

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

SANDS CHINA LTD., a Cayman Islands  
corporation,

Petitioner,

vs.

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Electronically Filed  
Case Number: 2015-08:24 a.m.  
Mar: 23/2015  
Tracie K. Lindeman  
Clerk of Supreme Court  
District Court Case Number  
A627691-B

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

**Volume III of XXXIII  
(PA424 – 592S)**

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## **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 III of XXXIII (PA424 – 592S)** 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**

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DATED this 20th day of March, 2015.

By: /s/ PATRICIA FERRUGIA

**APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR  
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*Ann D. Quinn*  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants

CASE NO. A-627691

DEPT. NO. XI

Transcript of  
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

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

THURSDAY, OCTOBER 13, 2011

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
PATRICIA GLASER, ESQ.

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

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

CLERK OF THE COURT  
RECEIVED  
OCT 19 2011  
*JS*

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

2 (Court was called to order)

3 THE COURT: That takes me to Jacobs versus Sands.

4 And I assume that everybody in the courtroom is here as a  
5 interested observer, because otherwise I have things on the  
6 calendar I don't know about it.

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

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

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

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

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

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

19 MS. GLASER: May I?

20 THE COURT: Please.

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

23 THE COURT: Good morning.

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

1 are three different bases for the position that we take and  
2 that Mr. Jacobs is not entitled to any of the documents he's  
3 possessed that he obtained as an employee of ours. We think  
4 it's the '04 policy. He says that wasn't applicable to him.  
5 We say there's a March 14, '09, side agreement he signed that  
6 said he was going to keep these documents confidential, and,  
7 of course, there is the consulting agreement in May of '09  
8 that he has to return documents that he got in connection with  
9 his employment.

10           Having said that, we've asked for them back. We  
11 event went to the trouble -- because I think Your Honor had an  
12 extremely good suggestion and one that was frankly beneficial  
13 to both sides when you suggested at one of our hearings, I'd  
14 like you to come up with a protocol, originally suggested by  
15 counsel for the plaintiff, which I concede, prior counsel for  
16 the plaintiff. We came up with that protocol because we  
17 thought it was an excellent idea to sort of get past sort of  
18 certain obstacles that had been put forth. And I need to  
19 emphasize one thing. Now, all of the papers that were filed,  
20 and you've seen, unfortunately, too many of them, I know, in  
21 all the papers that were filed nowhere does Mr. Jacobs  
22 dispute, because he cannot, that more than 11 gigabytes of  
23 documents were downloaded by Mr. Jacobs the day he was  
24 terminated by Sands China, the day he was terminated. And  
25 those are the documents primarily we are most interested in

1 not having him to disclose to his attorneys. Many of them are  
2 attorney-client, many, by their own admission, trade secrets,  
3 and certainly many of them were subject to the Macau Privacy  
4 Act.

5 Now, I want to get back to the protocol in just --  
6 in one moment. There is -- appears to be some dispute about,  
7 well, who was he really employed by. Under Macau law only  
8 Macau residents are entitled to work and provide services in  
9 Macau. And a Macau entity must apply for a work permit for  
10 that employee. That was done, and he signed a consulting  
11 agreement or document in order for us to get the work permit  
12 so he could work in Macau, which nobody contests he both did  
13 work in Macau and he both signed this document. That document  
14 that he signed has a confidentiality provision.

15 Now, to work in Macau without the work permit and  
16 therefore to work without the written agreement is a violation  
17 -- it's a crime in Macau. And everybody complied with the  
18 law, including Mr. Jacobs, by signing a document that allowed  
19 us to get a work permit.

20 Now, what do we do about this? I don't think that  
21 the Court necessarily has to adopt our position or plaintiff's  
22 position. I think what the Court frankly, in our view --

23 THE COURT: At the moment, Counsel, we are  
24 discussing a motion in limine, and that's all we're talking  
25 about. I certainly understand there is an overlap, and I will

1 be happy to get to that at a later point. Right now all I'm  
2 discussing is a motion in limine and, arguably, whether  
3 there's been compliance with the Eighth Judicial District  
4 Court rules, which I mentioned in our conference call the  
5 other day.

6 MS. GLASER: You did. And we supplied a  
7 declaration, Your Honor, by Mr. Steve Ma in response to the  
8 Court's inquiry about whether there had been a meet and  
9 confer. I want to say to Your Honor I'm an officer of the  
10 court, and on repeated occasions, both in writing and by  
11 telephone call, we requested a meet and confer not just with  
12 respect to the protocol which Your Honor had suggested was a  
13 good way to get past this, not just --

14 THE COURT: Protocol has nothing to do with your  
15 motion in limine, Ms. Glaser.

16 MS. GLASER: Agreed. What we did was we -- the day  
17 -- that day that we were in court we asked to meet and confer  
18 with Mr. Pisanelli in the hallway. He didn't have time, which  
19 is perfectly okay, and he would get back to us both with  
20 respect to returning the documents, what documents could be  
21 used and what could not, and the discovery that was -- the  
22 Court was talking about. And if you recall, Your Honor said,  
23 if you want discovery you have to make a motion. So we've  
24 attempted on repeated occasions -- it's in Mr. Ma's  
25 declaration -- to meet and confer with respect to --

1 THE COURT: Actually, I didn't say if you want  
2 discovery you have to make a motion. What I said was if you  
3 cannot reach an agreement as to the discovery you will have to  
4 make a motion.

5 MS. GLASER: Hundred percent correct. I apologize.  
6 That's exactly what you said. We could -- there was an effort  
7 to meet with prior counsel with respect to both discovery and  
8 with respect to return of the documents, both of which are  
9 addressed by the motion in limine. We -- Mr. Pisanelli  
10 actually admitted that he filed the motion without meeting and  
11 conferring on discovery. He admitted it. He said he just  
12 didn't have time to deal with us. That's okay. We then -- we  
13 attempted to -- continued to attempt to meet and confer, both  
14 with respect to this motion in limine precluding the use of  
15 documents at our hearing, whenever it may be, and we continued  
16 to attempt to discuss what documents could be used at the  
17 evidentiary hearing. And we were not met with anything other  
18 than -- and I say this as candidly as I can -- a stone wall.

19 Now, I can't confer -- meet and confer with myself.  
20 And, yes, we did not have a meeting and confer session because  
21 Mr. Pisanelli did not either have the time or desire to meet  
22 with us, but we made every reasonable effort to meet and  
23 confer, Your Honor. And I need to represent that again as an  
24 officer of the court.

25 I would like to address the merits of the motion in



1     limine or continue to --

2             THE COURT:   Sure.  But I don't want you to address  
3     the discovery issue, which is a separate issue.

4             MS. GLASER:  Well, it's actually interesting.  It's  
5     not entirely, because our -- and I -- and I want to make sure  
6     -- the Court may ultimately disagree with me, but I at least  
7     want to make sure that I'm clear.  The protocol takes into  
8     account a continuing dispute with respect to how Mr. Jacobs  
9     got these documents and whether he's entitled to them for  
10    purposes of the evidentiary hearing.

11            THE COURT:  Let me stop you.  Where is the protocol  
12    attached to your motion in limine?

13            MS. GLASER:  It's attached to our reply brief, Your  
14    Honor.

15            THE COURT:  That's not what I'm asking, Counsel.  
16    Where's the protocol attached to your motion in limine?

17            MS. GLASER:  It's not attached to the motion in  
18    limine because it --

19            THE COURT:  Thank you.

20            MS. GLASER:  -- by the time we filed our -- when we  
21    filed our motion in limine -- there've been so many hearings I  
22    can't be a hundred percent correct, but there's no question --

23            THE COURT:  Including one day before yesterday;  
24    right?

25            MS. GLASER:  Correct.

1 THE COURT: A telephonic hearing when somebody said  
2 Mr. Pisanelli wanted to move a hearing and turned out not to  
3 be true.

4 MS. GLASER: No. That is not correct.

5 THE COURT: That's not what people told my law  
6 clerk?

7 MS. GLASER: I want to be -- and I want to be very  
8 clear. This is what the -- what we understand. What was told  
9 was Mr. Pisanelli's office by email -- and Your Honor has the  
10 email -- offered -- specifically said, we can't meet until  
11 Thursday, today, to discuss the protocol. So we --

12 MR. PISANELLI: And I have to object, since she's  
13 now making representations of what I said. It's in the record  
14 what I said, which doesn't even resemble what she just said.

15 THE COURT: I am --

16 MR. PISANELLI: So I just offer that objection.

17 THE COURT: -- at the point where I have little  
18 patience with representations from counsel that are not based  
19 on written documents or heard in court. And if I don't have  
20 an affidavit from people at this point, it is causing me  
21 graver concern. I don't need counsel and putting my staff in  
22 the middle of a situation between the rest of you guys.

23 MS. GLASER: Okay. I want to -- we sent an email to  
24 Mr. Pisanelli yesterday, because he asked for an explanation  
25 of what happened with Your Honor. And I'm going to give it to

1 you in one sentence, and then I'm going to not say another  
2 word about it. The effort was -- no good deed goes  
3 unpunished. What we tried to do was we simply wanted to see  
4 if the Court was available. We did not represent that Mr.  
5 Pisanelli had agreed. I would never do that. If the Court  
6 were available in the afternoon, then we simply were going to  
7 ask the Court -- ask Mr. Pisanelli, okay, should we meet and  
8 confer this morning on the protocol. If that was misconstrued  
9 or we misspoke, I want to be very clear. The direction from  
10 my office was, just find out if the Court's even available on  
11 Thursday afternoon. That was the issue. Then when -- then  
12 Your Honor generated a phone call. But at no time --

13 THE COURT: No. I asked counsel to generate a phone  
14 call because it appeared that there was an issue after my  
15 staff had been contacted requesting a hearing be moved. And  
16 the person who was saying it was requesting be removed wasn't  
17 the person calling, which always gives us cause for concern.

18 MS. GLASER: I want to be clear. If your clerk  
19 understood us to be asking for the hearing to be moved without  
20 Mr. Pisanelli on the phone, that was a huge, inappropriate  
21 mistake, and we did not intend that at all. All we intended,  
22 and I want to be very clear, was to see if the Court were  
23 available, and then we were going to call Mr. Pisanelli.  
24 Without his agreement we wouldn't -- it wouldn't occur to us  
25 and it wouldn't occur to me to change a hearing in front of

1 Your Honor. And if we put your court staff remotely in the  
2 middle, I want to apologize right now. That was not the  
3 intention. The intention was simply to determine if Your  
4 Honor were even available this afternoon. If the Court were  
5 available, we then intended to call Mr. Pisanelli and ask him  
6 to participate in a call to continue this so we could have a  
7 meeting and confer regarding the protocol. I want to be as  
8 clear as I can be about that. And if there was a -- if we  
9 miscommunicated, I apologize to Your Honor. It was not  
10 intended to misrepresent anything, because we had not spoken  
11 to Mr. Pisanelli at that point, and I want to be very clear.

12 THE COURT: The point I was making -- and I just  
13 want you to be real honest with me, and if somebody else needs  
14 to answer the question because you're not sure of the answer,  
15 please have that person answer the question. There was no  
16 protocol that was discussed with anyone related to what is now  
17 a motion in limine before me on September 28th, other than  
18 what Mr. Williams had proposed last summer and I've repeatedly  
19 suggested people should talk about.

20 MS. GLASER: Correct.

21 THE COURT: Okay. So --

22 MR. PEEK: Your Honor, I will say, though, that on  
23 the 20th, after we came to the hearing before the Court --

24 THE COURT: Hold on. Let me look at my calendar so  
25 I can figure out what day that was. Okay.

1 MR. PEEK: September 20th. Remember -- you recall  
2 that I was here on --

3 THE COURT: And I want to apologize to you, Mr.  
4 Peek. You have been scolded by the Nevada Supreme Court  
5 inappropriately. I am the one who told you to file that writ  
6 because I believe their stay order is ambiguous and unclear.  
7 And so I'm sorry that you got criticized. And if there was a  
8 way for me to take the blame, I would. But, you know, I  
9 apologize. So --

10 MR. PEEK: My shoulders are broad. As I get older,  
11 Your Honor, they get broader. But, Your Honor --

12 THE COURT: Okay. So Justin Jones was here on the  
13 16th --

14 MR. PEEK: Correct.

15 THE COURT: -- for a TRO application, and then you  
16 guys were here on --

17 MR. PEEK: No, not on the TRO application. He was  
18 here on the motion for protective order, and that's the case  
19 in which -- in that main case -- in this main case on the 16th  
20 he was here, and you said, guys, I've been stayed --

21 THE COURT: Yeah.

22 MR. PEEK: -- go ask the Supreme Court for relief.

23 THE COURT: Please.

24 MR. PEEK: So -- and I don't want to get --

25 THE COURT: And then you filed a new case.

1 MR. PEEK: Filed a new case. I don't want to get  
2 into that. I just -- what I'm talking about is on the 20th we  
3 did come before you, and at the conclusion of the hearing on  
4 the 20th I did step outside, did speak with Mr. Pisanelli and  
5 Ms. Glaser. As you know, I was in trial, so --

6 THE COURT: Yeah, in Federal Court, because Judge  
7 McKibben asked me to move my hearing back so you wouldn't have  
8 to miss your jury closing arguments.

9 MR. PEEK: So I spoke briefly with Mr. Pisanelli  
10 about the protocol that had been proposed by Mr. Williams in  
11 his July 8th email, and I know that at the conclusion of that  
12 I said to both Ms. Glaser and to Mr. Pisanelli -- and I know  
13 that it was followed up, because I spoke to Ms. Glaser -- that  
14 she was going to give Mr. Pisanelli a call and work on my  
15 behalf to try to work through what kind of discovery -- what  
16 the extent of the discovery would be on the jurisdictional  
17 issue. I wasn't involved in that, but I -- I just -- I know  
18 that at least there was that moment. And I get what Mr.  
19 Pisanelli is saying, and I know that Ms. Glaser did call Mr.  
20 Pisanelli after that to try to set up that meet and confer.  
21 Beyond that, that's all I know. But I just wanted to just  
22 clarify that, that there was an effort at least on that  
23 jurisdictional issue and what the scope and -- the nature,  
24 scope, and extent of that discovery would be.

25 THE COURT: Okay. So two of my specific instances

1 that are discussed in Mr. Ma's affidavit relate to the court  
2 appearances that we had here and discussions in the hallway  
3 after those.

4 MS. GLASER: And we did make an attempt by email and  
5 by phone to discuss both issues, the scope of the discovery  
6 and -- before the motion was filed -- and also the return of  
7 the documents that is the subject of our motion in limine. We  
8 believe -- I know there've been a flurry of documents, but on  
9 the motion in limine we think that there are two documents  
10 signed by Mr. Jacobs. One document he says wasn't applicable  
11 to him, that he didn't deem in force against another  
12 individual at the company that was indeed applicable to the  
13 company as a whole. He says it wasn't applicable to him. We  
14 have the law, we have documents he himself signed which he  
15 does not back away from, and we have an 11-gigabyte download  
16 the day he was fired that is not explained and not addressed  
17 in any of his papers.

18 We ask the Court in our motion in limine to not  
19 allow those documents to be used, and then Your Honor --  
20 before the motion in limine was filed Your Honor had  
21 suggested, because you thought it was a discovery issue --  
22 we're not entirely in agreement with that, to be honest, but,  
23 nonetheless, that's when last Friday we sent them a protocol.  
24 It was not attached to our original motion in limine, because  
25 that protocol suggestion which was originally made by opposing

1 -- prior opposing counsel and Your Honor, when it was -- when  
2 Mr. Jones was here, you -- at that hearing you had suggested  
3 that the parties -- I think it was Mr. Jones or Mr. Peek, I'm  
4 frankly not remembering entirely, but Your Honor had suggested  
5 at that point let's think about a protocol because it was  
6 actually pointed out to you that Mr. Campbell's partner, Mr.  
7 Williams, had actually suggested a protocol, an ESI provider,  
8 et cetera.

9           So what we're saying is as follows. You're right  
10 that the ESI protocol wasn't part of the motion in limine  
11 'cause it wasn't -- wasn't the thrust of our motion. The  
12 thrust of our motion was quite simply, look, kiddo, in so many  
13 words, idiomatically, you took a lot of documents from us,  
14 there are privileged documents in there, Mr. Williams  
15 acknowledged there were privileged documents, that's when he  
16 stopped looking at the documents. There are trade secret  
17 information in there, there are Macau Privacy Act -- documents  
18 implicating the Privacy Act in there, no question about it.  
19 There has to be, there's so many of them. And we simply said,  
20 give those -- you cannot use those at the evidentiary hearing  
21 because in order for you to get ready for an evidentiary  
22 hearing you've got to review those documents. We don't want  
23 those documents reviewed, we don't think counsel has any right  
24 to look at those documents. Your Honor I think even made a  
25 suggestion -- I don't want to say more than it was. Obviously



1 everybody's bound by the code of professional conduct in terms  
2 of reviewing documents, and anybody looking at documents that  
3 are privileged is obviously subject to a motion to disqualify.  
4 We don't want to get to that.

5 THE COURT: And we actually now know what the rules  
6 are in Nevada for that --

7 MS. GLASER: We do, sort of.

8 THE COURT: -- because of a decision last week.

9 MS. GLASER: Yes. Although it's sort of an  
10 interesting decision, because there it was an anonymous source  
11 for the documents. There's no anonymity here. We know  
12 exactly --

13 THE COURT: No. I understand exactly what you're  
14 saying. But at least we now have a framework for the  
15 analysis.

16 MS. GLASER: We do. And that's what I wanted -- if  
17 you look at the Zahodnik case and the In Re Marketing case,  
18 and the Bumble case, which I guess some people call it the  
19 Merits Incentive case. I call it the Bumble case, but I think  
20 Your Honor knows to what I'm addressing myself --

21 THE COURT: I know what case you're talking about.

22 MS. GLASER: The Zahodnik case, plaintiffs sued IBM  
23 for wrongful discharge. There was a nondisclosure policy and  
24 return all the documents when you leave the employ policy. He  
25 retained the documents there, and he forwarded them to his

1 counsel. And the court said, no, you can't do that, you're  
2 enjoined from disclosure to third parties, and he ordered the  
3 return of the documents to the employer. In Re Marketing --  
4 that's a Fourth Circuit 1997 case.

5 In the In Re Marketing case a former president, he  
6 took documents and he -- I don't know if Your Honor's had a  
7 chance to look at that, but he returned the originals, but he  
8 kept copies, and he refused to agree not to use them. The  
9 court said, no, you've got to return those documents. In that  
10 case counsel was disqualified because the documents weren't  
11 returned. And that is a Texas Appeals Court decision of 1998.

12 And then you have the Bumble case. Documents were  
13 from an anonymous source, didn't know where they came from,  
14 and nobody was prepared, and certainly I'm not prepared, to  
15 attribute any bad motives to counsel who said, guess what,  
16 I've got these documents that came from an anonymous source.  
17 There were no documents there that were privileged, except for  
18 one, which the -- everybody conceded, and there the issue was  
19 was counsel to be disqualified or not, not was there a  
20 requirement the documents be returned or not returned.

21 There is clearly a heightened standard when an  
22 attorney receives documents from his own client, and that's  
23 clearly what happened here. What we're saying, Your Honor --  
24 and, by the way, Counsel says, well, you can't look at  
25 Zahodnik and you can't look at In Re Marketing, not because

1 they aren't well reasoned, but because Mr. Jacobs didn't sign  
2 anything. Well, there's at least four problems with that. He  
3 did sign two documents that required him to keep the documents  
4 confidential, and we've provided those to Your Honor. We've  
5 provided Your Honor also with a policy from 2004 of VML. He  
6 says he was above that policy. He enforced that very policy  
7 against another employee, and we have Amy Lee's declaration,  
8 Your Honor, which isn't refuted, that goes to that issue  
9 specifically.

10           So we know he signed a document -- documents,  
11 plural, requiring them to be kept confidential, we asked him  
12 to return the documents. We're not -- and the reason why Your  
13 Honor's suggestion, frankly, about the protocol, which was not  
14 attached to the motion, is you don't have to worry about what  
15 we're going to do with those documents. We'll give them to a  
16 neutral ESI provider, have everything Bates stamped, and have  
17 an orderly process for determining what's appropriate to be  
18 used, if anything, and what's not appropriate to be used. In  
19 other words, if Your Honor makes a determination at some later  
20 point, wait a minute, this guy did take these documents  
21 inappropriately and he needs to return them all, then what  
22 normal plaintiffs do is they file a request to produce  
23 documents. We're perfectly okay with that. But instead, out  
24 of an abundance of caution, we have suggested this protocol  
25 which says even more than that. If Your Honor doesn't buy --

1 which we believe strongly you should -- based on his own  
2 admissions that he shouldn't use these documents at all, then  
3 at least they have to be reviewed, not by counsel, to  
4 determine what's a trade secret, what's attorney-client  
5 privilege, what's subject to the Macau Privacy Act, and  
6 counsel for plaintiffs are not -- plaintiff is not qualified  
7 to do that. That would just be a complete, in our view,  
8 turning the law on its head.

9           So, yes, our motion in limine doesn't include the  
10 protocol. It says we want the documents back. We're willing  
11 -- and if the Court is inclined, we're willing to -- and we've  
12 got -- let me go back one step.

13           We did get some responses on the protocol last  
14 night. At 8:11 there was a surreply brief filed which lays  
15 out plaintiff's response to our detailed protocol that we'd  
16 sent the prior Friday and attempted to meet and confer about.  
17 I'm not saying he's entirely wrong. We are perfectly prepared  
18 to sit down and confer about that before Your Honor decides  
19 that he's not entitled to anything. That requires further  
20 briefing. He gave us a declaration yesterday that we don't  
21 think is totally accurate -- I'm talking about Mr. Jacobs now,  
22 not Counsel, of course -- and we are glad to respond to that.  
23 But it was filed last night -- or, excuse me, 5:47, when we  
24 were in the air flying here to Las Vegas.

25           My only point is we believe there's plenty in front

1 of Your Honor to grant our motion. At worst case the motion  
2 should be held in abeyance while we sit down and really do  
3 meet and confer. And to the extent we can agree, great. If  
4 we cannot agree, Your Honor will decide what's appropriate for  
5 the protocol and what's not. We think that's the way to  
6 resolve this issue as it stands right now. And I'm glad to  
7 answer any questions Your Honor has.

8 THE COURT: Thank you. I don't have any questions.  
9 Mr. Pisanelli.

10 MR. PISANELLI: Thank you, Your Honor.

11 Your Honor, I must say there's only been one time in  
12 my 20-plus years of practicing that I have had to regrettably  
13 reduce and limit my communications with opposing counsel to  
14 writing, where I just had to insist that I will no longer  
15 communicate face to face with this particular counsel because  
16 it was a constant and consistent exercise of having to refute  
17 misrepresentations about what occurred, and it was with great  
18 disappointment and sadness that I think I find myself in that  
19 place for the second time. I will get to the many, and there  
20 are many, misrepresentations that are made to you almost on a  
21 minute-by-minute basis. I cannot express -- I don't think if  
22 have the vocabulary to express to you how frustrating it is to  
23 sit here and listen to these tales woven before you as if they  
24 were gospel simply because you throw adjectives like "really"  
25 and "clearly" and "absolutely" that, well, then they must have

1 been true.

2 We have a body of rules and law that govern this  
3 proceeding. And if you put them together -- and I'm just --  
4 I'm not talking about a case, I'm talking about rules, whether  
5 it be rules of civil procedure, rules of appellate procedure,  
6 rules of professional responsibility, on and on, and if I --

7 THE COURT: Local rules.

8 MR. PISANELLI: Those, too. And I think if Your  
9 Honor were pressed to find the single most important rule that  
10 governs all of them, I think at least I can make a compelling  
11 argument to you that it comes down to one single, most  
12 important rule that every other rule is filtered through, and  
13 that is the duty of candor to this Court. Candor in all we  
14 do, not just these oral arguments that are his word against  
15 her word, things of that sort, but candor in all we do.

16 We have been experiencing in this case a constant  
17 exercise of duplicitousness, even in the labels given to  
18 documents. You'll recall, Your Honor, we have dealt with this  
19 and this other sister rogue case documents that are called  
20 motions for sanctions, when at their heart they're motions for  
21 injunctions. We've seen reply briefs, including this one,  
22 that are not replies at all, but new, supplemental briefs with  
23 new ideas. And today, of course, here we are again with a  
24 motion in limine. Why in the world did we come up with the  
25 topic motion in limine? Could it be that a motion for

1 injunction wouldn't work because you've already rejected it  
2 several times, or could it be that Sands China doesn't want to  
3 be open and up front with this Court on what it's really  
4 asking for because it might get in the way of its  
5 jurisdictional argument?

6           When someone comes into this court asking for an  
7 injunction, the benefits and protections of the laws of the  
8 state of Nevada and this Court, not just the defense of the  
9 case, not just a jurisdictional debate, but an injunction,  
10 then perhaps that's going to be one of those elements on the  
11 checklist we're going to talk about at the evidentiary hearing  
12 of why Sands China has subjected itself to the jurisdiction of  
13 this Court. Is that why it was called a motion in limine? I  
14 don't know. I doubt we're going to get anyone to stand up and  
15 tell you that was why we used that label.

16           But let me take a few minutes and talk about what it  
17 is that's before us. And I've got to tell you that's not an  
18 easy exercise, either. We started this debate -- I'm sure Ms.  
19 Glaser at this point wishes we would all forget, but we  
20 started this motion with a very simple foundation, that being  
21 ethics charges, ethics charges against me. Ms. Glaser stood  
22 up in this courtroom, said that I was telling you an untruth,  
23 she referenced thousands of pages of documents that I had been  
24 going through, the Jacobs records, and reading them and now I  
25 have put them in the record. Her words to Your Honor were,

1 "In making these disclosures Jacobs's counsel," that's me,  
2 "has made clear that he has no compunction with violating  
3 basic ethic and professional standards that preclude the use  
4 of stolen and/or confidential information belonging to an  
5 adverse party. Neither Jacobs nor his counsel appear to have  
6 any intention of ceasing their activity or making an effort to  
7 comply with the most fundamental tenets of ethical standards."  
8 That was the foundation, that was the introductory remark, the  
9 very first remark of the motion in limine. And let's not  
10 forget, Your Honor, that remark was supported by a sworn  
11 affidavit of Counsel. One certainly would think that when you  
12 come in under the privilege of pro hac vice privileges to  
13 practice in another jurisdiction any communication with the  
14 Court is going to be perfectly accurate, sworn statements to  
15 the Court are going to have that added extra level of  
16 carefulness before we put that into the record.

17 Now, we saw a bit of a schizophrenic approach,  
18 didn't we, to this motion in limine? Having, I'm presuming,  
19 the opportunity to go back and actually read the exhibits that  
20 they were incensed about, the exhibits that were the  
21 foundation of the ethics charges, the foundation of the motion  
22 in limine, I'm sure there was a uh-oh moment, these are not  
23 those records, these are not thousands of pages of, quote, end  
24 quote, "stolen documents," these are Internet documents, these  
25 are even Sands China's records they put in the public record,



1 and these are even the exact exhibits Sands China put in their  
2 own exhibit list. That was the foundation of the ethics  
3 charge, that was the foundation, the introductory, opening  
4 remark of this motion.

5 We saw other schizophrenic moments throughout this  
6 briefing, including the very clever attempt to disguise what  
7 it was they're asking for. We saw, Your Honor, where they  
8 said at one page in their brief that they were asking for  
9 limited relief to preclude the evidence at the hearing. And  
10 in the very next page, on page 8 of their opening brief,  
11 immediately after saying that they only wanted the limited  
12 relief, and I'll quote it, "expressly limits its requested  
13 relief -- SCL expressly limits its requested relief to prevent  
14 the use of these materials in connection with the evidentiary  
15 hearing." One page later, "Accordingly," quote, "SCL now  
16 moves for an order precluding Jacobs and his counsel from  
17 using any of the stolen documents for purpose of preparing."

18 Now, if there is any debate, any discussion that  
19 Sands China has subjected itself to the jurisdiction of this  
20 Court, we need only go to the reply, when they confirmed that  
21 they're really asking for a TRO, this just won't be honest  
22 with this Court and say so, where they say that by granting  
23 their motion, quote, "Doing so will preserve the status quo."

24 I don't know that there's a lawyer that hasn't been  
25 practicing for 25 minutes that doesn't recognize that phrase

1 "preserving the status quo." And so, you know, if we really  
2 are going to be honest with one another, if we're really going  
3 to live up to the single most important cardinal rule of  
4 practicing law in this court, and that is to be honest with  
5 you, let's be fair. This is a motion for an injunction. It's  
6 a motion for an injunction that doesn't satisfy any particular  
7 standard for injunctions, but it's hidden and embedded,  
8 thinking that no one in this room would possibly pick up on  
9 the subtle distinctions between a motion in limine and a TRO.

10 Well, guess what. We all did. We all remember that  
11 we started with an ethics charge, and we all remember that we  
12 ended up with a TRO. So what do we do? I was preparing last  
13 night, Your Honor, and I was thinking to myself, I actually  
14 wrote the words down in my notes, what in the world are we  
15 doing here, what is this exercise. And I finally just had to  
16 come down to the simple concept of let me answer what they are  
17 claiming to be prosecuting, a motion in limine. What is a  
18 motion in limine? Your Honor has undoubtedly dealt with more  
19 motions in limine in your time on the bench than all of us put  
20 together, so I don't need you -- I don't need to educate you  
21 on the point. But just for the record, we all know that a  
22 motion in limine is an exercise to exclude irrelevant and  
23 immaterial matters or it's a motion to exclude matters where  
24 the probative value is outweighed by the danger of unfair  
25 prejudice.

1 Another standard that goes hand in hand with motions  
2 in limine, of course, is this categorical approach, right.  
3 You don't come in and say that there's an entire body of  
4 evidence without saying anything about it, just saying, let's  
5 leave that body of evidence out over here and let's have a  
6 limited fictitious debate on what really happened, pretending  
7 that that body of evidence doesn't exist. Case after case,  
8 jurisdiction after jurisdiction says that's not what a motion  
9 in limine is intended to do, you have to be specific in what  
10 you want. All of these problems, of course, the fact that  
11 they've never attached or addressed any issue about prejudice,  
12 about immateriality, about irrelevance, the fact that they do  
13 this thing categorical, these issues in and of themselves are  
14 reasons to deny their motion.

15 But, of course, we don't end there. And in  
16 connection with the categorical issue what did we hear, Your  
17 Honor? Another exercise of duplicitousness. They say that in  
18 very carefully worded language that we are being criticized,  
19 poor Sands China, because we're asking for categorical  
20 exclusions of evidence and all the while Jacobs isn't giving  
21 us what he has. Notice what was missing from that sentence,  
22 Your Honor, notice what was missing through all of this  
23 briefing was a statement, even an unsubstantiated statement  
24 that we constantly get from counsel without any evidence, we  
25 don't get a statement from anyone that they don't know what we

1 have.

2           It is unfathomable to think that they don't know  
3 what we have. Recall all of this unsubstantiated testimony  
4 from Ms. Glaser. She herself told Don Campbell, I know you  
5 have these three different reports and I'd like them back.  
6 She now comes in without sworn testimony telling you about  
7 what's been downloaded. They now even make the suggestion  
8 that they know what Mr. Jacobs was Googling. Okay. Well,  
9 let's have the evidence about that, let's give me a deposition  
10 of their IT personnel, and I promise I'm going to show you  
11 what really happened at that computer, not Ms. Glaser's  
12 statement, not take my word for it, forget the evidence. They  
13 know exactly what's at issue here, Your Honor. And so this  
14 claim that they're somehow handcuffed, that they can't  
15 identify specific documents that should be excluded because  
16 they don't know what's at issue is utter nonsense. They know  
17 exactly what it is. And that is yet another reason this  
18 motion in limine cannot be granted.

19           Now let's talk for just a moment about the  
20 procedural defects. We start off with an ethics charge,  
21 right. That's what the motion in limine was about, where is  
22 the meet and confer. We get a single moment of candor through  
23 all of these briefings where we do see someone who wrote the  
24 brief, and I'm assuming it was Ms. Glaser or she approved it,  
25 on page 3 of their reply where they say there was none. And I

1 think she confirmed it again today, there was no meet and  
2 confer for this brief. But, of course, shockingly, that was  
3 my fault. It was my fault that subsequent to the filing of  
4 this disguised TRO these efforts to contact me to have meet  
5 and confers about a whole variety of different issues, some of  
6 which we talked about, some of which we didn't, was somehow my  
7 fault, it is my obligation to make sure they follow the rules  
8 on meet and confers, including going through the actual  
9 substance of a meet and confer, actually performing not just  
10 form over substance, but performed what you and the drafters  
11 of that rule require of us, to meet and actually talk and  
12 negotiate your respective positions.

13           Mr. Peek rightly said that in this hallway right  
14 outside your door here all of us huddled after one of these  
15 issues about Colby Williams's protocol, and this was within  
16 seconds of you saying something to the effect that you found  
17 it to be reasonable and you want us to discuss it. Ms.  
18 Glaser, during what she now characterizes or Steve Ma puts in  
19 as sworn testimony, that was a meet and confer, yet she'll  
20 also concede to you, I know because we're going to see some  
21 honesty from her, that she didn't even know what I was talking  
22 about, she didn't know what the email was or where it was. We  
23 had to point it to her. And she had a positive reaction to  
24 it. But to claim, oh, that's what that is, we should talk  
25 about it, was somehow the meet and confer under our Nevada

1 rules is once again an absurdity.

2 Now, Steve Ma and others are putting declarations  
3 in, and I have to concede to Your Honor I don't know who all  
4 the cast of characters are from the Glaser firm. I see a  
5 courtroom where they've all spread themselves out, Team --  
6 whatever, is the game of Risk here, you know, that's got  
7 different [inaudible] on it? They've spread themselves out in  
8 the courtroom. I don't know how many of them are the actual  
9 declarants that are giving this sworn testimony to you. I  
10 don't think Steve Ma is there. I have met him once. I'm  
11 certain I don't see him. But I don't know this gentleman in  
12 the front. He might be one of the declarants, as well, on the  
13 ethics charges. I'm not sure who he is, I just know he's part  
14 of Team Sands.

15 My point is this --

16 THE COURT: It doesn't matter.

17 MR. PISANELLI: It doesn't.

18 THE COURT: Okay.

19 MR. PISANELLI: What does matter, however, is this  
20 sworn false testimony to you that meet and confers have  
21 occurred and if they didn't occur then blame Pisanelli because  
22 he's just putting up a stone wall.

23 Remember -- I'll throw this out. How logical is  
24 that position to begin with? My case is stalled over these  
25 false allegations of stolen documents. My case is stalled

1 over this frivolous concept that Sands China has nothing --

2 THE COURT: Actually your case is stalled by the  
3 Nevada Supreme Court.

4 MR. PISANELLI: Over the concept of jurisdiction;  
5 right?

6 THE COURT: Yes.

7 MR. PISANELLI: I am the one with an incentive to  
8 get through all of it, to get through all this document noise,  
9 to get through the personal jurisdiction. And so to claim  
10 that I am somehow wanting and taking action to stall this  
11 entire process is a little bit of an absurdity.

12 So where does this all lead us? A motion in limine  
13 that's not supported by law, a motion in limine that didn't  
14 comply with the meet and confer requirements, a motion in  
15 limine that never addresses actual materiality and relevance  
16 of evidence itself. Really this is a discovery motion, the  
17 same discovery issues that were the basis of Your Honor  
18 denying Mr. Peek's motions for injunctions, Mr. Peek's motions  
19 for sanctions, the repeated different labels that were given  
20 to a motion for an injunction. It's the same exact issue.  
21 And to the extent there's any debate about that, Your Honor,  
22 remember what Mr. Peek's reply brief was in the motion to  
23 sanction. It was the opening brief in this case. Remember I  
24 told you there was a cut and paste and it was the same  
25 highlighting and the same commas and all that stuff? That's

1 what his argument was on reply, the reply that was filed  
2 before our opposition, and now that same brief finds its way  
3 here, but now it's called a motion in limine.

4 I'm banging my head trying to figure out what to do  
5 about this thing, whether to the misrepresentations to this  
6 Court, the lack of candor of what this motion is really trying  
7 to accomplish, the series of representations to Your Honor  
8 claiming evidence as gospel even though the only testimony  
9 we're getting is from Ms. Glaser herself, I am banging my head  
10 against the wall trying to figure out what is this exercise  
11 really about. It is not about the motion in limine -- I'm  
12 sorry. It's not about the protocol. That's easy. So let me  
13 just take a moment right now. That's easy.

14 You will see, Your Honor, if you even want to talk  
15 about the protocol, because it is a reply issue --

16 THE COURT: Protocol is Item 3 on the agenda for  
17 today.

18 MR. PISANELLI: Okay.

19 THE COURT: It's an add-on item. But I'm not  
20 talking about it right now.

21 MR. PISANELLI: I will talk about it now or talk  
22 outside the context --

23 THE COURT: I don't want to talk about it right now.

24 MR. PISANELLI: Okay. Good. Good. Because neither  
25 do I, because I don't think it's properly part of this motion.



1 THE COURT: Well, it is Part 3 of my agenda for  
2 today, though.

3 MR. PISANELLI: And I'm prepared to talk about it  
4 when you tell me to talk about it.

5 So the issue before us, then, if it's not a  
6 protocol, yet it's not an injunction because I think they've  
7 moved away from that, I don't think the issue of proper -- of  
8 whether Mr. Jacobs is properly in possession of these  
9 documents is before you, either, right. We have Ms. Glaser  
10 again giving some testimony, asking you to take her word for  
11 it because of the long history of forthright communications  
12 from her and her colleagues in this case that what she's  
13 telling you is gospel and that Mr. Jacobs has signed an  
14 agreement. Well, we were forced to address those issues in  
15 our surreply. And I apologize to you and your staff. It is  
16 not lost on us how hard you work generally and how hard you  
17 work simply because of this case, and to give a brief that  
18 late in the night is something I do with caution.

19 THE COURT: I read it this morning. I didn't read  
20 it last night.

21 MR. PISANELLI: Either way, it is only because the  
22 reply brief became, like Mr. Peek's exercise, a new motion.  
23 They had abandoned the ethics because I think they got caught  
24 and probably felt foolish about it, and so they came up with a  
25 new theory now, talking about the contracts. And so I'll take

1 just a few moments to talk about the contracts, and then I'll  
2 sit down and see what questions you may have for us.

3 First of all, the simple issue is what did the  
4 parties agree to. At the end of the day it is the very simple  
5 issue. Sands China has a contract with Steve Jacobs. No  
6 matter how much they want to hide from it, they can't get away  
7 from their Mr. Leven's own remarks to investors on a  
8 conference call, on an earnings call. He has a contract, we  
9 agree that it's a contract, it's called the terms sheet. We  
10 have some other documents -- excuse me, Your Honor.

11 (Pause in the proceedings)

12 MR. PISANELLI: I'm sorry. They're jumping down my  
13 throat because I'm talking faster than I'm thinking. Of  
14 course the terms sheet is with Las Vegas Sands. So we have  
15 the contract with them, and they don't -- Las Vegas Sands does  
16 not bargain for all of these rights that they want. They  
17 don't ask for them, and they don't get them. And so what do  
18 they do with that? They say, well, you used to have  
19 contracts, the Vagus Group used to have a contract, VML, a  
20 consulting contract, right, we're stuck with VML.

21 Well, there's lots of problems there. First of all,  
22 the terms sheet with Las Vegas Sands supersedes everything.  
23 The parties said so in writing in their side letter, they  
24 agreed to it. Second of all, where's VML? I haven't heard  
25 Ms. Glaser say that she represents VML. I haven't heard Mr.

1 Peek say he represents VML. VML can't come in here under --  
2 I'm sorry. These two parties can't come in here enforcing  
3 VML's rights, if it even has any, and Vagus Group isn't a  
4 party to this case, either. So, you know, these are parties  
5 that have nothing to do with anything. They were superseded  
6 in the first place, and they're not even parties to this case,  
7 so we can't and should not even talk about them.

8 And then we have this absurd argument supported by a  
9 declaration from someone I have no idea what her title is or  
10 why she would purport to have personal knowledge, saying that  
11 somehow, some way --

12 THE COURT: She was the lady who appeared at the  
13 Rule 16.1 conference by videoconference; correct?

14 MR. PEEK: No. That was Ann Salt, Your Honor.

15 THE COURT: Oh. That was a different lady. Okay.  
16 Sorry.

17 MR. PISANELLI: We have a different affiant  
18 testifying that Steve Jacobs as president, CEO, is bound by  
19 the employee manual with VML because, to her knowledge, he  
20 didn't object to it. He didn't sign it. You don't see a  
21 signed agreement there about what that document says, and  
22 you'll never see a signed agreement there. I'm not sure Ms.  
23 Glaser is being forthright about that, either. And what she  
24 hid from you on the point is the fact that Mike Leven  
25 specifically told Steve Jacobs that he is not bound by that

1 agreement because Steve Jacobs refused to be bound by that  
2 agreement, he refused to have his life and his contract  
3 governed by Macau law, and he said, it's okay, Mr. Leven did,  
4 don't worry about that, our deal is the terms sheet. We put  
5 sworn testimony from the actual principals. Of all the people  
6 that are scattered throughout the courtroom I don't believe  
7 Mr. Leven's one of them, but I sure would have liked to have  
8 seen a declaration from him if they wanted to say that there's  
9 a legitimate issue under debate here as to whether Steve  
10 Jacobs had agreed to be an employee, something I guess at the  
11 same parallel or equation of the valet parker or a bellman or  
12 somebody else and therefore he's subject to that same  
13 handbook. It's an absurd argument, and it's a desperate  
14 argument. Las Vegas Sands had an opportunity to bargain, and  
15 they did. And they have to live with that bargain.

16 Now, the elephant in the room for Sands China, of  
17 course, Your Honor, is something that I foreshadowed last time  
18 we were here. And that, of course, is the issue of waiver.  
19 Let's assume for the sake of debate that there was some  
20 legitimate argument that Sands China had that no matter what  
21 these documents are they're entitled to be the sole party that  
22 possesses them. What did Sands China do -- and we have to ask  
23 that question because the law mandates that we do -- what did  
24 Sands China do to protect its rights? For that matter, what  
25 did LVSC do to protect its rights? Well, first of all, they

1 unceremoniously escorted Mr. Jacobs -- on the day they claim  
2 he downloaded documents they escorted him from Mr. Leven's  
3 office with security guards to his room to pack, and took him  
4 to the border. Can I go to my office, Mr. Jacobs asked. No,  
5 you cannot. They escorted him to the border with his laptop  
6 and presumably with the thumb drives he uses and that Sands  
7 China gave to him with information on them, escorted him to  
8 the border and said, hope to never see you again. A year or  
9 so ago, more, escorted him to the border and did nothing.

10 Then they get sued. What did they do when they got  
11 sued? Same exact thing. Nothing. Sands China apparently  
12 starts going through his computer. Matter of fact, we have  
13 reason to believe they went through his computer that day.  
14 That's why I can't wait to depose the IT people to see who  
15 exactly was downloading that day. They went through his  
16 computer the day of his termination, and they let their  
17 counsel know, oh, boy, he's got some stuff, he's got some  
18 reports on Macau officials, we need to get those investigative  
19 reports back. They didn't say, we want everything back; they  
20 didn't say, we want the email back; they didn't say, we want  
21 the memos back; they didn't say, we want all of the financial  
22 stuff back; they didn't say they wanted every single thing  
23 that this man carried with him on a daily basis because his  
24 job required him to be so mobile. They said, give us that  
25 really incriminating, inflammatory stuff. A letter campaign,

Daily usage

Begin date 3/25/2013

End date 3/25/2013

| Date      | Items | Value  |
|-----------|-------|--|
| 3/25/2013 | 12    | \$10.71  |
|           | 1     | some of it is a little humorous, between Ms. Glaser and Mr.    |
|           | 2     | Campbell ensued, and nothing happened other than Mr. Campbell  |
|           | 3     | saying, you can have the originals, but, in so many words,     |
|           | 4     | you've got to be crazy if you think I'm giving you everything  |
|           | 5     | back, you have no right to it back and why in the world would  |
|           | 6     | he do it. And he didn't.                                       |
|           | 7     | So what did they do then? Crickets. Nothing.                   |
|           | 8     | Absolutely nothing. Colby Williams tells them in July of this  |
|           | 9     | year -- he didn't say, there's privileged communications in    |
|           | 10    | here and so I'm going to stop reviewing. Thank God he wrote    |
|           | 11    | that so we can stop debating about what he really said. What   |
|           | 12    | he really said was, I see that there's privileged              |
|           | 13    | communications in here that might have nothing to do with this |
|           | 14    | case and I'm not interested in wasting my time reading that    |
|           | 15    | stuff so why don't we enter into this very simple protocol.    |
|           | 16    | He didn't say, I'm raising my hands and stopping reading       |
|           | 17    | because there's privileged communications. He said the         |
|           | 18    | opposite. He said that Steve Jacobs was entitled to possess    |
|           | 19    | these privileged -- otherwise privileged communications        |
|           | 20    | because he had access them, he was the CEO and he was the      |
|           | 21    | president. That's what Colby Williams said. And what did       |
|           | 22    | they do protect their rights then? Nothing.                    |
|           | 23    | It is only until Mr. Peek in a frenzy that I had               |
|           | 24    | somehow committed ethics violations files a motion for         |
|           | 25    | sanctions for the very first time, a year later, that we see   |

1 these people getting off their hands and claiming outrage and  
2 prejudice and, oh, my God, we need this stuff back  
3 immediately. "Criminal behavior" was the phrase used.  
4 "Unethical behavior" is the words used against me after a year  
5 of knowing what he had. This is not a fact that can be  
6 overlooked. They would like you to. They will say, we didn't  
7 really know the magnitude until Colby's email. Well,  
8 discovery as I predict will show that they both will have to  
9 retract from that position when we find out when they were  
10 going through Steve's computer, which we already know was the  
11 day of, we will find out just when all of this came to light  
12 that it was only in July -- as if that's a good enough excuse,  
13 by the way, but it's only in July that they finally realize  
14 the magnitude. Well, that's utter nonsense. They knew from  
15 the day he left what he had and all they cared about was  
16 getting back these investigative reports from -- about  
17 government officials. That's what they knew about.

18 So where does it take us full circle? And I'm  
19 sorry, I know I'm going on a little longer than you would  
20 prefer.

21 Where does it take us? We started with a motion in  
22 limine over ethics charges.

23 THE COURT: It's okay. I just finished a two-day  
24 hearing that took fifteen days. So, you know, give you an  
25 extra fifteen minutes --

1 MR. PISANELLI: I appreciate that.

2 THE COURT: -- for both of you.

3 MR. PISANELLI: Thank you.

4 So where do we find ourselves? When I was banging  
5 my head last night wondering what do I argue, do I argue the  
6 open motion, do I argue the reply motion or brief -- I should  
7 call it a reply motion, because that's what it is -- do I  
8 reply to the new arguments that are being presented today.  
9 And I think the only thing I really can do is say that we must  
10 end where we started, a motion in limine based upon ethics  
11 charges that had no -- no meet and confer -- I was going to  
12 say 2.34, but I think this one is 2.47 -- and a motion that  
13 has nothing to do with relevance, prejudice, and things of  
14 that sort that you weigh on a daily basis when you have a  
15 trial to determine the probative value of information. They  
16 have not now, they will not ever tell you that these records  
17 have no probative value. They only tell you in fancy words  
18 that have nothing to do with reality that they are somehow  
19 prejudiced and they get to be the gatekeeper.

20 Well, the law doesn't say you get to be a  
21 gatekeeper, and the law certainly doesn't say you get to get  
22 an order directing you to be the gatekeeper over something  
23 called a motion in limine. For all those reasons, Your Honor,  
24 we ask that it summarily be denied. And we'll take up this  
25 issue of where we are on the protocol whenever you tell me to.



1 THE COURT: Item 3 on today's agenda.

2 Ms. Glaser.

3 MS. GLASER: Thank you, Your Honor.

4 Your Honor, the policies of nondisclosure and of  
5 confidentiality were signed by Mr. Jacobs. The motion in  
6 limine was filed to get back documents that he took with me.

7 THE COURT: A motion in limine is not used to get  
8 back documents. It's used the limit the evidence that is  
9 admitted or to allow evidence to be admitted during a  
10 particular hearing.

11 MS. GLASER: We could not -- and I want to be very  
12 candid with the Court, which I think I have been. And if Your  
13 Honor for a moment -- I mean, that's more important to me than  
14 anything else I can say to Your Honor. At no time was there  
15 ever, ever an effort to do anything other than be a hundred  
16 percent candid with this Court by me or anybody else in my law  
17 firm or -- and I certainly can speak for Mr. Peek. So if -- I  
18 want to get that out of the way.

19 Mr. Pisanelli -- there was three efforts to meet and  
20 confer. I can't meet and confer with myself, and I'm saying  
21 to you as an officer of the court -- and maybe I should put  
22 everything in writing, some of which is in writing -- we did  
23 try to meet and confer, and we were unsuccessful. I am not  
24 suggesting it was nefarious. It simply wasn't possible.  
25 That's number one.

1           Number two, there is no legal authority for the  
2 proposition that a document return policy must be in an  
3 employment agreement in order to be enforceable, number one.  
4 Number two -- and I -- we actually have, and I'm glad to at  
5 some point pursuant to your Court -- the Court's supervision,  
6 we have a IT report, and there were over 11 gigabytes of  
7 documents downloaded about a half an hour before Mr. Jacobs  
8 was fired on July 23, 2010. And they were downloaded from his  
9 computer when he was in his office. Maybe somebody else did  
10 it. That's possible. I can't -- I am not here to tell you  
11 that I know he didn't do it or he did do it, either way. I  
12 know that they were downloaded from his computer and he was in  
13 his office and it was a half an hour before he met to be  
14 fired, period. Those documents that he took should not be  
15 used in an evidentiary hearing in connection with  
16 jurisdiction.

17           Yes, we made a motion in limine because we can't ask  
18 -- and I'm -- no hiding the ball here. We can't ask for  
19 affirmative relief. We are asking to be out of this case on  
20 jurisdictional grounds as quickly as humanly possible. We  
21 asked for that November 21st hearing, and Your Honor is right,  
22 we have discovery issues that require to be put off. And I  
23 understand that. Not because we're trying to delay. We want  
24 to move forward as quickly as we can. And I'll get to the  
25 discovery motion in a moment.

1 THE COURT: That's Item Number 2 on my agenda.

2 MS. GLASER: I understand that, Your Honor, very  
3 clearly.

4 There are downloaded documents that should not be  
5 used until the Court, period, makes a determination about  
6 which documents should be used and which documents should not,  
7 if any of them should. It is -- we have provided you caselaw  
8 -- I was surprised to hear Mr. Pisanelli say this, that  
9 there's no caselaw that says you can't use these documents.  
10 Contrary to what is -- the cases we did provide you, you're  
11 not allowed to use documents. You're supposed to return  
12 documents that you improperly took. You're right, hundred  
13 percent. All we get with the motion in limine is you can't  
14 use them at the hearing. I understand that. There's an  
15 argument, well, you didn't specify which documents you're  
16 talking about. Your Honor, you can't specify what you don't  
17 know. There's no -- you have been provided no declaration  
18 that we know what was taken. If we knew what was taken, we  
19 wouldn't be here. We have no idea what was taken by Mr.  
20 Jacobs -- excuse me, by who we believe to be Mr. Jacobs the  
21 morning, July 23, 2010, that somebody in his office from his  
22 computer downloaded over 11 gigabytes of documents. Nobody  
23 has played fast and loose with this Court. Whether we were  
24 here by pro hac vice or we were here because we are otherwise  
25 members of this bar, nowhere at no time do we ever deal with

1 anything other than complete candor with this Court.

2 Documents were taken by appears to be Mr. Jacobs.

3 His lawyer has admitted -- Mr. Campbell has admitted, his  
4 prior lawyer, that he has these documents. We don't know what  
5 they are. We want those documents to be excluded from  
6 evidence at the time of the evidentiary hearing. The protocol  
7 is a separate -- I acknowledge that to you, is a separate  
8 vehicle to determine what documents are appropriately used and  
9 what documents are not, both in the litigation generally, but  
10 certainly in the evidentiary hearing.

11 So, Your Honor, we ask -- at worst this motion  
12 should be put off because perhaps it's premature until there's  
13 a determination made by Your Honor with respect to the body of  
14 these documents, whether they can be used at all and/or  
15 whether some of them, many of them are privileged. The fact  
16 that he came into possession of them as the CEO of the company  
17 and has privileged documents in no way takes -- does that take  
18 away from the fact that they're privileged and can't be  
19 provided to either counsel or third parties or the Court.

20 Your Honor, if you have any questions, I'm glad to  
21 answer them.

22 THE COURT: Mr. Sedlock has a note for you. Isn't  
23 the Mr. Sedlock?

24 MS. GLASER: No. That's Mr. Marcus.

25 THE COURT: Oh. I recognize him from other

1 hearings.

2 MR. MARCUS: Good to see you, Your Honor.

3 THE COURT: I'm sorry I can't remember your name.

4 MS. GLASER: Your Honor, we did not -- the reports  
5 that we asked for don't come from this 11 gigabytes. I want  
6 to be clear about that. These reports were given -- they're  
7 watermarked reports to prevent obvious things, and they were  
8 given to Mr. Jacobs, we learned in our investigation, after he  
9 filed the lawsuit, and we ask for them back. That has nothing  
10 to do with the download on July 23, 2010, nothing to do with  
11 it. They weren't part of that. And I assume Mr. Pisanelli  
12 doesn't know that, but certainly his client knows that. Our  
13 investigation with respect to what occurred was after  
14 plaintiff's counsel disclosed plaintiff's possession of over  
15 11 gigabytes of documents. That's when we did our  
16 investigation and made the determination that these documents  
17 were taken without our knowledge. We then learned about the  
18 download on July 23. We do not have any record with respect  
19 to what was taken. We can't reconstitute that. And I'm here  
20 to tell you that. And I'm glad to have our IT expert examined  
21 at a deposition under penalty of perjury and to testify about  
22 exactly what I'm saying to Your Honor.

23 Again, I think at worst this motion should be  
24 deferred, because we intend to be making a motion in limine to  
25 prevent documents that are improperly in Mr. Jacobs's

1 possession from being used in connection with the evidentiary  
2 hearing without authorization from this Court. Thank you,  
3 Your Honor.

4 THE COURT: Thank you.

5 The motion is limine is denied without prejudice for  
6 failure to comply with EDCR 2.47. The motion may be renewed  
7 upon good-faith efforts to confer. If counsel are concerned  
8 about accurately documenting the conversations that occur  
9 during the 2.47 conference or any future 2.34 conference, I  
10 would recommend the use of a court reporter for in-person  
11 meetings. If it is a telephone call and someone decides to  
12 record the telephone call, you must disclose the fact that you  
13 recording the telephone call.

14 Anything else related to this motion before I go to  
15 Motion Number 2?

16 MS. GLASER: Your Honor, I do have a question, if I  
17 might. With respect to the denial --

18 THE COURT: I am not denying any substantive basis  
19 in the motion at all.

20 MS. GLASER: That's what I'm asking. Thank you,  
21 Your Honor.

22 THE COURT: Purely procedural.

23 MS. GLASER: Understood.

24 MR. PISANELLI: And for this motion, Your Honor,  
25 just so the record's clear, I will accept Ms. Glaser's

1 invitation to depose her IT personnel.

2 THE COURT: I'm not there yet. That's Item 4 on my  
3 agenda.

4 All right. Let's go to your motion for  
5 clarification. And I apologize the other day for vacating a  
6 hearing without you present, Ms. Glaser. But it became  
7 apparent during our hearing that there was no way we were  
8 going to be able to be ready, given the issues that had to be  
9 accomplished and the position the Nevada Supreme Court took  
10 with respect to the extraordinary relief that I instructed Mr.  
11 Peek's firm to accomplish.

12 MS. GLASER: I have to say, Your Honor, I have never  
13 had a judge be as candid as you have been with respect to  
14 that. And it is not lost on me, and it's very much  
15 appreciated. So thank you for that.

16 THE COURT: But I apologize, because Mr. Ma was  
17 here, so I took the opportunity to have him come up to  
18 participate and then let him go back while I dealt with the  
19 other case so you weren't making an affirmative appearance in  
20 that case.

21 MS. GLASER: Not a problem. Thank you.

22 THE COURT: All right. Now we're on your motion for  
23 clarification.

24 MS. GLASER: Your Honor, I don't think anything  
25 speaks better about why we need a clarification than the

1 opposition to the motion for clarification. Your Honor may  
2 recall, and we keep harping on this, there were two things in  
3 the reply papers -- excuse me, the opposition papers that in  
4 our view are simply wrong. We've been up to the Nevada  
5 Supreme Court and -- as Your Honor well knows, and in -- I  
6 want to just address -- I want to address two points. Your  
7 Honor will recall that in the opposition they talk about, hey,  
8 we get discovery with respect to specific jurisdiction. And I  
9 want to remind the Court of three things. In their answer in  
10 the Nevada Supreme Court with respect to what was before the  
11 Nevada Supreme Court and what had been before Your Honor on  
12 the motion to dismiss Mr. Jacobs says, and I'm quoting from  
13 page 1 of his brief -- this is the answer in the Nevada  
14 Supreme Court, "Jacobs asserted two grounds for personal  
15 jurisdiction -- 'transient' and 'general' jurisdiction,"  
16 number one.

17           Number two, on plaintiff's motion to conduct  
18 jurisdictional discovery the first page of the motion, "Jacobs  
19 has already shown this Court that there is more than good  
20 reason to believe that Sands China is subject to general  
21 jurisdiction here."

22           Third, the order granting petition for writ of  
23 mandamus from the Nevada Supreme Court, if you go, Your Honor,  
24 to the third page, this court says, "We therefore direct the  
25 District Court to revisit the issue of personal jurisdiction



1 over petitioner by holding an evidentiary hearing and issuing  
2 findings regarding general jurisdiction." There is no  
3 reference to specific because it was dropped by prior counsel.  
4 The court didn't have it to review, the court didn't consider  
5 it, and the court didn't order an evidentiary hearing in  
6 connection with it. So that's number one.

7 Then for the first time -- actually, it's not the  
8 first time. It was raised in oral argument when we were last  
9 before Your Honor. There's now suddenly a theory apparently  
10 attributable to general jurisdiction that talks about agency.  
11 And I want to address agency for a moment. Because, again,  
12 that's why the discovery is too broad, in our view, and why it  
13 needs --

14 THE COURT: Are you referring to the quote I gave  
15 from the transcript of the original motion to dismiss, or are  
16 you referring to something else?

17 MS. GLASER: With respect to what I just said?

18 THE COURT: The agency issue. The new issue that  
19 you're talking about. I as part of our hearing recently went  
20 back and read part of the transcript during our hearing about  
21 what my finding really was --

22 MS. GLASER: Correct.

23 THE COURT: -- related to the board members.

24 MS. GLASER: Yes. Yes.

25 THE COURT: Okay. I just want to make sure that --

1 that's always been an issue to me.

2 MS. GLASER: Okay. And I want to address that.

3 THE COURT: Okay.

4 MS. GLASER: Thank you for asking the question.

5 What is said at page 17 of its opposition to the  
6 motion to dismiss, "Mr. Jacobs," I'm quoting, "seeks to  
7 establish jurisdiction over SCL based on SCL's contacts with  
8 the forum --" it goes on to say, and Counsel tries to take  
9 advantage of this "-- not just those attributable to Las Vegas  
10 Sands Corporation."

11 In the answer to the petition, in their answer to  
12 the petition at page 5, and I'm quoting, "SCL is subject to  
13 personal jurisdiction based on its own," based on its own,  
14 "contacts with Nevada." That's their -- that's the position  
15 that they presented to Your Honor, and that's what went up to  
16 the Nevada Supreme Court, not any so-called agency theory.  
17 And by agency, just so we're not oblique here, they're  
18 essentially saying that -- I guess that Las Vegas Sands acted  
19 as -- or an officer or director acted as an agent for Sands  
20 China in connection with actions taken in Nevada. I guess  
21 that's the theory. And what we're saying is that wasn't  
22 briefed, it wasn't the position they took before Your Honor on  
23 the motion to dismiss, and it certainly wasn't reviewed by the  
24 Nevada Supreme Court when they issued their writ.

25 Now, they have acknowledged that they are not

1 alleging personal jurisdiction over SCL by virtue of any  
2 conduct of SCL's parent, LVSC. Now -- and again I'm quoting  
3 from the -- from the answer, "As Jacobs explicitly stated to  
4 the District Court, he never sought to drag SCL into Nevada on  
5 LVSC's coattails. Instead, he asserted personal jurisdiction  
6 over SCL based on SCL's own contacts," own contacts, "with  
7 Nevada. SCL is subject to personal jurisdiction based on its  
8 own contacts with Nevada. For purposes of this dispute the  
9 affiliation between SCL and LVSC is the reddest of herrings."

10 That's where we start. I believe it's quite clear  
11 that that's a new theory. But, in any event, we're not here  
12 to reargue. We obviously respectfully disagree, but we're not  
13 here to reargue discovery. That ship has sailed. What we're  
14 saying is that you don't need to take Mr. Kay's deposition,  
15 and we outlined, I thought quite well, but perhaps not, why  
16 that was inappropriate. Mr. Kay was the CFO and executive  
17 vice president of Las Vegas Sands. I don't know if Your Honor  
18 remembers, and I'm -- and I'm not going to correctly quote  
19 you, but Your Honor was -- when we had this discovery issue  
20 before Your Honor on whether there should be discovery or not  
21 you were talking about, look -- you said it perhaps nicer  
22 than --

23 THE COURT: It's on page 43 of the transcript.

24 MS. GLASER: You were a little nicer than I'm saying  
25 it now, but you said, look, they have a title here that they

1 are chairman of Las Vegas Sands and chairman of Sands China.  
2 And then you went on to -- and Mr. Leven, no question, was a  
3 special consultant to the board of Sands China, and he's also  
4 an officer of Las Vegas Sands. And that was significant. And  
5 I'm not -- whether I agree or disagree, Your Honor was quite  
6 clear about that. I'm distinguishing, Mr. Goldstein, who's  
7 the president of Global Gaming at Las Vegas Sands Corporation,  
8 and he's been that since January 1, 2011. He's also executive  
9 vice president, and he had a prior management position with  
10 Las Vegas Sands, not with Sands China. Never an officer or  
11 director of Sands China, period. Mr. Kay is the CFO and  
12 executive vice president of Las Vegas Sands China [sic] since  
13 December 1, 2008. He's never been employed by anybody  
14 connected with Sands, anybody before that date. And he has  
15 always been an officer of Las Vegas Sands Corporation, never  
16 of Sands China.

17 So if you go to, for example, the next point, the  
18 Request Number 15, that is, quote, "Services performed by Las  
19 Vegas Sands on behalf of Sands China --" I think I'm directly  
20 quoting or something close to that, "-- regard site  
21 development, recruiting of executives, marketing Sands China's  
22 properties, negotiation of the joint venture with Harrah's,  
23 negotiation of Macau real estate to Stanley Ho." Your Honor,  
24 just too broad if you're considering general jurisdiction, the  
25 contacts that Sands China through its representatives has

1 here, whether that is sufficiently pervasive to justify the  
2 Court exercising jurisdiction over Sands China.

3 Request Number 18, "Reimbursement to Las Vegas Sands  
4 China's executives for work related to Sands China." Again,  
5 we don't -- we have always taken the position, and it's a  
6 matter of public record, Las Vegas Sands owns 70 percent of  
7 Sands China has, period. We've also emphasized to the Court  
8 it's a separate Hong Kong entity on the Hong Kong Stock  
9 Exchange, and no question it's required to be independent.  
10 They don't have bank accounts here, et cetera. We went  
11 through all this. I won't bore you with that again.

12 What we're asking the Court to clarify quite  
13 clearly, and, frankly, we were accused of -- this actually  
14 being a motion for consideration. I think there's nothing  
15 more obvious than a reconsideration when now we're being told  
16 that you're supposed to allow discovery with respect to  
17 specific jurisdiction, which was clearly not the position and  
18 not what was ordered by the Nevada Supreme Court. That's  
19 reconsideration. But having said that, we're not -- we're  
20 simply trying to demonstrate to the Court that specific  
21 jurisdiction clearly is out. Agency was not addressed before  
22 Your Honor, nor was it addressed in the Nevada Supreme Court,  
23 and we think that one's out, and therefore the limitations on  
24 the categories and the people being deposed ought to be more  
25 significant than it is right now.

1 THE COURT: Thank you.

2 Mr. Pisanelli.

3 MR. PISANELLI: Here we go again. Motion for  
4 clarification. I'm assuming underlying the word  
5 "clarification" is Ms. Glaser's concession that she's  
6 confused.

7 Now, what she did just tell you in relation to our  
8 position I guess is that she was confused that there were a  
9 longer list of grounds for hauling Sands China into court here  
10 than she had realized at that hearing. Or is she confused  
11 that we actually were quite crystal clear about our position  
12 at the hearing but later went back and took a word or two out  
13 of context and said because an argument was being made about  
14 general jurisdiction everything else was eliminated? For  
15 instance, Your Honor, never had to get to transient  
16 jurisdiction. Neither did the Supreme Court. But neither  
17 Your Honor nor the Supreme Court ever said transient  
18 jurisdiction's off the table. She tried that one and lost  
19 that one before.

20 So, you know, all I ask on this topic is just let's  
21 be forthright here, right. I didn't throw out any procedural  
22 hurdles, I didn't say that there's time limits that were  
23 missed in our opposition. I just said, let's just please be  
24 honest with each other, there's no confusion, there's no  
25 confusion as to whether Mr. Kay gets to be deposed or not.

1 She knew what your order was. She even sought clarification  
2 at the hearing. There's no confusion, there's no  
3 clarification needed here.

4 If she wants me to say it again, I'll say it again.  
5 If she wants to hear the different theories we have of why  
6 this company is subject to personal jurisdiction, I'll say  
7 them again. General jurisdiction based upon Sands China's  
8 contacts with Nevada. General jurisdiction based upon the  
9 agency role that LVSC played on behalf of Sands China. And  
10 I'm sure it's not lost on Ms. Glaser that agency goes along  
11 with subagency. We're not here to have a debate over form  
12 over substance, we're here to figure out whether Sands China  
13 had contacts with Nevada, its agents, that were performing  
14 services for Sands China in Nevada that Sands China otherwise  
15 would have had to perform for themselves. That's what the  
16 Ninth Circuit told us to do, that's what the Ninth Circuit  
17 says is the question to be asked, not form over substance.  
18 Doesn't say, well, was the agent from LVSC -- did it have a  
19 title in performing those agency functions. No. Neither did  
20 Your Honor. The only party that comes forward saying that  
21 agency goes hand in hand with title is Ms. Glaser.

22 Agency has nothing to do with title. Matter of  
23 fact, Sands China can have agents in Nevada working on its  
24 behalf which would be minimum contacts that would be taken  
25 into consideration for purposes of personal jurisdiction even

1 if they don't work for LVSC. It doesn't matter whether  
2 Sheldon Adelson had one or two titles. It's certainly an  
3 issue for you to consider of what his role was, but it doesn't  
4 matter whether he could or could not have been acting as an  
5 agent.

6 Same thing with Mr. Kay. We know what he was doing.  
7 We've already had this debate. This isn't clarification.  
8 This is reconsideration. They know what Mr. Kay does. He was  
9 in charge of the financing, financing which occurred in  
10 Nevada, financing for Sands China that was negotiated and  
11 executed here on Las Vegas Boulevard with the agent of Sands  
12 China, Mr. Kay.

13 Same thing with Rob Goldstein. The issues are  
14 identical. It doesn't matter if he has a title, and Ms.  
15 Glaser has never been confused about that topic. I'm certain  
16 she wasn't confused.

17 To somehow run from specific jurisdiction also is an  
18 odd position to take that that is off the table of whether  
19 Sands China had contacts with Nevada relating to the actual  
20 wrongful termination of Mr. Jacobs, whether Mr. Adelson, the  
21 person who by all measures from everything we've seen made the  
22 decision to terminate Mr. Jacobs, made the instruction to tell  
23 Mr. Leven to give him an ultimatum, give him a half hour to  
24 decide whether he will quit or be terminated and have him  
25 escorted to the border. That decision, she says, shouldn't



1 come before you despite that that decision occurred here on  
2 Las Vegas Boulevard, despite that that's where those  
3 instructions came from, that's too specific and we shouldn't  
4 have anything to do with it.

5 And I won't be redundant on her attempts to run from  
6 the transient jurisdiction, which really could and very well  
7 may at the end of the day be more important than all of this  
8 other stuff that we're going to debate. The bottom line is  
9 they're not confused about anything.

10 Now, she also claims to be confused about the dates  
11 for the discovery that you told us about, although she hasn't  
12 really touched upon it much, if at all, in oral argument.  
13 What's that confusion about? Your Honor rightly put the end  
14 date at the filing of the complaint. And a theory that I just  
15 can't understand where it comes from and what authority  
16 supports it, Ms. Glaser would have you pull the discovery back  
17 to the time of termination despite that virtually every case  
18 which talks about -- either at the United States Supreme Court  
19 or at the State Court levels, any case that talks about this  
20 issue says over and over and over that the filing of the  
21 complaint is relevant for purposes of determining contacts  
22 with the state on a jurisdictional purpose -- or basis, and  
23 she wants to tell you, no, no, no, no, let's just have it when  
24 Steve Jacobs was terminated. And why does she say that, Your  
25 Honor? Because she knows that Mike Leven took over the

1 position as president and CEO, she knows that he was running  
2 the company from Las Vegas Boulevard here in Nevada, the  
3 Venetian's headquarters, and she doesn't want the evidence to  
4 come in about those very substantial contacts. Why else would  
5 she say, no, let's push it back to the date of his  
6 termination?

7           There's no confusion. She's not confused what you  
8 said. There wasn't new evidence, wasn't new law, there's no  
9 confusion. It's a request for a do over, telling you you got  
10 it wrong. That's all it is, you got it wrong, Judge.

11           Same thing, she says, on the start date, that it  
12 should be from the IPO. What? The IPO, because it could not  
13 logically without money have been doing anything. Well, how  
14 about some evidence about that? I think we're going to find  
15 that it had lots and lots and lots going on, lots of contracts  
16 were being put in place for its benefit or even being executed  
17 on its own. And this concept that we shouldn't -- we should  
18 turn a blind eye and again have a fictitious debate over what  
19 happened by turning our head against relevant evidence during  
20 a time period for reasons -- I don't know, public policy? I  
21 can't even think of what the logic would be to intentionally  
22 turn our back on evidence and start at the IPO, rather than  
23 sometime earlier when Sands China, either in its official  
24 capacity or its predecessor entities or its promoters, the  
25 people that were creating it, were actually having contact

1 with Nevada.

2           The long and short of it is this, Your Honor. You  
3 already decided all these things. And I don't need to rest on  
4 that simple issue, Bob, I don't need to rest on the simple  
5 issue that you've already decided, though I could. The issue  
6 is you decided it because you thought about it and you  
7 considered the debate and you considered the arguments and you  
8 considered the evidence and the law. That's why we shouldn't  
9 change this whatsoever. Sands China was not thought up as an  
10 afterthought.

11           THE COURT: You agree, though, that if I think I was  
12 wrong I should change it?

13           MR. PISANELLI: Well, that depends if you're right  
14 about being wrong. So we'll have to see exactly what it is  
15 that you're talking about.

16           MR. PEEK: That's a good concession, Jim.

17           MR. PISANELLI: But if there is an issue that you're  
18 considering, I'd be happy to address it. But I just don't see  
19 it, Your Honor. The only argument -- I'll be frank with you.  
20 I think the only argument even worthy of discussion, though it  
21 is not clarification, it is indeed still a motion for a  
22 reconsideration, is whether we should go pre incorporation on  
23 Sands China. They say that, you know, we're going to have an  
24 argument about contacts Sands China had before its  
25 organizational documents were filed in the Cayman Islands.

1 And I would suggest to Your Honor -- again, I'll concede that  
2 at least that's a fair debate. But it shouldn't -- you  
3 shouldn't change it. We should go back to January 1st for a  
4 few reasons. One, they've already stipulated to that window.  
5 I think she forgot about that when they filed this opposition.  
6 That's a window they've already stipulated to.

7 And secondly, and it was the last point I was going  
8 to make, that is it is a fiction to say that in an  
9 organization of complexity that LVSC is that Sands China was  
10 an afterthought that came about in a spur of the moment and  
11 there really was nothing going on pre incorporation -- and by  
12 incorporation we're talking about filing of documents. This  
13 army of lawyers and accountants and executives were doing a  
14 lot. They were doing a lot in Nevada for the benefit of that  
15 entity and for the benefit of the preexisting entities that  
16 would become Sands China. And we're entitled to analyze to  
17 see whether it actually was an entity that had its name  
18 changed, was merged into another one. We're entitled to  
19 analyze to see if it was, as they claim now, a brand-new  
20 entity that had no contacts with anything. If that latter  
21 conclusion is found, then the discovery's going to be easy,  
22 won't it. You don't have any contacts, it didn't have  
23 anything that was going on in Nevada, it didn't have any  
24 business dealings that were occurring, well, then the  
25 discovery's going to be pretty simple.

1 I don't think that's true, and that's why I ask Your  
2 Honor -- we're not talking about relevance, we're not talking  
3 about admissibility, we're talking about discovery, a far  
4 broader standard than we should be looking at, before we just  
5 close the window and say, no, you don't get to look down that  
6 alley.

7 THE COURT: But it's limited discovery in  
8 conjunction with the order -- or, I'm sorry, the writ the  
9 Nevada Supreme Court has issued to me.

10 MR. PISANELLI: Right.

11 THE COURT: Okay. We have to be mindful of that,  
12 because there is a stay that's in place. And so I am limited  
13 significantly in what might generally be allowed as discovery.  
14 But I think I narrowed it when I did the order --

15 MR. PISANELLI: As did I.

16 THE COURT: -- whether you guys like it or not.

17 MR. PISANELLI: And if there is anything that you  
18 have doubt about, about being accurate and fair, all filtered  
19 through the fact that we're talking about discovery, not  
20 admissibility for purposes of contact, then, of course, I'd be  
21 happy to address the point. But I think we know where we're  
22 going. It is a sham to say we were confused. Nobody in this  
23 room is confused. We all sought clarification at the moment,  
24 and you told us what you wanted --

25 THE COURT: I even stayed after 5:00 to give you

1 clarification.

2 MR. PISANELLI: Right. You asked all of us, you  
3 exhausted all the questions. There was nobody confused when  
4 we walked out of here.

5 THE COURT: All right. Ms. Glaser.

6 MS. GLASER: Your Honor, I don't mean to be too cute  
7 about this, but there was no meet and confer with respect to  
8 the motion for discovery, and Mr. Pisanelli actually admits  
9 that in writing. He says it wouldn't have mattered anyway  
10 because we would never have been able to agree. So I'm --

11 THE COURT: Well, you guys told me you wouldn't  
12 agree in open court.

13 MS. GLASER: I'm not --

14 MR. PISANELLI: And she told me on the telephone, as  
15 well. Perhaps she forgot that.

16 THE COURT: Well, no. You told me in open court,  
17 which to me is a pretty big deal. When you guys tell me in  
18 open court you're not going to reach an agreement, I say, then  
19 I guess you're going to have to file a motion.

20 MS. GLASER: All I'm saying, Your Honor, is there  
21 was a specific effort to meet and confer by us. Mr. Pisanelli  
22 filed his motion with a meet and confer, and I'm just -- I  
23 think what's good for the goose is good for the gander in any  
24 event.

25 THE COURT: I'm happy to discuss that with you at

1 the time of that hearing. Today we're here on a motion for  
2 clarification because you want me to limit the scope of what I  
3 ordered beginning on page 43 of the transcript --

4 MS. GLASER: Right, Your Honor.

5 THE COURT: -- at the hearing I did on the day at  
6 4:00 o'clock because Judge McKibben asked me to because Mr.  
7 Peek had to be at his trial.

8 MS. GLASER: Okay. And, Your Honor, I want to say  
9 it as clearly as I can --

10 THE COURT: September 27th.

11 MS. GLASER: -- the best reason for clarification is  
12 found in the opposition papers, because the Nevada Supreme  
13 Court has limited the jurisdictional evidentiary hearing to  
14 general jurisdiction, not specific jurisdiction. And I won't  
15 bore you with quoting from the --

16 THE COURT: Actually what the Nevada Supreme Court  
17 says, just so we're entirely all clear, because I am bound to  
18 do what they tell me to when they issue a write --

19 MS. GLASER: I have it right here, but go ahead.

20 THE COURT: "Order that petition granted and direct  
21 the clerk of this court to issue a writ of mandamus  
22 instructing the District Court to hold an evidentiary hearing  
23 on personal jurisdiction, to issue findings of fact and  
24 conclusions of law stating the basis for its decision  
25 following that hearing, and to stay the action as set forth in

1 this order until after entry of the District Court's personal  
2 jurisdiction decision."

3 MS. GLASER: Your Honor, if you go up 11 lines above  
4 that, it clearly says to hold -- "by holding an evidentiary  
5 hearing and issuing findings regarding general jurisdiction."  
6 Because I'm telling Your Honor, and Your Honor can check the  
7 briefs --

8 THE COURT: I'm not checking the briefs, Ms. Glaser.

9 MS. GLASER: I understand. No question --

10 THE COURT: I'm going with what the Supreme Court  
11 told me to do in the writ that they issued.

12 MS. GLASER: And it says "general jurisdiction," not  
13 specific jurisdiction. Because counsel -- prior counsel,  
14 albeit, waived their argument with respect to specific  
15 jurisdiction both before Your Honor and again in front of the  
16 Nevada Supreme Court.

17 THE COURT: Anything else?

18 MS. GLASER: No, there is not, Your Honor.

19 THE COURT: Thank you.

20 The motion for clarification is granted in part. I  
21 am going to clarify again what I have said repeatedly since  
22 this case has been sent back sort of by the Nevada Supreme  
23 Court.

24 We are only going to do discovery related to  
25 activities that were done for or on behalf of Sands China.



1 That was an overriding limitation on all of the specific items  
2 that were requested in the motion for discovery.

3 Is there any further clarification that you would  
4 like to ask me at this time? Okay.

5 MS. GLASER: I would like the Court to be clear that  
6 with respect to specific jurisdiction it's a separate analysis  
7 that was not before the Nevada Supreme Court. And by  
8 definition not only do they articulate it in their order, but  
9 they clearly also say they can't be ordering an evidentiary  
10 hearing on issues that weren't before it and there's nothing  
11 discussed about specific jurisdiction.

12 THE COURT: Anything else?

13 MS. GLASER: I do -- I understand Your Honor's  
14 argument, and I think you're not agreeing with me on the  
15 agency theory.

16 THE COURT: I'm going to actually read you the writ,  
17 which is much more important than any other document from the  
18 Supreme Court.

19 MS. GLASER: Okay.

20 THE COURT: The writ says -- and it's directed to  
21 me. This is the second paragraph. "Now, therefore, you are  
22 instructed to hold an evidentiary hearing on personal  
23 jurisdiction, to issue findings of fact and conclusions of law  
24 stating the basis for your decision following that hearing,  
25 and to stay the action as set forth in the order until after

1 entry of your personal jurisdiction decision, in the case  
2 entitled Steve C. Jacobs versus Las Vegas Sands Corp., Case  
3 Number A-10-627591-C." Love and kisses, Nevada Supreme Court.

4 MS. GLASER: Your Honor, I did properly quote from  
5 the order above that.

6 THE COURT: I know. But what I'm trying to tell you  
7 is what matters more isn't what they say in their opinions,  
8 it's what the issue in the writ instructing me what to do.  
9 That's what I have to do. And I'm going to do it. And  
10 there's going to be a good order this time, instead of a lousy  
11 order that goes up, even if I have to draft it myself.

12 All right. Let's go to Item Number 3 on my agenda,  
13 which is --

14 MR. PEEK: I assume you mean by that your order  
15 denying jurisdiction. Well, I'm just trying to --

16 THE COURT: Okay. Let me -- instead of saying "good  
17 order," I will say a well-drafted and complete order. How's  
18 that?

19 MR. PEEK: Yeah. Because you don't have to  
20 necessarily find that there's jurisdiction.

21 THE COURT: No.

22 MR. PEEK: Okay.

23 THE COURT: I have to make a decision following an  
24 evidentiary hearing on the issue that a writ has been sent to  
25 me saying, you are specifically commanded to do this. And I

1 intend to do what they told me to do.

2 MR. PISANELLI: Quick question on the clarification  
3 issue.

4 THE COURT: Yes.

5 MR. PISANELLI: It was our understanding when we  
6 left this courtroom that we presented to Your Honor categories  
7 of discovery that we wanted, you granted many, you tailored  
8 some. We walk out now prepared to receive discovery and start  
9 noticing depositions. I have not had a discussion, so I don't  
10 know there's a debate in hand. But because of the silence  
11 we've heard since that last time I'm fearful that they're not  
12 intending to comply with that order unless they're receiving  
13 formal discovery requests, things of that sort. And I  
14 understood you not to be expecting that.

15 THE COURT: No, no. You're going to have to do  
16 formal discovery requests. Don't -- please, let's not assume  
17 that just because I said you can do these things --

18 MR. PISANELLI: Okay. Fair enough.

19 THE COURT: -- which is what I said, that that means  
20 they have to immediately respond. They don't.

21 MR. PISANELLI: But --

22 THE COURT: You have to do something affirmatively  
23 to put them in a position where they get it, which is one of  
24 the reasons I vacated the hearing, because there was no way  
25 we're ever going to get through it all by the time I had set

1   aside for November 21st, 22, and 23.

2               MR. PISANELLI: Well, in that regard do you want us,  
3   then -- I'll tell you the reason I thought you were expecting  
4   immediate compliance was because of the hearing, 30 days to  
5   respond and things of that sort just didn't fit. And so do  
6   you want us to go down that path pursuant to the rules as  
7   they're stated with response dates as --

8               THE COURT: That's Item Number 4 on my agenda.

9               MR. PISANELLI: Okay. I'll wait, then. I'm sorry  
10   to interrupt.

11              THE COURT: I'm on Number 3 right now, which is your  
12   ESI protocol. I understand that there's been a draft of an  
13   ESI protocol perhaps circulated. And, unfortunately, I've not  
14   had an opportunity to review the multiple competing drafts of  
15   the ESI protocol. Does anybody want to say anything about it  
16   while we're all here together?

17              MR. PISANELLI: I do, Your Honor --

18              MS. GLASER: Sure do, Your Honor. It was our draft,  
19   so maybe we should say it.

20              MR. PISANELLI: -- and I'll tell you what it is that  
21   I would like to say.

22              THE COURT: Okay. Why don't I let Ms. Glaser start?

23              MR. PISANELLI: I'll leave Colby Williams's email  
24   for her to see so she'll know exactly what it is I'm --

25              THE COURT: The July email? The one that -- the

1 July email that I started with on September 16th?

2 MR. PISANELLI: That's the one.

3 MS. GLASER: May I have just one moment, Your Honor?

4 THE COURT: Sure. It's really handy, because I've  
5 been harping on that particular email now for a month.

6 MS. GLASER: Well, we've spent a lot -- a lot of  
7 time drafting it.

8 (Pause in the proceedings)

9 MS. GLASER: Your Honor, I actually I think it's --  
10 doesn't matter, but it's Exhibit C to one of the 5,000 motions  
11 that have been before Your Honor.

12 MR. PEEK: It's Exhibit C to the reply, Your Honor.

13 THE COURT: Thank you.

14 MS. GLASER: It's called "Proposed Document Review  
15 Protocol." And what it literally does is agrees to -- the  
16 parties are required to agree to an ESI vendor. It really  
17 takes out of our hands and the other side's hands these  
18 documents. Just so I'm clear, Mr. Peek --

19 THE COURT: That's the hope.

20 MS. GLASER: No, it is. I mean --

21 THE COURT: I'm just telling you, Ms. Glaser, from  
22 past experience it's the hope.

23 MS. GLASER: Well, you know what --

24 THE COURT: Sometimes the ESI vendors make mistakes.

25 MS. GLASER: -- you're scaring me a little bit. But

1 okay. The idea was to pick an ESI vendor we both agreed to,  
2 to share the cost 50 percent, 50-50, then what happens is the  
3 ESI vendor then Bates-stamp numbers everything, plaintiff's  
4 counsel is supposed to provide to the ESI -- the ESI vendor  
5 all the documents received by Mr. Jacobs that are in his  
6 possession, custody, or control that he obtained. And I don't  
7 we do not want to get into a debate, because we actually put  
8 in the protocol "he obtained as an employee of SCL." We don't  
9 care about that. It's just he obtained as an employee,  
10 whether it was VML, SCL, Las Vegas Sands, all those documents  
11 of which we all concede are well over 11 gigabytes of  
12 documents. We want all those given to the ESI vendor. The  
13 ESI vendor shall put Bates-stamp numbers on everything so  
14 nobody's confused about what was provided, and I mean the  
15 originals go, so he doesn't keep anything in his possession,  
16 so nobody ever has to worry that somebody is let's just say  
17 even inadvertently reviewing trade secret information, more  
18 importantly, attorney-client privileged information, and, just  
19 as importantly Macau Privacy Act material that should not be  
20 reviewed by anybody.

21 After the Bates-stamp numbers are put on, then it's  
22 along with searchable -- and I'm a little out of my element,  
23 Your Honor, this is above my pay grade, but I'm going to  
24 describe what we put in the document, "searchable metadata  
25 information where it's available as required to make these

1 documents reasonably usable." And then we literally say,  
2 okay, this is what you do with emails, author, recipient, cc,  
3 bcc, et cetera; this is what you do with other electronic  
4 files, file name, file type or extension, et cetera; and for  
5 all documents the custodian, the Bates-stamp numbers beginning  
6 and the Bates-stamp numbers ending and the family range  
7 beginning and the family range ending; and then .tif images  
8 are produce in a monochrome, single-page format at 300 dpi  
9 resolution with Group 4, blah, blah. I mean, this is  
10 hypertechnical, but it's in an effort to safeguard the  
11 documents. And then what happens is effectively we -- they --  
12 the -- we go through the documents, our documents, nobody  
13 contends they're not --

14 THE COURT: Actually the ESI vendor typically runs a  
15 search, given search terms.

16 MS. GLASER: No problem.

17 THE COURT: You then go through the documents that  
18 are identified with issues related to the search terms. And  
19 then, if there are privileged items or other items I have to  
20 rule on, that's where we start.

21 MS. GLASER: That's the way this is set up. And it  
22 still takes into account full briefing, Your Honor, on the  
23 issue which we have not conceded and which Your Honor says is  
24 -- and it clearly is -- the notion that he shouldn't have had  
25 any of the documents to begin with and that the right way to

1 deal with this is -- it doesn't take them out -- we don't do  
2 anything with the documents, because the ESI vendor has them,  
3 but it doesn't take away from the issue that Your Honor still  
4 gets full briefing on who -- and maybe after discovery, okay  
5 with that, too, who is entitled to these documents, is Mr.  
6 Jacobs required to give them all back and do what normal  
7 plaintiffs do, file requests for production of documents, and  
8 not keep, and not have counsel or anybody else, any third  
9 party, review documents that don't belong to him. And the  
10 notion if something is privileged and he received it in his  
11 capacity as a CEO of the company and it was privileged at the  
12 time, he can waive that privilege, that is not true, and  
13 that's not the law. The law is quite clear that it's the  
14 company's privilege, not his, and the company does not waive  
15 that privilege and never has waived an attorney-client  
16 privilege. Nobody has conceded that, and no one has suggested  
17 that.

18           So what this protocol does -- and it's lengthy, but  
19 it's intended to be detailed because we put a lot of thought  
20 into it, and we are perfectly willing to meet and confer, if  
21 we can get that done, with a court reporter present or  
22 whatever present, telephone recording, doesn't matter to me,  
23 but we need to get this resolved so that the documents  
24 generally can be considered by the Court, should they be used  
25 or not in connection with evidentiary hearing, and to the



1 extent that Your Honor somehow disagrees that he doesn't  
2 improperly have them and shouldn't return them all, then at  
3 least we go document by document and determine what's  
4 privileged, what's subject to trade secret, and what is  
5 subject to the Macau Privacy Act.

6 THE COURT: You're going to go through all  
7 11 gigabytes?

8 MS. GLASER: Yes, ma'am, we are. And we have people  
9 set up to do that.

10 THE COURT: Okay.

11 MR. PEEK: We think there may be more than  
12 11 gigabytes, though, Your Honor. Because in light of the  
13 opposition that we saw from Mr. Pisanelli suggests to me that  
14 there's more than 11 gigabytes. I don't know what it is or  
15 not, and I'm not trying to put words in his mouth, but the  
16 opposition suggests that there's more than 11 gigabytes.

17 MR. PISANELLI: I think there is, but I don't know.

18 THE COURT: Let me ask a question -- let me ask the  
19 question more completely. Is it the intention of Sands China  
20 to go through all of the documents that are delivered to the  
21 ESI vendor and imaged for you to then review to determine if  
22 there is a particular issue and then to provide me with an  
23 item-by-item description as to your position?

24 MS. GLASER: Yes, ma'am, it is.

25 THE COURT: Okay.

1 MR. PEEK: And, Your Honor, as part of that process,  
2 because I'm sort of peripherally involved --

3 THE COURT: Well, Mr. Kay gave an affidavit about  
4 it, so yeah.

5 MR. PEEK: Right. Because I'm peripherally  
6 involved, there will be an issue, Your Honor, as to whether or  
7 not any of the documents can rightfully be used. And that'll  
8 be briefed in detail, rightfully be used --

9 THE COURT: Absolutely.

10 MR. PEEK: -- because we'll take depositions, we'll  
11 get to the bottom, as Mr. --

12 THE COURT: And you have a motion for protective  
13 order that's coming up and a motion to compel return of  
14 documents that's coming up. I mean, I've got all sorts of  
15 motion practice coming up.

16 MR. PEEK: Yeah. But I just didn't want there to be  
17 any question about this, is that, as Mr. Pisanelli wants to  
18 take the deposition of the IT folks in Macau, we likewise want  
19 to take the deposition of Mr. Jacobs --

20 THE COURT: That's Item Number 4.

21 MR. PEEK: -- as to how he came into possession.

22 THE COURT: I'm not into 4 yet.

23 MR. PEEK: You're right. I thought it was part of  
24 the protocols. But you're right, it is.

25 THE COURT: That's depos.

1 MR. PISANELLI: I promise --

2 THE COURT: Mr. Pisanelli.

3 MR. PISANELLI: I promise Mr. Peek not --

4 THE COURT: I have the July 8, 2011, email in front  
5 of me, as well as the ESI order that is already in file on  
6 this case dated June 23rd, 2011.

7 MR. PISANELLI: Yep. That last paragraph at the  
8 bottom of page 1 we are prepared to comply with today. There  
9 is a fraction of hyperbole in it, but the point is immediately  
10 or nearly immediately we can give them exactly what Mr.  
11 Williams said in July. They can have in .tif form, Bates  
12 stamped, all of them. There is no reason for delay. We don't  
13 need to go through all of this long basically disguised TRO  
14 that they presented to you, squeezing in the language that  
15 you've rejected time and time again. They want a copy of  
16 everything in .tif form, they want it all Bates numbered so  
17 that there's identifier of exactly what they're in possession  
18 of, I'm telling Your Honor as early as tomorrow I think. And  
19 if it's -- if I can't get that done, it's going to be like  
20 within days. I'm not talking months, weeks, anything of that  
21 sort. We're ready to give it to them and let's get this  
22 process underway.

23 I promise Mr. Peek that I will not claim ever to be  
24 surprised that either of them are going to argue that all of  
25 them should be excluded. I'm very much aware of that

1 position, and I'm very much aware that he's not waived it  
2 today and that I will be hearing this argument again. I get  
3 it. But our position, like Mr. Williams's, has always been,  
4 here, you can have a copy of them, tell us what you think  
5 we're not entitled to see or use and keeping in mind that Ms.  
6 Glaser once again, in our view, said -- told you the exact  
7 opposite of what the law is. That privilege, though they hold  
8 it, cannot be asserted against a party like Mr. Jacobs who was  
9 entitled to these communications in the course of his work.  
10 They cannot assert it, they cannot claim that he doesn't get  
11 to see them. She is dead wrong on the law. But we'll debate  
12 that another day.

13 So we don't need all of this long disguised issue.

14 THE COURT: Okay. So can --

15 MR. PISANELLI: This is what we'll do.

16 THE COURT: Wait. I need to get clarification from  
17 you.

18 MR. PISANELLI: Yes.

19 THE COURT: I assume from your suggestion that the  
20 last paragraph of the July 8th, 2011, email, which I'm marking  
21 as Court's Exhibit 1 for purposes of today's hearing, that you  
22 will transmit an electronic version to the ESI vendor that all  
23 of you agree upon. How, then, do you intend to do the review  
24 to determine if there is privileged material of Mr. Jacobs  
25 separate and apart from any materials that might be for the

1 Sands?

2 MR. PISANELLI: Yeah. We will --

3 THE COURT: How are you going to do that search?

4 MR. PISANELLI: We will -- that's a very good  
5 question.

6 THE COURT: It's a search term question, really.

7 MR. PISANELLI: It is a search term. And we will  
8 work with our client to determine what possibly could be in  
9 there. I remain optimistic and hopeful that that is going to  
10 be minimal, but I don't want to give away that issue.

11 THE COURT: Okay. Here is my concern, because I  
12 certainly agree that is an appropriate procedure. My fear is  
13 I don't want you looking at all 11 gigabytes of information.  
14 I want the vendor to run a search using the search terms  
15 you've identified that are expansive enough to capture all of  
16 the potential documents that may be privileged to Mr. Jacobs  
17 separate and apart from the other documents that are at issue  
18 in this ongoing battle. That is my concern.

19 MR. PISANELLI: I can live with that.

20 THE COURT: I don't want you to go through all the  
21 documents --

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

23 THE COURT: -- but I want you to be able to review  
24 the documents that this isolated search that you propose the  
25 search terms to can identify --

1 MR. PISANELLI: Sure.

2 THE COURT: -- and then you have to do the privilege  
3 log and provide that.

4 MR. PISANELLI: That makes perfect sense to me.

5 THE COURT: Then -- then after that happens  
6 typically what I would hope is that the rest of the documents,  
7 since Sands China has indicated an intention to review all  
8 11 gigabytes or more of data, that with the exception of those  
9 that you've identified as attorney-client of Mr. Jacobs and  
10 which I agree with you, they will then begin document by  
11 document reviewing those and making the identification as to  
12 whether there is a privilege or it is protected by Macau law  
13 or it is a trade secret, which are their three things they've  
14 told me are important to them. But I need you to do that  
15 review first, since Mr. Williams specifically identified that  
16 as an issue in the July email. And I need to know what your  
17 position is and your timing related to that, because it will  
18 greatly impact the work I have done.

19 I will tell you, I have a case -- and none of you  
20 guys are involved in this, luckily -- where it took them six  
21 months for the first person to complete the review before the  
22 data could be transmitted to the other people. And that's too  
23 long. And I get grumpy when people don't do their job in a  
24 expeditious fashion.

25 So tell me what your plan is.

1           MR. PISANELLI: My plan would be the following. Of  
2 course, go down the path that you described, give me 30 days.  
3 Trigger whatever it is you will require of the defendants  
4 based upon my production, not the 30 days, so that if I can  
5 hypothetically call back and say, Your Honor, I don't need to  
6 do that, Mr. Jacobs knows exactly what he possesses and is  
7 willing to produce without any redaction, so I'll give it to  
8 them immediately. So I don't know that to be the truth. I  
9 suspect it's probably not the case. But I think 30 days  
10 should work. And if it won't, I will -- the burden will be on  
11 me to come back to you and explain why I need more time and  
12 how much more time. And then I won't -- I'll reserve comment,  
13 but I'll let defendants decide how long they will need.

14           THE COURT: How long do you need to make the  
15 determination as to whether you're going to have the search  
16 terms run?

17           MR. PISANELLI: That I can let you know by the  
18 beginning of the week.

19           MS. GLASER: I'm sorry. I didn't hear that.

20           THE COURT: He said he needs the beginning of next  
21 week.

22           MS. GLASER: Fine.

23           THE COURT: How about I give you a couple extra  
24 days, because I'm always worried when people tell me they can  
25 do things that short, to the 19th.

1 MR. PISANELLI: Okay.

2 THE COURT: And if you decide after communicating  
3 with your client that you are not going to need to have the  
4 search terms run to make a determination as to whether there  
5 are any independent documents protected by attorney-client  
6 privilege or a privilege that would be held by Mr. Jacobs, as  
7 opposed to Sands China, then you will tell us on October 19th.  
8 You're either going to have the search terms available to the  
9 ESI vendor who will then run the search in their fashion and  
10 give you the results, or you will say, I don't need to have  
11 the search run.

12 And then Sands China will have how long to give me  
13 your search terms? Oh. No. You want to review them all.

14 MR. PEEK: We want to look at all the documents,  
15 Your Honor.

16 MS. GLASER: Believe me, I'm not looking forward to  
17 it, Your Honor.

18 THE COURT: Then the ESI vendor will have to post  
19 them and make them available on a remote site, and they will  
20 keep a log of every document that is reviewed and by whom,  
21 which means they have to assign user identification numbers to  
22 everyone who is involved in the process.

23 And how long will it take Sands China to review the  
24 documents, assuming there's about 11 gigs?

25 MS. GLASER: I need to know --



1 THE COURT: The answer is "longer."

2 MR. PEEK: Yeah. It's longer than 45 days, Your  
3 Honor.

4 THE COURT: Do you like how I added that part?

5 MR. PEEK: Yeah, I get that, Your Honor. It's not  
6 six months.

7 THE COURT: Mr. Pisanelli, you think if you're doing  
8 this you get 30 days' review period if you get to that point?

9 MS. GLASER: Your Honor, we would request 90 days,  
10 because it will take that long to do this properly.

11 And I do have a clarification request.

12 THE COURT: Okay. Hold on. Let me finish writing  
13 notes here.

14 (Pause in the proceedings)

15 THE COURT: All right. You had a question?

16 MR. PISANELLI: I do, as well.

17 THE COURT: I don't care who goes first.

18 MS. GLASER: I've got a couple of questions, Your  
19 Honor. I need to make sure -- I'm being told I need to make  
20 sure --

21 THE COURT: We need your people who are IT people  
22 and specialists who have done this before to communicate with  
23 me. Please feel free -- even if you're not admitted in Nevada  
24 or you're not a lawyer, please feel free to come up to the  
25 table so that when Ms. Glaser is telling me what you want her

1 to tell me she tells me what you mean. Because I --

2 MS. GLASER: Ninety days. When do we count the 90  
3 days from? That's the big issue.

4 THE COURT: We'll count the 90 days from the date  
5 either on which you get the notification from Mr. Pisanelli on  
6 October 19th that he does not need to run search terms to  
7 determine if there's any privileged material on behalf of Mr.  
8 Jacobs that would be separate and apart, or, alternatively,  
9 upon the time that he gives you the list of privileged  
10 material and the ESI vendor can then begin making other  
11 materials that are not on his privilege log available to  
12 you --

13 MR. PEEK: Your Honor --

14 THE COURT: -- while I am in the process of  
15 reviewing the materials that are on the privilege log that Mr.  
16 Pisanelli identifies typically through motion practice.

17 Yes.

18 MS. GLASER: Your Honor, we may finish it shorter  
19 than 90 days, and we want to be able to move this process  
20 along, too.

21 THE COURT: If you finish short of 90 days, you  
22 know, you give it to me.

23 MR. PEEK: Well, I -- here's my question.

24 THE COURT: But I doubt you're going to.

25 MR. PEEK: Because the 90 days is starting from the

1 19th of October, I think is what --

2 THE COURT: Not necessarily.

3 MR. PEEK: Okay. That's what I'm trying to get --

4 THE COURT: You have a moving target on when the

5 90 days starts.

6 MR. PEEK: Because we have to -- we have to get the

7 documents loaded, Bate numbered --

8 THE COURT: That's not you. Here's what happens --

9 MR. PEEK: That's my question.

10 THE COURT: Mr. Pisanelli has electronic data.

11 The electronic data within 48 hours of today, which is by --

12 48 judicial hours, which is by Monday, will be given to the

13 ESI vendor, which typically means you upload it to their site.

14 MR. PISANELLI: I think it's already done.

15 THE COURT: All right.

16 MR. PISANELLI: I think it's already Bates numbered,

17 .tif, and it's ready to be produced.

18 THE COURT: So if that's the case and the vendor

19 already has it --

20 MR. PISANELLI: And I believe the vendor to be

21 QUIVX, so outside institutional company --

22 MS. GLASER: Don't we have to agree?

23 MR. PEEK: But the --

24 THE COURT: Wait, wait, wait. Let's --

25 MR. PEEK: The issue that we have -- and I'm not

1 questioning Mr. Pisanelli's assertion here -- is we have a  
2 much broader protocol as to what it is that he has in his  
3 possession. So when he says --

4 THE COURT: You're asking for exactly the same thing  
5 that's already in the ESI protocol that I've signed. Isn't it  
6 nice that you were consistent?

7 MS. GLASER: May I --

8 MR. PEEK: Your Honor, there's a broader -- if you  
9 looked at our -- if you look in our ESI protocol, which is a  
10 broader one of everything that he ever had, that he got during  
11 the course of his employment, that's not --

12 THE COURT: I've limited the discovery on these  
13 issues to a specific period of time. My recollection, and I  
14 will refer to the ESI protocol, since I was wrong the last  
15 time I said it, was that time frame ran from January 1st,  
16 2009, to October 20th, 2010.

17 MR. PEEK: Right. I agree with that one.

18 MS. GLASER: This is a clarification --

19 MR. PEEK: May I see that, Your Honor, just for a  
20 moment.

21 THE COURT: Yes. I just punched it. Max has been  
22 very good at going to the --

23 MR. PEEK: Go ahead, Ms. Glaser. I'm sorry.

24 MS. GLASER: Because Your Honor rightfully has not  
25 ruled on the appropriateness of Mr. Jacobs having these

1 documents, and I appreciate that, we want a representation,  
2 which we will take to Your Honor, from Counsel that there will  
3 be nothing done -- our protocol that we had -- the special  
4 protocol that we had suggested made everybody turn over all  
5 the documents, and the ESI vendor is sort of the neutral who  
6 has everything. If he chooses not to do that or Your Honor  
7 doesn't order it and we think Your Honor should, then at  
8 minimum there should be a representation to the Court that  
9 there will be no use of the documents and/or the information  
10 in the documents absent further order of the Court.

11 THE COURT: Well, until the process is completed.  
12 The process is -- the anticipated path is that the electronic  
13 images are provided by Mr. Pisanelli to the ESI vendor, and I  
14 haven't determined that the one he's already picked is the  
15 one, but we'll have that discussion in a minute. He provides  
16 that. The understanding is he's not looking at those  
17 documents anymore, which is why I'm making him use search  
18 terms to review the documents.

19 MS. GLASER: And I appreciate that.

20 THE COURT: The reason he's having to review search  
21 terms is my goal was to keep him from getting further down a  
22 path where there may be a document that is protected by the  
23 attorney-client privilege, the Macau Privacy Act, or a trade  
24 secret that Mr. Jacobs has that I later determine he shouldn't  
25 have and I don't get into a position later where I have to

1 disqualify counsel because he was looking at documents when he  
2 shouldn't be.

3 MS. GLASER: Understood.

4 THE COURT: I don't want to be in that position,  
5 because it will make my case take longer.

6 MS. GLASER: Fair enough.

7 THE COURT: And it also screws things up  
8 procedurally.

9 MR. PEEK: And, Your Honor, I apologize. You are  
10 correct. Because our protocol did capture this, because it  
11 says that, "The parties must accurately identify and produce  
12 responsive non-privileged, active ESI stored [unintelligible]  
13 that is in their possession, custody, or control  
14 notwithstanding its location."

15 THE COURT: True.

16 MR. PEEK: So --

17 THE COURT: And that's already an order I issue,  
18 although it's stayed for all purposes except this.

19 MR. PEEK: Yeah. I guess it's really the "identify  
20 and produce responsive," but if he's just giving me everything  
21 that he has, that's what Mr. Pisanelli is telling me, is that  
22 everything that Mr. Jacobs has I'm going to give to the ESI  
23 vendor.

24 MS. GLASER: Your Honor --

25 THE COURT: And that's a yes, not just a nod. Come

1 on. Nods don't come out on my record, Mr. Pisanelli. Say  
2 yes.

3 MR. PISANELLI: I'm just waiting till he's finished.

4 THE COURT: Well, the nodding was -- say yes.

5 MR. PISANELLI: Yes.

6 THE COURT: Okay. Thank you.

7 MS. GLASER: Your Honor, the other clarification --  
8 and we did -- if you looked at -- and I can hand it up to the  
9 Court if it's easier. At paragraph 6 we actually --

10 THE COURT: Of yours?

11 MS. GLASER: Of our protocol. Do you want me to  
12 hand it up to you?

13 THE COURT: No. I have it.

14 MS. GLASER: Oh. I'm sorry.

15 THE COURT: I have all this stuff. Okay. And I've  
16 dealt with ESI issues many times.

17 MS. GLASER: We actually provide a mechanism for  
18 what Mr. Jacobs might determine to be his attorney-client  
19 privilege, as opposed to --

20 THE COURT: Well, but you understand that what  
21 paragraph 6 says is he's giving the search terms. That's what  
22 paragraph 6 says. I already told him that.

23 MS. GLASER: Okay. As long as we're in the same  
24 boat. Thank you.

25 THE COURT: But the search terms doesn't have to

1 necessarily be only those items that you've identified in 6,  
2 because there may be other items that the search terms Mr.  
3 Pisanelli believes are appropriate to elicit a response as to  
4 a document he believes Mr. Jacobs would hold the attorney-  
5 client privilege for may be something which isn't an attorney,  
6 but there's a particular subject that is an unrelated legal  
7 issue that's captured on there.

8 MS. GLASER: Okay. I'm --

9 THE COURT: Do you understand what I'm saying?

10 MS. GLASER: Fair enough. Fair enough.

11 THE COURT: He hired a lawyer to help him with a  
12 special LLC called, for instance, Sagebrush, so he wants to  
13 run "Sagebrush" as one of the search terms, so he'll make sure  
14 he pulls all that stuff.

15 MS. GLASER: Now, this is my question, because I  
16 just need to understand this. He goes through that process  
17 just as Your Honor's outlined, and now he identifies -- I'm  
18 making up a number -- 10 documents that he feels outside -- he  
19 wants to make sure they're protected from his standpoint. How  
20 does Your Honor then make the determination whether that's  
21 justified?

22 THE COURT: He does a privilege log. You get a copy  
23 of the privilege log from him, because he serves it upon you.  
24 If you look at it and you think there is a problem, then you  
25 talk to him, because that's what Rule 2.34 requires you to do.



1 MS. GLASER: I'm never going to be before Your Honor  
2 again --

3 THE COURT: And then --

4 MS. GLASER: -- without doing that.

5 THE COURT: -- after you talk to him -- or you could  
6 talk to Ms. Spinelli or Mr. Bice or whoever it is in their  
7 office they designate to respond to you, after you've had that  
8 communication in good faith to try and resolve the issue on  
9 the privilege log, then you're going to file a motion to  
10 require the production.

11 MS. GLASER: Understood.

12 THE COURT: And then he's going to say, this is the  
13 basis. And what almost always happens, unfortunately, is I  
14 then do an in-camera review.

15 MS. GLASER: Understood.

16 THE COURT: Almost always.

17 All right. Yes.

18 MR. PISANELLI: Perhaps -- I have to confess to you  
19 I'm a little confused.

20 THE COURT: You've done ESI before. You can't be  
21 confused.

22 MR. PISANELLI: I have done it before, and I'm still  
23 -- I always get confused.

24 THE COURT: Mr. Peek can be confused, 'cause he's  
25 older than us.

1 MR. BICE: On that we concur, Your Honor.

2 MR. PISANELLI: I have --

3 THE COURT: But he brought Mr. Anderson, who  
4 understands it.

5 MR. PEEK: I brought Brian with me today, Your  
6 Honor, to help me.

7 MR. PISANELLI: I have a body of documents that are  
8 stored electronically. And I'm going to do this broad strokes  
9 just to make sure I'm where you want me to be on this, okay.  
10 I have a body of evidence that is stored electronically. It  
11 has been identified by Bates number and whatever .tif means is  
12 what it is. I am going to take that body of evidence in  
13 electronic form, not hard copies, and I'm going to give it to  
14 the defendants. The only thing I expect to extract from that  
15 body of evidence is -- are the documents, if any, that I  
16 believe they are not entitled to see.

17 THE COURT: Correct.

18 MR. PISANELLI: And that will not be made a secret  
19 to them or you or anyone else. They will know by Bates number  
20 document, et cetera. In order to determine what of that body  
21 of evidence I am not going to give to them, I'm going to give  
22 the ESI vendor --

23 THE COURT: Well, not that you're not going to give  
24 to them, to which you are making a claim of privilege.

25 MR. PISANELLI: Yes.

1 MR. PEEK: Privilege log.

2 MR. PISANELLI: Yes. Of course. And in order  
3 to find them I'm not going to do what they are going to do  
4 and read every document and pull them out. I am going to  
5 give search terms to the vendor to say, here is the body of  
6 evidence, find me documents that have these words. And  
7 then --

8 THE COURT: And that search terms, the search terms  
9 that are communicated to the vendor get circulated to  
10 everyone. So if there is a dispute as to whether the search  
11 terms are too broad or they think your search term is going to  
12 pull information to which they will claim a privilege, then I  
13 have a different issue I have to resolve.

14 MR. PISANELLI: That's actually where I was headed  
15 with the confusion. So I'm there.

16 THE COURT: Are we done now?

17 MR. PISANELLI: I think so.

18 THE COURT: Any other questions on my Item Number 3,  
19 which was the ESI protocol issue?

20 MR. PEEK: Maybe Number 4 is going to capture it,  
21 because I certainly have questions, Your Honor.

22 THE COURT: 4 is my depo issue.

23 MR. PEEK: Yeah. But I even have more questions.  
24 What I'm concerned about is are we receiving in native format  
25 with metadata attached in those 11 gigabytes that will let us

1 know or give us insight as to when the documents were --

2 THE COURT: Hold on. Let me ask the question for  
3 Mr. Pisanelli.

4 How did the documents get converted into their  
5 current .tif format with Bates numbering on them?

6 MR. PISANELLI: I didn't do it, so I would be  
7 guessing.

8 THE COURT: I don't want you to guess.

9 MR. PISANELLI: I don't know.

10 THE COURT: How do I find out?

11 MR. PISANELLI: That was handled by outside counsel  
12 -- by outside I mean out side of me --

13 THE COURT: Correct.

14 MR. PISANELLI: -- and I have kept myself away from  
15 the process.

16 THE COURT: Frequently people hire Dennis Kennedy to  
17 do that, for some reason, and I have no idea why he's the one  
18 who always gets hired.

19 MR. PISANELLI: I did not hire Dennis Kennedy.

20 MR. PEEK: Oh. You're shocking me.

21 MR. PISANELLI: But it was handled by counsel for  
22 Mr. Jacobs, and I have maintained distance --

23 THE COURT: Okay.

24 MR. PISANELLI: -- with that process.

25 THE COURT: Here's the question that I need

1 answered. And it may be that the ESI vendor will have to be  
2 the one who tells me the answer to this question. If they get  
3 information and it appears to them that the .tif files they  
4 are receiving are files that were, for lack of a better term,  
5 printed and scanned, then I'm going to have a problem.

6 MR. PISANELLI: Okay. I'll find that out.

7 MR. PEEK: Yeah. Because you've seen in our  
8 protocol what we talk about is the metadata attached to the  
9 .tif file. That's --

10 THE COURT: It's not in -- it's in the order. It's  
11 in an order. I assume that the order that is currently in  
12 place, dated June 23rd, 2011, was complied with.

13 Here, Mr. Pisanelli. I'm going to give you a copy,  
14 because you weren't here then.

15 MR. PISANELLI: And by the way, if it was not  
16 complied with, can't even represent to you that this was done  
17 before or after this order, but I will do this. I mean, if --  
18 if we don't have the metadata, for instance, and that is  
19 something you want, then we're just going to have to --

20 THE COURT: Well, no. It's something I ordered.

21 MR. PISANELLI: I'm sorry?

22 THE COURT: It's something I ordered.

23 MR. PISANELLI: Okay.

24 THE COURT: It's not something I want.

25 MR. PISANELLI: My point is, then, maybe money has

1    been wasted and we have to start over.

2           THE COURT: That may be.

3           All right. So next question. The vendors.

4           MR. PISANELLI: All I know is that QUIVX was used,  
5    contracted directly with the law firm. I understand there to  
6    be a confidentiality obligation in relation to their work.  
7    That's all I can represent to you.

8           MR. PEEK: Don't know anything about them, Your  
9    Honor. I just want the opportunity to --

10          THE COURT: Other people have used them in other  
11    cases.

12          MR. PEEK: They're not familiar to me, and --

13          THE COURT: They aren't one that I've had a problem  
14    with yet.

15          MR. PEEK: Oh. That's a good sign, then.

16          MS. GLASER: Are not, or are?

17          THE COURT: Have not yet had a problem with.

18          MS. GLASER: Your Honor, we probably will have no  
19    problem, because --

20          THE COURT: But I want you to look and decide if you  
21    have a problem.

22          MR. PEEK: We want to check to vet them, that's all.

23          THE COURT: How long do you need? Because I ordered  
24    Mr. Pisanelli to give it to them by Monday, and I'm not going  
25    to make you give it, since they already have it.

1 MR. PEEK: In an abundance of caution, Your Honor,  
2 I'll give him till Tuesday, if it's okay with the Court, so  
3 that we can vet them, because it's already Thursday.

4 THE COURT: How long do you need to vet is what I'm  
5 trying to find out.

6 MS. GLASER: By the end of the day on Monday we  
7 should be able to get back to Mr. Pisanelli, and if you -- if  
8 Your Honor wishes, Your Honor, as well.

9 THE COURT: I don't care. But if you don't pick  
10 QUIVX, then I need to see you.

11 MR. PEEK: Then we need to pick somebody --

12 THE COURT: Unless you agree, I need to see you.

13 So the 48 hours that I gave you is tolled pending a  
14 decision on either they agree to QUIVX or I order a particular  
15 person to be your vendor.

16 MS. GLASER: Thank you, Your Honor.

17 MR. PEEK: Thank you, Your Honor.

18 THE COURT: So none of the dates are going to start  
19 moving until you hit that, till you know who your vendor is.

20 MS. GLASER: Understood.

21 THE COURT: All right. Does anybody have any  
22 questions, including those people who are more technically  
23 oriented than the rest of us, about what I have ordered, which  
24 are simply modifications to the prior ESI order?

25 MR. PISANELLI: I have a non-technical question on

1 cost.

2 MS. GLASER: We do not, Your Honor.

3 THE COURT: Okay. So Mr. -- your cost question, Mr.  
4 Pisanelli?

5 MR. PISANELLI: What do we do about it?

6 THE COURT: I don't know. What's it say in the  
7 order?

8 MR. PISANELLI: I don't know. I haven't read it.

9 THE COURT: I gave you my copy. Hold on a second.

10 MR. PISANELLI: I gave it back to you.

11 THE COURT: I think we addressed that in the  
12 original order.

13 MR. PEEK: Yeah.

14 THE COURT: "Each party expressly reserves its right  
15 to petition the Court to shift the cost of the production of  
16 the ESI to the requesting party." That's what it says.

17 MR. PEEK: Yeah. I agree. That's what my  
18 recollection was, too, Your Honor.

19 THE COURT: You want it back?

20 MR. PISANELLI: No, we've got one.

21 THE COURT: Anything else?

22 MR. PISANELLI: I don't think so.

23 MS. GLASER: No. Thank you, Your Honor.

24 MR. PEEK: Well, but what do we do in the short run  
25 of paying, paying QUIVX? Because certainly we have that cost



1 shifting.

2 THE COURT: He's the producing party.

3 MR. PEEK: So he's paying for it, he can shift it  
4 back to me later if he wants?

5 THE COURT: On that part. He can shift it later.

6 MR. PEEK: Okay.

7 THE COURT: But when you then are accessing your  
8 however many documents it ends up being, you're paying for all  
9 of that and the logging that has to be done. And I will tell  
10 you that there have been occasions where I've had to review  
11 the log that the ESI vendor keeps to make a determination as  
12 to whether anything fishy happened.

13 MR. PEEK: Okay. So, if I understand correctly,  
14 what you have suggested as a protocol for review of document  
15 by document with SCL is not contained within the body of the  
16 protocol, I don't believe, where we keep a log, as you're  
17 suggesting --

18 THE COURT: You don't keep a log. That's part of  
19 what the ESI vendor does. They issue user names. They  
20 typically keep a log of everybody who accesses each document.

21 MR. PEEK: But that -- but we wouldn't have that,  
22 for example, Your Honor --

23 THE COURT: You don't get it. We only get it when  
24 there's trouble.

25 MR. PEEK: Right.

1 THE COURT: And hopefully we won't have trouble.

2 MR. PEEK: My point is, Your Honor, that I don't  
3 recall seeing that in the protocol, that there is, as you say  
4 -- because I know, for example, when I'm reviewing the  
5 documents right now -- when I reviewed them before the stay  
6 and produced them to Jacobs, I had folks reviewing on my  
7 system where I had uploaded them. And I would assume that Jim  
8 would have done the same thing on his system had we gone  
9 through the normal process without this dispute.

10 THE COURT: Hold on.

11 MR. PEEK: So I just want to make -- I just want to  
12 have that clarification.

13 THE COURT: You're absolutely right that it is not  
14 covered in this order.

15 MR. PEEK: Right. So we just need to -- and I get  
16 what you're saying, Your Honor --

17 THE COURT: Typically the ESI vendors keep that.  
18 That's why they make, you have user names that are independent  
19 for everyone who accesses it. I'm trying to see if I can find  
20 -- you had a proposal from a vendor that was a contractual  
21 document, didn't you?

22 MS. GLASER: No. Ours --

23 MR. PEEK: I don't recall that we did, Your Honor,  
24 have a proposal from a vendor.

25 MS. GLASER: No. Our proposal is not from a vendor,

1 it's from a bunch of lawyers.

2 THE COURT: Oh. Okay.

3 MS. GLASER: I can hand that up to Your Honor if you  
4 don't have a copy.

5 MR. PEEK: Because I -- you know, we have to have a  
6 protocol about, okay, you're going to keep this log, but I  
7 don't --

8 THE COURT: They keep the log.

9 MR. PEEK: They keep a log. If I access Bate range  
10 of --

11 MS. GLASER: They know.

12 MR. PEEK: -- they know how long I'm there, what I  
13 do. I'm okay with --

14 THE COURT: They don't typically know how long  
15 you're there. They know if you reviewed it or if you  
16 downloaded it. That's typically the things that are recorded  
17 on those logs.

18 MR. PEEK: And we are going to be downloading --

19 THE COURT: Some.

20 MR. PEEK: -- some. So I'm going to just look on  
21 the screen. Okay.

22 THE COURT: Depends whether you hire a hundred law  
23 students to help you with your 11-gig review like some of the  
24 people do.

25 MR. PEEK: I know. To get it done in the 90 days.

1 Okay.

2 MS. GLASER: Thank you, Your Honor.

3 MR. PEEK: So we'll have to -- we'll have to put  
4 that into place somehow, Your Honor. We'll put that protocol  
5 into place.

6 THE COURT: That needs to be in whatever order we  
7 use adopting and approving the ESI vendor.

8 MR. PEEK: We'll work on that, Your Honor.

9 THE COURT: Okay. Because there will have to be  
10 either a stip and order for the ESI vendor for their  
11 protection, as well as yours, or, if it's a contested issue,  
12 we'll issue an order from me.

13 MR. PEEK: And I'll work with Mr. Pisanelli on  
14 getting that work -- on getting that done, Your Honor.

15 THE COURT: Anything else?

16 MR. PISANELLI: On this topic, or others?

17 THE COURT: On the ESI protocol issues.

18 MR. PISANELLI: No.

19 THE COURT: All right. My next topic listed on mine  
20 is depositions of IT folks, depositions of Jacobs, requests for  
21 productions of documents.

22 MR. PISANELLI: That's my actual -- that was the  
23 question I had for you. While we are doing this process I'd  
24 like to be productive, right. I'm going to have an argument  
25 coming our way about whether we have an entitlement to any of

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

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

14 MR. PISANELLI: Will do.

15 THE COURT: Next?

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

19 THE COURT: I'm not clear, either.

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

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

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

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

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

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

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

10 THE COURT: What is it?

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

13 THE COURT: That's the broader issue.

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

16 THE COURT: I am merely at this point in time on the  
17 11 gigs looking for the privilege issues.

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

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

1 as privilege issues. You understand what I'm saying?

2 MR. PEEK: I do. I do.

3 THE COURT: I intend to resolve the privilege issues  
4 first, and then I know you're going to argue that there's a  
5 lot more that aren't on that list that you claim he shouldn't  
6 have.

7 MR. PEEK: Correct.

8 THE COURT: And we're going to have a discussion  
9 about it after you take his depo.

10 MR. PEEK: Okay. After I take his depo.

11 MS. GLASER: So, if I'm understanding Your Honor,  
12 because this is important to us, we obviously have to depose  
13 him on all the privilege issues, but we also have to depose  
14 him on jurisdictional issues, not just privilege issues.

15 THE COURT: You don't have to. You can.

16 MS. GLASER: But we -- yes. But, Your Honor, we are  
17 -- he's taken the position that he's not subject to our  
18 confidentiality and return document --

19 THE COURT: He is taking that position.

20 MS. GLASER: Yeah. I heard that loud and clear,  
21 read it loud and clear. We need to --

22 THE COURT: That doesn't mean he's right.

23 MS. GLASER: I understand that.

24 THE COURT: It's a factual issue I will make a  
25 determination on at some point in time.



1 MS. GLASER: That's one issue that is pre before you  
2 get to the evidentiary hearing on jurisdiction.

3 THE COURT: Absolutely. I will make that  
4 determination I assume when you renew your motion in limine  
5 after having a conference under 2.47 and after you've taken  
6 his deposition and after I've ruled on the privilege issues.

7 MS. GLASER: I have memorized now -- if I haven't, I  
8 will memorize 2.47.

9 THE COURT: You should read the whole bunch of local  
10 rules. Some of them will actually amuse you, because they're  
11 funny.

12 MS. GLASER: Last thing, the two issues that sort of  
13 pre -- are before Your Honor determines jurisdiction are going  
14 to be his claim that he's not subject to the policies, which  
15 we've just articulated, and, two, how he came into possession  
16 of what we believe to be greater than 11 gigabytes of  
17 documents. I'm not saying that that deposition -- I haven't  
18 thought it through, honestly, but there can be all one  
19 deposition, but it might be two. And we're going to try as  
20 best we can not to inconvenience Mr. Jacobs for sake of  
21 inconvenience, because it inconveniences everyone.

22 THE COURT: How's this? I bet if you ask for -- if  
23 you don't to it all in the first depo, you're going to get a  
24 fight on whether you get the second depo. So I'd be really  
25 careful.

1 MS. GLASER: I'm not -- I'm not arguing with you.  
2 We're going to think that through carefully.

3 THE COURT: Okay. Here's what I'm trying to make  
4 sure we all understand. There's going to be an ESI  
5 production, there's going to be an ESI search, there's going  
6 to be reviews of documents that are separate and apart,  
7 there's going to be a ruling on any privilege issues related  
8 to particular documents, you're going to take depositions,  
9 some may be going on during this process, some may occur after  
10 the process. You are then going to, if you want, file a  
11 motion in limine again to prevent the use of the documents at  
12 the evidentiary hearing. But we will now have a framework  
13 which I had hoped we would be able to have through a different  
14 process than we're doing now on which documents would be used  
15 at the evidentiary hearing. Does that make sense?

16 MS. GLASER: It totally makes sense. And it's  
17 appreciated. And I, for one, would represent to the Court and  
18 to Mr. Pisanelli that I'm hopeful that we can work things out.  
19 I don't want to be in a position, nor do I think he does, of  
20 me being concerned that he's not -- he's saying one thing to  
21 the Court and one thing to me and vice versa. And we hope to  
22 avoid that at all costs, and I'm sure I can speak for both of  
23 us in that regard, Your Honor.

24 THE COURT: I certainly hope I don't get in the  
25 middle of those things.

1 Anything else you want to tell me, Mr. Peek?

2 MR. PEEK: The only thing I have, Your Honor, is  
3 that the hearings for next week --

4 THE COURT: On October 18th at 9:00 a.m., motion for  
5 leave to file an amended counterclaim, motion for protective  
6 order, and motion to compel. The last two probably are  
7 premature, but I'm happy to deal with them if you want, and  
8 I'll --

9 MR. PEEK: I think that those were all --

10 THE COURT: -- probably say they're premature.

11 MR. PEEK: -- those are all the ones that the Court  
12 asked us to withdraw.

13 THE COURT: Are they?

14 MR. PEEK: Yes.

15 THE COURT: Are you going to file an amended  
16 counterclaim, though?

17 MR. PEEK: I would love to. But I -- but that was  
18 one of the motions that you said to us that we couldn't go  
19 forward on that.

20 THE COURT: I can't rule on that. I can't rule on  
21 it. I'm stayed.

22 MR. PEEK: Right. So you asked us to withdraw those  
23 motions. So the fact that there's a hearing still on calendar  
24 for those withdrawn motions --

25 THE COURT: Can you vacate those hearings.

1 THE CLERK: I can do that, Judge.

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

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

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

8 THE COURT: All right.

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

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

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

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

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

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

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

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

8 Anything else?

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

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

13 THE COURT: Anything else?

14 MR. PISANELLI: Nope.

15 THE COURT: All right.

16 (Off-record colloquy)

17 THE PROCEEDINGS CONCLUDED AT 11:27 A.M.

18 \* \* \* \* \*

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CERTIFICATION

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

AFFIRMATION

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

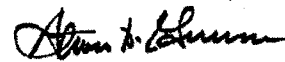
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15 *Attorneys for Defendant Sands China Ltd.*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

11 **STEVEN C. JACOBS,**  
12  
13 Plaintiff,

Case No.: A-10-627691-C

Dept. No.: XI

14 v.

**NOTICE OF ENTRY OF ORDER**


15 **LAS VEGAS SANDS CORP.,** a Nevada  
16 corporation; **SANDS CHINA LTD.,** a Cayman  
17 Islands corporation; **DOES 1** through **X;** and  
18 **ROE CORPORATIONS I** through **X,**  
19 Defendants.

20 PLEASE TAKE NOTICE that an Order Regarding November 22, 2011 Status Conference  
21 was entered on the 8<sup>th</sup> day of December, 2011. A true and correct copy is attached hereto.

22 DATED this 9 day of December, 2011.

23 **GLASER WEIL FINK JACOBS**  
24 **HOWARD AVCHEN & SHAPIRO LLP**

25 By:

  
26 Patricia L. Glaser, Esq. Pro Hac Vice Admitted  
27 Andrew D. Sedlock, Esq. Nevada Bar No. 9183  
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*Attorneys for Defendant Sands China Ltd.*

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Howard Avchen & Shapiro LLP

**CERTIFICATE OF MAILING**

I hereby certify that I am an employee of GLASER WEIL FINK JACOBS HOWARD  
AVCHEN & SHAPIRO LLP, and on the 9 day of December, 2011, I deposited a true and  
correct copy of the foregoing **NOTICE OF ENTRY OF ORDER REGARDING NOVEMBER  
22, 2011 STATUS CONFERENCE** via U.S. Mail at Las Vegas, Nevada, in a sealed envelope  
upon which first class postage was prepaid and addressed to the following:

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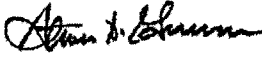
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An Employee of GLASER WEIL FINK JACOBS  
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1 **ORDER**

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15 *Attorneys for Sands China, Ltd.*

16 **DISTRICT COURT**  
17 **CLARK COUNTY, NEVADA**

18 **STEVEN C. JACOBS,**

19 Plaintiff,

20 v.

21 LAS VEGAS SANDS CORP., a Nevada  
22 corporation; SANDS CHINA LTD., a Cayman  
23 islands corporation; DOES I-X; and ROE  
24 CORPORATIONS I-X,

25 Defendants.

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

**ORDER REGARDING NOVEMBER 22,  
2011 STATUS CONFERENCE**

Date and Time of Hearing:  
November 22, 2011 at 10:00 a.m.

26 LAS VEGAS SANDS CORP., a Nevada  
27 corporation,

28 Counterclaimant,

v.

29 **STEVEN C. JACOBS,**

30 Counterdefendant.

31 The parties appeared before the Court on November 22, 2011, at 10:00 a.m. for a Status  
32 Conference regarding issues to be resolved between the parties regarding, among other things,  
33 documents in the possession, custody and/or control of Plaintiff Steven Jacobs which Jacobs

1 obtained while working for Sands China Ltd. ("SCL") and/or Las Vegas Sands Corp. ("LVSC")  
2 (collectively, the "Subject Documents"). Stephen Ma, Esq. of the firm GLASER, WEIL, FINK,  
3 JACOBS, HOWARD & SHAPIRO, LLP, appeared on behalf of SCL; J. Stephen Peek, Esq. of the  
4 firm HOLLAND & HART, LLP, appeared on behalf of LVSC; and James J. Pisanelli, Esq., Todd L.  
5 Bice, Esq., and Debra L. Spinelli, Esq. of the firm PISANELLI BICE PLLC, appeared on behalf of  
6 Jacobs. The Court having reviewed the pleadings and papers on file, and having considered the  
7 arguments of counsel, and good cause appearing therefore:

8 **IT IS HEREBY ORDERED** as follows:

9 1. The Court appoints Advanced Discovery to serve as the independent ESI Vendor in  
10 this action to take possession of the ~~Subject Documents~~ *electronically stored documents* for Defendants' review and other related  
11 work.

12 2. As the Court-appointed ESI Vendor, Advanced Discovery will take instructions  
13 directly from the Court because of concerns related to information that may be on some of Mr.  
14 Jacobs' ~~electronic devices storing the Subject Documents~~ *electronically stored documents*, including but not limited to the integrity,  
15 ~~completeness and chain of custody of the Subject Documents~~ *electronically stored documents* as identified by the Court and the  
16 Defendants at the November 22, 2011 hearing.

17 3. The Court and the parties will conduct joint conference calls or meetings with  
18 Advanced Discovery as necessary to discuss, among other things, the scope of work to be performed  
19 by the ESI Vendor.

20 4. By ~~Tuesday~~ *Friday*, December 9, 2011, Jacobs shall do either of the following:

21 a. Produce to Advanced Discovery a full mirror image of all electronic storage  
22 devices in Jacobs' possession, custody or control as of the date of Jacobs'  
23 ~~termination, July 23, 2010 that store or stored Subject Documents;~~ *electronically stored documents*; or

24 b. File a motion for protective order addressing any alleged demands or  
25 requirements by the U.S. Department of Justice or any other government  
26 entity purportedly preventing Jacobs' production of a full mirror image of all  
27 ~~electronic storage devices in Jacobs' possession, custody or control that store~~ *electronically stored documents*  
28 ~~or stored Subject Documents,~~ including a supporting sworn declaration and

supporting documentation by Jacobs' New York counsel.

5. Once the ESI Vendor makes a full, forensically sound image of the ~~Subject Documents~~ <sup>electronically stored</sup> (subject to the Court's ruling on Jacobs' possible motion for protective order as set forth in Paragraph 4 above), the ESI Vendor shall work, to the best of its ability, to segregate from the ~~Subject Documents~~ <sup>electronically stored information</sup> all documents created after the date of Jacobs' termination, July 23, 2010.

6. After the ESI Vendor has completed its work as described in Paragraph 5 above, the ESI Vendor shall conduct searches <sup>based upon terms submitted by Jacobs</sup> to identify documents that Jacobs contends are protected from disclosure by privilege or otherwise protected from disclosure utilizing search terms approved by the Court. In light of the work to be performed by the ESI Vendor as described in Paragraph 5 above, the working copy of the ~~Subject Documents~~ <sup>electronically stored documents</sup> upon which the ESI Vendor shall perform its searches will be limited to documents created on or before July 23, 2010.

7. The parties will further meet and confer regarding Jacobs' proposed search terms and the Court will resolve any outstanding issues regarding the proposed search terms. Upon completion of the searches, the ESI Vendor shall produce the search results to the Court in order for the Court to conduct an *in camera* review of these materials to determine if there is any basis for these documents to be withheld from SCL's review of the Subject Documents. Upon its *in camera* review of these documents, the Court will make a determination if it is appropriate for some of these documents to be released to Plaintiff's counsel in order to provide a log identifying a privilege or other protection from disclosure.

8. After the Court has ruled upon which of the ~~Subject Documents~~ <sup>electronically stored documents, if any</sup> are protected from disclosure to Defendants on the basis of privilege or other protection, SCL can begin their review of ~~the Subject Documents~~ <sup>documents as limited by the Court.</sup>

9. Any costs relating to the ESI Vendor's uploading of the ~~Subject Documents~~ <sup>electronically stored documents</sup> and retrieval of data (including as set forth in Paragraph 5) shall be paid initially by Jacobs.

10. Any costs relating to the ESI Vendor's work to perform searches to identify documents that Jacobs claims to be protected from disclosure shall be paid initially by Jacobs.

11. Any costs relating to the ESI Vendor's work to host the ~~Subject Documents~~ <sup>electronically stored documents</sup> on its server while SCL conducts its review of the ~~Subject Documents~~ <sup>documents as limited by the Court</sup> shall be paid initially by SCL.

1 12. To the extent the ESI Vendor performs any additional work in connection with the  
2 ~~Subject Documents~~ <sup>electronically stored documents</sup> at the instruction of the Court, the parties will equally share the cost of such  
3 work (i.e., Jacobs will pay 50% and SCL will pay 50%) unless otherwise ordered by the Court.

4 13. With regard to cost allocation, the parties may petition the Court to seek a shifting of  
5 costs incurred for work performed by the ESI Vendor, including as set forth in the June 23, 2011  
6 ESI Protocol.

7 14. Subject to further order from the Court, the ESI Vendor shall maintain the  
8 confidentiality of the ~~Subject Documents~~ <sup>ESI</sup> and all other information and/or documents contained on  
9 Jacobs' devices by not disclosing them in any form whatsoever to anyone other than the Court,  
10 employees of the ESI Vendor, and counsel for the parties (when so directed by the Court) in this  
11 action.

12 15. SCL's written discovery served upon Jacobs on October 24, 2011, is ordered  
13 stricken.

14 16. SCL may prepare and serve a more narrowly tailored set of written discovery to seek  
15 discovery from Jacobs relating to the anticipated jurisdictional hearing, to which discovery Jacobs  
16 shall either answer or timely object.

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1 17. Subject to the above, the Court's rulings at the October 13, 2011 hearing (as set forth  
2 in the transcript of the October 13, 2011 hearing) remain unchanged.


3  
4 DATED this 7<sup>th</sup> day of December, 2011.

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

9 Respectfully submitted by:

10 DATED this 5 day of December, 2011.


11 GLASER, WEIL, BINK, JACOBS,  
12 HOWARD AVCHEN & SHAPIRO, LLP

13 By:   
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15 Pro Hac Vice Admitted  
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24 Attorneys for Sands China, Ltd.

25 Approved as to form by:


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27 By:   
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32 Attorneys for Las Vegas Sands Corp.

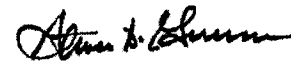
33 Approved as to form by:

34 PISANELLI BICE PLLC

35 By:   
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37 Todd L. Bice, Esq., Bar No. 4534  
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41 Attorney for Steven C. Jacobs

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**ORDR**

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Attorneys for Plaintiff Steven C. Jacobs

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

**STEVEN C. JACOBS,**

Plaintiff,

v.

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

Defendants.

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

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

**AND RELATED CLAIMS**

Date and Time of Hearings:

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

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

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

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

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

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

10 2. GRANTED as to the deposition of Sheldon G. Adelson ("Adelson"), a Nevada  
11 resident, who simultaneously served as Chairman of the Board of Directors and CEO of LVSC  
12 and Chairman of the Board of Directors of Sands China, regarding the work he performed for  
13 Sands China, and work he performed on behalf of or directly for Sands China while acting as an  
14 employee, officer, or director of LVSC, during the time period of January 1, 2009, to October 20,  
15 2010;

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

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

27  
28 <sup>1</sup> This time period was agreed upon and ordered by the Court in the Stipulation and Order  
Regarding ESI Discovery entered filed on June 23, 2011, and is also relevant to the limited  
jurisdictional discovery permitted herein.

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

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

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

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

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

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

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

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



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1 employee, officer, or director of LVSC, during the time period of January 1, 2009, to October 20,  
2 2010, including (on Plaintiff's information and belief) global gaming and/or international player  
3 development efforts, such as active recruitment of VIP players to share between and among  
4 LVSC and Sands China properties, and/or player funding;

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

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

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

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

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

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

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

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

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

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

14 In addition, Defendant Sands China's Motion for Clarification of Jurisdictional Discovery  
15 Order on Order Shortening Time ("Motion for Clarification") came before the Court for hearing  
16 on 9:00 a.m. on October 13, 2011. James J. Pisanelli, Esq., and Debra L. Spinelli, Esq., of the  
17 law firm PISANELLI BICE PLLC, appeared on behalf of Jacobs. Patricia L. Glaser, Esq., of the  
18 law firm Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP, appeared on behalf of  
19 Defendant Sands China, and J. Stephen Peek, Esq., of the law firm Holland & Hart LLP, appeared  
20 on behalf of Defendant LVSC. The Court considered the papers filed on behalf of the parties and  
21 the oral argument of counsel, and good cause appearing therefor:  
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1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion for  
2 Clarification is GRANTED IN PART as follows:

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

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

7 DATED: March 8, 2012

8  
9  
10   
11 THE HONORABLE ELIZABETH GONZALEZ  
12 EIGHTH JUDICIAL DISTRICT COURT

13 Respectfully submitted by:

14 PISANELLI BICE PLLC

15 By: 

16 James J. Pisanelli, Esq., Bar No. 4027  
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18 Debra L. Spinelli, Esq., Bar No. 9695  
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22 Attorneys for Plaintiff Steven C. Jacobs

23 Approved as to form by:

24 HOLLAND & HART

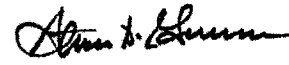
25 By: 

26 J. Stephen Peck, Esq., Bar No. 1758  
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Attorneys for Las Vegas Sands Corp.  
and Sands China, Ltd.

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1 **SAO**  
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9 speak@hollandhart.com  
10  
11 *Attorneys for Defendants Las Vegas Sands Corp.*  
12 *and Sands China Ltd.*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 **STEVEN C. JACOBS,**

11 Plaintiff,

12 v.

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

16 Defendants.

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

Date: n/a  
Time: n/a

**STIPULATED CONFIDENTIALITY  
AGREEMENT AND PROTECTIVE  
ORDER**

17  
18 **LAS VEGAS SANDS CORP.,** a Nevada  
19 corporation,

20 Counterclaimant,

21 v.

21 **STEVEN C. JACOBS,**

22 Counterdefendant.

24 The undersigned parties, by and through their counsel of record, hereby stipulate and  
25 agree that the handling of confidential material in these proceedings shall be governed by the  
26 provisions set forth below:  
27  
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3/19/12

1           **1. Applicability of this Protective Order:** This Protective Order does not and will  
2 not govern any trial proceedings in this action but will otherwise be applicable to and govern the  
3 handling of documents, depositions, deposition exhibits, interrogatory responses, responses to  
4 requests for admissions, responses to requests for production of documents, and all other  
5 discovery obtained pursuant to Nevada Rules of Civil Procedure or other legal process by or  
6 from, or produced on behalf of, a party in connection with this action (this information hereinafter  
7 referred to as "Discovery Material"). As used herein, "Producing Party" or "Disclosing Party"  
8 shall refer to the parties in this action that give testimony or produce documents or other  
9 information and to non-parties; "Receiving Party" shall refer to the parties in this action that  
10 receive such information, and "Authorized Recipient" shall refer to any person or entity  
11 authorized by Sections 11 and 12 of this Protective Order to obtain access to Confidential  
12 Information, Highly Confidential Information, or the contents of such Discovery Material.

13           **2. Designation of Information:** Any Producing Party may designate Discovery  
14 Material that is in its possession, custody, or control to be produced to a Receiving Party as  
15 "Confidential" or "Highly Confidential" under the terms of this Protective Order if the Producing  
16 Party in good faith reasonably believes that such Discovery Material contains non-public,  
17 confidential information as defined in Sections 4 and 5 below.

18           **3. Exercise of Restraint and Care in Designating Material for Protection:** Each  
19 Producing Party that designates information or items for protection under this Protective Order  
20 must take care to limit any such designation to specific material that qualifies under the  
21 appropriate standards. Mass, indiscriminate or routinized designations are prohibited.

22           **4. Confidential Information:** For purposes of this Protective Order, "Confidential  
23 Information" means any Protected Data (as defined below) and any information that constitutes,  
24 reflects, or discloses non-public, trade secrets, know-how, proprietary data, marketing  
25 information, financial information, and/or commercially sensitive business information or data  
26 which the designating party in good faith believes in fact is confidential or the unprotected  
27 disclosure of which might result in economic or competitive injury, and which is not publicly  
28

1 known and cannot be ascertained from an inspection of publicly available documents, materials,  
2 or devices. Confidential Information shall also include sensitive personal information that is not  
3 otherwise publicly available, such as home addresses; Social Security numbers; dates of birth;  
4 employment personnel files; medical information; home telephone records/numbers; employee  
5 disciplinary records; wage statements or earnings statements; employee benefits data; tax records;  
6 and other similar personal financial information. A party may also designate as  
7 "CONFIDENTIAL" compilations of publicly available discovery materials, which would not be  
8 known publicly in a compiled form.

9 (a) Protected Data. The term "Protected Data" shall refer to any information  
10 that a party believes in good faith to be subject to federal, state or foreign data protection laws or  
11 other privacy obligations. Protected Data constitutes highly sensitive materials requiring special  
12 protection. Examples of such data protection laws include, but are not limited to, the Macau  
13 Personal Data Protection Act ("MDPA") and the Hong Kong Personal Data Ordinance  
14 ("HKPDO").

15 5. **Highly Confidential Information:** For purposes of this Protective Order, Highly  
16 Confidential Information is any Protected Data and/or Confidential Information as defined in  
17 Section 4 above that also includes extremely sensitive, highly confidential, non-public  
18 information, consisting either of trade secrets or proprietary or other highly confidential business,  
19 financial, regulatory, or strategic information (including information regarding business plans,  
20 technical data, and non-public designs), the disclosure of which would create a substantial risk of  
21 competitive or business injury to the Producing Party. Certain Protected Data may compel  
22 alternative or additional protections beyond those afforded Highly Confidential Information, in  
23 which event the parties shall meet and confer in good faith, and, if unsuccessful, the party seeking  
24 any greater protection shall move the Court for appropriate relief. A party may re-designate  
25 material originally "CONFIDENTIAL" as "HIGHLY CONFIDENTIAL" by giving notice of  
26 such a re-designation to all parties.

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1           6.     **Designating Confidential Information or Highly Confidential Information.** If  
2 any party in this action determines in good faith that any documents, things, or responses  
3 produced in the course of discovery in this action should be designated as Confidential  
4 Information or Highly Confidential Information it shall advise any party who has received such  
5 material of this fact, and all copies of such document, things, or responses, or portions thereof  
6 deemed to be confidential shall be marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL"  
7 (whether produced in hard copy or electronic form) at the expense of the designating party and  
8 treated as such by all parties. A designating party may inform another party that a document is  
9 Confidential or Highly Confidential by providing the Bates number of the document in writing. If  
10 Confidential or Highly Confidential Information is produced via an electronic form on a computer  
11 readable medium (e.g., CD-ROM), other digital storage medium, or via Internet transmission, the  
12 Producing Party shall affix in a prominent place on the storage medium or container file on which  
13 the information is stored, and on any container(s) for such medium, the legend "Includes  
14 CONFIDENTIAL INFORMATION" or "Includes HIGHLY CONFIDENTIAL  
15 INFORMATION." Nothing in this section shall extend confidentiality or the protections  
16 associated therewith to any information that does not otherwise constitute "Confidential  
17 Information" or "Highly Confidential Information" as defined in Paragraphs 4 and 5 herein.

18           7.     **Redaction Allowed:** Any Producing Party may redact from the documents or  
19 things it produces matter that the Producing Party claims is subject to the attorney-client privilege,  
20 the work product doctrine, a legal prohibition against disclosure, or any other privilege from  
21 disclosure. Any Producing Party also may redact information that is both personal and non-  
22 responsive, such as a social security number. A Producing Party may not redact information in an  
23 otherwise responsive document solely because the Producing Party believes that the information  
24 is non-responsive. Nor shall a Producing Party withhold non-privileged, responsive information  
25 solely on the grounds that such information is contained in a document that includes privileged  
26 information. The Producing Party shall mark each thing where matter has been redacted with a  
27 legend stating "REDACTED," and include an annotation indicating the specific reason for the  
28

1 redaction (e.g., "REDACTED—Work Product"). All documents redacted based on attorney  
2 client privilege or work product immunity shall be listed in an appropriate log in conformity with  
3 Nevada law and Nevada Rule of Civil Procedure 26(b)(5). Where a document consists of more  
4 than one page, the page on which information has been redacted shall so be marked. The  
5 Producing Party shall preserve an unredacted version of such document. In addition to the  
6 foregoing, the following shall apply to redactions of Protected Data:

7 (a) Any party may redact Protected Data that it claims, in good faith, requires  
8 protections under the terms of this Protective Order. Protected Data, however, shall not be  
9 redacted from Discovery Material to the extent it relates to or identifies an individual named as a  
10 party or his/her agents, unless a party believes in good faith that the MDPA or HKDPO would  
11 prohibit disclosure of this specific information. If the latter, the title of the agent shall be  
12 identified and/or disclosed unless a party believes in good faith that such an identification or  
13 disclosure is also prohibited by the MDPA or HKDPO.

14 (b) Protected Data shall be redacted from any public filing not filed under seal.

15 (c) The right to challenge and the process for challenging redactions shall be  
16 the same as the right to challenge and the process from challenging the designation of  
17 Confidential Information or Highly Confidential Information.

18 **8. Use of Confidential Information or Highly Confidential Information.** Except  
19 as provided herein, Confidential Information and Highly Confidential Information designated or  
20 marked as provided shall be used solely for the purposes of this action, shall not be disclosed to  
21 anyone other than those persons identified herein in Sections 11 and 12, and shall be handled in  
22 such manner until such designation is removed by the designating party or by order of the Court.  
23 Nothing in this Protective Order shall preclude a party or other person from using his, her, or its  
24 own Confidential Information or Highly Confidential Information or from giving others his, her,  
25 or its Confidential Information or Highly Confidential Information.

26 Once the Court enters this Protective Order, a party shall have thirty (30) days to designate  
27 as Confidential or Highly Confidential any documents previously produced in this action, which it  
28



1 can do by stamping "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" on the document, or  
2 informing the other parties of the Bates-numbers of the documents so designated.

3       9.     **Documents Produced to Government Agencies or Bodies.** Documents or  
4 information that are otherwise subject to discovery do not become protected from disclosure in  
5 this action simply by virtue of producing those materials to the Hong Kong Securities and Futures  
6 Commission (the "SFC"), the U.S. Securities and Exchange Commission (the "SEC"), the U.S.  
7 Department of Justice (the "DOJ"), Nevada gaming authorities, the Chinese government officials,  
8 agencies or bodies (including, but not limited to, the State Administration of Foreign Exchange of  
9 China (SAFE)), Macau government officials, agencies or bodies, and/or Macau gaming  
10 authorities, the Singapore government officials, agencies or bodies, and/or Singapore gaming  
11 authorities (e.g., PAGCOR), New Jersey gaming authorities, and/or any governmental official,  
12 body or agency.

13       10.    **Use of Confidential Information and Highly Confidential Information in**  
14 **Depositions.** Counsel for any party shall have the right to disclose Confidential or Highly  
15 Confidential Information at depositions, provided that such disclosure is consistent with this  
16 Protective Order, including Sections 11 and 12. Any counsel of record may request that all  
17 persons not entitled under Sections 11 or 12 of this Protective Order to have access to  
18 Confidential Information or Highly Confidential Information leave the deposition room during the  
19 confidential portion of the deposition. Failure of such other persons to comply with a request to  
20 leave the deposition shall constitute substantial justification for counsel to advise the witness that  
21 the witness need not answer the question where the answer would disclose Confidential  
22 Information or Highly Confidential Information. Additionally, at any deposition session, (1) upon  
23 inquiry with regard to the content of any discovery material(s) designated or marked as  
24 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY;" (2)  
25 whenever counsel for a party deems that the answer to a question may result in the disclosure or  
26 revelation of Confidential or Highly Confidential Information; and/or (3) whenever counsel for a  
27 party deems that the answer to any question has resulted in the disclosure or revelation of  
28

1 Confidential or Highly Confidential Information, counsel to any party may designate portions of a  
 2 deposition transcript and/or video of any deposition (or any other testimony) as containing  
 3 Confidential or Highly Confidential Information in accordance with this Order by a statement on  
 4 the record during the deposition or by notifying all other parties in writing, within thirty (30)  
 5 calendar days of receiving the transcript or video that it contains Confidential or Highly  
 6 Confidential Information and designating the specific pages, lines, and/or counter numbers as  
 7 containing Confidential or Highly Confidential Information. If a designation is made via a  
 8 statement on the record during a deposition, counsel must follow up in writing within thirty (30)  
 9 calendar days of receiving the transcript or video, identifying the specific pages, lines, and/or  
 10 counter numbers containing the Confidential or Highly Confidential Information. If no  
 11 confidentiality designations are made within the thirty calendar (30) day period, the entire  
 12 transcript shall be considered non-confidential. During the thirty (30) day period, the entire  
 13 transcript and video shall be treated as Confidential Information (or Highly Confidential  
 14 Information) All originals and copies of deposition transcripts that contain Confidential  
 15 Information or Highly Confidential Information shall be prominently marked "CONFIDENTIAL"  
 16 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" on the cover thereof and, if and  
 17 when filed with the Court, the portions of such transcript so designated shall be filed under seal.  
 18 Counsel must designate portions of a deposition transcript as "CONFIDENTIAL" or "HIGHLY  
 19 CONFIDENTIAL – ATTORNEYS' EYES ONLY" within thirty calendar (30) days of receiving  
 20 the transcript. Any DVD or other digital storage medium containing Confidential or Highly  
 21 Confidential deposition testimony shall be labeled in accordance with the provisions of paragraph  
 22 6.

23 **11. Persons Authorized to Receive Confidential Information.** Confidential  
 24 Information produced pursuant to this Protective Order may be disclosed or made available only  
 25 to the Court, court personnel, and to the persons below:

26 (a) A party, or officers, directors, and employees of a party deemed necessary  
 27 by counsel to aid in the prosecution, defense, or settlement of this action;  
 28

1 (b) Counsel for a party (including in-house attorneys, outside attorneys  
2 associated with the law firm of counsel, and paralegal, clerical, and secretarial staff employed by  
3 such counsel);

4 (c) An entity retained by a party to provide litigation support services  
5 (photocopying, videotaping, translating, preparing exhibits or demonstrations, organizing, storing,  
6 retrieving data in any form or medium, etc.) and its employees;

7 (d) Outside experts or consultants (together with their support staff) retained  
8 by a party to assist in the prosecution, defense, or settlement of this action, provided that such an  
9 expert or consultant is not a current employee of a direct competitor of a party named in this  
10 action;

11 (e) Court reporter(s) and videographers(s) employed in this action;

12 (f) A witness at any deposition or other proceeding in this action; and

13 (g) Advanced Discovery or any other Court-appointed ESI vendor.

14 (h) Any other person as to whom the parties in writing agree or that the Court  
15 in these proceedings designates.

16 Any person to whom Confidential Information is disclosed pursuant to subparts (a), (b), (c), (d),  
17 (e), (f), (g) or (h) above shall be advised that the Confidential Information is being disclosed  
18 pursuant to an order of the Court, that the information may not be disclosed by such person to any  
19 person not permitted to have access to the Confidential Information pursuant to this Protective  
20 Order, and that any violation of this Protective Order may result in the imposition of such  
21 sanctions as the Court deems proper. Any person to whom Confidential Information is disclosed  
22 pursuant to subpart (c), (d), (f), (g), or (h) of this section shall also be required to execute a copy  
23 of the form Exhibit A. The persons shall agree in writing to be bound by the terms of this  
24 Protective Order by executing a copy of Exhibit A (which shall be maintained by the counsel of  
25 record for the party seeking to reveal the Confidential Information) in advance of being shown the  
26 Confidential Information. No party (or its counsel) shall discourage any persons from signing a  
27 copy of Exhibit A. If a person refuses to execute a copy of Exhibit A, the party seeking to reveal  
28

1 the Confidential Information shall seek an order from the Court directing that the person be bound  
2 by this Protective Order. In the event of the filing of such a motion, Confidential Information  
3 may not be disclosed to such person until the Court resolves the issue. Proof of each written  
4 agreement provided for under this Section shall be maintained by each of the parties while this  
5 action is pending and disclosed to the other parties if ordered to do so by the Court.

6       12.   **Persons Authorized to Receive Highly Confidential Information.** "HIGHLY  
7 CONFIDENTIAL – ATTORNEYS' EYES ONLY" documents and information may be used only  
8 in connection with this case and may be disclosed only to the Court and the persons listed in sub-  
9 sections (b) to (h) of Section 10 above, but shall not be disclosed to a party, or an employee of a  
10 party, unless otherwise agreed or ordered. Any person to whom Highly Confidential Information  
11 is disclosed pursuant to sub-sections (c), (d), (f), (g), or (h) of section 8 above shall also be  
12 required to execute a copy of the form Exhibit A.

13       13.   **Filing of Confidential Information or Highly Confidential Information With**  
14 **Court.** Any party seeking to file or disclose materials designated as Confidential Information or  
15 Highly Confidential Information with the Court in this Action must seek to file such Confidential  
16 or Highly Confidential Information under seal pursuant to Rule 3 of the Nevada Rules for Sealing  
17 and Redacting Court Records.

18       14.   **Notice to Non-Parties.** Any party issuing a subpoena to a non-party shall enclose  
19 a copy of this Protective Order with a request that, within ten (10) calendar days, the non-party  
20 either request the protection of this Protective Order or notify the issuing party that the non-party  
21 does not need the protection of this Protective Order or wishes to seek different protection. Any  
22 non-party invoking the Protective Order shall comply with, and be subject to, all other applicable  
23 sections of the Protective Order.

24       15.   **Knowledge of Unauthorized Use or Possession.** If a party receiving Confidential  
25 Information or Highly Confidential Information ("Receiving Party") learns of any unauthorized  
26 possession, knowledge, use or disclosure of any Confidential Information or Highly Confidential  
27 Information, the Receiving Party shall immediately notify in writing the party that produced the  
28

1 Confidential Information or Highly Confidential Information (the "Producing Party"). The  
2 Receiving Party shall promptly furnish the Producing Party the full details of such possession,  
3 knowledge, use or disclosure. With respect to such unauthorized possession, knowledge, use or  
4 disclosure the Receiving Party shall assist the Producing Party in preventing its recurrence.

5 16. **Copies, Summaries or Abstracts.** Any copies, summaries, abstracts or exact  
6 duplications of Confidential Information or Highly Confidential Information shall be marked  
7 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY" and shall be  
8 considered Confidential Information or Highly Confidential Information subject to the terms and  
9 conditions of this Protective Order. Attorney-client communications and attorney work product  
10 regarding Confidential Information or Highly Confidential Information shall not be subject to this  
11 section, regardless of whether they summarize, abstract, paraphrase, or otherwise reflect  
12 Confidential Information or Highly Confidential Information.

13 17. **Information Not Confidential.** The restrictions set forth in this Protective Order  
14 shall not be construed to apply to any information or materials that:

15 (a) Were lawfully in the Receiving Party's possession prior to such  
16 information being designated as Confidential or Highly Confidential Information in this action,  
17 and that the Receiving Party is not otherwise obligated to treat as confidential;

18 (b) Were obtained without any benefit or use of Confidential or Highly  
19 Confidential Information from a third party having the right to disclose such information to the  
20 Receiving Party without restriction or obligation of confidentiality;

21 (c) Were independently developed after the time of disclosure by personnel  
22 who did not have access to the Producing Party's Confidential or Highly Confidential  
23 Information;

24 (d) Have been or become part of the public domain by publication or  
25 otherwise and not due to any unauthorized act or omission on the part of a Receiving Party; or

26 (e) Under law, have been declared to be in the public domain.  
27  
28

1           **18. Challenges to Designations.** Any party may object to the designation of  
2 Confidential Information or Highly Confidential Information on the ground that such information  
3 does not constitute Confidential Information or Highly Confidential Information by serving  
4 written notice upon counsel for the Producing Party within thirty (30) calendar days of the date  
5 the item(s) was designated, specifying the item(s) in question and the grounds for the objection.  
6 If a party objects to the designation of any materials as Confidential Information or Highly  
7 Confidential Information, the party seeking the designation shall arrange for a E.D.C.R. 2.34  
8 conference to be held within ten (10) calendar days of receipt of a written objection to the  
9 designation to attempt to informally resolve the dispute. If the parties cannot resolve the matter,  
10 the party seeking the designation may file a motion with the Court to resolve the dispute. Such  
11 motions must be filed within ten (10) calendar days of the E.D.C.R. 2.34 conference. This  
12 Protective Order will not affect the burden of proof on any such motion, or impose any burdens  
13 upon any party that would not exist had the Protective Order not been entered. Any contested  
14 information shall continue to be treated as confidential and subject to this Protective Order until  
15 such time as such motion has been ruled upon.

16           **19. Use in Court.** If any Confidential Information or Highly Confidential Information  
17 is used in any pretrial Court proceeding in this action, it shall not necessarily lose its confidential  
18 status through such use, and the party using such information shall take all reasonable steps  
19 consistent with the Nevada Supreme Court Rules Governing Sealing and Redacting Court  
20 Records to maintain its confidentiality during such use.

21           **20. No Waiver.** This Protective Order is entered solely for the purpose of facilitating  
22 the exchange of documents and information among the parties to this action without involving the  
23 Court unnecessarily in the process. Nothing in this Protective Order nor the production of any  
24 information or document under the terms of this Protective Order, nor any proceedings pursuant  
25 to this Protective Order shall be deemed to be a waiver of any rights or objections to challenge the  
26 authenticity or admissibility of any document, testimony or other evidence at trial. Additionally,  
27 this Protective Order will not prejudice the right of any party or nonparty to oppose production of  
28

1 any information on the ground of attorney-client privilege; work product doctrine or any other  
2 privilege or protection provided under the law. Entry of this Protective Order does not preclude  
3 any party from seeking or opposing additional protection for particular information.

4       **21. Reservation of Rights.** The Parties each reserve (1) the right to seek or oppose  
5 additional or different protection for particular information, documents, materials, items or things;  
6 and (2) the right to object to the production, disclosure and/or use of any information, documents,  
7 materials, items and/or things that a Party designates or marks as containing Confidential  
8 Information on any other ground(s) it may deem appropriate, including, without limitation, on the  
9 ground of attorney-client privilege, work product, and/or any other privilege or protection  
10 provided under applicable law. This Stipulation shall neither enlarge nor affect the proper scope  
11 of discovery in this Action. In addition, this Stipulation shall not limit or circumscribe in any  
12 manner any rights the Parties (or their respective counsel) may have under common law or  
13 pursuant to any state, federal, or foreign statute or regulation, and/or ethical rule.

14       **22. Inadvertent Failure to Designate.** The inadvertent failure to designate  
15 information produced in discovery as Confidential or Highly Confidential shall not be deemed, by  
16 itself, to be a waiver of the right to so designate such discovery materials as Confidential  
17 Information or Highly Confidential Information. Within a reasonable time of learning of any  
18 such inadvertent failure, the Producing Party shall notify all receiving parties of such inadvertent  
19 failure and take such other steps as necessary to correct such failure after becoming aware of it.  
20 Disclosure of such discovery materials to any other person prior to later designation of the  
21 discovery materials in accordance with this section shall not violate the terms of this Protective  
22 Order. However, immediately upon being notified of an inadvertent failure to designate, all  
23 parties shall treat such information as though properly designated and take any actions necessary  
24 to prevent any unauthorized disclosure subject to the provisions of paragraph 18.

25       **23. No Waiver of Privilege:** Disclosure (including production) of information that a  
26 party or non-party later claims should not have been disclosed because of a privilege, including,  
27 but not limited to, the attorney-client privilege or work product doctrine ("Privileged  
28

1 Information"), shall not constitute a waiver of, or estoppel as to, any claim of attorney-client  
2 privilege, attorney work product, or other ground for withholding production as to which the  
3 Disclosing or Producing Party would be entitled in the Litigation.

4       **24. Effect of disclosure of Privileged Information:** The Receiving Party hereby  
5 agrees to return, sequester, or destroy any Privileged Information disclosed or produced by  
6 Disclosing or Producing Party upon request. If the Receiving Party reasonably believes that  
7 Privileged Information has been inadvertently disclosed or produced to it, it shall promptly notify  
8 the Disclosing or Producing Party and sequester such information until instructions as to  
9 disposition are received. The failure of any party to provide notice or instructions under this  
10 Paragraph shall not constitute a waiver of, or estoppel as to, any claim of attorney-client privilege,  
11 attorney work product, or other ground for withholding production as to which the Disclosing or  
12 Producing Party would be entitled in this action.

13       **25. Inadvertent Production of Non-Discoverable Documents.** If a Producing Party  
14 inadvertently produces a document that contains no discoverable information, the Producing Party  
15 may request in writing that the Receiving Party return the document, and the Receiving Party will  
16 return the document. A Producing Party may not request the return of a document pursuant to  
17 this paragraph if the document contains any discoverable information. If a Producing Party  
18 inadvertently fails to redact personal information (for example, a social security number), the  
19 Producing Party may provide the Receiving Party a substitute version of the document that  
20 redacts the personal information, and the Receiving Party shall return the original, unredacted  
21 document to the Producing Party.

22       **26. Return of Information.** Within thirty (30) calendar days after the final  
23 disposition of this action, all Confidential Material and/or Highly Confidential Material produced  
24 by an opposing party or non-party (including, without limitation, any copies, extracts or  
25 summaries thereof) as part of discovery in this action shall be destroyed by the parties to whom  
26 the Confidential Material and/or Highly Confidential Material was produced, and each counsel  
27 shall, by declaration delivered to all counsel for the Producing Party, affirm that all such  
28



1 Confidential Material and/or Highly Confidential Material (including, without limitation, any  
2 copies, extracts or summaries thereof) has been destroyed; provided, however, that each counsel  
3 shall be entitled to retain pleadings, motions and memoranda in support thereof, declarations or  
4 affidavits, deposition transcripts and videotapes, or documents reflecting attorney work product or  
5 consultant or expert work product, even if such material contains or refers to Confidential  
6 Material and/or Highly Confidential Material, but only to the extent necessary to preserve a  
7 litigation file with respect to this action.

8       **27. Attorney's Fees.** Nothing in this Protective Order is intended to either expand or  
9 limit a prevailing Party's right under the Nevada Rules of Civil Procedure or other applicable  
10 state or federal law to pursue costs and attorney's fees incurred related to confidentiality  
11 designations or the abuse of the process described herein.

12       **28. Injunctive Relief Available.** Each party acknowledges that monetary remedies  
13 may be inadequate to protect each party in the case of unauthorized disclosure or use of  
14 Confidential Information or Highly Confidential Information that the Receiving Party only  
15 received through discovery in this action and that injunctive relief may be appropriate to protect  
16 each party's rights in the event there is any such unauthorized disclosure or use of Confidential  
17 Information or Highly Confidential Information.

18       **29. Other Actions And Proceedings.** If a Receiving Party (a) is subpoenaed in  
19 another action or proceeding, (b) is served with a demand in another action or proceeding in  
20 which it is a party, or (c) is served with any legal process by one not a party to this Protective  
21 Order, seeking materials which were produced or designated as Confidential or Highly  
22 Confidential pursuant to this Protective Order, the Receiving Party shall give prompt actual  
23 written notice by hand or facsimile transmission to counsel of record for such Producing Party  
24 within five (5) business days of receipt of such subpoena, demand or legal process or such shorter  
25 notice as may be required to provide other parties with the opportunity to object to the immediate  
26 production of the requested discovery materials to the extent permitted by law. The burden of  
27 opposing enforcement of the subpoena shall fall upon the party or non-party who produced or  
28

1 designated the Discovery Material as Confidential or Highly Confidential Information. Unless  
2 the party or non-party who produced or designated the Confidential or Highly Confidential  
3 Information obtains an order directing that the subpoena not be complied with, and serves such  
4 order upon the Receiving Party prior to production pursuant to the subpoena, the Receiving Party  
5 shall be permitted to produce documents responsive to the subpoena on the subpoena response  
6 date. Compliance by the Receiving Party with any order directing production pursuant to a  
7 subpoena of any Confidential or Highly Confidential Information shall not constitute a violation  
8 of this Protective Order. Nothing in this Protective Order shall be construed as authorizing a  
9 party to disobey a lawful subpoena issued in another action.

10 30. Execution in Counterparts. This Protective Order may be signed in counterparts,  
11 and a fax or "PDF" signature shall have the same force and effect as an original ink signature.

12 31. Order Survives Termination. This Protective Order shall survive the termination  
13 of this action, and the Court shall retain jurisdiction to resolve any dispute concerning the use of  
14 information disclosed hereunder.

15 DATED this 21<sup>st</sup> day of March, 2012.

16 PISANELLI BICE PLLC

17 By: [Signature]  
18 James J. Pisanelli, Esq., Bar No. 4027  
19 Todd L. Bice, Esq., Bar No. 4534  
20 Debra L. Spinelli, Esq., Bar No. 9695  
21 Jennifer L. Braster, Bar No. 9982  
3883 Howard Hughes Pkwy, Suite 800  
Las Vegas, Nevada 89169

22 Attorneys for Plaintiff Steve C. Jacobs

DATED this 21<sup>st</sup> day of March, 2012.

HOLLAND & HART LLP

By: [Signature]  
J. Stephen Peek, Esq., Bar No. 1759  
Brian G. Anderson, Esq., Bar No. 10500  
Robert J. Cassity, Esq., Bar No. 9779  
9555 Hillwood Drive  
2nd Floor  
Las Vegas, Nevada 89134

Attorneys for Defendants Las Vegas Sands  
Corp. and Sands China Ltd.

24 IT IS SO ORDERED.

25 DATED this 21<sup>st</sup> day of March, 2012.

26  
27 [Signature]  
28 DISTRICT COURT JUDGE  
15

16915148.1  
3/19/12

EXHIBIT A

CONFIDENTIALITY AGREEMENT

I, \_\_\_\_\_ do hereby acknowledge and agree, under penalty of perjury, as follows:

1. I have read the Stipulated Confidentiality Agreement and Protective Order ("the Protective Order") entered in *Jacobs v. Las Vegas Sands Corp.*, Eighth Judicial District Court Case No. A627691-B on \_\_\_\_\_, \_\_\_\_\_, and I fully understand its contents.

2. I hereby agree and consent to be bound by the terms of the Protective Order and to comply with it in all respects, and to that end, I hereby knowingly and voluntarily submit and subject myself to the personal jurisdiction of the Eighth Judicial District Court of Nevada so that the said court shall have the power and authority to enforce the Protective Order and to impose appropriate sanctions upon me for knowingly violating the Protective Order, including punishment for contempt of court for a knowing violation of the Protective Order.

3. I understand that by signing this instrument, I will be eligible to receive "Confidential Information" and/or "Highly Confidential Information" under the terms and conditions of the Protective Order. I further understand and agree that I must treat any "Confidential Information" and/or "Highly Confidential Information" in accordance with the terms and conditions of the Protective Order, and that, if I should knowingly make a disclosure of any such information in a manner unauthorized by the Protective Order, I will have violated a court order, will be in contempt of court, and will be subject to punishment by the court for such conduct.

DATED: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Address)

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*Alvin L. Quinn*  
CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\*\*\*\*\*

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al.

Defendants  
.....

CASE NO. A-627691

DEPT. NO. XI

Transcript of  
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

STATUS CHECK

THURSDAY, MAY 24, 2012

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
HENRY WEISSMAN, ESQ.

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

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

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1 LAS VEGAS, NEVADA, THURSDAY, MAY 24, 2012, 9:12 A.M.

2 (Court was called to order)

3 THE COURT: That takes me to the last case on my  
4 calendar this morning. Is anybody here on something other  
5 than Sands Jacobs?

6 Okay. Good morning.

7 All right. Somebody want to tell me what's going  
8 on? I guess you should identify yourselves for purposes of  
9 the record first.

10 MR. PEEK: Good morning, Your Honor. Stephen Peek  
11 on behalf of Las Vegas Sands and on behalf of Sands China  
12 Limited.

13 MR. WEISSMAN: Good morning, Your Honor. My name is  
14 Henry Weissman from the Munger Tolles & Olson firm. I  
15 represent Sands China. And I also wanted to extend my  
16 greetings and apologies for my partner Brad Brian, who  
17 unfortunately threw out his back and is unable to be here this  
18 morning.

19 THE COURT: It's okay. You're going to do fine.

20 MR. BICE: Good morning, Your Honor. Todd Bice on  
21 behalf of Mr. Jacobs.

22 MS. SPINELLI: Good morning. Debra Spinelli on  
23 behalf of Mr. Jacobs.

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

1 THE COURT: Good morning. All right. This was  
2 our status check for us to figure out how we were going to  
3 do our evidentiary hearing on jurisdiction that the Supreme  
4 Court has ordered that I do before we do anything else on this  
5 case. And we had initially planned to start this the week of  
6 June 25th.

7 MR. PEEK: 25th, Your Honor.

8 THE COURT: And I will be back, ready to go on  
9 June 26th in the morning if you guys are ready to start then  
10 if you can give me a little bit of idea on your timing and  
11 issues like that.

12 MR. BICE: Well, I think, Your Honor, from our  
13 perspective we are likely going to be asking you to move that  
14 date in light of where we are at and where --

15 THE COURT: And then where am I going to put the  
16 Corrigan case, and where am I going to put the Harmon Tower,  
17 whatever they're doing with that evidentiary hearing?

18 MR. BICE: I understand, Your Honor. I am involved  
19 in the Corrigan case.

20 THE COURT: And then there's the Planet Hollywood  
21 case that goes for eight weeks starting right at Labor Day,  
22 and then there's a couple of -- about five weeks where I'm  
23 going to try and try every case I have except CityCenter, and  
24 then I'm going to start CityCenter.

25 MR. BICE: Understood.

1 THE COURT: Okay. So?

2 MR. PEEK: And, Your Honor, we obviously want to go  
3 in that week.

4 MR. BICE: Well --

5 THE COURT: I've had that week set aside for a  
6 period of time. So let's talk about it.

7 MR. BICE: Well, all right. Let's talk about it. I  
8 mean, where we are at right now is we have received some  
9 documents, I believe last week, from Las Vegas Sands.  
10 Yesterday we were told that they have not searched Mr.  
11 Jacobs's emails. We are supposed to get --

12 THE COURT: You mean his company emails?

13 MR. BICE: His company emails.

14 THE COURT: Okay.

15 MR. BICE: We were also told yesterday, I believe,  
16 that Sands China had not searched any of its emails, from what  
17 we could gather. We have not received anything from Mr.  
18 Levin, although we have been told that we will get those  
19 perhaps tomorrow and that we will get documents from Mr.  
20 Adelson maybe tomorrow or sometime in the future. And these  
21 were, by the way, just -- we received -- what we received were  
22 just documents. We don't have responses, we don't have any  
23 indication of what they are responsive to, except during a  
24 phone call yesterday where we got a little bit of color on  
25 what some of the documents are.

1           So with that in mind, I think it's a little -- I  
2 mean, I understand their position is, well, we'd like to go,  
3 and, of course, that's easy to say when we don't have the  
4 documents and we've got to take these depositions yet. And  
5 we're clearly, based on yesterday's call, going to have to  
6 have a motion to compel because of what we were told.

7           THE COURT: Or a motion to exclude.

8           MR. BICE: Well, it's a little -- or a motion for  
9 adverse inferences for failure to produce.

10          THE COURT: Or a motion for adverse inferences.

11          MR. BICE: And the Court can --

12          THE COURT: There's a lot of different things you  
13 could do in conjunction with this that doesn't cause me to  
14 have to move that date --

15          MR. BICE: Okay.

16          THE COURT: -- which we set about six months ago.  
17 Well, no. Three months ago?

18          MR. PEEK: More than that, Your Honor.

19          MR. BICE: No. This was --

20          THE COURT: Set it in January or February, didn't  
21 we?

22          MR. BICE: No, because we -- this was the original  
23 start of the trial date. We were on this track for the trial  
24 date. That's how this got set. So --

25          THE COURT: Well, no. We had -- originally I had a



1 date around Thanksgiving, and then I had a date of January,  
2 and then I had a date in March. Now I have this date. I've  
3 always had this date for the trial, but I can't do the trial,  
4 because everything's stayed till resolve the jurisdictional  
5 issue. So you're going to file some motions, huh?

6 MR. BICE: Well, I think we are going to file some  
7 motions. The status where we are at is we have produced Mr.  
8 Jacobs's -- and this is again where we're at a little bit of a  
9 disadvantage. We have produced Mr. Jacobs's electronic  
10 storage equipment per an agreement we have worked out to  
11 advance discovery. Advance discovery I think has done its  
12 first round of segregation of the information or is in the  
13 process of completing that. Then the documents are going to  
14 go to them for review, sort of as we had previously outlined.  
15 We've modified that somewhat by agreement amongst the parties.

16 So part of our other problem is we -- they obviously  
17 have said before, and you've granted their motion, about  
18 deposing Mr. Jacobs. Well, we aren't allowed to look at Mr.  
19 Jacobs's own documents. So, again, we think it's a little  
20 unfair for us to be defending our client at a deposition when  
21 we can't review his own documents. So that again is another  
22 problem.

23 I think another problem is we got a letter, I don't  
24 remember what day it was, I think it was a couple of days ago,  
25 and I think it's pretty clear we're going to have a little

1 tussle about Mr. Adelson's deposition. Even though you've  
2 ordered it, we got a letter -- it's been noticeable to us that  
3 we haven't been provided a date for Mr. Adelson's deposition,  
4 and now we get a letter saying that, well, they're reserving  
5 the right to come back to the Court not to have Mr. Adelson's  
6 deposition. So we've got to bring that issue to a head, too.

7 THE COURT: They can always ask me not to let it.  
8 But you've got to set it first. Then they'll file a motion  
9 that says, hey, Judge, don't let take his depo.

10 MR. BICE: Well, I'm trying to -- I don't -- I don't  
11 want to have to set them unilaterally, but apparently that's  
12 what we're going to have to do with respect to him. But,  
13 again, we've got to get documents from them.

14 THE COURT: Isn't Steve Morris his lawyer in this  
15 case?

16 MR. BICE: Not --

17 THE COURT: Not anymore, huh?

18 MR. BICE: Well, yes. In the defamation component  
19 of it, yes, that's right, he is.

20 But again, we don't have documents from Mr. Adelson,  
21 Mr. Levin, or Mr. Goldstein.

22 THE COURT: And when are the depositions scheduled?

23 MR. BICE: Well, we -- they have proposed dates for  
24 them, Mr. Kay I think sometime next -- the 2nd, and then  
25 they've given us dates that they propose for Mr. Levin and Mr.

1 Goldstein. But again, that's a little bit advantageous for  
2 them to give us dates when we don't have the documents.

3 THE COURT: Really -- we're really slipping  
4 backwards. So why haven't we produced the documents sooner?

5 MR. PEEK: Well, Your Honor, I guess I can address  
6 the Las Vegas Sands issues, and then [inaudible], and Mr. --

7 THE COURT: Weissman. Mr. Weissman.

8 MR. PEEK: -- Weissman, excuse me.

9 THE COURT: I wrote the name down so I'd get it  
10 right.

11 MR. PEEK: I know. I talk to him all the time, and  
12 I was just -- I had a senior moment, Your Honor.

13 THE COURT: I'm not saying anything about that, Mr.  
14 Peek.

15 MR. PEEK: I don't want to say anything about it.  
16 That 40 years I think has gotten to me.

17 Your Honor, we have produced documents in response  
18 to their requests for production sometime ago in rolling  
19 production. We did produce documents in March, we produced  
20 documents last week. Additional documents -- we're going to  
21 produce additional documents this Friday. We have proposed  
22 dates to them for -- on at least two occasions asking them to  
23 select a date for Mr. Kay, Mr. Goldstein, and Mr. Levin, and  
24 they have refused to take a date. But when Mr. Bice stands up  
25 and says we haven't produced any documents till just the other

1 day, that's not correct. We produced documents back in March,  
2 and then we identified, as well, Your Honor, in a first  
3 supplement documents that had been previously produced -- you  
4 may recall that we had started production of documents under  
5 the ESI protocols back in summer of last year.

6 THE COURT: Correct.

7 MR. PEEK: And so we --

8 THE COURT: Prior to the stay.

9 MR. PEEK: Pardon?

10 THE COURT: Prior to the stay.

11 MR. PEEK: Prior to the stay. And so we identified  
12 documents within that grouping that were responsive to their  
13 request. We have -- I gave him a disk last week, and then I  
14 identified by Bate numbers this week the documents -- which  
15 document is responsive to each request. They've insisted on  
16 an index. We're going to provide them with an index, as well,  
17 of the documents.

18 THE COURT: Smart decision on your part.

19 MR. PEEK: I've got to argue these issues, Your  
20 Honor. I think -- well, I'll leave that for another day.

21 So when they say that they don't have documents,  
22 they do.

23 With respect to Jacobs, Jacobs -- I'll have to let  
24 Mr. Weissman deal with Mr. Jacobs, because those are issues  
25 that are of Sands China, because he was a Sands China

1 executive, not a Las Vegas Sands executive. So we don't have  
2 documents on our server related to Mr. Jacobs. So when he  
3 says we haven't searched Mr. Jacobs, he is correct; because we  
4 don't have things to search for Mr. Jacobs.

5 THE COURT: So he didn't have a separate email  
6 address within the Las Vegas Sands server --

7 MR. PEEK: That is my understanding, Your Honor.

8 THE COURT: -- email server?

9 MR. PEEK: His was a .mo, which is the designation  
10 for Macau --

11 THE COURT: Okay.

12 MR. PEEK: -- as opposed to a .com, which would be  
13 the Las Vegas Sands or the venetian.com. So he didn't have  
14 that. With respect to the ESI of Mr. Jacobs, I'll let Mr.  
15 Weissman address that issue.

16 So I guess that my issue is that my clients, who are  
17 executives of Las Vegas Sands, are ready and prepared to go  
18 forward with their depositions on the dates that we've  
19 suggested to them. We've suggested them twice, you know, pick  
20 a date.

21 THE COURT: And at this point you believe you have  
22 fully complied with your discovery obligations in preparation  
23 for this jurisdictional hearing?

24 MR. PEEK: Yes, Your Honor, in the sense that we  
25 have commenced production and we will continue to produce.

1 THE COURT: Okay.

2 MR. PEEK: And they --

3 THE COURT: When do you anticipate --

4 MR. PEEK: They quarrel with I think some of the  
5 depositions -- excuse me, some of the discovery.

6 THE COURT: When do you anticipate completing your  
7 rolling disclosures?

8 MR. PEEK: We will have Mr. Levin and Mr. Goldstein  
9 by this Friday. We're working on Mr. Adelson, and we should  
10 have Mr. Adelson hopefully by the end of next week, but, if  
11 not, no later than the following week, which is the first week  
12 of June.

13 THE COURT: Okay.

14 MR. PEEK: But we hope to have it next week.

15 THE COURT: Understanding there may be an issue  
16 about whether they agree with your production, do you believe,  
17 given that rolling production schedule, you will have fully  
18 complied with your discovery obligations in preparation for  
19 the evidentiary hearing by the first week of June?

20 MR. PEEK: Yes, Your Honor --

21 THE COURT: Okay. Thanks.

22 MR. PEEK: -- I do.

23 THE COURT: Mr. Weissman. I know you've sort of  
24 been thrown in this because somebody's back went out, but I  
25 appreciate you being here, and to the extent you can

1 intelligently answer questions, I will truly appreciate it.

2 MR. WEISSMAN: I'll do my best. And it's a pleasure  
3 to be here, Your Honor. Thank you.

4 First of all, let me just start by saying we, too,  
5 feel very strongly that the hearing should go forward as  
6 planned on June 25th or 26th. Sands China Limited doesn't  
7 believe it should be in this case to begin with, and we're  
8 eager to get that issue heard and decided as soon as possible.

9 THE COURT: I've been ordered to conduct an  
10 evidentiary hearing, and I'm doing my best to get there.

11 MR. WEISSMAN: Thank you. We appreciate that.

12 And to that end, as the Court may recall, we don't  
13 believe that the facts that are relevant to the jurisdictional  
14 issue are in dispute. So we offered to stipulate to those  
15 facts some time ago. Plaintiffs felt that that stipulation  
16 didn't go far enough, they wanted more detail, so hence the  
17 document production and deposition process that we have  
18 ongoing. But we think this -- it's ready to -- it's  
19 appropriate to bring this to a conclusion.

20 With respect to Mr. Jacobs's ESI, we thought that  
21 was the purpose of the protocol that has been discussed many  
22 times with the Court since last October of delivering the  
23 documents that he has to the ESI vendor so they can be  
24 reviewed. I'm assuming that contains his email, since there's  
25 quite a lot of data.

1 THE COURT: Don't make that assumption.

2 MR. WEISSMAN: Well, I think the first thing that  
3 should --

4 THE COURT: It would be bad for your to make that  
5 assumption, because one would hope that his emails were on  
6 your server.

7 MR. WEISSMAN: Another image of them presumably  
8 would be.

9 THE COURT: Well, that's where they should be, is on  
10 the email server. He may have an extra or a duplicate copy  
11 that's on his laptop and the other storage devices he has.

12 MR. WEISSMAN: Right.

13 THE COURT: But they'd better be on your email  
14 server.

15 MR. WEISSMAN: Sure.

16 THE COURT: Because if they're not on your email  
17 server, boy, we'll have a lot of problems.

18 MR. WEISSMAN: Understood. But in terms of --

19 THE COURT: Okay. So when are they going to get  
20 produced?

21 MR. WEISSMAN: In terms of process, Your Honor,  
22 we're going to go through a very elaborate and lengthy and  
23 costly process to review Mr. Jacobs's ESI. It seems to us  
24 that process should run its course before we're obligated to  
25 go back and look at whatever emails we have of his, as well.



1 Why would we do it twice?

2 THE COURT: So you're telling me you haven't  
3 produced any of them and you haven't begun the process.

4 MR. WEISSMAN: That's correct.

5 THE COURT: Okay. The hearing is vacated. I will  
6 see you to discuss rescheduling of the hearing on June 28th.  
7 At that time I want an update as to where Sands China is with  
8 respect to the production of the ESI of Mr. Jacobs and the  
9 fulfillment of all of the discovery obligations which we have  
10 discussed for the evidentiary hearing to occur.

11 Anything else?

12 MR. PEEK: Your Honor, I know you did -- I knew you  
13 did --

14 THE COURT: Thank you -- thank you for being  
15 grilled, Mr. Peek. I really appreciate you going first and  
16 being grilled, because I got -- I set it up for the way that  
17 hopefully we'd get the right answers.

18 MR. PEEK: Yeah. Well, there's one thing that I  
19 don't think Mr. Weissman was allowed to even really address,  
20 because I know that you asked him a question. But Mr. Bice  
21 made much of the fact that, well, we've complied with the  
22 production of the Jacobs ESI to the vendor.

23 THE COURT: Well, you don't have it yet. I know  
24 that.

25 MR. PEEK: That's --

1 THE COURT: I got that part.

2 MR. PEEK: Okay. They just now --

3 MR. BICE: And I don't think -- I don't think I made  
4 much of it.

5 THE COURT: How do you think I missed that, Mr.  
6 Peek?

7 MR. PEEK: They just now produced that, Your Honor.  
8 So those issues that related to the Jacobs ESI --

9 THE COURT: We do not stagger discovery obligations,  
10 period, end of story. The only time I stagger discovery  
11 obligations is where I have expert issues where I know the  
12 expert opinions are dependent on others, and then I frequently  
13 stagger them. I do not stagger initial discovery disclosures.  
14 And having someone tell me they're not going to begin the  
15 search of their own email server until they've had a chance to  
16 review Mr. Jacobs's email off of his laptop is not an  
17 appropriate response.

18 MR. PEEK: Your Honor, you may recall -- and I don't  
19 mean to argue with -- respectfully.

20 THE COURT: It's okay, Mr. Peek. You and I have  
21 argued for 25 years.

22 MR. PEEK: We have, Your Honor. And I don't mean to  
23 cut --

24 THE COURT: And I finally get to get the better of  
25 your every once in a while now.

1 MR. PEEK: Yeah. This is certainly one of them.  
2 Well, this is not -- this is more Mr. Weissman's fight than  
3 mine. But you may recall that the issues that were raised by  
4 Sands China, as well as by Las Vegas Sands, with respect to  
5 the Jacobs ESI is that motion in limine which was filed a long  
6 time ago that Jacobs doesn't even get an opportunity to have  
7 access to the Sands China emails because of his conduct of how  
8 what he has come into his possession.

9 THE COURT: And I'm not ready to hear the motion in  
10 limine and make that decision --

11 MR. PEEK: But if we produce all those documents --

12 THE COURT: -- until I get to the discovery. You  
13 haven't done the discovery yet.

14 MR. PEEK: But -- I guess where I'm going with that  
15 is -- I'm not trying to -- in terms of the staggering, that's  
16 where I was kind of going, Your Honor, is that Sands China is  
17 kind of put into that position of --

18 THE COURT: Remember, you don't represent them  
19 today.

20 MR. PEEK: Yes, I do represent Sands China Limited,  
21 Your Honor. I am local counsel for them.

22 THE COURT: Oh. Are you?

23 MR. PEEK: Yes, I am.

24 THE COURT: Okay.

25 MR. PEEK: You may recall, Your Honor, they have to

1 have somebody here, and it's me. I got the long straw, Your  
2 Honor, the winning straw.

3 But in terms of staggering, the way the motion in  
4 limine had been set up and what you had least addressed to  
5 Sands China at the time, Ms. Glaser, was, well, that's  
6 something that we only can address once you have an  
7 opportunity to see what's on the --

8 THE COURT: True.

9 MR. PEEK: -- the Jacobs ESI that he has in his  
10 possession. So if we give them all of the ESI from our own,  
11 it defeats the whole notion of giving them access to documents  
12 in that motion in limine. So that's why I think there was a  
13 staggering of it.

14 THE COURT: I disagree with your analysis.

15 MR. PEEK: Okay.

16 THE COURT: I certainly respect there are going to  
17 be issues about the admissibility of certain evidence at the  
18 time of our evidentiary hearing, which is why I'm shocked we  
19 haven't got to the deposition stage yet, because I won't have  
20 any time to do evidentiary issues at this point. So I don't  
21 know when you're going to be ready, but clearly you're not  
22 going to be ready for a hearing at the end of June.

23 MR. PEEK: Well, we don't even know, Your Honor,  
24 whether a search of the Jacobs on the Macau server is going to  
25 be such that we couldn't be ready. So that's why -- I mean, I

1 appreciate you vacated that date, but we very well --

2 THE COURT: It's less than five weeks before our  
3 scheduled hearing and the search has yet to begin. I  
4 understand what you're telling me, and I would love to find a  
5 place to reset you. It may not be very easy given my ongoing  
6 schedule for the next year.

7 MR. PEEK: Well, that raises an interesting  
8 question, as well, Your Honor, that perhaps when we come back  
9 on the 28th we can talk about -- maybe this is just something  
10 that needs to be briefed. I don't know that you really need  
11 live witnesses. You can certainly --

12 THE COURT: I'm always happy to take that approach,  
13 and it may be that after you guys have been able to complete  
14 the depositions and the exchange of documents that are  
15 appropriate that we can do this on briefing. But until you've  
16 done what you're supposed to have done since November of last  
17 year I'm not in a position to have a hearing or even set a  
18 briefing schedule.

19 MR. PEEK: Well, you say since November of last  
20 year. We didn't get requests for production until much after  
21 November, and they were also ordered to give the Jacobs  
22 protocol in November we just got it in May.

23 THE COURT: We've been talking about how to get this  
24 evidentiary hearing scheduled in accordance with the writ that  
25 was issued since, what, last October?

1 MR. PEEK: We did, Your Honor, because we started.

2 THE COURT: And right after that writ came down I  
3 called you all in for a status hearing --

4 MR. PEEK: You did. You did.

5 THE COURT: -- to try and figure out what we needed  
6 to do to get that evidentiary hearing set. And we have been  
7 struggling with that since that time.

8 MR. PEEK: And we want it to go forward as quickly  
9 as we can, Your Honor.

10 THE COURT: I want it resolved one way or the other  
11 so that I can finish the assignment the Nevada Supreme Court  
12 gave me and we can either do something with the case or it can  
13 be stayed again while you all go up there.

14 MR. PEEK: Well, hopefully you'll resolve it  
15 favorably, Your Honor, and Sands China will be gone, we'll  
16 proceed to trial on Las Vegas Sands.

17 THE COURT: That might happen.  
18 Anything else?

19 MR. BICE: I have a lot of disagreement with what  
20 Mr. Peek was arguing --

21 THE COURT: It doesn't matter.

22 MR. BICE: -- but I'm not going to --

23 MR. PEEK: You won, Todd.

24 MR. BICE: Yeah, it doesn't matter.

25 THE COURT: All right. Mr. Bice, that means you

1 need to communicate to your colleagues in the Corrigan case --

2 MR. BICE: I do.

3 THE COURT: -- that it looks like you're going.

4 MR. BICE: Okay. So I'm free to contact Mr. Kennedy  
5 and tell him that -- is it the 26th is going to be the date?

6 THE COURT: A Tuesday.

7 MR. BICE: 26th.

8 THE COURT: And you guys said you needed two weeks.

9 MR. BICE: I believe that is correct.

10 MR. PEEK: We just picked up a week, Your Honor.

11 THE COURT: Well, no. We'd already talked about  
12 when their two weeks were. They were going to wait till you  
13 were finished, and we were worried about the Harmon Hotel  
14 thing, too.

15 MR. PEEK: So we come back on the 28th, Your Honor,  
16 which is a --

17 THE COURT: You're coming back on the 28th, and  
18 somebody's going to tell me -- and I'd like a status report  
19 the day before; I know it's hard for you sometimes to get them  
20 to me -- that tells me, Judge, we have made our best efforts  
21 and I can certify to you we did X, Y, and Z and either we  
22 found stuff or we didn't find stuff and now we have to review  
23 it for privilege, blah, blah, blah, and it's going to take  
24 this long.

25 MR. PEEK: Thank you, Your Honor.

1 MR. BICE: Thank you, Your Honor.

2 THE COURT: Goodbye.

3 MR. WEISSMAN: Thank you.

4 MR. PEEK: Goodbye.

5 THE PROCEEDINGS CONCLUDED AT 9:33 A.M.

6 \* \* \* \* \*

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CERTIFICATION

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

AFFIRMATION

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

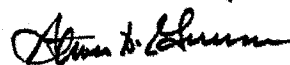
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9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 **STEVEN C. JACOBS,**

12 Plaintiff,

13 v.

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

19 Defendants.

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

Date: June 28, 2012  
Time: 9:00 a.m.

**DEFENDANTS' JOINT STATUS  
CONFERENCE STATEMENT**

18 **AND ALL RELATED MATTERS.**

21 Defendants Las Vegas Sands Corporation ("LVSC") and Sands China Ltd. ("SCL")  
22 respectfully submit this joint status report in advance of the case management conference  
23 scheduled for June 28, 2012.

24 **I. INTRODUCTION**

25 Defendants have now substantially completed the production of documents they had  
26 planned to produce in response to Plaintiff's request for documents relating to personal  
27 jurisdiction, with the exception of documents for which Plaintiff was the custodian. At the last  
28 case management conference on May 24, 2012, the Court vacated the June 25, 2012 date for the

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1 hearing on personal jurisdiction, based on the status of jurisdictional discovery, and in particular  
2 SCL's need to review and produce documents for which Plaintiff was the custodian. Since May  
3 24, Defendants have worked diligently to complete the production of documents from other  
4 custodians and to develop a plan for the review and production of Plaintiff's documents. The  
5 latter task has been complicated by Macau law governing the transfer of data to a foreign  
6 destination, but Defendants have developed a plan that will avoid those issues to the extent  
7 possible and hence should maximize the production of documents as quickly as possible. The  
8 details of this plan are described below.

9 **II. DOCUMENTS PRODUCED**

10 Defendants have produced approximately 3,500 documents, consisting of approximately  
11 19,500 pages, responsive to Plaintiff's request for production of documents relating to personal  
12 jurisdiction. Defendants' production includes documents from its senior executives: Messrs.  
13 Adelson, Leven, Goldstein, and Kay.

14 Defendants have engaged in a 3-step process to produce responsive documents. First,  
15 Defendants collected documents from custodians believed most likely to have responsive  
16 documents. Defendants collected approximately 300,000 such documents. Second, Defendants  
17 applied search terms designed to locate documents responsive to Plaintiff's request for production  
18 of documents relating to personal jurisdiction. (Defendants have provided the search terms to  
19 Plaintiff's counsel.) This yielded a population of approximately 15,400 documents. Third,  
20 Defendants reviewed the resulting data for responsiveness and privilege. Defendants produced  
21 the responsive, non-privileged data, along with responses that identify which documents are  
22 responsive to which document request, as well as an index.

23 Specifically, Defendants have produced:

- 24 • Documents relating to SCL Board meetings, including minutes (RFP 1).
- 25 • Documents reflecting travel of LVSC employees and agents to Macau, Hong  
26 Kong, or mainland China during the relevant period. (RFP 2-5). In the case of Messrs. Adelson  
27 and Leven, Defendants provided information on the number of trips.
- 28 • Documents reflecting Michael Leven's services as CEO of SCL and/or Special

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1 Advisor to SCL's Board and and/or Executive Director of SCL (RFP 6).<sup>1</sup>

- 2 • Documents reflecting the financing of SCL (RFPs 7 and 20).
- 3 • All contracts between SCL or Venetian Macau Ltd. and Nevada entities or persons
- 4 or the relevant information concerning those contracts (RFP 8).
- 5 • Substantially all responsive, non-privileged documents from Robert Goldstein
- 6 reflecting his services to SCL during the relevant period (RFP 9).
- 7 • All shared services agreements between LVSC and SCL (RFP 10).
- 8 • A substantial volume of documents reflecting services performed by LVSC for
- 9 SCL relating to design, development, and construction of parcels 5&6 (RFPs 11 and 21).
- 10 • Documents relating to recruitment of SCL executives (RFP 12). Defendants deny
- 11 that LVSC provided any recruiting services for SCL, but nevertheless produced documents from
- 12 LVSC custodians relating to the hiring of SCL executives. In a meet and confer on June 27,
- 13 2012, Plaintiff's counsel claimed that LVSC had not produced documents relating to the hiring of
- 14 Ed Tracy. In fact, LVSC did produce such documents on June 25, 2012.<sup>2</sup>

- 15 • A substantial volume of documents reflecting marketing services by LVSC for
- 16 SCL (RFP 13).
- 17 • All documents reflecting communications between LVSC and Harrah's, SJM,
- 18 Base Entertainment, Cirque du Soleil, and Bally in relation to the subjects specified in the
- 19 requests (RFP 14-19).

20 Except for documents for which Plaintiff was the custodian (discussed below), Defendants

21 have produced substantially all of the documents they had planned to produce. LVSC is in the

22 process of final review of approximately 3,000 documents, and it expects to produce responsive,

23 non-privileged documents within the next few weeks.

24 Since the May 24, 2012 status conference, Defendants have continued to review and

25 <sup>1</sup> LVSC learned this week that its IT department has misfiled another hard drive from a computer that may have been

26 used by Mr. Leven. LVSC will promptly determine if Mr. Leven was the custodian. If he was, LVSC will determine

27 if the hard drive contains data that is not duplicative of data previously processed. If so, LVSC will review such data

28 for responsiveness, using the same process described above.

<sup>2</sup> LVS00117333, LVS00117617, LVS00117638, LVS00117639, LVS00117642, LVS00117643, LVS00117644, LVS00117647, LVS00117837.

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1 produce documents responsive to Plaintiff's request for production of documents relating to  
2 personal jurisdiction. During this period, Defendants have produced approximately 2,500 of the  
3 3,500 documents produced to Plaintiff, totaling 8,362 pages.

4 Defendants have incurred well over \$300,000 in connection with the review and  
5 production of jurisdictional documents.

6 Despite the foregoing efforts, Plaintiffs on June 27, 2012 stated that they believe  
7 Defendants should have produced additional documents, although they refused to specify all of  
8 their concerns. To the extent Plaintiff believes that gaps remain in the production, the parties  
9 should meet and confer. Plaintiff has not adequately pursued the meet and confer process, and in  
10 particular has identified only two areas in which he believes Defendants' productions are  
11 inadequate. First, Plaintiff asserted that LVSC had not produced documents relating to the hiring  
12 of Ed Tracy; in fact, as noted above, LVSC had done so. Second, Plaintiff asserted that  
13 Defendants had not produced documents relating to the retention of Leonel Alves, an attorney in  
14 Macau. In fact, Plaintiff had not specifically requested such documents,<sup>3</sup> and Defendants  
15 concluded that the documents do not evidence services performed by LVSC for SCL. These and  
16 similar issues should be discussed further among the parties before they are brought to the Court.

17 **III. FUTURE PRODUCTION**

18 Since the May 24, 2012 status conference, Defendants also have developed a plan to  
19 review and produce Plaintiff's documents responsive to Plaintiff's personal jurisdiction document  
20 requests. SCL has collected Plaintiff's email and other ESI in Macau. Defendants had originally  
21 planned to defer the review of Plaintiff's ESI until after Plaintiff produced his ESI in his  
22 possession, so as to avoid duplicative review of the same documents. But in light of the Court's  
23 comments at the May 24 status conference, and the fact that Plaintiff did not deliver the ESI in his  
24 possession to Advanced Discovery until May 2012 – more than seven months after the Court first  
25 ordered him to do so – Defendants have revised their plan to commence such review as soon as  
26 possible.

27  
28 <sup>3</sup> RFP 22 requests documents relating to "outside counsel's review of Leonel Alves," not to LVSC's involvement in his retention. Defendants objected to RFP 22.

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1 The production of documents that are in Macau raises difficult questions under Macau's  
2 Personal Data Protection Act ("PDPA"). To avoid those issues to the extent possible, and thereby  
3 to maximize the volume of documents to be produced and to minimize delays associated with the  
4 Macau law issues, Defendants have developed a review process that starts with documents  
5 already in the United States. Specifically:

- 6 1. LVSC possesses approximately 100,000 emails and other ESI in the  
7 United States for which Plaintiff was the custodian. This data was  
8 transferred to the United States in 2010 in error.<sup>4</sup> LVSC was concerned  
9 about whether the production of these documents in the United States  
10 would raise additional issues under Macau law. Based on further  
11 consultations with the Macau government, LVSC now believes that  
12 Macau law does not prohibit the production documents already present in  
13 the United States. Accordingly, LVSC will review documents for which  
14 plaintiff was the custodian and which are located in the United States, and  
15 will produce those non-privileged documents responsive to Plaintiff's  
16 jurisdictional discovery requests.<sup>5</sup>
- 17 2. In addition, LVSC searched the emails of a large number of LVSC  
18 custodians and identified emails within the relevant date range that (a)  
19 were sent to or received from Plaintiff and (b) applied search terms  
20 designed to yield relevant hits. Defendants have provided the key words  
21 used for the search to Plaintiff's counsel.
- 22 3. After searching for key words, de-duping, and eliminating certain  
23 irrelevant document types, there are approximately 27,600 documents that  
24 remain. LVSC will review these documents and will produce those non-

25 <sup>4</sup> LVSC did not previously disclose the existence of this data to Plaintiff because their original plan had been to  
26 review the ESI in Plaintiff's possession.

27 <sup>5</sup> The data that was transferred to the United States in 2010 in error also includes data from other  
28 custodians. To the extent those other custodians have documents responsive to the jurisdictional  
discovery requests, LVSC will produce them. In addition, data from two employees in Macau  
was transferred in error to the United States prior to Mr. Jacobs' employment by SCL.

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1 privileged documents that are responsive to Plaintiff's jurisdictional  
2 discovery requests.

3 4. SCL will then determine whether there are in Macau any documents for  
4 which Plaintiff was the custodian, and which are responsive to Plaintiff's  
5 jurisdictional discovery requests, that are not also in the United States. To  
6 do so, LVSC will create a copy of the Jacobs ESI in LVSC's possession in  
7 the United States (item 1, above), as well as the emails from LVSC  
8 custodians that were sent to or received from Plaintiff and used certain  
9 key words (item 2, above). LVSC will provide this copy to SCL, which  
10 will take it to Macau. SCL has also requested that Plaintiff provide a copy  
11 of the ESI in his possession, which was delivered to Advanced Discovery,  
12 the Court-appointed ESI vendor. SCL limited its request to the data that  
13 is delivered to Plaintiff's counsel. Under the process established by  
14 Plaintiff, and accepted by Defendants subject to a reservation of rights,  
15 Advanced Discovery will exclude data (a) based on date limitations, (b)  
16 based on Plaintiff's search terms, which are designed to exclude emails  
17 that are unrelated to the case, and (c) based on Defendants' assertion of  
18 privilege. If Plaintiff agrees, SCL will take this copy to Macau as well.  
19 SCL will then de-dupe the data copied in the United States against  
20 Plaintiff's ESI in Macau to determine if there is any data in Macau that is  
21 not also in the United States population.

22 5. If SCL determines that there are additional documents in Macau for which  
23 Plaintiff was the custodian, SCL will review the documents to determine  
24 if they contain "personal data" as defined in Macau's Personal Data  
25 Protection Act ("PDPA"). SCL should be able to transfer outside Macau  
26 documents that do not contain personal data. Further, Defendants have  
27 requested that Plaintiff and his wife agree to waive the protections of the  
28 PDPA, to the extent they might apply. Such a waiver should permit SCL

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1 to transfer outside Macau those documents containing personal data only  
2 of Plaintiff and his wife. If documents in Macau contain personal data of  
3 other persons, and such other persons do not waive the protections of the  
4 PDPA, then the provisions of the PDPA respecting transfer must be  
5 complied with. Representatives of LVSC, SCL and Venetian Macau Ltd.  
6 have met with the Office of Personal Data Protection ("OPDP"), which is  
7 the government agency in Macau charged with the enforcement of the  
8 PDPA, to present their position that such transfers should be permitted.  
9 The OPDP did not agree with this position. Subsequently, Venetian  
10 Macau Ltd. sent OPDP a letter setting forth its justification for the transfer  
11 of such documents and requesting a response from OPDP. To date, no  
12 formal written response has been received.

13 On June 19, 2012, Defendants contacted Plaintiff to arrange a meet and confer  
14 teleconference. The teleconference occurred on June 25 and June 27, in which the parties  
15 discussed the foregoing plan and whether Plaintiff would agree to (a) provide a copy of the ESI in  
16 Plaintiff's possession that Plaintiff's counsel receive and (b) waive the protections of the PDPA to  
17 the extent it applies to Jacobs and his wife. On June 27, Plaintiff's counsel stated that Plaintiff  
18 would not agree to provide a copy of the ESI in Plaintiff's possession for purposes of de-duping  
19 in Macau. Plaintiff did not respond to Defendants' request for Plaintiff and his wife to waive the  
20 protections of the PDPA.

21 Plaintiff's counsel contended that Defendants should be required to turn over all of the  
22 data potentially relevant to this case to Advanced Discovery. There is no warrant for this  
23 draconian and expensive measure. To the extent Plaintiff's position is based on a belief that  
24 Defendants' production of documents has not been complete, the proper course of action is to  
25 meet and confer, not to assume that Defendants have acted improperly and seek an immediate  
26 sanction. Moreover, as noted, the wholesale transfer of data from Macau to the United States for  
27 delivery to Advanced Discovery would be prohibited by the PDPA. Defendants plan is more  
28 reasonable and efficient and is the only approach that is legally viable.

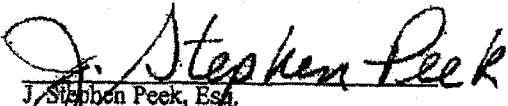


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1 **IV. NEXT STEPS**

2 As the Court is aware, SCL is anxious for the jurisdictional hearing to be held as soon as  
3 possible. The work plan described above to review Plaintiff's documents, however, will be time-  
4 consuming and costly. Defendants are not yet in a position to predict with confidence the time  
5 required to complete this additional document review. Accordingly, Defendants respectfully  
6 suggest that the Court schedule another case management conference in August, at which time  
7 Defendants hope to be able to provide a clearer schedule for the completion of document  
8 production and depositions, and hence the scheduling of the jurisdictional discovery hearing.

9 DATED June 27, 2012.

10   
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**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b), I certify that on June 27, 2012, I served a true and correct copy of the foregoing **DEFENDANTS' JOINT STATUS CONFERENCE STATEMENT** via e-mail and by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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*Attorney for Plaintiff*

  
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**Dineen Bergsing**

---

**From:** Dineen Bergsing  
**Sent:** Wednesday, June 27, 2012 3:12 PM  
**To:** James Pisanelli; 'Debra Spinelli'; Todd Bice; 'kap@pisanellibice.com'; 'see@pisanellibice.com'  
**Cc:** 'Fetaz, Max'  
**Subject:** LV Sands/Jacobs - Defendants' Joint Status Conference Statement  
**Attachments:** Untitled.PDF - Adobe Acrobat Pro

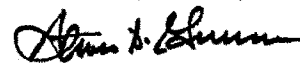
Please see attached Defendants' Joint Status Conference Statement. A copy to follow by mail.

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND RELATED CLAIMS

Case No.: A-10-627691

Dept. No.: XI

**PLAINTIFF STEVEN C. JACOBS'  
STATUS MEMORANDUM ON  
JURISDICTIONAL DISCOVERY**

Hearing Date: June 28, 2012

Hearing Time: 9:00 a.m.

**I. INTRODUCTION**

As the Court directed at its May 24, 2012, hearing, Plaintiff Steven C. Jacobs ("Mr. Jacobs") submits his status report of the discovery-related events that have taken place over the last 30 days, as well as all efforts since Mr. Jacobs served his written discovery requests on Defendants Las Vegas Sands Corp. ("LVSC") and Sands China Ltd. ("Sands China") in late December 2011. Included in this Status Memorandum is Jacobs' request that this Court:

- 1) establish a protocol and procedure that Defendants must follow to ensure preservation and actual production of all Jacobs-related documents and ESI

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1 related not only to jurisdiction, but also to the underlying merits action (*i.e.*, a  
2 procedure similar to that demanded from Mr. Jacobs);

3 2) impose a prompt time period for Defendants to review the "large  
4 amount" of Mr. Jacobs' e-mails and other Jacobs ESI that Defendants only three  
5 days ago revealed was in the United States (though they decline to reveal how or  
6 why it is here), has been for over a year though has yet to be reviewed by  
7 Defendants' counsel of record, and which Defendants concede is *not* in any way  
8 protected by the Macau Personal Data Protection Act (a new and different position  
9 than that which Defendants have previously articulated); and

10 3) schedule the evidentiary hearing to finally resolve the jurisdictional  
11 debate.

## 12 **II. DISCUSSION**

### 13 **A. STATUS: The documents and ESI in Jacobs' possession.**

14 The parties negotiated and agreed upon a procedure for Sands China to review the  
15 documents and ESI in Jacobs' possession for privilege or other protections. The procedure is in  
16 process and is as follows: Mr. Jacobs provided the following electronic storage devices to Jacobs'  
17 expert who, in turn, provided them to the Court-appointed ESI vendor, Advanced Discovery  
18 ("AD"):

- 19 ■ Seagate 500gb SSD (containing Windows Mirror Image System back-up of  
20 personal laptop as of August 2010, and original back-up of personal files/e-mails  
21 from July 2010);
- 22 ■ 7 thumb drives (containing multiple files, including, but not limited to, scanned  
23 images of all documents Mr. Jacobs possessed in hard/paper form);
- 24 ■ 1 thumb drive, Microcenter 32G drive, which contains scanned copies of  
25 documents of documents that Mr. Jacobs possesses in hard form only; and
- 26 ■ 24 DVDs (containing work files, work product, and/or backups/downloads of  
27 Sands related items).

28 On Friday, May 18, 2012, with Jacobs' expert present, AD made two full forensic images  
of each device. One copy remains in AD's possession and custody for processing (as agreed upon

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1 below), and one copy of all forensic images along with the forensic acquisition log was provided  
2 to Jacobs' expert. The original devices were returned to Jacobs' expert.

3 AD then: (1) extracted the user files from the parties' provided list of file extensions;  
4 (2) extracted/expanded and isolated any and all documents and information created, last modified,  
5 or last accessed between January 1, 2009 and July 27, 2010 at 11:00 a.m. Macau time; and  
6 (3) de-duplicated the documents.<sup>1</sup> The documents remaining ("Phase I documents") were  
7 provided to Jacobs via a hard drive on Monday, June 18, 2012, and made available for Jacobs'  
8 review on a secure online-review platform (Relativity). Jacobs was provided with a secure log-in  
9 and password. Jacobs was trained on the Relativity platform by AD on Monday, June 25, 2012.

10 Pursuant to the agreement of the parties, Jacobs has ten (10) business days to review the  
11 Phase I documents to create a list of search terms designed to identify: (a) personal/confidential  
12 information; (b) privileged information; and (c) any and all information unrelated to LVSC,  
13 Sands China, and/or their affiliates. Inasmuch as Jacobs received the hard drive of Phase I  
14 documents on Monday, June 18, 2012, Jacobs, (through counsel) will provide to Sands China's  
15 counsel his search terms by or before Monday, July 2, 2012.

16 AD then will run Jacobs' search terms and isolate the documents that fall within the search  
17 terms ("Privileged/Confidential/Personal/Irrelevant Documents"). A file list of the isolated  
18 documents (but not the documents themselves) shall be provided to Jacobs' counsel only (not to  
19 Sands China's counsel) so that Jacobs can create a variation of a privilege log (recognizing that  
20 Jacobs' counsel will not review the underlying documents at this stage), and thereafter provide the  
21 log to Sands China's counsel.

22 After isolation/separation of the Privileged/Confidential/Personal/Irrelevant Documents,  
23 AD will scrub and/or mask the file paths of the remaining documents ("Phase II documents") so  
24 that any post-termination organization of documents cannot be reviewed and/or ascertained.  
25 Jacob's expert shall be given an opportunity to access and view the file names, file paths, and  
26

27 <sup>1</sup> There was an unintended delay during this stage of the process due to a misunderstanding  
28 between the parties and Advanced Discovery regarding necessary approval of the types of files  
(e.g., user files, active files, file extensions), which was promptly addressed and resolved.

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1 related metadata to ensure that the file path and origin information is scrubbed before the  
2 documents are provided to Sands China's counsel. Jacobs' expert will not be reviewing the  
3 substantive content of the documents.

4 Then, only the scrubbed Phase II documents will be made available through AD's secure  
5 online system to Sands China's counsel for review. Only counsel can review the documents on  
6 the secure online platform. The documents shall not be printed (either through a system print or  
7 through a screen print) and shall not be downloaded. They only may be viewed on the system.  
8 Defense counsel shall not be given, or be permitted to review, a master list of documents  
9 contained on any of Jacobs' devices, and shall not be given the original devices. AD is not to  
10 provide Sands China with any other information related to Jacobs' devices or the information  
11 therein unless and until agreed to by the parties in writing.

12 The parties have agreed that any and all documents retrieved from Jacobs' devices shall be  
13 maintained and treated as "Highly Confidential" under the Stipulated Confidentiality Agreement  
14 and Protective Order entered in this action on March 22, 2012. In other words, any and all  
15 documents and information from Jacobs' devices will be for attorneys' eyes only during the  
16 review process and up to and until the Court issues an order with respect to those documents  
17 (e.g., whether, which, and when Jacobs' counsel are able to review documents in his possession).  
18 Following any order by the Court, the documents shall remain Highly Confidential until they are  
19 formally disclosed pursuant to NRCP 16.1 and designated Confidential and/or Highly  
20 Confidential upon review by Jacobs' counsel.

21 **B. STATUS: Jacobs' e-mails and other ESI in Sands China's possession in**  
22 **Las Vegas, Nevada.**

23 While the above production by Mr. Jacobs has been in process for a period of time and  
24 thus old news to the Court, what is not old news are the incredible revelations by LVSC and  
25 Sands China just two days ago. As a reminder, during the last status conference, Sands China  
26 confirmed that it had made no effort to review Mr. Jacobs' e-mail accounts for documents that  
27 may be responsive to Mr. Jacobs' jurisdictional discovery requests. The excuse: they were  
28 waiting to see what Mr. Jacobs possessed before they reviewed and produced any of his e-mails in

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1 their own possession, custody, and control. As such, this Court vacated the evidentiary hearing  
2 and set another status conference within 30 days so that the parties could update the Court on their  
3 discovery efforts. Obviously, the point was that during the 30-day reprieve, Sands China would  
4 review and produce Mr. Jacobs' e-mails.

5 On June 24, 2012, and in anticipation of the next (forthcoming) status conference, the  
6 parties participated in a conference call. During that call, Sands China and LVSC disclosed for  
7 the first time that a "large" amount of Jacobs' ESI evidence had been transported from Macau to  
8 the United States more than a year ago. Incredibly, this had occurred all the while Sands China  
9 and LVSC were clamoring to preclude all discovery, claiming that the Macau Personal Data  
10 Protection Act precluded any of this information from being produced in the United States.

11 When LVSC and Sands China were pressed as to how and why this information had not  
12 been disclosed in the course of the last year, they asserted that they had no obligation to inform  
13 Jacobs or this Court of what had transpired. When asked how these documents and ESI found its  
14 way out of Macau and into the United States, Sands China's counsel revealed that it had been  
15 done sometime in the summer/fall of 2010, that it had been a mistake, albeit one that had never  
16 been disclosed to anyone in this case for more than a year, and that they were not authorized to  
17 comment on how or why the data left Macau and came to reside in the United States. However  
18 and importantly, Sands China's counsel confirmed that the Macau Personal Data Protection Act  
19 would not apply to the selective data and information already in the United States, including the  
20 data brought here in purported "error."

21 What is more, it appears that Sands China and LVSC have not searched this data relevant  
22 to Mr. Jacobs' outstanding discovery requests and do not intend to do so until sometime in the  
23 future. In other words, they are slow playing their obligations to produce discovery to unilaterally  
24 grant themselves a right to sequence discovery by delaying their own production until they see  
25 Jacobs' data so to determine what they are willing to produce.

26 These new developments raise several concerns and pose even more problems for  
27 Mr. Jacobs and discovery (jurisdictional and merits-based) in this case. Sands China cannot  
28 selectively choose to employ the Macau Personal Data Protection Act to preclude the discovery of



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1 documents that it does not want to disclose or produce in this Nevada action. If this is not  
2 Sands China's intent, there must be some explanation for the Macau to United States data transfer,  
3 and it cannot be concealed from Jacobs or this Court.

4 Further, whatever relevant and/or discoverable data exists in Las Vegas and/or Macau  
5 must be preserved. While representations have been previously made, there seems to be  
6 categories of data of which even Defendants' counsel is unaware. Jacobs must be given the same  
7 preservation assurances that LVSC, Sands China, and this Court demanded of him. That is,  
8 Sands China and LVSC must be directed to image and preserve their possibly  
9 relevant/discoverable data and place it in the custody of this Court's appointed ESI vendor,  
10 Advanced Discovery. Not only should Defendants be held to the same standard with regard to  
11 preservation, but Defendants' lack of knowledge and/or awareness at any given time about the  
12 location of potentially relevant documents is cause for alarm.

13 Finally, while Mr. Jacobs understands that the procedural status of this action may not yet  
14 present a ripe dispute over the application of the Macau Personal Data Protection Act's  
15 applicability to discovery of specific documents in this action, there are two interesting evolutions  
16 taking place that cannot go unmentioned. First, and specific to this case, it appears Sands China is  
17 either waiving the applicability of the act with respect to certain documents, choosing to disregard  
18 the act with respect to certain documents, and/or conceding that the act does not apply to certain  
19 documents that it chose to bring to the United States. This selective application cannot be  
20 tolerated.

21 And, second, on a broader level, the law with respect to balancing a foreign country's  
22 privacy laws and the rules of civil procedure is evolving in favor of greater disclosure consistent  
23 with the United States' liberal discovery rules and away from foreign laws designed to slow and  
24 disrupt the United States legal process. The recent case of *Trueposition, Inc. v. LM Ericsson*  
25 *Tel. Co.*, CIV.A. 11-4574, 2012 WL 707012 (E.D. Pa. Mar. 6, 2012) (slip copy), is a prime  
26 example. There, the federal court held that a foreign corporation (in that instance, a French  
27 company) defending a civil action in the United States had to comply with its discovery  
28 obligations under the Federal Rules of Civil Procedure even if the corporation faced potential

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1 liability abroad for doing so in its home country. *Id.* at \*5-6. Notably, the procedural posture of  
2 *Trueposition* was similar to the case at hand. The French defendant company moved to dismiss  
3 for lack of jurisdiction, and the court granted limited jurisdictional discovery. The French  
4 defendant sought a protective order, citing a foreign privacy law (or blocking statute) and the  
5 Hague Convention as the basis for stopping or slowing discovery. Quoting the United States  
6 Supreme Court, the federal district court held that foreign blocking statutes "do not deprive an  
7 American court of the power to order a party subject to its jurisdiction to produce evidence even  
8 though the act of production may violate that statute." *Id.* (citing *Societe Nationale Industrielle*  
9 *Aerospatiale v. U.S. Dist. Court for S. Dist. of Iowa*, 482 U.S. 522, 544 n.9 (1987)).

10 Importantly, the *Trueposition* Court cited a litany of other cases with similar and  
11 consistent holdings. *E.g., In re Auto. Refinishing Paint Antitrust Litig.*, 358 F.3d 288, 300 (3d Cir.  
12 2004) (stating that *Aerospatiale* reiterates the well-settled view that blocking statutes do not  
13 deprive U.S. courts of their jurisdiction to order a foreign national party to produce evidence  
14 located within its country through the discovery rules); *Schindler Elevator Corp. v. Otis Elevator*  
15 *Co.*, 657 F. Supp. 2d 525, 533-34 (D.N.J. 2009) (party's reliance on Swiss Penal Law is  
16 unavailing, pointing out that foreign statutes prohibiting discovery do not bind American courts);  
17 *In re Aspartame Antitrust Litig.*, No. 06-1732, 2008 WL 2275531, at \*4 (E.D. Pa. May 13, 2008)  
18 (finding that a Swiss blocking statute does not mandate that the Hague Convention should be  
19 utilized over the Federal Rules of Civil Procedure); *Strauss v. Credit Lyonnais, S.A.*,  
20 249 F.R.D. 429, 454 (E.D.N.Y. 2008) ("The Supreme Court examined . . . the French Blocking  
21 Statute, and ordered discovery notwithstanding the penalties that could be imposed.").<sup>2</sup>

22 In a nutshell, foreign privacy laws do not excuse a foreign defendant from providing  
23 discovery pursuant the Rules. As the Supreme Court stated, "[i]t is clear that American courts are  
24 not required to adhere blindly to the directives of such a statute." *Aerospatiale*, 482 U.S. at 544.

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28 <sup>2</sup> This string cite is taken verbatim from *Trueposition*, with changes made only to the names  
of cases to allow for a full and complete citation, rather than a shore cite.

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1 Here, Defendants' actions are even more untenable. Sands China cannot pick and choose what  
2 discovery it wants to take out of Macau and present as a defense in this case. It must (preserve  
3 and) produce all discoverable documents, and it must be directed to do so immediately.

4 **C. STATUS: Defendants' document production in response to Mr. Jacobs'**  
5 **Jurisdictional Discovery Requests.**

6 On June 6, 2012, LVSC produced documents responsive to Mr. Jacobs' written  
7 jurisdictional discovery requests. Jacobs is presently reviewing the production. More recently, on  
8 June 25, 2012, LVSC produced approximately 2000 documents responsive to Mr. Jacobs'  
9 jurisdictional discovery requests, consisting of "some of Adelson's ESI" as well as some  
10 "additional Leven" documents. Jacobs' counsel is informed that production is ongoing and  
11 additional responsive documents will be forthcoming.

12 However, a consistent theme is plainly developing from Defendants' productions to date –  
13 they are sanitizing their productions and not producing evidence that goes to the jurisdictional  
14 issue about how key executives at LVSC were directing activities for Sands China, including on  
15 highly improper events. Despite the representation that additional documents are forthcoming,  
16 Defendants have asserted some objections that can and must be resolved, and there are a variety  
17 of documents that Mr. Jacobs knows to be missing. Recall that although Jacobs' counsel is unable  
18 to review the documents he possesses without threat of disqualification, the discovery requests  
19 were based upon Jacobs' knowledge of the procedures and processes in place during his tenure  
20 with LVSC, and various occurrences in which he was a participant and/or was informed about in  
21 some manner. Thus, with respect to certain categories of requests and/or responsive documents,  
22 Jacobs will be moving to compel supplemental responses. This includes, of course, the  
23 production of Mr. Jacobs' e-mails.

24 To highlight the magnitude of the lack of forthright compliance by Defendants, attached  
25 hereto is a Declaration from Mr. Jacobs outlining many of these subject matters of which he is  
26 aware that conveniently do not appear in any of the document productions by Defendants. As the  
27 Court can see from Mr. Jacobs' Declaration, he is intimately aware of the company's operations  
28 and knows when information is being withheld. If Defendants were being forthright in their

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1 production of documents based upon the search terms they yesterday represented to be using,  
2 documents on the subject matters that Mr. Jacobs identified would have been produced. Yet,  
3 none of them have been produced and it becomes more clear why that may be occurring: These  
4 are subject matters that LVSC and Sands China, as well as their executives, know were both  
5 improper and highly problematic.

6 Respectfully, neither Mr. Jacobs nor this Court is required to accept that documents on  
7 these touchy subject matters are not appearing in response to Jacobs' discovery requests out of  
8 mere coincidence. Once again, it appears that Defendants are sanitizing their production until  
9 after they can see what Mr. Jacobs possesses so as to grant themselves bifurcated or phased  
10 discovery.

11 **D. STATUS: The Scheduling of the Evidentiary Hearing.**

12 Given the revelation that a "large amount" of Jacobs' e-mails and Jacobs' ESI is located in  
13 the United States, and that Sands China is no longer asserting that the Macau Personal Data  
14 Protection Act prevents the disclosure of documents and ESI already in the United States  
15 (i.e., taken outside of Macau), the review and production of these documents should proceed  
16 fairly quickly. In addition, because the parties are currently engaged in the process by which  
17 Sands China can conduct its demanded privilege review of documents that Mr. Jacobs personally  
18 possesses, there should be no need or basis to further delay the scheduling of the evidentiary  
19 hearing on jurisdiction. Thus, Mr. Jacobs requests that this Court schedule the evidentiary  
20 hearing as is convenient with this Court's schedule. Mr. Jacobs believes that with document  
21 production taking place over the next 30 days, depositions can take place in late-July,  
22 early August, with the evidentiary hearing going forward in early September. In any event, there  
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1 is no need to further delay the scheduling of the evidentiary hearing, and equity (at least in the  
2 eyes of Jacobs) demands otherwise.

3 DATED this 27<sup>th</sup> day of June, 2012.

4 PISANELLI BICE PLLC

5  
6 By: 

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 27th day of June, 2012, I caused to be sent via e-mail and United States Mail, postage prepaid, true and correct copies of the above and foregoing **PLAINTIFF STEVEN C. JACOBS' STATUS MEMORANDUM ON JURISDICTIONAL DISCOVERY** properly addressed to the following:

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# EXHIBIT A

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1 **DECL**

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8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 STEVEN C. JACOBS,

11 Plaintiff,

12 v.

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

16 Defendants.

Case No.: A-10-627691

Dept. No.: XI

**DECLARATION OF STEVEN C.  
JACOBS**

17 **AND RELATED CLAIMS**

19 I, STEVEN C. JACOBS, declare as follows:

20 1. I am the plaintiff in the above-captioned matter, and I make this Declaration in  
21 support of Plaintiff's Status Memorandum filed pursuant to this Court's directive during the status  
22 conference held on May 24, 2012.

23 2. I am over eighteen years of age and am competent to testify to the matters stated  
24 herein. I have personal knowledge of the following, unless stated upon information and belief,  
25 and can and do competently testify thereto.

26 3. I have reviewed most of the non-attorneys' eyes only documents produced by  
27 Defendants Las Vegas Sands Corp. ("LVSC") and Sands China Ltd. ("Sands China") (LVSC and  
28 Sands China are collectively referred to as "Defendants") (before the latest production received



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1 this week) and in response to the written discovery requests my counsel served on my behalf in  
2 this action. Based upon that review, there are a number of responsive documents that I know to  
3 have existed from my tenure with LVSC that have not been produced. I also know that there are  
4 various subject matters and deals in which I was not involved, purposefully or otherwise but have  
5 good cause to believe that documents exist. There existed certain matters that Sheldon G. Adelson  
6 ("Adelson") and Michael Leven ("Leven") handled on their own with little to no disclosure to me.  
7 Via this declaration, I provide only a few examples of some documents that do exist and/or that I  
8 have reason to believe exist based upon my experience with the Defendants but have not been  
9 produced.

10 4. *Mike Leven Controlled Operations and Directed Activities of Sands China.*

11 During the period from May 2009 through the morning of July 23, 2010, Leven was  
12 extensively involved in running the day-to-day operations of Sands China from Las Vegas.  
13 E-mails, documents, and correspondence not yet produced in this action, and which relate to the  
14 jurisdictional issue of LVSC exercising direction and control of Sands China from Las Vegas  
15 include documents that reflect the following: Leven's authorization and participation in the  
16 negotiation of the deal with Harrah's; instructions and mandates to negotiate deals for  
17 Parcels 5 & 6 (located in Macau) including negotiating/concluding deals with Starwood Hotels &  
18 Resorts regarding the proposed Sheraton and St. Regis Tower in Macau, as well as Cirque  
19 Du Soleil and/or Base Entertainment productions for Sands China's entertainment venues;  
20 authorizing travel to finalize the apartment/hotel deal with Four Seasons in Macau; documents  
21 related to Leven's authorization, negotiation, and/or direction of special terms and conditions for  
22 severance payments to Sands China employees terminated by Adelson's mandate without cause;  
23 authorization for the resolution of Sands China litigation (e.g., employment matters, joint venture  
24 issues related to Parcel 3; discussions related to selling Parcels 7 & 8 to Stanley Ho); moving  
25 assets out of Sands China and redirecting the economic benefits to LVSC; liability transfers  
26 between LVSC and Sands China; authorizing and participating in explorative meetings regarding  
27 the sale/joint venture of JV of the malls; setting bonus targets and plans for Sands China Senior  
28 Executives and employees without review or approval by the Sands China Board; the firing of the

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1 President and CEO of Sands China without prior Sands China Board review and approval despite  
2 known conflicts of interest and without following the Hong Kong Stock Exchange's procedural  
3 requirements; authorizing and ordering the investigation of Macau government officials via the  
4 "Leverage Strategy" directed by Leven and Adelson; instructing vendors providing services to  
5 Sands China that Sands China representatives could not sign contracts on behalf of Sands China,  
6 but that contracts must be agreed to by Leven and/or LVSC; hiring and instructing U.S.-based  
7 sign companies to install new signage within the Venetian Macau mall; and giving instructions  
8 regarding investigations and subsequent junket reviews; agreeing and approving the removal of  
9 Leonel Alves from Sands China and subsequent rehiring; authorization and instructions regarding  
10 the execution of the deal with Playboy related to Parcels 5 and 6, including but not limited to  
11 notes associated with his dinner meeting with Playboy Executives prior to the deal being  
12 concluded among others.

13 5. *LVSC Prostitution Strategy for Macau.* E-mails and documents missing from  
14 Defendants' production demonstrate LVSC's Executive Management's control and direction from  
15 Las Vegas over acts of prostitution on Sands China's properties. As background, shortly after my  
16 arrival to Macau in May 2009, I launched "Operation Clean Sweep" designed to rid the casino  
17 floor of loan sharks and prostitution. This project was met with concern as LVSC Senior  
18 Executives informed me that the prior prostitution strategy had been personally approved by  
19 Adelson. Missing documents include but are not limited to e-mails and notes between myself and  
20 Mike Leven concerning Adelson's direct involvement, e-mails between Mark Brown and Senior  
21 LVSC Executives/Board members confirming the implementation of the strategy and highlighting  
22 its "success." Hard copies of these files were kept in my office drawer in a folder labeled  
23 "Outrageous." Again, these documents and e-mails will demonstrate control by LVSC executives  
24 from Las Vegas on matters of great import.

25 6. *Misuse of Blue Cards and Illegal Workers in Macau.* During the summer of  
26 2009, I commissioned an internal audit of foreign workers and their work permits, known as Blue  
27 Cards. Shortly after the audit was concluded, over 2000 employees were terminated. In the fall  
28 of 2009, the Macau government began enforcing its laws regarding the hiring and use of

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1 unauthorized foreign labor. To ensure compliance with Macau law, I instructed all Sands China,  
2 Venetian Macau Limited, and related company department heads and/or direct reports to audit  
3 their departments and to attest that they had reviewed the records of all foreign workers, including  
4 their blue cards. The Design and Construction department refused to audit and attest and, in the  
5 midst of the Sands China IPO, the Senior Executive in charge of Design and Construction  
6 resigned. Mike Leven intervened. According to Leven, Sands China growth would be at risk  
7 without the hiring and use of illegal construction workers and he overruled my instructions to  
8 audit and attest in order to, in his words, "save the IPO" of Sands China.

9 Missing documents include communications and e-mails that I know exist between Leven,  
10 LVS Board members, legal counsel, investment bankers, internal audit reports, myself and the  
11 Executive(s) in charge of Design and Construction. These communications and documents reflect  
12 Leven's instruction, direction, control, and decision making on behalf of what was surely a Sands  
13 China issue, including, but not limited to his "solution" which was to unilaterally move the  
14 department and its employees off the Macau payroll into Singapore, and to maintain the existing  
15 workforce (legal and/or illegal) through the use of the Shared Services Agreement. To my  
16 knowledge, none of these documents have been produced.

17 7. *Termination of Legal Services Rendered By Leonel Alves to Sands China,*  
18 *LVSC's Mandate That His Services Be Continued And The Subsequent Rehiring of Leonel*  
19 *Alves Post My Departure.* Other documents missing from Defendants' production to date include  
20 multiple e-mail requests from Adelson to Alves to arrange private meetings with high ranking  
21 Chinese Officials and/or to "hand deliver" personal correspondence to the same; an investigative  
22 report on Ng Lapseng; e-mails from Alves requesting \$300M USD for obtaining Strata-Title to  
23 the Four Seasons Hotel and resolution of the Taiwanese law suit, e-mails from me to LVSC  
24 executives stating that I would not participate; e-mails relating to issues regarding overbilling by  
25 Alves' firm; the investigative report conducted on Alves which was shared with the LVSC audit  
26 committee in early 2010 (referred to within LVSC as "The Alves Report"); e-mails concerning the  
27 wind down and termination of Alves' services by me; e-mails and communications with the  
28 Nevada Gaming Control Board relating to Alves, the Alves Report; e-mails and communications

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1 between Alves, Leven and/ or Adelson concerning his offer to take over the entire Sands China  
2 legal department at no cost provided existing employees were terminated; e-mails and  
3 communications between Adelson, Leven and/or Betty Yurich (on behalf of Adelson) regarding  
4 the services provided following the termination of Alves' services Sands China; and  
5 communications and e-mails between LVSC and Sands China Board members regarding Alves'  
6 rehire as outside counsel following my departure. Again, LVSC executives, from and in Las  
7 Vegas, controlled the services Alves provided to and for Sands China, even overruling Sands  
8 China management and circumventing the Sands China Board on these issues.

9 **8. LVSC Solicitation and Role In The Solicitation and Hiring of Ed Tracy.**

10 Defendants have not included any documents in their production related to LVSC Executives'  
11 roles in the hiring of Sands China executives, including Ed Tracy. Shortly after my departure,  
12 Mike Leven publically stated that LVSC had been looking for replacements and Senior  
13 Executives for Sands China "since February of 2010." Ed Tracy was hired shortly after my  
14 termination. Defendants have not produced e-mails between Leven, Adelson, Rob Goldstein,  
15 Ken Kay, the LVSC Board of Directors and/or the Sands China Board as it relates to the sourcing,  
16 recruitment, interviewing and hiring of Tracy. Also missing from production are e-mails,  
17 correspondence and files concerning Tracey's suitability including but not limited to disclosures  
18 made to the Sands China Board, the Nevada Gaming Control Board and/or the LVSC Compliance  
19 Committee. These documents will reveal that LVSC directed and controlled the recruitment and  
20 hiring of Tracy from Las Vegas.

21 **9. Marketing Plus: The Chairman's Club.** Also missing from Defendants'

22 production are program details, e-mails, correspondence and personal letters from Adelson to the  
23 upper most echelon of Sands China's customers inviting and/or welcoming them to the most  
24 exclusive club within LVSC -- The Chairman's Club. These documents will show that the  
25 Chairman's Club is controlled by Adelson, Chairman of LVSC, and LVSC personnel. Each  
26 member of the club is given exclusive access to Sands China's most luxurious suites, six figure  
27 monthly "per diems" and extremely large lines of credit. Also missing from the production are  
28 background reports conducted on Chairman Club members at the direction of LVSC executives,

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1 correspondence and communications regarding the club and its members to the Nevada Gaming  
2 Control Board, and e-mails concerning the approval and issuance of credit, collections and/or  
3 write-offs to or for the benefit of club members, who include known and/or suspected Triad  
4 leaders.

5 10. ***Marketing Plus: LVSC's Identification, Solicitation and Control of Whales and***  
6 ***Junkets To Play In Macau.*** LVSC had direct control and responsibility for identification,  
7 solicitation and recruitment of the majority of all credit accounts for individuals who played in  
8 Macau, including but not limited to Whales ("High Rollers") and Junkets. Missing from  
9 Defendants' production are e-mails and other documents that reflect direct sales efforts by LVSC  
10 in China, Indonesia, Korea, and the Middle East to identify, solicit, recruit and enable high net  
11 worth individuals to gamble in Macau. Documents will show that instructions came from LVSC  
12 executives, including quotas, tracking, player identification, amounts/bonuses paid, and  
13 recruitment visits by LVSC executives/employees, Goldstein included, to solicit, arrange, and/or  
14 transport players (and/or their money) into and/or out of Macau. The efforts were taken in and  
15 directed from Las Vegas.

16 11. ***LVSC's Control of Credit, Collections and Write-Offs.*** Without touching upon  
17 documents that reflect the physical couriering of funds from Macau to Las Vegas, Defendants  
18 have failed to produce documents that reflect LVSC's control (from Las Vegas) of Sands China's  
19 policies for credit, collections, and write-offs for Macau Government Officials, Executives of  
20 China State Owned Enterprises and government employees. Also missing from production are  
21 records and related e-mails, correspondence and communications between Sands China and  
22 LVSC concerning LVSC's collection efforts for debts owed to Sands China from LVSC  
23 Whales/high-rollers. In addition, Defendants have not produced e-mails or other communications  
24 exchanged between LVSC executive Rob Goldstein, Larry Chiu, their direct reports and patrons  
25 numbered 71646, 530636, 746600, 542706, 3272980, 3898206, and 3728791, among others.  
26 These documents demonstrate that Sands China financial activities and decisions were made by  
27 and/or at the instruction of LVSC executives and/or employees. In particular, with regard to  
28 71646, there are documents (though not produced) that demonstrate that LVSC authorized a \$16

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1 million write off on Sands China's books for this player's debt, and then subsequently flew him  
2 (and his wife) to Las Vegas aboard LVSC's 747, extended him credit, and allowed him to play.  
3 Documents not yet produced will also demonstrate that LVSC approved this individual to operate  
4 an unlicensed Junket in Macau.

5 12. I declare under penalty of perjury under the laws of the State of Florida and United  
6 States of America that the foregoing is true and correct and that I signed this Declaration on  
7 June 27 2012.

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STEVEN E. JACOBS