

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD., a Cayman Islands  
corporation,

Petitioner,

vs.

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Electronically Filed  
Case Number: 2015-08:27 a.m.  
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District Court Case Number  
A627691-B

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

**Volume X of XXXIII  
(PA1769 – 1917)**

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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 X of XXXIII (PA1769 – 1917)** to be served as indicated below, on the date and to the addressee(s) shown below:

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

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

### **Respondent**

### **VIA ELECTRONIC SERVICE**

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DATED this 20th day of March, 2015.

By: /s/ PATRICIA FERRUGIA

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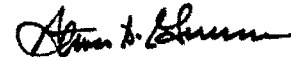
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1 MOT

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9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 STEVEN C. JACOBS,

12 Plaintiff,

13 v.

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

17 Defendants.

Case No.: A-10-627691

Dept. No.: XI

PLAINTIFF'S RENEWED MOTION  
FOR NRCP 37 SANCTIONS ON ORDER  
SHORTENING TIME

Hearing Date: 02/28/13

Hearing Time: 10 AM

18 AND RELATED CLAIMS

19  
20  
21 Plaintiff Steven C. Jacobs ("Jacobs") renews his motion for sanctions, including the  
22 striking of Sands China Ltd.'s ("Sands China") personal jurisdiction defense. To the surprise of  
23 no one, particularly Jacobs, Sands China openly defied this Court's December 18, 2012 discovery  
24 order, as well as this Court's entire sanctions ruling. It is no surprise because Sands China's  
25 disregard is in accord with the campaign of noncompliance that it and its Co-Defendant,  
26 Las Vegas Sands Corp. ("LVSC"), have waged for nearly two years. Defendants have made the  
27 clear choice that the consequences of noncompliance of this Court's rules and orders are  
28 preferable to the truth about them and their activities coming out in discovery. Thus, they

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1 knowingly concealed documents and information that LVSC had secretly brought from Macau  
2 and had its own attorneys review. They conveniently "lost" the originals of Jacobs' electronically  
3 stored information and hard drives from Macau, and omitted informing either Jacobs or this  
4 Court. They purposefully changed their own data transfer policy between corporate entities so as  
5 to erect a "stone wall" in the face of discovery demands made by Jacobs and the United States  
6 government. Plus, they have obstructed depositions and necessitated repeated motions to compel  
7 by instructing witnesses not to answer questions on matters that the Court has repeatedly  
8 overruled. And these are just the things Jacobs and the Court know about.

9 It is through that lens of history that Sands China's latest maneuver is viewed. On  
10 December 18, 2012, this Court gave Sands China two weeks to do what it had been told to do for  
11 over a year – produce the responsive documents to Jacobs' jurisdictional discovery requests,  
12 whether they were located in Macau or elsewhere. Of course, Sands China knew that it was never  
13 going to actually comply. But rather than just admit it, Sands China employed its limitless  
14 resources towards a sham response. On the day of the ordered production, January 4, 2013,  
15 Sands China carried out a document dump. This dump consisted of producing around  
16 27,000 pages that are redacted to the point of rendering the documents of import unintelligible.  
17 But even knowing what it had done and the blatant impropriety of it, Sands China added insult to  
18 injury by then filing a report with this Court congratulating itself on a job well done. And, from  
19 their standpoint, it is indeed "mission accomplished." Sands China produced a pile of essentially  
20 useless and unintelligible papers. It should have saved the trees and produced nothing, which  
21 was, of course, its intent all along.

22 This conduct is not a product of inadvertence, confusion or lack of sophistication by a  
23 novice litigant. No, it is the product of a perverse but necessary calculus by those who fear the  
24 truth coming out. Defendants have concluded that the consequences of noncompliance with this  
25 Court's rulings are preferable to the consequences of the evidence seeing the light of day. These  
26 Defendants have limitless financial resources. There is no monetary sanction that this Court can  
27 order that will impact them. These companies are controlled by one of the world's richest men.  
28 Paying attorneys' fees equates to victory.

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1 The time has come to end the charade. Sands China and LVSC have no intention of  
2 complying. Their intention is and remains unchanged: Avoid having the facts see the light of  
3 day. There is nothing more that Jacobs or this Court can do to alter the Defendants' calculated  
4 plan. They have knowingly violated multiple orders, including the December 18, 2012 Order.  
5 The time has come to strike Sands China's defense of personal jurisdiction, impose serious  
6 evidentiary sanctions on these Defendants, and allow Jacobs to proceed with the merits of his  
7 case.

8 Jacobs requests that this Court entertain an order shortening time because the Court  
9 previously indicated that it may convene an evidentiary hearing concerning Jacobs' requested  
10 relief. If that is the Court's inclination, then Jacobs asks this Court for an order shortening time so  
11 as to establish the timing of such an evidentiary hearing and to further set the briefing schedule.  
12 LVSC and Sands China have ground this case to a halt by disputing jurisdiction while  
13 simultaneously sabotaging the discovery process so as to avoid an evidentiary hearing on  
14 jurisdiction, let alone a full and fair one.

15 This Motion is based on Nevada Rule of Civil Procedure 37, the following Memorandum  
16 of Points and Authorities, any and all exhibits thereto, the papers and pleadings on file herein,  
17 including Jacobs' Motion for NRCP 37 Sanctions (the "First Motion for Sanctions"), and any oral  
18 argument this Court may consider.

19 DATED this 7th day of February, 2013.

20 PISANELLI BICE PLLC

21 By: 

22 James J. Pisanelli, Esq., Bar No. 4027  
23 Todd L. Bice, Esq., Bar No. 4534  
24 Debra L. Spinelli, Esq., Bar No. 9695  
25 3883 Howard Hughes Parkway, Suite 800  
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27 Attorneys for Plaintiff Steven C. Jacobs  
28

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ORDER SHORTENING TIME


Before this Court is the Request for an Order Shortening Time accompanied by the Declaration of counsel. Good cause appearing, the undersigned counsel will appear at Clark County Regional Justice Center, Eighth Judicial District Court, Las Vegas, Nevada, on the 8 day of February, 2013, at 10<sup>a</sup> m., in Department XI, or as soon thereafter as counsel may be heard, to bring this **PLAINTIFF'S RENEWED MOTION FOR NRCP 37 SANCTIONS ON ORDER SHORTENING TIME** on for hearing.

DATED: 02/08/13

  
DISTRICT COURT JUDGE

Respectfully submitted by:

PISANELLI BICE PLLC

By:   
James J. Pisanelli, Esq., Bar No. 4027  
Todd L. Bice, Esq., Bar No. 4534  
Debra L. Spinelli, Esq., Bar No. 9695  
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Attorneys for Plaintiff Steven C. Jacobs

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**DECLARATION OF TODD L. BICE, ESQ. IN SUPPORT OF  
PLAINTIFF'S RENEWED MOTION FOR NRCP 37 SANCTIONS  
ON ORDER SHORTENING TIME**

I, TODD L. BICE, Esq., being first duly sworn, hereby declare as follows:

1. I am one of the attorneys representing Plaintiff Steven C. Jacobs ("Jacobs") in the action styled *Steven C. Jacobs v. Las Vegas Sands Corp., et al.*, Case No. A656710, pending before this Court. I make this Declaration in support of Plaintiff's Renewed Motion for Sanctions (the "Motion"). I have personal knowledge of the facts stated herein and I am competent to testify to those facts.

2. On November 21, 2012, Jacobs filed a Motion for NRCP 37 Sanctions and in connection with that Motion, on December 4, 2012, filed a Motion to Conduct Limited Discovery Relating to Pending NRCP 37 Sanctions Motion and Motion to Set Evidentiary Hearing for Pending NRCP 37 Sanctions Motion ("Motion for Evidentiary Hearing").

3. The Court heard the Motion for Evidentiary Hearing on December 6, 2012, and denied the motion without prejudice, stating that if the Court determines evidentiary sanctions are appropriate, then the Court would offer Defendants the option of having an evidentiary hearing.

4. Jacobs respectfully requests the Court set a hearing on shortened time not to fully address the merits of this Motion but to address whether or not Defendants will be requesting an evidentiary hearing relating to this Motion and to set a briefing schedule and date(s) for the evidentiary hearing.

5. In other words, Jacobs is seeking to avoid the inevitable delay that will occur if the Court sets this Motion for a hearing in the ordinary course and then at that hearing date the Defendants request an evidentiary hearing.

6. I certify that this Motion is not brought for any improper purpose.

I declare under the penalties and perjury of the laws in the state of Nevada that the foregoing is true and correct.

Dated this 7th day of February, 2013.

  
TODD L. BICE, ESQ.

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## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

Sands China did not intend to comply with this Court's December 18, 2012 Order, and it knows it. It admits that it only produced a small portion of information that Jacobs knows exists. It searched only nine custodians, and purposefully omitted those that Jacobs identified as having highly relevant information. But of course, these are the same custodians that would also have documents that Sands China and LVSC would prefer this Court not to see. Thus, they were not searched. As if it needed to be more contemptuous, Sands China exacerbated its defiance by redacting the documents on grounds that this Court has expressly overruled, so as to render the documents indecipherable and useless. Its goal was to produce nothing of substance, and that is precisely what it did. Sands China appears to think that it can escape the consequences of this misconduct by presenting the Court with a receipt for \$900,000 as proof of all the work they did to make sure that no useful information was produced, and thus the Court will overlook how the emperor has no clothes. No one is that blind.

It would have been better, or at least more honest for Sands China to have just produced nothing at all. The result to Jacobs and this Court would have been the same (albeit without Jacobs having to incur attorneys' fees to sort through the unintelligible productions). But Sands China has no plans of being honest with Jacobs or the Court, as doing so only confirms that it is never going to comply with this Court's orders. For Defendants, any sanction this Court may impose is a pittance compared to what they stand to lose should the truth come out in this litigation or any government investigation. Accordingly, they have told this Court (by their actions): "Go ahead, sanction us. We are not going to comply." This is the one instance where the Court should take the Defendants at their word.

### **II. BACKGROUND**

#### **A. In Response To Jacobs' First Motion for Sanctions, The Court Orders Sands China To Produce All Jurisdictional Documents.**

This Court has already said the obvious: "[T]here appears to be an approach *by the client* to avoid discovery obligations that I have had in place since before the stay [issued on August 26,



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1 2011]." (Ex. 1, Hr'g. Tr. dated Dec. 18, 2012, 7:13-17 (emphasis added).) Unsurprisingly then,  
2 on November 21, 2012, Jacobs filed the First Motion for Sanctions. In that Motion and the  
3 subsequent hearing thereon, Jacobs pointed out that Defendants had not only ignored its discovery  
4 obligations under Nevada's Rules of Civil Procedure, but also this Court's express orders. Indeed,  
5 during the sixteen months of jurisdictional discovery, Sands China produced only fifty-five pages,  
6 or nineteen total documents, which is ridiculous given that the purpose of jurisdictional discovery  
7 to determine whether the Court has personal jurisdiction over *Sands China*.

8 Falling back on their old defense, Sands China claimed that it was excused from  
9 producing (or even reviewing) documents because of the Macau Personal Data Protection Act  
10 (the "MPDPA"). That tired excuse was meritless, in no small part because three months earlier  
11 this Court ruled that the MPDPA can no longer be used as a defense or excuse for not producing  
12 jurisdictional documents. (Ex. 2, Decision & Order dated Sept. 14, 2012 ("Decision & Order"),  
13 8:20-2 ("Las Vegas Sands and Sands China will be precluded from raising the MDPAs as an  
14 objection or as a defense to admission, disclosure or production of any documents.").)

15 In another of its routine moves, Sands China tried to shift the blame to Jacobs. It claimed  
16 that Jacobs failed to meet and confer with its counsel concerning the proper custodians in Macau  
17 or applicable search terms. This story proved equally disingenuous. The search terms had long  
18 been the subject matter of LVSC's production. And, the principal custodians in Macau had long  
19 been identified in correspondence. Sands China's only retort was to note that the custodians had  
20 been identified for merits discovery. But of course, it could not explain how that somehow  
21 diminished its obligation to search for jurisdictional documents from the same key individuals. In  
22 the end, Sands China simply grasped for any excuse for its own noncompliance.

23 This Court rightly rejected these excuses, noting that these Defendants had "violated  
24 numerous orders." (Ex. 1, Hr'g. Tr. Dated Dec. 18, 2012, 28:17). It gave Sands China one last  
25 chance to comply. (*Id.*, 28:17.) The Court set a firm deadline that by January 4, 2013,  
26 "Sands China will produce all information within their possession that is relevant to the  
27 jurisdictional discovery." (*Id.*, 24:15-17.) In other words, Sands China had fourteen days,  
28 including holidays, to do what the Court had already ordered nine months ago, and then again

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1 three months prior. (See Ex. 3, Order Regarding Mot. to Conduct Juris. Discovery dated March 8,  
2 2012, 3:16-5:7; Ex. 2, Decision & Order, 8:20-2.)

3 **B. Sands China Purposefully Violates the Court's Order.**

4 Sands China wants to pretend that a new miracle occurred over the holiday season. It  
5 claims that it was able to search for and produce all of its documents from Macau, a feat it decried  
6 as impossible just days earlier. In fact, Sands China asks for a round of applause. It filed a status  
7 report proclaiming how it had employed countless attorneys in Macau at high expense to conduct  
8 the review and get the production done. As supposed proof of its Herculean efforts, Sands China  
9 claimed that it spent over \$900,000 to produce some 27,000 pages (i.e., about 5,000 documents)  
10 on January 4, 2013. But as this Court has seen before, what these Defendants say in "status  
11 reports" oftentimes bear little resemblance to reality. And so it is yet again.

12 **I. Sands China knowingly did not search the principal custodians in**  
13 **Macau.**

14 To begin, Sands China only searched a total of nine Macau custodians.<sup>1</sup> Nine. And the  
15 nine custodians were not even the highest prioritized custodians designated by Jacobs – in fact,  
16 only six are on the list.<sup>2</sup> Sands China simply selected the persons *Sands China* wanted to review,  
17 which ensured that the most problematic documents for the Defendants would remain hidden  
18 offshore. (Ex. 4, Sands China's Report on Compliance, 5:12-13.) And even for these nine  
19 custodians, Sands China did not search for all of the relevant documents.

20 Take the custodian Ruth Boston just for the sake of example. Sands China only searched  
21 her documents with respect to one of Jacobs' Requests for Production of Documents. (*Id.*  
22 at Ex. C.) This is in addition to the fact that it did not even search custodians in Macau for a  
23 number of the document requests, and then limited the search to a subset of custodians for most  
24 all of the other document requests:

25 <sup>1</sup> Jacobs was one of those nine, meaning that Jacobs already had a large portion of the information  
26 Sands China just produced to him.

27 <sup>2</sup> Jacobs is unable to confirm Sands China's representation that it searched the nine custodians' ESI  
28 because of the substantial redactions made to the documents produced. For all Jacobs knows, the  
documents produced could have come from LVSC's previous productions.

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- Request No. 6 – searched only seven custodians
- Request No. 7 – searched only four custodians
- Request No. 8 – searched only five custodians
- Request No. 9 – searched only six custodians
- Request No. 10 – searched only four custodians
- Request No. 11 – searched only six custodians
- Request No. 12 – searched only four custodians
- Request No. 13 – searched only four custodians
- Request No. 14 – searched only three custodians
- Request No. 15 – searched only four custodians
- Request No. 16 – searched only five custodians
- Request No. 17 – searched only four custodians
- Request No. 18 – searched only four custodians
- Request No. 19 – searched only three custodians
- Request No. 20 – searched only four custodians
- Request No. 21 – searched only six custodians
- Request No. 22 – searched only four custodians

(See *id.*)

To highlight the manipulative nature of Sands China's non-search of key designees, the Court needs to look only at its purposeful failure to search the records of Iain Bruce and David Turnbull, two of Sands China's independent directors. The involvement of these two individuals, particularly Turnbull, has been routinely discussed at the jurisdictional depositions, including various emails with LVSC executives to which they were parties. And there is no denying that some of these emails have been the most embarrassing and problematic for the Defendants to try and rationalize. Clearly Bruce's and Turnbull's ESI were reasonably likely to contain documents relevant to jurisdictional discovery. Indeed, that is precisely why on December 12 (six days before the December 18 hearing), Jacobs' counsel requested an agreement to depose Bruce and Turnbull for jurisdictional discovery. (Ex. 5, Bice e-mail dated Dec. 12, 2012.) True to form, not

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1 only would Sands China not cooperate in the depositions, it then purposefully failed to search  
2 their documents even in the face of this Court's order. Again, this is intentional, not an oversight.

3 But the crown jewel of noncompliance is Defendants' intentional refusal to produce  
4 documents from custodian Luis Melo. Melo is the Number 2 person identified on the list of most  
5 important custodians in Macau. (Ex. 6.) And, Melo's documents are already located in the  
6 United States, being part of the secret shipment that Sands China made to LVSC in August of  
7 2010 that they concealed from both this Court and Jacobs. Sands China and LVSC know how  
8 important Melos' documents are to this case. That is precisely why they secretly shipped those  
9 documents to Las Vegas at the same time they brought over Jacobs' ESI.<sup>3</sup> Yet, despite this  
10 Court's sanctions order, despite their possession of these documents for two years in Las Vegas,  
11 and despite their own counsel representing to this Court that "we've given them everything we  
12 have in Las Vegas," Sands China has not produced a single document from Melo's ESI. (Ex. 1,  
13 Hr'g. Tr. Dated Dec. 18, 2012, 14:23.)

14 **2. Sands China knowingly produces unintelligible documents.**

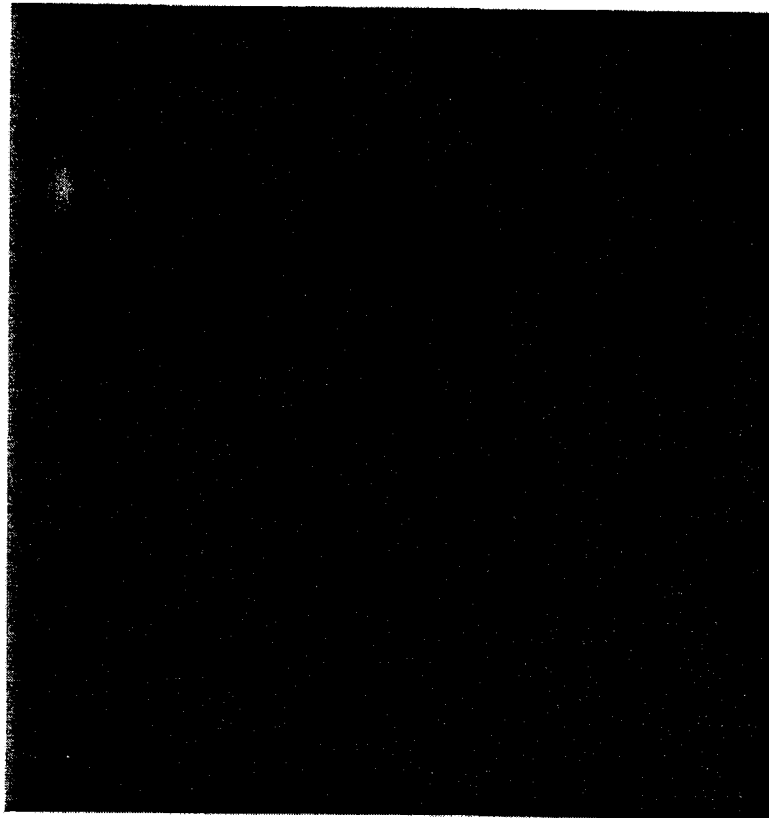
15 The purposeful non-search of central custodians is, in and of itself, an intentional violation  
16 of the Court's order. But Sands China had even more in store for Jacobs and this Court. Its last  
17 and loudest laugh came in the form of redactions that it made to the limited documents that it  
18 produced with its under-inclusive search. Sands China redacted everything and anything that  
19 might reveal whose document it was, or who had access to the document. Specifically, it redacted  
20 the names, titles, telephone numbers, fax numbers, and email addresses of everyone and anyone  
21 associated with each document. (Exs. 9-23, samples of production.) For good measure,  
22 Sands China would also redact dates and the names of board committees (and even what appears  
23

24 <sup>3</sup> In what can only be some form of perverse joke, Sands China asserted that Melo is not likely to  
25 have information relevant to personal jurisdiction – even though their own witness, particularly Ken Kay,  
26 identified Melo as having extensive involvement in the company's financing which was directed out of  
27 Las Vegas – and that many of his documents may be privileged. (Ex. 7, Bice Ltr. Dated Jan. 18, 2013;  
28 Ex. 8, Peek Ltr. Dated Jan. 29, 2013.) This Court would be hard pressed to find a more transparently  
improper attempt at avoiding compliance. LVSC and Sands China know precisely how important Melo's  
documents are, which is why they were some of the first documents brought to the United States  
"inadvertently" before they needed to find an excuse for nonproduction. And, this Court can rest assured  
that these Defendants have already been through Melo's ESI with a fine tooth comb, but have simply not  
produced any of it for jurisdictional purposes.

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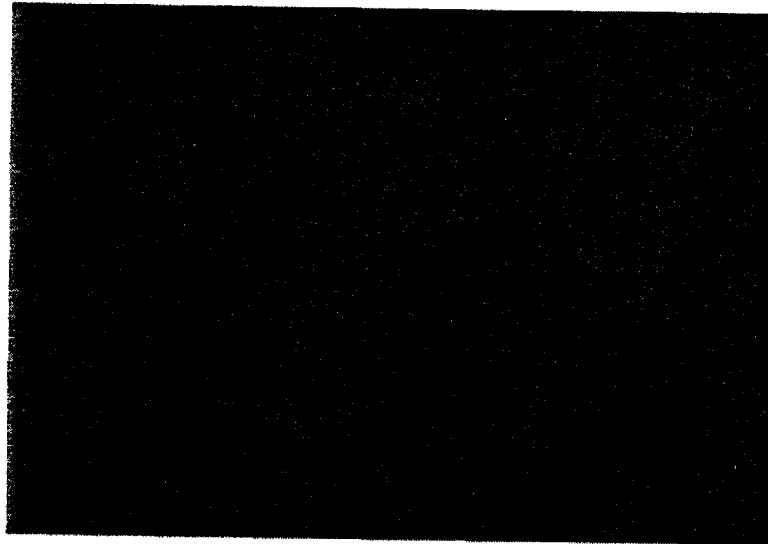
1 to be the term "Board of Directors" itself), among other innocuous things. (Ex. 22.) The effect of  
2 these redactions was precisely what Sands China intended – any document of substance was  
3 transformed into useless pieces of paper from which neither Jacobs nor any witness could ever  
4 glean real information. Sands China did not want to produce anything of substance, so it made  
5 sure that it did not by redacting the few documents it actually searched for.

6 Even the Defendants' own witnesses acknowledge that the redactions have rendered the  
7 production worthless. For instance, at Michael Leven's renewed deposition, Jacobs showed him  
8 several samples of Sands China's latest tactics and asked Leven to identify the document and  
9 explain its subject matter. Leven's testimony proved how Sands China had sabotaged the  
10 production:<sup>4</sup>



28 <sup>4</sup> Jacobs currently only has a rough copy of Mr. Leven's deposition transcript and will supplement with the final transcript upon receipt.

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Sands China knew that it had purposefully not complied with this Court's order. But that did not stop it from filing a so-called "Report on Its Compliance with the Court's Ruling of December 18, 2012," and proclaim its good deeds. But the real effect of that "Report" was to highlight how much money Sands China spent (supposedly \$900,000) in making sure that whatever substantive documents were produced would contain nothing decipherable. There are no limits to Sands China's arrogance.

### III. ARGUMENT

#### A. A Litigant's Established Pattern of Misconduct And Deception Mandates Additional Sanctions.

As a preliminary matter, although the Court's analysis of Jacobs' First Motion for Sanctions focused upon Sands China's failure to produce so much as a single page from Macau, Jacobs also sought (and seeks) sanctions against both Defendants for their long campaign of discovery abuses. As this Court has already noted, "there [were] varying degrees of willfulness demonstrated by the Defendants and their agents in failing to disclose transferred data to Jacobs ranging from careless nondisclosure to knowing, willful and intentional conduct with an intent to prevent [Jacobs'] access to information discoverable for the jurisdictional proceedings." (Ex. 2, Decision & Order, ¶35(a).) At that time the Court's concern was with the "limited issue" of Defendants' counsels' "lack of candor and nondisclosure of information to the Court and

1 appropriate sanctions pursuant to EDCR 7.60." (*Id.* at 1:28-2:9; Hr'g. Tr. dated Sept. 10, 2012,  
2 5:13-14 (the Court noting that its "hearing [was] not intended to infect any rights that Mr. Jacobs  
3 may have related to Rule 37 sanctions relating to the same issues.")).

4 The Court recognized that Jacobs was free to pursue additional Rule 37 sanctions based  
5 upon the concealment of outstanding evidence. And, under the law, such a past pattern of  
6 misconduct strongly counts toward the imposition of severe sanctions for repeat offenders. *Young*  
7 *v. Ribeiro Bldg., Inc.*, 106 Nev. 88, 93, 787 P.2d 777, 779-80 (1990) (The Nevada Supreme court  
8 has long found that in fashioning sanctions, specifically in determining the appropriateness of  
9 terminating sanctions, the court should look to, among other factors, the totality of the  
10 circumstances relating to a party's conduct throughout discovery); *Temora Trading Co., Ltd. v.*  
11 *Perry*, 98 Nev. 229, 645 P.2d 436 (1982) (terminating sanctions are proper where the normal  
12 adversary process has been halted due to an unresponsive party, as diligent parties are entitled to  
13 be protected against interminable delay and uncertainty in resolution of their legal rights.).

14 But even before addressing the consequences for violating this Court's December 18,  
15 2012, Order, it is important to note that Sands China's representations to this Court have proved  
16 less than forthright even about events that proceeded the Order's entry. Put bluntly, Sands China's  
17 story does not match up. Specifically, Sands China claims in its Report on Compliance that it  
18 engaged FTI on December 19, 2012, to "assume most of the technical aspects of the review and  
19 redaction process" because its prior vendor was unable to handle the "significantly increased  
20 volume of documents that had to be reviewed and produced." (Ex. 4, Sands China's Report on  
21 Compliance, 4:2-10.) However, FTI's production "indexes" that Sands China produced along  
22 with its documents were created well before December 19, 2012, showing that FTI's "review and  
23 redaction process" began as early as December 4, 2012. (Ex. 24, Screen shots of index's  
24 Properties)

25 Considering that FTI does not have an office in Macau, it appears that Sands China  
26 transferred its documents to FTI's office in Hong Kong for the review and redaction process. This  
27 is contrary to what Sands China told this Court when it claimed that "it could not rely on  
28 Hong Kong lawyers (or any other non-Macau lawyers) to review or redact Macau documents

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1 containing 'personal data.'" (Ex. 4, Sands China's Report on Compliance, 3:17-19). Thus, not  
2 only did Sands China engage FTI well before December 19, 2012, FTI's documents show that it  
3 had already undertaken the process of reviewing and redacting its documents before the Court  
4 issued the December 18 Order. This was occurring while at the very same time Sands China was  
5 telling this Court that it had been precluded from reviewing documents.

6 In truth, what little information Sands China did produce on January 4, 2013, only casts  
7 further doubt as to the accuracy of its various representations as to what it has been doing in  
8 Macau and why the documents were not produced long ago. On the face of FTI's own reports, it  
9 had been reviewing the documents for Sands China's own apparent strategic purposes while at the  
10 very same time Sands China was telling this Court that it could not review documents. Once  
11 again, more hiding of the ball appears to be occurring.

12 **B. The Time Has Come To End The Charade About Personal Jurisdiction.**

13 Regardless of the inconsistencies of Sands China's reporting as to its true activities, there  
14 is no dispute as to its knowing and intentional noncompliance with this Court's order that all  
15 documents be produced by January 4, 2013. Sands China did not search material custodians.  
16 Even for the few custodians it did search, it searched for less than a majority of the responsive  
17 requests. Then, to top it all off, what few documents of substance were gathered were then  
18 redacted so as to make them useless by redacting the names of every person, including who sent  
19 or received a document, and what it concerned.

20 As Jacobs explained in his First Motion for Sanctions, there are many legal grounds upon  
21 which this Court can and should impose severe sanctions for recurrent violations of this Court's  
22 orders. Rule 37 authorizes sanctions for "willful noncompliance with a discovery order of the  
23 court." *See also Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990).  
24 In addition to Rule 37, the Court has "inherent equitable powers" to impose sanctions for "abusive  
25 litigation practices." *Id.* (citing *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 916 (9th Cir.  
26 1987)) (citations omitted); *see also GNLV Corp. v. Serv. Control Corp.*, 111 Nev. 866, 869, 900  
27 P.2d 323, 325 (1995) (noting that courts have the inherent authority to impose discovery sanctions  
28 "where the adversary process has been halted by the actions of the unresponsive party."). As the



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1 Nevada Supreme Court warned, "[l]itigants and attorneys alike should be aware that these  
2 [inherent] powers may permit sanctions for discovery and other litigation abuses not specifically  
3 proscribed by statute." *Young*, 106 Nev. at 92, 787 P.2d at 779.

4 "Fundamental notions of fairness and due process require that discovery sanctions be just  
5 and that sanctions relate to the specific conduct at issue." *GNLV Corp.*, 111 Nev. at 870, 900 P.2d  
6 at 325 (citing *Young*, 106 Nev. at 92, 787 P.2d at 779-80). Along those lines, the minimum  
7 sanction a court should impose is one that deprives the wrongdoer of the benefits of their  
8 violations. See *Burnet v. Spokane Ambulance*, 933 P.2d 1036, 1041 (Wash. 1997) (*en banc*)  
9 ("The purpose of sanctions generally are to deter, punish, to compensate, to educate, and to  
10 ensure that the wrongdoer does not profit from the wrongdoing." (emphasis added)); *Woo v.*  
11 *Lien*, No. A094960, 2002 WL 31194374, 6 (Cal. Ct. App., Oct. 2, 2002) (upholding trial court's  
12 imposition of sanctions because not doing so "would allow the abuser to benefit from its  
13 actions.").

14 For that reason, one of the sanctions Rule 37 provides is an order that the "*designated*  
15 *facts shall be taken to be established for the purposes of the action in accordance with the*  
16 *claim of the party obtaining the order.*" NRCp 37(b)(2) (emphasis added). At the same time,  
17 "[t]here is no indication in Rule 37 that this list of sanctions was intended to be exhaustive."  
18 *J. M. Cleminshaw Co. v. City of Norwich*, 93 F.R.D. 338, 355 (D. Conn. 1981). The language  
19 "suggests that, under that rule, a court possesses the authority to fashion any of a range of  
20 appropriate orders to enforce compliance with the requirements of pre-trial discovery." *Id.* (citing  
21 *Flaks v. Koegel*, 504 F.2d 702, 707 (2d Cir. 1974) (noting the discretionary nature of discovery  
22 sanctions)). In other words, a court may fashion any form of sanction that meets the purpose of  
23 sanctions, which is "to ensure that a party does not benefit from its failure to comply, and to deter  
24 those who might be tempted to such conduct in the absence of such a deterrent."  
25 *Starlight Int'l Inc. v. Herlihy*, 186 F.R.D. 626, 647 (D. Kan. 1999).

26 Thus, "by imposing certain types of sanctions, the Court can prevent frustration of the  
27 discovery process by giving the frustrated party or parties the benefit of an inference that the  
28 deposition would have yielded evidence favorable to its position – or at least unfavorable to that

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defendant." See *In re ClassicStar Mare Lease Litig.*, (multiple Civ. Action Nos.) 2012 WL 1190888 (E.D. Ky. Apr. 9, 2012). Ultimately, "[s]election of a particular sanction for discovery abuses under NRCP 37 is generally a matter committed to the sound discretion of the district court." *Stubli v. Big D Int'l Trucks, Inc.*, 107 Nev. 309, 312, 810 P.2d 785, 787 (1991); see also *GNLV Corp.*, 111 Nev. at 866, 900 P.2d at 325 (noting the decision to impose discovery sanctions is "within the power of the district court and the [Nevada Supreme Court] will not reverse the particular sanctions imposed absent a showing of abuse of discretion.")

Here, LVSC and Sands China have knowingly sabotaged Jacobs' prosecution of this action. They have objected, obfuscated and obstructed the very process they asked for, thereby preventing Jacobs from proceeding with showing personal jurisdiction over Sands China. Defendants cannot be allowed to continue to profit from this noncompliance. At long last, the only means to deprive LVSC and Sands China of the benefits of their conduct is to strike Sands China's defense of personal jurisdiction, impose substantive and adverse inferences, and allow Jacobs to proceed with the merits of his case. See *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxities de Guinee*, 456 U.S. 694 (1982) (affirming the federal district court's finding of facts establishing personal jurisdiction as a sanction for the foreign defendant's failure to produce documents during jurisdictional discovery); *Bayoil, S.A. v. Polembros Shipping Ltd.*, 196 F.R.D. 479 (S.D.Tx. 2000) (federal district court striking the defendant's defenses of lack of personal jurisdiction and forum non conveniens).<sup>5</sup>

#### IV. CONCLUSION

After everything that has happened in this case, the Court gave Sands China one more chance to produce its documents and comply (albeit untimely) with its obligations for jurisdictional discovery. Sands China ignored that opportunity. Instead, it used its resources to create a phony appearance of compliance while simultaneously making sure that whatever it

<sup>5</sup> In the interest of brevity, Jacobs hereby incorporates his analysis of *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxities de Guinee*, 456 U.S. 694 (1982) and *Bayoil, S.A. v. Polembros Shipping Ltd.*, 196 F.R.D. 479 (S.D.Tx. 2000) from the First Motion for Sanctions.

1 produced was useless to Jacobs or the Court. This Court warned Sands China that its time is up  
2 on January 4, 2013. The Court can no longer excuse the Defendants' refusal to comply.

3 DATED this 7th day of January, 2013.

4 PISANELLI BICE PLLC

5  
6 By: 

James J. Pisanelli, Esq., Bar No. 4027  
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9 Attorneys for Plaintiff Steven C. Jacobs

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 7th day of February, 2013, I caused to be sent via e-mail and electronic service true and correct copies of the above and foregoing **PLAINTIFF'S RENEWED MOTION FOR NRCP 37 SANCTIONS** properly addressed to the following:

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An employee of PISANELLI BICE PLLC

# **EXHIBIT 1**

PA1787

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TRAN

**COPY**

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

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al.

Defendants

CASE NO. A-627691

DEPT. NO. XI

Transcript of  
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS FOR PROTECTIVE ORDER AND SANCTIONS

TUESDAY, DECEMBER 18, 2012

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

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

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

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

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33

PA1788

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

2 (Court was called to order)

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

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

7 THE COURT: Sure.

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

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

14 THE COURT: Any objection?

15 MR. BICE: No.

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

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

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

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

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

1 do it.

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

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

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

25           THE COURT: Third new counsel.



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

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

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

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

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

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

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

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

8 THE COURT: Thank you.

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

11 THE COURT: Thank you.

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

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

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

1 THE COURT: I did.

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

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

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

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

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

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

1 on counsel.

2 All right. Goodbye.

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

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

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

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

18 \* \* \* \* \*

19

20

21

22

23

24

25

CERTIFICATION

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

AFFIRMATION

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

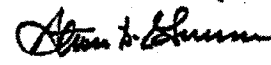
FLORENCE HOYT  
Las Vegas, Nevada 89146

*Florence M. Hoyt*  
FLORENCE HOYT, TRANSCRIBER

12/30/12  
DATE

# **EXHIBIT 2**

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1 FFCL

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5 STEVEN JACOBS,

6 )  
7 Plaintiff(s),

8 vs

9 LAS VEGAS SANDS CORP, ET AL,

10 Defendants.  
11 )

Case No. 10 A 627691

Dept. No. XI

Date of Hearing: 09/10-12/12

12 DECISION AND ORDER

13 This matter having come on for an evidentiary hearing before the Honorable Elizabeth  
14 Gonzalez beginning on September 10, 2012 and continuing day to day, based upon the  
15 availability of the Court and Counsel, until its completion on September 12, 2012; Plaintiff  
16 Steven Jacobs ("Jacobs") being present in court and appearing by and through his attorney of  
17 record, James Pisanelli, Esq., Todd Bice, Esq., and Debra Spinelli, Esq. of the law firm of  
18 Pisanelli Bice; Defendant Las Vegas Sands appearing by and through its counsel J. Stephen  
19 Peek, Esq. of the law firm of Holland & Hart and counsel for purposes of this proceeding,  
20 Samuel Lionel, Esq. and Charles McCrea, Esq., of the law firm of Lionel Sawyer & Collins;  
21 Defendant Sands China appearing by and through its counsel J. Stephen Peek, Esq. of the law  
22 firm of Holland & Hart, Brad D. Brian, Esq., Henry Weissman, Esq., and John B. Owens, Esq.  
23 of the law firm of Munger Tolles & Olson and counsel for purposes of this proceeding, Samuel  
24 Lionel, Esq. and Charles McCrea, Esq., of the law firm of Lionel Sawyer & Collins; the Court  
25 having read and considered the pleadings filed by the parties and the transcripts of prior  
26 hearings; having reviewed the evidence admitted during the trial; and having heard and  
27 carefully considered the testimony of the witnesses called to testify; the Court having  
28 considered the oral and written arguments of counsel, and with the intent of deciding the  
limited issues before the Court related to lack of candor and nondisclosure of information to

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

3 I.  
4 PROCEDURAL POSTURE

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

10 II.  
11 FINDINGS OF FACT<sup>1</sup>

12 1. Prior to litigation, in approximately August 2010, a ghost image of hard drives  
13 of computers used by Steve Jacobs in Macau<sup>2</sup> and copies of his outlook emails were transferred  
14 by way of electronic storage devices (the "transferred data") to Michael Kostrinsky, Esq.,  
15 Deputy General Counsel of Las Vegas Sands.<sup>3</sup>

16  
17  
18  
19 <sup>1</sup> Counsel for Las Vegas Sands objected on the basis of attorney client privilege to a majority of the  
20 questions asked of the counsel who testified during the evidentiary hearing. Almost all of those  
21 objections were sustained. While numerous directions not to answer on the basis of attorney client  
22 privilege and the attorney work product were made by counsel for Las Vegas Sands, sustained by the  
23 Court, and followed by the witnesses, sufficient information was presented through pleadings already in  
24 the record and testimony of witnesses without the necessity of the Court drawing inferences related to  
25 the assertion of those privileges. See generally, *Francis v. Wynn*, 127 NAO 60 (2011). The Court also  
26 rejects Plaintiff's suggestion that adverse presumptions should be made by the Court as a result of the  
27 failure of Las Vegas Sands to present explanatory evidence in its possession and declines to make any  
28 presumptions which might arguably be applicable under NRS Chapter 47.

<sup>2</sup> There is an issue that has been raised regarding the current location of those computers and hard  
drives from which the ghost image was made. The Court does not in this Order address any issues  
related to those items.

<sup>3</sup> According to a status report filed by Las Vegas Sands on July 6, 2012, there were other transfers of  
electronically stored data. Based upon testimony elicited during the evidentiary hearing, counsel was  
unaware of those transfers prior to the preparation and filing of the status report.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 <sup>4</sup> While Las Vegas Sands contends that a disclosure was made on June 9, 2011, this is inconsistent with  
28 other actions and statements made to the Court including the June 27, 2012 status report, the June 28,  
2012 hearing and the July 6, 2012 status report.

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

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

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

8  
9 **III.**  
**CONCLUSIONS OF LAW**

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

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

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

18 25. EDCR Rule 7.60 provides in pertinent part:

19 \* \* \*

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

25 \* \* \*

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

28 <sup>5</sup> The Court notes that there have also been significant issues with the production of information from  
Jacobs. On appropriate motion the Court will deal with those issues.

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

4             May 26, 2011

5             June 9, 2011

6             July 19, 2011

7             September 20, 2011<sup>6</sup>

8             October 4, 2011<sup>7</sup>

9             October 13, 2011

10            January 3, 2012

11            March 8, 2012

12            May 24, 2012

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

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

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

21       30. The Defendants concealed the existence of the transferred data from this Court.  
22  
23  
24

---

25 <sup>6</sup> This hearing was conducted in a related case, A648484.

26 <sup>7</sup> This hearing was conducted in a related case, A648484.

27 <sup>8</sup> While the Court recognizes that several other legal proceedings related to certain allegations made by  
28 Jacobs were commenced during the course of this litigation including subpoenas from the SEC and DOJ,  
this does not excuse the failure to disclose the existence of the transferred data; the failure to identify the  
transferred data on a privilege log, or the failure produce of the transferred data in this matter.

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

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

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

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

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

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

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

26  
27 <sup>9</sup> The Court recognizes no factors have been provided to guide in the evaluation of sanctions for conduct  
in violation of EDCR 7.60, but utilizes cases interpreting Rule 37 violations as instructive.

28 <sup>10</sup> As a result of the stay, the court does not address the discoverability of the transferred data and the  
effect of the conduct related to the entire case.

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

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

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

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

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

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

17 IV.

18 ORDER

19 Therefore the Court makes the following order:

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

23  
24  
25  
26 <sup>11</sup> There is an issue that has been raised regarding the current location of those computers and hard drives  
27 from which the ghost image was made. The Court does not in this Order address any issues related to  
those items.

28 <sup>12</sup> This does not prevent the Defendants from raising any other appropriate objection or privilege.

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

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

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

10  
11 Dated this 14<sup>th</sup> day of September, 2012

12  
13   
14 ELIZABETH GONZALEZ  
District Court Judge

15 Certificate of Service

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

19  
20 J. Stephen Peek, Esq. (Holland & Hart)

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

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

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

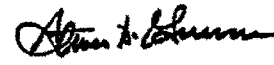
24  
25   
26 Dan Kutinac

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

# **EXHIBIT 3**



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CLERK OF THE COURT

**ORDR**

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Attorneys for Plaintiff Steven C. Jacobs

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

**STEVEN C. JACOBS,**

Plaintiff,

v.

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

Defendants.

Case No.: A-10-627691

Dept. No.: XI

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

Date and Time of Hearings:

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

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

**AND RELATED CLAIMS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 In addition, Defendant Sands China's Motion for Clarification of Jurisdictional Discovery  
15 Order on Order Shortening Time ("Motion for Clarification") came before the Court for hearing  
16 on 9:00 a.m. on October 13, 2011. James J. Pisanelli, Esq., and Debra L. Spinelli, Esq., of the  
17 law firm PISANELLI BICE PLLC, appeared on behalf of Jacobs. Patricia L. Glaser, Esq., of the  
18 law firm Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP, appeared on behalf of  
19 Defendant Sands China, and J. Stephen Peck, Esq., of the law firm Holland & Hart LLP, appeared  
20 on behalf of Defendant LVSC. The Court considered the papers filed on behalf of the parties and  
21 the oral argument of counsel, and good cause appearing therefor:  
22  
23  
24  
25  
26  
27  
28

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1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion for  
2 Clarification is GRANTED IN PART as follows:

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

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

7 DATED: March 8, 2012

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

11 Respectfully submitted by:

12 PISANELLI BICE PLLC

13 By: 

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15 Todd L. Bice, Esq., Bar No. 4534  
16 Debra L. Spinelli, Esq., Bar No. 9695  
17 Jarrod L. Rickard, Esq., Bar No. 10203  
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20 Attorneys for Plaintiff Steven C. Jacobs

21 Approved as to form by:

22 HOLLAND & HART

23 By: 

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25 Brian G. Anderson, Esq., Bar No. 10500  
26 9555 Hillwood Drive, Second Floor  
27 Las Vegas, NV 89134

28 Attorneys for Las Vegas Sands Corp.  
and Sands China, Ltd.

# **EXHIBIT 4**

PA1813

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*Attorneys for Sands China, Ltd.*

DISTRICT COURT  
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND ALL RELATED MATTERS.

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

Date: n/a  
Time: n/a

DEFENDANT SANDS CHINA LTD'S  
REPORT ON ITS COMPLIANCE WITH  
THE COURT'S RULING OF  
DECEMBER 18, 2012



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

1 Defendant Sands China Ltd. ("SCL") hereby provides the Court with a Report of its  
2 compliance with the Court's ruling of December 18, 2012. This compliance resulted in the  
3 production to Plaintiff of more than 5,000 documents (consisting of more than 27,000 pages) on  
4 or before January 4, 2013.

5 **I. THE COURT'S DECEMBER 18, 2012 RULING**

6 After Plaintiff served his jurisdictional discovery requests, Defendants began searching for  
7 and producing responsive documents. In this process, the parties eventually reached an impasse  
8 on SCL's position that, as to jurisdictional issues, a search of the ESI of custodians other than  
9 Plaintiff in Macau would be largely duplicative of LVSC's production.

10 Accordingly, on December 6, 2012, Defendants filed a motion for a Protective Order  
11 seeking the Court's guidance on whether the Macau search would have to include custodians  
12 other than Plaintiff. At that time, SCL was proceeding with an ESI search in Macau, but only for  
13 documents contained in Plaintiff's own ESI.

14 At a hearing held on December 18, 2012, the Court denied Defendants' motion and stated  
15 that it would enter an order directing SCL to produce all information relevant to jurisdictional  
16 discovery:

17 The motion for protective order is denied. I am going to  
18 enter an order today that within two weeks of today, which for ease  
19 of calculation because of the holiday we will consider to be January  
20 4<sup>th</sup>, Sands China will produce all information within their  
possession that is relevant to the jurisdictional discovery. That  
includes electronically stored information. Within two weeks.

21 (Dec. 18, 2012 Tr., Ex. A, at 24). In so doing, the Court expressly noted that its ruling did not  
22 foreclose SCL from making appropriate redactions. (*Id.*, at 27).

23 As of January 4, 2013, the above-described order had not yet been entered. Nevertheless,  
24 after the hearing, SCL immediately began taking steps to expand its on-going efforts in Macau to  
25 comply with the Court's ruling.

26 **II. SCL'S COMPLIANCE WITH THE COURT'S RULING**

27 SCL's production of more than 27,000 pages of documents resulted from an extended  
28 process that included seven major stages: (1) the recruitment of additional Macau lawyers to

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

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

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

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

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

28 ///

1           B.     The Selection of an Additional Vendor

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

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

14           C.     The Identification of Relevant Search Terms and Custodians

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

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

24                     ... We met for hours with his prior counsel explaining over  
 25 and over to the extent it was even needed if we're talking about the  
 26 custodians that they didn't know about in Macau, they needed only  
 look to Colby Williams's letter giving them 20 custodians that we  
 want that they've known for two years.

27           <sup>1</sup> See, e.g., Defendants' Opposition to Plaintiff's Motion for Sanctions, at 7-8 and Exhibit BB.

28           <sup>2</sup> *Id.*

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

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

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

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

27 <sup>3</sup> In July and August 2012, Defendants expanded the list of search terms and custodians used for the searches  
of LVSC's ESI after Plaintiff claimed that LVSC's production was inadequate.

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

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Principles”), Cmt. 6.b. This process typically includes “collecting electronically-stored information from repositories used by key individuals,” and “defining the information to be collected by applying reasonable selection criteria, including search terms, date restrictions, or folder designations.” *Id.*; see also *id.* Cmt. 11.a (instructing that “selective use of keyword searches can be a reasonable approach when dealing with large amounts of electronic data”).

Consistent with these principles, the Nevada courts have repeatedly endorsed the use of specified custodians and search terms to govern electronic discovery. See, e.g., *Cannata v. Wyndham Worldwide Corp.*, No. 2:10-cv-00068-PMP-VCF, 2012 WL 528224, at \*5 (D. Nev. Feb. 17, 2012) (ordering parties to agree on a final list of search terms and custodians).

The courts have also held that when a party requesting discovery refuses to agree on custodians and search terms, the responding party should develop its own search terms and list of custodians. See, e.g., *Treppel v. Biovail Corp.*, 233 F.R.D. 363, 374 (S.D.N.Y. 2006). In these circumstances, the party requesting discovery effectively waives its objections because it would be unfair to allow the requesting party to refuse to participate in the process of developing a search strategy and then later claim that the strategy was inadequate. See, e.g., *Covad Commc’ns Co. v. Revanet, Inc.*, 258 F.R.D. 5, 14 (D.D.C. 2009).

Thus, in the absence of any meaningful participation by Plaintiff, despite being invited to do so by Defendants, SCL relied on widely-accepted principles of electronic discovery to select a list of custodians and search terms that could reasonably be expected to yield documents relevant to the limited jurisdictional discovery the Court has allowed.

#### **D. The Review and Redaction of Documents**

After SCL developed its search strategy, it then applied the designated search terms to the ESI of the relevant custodians. SCL also processed approximately 20,000 pages of hardcopy documents maintained by Plaintiff and the other relevant custodians. Finally, SCL manually reviewed more than 50,000 hardcopy documents maintained by Plaintiff to determine whether they were copies of ESI or otherwise not relevant to any jurisdictional issues. This process yielded a population of more than 26,000 potentially responsive documents. FTI then “tiffed” each of these documents so that the Macau attorneys could redact personal data contained in the

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1 documents.

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

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

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

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

18 **F. Ongoing Quality Control Review**

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

27  
28 <sup>5</sup> The reviewers designated redactions based on the MPDPA as "Personal Redactions" and redactions based  
on the attorney-client privilege as "Privileged."


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

3 **III. CONCLUSION**

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

10 DATED January 8, 2013.

11   
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**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b), I certify that on January 8, 2013, I served a true and correct copy of the foregoing **DEFENDANT SANDS CHINA LTD'S REPORT ON ITS COMPLIANCE WITH THE COURT'S RULING OF DECEMBER 18, 2012** via e-mail and by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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## **EXHIBIT A**

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*Alfred J. Johnson*  
CLERK OF THE COURT

TRAN

**COPY**

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

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants

CASE NO. A-627691

DEPT. NO. XI

Transcript of  
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS FOR PROTECTIVE ORDER AND SANCTIONS

TUESDAY, DECEMBER 18, 2012

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

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

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

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

CLERK OF THE COURT

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

2 (Court was called to order)

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

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

7 THE COURT: Sure.

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

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

14 THE COURT: Any objection?

15 MR. BICE: No.

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

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

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

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

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

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

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

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

8 MR. PISANELLI: All right.

9 THE COURT: Mr. Jones.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the staggered approach.

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

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

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

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

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

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

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

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

1 do it.

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

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

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

25           THE COURT: Third new counsel.



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

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

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

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

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

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

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

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

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

5 MR. RANDALL JONES: No.

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

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

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

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

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

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

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

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

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

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

7 THE COURT: And Data Privacy Acts.

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

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

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

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

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

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

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

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

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

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



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

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

14                           (Pause in the proceedings)

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

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

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

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

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

12 THE COURT: Thank you.

13 THE COURT: Mr. Pisanelli.

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

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

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

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

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

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

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

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

9 MR. PISANELLI: Yes.

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

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

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

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

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

1 saying to you.

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

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

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

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

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

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

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

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

16           THE COURT: I mean, we know.

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



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

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

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

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

8 THE COURT: Thank you.

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

11 THE COURT: Thank you.

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

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

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

1 the videotape.

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

4 THE COURT: Yes.

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

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

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

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

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

5 The answer is no. Denied.

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

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

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

11 MR. PISANELLI: Okay.

12 THE COURT: Not Jim Randall, Randall Jones.

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

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

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

7 THE COURT: I understand.

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

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

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

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

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

19 MR. PISANELLI: We will indeed --

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

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

1 THE COURT: I did.

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

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

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

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

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

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

1 Macau within two weeks.

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

5 THE COURT: I know.

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

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

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

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

17 MR. PISANELLI: As have we.

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

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

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

1 different team.

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

5 THE COURT: Okay.

6 MR. PEEK: And I certainly disagree.

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

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

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

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

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

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

23 THE COURT: I don't remember.

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

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

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

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

19 THE COURT: Thank you.

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

21 THE COURT: Mr. Mark Jones.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 THE COURT: Thank you.

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

1 on counsel.

2 All right. Goodbye.

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

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

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

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

18 \* \* \* \* \*

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CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT  
Las Vegas, Nevada 89146

*Florence M. Hoyt*  
FLORENCE HOYT, TRANSCRIBER

12/30/12

DATE

## **EXHIBIT B**

PA1862



To whom this may concern,

The abovementioned official letter has been well received.

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

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

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

APP0520

PA1863

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

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

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

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

APP0521

PA1864

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

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

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

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

<sup>2</sup> The original version of the incoming letter reads "nos termos do disposto na alínea 4) do artigo 22.º da Lei 8/2003."

APP0622

PA1865

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

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

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

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

APP0523

PA1866

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

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

Yours faithfully,

APP0524

PA1867

## **EXHIBIT C**

PA1868

### CUSTODIANS AND SEARCH TERMS FOR MACAU REVIEW

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

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

**Custodian: Steve Jacobs**

**Search terms:**

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

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

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

Leven or "acting CEO or "interim CEO"

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

**Search terms:**

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

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

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

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

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

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

**Custodian: Steve Jacobs**

**Search terms:**

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

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

**Search terms:**

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

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

**Custodian: Steve Jacobs**

**Search terms:**

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

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

**Search terms:**

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

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

**Custodian: Steve Jacobs**

**Search terms:**

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

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

**Search terms:**

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

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

**Custodian: Steve Jacobs**

**Search 1 (Phase 2/3):**

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



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

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

**Search terms:**

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

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

**Custodian:** Steve Jacobs

**Search terms:**

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

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

**Search terms:**

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

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

**Custodian:** Steve Jacobs

**Search terms:**

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

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

**Search terms:**

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

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

**Custodian:** Steve Jacobs

**Search terms:**

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

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

**Search terms:**

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

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

**Custodian:** Steve Jacobs

**Search terms:**

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

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

**Search terms:**

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

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

**Custodian:** Steve Jacobs

**Search terms:**

Harrah\* OR Loveman

**Custodians:** Fiona Chan, Stephen Weaver, Edward Tracy

**Search terms:**

Harrah\* OR Loveman

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

**Custodian:** Steve Jacobs

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

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

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

**Search terms:**

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

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

**Custodian:** Steve Jacobs

**Search terms:**

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

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

**Search 1 and 2 (Phase 1 and 4):**

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

# **EXHIBIT 5**

PA1874

**Jennifer L. Braster**

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**From:** Todd Bice  
**Sent:** Wednesday, December 12, 2012 11:05 AM  
**To:** Steve Peek; Mark M. Jones (m.jones@kempjones.com)  
**Cc:** Debra Spinelli; James Pisanelli; Jennifer L. Braster; Eric T. Aldrian  
**Subject:** Bruce & Turnbull

Steve and Mark: I'm just following up on the request relative to deposing Mr. Bruce and Mr. Turnbull. I would like to get this matter in front of the court in the near future if the defendants intend to object. Thanks.

-- Todd.

# **EXHIBIT 6**



CAMPBELL  
& WILLIAMS  
ATTORNEYS AT LAW

VIA E-MAIL

July 20, 2011

Justin C. Jones, Esq.  
Holland & Hart  
9555 Hillwood Drive, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89134

Stephen Ma, Esq.  
Glaser Weil Pink Jacobs  
Howard & Shapiro  
3763 Howard Hughes Pkwy., Ste. 300  
Las Vegas, Nevada 89169

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

Dear Justin and Steve:

Per our previous discussions, we have prepared the following list of Sands China Ltd. custodians to search as part of the first phase of the searching process:<sup>1</sup>

- |                           |                       |
|---------------------------|-----------------------|
| 1. Ben Toh                | 11. Iain Bruce        |
| 2. Luis Melo              | 12. David Turnbull    |
| 3. Fiona Chan             | 13. Rachel Chiang     |
| 4. Pete Wu                | 14. Kevin Clayton     |
| 5. Eric Chiu <sup>2</sup> | 15. Andrew Billany    |
| 6. Antonio Perriera       | 16. Andrew MacDonald  |
| 7. Gunter Hatt            | 17. Kerry Andrewartha |
| 8. Matthew Pryor          | 18. Alidad Tash       |
| 9. Ian Humphries          | 19. Ruth Boston       |
| 10. Iain Fairbairn        | 20. Mark McWhinnie    |

<sup>1</sup> While certain individuals have/had multiple roles both with LVSC and Sands China, we have not included the names of such individuals on this list if they were included on the previous list we sent prioritizing LVSC custodians (e.g., Adelson, Levy, Jacobs, Schwartz, etc.) as it our understanding we only need to include them once. Please advise if you have a different understanding.

<sup>2</sup> We previously identified this individual as Eric Chen, but I believe his name is actually Eric Chiu.

700 SOUTH SEVENTH STREET  
LAS VEGAS, NEVADA 89101  
PHONE: 702/392-5822  
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PA1877

Justin Jones, Esq./Stephen Ma, Esq.  
July 20, 2011  
Page 2

By providing the foregoing list, Jacobs is not waiving his right to have other custodians searched as discovery proceeds.

Please contact me with any questions or comments.

Very truly yours,

CAMPBELL & WILLIAMS

  
J. Colby Williams, Esq.

JCW/



# **EXHIBIT 7**

PA1879



## PISANELLI BICE

January 18, 2013

TODD L. BICE  
ATTORNEY AT LAW  
TLB@PISANELLIBICE.COM

### VIA E-MAIL

J. Stephen Peek, Esq.  
Robert J. Cassity, Esq.  
HOLLAND & HART LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, Nevada 89134  
[speek@hollandhart.com](mailto:speek@hollandhart.com)  
[bcassity@hollandhart.com](mailto:bcassity@hollandhart.com)

Randall Jones, Esq.  
Mark Jones, Esq.  
Kemp, Jones & Coulthard  
3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
Las Vegas, Nevada 89169  
[irj@kempjones.com](mailto:irj@kempjones.com)  
[mmj@kempjones.com](mailto:mmj@kempjones.com)

RE: *Steven C. Jacobs v. Las Vegas Sands Corp, et al.*  
Eighth Judicial District Court, Case No. A627691-B

Dear Counsel:

We have received a series of documents purportedly coming from Sands China Ltd. ("Sands China"). Our review of those documents raises several questions for which we require a prompt response:

1. Where were the documents actually located and reviewed for production?
2. Virtually every document produced contains redactions which render the documents unintelligible. What is the basis for those redactions, considering that the court has sanctioned the Defendant for their past concealment of evidence and has overruled any objection to production of information under the Macau Personal Data Privacy Act?
3. We also noticed that several of the documents were sent either to or from custodians located in the United States which you have previously represented were searched. How is it that these documents were not produced from the custodians in the United States?

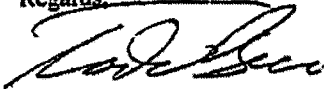
**B**

J. Stephen Peek, Esq.  
Robert J. Cassity, Esq.  
January 8, 2013  
Page 2

4. The documents do not appear to include the files and handwritten notes that Steven Jacobs knows were in his desk on the date of his termination. Were physical copies of Mr. Jacobs' files reviewed?
5. Robert Cassity sent us an email referencing "technical glitches" in a disk that had been delivered to our office concerning documents Nos. SCL00101824-109852. Yet, no explanation was provided as to what those glitches were, simply asking us to remove those documents from our system. While the disk has been returned, we would like to know the nature of the so-called technical glitches before we will agree to delete that prior production from our system. Some of the documents had been reviewed prior to receiving Mr. Cassity's email. We are suspicious that what is being claimed as a technical glitch is in fact proof that the documents were in the United States in an unredacted format. Is that what you claim was the "glitch"?
6. Tellingly absent from the production are any documents from Luis Melo, despite the fact that he was one of the top custodians long ago identified and his documents were transported to the United States over two years ago. What is the basis for having failed to produce documents from Melo? Please identify all persons that have reviewed Melo's documents, including the date those documents were reviewed.
7. Although certain documents have been produced, Sands China has not supplemented its discovery responses identifying which documents pertain to the discrete discovery requests. When is Sands China intending to do so?

These issues are without prejudice to additional areas of dispute as we further review the documents. However, in the face of the extensive redactions that render the documents unintelligible, we are unwilling to spend time debating or excusing Sands China's noncompliance. Please provide us with time early next week to hold a conference under Rule 2.34 on these issues, as we intend to seek prompt judicial relief for the noncompliance.

Regards,



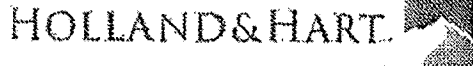
Todd L. Bice

cc: Michael Lackey, Esq. (via e-mail)

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PA1881

# EXHIBIT 8



J. Stephen Peek  
Phone (702) 222-2544  
Fax (702) 669-4650  
[speek@hollandhart.com](mailto:speek@hollandhart.com)

January 24, 2013

Via E-Mail Only: [tlb@pisanellibice.com](mailto:tlb@pisanellibice.com)

Todd L. Bice, Esq.  
Pisanelli & Bice  
3883 Howard Hughes Parkway, Suite 800  
Las Vegas, Nevada 89169

Re: Las Vegas Sands/Jacobs

Dear Todd:

Thank you for your correspondence of January 18, 2013. As a preliminary matter, I note that our January 8, 2013 Report to the Court contains detailed information responsive to many of the questions you raise in your letter.

I also note that several of your questions deal with specific search terms and/or custodians, even though you declined to participate in any cooperative effort to reach agreement on search terms and custodians for the SCL production. As we noted in our Report, after serving your jurisdictional discovery requests, you never (1) provided Defendants with a list of proposed custodians for jurisdictional discovery; (2) participated with Defendants in finalizing an expanded list of search terms for jurisdictional discovery; or (3) responded to Defendants' October 6, 2012 request to meet and confer about jurisdictional discovery in Macau. (See, e.g., D. Spinelli e-mail to D. Schneider, Aug. 14, 2012 ("Unfortunately, we are just not in a position to be able to tell you what terms you should use to search your documents:")). Having declined to participate in the meet-and-confer process, you have waived any objections to the adequacy of the search strategy. See, e.g., *Covad Commc'ns. Co. v. Revanet*, 258 F.R.D. 5, 14 (D.D.C. 2009).

Nevertheless, in the spirit of cooperation, I provide below the answers to your specific questions in the order you raised them.

1. As set forth in our Report, we searched for and identified ESI and other documents at SCL facilities in Macau. (Report, at 4-9).

2. As set forth in our Report, we redacted both personal data and privileged communications from the SCL production. (Report, at 6-7). As you know, both the Stipulated Confidentiality Order and the Court authorized the parties to redact

Holland & Hart LLP Attorneys at Law

Phone (702) 669-4600 Fax (702) 669-4650 [www.hollandhart.com](http://www.hollandhart.com)

7535 Hillwood Drive, 2nd Floor Las Vegas, NV 89124

Attn: William John Sculler, Clerk of the Supreme Court for the State of Nevada, 17th Center Inland NW 5th Fl. Washington, D.C.

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January 24, 2013  
Page 2



documents. (December 18, 2012 Tr., at 26-27; SCO, ¶ 7). We based the "personal data" redactions on two alternative grounds: (1) the Macau Data Privacy Act; and (2) a determination that personal data relating to specific individuals is not "relevant to jurisdictional discovery." Your claim that the documents are "unintelligible" without such personal data is incorrect. Nevertheless, we are currently preparing a "redaction log" that will provide additional information about redactions in e-mails and other documents produced. Also, as part of this process, we are identifying copies of currently-redacted documents that are located in the United States in unredacted form. All such copies will be produced in unredacted form as we identify them.

3. We have not determined to what extent (if at all) the SCL production contains documents to or from U.S. custodians that are not contained in the LVSC production. Nevertheless, if the SCL production does contain unique documents sent to (or received from) U.S. custodians, it simply reflects the fact that we used different custodians for the Macau jurisdictional searches than we did for the U.S. jurisdictional searches. If you had any issues with our selection of jurisdictional custodians, you should have raised such issues as part of the meet-and-confer process. Instead, you chose not to respond to our request for a meet-and-confer.

4. Yes, we searched hard copy documents in Macau, including hard copy documents that we believe were maintained by Plaintiff.

5. The "technical glitch" was that the vendor's software failed to impose the redactions in one of SCL's initial productions. As noted above, copies of any currently-redacted documents that are located in the United States in unredacted form will be produced in unredacted form.

6. We selected custodians who were likely to have documents relevant to jurisdictional discovery. Because Melo was an attorney—and because he was not involved in the operational side of the business—we determined that he was not reasonably likely to possess unique documents relevant to the narrow jurisdictional discovery permitted by the Court. We further determined that, in any event, his documents were likely to be privileged. Contrary to your suggestion, you never proposed Melo as a custodian for jurisdictional discovery. Again, if you had any issues with our selection of jurisdictional custodians, you should have raised such issues as part of the meet-and-confer process, instead of declining to participate at all.

7. We are preparing a supplemental response to our document production identifying which documents pertain to discrete discovery requests. We expect to submit the supplemental response on or before January 28, 2013.


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January 24, 2013  
Page 3

HOLLAND & HART 

If, after reviewing these responses, you would like to discuss any of these issues further, we can be available for a meet-and-confer conference call on January 29, 2013 at 2:00 p.m.

Sincerely,

  
J. Stephen Peck  
of Holland & Hart LLP

JSP/dmb

5975564\_1

PA1885

# **EXHIBIT 9**

PA1886



**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT 10**

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT 11**

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT 12**

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT 13**



**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT 14**

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT 15**

**SUBMITTED  
UNDER  
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TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT 16**

**SUBMITTED  
UNDER  
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TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT 17**



**SUBMITTED  
UNDER  
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TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT 18**

**SUBMITTED  
UNDER  
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TO  
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ORDER**

# **EXHIBIT 19**

**SUBMITTED  
UNDER  
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TO  
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ORDER**

# **EXHIBIT 20**

PA1908

**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT 21**



**SUBMITTED  
UNDER  
SEAL  
PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT 22**

**SUBMITTED  
UNDER  
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TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT 23**

**SUBMITTED  
UNDER  
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PURSUANT  
TO  
CONFIDENTIALITY  
ORDER**

# **EXHIBIT 24**

Production Index-SGL005 Properties

General Security Details Previous Versions

Property	Value
Comments	
Origin	
Authors	Byerson, Julia
Last saved by	FTI
Revision number	
Version number	
Program name	Microsoft Excel
Company	FTI Consulting
Manager	
Content created	12/4/2012 9:14 AM
Date last saved	1/3/2013 4:08 PM
Last printed	
Content	
Content status	
Content type	
Scale	No
Links dirty?	No

Remove Properties and Personal Information

OK Cancel Apply

PA1917