

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

5 THE COURT: Thank you.

6 Ms. Glaser.

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

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

3 MS. GLASER: Glad to provide it.

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

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

10 THE COURT: I don't want the disclosures.

11 MS. GLASER: But that's more information.

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

18 MR. PISANELLI: Can I pick both?

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

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

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

1 MS. GLASER: Thank you, Your Honor.

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

6 MR. PEEK: Your Honor --

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

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

13 MR. PEEK: Your Honor --

14 MR. PISANELLI: Thank you, Your Honor.

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

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

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

20 THE COURT: By noon.

21 MR. PISANELLI: Yes.

22 MR. PEEK: And we --

23 THE COURT: Mr. Peek.

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

1 did send me something to take a look at.
2 THE COURT: I don't know.
3 MR. PEEK: So I'll take a look at it and get back to
4 Jim.
5 THE COURT: I know that my former law clerk, Brian
6 Anderson, sent me a letter saying that he wanted me to sign
7 this, but Pisanelli had a different version and I haven't seen
8 it.
9 MR. PEEK: I haven't, either.
10 Your Honor, just a quick question. I know everybody
11 wants to leave here. But the hearing Tuesday is at 9:00,
12 9:30, 10:00, 10:30, 1:00 o'clock?
13 THE COURT: What hearing Tuesday?
14 MR. PEEK: On my motion for sanctions of the interim
15 -- the interim order.
16 THE COURT: That's on 9:00 o'clock, Steve.
17 MR. PEEK: 9:00 o'clock.
18 MS. GLASER: Thank you.
19 THE COURT: And I signed the OST. You need to file
20 and serve.
21 MR. PEEK: It got brought out without me knowing it.
22 THE COURT: I took care of it all. I'm on the ball.
23 (Off-record colloquy)
24 THE COURT: Have a nice evening, everyone.
25 THE PROCEEDINGS CONCLUDED AT 5:10 P.M.

CERTIFICATION

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

AFFIRMATION

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

**FLORENCE HOYT
Las Vegas, Nevada 89146**

10/4/11

FLORENCE HOYT, TRANSCRIBER

DATE

EXHIBIT 2

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND ALL RELATED MATTERS.

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

Date: n/a
Time: n/a

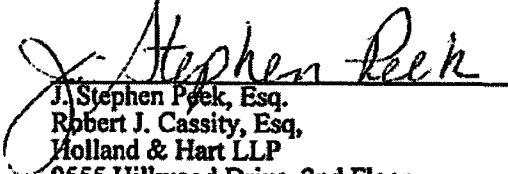
**DEFENDANTS' MOTION FOR A
PROTECTIVE ORDER ON ORDER
SHORTENING TIME**

Defendants Las Vegas Sands Corp. ("LVSC") and Sands China Ltd. ("SCL") move this
Court pursuant to Rule 26(c), this Court's March 8, 2012 Order, and the Nevada Supreme Court's

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

1 Order Granting SCL's Petition for Writ of Mandamus, for a protective order with respect to the
2 depositions of Sheldon G. Adelson and Robert G. Goldstein.

3 DATED November 26, 2012.

4 
5 J. Stephen Peek, Esq.
6 Robert J. Cassity, Esq.,
7 Holland & Hart LLP
8 9555 Hillwood Drive, 2nd Floor
9 Las Vegas, Nevada 89134
10 Attorneys for Las Vegas Sands Corp. and Sands
11 China Ltd.
12 -and-
13 J. Randall Jones, Esq.
14 Mark M. Jones, Esq.
15 Kemp Jones & Coulthard, LLP
16 3800 Howard Hughes Parkway, 17th Floor
17 Las Vegas, Nevada 89169
18 Attorneys for Sands China, Ltd.

12 **EX PARTE APPLICATION FOR ORDER SHORTENING TIME**

13 As set forth in the Affidavit of J. Stephen Peek, Esq. below, good cause exists to hear
14 Defendants' Motion for a Protective Order on an order shortening time. Plaintiff has taken an
15 extremely broad view of his entitlement to discovery under this Court's March 8 Order. In the
16 two depositions that have been taken to date, of Sheldon G. Adelson and Robert G. Goldstein,
17 Plaintiff has consistently attempted to obtain discovery into the merits of his claims, even though
18 the Court has limited discovery to jurisdictional issues. Furthermore, Plaintiff appears to be
19 pursuing jurisdictional theories that either have no viable legal basis or that Plaintiff himself
20 disclaimed a year ago, when the Court granted him the right to take limited jurisdictional
21 discovery. Two more depositions are scheduled in December, and Plaintiffs have made clear that
22 they intend to demand more deposition time with Messrs. Adelson and Goldstein in the near
23 future. Defendants seek an Order Shortening Time so that the discovery issues raised by their
24 Motion for Protective Order can be resolved expeditiously, discovery can be completed, and the
25 Court can hold a hearing on the issue of jurisdiction, as the Nevada Supreme Court directed.

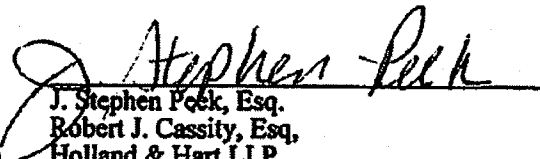
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Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

1 Defendants' request for an order shortening time is made in good faith and is not made for any
2 improper purpose, and accordingly Defendants request that this Motion be heard on an order
3 shortening time.

4 DATED November 26, 2012.

5
6 
7 J. Stephen Peek, Esq.
8 Robert J. Cassity, Esq.
9 Holland & Hart LLP
10 9555 Hillwood Drive, 2nd Floor
11 Las Vegas, Nevada 89134
12 Attorneys for Las Vegas Sands Corp. and Sands
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20 Attorneys for Sands China, Ltd.

21
22
23 **DECLARATION OF J. STEPHEN PEEK, ESQ.**

24 I, J. STEPHEN PEEK, ESQ., being duly sworn, state as follows:

25 1. I am one of the attorneys for Defendant Las Vegas Sands Corporation ("LVSC")
26 and Sands China Ltd. ("SCL") in this action. I make this Declaration in support of Defendants'
27 Motion for a Protective Order in accordance with EDCR 2.34 and in support of their Ex Parte
28 Application for an Order Shortening Time. I have personal knowledge of the facts stated herein,
except those facts stated upon information and belief, and as to those facts, I believe them to be
true. I am competent to testify to the matters stated herein.

2. During the depositions of Mr. Sheldon Adelson and Mr. Robert Goldstein,
Plaintiff's counsel was ranging far beyond the limited scope of discovery the Court had allowed
and was asking questions relating to the merits, instead of the narrow issue of jurisdiction.

3. I objected to Plaintiff's counsel's lines of questioning during these depositions that
I believed to be beyond the limited scope of discovery on the issue of personal jurisdiction.

4. Although I met and conferred with counsel for Jacobs in accordance with EDCR

1 2.34 during the depositions of Messrs. Adelson and Goldstein, we were unable to satisfactorily
2 resolve the discovery dispute and agreed that the discovery dispute would need to be resolved by
3 the Court.

4 5. Rather than immediately terminate the depositions, the parties agreed that I would
5 instruct the witnesses not to answer those questions that I believed to be outside the scope of
6 permitted discovery, and that Defendants would later proceed with filing a motion for protective
7 order on the discovery issues in dispute.

8 6. Plaintiff has now requested additional dates for continuing Mr. Adelson's
9 deposition. At the conclusion of Mr. Goldstein's deposition, Plaintiff's counsel indicated that he
10 would seek more deposition time with Mr. Goldstein as well.

11 7. I have also discussed with Plaintiff's counsel that these same discovery issues
12 would arise with regard to other witnesses Jacobs has already scheduled for deposition. The same
13 issues are likely to be raised in the deposition of Michael A. Leven, which is scheduled for
14 December 4 and of Kenneth Kay, which is scheduled for December 18. In order to allow all
15 parties an opportunity to present and argue a fully briefed Motion for Protective Order to be heard
16 by the Court, I believe that it would be in the best interests of both parties to resolve these issues
17 before Mr. Kay's deposition on December 18. I recognize that the Court's schedule may not
18 permit it to hear Defendants' Motion before the upcoming Leven deposition on December 4.
19 Accordingly, during the Leven deposition defense counsel will adopt the same procedure used at
20 the Adelson and Goldstein depositions, making objections as appropriate and instructing the
21 witness not to answer where counsel believes that Plaintiff's questions go beyond the bounds of
22 the limited jurisdictional discovery this Court has permitted. We will provide supplemental
23 briefing, as necessary, on the specific questions objected to in the Leven deposition.


24 8. Defendants' request for an order shortening time is made in good faith and is not
25 made for any improper purpose, and Defendants specifically request that the Court hear this
26 Motion on an order shortening time.

27 ///

28 ///

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9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

1 9. I declare under penalty of perjury that the foregoing is true and correct.

2
3 
4 J. Stephen Peek, Esq.

5 **ORDER SHORTENING TIME**

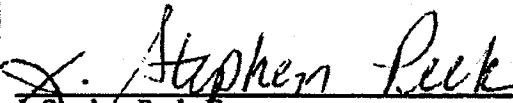
6 The Court having reviewed the Ex Parte Application for Order Shortening Time, and good
7 cause appearing,

8 IT IS HEREBY ORDERED that the foregoing DEFENDANTS' MOTION FOR A
9 PROTECTIVE ORDER shall be heard on shortened time on the ____ day of _____, 2012,
10 at the hour of ____ : ____ a.m./p.m. in Department XI of the Eighth Judicial District Court.

11 DATED this ____ day of _____, 2012.

12
13
14 DISTRICT COURT JUDGE

15 Submitted by:

16 
17 J. Stephen Peek, Esq.
18 Robert J. Cassity, Esq.,
19 Holland & Hart LLP
20 9555 Hillwood Drive, 2nd Floor
21 Las Vegas, Nevada 89134
22 Attorneys for Las Vegas Sands Corp. and Sands China Ltd.
23 -and-
24 J. Randall Jones, Esq.
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27 3800 Howard Hughes Parkway, 17th Floor
28 Las Vegas, Nevada 89169
Attorneys for Sands China, Ltd.

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
2 **DEFENDANTS' MOTION FOR A PROTECTIVE ORDER**

3 **I.**

4 **INTRODUCTION**

5 There were a number of disputes during both the Adelson and Goldstein depositions about
6 the scope of the questions Plaintiff's counsel asked. Defense counsel objected at various points
7 that Plaintiff's counsel was ranging far beyond the limited scope of discovery the Court had
8 allowed and was asking questions relating to the merits, instead of to the narrow issue of
9 jurisdiction. Rather than terminating the depositions and seeking immediate relief from the Court,
10 defense counsel instructed the witnesses not to answer certain questions, with the understanding
11 that Defendants would take their objections up with the Court at the appropriate time. Plaintiff
12 has now asked to schedule another deposition day for Mr. Adelson, both to return to the questions
13 that Mr. Adelson declined to answer and to ask additional questions. We assume that a similar
14 request will be forthcoming in the wake of the Goldstein deposition. Accordingly, Defendants
15 now seek a protective order sustaining their objections in both the Adelson and Goldstein
16 depositions, precluding Plaintiff from seeking any further deposition time with either witness, and
17 setting clear ground rules for the discovery that remains to be completed.

18 During Mr. Adelson's deposition, Plaintiff's counsel sought to support Jacobs' position on
19 general jurisdiction by asking Mr. Adelson whether, in his capacity as Chairman of SCL, he had
20 "directed" that certain actions be taken in Macau. Plaintiff's counsel then asked where Mr.
21 Adelson was when he gave such "directions." *See, e.g.,* Adelson Dep. at 86:1-6, 87:5-8, 131:11-
22 25. Defense counsel did not object to these questions. But he did object (and instructed Mr.
23 Adelson not to answer) when Plaintiff sought to delve more deeply into the details of a number of
24 events, including Jacobs' own termination. Similarly, Plaintiff's counsel asked Mr. Goldstein,
25 who acted solely as an officer of LVSC, whether he had "directed" Jacobs or other SCL
26 employees in Macau to take specific actions. *See, e.g.,* Goldstein Dep. at 6:24-25, 11:1-6, 74:11-
27 14, 185:13-17, 222:6-10. Again, Defendants' counsel did not object to these questions. He
28 objected and instructed the witness not to answer only when Plaintiff's counsel sought specific

1 details about the events in question — including Jacobs' termination — that have no conceivable
2 relevance to the jurisdictional issue.

3 Defendants' objections were well-founded. Plaintiff has the right under this Court's
4 March 8, 2012 Order to ask questions *only* about "activities that were done for or on behalf of"
5 SCL in Nevada during the relevant time frame (January 1, 2009 to October 20, 2010). *See* Ex. A
6 hereto. Defendants did not object when Plaintiff asked what directions or advice Messrs. Adelson
7 or Goldstein gave to Jacobs and other SCL employees in Macau about specific issues or what
8 involvement (if any) they had in helping SCL book entertainment or recruit executives for its
9 casino operations in Macau. But questions about the *details* of various events that occurred
10 during Jacobs' employment as SCL's CEO, including Jacobs' allegations of wrongdoing by Mr.
11 Adelson and the reasons for Jacobs' termination, are merits issues that are beyond the bounds of
12 the limited discovery the Court allowed.

13 More fundamentally, however, the Adelson and Goldstein depositions expose the fatal
14 flaws in Plaintiff's general jurisdiction theories. Even if Plaintiff can prove that, during the
15 relevant period of time, Mr. Adelson (in his capacity as SCL's Chairman) and Michael Leven (as
16 a special adviser to the SCL Board and later SCL's acting CEO) routinely gave "directions" to
17 SCL personnel in Macau from their offices in Las Vegas, that would not provide a basis for
18 finding that SCL was "present" in Nevada and therefore subject to general jurisdiction here. As
19 demonstrated below, Plaintiff's theory that SCL is subject to general jurisdiction in Nevada
20 because Las Vegas was SCL's "de facto" executive headquarters fails as a matter of law.

21 Similarly, even if Plaintiff could show that certain LVSC officers, including Mr.
22 Goldstein, gave direction to SCL employees in Macau on a variety of issues, such a showing
23 would not provide a basis for finding general jurisdiction over SCL in Nevada. Indeed, Plaintiff
24 has already conceded this point by disclaiming any attempt to treat SCL as LVSC's "alter ego"
25 for purposes of the jurisdictional analysis. In seeking jurisdictional discovery, Plaintiff argued
26 that he was not trying to prove that LVSC so controlled SCL that their separate corporate
27 identities should be disregarded; instead, Plaintiff argued that LVSC acted as SCL's agent and
28 provided SCL with services in Nevada. Under Plaintiff's own agency theory, it is irrelevant

1 whether any LVSC officer ever directed an SCL employee to do anything in Macau. Rather, the
2 question is whether SCL retained LVSC to act as its agent in Nevada and whether LVSC's
3 activities in Nevada on its behalf were sufficient to subject SCL to general jurisdiction here. As
4 we will explain at the appropriate time, the answer to that question is "no." But for purposes of
5 the present motion, the critical fact is that there is *no* theory under which Plaintiff should be
6 asking Mr. Goldstein or Kenneth Kay (who is scheduled to be deposed on December 18) about
7 whether, in their capacities as LVSC officers, they directed or controlled any SCL activities in
8 Macau. Instead, under Plaintiff's own "agency" theory, the only relevant questions relate to what
9 services (if any) LVSC provided to SCL in Nevada, pursuant to SCL's direction and control.

10 For the reasons outlined above below, Defendants seek an order from this Court that:

11 (1) To the extent that Defendants objected to Plaintiff's questions in the Adelson and
12 Goldstein depositions and instructed the witnesses not to answer, those objections are sustained;

13 (2) The Adelson and Goldstein depositions are concluded and no further jurisdictional
14 discovery may be taken from either witness;

15 (3) In the remaining depositions, in accordance with the Court's March 8 Order,
16 Plaintiff may only inquire into the facts regarding activities undertaken for or on behalf of SCL
17 that are relevant to jurisdiction — such as who did what, when and where — and may not inquire
18 into merits issues such as the reasons for Jacobs' termination; and

19 (4) Mr. Kay's deposition shall be limited to an inquiry into his activities for or on
20 behalf of SCL in Nevada, in accordance with the March 8 Order, and shall not seek information
21 about any purported "directions" Mr. Kay or any other LVSC executive may have given in his
22 capacity as such to SCL personnel in Macau about activities in Macau.

23 **II.**

24 **BACKGROUND FACTS AND PROCEDURAL HISTORY**

25 SCL is a Cayman Islands corporation. Through its wholly-owned subsidiary, Venetian
26 Macau Limited ("VML"), and other Macau subsidiaries, SCL owns and operates hotels, casinos,
27 and other facilities in Macau. See First Am. Compl. ¶ 3 on file herein with this Court; 12/21/10
28 Aff. of Anne Salt ("Salt Aff."), attached hereto as Ex. B, ¶¶ 3, 4 and 7. Approximately 70% of its

1 stock is indirectly owned by LVSC; the rest is publicly owned and traded on the Hong Kong
2 Stock Exchange. *Id.* ¶¶ 4-5. SCL is not licensed to do business in Nevada and has no operations
3 here. Indeed, under a Non-Competition Deed that SCL entered into with LVSC, SCL is
4 prohibited from conducting its casino business in or directing its marketing efforts to Nevada. *Id.*
5 ¶¶ 8-9. Nevertheless, in opposing SCL's motion to dismiss for lack of personal jurisdiction,
6 Plaintiff argued that, at the time the lawsuit was filed, there was general (or "doing business")
7 jurisdiction over SCL in Nevada. Plaintiff also invoked the concept of "transient jurisdiction,"
8 arguing that there was jurisdiction over SCL in Nevada because Plaintiff served the complaint on
9 Michael Leven, who was acting CEO of SCL at the time, at his office in Las Vegas. *See* Pl. Opp.
10 filed on 2/28/11, at 10, 14.

11 As the Nevada Supreme Court observed in granting SCL's Petition for Writ of
12 Mandamus, Plaintiff argued that SCL could be found to be "present" in Nevada and therefore
13 subject to general jurisdiction "based on the acts taken in Nevada to manage petitioner's
14 operations in Macau." Nevada Supreme Court Order, Ex. C hereto, at 1. But Plaintiff did not
15 distinguish between the actions of LVSC as SCL's parent corporation and the actions of SCL
16 itself. The Court noted that in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846
17 (2011), the U.S. Supreme Court had "considered whether jurisdiction over foreign subsidiaries of
18 a U.S. parent corporation was proper by looking only to the subsidiaries' conduct; the Court
19 suggested that including the parent's contacts with the forum would be, in effect, the same as
20 piercing the corporate veil." Order at 2. The Nevada Supreme Court then noted that it was
21 "impossible to determine if the district court in fact relied on the Nevada parent corporation's
22 contacts in this state in exercising jurisdiction over" SCL and remanded for an evidentiary hearing
23 and findings and conclusions on the issue of general jurisdiction. *Id.*¹

24 The Nevada Supreme Court's Order makes clear that whatever officers of LVSC may
25 have done (if anything) to "manage" SCL's business in Macau cannot provide a basis for
26

27 ¹ The Court directed this Court to consider Plaintiff's transient jurisdiction argument only if it determined that
28 general jurisdiction was lacking. Order at 3.

1 asserting general jurisdiction over SCL unless Plaintiff can show that LVSC's control was so
2 pervasive and complete that SCL's corporate veil should be pierced. On remand, Plaintiff
3 conceded that he could not meet the stringent standard for veil-piercing. Instead, Plaintiff offered
4 two new theories of general jurisdiction. First, he argued that the actions of SCL directors and
5 officers, including Messrs. Adelson and Leven, in supposedly managing SCL's Macau affairs in
6 Nevada could provide a basis for general jurisdiction, apparently under the theory that SCL's "de
7 facto" executive headquarters is located in Nevada. Second, Plaintiff argued that LVSC acted as
8 SCL's agent for some purposes and that LVSC's activities in Nevada as SCL's purported agent
9 could provide a basis for general jurisdiction. *See* 9/27/11 Hr'g Tr. at 21:3-10; 26.

10 The Court allowed Plaintiff to take discovery on these two general jurisdiction theories. It
11 permitted Plaintiff to take the depositions of Messrs. Adelson and Leven, who were identified as
12 serving simultaneously as both LVSC and SCL officers and/or directors, concerning the work
13 they performed directly for SCL and any work they performed on behalf of or for SCL in their
14 capacities as LVSC officers and directors. Plaintiff was also allowed to take Mr. Goldstein's
15 deposition even though Mr. Goldstein has never been employed by SCL in any capacity, because
16 Plaintiff claimed that he had actively participated in international marketing and development for
17 SCL while serving as an LVSC officer. *See* March 8 Order ¶ 4; 9/27/11 Hr'g Tr. at 26:22-25.
18 Similarly, Plaintiff was allowed to take the deposition of Mr. Kay, who also was employed only
19 by LVSC, based on Plaintiff's assertion that he had participated in funding efforts for SCL. March
20 8 Order ¶ 3; 9/27/11 Hr'g Tr. at 27:1-4. Given Plaintiff's agency theory — and his concession that
21 he was not pursuing an "alter ego" theory — we can only assume that Plaintiff's theory is that
22 Messrs. Goldstein and Kay were acting as SCL's agents in providing marketing and development
23 and financial services to SCL.

24 The document requests the Court granted were also in line with Plaintiff's two theories.
25 The Court allowed Plaintiff to request documents establishing the location of SCL Board
26 meetings, as well as documents related to Mr. Leven's service as acting CEO and Executive
27 Director of SCL during the period in question — document requests that apparently relate to
28 Plaintiff's first theory. *See* March 8 Order, ¶¶ 6, 9. Most of the other document requests appear to

1 be linked to Plaintiff's agency theory, seeking documents reflecting any work performed by
2 LVSC in Nevada on SCL's behalf with respect to a variety of different issues. *See, e.g., id.*, ¶¶
3 10, 12, 15, and 18.

4 After SCL moved for clarification of the Court's ruling on the scope of discovery, the
5 Court added that "[t]he parties are only permitted to conduct discovery related to activities that
6 were done for or on behalf of Sands China" and that this "is an overriding limitation on all of the
7 specific items" the Court had allowed. March 8 Order. By its terms, this clarification eliminated
8 any discovery into the theory that Plaintiff himself has disclaimed — namely, that LVSC
9 executives, acting for the benefit of LVSC, directed and controlled SCL's operations in Macau.
10 Instead, discovery was limited, as the Nevada Supreme Court's Order dictates, to the activities of
11 SCL in Nevada. That includes whatever activities Messrs. Adelson and Leven undertook in
12 Nevada in their capacities as directors or (in Mr. Leven's case) as an officer of SCL and whatever
13 activities any LVSC executive could be deemed to have undertaken in Nevada for or on behalf of
14 SCL, such as negotiating agreements with entertainment companies or arranging funding on
15 SCL's behalf.²

16 A second overriding limitation on discovery is provided by the Nevada Supreme Court's
17 Order, which directed this Court to "stay the underlying action, except for matters relating to a
18 determination of personal jurisdiction, until a decision on that issue has been entered." Order at 3.
19 Pursuant to that Order, this Court has allowed only jurisdictional discovery. Thus, any discovery
20 into the merits of the case is necessarily prohibited.

21 ///

22 ///

23 ///

24 ///

25 ² SCL disputes Plaintiff's argument that LVSC acted as SCL's agent when it provided certain products and
26 services to SCL. Those products and services were provided pursuant to a Shared Services Agreement between
27 LVSC and SCL. That Agreement did not purport to create an agency relationship, nor did it give SCL the right to
28 control the manner in which LVSC performed the services in question. Without control, there is no principal-agent
relationship. However, for discovery purposes Defendants have assumed that any services LVSC provided to SCL in
Nevada pursuant to the Shared Services Agreement would be deemed to have been provided "for or on behalf of
SCL."

III.

LEGAL ANALYSIS

A. **DEFENDANTS' OBJECTIONS AT MR. ADELSON'S DEPOSITION SHOULD BE SUSTAINED**

Most of the objections and instructions not to answer at the Adelson deposition related to questions concerning Jacobs' termination. As the Court may recall, at one point in the deposition, the parties called the Court for guidance as to whether Plaintiff could ask questions to support a theory of specific jurisdiction — a theory that Plaintiff did not raise until long after the Nevada Supreme Court issued its order, which he therefore waived. The Court did not expressly rule on that issue, but did allow Plaintiff to inquire into Mr. Adelson's actions on behalf of SCL in terminating Jacobs. Adelson Dep. (Ex. D hereto). at 195-97. Mr. Adelson then answered a series of questions on this issue; defense counsel cut off the questioning only when Plaintiff insisted on inquiring not only into *what* Mr. Adelson did, but also *why* he did it — on the ground that these questions addressed the merits, rather than the narrow issue of jurisdiction.³

Defense counsel also objected to Plaintiff's attempt to discover the content of daily and other periodic reports supplied by SCL to Mr. Adelson in his capacity as Chairman (Adelson Dep. at 121:11-25, 146:5-17, 160:20-161:4); to questions about the content of Mr. Adelson's input into the Shared Services Agreement with LVSC (*id.* at 169:14-24); to the content of certain directions Mr. Adelson allegedly gave to Jacobs with respect to a particular individual (*id.* at 279:5-14); and to questions about the automatic transfer of customer funds in the event that SCL customers from Macau visited Las Vegas (*id.* at 162:22-163:5).

All of these objections should be sustained. Plaintiff was able to depose Mr. Adelson at length about the basic facts concerning his termination — who did what, when and where. But

³ Many of the questions that Mr. Adelson declined to answer on advice of counsel revolved around Mr. Adelson's conversation with Mr. Leven at the SCL roadshow in London in January 2010. Mr. Adelson testified that he had discussed his dissatisfaction with Jacobs' performance as SCL's CEO during that conversation. Dep. at 201:07. On advice of counsel he refused to elaborate further on the details of the conversation. *See, e.g., id.*, at 203:12-15, 216:5-25, 220:12-18. He also declined to testify about how long before his termination the list of twelve reasons for Jacobs' termination was developed (Dep. at 206:6-25, 207:22-25, 208:1-6), about the details of Mr. Leven's authority to negotiate a settlement with Jacobs, or about discussions concerning the reasons for his termination (Dep. at 234:3-10, 235:14-23, 247:5-24, 249:1-12, 253:15-254:21, 279:20-25, 280:1-9).

1 his attempt to discover the details relating to his termination, including why he was terminated,
2 the extent to which Mr. Leven could have negotiated with him, etc., are plainly merits issues that
3 have no relevance to the issue of jurisdiction.⁴ For the same reason, Plaintiff was not entitled to
4 discovery into the specific contents of the reports that flowed to Mr. Adelson in his capacity as
5 SCL Chairman in Las Vegas or into any specific directions that Mr. Adelson might have given
6 Jacobs. The *fact* of such directions and information flow could conceivably be relevant to
7 Plaintiff's theory that Las Vegas is SCL's "de facto executive headquarters." But the *content* of
8 the directions and the information are wholly beside the point even under Plaintiff's theory.

9 Finally, because the Court has already rejected Plaintiff's attempt to obtain document
10 discovery into the so-called "automatic transfers" of funds in its March 8 Order, Plaintiff should
11 be precluded from asking questions about those transfers in the depositions the Court has
12 permitted.

13 Because Defendants' objections were appropriate, there is no reason to bring Mr. Adelson
14 back to answer questions that he declined to answer the first time around. Furthermore, giving
15 Plaintiff additional deposition time with Mr. Adelson to ask new questions would not yield any
16 benefit. Plaintiff inquired at length about the role Mr. Adelson plays as SCL's Chairman. *See*,
17 *e.g.* Adelson Dep. at 53-66; 77. It is apparent from Mr. Adelson's testimony that, in his capacity
18 as Chairman of SCL, Mr. Adelson participates in important corporate decisions, including the
19 hiring and firing of SCL executives.⁵ It is also clear that, as an experienced entrepreneur in the
20 gaming industry and in his position as Chairman of both LVSC and SCL, he was never shy about
21 expressing his views to Jacobs and others about a variety of SCL issues. Because he spent
22 approximately 50% of his time in Las Vegas, it is likely that he participated in telephonic Board
23

24 ⁴ Although Defendants continue to believe that Plaintiff waived any specific jurisdiction argument and that such an
25 argument fails on the merits as well, the Court need not decide that issue in order to rule on the instant Motion for
26 Protective Order. Even if Plaintiff could pursue his specific jurisdiction theory, discovery into the reasons for his
27 termination would be irrelevant to the jurisdictional issue and thus outside the bounds of discovery allowed by the
28 Court.

⁵ Mr. Adelson testified repeatedly that virtually every decision or piece of advice he gave with respect to SCL
was made wearing his "hat" as SCL's Chairman. *See* Adelson Dep. at 155:16-156:7, 165:14-25, 176:5-177:25. As
he explained, he owes a fiduciary duty to SCL and its shareholders to ensure that whatever he does as Chairman is in
the best interests of SCL.

1 meetings from Las Vegas and made decisions, participated in discussions, or provided advice to
2 SCL from Las Vegas.⁶ To the extent any of that is relevant — which it is not for the reasons
3 outlined below — Plaintiff has all of the evidence he needs from Mr. Adelson's deposition
4 concerning his involvement with SCL's affairs.

5 Furthermore, if Plaintiff has more questions regarding jurisdiction to ask of Mr. Adelson,
6 he has no one but himself to blame for not asking them during the deposition in September.
7 Plaintiff spent an inordinate amount of time on the issue of his termination. While Plaintiff is
8 understandably interested in that issue from a merits perspective, it has very little to do with the
9 issue of jurisdiction. Having chosen to waste a great deal of time on that issue, Plaintiff should
10 not be able to force Mr. Adelson to sit for yet another deposition to ask questions that could have
11 been asked the first time around.

12 **B. PLAINTIFF'S THEORY THAT LAS VEGAS WAS THE "DE FACTO"**
13 **EXECUTIVE HEADQUARTERS OF SCL FAILS AS A MATTER OF LAW**

14 Defendants also seek a protective order against any further deposition of Mr. Adelson,
15 because no matter what facts Plaintiff may develop about what Mr. Adelson did in Las Vegas in
16 his capacity as SCL's Chairman, Plaintiff still will not be able to sustain his theory that this Court
17 has general jurisdiction over SCL because its "de facto" executive headquarters is supposedly
18 located in Las Vegas.

19 "The standard for general jurisdiction is an exacting standard, as it should be, because a
20 finding of general jurisdiction permits a defendant to be haled into court in the forum state to
21 answer for any of its activities anywhere in the world." *CollegeSource, Inc. v. AcademyOne, Inc.*,
22 653 F.3d 1066, 1074 (9th Cir. 2011) (internal quotations omitted); *Budget Rent-A-Car v. Eighth*
23 *Judicial Dist.*, 108 Nev. 483, 835 P.2d 17, 19 (1992) ("[t]he level of contact with the forum state
24 necessary to establish general jurisdiction is high"). This standard is met only by "continuous
25

26 ⁶ Defendants offered in March 2012 to stipulate that Messrs. Adelson and Leven attended all telephonic SCL
27 Board meetings from Las Vegas and that offer still stands. As Mr. Adelson's deposition shows, he generally could
28 not recall where he happened to be when he had specific conversations relating to SCL, although he noted that he
spent 50% of his time in Las Vegas. Dep. at 131:21-25, 248:4-11. Further inquiry to pin down his location would
not only be futile but wholly irrelevant to the jurisdictional analysis, which focuses on where SCL's principal place of
business was — not on where the company's Chairman happened to be at particular points in time.

1 corporate operations within a state [that are] thought so substantial and of such a nature as to
2 justify suit against [the defendant] on causes of action arising from dealings entirely distinct from
3 those activities." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945). *See also Helicopteros*
4 *Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415 (1984) (the defendant's contacts with
5 the forum state must be "continuous and systematic" to warrant the exercise of general
6 jurisdiction); 4 *Federal Practice and Procedure* § 1067.5, at 507 ("the defendant must be engaged
7 in longstanding business in the forum state, such as marketing or shipping products, or
8 performing services or maintaining one or more offices there; activities that are less extensive
9 than that will not qualify for general in personam jurisdiction").

10 The fact that the defendant purchases goods and services in the forum for use elsewhere is
11 not the type of contact that will give rise to general jurisdiction. As the Court explained in
12 *Helicopteros*, "mere purchases [made in the forum state], even if occurring at regular intervals,
13 are not enough to warrant a State's assertion of [general] jurisdiction over a nonresident
14 corporation in a cause of action not related to those purchase transactions." *Id.* at 418. Thus, the
15 fact that SCL purchases goods or services from Nevada entities for use in Macau cannot provide a
16 basis for asserting general jurisdiction over SCL in a dispute that is unrelated to those good or
17 services.

18 In the recent *Goodyear* case, the Supreme Court also held that "even regularly occurring
19 sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to
20 those sales." 131 S. Ct. at 2857 n.6; *see also Id.* at 2856. Instead, it is only where a corporation
21 can be viewed as being "at home" in a particular forum that it is appropriate to subject it to
22 general jurisdiction there. *Id.* at 2851. *Goodyear* explains that "[f]or an individual, the paradigm
23 forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is
24 an equivalent place, one in which the corporation is fairly regarded as at home." *Id.* at 2853-54.
25 The citation the Court provided for that proposition identifies a corporation's place of
26 incorporation and principal place of business as the "paradigm" bases for the exercise of
27 general jurisdiction." *Id.*

28 ///

1 Here, of course, neither SCL's place of incorporation nor its principal place of business is
2 in Nevada. Plaintiff argued in the Nevada Supreme Court that Nevada should be deemed SCL's
3 "de facto executive headquarters" because SCL was supposedly managed from Las Vegas. After
4 the Nevada Supreme Court's ruling, however, it is clear that (absent veil-piercing) Plaintiff cannot
5 rely on whatever "directions" LVSC executives may have given to SCL to sustain their claim that
6 Las Vegas is SCL's "de facto executive headquarters." Instead, Plaintiff can look only to the
7 actions of SCL's *own* directors and officers in Nevada. Only two individuals who resided in
8 Nevada served on SCL's Board or held a post as an SCL officer during the relevant period — Mr.
9 Adelson, who was and is SCL's non-executive Chairman, and Mr. Leven, who was a Special
10 Advisor to the SCL Board until Jacobs was terminated, when he assumed the role of acting CEO
11 for a period of time. *See* 2/25/11 Aff. of Anne Salt, Ex. E hereto, ¶¶ 3,4. Both Mr. Adelson and
12 Mr. Leven traveled frequently to Macau, Hong Kong and other places outside Nevada to
13 discharge their obligations to SCL.⁷ But even if we assume that both gentlemen attended all
14 telephonic SCL Board meetings in Nevada and frequently carried out their SCL duties in Nevada,
15 that is not nearly enough to subject SCL to general jurisdiction here.

16 Plaintiff's "de facto executive headquarters" theory appears to be based on a sixty-year old
17 U.S. Supreme Court decision, *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952).
18 That case involved a mining company that was incorporated under Philippine law and owned
19 mining properties in the Philippines. During World War II, its operations were "completely
20 halted" when the Philippine Islands were occupied by the Japanese. *Id.* at 447. During that
21 period, the president of the company, who was also the general manager and principal
22 stockholder, returned home to Ohio, where he conducted all of the company's (limited) business
23 operations. *Id.* at 448. The U.S. Supreme Court held that there was general jurisdiction over the
24 company in Ohio under these unusual circumstances. But nothing in the decision suggests that

25 ⁷ In March 2012, Defendants offered to stipulate that in 2009, Mr. Adelson made six trips to Macau, three to Hong
26 Kong and one to mainland China. In 2010, through October 20, he made five trips to Macau, one to Hong Kong and
27 one to mainland China. Similarly, they offered to stipulate that in 2009, Mr. Leven made five trips to Macau and two
28 to Hong Kong, while from January 1–October 20, 2012, he made four trips to Macau and two to Hong Kong. *See also*
Adelson Dep. at 35; 26 ("I do an awful lot of traveling, quite an unusually large number of hours, and — I conduct
my business from wherever I'm located"). Mr. Adelson also testified that he and Mr. Leven were in London for
SCL's "roadshow" when it made its initial public offering. Dep. at 199.

1 the Court would have found general jurisdiction over the company in Ohio had the Philippine
2 mines remained in operation merely because the company's president and principal stockholder
3 spent some or even all of his time in Ohio.

4 To the extent there is any ambiguity in the *Perkins* decision itself, the current Court's
5 discussion of *Perkins* in *Goodyear* eliminates it. As noted above, in *Goodyear* the Supreme
6 Court equated general jurisdiction for a corporation with the corporation's place of incorporation
7 or principal place of business — a place where the company is "at home." The Court concluded
8 that *Perkins* fit within this construct because "Ohio's exercise of general jurisdiction was
9 permissible in *Perkins* because 'Ohio was the corporation's principal, if temporary, place of
10 business.'" *Id.* at 2856 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779-80 n.11
11 (1984). The Court distinguished the case before it from the situation in *Perkins* because "[u]nlike
12 the defendant in *Perkins*, whose *sole* wartime activity was conducted in Ohio, petitioners are in no
13 sense at home in North Carolina." *Id.* at 2857 (emphasis added).

14 In this case, all of SCL's casino and hotel operations are overseas, as are all of the officers
15 and employees who are responsible for carrying on SCL's day-to-day business. See 7/23/11 Salt
16 Aff. ¶¶ 5, 7. Under these circumstances, SCL cannot be deemed to be "at home" in Nevada
17 simply because, during the relevant time period, two of its directors and/or officers were also
18 directors or officers of SCL's parent company and were based in Las Vegas, where the parent
19 company has its headquarters. In *Gordon v. Greenview Hosp., Inc.*, 300 S.W.3d 635, 650 (Tenn.
20 2009), the Tennessee Supreme Court rejected a similar argument, noting that "[i]n this age of
21 electronic communications, telecommuting, and distributed management, the fact that [the
22 subsidiary's] officers and directors maintain offices in Tennessee [where the parent company was
23 headquartered] does not, by itself, lead to the conclusion that the corporation has continuous and
24 systematic contact with Tennessee or that the corporation is conducting business within the state."
25 *Accord Mattel, Inc. v. MGA Enter., Inc.*, 782 F. Supp. 2d 911, 1015 (C.D. Cal. 2011) (no general
26 jurisdiction over a Mexican subsidiary in California because the CEO, who served both the parent
27 and subsidiary, resided in California).

28 ///

1 Indeed, that has been the law for nearly a century. In *Riverside & Dan River Cotton Mills*
2 *v. Menefee*, 237 U.S. 189, 195 (1915), the Supreme Court held that “the mere fact that an officer
3 of a corporation may temporarily be in the state or even permanently reside therein, if not there
4 for the purpose of transacting business for the corporation, or vested with authority by the
5 corporation to transact business in such state, affords no basis for acquiring jurisdiction.” See
6 also *Joseph Walker & Sons v. Lehigh Coal & Nav. Co.*, 167 N.Y.S.2d 632, 634 (N.Y. Sup. Ct.
7 1957) (“It is settled that if a corporation is not doing business here the mere fact that its officers
8 may be found in this State, and even reside here, does not bring the corporation within the State’s
9 jurisdiction.”) (citing *Menefee*). Recently, in *Kuvedina, LLC v. Pat*, 2011 WL 5403717 at *4
10 (N.D. Ill. Nov. 8, 2011), the court applied the basic principle set forth in *Menefee* to the
11 hypothetical situation where the president of a small business based in Illinois lives just across the
12 border in northern Indiana. The court noted that “[u]nless the company *itself* has sufficient
13 contacts in the Northern District of Indiana, it would not be subject to personal jurisdiction there
14 even though its president resides there.”

15 So too, in this case, the fact that Messrs. Adelson and Leven lived in Las Vegas during the
16 period in question and therefore sometimes carried out their duties with respect to SCL in Las
17 Vegas does not provide a basis for the assertion of general jurisdiction over SCL. Neither Mr.
18 Adelson nor Mr. Leven was in Las Vegas at the behest of SCL to transact business on SCL’s
19 behalf in this State. Accordingly, the mere fact that they may have been here from time to time
20 when they carried out their duties for SCL cannot possibly provide a basis for asserting general
21 jurisdiction over SCL.

22 **C. DEFENDANTS’ OBJECTIONS AT MR. GOLDSTEIN’S DEPOSITION SHOULD**
23 **BE SUSTAINED**

24 As in Mr. Adelson’s deposition, the majority of the objections and instructions not to
25 answer in Mr. Goldstein’s deposition were in response to questions about Jacobs’ termination.
26 See, e.g., Goldstein Dep. (Ex. F hereto) at 41:15-24, 104:3-13, 107:8-109:4, 142:10-15, 173:25-
27 177:1, 197:5-13, 198:5-13, 198:1-7, 203:12-16, 228:9-17, and 251:20-23. Defense counsel also
28 objected and instructed Mr. Goldstein not to answer when Plaintiff’s counsel asked a variety of

1 questions about Mr. Goldstein's knowledge or actions with respect to specific SCL customers and
2 with respect to SCL's recruitment of Ed Tracy, who replaced Jacobs as CEO. *See, e.g., id.* at
3 80:19-81:1, 88:18-89:1, 119:5-20, 215:17-316:9, 217:3-6, 177:5-19, 250:11-21. At one point,
4 Plaintiff's counsel explained that these questions were designed to "demonstrat[e] who was really
5 calling the shots. . . which goes to the jurisdictional point." *Id.* at 111:13-16. In fact, throughout
6 the deposition, Plaintiff repeatedly asked Mr. Goldstein whether he (or other LVSC executives)
7 had directed or controlled SCL's actions in Macau with respect to certain customers or issues.

8 Defendants' objections relating to questions concerning Jacobs' termination should be
9 sustained for the reasons outlined above: discussions between Mr. Goldstein and Jacobs about
10 their respective employment agreements (Goldstein Dep. at 142:10-17 and 144:6-10), about what
11 tensions there may have been between Messrs. Leven and Jacobs (104:4-13), about why Jacobs
12 was leaving (107:8-10) all go to the merits of Jacobs' claims, rather than the jurisdictional issue.

13 Defendants' other objections should be sustained because Plaintiff's whole approach to
14 Mr. Goldstein's deposition was fundamentally flawed. Mr. Goldstein was never employed in any
15 capacity by SCL.⁸ Plaintiff's old theory, before the Nevada Supreme Court's ruling, was that
16 LVSC executives, including Mr. Goldstein, directed and controlled SCL's operations from Las
17 Vegas to such an extent that Las Vegas should be deemed SCL's "de facto executive
18 headquarters." But, for the reasons outlined above, after the Supreme Court's ruling, Plaintiff can
19 no longer rely on that theory unless he is prepared to argue that SCL is LVSC's alter ego — a
20 burden Plaintiff has specifically disclaimed. *See* 9/27/11 Hr'g Tr. at 26:1-5 ("And so we are not
21 saying alter ego. We don't care about alter ego yet, but we do care of whether the people in Las
22 Vegas Sands Corp. are acting as an agent and performing functions" for SCL).

23 Instead, Plaintiff's theory is that LVSC acted as an agent of SCL, which would require
24 proof that (contrary to the ordinary relationship between a parent and its subsidiary) LVSC acted
25 subject to the direction and control of SCL. *See Hunter Mining Labs., Inc. v. Management*
26 *Assistance, Inc.*, 763 P.2d 350, 352 (Nev. 1988) ("In an agency relationship, the principal
27

28 ⁸ Mr. Goldstein did serve as a director of VML during the period in question. *See* 10/4/11 Affidavit of John Morland, ¶ 4 (noting that Mr. Goldstein has been a director of VML since 2002).

1 possesses the right to control the agent's conduct. Restatement (Second) of Agency § 14
2 (1958)"). In fact, when Plaintiff persuaded the Court to allow him to take Mr. Goldstein's
3 deposition, he did so on the basis that Mr. Goldstein performed services on behalf of SCL in
4 Nevada as SCL's agent. See 9/27/11 Hr'g Tr. at 26:23-25; Jacobs' Opp. to Sands China Ltd.'s
5 Motion for Clarification of Jurisdictional Discovery Order, filed on October 12, 2011, at 5-6 & n.
6 5 (arguing that LVSC employees acting on behalf of SCL did so as subagents of LVSC, which
7 presumably acted as SCL's agent).

8 Based on Plaintiff's arguments and his representations to the Court, Defendants expected
9 that Plaintiff's deposition of Mr. Goldstein (and of Mr. Kay) would focus on determining what, if
10 anything, Mr. Goldstein did on behalf of SCL *in Nevada* and whether whatever he did in Nevada
11 was done pursuant to SCL's direction and control. Thus, Defendants were surprised, to say the
12 least, when virtually all of the questions Plaintiff asked Mr. Goldstein were focused on whether
13 he, in his capacity as a senior LVSC officer, directed or controlled SCL's actions *in Macau*.

14 Plaintiff should not be able, at this late stage, to resurrect a theory he abandoned (for good
15 reason) more than a year ago. Having spent a great deal of Mr. Goldstein's deposition on that
16 abandoned theory and on Jacobs' termination, Plaintiff should not be able to compel Mr.
17 Goldstein to sit for any additional deposition time.

18 **D. THE COURT SHOULD ENTER A PROTECTIVE ORDER WITH RESPECT TO**
19 **THE REMAINING DEPOSITIONS**

20 We recognize that the Court's schedule may not permit it to hear Defendants' Motion
21 before the upcoming Leven deposition on December 4. Accordingly, defense counsel will adopt
22 the same procedure used at the Adelson and Goldstein depositions, making objections as
23 appropriate and instructing the witness not to answer where counsel believes that Plaintiff's
24 questions go beyond the bounds of the limited jurisdictional discovery this Court has permitted.
25 We also recognize that the Court may not be able to rule on specific questions that are yet to be
26 asked and that, if objections are made during the Leven deposition, we will address those specific
27 objections in supplemental briefing; however, for the reasons outlined above, Plaintiff should not
28 be permitted to question Mr. Leven about the details of specific events that occurred during

1 Jacobs' tenure as SCL's CEO or about the reasons why Jacobs was terminated. At most, Plaintiff
2 should be allowed to ask Mr. Leven about the scope of his duties as Special Advisor to the SCL
3 Board and then acting CEO — about who did what, when and where. Plaintiff should not be
4 permitted to turn what should be a relatively simple jurisdictional deposition into a lengthy
5 exploration into the merits of his claims. Furthermore, for the reasons outlined in Part III-B
6 above, Plaintiff cannot show general jurisdiction over SCL simply by pointing to the fact that Mr.
7 Leven performed some or even *all* of his duties for SCL while he happened to be in Las Vegas.⁹
8 Thus, Plaintiff has no need to go through the same exercise with Mr. Leven that he did with Mr.
9 Adelson — attempting to dissect various actions taken for or on behalf of SCL and then asking
10 where the witness happened to be when those actions were discussed or decided upon.

11 With respect to Mr. Kay, Plaintiff should be limited to asking what (if anything) Mr. Kay
12 did in Nevada under the direction and control of SCL to assist SCL in obtaining financing.
13 Plaintiff should not be able to ask if Mr. Kay gave direction to SCL, since that would be contrary
14 to Plaintiff's own theory that LVSC and its employees acted as "agents" for SCL in Nevada

15 IV.

16 CONCLUSION

17 For the foregoing reasons, Defendants urge the Court to enter an order providing that:

18 (1) To the extent that Defendants objected to Plaintiff's questions in the Adelson and
19 Goldstein depositions and instructed the witnesses not to answer, those objections are sustained;

20 (2) The Adelson and Goldstein depositions are concluded and no further jurisdictional
21 discovery may be taken from either witness;

22 (3) In the remaining depositions, and in accordance with the March 8 Order, Plaintiff
23 may only inquire into the facts regarding activities undertaken for or on behalf of SCL that are
24 relevant to jurisdiction — such as who did what, when and where — and may not inquire into
25 merits issues such as the reasons for Jacobs' termination; and

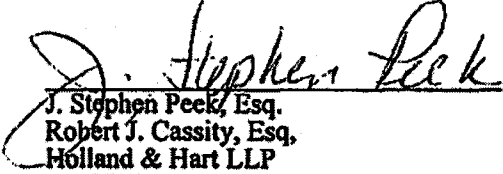
26 (4) Mr. Kay's deposition shall be limited to an inquiry into his activities for or on

27 ⁹ Defendants offered to stipulate that Mr. Leven carried out the duties normally associated with a CEO during
28 the period in which he was SCL's acting CEO and that he conducted some of these activities while physically located
in Nevada, although he also traveled frequently to Macau during his tenure.

Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
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1 behalf of SCL in Nevada, in accordance with the March 8 Order, and shall not seek information
2 about any purported "directions" Mr. Kay or any other LVSC executive may have given in his
3 capacity as such to SCL personnel in Macau about activities in Macau.

4 DATED November 26, 2012.


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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on November 26, 2012, I served a true and correct copy of the foregoing **DEFENDANTS' MOTION FOR a PROTECTIVE ORDER** 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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An Employee of Holland & Hart LLP

EXHIBIT 3

DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

vs.

CASE NO. A-10-627691

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

Defendants.

AND RELATED CLAIMS

VIDEOTAPE AND ORAL DEPOSITION OF SHELDON ADELSON
LAS VEGAS, NEVADA
THURSDAY, SEPTEMBER 6, 2012

HIGHLY CONFIDENTIAL

REPORTED BY: CARRE LEWIS, CCR NO. 497

JOB NO. 165201

1 DEPOSITION OF SHELDON ADELSON,
2 taken at 3883 Howard Hughes Parkway, Suite 800,
3 Las Vegas, Nevada, on Thursday, September 6, 2012,
4 at 10:26 a.m., before Carre Lewis, Certified Court
5 Reporter, in and for the State of Nevada.
6

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18 JUDGE ELIZABETH GONZALEZ

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25 Also Present:

Steven Jacobs

* CONFIDENTIAL *

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I N D E X

WITNESS: SHELDON ADELSON

EXAMINATION

PAGE

By Mr. Pisanelli

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	Sheldon Adelson	
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1 LAS VEGAS, NEVADA; THURSDAY, SEPTEMBER 6, 2012;

2 10:26 A.M.

3 -oOo-

4 THE VIDEOGRAPHER: This is the beginning of
5 Videotape No. 1 in the deposition of Sheldon Adelson
6 in the matter of Jacobs versus Las Vegas Sands
7 Corporation, held at Pisanelli Bice on September 6,
8 2012, at 10:26 a.m.

9 The court reporter is Carre Lewis. I'm
10 Dustin Kittleson, the videographer, an employee of 10:27
11 Litigation Services. This deposition is being
12 videotaped at all times unless specified to go off
13 the video record.

14 Would all present please identify
15 themselves beginning with the witness.

16 THE WITNESS: Sheldon Adelson.

17 MR. PEEK: Stephen Peek, with Holland &
18 Hart, representing Las Vegas Sands Corp. and Sands
19 China Limited. And also with me here today is
20 Mr. Adelson's general counsel, for -- 10:27

21 THE WITNESS: LVS's general counsel.

22 MR. PEEK: -- for Las Vegas Sands Corp.

23 MR. WEISSMANN: I'm Henry Weissmann, for
24 Sands China.

25 MR. SANDERS: I'm Jim Sanders from Reed

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1 Smith. I'm Mr. Adelson's personal attorney, though
2 I'm not appearing in this litigation.

3 MR. RAPHAELSON: I'm Ira Raphaelson. I'm
4 the corporate general counsel for Las Vegas Sands
5 Corp.

6 MS. ELSDEN: Sarah Elsdon, Pisanelli Bice,
7 litigation paralegal.

8 MR. BICE: Todd Bice on behalf of
9 plaintiff.

10 MR. JACOBS: Steve Jacobs, plaintiff. 10:28

11 MS. SPINELLI: Debra Spinelli.

12 MR. PISANELLI: James Pisanelli on behalf
13 of Steven Jacobs.

14 THE VIDEOGRAPHER: Will the court reporter
15 please swear in the witness.

16 Whereupon --

17 SHELDON ADELSON
18 having been first duly sworn to testify to the
19 truth, was examined and testified as follows:

20 MR. BICE: Before we begin any examination, 10:28
21 Mr. Peek, you and I had a conversation, actually a
22 couple of conversations this morning about the
23 possibility of Mr. Adelson showing up with
24 bodyguards today. I informed you that I would not
25 have any objection to one or more bodyguards being

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1 present in the room, but I did object if those
2 gentlemen are armed. I understand today that there
3 are two armed security guards in my lobby. I have
4 asked you to ask them to leave the premises or at
5 least go down to the downstairs lobby and wait,
6 assuming they do not want to get rid of their
7 firearms. I've understood from you that they refuse
8 to do that and they refuse to leave.

9 Is that an inaccurate recital of anything
10 we've discussed or the state of events as we sit 10:29
11 here now?

12 MR. PEEK: Well, a couple of things. One
13 is I asked if they could stay in the elevator lobby
14 here in the entrance to your suite, and you said, of
15 course, "No." We didn't discuss the downstairs
16 lobby, but I don't think that would change things,
17 and they have no place to deposit their weapons.
18 Mr. Adelson travels with security wherever he goes,
19 whatever he does.

20 THE WITNESS: Twenty-four hours a day. 10:29

21 MR. PEEK: And he does that because he is
22 probably one of the highest profile Jews in the
23 United States and there is a concern about that. He
24 is also a very wealthy individual and there are
25 concerns about that. So he always travels with

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1 security and has not left them.

2 MR. PISANELLI: I'm appreciative --

3 THE WITNESS: What are your concerns,
4 Mr. Pisanelli?

5 MR. PISANELLI: Mr. Adelson, I don't --
6 Mr. Bice and I do not permit firearms inside of the
7 premises of the place where we employ people --

8 THE WITNESS: How often do you get somebody
9 that really requires it?

10 MR. PISANELLI: -- and I'm not comfortable 10:30
11 allowing anyone to have firearms in our place of
12 business.

13 THE WITNESS: Are you afraid they are going
14 to shoot at you or something?

15 MR. PISANELLI: Do you want to get the
16 Court on the phone?

17 MR. PEEK: Sure.

18 THE WITNESS: I would like to put something
19 on the record.

20 MR. PISANELLI: Okay. 10:30

21 THE WITNESS: First of all, I apologize for
22 being late, because I had an operation a couple days
23 ago on my eyes, not cosmetic, but a required
24 operation, and the -- part of it broke apart, it
25 appears, so I had to take pictures. My wife, who is

* CONFIDENTIAL *

1 also a physician, had to take pictures and transfer
2 them to the doctor, the surgeon who did it in
3 Los Angeles. I should be going there today, but
4 because of this commitment I will be here today. So
5 I want it to be known that my wearing glasses is not
6 for cosmetic purposes, but because the glare of both
7 interior lights and the exterior light irritates an
8 already --

9 MR. PEEK: Inflamed eye.

10 THE WITNESS: -- inflamed eyes.

10:31

11 MR. PISANELLI: Thank you for that
12 explanation.

13 As you sit here --

14 THE WITNESS: And I would ask that -- I
15 know that since your plaintiff has a reputation of
16 disclosing everything to the public, I ask that the
17 explanation as to why my sunglasses are on accompany
18 any whole or partial release of this videotape.

19 MR. PISANELLI: I will tell you that I'm
20 not going to engage in a debate of any hyperbole or
21 insults, true or false, about Mr. Jacobs. I think
22 you are ill-informed about releasing information to
23 the press, but I understand your position and I
24 appreciate you sharing it with me.

10:32

25 From a physical perspective, Mr. Adelson,

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1 travel east to Europe and Israel and I travel to the
2 Far East or like to other potential locations with
3 different time zones, in the Far East and in
4 different parts of Asia.

5 Q. Where do the board meetings of SCL take
6 place?

7 A. Usually at -- there is a combination of
8 telephone meetings, so wherever people are. The
9 in-person meetings typically take place at the
10 Venetian Macau, and I think once in a great while in 03:11
11 either Hong Kong or Singapore.

12 Q. You told us earlier that as chairman you
13 have run these meetings; is that right?

14 A. That's correct.

15 Q. Where are you during these meetings?

16 A. Sitting in the room in which the board
17 meeting is held.

18 Q. Here in Las Vegas?

19 A. No, no, no. We never had an SCL board
20 meeting in Las Vegas. We have had -- I have 03:12
21 telephone -- telephonic meetings in any of my eight
22 or ten offices, either in the air or on the ground,
23 outside in commercial office buildings or my home
24 offices, but we have never had an SCL meeting in
25 Las Vegas.

* CONFIDENTIAL *

1 examination.

2 MR. PEEK: I understand.

3 THE WITNESS: I take that from your
4 predecessor, who religiously had a limit from 9:00
5 or 10:00 till 5:00, even with an hour, an
6 hour-and-a-half lunch.

7 BY MR. PISANELLI:

8 Q. Talking about Mr. Campbell?

9 A. Yes.

10 MR. PEEK: I will talk to you about it, 07:33
11 Jim.

12 MR. PISANELLI: All right. Go off the
13 record.

14 THE VIDEOGRAPHER: Off the record at 7:32.
15 (Deposition concluded at 7:32 p.m.)

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CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE	REASON

* * * * *

I, Sheldon Adelson, deponent herein, do hereby certify and declare the within and foregoing transcription to be my deposition in said action; under penalty of perjury; that I have read, corrected and do hereby affix my signature to said deposition.

Sheldon Adelson, Deponent	Date
---------------------------	------

* CONFIDENTIAL *

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

I, Carre Lewis, a duly commissioned and licensed Court Reporter, Clark County, State of Nevada, do hereby certify: That I reported the taking of the deposition of the witness, Sheldon Adelson, commencing on Thursday, September 6, 2012, at 10:26 a.m.

That prior to being examined, the witness was, by me, duly sworn to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate transcription of said shorthand notes.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS HEREOF, I have hereunto set my hand, in my office, in the County of Clark, State of Nevada, this 17th day of September 2012.

Carre Lewis

CARRE LEWIS, CCR NO. 497

* CONFIDENTIAL *

EXHIBIT 4

DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

vs.

CASE NO. A-10-627691

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

Defendants.

AND RELATED CLAIMS

VIDEOTAPE AND ORAL DEPOSITION OF MICHAEL LEVEN

VOLUME II

PAGES 268-456

LAS VEGAS, NEVADA

FRIDAY, FEBRUARY 1, 2013

REPORTED BY: CARRE LEWIS, CCR NO. 497

JOB NO. 173048

1 DEPOSITION OF MICHAEL LEVEN,
2 taken at 3883 Howard Hughes Parkway, Suite 800,
3 Las Vegas, Nevada, on Friday, February 1, 2013, at
4 11:24 a.m., before Carre Lewis, Certified Court
5 Reporter, in and for the State of Nevada.
6

7 APPEARANCES:

8 For the Plaintiff:

9 PISANELLI BICE, PLLC
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1 APPEARANCES (continued):

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10 The Videographer:

11 Litigation Services

12 By: Benjamin Russell

13 3770 Howard Hughes Parkway, Suite 300

14 Las Vegas, Nevada 89169

15 (702) 314-7200

16 Also Present:

17 Steven Jacobs

I N D E X

WITNESS: MICHAEL LEVEN

EXAMINATION

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By Mr. Bice

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1 LAS VEGAS, NEVADA; FRIDAY, FEBRUARY 1, 2013;

2 11:24 A.M.

3 -oOo-

4 THE VIDEOGRAPHER: This is the beginning of
5 Videotape Number 1 in the deposition of Michael 11:24:10
6 Leven in the matter of Jacobs versus Las Vegas Sands
7 Corporation, held at Pisanelli Bice at 3883 Howard
8 Hughes Parkway, Suite 800, Las Vegas, Nevada 89169
9 on the 1st of February, 2013 at approximately
10 11:28 a.m. 11:24:33

11 The court reporter is Carre Lewis. I am
12 Benjamin Russell, the videographer, an employee of
13 Litigation Services.

14 This deposition is being videotaped at all
15 times unless specified to go off the record. 11:24:45

16 Would all present please identify
17 themselves, beginning with the witness

18 THE WITNESS: Michael Leven.

19 MR. PEEK: Stephen Peek representing Sands
20 China Limited and Las Vegas Sands Corp. 11:25:00

21 MR. JONES: Mark Jones on behalf of Sands
22 China Limited.

23 MR. RAFAELSON: Ira Rafaelson on behalf of
24 Las Vegas Sands Corp.

25 MR. ALDRIAN: Eric Aldrian on behalf of 11:25:05

1 Steve Jacobs

2 MR. JACOBS: Steve Jacobs.

3 MR. BICE: Todd Bice on behalf of the
4 plaintiff.

5 THE VIDEOGRAPHER: Would the court reporter 11:25:14
6 please swear in the witness.

7 Whereupon --

8 MICHAEL LEVEN

9 having been first duly sworn to testify to the
10 truth, was examined and testified as follows:

11 EXAMINATION

12 BY MR. BICE:

13 Q. Good morning, Mr. Leven. You understand
14 that this is a continuation of your deposition?

15 A. Yes. 11:25:29

16 Q. All right. Since the last installment of
17 your deposition, have you spoken with anyone other
18 than legal counsel about your deposition?

19 A. No.

20 Q. Did you review any documents? 11:25:35

21 A. No.

22 Q. Did you review the transcript of the first
23 installment of your deposition?

24 A. No

25 Q. Has anything changed in terms of your 11:25:50

1 employment status with either Las Vegas Sands or
2 Sands China Limited since the last installment of
3 your deposition?

4 A. No.

5 (Discussion held off the record.) 11:26:35

6 (Exhibit 11 marked.)

7 BY MR. BICE:

8 Q. Show you what's been marked as Exhibit 11,
9 Mr. Leven, and give you a moment to read it.

10 A. Okay. 11:27:55

11 Q. All right. First of all, can you tell me
12 who Patrick Dumont is?

13 A. He's the vice president of strategy for the
14 company.

15 Q. For which company? 11:28:02

16 A. Las Vegas Sands.

17 Q. Does Mr. Dumont have any role for Sands
18 China Limited?

19 A. No.

20 Q. In this communication that you are having 11:28:14
21 with Mr. Dumont in June of 2010, in what capacity
22 were you acting?

23 A. I was acting in my regular capacity.

24 Q. And what would you describe as your regular
25 capacity? 11:28:35

1 A. I'm the chief operating officer of
2 Las Vegas Sands Corporation and a board member of
3 Sands China.

4 Q. Okay. So would it be your position that on
5 this -- in this e-mail string, you're acting in both 11:28:46
6 capacities simultaneously?

7 MR. PEEK: Mike, I think you may have
8 misspoke. You -- look at the date as to whether you
9 were a Sands China board member.

10 THE WITNESS: I don't remember, Steve, what 11:29:02
11 dates I was the Sands China board member or not
12 because being special advisor and a board member
13 changed from time to time. So I don't remember the
14 exact dates.

15 BY MR. BICE: 11:29:16

16 Q. Okay. Well --

17 A. I would either be acting as a board member
18 or an advisor to the board, I mean, whatever.

19 Q. Understood.

20 My question was -- I appreciate the 11:29:23
21 clarification.

22 At this time -- point in time, end of June
23 of 2010, in this e-mail exchange, you're acting in
24 both capacities?

25 A. Yes. 11:29:39

1 Q. Let's start at the bottom. This is an
2 e-mail from Mr. Dumont to yourself dated 6/29/2010
3 at 9:45 p.m., and then you respond. It says:
4 "Typical, I am canceling a leadership team meeting
5 on July 19 and 20. I don't want Jacobs there. I 11:30:03
6 will meet with others individually to discuss
7 organizational staffing needs during that time.
8 Goldstein and" -- is that Arasi, Arasi?

9 A. Arasi.

10 Q. Arasi. I apologize. 11:30:13

11 Can you tell me, who is Arasi?

12 A. Arasi was, at the time, the -- I believe
13 his title is president of the Marina Bay Sands or
14 CEO of Marina Bay Sands.

15 Q. Okay. Then going up, Mr. Dumont responds 11:30:34
16 and then you send a response to him saying: "I
17 don't disagree as long as we hire the COO."

18 Do you see that?

19 A. Which one are you going up to?

20 Q. I apologize. It's the e-mail from you to 11:30:57
21 him sent at --

22 A. It says: "I don't disagree as long as we
23 hire the COO"?

24 Q. Yes, sir.

25 A. Uh-huh. 11:31:06

1 Q. Who's the "we" that you're referencing
2 there?

3 A. I don't remember.

4 Q. Is it Sands China or Las Vegas Sands?

5 A. In this case, it would be Sands China, I 11:31:22
6 assume.

7 Q. Okay. And then the statement goes on. It
8 says: "The latest Jacobs headlines about airlines
9 growth predictions, et cetera, as well as his
10 selling of stock without informing us as a courtesy 11:31:38
11 simply verified decision made."

12 Do you see that?

13 A. Uh-huh.

14 Q. What is the decision made that is
15 referenced there? 11:31:47

16 A. The decision made was to terminate
17 Mr. Jacobs.

18 Q. Okay. So at least prior to June 29 of
19 2010, the decision had been made already?

20 A. Can you repeat that? 11:32:00

21 Q. Sure.

22 At least as of -- prior to June 29 of 2010,
23 the decision had been made already?

24 A. Yes.

25 Q. Okay. This then goes on to say: "We will 11:32:11

1 talk later when you get back about exorcism
2 strategy."

3 A. Yes.

4 Q. What do you mean by "exorcism strategy"?

5 A. The strategy of how the termination would 11:32:25
6 take place and what the relationships would be and
7 what the discussions and negotiations would be.

8 Q. Okay. And why was Mr. Dumont involved in
9 that?

10 A. Mr. Dumont was -- worked very closely with 11:32:39
11 me, particularly on HR matters, and I used him as a
12 resource and advisor in those capacities.

13 Q. All right. But Mr. Dumont -- did he have
14 any role on behalf of Sands China in this, or was he
15 acting for Las Vegas Sands in this? 11:33:03

16 A. His role was an advisor to me.

17 Q. All right.

18 A. In whatever capacity I was in.

19 Q. So he would also provide you advice in your
20 role as either a board member for Sands China or 11:33:11
21 special advisor to the board of Sands China?

22 A. Yes.

23 Q. Were his services something within the
24 scope, at least in your mind, of the shared services
25 agreement? 11:33:26

1 A. I didn't think of it -- didn't think of his
2 role involved in the shared services agreement. I
3 suppose. I mean, if you looked at the definition of
4 the shared services agreement, he would probably
5 come under it, but I never really thought of it that 11:33:47
6 way when I was -- I just used him as an advisor to
7 me.

8 Q. Did he provide advisory services to anyone
9 else on behalf of Sands China Limited, to your
10 knowledge? 11:34:02

11 A. I don't remember.

12 Q. Do you recall whether or not you did talk
13 with Mr. Dumont about the exorcism strategy?

14 A. I don't remember.

15 Q. And Mr. Dumont is based in Las Vegas? 11:34:26

16 A. Correct.

17 Q. And were these communications that you were
18 having with Mr. Dumont about this exorcism strategy,
19 were they occurring in Las Vegas?

20 A. I don't remember. Mr. Dumont was in 11:34:37
21 Las Vegas.

22 Q. Okay. Do you recall having any meetings
23 with Mr. Dumont about this exorcism strategy in
24 Las Vegas?

25 A. No. 11:35:00

1 Q. Do you recall whether Mr. Dumont -- other
2 than advising you, did he play any other role in the
3 exorcism strategy that you reference in the e-mail?

4 A. I don't think so.

5 (Exhibit 12 marked.)

11:35:49

6 BY MR. BICE:

7 Q. Show you what's been marked as Exhibit 12,
8 give you a moment to look at it. Let me know when
9 you're done.

10 A. Okay.

11:35:59

11 Q. All right. Do you recognize the initials
12 on the bottom of this page --

13 A. Yes.

14 Q. -- or the handwriting?

15 A. Yes.

11:36:26

16 Q. Can you tell me what it says?

17 A. It says: "Okay. M. Leven, August 3,
18 2009."

19 Q. Is this -- is that something you wrote?

20 A. Yes.

11:36:34

21 Q. In what capacity were you acting when you
22 wrote that on 8/3 of '09?

23 A. I was acting in the capacity of president/
24 chief operating officer of Las Vegas Sands Corp.

25 Q. Was there anyone else involved on behalf of

11:36:58

1 Las Vegas Sands Corporation in approving this
2 document?
3 A. Yes.
4 Q. And who was that?
5 A. Mr. Adelson. 11:37:06
6 Q. Anyone else?
7 A. No.
8 Q. When you signed off on this document, did
9 you do so in Las Vegas?
10 A. I don't remember where I signed off on it. 11:37:26
11 Q. Okay. What about Mr. Adelson? Do you know
12 where he signed off on that?
13 A. Well, he didn't sign off on it.
14 Q. Okay.
15 A. He approved it. 11:37:37
16 Q. All right. When he approved it, do you
17 know where he was at?
18 A. He was in Las Vegas when he approved it.
19 Q. Do you know approximately the time frame in
20 which he approved it since yours is signed on 8/3 of 11:37:51
21 '09?
22 A. I -- I don't remember exactly.
23 Q. Did his approval predate yours?
24 A. Certainly.
25 (Exhibit 13 marked.) 11:38:38

1 BY MR. BICE:

2 Q. I will show you what's been marked as
3 Exhibit 13 and give you a moment to read it.

4 A. Okay.

5 Q. All right. Do you recall sending this 11:39:45
6 e-mail?

7 A. No.

8 Q. Do you recall what it is about?

9 A. No.

10 Q. Let's start at the bottom. When it says -- 11:39:58
11 this is an e-mail from you to Mr. Jacobs.

12 Do you have any reason to dispute that you
13 have sent this e-mail?

14 A. No.

15 Q. It says: "I will not see him if you bring 11:40:07
16 him. I never want to see him. I trust my people.
17 There is no trial. He is out."

18 Do you see that?

19 A. Yes.

20 Q. Okay. And you -- as you sit here today, 11:40:18
21 you don't have any recollection of what this is
22 about?

23 A. No. Could you remind me?

24 Q. No, I can't.

25 Were you involved in overseeing any hiring 11:40:29

1 litigation threats by Mr. Jacobs?

2 A. Well, there were board meetings that went
3 on during that period. They would have been an
4 August -- a July or August board meeting.

5 If, in fact -- if, in fact, there was a 05:03:08
6 litigation threat from Mr. Jacobs, it would have
7 been discussed at the Las Vegas Sands board
8 meeting --

9 Q. Okay.

10 A. -- if the timing happened to coincide with 05:03:16
11 the meeting.

12 Q. All right.

13 MR. BICE: Let's take two minutes.

14 THE VIDEOGRAPHER: Off the record at
15 5:07 p.m. 05:03:46

16 (Off the record.)

17 THE VIDEOGRAPHER: On the record at
18 5:14 p.m.

19 MR. BICE: Okay. We're back on the record.

20 As I informed Mr. Peek and Mr. Jones, we're 05:10:56
21 suspending. We have -- you know, there's a
22 possibility we have issues with the Court on the
23 instructions that we have taken up, but other than
24 that topic, we would be done.

25 MR. PEEK: Thank you very much. 05:11:10

1 MR. JONES: Thank you.
2 THE VIDEOGRAPHER: Going off the record at
3 5:14 p.m.
4 (Deposition concluded at 5:14 p.m.)
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1	CERTIFICATE OF DEPONENT			
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* * * * *

17

18 I, Michael Leven, deponent herein, do hereby
19 certify and declare the within and foregoing
20 transcription to be my deposition in said action;
21 under penalty of perjury; that I have read,
22 corrected and do hereby affix my signature to said
23 deposition.

21

22

Michael Leven, Deponent

Date

23

24

25

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

I, Carre Lewis, a duly commissioned and licensed Court Reporter, Clark County, State of Nevada, do hereby certify: That I reported the taking of the deposition of the witness, Michael Leven, commencing on Friday, February 1, 2013, at 11:24 a.m.

That prior to being examined, the witness was, by me, duly sworn to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate transcription of said shorthand notes.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand, in my office, in the County of Clark, State of Nevada, this 10th day of February 2013.


CARRE LEWIS, CCR NO. 497

EXHIBIT 5

EXHIBIT 10.1

Steve Jacobs
Offer Terms and Conditions

1. Position: President and CEO Macau, listed company (ListCo)
 - a. Reporting into President and COO LVS or CEO/Chairman LVS
 - b. All staff to be direct reports, including EVP/President, Asia Development
2. Term: 3 years
3. Base Salary and Annual Bonus
 - a. 1.3 M base (USD)
 - b. 50% bonus
 - i. 25% Achieving annual EBITDAR Performance as submitted and approved by the BOD for Macau
 - ii. 25% Individual Objectives to be mutually agreed on an annual basis
4. Equity
 - a. 500,000 options in LVS to be granted date of hire at FMV. Should there be an IPO of Macau, LVS options to be converted at IPO into sufficient numbers of ListCo options such that the aggregate FMV of ListCo at the IPO list price is equal to the aggregate FMV of the LVS stock being converted. Conversion to be tax free.
 - b. Vesting
 - i. 250,000 shares vest Jan 1, 2010
 - ii. 125,000 shares vest Jan 1, 2011
 - iii. 125,000 shares vest Jan 1, 2012
5. Expat Package
 - a. 10,000 one time fee to cover moving expenses from Atlanta to HK
 - b. Housing Allowance: 12,000 per month, company pays deposit (if required)
 - c. Repatriation: Business airfare for employee and dependents, one 20 foot container, company to pay termination fees (if any)
 - d. Employee agrees to apply for Full Time Resident Status.

6. Expense reimbursement/ Business Travel
 - a. Full reimbursement of expenses necessary to conduct business in keeping with company and IRS policy
 - b. Business travel: Business class or above subject to prevailing company policy
7. Employee Benefit Plan: Participation in any established plan(s) for senior executives
8. Vacation and Holidays: 4 weeks per annum, with right to carry over should business demands prevent use
9. Change of Control: Provision to accelerate vest and terminate not for cause should Sheldon or Miri not be in control of company
10. Termination:
 - a. For Cause — Standard Language
 - b. Not For Cause — 1 Year severance, accelerated vest. Right to exercise for 1 year post termination.

Agreed, August 3, 2009

EXHIBIT 6


CLERK OF THE COURT

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

6 Attorneys for Plaintiff Steven C. Jacobs

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 **STEVEN C. JACOBS,**

11 Plaintiff,

12 v.

13 **LAS VEGAS SANDS CORP.,** a Nevada
corporation; **SANDS CHINA LTD.,** a
14 Cayman Islands corporation; **DOES 1**
through **X;** and **ROE CORPORATIONS**
15 1 through **X,**

16 Defendants.

17 **AND RELATED CLAIMS**

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

**NOTICE OF ENTRY OF ORDER
REGARDING PLAINTIFF STEVEN C.
JACOBS' MOTION TO COMPEL
DEPOSITION TESTIMONY ON ORDER
SHORTENING TIME**

Hearing Date: January 29, 2013

Hearing Time: 8:30 a.m.

18
19 PLEASE TAKE NOTICE that an *Order Regarding Plaintiff Steven C. Jacobs' Motion to*
20 *Compel Deposition Testimony on Order Shortening Time* was entered in the above-captioned
21 matter on May 8, 2013, a true and correct copy of which is attached hereto.

22 DATED this 8th day of May, 2013.

23 **PISANELLI BICE PLLC**

24 By  **NOEL B**

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

27 Attorneys for Plaintiff Steven C. Jacobs
28

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 8th day of May, 2013, I caused to be sent via United States Mail, postage prepaid, a true and correct copy of the above and foregoing NOTICE OF ENTRY OF ORDER REGARDING PLAINTIFF STEVEN C. JACOBS' MOTION TO COMPEL DEPOSITION TESTIMONY ON ORDER SHORTENING TIME properly addressed to the following:

J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
HOLLAND & HART
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134
speek@hollandhart.com
rcassity@hollandhart.com

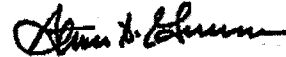
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An employee of PISANELLI BICE PLLC


CLERK OF THE COURT

1 **ORDER**

2 James J. Pisanelli, Esq., Bar No. 4027

3 JJP@pisanellibice.com

4 Todd L. Bice, Esq., Bar No. No. 4534

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14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 **STEVEN C. JACOBS,**

17 Plaintiff,

18 v.

19 **LAS VEGAS SANDS CORP.,** a Nevada
20 corporation; **SANDS CHINA LTD.,** a
21 Cayman Islands corporation; **DOES 1**
22 through X; and **ROE CORPORATIONS**
23 I through X,

24 Defendants.

Case No.: A-10-627691

Dept. No.: XI

**ORDER REGARDING PLAINTIFF
STEVEN C. JACOBS' MOTION TO
COMPEL DEPOSITION TESTIMONY
ON ORDER SHORTENING TIME**

Date: January 29, 2013

Time: 8:30 a.m.

25 **AND RELATED CLAIMS**

26 On January 29, 2013, the parties came before this Court on Steven C. Jacobs' Motion to
27 Compel Deposition Testimony on Order Shortening Time ("Motion to Compel"). Todd L. Bice,
28 Esq., of the law firm PISANELLI BICE PLLC, appeared on behalf of Plaintiff Steven C. Jacobs
("Jacobs"). J. Stephen Peek, Esq., of the law firm Holland & Hart LLP, appeared on behalf of
Defendants Las Vegas Sands Corp. ("LVSC") and Sands China Ltd. ("Sands China"). Mark M.
Jones, Esq., of the law firm Kemp Jones & Coulthard, LLP, and Michael B. Lackey, Jr., of the
law firm Mayer Brown LLP, appeared on behalf of Defendant Sands China. The Court
considered the papers filed on behalf of the parties and the oral argument of counsel, and good
cause appearing therefor:

04-25-13P12:12 RCVB

///

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

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

2 1. The Motion to Compel is GRANTED in part and DENIED in part;

3 2. As previously ordered, Jacobs may question deponents, excepting Ken Kay, as to
4 the decision making and implementation of the decision to terminate Jacobs from Sands China,
5 which is the "who, what, where, when and how" behind the decision. This questioning may
6 include the "who, what, where, when and how" of the decision-making process as well, but not
7 the basis for or the "why" behind the decision to terminate Jacobs; and,


8 3. The Motion to Compel is DENIED with respect to compelling the requested
9 deposition testimony of Mr. Kay, as Mr. Kay's deposition is limited to the work he performed for
10 Sands China, and work he performed on behalf of or directly for Sands China while acting as an
11 employee, officer, or director of LVSC, during the time period of January 1, 2009, to October 20,
12 2010.

13 DATED: May 7, 2013

14 
15 THE HONORABLE ELIZABETH GONZALEZ
16 EIGHTH JUDICIAL DISTRICT COURT

17 Respectfully submitted by:

18 PISANELLI BICE PLLC

19
20 By: 
21 James J. Pisanelli, Esq., Bar No. 4027
22 Todd L. Bice, Esq., Bar No. 4534
23 Debra L. Spinelli, Esq., Bar No. 9695
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25 Las Vegas, NV 89169

26 Attorneys for Plaintiff Steven C. Jacobs
27
28

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1 Approved as to form by:

2 HOLLAND & HART

3 By: 

4 J. Stephen Peck, Esq., Bar No. 1758
5 Robert J. Cassity, Esq., Bar No. 9779
6 9555 Hillwood Drive, Second Floor
7 Las Vegas, NV 89134

8 Attorneys for Las Vegas Sands Corp.
9 and Sands China Ltd.

KEMP JONES & COULTHARD

By: 

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and

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1999 K Street, N.W.
Washington, DC 20006

Attorneys for Sands China Ltd.

130 Nev., Advance Opinion 61
IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS SANDS CORP., A NEVADA
CORPORATION; AND SANDS CHINA
LTD., A CAYMAN ISLANDS
CORPORATION,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
ELIZABETH GOFF GONZALEZ,
DISTRICT JUDGE,

Respondents,

and

STEVEN C. JACOBS,
Real Party in Interest.

No. 62944

FILED

AUG 07 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Original petition for a writ of prohibition or mandamus challenging a district court order finding that petitioners violated a discovery order and scheduling an evidentiary hearing to determine appropriate sanctions.

Petition denied.

Morris Law Group and Steve L. Morris and Rosa Solis-Rainey, Las Vegas; Kemp, Jones & Coulthard, LLP, and J. Randall Jones and Mark M. Jones, Las Vegas; Holland & Hart LLP and J. Stephen Peek and Robert J. Cassity, Las Vegas,
for Petitioners.

Pisanelli Bice PLLC and Todd L. Bice, James J. Pisanelli, and Debra L. Spinelli, Las Vegas,
for Real Party in Interest.

BEFORE THE COURT EN BANC.¹

OPINION

By the Court, GIBBONS, C.J.:

In this opinion, we consider whether a Nevada district court may properly issue a discovery order that compels a litigant to violate a foreign international privacy statute. We conclude that the mere existence of an applicable foreign international privacy statute does not itself preclude Nevada district courts from ordering foreign parties to comply with Nevada discovery rules. Thus, civil litigants may not utilize foreign international privacy statutes as a shield to excuse their compliance with discovery obligations in Nevada courts. Rather, the existence of an international privacy statute is relevant to a district court's sanctions analysis if the court's discovery order is disobeyed. Here, the district court properly employed this framework when it found that the existence of a foreign international privacy statute did not excuse petitioners from complying with the district court's discovery order. And because the district court has not yet held the hearing to determine if, and the extent to which, sanctions may be warranted, our intervention at this juncture would be inappropriate. We therefore deny this writ petition.

¹The Honorable Kristina Pickering and the Honorable Ron Parraguirre, Justices, voluntarily recused themselves from participation in the decision of this matter.

FACTS AND PROCEDURAL HISTORY

This matter arises out of real party in interest Steven C. Jacobs's termination as president and chief executive officer of petitioner Sands China. After his termination, Jacobs filed a complaint against petitioners Las Vegas Sands Corp. (LVSC) and Sands China Ltd., as well as nonparty to this writ petition, Sheldon Adelson, the chief executive officer of LVSC (collectively, Sands). Jacobs alleged that Sands breached his employment contract by refusing to award him promised stock options, among other things.

Almost three years ago, this court granted a petition for a writ of mandamus filed by Sands China and directed the district court to hold an evidentiary hearing and issue findings as to whether Sands China is subject to personal jurisdiction in Nevada. *See Sands China Ltd. v. Eighth Judicial Dist. Court*, Docket No. 58294 (Order Granting Petition for Writ of Mandamus, August 26, 2011). Due to a string of jurisdictional discovery disputes that have arisen since that order was issued, the district court has yet to hold the hearing.

Throughout jurisdictional discovery, Sands China has maintained that it cannot disclose any documents containing personal information that are located in Macau due to restrictions within the Macau Personal Data Protection Act (MPDPA). Approximately 11 months into jurisdictional discovery, however, Sands disclosed for the first time that, notwithstanding the MPDPA's prohibitions, a large number of documents contained on hard drives used by Jacobs and copies of Jacobs's emails had been transported from Sands China in Macau to LVSC in the

United States.² In response to Sands's revelation, the district court sua sponte ordered a sanctions hearing. Based on testimony at that hearing, the district court determined that the transferred documents were knowingly transferred to LVSC's in-house counsel in Las Vegas and that the data was then placed on a server at LVSC's Las Vegas property. The district court also found that both in-house and outside counsel were aware of the existence of the transferred documents but had been concealing the transfer from the district court.

Based on these findings, the district court found that Sands's failure to disclose the transferred documents was "repetitive and abusive," deliberate, done in order to stall jurisdictional discovery, and led to unnecessary motion practice and a multitude of needless hearings. The district court issued an order in September 2012 that, among other things, precluded Sands from raising the MPDPA "as an objection or as a defense to admission, disclosure or production of any documents." Sands did not challenge this sanctions order in this court.

Subsequently, Sands filed a report detailing its Macau-related document production. Sands's report indicated that, with respect to all of the documents that it had produced from Macau, it had redacted personal data contained in the documents based on MPDPA restrictions prior to providing the documents to Jacobs. In response to Sands's redactions

²Sands stated that the presence of the documents in the United States was not disclosed at an earlier time because the documents were brought to the United States mistakenly, and Sands had been seeking guidance from the Macau authorities on whether they could be disclosed under the MPDPA.

based on the MPDPA, Jacobs moved for NRCP 37 sanctions, arguing that Sands had violated the district court's September 2012 order.

The district court held a hearing on Jacobs's motion for sanctions, at which the court stated that the redactions appeared to violate the September 2012 order. In its defense, Sands argued that the September 2012 order had prohibited it from raising the MPDPA as an objection or defense to "admission, disclosure or production" of documents, but not as a basis for *redacting* documents. The district court disagreed with Sands's interpretation of the sanctions order, noting:

I certainly understand [the Macau government has] raised issues with you. But as a sanction for the inappropriate conduct that's happened in this case, in this case you've lost the ability to use that as a defense. I know that there may be some balancing that I do when I'm looking at appropriate sanctions under the Rule 37 standard as to why your client may have chosen to use that method to violate my order. And I'll balance that and I'll look at it and I'll consider those issues.

Based on the above findings, the district court entered an order concluding that Jacobs had "made a prima facie showing as to a violation of [the district] [c]ourt's orders which warrants an evidentiary hearing" regarding whether and the extent to which NRCP 37 sanctions were warranted. The district court set an evidentiary hearing, but before this hearing was held, Sands filed this writ petition, asking that this court direct the district court to vacate its order setting the evidentiary hearing.

DISCUSSION

A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion. *Aspen Fin. Servs., Inc. v. Eighth Judicial Dist.*

Court, 128 Nev. ___, ___, 289 P.3d 201, 204 (2012). A writ of prohibition may be warranted when the district court exceeds its jurisdiction. *Id.* Although a writ of prohibition is a more appropriate remedy for the prevention of improper discovery, writ relief is generally unavailable to review discovery orders. *Id.*; see also *Valley Health Sys., L.L.C. v. Eighth Judicial Dist. Court*, 127 Nev. ___, ___, 252 P.3d 676, 679 (2011) (providing that exceptions to this general rule exist when (1) the trial court issues a blanket discovery order without regard to relevance, or (2) a discovery order requires disclosure of privileged information). Nevertheless, “in certain cases, consideration of a writ petition raising a discovery issue may be appropriate if an important issue of law needs clarification and public policy is served by this court’s invocation of its original jurisdiction” *Aspen Fin. Servs., Inc. v. Eighth Judicial Dist. Court*, 129 Nev. ___, ___, 313 P.3d 875, 878 (2013) (internal quotation marks omitted). “The burden is on the petitioner to demonstrate that extraordinary relief is warranted.” *Valley Health*, 127 Nev. at ___, 252 P.3d at 678.

In its writ petition, Sands argues generally that this court’s intervention is warranted because the district court has improperly subjected Sands to discovery sanctions based solely on Sands’s attempts to comply with the MPDPA. Sands has not persuasively argued that either of this court’s two generally recognized exceptions for entertaining a writ petition challenging a discovery order apply. See *Valley Health*, 127 Nev. at ___, 252 P.3d at 679. Nevertheless, the question of whether a Nevada district court may effectively force a litigant to choose between violating a discovery order or a foreign privacy statute raises public policy concerns and presents an important issue of law that has relevance beyond the

parties to the underlying litigation and cannot be adequately addressed on appeal. Therefore, we elect to entertain the petition. See *Aspen Fin. Servs.*, 129 Nev. at ___, 313 P.3d at 878.

Foreign international privacy statutes cannot be used by litigants to circumvent Nevada discovery rules, but should be considered in a district court's sanctions analysis

The intersection between Nevada discovery rules and international privacy laws is an issue of first impression in Nevada. The Nevada Rules of Civil Procedure authorize parties to discover any nonprivileged evidence that is relevant to any claims or defenses at issue in a given action. NRCP 26(b)(1). On the other hand, many foreign nations have created nondisclosure laws that prohibit international entities from producing various types of documents in litigation. See generally Note, *Foreign Nondisclosure Laws and Domestic Discovery Orders in Antitrust Litigation*, 88 Yale L.J. 612 (1979).

The United States Supreme Court has evaluated the intersection between these two competing interests and determined that such a privacy statute does not, by itself, excuse a party from complying with a discovery order. See *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court*, 482 U.S. 522, 544 n.29 (1987) ("It is well settled that such statutes do not deprive an American court of the power to order a party subject to its jurisdiction to produce evidence even though the act of production may violate that statute." (citing *Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers*, 357 U.S. 197, 204-06 (1958))). Generally, courts in similar situations have considered a variety of factors, including (1) "the importance to the investigation or litigation of the documents or other information requested"; (2) "the degree of specificity of the request"; (3) "whether the information originated in the

United States"; (4) "the availability of alternative means of securing the information"; and (5) "the extent to which noncompliance with the request would undermine important interests of the United States, or compliance with the request would undermine important interests of the state where the information is located." Restatement (Third) of Foreign Relations Law § 442(1)(c) (1987); see also *Linde v. Arab Bank, PLC*, 269 F.R.D. 186, 193 (E.D.N.Y. 2010). But there is some disagreement as to when courts should evaluate such factors.

Some jurisdictions, including the United States Court of Appeals for the Second Circuit, generally evaluate these factors both when deciding whether to issue an order compelling production of documents located in a foreign nation and when issuing sanctions for noncompliance of that order. *Linde*, 269 F.R.D. at 196.³

The United States Court of Appeals for the Tenth Circuit has espoused an approach in which a court's analysis of the foreign law issue is only relevant to the imposition of sanctions for a party's disobedience, and not in evaluating whether to issue the discovery order. *Arthur Andersen & Co. v. Finesilver*, 546 F.2d 338, 341-42 (10th Cir. 1976). The Tenth Circuit noted that in *Societe Internationale*, the Supreme Court

³Even within the Second Circuit, there is some uncertainty as to when a court should apply these factors. See *In re Parmalat Sec. Litig.*, 239 F.R.D. 361, 362 (S.D.N.Y. 2006) ("[T]he modern trend holds that the mere existence of foreign blocking statutes does not prevent a U.S. court from ordering discovery although it may be more important to the question of sanctions in the event that a discovery order is disobeyed by reason of a blocking statute." (quoting *In re Auction Houses Antitrust Litig.*, 196 F.R.D. 444, 446 (S.D.N.Y. 2000))).

stated that a party's reasons for failing to comply with a production order "can hardly affect the fact of noncompliance and are relevant only to the path which the [d]istrict [c]ourt might follow in dealing with [the party's] failure to comply." *Id.* at 341 (quoting *Societe Internationale*, 357 U.S. at 208). Based on this language, the Tenth Circuit determined that a court should only consider the foreign privacy law when determining if sanctions are appropriate. *Id.*; see also Wright, *Discovery*, 35 F.R.D. 39, 81 (1964) ("The effect of those laws is considered in determining what sanction to impose for noncompliance with the order, rather than regarded as a reason for refusing to order production").

In our view, the Tenth Circuit's approach is more in line with Supreme Court precedent.⁴ See, e.g., *Arthur Andersen*, 546 F.2d at 341-42; *In re Westinghouse Elec. Corp. Uranium Contracts Litig.*, 563 F.2d 992, 997 (10th Cir. 1977); Timothy G. Smith, Note, *Discovery of Documents Located Abroad in U.S. Antitrust Litigation: Recent Developments in the Law Concerning the Foreign Illegality Excuse for Non-Production*, 14 Va. J. Int'l L., 747, 753 (1974) (noting that Second Circuit cases failed to observe the Supreme Court's distinction between a court's power to compel discovery and the appropriate sanctions if a party failed to comply). We

⁴That is not to say that Nevada courts should never consider a foreign privacy statute in issuing a discovery order. Certainly, a district court has wide discretion to consider a number of factors in deciding whether to limit discovery that is either unduly burdensome or obtainable from some other sources. NRCP 26(b)(2). Thus, it would be well within the district court's discretion to account for such a foreign law in its analysis, but we decline to adopt the Second Circuit's requirement of a full multifactor analysis in ordering the production of such documents.

are persuaded by the Tenth Circuit's approach, and conclude that the mere presence of a foreign international privacy statute itself does not preclude Nevada courts from ordering foreign parties to comply with Nevada discovery rules. Rather, the existence of an international privacy statute is relevant to the district court's sanctions analysis in the event that its order is disobeyed. *Arthur Andersen*, 546 F.2d at 341-42.

Here, Sands argues that the district court never purported to balance any of the relevant factors before concluding that its MPDPA redactions were sanctionable. But in our view, the district court has yet to have that opportunity. The district court has properly indicated that it would "balance" Sands's desire to comply with the MPDPA with other factors at the yet-to-be-held sanctions hearing. Thus, Sands has not satisfied its burden of demonstrating that the district court exceeded its jurisdiction or arbitrarily or capriciously exercised its discretion. *Aspen Fin. Servs.*, 128 Nev. at ___, 289 P.3d at 204; *Valley Health*, 127 Nev. at ___, 252 P.3d at 678. Because we are confident that the district court will evaluate the relevant factors noted above in determining what sanctions, if any, are appropriate when it eventually holds the evidentiary hearing, we decline to preempt the district court's consideration of these issues by entertaining the additional arguments raised in Sands's writ petition.⁵

⁵The majority of Sands's briefing argues that the district court improperly (1) ordered discovery of documents that had no relevance to the issue of personal jurisdiction, and (2) concluded that Sands violated the technical wording of the September 2012 sanctions order. Although this first contention arguably falls within *Valley Health's* first exception, see 127 Nev. at ___, 252 P.3d at 679, the documentation accompanying Sands's writ petition does not clearly support the contention. *Id.* at ___,
continued on next page...

CONCLUSION

Having considered the parties' filings and the attached documents, we conclude that our intervention by extraordinary relief is not warranted. Specifically, we conclude that the mere presence of a foreign international privacy statute does not itself preclude Nevada district courts from ordering litigants to comply with Nevada discovery rules. Rather, the existence of such a statute becomes relevant to the district court's sanctions analysis in the event that its discovery order is disobeyed. Here, to the extent that the challenged order declined to excuse petitioners for their noncompliance with the district court's previous order, the district court did not act in excess of its jurisdiction or arbitrarily or capriciously. And because the district court properly indicated that it intended to "balance" Sands's desire to comply with the foreign privacy law in determining whether discovery sanctions are warranted, our intervention at this time would inappropriately preempt

... continued

252 P.3d at 678 ("The burden is on the petitioner to demonstrate that extraordinary relief is warranted."). In fact, the district court specifically noted that Sands may withhold all documents that were only relevant to merits discovery and thus irrelevant to the district court's jurisdiction over Sands China. Sands's second contention does not fall within either of *Valley Health's* two exceptions, and Sands does not argue otherwise. *Id.* at ___, 252 P.3d at 679. Further, neither issue raises public policy concerns or presents an important issue of law that has relevance beyond the parties to the underlying litigation. *Aspen Fin. Servs.*, 129 Nev. at ___, 313 P.3d at 878. As a result, we decline to entertain Sands's remaining arguments.

the district court's planned hearing. As a result, we deny Sands's petition for a writ of prohibition or mandamus.

L. Gibbons C.J.
Gibbons

We concur:

J. Hardesty J.
Hardesty

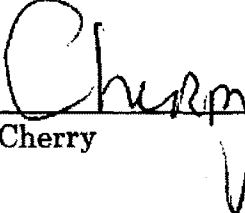
J. Douglas J.
Douglas

J. Saitta J.
Saitta

CHERRY, J., concurring in the result:

I agree with the majority that our intervention by extraordinary relief is not warranted at this time. However, I do not believe that a lengthy opinion by four members of this court on the conduct leading up to the sanctions hearing, or on the factors that the district court should consider when exercising its discretion in imposing future sanctions, is necessary or appropriate at this juncture of this case, when a thorough and fact-finding evidentiary hearing has not yet been conducted by the district court.

It is premature for this court to anticipate, project, or predict the totality of findings that the district court may make after the conclusion of any evidentiary hearing. At such time as findings of fact and conclusions of law are finalized by the district court, then—and only then—should an appropriate disposition be rendered in the form of a published opinion and made public.

 J.
Cherry

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1 Prohibition for Mandamus (the "Refreshing Recollection Order"), and the Order Granting
2 Plaintiff's Renewed Motion for NRCP 37 Sanctions Pending Defendants' Petition for Writ
3 Prohibition for Mandamus (the "Sanctions Order"). James J. Pisanelli, Esq. and Todd L. Bice,
4 Esq. of the law firm PISANELLI BICE PLLC appeared on behalf of Jacobs. J. Stephen Peek,
5 Esq. of the law firm HOLLAND & HART LLP appeared on behalf of Defendants. J. Randall
6 Jones, Esq. of the law firm KEMP, JONES & COULTHARD, LLP appeared on behalf of SCL.
7 The Court considered the status of the underlying writ petitions before the Nevada Supreme
8 Court, and good cause appearing therefor:

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

10 1. The stays of the Refreshing Recollection Order and the Sanctions Order are
11 extended until the next status check hearing on February 13, 2014, at 8:30 a.m. to reconsider the
12 status of the stays.

13 2. Should the Nevada Supreme Court not rule upon the underlying writ petitions
14 prior to February 13, 2014, and this Court decide to deny any requests for a further extension of
15 the stays, the Court will temporarily extend the stays for ten (10) days thereafter to permit
16 Defendants to seek potential relief from the Nevada Supreme Court if the Defendants believe it
17 is appropriate.

18 DATED this ____ day of October, 2013.

19
20 District Court Judge


21 Submitted by:

22 KEMP, JONES & COULTHARD

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21 and Sands China, Ltd.

DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

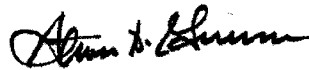
v.

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.

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CLERK OF THE COURT

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

ORDER EXTENDING STAY OF
ORDER GRANTING PLAINTIFF'S
RENEWED MOTION FOR NRCP 37
SANCTIONS

On March 11, 2014, counsel for Plaintiff Steven C. Jacobs ("Jacobs") and Defendants Las Vegas Sands Corp. and Sands China Ltd. ("SCL") (collectively "Defendants") came before this Court on a status check as to the pending writ proceedings before the Nevada Supreme Court regarding the Order Granting Jacobs' Motion to Compel Documents Used by Witness to

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1 Refresh Recollection Pending Defendants' Petition for Writ of Prohibition for Mandamus (the
2 "Refreshing Recollection Order"), and the Order Granting Jacobs' Renewed Motion for NRCP
3 37 Sanctions Pending Defendants' Petition for Writ Prohibition for Mandamus (the "Sanctions
4 Order"), this Court having previously issued stays of both Orders pending the outcome of the
5 related writ petitions. Todd L. Bice, Esq. of the law firm PISANELLI BICE PLLC appeared on
6 behalf of Jacobs. J. Stephen Peck, Esq. of the law firm HOLLAND & HART LLP appeared on
7 behalf of Defendants. J. Randall Jones, Esq. of the law firm KEMP, JONES & COULTHARD,
8 LLP appeared on behalf of SCL. The Court considered the status of the underlying writ
9 petitions before the Nevada Supreme Court, and good cause appearing therefor:

10 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

11 1. The stay of the Refreshing Recollection Order is no longer necessary in
12 accordance with the Nevada Supreme Court's recent Writ of Prohibition and Opinion, *Las*
13 *Vegas Sands Corp. v. Eighth Jud. Dist. Ct.*, 130 Nev., Advance Opinion 13 (Feb. 27, 2014).

14 2. The stay of the Sanctions Order is extended until the next status check hearing
15 on June 10, 2014, at 8:30 a.m. to consider the status of the same.

16 3. Should the Nevada Supreme Court not rule upon the writ petition regarding the
17 Sanctions Order prior to June 10, 2014, and this Court decide to deny any requests for a further
18 extension of the stay, the Court will temporarily extend the stay for ten (10) days thereafter to

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1 permit Defendants to seek potential relief from the Nevada Supreme Court if the Defendants
2 believe it is appropriate.

3 DATED this 26th day of March, 2014.

4
5
6 
District Court Judge


7 Submitted by:

8 KEMP, JONES & COULTHARD

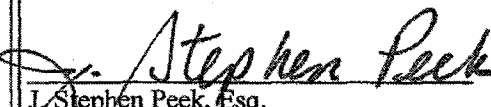
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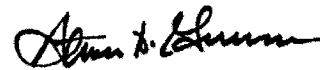
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13 *Attorneys for Las Vegas Sands Corp.
14 and Sands China, Ltd.*

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

17 STEVEN C. JACOBS,

18 Plaintiff,

19 v.

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

23 Defendants.
24

25 AND ALL RELATED MATTERS.

CASE NO.: A627691-B

DEPT NO.: XI

**DEFENDANT SANDS CHINA, LTD.'s
MOTION FOR SUMMARY
JUDGMENT ON PERSONAL
JURISDICTION**

Date:

Time:

26 Defendant Sands China Limited ("SCL") hereby moves for summary judgment on the
27 issue of personal jurisdiction. As described in greater detail below, the law has dramatically
28 changed since this Court first ruled on SCL's motion to dismiss for lack of personal jurisdiction

1 three years ago. Then, Plaintiff Steven C. Jacobs argued, and this Court agreed, that general
2 jurisdiction existed so long as SCL had “substantial or continuous and systematic” contacts with
3 Nevada. In *Daimler AG v. Bauman*, 134 S.Ct. 746, 761 (2014), however, the U.S. Supreme
4 Court labeled this theory of general jurisdiction “unacceptably grasping” and contrary to due
5 process. The U.S. Supreme Court explained that the question is not the extent of an out-of-state
6 corporation’s contacts with the forum, but rather whether its affiliations with the state are “so
7 ‘continuous and systematic’ as to render [it] essentially at home in the forum State.” *Id.*,
8 quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S.Ct. 2846, 2851 (2011).
9 “Typically, a corporation is ‘at home’ *only* where it is incorporated or has its principal place of
10 business.” *Viega GmbH v. Eighth Judicial Dist.*, No. 59976, 2014 Nev. LEXIS 48, at *11; 130
11 Nev. Adv. Rep. 40 (May 29, 2014) (emphasis added).

12 In *Daimler AG*, the U.S. Supreme Court acknowledged that in an “exceptional case . . . a
13 corporation’s operations in a forum other than its formal place of incorporation or principal
14 place of business may be so substantial and of such a nature as to render the corporation at
15 home in that State.” 134 S.Ct. at 761 n.19. Whether that standard is met should not entail a
16 complicated factual analysis; as the Supreme Court observed, it is “hard to see why much in the
17 way of discovery would be needed to determine where a corporation is at home.” *Id.* at 762
18 n.20.


19 After *Daimler AG* was issued, SCL filed a motion in the Nevada Supreme Court to
20 recall the mandate that Court had issued in No. 58294 on August 26, 2011, which directed this
21 Court to hold an evidentiary hearing on the issue of personal jurisdiction. *See* Order Granting
22 Petition for Writ of Mandamus, attached as Ex. A hereto. SCL argued that *Daimler AG*
23 precludes the exercise of general jurisdiction over SCL in Nevada because it is undisputed that
24 SCL is a Cayman Islands corporation with its principal place of business in Macau. The
25 Nevada Supreme Court denied SCL’s motion on May 19, 2014, on the ground that “even under
26 *Daimler AG*, factual findings must be made with regard to Sands China’s contacts with Nevada
27 in order to resolve the jurisdictional issue. Thus, Sands China’s arguments in this regard should
28

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1 be presented to the district court for consideration in conjunction with the personal jurisdiction
2 issue.” See Order Denying Motion to Recall Mandate, attached as Ex. B hereto.

3 In accordance with the Nevada Supreme Court’s directive, SCL now seeks summary
4 judgment based on *Daimler AG*. As demonstrated below, the issue of general jurisdiction can
5 and should be decided based on facts concerning SCL’s operations that are not subject to any
6 reasonable dispute. *Daimler AG* also resolves the legal issue of transient jurisdiction that the
7 Nevada Supreme Court directed this Court to consider after it ruled on general jurisdiction.
8 Finally, the Nevada Supreme Court’s May 29 decision in *Viega GmbH* provides additional
9 guidance on Plaintiff’s specific jurisdiction argument, which should enable this Court to decide
10 that issue as well without the need for holding an evidentiary hearing.

11 DATED June 26, 2014.


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NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

YOU, and each of you, will please take notice that the undersigned will bring the above and foregoing **DEFENDANT SANDS CHINA, LTD.'s MOTION FOR SUMMARY JUDGMENT ON PERSONAL JURISDICTION** on for hearing before the above-entitled Court on the 29 day of July, 2014, at the hour of 8:30 a.m./p.m. in Department XI of the Eighth Judicial District Court.

DATED this ____ day of June, 2014.

Unsigned

DISTRICT COURT JUDGE

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANT SANDS CHINA LTD.'S
MOTION FOR SUMMARY JUDGMENT ON PERSONAL JURISDICTION**

I.

ARGUMENT

A. *Daimler AG* Has Established A New Test For General Jurisdiction That Plaintiff Cannot Meet.

Daimler AG represents a sea change in the law with respect to general jurisdiction. It effectively eliminates the concept of "doing business" jurisdiction for out-of-state corporations and limits the forums where a company is always subject to suit to (in most cases) its state of incorporation and the state where it has its principal place of business.

The issue in *Daimler AG* was whether *Daimler AG*, a German corporation with its principal place of business in Germany, could be sued in California for torts one of its subsidiaries allegedly committed in Argentina. The Ninth Circuit held that the lawsuit could proceed against *Daimler AG* in California because its U.S. subsidiary, which sold *Daimler* vehicles on its behalf, had sufficient contacts with the state to be subject to general jurisdiction. The Ninth Circuit reached that conclusion first by holding that the U.S. subsidiary acted as *Daimler AG*'s agent and then by attributing all of the subsidiary's California contacts to the

1 German parent. The subsidiary's contacts included "multiple California-based facilities"; in
2 addition, approximately 2.4% of Daimler AG's worldwide sales were made in California
3 through its U.S. subsidiary. 134 S.Ct. at 752.

4 The U.S. Supreme Court reversed. The Court assumed that the U.S. subsidiary was in
5 fact Daimler AG's agent and that the subsidiary's California contacts should therefore be
6 attributed to Daimler AG. The Court also assumed (because Daimler did not argue otherwise)
7 that the U.S. subsidiary would have been subject to general jurisdiction in California.
8 Nevertheless, the Court held that, when Daimler AG's worldwide contacts were taken into
9 account, it was obvious that the German company was not "at home" in California and thus
10 could not be sued there on claims that were unrelated to its agent's activities in California.

11 The Court began its legal analysis by reiterating its observation in *Goodyear Dunlop*
12 *Tires Operations, S.A. v. Brown*, 131 S.Ct. 2846, 2854 (2011), that "specific jurisdiction has
13 become the centerpiece of modern jurisdiction theory." *Daimler AG*, 134 S.Ct. at 755. Specific
14 jurisdiction is "case-linked" and grants a court the power to hear only those claims "deriving
15 from, or connected with, the very controversy that establishes jurisdiction." *Goodyear*, 131
16 S.Ct. at 2851. By contrast, general or "all-purpose" jurisdiction, which grants a court the power
17 "to hear any and all claims against" a defendant regardless of where the claim arose, has played
18 "a reduced role." *Id.* at 2851, 2854. In *Goodyear* and then *Daimler AG*, the U.S. Supreme
19 Court held that the Constitution imposes a heavy burden on plaintiffs who seek to sue an out-of-
20 state corporation on a general jurisdiction theory.

21 The Supreme Court explained that, as a matter of due process, "only a limited set of
22 affiliations," such as being incorporated or having its principal place of business in the forum at
23 issue, "will render a defendant amenable to all-purpose jurisdiction there." *Daimler AG*, 134
24 S.Ct. at 760. Where the defendant is a foreign corporation with its principal place of business in
25 another state or foreign country, even proof of a "substantial, continuous, and systematic course
26 of business" in the forum — whether directly or through an agent — is not enough to assert
27 general jurisdiction over it. *Id.* at 760-61. The issue, the Court explained, is not the extent of
28 the out-of-state corporation's contacts with the forum, but rather whether its affiliations with the

1 state are “so ‘continuous and systematic’ as to render [it] essentially at home in the forum
2 State.” *Id.*, quoting *Goodyear*, 131 S.Ct. at 2851. *See also id.* at 758 n.11 (explaining that this
3 test requires the defendant to be “comparable to a domestic enterprise in that State”).

4 As the Nevada Supreme Court has recognized, *Daimler AG* creates a presumption that
5 general jurisdiction over a corporation lies only in the forums in which it is incorporated and has
6 its principal place of business. *See Viega GmbH v. Eighth Judicial Dist.*, 2014 Nev. LEXIS 48,
7 at *11 (“Typically, a corporation is ‘at home’ only where it is incorporated or has its principal
8 place of business”). The *Daimler AG* Court noted that these “affiliations have the virtue of
9 being unique—that is, each ordinarily indicates only one place—as well as easily ascertainable.
10 . . . These bases afford plaintiffs recourse to at least one clear and certain forum in which a
11 corporate defendant may be sued on any and all claims.” 134 S.Ct. at 760. In a footnote, the
12 U.S. Supreme Court said that it would not “foreclose the possibility that in an exceptional case .
13 . . a corporation’s operations in a forum other than its formal place of incorporation or principal
14 place of business may be so substantial and of such a nature as to render the corporation at
15 home in that State.” *Id.* at 761 n.19. But it held that, even when its U.S. subsidiary’s contacts
16 were attributed to the parent company, *Daimler AG*’s “activities in California plainly do not
17 approach that level.” *Id.*

18 Significantly, the U.S. Supreme Court noted that “it is hard to see why much in the way
19 of discovery would be needed to determine where a corporation is at home.” *Id.* at 762 n.20. In
20 the same footnote, the Court “clarified]” that “the general jurisdiction inquiry does not focu[s]
21 solely on the magnitude of the defendant’s in-state contacts.” *Id.* (internal quotation marks
22 omitted). “General jurisdiction instead calls for an appraisal of a corporation’s activities in their
23 entirety, nationwide and worldwide.” *Id.*

24 **B. The Facts Relevant To General Jurisdiction Under *Daimler AG* Are Indisputable.**

25 The facts that are relevant to general jurisdiction under *Daimler AG* are not subject to
26 any reasonable dispute. Plaintiff does not dispute that SCL is a Cayman Islands corporation
27 with its principal place of business in Macau. First Am. Compl. ¶ 3. Thus, the only question is
28 whether this is the “exceptional case” the U.S. Supreme Court had in mind in *Daimler AG*,

1 where SCL's "operations" in Nevada are "so substantial and of such a nature as to render the
2 corporation at home in that State." The indisputable facts demonstrate that the answer to this
3 question is unequivocally "no."

4 SCL has already presented to this Court facts showing that it had *no* "operations" in
5 Nevada. Under *Daimler AG*, that is dispositive of any claim that SCL is "at home" here. In the
6 year in which Jacobs filed this lawsuit (2010), SCL reported over \$4 billion in revenue, all of
7 which was generated by properties and businesses it owns in Macau. See SCL's 2010 Annual
8 Report, attached as Ex. C hereto; see also Affidavit of Toh Hup Hoch, attached hereto, ¶ 6. By
9 contrast, SCL owns *no* property in Nevada and has *no* revenue-producing operations here.
10 Indeed, under a Non-Competition Deed it entered to in November 2009 with its parent
11 company, Las Vegas Sands Corporation ("LVSC"), SCL is prohibited from conducting any
12 business in Nevada. See Toh Affidavit, ¶ 7; see also Deed of Non-Compete Undertakings,
13 attached as Ex. D hereto.

14 Plaintiff has taken extensive discovery on three theories he has offered in support of his
15 contention that there is general jurisdiction over SCL in Nevada. Plaintiff has argued that SCL
16 has substantial contacts with Nevada because it purchases goods and services and has
17 contractual arrangements with a number of Nevada companies (including LVSC). Second,
18 Plaintiff has claimed that LVSC's Nevada contacts should be attributed to SCL because LVSC
19 supposedly acts as SCL's agent for some purposes. Finally, Plaintiff has argued that, at the time
20 the lawsuit was filed, SCL was directed and controlled from Las Vegas, which Plaintiff claims
21 was its "de facto" executive headquarters. As demonstrated below, *Daimler AG* makes clear
22 that none of these theories is legally viable. Accordingly, the Court need not and should not
23 hold an evidentiary hearing on whatever factual questions those theories might raise.

24 **1. SCL's Purchases of Goods And Services From Nevada Is Irrelevant To**
25 **Whether It Is "At Home" Here.**

26 In his initial opposition to SCL's motion to dismiss, Plaintiff argued that there were
27 numerous transactions between SCL and LVSC that constituted relevant "contacts" for
28 purposes of a general jurisdiction analysis. Plaintiff pointed to agreements to provide reciprocal

1 procurement, design and development services; to share private jets; to use LVSC's
2 international marketing services to recruit VIP players and assist in managing SCL's retail malls
3 in Macau; and to license trademarks owned by LVSC for use in Macau. He also argued that
4 SCL had an ongoing contractual relationship with other entities that were based in Las Vegas,
5 such as Bally Technologies, Inc., noting that he himself had met with a number of companies in
6 Las Vegas to discuss entertainment and development issues relating to SCL's properties in
7 Macau. See 2/9/11 Plaintiffs' Opp. to Motion to Dismiss, at 7-8. Jacobs sought and was
8 granted discovery to obtain more information about these types of contacts, including discovery
9 of whether funding for SCL occurred in Nevada, what contracts or agreements SCL had entered
10 into with entities other than LVSC that were based in Nevada, and agreements between LVSC
11 and SCL, including but not limited to, the subjects outlined above. See March 8, 2012 Order ¶¶
12 11, 13, 15, 16.

13 Under *Daimler AG*, however, all of these contacts are legally irrelevant. The U.S.
14 Supreme Court made it clear that general jurisdiction cannot be based on an aggregation of
15 contacts with in-state residents. Instead, it depends on whether the foreign corporation has
16 *operations* in the forum and, if so, how those operations stack up when compared to the
17 company's operations world-wide. Here, SCL has no operations in Nevada, and all of the
18 contacts Jacobs could conceivably cite relate to SCL's purchase of goods and services for use at
19 its properties *in Macau*. By definition, none of these contacts is relevant to whether SCL is "at
20 home" in Nevada.

21 In *Daimler AG*, the U.S. Supreme Court reiterated the rule it had articulated thirty years
22 ago in *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 418 (1984), holding
23 that "mere purchases, even if occurring at regular intervals, are not enough to warrant a State's
24 assertion of *in personam* jurisdiction over a nonresident corporation in a cause of action not
25 related to those purchase transactions." *Daimler AG*, 134 S.Ct. at 757. So too, in this case,
26 general jurisdiction cannot be predicated on evidence that SCL bought goods or services in
27 Nevada, from LVSC or others, for use in Macau. Accordingly, there is no need for an
28

1 evidentiary hearing (or any additional discovery) to determine the extent to which SCL bought
2 goods and services in Nevada.

3
4 **2. Even If LVSC Acted As SCL's Agent For Some Purposes, That Does Not
Provide A Basis For Concluding That SCL Is "At Home" In Nevada.**

5 Plaintiff's second theory is a variation of the agency theory the Ninth Circuit adopted in
6 *Daimler AG* and that the U.S. Supreme Court rejected in that case. As noted above, the
7 plaintiffs there argued that Daimler AG's U.S. subsidiary (Mercedes Benz USA) acted as its
8 agent in selling Daimler vehicles in California. Daimler AG did not dispute that Mercedes Benz
9 USA was subject to general jurisdiction in California;¹ the plaintiffs argued that if Daimler
10 AG's agent was "doing business" in California, then Daimler AG itself would be deemed to be
11 doing business in the jurisdiction and would also be subject to general jurisdiction there.

12 In this case, Plaintiff has argued that SCL retained LVSC as its agent to perform a
13 variety of tasks on its behalf, both in Nevada and elsewhere. Plaintiff sought and was granted
14 discovery to determine the extent to which LVSC performed services on behalf of SCL. *See*
15 March 8, 2012 Order ¶ 15. Plaintiff has argued that because LVSC is subject to general
16 jurisdiction in Nevada, a finding that LVSC acted as SCL's "general agent" would lead
17 inevitably to the conclusion that SCL too was subject to jurisdiction here.

18 *Daimler AG*, however, specifically rejects the basic premise on which Plaintiff relies—
19 that a principal is subject to general jurisdiction in a particular forum simply because its agent is
20 subject to "all purpose" jurisdiction there. Even though it accepted, for the sake of argument,
21 that Mercedes Benz USA's considerable California contacts could be attributed to Daimler AG,
22 the U.S. Supreme Court held that those contacts had to be viewed in the context of Daimler
23 AG's overall business to determine whether Daimler AG itself (as opposed to its assumed
24 agent) was "at home" in California. Thus, *Daimler AG* requires a two-step analysis. The first
25 question is whether and to what extent the purported agent's contacts can be imputed to the
26

27 ¹ The U.S. Supreme Court's opinion strongly suggests that Daimler AG's concession was
28 wrong and that Mercedes Benz USA itself, which was a Delaware corporation with its principal
place of business in New Jersey, might not have been subject to general jurisdiction in

1 principal. The second is whether the principal's overall contacts demonstrate that it is "at
2 home" in the forum in question.

3 In *Viega GmbH*, the Nevada Supreme Court explained how an agency theory applies
4 when jurisdiction is at issue. Because "corporate entities are presumed separate," the mere fact
5 that a parent company owns a subsidiary does not mean that jurisdiction over the parent can be
6 based on the subsidiary's contacts with the forum. 2014 Nev. LEXIS 48, at *9. The Nevada
7 Supreme Court noted that the agency theory articulated in *Doe v. Unocal Corp.*, 258 F.3d 915,
8 925 (9th Cir. 2001), which Plaintiff has consistently relied on in this case, is one of the "narrow
9 exceptions to this general rule." 2014 Nev. LEXIS 48, at *9. Unlike an alter ego theory, the
10 agency theory "does not treat the parent and subsidiary as one entity, but rather attributes
11 specific acts to the parent because of the parent's authorization of those acts." *Id.* (internal
12 quotation marks omitted). The same necessarily applies to Plaintiff's unconventional
13 principal/agent theory, under which the subsidiary (SCL) is supposedly the principal and the
14 parent (LVSC) the agent.

15 An agency relationship is formed when "one person has the right to control the
16 performance of another." *Id.* at *13. Agencies "come in many sizes and shapes"; "[o]ne may
17 be an agent for some business purposes and not others so that the fact that one may be an agent
18 for one purpose does not make him or her an agent for every purpose." *Id.* at *14-15 (internal
19 quotation marks omitted). Thus, to attribute *all* of a purported agent's jurisdictional contacts to
20 the principal, the court would have to find that the agent "exist[s] solely to serve at the direction
21 of their" principal. *Id.* at *12. In *Daimler AG*, attribution of all of the subsidiary's contacts to
22 the parent company made sense, because Mercedes Benz USA's entire business was devoted to
23 marketing Daimler AG's vehicles. Here, by contrast, even assuming for purposes of argument
24 that LVSC acted as SCL's "agent" when it provided services to SCL under the Shared Services
25 Agreement,² the scope of that agency was narrowly limited to the specific tasks that LVSC

26
27 California.

28 ² In fact, LVSC did not act as SCL's agent when it provided services pursuant to the Shared
Services Agreement between LVSC and SCL. That Agreement does not purport to create an

1 undertook on SCL's behalf. Those are the very same tasks described in Part A-1—providing
2 procurement, design, marketing services and the like to SCL for its operations in Macau.

3 What cannot under any circumstances be attributed to SCL are LVSC's own business
4 operations in Nevada—its extensive gaming, resort and convention operations. LVSC conducts
5 those operations on its own behalf. Indeed, it would be absurd to argue that LVSC does
6 business in the United States as SCL's agent. As the Nevada Supreme Court explained in *Viega*
7 *GmbH*, an agency relationship depends on the principal's right to direct and control the agent's
8 conduct. As LVSC's subsidiary, SCL has no even arguable right or ability to control how
9 LVSC conducts its own business in Nevada.

10 Thus, the only LVSC contacts with Nevada that could possibly be attributed to SCL on
11 an agency theory are services LVSC performs here on behalf of SCL pursuant to the Shared
12 Services Agreement. But once again the Court need not hold a hearing to determine precisely
13 how extensive those services were. SCL paid LVSC approximately \$9 million in 2009 and \$8.7
14 million in 2010 for a variety of services that LVSC provided to SCL in the United States
15 pursuant to the Shared Services Agreement. *See* SCL 2009 Connected Transactions Summary
16 (SCL00100052) attached as Ex. F hereto; *see also* Toh Affidavit, ¶ 9 and SCL 2010 Connected
17 Transactions Summary (SCL00100051) attached as Ex. G hereto, *see also* Toh Affidavit, ¶ 10.
18 Even assuming for purposes of argument that all of these services were provided to SCL by
19 LVSC employees who were headquartered in Las Vegas, this is only a tiny fraction of SCL's
20 overall operating expenses during 2009 and 2010 of \$2.9 billion and \$3.3 billion respectively.
21 *See* Annual Report, Ex. C. Even if SCL itself maintained a back-office operation of that size

22
23
24 agency relationship, nor does it give SCL the right to control the manner in which LVSC
25 performed the services in question. *See* Shared Services Agreement, attached as Ex. E hereto.
26 Without control, there is no principal-agent relationship. *See Viega GmbH*, 2014 Nev. LEXIS
27 48, at *13 ("Generally, an agency relationship is formed when one person has the right to
28 control the performance of another"); *Hunter Mining Labs., Inc. v. Management Assistance, Inc.*, 763 P.2d 350, 352 (Nev. 1988) ("In an agency relationship, the principal possesses the right to control the agent's conduct"); *see also Trump v. Eighth Judicial District Court*, 857 P.2d 740, 745 n.3 (Nev. 1993) ("[a]n agency relationship is formed when one who hires another retains a contractual right to control the other's manner of performance"). The absence of an agency relationship provides another independent basis for rejecting this theory.

1 that was located in Nevada, that would not be nearly enough to conclude that SCL was “at
2 home” in Nevada.

3 *Daimler AG* is dispositive on this point as well. As noted above, the U.S. Supreme
4 Court assumed for purposes of argument that all of Mercedes Benz USA’s California operations
5 were attributable to Daimler AG for jurisdictional purposes. That included “multiple
6 California-based facilities, including a regional office in Costa Mesa, a Vehicle Preparation
7 Center in Carson, and a Classic Center in Irvine,” as well as annual automobile sales in
8 California that represented approximately 2.4% of Daimler AG’s worldwide sales. 134 S.Ct at
9 752. Notwithstanding the extent of Daimler AG’s California activities, the Supreme Court
10 concluded that, when considered in the context of Daimler AG’s worldwide operations, those
11 activities “plainly do not approach [the] level” at which they were “so substantial and of such a
12 nature as to render the corporation at home” in California. *Id.* at 761 n.19.

13 This case should be even easier to resolve than *Daimler AG* because SCL does not sell
14 any goods or services in Nevada and has no revenue-producing operations here.³ Put simply:
15 when a company is in the business of owning and operating integrated resort properties, as SCL
16 is, it cannot be “at home” in a forum where it has no such properties. As a result, even if SCL
17 had employees located in Nevada who provided support for its overseas operations and who
18 accounted for approximately 0.25% of its annual expenses, that would “plainly . . . not
19 approach” the level at which its operations in Nevada would be so substantial and of such a
20 nature as to render SCL “at home” here.⁴

21
22 ³ The absence of any revenue-producing activities in the State is particularly significant. “In the
23 corporate context, courts have historically applied general jurisdiction to organizations that hire
24 employees, hold real property, maintain bank accounts, apply for business licenses, advertise,
25 and regularly solicit sales within the relevant forum.” *In re Chocolate Confectionary Antitrust*
26 *Litig.*, 641 F. Supp. 2d 367, 383-84 (M.D. Pa. 2009). *See also Birzer v. Jockey’s Guild, Inc.*,
27 444 F. Supp. 2d 1005, 1009 (C.D. Cal. 2006) (courts generally consider “whether the defendant
28 makes sales, solicits or engages in business in the state, serves the state’s markets, designates an
agent for service of process, holds a license, or is incorporated there”); 4 *Federal Practice and*
Procedure § 1067.5, at 507 (“the defendant must be engaged in longstanding business in the
forum state, such as marketing or shipping products, or performing services or maintaining one
or more offices there; activities that are less extensive than that will not qualify for general in
personam jurisdiction”).

⁴ Plaintiff has taken extensive discovery to determine whether LVSC senior officers, including

1
2 **3. There Would Be No General Jurisdiction In Nevada Over SCL Even If**
3 **Executive Decisions Were Made Here.**

4 Citing *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), Plaintiff has
5 also argued that there is general jurisdiction can be established by showing that SCL's "de facto
6 executive headquarters" was in Las Vegas. *Perkins* does not support such a theory, however.
7 The defendant in *Perkins* (Benguet) was a mining company incorporated under Philippine law,
8 which owned mining properties in the Philippines. During World War II, its operations were
9 "completely halted" when the Philippines were occupied by the Japanese. *Id.* at 447. During
10 that period, the president of the company, who was also the general manager and principal
11 stockholder, returned home to Ohio, where he conducted all of the company's (limited) business
12 operations. *Id.* at 448. The U.S. Supreme Court held that there was general jurisdiction over
13 the company in Ohio under these unusual circumstances. But nothing in the decision suggests
14 that the Court would have found general jurisdiction over the company in Ohio had the
15 Philippine mines remained in operation merely because the company's president and principal
16 stockholder lived and worked in Ohio.

17 In fact, *Daimler AG* specifically rejects any such interpretation of *Perkins*. The Court
18 noted that the exercise of general jurisdiction was permissible in that case because "'Ohio was
19 the corporation's principal, if temporary, place of business.'" 134 S.Ct. at 756 (quoting *Keeton*
20 *v. Hustler Magazine, Inc.*, 465 U.S. 770, 779 n.11 (1984). In her concurring opinion, Justice
21 Sotomayor suggested that Benguet "may have had extensive operations in places other than
22 Ohio." 134 S.Ct. at 769 n.8. But the majority rejected that assertion, explaining that the
23 determination that there was general jurisdiction over Benguet in Ohio turned on the fact that
24 "All of Benguet's activities were directed by the company's president from within Ohio" and
25 "[t]o the extent that the company was conducting *any* business . . . it was doing so in Ohio." *Id.*

26 Kenneth Kay (then LVSC's CFO) and Robert Goldstein (LVSC's President of Global Gaming
27 Operations), participated in assisting SCL with respect to obtaining funding or in international
28 marketing or development. Whatever assistance these LVSC senior officers may have provided
to SCL is irrelevant to the agency analysis, however, because Plaintiff cannot possibly claim
that they were acting as SCL's agents—that is, pursuant to SCL's direction and control.

1 (emphasis supplied); *see also id.* (“Given the wartime circumstances, Ohio could be considered
2 a surrogate for the place of incorporation or head office”) (internal quotation marks omitted).
3 The Court also quoted with approval a law review article stating that *Perkins* “‘should be
4 regarded as a decision on its exceptional facts, not as a significant reaffirmation of obsolescing
5 notions of general jurisdiction’ based on nothing more than a corporation’s ‘doing business’ in a
6 forum.” *Id.*

7 *Daimler AG* thus precludes Plaintiff from relying on the fact that SCL’s Chairman (Mr.
8 Adelson) and for a time its Acting CEO (Mr. Leven) were headquartered in Las Vegas as a
9 basis for asserting general jurisdiction over SCL. Even assuming for purposes of argument that
10 both of those gentlemen were deeply involved in SCL’s management and discharged all of their
11 duties with respect to SCL from Las Vegas, that would not be nearly enough to show that SCL
12 was “at home” in Nevada at the time the lawsuit was filed.⁵ As the Supreme Court explained in
13 *Daimler AG*, the critical point is the extent of SCL’s *operations* in Nevada — not where its
14 Chairman or CEO happens to hang his hat. That some management may have been conducted
15 in Nevada and some services were performed on SCL’s behalf here does not come close to
16 showing that SCL—a Cayman Islands corporation with its principal place of business in Macau
17 and no revenue-producing operations in Nevada — is “at home” here.⁶

18
19 ⁵ In fact, the evidence is that both Messrs. Adelson and Leven traveled extensively and often
20 visited Macau. *See* Deposition of Sheldon G. Adelson, Vol. II at 61:20-24 and 137:8-138:3
21 attached as Ex. H hereto; *see also* Deposition of Michael Leven, dated December 4, 2012, at
22 18:9-20:4 attached as Ex. I hereto. That fact alone demonstrates how impossible it would be to
23 predicate general jurisdiction on an analysis of where executive-level decisions are made, rather
24 than (as *Daimler AG* requires) based on easily determinable objective facts, such as place of
25 incorporation, principal place of business and (in an exceptional case) the place where the
26 company’s readily observable operations are so extensive that it can be deemed to be “at home”
27 there as well.

28 ⁶ This was the rule even before *Daimler AG*. *See Gordon v. Greenview Hosp., Inc.*, 300
S.W.3d 635, 650 (Tenn. 2009) (“[i]n this age of electronic communications, telecommuting, and
distributed management, the fact that [the subsidiary’s] officers and directors maintain offices in
Tennessee [where the parent company was headquartered] does not, by itself, lead to the
conclusion that the corporation has continuous and systematic contact with Tennessee or that
the corporation is conducting business within the state”); *Mattel, Inc. v. MGA Enter., Inc.*, 782
F.Supp.2d 911, 1015 (C.D. Cal. 2011) (no general jurisdiction over a Mexican subsidiary in
California because the CEO, who served both the parent and subsidiary, resided in California);
Riverside & Dan River Cotton Mills v. Menefee, 237 U.S. 189, 195 (1915) (“the mere fact that
an officer of a corporation may temporarily be in the state or even permanently reside therein, if

Plaintiff may also argue that senior officers of LVSC exercise a certain level of supervisory authority over SCL from Las Vegas and that this factor somehow buttresses their “de facto” headquarters argument. A fair amount of discovery (and particularly the depositions of Messrs. Goldstein and Kay) focused on how LVSC senior officers interacted with SCL. But any such argument would fail as a matter of law. A parent/subsidiary relationship “necessarily includes some elements of control.” *Viega GmbH*, 2014 Nev. LEXIS 48, at *13; *id.* (“The relationship of owner to owned contemplates a close financial connection between parent and subsidiary and a certain degree of direction and management exercised by the former over the latter”) (internal quotation marks omitted).⁷ Whatever senior LVSC officers may have done to provide direction, supervision or assistance to SCL would be activity *by LVSC* to protect its own investment in its subsidiary.⁸ As such, that conduct would not be attributable to SCL. Indeed, the Nevada Supreme Court has already held as much in its August 26, 2011 Order in this case, noting that LVSC’s contacts with and activity in Nevada is irrelevant in deciding whether there is general jurisdiction over SCL. *See* Ex. A hereto at 2.

B. The Theory Of “Transient Jurisdiction” Does Not Provide A Basis For Exercising Jurisdiction Over SCL.

For all of the foregoing reasons, there is no general jurisdiction over SCL. The Nevada Supreme Court instructed this Court to consider Plaintiff’s theory of transient jurisdiction if it “determine[d] that general jurisdiction is lacking.” Ex. A hereto at 3. That theory does not depend on any factual development: it is undisputed that Plaintiff served his complaint on Michael Leven, who was then SCL’s Acting CEO, while he was in Nevada. The only question, then, is a purely legal one — whether serving a complaint on a senior officer of a corporation is

not there for the purpose of transacting business for the corporation, or vested with authority by the corporation to transact business in such state, affords no basis for acquiring jurisdiction”).

⁷ In this case, of course, SCL is not a wholly-owned subsidiary. Approximately 30% of SCL’s stock is publicly-held and is traded on the Hong Kong stock exchange. *See* Annual Report, Ex. C.

⁸ As noted above, this kind of supervision or management cannot provide a basis for concluding that the LVSC senior officer in question was acting as SCL’s agent because agency requires control by the principal. If LVSC was providing direction or supervision to SCL, then it necessarily follows that LVSC was not acting as SCL’s agent.

1 enough to confer jurisdiction over the corporation, regardless of whether there is general or
2 specific jurisdiction over the corporation in the forum. The answer to that question is
3 unequivocally “no.”

4 In *Cariaga v. District Court*, 104 Nev. 544, 762 P.2d 886 (1988), the Nevada Supreme
5 Court held that an individual who was not a resident of the State could be sued on matters
6 unrelated to his contacts to Nevada because he had been served with process when he was in
7 Nevada on vacation. Two years later, the U.S. Supreme Court agreed that due process does not
8 prohibit a state from exercising general jurisdiction over an individual based on the fact that he
9 or she was served with a summons while temporarily in the state. *Burnham v. Superior Court of*
10 *California*, 495 U.S. 604 (1990). Neither the Nevada Supreme Court nor the U.S. Supreme
11 Court, however, has ever held that the same theory can be applied to a corporation. Indeed, in
12 *Burnham*, the U.S. Supreme Court strongly suggested that the theory would *not* work with
13 respect to corporations because they have “never fitted comfortably in a jurisdictional regime
14 based primarily upon ‘de facto power over the defendant’s person.’” *Id.* at 610 n.1.

15 Those courts that have considered the issue in any depth have consistently refused to
16 extend transient jurisdiction to corporations, recognizing that doing so would “fly in the face of
17 *International Shoe*.” *Scholz Research and Development, Inc. v. Kurzke*, 720 F. Supp. 710, 713
18 (N.D. Ill. 1989); *see also Wenche Siemer v. Learjet Acquisition Corp.*, 966 F.2d 179, 183 (5th
19 Cir. 1992) (holding that applying *Burnham* to corporations would be “directly contrary to the
20 historical rationale of *International Shoe* and subsequent Supreme Court decisions”); *C.S.B.*
21 *Commodities, Inc. v. Urban Trend (HK) Ltd.*, 626 F. Supp. 2d 837, 849 -850 (N.D. Ill. 2009)
22 (same); *Republic Properties Corp. v. Mission West Properties, LP*, 895 A.2d 1006, 1022 (Md.
23 2006) (same).

24 Indeed, in *International Shoe* itself, the plaintiff had effected service within the state on
25 an agent of a non-resident corporation. *International Shoe Co. v. Washington*, 326 U.S. 310,
26 312 (1945). In holding that service on the agent was insufficient to confer jurisdiction on the
27 corporation, the U.S. Supreme Court made clear that, unlike individuals, a corporation “can
28 only manifest its presence through the authorized actions of its agents, and therefore jurisdiction

1 cannot be conferred without meeting the minimum contacts test.” *Scholtz*, 720 F. Supp. at 713
2 (summarizing *International Shoe*). Similarly, in *Perkins*, *supra*, the plaintiff served a
3 corporation by personal service on its president, who lived in the forum state. 342 U.S. at 445.
4 The U.S. Supreme Court refused to find jurisdiction based solely upon service on the president,
5 and went on to state that the fact that a corporation’s activities caused it to have a registered
6 agent in the forum state was “helpful but not a conclusive test” in the jurisdictional equation.
7 *Id.* at 445.

8 Plaintiff’s theory also conflicts with *Freeman v. Second Judicial District*, 1 P.3d 963
9 (Nev. 2000), where the Nevada Supreme Court held that serving a non-resident corporation’s
10 registered agent for service of process was insufficient to support the exercise of personal
11 jurisdiction over the corporation. *Id.* at 964. The Nevada Supreme Court explained that,
12 beginning with *International Shoe*, the focus of the jurisdictional inquiry has shifted away from
13 a state’s physical power over a defendant to the minimum contacts analysis. *Id.* at 967. If
14 appointing an agent to receive process is not enough to confer jurisdiction on a foreign
15 corporation, it necessarily follows that service on a foreign corporation’s officer or director,
16 who is *not* authorized to receive process, is similarly insufficient.

17 If there were any doubt about the viability of Plaintiff’s transient jurisdiction theory,
18 however, *Daimler AG* eliminates it. The U.S. Supreme Court held in *Daimler AG* that it
19 violates due process to exercise general jurisdiction over a foreign corporation based on the fact
20 that its agent is present and doing business on behalf of the foreign corporation in the forum.
21 That holding necessarily precludes the assertion of general jurisdiction based on the mere fact
22 that a corporate agent was served with a summons while in the forum.

23 **C. Plaintiff’s Theory Of Specific Jurisdiction Also Fails As A Matter Of Law.**

24 Even before *Daimler AG* was decided, Plaintiff recognized that it would be very difficult
25 to prove general jurisdiction over SCL. Over the course of the last two years, while continuing
26 to insist on broad discovery of his expanded (and now utterly discredited) general jurisdiction
27 theories, Plaintiff has been steadily shifting his focus to a theory of specific jurisdiction.
28 Plaintiff used the depositions he took of Messrs. Adelson and Leven in an attempt to prove what

1 is apparently the linchpin of that specific jurisdiction theory—that the decision to terminate him
2 was supposedly made in Nevada. But this theory too should be rejected, as matter of law.

3 To ensure that the point is preserved, we note once again that Plaintiff waived the
4 argument that there is specific jurisdiction over his claim in Count III for SCL’s alleged breach
5 of a stock option agreement. Plaintiff did not raise that argument either in his opposition to
6 SCL’s motion to dismiss or in response to SCL’s mandamus petition in the Nevada Supreme
7 Court. *See, e.g., City of Las Vegas Downtown Redevelopment Agency v. Crockett*, 117 Nev.
8 816, 822-823 (2001) (noting that failure to raise an issue in a responsive pleading may
9 constitute a waiver).⁹

10 In any event, Plaintiff’s specific jurisdiction theory fails as a matter of law. “Specific
11 personal jurisdiction arises when the defendant purposefully enters the forum’s market or
12 establishes contacts in the forum and affirmatively directs conduct there, and the claims arise
13 from that purposeful contact or conduct.” *Viega GmbH*, 2014 Nev. LEXIS 48, *8-9. *See also*
14 *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (a forum can assert specific
15 jurisdiction “over an out-of-state defendant who has not consented to suit there” only if the
16 defendant has “‘purposefully directed’ his activities at residents of the forum”). Here, Plaintiff
17 cannot point to anything to show that SCL purposefully directed any activity at a Nevada
18 resident (which Jacobs is not) or that it entered Nevada’s market or affirmatively directed
19 conduct in Nevada that gave rise to the only claim that Jacobs asserts against SCL—a claim for
20 breach of contract for SCL’s refusal to honor his demand to exercise certain stock options after
21 Jacobs was terminated. First Am. Compl. ¶ 47.

22 In a breach of contract case, the factors courts typically consider in deciding whether
23 there is specific jurisdiction include the degree to which the defendant does business in the state,
24 whether the contract chooses the law of the forum state, and whether contract duties were to be
25

26 ⁹ SCL (and LVSC as well) has been severely prejudiced by Plaintiff’s belated assertion of
27 specific jurisdiction. If, as Plaintiff now claims, jurisdiction could be established simply by
28 showing that the decision to terminate Jacobs was made in Las Vegas, then that is an issue that
should have been resolved at the outset, before Defendants spent millions of dollars to provide
Plaintiff with extensive discovery that is related only to his general jurisdiction arguments.

1 performed in the forum. *See Consulting Engineers Corp. v. Geometric Ltd.*, 561 F.3d 273, 278
2 (4th Cir. 2009) (listing factors and holding that communications with the forum state did not
3 provide a basis for specific jurisdiction where the contract was negotiated and was to be
4 performed elsewhere and did not choose the forum state law); *see also Stone v. State of Texas*,
5 76 Cal. App. 4th 1043, 1048 (1999) (“Due process requires a ‘substantial connection’ between
6 the contract at issue and the forum state”). Here, all of those factors militate against finding
7 specific jurisdiction. SCL does not do business in Nevada, nor was Jacobs headquartered in
8 Nevada during the period in which he served as SCL’s CEO. Plaintiff’s breach of contract
9 claim against SCL is based on an “option grant” that was issued to him outside the United
10 States, pursuant to a written resolution of the Remuneration Committee of the SCL Board,
11 which was signed by SCL’s CFO in Macau on letterhead bearing a Hong Kong address. *See*
12 *Toh Affidavit*, ¶ 11; *see also* Written Resolution of the Remuneration Committee of the Board
13 of Directors of the Company, attached as Ex. J hereto. Had Jacobs accepted the grant (which he
14 did not), his acceptance would have taken place in Macau, where he resided as SCL’s CEO,
15 rather than in Nevada. Moreover, the grant provides that it is governed by Hong Kong law and
16 performance was to take place outside the United States, by a grant of options to buy stock that
17 was traded on the Hong Kong stock exchange. *Id.* ¶¶ 11-12, Share Option Grant Letter,
18 attached as Ex. K hereto; *see also* SCL’s Equity Award Plan attached as Ex. L.

19 In a desperate attempt to find some connection between his breach of contract claim and
20 Nevada, Plaintiff contends that the decision to terminate him was made in Las Vegas. But even
21 if that is true—and the deposition testimony suggests that it is not¹⁰—Plaintiff has never even
22 attempted to explain how that would be relevant to whether there is specific jurisdiction over his
23

24
25 ¹⁰ What the depositions reflect is that there were discussions in a variety of places, including
26 Las Vegas and Singapore, and with a variety of people, including SCL’s directors. *See*
27 *Deposition of Sheldon G. Adleson*, dated September 6, 2012, at 199:19-23, 221:25-222:24,
28 attached as Ex. M hereto; *see also* *Deposition of Michael Leven*, dated December 4, 2012, at
116:4-22, 131:2-132:17, and *Deposition of Michael Leven*, Vol. 2 at 379:20-24. The testimony
provides another reason why the situs of the “decision” cannot be a relevant factor in the
jurisdictional analysis. Particularly if the decision is being made by a corporation, it may be
impossible to pinpoint exactly when the decision was made (as opposed to discussed) and where

1 breach of contract claim against SCL. Plaintiff has not brought a wrongful termination claim
2 against SCL. Instead, he himself alleges that his employment relationship was with LVSC and
3 that LVSC, rather than SCL, wrongfully terminated him. *See, e.g.*, First Am. Compl. ¶¶ 16-22,
4 56 & Count IV (asserting “tortious discharge” claim against only LVSC). If, as Plaintiff
5 alleges, it was LVSC that both hired and fired him, then it necessarily follows that the decision
6 to terminate him—wherever it was made—was made by LVSC, rather than by SCL.

7 Furthermore, even assuming (contrary to Jacobs’ own allegations) that Messrs. Adelson
8 and Leven were acting for SCL in terminating Jacobs, that they made the decision to terminate
9 Jacobs when they happened to be in Las Vegas, and that his alleged wrongful termination was
10 somehow relevant to his breach of contract claim against SCL (which it is not), that would still
11 not provide a basis for finding specific jurisdiction over SCL in Nevada. The important
12 question for purposes of a specific jurisdiction analysis is *not* where one of the parties made a
13 decision to take a particular action, but rather where the action was actually taken. *See, e.g., Cai*
14 *v. DaimlerChrysler AG*, 480 F.Supp.2d 1245, 1257 (D. Or. 2007) (specific jurisdiction over
15 breach of contract claim did not exist in Oregon because the contract was performed and
16 terminated outside the United States); *Katerndahl v. Brindenberg Securities, A/C*, 1996 WL
17 743800, at *5 (N.D. Cal. 1996) (California lacked specific jurisdiction over wrongful
18 termination claim because the plaintiff was terminated in Denmark). Here, it is undisputed that
19 Jacobs was terminated in Macau. *See* First Am. Compl. ¶¶ 31-32. Thus, proof that the
20 decision to terminate Jacobs was made in Nevada would not provide a basis for asserting
21 specific jurisdiction over SCL even if Plaintiff had brought a wrongful termination claim
22 against SCL (which he has not).

23 **D. Asserting Specific or General Jurisdiction Over SCL Would Be Unreasonable.**

24 SCL is not “at home” in Nevada and lacks sufficient contacts to be haled into court here
25 on the one claim Plaintiff has asserted against it. A separate and independent basis for denying
26 jurisdiction over SCL under any theory, however, is that it would be unreasonable to expect
27

28 it was made, if the participants are not all located in the same place.

1 SCL to defend its former CEO's claim in Nevada and therefore contrary to the requirements of
2 due process. "Whether general or specific, the exercise of personal jurisdiction must also be
3 reasonable." *Emeterio v. Clint Hurt and Associates, Inc.*, 967 P.2d 432, 436 (Nev. 1998) "In
4 determining whether the exercise of personal jurisdiction is reasonable, the United States
5 Supreme Court has set forth five factors to be taken into consideration: (1) 'the burden on the
6 defendant' of defending an action in the foreign forum,' (2) 'the forum state's interest in
7 adjudicating the dispute,' (3) 'the plaintiff's interest in obtaining convenient and effective
8 relief,' (4) 'the interstate judicial system's interest in obtaining the most efficient resolution of
9 controversies,' and (5) the 'shared interest of the several States in furthering fundamental
10 substantive social policies.'" *Id.* (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S.
11 286, 292 (1980)). Application of these factors confirms that it is "neither reasonable nor
12 constitutionally permissible to require the Defendant to litigate this contract dispute in Nevada."
13 *MGM Grand, Inc. v. District Court*, 807 P.2d 201, 202 (1991).

14 **1. Litigating In Nevada Would Impose An Undue Burden On SCL.**

15 Forcing SCL to defend against Plaintiff's claim in Nevada would impose significant
16 burdens on SCL. Most importantly, Nevada civil litigation rules may impose obligations on
17 SCL that are in tension with SCL's obligations under the foreign law of the jurisdictions where
18 it operates. This is nowhere more manifest than with respect to the Macau Personal Data
19 Privacy Act ("MPDPA"). As the Court is well aware, that statute may subject SCL to civil, and
20 even criminal, liability in Macau for complying with its discovery obligations under the Nevada
21 rules.

22 It would be unfair and unreasonable to put SCL to a choice between complying with
23 discovery obligations imposed by this Court and complying with the MPDPA. SCL did not
24 purposefully direct any conduct toward Nevada by drafting or sending an option agreement to
25 Plaintiff in Macau. On the contrary, SCL expressly incorporated Hong Kong law to govern the
26 letter. SCL could not reasonably have foreseen that, by sending that agreement to Plaintiff for
27 his signature in Macau, it would be haled into court in Nevada, where it would face the
28 immediate prospect of navigating potentially incompatible legal obligations.

1 **2. Nevada Has No Interest In The Dispute.**

2 Nevada has no interest in adjudicating Plaintiff's claim against SCL. Plaintiff is not a
3 Nevada resident. First Am. Compl. ¶ 1 (alleging that Jacobs is a citizen of Florida, with a
4 residence in Georgia as well). His claim against SCL is for breach of an alleged letter
5 agreement (which Jacobs never signed) to provide options to purchase shares in SCL, which are
6 listed on the Hong Kong stock exchange. The option agreement that SCL tendered to Jacobs—
7 and therefore Plaintiff's claim—is governed by Hong Kong law. SCL executed the agreement
8 in Macau, and sent it to Plaintiff who worked in Macau. *See Toh Affidavit* ¶ 11. Plaintiff later
9 was terminated while in Macau, leading to his claim against SCL. It is difficult to conceive of a
10 claim more divorced from any interests of Nevada.

11 **3. Plaintiff's Interest In Obtaining Convenient And Effective Relief Should Not**
12 **Trump SCL's Interests.**

13 Plaintiff will no doubt argue that it is more efficient for him to litigate his claim against
14 SCL along with his claim against LVSC. But the two claims are less closely related than
15 Plaintiff seems to think. Plaintiff claims that LVSC made an agreement with him that his stock
16 options would vest if he was terminated without cause. But he does not allege that SCL ever
17 made such an agreement. Instead, Jacobs claims a breach of contract against SCL based on an
18 options agreement that he never accepted and that, in any event, contains no such provision.
19 Whatever Jacobs' claim against SCL might be, there are more appropriate jurisdictions in which
20 Plaintiff can litigate it. He could, for example, bring an action in the Hong Kong courts. Not
21 only are Hong Kong courts fully capable of providing Plaintiff timely and effective relief, they
22 have the added advantage of being experts in the law that actually governs Plaintiff's claim.
23 Plaintiff, moreover, has the resources to retain able Hong Kong counsel. Finally, any marginal
24 inconvenience to Plaintiff from litigating in Hong Kong is far outweighed by the unfair burden
25 that a Nevada forum would impose on SCL.

26 ///

27 ///

28 ///

No conceivable public policy of this State would be furthered by adjudicating Plaintiff's claim that he is entitled to options in a company listed on the Hong Kong stock exchange pursuant to a contract with a Cayman Islands corporation whose principal place of business is Macau.

CONCLUSION

For the foregoing reasons, SCL urges the Court to grant summary judgment in its favor on the issue of personal jurisdiction and dismiss the claims made against it.



and

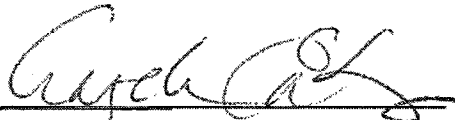
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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of June, 2014, the foregoing **DEFENDANT SANDS CHINA, LTD.'s MOTION FOR SUMMARY JUDGMENT ON PERSONAL JURISDICTION** was served on the following parties through the Court's electronic filing system:

ALL PARTES ON THE E-SERVICE LIST



An employee of Kemp, Jones & Coulthard, LLP

**AFFIDAVIT OF TOH HUP HOCK IN SUPPORT
OF DEFENDANT SANDS CHINA LTD.'S MOTION FOR SUMMARY JUDGMENT**

Toh Hup Hock, being first duly sworn, deposes and states:

1. I am an Executive Director and the Executive Vice President and Chief Financial Officer of Sands China Ltd. ("SCL"). I was appointed Chief Financial Officer of SCL in or about November 2009.

2. I have personal knowledge of the matters stated herein except for those statements made upon information and belief. As to those statements made upon information and belief, I believe them to be true. If called as a witness, I could and would competently testify to the matters set forth herein.

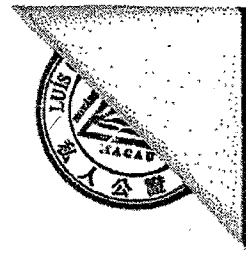
3. I make this affidavit in support of SCL's Motion for Summary Judgment on Personal Jurisdiction ("Motion").

4. SCL is the leading developer, owner and operator of multi-use integrated resorts and casinos in Macau, a Special Administrative Region of the People's Republic of China.

5. SCL is a Cayman Islands corporation with its principal place of business in Macau.

6. As referenced in SCL's 2010 Annual Report, in 2009, and 2010, SCL reported revenues of \$3,301,100,000 and \$4,142,300,000, all of which came from its properties and businesses in Macau. SCL incurred expenses of \$2,926,100,000 in 2009 and \$3,356,600,000 in 2010. A true and correct copy of SCL's 2010 Annual Report is attached to the Motion as Exhibit C.

7. I am informed and believe and thereon allege SCL has never had any business operations in Nevada, or sales of any goods or services there and is prohibited from doing so



pursuant to the Non-Competition Deed between LVSC and SCL. A true and correct copy of the Non-Competition Deed is attached to the Motion as Exhibit D.

8. The Shared Services Agreement dated November 8, 2008, between Las Vegas Sands Corp. (LVSC) and SCL, which is attached to the Motion as Exhibit E, is a true and correct copy of its purported counterpart.

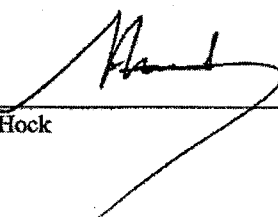
9. Exhibit F to the Motion denotes the total payments made to LVSC by SCL in 2009, for services rendered by LVSC in that same year under the terms of the Shared Services Agreement. Exhibit F is a true and correct copy of its purported counterpart.

10. Exhibit G to the Motion denotes the total payments made to LVSC by SCL in 2010, for services rendered by LVSC in that same year under the terms of the Shared Services Agreement. Exhibit G is a true and correct copy of its purported counterpart.

11. I executed the stock option grant letter in Macau and sent it to Plaintiff Steven Jacobs in Macau, which was issued pursuant to a written resolution of the Remuneration Committee of the SCL Board and to be construed in accordance with SCL's Equity Award Plan. True and correct copies of the Remuneration Committee resolution, the stock option grant letter, and the Equity Award Plan are attached to the Motion as Exhibits J, K and L, respectively.

12. The stock option grant is governed by Hong Kong law and concerns a grant of options to buy stock that was traded on the Hong Kong stock exchange.

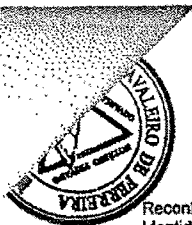
Dated this 26 day of June, 2014.



Toh Hup Hock

Subscribed and sworn to before me
this 26 day of June, 2014
(See attached)

NOTARY PUBLIC in and for



CARTÓRIO DO NOTÁRIO PRIVADO LUÍS CAVALEIRO DE FERREIRA

Reconheço a assinatura, feita perante mim, de TOH HUP HOCK, cuja identidade verifiquei pela exibição do Bilhete de Identidade de Residente Não Permanente de Macau nº 1510885(7), emitido em 27 de Maio de 2014, pela Direcção dos Serviços de Identificação.

Conta nº 175

\$7,00

Macau, 26 de Junho de 2014.

Notário,

TRANSLATION

OFFICE OF THE PRIVATE NOTARY LUÍS CAVALEIRO DE FERREIRA

I certify that TOH HUP HOCK, whose identity I verified by way of the Macau Non-Permanent Identity Card nº 1510885(7), issued on the 27th May 2014 by the Identification Bureau of Macau S.A.R., signed this document before me.

\$7,00

Macao, 26th June 2014

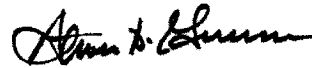
The Notary

(signature)

Translation made in Macao, on 26th June 2014, by me LUÍS CAVALEIRO DE FERREIRA in my capacity of Attorney at Law in the SAR of Macao, and it is according to the original.

LUÍS CAVALEIRO DE FERREIRA





CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

Case No.: A-10-627691

Dept. No.: XI

**OPPOSITION TO DEFENDANT
SANDS CHINA LTD.'S MOTION
FOR SUMMARY JUDGMENT ON
PERSONAL JURISDICTION AND
COUNTERMOTION FOR SUMMARY
JUDGMENT**

Hearing Date: July 29, 2014

Hearing Time: 8:30 a.m.

AND RELATED CLAIMS

I. INTRODUCTION

Defendant Sands China Ltd.'s ("Sands China") Motion for Summary Judgment rests on the very same argument it unsuccessfully made to the Nevada Supreme Court a few months ago – that there is no longer a need for evidence because the law has purportedly so dramatically changed that Sands China can never be subject to jurisdiction in light of *Daimler A.G. v. Bauman*, 134 S.Ct. 746 (2014). Its regurgitation of that contention to this Court is as lacking in substance as it was when made to (and rejected by) the Supreme Court. As the Nevada Supreme Court observed, "even under *Daimler AG*, factual findings must be made with regard to Sands China's

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1 contacts with Nevada in order to resolve the jurisdictional issue." (Ex. 1, Order Denying Mot. to
2 Recall Mandate, 2.)

3 Plaintiff Steven C. Jacobs ("Jacobs") recognizes Sands China's need to avoid an
4 evidentiary hearing at all costs. Sands China does not want a public airing of the real reasons for
5 Jacobs' termination or the fact that Sands China is controlled and operated from Las Vegas.
6 Sands China admittedly needs to pretend, for Hong Kong Stock Exchange purposes, that it is
7 operated from Macau. But the evidence developed in jurisdictional discovery shows otherwise.
8 The corporate decision-making for Sands China – where direction, control and policy emanate –
9 happens in Las Vegas. To use parlance from *Daimler AG*, Sands China is very much "at home"
10 in Nevada because that is the location of the corporate nerve center. Pretending otherwise will
11 never make it so, particularly by way of summary judgment.

12 The same is true for specific jurisdiction. The evidence is uncontroverted that Jacobs'
13 wrongful termination – the event giving rise to each cause of action – was hatched and carried out
14 in Las Vegas. Sands China cannot avoid the truth by regurgitating its erroneous and long-rejected
15 waiver assertion. Again, while Sands China is plainly desperate to avoid the facts, it tellingly can
16 never explain how Jacobs supposedly "waived" a jurisdictional basis that this Court did not
17 address because it alternatively found the existence of general jurisdiction. No one is confused as
18 to why Sands China continues to repeat this dubious proposition: Its own witnesses conceded that
19 the Jacobs termination was accomplished in Las Vegas by executives claiming to be acting as
20 Sands China's senior management. Because all of Jacobs' claims derive from those Nevada
21 events, Sands China is squarely subject to specific jurisdiction.

22 Nor is this a case where Sands China's then-CEO, Michael Leven ("Leven"), was merely
23 passing through Las Vegas on vacation when he was served with process for Sands China. Leven
24 is based in Las Vegas. As CEO for Sands China at that time, he necessarily controlled and
25 directed Sands China's operation from Las Vegas. Indeed, as Leven would acknowledge, most of
26 his time was spent in Las Vegas from where he exercised his ultimate control as CEO in
27 conjunction with Sands China's chairman, Sheldon Adelson. As courts have recognized, there is
28 nothing unfair under such circumstances about exercising transient jurisdiction.

1 Since Sands China claims that the issue of personal jurisdiction can be resolved by way of
2 motion and that this Court is not obligated to hold an evidentiary hearing, Jacobs countermoves
3 for summary judgment. After all, Sands China cannot now dispute the propriety of resolving this
4 issue by way of summary judgment considering its own Motion. This Court can and should treat
5 Sands China's Motion as consent to forego any unnecessary evidentiary hearing and enter
6 summary judgment in favor of Jacobs and against its personal jurisdiction defense.

7 **II. STATEMENT OF FACTS**

8 **A. Jacobs is Wrongfully Terminated for Blowing the Whistle on Corporate**
9 **Improprieties.**

10 Jacobs filed this action against Defendants Las Vegas Sands Corp. ("LVSC") and
11 Sands China on August 20, 2010, arising out of his wrongful termination. Specifically, Jacobs
12 asserted a claim against LVSC for tortious discharge in violation of public policy, as well as
13 several contract claims against both LVSC and Sands China for breach of various agreements
14 arising from Jacobs' employment, including breach of a stock option agreement that Sands China
15 (at the behest of LVSC) entered into with Jacobs for 2.5 million share options. (See Ex. 2,
16 Compl. ¶¶ 43-47, on file with the Court.) In support of that claim, Jacobs alleged "LVSC and
17 Sands China have wrongfully characterized Jacobs' termination as one for 'cause' in an effort to
18 deprive him of contractual benefits to which he is otherwise entitled." (*Id.* ¶ 47.) Simply put, all
19 of Jacobs' causes of action stem from his wrongful termination.

20 Jacobs will not re-chronical the gross misrepresentations made by Sands China and LVSC
21 in their attempt to conceal jurisdictional evidence. It suffices to note that on September 14, 2012,
22 after a three-day evidentiary hearing, this Court entered sanctions against both Sands China and
23 LVSC for their "knowing, willful and intentional conduct with an intent to prevent Plaintiff access
24 to information discoverable for the jurisdictional proceedings." (Ex. 4, Decision & Order dated
25 Sept. 14, 2014, 7:15-18.) Unfortunately, that order did not put a halt to the continued obstruction
26 and noncompliance. Months later, on December 18, 2012, this Court again recognized
27 Defendants' ongoing approach of "avoid[ing] discovery obligations that I have had in place since
28 before the stay" and that they had "violated numerous orders" related to jurisdictional discovery.

1 (Ex. 5, Hr'g Tr. dated Dec. 18, 2012, 7:12-17; 28:17.) As such, this Court scheduled yet another
2 evidentiary hearing concerning appropriate sanctions, where Jacobs intends to affirmatively seek
3 further sanctions, including the striking of Sands China's defense and pleading.¹

4 Although Sands China and LVSC have obtained a stay of this Court's December 18 Order
5 and the potential for further sanctions, Sands China appears to think that the stay can serve as both
6 a shield and a sword. It asks this Court to adjudicate Jacobs' rights, by way of summary judgment
7 no less, while simultaneously asserting that the stay precludes Jacobs from accessing proof or
8 obtaining the evidentiary sanctions he is entitled to seek. This is on top of the additional stay to
9 which Sands China and LVSC cling. That stay precludes Jacobs' access and use of documents in
10 his possession for jurisdictional purposes, based upon claims of privilege that this Court has
11 rejected.

12 It is for that very reason that this Court has postponed the evidentiary hearing, recognizing
13 that it cannot address the jurisdictional issue until Jacobs' counsel is permitted access to his
14 sources of proof. As such, Sands China's present Motion is yet another attempt to game the
15 system, whereby the two stays bind Jacobs from obtaining relief – precluding his access to
16 evidence and entitlement to sanctions – but purportedly not Sands China.

17 **B. Jurisdictional Discovery Confirms that Sands China is Being Operated From**
18 **Las Vegas and the conduct Giving Rise to This Case Occurred Here.**

19 The reasons for Sands China's discovery fraud upon this Court and Jacobs became
20 apparent during jurisdictional discovery. As Jacobs previously indicated, the epicenter of
21 Sands China's operations – where the management decisions are actually made and control
22

23 ¹ Sands China itself confirmed the basis for Jacobs' planned request for terminating
24 sanctions. Before the Supreme Court, Sands China claimed that the basis for its violation of this
25 Court's September 14 sanctions order is that this Court only prohibited it from using the Macau
26 Personal Data Privacy Act ("MPDPA") for those documents already located in the United States.
27 But as this Court knows, Sands China had already long-admitted that the MPDPA does not even
28 apply to documents once they are outside of Macau. Simply put, Sands China's own arguments
(attempting to justify its violations of this Court's order) confirm that the violations were
knowing. It actually claimed that this Court entered a sanction that had no meaning because it
only applied to documents for which the MPDPA had no application. If there is ever a case for
sanctions over misconduct, Sands China has confirmed it. It has treated this Court's sanctions
order as just another expendable pawn in its chess game.

1 exercised – is in Las Vegas. Indeed, while Jacobs served as Sands China's CEO, he was in fact
2 doing so pursuant to an employment agreement with LVSC that was made in Nevada and
3 governed by Nevada law. (Ex. 8, Leven Dep. Tr., Vol. II, 285:17-24 ("I was acting in the
4 capacity of president/chief operating officer of Las Vegas Sands Corp.").)

5 Likewise, from large decisions related to Sands China's financing and hotel room design
6 to miniscule decisions related to the choice of paper towel dispensers to be used in the men's
7 room, all decisions were ultimately made in Las Vegas by executives claiming to be wearing their
8 "Sands China" hat. As Leven would remind Jacobs and others:

9
10
11
12
13 (Ex. 6, LVS00216741, Leven e-mail dated May 27, 2010 (emphasis added).) To the
14 consternation of Sands China's counsel, even Adelson admitted that these "final calls" relating to
15 Sands China's operations were to be made in Las Vegas. Indeed, Adelson would boldly assert
16 that "[p]art of the problem was that Jacobs [as Sands China's CEO] tried to insert himself into
17 all these decisions." (Ex. 7, Adelson Dep. Tr., Vol. II, 87:24-88:7 (emphasis added).) Obviously,
18 if the Macau CEO is not supposed to be inserting himself into the management decisions, leaving
19 them to Las Vegas, it cannot be seriously doubted from where Sands China is actually being run.

20 It is this very Las Vegas-centric control and Jacobs' conflict with it that hastened his
21 wrongful termination. Jacobs had refused to genuflect to each Adelson's demand. As Leven
22 would later admit in an email to executives, with a blind copy to Adelson, the real reason for
23 Jacobs' termination was that "he believe[d] he report[ed] to the board, not the chair [Adelson]."
24 (Ex. 8, Leven Dep. Tr., Vol. II, 377:21-378:2.) But of course, that truth could not be uttered
25 consistent with a director's fiduciary duty. Thus, the internal spin would be "[REDACTED]"
26 [REDACTED]

27 [REDACTED]" (Ex. 9, LVS00142281, Draft Ltr (emphasis added).)
28 [REDACTED]

1 Of course, the "[REDACTED]" was none other than Adelson and Leven, to
2 whom Jacobs reported "[REDACTED]" and who directed matters and exercised control from
3 Las Vegas. (Ex. 10, LVS00115227, Leven e-mail dated Feb. 10, 2010.) Of course, with Jacobs
4 out of the way, even the faux appearance of Macau management would dissipate. Sands China
5 made Leven its acting-CEO, a role for which he needed no additional consideration in recognition
6 that it was largely a task that he had been "[REDACTED]" controlling all along. As acting CEO
7 until July 27, 2011, Leven was responsible for managing and controlling Sands China's operations
8 and he did so mainly from Las Vegas. (Ex. 11, Leven Dep. Tr., Vol. I, 200:19-22 (Leven
9 explaining role as acting-CEO of Sands China: "I was in Las Vegas and coming over to Macau,
10 but as soon as I got Irwin Siegel there to watch [and be the "eyes and ears" at Sands China], then I
11 stayed mostly in Vegas and came over rather infrequently at that point."; Sands China Ltd.
12 Annual Report for 2011, [http://media.corporate-ir.net/media_files/irol/23/233498/](http://media.corporate-ir.net/media_files/irol/23/233498/Reports/Annual_Report_2011.pdf)
13 [Reports/Annual_Report_2011.pdf](http://media.corporate-ir.net/media_files/irol/23/233498/Reports/Annual_Report_2011.pdf) (last visited July 14, 2014).²

14 Likewise, with Jacobs' elimination, Sands China vested ultimate control and direction over
15 key credit extensions – the very essence of a high-end gaming business – in Las Vegas
16 executives. (Ex. 12, LVS00011922, Long e-mail dated Aug. 31, 2010 ([REDACTED])
17 [REDACTED]; Ex. 13, LVS00119671,
18 Goldstein e-mail dated Sept. 25, 2010 (same). Again, the actual and ultimate control over
19 substantive decisions and policy are made and dictated in Las Vegas.

20 **C. This Court Repeatedly Rejects Sands China's Attempts at Evading Specific**
21 **Jurisdiction.**

22 Not only has jurisdictional discovery confirmed how Sands China is actually operated out
23 of Las Vegas, it further confirmed that Las Vegas is where the entire scheme to terminate Jacobs
24 was hatched and carried out so as to deprive Jacobs of what he was contractually entitled.
25 Because it always knew the truth about its actual Nevada activities, Sands China again sought to
26

27 ² Courts may take judicial notice of a fact that is "not reasonably open to dispute." *Sheriff,*
28 *Clark Cnty. v. Kravetz*, 96 Nev. 919, 920, 620 P.2d 868, 869 (1980) ("This fact, not reasonably
open to dispute, should be judicially noticed.").

1 avoid that discovery. As this Court undoubtedly recalls, the facts are so adverse that Sands China
2 has had to claim that Jacobs somehow waived the ability to establish specific jurisdiction, even
3 before the firm evidence of Sands China's Nevada-based activities came to light. Of course,
4 Sands China has never been able to explain just how such a waiver could have occurred.
5 Unremarkably, this Court has time and again ruled against Sands China's manufactured waiver
6 story, confirming that Jacobs is also entitled to assert specific jurisdiction. (*E.g.*, Ex. 14, Order
7 dated May 8, 2013.) Indeed, this Court has had to more than once admonish Sands China that
8 Jacobs is *entitled to discovery related to "the decision making and implementation of the*
9 *decision to terminate Jacobs from Sands China, which is the 'who, what, where, when, and*
10 *how' behind the decision."* (*Id.*, 2:3-7 (emphasis added).)

11 The reason for Sands China's obstinacy is rather obvious. It always knew where the
12 events surrounding the termination – thereby breaching the agreements with Jacobs – occurred
13 and were carried out. In Leven's own words: "The plan -- the -- the arrangements for carrying out
14 the termination of Steve Jacobs was developed here [in Las Vegas] and executed there [in
15 Macau]." (Ex. 8, Leven Dep. Tr., 396:14-19.) But even Leven conceded that the only so-called
16 "execution" directed towards Macau was him and others flying from Las Vegas to hand-deliver
17 the Nevada-prepared termination letter to Jacobs. (*Id.*, 387:7-11.) Adelson had simply wanted
18 Leven to pick up the telephone and fire Jacobs from Nevada. (Ex. 7, Adelson Dep. Tr., Vol. II,
19 71:2-7.) Any execution of the scheme in Macau was preordained in Las Vegas and purely for
20 appearance purposes.

21 The actual events for the termination, which would be called the "exorcism strategy," were
22 planned and carried out in Las Vegas ostensibly by executives and others wearing both their
23 LVSC and Sands China "hats." (Ex. 15, LVS00235110, Leven e-mail dated June 30, 2010.) This
24 included (1) the creation of fictitious Sands China letterhead upon which a notice of termination
25 was prepared, (2) preparation of the draft press releases with which to publicly announce the
26 termination, and (3) the handling of all legal-related matters for the termination. (Ex. 16,
27 SJ001176, Termination Ltr.; Ex. 17, LVS000117331, Reese e-mail dated July 20, 2010; Ex. 18,
28 LVS00130400, Hyman e-mail dated July 21, 2010.)

1 Indeed, it was attorneys from LVSC who notified Sands China's Board of the decision
2 made by "[REDACTED]" to terminate Jacobs, and who
3 promised to provide "[REDACTED]" at the upcoming Board meeting (after the termination took
4 place). (*Id.*; Ex. 9, LVS00142281, Draft Ltr.) And it was these same attorneys and executives --
5 again purportedly wearing their Sands China "hats" -- who boarded a plane in Las Vegas and in
6 pursuit of this scheme flew to Macau. (Ex. 19, LVS00267665, Murray e-mail dated July 22,
7 2010.)

8 Of course, Sands China knew these truths when it represented to this Court (and the
9 Nevada Supreme Court) that it "has not had any purposeful contacts relating to Plaintiff in
10 Nevada." (Ex. 20, Sands China's Mot. to Dismiss, 10:15-16.) But with the truth now out, Sands
11 China has to devise some story -- hence its unfounded and rejected waiver contention -- hoping to
12 avoid the unmistakable fact of specific jurisdiction. Respectfully, Sands China's repeating of an
13 unsupported and long-rejected contention only proves Jacobs' point.

14 **III. ARGUMENT**

15 **A. The Evidence Must Be Viewed and Resolved in Jacobs' Favor.**

16 Summary judgment is only appropriate where "the pleadings, depositions, answers to
17 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
18 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter
19 of law." NRCP 56(c); *see also Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026,
20 1031 (2005). A genuine issue of material fact is one that affects the outcome of the litigation.
21 *See Rivera v. Phillip Morris, Inc.*, 395 F.3d 1142, 1146 (9th Cir. 2005); *White v. City of Sparks*,
22 341 F. Supp. 2d 1129, 1135 (D. Nev. 2004). And, of course, this Court must view all evidence,
23 facts, and inferences in a light most favorable to the non-moving party. *Safeway*, 121 Nev. 724,
24 121 P.3d at 1031.

25 The moving party bears the burden of establishing the non-existence of any genuine issue
26 of material fact. *Safeway*, 121 Nev. 724, 121 P.3d at 1031. Only if this burden is met must the
27 non-moving party "transcend the pleadings and, by affidavit or other admissible evidence,
28 introduce specific facts that show a genuine issue of material fact." *Id.* at 603, 172 P.3d at 134.

1 "Evidence introduced in support of or opposition to a motion for summary judgment must be
2 admissible evidence" and competent evidence. *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev.
3 284, 302, 662 P.2d 610, 621 (1983) (admissible); *Saka v. Sahara-Nevada Corp.*, 92 Nev. 703,
4 705, 558 P.2d 535, 536 (1976) (competent).

5 Applying these principles, Sands China's Motion necessarily fails. To begin with,
6 Sands China's Motion is procedurally precluded because it has enlisted a stay to preclude Jacobs'
7 access to and use of evidence. The law precludes a party from employing a stay as a shield and
8 then simultaneously seeking to use it as an affirmative sword. Besides, the actual admissible
9 evidence that exists³ – which Sands China cannot dispute as it comes from its own witnesses –
10 confirms Jacobs' jurisdictional contentions. Sands China is being operated in Las Vegas which
11 subjects it to general jurisdiction. And, all of Jacobs' claims stem from his wrongful termination,
12 conduct that Sands China participated in and purposefully undertook in Nevada. Indeed, this is a
13 case where even a corporation is subject to transient jurisdiction because its CEO was properly
14 served in the very jurisdiction from which he was operating Sands China. As such, if this Court is
15 not required to hold an evidentiary hearing, as Sands China's Motion contends, then the party
16 entitled to summary judgment is Jacobs, not Sands China.

17 **B. Sands China's Motion is Procedurally Improper.**

18 Although the evidence submitted herewith already defeats Sands China's Motion, this
19 Court should deny it outright for an additional reason. On March 27, 2013, this Court entered an
20 Order reiterating Sands China's "obligation to produce documents responsive to the Court-ordered
21 jurisdictional discovery from Macau" and finding that Jacobs "ha[d] made a prima facie showing"
22 that Sands China had violated multiple orders governing jurisdictional discovery by, among other
23 things, "redacting personal data from its January 4, 2013 document production based upon the
24 MPDPA."⁴ (Ex. 21, Order dated Mar. 27, 2013.) But before this Court's Order for Sands China

25 _____
26 ³ Submitted simultaneously with this Motion is an objection to the evidence offered by Sands China.

27 ⁴ This Court previously "precluded [Sands China] from raising the MPDPA as an objection
28 or as a defense to admission, disclosure or production of any documents" as a sanction for prior misconduct and lack of candor. (Ex. 4, Decision & Order dated Sept. 14, 2012.)

1 to produce all relevant documents from Macau took effect, or the scheduled evidentiary hearing
2 "to determine the degree of willfulness related to those redactions and the prejudice, if any,
3 suffered by Jacobs" took place, Sands China sought emergency writ relief from the Nevada
4 Supreme Court, claiming that this Court exceeded its authority by requiring Sands China to
5 produce documents from Macau and even considering whether to impose sanctions against
6 Sands China for refusing to do so. The production of Sands China's documents and imposition of
7 sanctions – including Jacobs' intent and ability to seek dispositive sanctions – have been on hold
8 ever since.

9 At the same time, this Court has recognized that it cannot proceed with resolving the
10 jurisdictional issue until Jacobs' counsel is provided appropriate access to the records over which
11 this Court has rejected LVSC's and Sands China's claims of privilege. (See Ex. 22, Hr'g Tr. dated
12 Feb. 11, 2013.) But once again, Sands China has obtained a stay of that order of production,
13 depriving Jacobs' counsel access to Jacobs' own sources of proof. Considering that Sands China
14 has affirmatively obtained stays which preclude Jacobs from seeking affirmative sanctions relief
15 on the personal jurisdiction dispute, its present effort to exploit those stays must be rejected.
16 Courts recognize the impropriety of allowing a party to use a stay as a shield while
17 simultaneously seeking to use the stay's existence as a sword by seeking affirmative relief. See
18 *Versata Software, Inc. v. Callidus Software, Inc.*, CV-12-931-SLR, 2014 WL 1868869, *2
19 (D. Del. May 8, 2014) ("[I]t is apparent that Callidus is playing the stay card as both a sword and
20 a shield, moving forward on its interests but denying *Versata* the opportunity to do the same, thus
21 presenting a clear tactical advantage for Callidus, the moving party"); *In re Residential*
22 *Capital, LLC*, 12-12020 MG, 2012 WL 5430990, *4 (Bankr. S.D.N.Y. Nov. 7, 2012) (noting
23 impropriety of party's attempt to use a bankruptcy stay as both a shield and a sword for its
24 strategic advantages).⁵

25
26 ⁵ It appears that the timing of Sands China's Motion is not an accident and was in fact
27 undertaken to misuse this Court's temporary stay. Recall, one of the stays expired on June 10,
28 2014. The parties appeared before this Court and Sands China attempted to get Jacobs to simply
agree to continue the stay without disclosing the planned motion. Of course, the fact that
Sands China is seeking to gain advantage from the stay is grounds in and of itself to terminate it,
which Jacobs will be seeking in its forthcoming opposition to Sands China's request for further

1 Having obtained two stays that preclude Jacobs from enforcing the terms of this Court's
2 existing orders – rulings that directly bear upon the jurisdictional debate – those stays similarly
3 bind Sands China's hands just as they do Jacobs'.⁶

4 **C. Sands China Is Subject To General Jurisdiction In Nevada.**

5 Regardless of Sands China's stay gamesmanship, its theory of general jurisdiction is
6 predicated upon a knowing fiction. Of course, the fact that Sands China admits (but claims it is
7 irrelevant) that it "purchases good and services and has contractual arrangements with a number
8 of Nevada companies (including LVSC)" (Mot. at 7:14-23) is pertinent to whether "the level of
9 contact between the defendant [Sands China] and the forum state [Nevada] is high," as is required
10 for general jurisdiction. *Trump v. Eighth Jud. Dist. Ct.*, 109 Nev. 687, 699, 857 P.2d 740, 748
11 (1993); *see also Arbella Mut. Ins. Co. v. Eighth Jud. Dist. Ct.*, 122 Nev. 509, 511, 134 P.3d 710,
12 712 (2006) ("[G]eneral personal jurisdiction exists when the defendant's forum state activities are
13 so substantial or continuous and systematic that it is considered present in that forum and thus
14 subject to suit there, even though the suit's claims are unrelated to that forum."). But those
15 Nevada contacts are just the beginning, not the end-all-be-all, as Sands China would like to think.

16 Indeed, jurisdictional discovery has confirmed that Sands China merely pretends (for
17 appearance purposes) to be headquartered in Macau. But the true nucleus of its operations –
18 where the controlling executives actually make substantive decisions, direct operations and set
19 policy – is in Nevada. Cognizant of this fact, Sands China asks this Court to ignore the actual
20 evidence, citing the United States Supreme Court's recent decision in *Daimler AG v. Bauman*,
21 134 S. Ct. 746 (2014).

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25 extension. Sands China has made clear its intent to misuse the stay and cannot be allowed to
26 further profit from it.

27 ⁶ Although the evidence that Jacobs presently possesses defeats Sands China's motion, in an
28 abundance of caution, Jacobs further submits the declaration of counsel pursuant to NRCP 56(f)
outlining the improprieties and prejudice of allowing Sands China to misuse stays as a shield
against Jacobs' ability to obtain affirmative relief while it claims the ability to proceed.

1 In *Daimler AG*, a group of plaintiffs sued DaimlerChrysler ("Daimler") in the State of
2 California based upon the alleged collaboration between its subsidiary, Mercedes-Benz Argentina
3 ("MB Argentina") and various terrorist groups located in Argentina. There was no connection
4 between the plaintiffs and Daimler. There was no evidence that Daimler had offices in California,
5 had employees there, or in any way operated there. See *Daimler AG*, 134 S.Ct. at 758. And, it
6 certainly did not have officers and/or directors stationed in California conducting the corporation's
7 affairs from there. Instead, the only connection between Daimler and California was that one of
8 Daimler's subsidiaries, Mercedes-Benz USA, LLC ("MBUSA"), sold cars in California.
9 Nevertheless, the plaintiffs, citing *Doe v. Unocal*, 248 F.3d 915 (9th Cir. 2001), claimed that
10 personal jurisdiction existed because selling cars in California is "sufficiently important" to
11 Daimler such that it would have stepped in to perform that function for MBUSA were it
12 necessary. *Id.* at 759.

13 The Supreme Court disagreed, and found that a parent corporation's "hypothetical
14 readiness" to perform services on behalf of its domestic subsidiary in the forum state does not, in
15 and of itself, establish general jurisdiction. *Id.* at 759-60. The Court reasoned, "[a]nything a
16 corporation does through an independent contractor, subsidiary, or distributor is presumably
17 something that the corporation would do 'by other means' if the independent contractor,
18 subsidiary, or distributor did not exist." *Id.* at 759. As a result, the Court found that the
19 Ninth Circuit's "hypothetical readiness" test improperly "subjects foreign corporations to general
20 jurisdiction whenever they have an in-state subsidiary or affiliate[.]" *Id.* at 759-60.

21 The Court reiterated that for general jurisdiction to exist, a corporation "must be fairly
22 regarded as at home" in the forum state. *Id.* at 761. The Court explained that this had always
23 really been the guiding criteria and reaffirmed its prior general jurisdiction decisions. *Id.* Simply
24 stated, the relevant question, as it has always been, is whether the corporation's affiliations with
25 the State are "so continuous and systematic as to render it essentially at home in the forum State."
26 *Id.* (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945); *Goodyear Dunlop Tires Ops.,*
27 *S.A. v. Brown*, 131 S.Ct. 2846 (2011)). Plainly, a corporation is at home in both the place where it
28 is incorporated and where it has its principal place of business. *Goodyear*, 131 S.Ct. at 2854. As

1 the United States Supreme Court has also held, a corporation's principal place of business is
2 determined by its "nerve center," which is the "place where the corporation's officers direct,
3 control and coordinate the corporation's activities." *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93,
4 103 S.Ct. 1181 (2010).

5 Despite Sands China's wishes otherwise, corporations are subject to jurisdiction based
6 upon the actions of their officers, directors and agents within the forum state. That is how the
7 nerve center is determined. Indeed, as this Court knows, legal entities can only act through such
8 persons. As the Nevada Supreme Court explained long ago: "The contacts of an agent are
9 attributable to the principal in determining whether personal jurisdiction exists." *Trump*, 109
10 Nev. at 694, 857 P.2d at 745. And the Nevada Supreme Court's recent decision in *Viega GmbH*
11 *v. Eighth Jud. Dist. Ct.* does not change the fact that "[a] court may assert general jurisdiction
12 over foreign (sister-state or foreign-country) corporations to hear any and all claims against them
13 when their affiliations with the State are so 'continuous and systematic' as to render them
14 *essentially at home in the forum State*." 130 Nev. Adv. Op. 40, at *4 (2014) (emphasis added)
15 (considering whether agent's contacts "ha[ve] formed a relationship with Nevada that is so
16 continuous and systematic as to be considered at home in this state.").

17 Unlike *Daimler AG*, this is not a case of a foreign parent corporation's "hypothetical
18 readiness" to stand in for its local subsidiary. The evidence exposes how Sands China is *actually*
19 being operated and run by and through its officers and directors who do so from Las Vegas.
20 Indeed, depositions of both Adelson and Leven demonstrate how they direct and control the
21 activities and operations of Sands China from Las Vegas, and that they were "wearing their
22 Sands China hat" whenever they did so. (Ex. 7, Adelson Dep. Tr., Vol. II, 96:22-24 ("And SCL,
23 any time there was an SCL issue, I had to, not figuratively, but literally put on my SCL hat."); *see*
24 *also id.*, 116:2-6 ("Q. Okay. Did you ever have any business dealings [related to Sands China]
25 with him [Jacobs] over the phone while you were based in Nevada during that same time period?
26 A. What do you mean when I was based in Nevada? I'm always in Nevada. This is my home."))

27 This includes anything from approving compensation for Sands China to making its
28 casino design decisions. As Leven decreed: "[REDACTED]

1 [REDACTED] (Ex. 6, LVS00216741, Leven e-mail
2 dated May 27, 2010.) And in Adelson's words, one reason for Jacobs' termination was because
3 "Jacobs tried to insert himself into all these decisions." (See Ex. 7, Adelson Dep. Tr., Vol. II,
4 87:24-88:7.)

5 Sands China can argue all it would like, but it cannot change the facts as admitted by its
6 Chairman and its then-existing CEO. Those facts establish that Las Vegas is where Sands China's
7 executives direct, control and coordinate its activities, despite its desire to pretend otherwise.
8 Las Vegas is where actual control is exercised and where substantive decisions are made. This
9 reality is why Sands China is "at home" in Nevada, and subject to general jurisdiction here. See
10 *Hoschar v. Appalachian Power Co.*, 739 F.3d 163, 172-73 (4th Cir. 2014) (place where
11 day-to-day operations are conducted is not relevant, because a corporation's true nerve center is
12 where the ultimate power to make decisions rests, is exercised and where corporate policy is set.);
13 *Johnson v. SmithKline Beecham Corp.*, 724 F.3d 337, 356-66 (3rd Cir. 2013) (corporation's nerve
14 center is not where its officers were located, because its officers were not granted genuine
15 authority to set policy, but it was where the board of directors were meeting and exercising actual
16 control); *Moore v. Johnson & Johnson*, No. 12-490, 2013 WL 5298573, *7 (E.D. Penn. Sept. 20,
17 2013) (a corporation's "principal place of business" is not where it pretends it to be, it is where
18 actual and ultimate control is exercised, including where it is exercised by executives of a related
19 entity).

20 **D. Sands China Is Also Subject to Specific Jurisdiction, Given That the Scheme**
21 **to Tortiously Terminate Jacobs and Breach All Related Agreements Occurred**
22 **In Nevada.**

23 Nor can Sands China deny that the scheme to wrongfully terminate Jacobs was hatched
24 and carried out here in Las Vegas. As the man who oversaw and carried out the so-called
25 "exorcism strategy" (Leven) conceded, "the arrangements for carrying out the termination of
26 Steve Jacobs" were developed in Las Vegas. (Ex. 8, Leven Dep. Tr., Vol. II, 396:14-19.) This is
27 hardly disputable considering that Las Vegas is the place in which Adelson maintains and
28 exercises his tight control over corporate operations and policy. This fact alone more than meets

1 the "minimum contacts" necessary for this Court to impose personal jurisdiction over Sands
2 China.

3 As the Nevada Supreme Court explained in *Trump*, specific jurisdiction may be exercised
4 over a nonresident defendant where:

5 (1) the defendant purposefully avails himself of the privilege of
6 serving the market in the forum or of enjoying the protection of the
7 laws of the forum, or where the defendant purposefully establishes
8 contacts with the forum state and affirmatively directs conduct
toward the forum state, and (2) the cause of action arises from that
purposeful contact with the forum or conduct targeting the forum.

9 109 Nev. at 699-700, 857 P.2d at 748 (specific jurisdiction established where the cause of action
10 "arise[s] from the consequences in the forum state of the defendant's activities, and those
11 activities, or the consequences thereof, . . . have a substantial enough connection with the forum
12 state to make the exercise of jurisdiction over the defendant reasonable."); *Von's Companies, Inc.*
13 *v. Seabest Foods, Inc.*, 126 P.2d 1085, 1099 (Cal. 1996) (specific jurisdiction exists where "there
14 is a substantial nexus or connection between defendant's forum activities and the plaintiff's
15 claim.").

16 With its waiver argument repeatedly rejected, Sands China now claims (for the first time)
17 that Jacobs' theory of specific jurisdiction "fails as a matter of law" because the only claim
18 presently asserted against Sands China is breach of the option agreement with Jacobs and,
19 Sands China theorizes, its breach was not "purposefully directed" at the State of Nevada.
20 (Mot., 18:10-21.) Hardly.⁷

21 Jacobs' claim for breach of the option agreement arises out of and is based entirely upon
22 his wrongful termination. Without it, Sands China had no excuse for nonperformance. LVSC
23 and Sands China arranged Jacobs' termination so as to avoid paying him what he was and is
24 entitled to, including under the Sands China option agreement. (Ex. 2, Compl. ¶ 47 ("LVSC and
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26 ⁷ As this Court is also aware, Jacobs has filed a motion to amend his complaint to add
27 additional claims against LVSC and Sands China. And, he will also be seeking to add additional
28 claims against Adelson upon issuance of the Supreme Court's remittitur. Jacobs incorporates his
motion to amend presently pending before this Court as it further highlights the additional claims
and jurisdictional bases against Sands China that were developed as a result of jurisdictional
discovery.

1 Sands China have wrongfully characterized Jacobs' termination as one for 'cause' in an effort to
2 deprive him of contractual benefits to which he is otherwise entitled.") In other words,
3 Sands China's breached the option agreement when Adelson undertook the "exorcism strategy" so
4 as to cheat Jacobs out of what he was owed. The fact that Sands China and LVSC later
5 manufactured purported "for cause" reasons – even then, those reasons were fabricated in
6 Las Vegas – does nothing to change the genesis of Jacobs' claim. (Ex. 8, Leven Dep. Tr., Vol. II,
7 416:2-13.)

8 Sands China's breach of the option agreement was part and parcel of the scheme to
9 terminate Jacobs, the acts of which were planned and carried out in Nevada. Sands China's
10 attempt at drawing a line between Jacobs' termination and its breach of the option agreement is an
11 imaginary one. *See Etienne v. Wolverine Tube, Inc.*, 12 F. Supp. 2d 1173, 1180 (D. Kan. 1998)
12 (concluding for venue purposes that a substantial part of the relevant conduct took place in
13 Kansas because "the primary events giving rise to this [breach of contract] action . . . occurred by
14 means of communications between . . . two states," and "to the extent that [the] events occurred
15 anywhere, they occurred almost as much in Kansas as in Alabama"). When the Court considers
16 the totality of the circumstances of Sands China's breach, as it must, *see Remick v. Manfredy*, 238
17 F.3d 248, 256 (3rd Cir. 2001), there is no question that Jacobs' claims against Sands China
18 directly and substantially stem from its activities in Nevada.⁸

19 **E. Service Upon Sands China's Then-Existing CEO in Nevada is Proper and**
20 **Effective.**

21 Sands China cannot dispute that "personal jurisdiction may be exercised over a
22 non-resident defendant if the defendant is served with process while he is physically present in the
23 forum state." *Cariaga v. Eighth Jud. Dist. Ct.*, 104 Nev. 544, 546, 762 P.2d 886, 888 (1988);
24

25 ⁸ Sands China pretends by way of a footnote that it has been "severely prejudiced by
26 Plaintiff's belated assertion of specific jurisdiction." (Mot., 18 n. 9.) Tellingly, it presents no
27 proof of its purported prejudice. It could not, because specific jurisdiction has always been at
28 issue, and it was only this Court's finding of general jurisdiction for why this Court did not reach
the question earlier. Jacobs is the only party prejudiced from the fact that specific jurisdiction
was not "resolved at the outset" and that is because Sands China did not disclose the truth about
its Nevada activities in orchestrating the termination along with LVSC.

1 *Burnham v. Superior Court of California, Cnty. of Marin*, 495 U.S. 604, 610 (1990) ("Among the
2 most firmly established principles of personal jurisdiction in American tradition is that the courts
3 of a State have jurisdiction over nonresidents who are physically present in the State."). And, as
4 Sands China admits, "it is undisputed that Plaintiff served Michael Leven, who was then SCL's
5 Acting CEO, while he was in Nevada." (Mot., 15:20-21.)

6 But Sands China says that transient jurisdiction cannot apply because it is a corporation, as
7 opposed to a natural person. Sands China goes so far as to say that the United States Supreme
8 Court in *Burnham v. Superior Court of California, Cnty. of Marin* "strongly suggested that the
9 theory would *not* work with respect to corporations." (Mot., 16:11-13.) While the *Burnham*
10 Court did gratuitously comment about transient jurisdiction's potential application to corporations,
11 it made clear that it had "express[ed] no views on these matters." 495 U.S. 604, 610 n. 1. And, as
12 one subsequent court put it: "*Burnham's* reassertion of the general validity of transient
13 jurisdiction provides no indication that it should only apply to natural persons." *Oyuela v. Seacor*
14 *Marine (Nigeria), Inc.*, 290 F. Supp. 2d 713, 720 (E.D. La. 2003).

15 In any case, Sands China's proffered cases are plainly inapposite, as they all involve
16 situations where the foreign corporation's agent was only in the jurisdiction "temporarily," or
17 where the agent served was a registered agent in a state where the corporation otherwise had no
18 presence. See *Scholz Research and Develop., Inc. v. Kurzke*, 720 F. Supp. 710 (N.D. Ill. 1989)
19 (corporate agent served while attending temporary tradeshow); *C.S.B. Commodities, Inc. v. Urban*
20 *Trend (HK) Ltd.*, 626 F. Supp. 2d 837, 849 (N.D. Ill. 2009) (corporate agent served while
21 attending temporary tradeshow); *Wenche Siemer v. Learjet Acquisition Corp.*, 966 F.2d 179, 182
22 (5th Cir. 1992) (service upon registered agent and corporation did not conduct business in forum);
23 *Republic Properties Corp. v. Mission W. Properties, LP*, 895 A.2d 1006, 1009 (Md. 2006)
24 (service upon agent of partnership ineffective because partnership "never conducted *any* activity
25 of any kind in Maryland" (emphasis in original)).

26 Here, in contrast, Leven was not served with process during a temporary and isolated trip
27 to a jurisdiction where Sands China is not present; Leven was served in Las Vegas, Nevada, at the
28 very location and time in which he was acting as Sands China's CEO in carrying out its affairs.

1 Notably, Sands China cites no case for the proposition that a corporate CEO cannot be served in
2 the very locale from where he oversees the company's business activities. *See Nutri-West v.*
3 *Gibson*, 764 P.2d 693, 695 (Wyo. 1988) (applying transient jurisdiction to subject partnership to
4 personal jurisdiction because the managing partner was personally served in the jurisdiction and
5 her "presence in the jurisdiction is related to partnership activity.").⁹ There is nothing unfair about
6 subjecting a corporation to jurisdiction in the very locale where it has empowered its chief
7 executive officer to work.

8 **F. Jacobs Countermoves for Summary Judgment.**

9 Accepting Sands China at its word – that this Court is not obligated to hold an evidentiary
10 hearing – then the party entitled to summary judgment is Jacobs. As demonstrated above, the
11 actual facts are that the ultimate control over Sands China is exercised by executives in
12 Las Vegas. At the same time, the causes of action asserted here arise out of Sands China's
13 activities in Nevada, namely its orchestration of Jacobs' termination so as to escape its contractual
14 obligations. Because Sands China's own Motion claims that the Supreme Court's mandate does
15 not necessitate an evidentiary hearing, this Court should bind Sands China to that assertion and
16 enter summary judgment for Jacobs.

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25 ⁹ Apparently believing that *Daimler A.G.* is the answer to all of its jurisdictional problems,
26 Sands China also cites that decision for the notion that a plaintiff cannot establish transient
27 jurisdiction by serving an "agent [who] is present and doing business on behalf of the foreign
28 corporation in the forum." (Mot., 17:17-22.) But, as explained above, the issue in that case was
whether a parent corporation could be subject to general jurisdiction based upon its "hypothetical
readiness" to conduct business on behalf of its subsidiary in the subject forum. That case has
nothing to do with transient jurisdiction, or an executive that is served in a state while he was
actually operating and controlling the entities' affairs.

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1 IV. CONCLUSION

2 Sands China's Motion for Summary Judgment fails both procedurally and substantively.
3 If any party is entitled to summary judgment on Sands China's defense of personal jurisdiction, it
4 is Jacobs.

5 DATED this 19th day of July, 2014.

6 PISANELLI BICE PLLC

7
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 4th day of July, 2014, I caused to be served via the Court's E-Filing system, true and correct copies of the above and foregoing **OPPOSITION TO DEFENDANT SANDS CHINA LTD.'S MOTION FOR SUMMARY JUDGMENT ON PERSONAL JURISDICTION AND COUNTERMOTION FOR SUMMARY JUDGMENT** properly addressed to the following:

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DISTRICT COURT
CLARK COUNTY, NEVADA

12 STEVEN C. JACOBS,

13 Plaintiff,

14 v.

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

21 Defendants.

22 AND ALL RELATED MATTERS.

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CLERK OF THE COURT

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

**DEFENDANT SANDS CHINA LTD.'S
REPLY IN SUPPORT OF ITS MOTION
FOR SUMMARY JUDGMENT AND
OPPOSITION TO PLAINTIFF'S
COUNTER-MOTION FOR SUMMARY
JUDGMENT**

Date: July 29, 2014
Time: 8:30 a.m.

23
24 Plaintiff's opposition to SCL's motion for summary judgment once again confuses shrill
25 invective with the controlling legal standard. In the nearly three years since the Supreme Court
26 remanded this matter for findings on the question of whether this Court has personal jurisdiction
27 over SCL, Plaintiff has offered a bewildering array of shifting jurisdictional theories and
28 demanded—and gotten—millions of dollars' worth of discovery that was ostensibly designed to

1 support those theories. But in the wake of the U.S. Supreme Court's decision in *Daimler AG v.*
2 *Bauman*, Plaintiff does not even attempt to defend any of the general jurisdiction theories he
3 had previously advanced. Rather than concede defeat, however, Plaintiff recasts his argument
4 yet again, claiming for the first time that Las Vegas should be deemed SCL's principal place of
5 business—and then adds his usual quotient of outrageous (and false) accusations of misconduct,
6 in the transparent hope of distracting the Court from the lack of merit in all of his jurisdictional
7 theories.

8 Contrary to Plaintiff's argument, SCL's motion is not procedurally improper. Plaintiff
9 cannot maintain that he needs more documents to respond to SCL's motion while, at the same
10 time, arguing that he himself is entitled to summary judgment. Nor is the motion somehow
11 barred by the Nevada Supreme Court's denial of SCL's Motion to Recall its Mandate. Far from
12 rejecting SCL's interpretation of *Daimler AG*, the Nevada Supreme Court simply required SCL
13 to present its argument *first* to this Court. Respectfully, *Daimler AG* confirms what SCL has
14 argued all along — that this Court has no jurisdiction over SCL (a foreign defendant that has no
15 operations in Nevada) to entertain Plaintiff's claim that SCL breached a contract that was
16 allegedly formed in Macau, involves options to buy stock listed on the Hong Kong Stock
17 Exchange, and is governed by Hong Kong law.

18 I.

19 ARGUMENT

20 A. SCL's Motion For Summary Judgment Should be Granted.

21 1. Plaintiff Bears The Burden Of Showing That There Is A Genuine
22 Issue Of Material Fact Regarding Personal Jurisdiction.

23 Plaintiff argues (at 8) that SCL, as the party moving for summary judgment, "bears the
24 burden of establishing the non-existence of any genuine issue of material fact." But that is not
25 the law in the situation at issue here, where the party opposing summary judgment would bear
26 the burden of persuasion if there were an evidentiary hearing. *Viega GmbH v. Eighth Judicial*
27 *Dist.*, No. 59976, 2014 Nev. LEXIS 48, at *7; 130 Nev. Adv. Op. 40 (May 29, 2014) (plaintiff
28 bears the burden of proving personal jurisdiction by a preponderance of the evidence). Under

1 those circumstances, the “moving party may satisfy the burden of production by either (1)
2 submitting evidence that negates an essential element of the nonmoving party’s claim, or (2)
3 pointing out that there is an absence of evidence to support the nonmoving party’s case.”
4 *Francis v. Wynn Las Vegas, LLC*, 262 P.3d 705, 714 (Nev. 2011) (internal quotation marks and
5 ellipses omitted). It is then up to the party opposing summary judgment—here, Jacobs—to
6 “introduce specific facts that show a genuine issue of material fact.” *Id.* at 715 (internal
7 quotation marks omitted).¹

8 In this case, SCL met its burden by pointing to a number of undisputed facts concerning
9 its business and Jacobs’ termination. Thus, it is Jacobs who bears the burden of introducing
10 specific facts showing that there is a genuine issue of material fact that precludes the Court from
11 ruling against him as a matter of law on the issue of personal jurisdiction. For the reasons
12 outlined below, Jacobs has failed to meet that burden.

13 2. SCL’s Summary Judgment Motion Is Procedurally Proper.

14 Jacobs next argues (at 9-11) that SCL’s summary judgment motion should be denied
15 “outright” because it is supposedly “procedurally improper” in light of the stay orders entered
16 by this Court and the Nevada Supreme Court, which he claims have deprived him of documents
17 that could potentially prove his jurisdictional theories. In making that argument, Plaintiff
18 ignores two important facts. First, Plaintiff does not have to affirmatively prove his
19 jurisdictional case to defeat summary judgment; instead, he has only to show that there are
20 genuine issues of material fact. Second, as he consistently does, Plaintiff completely ignores the
21 fact that he has obtained tens of thousands of pages of documents in response to his document
22 requests, and he has taken seven days’ worth of depositions of Messrs. Adelson, Leven,
23 Goldstein and Kay. If Plaintiff cannot meet his burden of pointing to specific facts that at least
24 create a genuine issue of material fact—which, as explained below, he has not done—there is no
25

26 ¹ *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1030-31 (2005), cited in Pl. Br. at
27 8, is not to the contrary. Indeed, at the very page Plaintiff cites, the Court noted that, while the
28 evidence had to be construed in the light most favorable to the nonmoving party, the nonmoving
party had the burden of setting forth “specific facts demonstrating the existence of a genuine
factual issue.”

1 reason to believe that he could prevail no matter how many additional documents he might
2 obtain.

3 That Plaintiff's counsel has filed a conclusory Declaration pursuant to NRCP 56(f) does
4 not alter the analysis. "NRCP 56(f) permits a district court to grant a continuance when a party
5 opposing a motion for summary judgment is unable to marshal facts in support of its
6 opposition." *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 117-18, 110 P.3d 59,
7 62 (2005). "Furthermore, a motion for a continuance under NRCP 56(f) is appropriate only
8 when the movant expresses how further discovery will lead to the creation of a genuine issue of
9 material fact." *Id.* Here, Plaintiff does not claim that he has been "unable to marshal facts in
10 support of [his] opposition." On the contrary, he argues that he has offered sufficient facts to
11 obtain summary judgment in his favor. Moreover, Plaintiff does not explain why he needs the
12 specific documents that are the subject of the stays to compose an appropriate response to
13 SCL's motion. Indeed, counsel's NRCP 56(f) declaration does not even *mention* the additional
14 documents this Court ordered SCL to produce from Macau—even though Plaintiff's brief
15 complains at length about the stay of this Court's March 27, 2012 Order.²

16 Counsel's Declaration does claim that Defendants' privileged documents, which the
17 Nevada Supreme Court's stay order precludes him from reviewing, might support his
18 jurisdictional theories. But he does not bother to explain why that may be so. Instead, he says
19 only that he "reasonably believes" that certain unidentified documents listed on the privilege log
20 "would likely bolster" his claim of "ultimate control and direction of Sands China's affairs
21 being conducted by Las Vegas-based executives." *Bice Decl.* ¶ 5. That is not nearly enough to
22 explain why consideration of SCL's summary judgment motion should await a final
23

24
25 ² Plaintiff complains that the hearing on his renewed motion for sanctions was postponed
26 pending the Nevada Supreme Court's decision on Defendants' writ petition. But whether or
27 when that hearing is held is irrelevant to the question of whether this Court has personal
28 jurisdiction over SCL. In fact, this Court had planned to proceed with an evidentiary hearing on
the issue of personal jurisdiction notwithstanding the stay of its March 27 Order, until the
Nevada Supreme Court stayed this Court's order with respect to Defendants' privileged
documents as well.

determination of the privilege issues relating to the documents that Jacobs took with him when he was terminated.

3. Plaintiff Has Failed To Show That There Are Genuine Issues Of Material Fact Concerning General Jurisdiction.

Plaintiff's opposition effectively abandons all of his original general jurisdiction theories and offers instead a brand-new theory—that SCL's principal place of business is Nevada because Nevada is supposedly its "nerve center." That new theory fares no better than the theories Plaintiff has now discarded.

SCL's motion discussed at length the three theories Plaintiff had previously offered: (1) that SCL's had "continuous and systematic contacts" with Nevada through its purchase of goods and services here for use in Macau; (2) that LVSC acted as SCL's agent and therefore its presence in Nevada should be attributed to SCL; and (3) that Las Vegas was SCL's "de facto" executive headquarters. Plaintiff's opposition does not even attempt to refute SCL's argument that these theories are no longer viable in light of *Daimler AG v. Bauman*, 134 S.Ct. 746, 761 (2014).³ Instead, Plaintiff now argues, for the first time, that Nevada should be deemed SCL's principal place of business under the "nerve center" test the U.S. Supreme Court adopted in *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010), for diversity cases. This argument also fails as a matter of law.

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³ Although Plaintiff no longer relies on an "agency" theory of jurisdiction, he nevertheless tries to minimize the significance of *Daimler AG* by arguing (at 12) that the U.S. Supreme Court rejected only the "hypothetical readiness" aspect of the Ninth Circuit's decision in *Doe v. Unocal*, 248 F.3d 915 (9th Cir. 2001). In fact, *Daimler AG* rejected the central premise of *Doe v. Unocal*, which was that proof of general jurisdiction over an agent who was performing important services on behalf of its principal in the forum automatically gave rise to general jurisdiction over the principal as well. See SCL Opening Brief at 10. Jacobs relied on this now-discredited theory, citing *Doe v. Unocal* for the proposition that SCL would be subject to general jurisdiction under an "agency theory" if "LVSC functioned as Sands China's representative and performed services that are sufficiently important to Sands China." See Plaintiff Steven C. Jacobs' Opposition to Defendants' Motion for a Protective Order, filed on December 4, 2012, at 4.

1 a. **The “Nerve Center” Test Does Not Apply Here.**

2 There is a reason why Plaintiff never previously argued the “nerve center” test: that test
3 simply does not apply in a case like this. The issue in *Hertz* was how to decide the citizenship
4 of a U.S. company under the federal diversity statute, not whether there was general jurisdiction
5 over a foreign corporation that does not do business in the State (or indeed anywhere in the
6 United States). Under the diversity statute, a corporation is a citizen of at most two states—
7 where it is incorporated and the place in which it has its principal place of business. The
8 problem the U.S. Supreme Court dealt with in *Hertz* was that federal courts had disagreed about
9 how to determine a U.S. corporation’s one “principal place of business” for diversity purposes
10 when it had operations and offices in a number of states. The Court selected the “nerve center”
11 test for three reasons. First, it comported with the language of the statute, which required a
12 court to identify a single “place” within a state that could be described as the corporation’s
13 principal place of business. 559 U.S. at 93-94. Second, the Court noted that “administrative
14 simplicity is a major virtue in a jurisdictional statute” and concluded that a nerve center test
15 would be easier, “comparatively speaking,” to apply because “a corporation’s general business
16 activities more often lack a single principal place where they take place.” *Id.* at 94-95. Third,
17 the Court concluded that the “nerve center” test comported with the statute’s legislative history.
18 *Id.* at 95.

19 The test for general jurisdiction, by contrast, does not depend on congressional intent.
20 Rather, it depends on whether a foreign corporation’s “continuous *corporate operations* within
21 a state are so substantial and of such a nature as to justify suit against it on causes of action
22 arising from dealings entirely distinct from those activities.” *Daimler AG*, 134 S.Ct. at 754
23 (internal quotation marks and brackets omitted) (emphasis added). In *Daimler AG*, the U.S.
24 Supreme Court reiterated the view that corporations may be sued under a general jurisdiction
25 theory if their affiliations with the forum are so “continuous and systematic as to render them
26 essentially at home in the forum State.” *Id.* (quoting *Goodyear Dunlop Tires Operations, S.A.*
27 *v. Brown*, 131 S. Ct. 2846, 2851 (2011)). While the Court described a corporation’s “principal
28 place of business” as being one such affiliation, nothing in either *Goodyear* or *Daimler AG* even

1 remotely suggests that the Court intended that “place” to be defined by *Hertz*’s “nerve center”
2 test. Indeed, *Goodyear* did not cite *Hertz* at all. And *Daimler AG* cited *Hertz* only as “Cf.” for
3 the proposition that simple jurisdictional rules promote predictability. 134 S.Ct. at 760.⁴

4 The *Daimler AG* Court’s discussion of *Perkins v. Benguet Consolidated Mining Co.*,
5 342 U.S. 437 (1952), also strongly suggests that the U.S. Supreme Court would not base a
6 finding of general jurisdiction on the kind of analysis Plaintiff suggests. In *Daimler AG*, Justice
7 Sotomayor criticized the majority for concluding that there was no general jurisdiction over
8 *Daimler AG* without knowing whether *Daimler AG* maintained key files in California or
9 whether there were employees in California who made “important strategic decisions or
10 overs[aw] in any manner *Daimler*’s activities.” 134 S.Ct. at 767. Justice Sotomayor cited
11 *Perkins* for the proposition that this kind of information was critical in deciding whether there
12 was general jurisdiction over *Daimler AG* in California. She arrived at that conclusion by
13 characterizing *Perkins* as holding that there was general jurisdiction in Ohio over a foreign
14 corporation simply because a “single officer” worked out of his home office in Ohio and kept
15 corporate records there—even though the company’s mining operations were entirely overseas,
16 the company had managers overseas and in California, and company board meetings were held
17 in states other than Ohio. *Id.* at 767 & n. 5; 769 n.8. The majority, however, rejected Justice
18 Sotomayor’s reading of *Perkins*. *Id.* at 756 n.8. It stated that the president’s location in Ohio
19 was the basis for general jurisdiction only because all of the corporation’s operations in the
20 Philippines had been shut down by World War II and *all* of the company’s business (such as it
21 was) was being directed from Ohio, which made Ohio its “principal, if temporary, place of
22 business.” *Id.* at 635 (internal quotation marks omitted).

23
24 ⁴ In that passage, the Supreme Court first noted that “the place of incorporation and principal
25 place of business are paradigm bases for general jurisdiction” over a corporation and that
26 “[t]hose affiliations have the virtue of being unique—that is, each ordinarily indicates only one
27 place—as well as easily ascertainable.” 134 S.Ct. at 760 (internal quotation marks, brackets and
28 ellipses omitted). It then put in a “Cf.” cite to *Hertz*, quoting *Hertz* merely for the proposition
that “[s]imple jurisdictional rules ... promote greater predictability.” *Id.* If the Supreme Court
had thought that the “nerve center” test applied in identifying a corporation’s principal place of
business for general jurisdiction purposes, presumably it would have said so when it quoted
Hertz.

1 As demonstrated in SCL's Opening Brief (at 13), the majority's discussion of *Perkins*
2 demonstrates that general jurisdiction against SCL cannot be predicated on the assertion that
3 Nevada was SCL's "de facto" executive headquarters because SCL's Chairman and, for a
4 period of time, its acting CEO lived in Nevada. The Court's discussion also precludes
5 Plaintiff's attempt to achieve the same result by switching labels, calling his theory a "nerve
6 center" theory, rather than a "de facto headquarters" theory. Whatever the label, SCL cannot be
7 deemed to have its principal place of business here when all of its business operations are
8 overseas, it is prohibited by the Non-Competition Deed from doing business in Nevada, it lists
9 its principal place of business in its public filings as Macau,⁵ and its stock is publicly traded on
10 the Hong Kong Stock Exchange.

11 **b. SCL Would Be Entitled To Summary Judgment Even Under *Hertz***

12 In any event, even if a "nerve center" analysis were applied to determine where SCL's
13 principal place of business was for purposes of assessing general jurisdiction in 2010, SCL
14 would still be entitled to summary judgment. In *Hertz*, the Supreme Court held that a
15 corporation's "principal place of business" is the place (singular) where the corporation's
16 "brain"—its "actual center of direction, control, and coordination" is located. 559 U.S. at 93.
17 In determining a corporation's principal place of business under this test, the court must "focus
18 solely on the business activities of the corporation whose principal place of business is at issue."
19 *Johnson v. SmithKline Beecham Corp.*, 724 F.3d 337, 351 (3d Cir. 2013) (cited in Pl. Br. at 14)
20 (internal quotation marks omitted). In addition, to determine where the "brain" is located, the
21 court must first "acknowledge the nature of the corporation's activities, as it is difficult to locate
22 a corporation's brain without first identifying its body." *Id.* at 356 n. 21.

23 Toward that end, it is critical to recognize that SCL is a holding company, which holds
24 the stock of Venetian Macau Ltd. ("VML") and other entities that operate businesses in Macau
25 and Hong Kong. VML is the operating entity that holds the gaming subconcession in Macau.

26
27 ⁵ SCL's 2010 Annual Report listed its principal place of business in Macau as the Venetian
28 Macau and then listed another "principal place of business" in Hong Kong. There is no place of
business (principal or otherwise) listed in Nevada. *See* SCL Ex. C at 176.

1 See Am. Compl. ¶ 3; 2010 Annual Report, Ex. C to SCL's Motion, at 66 ("The principal
2 activity of the Company is investment holding and the principal activities of our subsidiaries are
3 the development and operation of integrated resorts in Macao, which contain not only gaming
4 areas but also meeting space, convention and exhibition halls, retail and dining areas and
5 entertainment venues"). In *Johnson*, the Third Circuit held that because the corporation at issue
6 there was a holding company, its "nerve center" was in Wilmington, Delaware, where the
7 corporation's quarterly Board meetings were held. In support of that conclusion, the court
8 pointed to "numerous post-*Hertz* cases that have determined the principal place of business of a
9 holding company by looking to the location in which its officers or directors meet to make high-
10 level management decisions." *Id.* at 354 n.19.

11 Similarly, in this case if the "nerve center" test is used to determine SCL's principal
12 place of business, the proper question is where SCL's Board met. Under Rule 3.08 of the
13 Listing Rules of the Hong Kong Stock Exchange, the "board of directors of an issuer is
14 collectively responsible for its management and operations."⁶ SCL's 2010 Annual Report
15 explains that the Board, which includes three Independent Non-Executive Directors, "directs
16 and supervises the Company and oversees the Group's businesses, strategic decisions and
17 performance." SCL Ex. C at 51, 52; *see also id.* at 55 ("The Board reserves for its decision all
18 major matters concerning the Company, including approval and monitoring of all policy
19 matters, overall strategies and budgets, internal control and risk management systems, material
20 transactions (in particular those that may involve conflicts of interest), financial information,
21 appointment of Directors, and senior management personnel, and other significant financial and
22 operational matters").

23 Under these circumstances, the Court would look to where the Board's meetings were
24 typically held in order to determine SCL's "principal place of business" under the "nerve
25 center" test. As the documents produced in discovery show, during the time frame at issue here,
26

27
28 ⁶ See Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited,
available at https://www.hkex.com.hk/eng/rulesreg/listrules/mbrules/documents/chapter_3.pdf.

1 all of the six in-person SCL Board meetings were held in China, with four in Macau at SCL's
2 headquarters at the Venetian Macau and two in Hong Kong. *See* Ex. O hereto.⁷

3 Thus, the "nerve center" analysis would lead inevitably to the conclusion that SCL's
4 principal place of business is in China, rather than Nevada. Plaintiff's assertion that LVSC
5 executives sometimes provided advice and support to SCL's operating subsidiaries does not
6 alter the conclusion that the holding company is directed and controlled by SCL's Board from
7 Macau.⁸ Nor does the fact that Mr. Adelson, in his capacity as SCL's Chairman and/or LVSC's
8 Chairman and CEO, provided advice or direction to those same subsidiaries on issues such as
9 the design of Parcels 5 and 6. Similarly, that Jacobs signed a term sheet from LVSC in August
10 2009, *before* SCL was even formed (Am. Compl. ¶¶ 22, 24), says nothing about where SCL's
11 principal place of business was in 2010. Indeed, the undisputed fact that Jacobs was
12 headquartered in Macau during his tenure as SCL's CEO and that Mike Leven, who replaced
13 him as acting CEO, spent a large amount of time in Macau until one of the directors (Irwin
14 Siegel) agreed to locate to Macau temporarily and two new officers were hired who resided in
15 Macau demonstrates that, even if the question was where SCL and its operating subsidiaries
16 were headquartered (*see* Pl. Exs. 11, 17), the answer would be "Macau."

17 As the Third Circuit noted in *Johnson*, the Supreme Court recognized in *Hertz* that "in
18 this era of telecommuting, some corporations may divide their command and coordinating
19 functions among officers who work at several different locations, perhaps communicating over
20 the Internet." *Id.* at 356 (quoting *Hertz*, 599 U.S. at 95-96). But *Hertz* discouraged courts from
21 trying to weigh the various functions that individuals in different locations performed, on the
22 theory that the Court should make a simpler determination, looking instead "towards the center
23

24 ⁷ The Notices of Meetings collectively attached as Ex. O and previously designated as
25 confidential, are no longer designated as confidential and the "Confidential" marking on each
document has been removed.

26 ⁸ At page 6 of his brief, Plaintiff points to the fact that, after his termination, LVSC's head of
27 global gaming operations (Mr. Goldstein) was asked to approve credit extensions over \$25
28 million. But the very documents Plaintiff cites in support of this conclusion (Pl. Exs. 12 and 13)
show that this was a stopgap measure until a new, permanent CEO was appointed who would be
located in Macau.

1 of overall direction.” *Id.* at 96. Here, that “center of overall direction” was in China, where
2 Board meetings were held. This Court need not and, indeed should not, conduct a more
3 searching inquiry to decide what the U.S. Supreme Court views as a simple question that can be
4 “resolved expeditiously at the outset of the litigation” without the need for “much in the way of
5 discovery”—namely, “where a corporation is at home.” *Daimler AG*, 134 S.Ct. at 762 n.20.

6 **4. There Is No Specific Jurisdiction Over Jacobs’ Claim Against SCL.**

7 Plaintiff suggests that SCL’s response to his specific jurisdiction argument is somehow
8 new. It is not. In fact, SCL argued in its original motion to dismiss (Pl. Ex. 20, at 9-10) that
9 there was no specific jurisdiction over the only claim Plaintiff asserted against it, for breach of
10 the option agreement. SCL pointed out that the option agreement was governed by Hong Kong
11 law and applied to options for stock traded on the Hong Kong Stock Exchange. It also pointed
12 out that Plaintiff did not and could not claim that SCL had purposefully directed any conduct at
13 him in Nevada, since Jacobs was in Macau when he was terminated and is not and never has
14 been a resident of Nevada. Plaintiff did not respond to this argument in his opposition to the
15 motion to dismiss and did not argue that there was specific jurisdiction over the claim he
16 asserted against SCL.⁹ Instead, he argued only general and transient jurisdiction; the same was
17 true when SCL sought mandamus relief in the Nevada Supreme Court. It was not until *after* the
18 Supreme Court remanded that Plaintiff first raised specific jurisdiction; as SCL has argued all
19 along, by that time it was too late.

20 In any event, Plaintiff’s specific jurisdiction argument fails as a matter of law. Plaintiff
21 argues that his claim for breach of the option agreement is directly tied to his wrongful
22 termination claim. But Plaintiff points to nothing in the option agreement providing that his
23

24 ⁹ In a footnote (Pl. Br. at 16 n.8), Plaintiff argues that he did not raise specific jurisdiction
25 because this Court ruled in his favor on general jurisdiction. This is revisionist history: Plaintiff
26 did not know how this Court would rule when he filed his opposition to SCL’s motion; it is
27 obvious that he did not raise specific jurisdiction because he did not think he could sustain that
28 argument. Plaintiff also tries to blame SCL for his own tactical decision not to raise the issue in
a timely manner, claiming that SCL “did not disclose the truth about its Nevada activities.” But
SCL can hardly be charged with concealing facts about a theory that fails as a matter of law—
that the location of its internal deliberative processes is somehow relevant to specific
jurisdiction.

1 options would vest in the event that he was terminated without cause. More importantly, for
2 present purposes, even if Plaintiff could show that the purported "strategy" to terminate him
3 was somehow relevant to his breach of contract claim and was formulated in Las Vegas, that
4 would not support the exercise of specific jurisdiction in Nevada over that claim. Plaintiff does
5 not cite a single case where the location of an *internal decision* to breach a contract was deemed
6 to be a relevant contact for a specific jurisdiction analysis.

7 In fact, the legal standard Plaintiff quotes at page 15 of his brief shows that it is *not*
8 relevant. That standard focuses on where the allegedly wrongful conduct was aimed—whether
9 the defendant purposefully availed itself of the privilege of serving the market in the forum
10 (where the claim is that a product injured the plaintiff in the forum) or affirmatively directed
11 conduct toward the forum state that resulted in injury there. Neither standard is met here, where
12 SCL's alleged conduct indisputably targeted Jacobs in Macau, rather than Nevada.

13 The two cases Plaintiff cites are also inapposite. In *Etienne v. Wolverine Tube, Inc.*, 12
14 F.Supp.2d 1173, 1180 (D. Kan. 1998), the plaintiff was a Kansas resident who argued that there
15 was specific jurisdiction in Kansas over his claim for breach of an employment contract because
16 the defendant, who was located in Alabama, communicated with the plaintiff in Kansas. The
17 court held that it was irrelevant that the defendant never physically entered the state because its
18 communications with the plaintiff were directed toward the state of Kansas for the purpose of
19 consummating a transaction, and thus those communications were made in Kansas as much as
20 they were in Alabama. Here, by contrast, Plaintiff has not pointed to any communications by
21 SCL that were directed at him in Nevada. Instead, Plaintiff concedes that he was terminated in
22 Macau. Similarly, in *Remick v. Manfredy*, 238 F.3d 248, 256 (3d Cir. 2001), the issue was
23 again whether a plaintiff who had entered into a contract with nonresidents could sue them in
24 his home state for breach of contract. The Third Circuit held that there was specific jurisdiction
25 over the claim because the defendants sought out the plaintiff in his home state and established
26 a contractual relationship with him there.

27 In *Remick*, the court held that the relevant factors in the jurisdictional analysis included
28 the location and character of the contract negotiations, the terms of the contract, and the parties'

1 actual course of dealing. *Id.* Here, the option agreement was granted by SCL's Remuneration
2 Committee in China, was governed by Hong Kong law, and would have been performed (had
3 Jacobs accepted it by signing it) in Macau or Hong Kong. In addition, Jacobs was terminated in
4 Macau. None of this involves SCL purposefully directing any conduct towards Jacobs in
5 Nevada and thus there is no basis for specific jurisdiction over Jacobs' breach of contract claim.

6 **5. There Is No Jurisdiction Under A Transient Jurisdiction Theory.**

7 If there is no general jurisdiction over SCL in Nevada (which there is not for the reasons
8 outlined above and in SCL's opening brief), then it necessarily follows that serving the
9 complaint on Mr. Leven in Las Vegas was not sufficient to establish personal jurisdiction.
10 Plaintiff does not even attempt to explain how his theory can be squared with *Freeman v.*
11 *Second Judicial District*, 116 Nev. 550, 551, 1 P.3d 963, 964 (2000), where the Nevada
12 Supreme Court held that serving a non-resident corporation's registered agent for service of
13 process was insufficient to support the exercise of personal jurisdiction over the corporation.
14 Merely having a permanent agent in the forum does not confer jurisdiction; in addition, the
15 plaintiff has to show that there is either general jurisdiction over the defendant or specific
16 jurisdiction over the claim. *Daimler AG* supports that conclusion as well. *Daimler AG* holds
17 that even the presence of an agent in the jurisdiction who is conducting the principal's business
18 on its behalf and is itself subject to general jurisdiction is not enough to give rise to jurisdiction
19 over the principal; instead, the plaintiff must prove that the principal is itself "at home" in the
20 forum.

21 These two cases demonstrate that a corporation is not subject to suit in a forum simply
22 because one of its agents—even a senior officer—permanently resides in the forum. Instead,
23 the question is whether the *entity itself* is "at home" in the forum or has purposefully directed
24 some conduct at the forum that gives rise to a claim that enables the court to exercise specific
25 jurisdiction over it. Because neither situation exists here, there is no jurisdiction over SCL.

26 **B. Plaintiff's Counter-Motion Should Be Denied.**

27 Plaintiff argues that, because SCL has moved for summary judgment, it must have
28 conceded that there are no genuine issues of material fact with respect to personal jurisdiction.

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1 On that basis, Plaintiff contends that the small bits and pieces of testimony and handful of
2 documents he has offered to oppose SCL's motion show that he is entitled to summary
3 judgment in his favor. That argument should be rejected.

4 The basic premise of Plaintiff's counter-motion is wrong. "The substantive law controls
5 which factual disputes are material and will preclude summary judgment; other factual disputes
6 are irrelevant." *Wood v. Safeway, Inc.*, 121 Nev. at 731. SCL's motion for summary judgment
7 is based on its understanding of the substantive law, which renders the factual arguments
8 Plaintiff makes irrelevant. But that does not mean that SCL has conceded, by filing its motion,
9 that there would be no genuine issues of material fact if its interpretation of the legal standards
10 were rejected. As the Nevada Supreme Court has recognized, where "cross-motions for
11 summary judgment are brought on separate legal theories and where separate sets of facts are
12 relied on to support those theories, a trial court must independently examine the record to
13 determine whether there are any material factual questions requiring a trial. If such is the case,
14 summary judgment should be denied." *Oesterle v. Cohen*, 99 Nev. 318, 320, 661 P.2d 1311,
15 1312 (1983).

16 That is the situation here. The parties disagree about the legal standards that apply in
17 deciding whether there is general jurisdiction over SCL. If the Court were to agree with
18 Plaintiff's new argument that the "nerve center" test applies and disagreed with SCL's argument
19 that the location of SCL Board meetings is dispositive, then an evidentiary hearing would be
20 required to decide whether the "actual center of direction, control, and coordination" was in Las
21 Vegas, as Plaintiff contends, or in China, as SCL contends. The evidence Plaintiff has offered
22 does not come close to meeting his burden of showing that Las Vegas should be deemed SCL's
23 "nerve center."

24 The same is true of Plaintiff's specific jurisdiction argument. For the reasons outlined
25 above, the facts that Plaintiff offers concerning where the decision to terminate him was
26 supposedly made are irrelevant to the issue of specific jurisdiction. But if the Court were to
27 conclude that they were relevant, an evidentiary hearing would have to be conducted to
28

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1 determine where, in fact, the ultimate decision was made and by whom. See SCL Br. at 19
2 n.10.

3 II.

4 CONCLUSION

5 For the foregoing reasons and the reasons set forth in its opening brief, SCL urges the
6 Court to grant summary judgment in its favor on the issue of personal jurisdiction and dismiss
7 the claims made against it.

8 DATED this 22nd day of July 2014.

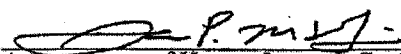
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15 Las Vegas, Nevada 89169
16 Attorneys for Sands China, Ltd.

17 J. Stephen Peek, Esq.
18 Robert J. Cassity, Esq.
19 Holland & Hart LLP
20 9555 Hillwood Drive, 2nd Floor
21 Las Vegas, Nevada 89134
22 Attorneys for Las Vegas Sands Corp. and Sands China,
23 Ltd.

24 CERTIFICATE OF SERVICE

25 I hereby certify that on the 22nd day of July, 2014, the foregoing DEFENDANT SANDS
26 CHINA LTD.'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY
27 JUDGMENT AND OPPOSITION TO PLAINTIFF'S COUNTER-MOTION FOR
28 SUMMARY JUDGMENT was served on the following parties through the Court's electronic
filing system:

ALL PARTIES ON THE E-SERVICE LIST

26 
27 An employee of Kemp, Jones & Coulthard, LLP

**AFFIRMATION OF HO SIU PIK IN SUPPORT OF DEFENDANT SANDS
CHINA LTD.'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Ho Siu Pik, solemnly and sincerely affirm:

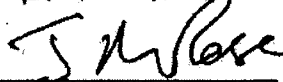
1. I am a Director, Corporate Services Division, of Tricor Services Limited, of Level 54, Hopewell Centre, 183 Queen's Road East, Hong Kong. Between October 14, 2009 and April 12, 2011, I was Joint Company Secretary of Sands China Ltd. ("SCL").
2. I have personal knowledge of the matters stated herein. If called as a witness, I could and would competently testify to the matters set forth herein.
3. I make this affirmation in support of SCL's Reply in Support of its Motion for Summary Judgment on Personal Jurisdiction ("Reply brief").
4. The notices collectively attached to the Reply brief under Exhibit O for the in-person SCL Board of Directors meetings held October 14, 2009, November 8, 2009, February 9, 2010, April 30, 2010, July 27, 2010 and October 21, 2010 are true and correct copies of their purported counterparts.

Dated this 23rd day of July, 2014.



Ho Siu Pik

Subscribed and affirmed before me
this 23 day of July, 2014



NOTARY PUBLIC, Hong Kong

JOHN MARTIN ROSE
NOTARY PUBLIC
HONG KONG

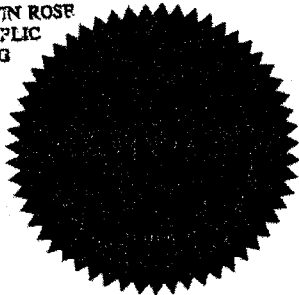


EXHIBIT O

SANDS CHINA LTD.

NOTICE OF MEETING

NOTICE IS HEREBY GIVEN that a Meeting of the Board of Directors of SANDS CHINA LTD. will be held at 10 am on Wednesday October 14, 2009 at the Vancouver Conference Centre in the purpose of considering and approving the matters set out in the Agenda.

For and on behalf of
SANDS CHINA LTD.



Steven Jackson
Director
Dated: October 9, 2009

RECEIVED

LVS00123450

SANDS CHINA LTD.

NOTICE OF MEETING

NOTICE IS HEREBY GIVEN that a Meeting of the Board of Directors of **SANDS CHINA LTD.** will be held at 4:00 p.m. on Sunday, November 8, 2009, for the purposes of considering and/or approving the matters detailed in the Agenda. The meeting will be held in the Peak Suite on Level 45 of the Four Seasons Hotel, located at 8 Finance Street, Central, Hong Kong.

For and on behalf of
SANDS CHINA LTD.



Luis Nuno Mesquita de Melo
Senior Vice President, General Counsel and
Joint Corporate Secretary

Dated: November 3, 2009

NOTICE OF A MEETING OF THE BOARD OF DIRECTORS

SANDS CHINA LTD.

金沙中國有限公司*

(Incorporated in the Cayman Islands with limited liability)
(Stock Code: 1928)

Monday, January 25, 2010

Dear Board Members,

Re: Sands China Ltd. (the "Company") - Notice of Meeting of the Board of Directors

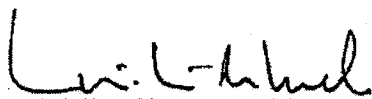
Notice is hereby given that a meeting of the Board of Directors of the Company will be held on the 9th of February 2010 at 10:00 a.m. (Hong Kong time) in the Executive Boardroom, Business Centre, Level 7, Island Shangri-la Hotel, Pacific Place, Supreme Court Road, Central, Hong Kong.

For those Members of the Board of Directors who will participate via teleconference, the dial-in information will be provided before the meeting.

The agenda for the Board meeting along with relevant materials will be issued shortly but no later than February 5th, 2010. Should you wish to include any special matters in the agenda, please let me know as soon as possible.

Should you have any queries regarding any of the above, please feel free to contact me.

For and on behalf of
Sands China Ltd.,



Luis Nuno Mesquita de Melo
Joint Company Secretary

Enclosure

LEVEL 39, ONE EXCHANGE SQUARE, 8 CONNAUGHT PLACE, CENTRAL, HONG KONG

LVS00127435

PA2530



April 15, 2010

To: The Board of Directors of Sands China Ltd. (the "Company")

Dear Board Members

Re: Notice of Meeting of the Board of Directors

I am writing to advise you that a meeting of the Board of Directors of the Company will be held at Venetian Macao Resort Hotel, Estrada da Baía de Nossa Senhora da Esperança, s/n, Macao SAR ("the Meeting") at the following time:

Macau/Hong Kong Time: April 30, 2010 at 9:00 AM
Las Vegas Time: April 29, 2010 at 6:00 PM

A detailed agenda and meeting materials will follow shortly.

Should you have any questions or wish to include matters in the agenda for discussion, please let me know.

Yours Sincerely,

Luis Nuno Mesquita de Melo
Joint Company Secretary

SANDS CHINA LTD.

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

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

LVS00220278

金沙中国
Sands China Ltd.

July 12, 2010

To: The Board of Directors of Sands China Ltd. (the "Company")

Dear Board Members

Re: Notice of Meeting of the Board of Directors

I am writing to advise you that a meeting of the Board of Directors of the Company will be held at The Venetian Macao Resort Hotel, Estrada da Baía de Nossa Senhora da Esperança, s/n, Taipa, Macao SAR ("the Meeting") at the following time:

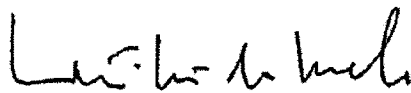
Macau/Hong Kong Time: July 27, 2010 at 10:00am

Las Vegas Time: July 26, 2010 at 7:00pm

A detailed agenda and materials for the Meeting will follow shortly.

Should you have any questions or wish to include matters in the agenda for discussion, please let me know.

Yours sincerely,



Luís Nuno Mesquita de Melo

Joint Company Secretary

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

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

LVS00126799

PA2532



NOTICE OF A MEETING OF THE BOARD OF DIRECTORS

September 30, 2010

Dear Board Members

Re: Sands China Ltd. (the "Company") – Notice of a Meeting of the Board of Directors

I am writing to advise you that a meeting of the Board of Directors of the Company will be held on October 21, 2010 at 9:00 a.m. (Hong Kong and Macau time) (i.e. October 20, 2010 at 6:00 p.m. (Las Vegas time)) at Executive Office L-03, Estrada da Baía de Nossa, Senhora da Esperança, s/n, The Venetian Macao Hotel Resort, Taipa, Macao SAR (the "Meeting"). Video-conference/dial-in details will be provided separately.

Materials for the Meeting will be circulated with a detailed agenda in due course.

Should you have any queries regarding any of the above or wish to include any additional matters in the agenda, please feel free to contact me.

Yours sincerely,

Anne Maree Salt
Joint Company Secretary

SANDS CHINA LTD.

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

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

LVS00233894

PA2533



CLERK OF THE COURT

RPLY

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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

**REPLY IN SUPPORT OF
COUNTERMOTION FOR
SUMMARY JUDGMENT**

Hearing Date: July 29, 2014

Hearing Time: 8:30 a.m.

AND RELATED CLAIMS

I. SANDS CHINA'S SUMMARY JUDGMENT INVITATION IS BINDING.

Sands China attempts to rewrite Jacobs' position so as to set up a false straw man from which to argue against Jacobs' counter motion. Jacobs does not claim that any time a party seeks summary judgment they forever concede the absence of disputed material facts. Jacobs' point – one Sands China cannot be genuinely confused about – is different.

In moving for summary judgment for itself, Sands China necessarily makes a binding concession that neither the stay nor writ of mandate issued by the Nevada Supreme Court precludes the ordinary operation of Nevada Rule of Civil Procedure 56 on Sands China's defense of personal jurisdiction. The point is simple: "A defendant may not request to proceed in one manner and then

1 later contend on appeal that the course of action was in error." *People v. Harding*, 966 N.E.2d 437,
2 441 (Ill. Ct. App. 2012); *Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345-46 (1994)
3 ("Since Young, on behalf of his client, filed the form requesting submission of the matter to the
4 court for decision, Lawrence may not be heard to complain of the decision which resulted from her
5 own attorney's request.").

6 Sands China's Motion under Rule 56 precludes it from disputing that summary judgment is
7 not a proper mechanism, provided that the material facts are undisputed, for resolving its claimed
8 defense. And, applying Rule 56 here, it is Jacobs, not Sands China, who is entitled to summary
9 judgment because:

10 (1) General jurisdiction exists. The facts are uncontroverted that the true headquarters
11 (i.e., nerve center) of Sands China – where ownership is exercised, policy is set and substantive
12 decisions are controlled – is Nevada. Sands China presents no admissible evidence showing
13 otherwise. And, its failure cannot be simply ignored.

14 (2) Sands China is also subject to specific jurisdiction. Jacobs' claims directly result
15 from Sands China's activities in Nevada. Jacobs' services as Sands China's CEO were provided
16 pursuant to a Nevada employment agreement with Sands China's parent, LVSC. That Nevada
17 contract was negotiated in Nevada and is governed by Nevada law. It provides for various forms
18 of compensation that Jacobs would receive, including stock options in Sands China. There is no
19 dispute that but for Jacobs' Nevada contract, pursuant to which he served as Sands China's CEO, he
20 would receive stock options. The substantive events depriving Jacobs of the stock options and other
21 compensation to which he is entitled – his wrongful termination – occurred in Nevada, with conduct
22 that Sands China specifically undertook in Nevada. Again, Sands China fails to present any contrary
23 evidence, instead choosing to argue the legal consequences of those facts, about which it is
24 mistaken.

25 (3) Transient jurisdiction also exists even though Sands China is a legal entity as
26 opposed to a natural person. Sands China authorized its CEO to conduct the company's affairs from
27 Nevada. It was in that capacity – acting as Chief Executive Officer and thus responsible for
28 controlling and overseeing the company's affairs – that Jacobs served Sands China's Nevada-based

1 CEO. Courts recognize that there is nothing unfair about exercising transient jurisdiction over an
2 organization that purposefully sets up its CEO to operate its affairs from the forum.

3 **II. JACOBS IS ENTITLED TO SUMMARY JUDGMENT ON GENERAL**
4 **JURISDICTION.**

5 Jacobs is not pursuing a "brand-new theory" of general jurisdiction, as Sands China oddly
6 claims. Jacobs has always noted that one of his theories is "general jurisdiction based upon what
7 Sands China does here [in Nevada]." (Ex. 1, Hr'g Tr. dated Sep. 27, 2011, 30:11-18; Ex. 2,
8 Sands China's Mot. for Prot. Order dated Nov. 26, 2012, 16:2-3 ("Plaintiff argued in the Nevada
9 Supreme Court that Nevada should be deemed SCL's 'de facto executive headquarters' because SCL
10 was supposedly managed from Las Vegas.")) In fact, almost two years ago, Sands China filed a
11 Motion for Protective Order – that reads almost identical to its instant Motion for Summary
12 Judgment – arguing that Jacobs' "theory that Las Vegas was the 'de facto executive headquarters' of
13 SCL fails as a matter of law."¹ Specifically, Sands China objected to discovery related to general
14 jurisdiction given that "it is only where a corporation can be viewed as being 'at home' in a particular
15 forum that it is appropriate to subject it to general jurisdiction there," and its view that "neither
16 SCL's place of incorporation nor its principal place of business is in Nevada."² (*Id.*, 15:20-22,
17 16:1-2.) Of course, the Court rejected the argument and allowed Jacobs to proceed with
18 jurisdictional discovery related to activities performed by and on behalf of Sands China in Nevada.

19 The reason why Sands China wanted so desperately to avoid discovery related to jurisdiction
20 is now obvious. The evidence shows that despite what Sands China wishes to pretend – so as to
21 escape United States' jurisdiction and be subject to its laws – its true principal place of business is
22 in Nevada, where the principal decisions are made, direction is given and control is exercised by
23

24 ¹ This also dispels Sands China's latest spin that *Daimler* was a "sea change." It is the same
25 argument Sands China made nearly two years ago.

26 ² Just as it did two years ago, in its Motion for Summary Judgment on Personal Jurisdiction
27 Sands China cites to Paragraph 3 of Jacobs' First Amended Complaint for the notion that "Plaintiff
28 does not dispute that SCL is a Cayman Islands corporation with its principal place of business in
Macau." Of course, Jacobs *does* dispute the location of Sands China's principal place of business,
which is referenced nowhere in Paragraph 3 or anywhere else for that matter. Sands China's
mischaracterization of the facts and Jacobs' pleading does not create a genuine issue of material
fact.

1 executives acting for Sands China. *See Hertz Corp. v. Friend*, 559 U.S. 77, 92-93, 103 S.Ct. 1181
2 (2010) (a corporation's principal place of business is determined by its "nerve center," which is the
3 "place where the corporation's officers direct, control and coordinate the corporation's activities.");
4 *see also* Ex. 6 to Countermot., LVS00216741, Leven e-mail dated May 27, 2010 (Leven advising
5 Sands China executives that "input from anyone [in Macau] is expected and listened to but final
6 design decisions are made by sga and las vegas[.]"); Ex. 7 to Countermot., Adelson Dep. Tr., Vol. II,
7 87:24-88:7 (Adelson testifying that "[p]art of the problem was that Jacobs [as Sands China's CEO]
8 tried to insert himself into all these decisions."); Ex. 8 to Countermot., Leven Dep. Tr., Vol. II,
9 377:21-378:2 (Leven telling LVSC executives that the real reason for Jacobs' termination was that
10 "he believe[d] he report[ed] to the board, not the chair [Adelson]."). In fact, even the decision to
11 terminate Jacobs from Sands China – which is the basis for this entire lawsuit – was made by "the
12 Chairman and senior leadership of LVS" in Las Vegas. (Ex. 9 to Countermot., LVS00142281,
13 Draft Ltr.)

14 Of course, Sands China offers no evidence to dispute the facts showing that its actual nerve
15 center is in Nevada, as required to avoid summary judgment.³ *See Cuzze v. Univ. & Cmty. Coll.*
16 *Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 134 (2007) ("[I]n order to defeat summary judgment,
17 the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence,
18 introduce specific facts that show a genuine issue of material fact."). Instead, Sands China claims
19 that all of the facts can simply be brushed aside based on its legal "argument" that for a holding
20 company, "the proper question is where SCL's Board met," which it claims was in China.⁴
21 (Opp'n, 9:11-12.)

22
23 ³ Sands China also attempts to distinguish between a corporation's principal place of business
24 for purposes of personal jurisdiction from that of diversity jurisdiction. They are not different. *See*
25 *Topp v. CompAir Inc.*, 814 F.2d 830, 836 (1st Cir. 1987) ("[T]he method for deciding whether a
26 parent is doing business in a state for the purpose of finding personal jurisdiction can be applied to
the analogous issue of determining the principal place of business for diversity jurisdiction."). In
fact, the fact that Sands China is seeking to now evade the nerve center test only proves Jacobs'
point.

27 ⁴ Nor can Sands China hide behind its board meeting notices, claiming that the meetings were
28 "held in China." Tellingly, Sands China presents no evidence that anyone really attended those
meetings "in China" as opposed to simply being on a conference line. That omission is fatal because
Sands China is well aware that Adelson and Leven testified that they generally participated in those
meeting telephonically from their offices in Las Vegas and Adelson actually chaired the meetings

1 Unfortunately for Sands China, its attempted use of labels (in name only) does not save it.
2 Courts "consider substance over form in determining the nerve center" for purposes of a
3 corporation's principal place of business. *J.A. Olson Co. v. City of Winona, Miss.*, 818 F.2d 401,
4 412 (5th Cir. 1987). Thus, while the principal place of business for a true holding company – one
5 that "exists solely to own and manage its investments in other companies, and does not engage in
6 its subsidiaries' operations" – may sometimes be where its board meetings are held, the same is not
7 true for a company like Sands China, which claims it "operates the largest collection of integrated
8 resorts in Macao." *Johnson v. SmithKline Beecham Corp.*, 853 F. Supp. 2d 487, 491 (E.D. Pa. 2012)
9 *aff'd*, 724 F.3d 337 (3d Cir. 2013); Ex. C to Sands China's Motion for Summ. J., 2011 Annual
10 Report, 4.)

11 Ultimately, the test to determine any "corporation's principal place of business – including
12 that of a holding company – is the state in which the corporation's activities are 'directed, controlled,
13 and coordinated.'" *Johnson*, 853 F. Supp. 2d at 495 (citing *Hertz*, 130 S.Ct. at 1192). As another
14 court has aptly recognized, the nerve center test concerns itself with the substance of where real
15 direction and control is being exercised, not self-serving labels:

16 *Johnson* confirms that *Hertz* is not as formalistic as the plaintiffs
17 contend. When 'the facts . . . suggest that [a] particular corporation
18 did not vest the relevant decision making in its officers,' those officers
19 do not compromise the corporation's nerve center. This Court's
conclusion that executives of a related entity may constitute a
corporation's nerve center fits comfortably with the third circuit's
reasoning and holding in *Johnson*.

20 *Moore v. Johnson & Johnson*, No. 12-490, 2013 WL 5298573 *7 (E.D. Penn. Sept. 20, 2013)
21 (citations omitted).

22 And Sands China has failed to produce any evidence contradicting its own internal records
23 and the testimony of its executives who admitted that its activities are directed, controlled, and
24 coordinated from Nevada. Thus, its principal place of business is in Nevada. Because Sands China
25

26 from Las Vegas. (See Ex. 3, Adelson Dep. Tr., Vol. 1, 130:5-25 ("Q. Where do the board meetings
27 of SCL take place? A. Usually at – there is a combination of telephone meetings, so wherever
28 people are. . . . We have had -- I have telephone -- telephonic meetings in any of my eight or ten
offices, either in the air or on the ground, outside in commercial office buildings or my home offices,
but we have never had an SCL meeting in Las Vegas.").

1 recognized that it could not present any evidence contradicting its own internal records and those
2 of LVSC, as well as the testimony of its own witnesses, the evidence is uncontroverted and Jacobs
3 is entitled to summary judgment against Sands China's personal jurisdiction defense on grounds of
4 general jurisdiction.

5 **III. JACOBS IS ALSO ENTITLED TO SUMMARY JUDGMENT ON SPECIFIC**
6 **JURISDICTION.**

7 But jurisdictional discovery revealed much more. It also confirmed the following
8 undisputed facts that subject Sands China to specific jurisdiction as well:

9 • Jacobs served as Sands China's CEO pursuant to an employment contract with Sands
10 China's controlling parent, LVSC, which was negotiated in Nevada, signed by Leven and approved
11 by Adelson in Nevada, and is governed by Nevada law. (Ex. 4, Leven Dep. Tr., Vol. II,
12 285:7-286:24; Ex. 5, Exhibit 10.1 to LVSC Form 10-Q dated May 10, 2010, Jacobs Term Sheet.⁵)

13 • That Nevada contract entitled Jacobs to various forms of compensation, including
14 stock options in the yet-to-be-formed spinoff that would subsequently become Sands China. (*Id.*)

15 • The Stock Option Agreement which Sands China breached is a direct product of
16 Jacobs' role as CEO, duties which he provided under the Nevada employment contract. Indeed, the
17 Stock Option Agreement specifies that it is in recognition of those services. (Ex. K to Sands China's
18 Mot. for Summ. J.)

19 • Sands China makes no efforts (because it cannot) to deny that "but for" Jacobs' CEO
20 services – those provided pursuant to the Nevada employment contract – that he would not have
21 been issued stock options, including in Sands China.

22 • The material events of breach of the Nevada employment agreement as well as the
23 Stock Option Agreement – Jacobs' wrongful termination – occurred in Nevada. (*See Jacobs*
24 *Countermot.*, 6:20-8:13, 14:20-16:18.)

25
26
27 ⁵ The Court may take judicial notice of filings with the Securities and Exchange
28 Commission. *Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1064 n.7 (9th Cir.
2008) (citing *Dreiling v. Am. Exp. Co.*, 458 F.3d 942, 946 n.2 (9th Cir. 2006)).

1 Because Sands China presents no evidence disputing those facts, and instead simply
2 attempts to argue the legal consequences of them, summary judgment is again appropriate. To
3 determine whether a court has specific jurisdiction over a defendant, the court looks at the following
4 three-prong test:

- 5 (1) The non-resident defendant must purposefully direct his
6 activities or consummate some transaction with the forum or
7 resident thereof; or *perform some act by which he*
8 *purposefully avails himself of the privilege of conducting*
9 *activities in the forum*, thereby invoking the benefits and
10 protections of its laws;
- 11 (2) The claim must be one which *arises out of or relates to the*
12 *defendant's forum-related activities*; and
- 13 (3) The exercise of jurisdiction must comport with fair play and
14 substantial justice, *i.e.*, must be reasonable.

15 *Yahoo, Inc. v. La Ligue Contre Le Racisme Et L'antisemitisme*, 433 F.3d 1199, 205-206 (9th Cir.
16 2006) (emphasis added). Once the first two prongs are satisfied, there is a presumption of
17 reasonableness and the burden shifts to Sands China to establish a "compelling case" that the court's
18 exercise of the jurisdiction is unreasonable. *Ballard v. Savage*, 65 F.3d 1495, 1500 (9th Cir. 1995).

19 The facts are uncontroverted that Sands China purposefully undertook activities in Nevada
20 – falsely orchestrating Jacobs' termination – so as to deprive him of his contractual rights. (See
21 Jacobs Countermot., 6:20-8:13, 14:20-16:18.) There is similarly no dispute that Jacobs' claims
22 "arise out of or relate to" those Nevada-based activities. And tellingly, Sands China makes no case,
23 let alone a compelling one, that a court's exercise of specific jurisdiction would somehow be
24 unreasonable. Indeed, in examining specific jurisdiction for breach of contract claims, courts hold
25 that jurisdiction is appropriate in the forum if the defendant's contacts there "were instrumental in
26 either the formation of the contract or its breach." *General Electric Co. v. Deutz AG*, 270 F.3d 144,
27 150 (3rd Cir. 2001); see also *Adelson v. Hananel*, 652 F.3d 75, 81 (1st Cir. 2011) (Sheldon Adelson
28 successfully claimed that an Israeli citizen was subject to specific jurisdiction in Massachusetts

1 because courts look at whether the defendant's activities were "instrumental either in the formation
2 of the contract or its breach.") (citations omitted).⁶

3 Again, there can be no serious suggestion that Jacobs' claim would not have arisen "but for"
4 Sands China's activities purposefully undertaken in Nevada. Nevada is where executives acting on
5 Sands China's behalf undertook the scheme to terminate Jacobs. All steps concerning the conduct
6 occurred in Nevada, and Sands China presents no evidence to the contrary. Because Jacobs' claims
7 arise out of and relate to Sands China's Nevada-based activities – wrongfully terminating him so as
8 to deprive him of his contractual rights – specific jurisdiction exists. *See Buckman v. Quantum*
9 *Energy Partners IV, L.P.*, No. 07-CV-1471-BR, 2008 WL 2235234, *6-7 (D. Or. May 29, 2008)
10 (specific jurisdiction exists because claim for breach of contract grew out of defendant's activities
11 in Oregon.)⁷

12 **IV. JACOBS IS ALSO ENTITLED TO SUMMARY JUDGMENT ON TRANSIENT**
13 **JURISDICTION.**

14 Unable to dispute the authorities rejecting its contention that transient jurisdiction only
15 applies to natural persons, Sands China now hangs its hat on one wholly-dissimilar case: *Freeman*
16 *v. Second Jud. Dist. Ct.*, 116 Nev. 550, 1 P.3d 963 (2000). There, the court merely explained, as
17 had other courts, that simply serving a resident agent – someone who merely contracts to accept
18 legal documents – does not (by itself) subject a legal entity to jurisdiction.

19 But as this Court knows, that is not remotely comparable to service upon a legal entity's
20 CEO who the company specifically authorized to conduct its affairs in the forum. *See Nutri-West*
21 *v. Gibson*, 764 P.2d 693, 695 (Wyo. 1988) (applying transient jurisdiction to subject partnership to

22
23 ⁶ The court specifically noted that it was irrelevant to which jurisdiction the laws governed
24 the contract, because that is a choice of law question, not a question for personal jurisdiction.
Id. at 81 n.2.

25 ⁷ Unable to shake its Nevada activities giving rise to specific jurisdiction, Sands China again
26 repeats its erroneous contention that Jacobs somehow waived specific jurisdiction. Jacobs has now
27 lost count of the number of times this Court has rejected this convenient theory – one built around
28 Sands China's misrepresentations to both this Court and the Nevada Supreme Court – as to its real
Nevada activities. (*See* Ex. 6, Order on Jacobs' Mot. to Compel Depo. Testimony dated May 8,
2013, 2:3-5 ("*As previously ordered*, Jacobs may question deponents . . . as to the decision making
and implementation of the decision to terminate Jacobs from Sands China, which is the 'who, what,
where, when, and how' behind the decision." (emphasis added).)

1 personal jurisdiction because the managing partner was personally served in the jurisdiction and her
2 "presence in the jurisdiction is related to partnership activity.") Again, Sands China tellingly cites
3 no case disputing the propriety of transient jurisdiction when a legal entity purposefully engages its
4 chief executive officer to operate the company's affairs from the forum.

5 DATED this 24th day of July, 2014.

6 PISANELLI BICE PLLC

7
8 By: /s/ Todd L. Bice

9 James J. Pisanelli, Esq., Bar No. 4027
10 Todd L. Bice, Esq., Bar No. 4534
11 Debra L. Spinelli, Esq., Bar No. 9695
12 Eric T. Aldrian, Esq., Bar No. 11897
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14 Las Vegas, Nevada 89169

15 Attorneys for Plaintiff Steven C. Jacobs
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PISANELLI BICE PLLC
3883 HOWARD HUGHES PARKWAY, SUITE 800
LAS VEGAS, NEVADA 89169

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 24th day of July, 2014, I caused to be served via the Court's E-Filing system, true and correct copies of the above and foregoing **REPLY IN SUPPORT OF COUNTERMOTION FOR SUMMARY JUDGMENT** properly addressed to the following:

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EXHIBIT 1

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS

Plaintiffs

vs.

LAS VEGAS SANDS CORP., et al..

Defendants

And related cases and parties

CASE NO. A-627691

DEPT. NO. XI

Transcript of
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON PLAINTIFF'S MOTION TO CONDUCT
JURISDICTIONAL DISCOVERY

TUESDAY, SEPTEMBER 27, 2011

APPEARANCES:

FOR THE PLAINTIFFS:

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

FOR THE DEFENDANTS:

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

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

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

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

2 (Court was called to order)

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

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

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

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

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

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

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

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

7 THE COURT: The motion in limine.

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

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

11 MR. PEEK: Yeah. I --

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

13 MS. GLASER: Actually, the --

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

16 THE COURT: Oh. Okay.

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

25 THE COURT: Okay.

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

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

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

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

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

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.
Mar: 23/2015
Tracie K. Lindeman
Clerk of Supreme Court
District Court Case Number
A627691-B

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

**Volume XIII of XXXIII
(PA2402 – 2640)**

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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 XIII of XXXIII (PA2402 – 2640)** 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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MANDAMUS RE MARCH 6, 2015 SANCTIONS ORDER
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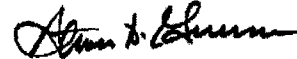
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CLERK OF THE COURT

1 **ORDR**

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5 **EIGHTH JUDICIAL DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**
7

8 STEVEN C. JACOBS,)

9 Plaintiff,)

10 vs.)

11 LAS VEGAS SANDS CORP., a Nevada)
12 corporation, et al.,)

13 Defendants.)

14 AND ALL RELATED CLAIMS)
15)
16)
17)

Case No.: A-10-627691-B

Dept. No.: XI

**ORDER ON PLAINTIFF STEVEN
C. JACOBS' MOTION TO
RETURN REMAINING
DOCUMENTS FROM
ADVANCED DISCOVERY**

Hearing Date: April 12, 2013

Hearing Time: In Chambers

18 Before this Court is Plaintiff Steven C. Jacobs' ("Jacobs") Motion to Return Remaining
19 Documents from Advanced Discovery (the "Motion"). The Court has considered all briefing on
20 the Motion, including the supplemental brief it ordered from Defendants and the Defendants'
21 Sur-Reply. The Court being fully informed, and good cause appearing therefor:

22 THE COURT HEREBY STATES as follows:

23 1. At issue are documents that Jacobs has had in his possession since before his
24 termination on July 23, 2010.

25 2. Amongst the documents that Jacobs possessed at the time of his termination were
documents over which Defendants claim an attorney-client or other form of privilege.

1 3. These are documents that Jacobs authored, was a recipient of, or otherwise
2 possessed in the course and scope of his employment.

3 4. Jacobs' present Motion does not seek to compel the Defendants to produce
4 anything. Rather, Jacobs seeks return of documents that were transferred to the Court's
5 approved electronic stored information ("ESI") vendor, Advanced Discovery, pursuant to a
6 Court-approved protocol.

7 5. Pursuant to a Court-approved protocol, Defendants' counsel were allowed to
8 review Jacobs' documents and have now identified approximately 11,000 of them as being
9 subject, in whole or in part, to some form of privilege, such as attorney-client, work product,
10 accounting or gaming.

11 6. Based upon these assertions of privilege, Defendants contend that even though
12 the documents are presently in Jacobs' possession, custody and control – the Court having
13 previously concluded as part of its Decision and Order dated September 14, 2012 that
14 Defendants are precluded from claiming that he stole the documents – they assert that Jacobs
15 cannot provide these documents to his counsel even if they relate to the claims, defenses or
16 counterclaims asserted in this action.

17 7. Jacobs' Motion, although styled as one seeking return of documents from the
18 Court's approved ESI vendor, Advanced Discovery, more aptly seeks to allow Jacobs' counsel
19 to access these documents, which Jacobs has otherwise possessed and had access to since before
20 July 23, 2010.

21 8. The Defendants assert that all privileges belong to the Defendants' corporate
22 entities, not any of their executives, whether present or former. From this, they contend that
23 Jacobs does not have the power to waive any privileges.

24 9. The Court notes a split of authority as to who is the client under such
25 circumstances. *See Montgomery v. Etrepid Techs. LLC*, 548 F. Supp. 2d 1175 (D. Nev. 2008).
However, the facts of this case are different, and the Court disagrees with the Defendants'
framing of the issue.

1 10. The Court does not need to address (at this time) the question of whether any of
2 the particular documents identified by the Defendants are subject to some privilege (a
3 contention which Jacobs disputes), whether Jacobs has the power to assert or waive any
4 particular privileges that may belong to the Defendants (a position which the Defendants'
5 dispute) or whether Defendants waived the privilege. Instead, the question presently before this
6 Court is whether Jacobs, as a former executive who is currently in possession, custody and
7 control of the documents and was before his termination, is among the class of persons legally
8 allowed to view those documents and use them in the prosecution of his claims and to rebut the
9 Defendants' affirmative defenses and counterclaim, as these were documents that the former
10 executive authored, received and/or possessed, both during and after his tenure.

11 11. Even assuming for the sake of argument that Defendants had valid claims of
12 privilege to assert to the documents as against outsiders, they have failed to sustain their burden
13 of demonstrating that Jacobs cannot review and use documents to which he had access during
14 the period of his employment in this litigation.

15 12. In the Court's view, the question is not whether Jacobs has the power to waive
16 any privilege. The more appropriate question is whether Jacobs is within the sphere of persons
17 entitled to review information (assuming that it is privileged) that pertains to Jacobs' tenure that
18 he authored, received and/or possessed, and has retained since July 23, 2010.

19 13. Even assuming for the sake of argument that Defendants had valid claims of
20 privilege to assert to the documents as against outsiders, they have failed to sustain their burden
21 of demonstrating that they have privileges that would attach to the documents relative to Jacobs'
22 review and use of them in this litigation.

23 14. That does not mean, however, that at this time the Court is making any
24 determination as to any other use or access to sources of proof. Until further order, Jacobs may
25 not disseminate the documents in question beyond his legal team. And, all parties shall treat the
documents as confidential under the Stipulated Confidentiality Agreement and Protective Order
entered on March 22, 2012.

1 THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

2 1. The Motion to Return Remaining Documents from Advanced Discovery is
3 GRANTED. When this Order becomes effective, Advanced Discovery shall release to Jacobs
4 and his counsel all documents contained on the various electronic storage devices received by
5 Advanced Discovery from Jacobs on or about May 18, 2012, and that have otherwise not been
6 previously released to Jacobs and his counsel.

7 2. Those documents listed on the Defendants' privilege log dated November 30,
8 2012, shall be treated as confidential under the Stipulated Confidentiality Agreement and
9 Protective Order entered on March 22, 2012 until further order from this Court.

10 3. This Order shall become effective ten (10) days from the date of its notice of
11 entry.

12 DATED: 18 June 2013

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14 

15 THE HONORABLE ELIZABETH GONZALEZ,
16 EIGHTH JUDICIAL DISTRICT COURT
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IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jun 21 2013 04:14 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

LAS VEGAS SANDS CORP., a Nevada
corporation, and SANDS CHINA LTD., a
Cayman Islands corporation,

Petitioners,

vs.

CLARK COUNTY DISTRICT AND THE
HONORABLE ELIZABETH GONZALEZ,
DISTRICT JUDGE,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Case Number:

District Court Case Number
A627691-B

**EMERGENCY
PETITION FOR WRIT OF
PROHIBITION OR
MANDAMUS TO
PROTECT PRIVILEGED
DOCUMENTS**

**RELIEF REQUESTED BY
JULY 5, 2013**

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Rule 26.1 Disclosure

The undersigned counsel of record certifies that the following are persons and entities as described in Nev. R. App. P. 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Petitioner Las Vegas Sands Corp. ("LVSC") is a publicly-traded Nevada corporation. LVSC owns a majority of the stock in Petitioner Sands China Ltd. ("SCL"), which is a Cayman Islands corporation whose stock is publicly traded on the Stock Exchange of Hong Kong Limited ("HKEx").

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I. INTRODUCTION

Defendants reluctantly bring their third Petition for a Writ of Mandamus in this wrongful termination litigation. This Petition arises out of the district court's June 19, 2013 Order directing that more than 11,000 documents containing defendants' privileged information be released to plaintiff for his use against defendants, with no evaluation of the merits of any of defendants' privilege claims. In compelling this *en masse* disclosure of privileged materials, the district court did not dispute that the challenged documents contained privileged information, or that defendants had taken all necessary steps to preserve the privilege. Instead, the court based its ruling on the broad assertion—made with no citation to any authority—that plaintiff is within a special "sphere of persons" legally entitled to disclose and use defendants' privileged documents because he had access to the documents when he was the CEO of Petitioner Sands China Ltd. ("SCL") and took them with him when he was terminated.

This ruling from one of Nevada's business courts places Nevada directly at odds with law elsewhere, including decisions of the U.S. Supreme Court and Nevada's federal court. *See, e.g., Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 349 (1985); *Montgomery v. eTrepid Techs., LLC*, 548 F. Supp. 2d 1175, 1187 (D. Nev. 2008). In these cases, the courts have held that (1) the attorney-client privilege applies to a corporation's communications with its attorneys; (2) the corporation is the exclusive holder of the privilege; and (3) a former executive therefore has no right to disclose or use the corporation's privileged documents. *Weintraub*, 471 U.S. at 349; *Montgomery*, 548 F.Supp.2d at 1183-87.

In this case, the privilege issue arose after SCL learned that plaintiff had surreptitiously taken nearly 40 gigabytes of the company's

electronically-stored information ("ESI")—including documents protected by the company's attorney-client privilege—when the company terminated him in 2010. After defendants brought this issue to the district court's attention, the court appointed a third-party vendor to take control of the ESI and then established a detailed protocol for the parties to review the data and make privilege claims. Using this protocol, defendants reviewed more than 98,000 electronic data files and prepared a detailed privilege log containing more than 11,000 entries.

Yet, at the end of this lengthy and expensive court-ordered process, the district court did not review a single document or evaluate the merits of any of defendants' privilege assertions. Nor did the court make any finding that the privileged communications are relevant to plaintiff's underlying claims. Instead, the court declared (with no analysis or supporting case law) that (1) an undefined "sphere of persons" has a legal right to inspect a corporation's privileged documents and then use the documents against the company in litigation; (2) defendants bore the burden of *disproving* plaintiff's assertion that he came within that "sphere"; and (3) defendants did not meet the "burden" the court had imposed on them. On this basis, the district court ordered the *en masse* disclosure of thousands of documents containing privileged information to plaintiff *and his attorneys* within 10 days.¹

A writ of prohibition is the proper "remedy for the prevention of improper discovery," *Wardleigh v. Dist. Ct.*, 111 Nev. 345, 350, 891 P.2d

¹ Defendants are seeking a stay of the district court's June 19 Order pending this Court's ruling. If that Order is not stayed, the e-discovery vendor to whom the documents were provided would be required to release the documents to plaintiff and his counsel by July 5, 2013, ten days after the June 20 notice of entry of the order.

1180, 1183 (1995). Defendants have no adequate remedy other than to seek extraordinary relief from this Court. Absent this Court's intervention, the documents at issue "would irretrievably lose [their] confidential and privileged quality and petitioners would have no effective remedy, even by a later appeal." *Id.* at 350-51, 891 P.2d at 1183-84.

This Petition also raises an important question of first impression under Nevada law—*i.e.*, whether a corporation's *former* executive has a right to review the corporation's privileged documents and then use the documents against the company in litigation. While this Court has not yet considered this question, other courts have done so. Most notably, the U.S. Supreme Court and other federal courts have squarely held that "[d]isplaced managers" like plaintiff have no control over a corporation's privileged communications, "even as to statements that the former [managers] might have made to counsel." *Weintraub*, 471 U.S. at 349; *see also Montgomery*, 548 F.Supp.2d at 1187.

The rationale of these decisions is especially applicable where, as here, the displaced manager is *suing* the corporation and thus pursuing personal interests that are directly adverse to the corporation. A corporation's managers are fiduciaries, and they must place the best interests of the company above their own interests. Allowing a former executive to take the company's privileged communications and then use them *against* the company in a lawsuit is fundamentally contrary to that manager's fiduciary duty. It is also antithetical to the important public interests served by the privilege. A corporate client (like anyone else who seeks legal advice) must be allowed to communicate candidly with its attorneys, without worrying that one of its officers might later try to use those communications against it.

Accordingly, Petitioners respectfully ask this Honorable Court for a writ of prohibition or mandamus (1) clarifying that plaintiff, as a former officer of SCL, has no right of access to (or control over) privileged documents belonging to SCL or its affiliates and no right to use their privileged documents against them; and (2) directing the district court to set aside its erroneous June 19, 2013 Order.

II. ISSUE PRESENTED BY THIS WRIT PETITION

Whether a corporation's former executive has a right to review the corporation's privileged documents, disclose them to his attorneys, and then use those documents against the company in litigation.

III. STATEMENT OF FACTS

A. The Underlying Litigation.

Plaintiff Steven C. Jacobs was the CEO of defendant SCL (which does business exclusively in Macau) until his termination in July 2010. Shortly thereafter, he filed this lawsuit in the Clark County district court against SCL and LVSC, alleging wrongful termination and breach of contract.

SCL moved to dismiss Jacobs' claims against it for lack of personal jurisdiction. The district court denied SCL's motion to dismiss, but on August 26, 2011, this Court issued an Order granting SCL's Petition for Mandamus. Petitioners' Appendix ("PA") 1-4. The Court's Order directed the district court to hold an evidentiary hearing and issue findings on the issue of personal jurisdiction over SCL. PA3. The Court also directed the district court to "stay the underlying action," except for matters relating to jurisdiction. *Id.*

B. Defendants Learn that Jacobs Took Their Documents, and Promptly Seek to Protect Their Rights.

On November 23, 2010, shortly after Jacobs filed suit, SCL advised Jacobs' attorney that SCL had reason to believe that Jacobs had taken company property following his termination, including three specifically-identified reports. PA26. SCL demanded that Jacobs return the reports and any "other Company property" he might have. *Id.* SCL further demanded that Jacobs "not modify or delete" any data relating to SCL or LVSC that was maintained on electronic storage devices. PA27. In late December 2010, Jacobs' attorneys returned two of the three requested reports, but they did not say whether he had any other company documents. PA3009, PA3011.

Months later, on July 8, 2011, Jacobs' attorneys revealed to SCL that Jacobs had "electronically transferred" to his attorneys' offices about 11 gigabytes of corporate e-mail communications,² including e-mails from "various attorneys employed by LVSC and SCL." PA34. In subsequent communications, Jacobs' attorneys "agreed not to produce the documents in this litigation" until the district court resolved the privilege issue. PA45. The attorneys also assured defendants that "our firm will continue to refrain from reviewing the documents so as not to create any issues regarding the documents containing communications with attorneys."³ *Id.*

² A "byte" is the digital analog of a word, and a "gigabyte" is over 1 billion bytes. Eleven gigabytes of data are equivalent to "tens of thousands of pages." *U.S. ex rel. Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1062 (9th Cir. 2011). As discussed below, defendants later learned that Jacobs actually held nearly four times that much data, some 40 gigabytes.

³ On September 13, 2011, LVSC filed motions for a protective order and to compel Jacobs to return all of the documents he had taken with him when he left Macau. PA5-14. LVSC subsequently withdrew those motions when the district court expressed doubts about whether it had jurisdiction to

On September 28, SCL filed a motion *in limine* to exclude Jacobs' ESI from the jurisdictional hearing. PA119-30. In briefing this motion, SCL proposed that the court adopt a protocol for a third party vendor to take custody of the ESI so that defendants could review the ESI and assert privilege objections to specific documents as appropriate. PA180-82.

C. The Court Approves a Detailed Protocol for the Parties to Review the Data and Make Privilege Claims.

On October 13, 2011, the district court denied SCL's motion *in limine* and directed the parties to meet and confer to develop a protocol for reviewing the ESI that Jacobs had taken from SCL. PA254, PA299. In the ensuing negotiations, defendants learned that (1) the total ESI in plaintiff's possession was nearly 40 gigabytes (and not 11 gigabytes, as Jacobs had previously represented) (PA367, PA494 § 2.5), and (2) despite an agreed order requiring the parties to preserve documents (and despite the specific representations made by Jacobs' counsel) Jacobs had continued to work with the electronic devices holding the data (PA369-73).

Following a November 22, 2011 hearing (PA622-23, PA654-57), the district court entered an order establishing the protocol for the parties to review the ESI that Jacobs had taken and to assert privileges. PA730-34. In the order, the court appointed Advanced Discovery to serve as the third-party ESI vendor (PA731 ¶ 1) and directed Jacobs either to (a) produce a "full mirror image of all electronic storage devices" to the vendor or (b) file a motion for a protective order showing that government requirements prevented the production of a full mirror image. PA731 ¶ 4.

entertain the motions in light of the limitations this Court had imposed in its August 26, 2011 Order. PA62-65.

Instead of producing the ESI, Jacobs moved for a protective order, complaining that the court-ordered process would force him to disclose privileged data. PA707-27. At the hearing on the motion, Jacobs' attorney represented that he could not assure the court that the data in his possession was truly a mirror image.⁴ PA2880. He also claimed that it was "extremely risky" to turn over "all of this sensitive information" to a third party vendor. PA2881. In response, the court directed the parties to meet and confer about revisions to the protective order that could accommodate Jacobs' concerns about the ESI review. PA769-70.

After the court approved the parties' modifications to the protective order in March 2012, Jacobs finally turned over his electronic devices to Advanced Discovery on May 17, 2012. PA2948. The vendor then had to extract the user files and process them for screening by plaintiff. *See* PA732 ¶¶ 5-6. Plaintiff took an additional month to complete his screening of the ESI. *See* PA2833.

D. Defendants Gain Access to the Data and Assert Detailed Privilege Objections.

As a result of this lengthy process, defendants were not able to review any of the data until July 24, 2012 (PA2836) – nearly two years after Jacobs took the ESI, and over a year after Jacobs' attorneys first notified defendants that he had taken the ESI. When defendants did gain access, four additional factors complicated their review: (1) the documents were voluminous, encompassing more than 98,500 files (PA2836); (2) the court-

⁴ Even now, there is still no assurance that the data plaintiff eventually produced is truly complete. On January 3, 2012 – the day of the hearing – plaintiff filed a police report claiming that his hard drive had been stolen from his apartment in Florida, where it had been hidden in a coffee pot. PA2886-90. Plaintiff did not notify defendants or the court of the alleged burglary.

appointed vendor had not completed its investigation of more than 7,500 "placeholder" files (PA2836-37); (3) defendants could not print or make copies of the electronic data (PA2833); and (4) defendants could not redact documents, or otherwise produce the non-privileged parts of documents (*id.*; PA2836 n.2).

Despite these obstacles, defendants produced a preliminary list of potentially-privileged documents on September 15, 2012 (PA2836), which allowed plaintiff to access the vast majority of the ESI—approximately 84,000 of the total 98,500 files. PA2812. In addition, in November 2012, defendants completed their review of the 14,000 potentially privileged files and arranged for Advanced Discovery to release an additional 3,000 files to plaintiff. PA2813. Defendants then gave plaintiff a final privilege log on December 2, 2012 (*id.*) – just two weeks after plaintiff issued his own log (PA2952-54). In total, defendants reviewed over 98,500 data files; released 84,000 files and provided a draft privilege log within two months; then released another 3,000 files and issued a final privilege log comprising over 1,700 pages (PA810) and containing over 11,000 entries (PA2813) about two months after that.⁵

E. The District Court's June 19, 2013 Order.

After receiving defendants' final privilege log, plaintiff never requested a meet-and-confer with defendants to discuss any issues relating to defendants' privilege log. Instead, on February 15, 2013 plaintiff filed a motion asking the district court to order the wholesale release of every

⁵ The vast majority of entries on defendants' log are based on the attorney-client privilege. A much smaller number are based on the work-product doctrine, as they relate to litigation with third parties that was pending or anticipated when Jacobs was terminated. A handful assert other privileges, such as the accountant-client privilege.

document identified on that log. PA809-27. Plaintiff acknowledged federal case law holding that terminated employees have no authority over corporate privileges, but claimed that the law recognized an exception for privileged documents authored or received by a former employee. PA810. In so doing, plaintiff did not make any showing that the privileged documents would be relevant to the jurisdictional inquiry (the only issue properly before the district court), but instead asserted that the documents would be relevant to his substantive claims. PA813-14.⁶

Defendants filed an opposition and a request for oral argument. PA2808-29, PA2891-96. The district court denied the request for oral argument and decided to first address plaintiff's claim that the privilege did not apply to his motion for access to the documents. PA2906. To this end, the court asked defendants to file a supplemental brief addressing the "effect of the privilege" when the corporation is litigating against a former officer and a protective order restricts the disclosure or use of confidential documents outside the litigation. *Id.*

Defendants filed a supplemental brief providing additional legal authority showing that a former officer like plaintiff may not use privileged documents against his former employer. PA2916. Defendants also showed that the existence of a protective order was irrelevant, because releasing defendants' privileged documents to their adversaries (plaintiff *and* his attorneys) would violate their privileges whether or not plaintiff disseminated those documents to the outside world. PA2916-20.

⁶ Plaintiff also argued that defendants had not adequately supported their privilege objections, and that defendants had waived privilege by placing privileged communications "at issue." Defendants opposed these arguments, and the district court did not reach them.

In his reply, Plaintiff made a new argument, asserting for the first time that the relevant issue was whether he was among a "class of persons" legally permitted to review and use the corporation's privileged communications. PA2956. Plaintiff then claimed that he was such an individual because he had possessed the documents during his employment at SCL and continued to possess them after his termination. PA2962-65. Defendants promptly moved to strike the new argument and (in the alternative) sought leave to file a sur-reply. PA3029-35.

On April 12, 2013, the district court issued a minute order stating that it would grant plaintiff's motion. PA3027. The court acknowledged that "any privilege related to these documents in fact *belongs to the Defendants*," but nevertheless held that plaintiff could "use the documents for purposes of this litigation." *Id.* (emphasis added). The court based this conclusion on the fact that "Jacobs was in a position and in fact had access to the documents at issue during the period of his employment." *Id.*

Subsequently, the district court gave defendants leave to file a sur-reply in opposition to the motion. PA3105. Defendants filed that sur-reply on June 12, 2013. PA3106-19. Two days later, the district court issued a minute order stating that it still intended to grant plaintiff's motion. PA3137. On June 19, 2013, the court entered its final order. PA3180-84. In the order, the court stated that it did not need to address defendants' privilege claims because it thought the relevant question was whether plaintiff "is among the class" or "sphere" of persons legally entitled to review and use defendants' privileged documents. PA3182 ¶¶ 10, 12. The order shifted the burden to defendants to prove that that plaintiff was not a member of this special "class of persons," then concluded they had not satisfied that burden because plaintiff possessed the documents both

during and after his tenure as CEO. *Id.* The order provided no case law or legal analysis to support its assertions that (1) an undefined "class of persons" enjoys a legal right to inspect a corporation's privileged documents and then use the documents in litigation against the company; (2) defendants bore the burden of showing that plaintiff was *not* a member of that special "class"; and (3) defendants could not exclude plaintiff from the purported "special" class because he possessed the documents both before and after his period of employment.

On this basis, the court directed Advanced Discovery to release to plaintiff and his counsel all of the documents defendants maintain are privileged and had logged as such in the log the district court required but did not review. PA2813, 2823-28, 3183. The court stayed the effective date of the order for 10 days after notice of entry (*id.*) so that defendants could seek writ relief from this Court. Defendants intend to promptly file a motion asking the district court to further stay the effect of its June 19 Order, pending this Court's consideration of this writ petition.

IV. STATEMENT OF REASONS WHY THE WRIT SHOULD ISSUE

A. The District Court's Order Presents Important Questions Of First Impression That Urgently Require Clarification.

Writ relief is appropriate where the petitioner has no "plain, speedy and adequate remedy in the ordinary course of law." NRS 34.330. Prohibition is the proper "remedy for the prevention of improper discovery," *Wardleigh*, 111 Nev. at 350, 891 P.2d at 1183, because discovery orders are not immediately appealable and the affected party does not have a plain, speedy, or adequate remedy at law to prevent disclosure. *Id.*

This is especially true for a district court order, like the one here, that "requires disclosure of privileged information." *Club Vista Fin. Servs., LLC*

v. Eighth Judicial Dist. Ct., 128 Nev. ___, 276 P.3d 246, 249 (2012). "If improper discovery were allowed" in such a case, "the assertedly privileged information would irretrievably lose its confidential and privileged quality and petitioners would have no effective remedy, even by a later appeal." *Id.* (quoting *Wardleigh*, 111 Nev. at 350-51, 891 P.2d at 1183-84). In this case, the district court ordered the *en masse* release of thousands of privileged documents, without evaluating the merits of defendants' privilege claims for any of those documents. Appeal in the normal course "would not effectively remedy" the massive and "improper disclosure of" privileged information that the district court has directed. *Id.*

Over and above the imminent threat of irreparable harm, "the consideration of an extraordinary writ" is also justified here because "an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction." *Sonia F. v. Eighth Judicial Dist. Ct.*, 125 Nev. 495, 498, 215 P.3d 705, 707 (2009) (citation omitted). It is clear that the attorney-client privilege belongs to the client, and that a corporation that obtains legal advice is the client. The district court itself acknowledged that "any privilege related to these documents in fact belongs to the Defendants." PA3027. This is mainstream law that should apply in Nevada. *Weintraub*, 471 U.S. at 348.

Yet notwithstanding these well-established principles, the district court held—with no supporting analysis or citations to case law—that a former executive is among a special "class of persons" having the legal right to inspect a corporation's privileged documents and then use those documents against the company in litigation. PA3182 ¶ 10. This Court has never considered, let alone endorsed, such a result, and it is directly contrary to the Supreme Court's decision in *Weintraub*.

In addition to its far-reaching implications for the attorney-client privilege, the district court's singular ruling, if allowed to stand, carries profound ramifications for corporate governance. A company's CEO has virtually limitless access to its most sensitive and privileged information. But with that power comes the equally weighty responsibility of being a fiduciary. Corporate officers must act in the best interests of the company, without regard to their own personal interests. Once terminated, their right to possess corporate property ends, but their fiduciary duties endure.

Under the district court's theory, however, a former officer is free to load the corporation's privileged documents into the digital equivalent of several semi-trucks upon his departure, and then haul those files away to use them against the company. The district court's ruling turns the concepts of fiduciary duty and loyalty upside down. Thus, in addition to preventing irreparable harm in this case, this Court's intervention will provide clarification on "an important issue of law" and serve broader "public policy" interests. *Sonia F.*, 125 Nev. at 498, 215 P.3d at 707.

B. The District Court's Order Adopts a Sweeping, and Unsupported, Exception to the Attorney-Client Privilege.

The district court held that plaintiff is a member of an undefined "class of persons" who can lawfully inspect (and use) defendants' privileged documents because (1) he previously had access to the documents during his period of employment; and (2) he continued to "possess" the documents after his termination. Neither theory has merit.

1. Plaintiff's Prior Access to Defendants' Privileged Documents Does Not Create a Right to Inspect or Use the Documents After His Termination.

The district court appeared to base its ruling primarily on the theory that plaintiff could legally inspect defendants' privileged documents (and use them against the company in litigation) because plaintiff had access to the documents during his tenure as SCL's CEO. This theory is contrary to settled principles of attorney-client privilege law.

It is beyond doubt that the attorney-client privilege belongs to the client. NRS 49.095 ("A client has a privilege to refuse to disclose, and to prevent any other person from disclosing" privileged communications). It is equally indisputable that when a corporation receives legal services, that corporation is the client. NRS 49.045 (defining "client" to "includ[e] a . . . corporation"); *Weintraub*, 471 U.S. at 348 ("It is by now well established, and undisputed by the parties to this case, that the attorney-client privilege attaches to corporations."). The district court did not disagree with this principle; on the contrary, it specifically acknowledged that "any privilege related to these documents in fact belongs to the Defendants." PA3027. Contrary to the district court's Order, this fact is not only relevant but dispositive. Because defendants hold the privilege, only they can decide if, when, and how their privileged documents may be used.

Plaintiff's status as the former CEO of SCL does not give him any "right of access" to defendants' privileged communications, even if he reviewed, created or received the communications during his tenure as CFO. If the corporation is the exclusive holder of the privilege (and the district court agreed that it is), the corporation has the *exclusive* right to decide whether to assert or waive the privilege with respect to privileged

documents. Consequently, a former executive has no "right of access" to such documents because he is no longer a part of the corporation.

Consistent with this logic, the Supreme Court in *Weintraub* explained that "for solvent corporations" – like the Petitioners here – "the power to waive the corporate attorney-client privilege rests with the corporation's management and is normally exercised by its officers and directors." 471 U.S. at 348. Thus, "when control of a corporation passes to new management, the authority to assert and waive the corporation's attorney-client privilege passes as well." *Id.* at 349. "Displaced managers may not assert the privilege over the wishes of current managers." *Id.* The Court made clear that this principle applies "even as to statements that the former [managers] might have made to counsel." *Id.* Based on that principle, the Court concluded that a former executive "who is now neither an officer nor a director . . . retains no control over the corporation's privilege." *Id.* at 349 n.5.

Similarly, the federal district court in Nevada held that a former officer "may not access" his former employer's "attorney-client privileged communications" in his lawsuit against his former employer. *Montgomery*, 548 F. Supp. 2d at 1187. The court found "very convincing" the Supreme Court's opinion in *Weintraub* (discussed above), "which states that the privilege belongs to the corporation, can be asserted or waived only by management, and that this power transfers when control of the corporation is transferred to new management." *Id.* Further, after a lengthy survey of case law (*id.* at 1183-87), the court concluded that the "line of cases" holding that "the corporation is the sole client" (and thus has exclusive power over the privilege) was "more persuasive" (*id.* at 1187). Finally, the court added, the former officer was "not suing on behalf of" the company "or in his

capacity as a former manager or officer," but was instead "suing to benefit himself individually," a position that did not "entitle him to [the company's] attorney-client privileged communications." *Id.* At the time of suit, he was "adverse" to the client – and even during his employment (when he had lawful "access to such documents") "he still would have been duty-bound to keep such information confidential." *Id.*

Contrary to the district court's view, it makes no difference that plaintiff is a former CEO of SCL or that he had access to the privileged documents while he was CEO. Because the privilege belongs exclusively to the corporation, a former executive has no control over a corporation's privileged communications. As noted earlier, the Supreme Court squarely held in *Weintraub* that "[d]isplaced managers may not assert the privilege over the wishes of current managers, even as to statements that the former [managers] might have made to counsel concerning matters within the scope of their corporate duties." 471 U.S. at 349.

Likewise, the Nevada federal court in *Montgomery* held that a former officer "may not access" his ex-employer's privileged documents, "even though [he] would have had access to such documents during his time [at the company]." 548 F. Supp. 2d at 1187. *See also Gilday v. Kenra, Ltd.*, No. 1:09-cv-229-TWP-TAB, 2010 WL 3928593, at *4 (S.D. Ind. Oct. 4, 2010) (corporation "may assert the attorney-client privilege against [former employee], even as to privileged documents she accessed during her employment"); *Davis v. PMA Cos.*, No. CIV-11-359-C, 2012 WL 3922967, at *6 (W.D. Okla. Sept. 7, 2012) (corporation's former president may not "access communications that he once authorized, received or otherwise

participated in while president" because after termination he "is not the client and has no right to access any privileged communications").⁷

All of these results make perfect sense. In each case – and in this one as well – the former officer made or obtained privileged communications while he was still employed by the company, in his capacity as a corporate officer. In that capacity, the officer is bound by a fiduciary duty to serve the company's interests, without regard to his or her own personal interests. Thus, "even though [plaintiff] would have had access" to privileged communications while he was employed, "he still would have been duty-bound to keep such information confidential." *Montgomery*, 548 F. Supp. 2d at 1187. But now, plaintiff "is suing to benefit himself individually." *Id.* That may be "a perfectly acceptable position, but" it is certainly "not one which should entitle him to [defendants'] attorney-client privileged communications." *Id.* It would be "paradoxical to allow a party to access information previously available to that individual only because

⁷ Other decisions reach the same result. See, e.g., *Milroy v. Hanson*, 875 F. Supp. 646, 649-50 (D. Neb. 1995) ("A dissident director is by definition not 'management' and, accordingly, has no authority to pierce or otherwise frustrate the attorney-client privilege."); *Fitzpatrick v. Am. Int'l Group, Inc.*, 272 F.R.D. 100 (S.D.N.Y. 2010) (former CEO, who sued his ex-employer alleging he was terminated without cause, was not entitled to discovery of privileged documents); *Barr v. Harrah's Entm't, Inc.*, No. Civ. 05-5056JEL, 2008 WL 906351 (D.N.J. Mar. 31, 2008) (former CEO, who filed putative class action related to stock options, could not obtain in discovery documents he had access to while CEO); *In re Hechinger Inv. Co.*, 285 B.R. 601, 610 (D. Del. 2002) ("[T]hose managers displaced may not assert or waive the privilege over the desires of the current managers, including for statements that the former [managers] made to counsel"); *Dexia Credit Local v. Rogan*, 231 F.R.D. 268, 277 (N.D. Ill. 2004) ("[O]nce [former CEO's] control group status terminated, so too did his right of access to privileged documents of the corporation.").

of his or her role as a fiduciary once that party is adverse to the corporation." *Davis*, 2012 WL 3922967, at *6.

The Nevada privilege statutes compel the same conclusion. NRS 49.095 plainly authorizes the client to "prevent any other person from disclosing" confidential attorney-client communications. NRS 49.115 lists the exceptions to the privilege, but it does not contain any exception for former employees who happen to make, receive, or otherwise obtain access to privileged communications. There is no basis for the district court's attempt to create such an exception here.

2. Plaintiff's Possession of Defendants' Privileged Documents After His Termination Does Not Create A Right to Inspect or Use the Documents in Litigation.

Because there is no exception to privilege for documents created or obtained by a former officer, plaintiff and the district court tried shifting to avoid the issue of privilege entirely. Thus, the June 19 Order states that it "does not need to address . . . whether any of the particular documents identified by the Defendants are subject to some privilege" or "whether Jacobs has the power to assert or waive any particular privileges that may belong to the Defendants." PA3182 ¶ 10. The Order states that "[t]he documents at issue are all presently within [Jacobs'] possession, custody and control" and deems the assertion of privilege irrelevant in considering whether "to allow Jacobs' counsel to access these documents" or to allow Jacobs and his attorneys to "use them in the prosecution of his claims." *Id.*

Contrary to the district court's view, an adverse party's possession of privileged documents does not make the issue of privilege go away. As holders of the privilege, defendants have the right to prevent Jacobs from using those communications against them or from disclosing those

communications to his lawyers, to the district court, or to anyone else. NRS 49.095 gives defendants the absolute "privilege to refuse to disclose" their privileged communications *and* "to prevent *any other person* from disclosing" those communications.

Gaining possession of privileged documents does not give an adverse party any right to disclose them further or to use them in litigation against the privilege holder. To the contrary, if a party receives privileged documents that were inadvertently produced, Model Rules of Prof'l Conduct R. 4.4(b) requires the receiving party's counsel to "promptly notify the sender." Indeed, this Court has recognized that an attorney who receives the other side's privileged documents "must promptly notify opposing counsel," even if the documents were received from an anonymous source or a third party unrelated to the litigation. *Merits Incentives, LLC v. Eight Judicial Dist. Ct.*, 127 Nev. ___, 262 P.3d 720, 725 (2011). These duties apply with even more force when an attorney receives an adverse party's confidential documents from his or her client. *Id.* at 724-25. Moreover, "a party whose privileged information has been obtained by the opposing party" may "seek[] the return of that information" from its opponent and then seek "relief from the district court" if the opponent refuses. *Id.* at 725 n.7. The June 19 Order's refusal even to confront the issue of privilege is flatly contrary to the statute and to this Court's holdings.

Whether or not plaintiff properly obtained the privileged documents while he was employed as CEO of SCL makes no difference.⁸ As discussed

⁸ Defendants believe that plaintiff downloaded much of the data in anticipation of his termination, in order to take it with him when he left. To the extent that was the case, the documents would not have come to his

above, now that plaintiff has been terminated, he no longer has any authority over privileges that belong to SCL and LVSC. When plaintiff obtained the documents, he was under a fiduciary duty to act in the company's best interests. Now that he has been terminated and is pursuing a lawsuit *against* the company, he has no right to use those privileged documents against defendants (who are the only rightful holders of the privilege) or to disclose them to his attorneys. See *In re Marketing Investors Corp.*, 80 S.W.3d 44, 50 (Tex. App. 1998) ("We conclude the attorney-client privilege applies against" terminated executive notwithstanding his "possession of the Corporate documents"); *Gilday*, 2010 WL 3928593, at *1, *4 (corporation "may assert the attorney-client privilege against [former employee], even as to privileged documents she accessed during her employment," and even though former employee "copied several documents" and took them prior to termination). The employee's possession of privileged documents cannot make a difference: otherwise, terminated employees would have the perverse incentive to take masses of privileged documents with them as they leave the building.

Equally baseless is the district court's reference (PA3181 ¶ 6) to a prior order, entered September 14, 2012, that sanctioned defendants by precluding them, for purposes of jurisdictional discovery and the evidentiary hearing on jurisdiction (now scheduled to begin on July 16, 2013), "from contesting that Jacobs ESI . . . is not rightfully in his possession" (PA770I). The question here is not whether the ESI is rightfully in Jacobs' possession, but whether he may now disclose defendants' *privileged* documents to his attorneys and then use the documents against

attention in the ordinary course of his employment. He had no right to access the documents or take them with him.

defendants in the underlying lawsuit. While the September 14, 2012 sanctions order settles the admissibility issue with respect to the *non-privileged* documents that Jacobs took with him, for purposes of the evidentiary hearing on jurisdiction, it has no relevance to whether defendants can object to plaintiff's dissemination or use of documents on privilege grounds.

Indeed, the September 14, 2012 order makes that very point clear: far from foreclosing or resolving claims of privilege, the order expressly *preserves* them. It squarely states that "[t]his [sanction] *does not prevent* the Defendants from raising any other appropriate objection *or privilege*." PA770I n.13 (emphasis added). Given the order's express preservation of privilege, it was manifestly improper for the district court to subsequently bootstrap that order into a basis for disregarding privilege.⁹

Finally, the June 19 Order is fundamentally inconsistent with the purpose of the privilege: "to encourage full and frank communication between attorneys and their clients," without fear that the communication might someday be turned against them. *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). To serve that purpose, the U.S. Supreme Court held that the privilege extends beyond the narrow "control group" to encompass an attorney's communications with middle and lower-level employees. *Id.* at 390-93. As the Court explained, the restricted control-group test would

⁹ The district court entered the September 14 order as a discovery sanction after defendants voluntarily disclosed in 2010 that they had transferred a copy of the ESI for which Jacobs was the custodian from Macau to Las Vegas; the district court decided that defendants should have disclosed the transfer sooner. A subsequent order entered on March 27, 2013 that purports to interpret the September 14 order is the subject of a separate Petition, No. 62944, which this Court has accepted. The June 19 Order here represents another improper expansion of the September 14, 2012 order.

"frustrate[] the very purpose of the privilege by discouraging the communication of relevant information": employees outside the control group are likely to "have the relevant information needed by corporate counsel" and they are also likely to be the ones who "will put into effect" the lawyer's advice. *Id.* at 391-92.

This Court has "approve[d] the test announced in *Upjohn*." *Wardleigh*, 111 Nev. at 352. But the district court's theory is fundamentally opposed to that framework. Under the June 19 Order, any employee who communicated with a lawyer – *and* any other employee who happens to get his or her hands on a copy of that communication – would be able to use that privileged communication against the company. Thus, widening the circle of attorney-client communication would *increase* the company's risk and increase the number of people who might take privileged communications with them when they depart and later use those communications against the company. If that were the case, companies would not encourage their employees to communicate with company attorneys in the first place. As the court held in *Dexia*, allowing former employees to use the company's privileged documents "would undermine the privilege" and "chill the willingness of control group members to speak candidly on paper (or these days, in electronic media) about privileged matters, knowing that some day one of their number may leave the control group and become adverse (whether through litigation or business activity) to the corporation." 231 F.R.D. at 277. *See also Gilday*, 2010 WL 3928593, at *4 ("These rationales [for upholding privilege] are sound, particularly given the revolving door that is a mainstay of today's corporate employment setting.").

3. The Law Recognizes No "Sphere Of Persons" Having a Legal Right to Inspect or Use a Corporation's Privileged Documents.

After discarding the dispositive issue of privilege, the district court turned to an irrelevant question, advanced by plaintiff in his reply brief: whether plaintiff falls within an undefined "class" or "sphere of persons" who purportedly have a legal right to review and use defendants' privileged documents. PA3182, ¶¶ 10, 12. The court then held that plaintiff fell within this special "sphere of persons." PA3182 ¶ 12. In so doing, the court committed two fundamental errors.

First, the court posed the wrong question. Under Nevada law there is no "sphere of persons" – other than the client itself – that has any authority to disclose or use privileged documents. By its plain terms, NRS 49.095 gives the client the privilege "to prevent *any other person* from disclosing" privileged communications. No person or class of persons is exempt from the statutory command. Likewise, neither the June 19 Order, nor the plaintiff's briefs below, cited any Nevada case law exempting any class of persons from the statutory privilege. Where (as here) privilege is asserted, the only proper inquiries are the ones the district court avoided: (i) whether the communication satisfies the statutory elements for protection; (ii) whether one of the statutory exceptions in NRS 49.115 applies; and (iii) whether *the client* waived the privilege.

Lacking any basis in Nevada law for his "special class" theory, plaintiff tried to manufacture support from out-of-state case law. PA819-20, PA2963-65. None of those cases supports the district court's June 19 Order. Most of them arose in the wholly unrelated context in which a former in-house attorney sues his client in a dispute about the attorney's

advice.¹⁰ Such attorney-client disputes are inapposite. They are the subject of a special exception to privilege that is expressly limited to disputes between attorney and client. *Willy*, 423 F.3d at 496 (citing exception for attorney-client disputes under model rules); NRS 49.115(3) (Nevada privilege exception limited to "a communication relevant to an issue of breach of duty by the lawyer to his or her client or by the client to his or her lawyer"). That separate exception has no bearing here. Plaintiff is not an attorney and this case is not an attorney-client dispute.

Plaintiff's other citations are equally off base. *People v. Greenberg*, 851 N.Y.S.2d 196 (Ct. App. 2008) did not involve a former officer's suit against the corporation; in fact, the former officers and the company were aligned. *Greenberg* dealt with the right of two former directors to view privileged memoranda in defending against a suit by the New York Attorney General, who was also suing the company. *Id.* at 198. The "[m]ost significant" factor in the *Greenberg* decision was that the company had already waived its privilege claims by voluntarily producing virtually all of the documents to the SEC. *Id.* at 202. Further, the court relied on New York law giving former directors a qualified right to inspect corporate documents generated during their tenure. *Id.* at 199. None of these case-specific facts is presented here: plaintiff is obviously not aligned with the corporate clients

¹⁰ See *Willy v. Admin. Review Bd.*, 423 F.3d 483 (5th Cir. 2005); *Kachmar v. SunGard Data Sys., Inc.* 109 F.3d 173 (3d Cir. 1997); *Van Asdale v. Int'l Game Tech.*, 577 F.3d 989 (9th Cir. 2009); *Fox Searchlight Pictures, Inc. v. Paladino*, 106 Cal. Rptr. 2d 906 (Ct. App. 2001). *Kachmar* and *Van Asdale* do not even address discovery, much less order the disclosure of privileged communications. They simply hold, at the pleadings stage, that a former attorney may bring a whistleblower suit, notwithstanding the possibility that attorney-client confidences might later be implicated.

but adverse to them, he is not a former director, and defendants have not waived their privilege claims.

In re Braniff Insolvency Litig., 153 B.R. 941 (M.D. Fla. 1993) is also inapposite; indeed, it involves a context that is the polar opposite of the situation here. In *Braniff*, former officers and directors were *defendants* in a suit brought by the company (which was then in bankruptcy). *Id.* at 942 & n.1. Plainly, *Braniff* does not address the situation presented here, in which the roles are reversed and a former officer seeks to use privileged documents offensively, as a plaintiff. In the context presented here, the weight of federal authority holds that a displaced officer has no right to access, disclose or use the company's privileged communications. As discussed above, that conclusion stems from the Supreme Court's decision in *Weintraub*, the officer's fiduciary duty of loyalty, and the public policy of encouraging candid communication between the corporate client and its attorney. *Braniff* arose in a context opposite from the one at bar, and the court's opinion does not mention *Weintraub*, does not address the concept of fiduciary duty, and does not discuss the policies served by the privilege.

4. Plaintiff May Not Disclose or Use Defendants' Privileged Documents.

As the preceding section shows, the district court asked the wrong question – whether plaintiff belongs to a privilege-exempt "class of persons" when no such class exists under Nevada law. The district court then gave the wrong answer when it decided that plaintiff was entitled to disclose defendants' privileged documents to his attorneys and use those documents in litigation.

The district court reached that erroneous conclusion by shifting the burden to defendants to *disprove* plaintiff's assertion that he belonged in a

special "class" and then stating that defendants "failed to sustain" that burden. PA3182 ¶¶ 11, 13. Requiring defendants to prove the negative –or to exclude plaintiff from a "class of persons" when no such class exists under Nevada law in the first place – is manifestly improper. As demonstrated above, NRS 49.095 gives the corporate client an absolute privilege against the disclosure of privileged communications by "*any other person*" and plaintiff's status as a former officer of one defendant does not give him any rights to defendants' privileged documents. Defendants bear the burden of establishing *privilege*, but the district court did not evaluate their claims on the merits and indeed "assum[ed] . . . that Defendants had valid claims of privilege to assert." PA3182 ¶¶ 11, 13.

The district court's suggestion that the documents might "relate to the claims, defenses or counterclaims asserted in this action" makes no difference. At the outset, there is no record basis for such a finding. The district court ordered the wholesale release of thousands of privileged documents *without looking at any of them*. The court made *no attempt* to assess whether any document was even relevant to the "claims, defenses or counterclaims asserted in this action." And it strains credulity to suggest that every one of the nearly 11,000 documents is somehow relevant to the issues in this case.

Nor did the court make any finding that any of the privileged documents is relevant to the question of personal jurisdiction, the only issue properly before the district court in light of this Court's August 2011 Order. Plaintiff did not show that any of the privileged documents (let alone all of them) were relevant to jurisdiction; instead, his brief below argued they would be relevant to the merits. The district court's statement

that plaintiff could use the documents "in the prosecution of his claims" (PA3182 ¶ 10) reinforces the lack of any connection to jurisdiction.

More fundamentally, though, the statutory attorney-client privilege is not qualified but "absolute," and it does not permit courts to perform any "balance between a public interest [in nondisclosure] and the need for relevant evidence in civil litigation." *State ex rel. Tidvall v. Eighth Judicial Dist. Ct.*, 91 Nev. 520, 525, 539 P.2d 456, 459 (1975) (construing identical language of governmental privilege in NRS 49.025). The attorney-client privilege "cannot be overcome by a showing of need." *Admiral Ins. Co. v. U.S. Dist. Ct.*, 881 F.2d 1486, 1494 (9th Cir. 1989) (quoting Saltzburg, *Corporate and Related Attorney-Client Privilege: A Suggested Approach*, 12 Hofstra L. Rev. 279, 299 (1984)). A rule that exposes privileged communications to the client's adversary for use in litigation based on claims of relevance "would destroy the privilege or render it so tenuous and uncertain that it would be 'little better than no privilege at all.'" *Id.* at 1495 (quoting *Upjohn*, 449 U.S. at 393). Because "the attorney-client privilege" is "an absolute privilege, once the court determines that the matter sought falls within the scope of the privilege, it cannot order the matter disclosed unless it fits within some exception to the privilege." Wright, Graham, Gold & Graham, *Federal Practice & Procedure*, § 5690. The June 19 Order is based on the district court's improper evasion of the only inquiries that the statutory privilege permits.

C. The Protective Order in the Underlying Litigation Does Not Permit the District Court to Order the Release of Defendants' Privileged Communications to their Adversary.

The June 19 Order also errs in assuming that the district court is free to disregard defendants' rights and turn their privileged documents over to plaintiff and his attorneys for use in the litigation, simply because a

protective order prevents them from using or disclosing the documents outside the litigation. PA3182¶ 14. The existence of a protective order does not allow the district court to disregard defendants' privileges.

The protective order prevents parties from disclosing confidential information to outsiders, or using that information outside this litigation. But that is not the protection that the attorney-client privilege demands. The court-ordered disclosure of defendants' privileged documents to defendants' adversary, and that adversary's use of those documents *within* the underlying litigation, would be patent violations of the privilege, and would wreak irreparable harm on defendants. See *Chase Manhattan Bank, N.A. v. Turner & Newall, PLC*, 964 F.2d 159 (2d Cir. 1992) (granting writ of mandamus and vacating discovery order that allowed opposing counsel to review privileged documents, even though review was governed by an "attorneys'-eyes-only" protective order); *In re Dow Corning Corp.*, 261 F.3d 280, 286 (2d Cir. 2001) (remanding discovery order that had compelled disclosure of privileged documents and deposition of attorney pursuant to protective order, and admonishing trial court that "a protective order will not adequately safeguard the privilege holder's interests such that the attorney-client privilege may be neglected").

In *Chase Manhattan*, as in the present case, the defendant asserted privilege as to "thousands of documents" and the plaintiff challenged that assertion. 964 F.2d at 160-61. Instead of resolving the privilege issue *before* disclosure, the district court ordered the defendant to produce the documents for review by plaintiff's counsel under an attorneys'-eyes-only provision of the protective order. The appellate court granted a writ of mandamus and vacated the order. First, the court observed, "[o]ur research suggests that . . . such a procedure is, but for one precedent, non-

existent" – and that one precedent was an "unreported decision by a district court in another circuit" with "no reasoning" and "no precedential value." *Id.* at 164, 165.

Second, the court recognized that disclosure would create irreparable harm even if the communications were "later deemed to be privileged" and thus "inadmissible at trial." *Id.* at 165. As the court explained, "[t]he attorney-client privilege prohibits disclosure to adversaries as well as the use of confidential communications as evidence at trial." *Id.* at 164. Therefore, "[i]f opposing counsel is allowed access to information arguably protected by the privilege before an adjudication as to whether the privilege applies, a pertinent aspect of confidentiality will be lost" whether or not the documents are admitted or excluded at trial. *Id.* at 165.

Third, the court found that the attorneys'-eyes-only review permitted by the trial court under the terms of a protective order was still a violation of privilege. Indeed, as the court noted, "a litigant claiming the privilege would probably prefer almost anyone other than adversary counsel to review the documents in question." *Id.* at 164. "The attorneys'-eyes-only condition" of the protective order did not support disclosure, because it "allows one kind of critical disclosure – to opposing counsel in litigation – that the privilege was designed to prevent." *Id.*

Similarly, the appellate court in *Dow Corning* held that "a protective order purportedly designed to safeguard Dow Corning's privileges and prevent further dissemination" did not support the disclosure of privileged documents. 261 F.3d at 282-83. As the court held, the "compelled disclosure of privileged attorney-client communications, absent waiver or an applicable exception, is contrary to well established precedent." *Id.* at 284. As in *Chase Manhattan*, the court "found no authority . . . that holds

that imposition of a protective order like the one issued by the district court permits a court to order disclosure of privileged attorney-client communications." *Id.* "The absence of authority no doubt stems from the common sense observation that such a protective order is an inadequate surrogate for the privilege." *Id.* Accordingly, the appellate court remanded the matter to the trial court for an evaluation of the privilege asserted – with the stern admonition "that relevance without more does not override the privilege, and that a protective order will not adequately safeguard the privilege holder's interests such that the attorney-client privilege may be neglected." *Id.* at 286.

V. CONCLUSION

Petitioners respectfully request that this Court exercise its discretion to entertain this Petition and grant Petitioners emergency relief by July 5, 2013, either by granting the Petition or by staying the effect of the district court's June 19 Order pending consideration of the Petition. Petitioners further request that the Court grant the Petition by: (1) clarifying that a corporation's former CEO has no right to use privileged communications of the corporation and its affiliates in a suit against those companies; and (2) directing the district court to set aside its erroneous Order.

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By: /s/ STEVE MORRIS

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Attorneys for Petitioners

NRAP 27(E) CERTIFICATE OF NEED FOR EMERGENCY RELIEF

I, Steve Morris, declare:

1. I am a lawyer with Morris Law Group, counsel of record for CityCenter.
2. I certify that the relief requested in this Petition is needed on an emergency basis. Unless the district court's order is reversed, Petitioners will suffer immediate and irreparable harm and their privileges will be impaired.
3. As explained in this Petition, urgency of immediate review is present because the district court's order requires a third-party vendor to release petitioners' privileged documents on July 5, 2013. Petitioners intend to promptly seek a stay from the district court pending this Court's review of the Petition and will advise the Court immediately of the outcome.
4. The contact information (including telephone numbers) for the other attorneys in this case is as follows: James J. Pisanelli, Todd Bice, Debra Spinelli, Pisanelli Bice, 3883 Howard Hughes Parkway, Suite 800, Las Vegas, Nevada 89169, (702) 214-2100. Opposing counsel were notified that Petitioners would be challenging the district court's order by writ, and have been e-served with a copy of this Petition concurrently with its submission to this Court.

I declare the foregoing under penalty of perjury under the laws of the State of Nevada.


Steve Morris

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this **EMERGENCY PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIVILEGED DOCUMENTS**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Nev. R. App. P. 28(e), which requires every section of the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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Attorneys for Petitioners

VERIFICATION

1. I, Robert Rubenstein, declare:
2. I am Vice President and Global Deputy General Counsel at Las Vegas Sands Corp., one of the Petitioners herein;
3. I verify that I have read the foregoing **EMERGENCY PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIVILEGED DOCUMENTS**; that the same is true of my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury of the laws of Nevada, that the foregoing is true and correct.

Executed on this 20th day of June 2013 in Las Vegas, Nevada, U.S.A.



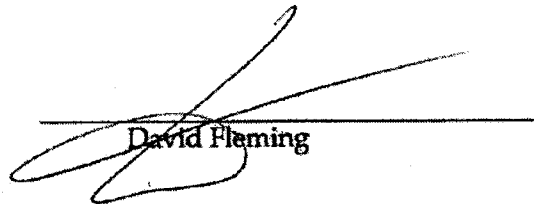
Robert Rubenstein

VERIFICATION

1. I, David Fleming, declare:
2. I am the General Counsel and Company Secretary at Sands China, Ltd., one of the Petitioners herein;
3. I verify that I have read the foregoing **EMERGENCY PETITION FOR WRIT OF PROHIBITION OR MANDAMUS TO PROTECT PRIVILEGED DOCUMENTS**; that the same is true of my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury of the laws of Nevada, that the foregoing is true and correct.

Executed on this 20th day of June 2013 in London, England.


David Fleming

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 **REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE MARCH 27, 2013 ORDER** to be hand delivered, in a sealed envelope, on the date and to the addressee(s) shown below:

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

Respondent
James J. Pisanelli
Todd L. Bice
Debra Spinelli
Pisanelli Bice
3883 Howard Hughes Parkway, Suite 800
Las Vegas, Nevada 89169

Attorneys for Steven C. Jacobs, Real Party in Interest

DATED this 21st day of June, 2013.

By: /s/ PATRICIA FERRUGIA

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Location : District Court Civil/Criminal [Help](#)

REGISTER OF ACTIONS

CASE NO. A-10-627691-B

Steven Jacobs, Plaintiff(s) vs. Las Vegas Sands Corp, Defendant §
 (s) §
 §
 §
 §
 §
 §
 §

Case Type: **Business Court**
 Date Filed: **10/20/2010**
 Location: **Department 11**
 Case Number History: **A-10-627691-C**
 Cross-Reference Case Number: **A627691**
 Supreme Court No.: **58740**

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EVENTS & ORDERS OF THE COURT

07/11/2013 **Status Check (8:30 AM)** (Judicial Officer Gonzalez, Elizabeth)
Status Check: Stay (per Stip & Order filed 6/5/13)

Minutes

07/11/2013 8:30 AM

- Mr. Jones advised they have heard from the Supreme Court.
- Mr. Bice stated from their perspective today is just a status check and they have not been given any guidance. COURT

ORDERED, stay EXTENDED for ninety (90) days. Matter SET
for Status Check on October 10, 2013. 10-10-13 8:30 AM
STATUS CHECK: SUPREME COURT

Parties Present

Return to Register of Actions

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03-14-13 PM 4:20 RCVD

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15 *Attorneys for Las Vegas Sands Corp.
and Sands China, Ltd.*

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

19 STEVEN C. JACOBS,

20 Plaintiff,

21 v.

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

25 Defendants.

26 AND ALL RELATED MATTERS.
27
28

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CLERK OF THE COURT

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

**ORDER EXTENDING STAY OF
ORDER GRANTING PLAINTIFF'S
RENEWED MOTION FOR NRCP 37
SANCTIONS PENDING
DEFENDANTS' PETITION FOR WRIT
OF PROHIBITION OR MANDAMUS**

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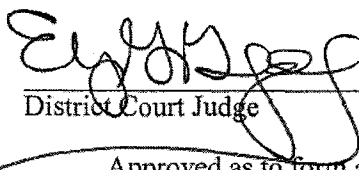
On July 11, 2013, Plaintiff Steven C. Jacobs ("Jacobs") and Defendants Las Vegas Sands Corp. and Sands China, LTD. ("SCL") (collectively "Defendants") came before this Court for a status check on the stay of the Order Granting Plaintiff's Renewed Motion for NRCP 37 Sanctions Pending Defendants' Petition for Writ Prohibition for Mandamus ("Order"), which was previously extended in an order dated June 5, 2013. Todd L. Bice, Esq. and Debra L. Spinelli, Esq. of the law firm PISANELLI BICE PLLC appeared on behalf of Jacobs. J. Stephen Peek, Esq. of the law firm HOLLAND & HART LLP appeared on behalf of Defendants. J. Randall Jones, Esq. of the law firm KEMP, JONES & COULTHARD, LLP appeared on behalf of SCL. The Court considered the status of the underlying writ petition before the Nevada Supreme Court, and good cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. The stay of the Order Granting Plaintiff's Renewed Motion for NRCP 37 Sanctions Pending Defendants' Petition for Writ Prohibition for Mandamus, filed on May 13, 2013, is extended for ninety (90) days from the July 11, 2012 status check; and

2. The Court will conduct a Status Check on October 10, 2013 at 8:30 a.m. to consider the status of the stay.

DATED this 20 day of August, 2013.



District Court Judge


Submitted by:

Approved as to form and content:

KEMP, JONES & COULTHARD

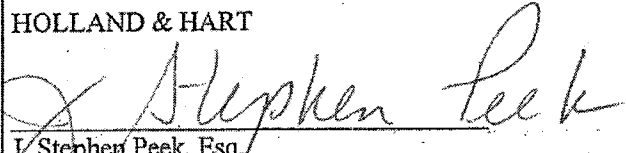
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And Sands China, Ltd.*

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS SANDS CORP., A NEVADA
CORPORATION; AND SANDS CHINA
LTD., A CAYMAN ISLANDS
CORPORATION,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
ELIZABETH GOFF GONZALEZ,
DISTRICT JUDGE,

Respondents,

and

STEVEN C. JACOBS,
Real Party in Interest.

No. 63444

FILED

OCT 01 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER GRANTING STAY

This original petition for a writ of prohibition or mandamus challenges a district court order requiring that certain documents that petitioners contend are privileged be returned to real party in interest for his use in the prosecution of the action below.


Petitioners have moved this court for a stay of the challenged district court order pending resolution of their writ petition, and this court entered a temporary stay on June 28, 2013, pending receipt and consideration of any opposition and reply. Real party in interest has now opposed the motion for a stay, and petitioners have filed a reply. Having considered the parties' arguments and the documents before us, we conclude that a stay is warranted, pending resolution of this petition. See NRAP 8(c). Accordingly, we stay the June 19, 2013, order directing the return of documents to real party in interest in Eighth Judicial District

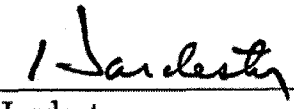


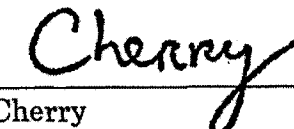
13-29195

Court Case No. A627691, pending further order of this court. We further deny real party in interest's request for relief from the stay of the proceedings below, as this request is outside the scope of the issue pending before us here.

It is so ORDERED.

 J.
Gibbons

 J.
Hardesty

 J.
Cherry

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Kemp, Jones & Coulthard, LLP
Holland & Hart LLP/Las Vegas
Morris Law Group
Pisanelli Bice, PLLC
Eighth District Court Clerk

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and Sands China, Ltd.

DISTRICT COURT
CLARK COUNTY, NEVADA

15 STEVEN C. JACOBS,

16 Plaintiff,

17 v.

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

21 Defendants.

22
23 AND ALL RELATED MATTERS.

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CLERK OF THE COURT

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

**ORDER EXTENDING (1) STAY OF
ORDER GRANTING MOTION TO
COMPEL DOCUMENTS USED BY
WITNESS TO REFRESH
RECOLLECTION AND (2) STAY OF
ORDER GRANTING PLAINTIFF'S
RENEWED MOTION FOR NRCP 37
SANCTIONS**

24 On October 10, 2013, Plaintiff Steven C. Jacobs ("Jacobs") and Defendants Las Vegas
25 Sands Corp. and Sands China Ltd. ("SCL") (collectively "Defendants") came before this Court
26 on a status check to consider extending the stay of the Order Granting Motion to Compel
27 Documents Used by Witness to Refresh Recollection Pending Defendants' Petition for Writ of
28

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1 Prohibition for Mandamus (the "Refreshing Recollection Order"), and the Order Granting
2 Plaintiff's Renewed Motion for NRCP 37 Sanctions Pending Defendants' Petition for Writ
3 Prohibition for Mandamus (the "Sanctions Order"). James J. Pisanelli, Esq. and Todd L. Bice,
4 Esq. of the law firm PISANELLI BICE PLLC appeared on behalf of Jacobs. J. Stephen Peek,
5 Esq. of the law firm HOLLAND & HART LLP appeared on behalf of Defendants. J. Randall
6 Jones, Esq. of the law firm KEMP, JONES & COULTHARD, LLP appeared on behalf of SCL.
7 The Court considered the status of the underlying writ petitions before the Nevada Supreme
8 Court, and good cause appearing therefor:

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

10 1. The stays of the Refreshing Recollection Order and the Sanctions Order are
11 extended until the next status check hearing on February 13, 2014, at 8:30 a.m. to reconsider the
12 status of the stays.

13 2. Should the Nevada Supreme Court not rule upon the underlying writ petitions
14 prior to February 13, 2014, and this Court decide to deny any requests for a further extension of
15 the stays, the Court will temporarily extend the stays for ten (10) days thereafter to permit
16 Defendants to seek potential relief from the Nevada Supreme Court if the Defendants believe it
17 is appropriate.

18 DATED this 5 day of ^{November} ~~October~~, 2013.


19 
20 District Court Judge

21 Submitted by:

Approved as to form and content:

22 KEMP, JONES & COULTHARD

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