

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.

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

**Volume IV of XXXIII
(PA593 – 752)**

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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 IV OF XXXIII (PA593 – 752)** 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

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DATED this 20th day of March, 2015.

By: /s/ PATRICIA FERRUGIA

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Ann L. Blum

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

HEARING TO SET TIME FOR EVIDENTIARY HEARING

THURSDAY, JUNE 28, 2012

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

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

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

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1 LAS VEGAS, NEVADA, THURSDAY, JUNE 28, 2012, 9:51 A.M.

2 (Court was called to order)

3 THE COURT: Okay. If I could go to Jacobs versus
4 Sands.

5 Mr. Pisanelli, if you'd switch sides of the room.

6 What did you guys do with Mr. Peek? There he is.

7 MR. PEEK: I'm here, Your Honor. The elevator --

8 THE COURT: Well, while you're coming up, Mr. Peek,
9 I've got a question.

10 MR. PEEK: Yes, Your Honor.

11 THE COURT: I've been dealing with what I
12 characterize as a discovery dispute in a jurisdictional
13 portion of this litigation because of the writ I told you to
14 file in the Nevada Supreme Court related to this discovery
15 issue was determined by the Nevada Supreme Court to be
16 inappropriate. So why didn't somebody tell me 11 months ago
17 or so that the Macau Data Privacy Protection Act wasn't going
18 to be an issue because somehow the documents had already
19 gotten to the U.S. and, geez, it was by mistake, but we're not
20 going to pursue that anymore?

21 MR. BRIAN: I'm volunteering to take him up --

22 MR. PEEK: I mean, I could, but I --

23 THE COURT: I don't think you guys understood how
24 frustrated I was when I read the statute.

25 MR. PEEK: No, I'm sure you were very frustrated,

1 Your Honor. And we are prepared to answer that question with
2 -- to you this morning. And I can do it, or I'm going to
3 defer to Mr. Brian, because --

4 THE COURT: I don't care who does it. I'd just
5 really like an answer, because we've spent 11 or 12 months on
6 this issue.

7 MR. PEEK: Yeah. And I think, Your Honor, just
8 understand that although you say it was all here, it's not --
9 what they're suggesting to you, that it is all here, is not
10 exactly correct.

11 THE COURT: Okay.

12 MR. PEEK: So I'll let Mr. Brian --

13 MR. BRIAN: Your Honor, Brad Brian for Sands China
14 Limited. Let me try, Your Honor, because I appreciate Your
15 Honor's frustration.

16 When we got into the case we got in in stages. Mr.
17 Weissman got in a few months before I did. I got in around
18 February or March. And when this issue first came up --

19 THE COURT: You can sit down. You don't have to
20 stand.

21 MR. BRIAN: -- and we learned that there had been
22 some transfers of documents from Macau there was -- those
23 documents were in error. They should not have happened.
24 There was a real concern about what we should do about it.
25 And since that -- since that concern began there have been a

1 number of meetings with the Macau authorities who are
2 responsible for dealing with this issue. Mr. Weissman and
3 another lawyer from the United States travelled to Macau and
4 met with the authorities. There've been I think -- I'm told
5 five meetings, some involving folks from the U.S., others
6 involving lawyers over there, to try to figure out how to deal
7 with this. And the intention at the time -- and frankly there
8 was a concern about whether we could do anything with it,
9 whether or not we were allowed to do anything with those
10 documents. It was not until a meeting on May 29th of this
11 year, after the last status conference that there was
12 sufficient comfort that we could produce in this litigation
13 Macau documents that were already in the United States.
14 Before that it had been our plan, which I --

15 THE COURT: Nobody told me for the 11 months that
16 I've been dealing with it there was a potential issue that you
17 were exploring with the Macau authorities, and all the times I
18 asked questions about whether we could talk to the Macau
19 authorities about making this process work better. Nobody
20 thought to say, gosh, Judge, we're already talking to them
21 because we screwed up and took this information we weren't
22 supposed to and we're trying to see what we're supposed to do
23 now.

24 MR. BRIAN: Your Honor, in hindsight if you could
25 roll the clock back there's no doubt that it would have been

1 better to advise the Court of that. I recognize that. There
2 was real worry about what the implications of all this were,
3 and so the plan had been, which I understand Your Honor did
4 not like and expressed a discomfort about it at the last
5 status conference, which unfortunately I was sick and couldn't
6 attend -- maybe fortunately, I don't know -- was it had been
7 to go through Jacobs's -- Mr. Jacobs's ESI, go through those
8 documents, then compare it to the documents that were already
9 here, and if there were additional documents already here, to
10 go to the Macau authorities and try to persuade them that it
11 was okay to produce them.

12 Your Honor expressed the view that, no, no, we don't
13 sequence that discovery, and I'm not asking Your Honor to
14 revisit that. And then on a meeting on May 29th we got
15 sufficient comfort -- by the way, it's not a waiver issue.
16 The question is what the Macau authorities will do about it in
17 the event we were to make a production in this lawsuit of
18 those documents. We got the comfort and then developed --
19 immediately developed a protocol, went to the plaintiff's
20 lawyers and laid out the protocol, requested a meet and
21 confer, which they were not available to do last week, that's
22 why it appeared this week. So now we're in a process -- we're
23 in a situation where we're going to end up reviewing
24 essentially two sets of what are largely overlapping
25 documents. That's going to be more expensive, more

1 burdensome, more time consuming, I get that. We think it
2 could have been avoided if Mr. Jacobs had produced his ESI
3 earlier. He didn't for reasons that he can explain. But we
4 are where we are. And if we had rolled the clock back, maybe
5 this thing would have been done differently, maybe it should
6 have been done differently. There was no -- there was no ill
7 intent on the part of anybody to do this and in any way
8 conceal it, and all those documents were either going to be
9 produced to the extent they were nonprivileged or recorded on
10 a privilege log. So that's -- that's where we are. And they
11 took -- it took a long time to get guidance from the Macau
12 authorities. This is not a -- the law is complicated and
13 evolving, I think is the best way to say it. And as to what
14 the Macau authorities would do about it is evolving. That led
15 to the multiple -- multiple meetings.

16 THE COURT: Well, I'm very disappointed in the
17 conduct of counsel.

18 MR. BRIAN: I understand, Your Honor. And I can
19 only tell you that it's an issue that -- it's just been a
20 concern, and counsel, the client, everybody have been
21 struggling with certainly since the time we got in this case.
22 I can't speak for what happened before we got in this case,
23 but it's an issue that people have been dealing with, dealing
24 with diligently.

25 I will tell you my perspective -- I mean, I

1 understand that's a concern, but when I went over the papers
2 last night to prepare for this hearing my perspective on it
3 was -- I read two different pleadings. We think that despite
4 Your Honor's --

5 THE COURT: I'm not really worried about what's in
6 the status reports now. I'm worried about the work that we've
7 done related to the production of the documents and the
8 application of the Macau Data Privacy Act and the work we've
9 done on this side and the work that you guys have done on that
10 side when you have the documents here in the U.S. all along.
11 Now, whether they were in the U.S. wrongfully, appropriately,
12 or in violation of Macau law is a different issue. But nobody
13 told any of us, and that's a problem, Counsel.

14 MR. BRIAN: Your Honor, I can only repeat what I
15 said. I understand the Court's frustration, I do. And to the
16 extent that it should have been done earlier, I apologize. I
17 mean, if it had become more -- if it had been raised earlier,
18 maybe in hindsight that would have been better. I'm just
19 telling you that at the time there was a real concern about
20 what we are to do about it, and nobody really had an answer
21 until we went through those series of meetings with Macau
22 authorities. That's -- that may not be satisfactory to the
23 Court, I'm just telling you that's the process that both the
24 clients and counsel went through for the last -- oh, God, last
25 number of four, five months.

1 THE COURT: All right.

2 MR. PEEK: And, Your Honor, since -- since I was the
3 one that --

4 THE COURT: You've been here the whole time.

5 MR. PEEK: I've been here the whole time, and so I'm
6 not going to let Mr. Brian take any hits for me. So I have to
7 take and accept that responsibility, as well. And if we're
8 wrong in your view, Your Honor, I apologize. But it is, as
9 Mr. Brian has described it, a struggle with the Macau PDPA.
10 It's been a struggle for over 14, 15 months or longer since it
11 came to our attention. They're trying to work through that
12 issue with the Office of Personal Privacy Data and the
13 implications that come from that potential violation that put
14 us where we are here today. And for that, Your Honor, I
15 apologize to this Court. I do.

16 MR. BRIAN: And I do.

17 MR. PEEK: And I take that responsibility, Your
18 Honor, because my credibility with this Court is important to
19 me, because I appear in front of this Court an awful lot, and
20 I have been here an awful lot.

21 THE COURT: I sent you on a writ up to the Supreme
22 Court because --

23 MR. PEEK: You did, Your Honor.

24 THE COURT: -- of what you told me about this.

25 MR. PEEK: You did.

1 THE COURT: You didn't have to tell them anything,
2 because they sent you right back.

3 MR. PEEK: They did. But it was a different issue,
4 Your Honor.

5 THE COURT: Overlapping, Mr. Peek.

6 MR. PEEK: I agree, Your Honor, it is overlapping.
7 But certainly --

8 MR. BRIAN: Your Honor, there are -- there are other
9 issues, and I just second what Mr. Peek says. If we made a
10 mistake in judgment, I apologize for that. I can tell you
11 that for many, many months that everybody has been trying to
12 resolve that issue and to solve it. Now, we obviously didn't
13 solve it to the Court's satisfaction, and for that I
14 apologize. But people were trying to solve it and, you know,
15 either there were mistakes made with the transfers and maybe
16 there were mistakes made with how it was handled, but there
17 are other issues raised in the papers, and I would like to
18 address them briefly --

19 THE COURT: Sure.

20 MR. BRIAN: -- because when I read the papers, I
21 mean, I do think that we have acted diligently to -- we've
22 searched over 300,000 documents, we've produced at a cost of
23 more than \$300,000, we have met and conferred, and now we read
24 for the first time yesterday a litany of allegations that we
25 have not been told about, there've been --

1 THE COURT: You're referring to the declaration Mr.
2 Jacobs attached to the status report?

3 MR. BRIAN: I'm referring to the declaration of Mr.
4 Jacobs, which I think, Your Honor, is an example of what is
5 wrong with litigation nowadays, where people put out
6 essentially press releases in the disguise of a declaration.
7 And that's what that largely is. There is nothing in that --

8 THE COURT: Because there's absolute immunity for
9 that.

10 MR. BRIAN: I stand.

11 THE COURT: That's why Mr. Adelson got out of the
12 case [inaudible].

13 MR. BRIAN: Well, Your Honor, that -- what's done is
14 done, but that declaration, there are things in there that
15 they're not -- we have never heard about those things before.
16 If Mr. Jacobs --

17 THE COURT: Aren't you glad you know about them now?

18 MR. BRIAN: If Mr. Jacobs truly believed that Mr.
19 Adelson had approved prostitution, he would have resigned. He
20 was fired. And that is in that declaration for one reason.
21 You know that and they know that and Mr. Jacobs knows that.
22 And those sort of false, scurrilous allegations do not belong
23 in the case.

24 With respect to the discovery disputes, we have met
25 and conferred with -- Mr. Weissman and other colleagues at my

1 firm, Mr. Peek, have met and conferred with them on a number
2 of occasions. It was not until yesterday that they said they
3 raised two issues of documents they say we did not produce
4 that should have been produced. They're wrong on one, and Mr.
5 Weissman can explain this if you need more details, and the
6 other one we don't think was ever requested. So we went --

7 THE COURT: And the Mr. Tracy ones have now been
8 produced.

9 MR. BRIAN: We went through -- we went through last
10 night -- because we hadn't seen this declaration and these
11 allegations until we got it, we went through last night and we
12 prepared this report, which if I may pass it up to the Court,
13 goes through some of the allegations of documents that they
14 say were not produced which in fact have been produced.

15 THE COURT: Okay. We've marked it as Court's 1 for
16 you.

17 MR. BRIAN: Thank you, Your Honor. Those documents
18 have been produced. So we're in a situation where we would
19 like to move forward to solve the discovery disputes, not to
20 conjure up disputes and try to make hay out of them, which I
21 think is what's happening on the other side.

22 Now, unfortunately, we have the issue with the Macau
23 documents that Your Honor doesn't feel so kindly toward us
24 about. I understand that. But on the other issues, we have
25 been dealing with this diligently, as competently as we know

1 how to try to move this case forward. We met with the client
2 last night. We are going to double and redouble our efforts
3 to move this thing along and review the Jacobs documents that
4 are in the United States and get those documents that are
5 responsive to jurisdiction produced as quickly as we can. We
6 are the ones who've wanted to move forward with a hearing on
7 jurisdiction. We were the ones who came in and wanted to keep
8 today's date. It was the plaintiff who wanted to delay it.
9 Now they pretend to want to move forward quickly.

10 So we think, Your Honor, we can address the specific
11 issues, but I don't think it's appropriate to put in the
12 declaration that was put in without raising that, I don't
13 think it's appropriate to put in all of these so-called
14 discovery disputes without raising them in a meet and confer
15 and, if they can't be resolved, filing a motion, which is the
16 appropriate -- I think that if there are issues --

17 THE COURT: It is the appropriate way, you're
18 absolutely right.

19 MR. BRIAN: If there are -- if there are documents
20 that they say are responsive that Mr. Jacobs knows were not
21 produced, tell us and we'll go back and look at them, which is
22 what we're going to do now in response to this declaration.
23 Thank you.

24 THE COURT: Okay. I marked your Table of Production
25 as Court's Exhibit 1 so that we have it for the record, but I

1 anticipate always that issues related to compelling documents
2 will be handled by a motion. The status report is merely to
3 tell me if we're going to throw me off schedule further. Part
4 of what we were hoping today was to talk about scheduling.

5 MR. BRIAN: Here's our -- here's our --

6 THE COURT: I'm not sure we're at a point to even
7 talk about scheduling in this case.

8 MR. BRIAN: Well, here's our --

9 MR. BICE: I'd like to be heard before we talk about
10 scheduling, Your Honor.

11 THE COURT: Wait. Not yet, Mr. Bice. Not yet, Mr.
12 Bice.

13 MR. BRIAN: On that -- if you want my thoughts, I'll
14 sit down after that, but --

15 THE COURT: Sure.

16 MR. BRIAN: -- as I say, last night we sat down with
17 the client and talked about how we would essentially increase
18 staffing, increase the expense, and get it done. And we think
19 that we can get all of the documents, other than documents in
20 Macau -- and we have to decide what the Court is going to do
21 with that, because documents in Macau are a whole different
22 situation and involve legal issues that may or may not have to
23 be resolved on the jurisdictional issue. But we think we can
24 get through all of the Jacobs documents and all of the other
25 documents in the United States by Labor Day and get those

1 produced so that if, Your Honor -- if there's no discovery
2 disputes and discovery motions, we think we'd be in a position
3 to have a hearing in October. That's our best bet.

4 THE COURT: All right. Thank you.

5 Mr. Bice.

6 MR. BICE: Yes, Your Honor. I learned about this
7 information -- I think the day before yesterday was the first
8 I --

9 THE COURT: And "this information," you mean the
10 stuff that got taken out of Macau?

11 MR. BICE: Yes. That's right. Now, Mr. Brian
12 didn't -- wasn't on any of the calls that we've had over the
13 course of the last three days about this, so I want the Court
14 to understand what I was told, because you can imagine my
15 reaction when I heard this information. I won't use the same
16 tone that I used over the phone, but I'll try and recall
17 exactly what I said.

18 "How long have you known about this and why weren't
19 we and the Court told about it"; and this is the response I
20 was given, we were under no duty to disclose this to you or
21 the Court. That was the answer I got. I was never told, oh,
22 we've been working with the Macau Government, you know, we
23 didn't know what to do, we've been trying to solve this. The
24 answer was that simple. Ms. Spinelli was also on the phone,
25 and I believe Mr. Pisanelli was in the room. "We had no duty

1 to disclose this to you or the Court." That's why we weren't
2 told about it. It wasn't because of Macau Data Privacy
3 problems.

4 And I love this argument from Mr. Brian, well, we
5 wanted to move the hearing quickly, we wanted to move forward
6 with the hearing. You're darn right he did. That's exactly
7 what they were trying to do. They were trying to cram that
8 hearing down our throat without the facts ever coming to
9 light. And only when you said, we're not going to do that,
10 guess what happens. Now their hands are tied, they have to
11 'fess up that for two years they have been sitting on these
12 documents and even to this day haven't searched them for
13 purposes of this case. They've apparently been searching them
14 for other purposes, I'm sure to deal with the United States
15 Government, but they haven't searched them for purposes of
16 this case. You ordered jurisdictional discovery last year,
17 and they still haven't searched these documents.

18 Your Honor, Mr. Jacobs has a saying, and I can now
19 see how it is in play here. Mr. Adelson told Mr. Jacobs in
20 response to several complaints by Mr. Jacobs about the
21 inappropriate activities that were going on at Sands, it's not
22 what they know, it's what they can prove. And we've now seen
23 that is exactly what's going on in this case. It's not what
24 Mr. Jacobs knows, it's what Mr. Jacobs can prove, so we want
25 to make sure we see Mr. Jacobs's documents before he sees

1 ours. And that was the whole excuse for the sequencing that
2 was going on, and that became crystal clear. And when you
3 called them out and said, you're not permitted to do that,
4 what did they do in the last 30 days relative to producing Mr.
5 Jacobs's emails and the like to us? Nothing. They haven't
6 even searched them by their own acknowledgements. Because,
7 guess what, Your Honor, guess when they get Mr. Jacobs's ESI
8 under our agreement. They get it next week. That's what this
9 is about. This is about stalling as long as they can. They
10 didn't have a duty, to use their exact words, a duty to
11 disclose this to us or to the Court, and now they'll start
12 looking at Mr. Jacobs's emails. And I love this. You know,
13 they've got their resources. They're going to man up now or
14 they're going to get lots of personnel and they're going to
15 start searching through Mr. Jacobs's ESI. Guess when they're
16 going to do that. Just as soon as they get Mr. Jacobs's from
17 Advance Discovery so that they know what he can prove, not
18 what he knows. And that's what -- that's why I took the
19 position, and I ask the Court to do it now, they be directed
20 to immediately deposit all ESI with Advance Discovery. Not
21 that they can search it after they get Mr. Jacobs's documents
22 to determine what he can prove, not what he knows, so that
23 then documents don't get sanitized. And that's what the
24 purpose of his affidavit is.

25 And I'll be happy to address why is affidavit is --

1 was submitted with the status report. Because what has gone
2 on and what we found out about two days ago is they've been
3 holding onto a bunch of documents and they're sanitizing them.
4 They produce a few things. I love this argument, they've
5 produced everything about Ed Tracy. We've responded to that.
6 They've produced duplicates of I think his resume and an email
7 forwarding it. That is it.

8 THE COURT: And those were produced yesterday?

9 MR. BICE: No. Those were produced before then, two
10 days ago.

11 THE COURT: Two days ago.

12 MR. BICE: Right. And that's all they've produced.
13 And then they come to you and say, well, see, we're
14 responding. No. What they're doing is they're trying to just
15 leak out a little information so that they can say to you, oh,
16 we're responding; because they are cherry picking what they
17 don't want to be known. And then they come to us and say,
18 well, you should tell us, tell us what Mr. Jacobs knows, and
19 then we'll go look for additional documents. Again, this one-
20 sided attempt, we want to know what Jacobs can prove before we
21 respond to discovery. Just like they -- how in the world can
22 they stand here and tell you they were not under a duty to
23 disclose to us and to you that for two years they have had
24 Jacobs's emails in the United States? I mean, I can't
25 remember the number of times we were in this courtroom, people

1 from -- they were represented by separate counsel because they
2 couldn't even look at the documents. That was the story. Mr.
3 Peek's firm couldn't even look at the documents. Now it turns
4 out his client is the one that has possessed them all along.

5 Now, I asked point blank questions about this. And
6 you're right, I was -- I was agitated on the phone. I don't
7 deny it. I asked them point blank, how did they get here and
8 when did they get here; the first answer was, well, we'll need
9 to confer with our client about whether or not we're going to
10 answer that question.

11 So then the response came back in a subsequent phone
12 call, they were brought here by a lawyer. They won't tell us
13 who. They claim it was none of them, but they won't tell us
14 who brought them here, and they don't say exactly when they
15 were brought here, just sometime in 2010.

16 Then we started asking followup questions, of
17 course, and then we were accused of conducting an inquisition
18 against them over this stuff, such as, what's been done with
19 them; well, nothing has been done with them. And that's why,
20 Your Honor, we ask you to now take control of those documents
21 and place them with Advance Discovery just like Mr. Jacobs had
22 to do. These people have lost the right -- when I say these
23 people, Sands and Sands China have lost the right to tell us
24 and to tell this Court, trust us, we're going to be forthright
25 with you in discovery, trust us. For two years they kept a

1 secret, a whopper from you and from us, and there is no excuse
2 for it anywhere. They can't be trusted, they've demonstrated
3 they can't be trusted, and the documents need to be placed
4 with Advance Discovery now so that we don't run into more
5 selective sanitizing of the documentation with the assurances
6 of trust us. Tell us, Mr. Jacobs, what else would you like to
7 know, you let us know what you're looking for and then we'll
8 see if we can find it for you. That's not the way it's
9 supposed to be working.

10 And what Mr. Jacobs knows, Your Honor, which is why
11 we submitted this declaration is if they were legitimately
12 running the search terms that they have told us that they ran
13 to pull out these documents about Ed Tracy, Mr. Jacobs knows
14 for a fact other documents would have surfaced. And they
15 didn't. Why is that? Who's making the selection process
16 internally or amongst this group to not find the documents and
17 not produce them? Somebody is. You know, this is the -- this
18 is the problem for them, is that Mr. Jacobs knows the
19 documentation that exists. Again, they want to know what
20 could he prove exists. He knows what exists. And it's not
21 showing up if they were legitimately running these search
22 terms like they claim that they were. And that's why they've
23 lost the right to claim, trust us.

24 After two years of silence while we sat here -- you
25 know, Mr. Brian's firm wasn't involved at that point in time,

1 but we had argument after argument after argument in this
2 courtroom, we had motions for sanctions leveled against us
3 over all this. And while that was ongoing the people in this
4 courtroom sat here with knowledge that they had large volumes
5 of those documents in Sands's possession here in Las Vegas.
6 Can anyone sit here with a straight face and say, we didn't
7 feel that it was appropriate or we were under any duty to
8 inform the Court of that fact? They knew it. And they
9 deceived us. And it wasn't an oversight. You were here, I
10 was here, Mr. Pisanelli was here. It was no oversight.

11 What happened is they wanted to cram that hearing
12 down our throat without ever revealing this fact to us. And
13 when you called them out on the attempt to sequence discovery,
14 that forced their hand. And now the excuse has come out,
15 well, now they've tried to negotiate -- I can't -- really, I
16 can't keep the stories straight. Are you now claiming that
17 you've been negotiating with the Macau Government for the last
18 two years, or are you claiming that you only started that
19 process within the last 30 days? I'm confused.

20 As we've cited to you, Your Honor, in --

21 THE COURT: Let's talk about your discovery.

22 MR. BICE: I'm happy to do that. There's a couple
23 of more points about theirs I'd like to know.

24 They make a reference that there were -- because,
25 again, I learned something new with the status report. Now it

1 turns out that it wasn't just Mr. Jacobs's documents that were
2 transferred to the United States, apparently two other unnamed
3 people. Well, who are they? Why isn't that disclosed to us?
4 Was one of them Eric Chu [phonetic]? I'd like them to explain
5 on the record who those people are, because that may explain
6 to us where there are some additional documents. Is it Eric
7 Chu and Yvonne Mau whose data they transported into the United
8 States and have possessed for the last two years without
9 telling us?

10 That's why we asked, Your Honor -- that's why we
11 submitted an affidavit with the status report. We recognize
12 that affidavits with status reports aren't the norm. And I
13 told them yesterday that we were going to submit it in light
14 of this revelation and what is going on in this case; because
15 there's two things, they've demonstrated that they can't be
16 trusted to produce the information because they've been
17 sitting on it for two years, and they've demonstrated that
18 they can't be trusted to respond to our discovery requests
19 because documentation that Mr. Jacobs knows exists that would
20 be -- would surface in these search terms is also not being
21 produced. Something is afoot here, and it's not oversight.

22 Now, to respond to Her Honor's question, our
23 discovery. Our discovery has been placed with Advance
24 Discovery. Mr. Jacobs was given 10 days in order to review
25 it. That's what we find fascinating. He's got hundreds of

1 thousands of pages, and we agreed to have 10 business days to
2 review it. But they have had this documentation for two
3 years, and, of course, they're just not going to get to it
4 until, guess when, until they get to see Mr. Jacobs's
5 documents, because this case is about what Steve Jacobs can
6 prove, not what he knows. That's why I ask you to force them
7 to now, before they get Mr. Jacobs's data, deposit their
8 documentation with Advance Discovery so that we won't have a
9 dispute down the road when more documents go missing or there
10 are new revelations that the Court didn't need to know and
11 that we didn't need to know about for the last two years.

12 And as we cite to the caselaw for you, Your Honor,
13 we think that there's a little selective interpretation going
14 on of the Macau Data Privacy Act. Whoever these unnamed
15 lawyers are that made the decision that the data could be
16 shipped -- and, of course, it only demonstrates Mr. Jacobs's
17 point all along about who really controls Sands China. It's
18 being controlled from Las Vegas by the Las Vegas executives.
19 Who went and got the documents and pulled them out of Macau?
20 Las Vegas Sands did. Why? Because they're in control. Who
21 are the lawyers that made that decision? When did the Macau
22 Data Privacy Act suddenly become the defense? It seems like
23 it only became the excuse after this Court started saying,
24 we're going to do jurisdictional discovery. It apparently
25 wasn't any obstacle before then.

1 So what we've got going on is when Sands wants to
2 pull information out of Macau for its own purposes it's not an
3 obstacle to it or even its legal team. But when they have to
4 have the burden of responding to discovery in litigation in
5 the United States, whoa, Macau Data Privacy Act, we can't --
6 we can't comply and we can't even tell you, Your Honor, that
7 we've interpreted it and applied it differently for the last
8 two years before our sudden revelation that it applied and
9 precluded us from responding to discovery.

10 That's why we cite the caselaw to you, Your Honor,
11 in our status brief. And I understand again it's a status
12 brief, but we're still trying to move this forward and that
13 the Federal Courts have taken the position that these blocking
14 statutes, especially how it's being invoked in this matter by
15 Sands, do not obstruct discovery and they are still required
16 to respond. That's why we are asking that they be forced to
17 place both the documentation that they have here in Nevada
18 with Advance Discovery so that nothing else happens to it, and
19 that all documentation in Macau that they claim to have
20 preserved also be deposited with Advance Discovery
21 immediately. That way we can work out a protocol that it can
22 legitimately be searched, just like they insisted Mr. Jacobs
23 had to do, legitimately be searched to determine what is in
24 there, not sanitized by people who have an agenda here of not
25 having the bad facts come out, just spoon feeding us what

1 they'd like us to see.

2 And if the Court doesn't have any further questions
3 for me, I will sit down.

4 THE COURT: So your discovery is back on track and
5 the -- Mr. Jacobs is currently reviewing the information that
6 was gathered by the search terms when Advance Discovery ran
7 them --

8 MR. BICE: That is correct.

9 THE COURT: -- and that should be returned to
10 Advance Discovery for them to make any determinations as to
11 personal or private information that Mr. Jacobs has designated
12 and then be produced to the defendants next week?

13 MR. BICE: What Mr. Jacobs has done is he has gone
14 through the documents, he is comparing the search terms that
15 are going to be then run against the database, that those
16 search terms will then pull out those documents, they will get
17 to see the search terms. When that is done they can either
18 agree or disagree. We've agreed that if in the event that
19 there's disagreement that will hold up the process the search
20 terms will be run, the documents will be pulled out and
21 segregated, they will then be given access on a secured server
22 to what remains of the documentation. It's already been de-
23 duped. All that process has already occurred. That's what's
24 obviously --

25 THE COURT: The removal of the documents especially

1 related to Mr. Jacobs's children, which was of a --

2 MR. BICE: Yes.

3 THE COURT: -- significant concern to me when this
4 issue first came up about a year ago --

5 MR. BICE: Yes.

6 THE COURT: -- are going to be pulled out --

7 MR. BICE: That is correct, Your Honor.

8 THE COURT: -- through the search term use.

9 MR. BICE: That is correct, Your Honor.

10 THE COURT: Okay.

11 MR. BICE: And that process has been underway now
12 for a period of time, and it will be done. We agreed that he
13 would have 10 business days to complete that, and he will be
14 done with it.

15 Obviously, Your Honor, in that regard just
16 demonstrating our frustration with this recent revelation is
17 even though they've had this data for two years they haven't
18 even run it to compare it against their own database in Macau
19 to determine what's missing or what isn't missing or what's
20 even left in Macau. They haven't even done that process.
21 Why? Because they want to see what Steve Jacobs has before
22 they produce anything from Steve Jacobs. And that sequencing
23 is what you told them was forbidden, and all they have -- they
24 have granted it to themselves by now just simply using time as
25 the means in which to accomplish it once you told them they

1 weren't allowed to do that.

2 THE COURT: Okay. Before you leave the podium let's
3 talk about scheduling.

4 MR. BICE: Yes, Your Honor.

5 THE COURT: The volume of documents that is going to
6 be provided on the secured server for the defendants to review
7 beginning next week is probably going to take them three to
8 four weeks to get through?

9 MR. BICE: Yes.

10 THE COURT: Okay. Assuming some day you get some
11 more documents from the defendants, how much longer do you
12 think you're going to need before you're ready for the
13 hearing?

14 MR. BICE: We will not need much time. Once we get
15 the documents we will take the depositions within 30 days of
16 our possession of those documents, and we will proceed.

17 THE COURT: Okay. So you're talking about another
18 60 to 90 days basically.

19 MR. BICE: We would think 60. I mean, if Mr. Jacobs
20 -- you know, you had said three to four weeks for them to
21 review it. I wouldn't think it would really take that long.
22 I mean, Mr. Jacobs is reviewing them in 10 business days.
23 They have a far larger army than Mr. Jacobs has. He's doing
24 this -- has to do it, by agreement, all by himself. They
25 could certainly get through those documents a whole heck of a

1 lot faster if the -- and by the way, I'm quite sure they will,
2 Your Honor. I'm quite sure they're going to get through those
3 documents real fast, because they want to see what's in them
4 before the Court tells them what they have to give to me. And
5 that's what's inappropriate.

6 THE COURT: Okay.

7 MR. BICE: Thank you, Your Honor.

8 THE COURT: Thank you.

9 Mr. Brian.

10 MR. BRIAN: I think I can be really brief, Your
11 Honor, unless you have more questions.

12 Let me address very briefly Mr. Bice's request that
13 we be required to deposit these documents with Advance
14 Discovery. I understand there's a big difference, that the
15 Court ordered that of Mr. Jacobs because, contrary to what is
16 normally done, Mr. Jacobs did not take an image of his hard
17 drive, and continued to use it. There was concern, and we had
18 concerns and the Court had concerns, that caused that
19 procedure to be raised.

20 Now, Mr. Bice tries to equate that by saying there's
21 evidence of sanitizing of documents, but that's the issue that
22 just got conjured up yesterday in connection with the status
23 conference report, has never been the subject of meet and
24 confers, and the issue that I think many things they say are
25 wrong. If they have evidence that they think documents exist

1 that were not produced, we're happy to sit down and go back
2 and look at them and try to produce more documents. So I
3 don't -- I don't think the situations are at all -- at all
4 equal.

5 THE COURT: And the documents you're going to look
6 at are the electronically stored information that was taken
7 out of Macau?

8 MR. BRIAN: We're going to -- we are -- on those
9 documents we heard Your Honor loud and clear. We are going to
10 double and redouble and go through those documents. I'm
11 talking about the other documents that are now in his
12 declaration that he says have -- that are just essentially Las
13 Vegas Sands type documents that he says have not been
14 produced. On those documents we should sit down across the
15 room and figure out are there documents that exist that Mr.
16 Jacobs thinks exist that have not been produced, and we'll go
17 back and look at them.

18 THE COURT: Okay. So let's switch gears for a
19 minute.

20 MR. BRIAN: There's no intention to sanitize the
21 documents, certainly by nobody in this room, Your Honor.

22 As to the hearing date, I --

23 THE COURT: Are you finished?

24 MR. BRIAN: Pardon?

25 THE COURT: I have a point, if I could make it,

1 please.

2 MR. BRIAN: Go ahead. Please.

3 THE COURT: I'm inclined to schedule an evidentiary
4 hearing to make a determination as to the failure of the
5 defendants to disclose the existence of the information that
6 was removed from Macau, and at that hearing I want the
7 attorney who was involved in the transporting of the
8 electronically stored information, I want the actual
9 electronic storage devices on which the information was
10 disclosed. When will you be able to provide that information
11 for me so I can conduct a hearing and make a determination as
12 to whether any sanctions are appropriate?

13 MR. BRIAN: I don't know. I may have to ask Mr.
14 Weissman that, Your Honor. I think the individual --

15 THE COURT: I'm going to let you take a chance and
16 make a -- take a short break while I finish up the rest of the
17 cases, and then I'll get to you.

18 MR. BRIAN: We'll do that, Your Honor. Thank you.

19 (Court recessed at 10:28 a.m., until 10:41 a.m.)

20 THE COURT: Gentlemen, we were talking about dates.

21 MR. PEEK: Your Honor, if I understand correctly,
22 what the Court has asked us to do is to have available the
23 individual who took the data from Macau in 2010. I will tell
24 the Court that was former in-house counsel Michael Kastrinski
25 who did that. He no longer is an employee. However, I

1 believe he lives in Las Vegas, so he certainly is available
2 whenever we can get a date, because I'm sure he's within the
3 subpoena power of the Court, and I'm sure he will more than
4 likely cooperate with us. We'll certainly request that he
5 cooperate.

6 THE COURT: He's always cooperated whenever we've
7 asked him to do anything before in other cases.

8 MR. PEEK: So that's the issue with respect to that
9 removal of data by Mr. Kastrinski in 2010. And I don't know
10 when you want to do something -- when you want to have that
11 hearing.

12 THE COURT: Where are the electronic storage
13 devices?

14 MR. PEEK: They are at the Sands, Your Honor.

15 THE COURT: Okay.

16 MR. PEEK: At the Las Vegas Sands Hotel & Casino.

17 THE COURT: They're still preserved?

18 MR. PEEK: They are still preserved, Your Honor.
19 They have been preserved. They have not --

20 THE COURT: That's a good thing, Mr. Peek.

21 MR. PEEK: Yes, Your Honor. They are preserved,
22 Your Honor.

23 THE COURT: Okay.

24 MR. PEEK: They're in the same --

25 THE COURT: Does somebody want to call Mr.

1 Kastrinski? Is he --

2 MR. PEEK: I don't know if he's found new
3 employment. I don't know what he's doing. I've not been in
4 touch with Mr. Kastrinski, Your Honor, for some time. But I
5 can certainly -- I'll reach out to him.

6 THE COURT: I have the week of July 9th fairly open
7 because the CityCenter people moved back a week and Mr. Bice
8 settled his other case and you guys didn't go, so the July
9 stack is more open than it was. So I was looking at the week
10 of July 9th. I figure this as almost a full day, knowing the
11 people involved in this case, and by that I mean the lawyers.

12 MR. PEEK: I have very intense hearings on the 10th.
13 I have I think four or five motions on the 10th.

14 THE COURT: Is that in the Wayne Newton case?

15 MR. PEEK: It is, Your Honor. I also have the
16 deposition of Mr. Kennedy scheduled for the 9th, and also the
17 Harbers scheduled for followup after our motion practice. So
18 certainly towards the end of that week I would --

19 THE COURT: So you're looking at Friday, the 13th?

20 MR. BRIAN: Not a good day to pick, but -- Your
21 Honor, unfortunately, I'm in Washington on some intense
22 confidential negotiation through the 13th, for the next two
23 weeks, starting on Monday.

24 THE COURT: Well, then I guess we can move up to the
25 week before.

1 MR. BRIAN: Can we do it that following week?

2 THE COURT: No, I can't. We can move up the week
3 before, which is the week of the Fourth of July.

4 MR. BRIAN: I can't. See, I start this week, and
5 it's going to run for two weeks.

6 THE COURT: I'm not moving it past my CityCenter,
7 Wayne Newton, and kids fighting over the business with parents
8 cases.

9 MR. PEEK: What was the last one, kids fighting over
10 what?

11 THE COURT: Kids fighting over the business with the
12 parents. It's called CD Construction versus ERC Investments.
13 Max just tells me it's the son fighting with the parents case.

14 MR. PEEK: Doesn't sound like a pleasant one, Your
15 Honor.

16 MR. BRIAN: May we have a moment, Your Honor?

17 MR. PEEK: I'd be available, Your Honor.

18 THE COURT: Now, if you can get the CityCenter folks
19 to resolve their issue on the Harmon, then I could go back to
20 doing regular stuff, and they could get ready for trial.

21 MR. PEEK: So, Your Honor, we're just talking about,
22 what, a half a day, one with Mr. --

23 THE COURT: I'm thinking it's a little more than a
24 half a day knowing the people --

25 MR. PEEK: Okay. So --

1 THE COURT: -- knowing the lawyers involved in this
2 case. And I'm not criticizing you --

3 MR. PEEK: I know you're not, Your Honor.

4 THE COURT: -- and I'm not criticizing Mr. Bice.
5 But you're both very, very thorough. And I am criticizing Mr.
6 Pisanelli. Forty-five minutes on the can I take a deposition
7 motion.

8 MR. PEEK: I was here, Your Honor, listening to --

9 MR. BRIAN: Perhaps, Your Honor, if -- what date
10 works the week of July 9th? I don't know if I can do it, but
11 Mr. Weissman will be here if I can't do it. Is the 13th the
12 best day?

13 THE COURT: Well, your friend here has Wayne
14 Newton's stuff most of that week, he said.

15 MR. BRIAN: Let's set it for the 13th, and somebody
16 from our office will be here. I don't know -- I don't know
17 that it can be me.

18 THE COURT: Okay. Friday, the 13th, at 9:30.

19 MR. BRIAN: That's fine, Your Honor.

20 MR. BICE: Fine with us.

21 MR. PEEK: That's fine, Your Honor.

22 THE COURT: Okay.

23 MR. PEEK: We'll have Mr. Kastrinski here. I
24 assume, Your Honor, you're not asking for outside counsel with
25 respect to what its conversations were with the client to

1 testify --

2 THE COURT: No, I'm not.

3 MR. PEEK: -- Ms. Glaser or myself.

4 THE COURT: I'm not asking for any attorney-client
5 privilege. I am asking for the how did the stuff get out of
6 Macau. You guys have told me why you didn't tell me. I take
7 you at your word. I may disagree with the judgment call that
8 you made, but I have very serious concerns about what happened
9 and the data and what the data actually is and how that
10 impacts the jurisdictional discovery that I've been trying to
11 oversee for almost a year.

12 MR. BRIAN: We understand, Your Honor.

13 MR. PEEK: We understand, Your Honor.

14 THE COURT: Mr. Bice, is there something you want to
15 say, since you're standing up? Or are you just tired of
16 sitting?

17 MR. BICE: Well, I'm tired of sitting, but -- I
18 think I'd like more information about --

19 THE COURT: About what?

20 MR. BICE: About -- you know, I'm not going to just
21 accept the premise that Mr. Kastrinski did this on his own.
22 Maybe he --

23 THE COURT: Well, I'm sure somebody's going to ask
24 him, who told you to do this, or, why'd you do it.

25 MR. BICE: So would it be productive to see if we

1 cannot depose Mr. Kastrinski before the -- we're going to have
2 an evidentiary hearing. I --

3 THE COURT: Sure, you can depose Mr. Kastrinski if
4 you want to.

5 MR. BICE: And that way we can perhaps find out who
6 all has known about this, how long they've known, which is all
7 relevant, it seems to me, to your question.

8 THE COURT: And if there's going to be privilege
9 issues, that somebody's going to set up so we have them and
10 can deal with them.

11 MR. BICE: Yes. And I know he is residing in Las
12 Vegas, so we can work with him to try and set up --

13 THE COURT: For some reason I thought he was still
14 at Harrah's.

15 MR. BICE: He is not --

16 MR. PEEK: No, no. He was at Harrah's, and then he
17 came to us after Harrah's, Your Honor.

18 THE COURT: Okay.

19 MR. BICE: He is not, Your Honor.

20 MR. PEEK: I don't know where he is now. Maybe Mr.
21 Bice does.

22 MR. BICE: Well, since he and I went to law school
23 together, I do -- he is working at a firm. I don't know the
24 name of it.

25 THE COURT: But you're going to find out --

1 MR. BICE: Yeah.

2 THE COURT: -- and you're going to set him for depo
3 and perhaps notify him that I picked the day of July 13th at
4 9:30 to talk with him.

5 MR. BICE: I'm sure he will be very happy, Your
6 Honor.

7 MR. PISANELLI: And, Your Honor, from what we learn
8 from that deposition will we be permitted to subpoena other
9 people from Sands if we find out that they're at the heart of
10 this action?

11 THE COURT: How about we have a conference call if
12 you discover that.

13 MR. BICE: Brief.

14 MR. PISANELLI: Very good.

15 THE COURT: If you want to do anything more than
16 talk to more than talk to Mr. Kastrinski, we have a conference
17 call.

18 MR. BICE: Thank you, Your Honor.

19 MR. BRIAN: We'll ben touch with Mr. Kastrinski and
20 see what his schedule's like for the deposition, Your Honor.

21 THE COURT: Mr. Bice, don't talk to him about
22 anything about this case other than scheduling.

23 MR. BICE: I will not, Your Honor.

24 THE COURT: Thank you. Because I don't want any of
25 us to get into the situation of having a potential

1 disqualification issue raise its ugly head yet again.

2 MR. BICE: Absolutely, Your Honor.

3 MR. PEEK: Your Honor, so --

4 THE COURT: Mr. Williams, thank you very much, by
5 the way for your ESI protocol that was drafted over a year
6 ago, which actually ended up being used.

7 MR. WILLIAMS: I can see it's done a lot of good,
8 Your Honor.

9 THE COURT: I've moved so far forward.

10 MR. PEEK: Your Honor, so that I can be prepared
11 from a briefing standpoint and an argument standpoint --

12 THE COURT: Hold on. Let me get my rule book out so
13 I can tell you what the rules that I'm concerned about.

14 MR. PEEK: -- and what the --

15 THE COURT: There's this rule called Rule 37, but
16 the rule that I think is more important for purposes of this
17 hearing is an infrequently used rule. The last time I believe
18 it was cited in a published decision was the Nevada Power-
19 Fluor case, which should give you an idea.

20 MR. PEEK: I remember Mr. McPike's case well.

21 THE COURT: It was EDCR 7.60.

22 MR. BRIAN: What is it, Your Honor?

23 THE COURT: EDCR 7.60.

24 MR. PEEK: I don't think that's what it was at the
25 time of the -- but I'm sure the rule was there at time of the

1 Nevada Power.

2 THE COURT: No, it was the exact same rule.

3 MR. PEEK: It was the same rule. I was trying to
4 remember --

5 THE COURT: It's never been cited any other time
6 except then.

7 MR. PEEK: Are you looking for those same similar
8 sanctions? Because that's really what I'm -- that's really
9 where I'm going, Your Honor. I understand the violation, but
10 I'm trying to understand where the Court is going with its --

11 THE COURT: I'm not going to put anybody in jail, so
12 I'm not doing this as a contempt proceeding. I'm doing it as
13 a potential sanctions hearing. There are issues related to --
14 monetary sanctions related to attorneys' fees necessitated by
15 this situation.

16 MR. PEEK: I understand that, Your Honor.

17 THE COURT: There's potential sanctions that might
18 go to a charitable organization, and it is unlikely that there
19 will be evidentiary sanctions unless it appears to me there
20 has been data lost as a result of the removal and
21 transportation. And I won't know that until we do more stuff.
22 and probably won't occur at this hearing.

23 MR. PEEK: Okay.

24 THE COURT: You understand what I'm saying?

25 MR. PEEK: I do, Your Honor.

1 THE COURT: Okay.

2 MR. PEEK: I just wanted to be clear on it so that I
3 could be prepared to make the arguments.

4 THE COURT: Okay.

5 MR. BICE: Your Honor, may I -- there are a couple
6 points. One, we haven't really addressed my request that they
7 be forced to deposit this data with Advance Discovery prior to
8 their receipt of Mr. Jacobs's data, which we are very
9 concerned is going --

10 THE COURT: You're right. I didn't grant that
11 request.

12 MR. BICE: Okay. I didn't -- well, I didn't hear
13 you deny it, either. That's why I'm asking for the --

14 THE COURT: No. I set this hearing instead and I
15 asked where the originals were, and I was told, and I'm taking
16 Mr. Peek at his word, since he knows I'm rather irritated at
17 the moment.

18 MR. BICE: I understand that. But do they get Mr.
19 Jacobs's data next week?

20 THE COURT: Absolutely.

21 MR. BICE: All right.

22 THE COURT: Anything else?

23 MR. BICE: And I don't want my silence to your
24 comments to be deemed that we will not be seeking other
25 sanctions other than what the Court has detailed.

1 THE COURT: Since this was set sua sponte by me, as
2 opposed to a motion by you --

3 MR. BICE: Yes.

4 THE COURT: -- I always try and give people the
5 opportunity to have a hearing before I sanction them, unless
6 it's for something that's obvious, like rolling their eyes,
7 yelling at me, calling me names, or something like that.

8 MR. BICE: Understood, Your Honor. I just didn't
9 want my silence to somehow be --

10 THE COURT: Ten days sometimes is enough for those
11 kind of hearings, but this one will be shorter.

12 MR. BICE: Understood, Your Honor.

13 MR. PEEK: Ten days in jail, Your Honor, for --

14 THE COURT: Ten days for a hearing, Mr. Peek.

15 MR. PEEK: I was concerned about --

16 THE COURT: You never went to jail during that
17 hearing.

18 MR. PEEK: No, I know.

19 THE COURT: And your client ended up never going to
20 jail here in the U.S., for that matter.

21 MR. PEEK: And you know he passed away, Your Honor.

22 THE COURT: Yeah, he did.

23 Anything else?

24 MR. BRIAN: No. Thank you, Your Honor.

25 THE PROCEEDINGS CONCLUDED AT 10:52 A.M.

CERTIFICATION

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

AFFIRMATION

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

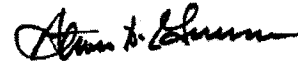
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16 **DISTRICT COURT**

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; **SHELDON G. ADELSON,**
24 in his individual and representative capacity;
25 **DOES I-X; and ROE CORPORATIONS I-X,**

26 Defendants.

27 **AND ALL RELATED MATTERS.**

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

Date: July 13, 2012
Time: 9:30 a.m.

**DEFENDANTS' STATEMENT
REGARDING DATA TRANSFERS**

28 ///

///

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

1 In advance of the hearing scheduled for July 13, 2012, Defendants Las Vegas Sands
2 Corporation ("LVSC") and Sands China Ltd. ("SCL") respectfully submit this statement
3 regarding data transfers from Macau to the United States and related issues. In providing this
4 statement, Defendants do not intend to and do not disclose any communications protected by the
5 attorney-client privilege, and Defendants do not intend to and do not waive any attorney-client or
6 attorney work product privileges.

7
8 **I. INTRODUCTION**

9 Defendants take seriously the Court's comments at the June 28, 2012 Status Conference
10 and will be prepared to discuss further with the Court the issues involving the Macau documents.
11 In the interim, and as discussed in the July 3, 2012 telephonic conference, Defendants make this
12 submission to present the facts as currently developed regarding the transfers from Macau to the
13 U.S. of data potentially discoverable in this litigation. Although the focus of the discussion with
14 the Court on June 28, 2012 was on the transfer of data for which Mr. Jacobs was the custodian,
15 Defendants are also analyzing other transfers of data from Macau to the U.S. that are potentially
16 discoverable in this case. Defendants and their counsel have worked hard over the past 8 days to
17 present these facts, but this work is not yet complete. This submission presents Defendants' best
18 efforts at this time.

19
20 **II. TRANSFERS OF PLAINTIFF'S DATA**

21 **A. Transfers in August 2010**

22 Plaintiff was terminated on July 23, 2010. Following a communication with Gayle
23 Hyman, then General Counsel of LVSC, on or about August 5, 2010, Michael Kostrinsky, who
24 was then LVSC's Deputy General Counsel, contacted the SCL legal department to request a
25 transfer to LVSC of electronic images of Mr. Jacobs' email and the hard drive of his computer.
26 After an initial effort to transfer some or all of this data via an FTP was unsuccessful, IT
27 personnel in Macau copied Jacobs' data onto a new hard drive. That hard drive was received by
28 LVSC on or about August 16, 2010 and is referred to herein as the "August 16 Hard Drive."

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1 The August 16 Hard Drive contains ghost images of hard drives of three computers, as
2 well as emails (Outlook PSTs). According to LVSC's records, the images of the hard drives were
3 created on July 26 and 27, 2010, and the PST files were created on August 5, 2010. LVSC has
4 maintained the August 16 Hard Drive since August 16, 2010. An image of the August 16 Hard
5 Drive was created by Stroz Friedberg (a data forensics firm) on March 22, 2011.¹ LVSC still has
6 the August 16 Hard Drive and, as Plaintiff's counsel was informed on July 2, 2012, is providing it
7 to Advanced Discovery, the Court-appointed ESI vendor.

8 Starting no later than August 25, 2010, LVSC IT personnel arranged for Mr. Kostrinsky to
9 have access to Mr. Jacobs' emails that had been transferred on the August 16 Hard Drive through
10 Mr. Kostrinsky's work laptop computer in order to enable him to review this data.²

11 Mr. Kostrinsky reviewed some of the emails. Stephen Peek and another attorney from his
12 law firm also reviewed certain emails on Mr. Kostrinsky's computer. Some of Jacobs' emails
13 were printed and provided to or shared with outside and inside counsel. It is possible that these
14 emails were shared with other LVSC employees.

15 B. Other Transfers

16
17 Mr. Kostrinsky visited Macau in November 2010. During that trip, he may have been
18 given a hard drive or other data storage device and brought that item back to Las Vegas. It
19 appears that Mr. Kostrinsky instructed LVSC IT to load data from a device onto a computer so
20 that he could review the data. LVSC is attempting to locate this device and ascertain its content.

21 In connection with the Jacobs matter, Mr. Kostrinsky caused LVSC IT to create a shared
22 drive in late 2010. In addition, in connection with a subpoena from the United States Securities
23 and Exchange Commission ("SEC") received on February 9, 2011, Mr. Kostrinsky caused LVSC
24 IT to create another shared drive. The "shared drives" were document repositories that allowed
25

26 ¹ The role of Stroz Friedberg is more fully described below.

27 ² At the May 24, 2012 Status Conference, counsel stated that defendants had not searched Mr. Jacobs' data. Tr. at 9-
28 10, 14. The context of this discussion was the review of Mr. Jacobs' data for purposes of responding to Plaintiff's
jurisdictional discovery requests. Mr. Kostrinsky and other counsel have reviewed the data, though not in connection
with responding to Plaintiff's jurisdictional discovery requests.

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1 authorized personnel, such as inside and outside counsel, to review images of documents that had
2 been collected and to add documents for review. It appears that at least one in house attorney in
3 Macau, Anne Salt, had access to one or both of these shared drives and could upload documents
4 to one or both of them. Defendants are continuing to investigate whether data was uploaded in
5 Macau, and if so, whether copies of any such data currently exist in the U.S. Defendants are also
6 attempting to determine the current status and content of these shared drives.

7 In addition, at various times, Mr. Kostrinsky received emails from Macau consisting of
8 information potentially relevant to the Jacobs litigation.³ Such data has been preserved and will
9 be reviewed for responsiveness to Plaintiff's jurisdictional discovery requests, subject to
10 appropriate privilege objections.

11 **III. TRANSFERS IN FEBRUARY-MARCH 2011**
12

13 On February 9, 2011, LVSC received a subpoena from the SEC. LVSC personnel
14 requested that SCL personnel transmit copies of responsive data to LVSC. It appears that Ms.
15 Hyman, Mr. Kostrinsky, Anne Salt of SCL, and probably others were involved in these
16 communications.

17 In March 2011, LVSC received two hard drives from Macau. One of these hard drives
18 (received in approximately mid-March) contained images of hard drives of computers used by
19 two employees in Macau, and the other hard drive (received on March 4) contained images of
20 hard drives of computers used by three other employees in Macau, as well as two PST files
21 containing Jacobs emails (one believed to contain 2010 emails, and one 2009 emails). These hard
22 drives are referred to herein as the "March Hard Drives." LVSC's records indicate that the PST
23 files on the hard drive received on March 4 were created on February 18, 2011.

24 LVSC has maintained the March Hard Drives since their receipt and, also as described to
25 Plaintiff's counsel on July 2, 2012, is providing them to Advanced Discovery. In March 2011,
26 Stroz Friedberg was retained by counsel to the Audit Committee and Special Litigation
27

28 ³ As discussed below, other LVSC employees, as well as inside and outside counsel, also received emails from
Macau containing information potentially relevant to the Jacobs litigation.

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1 Committee of LVSC's Board of Directors to collect and process data in connection with the SEC
2 subpoena. One of the first steps taken by Stroz Friedberg was to image data that LVSC had
3 already collected. It appears that on March 22, 2011, Stroz Friedberg imaged the March Hard
4 Drives (as well as the August 16 Hard Drive, as noted above).

5 In connection with this litigation, Defendants have retained FTI as their data processing
6 vendor. Accordingly, on or about May 28, 2012, FTI received from Stroz Friedberg a copy of the
7 data imaged from the August 16 and March Hard Drives (including the Jacobs data described
8 above), in order to enable Defendants to search and review such data for this case.

9
10 **IV. STATUS OF ORIGINAL MEDIA**

11 SCL is aware of two desktop computers that Mr. Jacobs used while employed by SCL. In
12 addition, it appears that Mr. Jacobs may have used two laptop computers issued by SCL, VML,
13 and/or their affiliates in Macau.⁴ For each of these computers, SCL possesses in Macau the
14 original hard drive and/or either a ghost image or forensic image of the hard drive. Ghost images
15 typically contain a copy of all data on the original hard drive, except data that may have been
16 housed in (1) unallocated space and (2) page files. In general, data housed in unallocated space
17 and page files may include deleted files and internet history files.

18 Personnel in Macau were instructed to preserve Mr. Jacobs' original data in Macau. It
19 appears that this instruction was not followed with respect to the original hard drive of the
20 desktop computer that Mr. Jacobs was using at the time of his termination. A ghost image of that
21 hard drive was created on or about July 27, 2010, and a copy of that ghost image is included on
22 the August 16 Hard Drive. It appears that, after the ghost image was created, the original hard
23 drive of the desktop computer that Mr. Jacobs was using at the time of his termination may have
24 been recycled for use by another SCL employee. SCL has secured in Macau the computer
25 assigned to the other SCL employee, which may contain the same hard drive that was in the
26 desktop computer that Mr. Jacobs was using at the time of his termination. SCL also has secured

27
28 ⁴ Mr. Jacobs had a personal laptop computer, which he retained following his termination. Neither LVSC nor SCL made an image of Mr. Jacobs's personal laptop.

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1 the other desktop computer, which Mr. Jacobs used until April 2010.

2 SCL has secured in Macau original hard drives from two laptop computers and ghost
3 images of hard drives from two other laptop computers. Further analysis is required to identify
4 which of these hard drives, if any, Mr. Jacobs used. Copies of the ghost images of the hard drives
5 from the two laptop computers are included on the August 16 Hard Drive.

6
7 **V. OTHER DATA TRANSFERS**

8 Defendants have also endeavored to catalog other data that was transferred from Macau to
9 the United States and that is potentially discoverable in this litigation. Today, Defendants can
10 report the following.

11 It appears that starting on or about November 28, 2007, copies of incoming emails to two
12 employees in Macau were automatically transmitted to Ms. Hyman in Las Vegas.⁵ It appears that
13 the employees in question were not informed that their incoming emails were being automatically
14 transmitted to Ms. Hyman. It also appears that the automatic transmittal of the incoming emails
15 continued into the discovery period. Such documents are included within the Stroz dataset.
16 LVSC will review this data to determine if it contains documents responsive to Plaintiff's
17 jurisdictional discovery requests and will produce any unprivileged documents relevant to
18 personal jurisdiction.

19 From 2008-10, the law firm Orrick, Herrington & Sutcliffe LLP performed legal services
20 for LVSC. In connection with that work, it appears that documents were transferred from Macau
21 to the U.S. in 2009. Such documents are included in the Stroz dataset. LVSC will review this
22 data to determine if it contains documents responsive to Plaintiff's jurisdictional discovery
23 requests and will produce any unprivileged documents relevant to personal jurisdiction.

24 In addition, it appears that Mr. Kostrinsky was given a CD in Macau in November 2010,
25 which he also brought back to Las Vegas. LVSC has located a CD that it believes may be the CD
26 that Mr. Kostrinsky brought back from Macau to Las Vegas. LVSC will deliver that CD to
27 Advanced Discovery.

28 ⁵ During this time, Ms. Hyman was LVSC's Deputy General Counsel.

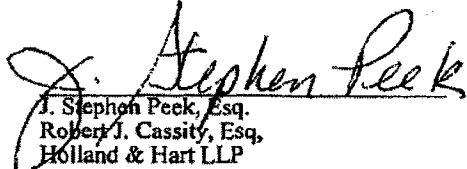
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1 Finally, in the ordinary course of business, employees of SCL and VML send emails to
2 employees of LVSC on business matters. Moreover, emails have been sent to, from, and among
3 in-house and outside counsel for VML, SCL, and LVSC in connection with this litigation and
4 other legal work.⁶ LVSC has collected emails from LVSC custodians and searched relevant
5 custodians for documents responsive to Plaintiff's jurisdictional discovery requests. To the extent
6 such documents contain emails from Macau that might be said to contain personal data, LVSC
7 will not withhold them based on Macau's Personal Data Protection Act (although LVSC reserves
8 the right to assert other applicable privileges).


9
10 **VI. CONCLUSION**

11 Defendants are continuing to search for data transferred from Macau to the U.S. that is
12 potentially discoverable in this case. Defendants will review the data in the U.S. for
13 responsiveness to Plaintiff's jurisdictional discovery requests and will not withhold such
14 documents based on Macau's Personal Data Protection Act.

15 DATED July 6, 2012.

16
17 
18 J. Stephen Peek, Esq.
19 Robert J. Cassity, Esq.
20 Holland & Hart LLP
21 9555 Hillwood Drive, 2nd Floor
22 Las Vegas, Nevada 89134

23 *Attorneys for Las Vegas Sands Corp. and Sands
24 China Ltd.*

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Attorneys for Sands China, LTD.

27 ⁶ For example, on at least two occasions, in the course of collecting documents that were potentially responsive to
28 Plaintiff's document requests on personal jurisdiction, SCL employees transmitted records containing personal data
to LVSC and/or SCL's outside counsel.

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on July 6, 2012, I served a true and correct copy of the foregoing **DEFENDANTS' STATEMENT REGARDING DATA TRANSFERS** 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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Todd L. Bice, Esq.
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Attorney for Plaintiff


An Employee of Holland & Hart LLP

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Dineen Bergsing

From: Dineen Bergsing
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To: James Pisanelli; 'Debra Spinelli'; Todd Bice; 'kap@pisanellibice.com'; 'see@pisanellibice.com'
Cc: 'Fetaz, Max'
Subject: LV Sands/Jacobs - Defendants' Statement Regarding Data Transfers
Attachments: Untitled.PDF - Adobe Acrobat Pro

Importance: High

Please see attached Defendants' Statement Regarding Data Transfers. A copy to follow by mail.

Have a good weekend, everyone.

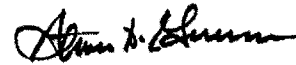
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16
17 DISTRICT COURT
18 CLARK COUNTY, NEVADA

19 STEVEN C. JACOBS,

20 Plaintiff,

21 v.

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

24 Defendants.
25

26 AND ALL RELATED MATTERS.
27
28

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

Date: n/a
Time: n/a

**DEFENDANTS' STATEMENT
REGARDING INVESTIGATION BY
MACAU OFFICE OF PERSONAL DATA
PROTECTION**

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

1 At the August 2, 2012 hearing on Defendant Las Vegas Sands Corporation's ("LVSC")
2 expedited motion for a protective order, counsel handed up a Form 8-K filed by LVSC on August
3 1, 2012, which in turn attached a Voluntary Announcement Sands China Ltd. ("SCL") filed with
4 the Hong Kong Stock Exchange. The Court marked the 8-K as an exhibit. Due to the press of
5 time, Defendants did not have the opportunity to explain the significance of the developments
6 noted in the 8-K filing. This statement provides a brief explanation.

7 As referenced in the 8-K and SCL's Voluntary Announcement, attached hereto as Exhibit
8 A, on July 31, 2012, the Macau Office for Personal Data Protection ("OPDP") formally notified
9 Venetian Macau Ltd., a subsidiary of SCL, that it has launched an official investigation procedure
10 in relation to the alleged transfer from Macau by Venetian Macau Ltd. ("VML") to the United
11 States of certain data. More recently, on August 2, 2012, Francis Tam, Macau's Secretary for
12 Economy and Finance, gave a press conference in which he stated that if OPDP finds "any
13 violation or suspected breach" of Macau's Personal Data Protection Act ("PDPA"), the
14 government "will take appropriate action with no tolerance. Gaming enterprises should pay close
15 attention to and comply with relevant laws and regulations."¹

16 These developments are significant for two reasons. First, they demonstrate that
17 Defendants had a well-founded concern that the disclosure of the past transfers of data would
18 have repercussions in Macau. Second, they demonstrate that the PDPA remains in effect and is
19 being strictly enforced by OPDP. VML must punctiliously comply with the PDPA, which
20 restricts its ability to transfer documents and any other personal data from Macau to the U.S.
21 Accordingly, the PDPA remains a significant impediment to compliance with discovery requests
22 in this case. OPDP's action and Secretary Tam's comments make clear that the PDPA is not a
23 "sham," as Plaintiff claims, and that the efforts of the Court and the parties in addressing the
24 PDPA were not wasted.

25 ///


26
27 ¹http://www.macaodaily.com/html/2012-08/03/content_721150.htm;
28 <http://www.macaodailytimes.com.mo/macau/37657-francis-tam%3A-gov%E2%80%99t-won%E2%80%99t-tolerate-corporate-irregularities.html>; <http://www.macaubusiness.com/news/little-room-for-more-new-tables-gov%E2%80%99t/17752/>

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Defendants will elaborate on these points in future filings.

DATED August 7, 2012.


J. Stephen Peck, Esq.
Robert J. Cassity, Esq.
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on August 7, 2012, I served a true and correct copy of the foregoing **DEFENDANTS' STATEMENT REGARDING INVESTIGATION BY MACAU OFFICE OF PERSONAL DATA PROTECTION** 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


An Employee of Holland & Hart LLP

Dineen Bergsing

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Sent: Tuesday, August 07, 2012 4:13 PM
To: James Pisanelli; 'Debra Spinelli'; Todd Bice; 'kap@pisanellibice.com'; 'see@pisanellibice.com'
Subject: LV Sands/Jacobs - Defendants' Statement Regarding Investigation by Macau Office of Personal Data Protection
Attachments: Untitled.PDF - Adobe Acrobat Pro

Please see attached Defendants' Statement Regarding Investigation by Macau Office of Personal Data Protection. A copy to follow by mail.

Dineen M. Bergsing

*Legal Assistant to J. Stephen Peek,
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**SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 8-K

**CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934**

Date of Report (date of earliest event reported):
August 1, 2012

LAS VEGAS SANDS CORP.
(Exact name of registrant as specified in its charter)

NEVADA
(State or other jurisdiction
of incorporation)

001-32373
(Commission File Number)

27-0099920
(IRS Employer
Identification No.)

**3355 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA**
(Address of principal executive offices)

89109
(Zip Code)

Registrant's telephone number, including area code: (702) 414-1000

NOT APPLICABLE
(Former name or former address, if changed since last report)

Check the appropriate box if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (See General Instruction A.2. below):

- ☐ Written Communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-
-

<http://www.sec.gov/Archives/edgar/data/1300514/000095...> 8/1/2012

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Page 2 of 4

Item 7.01 Regulation FD Disclosure.

On August 1, 2012, Sands China Ltd. ("SCL"), a subsidiary of Las Vegas Sands Corp. with ordinary shares listed on The Stock Exchange of Hong Kong Limited (the "SEHK"), filed an announcement (the "Announcement") with the SEHK stating that SCL's subsidiary, Venetian Macau Limited ("VML"), has received a notification from the Office for Personal Data Protection of the Government of the Macao Special Administrative Region of the People's Republic of China (the "OPDP") indicating that the OPDP has launched an official investigation procedure in relation to the alleged transfer from Macao by VML to the United States of America of certain data. The Announcement is attached as Exhibit 99.1 to this report and is incorporated by reference into this item.

The information in this Form 8-K and Exhibit 99.1 attached hereto shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, nor shall they be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, except as shall be expressly set forth by specific reference in any such filing.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

99.1 SCL announcement, dated August 1, 2012.

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Page 3 of 4

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report on Form 8-K to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: August 1, 2012

LAS VEGAS SANDS CORP.

By: /s/ Ira H. Raphaelson

Name: Ira H. Raphaelson

Title: Executive Vice President and Global
General Counsel

3

<http://www.sec.gov/Archives/edgar/data/1300514/000095...> 8/1/2012

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Page 4 of 4

INDEX TO EXHIBITS

99.1 SCL announcement, dated August 1, 2012.

4

<http://www.sec.gov/Archives/edgar/data/1300514/000095...> 8/1/2012

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eh1200947_ex9901.htm

Page 1 of 1

EX-99.1 2 eh1200947_ex9901.htm EXHIBIT 99.1

EXHIBIT 99.1

Hong Kong Exchanges and Clearing Limited and The Stock Exchange of Hong Kong Limited take no responsibility for the contents of this announcement, make no representation as to its accuracy or completeness and expressly disclaim any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this announcement.

SANDS CHINA LTD.

金沙中國有限公司 *

(incorporated in the Cayman Islands with limited liability)

(Stock Code: 1928)

Voluntary Announcement

Sands China Ltd. (the "Company") notes that its subsidiary, Venetian Macau Limited ("VML") has received a notification from the Office for Personal Data Protection of the Government of the Macao Special Administrative Region of the People's Republic of China (the "OPDP") indicating that the OPDP has launched an official investigation procedure in relation to the alleged transfer from Macao by VML to the United States of America of certain data.

The Company is unable to comment further at this time.

By Order of the Board
Sands China Ltd.
David Alec Andrew Fleming
Company Secretary

Macao, August 1, 2012

As at the date of this announcement, the directors of the Company are:

Executive Directors:

Edward Matthew Tracy
Toh Hup Hock

Non-executive Directors:

Sheldon Gary Adelson
Michael Alan Leven (*David Alec Andrew Fleming as his alternate*)
Jeffrey Howard Schwartz
Irwin Abe Siegel
Lau Wong William

Independent non-executive Directors:

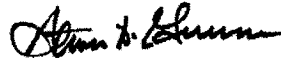
Iain Ferguson Bruce
Chiang Yun
David Muir Turnbull

* For identification purposes only

<http://www.sec.gov/Archives/edgar/data/1300514/000095...> 8/1/2012

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27 *Attorneys for Sands China, LTD.*

DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND ALL RELATED MATTERS.

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

Date: n/a
Time: n/a

**DEFENDANTS' STATEMENT
REGARDING HEARING ON
SANCTIONS**

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

1 In advance of the August 30-31, 2012 hearing, Defendants Las Vegas Sands Corporation
2 ("LVSC") and Sands China Ltd. ("SCL") submit this brief concerning data transfers and Macau's
3 Personal Data Protection Act ("PDPA") and explaining why sanctions should not be imposed.

4 **I. INTRODUCTION**

5 After Defendants filed a Status Conference Report that discussed the transfer from Macau
6 of certain electronically stored information ("ESI"),¹ including ESI for which Plaintiff was the
7 custodian, the Court sua sponte ordered a hearing to consider the imposition of sanctions. The
8 Court stated that it would evaluate whether Defendants' previous arguments about data transfers
9 and the PDPA had (1) violated EDCR 7.60(b) by causing the Court and plaintiff to waste time on
10 the PDPA, or (2) breached Defendants' duty of candor to the Court.

11 We deeply regret that our conduct has given rise to the Court's concerns. We file this
12 brief in the dual hope of addressing those concerns and providing context for the issues, each of
13 which will be discussed in detail below. With regard to the first question, the July 31, 2012
14 announcement by the responsible Macau government agency of an investigation into past data
15 transfers from Macau, together with the agency's August 8, 2012 official rejection of the
16 companies' position that data can be transferred from Macau for purposes of producing
17 documents in discovery in this case and to the United States Government, demonstrate that the
18 application of the PDPA and attendant privacy issues remain very real hurdles to discovery and
19 that the defendants' concerns were well-founded.

20 With regard to the second question, it is our sincere hope to satisfy the Court that there
21 was neither a violation of the duty of candor nor any violation of our discovery obligations as they
22 arose and in the context of competing international legal considerations. On June 9, 2011,
23 LVSC's counsel informed the Court that the PDPA "implicates" some of its documents in Las
24

25 ¹ On June 27, 2012, Defendants filed a Joint Status Conference Report in which they disclosed that ESI for which
26 Plaintiff was the custodian, as well as certain other data, had been transferred from Macau to the United States
27 (Attached hereto as Exhibit DD). (Defendants submit concurrently herewith one (1) volume of exhibits, constituting
28 the pleadings and transcripts discussed in this submission. Defendants also submit concurrently herewith an
Appendix that sets forth a chronological discussion of their statements.) On July 6, 2012, Defendant filed a
Statement Regarding Data Transfers, which described these and other data transfers (Attached hereto as Ex. EE).
The data that was transferred from Macau to the United States as described in those filings is referred to herein as the
"Subject Transfers."

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1 Vegas. Because LVSC does not do business in Macau, LVSC's invocation of the PDPA could
2 only mean that it possessed in the United States documents that had come from Macau. At the
3 same hearing, Plaintiff's counsel stated that "foreign law" was not a basis for refusing to produce
4 documents that are "in the jurisdiction in which the litigation is taking place like they are here."
5 In subsequent meet-and-confer communications, Plaintiff's counsel specifically denied that
6 LVSC "would be entitled to withhold documents in its possession in Las Vegas on the grounds
7 that production of the same would violate the Macau Act." Plaintiff's counsel stated that he
8 would bring a motion to compel once he knew "what materials are being withheld." Yet Plaintiff
9 never asked what SCL documents were outside Macau or what documents in LVSC's possession
10 came from Macau. Had Plaintiff asked those questions, a truthful answer would have been given.
11 But the question was not asked, and in adversarial litigation, that fact makes a difference. There
12 was, as we show below, no legal or ethical duty to volunteer.

13 In hindsight, Defendants acknowledge that their statements could have been clearer and
14 more detailed and, had they been so, this hearing would not have been necessary. But the failure
15 to do so was at most an honest mistake, not a violation of a legal duty and certainly not a fraud on
16 the Court as Plaintiff has suggested. Defendants sincerely regret failing to meet the Court's
17 expectations, but respectfully submit that sanctions are unwarranted for several reasons.

18 First, Defendants properly invoked the Macau Data Protection Act in pleadings and
19 arguments to this Court. The PDPA was and remains a genuine impediment to the production of
20 documents in Macau. Although Defendants transferred certain data from Macau to the United
21 States, including data for which Plaintiff was the custodian, a far larger quantity of potentially
22 responsive documentary information remains in Macau. Indeed, Plaintiff initially demanded that
23 SCL review data from 38 custodians employed by SCL's operating subsidiary in Macau,
24 Venetian Macau Limited ("VML"). SCL estimated that those custodians' data, which was and is
25 housed in Macau and has not been transferred to the United States, amounted to 2 to 13 terabytes
26 of data or more.

27 Since May 2011, the Macau Office for Personal Data Protection ("OPDP"), the agency
28 charged with enforcement of the PDPA, has made clear to VML that transfers of personal data

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1 from Macau are subject to the PDPA, that OPDP will strictly enforce the PDPA, and that failure
2 to comply with the PDPA may result in civil and criminal penalties. On July 31, 2012, following
3 Defendants' disclosures to this Court of the Subject Transfers and related press accounts, OPDP
4 commenced an official investigation into the alleged transfer from Macau by VML to the United
5 States of certain data. In addition, on August 3, 2012 Francis Tam, Macau's Secretary for
6 Economy and Finance, stated that the Macau government will have "no tolerance" for breaches of
7 the PDPA. In sum, there can be no question that the PDPA remains applicable to documents that
8 are still located in Macau and the PDPA therefore remains a significant issue in this litigation,
9 regardless of the Subject Transfers.

10 Plaintiff has criticized LVSC for seeking to compel Plaintiff to return data that he took
11 upon his departure from SCL without disclosing the Subject Transfers to the Court. But
12 Defendants had a reasonable basis—both for PDPA and non-PDPA reasons—for distinguishing
13 the Subject Transfers from the Plaintiff's transfers. For one thing, the PDPA was not the only, or
14 even the first, argument LVSC made in support of its LVSC's efforts to obtain a return of the data
15 taken by Plaintiff; LVSC also relied on grounds wholly independent of the PDPA, such as
16 ownership, confidentiality, and privilege. Insofar as the PDPA was concerned, LVSC focused on
17 the possibility that Plaintiff would publicly disclose documents containing personal data that he
18 had removed from Macau. In this context, LVSC had a reasonable basis for invoking the PDPA,
19 whose central purpose is to prevent public disclosure of personal data.

20 By contrast, the Subject Transfers did not endanger privacy interests in the same way as
21 did Plaintiff's possible disclosures, which could have exposed VML to adverse consequences
22 under Macau law. LVSC's removal of data from Macau would in no way justify Plaintiff's
23 public disclosure of Macau data, whether taken by him or someone else. LVSC's arguments
24 concerning Plaintiff's transfers were neither frivolous, vexatious nor a waste of the parties' or the
25 Court's time, regardless of the Subject Transfers.

26 Second, Defendants did not make any false or misleading factual representations to the
27 effect that they had *not* transferred any data from Macau. On the contrary, SCL correctly stated
28 that "the overwhelming majority" of SCL's documents were in Macau. That statement truthfully

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1 conveys two things: That most of the documents are in Macau, and that some were not. In
2 addition, as noted, LVSC told the Court and Plaintiff's counsel that it had documents in Las
3 Vegas that implicated the PDPA, which could only mean documents that had come from Macau.

4 Third, Defendants had a reasonable basis for not disclosing the Subject Transfers sooner.
5 Defendants had a legitimate concern that a premature disclosure of the Subject Transfers could
6 have led to an adverse reaction by the Macau authorities. Beginning on May 13, 2011,
7 Defendants pursued numerous discussions with OPDP to address the PDPA. It was not until a
8 meeting with OPDP on May 28, 2012 that Defendants achieved a level of comfort that LVSC
9 could produce in this case the documents that had been transferred from Macau to the United
10 States, although even then VML faced the possibility of an enforcement action in respect of past
11 transfers should the disclosure result in frustration of the purposes of the PDPA. Subsequent
12 events have confirmed that Defendants' concerns were well-founded, as OPDP's recently-
13 announced official investigation demonstrates. In addition, Defendants did not violate—let alone
14 willfully violate—any order of the Court. Defendants had a reasonable basis for concluding that
15 they were not under an immediate obligation to disclose the Subject Transfers before VML
16 pursued additional communications with OPDP, given that their document production was not
17 complete.

18 *****

19 Defendants understand that the hearing on August 30-31, 2012 is the *Court's* hearing, at
20 which the Court will ask questions and hear presentations about the issues of concern to the
21 Court. Mr. Peek will attend the hearing, and we understand that Ms. Glaser will as well. In
22 addition, Michael Kostrinsky (LVSC's former Associate General Counsel) and Manjit Singh
23 (LVSC's Chief Information Officer) will be available to answer the Court's questions.

24 Although the Court has indicated that Plaintiff's counsel will be permitted to ask
25 questions, the Court should not permit Plaintiff's counsel to misuse the hearing to pursue their
26 own agenda. Plaintiff's counsel have given every indication that they will attempt to do just that.
27 On the evening of August 23, Plaintiff's counsel sent an email in which they attached proposed
28 subpoenas for Michael Leven, LVSC's Chief Operating Officer, a 30(b)(6) designee on the topics

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1 that were covered by their 30(b)(6) deposition notice (including two that the Court ruled they
 2 could not pursue pending further briefing), and Manjit Singh.

3 The email went on to demand that ten lawyers attend the hearing, including not only Mr.
 4 Peek and Ms. Glaser, but also their colleagues Justin Jones, Stephen Ma, and Andrew Sedlock.
 5 Even more disturbing, the email demands the attendance of Gayle Hyman and Robert Rubenstein
 6 (in-house LVSC lawyers that the Court has already ruled cannot be deposed), David Fleming
 7 (SCL's General Counsel, who resides in Macau), and Brad Brian and Henry Weissmann
 8 (attorneys of record for SCL). The email states that "[w]hile it is not our intent to seek testimony
 9 from any of the above-listed counsel during the hearing (and hence no subpoenas are attached for
 10 any of them), since they all have played some role in the disclosures or non-disclosures to the
 11 Court, we believe it would be prudent if each/all were present upon chance the Court wishes to
 12 ask them questions directly (rather than proceed through a game of telephone)." The email then
 13 threatens to subpoena these lawyers if Defendants do not agree to produce them at the hearing.

14 The Court's concerns, which led it to set this hearing, are not a license for Plaintiff's
 15 counsel to engage in such abusive litigation tactics. Despite the Court's repeated statements about
 16 the limited scope of the hearing, Plaintiff's counsel persists in trying to turn this hearing into a
 17 courtroom circus. Plaintiff continues to threaten to file his own motion for sanctions. To date,
 18 however, he has not done so, and the only motion calendared for hearing on August 30-31 is the
 19 Court's own motion. The Court should not countenance Plaintiff's counsel's harassing and
 20 improper behavior.

21 **II. ARGUMENT**

22 This section sets forth the governing legal standards and then applies those standards to
 23 the statements Defendants have made in pleadings and in open court.²

24 **A. Legal Standards**

25 "The general rule in the imposing of sanctions is that they be applied only in *extreme*

26
 27 ² In order to present a complete record, Defendants discuss the statements made prior to the Supreme Court's August
 28 26, 2011 order staying non-jurisdictional issues. (Attached hereto as Exhibit M). Defendants respectfully submit,
 however, that the Supreme Court's stay order limits the Court's authority to impose sanctions for conduct that does
 not directly relate to jurisdiction. Defendants reserve all rights in this regard.

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1 *circumstances* where willful noncompliance of a court's order is shown by the record."
2 *Finkelman v. Clover Jewelers Boulevard, Inc.*, 91 Nev. 146, 147, 532 P.2d 608, 609 (1975)
3 (emphasis added). In *Finkelman*, defendant was ordered to produce certain documents, and the
4 copies produced were "illegible, unintelligible, unidentifiable and so badly reproduced as to be
5 worthless for examination." *Id.* As a sanction, the trial court ordered the defendant's answer
6 stricken and entered judgment for the plaintiff. The Nevada Supreme Court reversed, finding
7 "nothing in the record that indicates willful disregard of the district court's order to produce
8 documents....We have here...an incident where the parties have partially complied with the
9 court's order and have provided an explanation for their failure to fully comply. This, of course,
10 negates willfulness." *Id.*

11 As discussed below, Defendants did not disobey an order of the Court or any other
12 requirement; they had a reasonable basis for the arguments they presented to the Court; and they
13 did not misrepresent the facts. Accordingly, sanctions are not warranted.

14 1. EDCR 7.60(b)

15 The Eighth Judicial District Court Rule ("EDCR") rule governing sanctions provides:

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

- 21 (1) Presents to the court a motion or an opposition to a motion
22 which is obviously frivolous, unnecessary or unwarranted.
- (2) Fails to prepare for a presentation.
- (3) So multiplies the proceedings in a case as to increase costs
unreasonably and vexatiously.
- (4) Fails or refuses to comply with these rules.
- (5) Fails or refuses to comply with any order of a judge of the
court.

23 EDCR 7.60(b). Defendants understand the Court's concerns are based on clauses (1) and (3).

24 There has been no suggestion that counsel failed to prepare for a presentation or that the
25 nondisclosure of the Subject Transfers violated the rules or a court order.

26 Clauses (1) and (3) embody the standards set forth in Nev. R. Civ. P. 11, which requires
27 the person submitting a pleading to certify, "to the best of the person's knowledge, information,
28 and belief, formed after an inquiry reasonable under the circumstances," that the pleading "is not

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1 being presented for any improper purpose, such as to harass or to cause unnecessary delay or
 2 needless increase in the cost of litigation," that the legal contentions "are warranted by existing
 3 law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or
 4 the establishment of new law," and that the factual contentions "have evidentiary support or, if
 5 specifically so identified, are likely to have evidentiary support after a reasonable opportunity for
 6 further investigation or discovery."

7 Indeed, EDCR 7.60 must be construed as coextensive with Rule 11 because Nev. R. Civ.
 8 P. 83 permits district courts to adopt local rules only if such rules are "not inconsistent" with the
 9 Nevada Rules of Civil Procedure. "[U]nder NRCP 83, district court rules must be consistent with
 10 the Nevada Rules of Civil Procedure. Therefore, EDCR 7.60 cannot exceed the scope of NRCP
 11 37(b)." *Nevada Power Co. v. Fluor Illinois*, 108 Nev. 638, 644, 837 P.3d 1354, 1359 n.4 (1992).
 12 The same reasoning applies with respect to the relationship between EDCR 7.60(b) and NRCP
 13 11.

14 Sanctions under NRCP 11 may be imposed only when the claim is "frivolous," i.e., when
 15 it "is 'both baseless and made without a reasonable and competent inquiry.' Thus, a
 16 determination of whether a claim is frivolous involves a two-pronged analysis: (1) the court must
 17 determine whether the pleading is 'well grounded in fact and is warranted by existing law or a
 18 good faith argument for the extension, modification or reversal of existing law'; and (2) whether
 19 the attorney made a reasonable and competent inquiry." *Bergmann v. Boyce*, 109 Nev. 670, 676,
 20 856 P.2d 560, 564 (1993) (citations omitted).

21 The Supreme Court has cautioned against imposition of Rule 11 sanctions for claims that
 22 are novel and ultimately unsuccessful. "Rule 11 sanctions are not intended to chill an attorney's
 23 enthusiasm or creativity in reasonably pursuing factual or legal theories, and a court should avoid
 24 employing the wisdom of hindsight in analyzing an attorney's action at the time of the pleading."
 25 *Marshall v. District Court*, 108 Nev. 459, 465-66, 836 P.2d 47, 52 (1992); *see also K.J.B. Inc. v.*
 26 *Drakulich*, 107 Nev. 367, 370, 811 P.2d 1305, 1307 (1991) (claim was "warranted by
 27 ambiguities" in existing law and "a reasonable belief" that the claim might be barred if brought
 28 later; "[w]e cannot fault appellant's counsel for zealously protecting his client's interests").

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1 In *Rivero v. Rivero*, 125 Nev. 410, 216 P.3d 213 (2009), the Supreme Court reversed the
2 imposition of sanctions under NRCP 11 and EDCR 7.60 for filing a motion to disqualify the trial
3 court judge. The Court noted that sanctions may be imposed for a frivolous motion, but the
4 "district court must determine if there was any credible evidence or reasonable basis for the claim
5 at the time of filing." 125 Nev. at 411, 216 P.3d at 234. Although the motion "may have been
6 without merit, that alone is insufficient for a determination that the motion was frivolous,
7 warranting sanctions." *Id.*

8 Clause (3) of EDCR 7.60(b) is also similar to 28 U.S.C. § 1927, which provides:

9 Any attorney or other person admitted to conduct cases in
10 any court of the United States or any Territory thereof who so
11 multiplies the proceedings in any case unreasonably and
12 vexatiously may be required by the court to satisfy personally the
excess costs, expenses, and attorneys' fees reasonably incurred
because of such conduct.

13 In construing this statute, federal courts have held that it does not permit the imposition of
14 sanctions "absent a finding that counsel's conduct resulted in bad faith, rather than
15 misunderstanding, bad judgment, or well-intentioned zeal." *LaSalle Nat'l Bank v. First Conn.*
16 *Holding Group, LLC*, 287 F.3d 279, 289 (3d Cir. 2002). As EDCR 7.60(b)(3) uses the same
17 wording, it should be construed in the same way. *See Edgington v. Edgington*, 119 Nev. 577,
18 584, 80 P.3d 1282, 1288 (2003) (recognizing that state statutes substantially similar to previously-
19 enacted federal statutes should be construed in the same manner).

20 2. Duty of Candor

21 Nevada Rule of Professional Conduct Rule 3.3, entitled "Candor Toward the Tribunal,"
22 states:

23 (a) A lawyer shall not knowingly:

24 (1) Make a false statement of fact or law to a tribunal or fail
to correct a false statement of material fact or law previously made
to the tribunal by the lawyer;

25 (2) Fail to disclose to the tribunal legal authority in the
controlling jurisdiction known to the lawyer to be directly adverse
26 to the position of the client and not disclosed by opposing counsel;
or

27 ///

28 ///

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1 (3) Offer evidence that the lawyer knows to be false....
2 (d) In an ex parte proceeding, a lawyer shall inform the tribunal of
3 all material facts known to the lawyer that will enable the tribunal
4 to make an informed decision, whether or not the facts are adverse.

5 Rule 3.3(a)(1) thus prohibits an attorney from making a false statement of fact or making a
6 statement of fact that is misleading due to the failure to disclose other facts. See Official
7 Commentary to Model Rules of Professional Conduct 3.3(a) ("There are circumstances where
8 failure to make a disclosure is the equivalent of an affirmative misrepresentation."); *Gum v.*
9 *Dudley*, 505 S.E.2d 391, 402 (W.Va. 1997) ("[I]n determining whether an attorney's silence
10 violated the general duty of candor owed to a court, it must be shown by a preponderance of the
11 evidence that (1) the silence invoked a material misrepresentation, (2) the court believed the
12 misrepresentation to be true, (3) the misrepresentation was meant to be acted upon, (4) the court
13 acted upon the misrepresentation, and (5) that damage was sustained."); cf. *Brody v. Transitional*
14 *Hospitals Corp.*, 280 F.3d 997, 1006 (9th Cir. 2002) ("To be actionable under the securities laws,
15 an omission must be misleading, in other words it must affirmatively create an impression of a
16 state of affairs that differs in a material way from the one that actually exists.").

17 An attorney does not, however, have a generalized duty to disclose all facts in an
18 adversarial proceeding. This is made clear by NRPC 3.3(d), which imposes a duty on an attorney
19 *in an ex parte proceeding* to disclose all material facts. This special duty demonstrates that in an
20 adversarial proceeding such as this one, no such duty to disclose all material facts exists.

21 The limited scope of the duty imposed on attorneys to disclose adverse facts was
22 discussed in *Apotex Corp. v. Merck & Co., Inc.*, 229 F.R.D. 142 (N.D. Ill. 2005). Apotex sued
23 Merck for patent infringement with respect to a drug. Merck prevailed on the ground that it had
24 invented the process before Apotex had filed the patent, and that Merck had not concealed or
25 suppressed the invention. Some years later, in a separate lawsuit, Merck's witness testified that
26 the use of a compound in the production of the drug was a trade secret. Apotex sued Merck,
27 claiming that the prior failure to disclose to the court that the role of this compound was a trade
28 secret was improper—indeed, fraudulent. Specifically, Apotex challenged Merck's argument in
the prior case that it had not suppressed the process for making the drug. The court disagreed. It

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1 found that Merck's statements "were not an attempt to characterize the truth as an omniscient
2 observer might see it. Rather, they were comments on the sufficiency of the evidence that was
3 submitted in the case." *Id.* at 147. The court continued:

4 It was not a "fraud" for Merck to argue the inferences from the
5 evidence that had been presented in the case-even if it now turns out
6 that the evidence that was presented might not have represented the
7 full story. Absent a showing that Merck had withheld or concealed
8 evidence requested in discovery or presented false testimony or
9 evidence, the contention in its briefs that there was no concealment
10 of the Vasotec process was an appropriate argument regarding the
11 evidence that had been offered....

12 Apotex seems to suggest that by raising the § 102(g) issue, Merck
13 effectively assumed an obligation to make full disclosure of all the
14 evidence bearing on that issue, helpful or harmful, even without
15 appropriate discovery requests by Apotex. But for better or worse,
16 that is not the way civil litigation works. Our system of justice
17 largely leaves it to the adversarial process to ferret out the truth.
18 That process does not always work perfectly even if all parties
19 comply with their obligations; sometimes one side or another does
20 not ask the right questions and as a result fails to uncover helpful
21 evidence. But when that happens in a civil case, the other side has
22 no independent obligation to produce what it has not been asked to
23 produce, unless a statute or rule requires it to do so.

24 *Id.* at 147-48.

25 The court noted that "nondisclosure does not amount to fraud absent a duty to speak," and
26 concluded that there was no duty to "volunteer information" to a litigation opponent absent a
27 request or a statutory requirement. *Id.* at 148. The court also found that the prior statements were
28 not a "half-truth," i.e., "a disclosure that is misleading because it omits important information."
Id. at 149. The prior statements were accurate, and the witness did not "say or imply that the
explanations" were anything more than a "summary." *Id.* Apotex's failure to inquire further in
discovery into the process did "not suggest fraud on the part of Merck." *Id.*

The court specifically addressed the attorney's duty of candor under Illinois' version of
Rule 3.3, stating: "The Rules [of Professional Conduct] do not bar a lawyer in a civil case from
arguing the evidence in the case, even if that evidence does not represent the truth as an
omniscient observer might see it." *Id.* at 148. *See also Winkler Construc. v. Jerome*, 734 A.2d
212 (Md.1999) (a subcontractor claiming a mechanic's lien does not have to disclose that there is
a dispute about the work; a party is not required to present adverse evidence supporting a defense,
especially in a proceeding that is not ex parte).

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1 By contrast, in *Sierra Glass & Mirror v. Viking Industries, Inc.*, 107 Nev. 119, 808 P.2d
2 512 (1991), the defendant, which contested personal jurisdiction, read at trial the deposition of a
3 sales representative. While representing that the entire deposition was being read, defendant's
4 counsel omitted the portion in which the representative stated that she resided in Nevada. In
5 holding that this omission violated the duty of candor, the Nevada Supreme Court also expressly
6 recognized that there is no general duty for an attorney to disclose all facts that the opponent
7 might find helpful in its arguments: "An attorney has no obligation to proffer evidence that helps
8 the opponent. But if an attorney represents that he or she is proffering an entire document,
9 omitting pertinent portions of that document is a blatant fraud." 107 Nev. at 126, 808 P.2d at 516.
10 Defendant's counsel compounded this misrepresentation by arguing in its appellate brief that the
11 sales representative did not live in Nevada, even though defendant's counsel knew or should have
12 known that this representation was false. When plaintiff specifically challenged this statement,
13 the defendant failed to correct it. The Court found that this "failure to correct the misstatement
14 once it was brought to their attention" was an especially "egregious action." 107 Nev. at 127, 808
15 P.2d at 516.

16 In sum, the duty of candor imposed by NRPC 3.3 prohibits an attorney from making a
17 false statement of fact or a statement that is rendered misleading by the omission of important
18 information. But the rule does not impose an obligation to disclose all facts in an adversarial
19 proceeding.

20 **B. Defendants Did Not Engage In Sanctionable Conduct By Invoking the PDPA**

21 1. The PDPA Was and Remains an Obstacle to the Production of Documents
22 in this Action

23 Macau's PDPA was and remains in effect and applies to the transfer of personal data from
24 Macau to the United States, including for purposes of production in this case. The PDPA is not
25 unique. It is based on Portuguese law and is similar to data protection laws through Europe, in
26 particular, the European Privacy Directive of 1995 (Directive 95/46/EC). Declaration of David
27 Fleming ("Fleming Decl.") at ¶ 3, August 21, 2012. (Attached hereto as Exhibit HH at
28 APP00871). All of these laws, including the PDPA, restrict automated data processing, entitle

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1 data subjects to object to automated data processing, and mandate protections and restrictions on
2 processing certain types of data for certain purposes. *Id.*

3 Article 19 of the PDPA prohibits transfers of personal data to a destination outside Macau,
4 unless the destination jurisdiction ensures “an adequate level of protection,” and subject to
5 compliance with the conditions imposed by the PDPA. *Id.*, ¶ 6. The PDPA defines the phrase
6 “adequate level of protection” in terms similar to those used in the European Directive. Transfers
7 may be made only if the destination jurisdiction, or the transfers themselves, appear on a list
8 maintained by the OPDP. No such list has yet been published by the OPDP, whose approach is to
9 deal with requests for consent on a case-by-case basis. *Id.* European nations have determined
10 that the United States does not provide an “adequate level of protection” within the meaning of
11 the European Directive.

12 Article 20 of the PDPA enumerates “derogations” or exceptions to Article 19, which are
13 similar to the exceptions contained in Article 26 of the European Directive. Generally speaking, a
14 transfer of personal data to a destination outside Macau requires the consent of the data subject, or
15 consent from the OPDP, to be obtained prior to the transfer taking place. The OPDP has
16 indicated that it would be unlikely to consent to a transfer of personal data to a jurisdiction that
17 did not provide an adequate level of protection for personal data, similar to the “safe harbor” or
18 “safe haven” protection measures provided to individuals in European jurisdictions. The
19 alternative option would be for the public or judicial authorities in the destination jurisdiction to
20 approach the Macau Special Administrative Region, through the usual diplomatic or mutual legal
21 assistance channels, to obtain assistance with facilitating a transfer of personal data. *Id.*, ¶ 7.

22 Violations of the PDPA may be enforced as administrative offences, analogous to civil
23 penalties, punishable by fines, and as crimes, punishable by larger fines and penalties and/or
24 imprisonment. *Id.*, ¶ 5.

25 Defendants’ past transfers of ESI for which Plaintiff and others were custodians do not
26 mean that the Court’s attention to the PDPA was wasted or that PDPA is a sham, as Plaintiff
27 suggested in oral arguments. Since May 2011, OPDP has made clear to VML that transfers of
28 personal data from Macau are subject to the PDPA, that OPDP will strictly enforce the PDPA,

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1 and that failure to comply with the PDPA may result in civil and criminal penalties. *Id.*, ¶ 9.
2 Representatives of LVSC, SCL, and VML met with OPDP on March 7, 2012 and argued that
3 transfers of data for purposes of compliance with discovery obligations in this case, and for
4 purposes of production to the SEC, should be regarded as consistent with the PDPA. *Id.*, ¶ 10.
5 VML confirmed and elaborated on these points in a June 27, 2012 letter. *Id.*, ¶ 12. OPDP,
6 however, disagrees. At the March 7, 2012 meeting, OPDP stated that the PDPA does not permit
7 VML to transfer personal data in order to comply with discovery obligations imposed by United
8 States law on LVSC and SCL, and stated that OPDP must approve any transfer consistent with
9 the PDPA. *Id.*, ¶ 10. VML received OPDP's formal response to VML's June 27, 2012 letter on
10 August 14, 2012. It rejects VML's position in favor of procedures available under international
11 legal assistance provisions of the law. *Id.*, ¶ 16.

12 Following Defendants' disclosures to this Court on June 27, 2012 and July 6, 2012, and
13 related press accounts, OPDP sent a letter on July 31, 2012, notifying VML that OPDP had
14 launched an official investigation procedure in relation to the alleged transfer from Macau by
15 VML to the United States of certain data. *Id.*, ¶¶ 13-14. This notification was made public with
16 the knowledge of the OPDP in a filing by SCL with the Hong Kong Stock Exchange followed by
17 an SEC filing by LVSC. On August 2, 2012, Francis Tam, Macau's Secretary for Economy and
18 Finance, made a statement that was reported in the press, in which he stated that if OPDP finds
19 "any violation or suspected breach" of the PDPA, the government "will take appropriate action
20 with no tolerance. Gaming enterprises should pay close attention to and comply with relevant
21 laws and regulations." *Id.*, ¶ 15. Nor is VML the only entity subject to the PDPA. On June 3,
22 2012, OPDP confirmed that it had begun investigation procedures into the disclosure of personal
23 information by Wynn Macau Ltd. as part of a report on removed director Kazuo Okada.³

24 As OPDP has made clear, the PDPA remains applicable to documents that are still located
25 in Macau. Notwithstanding the Subject Transfers, vast quantities of data that Plaintiff seeks in
26 discovery remain in Macau and are subject to the PDPA. Plaintiff's initial discovery demand was

27
28 ³ <http://www.macaudailytimes.com.mo/macau/34267-GDPD-launches-Wynn-privacy-probe-Google-fined-for-Street-View.html>

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1 for SCL to review data from 38 VML custodians whose data is housed in Macau. On May 2,
 2 2011, Plaintiff served his "Initial Identification of ESI Search Terms and Date Ranges," in which
 3 he demanded that Defendants search the email accounts of 76 custodians, of which 38 are VML
 4 employees whose data resides in Macau. (Attached hereto as Exhibit A). SCL estimated that
 5 these requests would call for review of approximately 2 terabytes to 13 terabytes of data, or more,
 6 in Macau. SCL's Renewed Motion for Stay (July 14, 2011) at 5 (Sedlock Decl., ¶ 10); Fleming
 7 Declaration, ¶ 7. (Attached hereto as Exs. J at APP00177 & I at APP00172). This is far more data
 8 than in the Subject Transfers. Regardless of when Defendants disclosed the Subject Transfers,
 9 the Court would have to address whether Defendants should be ordered to produce documents
 10 located in Macau in light of the PDPA.

11 The Subject Transfers do not render Defendants' invocation of the PDPA frivolous or
 12 inappropriate. SCL filed two motions for stay pending its writ petition on its personal jurisdiction
 13 motion—one on May 17, 2011 and the second on July 14, 2011. Each motion argued (1) there
 14 was a potential conflict between the obligations imposed by NRCP 16 and the PDPA, and (2)
 15 compliance with NRCP 16 would require its counsel to travel to Macau to review documents,
 16 which would be costly and burdensome. Specifically, the May 17, 2011 motion argued that the
 17 PDPA may "be an impediment, if not a bar, to SCL retrieving, reviewing and producing certain
 18 information and documents, including ESI, that may be subject to Nevada Rule of Civil
 19 Procedure ("NRCP") 16 disclosure requirements or that Jacobs may demand be produced,"
 20 although it noted that "this advice was not definitive." Krum Decl., ¶ 6. (Attached hereto as
 21 Exhibit B at APP00010). *See also* May 26, 2011 Tr. 5:14-19. (Attached hereto as Exhibit C at
 22 APP00084). These statements were all correct.

23 SCL's July 14, 2011 stay motion attached a declaration from SCL's General Counsel, who
 24 reported that OPDP stated that production of ESI "and other documents stored in Macau will
 25 require strict compliance with relevant Macau law," and that the PDPA "will be strictly enforced
 26 by the Macau government, in particular the Macau OPDP, and failure to comply may result in
 27 civil and criminal penalties." Fleming Decl., ¶¶ 4, 8. (Attached hereto as Exhibit I at APP00172,
 28 APP00173). *See also* Motion at 4-5 (Sedlock Decl., ¶¶ 6-12). (Attached hereto as Exhibit J at

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1 APP00177). At the hearing on the motion, SCL's counsel stated that documents in Macau had to
2 be reviewed in Macau and presented to OPDP before being transferred out of Macau:

3 [Ms. GLASER:] Documents get – must be reviewed in Macau.
4 We're starting that process now. We have gone through the process
and represent to the Court we have gathered electronic documents,
as well as hard copy.

5 THE COURT: Correct.

6 Ms. GLASER: They're in Macau. They are not allowed to leave
Macau. We have to review them there, and then to the extent that
7 the Privacy Act, which is read very broadly according to our Macau
written opinion counsel, it's read very broadly, it then -- then you
8 go to the office that supervise the privacy Act, say, okay, with
respect to these group of documents, not the whole universe, but
9 these group of documents we want to take them out of Macau,
produce them in this litigation, and we do that pursuant to a
10 stipulation and hopefully court order that says, of course, these are
only going to be used in connection with this litigation and for no
other purpose.

11 We then hope to and anticipate being able to convince the Macau
court, not a problem, okay, go – Macau office that we – indeed, the
12 government says, yes, you can do these in the Jacobs litigation.

13 June 9, 2011 Tr. 52:7-53:2 (Attached hereto as Exhibit D at APP00151-APP00152); *see also* July
14 19, 2011 Tr. 6:1- 8:24. (Attached hereto as Exhibit K at APP00218- APP00220).

15 These factual statements were and remain true, and the legal arguments were not
16 frivolous. Documents were in Macau and they were and remain subject to the PDPA. Neither
17 prong of NRCF 11 (which is also the standard under EDCR 7.60(b)) is met in this situation.
18 Defendants' arguments about the PDPA were well grounded in fact and had a reasonable basis in
19 law. *Bergmann*, 109 Nev. at 676, 856 P.2d at 564; *Rivero*, 125 Nev. at 440, 216 P.2d at 234.
20 Moreover, Defendants' counsel made a "reasonable and competent inquiry," *Bergmann*, 109 Nev.
21 at 676, 856 P.2d at 564, as shown by the multiple communications with OPDP.

22 2. LVSC's Actions To Obtain Return Of Documents In Plaintiff's Possession
23 Was Not Sanctionable

24 LVSC filed three sets of pleadings to compel Plaintiff to return the documents that he took
25 upon his departure from SCL. On September 13, 2011, LVSC filed a motion to amend the
26 counterclaim, attaching a proposed counterclaim that alleged that the documents Plaintiff took
27 upon his departure were LVSC's property, that they contained information that was confidential,
28

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1 proprietary, and/or privileged, and that "upon information and belief, the documents stolen and/or
2 wrongfully retained by Jacobs contain personal data that is subject to Macau's Personal Data
3 Protection Act, the violation of which carries criminal penalties in Macau." Proposed Amended
4 Counterclaim, ¶¶ 53-56. (Attached hereto as Exhibit N at APP00250). On the same date, LVSC
5 filed a motion to compel return of stolen documents, which argued that Plaintiff's refusal to return
6 "stolen company documents exposes LVSC and its indirect subsidiaries, SCL and VML to
7 possible criminal action in Macau for potential violation of the Macau Personal Data Protection
8 Act ('Macau Act')". Motion at 3. (Attached hereto as Exhibit P at APP00310). LVSC also
9 asserted that it had "serious concerns that Jacobs will disclose company documents that contain
10 personal data in violation of Macau law. The Macau Act provides for serious sanctions in such
11 circumstances, sanctions which could potentially be levied against LVSC and/or its indirect
12 subsidiaries SCL and VML." Motion at 6. (*Id.* at APP00313.) Also on September 13, 2011,
13 LVSC filed a motion for protective order and for return of stolen documents, which argued that
14 Jacobs had wrongfully retained documents containing privileged information and/or trade secrets.
15 (Attached hereto as Exhibit O). LVSC withdrew all three of these pleadings on September 19,
16 2011. (Attached hereto as Exhibit S).

17 After the Court indicated that the Supreme Court's stay prevented it from acting on those
18 motions, LVSC filed a new action against Jacobs, Case No. A-11-648484-B, on September 16,
19 2011. (Attached hereto as Exhibit Q). The complaint was similar to the proposed amended
20 counterclaim. Also on September 16, 2011, LVSC filed an ex parte motion for Temporary
21 Restraining Order, arguing that there was an immediate risk that Jacobs would disclose LVSC
22 documents that were confidential, privileged, and subject to the PDPA. The motion also argued
23 that Jacobs's disclosure may violate the PDPA, and that such violations might expose LVSC
24 and/or its subsidiaries to penalties. (Attached hereto as Exhibit V).

25 On September 26, 2011, LVSC filed an Emergency Petition for Writ of Mandamus in the
26 Nevada Supreme Court. The petition sought a writ to modify the stay to permit this Court to
27 consider motions to return the documents in Plaintiff's possession. Similar to the pleadings filed
28 with this Court, LVSC's petition argued that it was entitled to relief because the documents taken

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1 by Plaintiff contain attorney-client privileged correspondence, trade secrets, documents protected
2 from disclosure by contract, and may include personal data protected by the PDPA. LVSC noted
3 the sanctions for violations of the PDPA and stated it wished to "recover these materials stolen by
4 Jacobs and to ensure that these materials will not in any way be reviewed, distributed or used by
5 Jacobs, his agents (including his attorneys) or any other third parties." Petition at 13-14.
6 (Attached hereto as Exhibit U at APP00439- APP00440).

7 The factual predicate for these actions was that Plaintiff removed data from Macau that he
8 was not entitled to possess at all after his termination, let alone remove from Macau. Those facts
9 are not rendered untrue or misleading by the additional fact that Defendants transferred data from
10 Macau.

11 Nor do the Subject Transfers render frivolous the legal arguments made in support of the
12 efforts to compel Plaintiff to return the data he removed from Macau. First, the PDPA was not
13 the only, or even the first, ground for those efforts, which also argued that the documents Plaintiff
14 obtained while employed remain company property, and that they include material that is
15 confidential, proprietary and/or subject to the attorney-client privilege and/or work product
16 doctrine. The argument that Plaintiff's removal of the data violated the PDPA was only an
17 additional ground. Hence, the PDPA argument did not unreasonably and vexatiously multiply
18 proceedings in violation of EDCR 7.60(b)(3).

19 Second, LVSC's arguments based on the PDPA were reasonable. This is shown
20 conclusively by OPDP's July 31, 2012 notice of investigation. Even absent OPDP's action, there
21 was a reasonable basis for the concern at the time, which was sufficient to justify LVSC's
22 position under NRCP 11 and EDCR 7.60(b). *K.J.B.*, 107 Nev. at 370, 811 P.2d at 1307.

23 Third, LVSC's PDPA-based arguments remain reasonable when considered in light of the
24 fact of the Subject Transfers. Plaintiff's actions implicated the policies of the PDPA in a way that
25 the Subject Transfers did not. LVSC's arguments focused on the possibility that Plaintiff would
26 disclose publicly documents containing personal data that he had removed from Macau.⁴ The

27 ⁴ Defendants' concerns about leaks to the press of documents containing personal data were borne out by recent
28 articles in the press quoting documents that include attorney-client communications. Defendants do not yet know
who was the source of those leaks.

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1 purpose of the PDPA is to protect individuals' privacy and personal data, and Plaintiff's
2 threatened disclosure of that data to third parties would have undermined that purpose. LVSC
3 also expressed concern that it would be subject to penalties under Macau law if Plaintiff were to
4 publicly disclose personal data that he had removed from Macau.

5 By contrast, the transfer of data from Macau, and LVSC's continued possession of that
6 data in the United States, did not implicate the same concerns. LVSC had control of the data
7 from the Subject Transfers and any required production would be made subject to appropriate
8 safeguards—not disseminating it to the public.

9 In any event, even if LVSC's position might somehow have been weakened by disclosure
10 of the Subject Transfers, a failure to disclose that a party has arguably acted inconsistently with its
11 own tenable legal position is not a sufficient basis to impose Rule 11 sanctions. In *Dunn v. Gull*,
12 990 F.2d 348 (7th Cir. 1993), plaintiff sued for trademark infringement, alleging that defendant's
13 "restaurant sign and the names and symbols contained therein were substantially similar to
14 [plaintiff's] restaurant signs." *Id.* at 349. After filing suit, plaintiff applied to register three
15 trademarks with the U.S. Patent and Trademark Office ("USPTO"). *Id.* The USPTO denied one
16 of the applications on the ground that plaintiff's proposed mark "did not identify or distinguish its
17 services from those of others." *Id.* Plaintiff then moved for summary judgment against
18 defendant, without disclosing the USPTO's denial of its application. *Id.* Later still, Plaintiff
19 voluntarily dismissed its suit, stating that defendants had changed their sign. *Id.* Defendants, who
20 had learned on their own of the denial of plaintiff's trademark application, moved for sanctions.
21 *Id.* The district court denied the motion.

22 On appeal, the Seventh Circuit affirmed. Rejecting the defendants' argument that
23 plaintiff's failure to disclose the USPTO's decision was fraudulent, the court explained that while
24 the decision "bears weight, it [was] not enough to render [plaintiff's] motion for summary
25 judgment legally baseless." *Id.* at 352. The court also emphasized that plaintiff "did not make
26 false factual or legal representations." *Id.* Finally, the court cited the district court's finding that
27 the nondisclosure was not intentional. *Id.*

28 Similarly, the Subject Transfers did not render LVSC's filings sanctionable. As in *Dunn*,

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1 LVSC's arguments were not legally baseless and LVSC did not make false factual or legal
2 representations in presenting its position. *See id.* at 352.

3 **C. Defendants Did Not Engage In Sanctionable Conduct By Failing To Disclose**

4 **The Data Transfers Sooner**

5 The prior section explains why the legal arguments Defendants made with respect to the
6 PDPA do not justify the imposition of sanctions; this section explains why Defendants' factual
7 representations with respect to data transfers were neither false nor misleading.

8 1. Defendants Did Not Make Any False Or Misleading Statements of Fact
9 Regarding The Subject Transfers

10 Defendants did not make any false or misleading statements of fact with respect to the
11 transfer of data from Macau. Defendants did not represent to the Court that they had not
12 transferred data from Macau to the United States.

13 On June 9, 2011, the Court heard argument on SCL's motion to dismiss. After the motion
14 was argued, there was an extended discussion of the impact of the PDPA on discovery in the case.
15 In the course of that discussion, SCL's counsel stated that documents in Macau had to be
16 reviewed in Macau, and that OPDP had to authorize the removal of particular documents from
17 Macau. Tr. 52:12-53:5 (Ex. D at APP00151- APP00152). Further in the same vein, SCL's
18 counsel stated:

19 [Ms. GLASER:] [W]e have to get permission to get
20 documents out of Macau.

21 THE COURT: All documents from Sands China have to get
22 permission from the Office of Privacy?

MS. GLASER: Oh, yeah. Absolutely.

23 *Id.* at 58:11-14 (APP00157). Because the last statement immediately followed the reference to
24 the documents still in Macau, the statement that OPDP's permission was required for all SCL
25 documents meant all documents located in Macau.

26 SCL's counsel did not state or imply that all SCL documents were in Macau. In fact, SCL
27 was careful to state just the opposite. For example, in a motion for stay filed soon after the June
28 9, 2011 hearing, SCL stated that the "overwhelming majority" of its responsive documents were

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1 located in Macau. SCL's Renewed Motion for Stay (July 14, 2011) at Motion at 4 (Sedlock
2 Decl., ¶ 6). (See Ex. J at APP00177). This statement makes clear that some responsive
3 documents, albeit a minority, were not located in Macau. See also SCL's First Motion for Stay
4 (May 17, 2011) at 9 (stating that PDPA may prevent SCL's compliance with "certain" NRCP 16
5 disclosure obligations and "certain" discovery requests). (See Ex. B at APP00014). Although
6 SCL did not specifically identify the Subject Transfers at that time, SCL did not represent that all
7 responsive documents were located solely in Macau and, indeed, indicated to the contrary.

8 This point is reinforced by statements made by LVSC's counsel at the same June 9, 2011
9 hearing:

10 MR. PEEK: let me just add one thing, because I didn't
11 address this. *That same Data Privacy Act, Your Honor, also*
12 *implicates communications that may be on servers and email*
communication and hard document - - hard-copy documents in
Las Vegas - -

13 THE COURT: Here in the States?

14 MR. PEEK: -- Sands, as well.

15 THE COURT: Well, you can take the position

16 MR. PEEK: Well, we are told that by the --

17 THE COURT: It's okay.

18 MR. PEEK: Office of Data Privacy

19 THE COURT: You can take the position --

20 MR. PEEK: -- counsel, Your Honor. And I'll we'll brief
21 that with the Court. Again--

22 THE COURT: And then I'll decide.

23 Tr. 55:5-19 (emphasis added) (See Ex. D at APP00154). Since LVSC operates in the United
24 States and not in Macau, LVSC's invocation of the PDPA indicates that it possessed in the United
25 States documents that had come from Macau. The only reason the PDPA could apply to
26 documents in Las Vegas is if those documents originated in Macau. This statement therefore
27 made clear that some data from Macau was in the United States, which negates any suggestion
28 that Defendants stated or implied that no data had been transferred to the United States from
Macau.

Later in the same hearing, Plaintiff's counsel denied that the PDPA could be used to block
discovery: "There's a United States Supreme Court case right on point that says, we don't care
what foreign law says, you've got to produce documents, *particularly when they're in the*
jurisdiction in which the litigation is taking place like they are here." Tr. 59:11-15 (emphasis

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1 added). (See Ex. D at APP00158). Plaintiff's counsel thus understood the comments by LVSC's
2 counsel to mean that LVSC was asserting that "foreign law" (i.e., the PDPA) applied to
3 documents "in the jurisdiction" (i.e., in Nevada), which could only mean that such documents had
4 come from Macau.

5 In follow-up meet-and-confers with Plaintiff's counsel, LVSC again disclosed that LVSC
6 possessed information subject to the PDPA. On June 22, 2011, Mr. Peek wrote an email to
7 Plaintiff's counsel, Colby Williams, stating that the PDPA "make[s] it difficult for LVSC and SCL
8 to meet the initial disclosure deadlines...." (Attached hereto as Exhibit E; (emphasis added)).⁵
9 Again, LVSC's invocation of the PDPA indicates that it possessed in the United States documents
10 that had come from Macau. Mr. Williams responded on June 24, 2011, writing that Plaintiff did
11 not agree "that LVSC would be entitled to withhold documents in its possession in Las Vegas on
12 the grounds that production of the same would violate the Macau Act." Mr. Williams noted that a
13 motion to compel would "not be ripe until we know what materials are being withheld."
14 (Attached hereto as Exhibit G).

15 On July 8, 2011, Mr. Williams wrote an email to Defendants' counsel requesting an
16 agreement that the PDPA does not provide a basis for withholding documents in the litigation "at
17 least insofar as [Jacobs's] production is concerned." Mr. Williams stated that the parties could
18 debate later whether the PDPA provides a basis for Defendants to withhold documents. (Attached
19 hereto as Exhibit H). Mr. Williams' July 8 email also discloses that Plaintiff possessed
20 approximately 11 GB of emails received during his tenure with Defendants, including emails
21 from LVSC and SCL attorneys. The July 8, 2011 email was submitted to the Court on numerous
22 occasions and was marked as a Court exhibit at the October 13, 2011 hearing. (Attached hereto as
23 Exhibit AA). Hence, the Court was again apprised of LVSC's position that the PDPA could be
24 applicable to documents in LVSC's possession, further demonstrating that LVSC was not
25 concealing that it possessed documents in Las Vegas that had been transferred from Macau to the
26 United States.

27
28 ⁵ Several of the exhibits to this Statement are authenticated in the Declaration of J. Stephen Peek, Esq., attached
hereto as Exhibit II.

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1 Plaintiff never served discovery—or even an informal request—for more information
2 about the Macau data held by LVSC. This failure is all the more notable in light of the Court's
3 suggestion at the June 9, 2011 hearing that Plaintiff serve discovery or otherwise inquire into
4 what materials may have been provided to the SEC. Tr. 62:12-63:3 (*See* Ex. D at APP00161-
5 APP00162). Despite the meet and confer emails in which Plaintiff's counsel noted the need to
6 address further what documents LVSC was withholding based on the PDPA, Plaintiff never
7 followed up about the nature of those documents.

8 Nor did Defendants make any other statement of fact that was rendered misleading by the
9 nondisclosure of the Subject Transfers. SCL's motions for stay noted that there was a potential
10 conflict between SCL's discovery obligations under Rule 16 and the restrictions imposed by the
11 PDPA. (*See* Exs. B & J). These statements did not imply that there were no documents in the
12 United States that had been transferred from Macau. The factual predicate for the argument in the
13 stay motion was that documents in Macau would be subject to disclosure obligations under Rule
14 16, not that *all* of SCL's documents were only in Macau. Indeed, SCL's July 14, 2011 motion for
15 stay specifically referred only to the "overwhelming majority" of the information to which the
16 PDPA was applicable being in Macau:

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

23 ...
24 8. Counsel for SCL have since undertaken an analysis
25 of the Macau Act as well as met with the Macau Office for Personal
26 Data Protection (the "Macau OPDP") to determine the most
27 efficient and compliant method to review and produce ESI
28 *currently stored in Macau* in compliance with the Macau Act.

29 SCL's Renewed Motion for Stay (July 14, 2011) at Motion at 4 (Sedlock Decl., ¶ 6, 8). (*See* Ex. J
30 at APP00177) (emphasis added).

31 That factual predicate was and remains true. As noted, Plaintiff's initial demand was for
32 SCL to search the email accounts of 38 VML custodians whose data resides in Macau, with an
33 estimated volume of 2 to 13 terabytes or more of data. The fact that *some* of the SCL information

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1 requested by Plaintiff, including ESI for which Plaintiff was the custodian, had already been
2 transferred to the United States, did not make it misleading to say that the PDPA applied to
3 documents still in Macau, especially with the qualification that the documents in Macau were
4 only the "overwhelming majority" of the documents to which the PDPA might apply, not all such
5 documents.

6 Also at the July 19, 2011 hearing, again the context of SCL's argument that the review of
7 documents in Macau would be burdensome and costly, there was a discussion of whether LVSC's
8 counsel could participate in the review of documents in Macau. Defendants stated that LVSC's
9 counsel could not go to Macau to review documents, because only attorneys who represent SCL
10 could review documents there. Tr. 7:9-24. (See Ex. K at APP00219).⁶ There was no discussion
11 of whether LVSC's counsel could review documents *in Nevada* that had come from Macau. In
12 fact, as Defendants have previously described, LVSC's counsel reviewed data from the Subject
13 Transfers in Las Vegas. Defendants' Statement Regarding Data Transfers (July 6, 2012) at 3.
14 (Attached hereto as Exhibit EE at APP00823).

15 Another discussion of the PDPA occurred at a status check on May 24, 2012. At that
16 hearing, Plaintiff's counsel raised issues regarding the status of document discovery, and
17 particularly the production of Plaintiff's email. In response, LVSC's counsel stated:

18 [MR. PEEK:] With respect to Jacobs, Jacobs - - I'll have to
19 let Mr. Weissman deal with Mr. Jacobs, because those are issues
20 that are of Sands China, because he was a Sands China executive,
21 not a Las Vegas Sands executive. So we don't have documents on
22 our server related to Mr. Jacobs. So when he says we haven't
23 searched Mr. Jacobs, he is correct; because we don't have things to
24 search for Mr. Jacobs.

25 THE COURT: So he didn't have a separate email address
26 within the Las Vegas Sands server or Macau

27 MR. PEEK: That is my understanding, Your Honor.

28 Tr. 9:23-10:7. (Attached hereto as Exhibit CC at APP00798-APP00799). In context, the
statement that Plaintiff's data was not on LVSC servers meant that Plaintiff did not have an
LVSC email account separate from his SCL email account—not that Plaintiff's data had never

⁶ VML specially authorized O'Melveny & Myers LLP, which reported to the LVSC Audit Committee, to collect and review documents in Macau. We are informed that O'Melveny did so, but did not transfer any documents out of Macau.

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1 been transferred from Macau. In addition, Defendants disclosed the transfer of Jacobs' data soon
 2 thereafter on June 27, 2012, and LVSC clarified this comment in its Statement on Data Transfers
 3 on July 6, 2012, where it said that the reference to not having searched Plaintiff's data was made
 4 in the context of the review of Plaintiff's data for the purpose of responding to Plaintiff's
 5 jurisdictional discovery requests. Defendants' Statement Regarding Data Transfers (July 6, 2012)
 6 at 3 n.2. (*See* Exhibit EE at APP00823).

7 In reviewing the record in this case in connection with the preparation of this brief,
 8 Defendants have identified one additional statement, albeit not directly with respect to the Subject
 9 Transfers, that warrants further comment. On July 19, 2011, the Court heard argument on SCL's
 10 renewed motion for stay pending the disposition of its writ petition. As noted, at this hearing,
 11 SCL's counsel explained that, under the PDPA, Defendants believed that documents in Macau
 12 had to be reviewed in Macau. Tr. 5:25-8:19. (*See* Ex. K at APP00217- APP00220). In response,
 13 Plaintiff's counsel (Colby Williams) observed that SCL would have to engage in the same
 14 document review process in connection with investigations by the United States Government. *Id.*
 15 at Tr. 10:20-11:16. (APP00222- APP00223). SCL's counsel replied:

16 [MS. GLASER:] [T]he government investigations that are
 17 occurring, they have the same roadblock, the same stone wall that
 18 every else has. They are not – they are not even permitting the
 19 government to come in and look at documents, period. It is only
 20 Sands China lawyers who are being allowed to even start the
 process of reviewing documents. There are no documents that have
 been produced that have – from Sands China to the federal
 government in any way, shape, or form.

21 *Id.* at Tr. 12:2-10. (APP00224). As of the date of the July 19, 2011 hearing, O'Melveny & Myers
 22 LLP, which reported to the LVSC Audit Committee, had produced to the United States
 23 Government certain legal bills that had been presented to Sands entities in Macau and
 24 subsequently transferred by these Sands entities to Nevada. In addition, O'Melveny produced to
 25 the United States Government certain SCL and VML policy and procedure documents. As of
 26 July 19, 2011, O'Melveny had not produced to the United States Government any ESI for which
 27 Plaintiff was the custodian. We understand that Ms. Glaser will attend the August 30-31, 2012

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1 hearing and, subject to privilege considerations,⁷ be prepared to address her comments in light of
2 (1) the fact that the legal bills were in Nevada, and (2) her lack of knowledge, then or now, of any
3 other document productions by O'Melveny to the United States Government prior to the July 19,
4 2011 hearing.

5 In sum, Defendants did not violate the duty of candor by failing to specifically identify the
6 Subject Transfers. Indeed, Defendants' statements and omissions are less problematic than those
7 analyzed in *Apotex*, where the defendant presented evidence and argument that portrayed a certain
8 set of facts without disclosing other facts that pointed in the opposite direction, yet the court
9 found no violation. Here, the existence of the Subject Transfers was not inconsistent with
10 Defendants' argument. That argument was and is legitimate. So too is its core factual predicate.

11 Unlike *Sierra Glass & Mirror*, moreover, Defendants did not make assertions that were
12 misleading absent the disclosure of the Subject Transfers, let alone affirmative misrepresentations
13 about those transfers. Further, Defendants did voluntarily disclose the Subject Transfers
14 themselves, in contrast to counsel in *Sierra Glass & Mirror*, who argued on appeal that the
15 employee did not live in Nevada and then failed to correct that misstatement when it was brought
16 to their attention. 107 Nev. at 126-27, 808 P.2d at 516.

17 2. Defendants Had A Reasonable Basis For Not Disclosing The Transfers
18 Sooner

19 Defendants had a reasonable basis for not disclosing the data transfers sooner than they
20 did. Because Defendants can explain their conduct, such conduct cannot be deemed "willful."
21 *Finkelman*, 91 Nev. at 148, 532 P.2d at 609.

22 First, there was a reasonable ground for concern that public disclosure of past transfers of
23 data from Macau could have led the OPDP to take adverse action. Beginning on May 13, 2011,
24 VML pursued numerous communications with OPDP. Throughout these discussions, OPDP
25 made clear it regards the transfer of personal data from Macau as being subject to the PDPA, that
26 OPDP will strictly enforce the PDPA, and that failure to comply with the PDPA may result in
27

28 ⁷ Defendants do not intend to, and do not, waive any applicable privilege. Defendants will seek the Court's guidance
on the scope of privilege in the context of responding to specific questions at the August 30 hearing.

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1 civil and criminal penalties. During the course of those communications, VML became
2 concerned that OPDP might be compelled to take enforcement action if publicity surrounding the
3 Subject Transfers resulted in frustration of the purpose of the PDPA.

4 It was not until a meeting between SCL's General Counsel and OPDP on May 28, 2012
5 that Defendants achieved a level of comfort that LVSC's production in this case of documents
6 previously transferred from Macau to the United States would not constitute a separate violation
7 of the PDPA by LVSC. Nevertheless, VML remains at risk for past transfers of data from Macau
8 to the extent that such transfers result in the disclosure of personal data, particularly a public
9 disclosure, in a manner that undermines the purposes of the PDPA.⁸

10 These concerns about the OPDP's response to a public disclosure of prior data transfers
11 were well-founded, as conclusively demonstrated by OPDP's July 31, 2012 letter notifying VML
12 of the launch of OPDP's official investigation into alleged data transfers. Also relevant is
13 Secretary Tam's August 2, 2012 comments to the effect that OPDP has a policy of "no tolerance"
14 for breaches of the PDPA. These developments underscore that Defendants' concerns about
15 disclosure of past transfers were legitimate, and that their efforts to communicate with OPDP
16 prior to the disclosure were reasonable.

17 Second, Defendants had a reasonable basis for concluding that they were not under an
18 immediate obligation to disclose the past data transfers before VML pursued additional
19 communications with OPDP. As discussed elsewhere in this submission, Defendants did not state
20 or imply that data had not been transferred from Macau to the United States, and their
21 representations to the Court and Plaintiff's counsel about the PDPA did not trigger a legal duty to
22 disclose the Subject Transfers. In addition, Defendants had not completed their production of
23 documents in response to Plaintiff's jurisdictional discovery requests.⁹ Nor was there any order

24 ⁸ We are informed that, subsequent to the July 19, 2011 hearing, O'Melveny produced to the United States
25 Government additional documents that originated in Macau, but had been previously transferred by the company to
26 Nevada. These productions did not involve a public disclosure; indeed, the particulars of what was produced to the
27 Government remain confidential. These productions therefore presented different considerations than the public
disclosure of the Subject Transfers and the production of documents from the Subject Transfers in discovery in this
case.

28 ⁹ Defendants also had not completed their Rule 16.1 disclosures when the Supreme Court issued the writ staying non-
jurisdictional proceedings.

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1 requiring the production of documents from the Subject Transfers by a date certain, or indeed at
 2 any time.

3 In these circumstances, there was a reasonable basis for not disclosing the Subject
 4 Transfers earlier. Hence, there was not a willful violation that would justify the imposition of
 5 sanctions.

6 **III. PROCEDURE FOR HEARING**

7 Because the hearing was set by the Court sua sponte, the hearing should be limited to the
 8 specific issues that the Court has identified as its concern. The purpose of the hearing is to
 9 answer the Court's questions and concerns, and thereby protect *Defendants'* rights.

10 The purpose of the hearing is decidedly not to give Plaintiff's counsel a forum to harass
 11 Defendants, their executives and their counsel for their own ends. On July 10, 2012, the Court
 12 denied Plaintiff's motion for leave to depose Ms. Hyman and Mr. Rubenstein. Yet, Plaintiff's
 13 August 23, 2012 email demands that they appear at the hearing. Aug. 23, 2012 Email from D.
 14 Spinielli to S. Peek et al. attaching subpoenas. (*See* Ex. JJ at APP00883). At the August 2, 2012
 15 hearing, the Court stated that the information Plaintiff was seeking in its 30(b)(6) deposition
 16 notice was not the Court's concern in the hearing it had set: "if that discovery doesn't get done
 17 before my hearing, it's not going to bother me, because the questions I'm going to ask are going
 18 to be rather direct and to the point." Tr. 30:19-22. (Attached hereto as Exhibit GG at APP00863).
 19 Yet, Plaintiff's August 23, 2012 email proffers a proposed subpoena for a 30(b)(6) witness on
 20 these same topics—even topics 10-11, regarding communications with O'Melveny and the
 21 Compliance Committee, which the Court said Plaintiff could not depose a witness about, pending
 22 further briefing. At the August 23, 2012 hearing, in response to statements by Plaintiff's counsel
 23 about their intention to subpoena Mr. Leven and Mr. Singh, the Court stated that what it "really
 24 want[ed] to know is why didn't anyone tell me" about the PDPA, Tr. 30:24-25 (Attached hereto
 25 as Exhibit KK at APP00929), that this was a question for Ms. Glaser and Mr. Peek, *id.* at 31:2-4
 26 (APP00930), and that "the only people who have spoken to me about the Macau Data Privacy Act
 27 and their inability to produce the documents are lawyers," *id.* at 32:15-17 (APP00931). Yet, later
 28 that same evening, Plaintiff's counsel sent an email that not only seeks to subpoena Mr. Leven,

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1 but expands the list to a 30(b)(6) witness, which they had never previously raised with Defendants
2 and without any support for the proposition that a subpoena for a 30(b)(6) witness at a hearing (as
3 opposed to a deposition) is appropriate.

4 Plaintiff's counsel exhibited even more reckless behavior in demanding that Brad Brian
5 and Henry Weissmann, counsel of record for SCL, appear at the hearing. Mr. Brian and Mr.
6 Weissmann certainly will be present at the hearing, but the implication of Plaintiff's letter is that
7 those attorneys also made representations to the Court that Plaintiff's counsel thinks were
8 questionable. There is no basis for this implication. At the hearing on August 23, 2012,
9 Plaintiff's counsel suggested that Defendants' Statement on Data Transfers (filed July 6, 2012)
10 was "untrue" because it did not disclose that Mr. Peek and attorneys at Glaser Weil had VPN
11 access to the Sands network. Tr. 13:21-14:21. (See Ex. KK at APP00912- APP00913). On the
12 contrary, the Statement said that LVSC created "'shared drives' [which] were document
13 repositories that allowed authorized personnel, such as inside *and outside counsel*, to review
14 images of documents that had been collected..." Defendants' Statement Regarding Data Transfers
15 (July 6, 2012) at 3:24-4:2 (emphasis added). (See Ex. EE at APP00823). Although the word
16 "VPN" was not used, this passage makes patently obvious that outside counsel could access
17 documents on the LVSC network. The Statement also disclosed that Mr. Peek and others had
18 reviewed certain emails on Mr. Kostrinsky's computer. *Id.* at 3:11-14. (APP00823). Plaintiff's
19 counsel's claim that the Statement was "untrue," and their implication that the conduct of Messrs.
20 Brian and Weissmann is the subject of the Court's concern, is recklessly false.

21 The larger point is that Plaintiff's counsel should not permitted to hijack the Court's
22 hearing or try to distract Defendants further by creating a wedge between counsel and their
23 clients. On August 24, 2012, Defendants' counsel informed Plaintiff's counsel that the demands
24 set forth in the August 23, 2012 email were wholly improper and that Defendants' counsel would
25 not accept service of any subpoenas. On Sunday, August 26, 2012, Plaintiff's counsel persisted in
26 their gamesmanship by sending an email providing notice of their intention to serve seven
27 subpoenas, including one on former LVSC General Counsel Gayle Hyman, whom the Court ruled
28 on July 10, 2012 could not be deposed. The continued effort to harass the Defendants will be

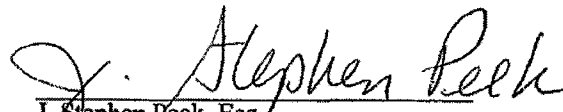
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1 addressed in a separate motion to quash. Respectfully, the Court should not countenance
2 Plaintiff's irresponsible behavior. Plaintiff has filed no motion and has no right to dictate the
3 scope of the hearing or to seek any relief. The Court should limit the hearing to the specific
4 concerns the Court has articulated.

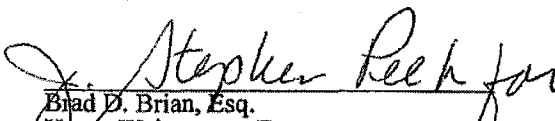
5 **IV. CONCLUSION**

6 Defendants deeply regret that their conduct has caused the Court to express the concerns it
7 has stated. Defendants acknowledge, with the benefit of hindsight, that their statements could
8 have been clearer and more detailed. Defendants sincerely regret failing to meet the Court's
9 expectations, but respectfully submit that sanctions are unwarranted.

10 DATED August 27, 2012.

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

17 *Attorneys for Las Vegas Sands Corp. and Sands
18 China Ltd.*

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26 Los Angeles, California 90071

27 *Attorneys for Sands China, LTD.*

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on August 27, 2012, I served a true and correct copy of the foregoing **DEFENDANTS' STATEMENT REGARDING HEARING ON SANCTIONS** 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


An Employee of Holland & Hart LLP

Dineen Bergsing

From: Dineen Bergsing
Sent: Monday, August 27, 2012 10:58 AM
To: 'jjp@pisanellibice.com'; 'dls@pisanellibice.com'; 'tjb@pisanellibice.com';
'kap@pisanellibice.com'; 'see@pisanellibice.com'
Subject: LV Sands/Jacobs - Defendants' Statement Regarding Hearing on Sanctions
Attachments: 3476_001

Please see attached Defendants' Statement Regarding Hearing on Sanctions. A copy to follow by mail.

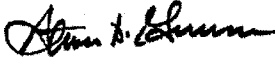
Appendix and Exhibits under separate emails to follow.

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Justin C. Jones, David J. Freeman
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CLERK OF THE COURT

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15 *Attorneys for Sands China, LTD.*

DISTRICT COURT

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; SHELDON G. ADELSON,
in his individual and representative capacity;
DOES I-X; and ROE CORPORATIONS I-X,

24 Defendants.

CASE NO.: A627691-B

DEPT NO.: XI

Date: August 30, 2012

Time: 10:00 a.m.

APPENDIX TO DEFENDANTS'
STATEMENT REGARDING HEARING
ON SANCTIONS

Exhibit	Date	Description	Bates Nos.
26 A.	5/2/2011	Jacobs Initial ID of ESI Search Terms and 27 Date Ranges.	APP00001-APP00005
28			

5734134_1

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Exhibit	Date	Description	Bates Nos.
B.	5/17/2011	Sands China's Motion to Stay Proceedings Pending Writ Petition on Order Shortening Time.	APP00006-APP00079
C.	5/26/2011	Hearing Transcript - Sands China's Motion to Stay Proceedings.	APP00080-APP00099
D.	6/9/2011	Hearing Transcript - Defendants' Motions to Dismiss.	APP00100-APP00166
E.	6/22/2011	Steve Peek email to Colby Williams regarding initial disclosures.	APP00167
F.	6/23/2011	Colby Williams letter to Justin Jones regarding LVS Priority Custodians.	APP00168
G.	6/24/2011	Colby Williams email to Patricia Glaser; Stephen Ma; Steve Peek; Justin Jones regarding production & ESI deadlines.	APP00169
H.	7/8/2011	Colby Williams email notifies defendants that Steve Jacobs has ESI that could contain privileged documents.	APP00170
I.	7/14/2011	Fleming Declaration In Support of Sands China's Motion to Stay Proceedings Pending Writ Petition.	APP000171-APP000173
J.	7/14/2011	Sands China's Motion to Stay Proceedings Pending Writ Petition.	APP00174-APP00212
K.	7/19/2011	Hearing Transcript - Defendant Sands China's Motion to Stay Proceedings Pending Writ Petition.	APP00213-APP00226
L.	7/20/2011	Colby Williams letter to Justin Jones regarding SCL Priority Custodians.	APP00227-APP00228
M.	8/26/2011	Order Granting Petition for Writ of Mandamus.	APP00229-APP00232
N.	9/13/2011	Las Vegas Sands Corp.'s Motion for Leave to File Amended Counterclaim.	APP00233-APP00263
O.	9/13/2011	Las Vegas Sands Corp.'s Motion for Protective Order and for Return of Stolen Documents.	APP00264-APP00307
P.	9/13/2011	Las Vegas Sands Corp.'s Motion to Compel Return of Stolen Documents Pursuant to Macau Personal Data Protection Act.	APP00308-APP00367
Q.	9/16/2011	Complaint & Case Cover Sheet (LVSC v. Jacobs, Case No. A-11-648484-B).	APP00368-APP00377
R.	9/16/2011	Hearing Transcript - Telephonic Status Check.	APP00378-APP00390
S.	9/19/2011	LV Sands Corp.'s Notice of Withdrawal of Motions.	APP00391-APP00394
T.	9/20/2011	Hearing Transcript - Application for Temporary Restraining Order (LVSC v. Jacobs, Case No. A-11-648484-B).	APP00395-APP00421

5734134_1

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Exhibit	Date	Description	Bates Nos.
U.	9/26/2011	LV Sands' Emergency Original Petition for Writ of Mandamus.	APP00422-APP00447
V.	9/28/2011	Las Vegas Sands Corp.'s Ex Parte Motion for Temporary Restraining Order and Preliminary.	APP00448-APP00512
W.	9/29/2011	Interim Order.	APP00513-APP00515
X.	10/4/2011	Hearing Transcript re Plaintiffs Motion for Sanctions.	APP00516-APP00550
Y.	10/4/2011	Order Denying Petition for Writ of Mandamus.	APP00551-APP00552
Z.	10/10/2011	Jacobs Opposition to Sands China's Motion in Limine.	APP00553-APP00618
AA.	10/13/2011	Hearing Transcript- Sands China's Motion in Limine.	APP00619-APP00726
BB.	1/3/2012	Hearing Transcript - Plaintiff's Motion for Protective Order.	APP00727-APP00789
CC.	5/24/2012	Hearing Transcript - Status Check.	APP00790-APP00811
DD.	6/27/2012	Defendants' Joint Status Conference Statement.	APP00812-APP00820
EE.	7/6/2012	Defendants' Statement Regarding Data Transfers.	APP00821-APP00829
FF.	9/26/2011	Letter enclosing proposed interim order	APP00830-APP00833
GG.	8/2/2012	Hearing Transcript - Motion for Protective Order.	APP00834-APP00869
HH.	8/21/2012	Declaration of David Fleming.	APP00870-APP00880
II.	8/23/2012	Affidavit of J. Stephen Peek.	APP00881-APP00882
JJ.	8/23/2012	Debra Spineilli to Steve Peek, et al. attaching subpoenas for evidentiary hearing.	APP00883-APP00899
KK.	8/23/2012	Hearing Transcript - Motion for Protective Order re: Deposition of Ron Reese.	APP00900-APP00933

DATED August 27, 2012.


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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on August 27, 2012, I served a true and correct copy of the foregoing **APPENDIX TO DEFENDANTS' STATEMENT REGARDING HEARING ON SANCTIONS** 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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21 *Attorneys for Sands China, LTD.*

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

20 **STEVEN C. JACOBS,**
21 **Plaintiff,**

Case No.: A-10-627691-C

Dept. No.: XI

22 **vs.**

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

DECLARATION OF DAVID FLEMING

26 **Defendants.**

27
28
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APP00870

PA689

David Fleming, being first duly sworn, deposes and states:

1. I am the General Counsel and Company Secretary of Sands China Ltd. ("SCL"). I am admitted as a barrister and solicitor of the supreme court of South Australia (1979) and solicitor of the supreme and high courts in England and Hong Kong (1992). I have personal knowledge of the matters stated herein except those stated upon information and belief and I am competent to testify thereto.

2. I make this affidavit in response to Plaintiff's Notice of Deposition of NRCP 30(b)(6) witness(es) for Las Vegas Sands Corp. ("LVSC") for Sanctions Discovery, topics 14 and 15. I understand that this affidavit may also be submitted to the Court in connection with that Notice and/or other matters.

3. Although I am not admitted to the bar in Macau, I have the following understanding of Macau's Personal Data Protection Act ("PDPA"), Law No. 8/2005. The PDPA is based on the data protection law of Portugal, in particular the Portuguese Data Protection Act of 1998 (Law No. 67/1998), which was based on the European Privacy Directive of 1995 (Directive 95/46/EC). The PDPA adopts similar personal data protection measures to those that exist throughout the body of the European Community. The purpose of the PDPA is to protect individuals' privacy and personal data.

4. I further understand that the PDPA is administered and enforced by the Office for Personal Data Protection ("OPDP"), which was established by the Chief Executive of Macau in February 2007, having the legal powers of the "public authority" designated to regulate the PDPA.

5. I further understand that, in common with European personal data protection law, the PDPA requires de-identification, restricts automated processing, entitles data subjects to object to automated processing, and contains security protections and restrictions on processing certain kinds of data. Violations of the PDPA may be enforced as administrative offences, analogous to civil penalties, punishable by fines, and as crimes, punishable by larger fines and penalties and/or imprisonment.

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- 2 -

APP00871

PA690

1 6. I further understand that Article 19 of the PDPA prohibits transfers of personal
2 data outside Macau, unless the destination jurisdiction ensures "an adequate level of protection,"
3 and subject to compliance with the conditions imposed by the PDPA. What constitutes "an
4 adequate level of protection" is defined in analogous terms to the European Directive. Transfers
5 can only be made if the destination jurisdiction, or the transfers themselves, appear on a list
6 maintained by the OPDP. No such list has yet been published by the OPDP whose approach is to
7 deal with requests for consent on a case by case basis pursuant to Article 20 of the PDPA. Article
8 20 of the PDPA contains a list of "derogations" or exceptions to Article 19, which are similar to
9 the exceptions contained in Article 26 of the European Directive.

10 7. I further understand that, generally speaking, a transfer of personal data to a
11 destination outside Macau requires the consent of the data subject, or consent from the OPDP, to
12 be obtained prior to the transfer taking place. The OPDP has indicated that it would be unlikely to
13 give its consent to a transfer of personal data to a jurisdiction that did not provide an adequate
14 level of protection for personal data, similar to the "safe harbor" or "safe haven" protection
15 measures provided to individuals in European jurisdictions. The alternative option would be for
16 the public or judicial authorities in the destination jurisdiction to approach the Macau Special
17 Administrative Region, through the usual diplomatic or mutual legal assistance channels, to
18 obtain assistance with facilitating a transfer of personal data.

19 8. The PDPA is a relatively new law in Macau, and I understand that many of its key
20 provisions have not been defined or applied. VML's understanding of the PDPA, as well as the
21 understandings of other companies operating in Macau, is evolving as affected companies and
22 OPDP gain experience with its application.

23 9. Beginning on May 13, 2011 and thereafter, representatives of Venetian Macau
24 Ltd. ("VML") have had a number of communications and meetings with the OPDP regarding the
25 collection, review and transfers of Macau documents in response to subpoenas issued by U.S.
26 government authorities and/or in connection with the Jacobs litigation. Although I understand the
27 specifics of the communications are confidential, the OPDP made clear that it regards the
28 transfers of personal data from Macau as being subject to the PDPA, that OPDP will strictly

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- 3 -

APP00872

PA691

1 enforce the PDPA, and that failure to comply with the PDPA may result in civil and criminal
2 penalties.

3 10. On March 7, 2012, a meeting was held at the OPDP. The meeting was attended by
4 representatives of Las Vegas Sands Corp. ("LVSC"), SCL, and VML. Although I did not attend
5 this meeting, I understand there was a discussion of a proposed transfer of data from Macau to the
6 U.S. in connection with a subpoena issued by the United States Securities and Exchange
7 Commission ("SEC") and in connection with the Jacobs case. I further understand OPDP
8 representatives stated that personal data could not be transferred without a request by VML and
9 advance approval from OPDP, and there was no assurance that such approval would be provided
10 absent consent of the data subject. Moreover, I understand OPDP stated that any transfer of
11 personal data in connection with the SEC subpoena and the Jacobs case must comply with the
12 PDPA.

13 11. On May 28, 2012, I met with a representative of the OPDP to discuss past data
14 transfers. It was only as a result of this meeting that LVS and SCL achieved a level of comfort
15 that the production of documents previously transferred from Macau to the U.S. would not
16 constitute a separate violation of the PDPA. Nevertheless, past transfers of data from Macau
17 could result in enforcement action to the extent that such transfers result in the disclosure of
18 personal data in a manner that undermines the purposes of the PDPA.

19 ~~12. On June 27, 2012, I sent a letter to OPDP that (a) notifies OPDP of the~~
20 ~~circumstances surrounding the proposed transfer of data from Macau to the U.S. in connection~~
21 ~~with the SEC subpoena and the Jacobs case, (b) explains why VML believes that the transfer is~~
22 ~~consistent with the PDPA, and (c) solicits OPDP's concurrence for the proposed transfer.~~

23 13. I am informed and believe that LVSC and SCL made submissions to the Court on
24 June 27, 2012 and July 6, 2012 in which they disclosed that data had been transferred from
25 Macau to the U.S. These disclosures were reported by the press, including a July 27, 2012 story
26 by ProPublica.¹

27 ¹ [http://www.propublica.org/article/new-questions-about-sheldon-adelsons-casino-operations-in-](http://www.propublica.org/article/new-questions-about-sheldon-adelsons-casino-operations-in-macau)
28 [macau.](http://www.propublica.org/article/new-questions-about-sheldon-adelsons-casino-operations-in-macau)

1 14. On July 31, 2012, OPDP sent a confidential letter notifying VML that OPDP had
2 launched an official investigation procedure in relation to the alleged transfer from Macau by
3 VML to the United States of certain data. On August 1, 2012, with OPDP's knowledge, SCL
4 filed a Voluntary Announcement with the Hong Kong Stock Exchange regarding this event. A
5 true and correct copy of the Voluntary Announcement is attached hereto as Exhibit A. On August
6 1, 2012, LVSC filed a Form 8-K with the United States Securities and Exchange Commission,
7 which in turn attaches SCL's Voluntary Announcement. A true and correct copy of the Form 8-K
8 is attached hereto as Exhibit B.

9 15. On August 2, 2012, Francis Tam, Macau's Secretary for Economy and Finance,
10 gave an interview, which was subsequently reported in the press, in which he stated that if OPDP
11 finds "any violation or suspected breach" of the PDPA, the government "will take appropriate
12 action with no tolerance. Gaming enterprises should pay close attention to and comply with
13 relevant laws and regulations."²

14 16. On the evening of August 14, 2012, VML received a confidential letter from the
15 OPDP dated August 8, 2012 in response to VML's letter of June 27, 2012 rejecting the
16 Company's outline of a procedure to allow data transfers to the U.S. in connection with the SEC
17 subpoena and Jacobs litigation, absent consent of the subject of the data transfer, in favor of
18 procedures available under international legal assistance provisions of the law.

19 17. ~~Nothing in this declaration is intended to be a waiver of any privileges, including~~
20 ~~but not limited to, the attorney-client privilege and the attorney work product privilege, all of~~
21 ~~which are expressly reserved.~~

22 ~~I declare under penalty of perjury under the laws of the State of Nevada that the foregoing~~
23 ~~is true and correct, and that I am physically located outside the geographic boundaries of the~~
24 ~~United States, Puerto Rico, the United States Virgin Islands and any territory or insular~~
25

26 ² http://www.macaodaily.com/html/2012-08/03/content_721150.htm;
27 <http://www.macaodailytimes.com.mo/macau/37657-francis-tam%3A-gov%E2%80%99t-won%E2%80%99t-tolerate-corporate-irregularities.html>;
28 <http://www.macaubusiness.com/news/little-room-for-more-new-tables-gov%e2%80%99t/17752/>

1 possession subject to the jurisdiction of the United States.

2 Executed on the 21st day of August, 2012, at Macau, S.A.R., China.

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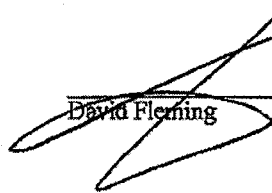
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David Fleming

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- 6 -

APP00875

PA694

eh1200947_ex9901.htm

Page 1 of 1

EX-99.1 2 eh1200947_ex9901.htm EXHIBIT 99.1

EXHIBIT 99.1

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SANDS CHINA LTD.

金沙中國有限公司 *

(Incorporated in the Cayman Islands with limited liability)

(Stock Code: 1928)

Voluntary Announcement

Sands China Ltd. (the "Company") notes that its subsidiary, Venetian Macau Limited ("VML") has received a notification from the Office for Personal Data Protection of the Government of the Macao Special Administrative Region of the People's Republic of China (the "OPDP") indicating that the OPDP has launched an official investigation procedure in relation to the alleged transfer from Macao by VML to the United States of America of certain data.

The Company is unable to comment further at this time.

By Order of the Board
Sands China Ltd.
David Alec Andrew Fleming
Company Secretary

Macao, August 1, 2012

As at the date of this announcement, the directors of the Company are:

Executive Directors:

Edward Matthew Tracy
Toh Hup Hock

Non-executive Directors:

Sheldon Gary Adelson
Michael Alan Leven (*David Alec Andrew Fleming as his alternate*)
Jeffrey Howard Schwartz

Irwin Abe Siegel
Lau Wong William

Independent non-executive Directors:

Iain Ferguson Bruce
Chiang Yun
David Muir Turnbull

* For identification purposes only

<http://www.sec.gov/Archives/edgar/data/1300514/000095...> 8/1/2012

APP00876

PA695

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Page 1 of 4

8-K 1 eh1200947_8k.htm FORM 8-K

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (date of earliest event reported):
August 1, 2012

LAS VEGAS SANDS CORP.
(Exact name of registrant as specified in its charter)

NEVADA
(State or other jurisdiction
of incorporation)

001-32373
(Commission File Number)

27-0099920
(IRS Employer
Identification No.)

3355 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA
(Address of principal executive offices)

89109
(Zip Code)

Registrant's telephone number, including area code: (702) 414-1000

NOT APPLICABLE
(Former name or former address, if changed since last report)

Check the appropriate box if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (See General Instruction A.2. below):

- ☐ Written Communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

<http://www.sec.gov/Archives/edgar/data/1300514/000095...> 8/1/2012

APP00877

PA696

Item 7.01 Regulation FD Disclosure.

On August 1, 2012, Sands China Ltd. ("SCL"), a subsidiary of Las Vegas Sands Corp. with ordinary shares listed on The Stock Exchange of Hong Kong Limited (the "SEHK"), filed an announcement (the "Announcement") with the SEHK stating that SCL's subsidiary, Venetian Macau Limited ("VML"), has received a notification from the Office for Personal Data Protection of the Government of the Macao Special Administrative Region of the People's Republic of China (the "OPDP") indicating that the OPDP has launched an official investigation procedure in relation to the alleged transfer from Macao by VML to the United States of America of certain data. The Announcement is attached as Exhibit 99.1 to this report and is incorporated by reference into this item.

The information in this Form 8-K and Exhibit 99.1 attached hereto shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, nor shall they be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, except as shall be expressly set forth by specific reference in any such filing.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

99.1 SCL announcement, dated August 1, 2012.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report on Form 8-K to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: August 1, 2012

LAS VEGAS SANDS CORP.

By: /s/ Ira H. Raphaelson

Name: Ira H. Raphaelson

Title: Executive Vice President and Global
General Counsel

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<http://www.sec.gov/Archives/edgar/data/1300514/000095...> 8/1/2012

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INDEX TO EXHIBITS

99.I SCL announcement, dated August 1, 2012.

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APP00880

PA699

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ORIGINAL

Steven D. Jacobs

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

TELEPHONE CONFERENCE

WEDNESDAY, AUGUST 29, 2012

COURT RECORDER:

TRANSCRIPTION BY:

SANDRA PRUCHNIC
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

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

RECEIVED
SEP 11 2012
CLERK OF THE COURT

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PA700

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
BRAD D. BRIAN, ESQ.

FOR HOLLAND & HART:

CHARLES H. McCREA, JR., ESQ.
SAMUEL LIONEL, ESQ.

1 LAS VEGAS, NEVADA, WEDNESDAY, AUGUST 29, 2012, 4:37 P.M.

2 (Court was called to order)

3 THE COURT: Good afternoon, everyone, including our
4 new arrival. This is Judge Gonzalez. Can you all identify
5 yourselves for purposes of my record.

6 MR. MCCREA: Good afternoon, Your Honor. This is
7 Sam Lionel and Charles McCrea.

8 MR. LIONEL: Good afternoon, Your Honor.

9 THE COURT: That would be my new arrivals. Welcome
10 to our case.

11 MR. MCCREA: Thank you.

12 MR. PEEK: Good afternoon, Your Honor. And, Your
13 Honor, this is Stephen Peek on behalf of Las Vegas Sands Corp.

14 MR. BRIAN: Brad Brian on behalf of Sands China
15 Limited.

16 MR. BICE: Good afternoon, Your Honor. Todd Bice,
17 Jim Pisanelli, and Debbie Spinelli and Eric Aldren on behalf
18 of Mr. Jacobs.

19 THE COURT: All right. So, Mr. McCrea, you asked
20 for this call.

21 MR. MCCREA: Yes, Your Honor. We were retained a
22 little over an hour ago to represent Las Vegas Sands and Sands
23 China Limited in the hearing tomorrow. We were advised I
24 think today that their lawyers were going to be put under oath
25 tomorrow and questioned by not only yourself, but opposing

1 counsel. And we have -- we have some very serious concerns
2 concerning attorney-client privilege that they have
3 specifically retained us to address. And we don't feel that
4 we have an adequate background in this case at this point to
5 proceed tomorrow. We would respectfully request a short
6 continuance to allow us to familiarize ourselves with the
7 pleadings that have been filed and to meet with our client and
8 their representatives. There's some very serious issues that
9 are raised by these proceedings, and we want to make sure that
10 our clients are adequately represented.

11 THE COURT: Mr. Bice.

12 MR. BICE: Yes, Your Honor. I agreed -- Mr. McCrea
13 called me and he had asked for a continuance. I talked with
14 my team, as well as my client, who has just flown in. I told
15 Mr. McCrea that I would not agree to his request for a
16 continuance, but out of respect for the Court I would agree to
17 this phone call, because I didn't want you getting surprised
18 by his request tomorrow. So I understand that's why we're all
19 here on the phone.

20 My position, Your Honor, and I'm sure it's not going
21 to surprise you, is that there is no grounds for a
22 continuance. The fact that the lawyers will be put under oath
23 is an issue of insignificance. They had a duty of candor
24 regardless of whether they're under oath. The fact that you
25 informed them today that they were going to be under oath

1 could in no way really change or alter the issues that were
2 going to arise at this hearing and any claims of privilege
3 that were going to arise at this hearing.

4 We have scheduled this hearing now I think more than
5 a month ago to accommodate everybody's schedules, and set it
6 aside for two days so we can conduct this. You had always
7 indicated that we were going to be able to ask questions at
8 this hearing and that the Court was going to ask questions at
9 this hearing. They have a large group of lawyers already for
10 these two clients, who have asserted privileges at the
11 depositions of another lawyer that was deposed, Mr.
12 Kostrinsky, and they will -- no doubt are fully prepared to
13 assert their privileges tomorrow to the extent that they are
14 applicable and that we can deal with them. And -- you know,
15 and they already have filed their 31-page brief explaining
16 this.

17 The significance of people being put under oath,
18 especially parties that -- or persons that already owed the
19 Court a duty of candor by officers of the Court is
20 insignificant, and certainly in our view does not justify
21 completely derailing this when we have been preparing eagerly
22 to proceed with this function and it has largely sort of --
23 you know, it's occupied this case, and we would like to get on
24 with it.

25 THE COURT: Anybody else want to say anything before

1 I go back to Mr. McCrea?

2 MR. PEEK: Yes, Your Honor. I would like to say
3 something. This is Stephen Peek.

4 When the Court first ordered this hearing its
5 comment was that it wanted to hear from Michael Kostrinsky and
6 wanted the data that was transferred into the U.S. to be
7 available at the hearing, and that was set for I think two
8 weeks hence. It then expanded a little bit more as time went
9 on into, I want to hear from Peek, I want to hear from Glaser,
10 to now, I want to put these folks under oath and there will be
11 additional witnesses who may or may not have said something to
12 me and I want to hear from those individuals who made any
13 representation to me, I want to put them under oath, I'm going
14 to ask him questions, Mr. Bice will be allowed to ask them
15 questions and the rest of you -- you said to Mr. Brian, you
16 will also be allowed to ask questions. And I think that was
17 directed at me, as well.

18 As I left I began to think about the potential
19 issues that were raised by that. One is that I'm now
20 potentially adverse to my client based on some of the comments
21 the Court made this morning as to whether representations were
22 by me or representations were by the client and how those came
23 about. That certainly is attorney-client issues, as well.
24 But if the Court wants to inquire into that, I'm going to need
25 somebody there to tell me when to assert the privilege.

1 It also raises the witness advocates, as well,
2 issue, which I hadn't thought about until this morning when
3 you said that to me about being put under oath. Those are the
4 reasons why after consultation with the client Mr. Brian and I
5 recommended that they seek independent counsel. And they did.

6 THE COURT: And they hired your good friend Mr.
7 McCrea from the Newton case.

8 MR. PEEK: Yes, sir, I did -- or, yes, ma'am, I did.

9 MR. BRIAN: Your Honor, this is Brad Brian. I don't
10 want to repeat what Steve Peek said, but let me just weigh in
11 briefly.

12 I raised the issue at the end of the hearing today
13 because I had understood until very recently that -- as Mr.
14 Peek said, that Your Honor was interested in hearing from Mr.
15 Kostrinsky and then from Mr. Singh. You expressed interest in
16 hearing from Mr. Peek and Ms. Glaser, and we arranged that,
17 although I --

18 THE COURT: I don't think I just expressed interest
19 in hearing from Ms. Glaser. It was pretty definite.

20 MR. BRIAN: I'm sorry, Your Honor. I don't mean to
21 misstate it. I just -- the people you've identified, they
22 were Mr. Kostrinsky, eventually Mr. Singh, Mr. Peek, and Ms.
23 Glaser. And I asked the question this morning because I know
24 Mr. Bice was being [unintelligible] that they've not formed a
25 view that they're accusing Munger, Tolles & Olson of having

1 any -- acting improperly, but he said he's going to inquire.
2 That, coupled with the prospect of being put no notice, we
3 talk to our in-house general counsel, and our firm has a
4 concern, and we therefore advised the client that we're in a
5 position where -- I don't know that we're adverse to the
6 client yet, but it does an issue. And we felt that it was
7 important to advise the client so that the client could get
8 independent representation so that we're not being asked to
9 decide essentially whether to answer a question or to assert
10 privilege at the same time when you're wearing two hats as a
11 witness and lawyer.

12 I don't think anybody's asking for a lengthy
13 continuance. The hearing was continued once not at our
14 request. I think people were thinking about the week of
15 September 10th. So no one's thinking about a lengthy
16 continuance. It's a very serious issue, and everybody on this
17 side is taking it very seriously, as the Court is and as Mr.
18 Bice and his team are.

19 THE COURT: Well, it just so happens that yesterday
20 Mr. Peek and Mr. McCrea made that week available, huh?

21 MR. MCCREA: Yes, we did, Your Honor.

22 MR. PEEK: Yes, we did, Your Honor.

23 THE COURT: All right. Mr. Bice, what else do you
24 want to tell me?

25 MR. BICE: I understand and I can recognize some of

1 the concerns that are being expressed; but, nonetheless, these
2 issues exist regardless of whether or not these people are put
3 under oath. They have this exact same duty of candor and to
4 disclose all the material facts to the Court whether they're
5 under oath or not under oath. The fact that the Court
6 revealed today that the reference came up to them being under
7 oath, which was I believe was prompted by a question by Mr.
8 Brian, really doesn't have anything to do with why they are
9 suddenly desiring to have separate counsel.

10 They have now decided to have separate counsel, it
11 seems to me, because they don't want to be the ones to be
12 deciding whether or not they should be answering certain
13 questions or not. Having made representation to the Court, I
14 don't believe that it would be permissible to start invoking
15 privileges in which to withhold information from the Court on
16 the very same subject matters that they've already made
17 representations on. You can't have it both ways.

18 So I don't believe that there really can be any
19 grounds to say, well, now that because the Court has indicated
20 that people will be put under oath that they somehow now need
21 to have separate counsel and that there needs to be a
22 continuance in order to accommodate that.

23 THE COURT: Okay. Well, let me just make the record
24 clear. Nobody ever asked me before today whether it was my
25 intention to have counsel sworn when they testified in an

1 evidentiary hearing. When I was asked the question today I
2 answered as I had anticipated the proceeding would always
3 occur. I'm certainly sorry, Mr. Brian, that you didn't
4 realize that previously. I certainly understand that it can
5 put counsel in a difficult position. But this really isn't
6 that complicated a hearing. It's why were misrepresentations
7 made to me for a year and a half. That's really all it is.
8 And I've got a bunch transcripts and I've got a bunch of
9 affidavits where people told me stuff that has turned out to
10 be clearly untrue. And I'm going to get to the bottom of it.

11 The question is should I give Mr. McCrea and Mr.
12 Lionel a break and give them a week or two to straighten it
13 out. And that's really what the issue is. Because I think
14 this is engineered, personally, but I don't want to put
15 anybody in a bad situation.

16 MR. MCCREA: Your Honor, this is Charles McCrea. We
17 are not trying to derail these proceedings in any way. All we
18 want to do is be given the opportunity to come up to speed on
19 what it is that is exactly before you and to be able to
20 properly assert whatever privileges we have to assert in this
21 proceeding.

22 As you know, I believe, there are a lot of other
23 actions pending involving our clients, including investigative
24 proceedings by governmental authorities both here and in
25 China, and the information that is going to be delved into in

1 tomorrow's proceeding, or what is presently scheduled for
2 tomorrow, is -- concerns issues that are implicated in all
3 those other -- or many of those other investigations. And we
4 feel that our client truly needs prepared and appropriate
5 representation in those proceedings. They would be greatly
6 prejudiced without that.

7 THE COURT: Okay. Anything else, Mr. Bice?

8 MR. BICE: Yes, Your Honor. I mean, everything that
9 Mr. McCrea has stated they have known about since the day that
10 this Court convened this evidentiary hearing. None of this
11 information is new. These investigations have not just been
12 opened. This investigations have been pending for many, many
13 months, in fact in some of the instance over a year. So this
14 isn't new information that warrants a delay, an additional
15 delay. This information has been known to them all along.
16 And to now come and say, well, the -- what's going to be
17 discussed tomorrow is going to implicate those things, it may
18 very well be the case that it's going to. But it's always
19 been going to. Nothing has changed between the opening of
20 those investigations and the scheduling of this hearing.

21 THE COURT: All right.

22 MR. BRIAN: Your Honor, this is -- Your Honor, this
23 is Brad Brian. Just briefly. Your Honor made a comment that
24 -- I think I heard it right, that you commented that possibly
25 this has been engineered, and I didn't quite understand that.

1 But I can assure the Court that this is not something that
2 anybody is trying to engineer. We really are not. And for
3 precisely the reason that Mr. Bice stated, that you have a
4 situation where the Court and counsel are going to inquire as
5 to representations into the court and the witness lawyer may
6 well have an interest in answering questions that the company
7 may choose to assert privilege. And it puts the witness
8 lawyer in a position of conflict of having to decide whether
9 he or she wants to answer or a question but the company may
10 want to assert the privilege. That's the issue. And the fact
11 that it's under oath makes a difference in the level of
12 formality. I agree with Mr. Bice, of course there's a duty of
13 candor. But it does create more starkly the issue that I just
14 raised. It's not a question of counsel trying to engineer
15 anything. It's trying to do the best job for our client. And
16 all that's being asked for is I think a continuance to the
17 week of September 10th, which I think is just a two-week
18 continuance.

19 MR. LIONEL: If Your Honor pleases. Mr. Lionel.
20 This request for a short continuance is made in absolute good
21 faith. Mr. McCrea and I are not prepared to go in there and
22 represents the clients tomorrow. We need at least until week
23 of the 10th so that we can properly prepare.

24 THE COURT: And it's really handy. I vacated the
25 Newton hearing yesterday.

1 MR. BICE: Your Honor, this is Todd Bice. I do have
2 some additional points that I do need to make, because --

3 THE COURT: Then please make them before I tell you
4 what we're going to do.

5 MR. BICE: There is a lot of things that are afoot
6 relative to Mr. Jacobs, more so than just this case and
7 something that the Sands and its counsel are well aware of.
8 And they are well aware that there are ongoing proceedings in
9 Florida that Mr. Adelson instituted where he claimed that the
10 affidavit filed in your court was defamatory.

11 Now, set aside for the moment that Mr. Adelson, of
12 course, has claimed that everything he says is absolutely
13 privileged. He still filed an action in Florida over the
14 filing of that affidavit, claiming it was defamatory. Of
15 course, we have responded to that and in fact had scheduled
16 Mr. Adelson's deposition for September the 14th. We believe
17 that there are some games going on and suddenly Mr. Jacobs's
18 deposition was then scheduled by them for September the 7th,
19 and they are insisting that it has to go forward and that Mr.
20 Adelson, of course, wasn't -- we had originally scheduled his
21 deposition here in August, and he wasn't available at all
22 until after this -- at the end of August, which just happened
23 to coincide with this Court's evidentiary hearing.

24 So I think, again -- you know, I'm not trying to
25 accuse counsel of scheduling or rigging events here so as to

1 postpone this, but I do have to think that this is playing a
2 role in this sudden desire to now have new counsel appear
3 while at the same time everything that they are pointing out
4 is something that they have known about for the last two
5 months.

6 MR. PEEK: Your Honor, you know what my schedule has
7 been. And so when he says that I just wasn't available -- or
8 that Mr. Adelson wasn't available, it was that I wasn't
9 available, and I said we could do Mr. Adelson in September.
10 And we picked dates in September. We still had a little bit
11 of -- something to work out, whether it's going to be on the
12 6th or the 7th. They chose the 6th, and I said, I'm not
13 available -- Mr. Adelson's not available on the 6th, and we do
14 have the 7th. I haven't heard back from them. But Mr.
15 Adelson is available and plans on giving his deposition on the
16 7th.

17 MR. BICE: And the reason -- and the reason, Your
18 Honor, that Mr. Adelson is only available on the 7th I'm sure
19 has nothing to do with the fact that his Florida counsel is
20 insisting that Mr. Jacobos's deposition has to go on the 7th.

21 MR. PEEK: I'm not involved in the Florida action,
22 Your Honor.

23 MR. BICE: See, this whole thing is there's this
24 game playing going on with respect to scheduling, Your Honor.
25 And --

1 MR. BRIAN: Todd, that's just not true. That's not
2 true.

3 MR. BICE: Brad, that is true. I know what's going
4 on in the Florida case. If you don't, then don't say it's not
5 true. And if you do, however -- if you do know what's going
6 on, then you know it is true. So --

7 THE COURT: I'm not really worried about the Florida
8 case right now. I'm worried about the sanctions hearing which
9 I sua sponte set as a result of learning that
10 misrepresentations had been made to me in court and in
11 pleadings.

12 The question that I have is, Mr. Bice, how much have
13 you spent prepping for this hearing?

14 MR. BICE: Oh. I don't know.

15 THE COURT: Come on. Give me your best estimate.

16 MR. BICE: Well, certainly the last -- certainly the
17 last two days or probably three days, not a full three days
18 for me, certainly the last three full days for Ms. Spinelli
19 and Mr. Pisanelli, and the last two days for me. And Mr.
20 Jacobs, you know, has flown here, and --

21 THE COURT: Well, those are the questions I'm now
22 asking, Mr. Bice. So tell me. Ho much? Because I'm going to
23 give some people some information before I tell them what
24 we're going to do.

25 MR. BICE: I apologize, Your Honor. People here in

1 the office are asking me questions. I mean -- hold on, Your
2 Honor. I apologize.

3 THE COURT: It's all right.

4 The defendants' firm is going to pay for the
5 overtime. The reason the defendants' firm is paying for the
6 overtime is this is Steve Peek's fault. And I don't care if
7 the firm or the party, but that's how we're going to have to
8 do it; because otherwise I can't finish today.

9 Did you hear me, Mr. Went? Because Mr. Peek is the
10 one keeping me from hearing the closing arguments, you guys
11 have to pay the overtime. I don't care how it gets allocated
12 back at your office, but I have to have the overtime billed to
13 a party or I can't finish your case today.

14 MR. WENT: We'll figure it out, Your Honor. Thank
15 you.

16 THE COURT: I know you will. That's why I'm just
17 telling you while Mr. Peek's on the phone.

18 MS. LOVELACE: Absolutely.

19 MR. WENT: Thank you, Your Honor.

20 MR. PEEK: I got that, Your Honor.

21 THE COURT: I know you did. I was just taking care
22 of my part here in the courtroom that I've been trying to
23 finish, too. Because these guys don't want to have to come
24 back tomorrow.

25 MR. PEEK: I don't want them to come back, either,

1 Your Honor.

2 THE COURT: Best estimate, Mr. Bice.

3 MR. BICE: Well, attorneys' fees that we've incurred
4 over the last -- course of the last three days are going to be
5 about \$21,000. I have no idea what Mr. -- well, that's not
6 really true, because I've got another one of my associates --
7 it's going to be more than \$25,000, and my client's travel
8 expenses, I don't know what they are.

9 THE COURT: So they're probably about two grand;
10 right?

11 MR. BICE: Probably.

12 THE COURT: Okay. So my best guess is Mr. Peek, Mr.
13 Lionel, Mr. McCrea, Mr. Brian, that I will be happy to grant
14 this short extension. Although it smells bad to me, I think
15 it is the right thing to do. But because of the delay, I will
16 require that the reasonable attorneys' fees and travel
17 expenses incurred by Mr. Jacobs and his counsel be reimbursed.
18 Mr. Bice will have to file a separate motion related to that,
19 but I wanted you to have an idea about what that dollar value
20 was before I told you what my ruling was.

21 MR. PEEK: But you're not -- you're not saying, Your
22 Honor, the twenty-five, \$27,000. We at least get to say, you
23 haven't lost all of that time, you certainly had the benefit
24 of that?

25 THE COURT: Yes.

1 MR. PEEK: As to the separate motion.

2 THE COURT: Yes. That's a separate motion Mr. Bice
3 will file, but I wanted you to know whether he thought it was
4 \$100,000 or \$5,000 before I got to that point.

5 MR. BICE: All right. And just so we're clear, to
6 the extent I have to file a motion, that would be included in
7 that request, Your Honor?

8 THE COURT: Yes. You will add that to your request.
9 But I wanted them to have an idea of the area in which you
10 will be asking for that reimbursement, okay.

11 Anybody else have a question? Who's calling all the
12 TV crews to tell them not to come?

13 MR. PEEK: What days, Your Honor, of the week of the
14 10th you're going to hear this? Because I know Mr. Brian has
15 to be in New Orleans on the 14th.

16 MR. BRIAN: And, Your Honor, my only comment -- and
17 Mr. Bice -- this is Mr. Brian -- was I was just trying assure
18 the Court that the request for a continuance has nothing to do
19 with polishing up the case in Florida. I wasn't speaking
20 about depositions. It was simply we're not trying to affect
21 that case in any way by asking for this short continuance,
22 that's all.

23 THE COURT: I'm going to let the Florida judge
24 figure that out. I've already dealt with the defamation claim
25 that was filed against Mr. Adelson in this case and dismissed

1 it because of the privilege that is associated with those kind
2 of disclosures in litigation. But I'll let the Florida judge
3 decide what the issues are in his case or her case.

4 So we will start at 1:00 o'clock on September the
5 10th, and go until we're finished. I am hopeful that we'll
6 only be two days. Right? So that means we may go into the
7 Wednesday. But Mr. Brian should be able to make his
8 appointment in New Orleans.

9 MR. BRIAN: I appreciate that, Your Honor. Thank
10 you.

11 THE COURT: All right.

12 MR. LIONEL: Thank you, Your Honor.

13 THE COURT: All right. And will you please
14 apologize to Mr. Jacobs for me that the late notice of this --
15 I'm going to have to find somebody to call all the TV crews
16 who had already inquired about what time they could come set
17 up in the morning.

18 MR. BICE: Well, we will, Your Honor. But we need
19 -- we need an opportunity to confer with Mr. Jacobs. I don't
20 know what his schedule is.

21 THE COURT: Okay. Is he there with you?

22 MR. BICE: He is not. Can we go on hold here for
23 just one second?

24 THE COURT: Yes, you can.

25 MR. BICE: Thank you, Your Honor.

1 (Pause in the proceedings)

2 THE COURT: All right. What, Mr. Bice?

3 MR. BICE: After having my client yell at me, he
4 will adjust his schedule and be here on the 10th.

5 THE COURT: All right. Thank you. See you guys
6 then.

7 MR. BRIAN: Thank you, Judge.

8 MR. PEEK: Thank you, Your Honor.

9 THE PROCEEDINGS CONCLUDED AT 5:03 P.M.

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CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146


FLORENCE HOYT, TRANSCRIBER

9/7/12

DATE

Electronically Filed
09/11/2012 11:09:23 AM


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

HEARING ON DEFENDANTS' MOTION TO QUASH SUBPOENAS

WEDNESDAY, AUGUST 29, 2012

COURT RECORDER:

TRANSCRIPTION BY:

SANDRA PRUCHNIC
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

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APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
BRAD D. BRIAN, ESQ.
HENRY WEISSMAN, ESQ.

1 LAS VEGAS, NEVADA, WEDNESDAY, AUGUST 29, 2012, 9:14 P.M.

2 (Court was called to order)

3 THE COURT: Good morning.

4 Mr. Peek, this is your motion.

5 MR. PEEK: Thank you, Your Honor.

6 MR. BRIAN: Your Honor, Mr. Peek, maybe because he's
7 been working so hard, he's asked me to argue this one this
8 morning. Brad Brian.

9 (Off-record colloquy)

10 MR. BRIAN: Your Honor, aside from the plaintiff's
11 continuing harsh rhetoric, their opposition really offers no
12 substantive response to the points we make in our motion to
13 quash.

14 Let me start with the Rule 30(b)(6) subpoena. We
15 cite --

16 THE COURT: Though Rule 30(b)(6) is only for
17 depositions, not for trial.

18 MR. BRIAN: It's a discovery rule.

19 THE COURT: Yeah, it's a discovery rule. Okay.

20 MR. BRIAN: It's a discovery rule, and there's no
21 case that says that it can be used to subpoena people to trial
22 or an evidentiary hearing. They don't cite one. What they do
23 is they complain about the 30(b)(6) of Mr. Sing, who I would
24 say was deposed until I think about 4:40 p.m., answered
25 hundreds of questions, was pretty forthright when he was

1 unable to answer questions. We said we'd bring him back.
2 It's just not an issue. You can't use a 30(b)(6) to bring
3 somebody to the Court's hearing tomorrow.

4 I should say that as to Mr. Sing Your Honor has
5 expressed desire to have Mr. Sing here tomorrow, and he'll be
6 here. There's no need to subpoena Mr. Singh. He will be at
7 the court. We've said that to Your Honor because you asked
8 for it, and he'll be here.

9 So let me turn to some of the witnesses. And I want
10 to start with Mike Leven. The Court --

11 THE COURT: Hold on. Before you do that, Max
12 mentioned that there was a letter that was sent by Mr.
13 Kostrinsky's counsel. I'm sorry to interrupt, it's just I'm
14 afraid I'm going to forget. I haven't read it, because I
15 don't read letters from counsel. But have you all gotten it?

16 MR. PEEK: I have gotten it, and I have read it,
17 Your Honor, yes.

18 THE COURT: So can somebody tell me if there's a
19 plan with respect to Mr. Kostrinsky like where we want to
20 [unintelligible]?

21 MR. BRIAN: Here's the plan as we understand it,
22 Your Honor. His -- Mr. Kostrinsky -- we found out about this
23 when we got the letter. We advised him of the two-day hearing
24 and asked that he be available. We got the letter which says
25 that Mr. Kostrinsky's not available Thursday morning and asked

1 if he could appear either Thursday afternoon or Friday.

2 THE COURT: Is that okay with everybody?

3 MR. BRIAN: Well, our view is -- and we've actually
4 gotten back to his lawyer and we said we'd really like him to
5 be here Thursday. It's our hope that we'll finish this in a
6 day, so we'd like him to come here Thursday. That was our
7 view. And I don't know if he's responded to that or not.

8 MR. PEEK: Your Honor, Mr. Owens and I were together
9 yesterday, and Mr. Owens spoke to David. He blames the
10 schedule on you because of your triple tracking in the MGM,
11 Your Honor. He's apparently one of the --

12 THE COURT: CityCenter.

13 MR. PEEK: On the CityCenter, yeah.

14 THE COURT: Yes. And Mr. Kostrinsky's working on
15 that case.

16 MR. PEEK: He is. So he was --

17 THE COURT: He comes into court.

18 MR. PEEK: He was like, I'm in depositions the Court
19 said I had to do.

20 THE COURT: He is.

21 MR. PEEK: So we got that, Your Honor --

22 THE COURT: As is everybody else in town.

23 MR. PEEK: -- and we said, we're fine in the
24 afternoon as long as it's okay with the Court. But we --

25 THE COURT: Here's the only caveat I will give you.

1 As yesterday, sometimes things don't go as planned. And
2 yesterday my motion calendar started 15 minutes late because
3 of a traffic issue, which really isn't Mr. Peek's fault, but
4 he was the one who was the victim of it. And I didn't finish
5 with my Planet Hollywood motions for summary judgment before
6 noon. And so I didn't finish their motions, I had to send
7 them away. I'm not having them come back on Thursday, because
8 I didn't want them to interrupt your hearing and further throw
9 me off track. But I do have several other cases that are on
10 calendar on Thursday. So you all know I do my best to be
11 ready when I tell you I will, but sometimes it's things that
12 are out of my control.

13 One of the potential problems that I have is a case
14 that I call brothel wars.

15 MR. BRIAN: I'm not sure I want to ask why you call
16 it that.

17 THE COURT: And if that case is resolved as they
18 told me it's resolved, then it's not a problem. If it's not
19 resolved, it's a time-consuming issue that they have
20 presented.

21 The other problem I have is a preliminary injunction
22 hearing on a merger. It either is going to go bad or it's
23 going to go quick. So, I mean, I'm just telling you. So when
24 you tell people, please tell them that, you know, be flexible
25 with their time, because it is difficult scheduling.

1 MR. BRIAN: Are those hearings all set for the
2 morning, Your Honor?

3 THE COURT: Everything's set for 8:30 tomorrow. I
4 have seven or eight things coming up.

5 MR. PEEK: Are you going to do Planet Hollywood as a
6 trail-over, too, Your Honor, or not?

7 THE COURT: No. Planet Hollywood's not coming back
8 till next Tuesday at 8:30 in the morning.

9 MR. BICE: Your Honor, we had subpoenaed Mr.
10 Kostrinsky to be here. We don't have any objections telling
11 Mr. Kostrinsky and his counsel, Mr. Lee, that he should not
12 show up until after 1:00 o'clock on Thursday, if that works
13 for him.

14 THE COURT: I think that's probably our best plan.
15 And the reason I think that's our best plan is there's going
16 to be some housekeeping issues that I'm going to want to
17 address.

18 MR. BICE: Understood.

19 THE COURT: We, that would be my staff and I and,
20 unfortunately, members of my family, have gotten sucked into
21 reviewing the transcripts related to prior representations
22 that were made to me. And for me that is a big deal, and
23 that's why -- as this is my hearing that is set, those are
24 things I'm going to concentrate on. So as you finish your
25 argument, separate and apart from Mr. Kostrinsky, who never

1 made a representation to me other than what was in the
2 affidavit, you know -- okay.

3 MR. BRIAN: Okay.

4 THE COURT: So keep going with your argument.

5 MR. BRIAN: Okay. So let me --

6 THE COURT: And was sorry to interrupt, but I was
7 afraid of that issue getting away from us.

8 MR. BRIAN: No. I think we're all in accord on
9 that. I think Mr. Bice's idea of the 1:00 o'clock is fine
10 with us, Your Honor, for Mr. Kostrinsky.

11 So I've covered the 30(b)(6) issue, and I've covered
12 Mr. Singh, who will be here tomorrow.

13 With respect to the other witnesses, Your Honor, let
14 me start with Mr. Leven. Mr. Leven is the number two ranking
15 officer of the Las Vegas Sands Corporation. And, as we say in
16 our brief, the courts have erected a very high standard before
17 a senior executive can be called into court to testify. So
18 the question is has the plaintiff met that very high standard.
19 And the only thing he says in his brief to try to meet that
20 standard is on the first line of page 8, where he says, and I
21 quote, "No major action or decision in legal takes place
22 without Leven's direction and authorization," unquote. No
23 citation, no authority. There is nothing to support that.
24 That is not enough under the caselaw to justify bringing in
25 that Las Vegas of officer for this hearing.

1 Your Honor has not been shy in saying what you're
2 interested in talking about. Mr. Leven did not make any
3 representations to the Court about Macau documents, about the
4 transfers of documents, not anything. He's not a party to
5 this action, and I would respectfully submit that they have
6 come woefully short of meeting their burden of justifying
7 bringing somebody like Mr. Leven to the court tomorrow.

8 So let me talk about the lawyers, Gayle Hyman,
9 Andrew Sedlock, and Justin Jones.

10 THE COURT: Ms. Hyman is in house. Everyone is
11 outside counsel.

12 MR. BRIAN: Ms. Hyman is in house. The other two
13 are outside counsel. We've dealt with Ms. Hyman before when
14 they sought to take her deposition. And you'll recall -- Mr.
15 Peek actually argued that motion, Your Honor. You'll recall
16 we brought -- we cited the Club Vista case, a recent Nevada
17 Supreme Court case that sets, again, a very high standard for
18 opposing -- for deposing opposing counsel and adopts expressly
19 the framework of the Eighth Circuit case Shelton versus
20 American Motors, which dealt with a deposition of in-house
21 counsel. And the Club Vista case adopts that standard. And
22 the standard is extraordinarily high.

23 You'll recall that Mr. Peek -- he can correct me if
24 I'm wrong -- Mr. Peek represented to the Court last time we
25 were here on this that Ms. Hyman was one of the supervising

1 attorneys to whom he reported in the 2011 time period on this
2 very lawsuit. So under the Club Vista standard and the
3 Shelton versus American Motors standard, the Court properly
4 rejected their attempt to take her deposition.

5 Now, they say, well, this is different, that this is
6 not a deposition, this is the Court's hearing. I recognize
7 there are different interests and different policies, but some
8 of those policies are the same. There should certainly be a
9 high standard before someone is permitted to bring that
10 lawyer, the in-house lawyer who was the supervising -- one of
11 the supervising attorneys on the case, into court to testify.
12 The only thing they really say in their brief to justify that
13 is that she sat in the courtroom in one or more hearings while
14 representations were made to the Court by Mr. Peek and Ms.
15 Glaser. And I would respectfully submit, Your Honor, that
16 that's simply not enough.

17 Mr. Sedlock, who was a lawyer at the time -- I don't
18 think he still is, but I think he was a lawyer then at the
19 Glaser Weil firm.

20 THE COURT: I think he's at Lewis and Roca now.

21 MR. BRIAN: I'm not sure, Your Honor.

22 MR. PEEK: I have Gordon & Silver, Your Honor.

23 THE COURT: Okay. Well, he's around, because he
24 comes in.

25 MR. BRIAN: Yeah. He's been subpoenaed -- we

1 understand he has been subpoenaed. The basis that's offered
2 in the brief to bring him before the Court is a declaration
3 that he filed with respect to Macau documents. What he says
4 in essence in that declaration -- I'm not saying it's the only
5 thing, but it's the thing at issue, I think, is that, quote,
6 "The overwhelming majority of documents were in Macau." That
7 was a true statement then, it's a true statement now. Ms.
8 Glaser will be here to answer the Court's questions. There's
9 no reason that Mr. Sedlock has to be here, as well.

10 With respect to Justin Jones, he is one of Mr.
11 Peek's partners. Mr. Peek, of course, will be here to answer
12 the Court's questions. I think that's enough. But if Your
13 Honor wants Mr. Jones here, he will be available. I defer
14 completely to Your Honor with respect to that.

15 THE COURT: Okay. Let me tell you what I wrote down
16 yesterday, and Mr. Bice doesn't even need to argue this,
17 because I know what Mr. Bice's position is, and he and I have
18 a slight disagreement as to how this hearing's going to be
19 conducted. But he's going to have his own hearing someday
20 when he files his own motion.

21 I expect that any attorney who made a representation
22 to me about the Macau documents or the Macau Data Privacy Act
23 will be present here in court to answer questions, whether
24 their representation was made in an affidavit or whether their
25 representation was made in open court. That's my expectation.

1 I have been told by you guys that certain witnesses
2 have been directed not to answer questions on the basis of
3 attorney-client privilege. That's fine. However, each
4 attorney who made a statement to me will answer to me as to
5 why they made those statements. If they don't come, that's
6 fine. I will assume whatever I need to based upon the other
7 evidence that is presented to me, and make appropriate
8 inferences about what was going on. But if people don't come,
9 then they're not going to be able to tell me anything else
10 about what their actions were than what I will be left to
11 infer based upon the transcripts that I've had pulled together
12 and reviewed and my recollection. And, you know, frankly,
13 gentlemen, the hours that have been spent by me and my staff
14 related to these issues over the last couple years is a very
15 disturbing amount of time, especially given what's happened
16 here.

17 MR. BRIAN: Your Honor, the only -- and we take
18 seriously, Your Honor, your statement. The only person -- as
19 you're making those comments the only person I'm thinking of,
20 and I may need help from Mr. Peek or Mr. Weissman, is Mr. Ma
21 from the Glaser Weil firm. He's in Los Angeles. He's beyond
22 subpoena power. We thought it was adequate to have Ms. Glaser
23 here. Mr. Ma was not planning on coming. I don't know if
24 Your Honor's requesting that he be here or not.

25 THE COURT: I don't -- at this point I can't tell

1 you whether Mr. Ma made any representations to me in court or
2 in an affidavit. If it turns out he did and he doesn't come,
3 that's okay, I'm going to listen to the evidence that is
4 presented to me, and I will make appropriate inferences based
5 upon the evidence that is presented to me.

6 MR. BRIAN: We'll look at that, Your Honor. In
7 reviewing the record I recall Mr. Ma made -- made certain --
8 made at least one appearance, maybe more. I don't know if it
9 was on those issues. I just have to go back and look at that
10 time. And I don't know whether we could prevail upon Mr. Ma
11 to get here.

12 THE COURT: The issues were pervasive.

13 MR. BRIAN: I know they were. I know. I understand
14 that. But that sort of goes to my -- I think your comment
15 kind of goes to my last point, which is we fully recognize
16 that Your Honor has certain concerns. You've set them forth.
17 Tomorrow is your hearing.

18 THE COURT: Most of you know that I'm not shy about
19 telling you when there's a problem.

20 MR. BRIAN: You've not been shy, Your Honor. And we
21 understand this. But the one thing we do think, and I think
22 it goes to your comment about a difference between you and Mr.
23 Bice about the scope of the hearing, tomorrow is your hearing.
24 It's not the plaintiff's hearing, it's not the plaintiff's
25 counsel's hearing.

1 THE COURT: But I'm going to let Mr. Bice ask
2 questions.

3 MR. BRIAN: I understand that.

4 THE COURT: I'm going to limit him if he seems to be
5 going too far afield for the purpose I'm conducting the
6 hearing, but, you know, he and I will have those discussions
7 as we get there.

8 MR. BRIAN: Yeah. I --

9 THE COURT: I don't think you can do this hearing in
10 a day given the number of transcripts that exist.

11 MR. BRIAN: Maybe, Your Honor. We'd like to do it
12 -- you know, we want to get through it, we want to get to the
13 merits as fast as we can. My only point is that it's your
14 hearing, it's not theirs. If and when they file a motion,
15 we'll have to deal with that.

16 THE COURT: That's correct. Then we'll have a
17 different hearing.

18 MR. BRIAN: That's a different hearing. And
19 tomorrow is your hearing, and I think this -- these subpoenas
20 that they have served, the 30(b)(6), the request for Ms.
21 Hyman, the request for Mr. Leven really go to issues that are
22 of concern to them. I think they go beyond what the Court has
23 indicated an interest in.

24 THE COURT: Well, what their position is, and I
25 clearly understand their position, the Sands and the lawyers

1 are lying to me, you guys have been lying to me for two years,
2 and you're still lying to me. And that's what their position
3 is, and I understand that. And, you know what, I have kids, I
4 know when people are lying. I can't tell you I know every
5 time somebody's lying, but I've got a history of being able to
6 identify issues and try and point out inconsistencies and try
7 to work through there. That's why I'm telling you if you
8 don't bring people I will make appropriate inferences based
9 upon the evidence that is presented to me.

10 MR. BRIAN: Well, I guess on that last point, Your
11 Honor, if anybody thinks that we're, quote, "still lying" to
12 the Court, I guess I'd like to know that.

13 THE COURT: I think people like your client, you or
14 your client, and I don't know which of these people, is still
15 lying to us. I can tell you from reading Mr. Bice's brief.
16 He's putting it in his brief.

17 THE COURT: Well, I guess we need to know that,
18 because --

19 THE COURT: Mr. Bice, do you think there's a lack of
20 candor occurring, whether it's counsel or the client?

21 MR. BICE: I do.

22 THE COURT: Okay.

23 MR. BRIAN: Then I --

24 THE COURT: See? Just so we're all clear.

25 MR. BICE: As of today, and that's what we intend to

1 show you in the next two days.

2 MR. BRIAN: Then we need to know that. We need to
3 know that --

4 THE COURT: I've known that since he asked me to do
5 discovery.

6 MR. BRIAN: We need to know that, because we --

7 THE COURT: How did you miss it?

8 MR. BRIAN: Let me -- let me be specific, Your
9 Honor. We were -- we have come in here, we being Mr. Weissman
10 and myself, we have -- we made a disclosure, we did an
11 investigation, we made a further disclosure. If there are
12 issues that Mr. Bice wants to raise, he should let us know
13 specifically, because at that point I'm going to tell my
14 client that an issue has been raised with respect to us. If
15 there's past conduct, there's a different issue for my client
16 to consider. That's all I'm saying.

17 THE COURT: Well, that's why I phrased the question
18 as either counsel or the client --

19 MR. BRIAN: I understand that.

20 THE COURT: -- because this point I do not know
21 where the issues are being alleged to come from. But I can
22 tell you from reading Mr. Bice's briefs -- and I read the
23 briefs, that I know that he thinks somebody's not being honest
24 about what happened.

25 MR. BRIAN: I'm going to say it again, Your Honor --

1 THE COURT: Whether it's about what's happening now
2 is a different issue. But what's happened in the past, Mr.
3 Bice clearly thinks that people aren't being honest with him.

4 MR. BRIAN: I understand that, Your Honor. And to
5 the extent we're dealing with past conduct I understand that.

6 THE COURT: But it's a continuing to disclose what
7 happened. I'm at the point --

8 MR. BRIAN: Well --

9 THE COURT: I am frankly at the point that I am
10 disturbed with the lack of candor that has occurred in this
11 courtroom, and nobody's 'fessed up about what really happened.
12 I'm waiting to hear it. I think I might hear some of it in
13 the next couple of days. But to say that there's nothing
14 that's ongoing I think is -- you can't do that, because
15 there's something that happened in the past and nobody's come
16 clean about it yet. Someday somebody's going to come clean
17 about it, and then we're going to know. But at this point I
18 still have serious concerns about what has occurred. And each
19 time there has been a filing there's a different spin. And
20 that's okay. Lawyers are hired to do spin. It's part of what
21 you guys do. But I'm conducting an evidentiary hearing to
22 make determinations as to misrepresentations that were made to
23 me.

24 MR. BRIAN: I understand that, Your Honor. And I
25 don't agree with the word "spin." What we do as lawyers is we

1 advocate the legal conclusions based on the facts. If a
2 lawyer or a client has misrepresented a fact, obviously that
3 is wrongful conduct. There is a difference between mistakes
4 in judgment and a violation of the duty of candor. And we're
5 happy to answer the Court's inquiries and the facts.

6 But my only point now -- I understand the point
7 that, Your Honor, you're going to address tomorrow. But if
8 somebody -- if Mr. Bice or anybody thinks that I'm sitting up
9 here now and making misrepresentations to the Court, I need to
10 know that, because I need to tell my client that, because they
11 may well want to consult with a new lawyer.

12 THE COURT: Okay.

13 MR. BRIAN: Very simple.

14 THE COURT: I understand what you're saying.

15 Mr. Bice, anything you want to say?

16 MR. BICE: Yes, Your Honor. It is interesting that
17 you made the observation about spin, because actually in my
18 notes to make my presentation to you today I specifically
19 wrote down that, unlike Fox News and the O'Reilly Factor, this
20 is not a spin zone, this is a true no spin zone. It is a
21 court of law. You scheduled a two-day --

22 THE COURT: That's not how it works, though, in
23 reality. You know that, Mr. Bice. You've been --

24 MR. BICE: Well, I do know that, except with respect
25 to this issue -- and I'll -- I will answer Mr. Brian's

1 question in part. Do we believe that the lack of disclosure,
2 i.e., the lack of candor to the Court, whether it's coming
3 from the defense counsel or whether it is coming from their
4 clients, is continuing up to and through today? The answer
5 is, yes, we do believe that. And, quite frankly, I think
6 their pleadings, their so-called mea culpa when they
7 supposedly came clean, we know lack many facts that their
8 clients certainly knew and we know that Mr. Peek knew. Now,
9 whether the lawyers at MTO knew it when they made those
10 disclosures to you I don't know, but that's one of the things
11 we intend to find out in this next two days, when they knew
12 and what they knew and when it was disclosed to the Court,
13 which is a big deal.

14 So let me address just a couple of these points.
15 Here's my point with Ms. Hyman, all right. Ms. Hyman was --
16 as Mr. Peek says, she's one of the supervising lawyers for the
17 client on this matter. That's been their characterization of
18 her. I know her, and I know that she sat right there where
19 one of my associates is sitting in the back of the courtroom
20 and listened to many of the representations that were made to
21 you about the Macau data and the Macau Data Privacy Act. And
22 I know for a fact she knew those statements were untruthful.
23 She is a lawyer, and under the rules she is obligated to pull
24 her counsel aside and demand that they correct those
25 misstatements to the Court. She didn't do that because she

1 was complicit in the deception of the Court. And that's why
2 she --

3 THE COURT: And the appropriate -- the appropriate
4 issue for you if that's really what you believe, Mr. Bice, is
5 to file a Bar complaint.

6 MR. BICE: Well, if we --

7 THE COURT: And that may be what happens --

8 MR. BICE: It may be.

9 THE COURT: -- as a result of some of these hearing.

10 MR. BICE: It very -- I apologize.

11 THE COURT: But, I mean, I have issues with having
12 -- and, you know, I used to be a defense lawyer with corporate
13 clients, and I've dealt with in-house counsel, and I know that
14 sometimes they're seriously involved in the litigation
15 strategy. And under the Club Vista case I have to be mindful
16 of that and not invade that, even though here I may have a
17 client that was directing the activity. And I may well have
18 that.

19 MR. BICE: Right.

20 THE COURT: But I'm not at this point going to make
21 her come forward to testify in my hearing -- not saying what
22 I'll do in your hearing --

23 MR. BICE: Okay.

24 THE COURT: -- in my hearing, because she did not
25 make a representation to me in court in either an affidavit or

1 in front of me.

2 MR. BICE: But she did. And this is the way --

3 THE COURT: She sat in court and didn't say
4 anything.

5 MR. BICE: But this is what -- this is -- Your
6 Honor, with all due respect, failure to inform the Court of
7 the truth is a misrepresentation. And when you have a duty to
8 speak, which is what she had a duty to speak, she is the
9 client representative that sat in this courtroom. So you
10 can't sit there and say, you know, it's like the movie,
11 earmuffs, and then pretend to the Court I don't have to now
12 inform the Court and it's not a misrepresentation, because I
13 sat there and let the Court be deceived. That is a
14 misrepresentation, and it is the same as though she had
15 understood up in front of you and told you the false
16 statement. And that's our point with respect to her.

17 THE COURT: And I understand that.

18 MR. BICE: All right. Now let me deal with Mr.
19 Leven, because I think this one is even a bit more slippery
20 with respect to the defendants. Here's what we know from Mr.
21 Singh's testimony, Your Honor. This so-called change in
22 policy about the Macau Data Privacy Act didn't occur until the
23 United States issued a subpoena to these defendants. Then all
24 of a -- this wasn't the Macau Government that came up with
25 this. This was the defendants coming up with an excuse and

1 then using that excuse not only in dealing with the
2 government, in dealing with us.

3 THE COURT: And that is going to be an appropriate
4 issue when you bring a Rule 37 motion for sanctions as a
5 result of the misconduct that has occurred.

6 MR. BICE: But here's the point with respect to Mr.
7 Leven and your hearing. Mr. Leven is the chief operating
8 officer of Las Vegas Sands Corp. He also, if you'll recall,
9 at the time in which this Macau information was going on, he
10 was serving as the interim chief executive officer of the
11 Sands China entity. This is the individual who is the actor
12 for the client regarding the misrepresentations that were made
13 to this Court. Mr. Leven should be here to have to explain
14 what it was he was directing and not directing. You can't
15 just hide and say, well, you know, these lawyers -- if he
16 wants to come in and say, listen, I didn't know any of this
17 that was going on, that's fine. Then let him take the stand,
18 raise his hand, and swear that that's true. Because I don't
19 think it is true, and I think that he's going to have a
20 serious problem. And that's exactly why they're having such a
21 fit about him showing up. They know exactly what his role was
22 in this, and they don't want to him dare have to take the
23 stand and be subject to examination about what he knew and
24 when he knew it. And there's nothing inappropriate about the
25 Court getting to the bottom -- because, recall, Your Honor,

1 one of the issues we're having here is who was directing this,
2 was it just the lawyers that were making those representations
3 that are in that transcript, or was that being done at either
4 the direction, explicitly or tacitly, with client's permission
5 and knowledge. And that's why both Hyman and Leven should
6 have to be here and you will decide based upon the evidence
7 that you hear whether or not they should be forced to take the
8 stand and ask specific -- answer specific questions about
9 their conduct in that regard. And that's -- Your Honor, I
10 don't need to say any more about it.

11 I know this. If I were in their shoes and I was
12 accused of making misstatements to the Court, you couldn't
13 keep me out of this courtroom. And the fact that they don't
14 want any of these people in this courtroom I think speaks
15 volumes.

16 THE COURT: All right. Anything else related to the
17 motion?

18 MR. BRIAN: No, Your Honor.

19 THE COURT: Okay. The motion is granted in part.
20 The motion is granted with respect to the 30(b)(6) witness.
21 30(b)(6) is a discovery device, not a device to compel
22 attendance at evidentiary hearings or trials.

23 It is also granted with respect to Mr. Leven. While
24 I certainly understand the issues related to the direction of
25 the client, I think that there is sufficient attorney

1 involvement that I'm going to make inferences based upon the
2 responses I get to the questions I intend to ask. It's been a
3 long time since I've outlined a direct examination, so, you
4 know --

5 And then with respect to Ms. Hyman it's also
6 granted. I think I've made clear what I think the potential
7 problems are with that. There may be a day later when we get
8 to a Rule 37 motion that is filed by the plaintiffs at which I
9 may take a different position related to all of these
10 witnesses. But with respect to the hearing that I've
11 scheduled, which is primarily centered EDCR Rule 7.60 and the
12 inherent powers of the Court, I am primarily concentrating on
13 the statements that were made to me by counsel in documents
14 that were filed with the Court and in open court, and I
15 anticipate that anyone who made such a statement will be here
16 to answer questions. And if they don't, I will draw
17 appropriate inferences.

18 MR. BICE: And, Your Honor, I just want the record
19 to be clear. So is it fair to also say that in granting their
20 motion you're not saying that you also will not draw adverse
21 inferences if either Mr. Leven or Ms. Hyman or anybody else
22 doesn't show up and it turns out that the evidence is that
23 they had knowledge; right?

24 THE COURT: I said appropriate inferences.

25 MR. BICE: Thank you.

1 THE COURT: Appropriate inferences are sometimes
2 adverse, Mr. Bice.

3 MR. BICE: That's right.

4 MR. BRIAN: I don't think that issue is before the
5 Court, Your Honor.

6 THE COURT: No, it's not.

7 MR. BRIAN: And we can decide that, and I'd like to
8 be heard on that tomorrow.

9 Was Your Honor done with the ruling? I do have a
10 question about tomorrow's hearing.

11 THE COURT: I am done with the ruling on the motion,
12 and we've discussed Mr. Kostrinsky, which was my other issue
13 to address today that I was aware of.

14 MR. PEEK: Did you get our brief, by the way? Do
15 you have our brief?

16 THE COURT: I have a stack in a binder. I wouldn't
17 call it a brief.

18 MR. BRIAN: Well, the brief is briefer than the
19 stack, Your Honor.

20 THE COURT: It's 6 inches.

21 MR. BRIAN: We --

22 THE COURT: I'm in a trial. I'm going to finish
23 that trial today, and then tonight I will re-review the
24 transcripts, some of the highlights and markings that have
25 been made for me on transcripts, and read the briefs that are

1 submitted by counsel in preparation for the hearing. And I'd
2 really love to know if anybody has any alternative sanction
3 idea, other than the ones that I have written down and I'm not
4 going to tell you about.

5 MR. BRIAN: Your Honor, we're actually working on
6 that now. We had not -- we were planning on dealing with that
7 orally, which is why it wasn't --

8 THE COURT: That's fine.

9 MR. BRIAN: -- it wasn't in the brief. We're now
10 actually working up something. We don't know whether we'll be
11 able to get you something in writing before the hearing or
12 not, but we have that in mind. We just couldn't do it in
13 connection with the other brief. We did --

14 THE COURT: It is clearly important, because I will
15 pull out the Ribiero case even though it technically doesn't
16 apply because it's a Rule 37 case, and I will go through the
17 factors to make sure that everybody understands that there are
18 issues that I have to make findings on. And I don't think
19 Ribiero controls the analysis I have to make, because it's not
20 a Rule 37 hearing, but it is instructive.

21 MR. BRIAN: Yes. I understand, Your Honor.

22 Just one -- I'll call it housekeeping, Your Honor.
23 Actually two things. One, we attached to our brief what we
24 called an appendix, we could alert the Court's staff if you
25 can't find it, which actually goes through frankly what we

1 thought were the representations at issue, so to speak. And
2 we tried to be as complete -- Mr. Bice may disagree with the
3 list, but we actually tried to be pretty complete in
4 identifying those. Obviously we have a different take on it
5 than Mr. Bice and maybe even the Court has, but we did want to
6 make sure Your Honor had an easy way of looking at those.

7 And secondly, Your Honor, just in terms of the
8 witnesses, how do you want to proceed?

9 THE COURT: I'm going to ask questions. And then
10 after I ask questions I'm going to ask Mr. Bice if he has any
11 questions, and then Mr. Bice is going to hopefully going to
12 ask -- Mr. Bice, Mr. Pisanelli, and Ms. Spinelli will ask
13 limited and focused questions on the area that I am concerned
14 about, and then I will ask you if you have any questions.

15 MR. BRIAN: And, Your Honor, the final thing --

16 THE COURT: I don't need an opening statement,
17 please.

18 MR. BRIAN: I had -- I had prepared four minutes of
19 opening remarks, which I'll look at it.

20 THE COURT: Four minutes are okay.

21 MR. BRIAN: It's really short.

22 THE COURT: Four minutes are okay.

23 MR. BRIAN: But I'll keep it short. I understand,
24 Your Honor.

25 But in terms of the lawyers who are officers of the

1 Court I was making the assumption that they won't be
2 testifying under oath, that they'll be --

3 THE COURT: Absolutely they're going to be sworn in.

4 MR. BRIAN: They are. Okay.

5 THE COURT: Absolutely. This is a serious
6 proceeding, and they will be sworn.

7 MR. BRIAN: It's a serious proceeding whether or not
8 they're sworn, but we hear, Your Honor.

9 MR. PEEK: I take this hearing very seriously, Your
10 Honor.

11 THE COURT: I know you do, Mr. Peek.

12 MR. PEEK: And I take the accusations coming from
13 the other side very seriously.

14 THE COURT: Just so everybody's clear, I've known
15 Mr. Peek for a long time, and I've known Mr. Pisanelli and Mr.
16 Bice for a long time. And this hearing bothers me, and it
17 bothers me because of what's happened. And I want to get to
18 the bottom of what's happened and why it has happened. Mr.
19 Peek has a number of other cases here. He's done good things
20 in here, he's done things I've given a really hard time about
21 in here. Mr. Pisanelli's been on my list for going 45 minutes
22 on an uncontested motion that should have taken two. So, I
23 mean, I know all of these people, because we are a small legal
24 community. And I have to take that into my consideration as I
25 evaluate this.

1 Mr. Brian, you're new. You don't know us very well.

2 MR. BRIAN: I'm learning.

3 THE COURT: It's a small legal community here, and,
4 believe me, everybody know everybody else's business. And so
5 I know that Mr. Peek takes this seriously, because every time
6 he's in here on something he has to remind me why I can't make
7 him do certain scheduling things because he was trying to get
8 ready for this hearing to defend his honor. And I understand
9 that. But it's not that, you know, this is behind closed
10 doors or something. Everybody knows about this, and we're
11 going to do this in the open so everybody hears what happened,
12 and we're going to get explanations. They may not be
13 explanations I like, but I'm going to get the explanations.

14 MR. BRIAN: Do you have a preferred order of
15 witnesses, Your Honor?

16 THE COURT: I'd really like to hear from Mr.
17 Kostrinsky first, but I'm not going to be able to. So I would
18 think either Ms. Glaser or Mr. Peek is probably a good person
19 to start with.

20 MR. BRIAN: Sounds right, Your Honor.

21 THE COURT: I mean, that's -- in my mind they're
22 probably two of the more frequent participants in the hearings
23 that are issue.

24 MR. BRIAN: Okay. Thank you for the guidance, Your
25 Honor.

1 THE COURT: Anything else?

2 MR. BRIAN: Should we be here at 9:00 or 9:30
3 tomorrow?

4 THE COURT: No. I think we've got you scheduled for
5 10:00.

6 MR. PEEK: 10:00, yeah. Okay.

7 THE COURT: Because I told you I have some issues in
8 the morning.

9 MR. BRIAN: Thank you, Your Honor.

10 THE COURT: Okay. Anything else?

11 MR. PISANELLI: Your Honor, made clear you don't
12 want much, if any, opening statements. Do you want counsel
13 prepared to make summary arguments after we have all the
14 evidence put together?

15 THE COURT: I absolutely want you to make arguments
16 at the end.

17 MR. PISANELLI: Okay. Thank you.

18 MR. BICE: Thank you, Your Honor.

19 THE COURT: And you know there's going to be
20 questions that will ask of counsel, because that's what I do.
21 I am trying to navigate through a situation that is very
22 uncomfortable for me, and it is very new to me, because I have
23 never had one of these hearings. I know other judges have
24 conducted them and been recently affirmed. But this is
25 different.

1 MR. PEEK: It's very uncomfortable for me, as well,
2 Your Honor.

3 THE COURT: I understand. We're going to get
4 through this, and then we're going to do whatever we're going
5 to do.

6 MR. PISANELLI: Thank you, Your Honor. See you
7 tomorrow.

8 MR. BRIAN: Thank you, Your Honor.

9 MR. PEEK: Thank you.

10 THE COURT: Anything else?

11 MR. BICE: No. Thank you, Your Honor.

12 THE PROCEEDINGS CONCLUDED AT 9:48 A.M.

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CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt
FLORENCE HOYT, TRANSCRIBER

9/7/12

DATE