't tell what I ruled on. So they ordered me to have an evidentiary hearing. So I'm going to have an evidentiary hearing --

MS. GLASER: Your Honor --

THE COURT: -- and I'm going to make detailed findings of fact and conclusions of law, and then they're going to decide if I'm right.

MS. GLASER: Correct. And I'm saying --

THE COURT: That's what's going to happen.

MS. GLASER: I want to use this, if I could, the IAA transactions one more time, because I have about three more minutes.

THE COURT: You're winning on that issue.

MS. GLASER: Okay. Never mind. I'll stop.

Your Honor, what is particularly concerning to us is that the disclosure being sought -- and I -- and I say this -- I'm not suggesting -- this is not attributable to Counsel. I hope not, anyway. But I say to you we cited to you the Zahodnik case. If a client has taken documents

inappropriately, and we cited to you the policy that was in place in Macau, they can't be used in an evidentiary hearing or any proceeding, and they can't be used by counsel, and they certainly can't be used by Mr. Jacobs. And I don't think that's particularly unusual, but there is a very clear policy that we put forth that --

THE COURT: I'm going to resolve that issue on October 13th at 9:00 o'clock.

MS. GLASER: Okay. Your Honor, we don't believe any discovery should be taken. Certainly they don't need any depositions. If they need some IAA documents to demonstrate further about VML, glad to provide them. But, Your Honor, what's here is a complete overreach.

MR. PISANELLI: Did you file something?

MR. PEEK: I don't think I need to file anything, Your Honor.

THE COURT: Mr. Pisanelli, I need to ask you a question.

MR. PISANELLI: Yes, ma'am.

THE COURT: It appears to me at least in part Ms. Glaser is right, that some of your requests are overbroad. There is no limitation of time as to many of these requests. Can you give me what you believe to be a reasonable time. And you can think about it while I hear from Mr. Peek, who didn't file a brief, so he's going to be really short in his

comments.

MR. PEEK: Well, Your Honor, I don't think I --

THE COURT: Because he has 30 seconds before I'm shutting down.

MR. PEEK: Okay. My 30 seconds relates to your request to take discovery from Las Vegas Sands Corp. as a purported agent of Sands China Limited when I am not permitted to move forward with my motions with respect to theft of the documents of Las Vegas Sands, and yet he's allowed to take discovery against Las Vegas Sands in the face of the stay. That seems to me to be highly improper on the part of his request, the sword and the shield. And I'll sit down, because the staff has to leave, Your Honor, and I --

THE COURT: I didn't issue the stay, Mr. Peek.

MR. PEEK: I understand that.

THE COURT: I certainly understand your frustration.

MR. PEEK: But let's honor the stay and not allow discovery against Las Vegas Sands as he is requesting it to be conducted.

THE COURT: I understand your position.

Mr. Pisanelli, could you give me a reasonable time limit.

MR. PISANELLI: I can. Mr. Jacobs appears to have started his service for the company in 2006, and so we would ask --

MS. GLASER: I'm sorry. What was that?

MR. PISANELLI: 2006. And so we would ask that the discovery be limited between 2006 to the present.

THE COURT: He didn't start in 2006.

MR. PISANELLI: He didn't?

MS. GLASER: No. 2009.

MR. PEEK: Your Honor, we have a stipulation already with respect to the scope of discovery generally of January 2009 through October 2010. We already have that.

THE COURT: That's what I thought. That's what I thought. I thought we had one that was '09.

MR. PEEK: We do, Your Honor.

MR. PISANELLI: He was performing services back in -- as early as 2006, Your Honor. I can provide that to you. But that's our position.

MS. GLASER: That's absolutely incorrect.

THE COURT: Okay. Wait, wait, wait. Sit down. Let me tell you what we're doing.

To the extent I permit any depositions, and I'm going to tell you which ones I'm allowing, the depositions are limited to the capacity the deponent is being taken in with respect to work done on or -- done for or on behalf of Sands China. That means that if someone is working in capacities for both Las Vegas Sands and Sands China, we're not going to ask them about their daily activities with Las Vegas Sands.

However, to the extent their work is on behalf of Sands China or directly for Sands China, it will be fair game.

MR. PISANELLI: Questions at the end, or now?

THE COURT: Not yet.

MR. PISANELLI: Okay.

THE COURT: Time periods, January 1, '09, through October 1, 2010. Mr. Leven's deposition may be taken, Mr. Adelson's deposition may be taken. I'd really rather not get into a dispute where Mr. Adelson's deposition is taken. So if you guys would just listen to what the Federal Court judge said. Mr. Kay's deposition, Mr. Goldstein's deposition, a narrowly tailored 30(b)(6) deposition of Sands China representatives. And I assume if there is an issue, someone will raise it in a protective order motion.

Issues related to the location and scheduling of board meetings, along with copies of the minutes of board meetings, as well as the list of attendees and how they participated in board meetings from January 1st, 2009, to October 1st, 2010; documents that relate to travels from Macau, China, Hong Kong, by Adelson, Leven, Goldstein, and any other individual who is employed by Las Vegas Sands who was acting on behalf of Sands China will be provided.

I am not going to require the calendars to be provided. I'm not requiring phone records to be provided.

Documents related to Mr. Leven's service as CEO

without being compensation [sic], which is Number 9. Number 11 is fair game. Number 12, to the extent they are documents by Mr. Goldstein that would be subject to issues that you're going to discuss with him at his deposition with the limitation that I have given you. Agreements between Las Vegas Sands and Sands China related to services that are performed by Las Vegas Sands on behalf of Sands China. That is covered by Number 13.

Item Number 14 I'm not going to permit.

Item Number 15 I am going to permit.

Item Number 16 I am going to permit.

Item Number 17 I am not going to permit.

Item 18 I am going to permit.

19 I'm permitting.

20 I've already said I'm not permitting.

And now for your questions so I can get my staff out of here.

MR. PISANELLI: Just very quickly. The only question I have on the capacity of acting on behalf of Sands China, we have a company that elected to give dual roles. And so while Ms. Glaser says everything Mr. Adelson did, by way of example, was part of the exercise and fulfillment of his fiduciary duties to oversee the subsidiary, in a vacuum, if he was only the chairman of Las Vegas Sands, there would be merit to that argument. What don't want to happen is have a debate

to say, well, he was the chairman of Sands China --

THE COURT: Okay. Let me answer the question very directly.

MR. PISANELLI: Yes.

THE COURT: Since Mr. Leven and Mr. Adelson both have titles as officers or directors Sands China, you're going to ask them about the work that they did for Sands China. If they did any work on behalf of Sands China while they were acting as employees or officers or directors of Las Vegas Sands, that is also fair game. However, you are not going to ask them about their daily activities in conjunction with Las Vegas Sands.

MR. PEEK: And it's during the relevant time period of --

THE COURT: Yes.

MR. PEEK: -- January 1 through October of 2010.

THE COURT: January 1, '09, through October -- yes.

MR. PEEK: Okay.

MS. GLASER: And, Your Honor, we will -- I apologize for the clarification, but I need to say it.

THE COURT: I'm here.

MS. GLASER: In connection with their supervisory roles. That's what the law says, I'm not making it up.

THE COURT: No, I understand.

MS. GLASER: And if they were performing -- their

hat was in a supervisory role wearing a Las Vegas Sands hat, whether it touched on Sands China or not is irrelevant.

THE COURT: Ms. Glaser, you would have a better argument if they were only serving as a director. Once they have a title of the CEO or the chairman of the board, that makes it a much more difficult argument for you to make, in my opinion. But that is a factual determination that I will make after hearing the evidence at the time of the evidentiary hearing.

MS. GLASER: Your Honor --

THE COURT: The reason I made a determination earlier that there were pervasive contacts -- and what I said was there pervasive contacts with the state of Nevada by activities done in Nevada by board members of Sands China.

MS. GLASER: Understood.

THE COURT: I was not referring to activities of Las Vegas Sands employees.

MS. GLASER: I know you weren't.

THE COURT: I was very specific about what I was saying.

MS. GLASER: I know you weren't. But the activities that you heard about were in their capacity as supervisory activities.

THE COURT: I understand that's your position. That is a factual determination I will make at the time of the

evidentiary hearing.

MS. GLASER: One question. Then I will sit down. Does Your Honor have a procedure -- I ask out of ignorance, so forgive me --

THE COURT: No. Please.

MS. GLASER: -- with respect to discovery if we get into I'll call them --

THE COURT: You have two issues. If you're in a depo and you have an issue, you call and I try and take a break from my trial or reschedule the time.

MS. GLASER: That's what I'm asking.

THE COURT: If it is something that is more substantive, like you have discovered there's all this privileged issue that you think Mr. Pisanelli is going to go into, you can file a motion for protective order on an order shortening time, and I'll try and get it done on three days' notice.

MS. GLASER: I appreciate it. Thank you.

THE COURT: Those are the two best options.

MS. GLASER: Thank you, Your Honor.

THE COURT: Or sometimes what people do is you realize you've got a discovery dispute and you're all going to be down here at the courthouse on something else, so you ask if you can come in at whatever time, and we all talk.

MS. GLASER: Understood.

MR. PISANELLI: Your Honor, I just --

THE COURT: There's a number of different ways to get here.

MR. PISANELLI: Your Honor, I just missed on your notes. On Items 9 and 10 did you say yes? I thought you said yes, but I --

THE COURT: You're going to make me get -- hold on, hold on.

MR. PISANELLI: I don't want to overreach.

THE COURT: 9 I said yes, and I believe I said yes on 10.

MR. PISANELLI: Okay. Now, the only other issue I have for you is after I asked for those depositions we received their witness and exhibit list, which experts. And so if they're going to put -- you're going to allow them to put experts, I think in all fairness I should not only get a report from this expert before they show up in this courtroom, but be allowed to examine them under oath.

THE COURT: I have never before had an expert on a jurisdictional hearing.

MR. PISANELLI: Neither have I.

THE COURT: That doesn't mean I won't entertain it. But I need to have some more information before I can make that determination.

MS. GLASER: Your Honor, I think you'll --

THE COURT: I didn't say yes or no. I said I need more information.

MS. GLASER: Glad to provide it.

THE COURT: So how am I going to get that more information?

MS. GLASER: We'll provide you -- let me do this. First of all, I don't think the disclosures have been provided to Your Honor because I think we were just supposed to exchange them.

THE COURT: I don't want the disclosures.

MS. GLASER: But that's more information.

THE COURT: All right. So, Mr. Pisanelli, you have two options. You can tell me you're going to file a motion to exclude the expert that Ms. Glaser thinks she wants to use, or alternatively to let you do stuff related to the expert. And I think that's probably the best, if Ms. Spinelli can spend a few minutes doing that.

MR. PISANELLI: Can I pick both?

THE COURT: I usually make -- I usually make you pick one or the other.

MR. PISANELLI: If I depose them, then that means they get to take the stand?

THE COURT: That doesn't mean I'm going to think they're credible or I think they're important, but I will listen to them.

MS. GLASER: Thank you, Your Honor.

THE COURT: And sometimes even though you think you're winning on the not getting him to testify, I'll say, you know what, you're right, but I'm still going to make you take a depo and listen to him.

MR. PEEK: Your Honor --

MR. PISANELLI: Does this mean if I want information, Your Honor, I'm getting a report as we would normally, and I'll depose him?

THE COURT: There is a requirement in Nevada on how you are going to disclose expert information. It can either be by report or by the other method that the rule dictates.

MR. PEEK: Your Honor --

MR. PISANELLI: Thank you, Your Honor.

THE COURT: Mr. Peek, it's so nice to see you.

Mr. Pisanelli, I did not get a competing order from you on the interim order. Will you have it to me tomorrow so I can sign one way or the other.

MR. PISANELLI: Yes. Yes, we will. Thank you.

THE COURT: By noon.

MR. PISANELLI: Yes.

MR. PEEK: And we --

THE COURT: Mr. Peek.

MR. PEEK: You know, I've been in trial, so I haven't had a chance to even look at what he wants, because he

did send me something to take a look at.

THE COURT: I don't know.

MR. PEEK: So I'll take a look at it and get back to Jim.

THE COURT: I know that my former law clerk, Brian Anderson, sent me a letter saying that he wanted me to sign this, but Pisanelli had a different version and I haven't seen it.

MR. PEEK: I haven't, either.

Your Honor, just a quick question. I know everybody wants to leave here. But the hearing Tuesday is at 9:00, 9:30, 10:00, 10:30, 1:00 o'clock?

THE COURT: What hearing Tuesday?

MR. PEEK: On my motion for sanctions of the interim -- the interim order.

THE COURT: That's on 9:00 o'clock, Steve.

MR. PEEK: 9:00 o'clock.

MS. GLASER: Thank you.

THE COURT: And I signed the OST. You meed to file and serve.

MR. PEEK: It got brought out without me knowing it.

THE COURT: I took care of it all. I'm on the ball.

(Off-record colloquy)

THE COURT: Have a nice evening, everyone.

THE PROCEEDINGS CONCLUDED AT 5:10 P.M.

CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt — 10/4/11

FLORENCE HOYT, TRANSCRIBER — DATE

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CLERK OF THE COURT

MIL
Patricia Glaser, Esq. (Pro Hac Vice Admitted)
Stephen Ma, Esq. (Pro Hac Vice Admitted)
Andrew D. Sedlock, Esq. (NBN 9183)
GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO, LLP
3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169
Telephone: (702) 650-7900
Facsimile: (702) 650-7950
E-mail:
pglaser@glaserweil.com
sma@glaserweil.com
asedlock@glaserweil.com

Attorneys for Sands China, Ltd.

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

LAS VEGAS SANDS CORP., a Nevada corporation,

Counterclaimant,

v.

STEVEN C. JACOBS,

Counterdefendant.

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

SANDS CHINA LTD.'S MOTION *IN LIMINE* TO EXCLUDE DOCUMENTS STOLEN BY JACOBS IN CONNECTION WITH THE NOVEMBER 21, 2011 EVIDENTIARY HEARING REGARDING PERSONAL JURISDICTION ON ORDER SHORTENING TIME

DATE OF HEARING: October 13, 2011
TIME OF HEARING: 9:00 A.M.

Sands China Ltd. ("SCL") hereby brings the following Motion *in Limine* to Exclude Evidence in connection with the November 21, 2011 Evidentiary Hearing regarding Personal Jurisdiction on Order Shortening Time (the "Motion"). This Motion is based upon the attached memorandum of points and authorities, the papers and pleadings on file in this matter, and any

oral argument that the Court may allow.

DATED September 26, 2011.

Patricia Glaser, Esq. (Pro Hac Vice Admitted)
Stephen Ma, Esq. (Pro Hac Vice Admitted)
Andrew D. Sedlock, Esq. (NBN 9183)
GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO, LLP
3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169
Telephone: (702) 650-7900
Facsimile: (702) 650-7950
E-mail:
pglaser@glaserweil.com
sma@glaserweil.com
asedlock@glaserweil.com

Attorneys for Sands China, Ltd.

APPLICATION FOR ORDER SHORTENING TIME

SCL applies for an Order Shortening Time for the hearing on its Motion *in Limine* to Exclude Evidence in connection with the November 21, 2011 Evidentiary Hearing regarding Personal Jurisdiction based upon the following Affidavit of Andrew D. Sedlock, Esq.

DATED September 26, 2011.

GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP

By: _____
Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)
Stephen Ma, Esq. (Pro Hac 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.

2. This Motion requests an Order excluding any documents stolen from the Defendants from use by Plaintiff in connection with the Evidentiary Hearing, and all proceedings related to personal jurisdiction in this case.

3. As recently as August 3, 2011, Jacobs' *prior* counsel admitted that Jacobs is in possession of approximately eleven (11) gigabytes of documents (the "Stolen Documents") acquired while Jacobs served as CEO of SCL and as a consultant for SCL's majority shareholder, Las Vegas Sands Corp. ("LVSC").

4. The Stolen Documents contain, among other things, attorney-client privileged correspondence and confidential information which he refuses to return. (A true and accurate copy of the August 3, 2011 letter is attached hereto as **Exhibit A**).

5. Despite repeated requests, Jacobs refuses to return the Stolen Documents to their rightful owners. Accordingly, defendant Las Vegas Sands Corp. ("LVSC") was forced to file a companion action for conversion of its property and misappropriation of trade secrets. (A true and accurate copy of the LVSC Complaint is attached hereto as **Exhibit B**).

6. LVSC immediately sought injunctive relief and return of the Stolen Documents. On September 20, 2011, LVSC sought return of its stolen documents due to the immediate risk that Jacobs would disclose privileged, confidential and sensitive business information contained

in the Stolen Documents, and/or continue his review and potentially disclose and disseminate documents subject to the attorney-client privilege.

7. On September 20, 2011, the Court granted LVSC's request for TRO in the form of an "interim order" precluding Jacobs from disseminating the 11 gigabytes of information (the "Interim Order"). (A true and accurate copy of LVSC's Proposed Interim Order is attached hereto as **Exhibit C**.)

8. On Friday, September 23, 2011, at about 7:45 p.m., Jacobs' new counsel at Pisanelli Bice LLP emailed supplemental discovery disclosures to counsel for LVSC and SCL. (A true and accurate copy of the 9/23/11 email and First Supplemental Disclosure is attached hereto as **Exhibit D**).

9. The documents identified in the supplemental disclosures reveal that Jacobs' intends to use the Stolen Documents, including but not limited to email communications he stole from SCL, LVSC and/or Venetian Macau Limited ("VML") without their knowledge or consent, including communications involving in-house counsel.

10. Accordingly, SCL now moves for an order precluding Jacobs and his counsel from using any of the Stolen Documents for the purpose of preparing for the Evidentiary Hearing, or employing any of these documents in connection with the Evidentiary Hearing in any way.

11. If this Motion is fully briefed by the parties and heard in the ordinary course, Jacobs will be able to continue using the Stolen Documents in connection with and preparation for the Evidentiary Hearing, to SCL's prejudice.

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

EXECUTED September 26, 2011.

Andrew D. Sedlock, Esq.

Subscribed and Sworn to before me on this 26th day of September, 2011.

Notary Public, in and for said County and State.

NOTARY PUBLIC STATE OF NEVADA County of Clark DAWN M. DUDAS Appt. No. 97-4047-1 My Appt. Expires Sept. 27, 2013

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 **SANDS CHINA LTD.'S MOTION *IN LIMINE* TO EXCLUDE DOCUMENTS STOLEN BY JACOBS IN CONNECTION WITH NOVEMBER 21, 2011 EVIDENTIARY HEARING REGARDING PERSONAL JURISDICTION 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 13th day of Oct, 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 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.

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

YOU, and each of you, will please take notice that the undersigned will bring the above and foregoing **SANDS CHINA LTD.'S MOTION *IN LIMINE* TO EXCLUDE DOCUMENTS STOLEN BY JACOBS IN CONNECTION WITH NOVEMBER 21, 2011 EVIDENTIARY HEARING REGARDING PERSONAL JURISDICTION ON ORDER SHORTENING TIME** on for hearing before the above-entitled Court on the 13th day of Oct, 2011, at 9:00 a.m. of said day in Department XI of said Court.

DATED September 26, 2011.

Patricia Glaser, Esq. (Pro Hac Vice Admitted)
Stephen Ma, Esq. (Pro Hac Vice Admitted)
Andrew D. Sedlock, Esq. (NBN 9183)
GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO, LLP
3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169
Telephone: (702) 650-7900
Facsimile: (702) 650-7950
E-mail:
pglaser@glaserweil.com
sma@glaserweil.com
asedlock@glaserweil.com

Attorneys for Sands China, Ltd.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Recently, this Court entered an interim order in a companion case brought by SCL's parent company, Las Vegas Sands Corp. ("LVSC"), which prohibited Jacobs from distributing documents stolen by Jacobs, including approximately 11 gigabytes of documents that Jacobs' former attorneys recently admitted were, among other things, subject to the attorney-client privilege. However, within days of the Court's entry of that order, Jacobs' counsel disclosed in connection with the November 21, 2011 evidentiary hearing nearly one thousand (1000) pages of

documents, many of which were among those contained in the eleven gigabytes of stolen information. In making this disclosure, Jacobs' counsel has made clear that he has no compunction with violating basic ethical and professional standards that preclude the use of stolen and/or confidential information belonging to an adverse party. Jacobs himself also appears to have no problem disclosing information that he is required to keep confidential, and neither Jacobs nor his counsel appear to have any intention of ceasing their activity or making an effort to comply with the most fundamental tenets of ethical standards.

These standards are quite clear, and leave little room for argument – neither a party nor his counsel may use stolen information against an adverse party or introduce such information without the owner's consent. In accordance with these requirements, SCL respectfully requests an order from this Court precluding Jacobs' use of any of the stolen documents for the purpose of jurisdictional determination either at, or prior to, the November 21, 2011 Evidentiary Hearing (the "Evidentiary Hearing").

SCL expressly limits its requested relief to prevent the use of these materials in connection with the Evidentiary Hearing to address the issue of personal jurisdiction. In bringing this Motion, SCL expressly reserves all rights, objections and defenses regarding the Court's lack of personal jurisdiction over SCL, as well as the terms of the current stay ordered by the Nevada Supreme Court. Nothing in this Motion shall be construed as a waiver or admission of jurisdiction, as this Court presently lacks both general and specific personal jurisdiction over SCL.

II.

STATEMENT OF FACTS

As recently as August 3, 2011, Jacobs' *prior* counsel admitted that Jacobs is in possession of approximately eleven (11) gigabytes of documents (the "Stolen Documents") acquired while Jacobs served as CEO of SCL and as a consultant for SCL's majority shareholder, Las Vegas Sands Corp. ("LVSC"). The Stolen Documents contain, among other things, attorney-client privileged correspondence and confidential information which he refuses to return. *See* August 3, 2011 letter as **Exhibit A**. However, Jacobs' former counsel made a commitment that "[w]hile

[Jacobs] is unable to 'return' the documents to Defendants, ***we agreed not to produce the documents in this litigation*** until the issue is resolved by the Court. Additionally, ***our firm will continue to refrain from reviewing the documents*** so as not to create any issues regarding the documents containing communications with attorneys." *Id.* (Emphasis added)

Despite repeated requests, Jacobs refuses to return the Stolen Documents to their rightful owners. Accordingly, LVSC was forced to file a companion action for conversion of its property and misappropriation of trade secrets. *See* LVSC Complaint, attached as **Exhibit B**.

LVSC immediately sought injunctive relief and return of the Stolen Documents. On September 20, 2011, LVSC sought return of its stolen documents due to the immediate risk that Jacobs would disclose privileged, confidential and sensitive business information contained in the Stolen Documents, and/or continue his review and potentially disclose and disseminate documents subject to the attorney-client privilege.

On September 20, 2011, the Court granted LVSC's request for TRO in the form of an "interim order" precluding Jacobs from disseminating the 11 gigabytes of information (the "Interim Order"). *See* LVSC's Proposed Interim Order attached hereto as **Exhibit C**.

On Friday, September 23, 2011, at about 7:45 p.m., Jacobs' new counsel at Pisanelli Bice LLP emailed supplemental discovery disclosures to counsel for LVSC and SCL. *See* 9/23/11 email and First Supplemental Disclosure attached hereto as **Exhibit D**. The documents identified in the supplemental disclosures reveal that Jacobs' intends to use the Stolen Documents, including but not limited to email communications he stole from SCL, LVSC and/or Venetian Macau Limited ("VML") without their knowledge or consent, including communications involving in-house counsel. *Id.* Accordingly, SCL now moves for an order precluding Jacobs and his counsel from using any of the Stolen Documents for the purpose of preparing for the Evidentiary Hearing, or employing any of these documents in connection with the Evidentiary Hearing in any way.

III.

LEGAL ARGUMENT

A. Standard for Issuance of a Motion in Limine.

NRCP 26(c) allows a party to preclude the use of evidence for good cause. Specifically,

under NRCP 26(c) and upon a showing of good cause: "[T]he court . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; . . . [or] (7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way." The trial court has broad discretion to grant motions in limine to exclude evidence that may contain privileged or confidential information, or for equitable considerations based on the parties' conduct. *See Bull v. McCusky*, 96 Nev. 706 (1980).

B. Jacobs Should be Precluded from Using the Stolen Documents in Preparation For or During the Course of the Evidentiary Hearing.

1. Nevada's Rules of Professional Conduct Prohibit Jacobs' Counsel from Using Stolen Documents

As codified in Nevada's Rules of Professional Conduct, lawyers are prohibited from using illegally obtained evidence. Nevada RPC 4.4(a) provides in relevant part:

> (a) In representing a client, a lawyer shall not . . . use methods of obtaining evidence that violate the legal rights of such a [third] person.

Commenting on this rule, Hazard, Hodes and Jarvis, in their treatise *The Law of Lawyering* Third Edition, note:

> Rule 4.4 continues the theme of fairness in advocacy by recognizing the rights of nonclients, including opposing parties in litigation. Such recognition is testimony to the fact that lawyers are not supposed to be amoral hired guns; their role is rather to fight for their clients as hard as need be, but fairly.

Aspen Pub §40.2 (2010 edition).

This standard is reiterated again in Nevada RPC 8.4, which provides:

> **Misconduct.** It is professional misconduct for a lawyer to . . . (d) ***[e]ngage in conduct that is prejudicial to the administration of justice.*** (emphasis added).

Ethics opinions from various jurisdictions have consistently held that once a lawyer is in possession of documents that he knows or should know are stolen, professional responsibility rules comparable to Nevada's Rule 8.4 prohibit the lawyer from using them. Indeed, in *Perna v.*

Electronic Data Corp., 916 F.Supp. 388 (D. N.J. 1995), the Advisory Committee on Professional Ethics weighed in and found that New Jersey's Rule of Professional Conduct 8.4 applied. The Ethics Opinion stated:

> It is well established that an attorney may not do indirectly that which is prohibited directly (see RPC 8.4(a)), and ***consequently the lawyer cannot be involved in the subsequent review of evidence obtained improperly by the client.*** Furthermore, the conduct of the inquirer's client [who initially obtained opposing counsel's documents] may have been of benefit to that client in the litigation. ***For a lawyer to allow a client's improper actions taken in the context of litigation to benefit that client in such litigation would constitute "conduct that is prejudicial to the administration of justice" under RPC 8.4(d).***

See Advisory Opinion 680, Advisory Committee on Professional Ethics, 4, N.J.L. 124 (Jan. 16, 1995) (emphasis added); *see also* ABA Comm. on Ethics and Professional Responsibility, Form Op. 368 (1992) ("Inadvertent Disclosure of Confidential Materials"). *Accord, Milford Power Ltd. Partnership v. New England Power Co.*, 896 F. Supp. 53, 57 (D. Mass. 1995); *Resolution Trust Corp. v. First of America Bank*, 868 F. Supp. 217, 219, 220 (W.D. Mich. 1994) (ordering destruction of improperly received documents plus all copies and "all notes relating to" it); *see also Zahodnick v. International Business Machines Corp.*, 135 F.3d 911, 915 (4th Cir. 1997)(holding that confidential and/or stolen information cannot be supplied to a third party, even if it is that party's attorney).

Here, Jacobs' counsel's disclosure and use of documents and information that his client has stolen from SCL and LVSC, which includes attorney-client privileged and confidential documents, and clearly constitutes a violation of Nevada Rule of Professional Conduct 8.4 because Plaintiff's counsel is deliberately taking advantage of Jacobs' criminal conduct, and flouting the attorney client privilege of SCL that has been compromised by no fault of SCL.

Jacobs' counsel must therefore be precluded from using any of the Stolen Documents as evidence at the Evidentiary Hearing, or in preparation for the Evidentiary Hearing to adjudicate the personal jurisdiction issue.

2. *Jacobs Has an Obligation to Maintain Confidentiality and Should Be Precluded From Using The Stolen Documents at the Evidentiary Hearing.*

In addition to his counsel's ethical obligations, Jacobs has an independent obligation to

not disclose the Stolen Documents or introduce them as evidence at the Evidentiary Hearing.[1] As stated, if a party is aware that they are in the possession of confidential or privileged information, he/she may not disclose it to a third-party, even their attorneys. *Zahodnick*, 135 F.3d at 915. In *Zahodnick*, an employee, who signed two nondisclosure agreements, retained confidential information belonging to the company, IBM, upon his termination. The employee further forwarded the documents to his counsel without IBM's consent. *Id.* The court determined that there was a breach of confidentiality and enjoined the employee from disclosing the confidential materials to third parties. *Id.* This duty is not confined to cases where a party executes a confidentiality agreement, but also applies where the litigant knows, or has reason to know, that the information is confidential or privileged. *See Leonard v. The Louis Berkman, LLC*, 417 F.Supp.2d 777 (N.D. W.V. 2006).

Additionally, as the former Chief Executive Officer of SCL, Jacobs served as an employee and executive of SCL's subsidiary VML, and therefore is obligated to abide by all company policies, including, but not limited to, VML's Confidential Company Information Policy. VML's Confidential Company Information Policy requires that:

> Upon separation from the Venetian Macau Ltd., all Team Members are required to return all electronic files, CDs, floppy discs, information reports and documents (including copies) containing any confidential and/or proprietary information to the respective department head.

As such, Jacobs' refusal to return the Stolen Documents is a direct violation of the Confidential Company Information Policy.

Through his counsel, Jacobs has already admitted that he is aware that the Stolen Documents contain confidential and/or privileged information. Jacobs has also made it clear that he intends to use the Stolen Documents for whatever purpose he unilaterally deems appropriate, and has made no effort to maintain the confidentiality of the information contained therein.

[1] In addition to the confidentiality and privilege concerns, SCL submits that the Stolen Documents must be excluded from use at the Evidentiary Hearing (or disclosure prior thereto) as there is a risk of disclosure of personal information subject to Macau's Personal Data Protection Act (the "Macau Act"). Here, Jacobs has confirmed that he intends to disclose and use company documents that contain personal data in violation of the Macau Act, including but not limited to correspondence listed at Exhibit Nos. 7, 8, 13, 15, 16, 18, 22, and 23 identified in Exhibit D.

Therefore, Jacobs should be precluded from using the Stolen Documents in connection with this Court's jurisdictional determination at the Evidentiary Hearing.

IV.

CONCLUSION

For the foregoing reasons, SCL hereby requests that the Court grant its Motion and issue an Order excluding any of the Stolen Documents from use in connection with the Evidentiary Hearing, and all proceedings related to personal jurisdiction in this case.

DATED September 26, 2011.

Patricia Glaser, Esq. (Pro Hac Vice Admitted)
Stephen Ma, Esq. (Pro Hac Vice Admitted)
Andrew D. Sedlock, Esq. (NBN 9183)
GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO, LLP
3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169
Telephone: (702) 650-7900
Facsimile: (702) 650-7950
E-mail:
pglaser@glaserweil.com
sma@glaserweil.com
asedlock@glaserweil.com

Attorneys for Sands China, Ltd.

EXHIBIT "A"

EXHIBIT "A"

CAMPBELL & WILLIAMS
ATTORNEYS AT LAW

VIA E-MAIL August 3, 2011

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

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

Dear Justin:

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

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

1. This is an accurate statement.

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

7501 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

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

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

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

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

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

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

Very truly yours,

CAMPBELL & WILLIAMS

J. Colby Williams, Esq.

JCW/

[redacted]

EXHIBIT "B"

EXHIBIT "B"

BUSINESS COURT CIVIL COVER SHEET

County, Nevada

Case No. A-11-648484-B
(Assigned by Clerk's Office) XI

I. Party Information

Plaintiff(s) (name/address/phone): LAS VEGAS SANDS CORP., a Nevada corporation Attorney (name/address/phone): Justin C. Jones, Esq./Holland & Hart LLP 9555 Hillwood Drive, 2nd Floor, Las Vegas, NV (702-669-4600)	Defendant(s) (name/address/phone): STEVEN C. JACOBS, an individual; VAGUS GROUP, INC., a Delaware corporation Attorney (name/address/phone):

II. Nature of Controversy

☐ Arbitration Requested

Please check the applicable boxes for both the civil case type and business court case type.

Civil Cases

Real Property

- ☐ Landlord/Tenant
  - ☐ Unlawful Detainer
- ☐ Title to Property
  - ☐ Foreclosure
  - ☐ Liens
  - ☐ Quiet Title
  - ☐ Specific Performance
- ☐ Other Real Property
  - ☐ Partition
  - ☐ Planning/Zoning

Negligence Torts

- ☐ Negligence – Premises Liability (Slip/Fall)
- ☐ Negligence – Other

Torts

- ☐ Product Liability
  - ☐ Motor Vehicle-Product Liability
  - ☐ Other Torts-Product Liability
- ☐ Intentional Misconduct
  - ☐ Defamation (Libel/Slander)
  - ☐ Interfere with Contract Rights
- ☐ Employment Torts (Wrongful Termination)
- ☐ Other Torts
  - ☐ Anti-trust
  - ☐ Fraud/Misrepresentation
  - ☐ Insurance
  - ☐ Legal Tort
  - ☐ Unfair Competition

Other Civil Types

- ☐ Civil Writ
  - ☐ Other Special Proceeding
- ☐ Other Civil Filing
  - ☐ Compromise of Minor's Claim
  - ☐ Conversion of Property
  - ☐ Damage to Property
  - ☐ Employment Security
  - ☐ Enforcement of Judgment
  - ☐ Foreign Judgment – Civil
  - ☐ Other Personal Property
  - ☐ Recovery of Property
  - ☐ Stockholder Suit
  - ☐ Other Civil Matters
- ☐ Construction Defect
  - ☐ Chapter 40
  - ☐ General
- ☐ Breach of Contract
  - ☐ Building & Construction
  - ☐ Insurance Carrier
  - ☐ Commercial Instrument
  - ☐ Other Contracts/Acct/Judgment
  - ☐ Collection of Actions
  - ☐ Employment Contract
  - ☐ Guarantee
  - ☐ Sale Contract
  - ☐ Uniform Commercial Code
- ☐ Civil Petition for Judicial Review
  - ☐ Foreclosure Mediation
  - ☐ Other Administrative Law
  - ☐ Department of Motor Vehicles
  - ☐ Worker's Compensation Appeal

Business Court

Business Court Case Type

Clark County Business Court

- ☐ NRS Chapters 78-89
- ☐ Commodities (NRS 91)
- ☐ Securities (NRS 90)
- ☐ Mergers (NRS 92A)
- ☐ Uniform Commercial Code (NRS 104)
- ☐ Purchase or Sale of Stock /Assets of Business/ Corporate Real Estate
- ☐ Trade-mark/Trade Name (NRS 600)
- ☒ Enhanced Case Mgmt/Business
- ☐ Other Business Court Matters

Washoe County Business Court

- ☐ NRS Chapters 78-88
- ☐ Commodities (NRS 91)
- ☐ Securities (NRS 90)
- ☐ Investments (NRS 104 Art. 8)
- ☐ Deceptive Trade Practices (NRS 598)
- ☐ Trade-mark/Trade Name (NRS 600)
- ☐ Trade Secrets (NRS 600A)
- ☐ Enhanced Case Mgmt/Business
- ☐ Other Business Court Matters

Sept. 16, 2011
Date

Signature of initiating party or representative

Nevada AOC – Research and Statistics Unit
Pursuant to N.R.S. 1.360 and 3.275

Form PA 201-BC
Rev. 1.0
6/2010

COMPB
J. Stephen Peek, Esq.
Nevada Bar No. 1759
Justin C. Jones, Esq.
Nevada Bar No. 8519
Brian G. Anderson, Esq.
Nevada Bar No. 10500
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
(702) 669-4600
(702) 669-4650 – fax
speek@hollandhart.com
jcjones@hollandhart.com

Attorneys for Defendant Las Vegas Sands Corp.

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS SANDS CORP., a Nevada corporation, Plaintiff, v. STEVEN C. JACOBS, an individual; YAGUS GROUP, INC., a Delaware corporation; DOES I through X and ROE CORPORATIONS XI through XX; Defendants.	CASE NO.: A-11-648484-B DEPT NO.: XI COMPLAINT

Las Vegas Sands Corp. ("LVSC"), by and through its undersigned counsel, the law firm of Holland & Hart LLP, as and for its Complaint, hereby complains, alleges and states as follows:

PARTIES

1. Plaintiff LVSC is a Nevada corporation.

2. Defendant Steven C. Jacobs ("Jacobs") is an individual who, upon information and belief, resides in the State of Georgia and/or Florida. Jacobs maintained a hotel room at the Venetian Macau Resort Hotel and worked in the Macau Special Administrative Region ("Macau") of the People's Republic of China ("China") and maintained a residence for himself and his family in the Hong Kong Special Administrative Region ("Hong Kong").

3. Upon information and belief, Defendant Vagus Group, Inc. ("Vagus") is a Delaware corporation which at all times relevant hereto was and is doing business in Clark County, Nevada.

4. Defendants Does I through X and Roe Corporations XI through XX are persons or entities whose acts, activities, misconduct or omissions make them jointly and severally liable under the claims for relief as set forth herein. The true names and capacities of the Doe Defendants and Roe Corporate Defendants are presently unknown, but when ascertained, Plaintiff requests leave of the Court to amend the Complaint to substitute their true names and capacities.

GENERAL ALLEGATIONS

5. LVSC's direct or indirect subsidiaries own and operate The Venetian Resort Hotel Casino, The Palazzo Resort Hotel Casino and The Sands Expo and Convention Center in Las Vegas, Nevada and the Marina Bay Sands in Singapore. LVSC has an indirect majority ownership interest through its subsidiaries in the Sands Macao, The Venetian Macao Resort Hotel ("The Venetian Macao"), the Four Seasons Hotel Macao, Cotai Strip™ ("Four Seasons Hotel Macao," which is managed by Four Seasons Hotels Inc.), and the Plaza Casino (together with the Four Seasons Hotel Macao, the "Four Seasons Macao") in Macau and the Sands Casino Resort Bethlehem in Bethlehem, Pennsylvania. LVSC's indirect majority-owned subsidiaries are also creating a master-planned development of integrated resort properties, anchored by The Venetian Macao, which LVSC refers to as the Cotai Strip™ in Macau.

Jacobs Performs Consulting Work for LVSC

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

7. The Vagus Consulting Agreement was authored by and executed by Jacobs.

8. Pursuant to the Vagus Consulting Agreement, Vagus acknowledged the confidential and highly sensitive nature of information and documents that it would be privy to under the Agreement.

Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

9. Specifically, the Vagus Consulting Agreement states:

Confidentiality

VGI understands that certain information received by and/or made available through LVS and/or its vendors, consultants and advisors is confidential and proprietary and may be restricted due to LVS public company status. VGI agrees that it will not disclose or use, and shall diligently protect and keep confidential all sensitive information received as part of or related to this project. All members of the VGI team assigned to LVS will execute and deliver any standard confidentiality / non-disclosure agreements as requested. This confidentiality provision shall survive the expiration and/or the termination of this agreement . . .

10. During the course and scope of the Vagus Consulting Agreement, Vagus and Jacobs obtained documents and information that is confidential, proprietary and/or subject to the attorney-client privilege and/or work product doctrine.

Jacobs Is Hired to Perform Work for VML and SCL.

11. In or about May 2009, Jacobs was asked to perform consulting work for Venetian Macau Limited ("VML"), an indirect subsidiary of LVSC which is now a subsidiary of Sands China Ltd. ("Sands China").

12. In connection with this work, Jacobs executed an Agreement for Services with VML whereby he would address "senior management issues" relating to VML's "business of developing, designing, constructing, equipping, staffing, owning and operating legalized casino(s) in Macau SAR."

13. The Agreement for Services states:

> 6. CONFIDENTIALITY AND OWNERSHIP OF WORKS. The Consultant agrees that neither it nor any of its employees, either during or after this Agreement, shall disclose or communicate to any third party any information about the Company's policies, prices, systems, methods of operation, contractual agreements or other proprietary matters concerning the Company's business or affairs, except to the extent necessary in the ordinary course of performing the Consultant's Services. Upon termination of this Agreement for any reason, all papers and documents in the Consultant's possession or under its control belonging to the Company, must be returned to the Company.

14. On or about July 15, 2009, Sands China was incorporated as a limited liability company in the Cayman Islands in preparation for listing on The Main Board of the Stock Exchange of Hong Kong Limited ("SEHK") in November 2009.

15. In July and August 2009, Jacobs negotiated certain employment terms, which

Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

were set out in a term sheet. The term sheet was used in preparing a draft of an employment agreement between Jacobs and VML, but that document was never finalized or executed.

16. In November 2009, LVSC's indirect majority-owned subsidiary, Sands China, the direct or indirect owner and operator of Sands Macao, The Venetian Macao, Four Seasons Macao and ferry operations, and developer of the remaining Cotai Strip integrated resorts, completed an initial public offering of its ordinary shares (the "Sands China Offering") on the SEHK.

17. Jacobs was appointed President – Macau and Chief Executive Officer of Sands China.

18. During the course and scope of his work for VML and SCL, Jacobs obtained documents and information that is confidential, proprietary and/or subject to the attorney-client privilege and/or work product doctrine.

Jacobs' Employment Is Terminated by Sands China and VML for Cause.

19. On or about July 23, 2010, the Board of Directors of Sands China voted to remove Jacobs as President and Chief Executive Officer of Sands China and as a member of the Sands China Board of Directors.

20. On July 23, 2010, Jacobs' employment with VML and Sands China was terminated for cause because, among other things, he had repeatedly exceeded his authority, defied and disregarded instructions, and engaged in several improper acts and omissions, including but not limited to those identified above.

Jacobs Steals Confidential, Proprietary and Privileged Documents from LVSC and Then Refuses to Return Them.

21. Based upon representations of his counsel, Jacobs stole and/or wrongfully retained documents that were property of LVSC following his termination.

22. Such documents include material that is confidential, proprietary and/or subject to the attorney-client privilege and/or work product doctrine.

23. Upon information and belief, the documents stolen and/or wrongfully retained by Jacobs described sensitive compilations, methods, techniques, systems, and/or procedures

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9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

relating to gaming operations, personnel and labor and include proprietary, confidential and material non-public financial information.

24. Furthermore, upon information and belief, the documents stolen and/or wrongfully retained by Jacobs contain personal data that is subject to Macau's Personal Data Protection Act, the violation of which carries criminal penalties in Macau.

25. Upon information and belief, Jacobs wrongfully removed such documents and information on a consistent and regular basis from the time that he began his relationship with LVSC until his termination.

26. In fact, LVSC is informed and believes that on the day he was terminated by VML and SCL, Jacobs surreptitiously transferred several gigabytes of electronic documents and files to a removable flash drive and removed the flash drive from the premises.

27. Jacobs was not authorized to retain such documents and information following his termination.

28. LVSC has demanded that Jacobs return all LVSC documents; however, Jacobs refuses to return company documents and information in his possession to LVSC.

FIRST CLAIM FOR RELIEF

(Civil Theft/Conversion – Vagus and Jacobs)

29. LVSC repeats and realleges each and every allegation contained in the preceding paragraphs as though set forth fully herein.

30. Vagus and Jacobs wrongfully stole and converted to their own use personal property that rightfully belongs to LVSC in the form of company documents and data, including in electronic form.

31. As a result of the theft and conversion of personal property that rightfully belongs to LVSC, LVSC has been damaged in an amount in excess of $10,000.00.

32. As a result of their actions, Vagus and Jacobs are guilty of oppression, fraud, and malice and in addition to actual and compensatory damages, LVSC is entitled to recover punitive damages for the sake of example and by way of punishing Vagus and Jacobs.

33. It has become necessary for LVSC to retain the services of an attorney to

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Las Vegas, Nevada 89134

prosecute this action, entitling LVSC to reimbursement for such fees and costs of suit.

SECOND CLAIM FOR RELIEF

(Misappropriation of Trade Secrets – NRS 600A – Vagus and Jacobs)

34. LVSC repeats and realleges each and every allegation contained in the preceding paragraphs as though set forth fully herein.

35. Upon information and belief, Vagus and Jacobs obtained trade secrets from LVSC, including documents that reflect information that derives independent economic value from not being generally known to, and not being readily ascertainable by proper means by, the public or any other persons who can obtain commercial or economic value from its disclosure or use.

36. Upon information and belief, these documents obtained by Vagus and Jacobs described sensitive compilations, methods, techniques, systems, and/or procedures relating to gaming operations, personnel and labor and include material non-public financial information of LVSC and SCL.

37. LVSC made reasonable efforts to maintain the secrecy of trade secrets obtained by Jacobs by, among other things, placing the word "Confidential" or "Private" or another indication of secrecy on documents that describe or include any portion of the trade secret.

38. Vagus and Jacobs have stolen and/or wrongfully retained documents containing LVSC trade secrets despite demands by LVSC for return of such documents.

39. Upon information and belief, Vagus and Jacobs have wrongfully copied, duplicated, sent, mailed, communicated or conveyed documents containing trade secrets to unauthorized third parties.

THIRD CLAIM FOR RELIEF

(Injunctive Relief – Vagus and Jacobs)

40. LVSC repeats and realleges each and every allegation contained in the preceding paragraphs as though set forth fully herein.

41. As set forth above, Vagus and Jacobs have stolen and/or wrongfully retained sensitive company documents from LVSC and have failed and refused to return the same.

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Las Vegas, Nevada 89134

42. Vagus' and Jacobs' actions are causing and will cause great and irreparable harm to LVSC if not enjoined.

43. LVSC has a strong likelihood of success on the merits of its claims and is without an adequate or immediate remedy at law for the actions of Vagus and Jacobs.

44. Accordingly, the Court should grant preliminary and permanent injunctive relief compelling Vagus and Jacobs to immediately return all stolen and/or wrongfully retained property of LVSC, including, but not limited to, all LVSC company documents.

45. Furthermore, the Court should restrain and enjoin Jacobs and his agents, representatives, attorneys, affiliates, and family members from directly or indirectly, reviewing, disclosing or transferring, or allowing the review, disclosure and/or transfer, of the documents stolen by Jacobs and any information contained therein to any person or entity, whether in the course of this litigation or in any other context whatsoever.

PRAYER FOR RELIEF

WHEREFORE, LVSC prays for judgment against Jacobs as follows:

1. For compensatory damages according to proof at trial, plus interest thereon at the maximum legal rate;

2. For punitive damages;

3. For attorneys' fees and costs;

4. For a restraining order and mandatory injunction compelling Vagus and Jacobs to immediately return all stolen and/or wrongfully retained property of LVSC, including, but not limited to, all LVSC company documents.

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Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

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

DATED September 16, 2011.

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

Attorneys for Defendant Las Vegas Sands Corp.

Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

EXHIBIT "C"

EXHIBIT "C"

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.

Case Number: 67376

District Court Case Number A627691-B

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

Volume II of XXXIII (PA210 – 423)

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, 17th 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 II of XXXIII (PA210 – 423)** 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 MANDAMUS RE MARCH 6, 2015 SANCTIONS ORDER

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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.: 58294

(D.C. No.: A-10-627691-C)

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION

GLASER WEIL FINK JACOBS HOWARD, AVCHEN & SHAPIRO LLP

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

Attorneys for Petitioner

CAMPBELL & WILLIAMS

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

Attorneys for Real Party in Interest

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I. INTRODUCTION

The issue set forth in Sands China Ltd.'s ("SCL") Petition for Writ of Mandamus, or in the alternative, Writ of Prohibition (the "Writ Petition"), is under what circumstances can a court properly exercise general personal jurisdiction over a foreign entity with no substantial or continuous and systematic contacts with Nevada, apart from those that arise from its relationship as a subsidiary to a domestic parent company. The Writ Petition demonstrated that such contacts are plainly insufficient to establish general personal jurisdiction without a concurrent showing of an alter ego relationship between the parent and subsidiary, or an excessive degree of control by the parent corporation.

Setting aside the pejorative attacks and conclusory rhetoric contained therein, the Answer to the Writ Petition (the "Answer") is remarkable in that it demonstrates that many of the key facts and legal authority in support of the Writ Petition remain undisputed.

First, Jacobs does *not dispute* the factors set forth in the Writ Petition regarding the determination of general personal jurisdiction over foreign defendants based on shared contacts with an in-forum affiliate. Specifically, in the context of a foreign subsidiary and a domestic parent corporation, a substantial majority of jurisdictions require evidence that the two entities are alter egos of each other before general personal jurisdiction can be applied to the foreign subsidiary. *See Doe v. Unocal Corp.*, 248 F.3d 915, 916 (9th Cir. 2001) (holding that a local entity's contacts with the forum can only be imputed to the foreign entity if there is evidence of an alter ego relationship); *see also AT&T v. Lambert*, 94 F.3d 586, 596-99 (9th Cir. 1996) (declining to assert general personal jurisdiction over foreign subsidiary where in-forum parent held a majority of seats on subsidiary's board, approved subsidiary's hiring decisions, directed subsidiary's financial and business decisions, and appointed one of its own board members to serve as subsidiary's chairman).

As further described herein, this principle was recently affirmed by the U.S. Supreme Court in a decision issued shortly after the Writ Petition was filed. *See Goodyear v. Brown*, 131 S.Ct. 2846 (2011), 2011 U.S. LEXIS 4801. As with the present case, the U.S. Supreme Court in *Goodyear* declined to impute the domestic parent's activities to the foreign subsidiary defendant,

recognizing that merging parent and subsidiary for jurisdictional purposes requires an inquiry "comparable to the corporate law question of piercing the corporate veil." *Id.* at 810. The U.S. Supreme Court in *Goodyear*, and in the companion case *J. McIntyre Machinery, Ltd. v. Nicastro*, rejected state court expansion of general personal jurisdiction in the context of asserting personal jurisdiction over foreign subsidiaries of United States parent companies. In these June, 2011 cases the U.S. Supreme Court reversed the Supreme Court of New Jersey, and the Court of Appeals of North Carolina, and directed them to dismiss the foreign subsidiaries. *Id.; see also J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011), 2011 U.S. LEXIS 4800. Therefore, in the absence of a showing of alter ego, the actions of representatives of SCL's parent company, Las Vegas Sands Corp. ("LVSC") cannot be used to establish general personal jurisdiction over SCL, even if they also serve as representatives of SCL.

Second, it is *undisputed* that Jacobs carries the burden of proof to demonstrate a *prima facie* case for personal jurisdiction, and absent that showing, SCL should be dismissed from the underlying lawsuit. As discussed in more detail below, Jacobs' jurisdictional allegations amount to nothing more than hyperbolic and erroneous attacks on activities carried out by the non-executive Chairman of SCL's Board of Directors, Sheldon Adelson ("Adelson") and, at that time, a special advisor to SCL's Board of Directors, Michael Leven ("Leven"), both of whom also served as top-level officers and directors for LVSC. Again, Jacobs ignores the established legal authority in multiple jurisdictions which holds that without a concurrent showing of an alter ego relationship between the parent and subsidiary, or an excessive degree of control by the parent corporation, such contacts are simply irrelevant and cannot support the District Court's finding of general jurisdiction.

Similarly, Jacobs tries to revive another argument that has been dismantled by the Writ Petition and SCL's prior filings, namely that SCL is subject to general personal jurisdiction due to its participation in a process that allegedly transfers casino player funds to and from Las Vegas. However, Jacobs does not dispute the cumulative affidavits provided by SCL on this issue (and the references to his own submitted evidence) that prove SCL was not involved in this process and did not otherwise transfer any funds either to or from Las Vegas. More importantly, Jacobs does not dispute that, assuming *arguendo*, even if SCL did participate in this process (and it did not, as

demonstrated previously), cooperative management of an internal accounting or marketing program is insufficient to support a finding of general personal jurisdiction. *See Fletcher v. Atex, Inc.*, 68 F.3d 1451, 1459-60 (2d Cir. 1995) (co-participation in accounting procedures is insufficient to establish general jurisdiction; *see also Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1177 (9th Cir. 1980).

Third, it is *undisputed* that the District Court based its decision to exercise general personal jurisdiction solely on "activities done in Nevada by board members of Sands China." (Transcript, Appendix 6 to Writ Petition, at p. 62, lines 4-5). The District Court did not provide any other basis or reasoning for its decision, and did not imply that other forms of personal jurisdiction were applicable to the present case. Unfortunately, Jacobs burdens this Court with a renewed attempt to apply the doctrine of transient personal jurisdiction to SCL, a corporate entity. As addressed in the Writ Petition and set forth in detail in the record, transient personal jurisdiction is wholly inapplicable to corporate defendants such as SCL, as further evidenced by the District Court's refusal to even acknowledge the issue during the March 15, 2011 hearing on the Motion. (Transcript, Appendix 6 to Writ Petition). To the extent the Court considers the argument, SCL has provided a summary of the applicable arguments and case law, and SCL is not precluded in any way from responding at this time to Jacobs' renewed arguments.

Finally, it is *undisputed* that SCL is not the alter ego of LVSC, nor does LVSC exert a disproportionate amount of control considering its status as majority shareholder. Again, the uncontested authority in the Writ Petition requires such a showing before the activities of Adelson and Leven, taken while serving as the non-executive Chairman of SCL's Board of Directors and special advisor to SCL's Board of Directors, respectively, can be considered in SCL's jurisdictional analysis. Jacobs makes no effort to dispute or even address the numerous facts that establish SCL's corporate and operational independence from LVSC and the absence of any alter ego argument. Such facts include, but are not limited to: (1) SCL's operation as a public company with stock traded on The Stock Exchange of Hong Kong Limited, which requires a demonstration of operational independence, (2) maintenance of an independent treasury department, financial controls, bank accounts and accounting system, (3) an independent Board of Directors with three

independent non-executive directors, and (4) the existence of a Non-Competition Deed between LVSC and SCL that prohibits SCL from conducting business or directing efforts to Nevada. (Writ Petition at p. 33).

By ignoring the need to make a showing of alter ego before seeking to apply Adelson and Leven's actions to SCL's jurisdictional analysis, Jacobs likewise ignores a fundamental corporate principle that a corporation and its subsidiary are distinct legal entities that exist separate from their respective shareholders, officers and directors. *See Transure v. Marsh and McLennan, Inc.*, 766 F.2d 1297, 1299 (9th Cir. 1985) ("It is entirely appropriate for directors of a parent company to serve as directors of its subsidiary, and that fact alone may not serve to expose parent to liability for its subsidiary's acts.").

Jacobs' decision to ignore or otherwise misconstrue SCL's Writ Petition only serves to highlight the validity of SCL's positions. SCL therefore submits that the District Court was compelled by law to dismiss SCL for lack of personal jurisdiction and has continued to exceed its authority through its continued exercise of jurisdiction, and SCL is entitled to extraordinary relief in the form of a Writ of Mandamus or a Writ of Prohibition.

II. LEGAL ARGUMENT

A. Jacobs' Jurisdictional Allegations are Insufficient to Establish a Prima Facie Case for General Personal Jurisdiction

As stated above, Jacobs has attempted to frame the issue in the Writ Petition, as he did at the District Court level, as one "involving a 'coattail' assertion of personal jurisdiction on the ground that, although it has no contacts with Nevada, SCL has nonetheless been compelled to defend itself here because of LVSC's contacts with Nevada." (Answer at p. 3, lines 9-11). This statement evidences Jacobs' profound misunderstanding of both fundamental jurisdictional and corporate legal principles. Jacobs also attempts to shift this Court's focus away from the actual stated issue presented in the Writ Petition, namely, whether a Nevada state court may exercise general personal jurisdiction over a foreign entity with no contacts with Nevada, other than those incident to its status as a subsidiary – not alter ego – of a Nevada corporation.

The issue is not whether the District Court imputed LVSC's unrelated forum contacts to SCL, but whether it erred when it found that the actions of Adelson and Leven (LVSC executives who also served as the non-executive Chairman of and special advisor to the SCL Board of Directors) were sufficient to establish general jurisdiction over SCL, even when those actions were entirely consistent with a parent/subsidiary relationship. SCL's Writ Petition cited numerous cases where courts had explicitly ruled that this type of evidence was inadequate to establish general personal jurisdiction, and further demonstrated that Nevada has yet to issue a decision that comports with either the majority or minority view on this issue. In response, Jacobs merely restates his prior jurisdictional allegations and avoids distinguishing or even discussing any of these cases cited in the Writ Petition.

Jacobs' refusal to address this issue only underscores the inherent flaws in his argument and the need for this Court to both dismiss SCL from this lawsuit and clarify this issue for Nevada's state courts. As demonstrated in the Writ Petition and discussed further below, Jacobs' jurisdictional allegations are, in many cases, simply incorrect, and, more importantly, inadequate as a matter of law to establish general personal jurisdiction.

1. Determining General Personal Jurisdiction Over a Foreign Affiliated Entity

In the Writ Petition, SCL set forth the widely-recognized factors used by courts to determine general personal jurisdiction over a foreign entity, and further demonstrated that a majority of jurisdictions will not impute the actions taken by a parent company to its subsidiary, or a board member or executive shared by both the parent and subsidiary, absent a showing of alter ego. Critically, Jacobs does not dispute this established legal authority. (Answer at p. 4, lines 15-16).

At the outset, it is important to note that general personal jurisdiction will only be found where the level of contact between the foreign defendant and the forum state is so substantial that it should be deemed present in the forum and therefore subject to suit for any claim. *See Firouzabadi v. First Jud. Dist. Ct.*, 110 Nev. 1348, 1352 (1994). In the context of a suit involving a foreign defendant who also has a domestic affiliated entity, courts have recognized that the jurisdictional analysis must include a recognition of the distinction between "substantial or continuous and systematic" contacts and those merely associated with normal corporate governance. *See Doe v.*

Unocal Corp., 248 F.3d 915, 925 (9th Cir. 2001) (noting the "well established principal of corporate law" that a corporation and its subsidiary, or subsidiary's agents, are presumed to be separate for liability and jurisdictional purposes).

As set forth above, this past June, the U.S. Supreme Court emphasized the need to separate the in-forum actions of the domestic parent from its foreign subsidiary, and the infrequency with which the U.S. Supreme Court has justified the exercise of general personal jurisdiction over a foreign defendant. *See Goodyear v. Brown*, 131 S.Ct. 2846, 180 L. Ed. 2d 796 (2011). As with the present case, the plaintiffs' claim in *Goodyear* arose solely due to actions that occurred outside the U.S., and were allegedly attributable to a foreign subsidiary of a domestic corporation, namely Goodyear USA, which had previously conceded personal jurisdiction in North Carolina. *Id.* at 802. Goodyear USA's foreign subsidiaries, however, maintained that the North Carolina courts lacked personal jurisdiction. *Id.* The U.S. Supreme Court first noted that since deciding the seminal case of *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945), it had issued just one opinion where "an out-of-state corporate defendant's in-state contacts were sufficiently 'continuous and systematic' to justify the exercise of general jurisdiction over claims unrelated to those contacts." *Id.* at 807 (citing *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952)). In its holding, the U.S. Supreme Court found that general personal jurisdiction did not exist over the foreign defendant, even though it had intentionally and repeatedly directed products to the forum state. *Id.* at 809-10. The Court went further and stated that "even regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales". *Id.* at 810, n.6. The Court also rejected respondent's "single enterprise" theory, recognizing that merging parent and subsidiary for jurisdictional purposes requires an inquiry "comparable to the corporate law question of piercing the corporate veil." *Id.* at 810.

The holding in *Goodyear* reinforces the well established legal authority supporting SCL's Writ Petition. The legal authority relied upon in the Writ Petition specifically address the issue of whether for jurisdiction purposes a court can consider the actions of a parent company representative, who also serves either as an executive or as a board member for a foreign subsidiary. (Writ Petition at pp. 28-32). In those circumstances, a substantial majority of jurisdictions require,

as was found in *Goodyear*, evidence that the two entities are alter egos of each other before general personal jurisdiction can attach.[1]

As demonstrated in SCL's Writ Petition, a minority of jurisdictions take a slightly different approach, examining the degree of control exercised by the parent and only finding general jurisdiction over the foreign subsidiary if the parent exercises an excessive degree of control.[2] (Writ Petition at pp. 31-32). However, for the reasons set forth in the Writ Petition, this minority view similarly does not allow a court to base general jurisdiction on activities commensurate with normal parental involvement or control. *See Reul v. Sahara Hotel, Inc.*, 372 F.Supp. 995, 998 (S.D. Tx. 1974) (holding that sole ownership over subsidiary or common directors is insufficient to establish general jurisdiction absent a showing that the parent exerted "more than that amount of control of one corporation over another which mere common ownership and directorship would indicate").

It is undisputed that Jacobs submitted no evidence that SCL is the alter ego of LVSC, or that (through Adelson or Leven) LVSC exercised a level of domination and control greater than would be expected from a majority shareholder. (Writ Petition at pp. 33-34). Again, Jacobs declined to address this issue and in restating the same allegations put forth to the District Court, he asks this Court to analyze SCL's alleged contacts without any factual or legal support for any alter ego relationship between SCL and LVSC.

2. Adelson and Leven's Alleged Actions are Insufficient to Establish General Personal Jurisdiction

[1] *See Doe v. Unocal Corp.*, 248 F.3d 915, 916 (9th Cir. 2001) (holding that a local entity's contacts with the forum can only be imputed to the foreign entity if there is evidence of an alter ego relationship); *see also AT&T v. Lambert*, 94 F.3d 586, 596-99 (9th Cir. 1996) (declining to assert general personal jurisdiction over foreign subsidiary where in-forum parent held a majority of seats on subsidiary's board, approved subsidiary's hiring decisions, directed subsidiary's financial and business decisions, and appointed one of its own board members to serve as subsidiary's chairman); *Gordon et al. v. Greenview Hosp., Inc.*, 300 S.W.3d 635, 649 (Tenn. 2009) (holding that in-forum presence of officers or directors of foreign entity is insufficient to establish general personal jurisdiction).

[2] *See Hargrave v. Fireboard Corp.*, 710 F.2d 1154, 1159-61 (5th Cir. 1983) (finding that the activities of a parent company representative can be imputed to a foreign affiliate if the parent exercises domination and control "greater than that normally associated with common ownership and directorship."); *see also Reul v. Sahara Hotel, Inc.*, 372 F.Supp. 995 (S.D. Tx. 1974).

In the Writ Petition, SCL demonstrated that, during Jacobs' tenure as SCL's Chief Executive Officer, Adelson served as the non-executive Chairman of SCL's Board of Directors, and Leven served as a special advisor to SCL's Board of Directors. (Writ Petition at p. 14). Jacobs disingenuously ignores that both Adelson and Leven held those positions with SCL by virtue of the high-level executive positions they also held with SCL's parent company, LVSC. As was discussed repeatedly in the cases cited in the Writ Petition (and ignored by Jacobs), the issue in this case is whether general personal jurisdiction can be based on the in-forum activities of SCL's board members, who also serve and act on behalf of SCL's domestic parent company.

In his Answer, Jacobs asks the Court to disregard SCL's affiliation with LVSC, and analyze Adelson and Leven's alleged actions in Nevada, without recognizing that those actions allegedly occurred in Nevada solely because of SCL's affiliation with LVSC.[3] Likewise, Jacobs' refusal to address the numerous cases cited in the Writ Petition becomes clear when it is readily apparent that he missed the point of those consistent holdings – without a showing of alter ego or excessive control, a court cannot exercise general personal jurisdiction over a foreign subsidiary based on in-forum activities of parent company representatives, even if they also serve as representatives of the foreign subsidiary. *See e.g. Gordon*, 300 S.W.3d at 650 (no general personal jurisdiction over wholly-owned foreign subsidiary even when subsidiary's directors, who also served as directors of in-forum parent company, were domiciled in forum state and controlled subsidiary's finance/budget decisions, policies and procedures, and general corporate performance); *see also AT&T*, 94 F.3d at

[3] The Writ Petition demonstrated that all of Adelson and Leven's alleged activities were directed at Macau, not Nevada, and that an analysis of general personal jurisdiction should examine the effect of the conduct on the forum state, i.e. Nevada. *See Kumarelas v. Kumarelas*, 16 F.Supp.2d 1249, 1254 (D. Nev. 1998). Jacobs responds first with an attempt to distinguish this case by claiming that the analysis only relates to claims of specific rather than general personal jurisdiction. (Answer at p. 15, lines 19-20). However, the court in *Kumarelas* discussed this factor in the context of establishing "purposeful availment," which is an element of both specific and general personal jurisdiction, and is particularly applicable to the case at hand. *Id.* at 1253-54. Jacobs also cites to *Gator.Com Corp. v. L.L. Bean, Inc.*, 341 F.3d 1072 (9th Cir. 2003) in an effort to show that SCL somehow failed to demonstrate that SCL's activities *within* Nevada were insufficient to establish general personal jurisdiction. However, the court in *Gator.Com* did not engage in such semantic distinctions, and found general personal jurisdiction because the foreign defendant had "serve[d] the market in the forum State" by marketing and shipping products to customers in the forum state and maintaining contacts with numerous vendors in the forum state. *Id.* at 1078. Again, Jacobs does not carry his established burden to show that Adelson or Leven's actions had any impact on Nevada or its residents, and the cases cited in support of his arguments are inapplicable here.

591 (holding that in order for parent's relationship to confer general personal jurisdiction, there must be a showing of an alter ego relationship).

Instead, Jacobs seeks to avoid the established jurisprudence on the issue and attempts to mischaracterize SCL's argument as an assertion that "the *mere presence* of directors in the forum state is insufficient to establish general jurisdiction over a foreign corporation," and repeats his claim that Adelson and Leven made high-level management decisions on behalf of SCL. (Answer at pp.14-15). Significantly, Jacobs does not (and cannot as a matter of law) allege or even imply that such actions are evidence of alter ego or an excessive degree of control. In fact, all of Adelson and Leven's alleged actions, for example, "determin[ing] whom SCL should hire and retain as counsel, whom to favor with SCL's business and how to expand it, how to design SCL properties and under what terms to sell them, etc.," are well within what would be expected from board members and advisors who also served as representatives for SCL's majority shareholder.[4] (Answer at p. 15, lines 1-5).

Jacobs also neglects to address the numerous facts that establish SCL's corporate and operational independence from LVSC. (Writ Petition at pp. 33-34). As demonstrated in the Writ Petition, such facts include, but are not limited to (1) SCL's operation as a public company with stock traded on The Stock Exchange of Hong Kong Limited, which requires a demonstration of operational independence, (2) maintenance of an independent treasury department, financial controls, bank accounts and accounting system, (3) an independent Board of Directors with three independent non-executive directors, and (4) the existence of a Non-Competition Deed between LVSC and SCL that prohibits SCL from conducting business or directing efforts to Nevada. (Writ

[4] Jacobs attempts to argue that SCL has placed improper emphasis on Leven's titles, whether they be special advisor to the SCL Board of Directors, or acting CEO of SCL (which Leven has occupied since Jacobs' termination). However, it is Jacobs who creates a distinction where none actually exists, as it is irrelevant what position Leven occupies as it is held in connection with his position as a LVSC representative. The cases cited by Jacobs in support of his argument are similarly inapplicable, as none involve any jurisdictional analysis whatsoever. *See Marcuse v. Del Webb Communities, Inc.*, 123 Nev. 278, 285 (2007) (deciding standing of unnamed class members); *Brad Assocs. v. Nevada Fed. Fin. Corp.*, 109 Nev. 145, 149 (1993) (deciding applicability of NRS 602.070 to parties not named on Deed of Trust). Furthermore, Jacobs' citation to *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1331 (9th Cir. 1984), does not support Jacobs' position because the *Gates* case did not involve a general personal jurisdiction analysis in the context of a parent/subsidiary relationship, and further found that despite numerous contacts and the solicitation of business in the forum state, general personal jurisdiction could *not* be established.

Petition at p. 33). By ignoring these uncontested facts, Jacobs also ignores the well-established legal authority that absent a showing of an alter ego relationship between SCL and LVSC, the District Court should not have considered Adelson or Leven's contacts with Nevada in SCL's jurisdictional analysis.

3. SCL Demonstrated That Jacobs' Allegations Regarding Monetary Transfers Were Factually Incorrect and Legally Irrelevant

In both the Motion and Writ Petition, SCL demonstrated through uncontested affidavits and Jacobs' own proffered evidence, that Jacobs' allegation that SCL regularly transfers its customers' funds to and from Las Vegas was demonstrably false. (Writ Petition at pp. 37-38). In addition to demonstrating that the funds in question are not transferred at all (but instead are entered as a series of intra-company bookkeeping entries known as Inter-company Accounting Advice ("IAA")), the Court was provided with uncontroverted evidence that this process is handled in Macau not by SCL, but by its subsidiary VML. (Writ Petition at p. 38). Not surprisingly, Jacobs's own evidence identifies VML as the originating/receiving party in Macau, and also clearly demonstrates that he is attempting to attribute actions to SCL that took place more than two years before it came into existence.[5] (Answer at p. 16, Ex. 14 to Jacobs' Opposition to the Motion).

This follows logically from VML's role as the Macau gaming license subconcessionaire, and thus is the only entity authorized to deal with transactions related to patron's gaming funds. (Writ Petition at p. 12). Despite Jacobs' histrionics and conjecture, no patron funds are actually "transferred" to either location, and as set forth in the Writ Petition, the fact remains that it consists of nothing more than a series of intra-corporate bookkeeping entries to account for funds that have been deposited in either Macau or Las Vegas. (Writ Petition at p. 38). Jacobs offers no substantive response and merely lobs pejorative (and unsupported) assertions that the IAA process is an "insultingly transparent charade" and a "house-of-cards contrivance to mask the millions of Macau dollars 'available' in Las Vegas." (Answer at p. 18, lines 5-9). Jacobs offers no reasoning or

[5] Jacobs only other piece of evidence submitted in support of his allegation is a self-serving and conclusory affidavit which alleged that SCL "transfer[ed] funds electronically from Asia to LVSC or its affiliates in Las Vegas." (Ex. 1 to Opposition, ¶ 14). Jacobs' allegation is rebutted by both SCL's submitted evidence and Jacobs' own documents, and thus is not entitled to a presumption of validity.

evidence to support these allegations, and pursuant to his own cited case law, such arguments cannot be considered as a matter of law. *See Mainor v. Nault*, 120 Nev. 750, 777 (2004).

Even assuming *arguendo* that such allegations were true (and SCL has shown that they are not), Jacobs' allegations remain irrelevant as a matter of law because, as demonstrated in SCL's Writ Petition (see Writ Petition at page 38:13 – 39:6), such allegations are inadequate to establish general jurisdiction.[6] *See Fletcher v. Atex, Inc.*, 68 F.3d 1451, 1459-60 (2d Cir. 1995) (co-participation in accounting procedures is insufficient to establish general jurisdiction; *Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1177 (9th Cir. 1980) (cooperative marketing or promotional efforts inadequate to establish general personal jurisdiction); *Romann v. Geissenberger Mfg. Corp.*, 865 F.Supp. 255, 260-61 (E.D.Pa. 1994) (no general jurisdiction even though defendant made $230,000 in direct sales to forum state and was qualified to do business in forum state).[7]

In sum, the IAA process cannot provide a basis for general personal jurisdiction over SCL due to its complete lack of involvement, and to its inherent lack of "substantial or continuous and systematic" contacts with Nevada.

B. <u>This Court Should Clarify This Issue of Law for Nevada's State Courts</u>

In addition to the arguments set forth in the Writ Petition, this Court need not look any further than Jacobs' Answer for a clear example of why the issue presented in the Writ Petition

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[6] Jacobs cites to *Provident Nat. Bank v. California Federal Sav. & Loan Ass'n*, 819 F.2d 434 (3d Cir. 1987) in an attempt to demonstrate that participation in the IAA process could subject SCL to general personal jurisdiction in Nevada. (Answer at p. 19, lines 6-16). However, as demonstrated previously in the SCL's briefs to the District Court, the Provident case is entirely distinguishable from the present action. In Provident, the 3d Circuit U.S. District Court applies general personal jurisdiction principles to the defendant primarily due to the existence of nearly one thousand (1000) of defendant's account depositors residing in the forum state. *Id.* at 436. The defendant in Provident was also involved in servicing more than Ten Million Dollars ($10,000,000.00) in loan funds, which necessarily involved the transfer and deposit of funds into the forum state. *Id.* at 436-37. In stark contrast, SCL has already demonstrated with uncontested evidence that the IAA process reflects only a record of inter-company accounting transactions between VML and an LVSC affiliate, and does not involve any transfers of funds to or from Nevada. (SCL Reply in Support of Motion (the "Reply"), pp. 18-19; Affidavits of Jennifer Ono, Patricia Green and Jason Anderson attached in support of Reply).

[7] In his Answer, Jacobs contended that the *Romann* case "is no longer good law" and "was abrogated by the court that decided it." (Answer at p. 20, fn. 59). Jacobs' assertion is incorrect. *Romann* was criticized in *Eagle Traffic Control, Inc. v. James Julian, Inc.*, 933 F.Supp. 1251 (E.D. Pa. 1996), solely on the issue of whether merely registering to do business in the forum established general jurisdiction and did not otherwise criticize or abrogate the holding in *Romann*, including with regard to sales or transfers of funds to the forum state. *Id.* at 1256.

requires additional clarification for Nevada's state courts. In his Answer, Jacobs continually misapplies and misconstrues basic jurisdictional principles, and fails to recognize the difference between the actions of a foreign entity acting on their own accord, and actions taken on behalf of that entity by a representative shared with its in-forum parent.

This issue remains unresolved for Nevada's state courts, and while Jacobs argues that the issue itself is "a straw man fabricated by SCL in disregard of the actual issues...," (Answer at p. 4, line 15) the fact remains that a majority of other jurisdictions (including the U.S. Supreme Court) have considered this a very important issue and have consistently ruled that only when the foreign entity is considered the alter ego of the domestic entity, can the domestic entity's contacts be considered in the jurisdictional analysis of a foreign affiliate. *See Goodyear*, 180 L. Ed. 2d at 810; *Doe*, 248 F.3d at 926; *Newman v. Comprehensive Care Corp.*, 794 F.Supp. 1513, 1519 (D. Or. 1992).

And while SCL certainly did not "prophesize an End-of-Western-Civilization-As-We-Know-It catastrophe," the expansion of Nevada's gaming companies will ensure that this issue will come before a Nevada state court again. Nevada's courts must be provided with the precedent to decide such cases, as the current test leaves the issue open to inconsistent results. SCL therefore requests that the law in Nevada should be clarified to employ the prevailing test applied in a majority of jurisdictions, which in the present case, has not been met under any interpretation of the submitted facts.

C. The Exercise of Personal Jurisdiction Over SCL is Unreasonable

Because the District Court did not make any findings as to the reasonableness of its exercise of personal jurisdiction over SCL, and Jacobs failed to add any significant arguments on this point that he did not previously make in his Opposition, SCL will limit its discussion of this issue to clarify a few points that were misstated in Jacobs' Answer.

As an initial matter, Jacobs does not dispute the established legal authority set forth in the Writ Petition regarding the finding of general personal jurisdiction over a foreign entity. (Answer at pp. 4-5). Additionally, it is important to recognize that Jacobs' claim against SCL for breach of contract is unrelated to any actions taken in Nevada, by either SCL or LVSC. Jacobs' claim relates

to the Stock Option Grant Letter which purportedly granted Jacobs an option to purchase SCL stock.[8] (Exhibit F to Motion). Whether or not SCL's "two top executives live and work [in Nevada]" has no bearing on how burdensome or efficient it will be for SCL to litigate this claim in Nevada. (Answer at p. 22, line 16). In fact, as demonstrated in SCL's Motion, Adelson and Leven did not hold executive positions with SCL during Jacobs' tenure as their positions were, respectively, Non-Executive Director and Special Advisor. (Motion at p. 5, lines 1-12). As such, Jacobs' claim against SCL does not involve SCL's "two top executives" or any LVSC representatives, and with the exception of Jacobs, nearly all of the relevant witnesses and documents are located in Macau. Therefore there is little question that Macau would provide the most suitable forum to litigate Jacobs' claim against SCL, which tips strongly against the reasonableness of the District Court's continued exercise of personal jurisdiction.

Jacobs argues that because Nevada "has a vital interest in the conduct of its gaming licensees, of which LVSC is one," that Nevada's interest somehow overrides Macau's interest in protecting companies such as SCL, which actually does business in Macau. (Answer at p. 23, line 7). Without providing any supporting legal authority, Jacobs asserts that Nevada's gaming laws extend to its licensee's foreign operations, such as SCL in Macau, and "therefore, Nevada has a paramount interest in the adjudication of this dispute." (Answer at p. 23, lines 9-10).

A review of the prospectus cited in Jacobs' Answer demonstrates that this position is not grounded in fact. (Appendix 3 to Answer). SCL's prospectus provides that due to LVSC's status as SCL's "controlling shareholder," it must oversee certain SCL operations to ensure LVSC remains compliant with Nevada's gaming laws. *Id.* A review of the possible actions that may be taken in the event of a failure to comply shows that all disciplinary actions taken by the Nevada Gaming Commission would affect only LVSC, and not SCL. *Id.*

As noted above, the foreign gaming sections of the Nevada Gaming Control Act, NRS 463.680-.720, are restrictions on LVSC to avoid unsuitable associations and practices, not entities

[8] As demonstrated in the Motion, the Stock Option Grant Letter is unenforceable by its own terms as a matter of law because, among other things, Jacobs never signed the document and the unvested SCL options ceased to exist (as set forth in the explicit terms of the Stock Option Grant Letter) upon the termination of Jacobs' employment on July 23, 2010. (Exhibit F to Motion; Affidavit of Anne Salt in support of Motion, ¶¶ 13, 14).

operating outside of Nevada. Furthermore, Jacobs' argument would set a dangerous precedent, because it effectively asserts that the otherwise well-established minimum contacts jurisdictional analysis is preempted in every instance in which an entity regulated by the Nevada Gaming Commission is a "controlling" shareholder of a foreign corporation.

Taken with the remaining factors as set forth in the Writ Petition, this Court should find that the District Court's continued exercise of jurisdiction is unreasonable and would offend the principles of due process if allowed to continue.

D. Jacobs' "Transient" Personal Jurisdiction Argument is Meritless And Was Not, In Any Way, Replied Upon By The District Court

In his Answer, Jacobs inexplicably leads with the argument that SCL should be subject to "transient" personal jurisdiction, by virtue of the fact that a SCL corporate officer was served with the summons and complaint while present in Nevada. (Answer at p. 6, lines 5-8). Jacobs further argues that because SCL did not address this issue in its Writ Petition, it has effectively conceded the issue and should be precluded from challenging the argument in this proceeding. (Answer at pp. 6-8). Neither position has merit, and as demonstrated by SCL in its Reply in Support of SCL's Motion to Dismiss (the "Reply") and by both parties at the March 15, 2011 hearing, the principle of transient personal jurisdiction is inapplicable to the issue of personal jurisdiction over SCL.

1. The Principle of Transient Personal Jurisdiction is Inapplicable to Corporate Defendants Such As SCL and Was Not Considered by the District Court

As with most of his arguments in the Answer, Jacobs' contention that SCL is subject to transient personal jurisdiction because its acting CEO was served in Nevada is recycled from his Opposition filed in response to SCL's Motion. (Opposition, attached as Appendix 3 to the Writ Petition, at pp. 10-13). In both the Answer and Opposition, Jacobs relies primarily on *Burnham v. Superior Court*, 495 U.S. 604 (1990) for the proposition that service upon a corporate officer in the forum state is a proper basis for asserting personal jurisdiction over the corporate entity. (Answer at p.6, fn. 16; Opposition at pp. 10-12).

However, as explained in detail in SCL's Reply, while the transient personal jurisdiction principle was applied to the defendant in *Burnham*, the U.S. Supreme Court limited its application

to individual defendants and *expressly declined to extend it to corporate entities*. *See Burnham*, 495 U.S. at 610 n. 1 ("[C]orporations ... have never fitted comfortably in a jurisdictional regime based primarily upon 'de facto power over the defendant's person.' We express no views on these matters and, for simplicity's sake, omit reference to this aspect of 'contacts'-based jurisdiction in our discussion.")(internal citations omitted).

SCL's Reply also addressed the other cases cited by Jacobs in support of his position, namely, *Comerica Bank-California v. Sierra Sales, Inc., et al.*, 1994 U.S. Dist. LEXIS 21542 (N.D. Cal. 1994), *Northern Light Technology, Inc. v. Northern Lights Club*, 236 F.3d 57 (1st Cir. 2001), and *Oyuela v. Seacor Marine (Nigeria), Inc.*, 290 F.Supp.2d 713 (E.D. La. 2003), and noted that despite Jacobs' claims to the contrary, none actually stood for the proposition that the *Burnham* decision could be applied to corporate defendants. (Reply at pp 8-10).[9]

In short, SCL's Reply made clear that the transient personal jurisdiction principle could not be considered as part of the District Court's jurisdictional analysis, and that Jacobs' arguments were fundamentally flawed. At the March 15, 2011 hearing on the Motion, counsel for SCL briefly addressed the *Burnham* case and its inapplicability to corporate entities such as SCL. (Transcript of March 15, 2011 hearing, attached to Writ Petition as Appendix 6, at p. 48, lines 4-8). This statement prompted no response from the District Court, and Jacobs' counsel avoided the transient personal jurisdiction issue altogether during his argument.

It is irrelevant whether Jacobs' counsel chose not to address this issue because he was "constrained by time limits and flow of colloquy," as claimed in his Answer, or for some other

[9] In citing to *Comerica*, Jacobs disingenuously ignores the fact that the court's decision in that case dealt with another individual defendant, and not the corporate defendant. *See Comerica*, 1994 U.S. Dist. LEXIS at *6-11 (N.D. Cal. 1994)(applying *Burnham* ruling to determine personal jurisdiction over individual co-defendant James Gary Pyle). *Northern Light* and *Oyuela* are similarly inapplicable, as the court's analysis of transient jurisdiction in *Northern Light* was contained in a footnote and only referenced *Burnham* by stating that due to the defendants' failure to raise it earlier, any argument that it did not apply had been waived. *See Northern Light*, 236 F.3d at 63; *see also C.S.B. Commodities, Inc. v. Urban Trend, Ltd., et al.*, 626 F.Supp.2d 837, 849-50 (N.D. Ill. 2009). The *Oyuela* court had relied solely upon *Northern Light* and had also proceeded with a minimum contacts analysis to determine that jurisdiction was proper. *See Oyuela*, 290 F.Supp.2d at 722; *see also C.S.B. Commodities*, 626 F.Supp.2d at 851 ("Neither [the *Northern Light* or *Oyuela*] case thus provides much support for the application of *Burnham* without a minimum contacts analysis.").

strategic purpose. What is relevant, however, is that his argument was shown to be without merit or application, and the District Court neither discussed nor chose to base its ruling on transient personal jurisdiction. Critically, Jacobs offers absolutely no additional support for his argument that transient personal jurisdiction could be applied to SCL without violating established law and simple logic.

2. SCL Has Neither Conceded the Issue of Transient Personal Jurisdiction, Nor Is It Precluded From Responding to Jacobs' Argument

Jacobs also argues that because SCL allegedly failed to provide additional analysis of the transient personal jurisdiction issue in the Writ Petition, it has "abandon[ed] that issue, and must accept the consequences." (Answer at p. 7, line 7). As discussed above, SCL has repeatedly demonstrated that transient personal jurisdiction has no impact on the issues presented in this case, and as stated above, was ignored by the District Court in its decision to grant the Motion.

Jacobs cites to *Wyeth v. Rowatt*, 244 P.3d 765 (2010), *Mainor v. Nault*, 120 Nev. 750 (2004), and *Browning v. State*, 120 Nev. 347 (2004) in support of his argument. Upon further examination however, those cited cases do not support the blanket assertion espoused by Jacobs. In each case, the issues that were disregarded by the appellate court were those that had not been raised or addressed at the trial court level and were specifically relied upon as part of the argument in the appellate brief. *See Wyeth*, 244 P.2d at 779, fn. 9 (declining to consider argument first raised in appellate brief that trial court gave an improper jury instruction); *Mainor*, 120 Nev. 776-77 (noting that the court was entitled to reject an argument to take judicial notice of opposing counsel's prior conduct); *Browning*, 120 Nev. at 361 (rejecting argument that trial counsel was ineffective when the particular issue had been raised for the first time in the appellate brief).

In the present case, the transient personal jurisdiction issue had been extensively briefed to the District Court, and subsequently shown to be inapplicable. The District Court did not address or even allude to the issue, and did not cite the transient personal jurisdiction doctrine as support for the decision at issue in the Writ Petition. (Transcript, attached as Appendix 6 to Writ Petition, at p. 62, lines 3-5 (stating that the denial of SCL's Motion was based on " pervasive contacts with the state of Nevada by activities done in Nevada by board members of Sands China.")). However, SCL

still brought the issue to this Court's attention in the Writ Petition, and provided a full record of the proceedings in the event this Court had a desire to examine it further.

While no additional analysis is necessary, Jacobs has nonetheless decided to waste both this Court's and SCL's time and resources by raising this issue again. SCL submits, as it did to the District Court, that Jacobs' argument has no basis in law or fact and should be summarily rejected.

III. 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 substantial or continuous and systematic contacts with Nevada. Specifically, general jurisdiction over SCL cannot be based on its corporate contacts with its majority shareholder, LVSC, without a showing of an alter ego relationship between SCL and LVSC, or evidence of LVSC's excessive degree of control over SCL. 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 August 9, 2011.

GLASER WEIL FINK JACOBS HOWARD, AVCHEN & SHAPIRO LLP

By: _____

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

Attorneys for Petitioner Sands China Ltd.

VERIFICATION

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

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 Petitioner's Reply In Support Of Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition 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 9th day of August, 2011

NOTARY PUBLIC in and for
said County and State

My Commission expires 9-27-13

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
DAWN M. DUDAS
Appt. No. 97-4047-1
My Appt. Expires Sept. 27, 2013

Glaser Weil Fink Jacobs
Howard Avchen & Shapiro LLP

740438.1

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of GLASER WEIL FINK JACOBS HOWARD AVCHEN SHAPIRO LLP and on the 9th day of August, 2011, I deposited a true and correct copy of the foregoing **PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION** by U.S. Mail at Las Vegas, Nevada, in a sealed envelope upon which first class postage was prepaid and addressed to:

J. Stephen Peek, Esq.
Justin C. Jones, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Donald J. Campbell, Esq.
J. Colby Williams, Esq.
CAMPBELL & WILLIAMS
700 S. 7th Street
Las Vegas, NV 89101

An Employee of GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP

Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 58294

FILED

AUG 26 2011

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

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

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

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

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

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

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

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

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

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

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

Saitta, J.
Saitta

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

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

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

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CLERK OF THE COURT

MOT
James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com
Todd L. Bice, Esq., Bar No. #4534
TLB@pisanellibice.com
Debra L. Spinelli, Esq., Bar No. 9695
DLS@pisanellibice.com
PISANELLI BICE PLLC
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169
Telephone: (702) 214-2100
Facsimile: (702) 214-2101

Attorneys for Plaintiff Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS, Plaintiff, v. LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; DOES I through X; and ROE CORPORATIONS I through X, Defendants. AND RELATED CLAIMS	Case No.: A-10-627691 Dept. No.: XI **PLAINTIFF'S MOTION TO CONDUCT JURISDICTIONAL DISCOVERY**

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

Based upon writ relief sought by Defendant Sands China, Ltd. ("Sands China") contesting jurisdiction, the Nevada Supreme Court has directed this Court to hold an evidentiary hearing concerning this Court's jurisdiction over Sands China. In anticipation of that hearing, Plaintiff Steven Jacobs ("Jacobs") seeks jurisdictional discovery so as to forestall any claims by Sands China that the evidence of its pervasive contacts with the State of Nevada are somehow lacking or incomplete. Jacobs has already shown this Court that there is more than good reason to believe that Sands China is subject to general jurisdiction here. Because Sands China could not plausibly (and does not even try to) claim that Jacobs' assertion of personal jurisdiction over Sands China is

clearly frivolous, the cases are legion in holding that Jacobs is entitled to conduct expedited jurisdictional discovery in anticipation of the evidentiary hearing.

This Motion is based on the attached Memorandum of Points and Authorities and any additional argument this Court chooses to consider.

DATED this 21st day of September, 2011.

PISANELLI BICE PLLC

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

Attorneys for Plaintiff Steven C. Jacobs

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

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned counsel will appear at Clark County Regional Justice Center, Eighth Judicial District Court, Las Vegas, Nevada, on the 25 day of Oct, 2011, at 9a.m., in Department XI, or as soon thereafter as counsel may be heard, to bring this **MOTION TO CONDUCT JURISDICTIONAL DISCOVERY** on for hearing.

DATED this 21st day of September, 2011.

PISANELLI BICE PLLC

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

Attorneys for Plaintiff Steven C. Jacobs

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Jacobs will not burden this Court with a full recitation of the facts leading up to this Motion. It suffices to note that Sands China objects to personal jurisdiction in the State of Nevada and convinced the Nevada Supreme Court that an evidentiary hearing concerning the scope of its contacts with this State is warranted. Having fought for such an evidentiary proceeding, Sands China cannot seriously object to expedited jurisdictional discovery which will allow Jacobs to meet his burden and establish a record of Sands China's systematic and pervasive contacts within this State.

Sands China's apparent belief that Jacobs and this Court are limited to whatever evidence they presently possess concerning Sands China's contacts is plainly without merit. Court after court holds that when a defendant seeks an early dismissal on grounds of personal jurisdiction, and the assertion of jurisdiction is not clearly frivolous, then the plaintiff is entitled to conduct jurisdictional discovery prior to any consideration of the jurisdictional objection. And here, Jacobs' claim of personal jurisdiction over Sands China is anything but frivolous.

II. ANALYSIS

Under NRCP 26(a), this Court may order the taking of discovery prior to the filing of a joint case conference report. One of the most oft-cited reasons for permitting early discovery is when a defendant contests a court's personal jurisdiction. The showing needed for a plaintiff to obtain such discovery is quite minimal. All that this Court must conclude to trigger Jacobs' right to such discovery is that his claim of jurisdiction does not appear to be clearly frivolous:

> We have explained that if "the plaintiff's claim is not clearly frivolous [as to the basis for personal jurisdiction] - the district court should ordinarily allow discovery on jurisdiction in order to aid the plaintiff in discharging' [his or her] burden".

Metcalfe v. Renaissance Marine, Inc., 566 F.3d 324, 336 (3d Cir. 2009) (citations omitted) ("Furthermore, we have found jurisdictional discovery particularly appropriate where the defendant is a corporation."); *Pat Clark Sports, Inc. v. Champion Trailers, Inc.*, 487 F. Supp. 2d 1172, 1179 (D. Nev. 2007) (unless it is clearly shown that discovery will not produce evidence of

facts supporting jurisdiction, "court ordinarily should grant discovery regarding jurisdiction where the parties dispute pertinent facts varying on the question of jurisdiction or more facts are needed.").

Indeed, while he has already done so, Jacobs need not establish a *prima facie* case of personal jurisdiction in order to obtain discovery. Rather, all he need show is a "colorable basis" for jurisdiction or "some evidence" for believing that jurisdiction exists. *Calix Networks, Inc. v. Wi-LAN, Inc.*, 2010 WL 3515759 *4 (N.D. Cal. Sept. 8, 2010); *PowerStation, LLC v. Sorenson Research & Dev. Trust*, 2008 WL 5431165, at *2 (D. S.C. Dec. 31, 2008) (where plaintiff offered more than mere speculation and conclusory assertions, jurisdictional discovery warranted as it will "aid this court in determining whether personal jurisdiction exists . . . .").

Courts recognize that the failure to afford the plaintiff jurisdictional discovery when it appears that claims of jurisdiction are not clearly frivolous constitutes an abuse of discretion. *See, e.g., Nuance Cmmcn's, Inc. v. Abbyy Software House*, 626 F.3d 1222, 1237 (Fed. Cir. 2010 (reversing district court for "failure to grant plaintiff jurisdictional discovery because such discovery should ordinarily be granted where the facts bearing upon question of jurisdiction are in dispute"); *Patent Rights Protection Group v. Video Game Tech., Inc.*, 603 F.3d 1354, 1372 (Fed. Cir. 2010) (reversing because plaintiff's request for jurisdictional discovery was not based on a mere hunch and thus "discovery may unearth facts sufficient to support the exercise of personal jurisdiction over one or both of the companies."); *Laub v. U.S. Dept. of Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003) (district court abused discretion by refusing to grant jurisdictional discovery since such discovery should ordinarily be granted when the jurisdictional facts are contested); *Central States, Se & Sw Area Extension Fund v. Phencorp Reinsurance Co.*, 440 F.3d 870, 877-78 (7th Cir. 2006) (finding that district court erred in denying jurisdictional discovery for claims of general jurisdiction, explaining that "it is not surprising that [the plaintiff] can do little more than suggest" certain minimum contacts given the denial of jurisdictional discovery); *Bower v. Wurzburg*, 501 S.E.2d 479, 488 (W.Va. 1998) ("We believe that it is inequitable to require a plaintiff to come forward with 'proper evidence detailing specific facts demonstrating' personal

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

jurisdiction, yet deny him or her access to reasonable jurisdiction discovery through which such evidence may be obtained, particularly in a complex case such as this one.").

Contrary to Sands China's wishes, the law overwhelmingly supports Jacobs' right to engage in jurisdictional discovery so as to rebut Sands China's attempt at an early exit from this case. Thus, consistent with these numerous authorities, Jacobs requests expedited discovery on the following categories in order to obtain evidence and prepare for this Court's scheduled evidentiary hearing:

1. The deposition of Michael A. Leven ("Leven"), a Nevada resident, who simultaneously served as President and COO of Las Vegas Sands Corp. ("LVSC") and CEO of Sands China (among other titles);

2. The deposition of Sheldon G. Adelson ("Adelson"), a Nevada resident, who simultaneously served as Chairman of the Board of Directors and CEO of LVSC and Chairman of the Board of Directors of Sands China;

3. The deposition of Kenneth J. Kay ("Kay"), upon information and belief a Nevada resident, and LVSC's Executive Vice President and CFO, who, upon information and belief, participated in the funding efforts for Sands China;

4. The deposition of Robert G. Goldstein ("Goldstein"), a Nevada resident, and LVSC's President of Global Gaming Operations, who, upon information and belief, actively participates in international marketing and development for Sands China;

5. The deposition of an NRCP 30(b)(6) deponent in the event that the above witnesses claim a lack of memory or knowledge concerning activities within their authority;

6. Documents that will establish the date, time, and location of each Sands China Board meeting (including the meeting held on April 14, 2010, at 9:00 a.m. Macau Time/April 13, 2010, at 6:00 p.m. Las Vegas time), the location of each Board member, and how they participated in the meeting;

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LAS VEGAS, NEVADA 89169

7. Documents that reflect the travels to and from Macau/China/Hong Kong by Adelson, Leven, Goldstein, and/or any other LVSC's executive for any Sands China related business (including, but not limited to, flight logs, travel itineraries);

8. The calendars of Adelson, Leven, Goldstein, and/or any other LVSC executive who has had meetings related to Sands China, provided services on behalf of Sands China, and/or travelled to Macau/China/Hong Kong for Sands China business;

9. Documents and/or communications related to Michael Leven's service as CEO of Sands China and/or the Executive Director of Sands China Board of Directors without payment, as reported to Hong Kong securities agencies;

10. All documents that reflect that the negotiation and execution of the agreements for the funding of Sands China occurred, in whole or in part, in Nevada;

11. All contracts/agreements that Sands China entered into with entities based in or doing business in Nevada, including, but not limited to, any agreements with BASE Entertainment and Bally Technologies, Inc.;

12. All documents that reflect global gaming and/or international player development efforts, including efforts lead by Rob Goldstein who, upon information and belief, oversees the active recruitment of VIP players to share between and among LVSC and Sands China properties, player funding, and the transfer of player funds.

13. All agreements for shared services between and among LVSC and Sands China or any of its subsidiaries, including, but not limited to, (1) procurement services agreements; (2) agreements for the sharing of private jets owned or made available by LVSC; and (3) trademark license agreements;

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

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3883 HOWARD HUGHES PARKWAY, SUITE 800
LAS VEGAS, NEVADA 89169

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

16. All documents that reflect work performed on behalf of Sands China in Nevada, including, but not limited, documents that reflect communications with BASE Entertainment, Cirque de Soleil, Bally Technologies, Inc., Harrah's, potential lenders for the underwriting of Parcels 5 and 6, located in the Cotai Strip, Macau, and site designers, developers, and specialists for Parcels 5 and 6;

17. All documents, including financial records and back-up, used to calculate any management fees and/or incorporate company transfers for services performed and/or provided by LVSC to Sands China, including who performed the services and where those services were performed and/or provided, during the time period where there existed any formal or informal shared services agreement;

18. All documents that reflect reimbursements made to any LVSC executive for work performed or services provided related to Sands China;

19. All documents that Sands China provided to Nevada gaming regulators; and

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

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3883 HOWARD HUGHES PARKWAY, SUITE 800
LAS VEGAS, NEVADA 89169

III. CONCLUSION

The law affords Jacobs the right to conduct jurisdictional discovery in order to meet his burden of establish Sands China's systematic and pervasive contacts with the State of Nevada. In seeking to obtain a hasty dismissal of this case on jurisdictional grounds, Sands China cannot be heard to protest such discovery: Sands China has placed its contacts with the State of Nevada squarely at issue.

DATED this 21st day of September, 2011.

PISANELLI BICE PLLC

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

Attorneys for Plaintiff Steven C. Jacobs

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 21st day of September, 2011, I caused to be sent via email and United States Mail, postage prepaid, true and correct copies of the above and foregoing **PLAINTIFF'S MOTION TO CONDUCT JURISDICTIONAL DISCOVERY** properly addressed to the following:

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

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

/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC

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

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CLERK OF THE COURT

OPPM
Patricia L. Glaser, (Pro Hac Vice Admitted)
Stephen Ma, (Pro Hac Vice Admitted)
Andrew D. Sedlock, State Bar No. 9183
GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP
3763 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169
Telephone: (702) 650-7900
Facsimile: (702) 650-7950
email: pglaser@glaserweil.com
sma@glaserweil.com
asedlock@glaserweil.com

Attorneys for Defendant Sands China Ltd.

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

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

DATED September 26, 2011.

GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP

By: _____

Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)
Stephen Ma, 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. LEGAL ARGUMENT

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

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

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

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

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

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

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

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

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

See Writ Order at pp. 2, 3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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