

**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 Mar: 23/2015 08:28 a.m.  
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A627691-B

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

**Volume XIV of XXXIII  
(PA2641 – 2848)**

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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 XIV of XXXIII (PA2641 – 2848)** 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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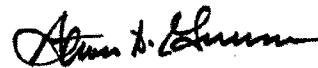
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CLERK OF THE COURT

TRAN

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

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants  
.....

CASE NO. A-627691

DEPT. NO. XI

**Transcript of  
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON MOTIONS**

THURSDAY, AUGUST 14, 2014

**APPEARANCES:**

FOR THE PLAINTIFF:

TODD BICE, ESQ.  
DEBRA SPINELLI, ESQ.  
JORDAN SMITH, ESQ.

FOR THE DEFENDANTS:

J. STPHEN PEEK, ESQ.  
JON RANDALL JONES, ESQ.  
MARK JONES, ESQ.  
STEVE L. MORRIS, ESQ.

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, THURSDAY, AUGUST 14, 2014, 8:40 A.M.

2 (Court was called to order)

3 THE COURT: Jacobs versus Sands. Good morning.

4 MR. RANDALL JONES: Good morning, Your Honor.

5 MR. MORRIS: Good morning, Your Honor.

6 MR. PEEK: Good morning, Your Honor.

7 THE COURT: Does everybody have a copy of the Nevada  
8 Supreme Court's order denying a rehearing dated August 7th?

9 MR. BICE: We do.

10 MR. PEEK: Yes, Your Honor, I do.

11 THE COURT: Okay. So that slightly impacts some of  
12 the things we're going to talk about today. And I appreciate  
13 your supplemental brief after the orders.

14 Okay. Does everybody want to identify themselves  
15 for purposes of the record, since Tina is not my usual clerk.

16 MR. BICE: Yes. Good morning, Your Honor. Todd  
17 Bice on behalf of plaintiff Steven Jacobs.

18 MR. PISANELLI: Good morning, Your Honor. James  
19 Pisanelli on behalf of Steven Jacobs.

20 MR. SMITH: Good morning, Your Honor. Jordan Smith  
21 on behalf of Steven Jacobs.

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

24 MR. RANDALL JONES: Good morning, Your Honor.  
25 Randall Jones and Mark Jones on behalf of Sands China Limited.



1 MR. MORRIS: Good morning, Your Honor. Steve Morris  
2 on behalf of Sheldon Adelson.

3 MR. PEEK: And good morning, Your Honor. Stephen  
4 Peek on behalf of the Las Vegas Sands and Sands China Limited.

5 THE COURT: All right. Which motion would you like  
6 to start with, the motion to amend the complaint?

7 MR. BICE: I leave it to the Court's pleasure.

8 THE COURT: Let's go to the motion to amend the  
9 complaint first.

10 MR. BICE: Okay. Your Honor, as you are aware, at  
11 this juncture, notwithstanding the fact of the age of this  
12 case --

13 (Pause in the proceedings)

14 THE COURT: All right. Let's go.

15 MR. BICE: Your Honor, notwithstanding the age of  
16 this case, as Your Honor is very familiar with it, Sands China  
17 has not filed an answer in this action, and we have sought to  
18 amend the complaint. And we would submit, Your Honor, that  
19 Sands China as the basis for its opposition to this amendment  
20 is in fact contrary to its arguments about jurisdiction. What  
21 it is insisting to this Court is that it has to look at each  
22 particular cause of action now in order to assess particularly  
23 with respect to specific jurisdiction. And to do that the  
24 Court obviously needs to then have before it all potential  
25 claims that are being asserted or are going to be asserted in

1 order to assess that specific jurisdiction issue.

2 But now they come to you and they say, well, you  
3 shouldn't, because the stay precludes you from allowing Mr.  
4 Jacobs to amend his complaint. And our position on that, Your  
5 Honor, as we put forth in our pleadings, is I think very  
6 straightforward, is the merits stay does not in any way  
7 preclude these types of amendments, because these types of  
8 amendments directly relate to, to use the Supreme Court's  
9 words, matters relating to the determination of personal  
10 jurisdiction. We have learned through the jurisdictional  
11 discovery of a lot of facts concerning the activities that  
12 Sands China was undertaking in cooperating with LVSC in Las  
13 Vegas and undertaking those actions that give rise to the  
14 claims. And so therefore we are seeking to amendment to  
15 assert those causes of action to have them before the Court,  
16 because that necessarily with respect to specific jurisdiction  
17 plays a role in this Court's ultimate determination on the  
18 jurisdictional question. And the Supreme Court's order, Your  
19 Honor, does not say -- and we cite caselaw for you for this  
20 proposition -- does not say anything that precludes Mr. Jacobs  
21 from making an amendment, either expressly or even implicitly.  
22 We would submit to the contrary by necessary implication of  
23 its directive that the Court entertain matters that are  
24 relating to the determination of personal jurisdiction an  
25 amendment that adds causes of action specifically predicated

1 upon Sands China's Nevada activities are appropriate. I thank  
2 the Court.

3 THE COURT: Thank you.

4 Who wants to speak relative to opposition to the  
5 motion?

6 MR. RANDALL JONES: Well, I will speak on behalf of  
7 Sands China, Your Honor.

8 MR. RANDALL JONES: Well, I noted -- good morning,  
9 Your Honor.

10 THE COURT: Good morning, Mr. Jones. How are you  
11 today?

12 MR. RANDALL JONES: Well, thank you.

13 I would note that Mr. Bice said that -- very  
14 unequivocally that merits stay does not stay these types of  
15 amendments. And as we noted in our opposition on page 4, and  
16 I'm quoting here, Mr. Bice said that, "At this point the  
17 merits stay precludes Jacobs from amending his complaint," end  
18 quote. He went on to say, "But when that is gone he will be  
19 -- we will be amending his complaint to assert, among other  
20 things, claims for abuse of process against both Sands China  
21 and LVSC," end quote. And at the Supreme Court argument he  
22 repeated this point by saying, quote, "Presently the District  
23 Court views the merits stay as prohibiting Jacobs from  
24 amending his complaint even to augment his claims which would  
25 reinforce his theories for jurisdiction," end quote. That's

1 Exhibit B at page 21, note 11.

2           So Mr. Bice has acknowledged to this Court and the  
3 Supreme Court that the stay does include amending the  
4 complaint, including augmenting his theories of jurisdiction.  
5 It cannot get any more clear than that. And I don't know how  
6 he can come in here and say the exact opposite is a  
7 justification for his attempts to now amend the complaint.

8           And there are other issues implicated by this, as  
9 well, Your Honor, but the Daimler case tells us, as you know,  
10 we have issues about -- we have to consider the issues about  
11 where the defendant was at home.

12           THE COURT: And have fun defining "at home."

13           MR. RANDALL JONES: Well, that's going to be an  
14 interesting discussion, Your Honor. We think it's pretty  
15 straightforward. We obviously have a disagreement with Mr.  
16 Bice about that subject. But with respect to specific  
17 jurisdiction, which appears to be what he is trying to do now  
18 with his amendment with these new claims, at least that's what  
19 he appears to be saying in his motion, first of all, we  
20 believe they have waived any arguments about specific  
21 jurisdiction. And that I think is something the Court needs  
22 to consider in making a decision with respect to this motion  
23 in addition to the fact that Mr. Bice has acknowledged that he  
24 can't do what he's now trying to do and should be judicially  
25 estopped from trying to do it, but even if he was allowed to

1 assert these new claims against Sands China related to  
2 specific jurisdiction, as the Court knows, you still have to  
3 make an independent decision with respect to specific  
4 jurisdiction on a case-by-case basis, which would take us back  
5 to his original breach of contract claim and specific  
6 jurisdiction.

7           So his new claims do nothing -- that was one of his  
8 arguments, these new claims reinforce his existing arguments  
9 for jurisdiction. And they don't. Because they have to be  
10 looked at independently. So they don't do anything to  
11 reinforce his original claims for specific jurisdiction,  
12 assuming he actually had made those claims.

13           But, Your Honor, that also raises another issue,  
14 that if he was allowed to amend at this late point in time --  
15 and he started out his discussion by saying, we're way far  
16 into this, it's been years and years. We all know the  
17 history. It certainly has been a long time. So --

18           THE COURT: And you missed part of it.

19           MR. RANDALL JONES: I did miss part of it. He wants  
20 to now amend the complaint to add two new claims, and we would  
21 then have a right, obviously, to respond to those claims,  
22 assuming the Court allowed them. And I can assure the Court  
23 that we would be looking very carefully at a motion to  
24 dismiss, which would further delay what Mr. Bice says he wants  
25 to do right away, which is have a hearing on jurisdiction.

1           So, you know, Mr. Bice loves to get up here and make  
2       pejorative statements about my client and the other parties in  
3       this case at every opportunity. And one of the things he  
4       loves to harp on is that he claims we've continued to cause  
5       delay. What he's doing now is an attempt to delay this  
6       process further. And so we would like to get to the  
7       jurisdictional hearing as soon as possible, because we think  
8       there is no jurisdiction against Sands China. So this attempt  
9       at this late date will simply further delay this process, and  
10      we think it is not justified or appropriate. And Mr. Bice, up  
11      until this recent motion, had said it was not only not  
12      appropriate, but he couldn't do it and that you have said he  
13      couldn't do it before. So we would believe that the stay does  
14      prohibit that and that there's no justification for it  
15      otherwise. Thank you, Your Honor.

16           MR. PEEK: Your Honor, I have nothing to add on  
17      behalf of Las Vegas Sands --

18           THE COURT: Thank you.

19           MR. PEEK: -- other than what has been argued by Mr.  
20      Jones.

21           THE COURT: And, Mr. Morris, this issue doesn't  
22      impact you, does it?

23           MR. MORRIS: Well, when we started -- opened this  
24      hearing you remarked about denial of rehearing on August the  
25      7th. I think it does have some relationship, but I'll --

1 we're now addressing the second amended complaint or the  
2 proposed --

3 THE COURT: Yes. I'm not at the motion for  
4 reconsideration of the defamation issues yet, which is a  
5 different motion.

6 MR. MORRIS: Well, I'll speak in response to that.  
7 But I still -- what I have to say does pertain to --

8 THE COURT: I'm happy to listen.

9 MR. MORRIS: Well, okay. If you're happy to  
10 listen --

11 THE COURT: And I know that all these other people  
12 in the audience are happy to listen, too.

13 MR. MORRIS: I'm happy to speak.

14 MR. PEEK: We might get some CLE from it, Your  
15 Honor.

16 MR. MORRIS: Your Honor, with respect to the  
17 defamation, that claim in the second amended complaint -- or  
18 the proposed second amended complaint not only adds -- puts  
19 Mr. Adelson back in the case, but it makes claims against Las  
20 Vegas Sands and Sands China. I point this out because you  
21 have raised it at the outset, and I think it's of  
22 significance.

23 With respect to reinstatement of this defamation  
24 claim this is premature. The remittitur from the Supreme  
25 Court has not issued. There's 25 days from August the 7th.

1 So until that occurs, Your Honor, there isn't any occasion  
2 with respect to the jurisdiction of this Court to entertain a  
3 motion to dismiss.

4 But, having said that, I was not here, and I'm sorry  
5 that I wasn't now, in the meeting before last when a point  
6 came up that I think is of some consequence. We wish to file  
7 a motion to -- against the proposed second amended complaint  
8 when it is appropriate to do so, and that is when remittitur  
9 has run.

10 THE COURT: So you're saying it's not appropriate to  
11 do that until September.

12 MR. MORRIS: Yes, that's my point. And we would  
13 like to -- and that motion, of course, because it is against  
14 the defamation claim and it brings up and we'll bring before  
15 you a point that the Supreme Court addressed in its decision,  
16 it's four-three decision reversing dismissal of the defamation  
17 claim in 2012, it brings up the Anzelone case and conditional  
18 privilege, and we would like the opportunity, since you are  
19 the person who in the first instance will consider the  
20 applicability of that privilege, we would like the opportunity  
21 to move against the filing of this second amended complaint on  
22 the ground that the conditional privilege applies, which is a  
23 point that the Supreme Court said you did not address, and it  
24 is among those things that the Court said --

25 THE COURT: That's what happens when I decide it's



1 an absolute privilege. I don't look at the conditional  
2 privilege.

3 MR. MORRIS: Of course. And I'm not quarrelling  
4 with that. But we made alternative arguments before you and  
5 before the Supreme Court, and the Supreme Court said -- in  
6 substance what the Supreme Court said is, take it to Judge  
7 Gonzalez first.

8 THE COURT: They said that in three opinions. So  
9 we're going to talk about some of those others in a minute.

10 So your position, Mr. Morris, is because the second  
11 amended complaint attempts to resolve the defamation issue  
12 which was on appeal and which is now the subject of soon-to-be  
13 remitted, we should delay consideration of this because of the  
14 fifth cause of action?

15 MR. MORRIS: Yes.

16 THE COURT: Thank you.

17 Mr. Bice.

18 MR. BICE: Your Honor, the second amended complaint  
19 does not alter a single word of the defamation claim that's  
20 already before the Court. So I'm not quite sure where Mr.  
21 Morris is coming from, because that's just simply not  
22 accurate. That defamation issue and the issuance of the  
23 remittitur has nothing to do with this motion to amend with  
24 respect to Las Vegas Sands and Sands China.

25 What Mr. Morris is really trying to do, I guess, is

1 argue that the stay only applies to Mr. Jacobs but it doesn't  
2 apply to the defendants, because he says, well, we want to  
3 brief a bunch of merits motions against -- and that's true  
4 regardless of whether the second amended complaint is filed or  
5 not, apparently, because the defamation claim is completely  
6 untouched by it. So that is a complete red herring and an  
7 attempt to simply delay what we believe, Your Honor, is  
8 inevitable under the law.

9           Now, Mr. Jones says that we are the parties here in  
10 engaged in double speak about what's the proper scope of the  
11 stay. And we certainly disagree with that, Your Honor. As we  
12 point out in our reply brief, this is an issue that they took  
13 the position. This Court expressed some concern about that in  
14 the past. We think that that is wrong. We have acknowledged  
15 that that's what the Court's view was, and if we  
16 misinterpreted the Court, then so be it. But the fact of the  
17 matter is we're bringing this motion. And you'll notice they  
18 don't address the point we make about the caselaw that we cite  
19 that specifically says that the stay cannot impact our ability  
20 to amend on this particular issue, because it relates to the  
21 Court's personal jurisdiction determination. And, as which,  
22 the Supreme Court's stay order cannot and should not be  
23 interpreted as somehow precluding it.

24           Now, if the Court is of the view that it did in the  
25 past, well, we think that that is mistaken, and we are asking

1 the Court to rectify that. If we misinterpreted what your  
2 view was in the past, well, then, that was our mistake. But,  
3 nonetheless, with all due respect, an absurd argument of  
4 judicial estoppel? We're not the parties who obtained any  
5 benefit from this position. The party here who's trying to  
6 engage in flip-flopping is the party who was here before  
7 telling you that the stay didn't apply to their proposed  
8 amendments. So --

9 THE COURT: My concern, though, Mr. Bice, is a  
10 little different. I have thought that with respect to merits  
11 issues I should not be doing additional work given the  
12 language of the writ that was issued to me. When I am looking  
13 at many of the allegations that you've included in the second  
14 amended complaint it reinforces those concerns, although they  
15 do in some ways relate to the jurisdictional issues, which is  
16 why we're having this discussion this morning.

17 And so my concern whether we're opening a can of  
18 worms that can be opened a little bit later, after I've  
19 clarified some of the jurisdictional issues.

20 MR. BICE: I don't -- you know, the problem that  
21 that presents for us is we're going to hear Sands China claim  
22 that, well, you know, specific jurisdiction has to be  
23 addressed on a claim-specific basis. That's exactly what  
24 their argument has been. And now they're saying, well, that  
25 claim isn't currently before the Court because you haven't

1 allowed them to amend, so you can't use that as one of the  
2 bases for determining specific jurisdiction over Sands China.  
3 And we think that that, of course, exactly reverses the  
4 position that the Court is supposed to be in when it's making  
5 the determination. The Court has to look at what are the  
6 claims that are being asserted, do those claims arise out of  
7 contacts that were performed in the state of Nevada. And on  
8 these claims the answer to that is yes. And that's why an  
9 amendment of this is appropriate.

10 I understand the Court's concerns about, well, we  
11 can't get into the merits. And we agree with that issue,  
12 because that's ultimately what the Supreme Court has said.  
13 But the Supreme Court's stay should not be interpreted to say  
14 that Jacobs can't amend his claims to add additional causes of  
15 action which further reinforce this personal jurisdiction over  
16 Sands China. Because if that's the ruling, Your Honor, then,  
17 of course, we're now in a catch-22; the Court says, well, you  
18 can't bring in these claims that enhance the jurisdictional  
19 debate that directly relate to it but I'm going to take up  
20 whether or not Sands China is subject to personal jurisdiction  
21 before the Court.

22 THE COURT: I understand what you're saying, Mr.  
23 Bice. It's a very difficult issue, but I understand what  
24 you're saying. And the difficulty relates to the nature of  
25 the stay that was issued in conjunction with the writ. But

1 that's a different issue. Anything else?

2 MR. BICE: Your Honor, that's why we cite, I believe  
3 -- I don't remember exactly, I can look them up -- the case we  
4 cited that specifically address this is that unless the remand  
5 mandate from the Supreme Court or the Court of Appeals, in  
6 this case because these are federal cases, specifically  
7 dictate otherwise, parties are free to amend their complaint  
8 and amend their pleadings. And here there is nothing in that  
9 order that can be interpreted or should be interpreted as  
10 saying that Jacobs can't amend his complaint specifically as  
11 to additional claims that were gleaned out of jurisdictional  
12 discovery that go directly to the issue that the Supreme Court  
13 told this Court to address, which is what contacts did Sands  
14 China have in the state of Nevada.

15 THE COURT: Thank you.

16 MR. BICE: Thank you, Your Honor.

17 THE COURT: I'm going to grant the motion, with the  
18 exception to the fifth claim for relief against Adelson. I  
19 agree that it is premature at this time for that claim to be  
20 addressed. You can address that after the remittitur is  
21 received.

22 With respect to the new claims, because they appear  
23 to relate to jurisdictional issues that I am supposed to be  
24 determining, while they may also deal with merits issues, I'm  
25 going to allow the amendment, because we have to address the

1 jurisdictional issues.

2 MR. PEEK: Your Honor, I have a question from Las  
3 Vegas Sands' standpoint. Am I then permitted to file motions  
4 to dismiss?

5 THE COURT: Absolutely.

6 MR. PEEK: Thank you.

7 MR. RANDALL JONES: Your Honor, I just -- a point of  
8 clarification, because it didn't really come up until after  
9 rebuttal. But the one question I have, and it kind of relates  
10 to this issue of the defamation against Mr. Adelson, is these  
11 all -- these new claims relate to defamation. That's what  
12 they're all grounded on. And it seems to me that until -- and  
13 this goes to another motion we have this morning, and I just  
14 thought I'd bring it up now, but I would like to --

15 THE COURT: I'm not to that one yet.

16 MR. RANDALL JONES: I understand. But it implicates  
17 that motion and whether or not -- what relief or what ruling  
18 the Court makes with respect to that motion. So I just want  
19 to at least make the Court aware I think that there are issues  
20 there that relate to that that I would like to at least --

21 THE COURT: I know there are issues there.

22 MR. RANDALL JONES: -- be able to revisit this  
23 ruling with the Court when we get to that point, that's all.

24 THE COURT: Well, I anticipate that after the new  
25 complaint is filed I'm going to see a plethora of motions to

1 dismiss on numerous issues, including the defamation issues as  
2 amended and the issues that sort of pervade some of those  
3 claims in the complaint.

4 MR. RANDALL JONES: Fine, Your Honor. Again, I just  
5 at least wanted to raise this point with the Court.

6 THE COURT: I'm not to that motion. I'm going to  
7 let you talk in a minute, but I'm not quite there.

8 MR. RANDALL JONES: Thank you.

9 THE COURT: Mr. Bice, if we could go to the motion  
10 to reconsider the dismissal of the defamation claims against  
11 defendants Sands and Sands China.

12 MR. BICE: Yes. Your Honor, this motion, according  
13 to the defendants, is both simultaneously too late and  
14 simultaneously too early is their position with respect to it,  
15 and I think that pretty much proves our point, because that --  
16 the motion is accurate. The Court had dismissed the  
17 defamation claim on the litigation privilege, the Nevada  
18 Supreme Court has overturned that ruling, and then their  
19 position was, well, you've got to wait for the rehearing to be  
20 decided. That was it. Now that that's been decided adverse  
21 to them, now, well, now you shouldn't consider this for -- I  
22 don't know what reason -- the remittitur hasn't issued. But,  
23 again, that has nothing to do with Sands China or Las Vegas  
24 Sands Corporation, Your Honor. The issue has been briefed, as  
25 we point out, and a lot of caselaw on this point that Supreme

1 Court decisions are binding authority unless the opinion has  
2 been withdrawn. Not only has the opinion not been withdrawn,  
3 the petition for rehearing was denied.

4 With respect to Mr. Adelson, he doesn't have any dog  
5 in this fight. He claims -- it's odd, because he's claiming  
6 he's not before the Court right now because the remittitur  
7 hasn't issued, but he wants to be heard on motions that don't  
8 pertain to him. And so we do object to that practice.

9 But the point of the matter --

10 THE COURT: You know I'm always going to let  
11 everybody wants to talk talk.

12 MR. BICE: I know, Your Honor.

13 THE COURT: You know, it's just the way I am.

14 MR. BICE: I know, Your Honor.

15 THE COURT: Sorry.

16 MR. BICE: But our point here is the basis for the  
17 Court's dismissal of those claims against Sands China and  
18 against Las Vegas Sands has been reversed by the Supreme  
19 Court. Those claims now -- we are entitled to have them  
20 reinstated. And now is an appropriate time to reinstate them,  
21 because, again, they specifically tie back into the  
22 jurisdictional debate with respect to Sands China.

23 Now, I've heard that we're going to hear some claim  
24 that Mr. Adelson wasn't speaking on behalf of Sands China,  
25 which we think will prove interesting if that's going to be



1 their position, since he's -- the defamatory statement was he  
2 claimed that we have developed a number of reasons for Mr.  
3 Jacobs's termination when they are simultaneously representing  
4 to the Court that Mr. Jacobs was terminated by Sands China.  
5 So that will prove interesting if that becomes their latest  
6 story. But, again, that's a premature issue.

7 Right now the Supreme Court has ruled, the petition  
8 for rehearing has been denied, and we are entitled to have the  
9 defamation claims reinstated so that we can -- because, again,  
10 it ties back to the jurisdictional issue, Your Honor, with  
11 respect to Sands China.

12 THE COURT: Thank you.

13 MR. BICE: Thank you.

14 THE COURT: Mr. Jones, Mr. Peek.

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

16 I actually -- in one of those rare occasions I think  
17 I actually agree with Mr. Bice about something. He says that  
18 we argue that their motion is both too late and too early.  
19 Well, in fact it is, both of those things. The claims were  
20 dismissed, they did not move for reconsideration at the time,  
21 and --

22 THE COURT: But don't we have a change in law of the  
23 state of Nevada?

24 MR. RANDALL JONES: Well, we have a change in the  
25 status of the case, I agree with that based on the Supreme

1 Court ruling. They had a right to make their motion. They  
2 didn't make it, so that's undisputable. They talk about  
3 inherent authority, and they talk about cases from other  
4 jurisdictions that talk about what a summary judgment means.  
5 We certainly think those cases are clearly distinguishable,  
6 and I can go through that if the Court wants me to take the  
7 time to do it. But all you have to do is look at them. Even  
8 the cases they cite from the Nevada cases to talk about other  
9 issues, not a reconsideration of interlocutory order. So they  
10 don't have any case authority. They're basically relying on  
11 this so-called inherent authority of you to do what they want  
12 you to do.

13 But, Your Honor, I've been in this situation where  
14 this very thing has happened. And they have to -- at least as  
15 far as I've seen in other matters, they have to wait until the  
16 case is over, and then they have a right to appeal that issue.  
17 So that's why it's too early. That's why it's premature.  
18 They have -- they lost the issue--

19 THE COURT: But I've I got the right not to get  
20 reversed again when I know it's wrong, because they already  
21 issued a written decision saying, Judge, you've got to  
22 consider these other things.

23 MR. RANDALL JONES: Well, here's the problem with  
24 that argument, Your Honor. We never addressed -- "we" being  
25 Sands China. Sands China was never given the opportunity to

1 address the specific other issues that were raised. And we  
2 would --

3 THE COURT: Well, absolutely you get to have that  
4 right in the renewed motion to dismiss that you're going to  
5 file when the second amended complaint is actually served.

6 MR. RANDALL JONES: Well, here's what I see as the  
7 procedural problem with that. They didn't move pursuant to  
8 54(b) to take that issue up.

9 THE COURT: Correct.

10 MR. RANDALL JONES: They picked their poison, Judge.  
11 And from my perspective --

12 THE COURT: It wasn't final, so it's interlocutory,  
13 and I can change it at any time if I want.

14 MR. RANDALL JONES: Well, ultimately I guess you're  
15 the judge, so you can make your rulings however you want to  
16 make them. But it would seem to me that if they wanted to  
17 appeal that issue they could have done exactly what they did  
18 with Mr. Adelson. They could have asked you to certify it  
19 pursuant to 54(b), which presumably you would have done,  
20 because you did it on the other issue. And they didn't do  
21 that. And so there should be no, if you will, attempt for  
22 them now to come back after the fact and say, well, we got  
23 this one reversed, let's go back to where we were before with  
24 these other matters that we did not either reconsider or move  
25 to certify.

1           So, Your Honor, I -- well, I obviously understand  
2 from the Court that -- put it another way. It's pretty  
3 obvious you're going to grant this motion, but we want to make  
4 sure we have a full opportunity --

5           THE COURT: Absolutely.

6           MR. RANDALL JONES: -- to brief these issues that  
7 were never briefed and decided by the Court before.

8           THE COURT: Absolutely. I'm not precluding anybody  
9 from filing anything in their motions to dismiss that I know  
10 are going to be filed soon.

11          MR. RANDALL JONES: Understood, Your Honor.

12          THE COURT: All right. Mr. Peek.

13          MR. PEEK: I really have nothing to add, Your Honor.

14          THE COURT: All right. The motion's granted given  
15 the Supreme Court's opinion with respect to the Adelson  
16 defamation claim, because in my mind they made a clarification  
17 of the law that affects my prior decision, and I'm going to  
18 learn from that opinion.

19                If we could now --

20          MR. PEEK: Your Honor, just as sort of a procedural  
21 issue, because we still have the issue of the motion to amend  
22 and the fifth claim for relief and Adelson, and so I'm just  
23 trying to kind of put all the pieces of that puzzle together.

24          THE COURT: I allowed them to amend the fifth claim  
25 for relief, except as to Mr. Adelson. That means when it's

1 served on you you want to file your motion to dismiss.

2 MR. PEEK: Now that we have this motion to  
3 reconsider so we still get that opportunity, then, once the --  
4 if and when you allow an amendment on the fifth claim for  
5 relief, that would then trigger the motion to dismiss on --

6 THE COURT: I did allow the amendment on the fifth  
7 claim for relief, just not as against Mr. Adelson yet because  
8 of the remittitur issue.

9 MR. PEEK: Okay.

10 THE COURT: Though you will file whatever fulsome  
11 motion you think is appropriate, Mr. Peek and Mr. Jones and  
12 Mr. Morris, and then I'll --

13 MR. PEEK: Want to just make sure I clarify, Your  
14 Honor.

15 THE COURT: Yeah. All right. Do you want to talk  
16 about the motion to extend the stay?

17 MR. RANDALL JONES: Yes, Your Honor. Your Honor, as  
18 you've already noted, you have now received some direction  
19 from the Supreme Court as to what you believe you're supposed  
20 to do as we proceed with this matter. And one of the things  
21 that we believe was instructive and is important and relevant  
22 to this motion that we've filed is a determination of prior to  
23 any jurisdictional discovery hearing -- or, excuse me, any  
24 sanction hearing in particular some further briefing to  
25 determine what documents, if any, that have been requested --

1           THE COURT: I thought was going to do an in-camera  
2 review based upon their opinion. That's what I have written  
3 down to discuss at the end of today's hearing.

4           MR. RANDALL JONES: Well, I do want to discuss that  
5 issue, Your Honor. What I was first referring to is the Macau  
6 documents.

7           THE COURT: Right.

8           MR. RANDALL JONES: And the Supreme Court has  
9 essentially adopted the Internationale versus Rogers.

10          THE COURT: That's part of my balancing test when I  
11 consider Rule 37 sanctions, which I said when you guys were  
12 here the last time.

13          MR. RANDALL JONES: I understand. So I certainly  
14 would ask this Court if we extend the stay as it relates to  
15 the sanctions hearing to allow us to brief those issues,  
16 because we think those issues need to be briefed before any  
17 such hearing, any sanctions hearing. Those are obviously very  
18 important issues to all concerned, including the Court, and  
19 that we now have a test that this Court is directed to follow  
20 that we need to address before we ever get to that hearing.  
21 That is certainly our position. We think that's a necessary  
22 prerequisite before we get to that point. And so we would ask  
23 that the sanction hearing be stayed until we're allowed to do  
24 that.

25          THE COURT: Well, I have to stay the sanctions

1 hearing. I was going to stay the sanctions hearing and not  
2 schedule it until after I finish the in-camera review. So I  
3 think the two things -- if you want to file more briefs on the  
4 Macau stuff, I'm always happy to read your briefs. The  
5 problem I have is I'm going to have what is going to be a very  
6 difficult task before me. I'm doing an in-camera review given  
7 the instructions by the Nevada Supreme Court that merely  
8 having a cc on a document isn't enough for a claim of  
9 attorney-client privilege, which means I have to make a very  
10 careful review of the contents of each of the communications.

11 MR. RANDALL JONES: I was -- actually I did plan to  
12 bring that up. That's, what, Footnote 17, I believe, of --

13 THE COURT: So, I mean, I've got some things on my  
14 plate that I need to be handling, and I'm going to -- it's  
15 going to take me a little while to do the in-camera review.  
16 It will take me longer than it usually does, because I'm also  
17 getting ready for the CityCenter trial at the same time. I  
18 have 6,000 people who filled out ability to serve  
19 questionnaires, and next week 300-and-some will fill out the  
20 first batch of the longer questionnaires. So I've got some  
21 things. So I think you have time to do some briefing, because  
22 I'm not going to schedule the sanctions hearing or the  
23 evidentiary hearing until I finish the in-camera review. So  
24 if you want to do briefing, I'm always going to consider  
25 briefing, Mr. Jones.

1 MR. RANDALL JONES: All right. Well --

2 THE COURT: So if you want to file a motion for  
3 instructions or whatever you want to call it, I'm happy to  
4 read it.

5 MR. RANDALL JONES: So that brings up the ultimate  
6 issue. With the ruling of the Supreme Court we now have an  
7 issue to produce these documents and whether we need to  
8 produce them immediately. We would ask the stay be extended  
9 with respect to production of the Macau documents until we've  
10 had the opportunity to do this briefing based upon these five  
11 factors, in particular factor number one, which essentially  
12 goes to relevance, and we think that there are certainly some  
13 significant issues that need to be addressed there with  
14 respect to these Macau documents, especially in light of the  
15 new nerve theory center -- nerve center theory, excuse me,  
16 that the plaintiff now seems to be asserting.

17 So, Your Honor --

18 THE COURT: I think that's part of their at home  
19 analysis. I think it's all wrapped up together, which is one  
20 of the reasons I denied both the motions for summary judgment,  
21 because there appear to be genuine issues of material fact as  
22 to where Sands China is at home.

23 MR. RANDALL JONES: Understood. And so my point is  
24 simply that, in other words, we have a ruling that was from  
25 last -- well, the spring of 2013 with respect to the Macau



1 documents. We would simply ask that the Court extend that  
2 stay until we finish this process out and we've been allowed  
3 to do this briefing.

4 THE COURT: Let just ask you a question. How long  
5 is it going to take you to do that briefing? Your part. Not  
6 Mr. Bice's part, just your part.

7 MR. RANDALL JONES: I would say, Your Honor, we  
8 would like at least two weeks, if not three weeks.

9 THE COURT: So you want to file a brief in three  
10 weeks or so.

11 MR. RANDALL JONES: Yes.

12 THE COURT: And then Mr. Bice will have three or  
13 four weeks to file a brief, and then you'll file another  
14 brief, then I'll have a hearing. So if we're talking about  
15 60 days or 75 days or even 90 days, I think it's going to fall  
16 in the same realm as this in-camera review of the Jacobs drive  
17 that I'm going to have to now do. So if you want to file a  
18 motion, I'm happy to discuss it with you if that's what you  
19 want to do --

20 MR. RANDALL JONES: That's what we're asking.

21 THE COURT: -- and allow you a little bit of time  
22 before you produce those documents. I've already made a  
23 determination you should produce them. You said you're not  
24 going to. I said, okay, that's bad, I'm going to sanction  
25 you. So if you still don't want to produce them, that's okay,

1 I understand, but it's part of the analysis I go through when  
2 I get to the sanctions hearing. Like I said before, I've got  
3 to balance those issues.

4 MR. RANDALL JONES: Understood, Your Honor. And so  
5 with the time frame the Court's provided, certainly 60 to 90  
6 days, I think that's certainly acceptable. We would ask that  
7 the stay be extended for that time period. And we --

8 THE COURT: And the only thing you're asking to be  
9 stayed is my holding the sanctions hearing.

10 MR. RANDALL JONES: Well, I'm asking the Court to  
11 stay two things, to stay the sanctions hearing during that  
12 time period -- we would actually like -- we think that the  
13 appropriate order of discussion would be the jurisdictional  
14 hearing first. Because if the Court is --

15 THE COURT: No. We're doing the sanctions hearing  
16 first.

17 MR. RANDALL JONES: Well, Your Honor, at a minimum,  
18 then, we would ask that if the Court is unwilling to consider  
19 doing the sanctions hearing second, then we would ask that the  
20 Court do these two hearings simultaneously.

21 THE COURT: That may happen. Or I may do them  
22 seriatim --

23 MR. RANDALL JONES: And, Your Honor --

24 THE COURT: -- because they have overlapping issues.

25 MR. RANDALL JONES: -- there's a reason for that,

1 and the reason for that -- not, you know, just because we'd  
2 like to do it that way, the sanctions analysis is going to be  
3 driven, we believe, by a substantial -- in a substantial way  
4 by the jurisdictional analysis. And in fact if we're correct  
5 that jurisdiction against Sands China is not appropriate, that  
6 will have a substantial impact, we would hope, on this Court's  
7 decision as to whether or not any sanction is appropriate.  
8 And so to do it otherwise would not be fair to Sands China  
9 under the circumstances.

10 THE COURT: Okay. There's going to be a sanction,  
11 because I already had a hearing and I made a determination  
12 there is a sanction. The question is the level of the  
13 sanction, which is what I'm doing the hearing, and that  
14 relates to the balancing that I have to do under Rule 37,  
15 because you guys decided not to comply with an order after you  
16 had notice and an opportunity to have everything that I wanted  
17 to consider related to those documents. And it's okay. I  
18 issued an order, it was in writing, you guys decided not to  
19 appeal it. In fact, some of the sanctions that were required  
20 under it were paid. And then we had an issue that you just  
21 didn't want to comply, and so you redacted additional stuff.  
22 And that's okay. You can make that decision. But making  
23 those decisions have consequences, and that's what my  
24 sanctions hearing is about.

25 MR. RANDALL JONES: Your Honor, I understand. I

1 want to make sure it's clear for the record we just didn't  
2 decide not to comply with that order. There were compelling  
3 reasons which we hope this Court would take into account in  
4 any sanctions hearing whenever it's decided.

5 THE COURT: Absolutely.

6 MR. RANDALL JONES: And so with respect to this  
7 process we are simply saying that the jurisdictional issues  
8 and analysis will certainly have implications on any sanction  
9 this Court might consider. We think that that is the most  
10 appropriate way. If not having the sanctions hearing second,  
11 that at a minimum these should happen seriatim as you've said  
12 you were willing to consider. We would ask the Court to do  
13 that, and we would ask that the Court, since the Court hasn't  
14 made a ruling on sanction -- it doesn't sound like the Court  
15 is willing to do that until it's heard, have the actual  
16 hearing.

17 THE COURT: I'm not going to choose the type of  
18 sanctions until I have the hearing and have the opportunity to  
19 have the evidence I need to make the balancing determination  
20 that I always make under Rule 37.

21 MR. RANDALL JONES: So that is -- we're requesting  
22 that the Court continue the stay with respect to the -- any  
23 sanctions hearing whether or not any sanctions occur before  
24 that time -- it sounds like the Court is going to do that --  
25 and at a minimum that these hearings occur simultaneously or

1   seriatim -- in seriatim, as you say, and that -- I think  
2   that's our position, Your Honor.

3           THE COURT: All right. Thanks.

4           Mr. Peek, you don't want to add anything?

5           MR. PEEK: No, Your Honor, because this really is a  
6   Sands China issue.

7           THE COURT: Thank you.

8           Mr. Bice, anything you want to say?

9           MR. BICE: I apologize Your Honor.

10          THE COURT: Do you want to say anything?

11          MR. BICE: I do. I apologize.

12          Your Honor, if this argument sounds familiar to the  
13   Court, it certainly sounds familiar to us, because it's --  
14   basically it's a repeat of Ms. Glaser's position long ago  
15   before we knew about the documents being in Las Vegas. As  
16   you'll recall, she wanted -- please, we implore you, please  
17   hold this evidentiary hearing before what we knew were  
18   documents that hadn't been disclosed. And you're basically  
19   getting the same pitch today. This motion, Your Honor, on a  
20   stay is moot. The Supreme Court has rejected their contention  
21   about the MPDPA as being a defense to their production. As  
22   you accurately point out, they have made a choice to violate  
23   the Court's order, and what they're saying is, well, we think  
24   that we have a sufficient excuse. Well, that's not simply a  
25   question about what's going to be the degree of sanction,

1 because we certainly dispute that. In fact, we're going to  
2 show you as part of that evidentiary hearing the  
3 representations that they made to the Supreme Court about what  
4 your order meant completely neutered it. And so we don't  
5 think that this was some, well, we had compelling reasons  
6 under the MPDPA to do it; their position to the Supreme Court  
7 was your order actually only applied to documents that were  
8 already in the United States, the very same documents that  
9 they previously told you the MPDPA doesn't even apply to once  
10 they're in the United States.

11 That's why this issue about the sanctions is  
12 appropriate and it's important and it goes to -- it has to  
13 precede the evidentiary hearing, because one of the things  
14 obviously we're going to be seeking are some evidentiary  
15 sanctions as a result of that issue based upon the personal  
16 jurisdiction debate.

17 And so the basis -- there is no basis to stay. This  
18 Court is going to schedule the evidentiary hearing on this  
19 issue when it has time to do that, and that's when it should  
20 be addressed. Because we have an additional issue coming back  
21 to this issue about the in-camera inspection. As the Court  
22 knows, one of the issues in the other writ where the Supreme  
23 Court disagreed with the Court and said that you have to look  
24 at these things --

25 THE COURT: They agree with Mr. Peek.

1 MR. BICE: They agree with Mr. Peek.

2 THE COURT: For the record, they agreed with Mr.  
3 Peek.

4 MR. BICE: They did. And will acknowledge that no  
5 matter how badly it --

6 MR. PEEK: Does it really hurt, Todd?

7 MR. BICE: -- causes me pain in the throat, they did  
8 agree with Mr. Peek's position on this. I acknowledge that,  
9 Your Honor. But what they also said was -- because you'll --  
10 as Her Honor will recall, our principal position on this was  
11 that they had long ago waived any claim of privilege. And the  
12 Supreme Court even made the point in it's Footnote Number 9  
13 that the District Court is going to have to -- that being Her  
14 Honor, is going to have to make findings of fact about that  
15 very issue. So as part of the sanctions hearing -- and again,  
16 we think that this may moot much of the in-camera review that  
17 Her Honor is planning to undertake, but that's obviously up to  
18 Her Honor. But, nonetheless, as part of that sanctions  
19 hearing that the Court is planning we also think that we have  
20 to have a hearing on our position, the very first position we  
21 advanced on this issue, is that they long ago waived any  
22 entitlement to claim privilege regardless of who was the  
23 holder. The Supreme Court in its decision merely addresses  
24 who can, quote, unquote, "waive the privilege" or who can use  
25 these documents affirmatively assuming that there is a

1 privilege to assert. Our point, as the Court will recall, was  
2 they don't even have the ability to assert that, because  
3 they've acknowledged that they knew about these documents for  
4 a long, long time, and in fact they've always insinuated, and  
5 the Court's even made comment on it, that they somehow they  
6 knew what he took with him at the time of his departure, and  
7 did nothing about it for more than a year, which under  
8 analogous federal caselaw the courts have consistently said  
9 that is a complete and wholesale waiver of any claim of  
10 privilege.

11           So we're going to be asking the Court as part of  
12 that evidentiary hearing about the sanctions aspect to be  
13 holding an evidentiary privilege also -- or an evidentiary  
14 hearing also about the waiver that we maintain existed, which  
15 we also think would moot much of the Court's need to conduct  
16 that in-camera review. And that's why we would ask to do that  
17 more promptly, rather than later, because it might streamline  
18 the process and it might save the Court some time on it.  
19 Because if the Court agrees with us on that waiver issue, the  
20 question about in-camera review would not be necessary.

21           So at this point, Your Honor, this motion for stay  
22 is moot and it just needs to be denied.

23           THE COURT: We're really talking about scheduling  
24 now.

25           MR. BICE: Exactly. That's right. But I don't want



1 there to be -- I mean, the concern I have is that they try and  
2 use -- get you to say, well, I'm going to grant a stay.  
3 There's no basis for a stay. The Supreme Court rejected their  
4 position, and now --

5 THE COURT: Well, I have a stay on merits discovery.

6 MR. BICE: What's that?

7 THE COURT: I still have a stay on merits discovery.

8 MR. BICE: That's true. I thank the Court for its  
9 time.

10 THE COURT: Mr. Jones, anything else?

11 MR. RANDALL JONES: Just briefly, Your Honor. I'm  
12 compelled to just disagree with most of what Mr. Bice said  
13 about what we've done and what --

14 THE COURT: Except that Mr. Peek was right.

15 MR. RANDALL JONES: Except for Mr. Peek was right.  
16 I would agree with that part of his discussion.

17 Your Honor, without wanting to argue the issues of  
18 sanctions or not, that's not the issue today, although  
19 certainly that's a subject of the issue today. We certainly  
20 disagree that we have waived any rights to privilege, and --

21 THE COURT: Don't you think we should brief it? I  
22 know we've briefed it a little before, but, instead of me  
23 pulling those briefs out of the file again, don't you think  
24 you'd rather brief it again?'

25 MR. RANDALL JONES: We certainly would, Your Honor.

1 And that's part of what we're asking and one of the  
2 justifications for extending the stay before the Court does  
3 anything with respect to sanctions.

4 And I have to just make the point that I completely  
5 disagree with Mr. Bice about truncating the in-camera review  
6 process. I think the Supreme Court was very clear about that.

7 THE COURT: I don't get to do that. I have been  
8 told to do it, so I'm going to do it.

9 MR. RANDALL JONES: That's the way I understood it,  
10 Your Honor.

11 THE COURT: Second time I've been told to do an in-  
12 camera review, and the last time took me a month of working on  
13 that only with the exception of everything else.

14 MR. RANDALL JONES: And I don't want to belabor the  
15 point, but to suggest that we have waived that privilege when  
16 the Supreme Court specifically said not only have we not  
17 waived that privilege, that this Court needs to actually go  
18 and look at those documents to see where the privilege was  
19 properly asserted.

20 THE COURT: All right. So the motion is denied as  
21 to stay.

22 But as to the scheduling issues that it relates to I  
23 concur with Mr. Jones that it is important that the in-camera  
24 review and additional briefing occur prior to the sanctions  
25 hearing occurring.

1 I am going to conduct the sanctions hearing prior to  
2 starting the jurisdictional hearing, but it may be right  
3 before. I'm not planning to have a whole lot of time between  
4 those, but part of that is going to be my schedule and the  
5 status of the briefing that I get. I don't have the briefing  
6 yet, so I'm not going to commit to how exactly I'm going to  
7 schedule them, but my thought is to do it right before,  
8 because I've got witness issues and I've got common issues,  
9 and I want to have those people all here at one time, okay.  
10 So that's my thought process.

11 So I'm going to be getting briefs related to the  
12 issues on the sanctions, Mr. Jones, you said in about three  
13 weeks, we're going to set a hearing there, and then you and  
14 Mr. Bice will agree to whatever briefing schedule you do, and  
15 then I will move the hearing to accommodate that briefing  
16 schedule.

17 I'm going to get briefs, Mr. Bice, from you on the  
18 waiver of the privilege issue. Then you and Mr. Jones are  
19 going to agree on whatever schedule you agree to, and then  
20 we'll set the hearing for that.

21 How am I going to get the documents to do the in-  
22 camera review?

23 MR. BICE: I'm going to allow Ms. Spinelli to  
24 address that, Your Honor.

25 THE COURT: They're on some -- they're in the cloud;

1 right?

2 MR. RANDALL JONES: Yes.

3 MS. SPINELLI: Your Honor, they're with the Court's  
4 vendor, Advance Discovery, so I don't know if -- I notice you  
5 do electronic document review for your exhibits, but we could  
6 arrange, obviously, a connection with the Court, or --

7 THE COURT: I need access.

8 MS. SPINELLI: Yes.

9 MR. RANDALL JONES: Your Honor --

10 THE COURT: I need whatever the code is.

11 MS. SPINELLI: Absolutely.

12 MR. RANDALL JONES: May I just make a suggestion?  
13 Why don't we get with counsel and try to figure out a protocol  
14 that's acceptable to both sides about how we get those  
15 documents to the Court. Does that make sense?

16 THE COURT: Well, but aren't they stored  
17 electronically right now?

18 MR. RANDALL JONES: That's my understanding. They  
19 are with Advance Discovery.

20 THE COURT: I can review them electronically.

21 MR. RANDALL JONES: Well, I'm just saying, because  
22 we haven't talked to Advance Discovery to find out the best  
23 way to do that. If we -- if we work together, I think that we  
24 could come up with a protocol that's acceptable to both  
25 parties, and we can talk to the Court and find out what your

1 tech people the best way to do this.

2 THE COURT: Well, it won't be that hard. I just  
3 need the access code.

4 MR. RANDALL JONES: I don't think so, either, but --

5 THE COURT: Here's the other two things that I need  
6 in conjunction with that. Because it's been so long since  
7 this motion was originally brought, I need a new version of  
8 the privilege log. I would prefer it in a Excel spreadsheet  
9 format. If you give it to me in Word, I can live with it. I  
10 will not take it in .pdf or paper, because I have to be able  
11 to create my own column as I go through and do the in-camera  
12 review to make a ruling on each of the documents as I review  
13 them. So I need that privilege log in Excel or Word.

14 With respect to the player list, since there are  
15 people that I do not know who are included in the documents, I  
16 need an identification of who they are and what their  
17 positions are, and if they are counsel, to have that  
18 specifically identified and what the scope of their work was.  
19 That player list needs to be exchanged so that both sides have  
20 the opportunity to view it. I have in prior cases had  
21 litigation or arguments about whether people on the players  
22 list really were who they said they were. And I anticipate  
23 that that may be an issue that we have to address.

24 MR. PEEK: May I have a moment, Your Honor?

25 THE COURT: Yes. You can have as many moments as

1 you want, Mr. Peek.

2 (Pause in the proceedings)

3 MR. RANDALL JONES: Mr. Peek raises a question I  
4 guess of the breadth of the player list is that there are only  
5 certain documents in which they objected to an assertion of  
6 privilege that are at Advance Discovery. And so --

7 MR. BICE: That's not true. We gave some examples  
8 of the -- when we filed the motion --

9 THE COURT: That was my recollection. That was why  
10 I was relieved to be able to find a way to make a wholesale  
11 decision, which the Supreme Court disagreed with. So I'm  
12 going to go through and do an --

13 MR. PEEK: So they're objecting to all of those  
14 documents upon which we claim a privilege --

15 THE COURT: That's what I've always understood.

16 MR. PEEK: -- as opposed to specific ones on the  
17 log.

18 THE COURT: That's why I told you I thought this  
19 would be a very difficult review for me, because I've always  
20 thought I was reviewing it all.

21 MR. PEEK: Yeah. I thought that was just a smaller  
22 subset of that, Your Honor. So --

23 THE COURT: Why do you think I tried to take the  
24 easy way out, Mr. Peek?

25 MR. PEEK: What's that?

1 THE COURT: Never mind. I didn't say anything.

2 So, Mr. Jones, how long to get me that stuff and  
3 come up with some sort of plan for us to figure out how I'm  
4 going to perform my obligations of doing an in-camera review?

5 MR. RANDALL JONES: Your Honor, can we -- because  
6 I'm not the tech person, can we have -- today's Thursday --  
7 can we have -- is it acceptable to the Court to give us week  
8 so we can get with our tech people and --

9 THE COURT: Why don't we give you two?

10 MR. RANDALL JONES: That would even be better.

11 THE COURT: Okay. So can I have a status check with  
12 you on August 28th for us to talk about the followup to my in-  
13 camera review. The one thing I would like exchanged at least  
14 two days prior to that hearing is your player list, because I  
15 think the player list, if there's going to be motion practice  
16 related to the identity of those persons or their scope of  
17 their work, I want to do it sooner, rather than later, and I  
18 want to do it before I start the in-camera review.

19 MR. RANDALL JONES: At 8:30, Your Honor?

20 THE COURT: Yes, please. That's what time I try and  
21 start my calendars.

22 MR. RANDALL JONES: Just wanted to verify.

23 THE COURT: And I apologize to Judge Earl's  
24 calendar, which starts at 9:00, because I only had two things  
25 this morning.

1 MR. PEEK: So 8:00 o'clock on the 28th?

2 THE COURT: 8:30, Mr. Peek.

3 MR. PEEK: 8:30 on the 28th.

4 MR. PISANELLI: Your Honor, I've got something at  
5 10:00, but can --

6 THE COURT: You don't have to come.

7 MR. PISANELLI: 8:30 is fine. Any way that we could  
8 know that we go first, since it's just a status conference?

9 THE COURT: I only have one or two things every  
10 Thursday. It just seems --

11 MR. PISANELLI: Yeah. But if Mr. Peek is on that  
12 one in front of us, that could push us way back into the  
13 afternoon.

14 MR. PEEK: I'm here on the 29th, I think, Your  
15 Honor.

16 THE COURT: Are you?

17 MR. PEEK: On Parametric.

18 THE COURT: Yeah, probably. Mr. Peek's very happy  
19 with the decision on the privilege for that case, too.

20 Okay. Anything else? And the DISH Network case.

21 MR. RANDALL JONES: Your Honor, I take it at the  
22 status check that we will have more discussion about  
23 potentially scheduling some hearings in the future.

24 THE COURT: I'm going to have to get into the  
25 in-camera review before I know when I'm going to be able to



1 schedule the hearing, because part of what I've been saying  
2 the whole time is those documents that are part of the Jacobs  
3 material, if they're going to be released, need to be released  
4 prior to the jurisdictional hearing in time for the  
5 plaintiff's counsel to be able to review those documents,  
6 digest it, and determine if they're going to use them. If  
7 they're protected by the privilege, they won't get them. But  
8 if some of them aren't, they get them ahead of the hearing,  
9 and then we're going to have to have a discussion. So until I  
10 know how long it's going to take me to do that in-camera  
11 review that I've been ordered to do -- and I cannot at this  
12 point, given my CityCenter trial, just set a month aside like  
13 I did the last time was ordered to do this and do it, so it's  
14 going to take longer.

15 MR. RANDALL JONES: Your Honor, the only other issue  
16 I had is we've submitted competing orders on the summary  
17 judgment motion.

18 THE COURT: I'd love to see them in Word format.

19 MR. RANDALL JONES: Your Honor, we will provide  
20 that.

21 THE COURT: We've only received one side. So if you  
22 would both email them to us.

23 MR. RANDALL JONES: We submitted ours and provided a  
24 copy to the --

25 MR. BICE: We will get ours to you today, Your

1 Honor.

2 THE COURT: If you would both email them to me in  
3 Word format.

4 MR. BICE: We will.

5 MR. RANDALL JONES: Your Honor, there was also --

6 THE COURT: Because if I decide I don't like your  
7 order, I cut and paste and change.

8 MR. RANDALL JONES: There was -- there was a motion  
9 to seal, also, and also --

10 THE COURT: There is a motion to seal and a motion  
11 to undesignate as confidential. I was holding that for last.

12 MR. RANDALL JONES: That's the only thing that I'm  
13 aware of that still needs to be addressed.

14 THE COURT: The motion to seal is granted.

15 The motion to unseal is denied at this time without  
16 prejudice to renew it at a later point in time after I finish  
17 the jurisdictional hearing. At this point I'm going to leave  
18 it sealed.

19 MR. RANDALL JONES: Your Honor, my question would be  
20 is the protocol -- we presume the protocol is still in place,  
21 and we would --

22 THE COURT: Absolutely.

23 MR. RANDALL JONES: We simply -- if they would sit  
24 down with us and have a meet and confer, it may make that  
25 motion moot. So we would --

1 THE COURT: It may.

2 MR. BICE: Yeah, we agree that the protocol is in  
3 place, but, unfortunately, every document is designated as  
4 confidential in disregard of the order.

5 THE COURT: I know, Mr. Bice. I know. And I have  
6 not at this point gone through and parsed which ones should or  
7 should not. At some time, unfortunately, I'm going to  
8 probably have to do that if you don't reach an agreement.

9 MR. RANDALL JONES: And, Your Honor, I don't  
10 appreciate Mr. Bice's comment "in disregard of the order." We  
11 disagree with that statement, as you can imagine.

12 THE COURT: All right. So some day we're all going  
13 to get together and have a nice discussion and work this out.  
14 In the meantime, I look forward to seeing you in two weeks at  
15 a status check. Have a nice day.

16 If we receive the remittitur before then, Mr.  
17 Morris, then I will address on fairly short notice the issue  
18 related to the fifth claim for relief in the current second  
19 amended complaint as against Mr. Adelson.

20 MR. MORRIS: Very good. Thank you, Your Honor.

21 MR. BICE: Thank you, Your Honor.

22 THE PROCEEDINGS CONCLUDED AT 9:34 A.M.

23 \* \* \* \* \*

24

25

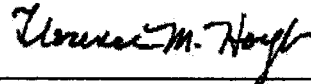
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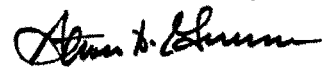
**AFFIRMATION**

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

**FLORENCE HOYT**  
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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.

**AND RELATED CLAIMS**

Case No.: A-10-627691

Dept. No.: XI

**ORDER ON DEFENDANT SANDS  
CHINA, LTD.'S MOTION FOR  
SUMMARY JUDGMENT ON  
PERSONAL JURISDICTION AND  
PLAINTIFF'S COUNTERMOTION FOR  
SUMMARY JUDGMENT**

Hearing Date: July 29, 2014

Hearing Time: 8:30 a.m.

Before the Court is Defendant Sands China, Ltd.'s ("SCL") Motion for Summary Judgment on Personal Jurisdiction (the "Motion") and Plaintiff Steven C. Jacob's Countermotion for Summary Judgment (the "Countermotion"). Each side agrees that the stay directed by the Nevada Supreme Court does not preclude this Court from resolving the jurisdictional issue by way of summary judgment. Accordingly, on July 29, 2014, the Court heard oral argument and considered all briefing on the Motion and Countermotion and now, being fully informed, and good cause appearing therefor:

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

1 THE COURT RULES as follows:

2 1. Because the Court believes there are genuine issues of material fact, the Court  
3 needs to conduct an evidentiary hearing and to make findings of fact on the issues of general,  
4 specific, and transient jurisdiction with respect to SCL as has been directed by the Nevada  
5 Supreme Court.

6 2. For the purposes of general jurisdiction, issues of fact remain including,  
7 nonexclusively, the location of the SCL board meetings, where the officers were conducting their  
8 business, and where the oversight of day-to-day activities was occurring to make a determination  
9 as to where SCL was at home.

10 3. For the purposes of specific jurisdiction, issues of fact remain including,  
11 nonexclusively, where SCL's decision-making process occurred, the delivery of that  
12 decision-making process, and the impact of the delivery of that decision-making process in  
13 Nevada.

14 4. For the purposes of transient jurisdiction, issues of fact remain including,  
15 nonexclusively, the extent and nature of Michael Leven's responsibilities and day-to-day  
16 activities on behalf of SCL, as he is the individual that was served with Summons and Complaint  
17 in this matter.

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


- 19 1. Defendants' Motion is DENIED without prejudice; and  
20 2. Plaintiff's Countermotion is DENIED without prejudice.

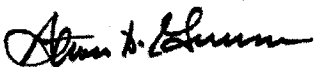
21 DATED: 09/15/14

22   
23 THE HONORABLE ELIZABETH GONZALEZ  
EIGHTH JUDICIAL DISTRICT COURT

24 Respectfully submitted by:

25 PISANELLI BICE PLLC

26 By:   
27 James J. Pisanelli, Esq., #4027  
28 Todd L. Bice, Esq., #4534  
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CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

STEVEN C. JACOBS,

Plaintiff,

vs.

LAS VEGAS SANDS CORP, SANDS  
CHINA LTD,

Defendants.

CASE NO. A-10-627691

DEPT. NO. XI

**Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT  
JUDGE

**PLAINTIFF'S MOTION FOR RELEASE OF DOCUMENTS FROM ADVANCED  
DISCOVERY ON THE GROUNDS OF WAIVER; PLAINTIFF'S MOTION ON  
DEFICIENT PRIVILEGE LOG ON OST**

THURSDAY, OCTOBER 9, 2014

APPEARANCES:

For the Plaintiff:

JAMES J. PISANELLI, ESQ.

TODD L. BICE, ESQ.

JORDAN T. SMITH, ESQ.

DEBRA SPINELLI, ESQ.

For the Defendants:

J. STEPHEN PEEK, ESQ.

JON RANDALL JONES, ESQ.

MARK JONES, ESQ.

RECORDED BY:

JILL HAWKINS, DISTRICT COURT

TRANSCRIBED BY:

KRISTEN LUNKWITZ

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

1 THURSDAY, OCTOBER 9, 2014 8:30 A.M.

2

3 THE COURT: Good morning, Mr. Peek. How are you  
4 today?

5 MR. PEEK: Good morning.

6 THE COURT: Mr. Morris called to say he had to be  
7 down with Judge Denton, so he was unable to join us and  
8 asked us to proceed without him. So, we're here related to  
9 some motions that the plaintiffs have filed and I report  
10 that I have made absolutely no progress on your case since  
11 I've been in the pretrial process of CityCenter. I've  
12 taken the boxes home several times, but I have not gotten  
13 to them as part of what I'm trying to do with the other  
14 case. I keep hoping I'll get to them, but I don't.

15 MR. PISANELLI: I know that feeling of taking the  
16 work home and never quite getting it.

17 THE COURT: I've got a Yukon and I can only put so  
18 much in it and then it comes back on Mondays. Most of it's  
19 been read, but you're at the end.

20 MR. PISANELLI: Yeah.

21 THE COURT: So, --

22 MR. RANDALL JONES: Bring -- take my briefcase as  
23 well, Your Honor. That's about it.

24 THE COURT: Well it takes me two trips to load it  
25 with the boxes. So, all right. Mr. Pisanelli, are you



1 going to argue some motions this morning?

2 MR. PISANELLI: I am.

3 THE COURT: Okay.

4 MR. PISANELLI: Do you have a preference on how we  
5 begin?

6 THE COURT: I don't care which one we start with.  
7 They're basically the same issue. They've been bad again.  
8 Their privilege log is bad. It's taking too long. They're  
9 still bad, bad, bad.

10 MR. PISANELLI: Well, when you put it that way.  
11 You're kind of stealing my thunder

12 THE COURT: I was summarizing the argument.

13 MR. PISANELLI: Yeah.

14 Your Honor, I know you hear -- I'm starting, by  
15 the way, privilege log deficiencies, and I know you hear  
16 this phrase so much you probably consider it to be a cliché  
17 at this point, but I'm going to use it anyway because it  
18 seems to fit the circumstances that if not know, when?

19 We know that there are consequences to failing to  
20 provide an adequate privilege log. We know it from when we  
21 were trained as lawyers just out of law school and we  
22 certainly know it from being trained by you in this  
23 courtroom. You have some very high standards for all of us  
24 to conduct ourselves and we all do. Sometimes it's  
25 lawyering, sometimes it's clienting, if that's a word, but

1 you understand my point. You set a high bar for us here in  
2 Business Court and we all -- and when I say we, I mean all  
3 of us, at both tables, do our best to try and comply with  
4 it.

5 We've fallen not a little short, about as short as  
6 your high standards that I can think of in any case I've  
7 ever --

8 THE COURT: I've had one that's worse.

9 MR. PISANELLI: Really? Well, you see more of  
10 them than I do. This is as bad as I've gotten. In the  
11 totality of circumstances, not just the worst log, but when  
12 you take the entire dispute into consideration, that's when  
13 I think we get to the point of being comfortable with the  
14 fact that what we're asking for is rather harsh.

15 And I'm not going to repeat everything that's in  
16 the briefs, but I think it's important to point out just a  
17 couple of very quick facts of why it is not beyond the  
18 pale, it is not severe, and it is not overly harsh to say  
19 that the rule that you always apply, applies here. And  
20 that is that we start with when this log originally was  
21 produced, coupled with our very extensive objections, which  
22 followed only two weeks later and that's September 26,  
23 2012.

24 You combine that fact, that we started in 2012,  
25 this thing was amended once, called a final log a couple of

1 months later in December 2012, and all that final really  
2 did, as you may recall, is took some stuff off it. Right?  
3 But it never addressed all of the deficiencies that we  
4 brought to their attention.

5           And so, we, for two years, were holding on to a  
6 log that does very little. It leaves a few clues, I'll  
7 give them that credit, here and there of what the actual  
8 document was. It leaves a few clues, here and there, of  
9 what the underlying premise was for the assertion of the  
10 privilege and then that's it.

11           And we heard, for two years now, Sands China stand  
12 behind it, for two years dealing with us. And now all the  
13 way up to only a couple of weeks ago before you, I think  
14 the quote, something to the effect of: We have carried our  
15 prime requirement that we provide a detailed privilege log.

16           So, we don't have to look to any of the cases that  
17 talk about a party that says: Okay, it was a bad first  
18 effort, Your Honor, but I fixed it and only two weeks had  
19 lapsed, only a month has lapsed, only two months have  
20 lapsed, but I fixed it. It was a good faith assertion and  
21 the first effort we see from some of the cases where  
22 leniency was the rule that was applied and then other times  
23 it was the timing of the correction that got some of the  
24 parties off the hook for their bad privilege logs.

25           But here, we have a disastrous one. I think you

1 may have characterized it as awful, being kind to them, and  
2 we had them standing behind stubbornly and defiantly for  
3 two solid years only to come in, at the end of the day,  
4 looking for the do over. And that's why I started this  
5 conversation with the concept that if not now, then when?

6 THE COURT: Well, sometimes when I give do overs,  
7 there are assessments of expenses that are related to it.

8 MR. PISANELLI: Sure.

9 THE COURT: And that may be part of what happens  
10 after I finish, if I ever get to it, the in-camera review.

11 MR. PISANELLI: Right.

12 THE COURT: And that's, I think, where the issue  
13 is -- because it's not necessarily a waiver just because  
14 their privilege log is awful, or was awful before they  
15 started trying to do a better job.

16 MR. PISANELLI: Yep.

17 THE COURT: But it's caused a lot of people a lot  
18 of work and this isn't the first time in this case we've  
19 had something like this happen.

20 MR. PISANELLI: Right.

21 THE COURT: And so the question is: I understand  
22 what you're saying, but isn't the appropriate remedy some  
23 sort of recompense for the expense and time that everyone  
24 has had to go through?

25 MR. PISANELLI: But, I mean, how do you put that -

1 - let me start with the underlying premise. Of course  
2 you're right. All right. But we bring this log to your  
3 attention that says it may result in the waiver and the  
4 may, of course, is the definition that's the key word to  
5 all of it, it means you decide.

6 THE COURT: Judicial discretion.

7 MR. PISANELLI: Yeah. Exactly. It's up to you.  
8 I'm not going to pretend it's anything other than your  
9 decision and I throw this last fact into context of why now  
10 is the time that it's something more than a just a writing  
11 a check that seems to be irrelevant to this -- to these  
12 parties because no matter how many checks they write for  
13 checks, nothing seems to change.

14 We have, as I've said, a terrible log. We have  
15 two years of defiance of standing behind it, but then look  
16 at what we've now learned. What was put on the log was so  
17 reckless that already, before you started your in-camera  
18 review, 50 percent --

19 THE COURT: Well, no I actually --

20 MR. PISANELLI: -- of them gone --

21 THE COURT: -- started it, Mr. Pisanelli.

22 Remember, I started it and then I said --

23 MR. PISANELLI: And then you had to stop.

24 THE COURT: -- it was awful.

25 MR. PISANELLI: Yeah.

1 THE COURT: And then we had a -- somebody decided  
2 to take a second look.

3 MR. PISANELLI: Yep. My point is only before we  
4 got any benefit of your work, 50 percent of the 3,000 pages  
5 are withdrawn. You have to put, I think, that into  
6 context: the timing, the stubbornness to correct, and how  
7 bad it was, how reckless -- reckless isn't even the right  
8 word. All right. These are skilled attorneys starting at  
9 MTO and moving through the roster of people whose  
10 fingerprints are on this. These are skilled people who  
11 knew what they were doing and before you have taken one  
12 document off it, they took 50 percent of the 3,000 page  
13 privilege log and said: Yeah, we shouldn't have done that.

14 So, I won't beat the dead horse. You know what my  
15 position is.

16 THE COURT: I do.

17 MR. PISANELLI: Today does present the  
18 circumstances where I think -- and just let me put the  
19 proposal out there and Your Honor, of course, can do with  
20 it as you please; but I think the fair proposal, in light  
21 of the totality of the circumstances, is that it's a two-  
22 step process on your in-camera review. You start at what  
23 the privilege log said and if that's not good enough, it's  
24 released. If it is good enough in your view, then the in-  
25 camera review of the document itself can be analyzed to see

1 if it should have been on there in the first place, but  
2 holding them responsible for what they put on that log in  
3 the first instance, I don't think is overly harsh. They  
4 didn't correct it. They knew what they were doing and now  
5 it's time to pay.

6 We can't get the two years, really three years,  
7 back. We can get some of our attorneys' fees back, and I  
8 understand your point, but we can't get the fact that they  
9 have stalled this case for three years now and we're still  
10 in a jurisdictional phase because we can't seem to get a  
11 good faith effort on --

12 THE COURT: And I still have to do an --

13 MR. PISANELLI: --

14 THE COURT: -- evidentiary hearing according to  
15 your writ.

16 MR. PISANELLI: You understand our frustrations.  
17 Sometimes --

18 THE COURT: Oh boy.

19 MR. PISANELLI: -- we've been boisterous about it.  
20 Sometimes we banged our head on the table, sometimes  
21 literally, other times figuratively, but you understand our  
22 frustration.

23 THE COURT: Absolutely.

24 MR. PISANELLI: We think holding Sands China  
25 responsible for their own conduct and choices is not overly

1 harsh and that's all we ask of you.

2 THE COURT: All right. Thank you. Mr. Jones.

3 Mr. Sorenson, I already handled your case. I'm  
4 done. I granted it.

5 MR. SORENSON: Thank you, Your Honor.

6 MR. RANDALL JONES: I don't want to belabor this  
7 either. I think I understand what you're suggesting, but I  
8 do think it's important to point out a couple of things  
9 that I just think are inaccurate.

10 First of all, the privilege log, in it and of  
11 itself, I don't believe has delayed the evidentiary  
12 hearing, certainly not in any material way because there  
13 were other issues, as you well know, that had to do with  
14 many other writs, that had -- that were really the delay  
15 and the delay was as a result of stays that were issued by  
16 both this Court and the Supreme Court with respect to how  
17 certain things were handled, including discovery.

18 And I want to point out, you know, Mr. Bice has, I  
19 think to his credit, has acknowledged that the Munger  
20 Tolles law firm is a very good law firm.

21 THE COURT: But that's a really awful privilege  
22 log to come out of a very good law firm then. I don't know  
23 who they send it out to do, but it doesn't appear to have  
24 the quality of anybody, except for one firm, that I've ever  
25 seen before.



1 MR. RANDALL JONES: And I --  
2 THE COURT: And that's a local firm. Sorry.  
3 MR. RANDALL JONES: And I assume it's not our  
4 firm, my --  
5 THE COURT: Not yours.  
6 MR. RANDALL JONES: -- firm.  
7 THE COURT: Not even a case you're involved in.  
8 MR. RANDALL JONES: But, I do want to point out,  
9 in defense of Munger Tolles, and this is something that wed  
10 didn't really even get into until this whole issue came up  
11 after the Supreme Court ruled on the ruling that you had  
12 made about a class of persons -- Mr. Jacobs being allowed  
13 to take these documents because, at that point, Judge, --  
14 THE COURT: Not being able to take them. That  
15 wasn't what I said.  
16 MR. RANDALL JONES: I'm sorry. Being --  
17 THE COURT: I said being able to review them --  
18 MR. RANDALL JONES: -- able to use them.  
19 THE COURT: -- and use them.  
20 MR. RANDALL JONES: I misspoke. That's certainly  
21 what I meant and I hope the Court understood what I meant,  
22 but the point is is that the privilege log became moot at  
23 that point as long as that ruling was out there until we  
24 heard what the Supreme Court had to do --  
25 THE COURT: You're right.

1 MR. RANDALL JONES: -- or had to say.  
2 THE COURT: It did. Which is why --  
3 MR. RANDALL JONES: So --  
4 THE COURT: -- I asked when you came back if you  
5 wanted a second chance to look at it again and --  
6 MR. RANDALL JONES: And --  
7 THE COURT: -- initially, you guys said: No.  
8 MR. RANDALL JONES: Initial -- well, what I said  
9 at the -- when you put that question to me, and I'm happy  
10 to stand here in front of you and tell you I said it and  
11 why I said it.  
12 When the District Court asks me, and I've got a  
13 document which I have not had an opportunity to review, I  
14 have not had an opportunity to review the protocol in any  
15 detail and you ask me and you -- and I don't blame you for  
16 doing it, but you put me on the spot.  
17 THE COURT: Of course I did.  
18 MR. RANDALL JONES: What did you expect me --  
19 THE COURT: That's my job.  
20 MR. RANDALL JONES: What did you expect me to say?  
21 I had to stand on the document that our prior counsel had  
22 offered to the Court until I knew otherwise and as soon as  
23 we knew otherwise, we immediately informed the Court of  
24 that and took action to correct the situation.  
25 But getting back to Munger Tolles and the

1 condition of that initial log. You know, it's easy in  
2 hindsight to say: You know, what a bad job they did and  
3 how faulty that log was, but if you go back in the context  
4 of the time and you look at what they were trying to do at  
5 the time they were trying to do it -- we're talking about  
6 close to 100,000 documents with a protocol that they did  
7 not devise. It was a protocol that was essentially put  
8 together Advanced Discovery on the categories and you have  
9 to remember, Judge, the way those categories were set up  
10 and this had to do with the issue of redaction of the  
11 documents is just one example.

12           If any document in a chain was privileged, whether  
13 it be the document that it -- that included an attachment  
14 that was not privileged, it had to be -- the only way you  
15 could designate it was privileged. If the attachment was  
16 privileged but the e-mail that it was attached to was not  
17 privileged, then you had to designate it as privileged.

18           And so, -- and they were working under, in my --  
19 at least from my perspective, with 100,000 documents,  
20 pretty extreme time constraints with a protocol that did  
21 not allow them all the categories, that's why we had to  
22 revise it, to designate these documents in the appropriate  
23 fashion so that we didn't run into this mess later on.

24           And then the question becomes, and I certainly  
25 understand their argument, Mr. Jacobs' argument that:

1 Well, why didn't you fix it? And, as I said before, once  
2 you made your ruling that Mr. Jacobs was entitled to review  
3 these documents and that there was no privilege because of  
4 the class of persons that he was in, what's the point?  
5 Should we have -- when it came --

6 THE COURT: It still doesn't make sense to me and  
7 I know the Supreme Court has ruled, but he can't review a  
8 document that he's the recipient or the author of. That  
9 still doesn't make sense to me, but I understand the  
10 ruling.

11 MR. RANDALL JONES: And I understand your  
12 statement, Judge, but the bigger point, as it relates to  
13 this motion, is: Are sanctions appropriate, of any kind,  
14 based upon the timing of these issues? And --

15 THE COURT: Right now.

16 MR. RANDALL JONES: And --

17 THE COURT: At this point, I agree with you  
18 they're not and I already told Mr. Pisanelli that. They  
19 may be some day.

20 MR. RANDALL JONES: And I -- and because you made  
21 that comment, I certainly, at least, want to give you our  
22 side of the story or at least our initial side of the story  
23 because if this is an argument that needs to be made later,  
24 I don't want it to go un --

25 THE COURT: You know if it becomes an issue later

1 I'm going to give you an opportunity argue and if it  
2 becomes an issue where reviewing the now revised privilege  
3 log and revised redacted documents, most of which are  
4 sitting in the vestibule of my office at the moment, if it  
5 appears to me there has still been such a dramatic  
6 shortfall, I think it will be a significant hearing that we  
7 have.

8           If, on the other hand, it looks like that when you  
9 got a fresh shot at it that you had an opportunity to do  
10 the right thing and you did the right thing and what I've  
11 got back there and what's on the Advanced Discovery website  
12 are, in fact, arguably privileged, even though I may  
13 disagree with some of them that you designated, then it's a  
14 different discussion and I talk to Mr. Pisanelli about what  
15 the attorneys' fees are that he's incurred in the last few  
16 months as a result of this additional delay.

17           So, --

18           MR. RANDALL JONES: And, Judge, --

19           THE COURT: -- I've got these two different things  
20 that I might get, but I've got to finish the review before  
21 I can get there and I have to look at them more.

22           MR. RANDALL JONES: But that's -- I --

23           THE COURT: And I've told Mr. Pisanelli that. He  
24 doesn't like it, but I've got to look at them all.

25           MR. RANDALL JONES: Well -- and, Your Honor, just

1 for the record, I don't like that you would still consider  
2 that there would be any appropriate sanction later on  
3 because I do think we've tried as best we could in good  
4 faith --

5 THE COURT: Do you know how many hours I spent on  
6 it the first time before you guys decided to redo it?  
7 That's frustrating for a judge who already has limited  
8 time, Mr. Jones, to go through that effort, come in and  
9 have a discussion with counsel, and then have the  
10 recognition that something should be changed and I  
11 recognize that from your perspective, you were relying on  
12 what you believe to be very competent prior counsel and  
13 their work.

14 MR. RANDALL JONES: And I appreciate that, Your  
15 Honor, and, by the way, I -- we certainly understand you  
16 have a busy docket and I would hope that you would  
17 understand that we don't want to do anything to increase  
18 your burden unnecessarily and to the extent that there was  
19 -- that did occur, and I certainly saw and heard some of  
20 your frustration at some of the hearings leading up to  
21 today on this subject, and I -- as it relates to prejudice,  
22 I understand the Court has been -- your -- you've told us  
23 that you've been significantly inconvenienced and  
24 frustrated by this --

25 THE COURT: Well the biggest part is the --

1 MR. RANDALL JONES: -- process.

2 THE COURT: -- window I have from when CityCenter  
3 decided they wanted to have that month continuance, that  
4 window was when I was going to look at these documents.  
5 Because of the hiccup, and then the secondary problem with  
6 Advanced Discovery when I went on and looked at all the  
7 documents and then all of a sudden they get changed in the  
8 middle of my review, which I know they still haven't  
9 explained, but it happened, has caused me to then have to  
10 find another window of time, which may not be until my  
11 December break of CityCenter, to be able to sit down there  
12 and look at these documents. And that's what the real  
13 issue is, Mr. Jones, is the timing issue.

14 MR. RANDALL JONES: And let me leave you with  
15 this. The point about the additional review is to -- and  
16 because there's a point they made about we want a do over  
17 and change the privilege log. As you know, we're not  
18 adding anything to the privilege log. We're taking things  
19 away from the log.

20 THE COURT: Absolutely. And I appreciate that.

21 MR. RANDALL JONES: And so, the point being,  
22 hopefully, whatever time was lost by the Court in the  
23 review, will be made up by the reduction in the number of  
24 documents that you have to review, which we believe will be  
25 in excess of 50 percent based on, I think, what we're

1 seeing so far.

2 THE COURT: That's why your brother convinced me  
3 to stop the review I was doing because he was telling me it  
4 was going to be 30 to 40 percent and then it went up a  
5 little bit. So, I'm very glad of the efforts. I'm glad to  
6 not have to review all of those documents, but it did cause  
7 this timing delay that is a significant issue.

8 MR. RANDALL JONES: So, I hope the Court would  
9 take into account the fact that we have substantially  
10 reduced the burden on the Court which would at least lesson  
11 the time that it would take to review the documents at the  
12 end of the day and I'll leave it at this, Your Honor.  
13 Assuming, because of CityCenter, that we aren't able to get  
14 to this evidentiary hearing until well after you've had a  
15 chance to review the privileged documents and make your  
16 ruling, then there would be no actual privilege -- or  
17 prejudice to Mr. Jacobs because he will have had the  
18 documents in sufficient time to prepare himself for the  
19 evidentiary hearing.

20 And so, I would ask the Court to keep an open mind  
21 about those issues and consider those as well as giving us  
22 the opportunity at a later date, if the Court thinks it's  
23 necessary, to address this issue again.

24 THE COURT: Oh, absolutely.

25 MR. RANDALL JONES: Thank you.



1 THE COURT: Mr. Pisanelli.

2 MR. PISANELLI: My final points, Your Honor, it  
3 always seems -- it's always interesting to me that the  
4 party that has caused delay, in this case three years,  
5 seems to say no harm, no foul. I guess time is on their  
6 side. If this takes 45 years to get to an actual hearing,  
7 no harm, no foul because you ultimately got what you fought  
8 so hard to get, which, by the way, should have been  
9 voluntarily disclosed.

10 So there is not a lot of credibility that should  
11 be given to an argument that they have not caused any  
12 prejudice in this case.

13 I'll leave Your Honor with two points. Counsel  
14 tells you that the log deficiencies for two years didn't  
15 cause the delay apparently because the other bad things  
16 they were doing caused delay. I'm not sure you can ever,  
17 with a straight face, say: Don't sanction me for this  
18 behavior because it would have happened anyway because I  
19 was so bad in the other behavior. They can't really take  
20 shelter from their own bad conduct which caused delay.

21 But, with that said, it's still not true. Recall  
22 part of this delay was the assertion of privilege that --  
23 from Sands China, for these documents. They went to the  
24 Supreme Court and claimed privilege on documents, now 7,000  
25 of which were never privileged in the first instance and

1 they released them after the delay had already occurred.  
2 After the Supreme Court sent them back, they released 7,000  
3 documents and said now that there was no causal connection  
4 between that improper assertion and the delay -- this  
5 current delay that we're suffering. That's just not true.

6           And, finally, Sands China says that they had no  
7 opportunity to review the privilege log and that's why up  
8 to only weeks ago they still stood behind them saying that  
9 they had met their objection. What is left from that  
10 story, Your Honor, is that we had two very important events  
11 prior to Sands China standing before you and saying that  
12 the log was good enough. One was extensive meet and  
13 confers very recently, just before that hearing.

14           And, most importantly, Ms. Spinelli wrote a thesis  
15 on the problems with this privilege log two years ago that  
16 were in the possession of all counsel, past and forward.  
17 And so to claim that they didn't have a chance to review  
18 the log isn't exactly accurate. They chose not to review  
19 the log. They chose to ignore all of the deficiencies set  
20 forth in Ms. Spinelli's letter and they chose to ignore  
21 what we brought to their attention in our meet and confer.  
22 To suggest they didn't have a chance, poor Sands China, I  
23 don't think really comports with the evidence of what we  
24 know here.

25           Taking all of this into consideration, Your Honor,

1 I won't beat the dead horse but I think now is the time.  
2 They've had more than enough chance. They've done what  
3 they can to continue to delay this process and we think  
4 there should be some consequences to it.

5 THE COURT: Okay. The motion is denied without  
6 prejudice through after I finish the review of the in-  
7 camera and redacted documents that -- which the claim of  
8 privilege is based.

9 Is that -- did we basically combine bot of the  
10 arguments, Mr. Pisanelli, or do you want to argue the one  
11 separately?

12 MR. PISANELLI: No the other separate one really  
13 is a different issue.

14 THE COURT: I'm happy to listen.

15 MR. PISANELLI: So this argument of waiver, Your  
16 Honor, is founded upon three things, first of which, of  
17 course, is the Supreme Court's mandate from its recent  
18 opinion issued 2014, this year. The other is the  
19 undisputed fact of Jacobs' possession and how long he's had  
20 them, the manner in which he's possessed them, and the open  
21 notice. And the third, which is as important as those two,  
22 is the lack of evidence that was presented to you from  
23 Sands China to somehow rebut that they did not waive the  
24 attorney-client privilege as it relates to the documents in  
25 Mr. Jacobs' possession. You'll note --

1           THE COURT: You're talking about the delay between  
2 Mr. Campbell and Ms. Glaser's communications and  
3 disclosures related to the documents?

4           MR. PISANELLI: We're talking about the delay from  
5 when -- it really is prior to, but I'll just, for the sake  
6 of debate, say the delay starts when Mr. Jacobs is escorted  
7 to the border to leave Macau. That day is when this delay  
8 begins, because we know from Patty Glaser's own words, when  
9 she first communicates with Mr. Campbell, that she has had  
10 communications with people inside of her company that led  
11 her to believe that Mr. Jacobs has possession of documents.  
12 Her words. That she has, quote:

13                 Reason to believe, based on conversations with  
14                 existing and former employees and consultants of the  
15                 company, that Jacobs, her word, had stolen company  
16                 property, including, but not limited to, --

17                 And then she focused on these investigative  
18 reports, which were apparently quite sensitive to them that  
19 they wanted back.

20                 The exchange then starts with Mr. Campbell who  
21 tells her: Yes, I'll have them and I'll give you the  
22 originals back, but understand one thing, Mr. Jacobs, like  
23 other executives who have access to privilege  
24 communication, and he travels around the world and  
25 continues to possess those, and were keeping copies. She

1 doesn't like that and she complains that not only she wants  
2 all copies of the investigative reports back, but she also  
3 says that she wants everything back. In other words, she  
4 starts a letter writing campaign, a little chest pounding,  
5 but doesn't do anything about it.

6           So, the delay that I'm talking about, Your Honor,  
7 is starting from her claim to have actual knowledge that  
8 Jacobs is possessing something to standing here today to  
9 take an analysis of what did Sands China do between that  
10 time in 2010, as we stand here today, what did they do, as  
11 the law requires them, to somehow retrieve these documents  
12 back from Mr. Jacobs? The answer, at the end of the day,  
13 is nothing. They wrote some letters. The law tells us  
14 that's not good enough. They communicated: We want our  
15 stuff back. You stole them. That's not good enough.

16           They actually even filed, somewhere along the way,  
17 motions in limine not to use them in the evidentiary  
18 hearing, but you don't see a motion anywhere from Sands  
19 China over that entire period of time going all the way  
20 back to 2010 that they did anything about it.

21           What they did do --

22           THE COURT: Is have their friends at Las Vegas  
23 Sands file something.

24           MR. PISANELLI: Do you remember that?

25           THE COURT: I don't remember anything about it.

1 MR. PISANELLI: The first time Patty Glaser --  
2 THE COURT: Oh please. Please don't point at Mr.  
3 Kostrinsky. He's here for something else.  
4 MR. PISANELLI: And what a remarkable coincidence  
5 that is.  
6 So you remember it. Patty Glaser was in the front  
7 row pretending not to be the puppet master on that motion  
8 because Sands --  
9 MR. RANDALL JONES: Your Honor, I'm going to  
10 object.  
11 MR. PISANELLI: -- didn't want to come up in front  
12 --  
13 MR. RANDALL JONES: These pejorative comments  
14 about counsel are inappropriate and Mr. Pisanelli --  
15 THE COURT: Overruled.  
16 MR. RANDALL JONES: -- likes to --  
17 MR. PISANELLI: Thank you.  
18 MR. RANDALL JONES: -- do it.  
19 THE COURT: Overruled.  
20 MR. PISANELLI: And then the next time Sands China  
21 came in here to sanction me and Todd Bice because we had  
22 actually bated stamped the documents that they had already  
23 disclosed, then Mr. Ma was in the back of the room, but  
24 never coming across the bar to actually assert what their  
25 company was obligated to assert as a retrieval of their

1 documents. It never happened in this case. So --

2 THE COURT: Well don't you think this goes to  
3 maybe if they ask for that affirmative relief there might  
4 be jurisdiction against them?

5 MR. PISANELLI: Of course that's the --

6 THE COURT: Okay. All right. I was just --

7 MR. PISANELLI: -- reason they did it, but --

8 THE COURT: -- trying to make --

9 MR. PISANELLI: -- do they get to --

10 THE COURT: -- sure we all understand what the  
11 real reason is.

12 MR. PISANELLI: Sure. But there's a consequence  
13 to that choice, too, right? That we have a company who now  
14 claims that someone else was doing their bidding for them  
15 and they even tried to claim that -- I think it was the  
16 *Teleglobe* [phonetic] case that companies can do that.  
17 Interestingly enough, *Teleglobe* [phonetic] said the exact  
18 opposite. We can't ignore the corporate forum when one  
19 party wants to gain an advantage here, avoiding personal  
20 jurisdiction, and pretend like it's one company so that  
21 their parent can go in and make their fight.

22 There's one party who owns these documents. That  
23 party was a -- in the audience. They weren't a  
24 participant. They didn't come in here and ask you for any  
25 relief. In other words, they didn't do what the law

1 requires them to do. And so we stand here today with what  
2 has to be a concession that Sands China did nothing.

3 And so, the second part of the analysis then has  
4 to be: How long did they do nothing? Even if we give them  
5 credit for what their parent did, which really was only one  
6 motion that went nowhere, that was still a two month delay  
7 by their analysis. But the truth of the matter is they  
8 haven't shown anything, by way of evidence, of how long  
9 they've actually known.

10 Recall what I said at the beginning. Patty Glaser  
11 tells Don Campbell immediately when Steve Jacobs in 2010 is  
12 discharged that we want our stuff back. They then, in this  
13 case, cite to Patty Glaser and her statements, not sworn  
14 statements, her statements at this very podium to say that  
15 we didn't know until Colby Williams wrote a letter saying I  
16 have privileged material and immaterial information, they  
17 let them know. And they equate and ask Your Honor to  
18 assume that the date that Colby Williams discovers there  
19 may be privileged information is the same day that they  
20 discovered that we had, Mr. Jacobs had privileged  
21 information.

22 The question then has to be: What evidence do you  
23 have Sands China, what evidence have you presented to this  
24 Court, to prove that those are the same dates? Because  
25 it's inconsistent with Patty Glaser -- with what Patty



1 Glaser said a year earlier, two years earlier, or a year  
2 earlier, going all the way back to June of 2010.

3           Instead of giving the declaration from those past  
4 and former employees that she talked about in June of 2010,  
5 they ignore those. They don't even give a declaration from  
6 Patty Glaser herself. They simply give the in court  
7 statements at this podium when she said to you: Your  
8 Honor, we didn't know until Colby Williams sent that  
9 letter. I can give you some sworn testimony if you want it.  
10 All right. I want it. And I imagine Your Honor wants it.

11           Where is it? Where has Sands China met its  
12 evidentiary burden, as they're obligated to do, to show you  
13 two things: When it was when they knew that Steve Jacobs,  
14 like virtually every other executive in the world, is in  
15 the possession of documents that he, as you said,  
16 communicated with, on, he was a recipient of them, he was  
17 an author of some of them? Where is the evidence of when  
18 they knew that when they took him to the border with his  
19 laptop in hand that they didn't know it was on that laptop?  
20 Where's their evidence of that? It's absent. All we have  
21 is Patty Glaser's words.

22           And then the second step is where is the evidence  
23 of what they did to protect it? Their burden. We've cited  
24 cases from federal courts, from state courts, from the  
25 Nevada Supreme Court. It's everywhere. It's their burden

1 to show that this information remained confidential and  
2 that they were very protective of it and tried to get it  
3 back.

4 The second --

5 THE COURT: Don't you think the efforts of Las  
6 Vegas Sands in trying to protect that information is  
7 something that I should consider for purposes of the  
8 evidentiary hearing as opposed for the waiver? Because we  
9 have the same similar argument about: Okay, so we have Las  
10 Vegas Sands still pulling all the strings here, which has  
11 been your argument throughout.

12 MR. PISANELLI: Sure.

13 THE COURT: That's why I have additional evidence  
14 by what's happened in my courtroom --

15 MR. PISANELLI: Sure.

16 THE COURT: -- about what's part of that  
17 jurisdictional argument. Isn't that how you are more  
18 effectively --

19 MR. PISANELLI: I think --

20 THE COURT: -- able to use that?

21 MR. PISANELLI: I think the answer, Your Honor,  
22 has to be both. It has to be both that the way they're --  
23 the parent is conducting their business in the jurisdiction  
24 has to be taken into consideration of whether that company  
25 is subject to jurisdiction of this Court, but we also have

1 to say that these documents, really that are at issue,  
2 which we haven't yet had to deal with yet, the documents in  
3 possession of Mr. Jacobs that are at issue of the very  
4 claims that we someday litigate, that has to be governed by  
5 Sands China's behavior.

6           If here is a privilege there, we have to decide:  
7 Does Sands China try and set the default setting as no  
8 disclosure, unless there's an at issue waiver? Do they get  
9 that default setting if they never protected the documents  
10 in the first place? In other words, Sands China treated  
11 these documents from day one, when they escorted Mr. Jacobs  
12 to the border, they treated these documents as rightly in  
13 his possession. We know that because they didn't do  
14 anything to get them back.

15           As I said earlier, there's no evidence in the  
16 record of when they knew and so we have to assume that the  
17 evidence that they didn't give us, the evidence that Patty  
18 Glaser alluded to twice in a letter to Campbell and later  
19 in this courtroom, since they didn't present it to you, we  
20 have to conclude that it's bad for them and that all  
21 evidence will point to what we probably all assume, that  
22 they knew even before Jacobs was terminated what he  
23 possessed.

24           And so the second step then is: What did they do  
25 to protect it? If the answer is nothing, you've sat on

1 your hands for two years and done nothing, then the law  
2 tells us that there is a waiver there and Mr. Jacobs can  
3 defend himself with the same evidence that they're in  
4 possession of and show that these communications that go to  
5 the heart of the issues in this case are not only rightly  
6 in his possession, but can rightly be reviewed by his  
7 lawyers and presented to Your Honor or someday a jury to  
8 show that the claims and the defenses put forth by Sands  
9 China in this case are frivolous.

10 That's really, at the end of the day, what we're  
11 doing. It's that they're trying to hide the truth. Right?  
12 That's what a privilege is and I'm not making it up and  
13 counsel can be angry that that's pejorative, too, but the  
14 Supreme -- our Supreme Court and every court in the land  
15 says that we interpret attorney-client -- the assertion of  
16 the attorney-client privilege narrowly because it impedes  
17 the search for the truth and that's what we're doing here.

18 They are trying to take relevant and material  
19 evidence that will go the heart of this case, take them out  
20 of the picture so that the truth will be something short of  
21 a clean and clear picture. That's why every court that  
22 addresses privilege says: Very, very narrow  
23 interpretation. That's why every court that addresses this  
24 issue for parties like Sands China, that does nothing,  
25 nothing to protect the privilege, if it existed in the

1 first place, it's been waived.

2           So it's a very long-winded way of answering your  
3 question -- say that it's both. That it has to be taken  
4 into consideration as a factor for personal jurisdiction in  
5 this courtroom and there -- it should be released so that  
6 we can use that evidence both in the jurisdictional debate  
7 and the merits debate.

8           THE COURT: Thank you.

9           MR. PISANELLI: Thank you.

10          THE COURT: Mr. Jones.

11          MR. RANDALL JONES: Yes, Your Honor. Well, Mr.  
12 Pisanelli is right about one thing. He is right. I am  
13 angry. I'm angry when they try to take the law, as I  
14 certainly understand it, and has been interpreted by every  
15 judge and the Discovery Commissioner --

16          THE COURT: Well but here's --

17          MR. RANDALL JONES: -- that I've been in front of  
18 --

19          THE COURT: Here's the deal, Mr. Jones. Do you  
20 know who tried to get the documents back from Mr. Jacobs?  
21 Do you know who it was? It was Justin Jones. Remember?  
22 Justin filed -- well, you weren't here yet. Steve  
23 remembers. It was Justin Jones because we had a stay in  
24 place and we had some issues, so he filed a separate  
25 lawsuit.

1 MR. RANDALL JONES: I understand -- I've seen the  
2 record. I've read the record.

3 THE COURT: On behalf of Las Vegas Sands, not  
4 Sands China.

5 MR. RANDALL JONES: This was totally appropriate  
6 under the circumstances.

7 THE COURT: And why?

8 MR. RANDALL JONES: Because in those documents,  
9 Your Honor, were documents that related to privilege  
10 between Las Vegas Sands and Mr. -- and other parties.

11 So there were -- in other words, Las Vegas Sands  
12 had a dog in that fight.

13 THE COURT: Well, sure. They had the drive at  
14 their office.

15 MR. RANDALL JONES: Well, they had a dog in the  
16 fight because they had privileged documents they wanted to  
17 protect, but in addition to that, less than a month later,  
18 on September 28<sup>th</sup>, Las Vegas -- or Sands China, Limited,  
19 filed its own motion with this Court and you brought up an  
20 issue that Mr. Pisanelli had to admit because you,  
21 essentially, put it to him that the reason that Sands China  
22 was hesitant initially to get into that fight is because  
23 they didn't want to have to play the game of gothca with  
24 Mr. Jacobs and his counsel.

25 So, -- and the Court certainly understood --

1 THE COURT: I recognize that.

2 MR. RANDALL JONES: So, you have a party who has  
3 standing to bring that motion who brings and we -- I'm  
4 certainly happy to go through that timeline because I think  
5 that timeline not only belies everything that Mr. Pisanelli  
6 has said, it shows that Mr. Pisanelli more so, in my  
7 opinion, than his predecessor counsel, directly violated  
8 the rules that I think I'm supposed to comply with.

9 Well let me ask you, Your Honor. Am I to be --  
10 understand from you, and I've been in this situation with  
11 you before on both sides of this issue, that I can receive  
12 privileged documents from a third party or my client, for  
13 that matter, and that I can keep these documents and I can  
14 call up the other sides and say: I've got some of your  
15 documents. I'm not going to tell you what they are, how  
16 many they are, but I can tell you this. I've looked at  
17 them a little bit and I -- enough to determine there are  
18 privileged documents in here and even though you've  
19 demanded a four -- excuse me, eight months before that if  
20 that client has any documents of my client, that you give  
21 them back immediately, even though that's happened, I get  
22 to tell the other attorney: Look, I've got these  
23 privileged documents. I don't know how many there are in  
24 there, but I'm going to keep them. And --

25 THE COURT: You and I both know there's ethical

1 issues there --

2 MR. RANDALL JONES: Yes, there are.

3 THE COURT: -- and Nevada has not adopted clawback

4 as part of its --

5 MR. RANDALL JONES: Well --

6 THE COURT: -- rules and --

7 MR. RANDALL JONES: -- what Nevada has adopted --

8 THE COURT: -- until Nevada has adopted clawback,

9 there is a very gray ambiguity there.

10 MR. RANDALL JONES: Well, Judge, we have the --

11 THE COURT: But there's a --

12 MR. RANDALL JONES: -- *Merits and Sitive*

13 [phonetic] case that says what a duty of a lawyer is under

14 these circumstances and I certainly don't believe that in

15 this case that duty was followed. In addition to

16 professional -- Nevada Rule of Professional Conduct 4.4B,

17 which also requires full disclosure.

18 Now, what did my client get? Let's talk about

19 his timeline. That's an absurdity. It -- all you've got

20 to do is read the letter that Ms. Glaser sent. She said:

21 We think you have -- we have reason to believe you have

22 three reports and it may have other stuff. May, don't

23 know, but may. But if you have those three reports, we

24 want them back and, by the way, if you have anything else,

25 give it back to us.



1           So, counsel's on notice. Counsel sends a letter.  
2 This is November 23<sup>rd</sup> of 2010. Counsel sends a letter and  
3 says: I don't know what you're talking about. I haven't  
4 even had a chance to talk to my client, but I'll look into  
5 it and let you know. And he writes back and says: Well, I  
6 do apparently have one report but I'm keeping it. I'll  
7 give you the original, but I'm keeping a copy and I'll talk  
8 to him about other stuff, but -- and this is where Mr.  
9 Pisanelli has the audacity to say that we disclosed all of  
10 these documents where Mr. -- relying on Mr. Campbell's  
11 statement that -- and, by the way, I wouldn't be surprised  
12 if he has other documents. Terminated employees, in my  
13 experience, often, often being the operative word here,  
14 have a multitude of documents they keep. So they -- we may  
15 have more.

16           That is blatantly not sufficient under the *Merits*  
17 *and Sitive* [phonetic] case.

18           Now, I'll give Mr. Campbell the benefit of the  
19 doubt that he didn't know what other documents were had  
20 because we know in July, July 8<sup>th</sup> of 2011, Mr. Williams sent  
21 an e-mail confirming that they now understood from  
22 documents they received a week before. So the week of July  
23 1<sup>st</sup>, in his e-mail, he says: I've got 11 gigs of ESI and I  
24 started looking at some of it and I realized it was  
25 privileged and I stopped looking at it because Mr. Campbell

1 and Mr. Williams are good lawyers and they knew they were  
2 risking being disqualified from that case as, by the way,  
3 you admonished -- since they like to point at lawyers, you  
4 admonished these lawyers that if they wanted to go and look  
5 at this stuff while these motions were pending, they were  
6 risking being disqualified.

7 THE COURT: I did tell them that.

8 MR. RANDALL JONES: Yes, you did. And guess what  
9 they didn't do, at least allegedly, unless Mr. Pisanelli  
10 wants to get up here and admit something to the Court?  
11 They didn't look at them.

12 So, what has happened with this disclosure?  
13 Nothing. We have a motion by my client, Sands China,  
14 within three months of having this issue and, by the way,  
15 there were at least three meet and confers by August 3<sup>rd</sup> of  
16 2011 about this issue --

17 THE COURT: Mr. Jones, Ms. Glaser stood here  
18 probably fifteen times and told me there was no way she was  
19 producing any documents and no way she was doing anything  
20 until I resolved the Motion to Dismiss.

21 I don't know if you know the history, but it was -  
22 -

23 MR. RANDALL JONES: And, Your Honor, I don't know  
24 the history like you do. I certainly try to get caught up  
25 on the history, but with respect to this issue of whether

1 or not they complied with their duty, Mr. Pisanelli wants  
2 to --

3 THE COURT: No, I --

4 MR. RANDALL JONES: -- turn the duties around.

5 THE COURT: -- understand they have duties. You  
6 both have duties. And it's a --

7 MR. RANDALL JONES: And it's --

8 THE COURT: -- complex issue and the problem in  
9 this case is I had somebody who didn't want to participate  
10 in that process.

11 MR. RANDALL JONES: And, Your Honor, you've  
12 addressed that issue. You addressed that issue, what?  
13 About two years ago now. And I understand the Court still  
14 has concerns about that issue, that is not what we're  
15 talking about today.

16 THE COURT: I know.

17 MR. RANDALL JONES: Ms. Glaser said, as I  
18 understood it, after July 8<sup>th</sup> of 2011, they did look into  
19 what Mr. Jacobs may have taken, we have a different word  
20 for what he did, taken from the company. And we had no  
21 knowledge of ESI having been taken from the company until  
22 after Mr. Williams, Colby Williams, sent that e-mail on  
23 July 8<sup>th</sup>.

24 And, by the way, as you may recall, he said they  
25 think they have 11 gigabytes of documents, undefined. On

1 May 6<sup>th</sup>, I think, is when they sent their original  
2 disclosures and they have a paragraph that says: Oh, by  
3 the way, in addition to about 237 documents, which were all  
4 kind of plain vanilla stuff, we also have some ESI. Didn't  
5 say what it was, didn't say how much it was, until July 8<sup>th</sup>  
6 and they were only off by about 32 gigs. Instead 11 gigs,  
7 I think it was 44 gigs it ultimately ended up being,  
8 without any description of what it was, how they got it,  
9 when they got it, what was privileged or -- excuse me,  
10 other than the fact that it apparently -- some of it was  
11 privileged, which is in direct violation of Nevada Supreme  
12 Court precedent, the *Merits* [phonetic] case as well as the  
13 Rules of Professional Conduct.

14           So, if anybody should be outraged here it should  
15 be my client. You can't shift the burden, which is all  
16 they want to do.

17           And here's the dilemma we are faced with, Judge.  
18 There were some mistakes made. There were some mistakes  
19 made early on in the discovery process by my client. The  
20 Court has addressed those mistakes, but -- through an  
21 evidentiary hearing and this Court has said we're going to  
22 deal with that at some point in time, but what's -- the  
23 problem we're facing, and I understand Mr. Pisanelli's  
24 strategy and Mr. Bice's strategy, but it's to essentially  
25 take events that happened in the past and relive them every

1 single hearing we're in front of you on and to try to say:  
2 These guys are bad guys, they can never be reformed, and  
3 we're going to hold it against them until the end of the  
4 case.

5           And Mr. Pisanelli, I remember one of the first  
6 cases I got here in and he made some pejorative counsel  
7 about new counsel. I'm sure these are just the new people  
8 on the block on a long string of bad counsel that they've  
9 had and they'll be gone shortly thereafter. Well guess  
10 what?

11           THE COURT: I just smiled because I knew you guys  
12 were going to look at it with a fresh set of eyes.

13           MR. RANDALL JONES: And we did, Judge, and we're  
14 still here and we are trying to make sure -- and I'm not --  
15 I'm telling you right now in open court we're not perfect  
16 and we're probably going to make some mistakes in the  
17 future, but I can guarantee the Court this. We are going  
18 to do everything we can to make sure we do it right and if  
19 we make a mistake, we're going to do everything we can to  
20 bring it to your attention immediately and to correct it.

21           And if -- I hope, I hope the Court has enough  
22 experience with me and my brother and Mr. Peek and Mr.  
23 Morris to give us some benefit of the doubt that we are  
24 going to comply with our ethical obligations and our duties  
25 to the Court and to opposing counsel and to the opposing

1 party, and we are going to do what we can to make sure that  
2 we comply with the rules and mitigate any errors that may  
3 have been made in the past, which I believe we have done  
4 and I would ask this Court. Do not let Mr. Pisanelli turn  
5 the rules on their head and make it my client's burden for  
6 something they were remiss at.

7           And to suggest, in spite of the lengthy case law  
8 we've suggested -- or showed to the Court otherwise, to  
9 suggest that the alleged three month delay from July 8<sup>th</sup> to  
10 September 28<sup>th</sup> or so is sufficient to have created a waiver  
11 is an absurdity.

12           First of all, three months, we've got cases we've  
13 cited where they went a couple of years and the Court made  
14 reference to the fact that in those cases where the parties  
15 agreed not to review the documents during the interim  
16 period, which is exactly what happened here, there could be  
17 no waiver because there was an agreement by counsel. In  
18 this case, Mr. Williams and Mr. Campbell, who we trusted  
19 when he told us he wasn't going to review the documents, we  
20 believed them.

21           And so there was -- and we told them, after three  
22 meet and confers where we couldn't reach an agreement about  
23 getting the documents back, and they agreed to continue to  
24 abstain from reviewing the documents, we would file the  
25 appropriate motions, which happened by September 28<sup>th</sup> in the

1 case of *Sands China*. It happened in early September in the  
2 case of *Las Vegas Sands*.

3           So, to suggest -- and, by the way, as you may  
4 know, there was an interim order that said you're not going  
5 to look at those documents until we get some further  
6 direction from the Supreme Court. And then we had the  
7 Advanced Discovery protocol in place by December. To  
8 suggest that during that time, from July 8<sup>th</sup> when we  
9 actually knew the extent of the documents, to then suggest  
10 there's a wholesale waiver of all the privilege of all  
11 those documents, when they agreed never to look at those  
12 documents without further order of the Court, and then we  
13 have an order imposing a prohibition on them reviewing  
14 them, is an absurdity and turns the rules on their head.

15           And if that's the rule, then I assume I can tell  
16 Ms. Bulla next time my client gets documents from the  
17 opposing party that are privileged, that, by the way, Judge  
18 Gonzalez told me I don't have to give those back to you and  
19 I can look at them. That is what Mr. Pisanelli is  
20 suggesting. And if so, I can't wait to get a case with Mr.  
21 Pisanelli where his client's documents are provided to me  
22 by my client that include all kinds of privileged  
23 documents.

24           Thank you.

25           THE COURT: Thanks, Mr. Jones.

1           Mr. Pisanelli, do you want to wrap up quickly?

2           MR. PISANELLI: Sands China doth protest too much,  
3 Your Honor. We hear lots of arguments about the *Merits*  
4 [phonetic] decision. The *Merits* [phonetic] decision  
5 doesn't have anything to do with this case. The *Merits*  
6 [phonetic] decision has to do whether there's lawyer  
7 misconduct on not disclosing to the other side what you may  
8 have. It doesn't even touch upon the issue of the burdens  
9 of the party who claims a privilege to produce evidence  
10 about when they knew and what they did to retrieve it.  
11 It's completely a red herring that has nothing to do with  
12 anything.

13           It's also interesting to point out that in one  
14 breath, they say that merits controls this issue, that  
15 there was attorney misconduct. I'm not sure if he's saying  
16 it was me or Don and Colby, but is he upset that we didn't  
17 tell them every document we had? Because I think if I did  
18 tell them every document that we had, we necessarily would  
19 have had to read those documents and then we'd be hearing a  
20 different argument: How dare you read the documents and  
21 now we want you disqualified. So the point of it is it's a  
22 circular argument that has nothing to do with Sands China.  
23 It's Sands China's behavior that is the focus of our  
24 motion.

25           And so, I will repeat, I heard a lot of argument.



1 I heard a lot of anger coming from Sands China, but this is  
2 what I didn't hear. Where is their evidence about when  
3 they knew what Steve Jacobs had? Silence. Where is the  
4 even argument -- where is the point to the record of when  
5 they came to this courtroom to retrieve it? Silence.

6           Instead, he pointed to you to two motions: A  
7 motion in limine, which is not a motion to retrieve their  
8 documents, and I think he overlooked a motion for sanctions  
9 that Sands China filed against us for alleged -- for using  
10 documents that were privileged but they seem to forget, you  
11 may remember that motion that there -- it was based upon  
12 document that they put in the record attached to their own  
13 motion and then tried to have us sanctioned for referencing  
14 their motion.

15           So, that's the totality of what they did to  
16 protect themselves. No evidence. Nothing to protect  
17 themselves.

18           The Supreme Court told us this year, Your Honor,  
19 at footnote 9, in this case, the following.

20           THE COURT: Yeah, because only one judge can have  
21 two writs issued against her on the same day. Same day.

22           MR. PISANELLI: We direct the District Court to  
23 make findings of fact and resolve whether Sands waived  
24 any privileges.

25           That's what they told you to do. In order to make

1 findings of fact and resolve whether Sands China waived any  
2 privileges, we needed to see Sands China's evidence of when  
3 they knew. It never came. All we had was reference to  
4 Patty Glaser's argument in this courtroom. We needed to  
5 see where it was they came to this courtroom and asked for  
6 the documents to be returned. It never happened. There's  
7 only one conclusion available. It doesn't matter how  
8 loudly you yell, it doesn't matter how angry you get,  
9 there's only one conclusion available and that is that they  
10 waived.

11           If they think that Colby Williams, or Don  
12 Campbell, or me, or Todd Bice, or Debbie Spinelli, or all  
13 of us should somehow be sanctioned under the *Merits*  
14 [phonetic] decision, then I invite them to file that motion  
15 and we'll have that debate at the appropriate time. But  
16 whether that happens or not, has nothing to do with whether  
17 Sands China protected what they claim to be privileged  
18 documents. The clear answer to that question is: No, they  
19 did not.

20           THE COURT: And it's your position that in order  
21 to protect the documents, they would have had to file  
22 something in Nevada which would have caused them to submit  
23 to the jurisdiction of Nevada?

24           MR. PISANELLI: I think they had to do something  
25 and they did nothing. So I think they needed to come into

1 this courtroom, yes. Would that effort been dispositive as  
2 to the personal jurisdiction? I don't know. That's not  
3 before us now. It certainly would have been a subject of  
4 debate, but they did nothing.

5           Yeah, it's -- and, again, the smartest person on  
6 our team, reminds us that in her letter to Don Campbell,  
7 Patty Glaser threatened that if I don't get my records  
8 back, I'm either coming to Las Vegas or Macau to get them  
9 back. They didn't go to Macau. Certainly no argument ever  
10 could have been made that by going to Macau to get relief  
11 from a Macau Court that they would have been -- subjected  
12 themselves to jurisdiction here or waiving some right not  
13 to subject themselves here. They didn't do anything. They  
14 didn't come to you. They didn't go to Macau. Didn't go  
15 anywhere.

16           So it's -- we're left with no evidence of when  
17 they knew and what has to be a conceded point that they did  
18 nothing.

19           THE COURT: Thank you.

20           MR. PISANELLI: Thank you.

21           THE COURT: I'm going to take this under  
22 submission. I need to think about it some more. I'm going  
23 to schedule it on October 24<sup>th</sup> on my chambers calendar for  
24 decision.

25           MR. PISANELLI: Thank you.

1 MR. RANDALL JONES: I just point out that the  
2 document that Ms. Glaser requested back was the one report  
3 that they admitted they had.

4 THE COURT: No, I know what report it is.

5 MR. RANDALL JONES: So if there's any argument of  
6 waiver, it's as to a couple of reports, period.

7 THE COURT: Okay. Anything else?

8 MR. PISANELLI: Thank you, Your Honor.

9 THE COURT: Have a nice day.

10 MR. RANDALL JONES: Thank you.

11

12 PROCEEDING CONCLUDED AT 9:25 A.M.

13 \* \* \* \* \*

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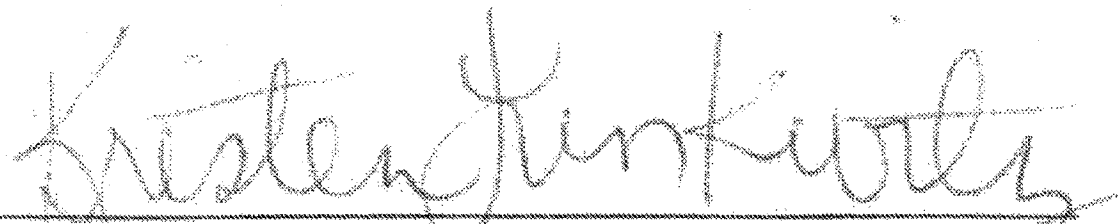
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**CERTIFICATION**

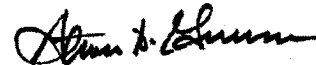
I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

**AFFIRMATION**

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.

A handwritten signature in cursive script, reading "Kristen Lunkwitz", is written over a horizontal line.

KRISTEN LUNKWITZ  
INDEPENDENT TRANSCRIBER



CLERK OF THE COURT

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DISTRICT COURT  
CLARK COUNTY, NEVADA

13 STEVEN C. JACOBS,  
14

15 Plaintiff,  
16

17 v.  
18

19 LAS VEGAS SANDS CORP., a Nevada  
20 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,  
21

22 Defendants.  
23

24 AND ALL RELATED MATTERS.  
25

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

SANDS CHINA LTD.'S MOTION TO  
RECONSIDER THE COURT'S  
MARCH 27, 2013 ORDER

Date:  
Time:

26 On March 27, 2013, this Court entered an order requiring Defendant Sands China Ltd.  
27 ("SCL") to expand its search for documents responsive to Plaintiff's jurisdictional discovery  
28 requests to include documents held by 20 custodians that Plaintiff had identified in a July 2011

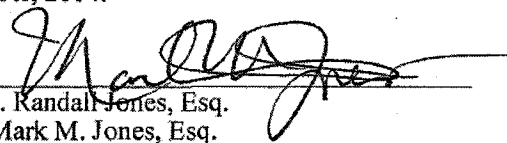
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1 letter.<sup>1</sup> The March 27 Order expressly precluded SCL or Defendant Las Vegas Sands Corp.  
2 (“LVSC”) “from redacting or withholding documents based upon the MPDPA.” 3/27/13 Order  
3 at 3. The Court stayed its Order to the extent that it required production of documents from  
4 Macau pending a decision on Defendants’ Petition for a Writ of Prohibition or Mandamus.  
5 After the Nevada Supreme Court denied that Petition on August 7, 2014, the Court declined to  
6 continue its stay.

7 As explained in greater detail below, SCL has produced approximately 4,100 new  
8 documents in response to the unstayed portion of the Court’s March 27 Order, none of which  
9 have any MPDPA redactions. There are an additional 7,600 non-privileged documents that  
10 were subject to the now-vacated stay. Because it is clear that those documents are either wholly  
11 irrelevant to the jurisdictional issue or entirely cumulative of documents that Plaintiff already  
12 has, SCL urges the Court to reconsider its order requiring SCL to produce additional documents  
13 from Macau without any MPDPA redactions.

14 This Motion is based upon the following memorandum of points and authorities, the  
15 papers and pleadings on file herein, and any oral argument that the Court may allow.

16 DATED this 17 day of October, 2014.

17   
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<sup>1</sup> That letter identified the custodians whose documents Plaintiff wanted SCL to search in the first phase of merits discovery.

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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 SANDS CHINA LTD.'S MOTION TO RECONSIDER THE COURT'S MARCH 27, 2013 ORDER on for hearing before the above-entitled Court on the 21 day of November, 2014, at the hour of Chambers a.m./p.m. in Department XI of the Eight Judicial District Court.

DATED this \_\_\_\_ day of October, 2014.

UN SIGNED

DISTRICT COURT JUDGE

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
SANDS CHINA LTD.'S MOTION TO RECONSIDER  
THE COURT'S MARCH 27 ORDER**

**I.**

**INTRODUCTION**

In the fall of 2011, the Court granted Plaintiff the right to take limited document discovery and four depositions (of Messrs. Adelson, Leven, Goldstein and Kay) to support his jurisdictional theories. The document discovery the Court allowed was all designed to support Plaintiff's various theories of general jurisdiction:

- First, Plaintiff argued that SCL's "primary officers are directing the management and control of that company from the offices [of LVSC] here on Las Vegas Boulevard." 9/27/11 H'ring Tr. at 21:8-10. Based on that theory, the Court allowed Plaintiff to seek documents to determine where SCL Board meetings were held and where directors were located if they attended by phone (Request #6), and when and how often the four deponents and other LVSC employees traveled to China on SCL-related business (Request #7).<sup>2</sup> Plaintiff also sought documents related to Mr. Leven's service as acting CEO of SCL and/or Executive Director of the SCL Board (Request #9).

<sup>2</sup> References to "Requests" are to the numbered paragraphs in the Court's March 8, 2012 Order, which memorialized its rulings on Plaintiff's requested discovery.



- Second, Plaintiff claimed that SCL had sufficient contacts in Nevada to be deemed to be doing business here. 9/27/11 H'ring Tr. at 24:14. Based on that theory, the Court allowed Plaintiff to obtain copies of contracts that SCL had entered into with entities based in or doing business in Nevada, including the shared services and other agreements between SCL and LVSC, as well as documents reflecting work performed by or on behalf of SCL in Nevada. *See* Requests # 10, 11, 13, and 16.
- Third, Plaintiff argued that LVSC acted as SCL's agent and that LVSC's contacts with Nevada could therefore be attributed to SCL. In support of that theory, Plaintiff was allowed to seek documents reflecting services performed by LVSC or its executives on behalf of SCL, as well as documents reflecting amounts (if any) that SCL paid to LVSC executives to reimburse them for work performed for SCL. *See* Requests # 12, 15, and 18.

In December 2011, Plaintiff issued 24 Requests for Production of Documents ("RFPs") to SCL (and separately to LVSC as well) based on the categories of documents the Court had permitted him to discover. *See* Ex. A hereto. To date, Defendants have produced nearly 34,000 documents in response to those RFPs, consisting of almost 240,000 pages. LVSC produced about 24,000 documents (168,000 pages), while SCL has produced close to 10,000 documents (totaling about 71,000 pages). Of the SCL documents, around 4700 were originally produced from Macau in early 2013 with personal data redacted; LVSC was subsequently able to find duplicates of more than 2100 of those documents in the United States, which were then produced in unredacted form. It is that January 2013 production that is the subject of the sanctions hearing the Court intends to conduct.

SCL's January 2013 production was based on a search of documents held by eight custodians, in addition to Jacobs himself. In its March 27 Order, the Court directed SCL to expand its search (i) to include 14 additional custodians (based on Jacobs' original list of merits custodians) and (ii) to search the documents of each of the 20 custodians Jacobs had designated for documents responsive to each of Plaintiff's 24 RFPs. The Court permitted SCL to redact or withhold documents on privilege grounds or on the ground that they were "responsive to merit-based discovery but not jurisdictional discovery," provided that SCL logged all such documents for Plaintiff's and the Court's review. March 27 Order at 2:24. As noted above, the March 27 Order prohibits any MPDPA redactions to comply with Macau's data privacy laws. *Id.* at 3.

On April 5, 2013, Defendants filed a Petition for a Writ of Prohibition or Mandamus in the Nevada Supreme Court seeking review of the March 27 Order; at the same time, Defendants

1 sought a stay of the Court's Order pending the Nevada Supreme Court's decision. The Court  
2 granted a partial stay, staying SCL's obligation to produce documents from Macau "that were  
3 not included on any electronic storage device brought to the United States as referenced at the  
4 September 2012, sanction hearing." May 13, 2013 Order at 2.

5 Defendants fully complied with the portions of the Court's March 27 Order that were  
6 not stayed. The expanded list of custodians included four individuals who reside outside of  
7 Macau—SCL's three outside directors (Iain Bruce, David Turnbull, and Rachel Chiang) and  
8 Andrew MacDonald, who is the Executive Vice President of Casino Operations at Marina Bay  
9 Sands in Singapore. SCL produced all of these custodians' non-privileged documents without  
10 any MPDPA redactions. In addition, some documents for two other custodians (Luis Melo, the  
11 former general counsel of SCL and for SCL's subsidiary, Venetian Macau Ltd. ("VML"), and  
12 Eric Chiu, VML's President of Asian Development) were included on the electronic storage  
13 devices that were referred to at the September 2012 hearing. Defendants produced those  
14 documents as well, to the extent they were not privileged, without any personal data redactions.  
15 In all, SCL produced approximately 3400 documents from these sources. It also produced a  
16 privilege log and a "relevancy" log for these searches; the relevancy log identified documents  
17 that had been located through a computerized search of the custodians described above using  
18 the search terms Defendants had previously provided to Plaintiff and the Court, but were  
19 nevertheless not responsive to Plaintiff's RFPs.<sup>3</sup>

20 Finally, Defendants searched LVSC's database for additional responsive documents.  
21 They did that by transporting LVSC's database to Macau, asking VML to run searches of the  
22 custodians in Macau on its own database, and then running a computerized search to find  
23 duplicates in the LVSC database. LVSC's database contained 725 such documents, which were  
24 produced to Plaintiff without MPDPA redactions. Defendants have thus produced a total of  
25

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26 <sup>3</sup> It is possible that some of these documents may be relevant to the merits, but they were withheld  
27 because they were deemed non-responsive to Plaintiff's specific jurisdictional RFPs—and not because  
28 any determination was made that they were responsive to merits-based rather than jurisdictional  
discovery.

1 approximately 4,100 documents without MPDPA redactions in response to the Court's March  
2 27 Order.

3 The Nevada Supreme Court denied Defendants' Petition in an August 7, 2014 Order.  
4 That Order provided significant guidance with respect to the factors the Court must consider in  
5 deciding what sanctions, if any, are appropriate in light of SCL's redaction of personal  
6 information from the documents it produced from Macau in January 2013.<sup>4</sup> The Supreme Court  
7 held that a district court is required to balance these factors in deciding whether and the extent  
8 to which any sanctions should be imposed; at the same time, the Court noted that district courts  
9 have "wide discretion" to consider foreign privacy statutes in "deciding whether to limit  
10 discovery that is either unduly burdensome or obtainable from some other sources." August 7  
11 Order at 9 n.4.

12 Since this Court declined to further extend its stay, SCL has been working to prepare the  
13 documents that were subject to the now-vacated stay for production. Computerized searches of  
14 the expanded custodians in Macau turned up over 60,000 potentially responsive documents; a  
15 review of those documents in Macau by Macanese lawyers indicated that approximately 8,000  
16 were responsive. Those documents were then redacted to remove all personal information; the  
17 redacted documents were transferred to the United States and reviewed for both responsiveness  
18 and privilege. That further review resulted in the identification of about 7,600 non-privileged  
19 documents for production. As discussed in greater detail below, the overwhelming majority of  
20 those documents relate to work that LVSC did for or on behalf of SCL—documents that are no  
21 longer relevant because they relate only to Plaintiff's now-abandoned "agency" theory of  
22 general jurisdiction.

23  
24  
25 <sup>4</sup> Those factors include: "(1) 'the importance to the investigation or litigation of the documents or other  
26 information requested'; (2) 'the degree of specificity of the request'; (3) 'whether the information  
27 originated in the United States'; (4) 'the availability of alternative means of securing the information';  
28 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.'" April 7 Order at 7-8 (quoting the Restatement (Third) of Foreign Relations  
Law § 442(1)(c) (1987)).

1 SCL is ready to produce the remaining 7,600 documents, but seeks reconsideration of  
2 the Court's March 27 Order to the extent that Order prohibits SCL from redacting any personal  
3 data from those documents to comply with the requirements of Macau's data privacy laws.

4 As SCL has previously explained, in November 2012, VML received permission from  
5 Macau's Office of Personal Data Protection ("OPDP") to conduct a computerized review of the  
6 documents it controls so that SCL could respond to the jurisdictional discovery in this case.  
7 However, the OPDP conditioned that permission on VML's agreement that (i) only Macanese  
8 lawyers would review documents in their unredacted form and (ii) those lawyers would redact  
9 all personal information or obtain specific consents from the individuals whose personal  
10 information appeared in the documents before the documents were transferred to the United  
11 States for production to plaintiff. When SCL asked VML to produce documents in a  
12 compressed, holiday-shortened period of time in order to comply with this Court's December  
13 18, 2012 Order, it did not ask VML to secure consents from individuals whose personal data  
14 appeared in the documents identified as responsive. Given the press of time and the number of  
15 individuals involved, it was not practical to obtain a large number of consents. That was  
16 particularly true in light of the MPDPA's requirement that each individual "freely" give  
17 "specific" and "informed" consent to have his or her personal data processed. The OPDP had  
18 specifically warned VML that "in the employment relation, it is particularly important to pay  
19 special attentions to whether the data subject is influenced by his or her employer and might not  
20 freely make choices." *See* OPDP August 8, 2012 Letter (Ex. D hereto) at 10-11. Thus, it was  
21 impossible for VML to broadly solicit blanket consents. In addition, the Court's comments at  
22 the December 18, 2012 hearing appeared to suggest that SCL could redact documents it  
23 produced from Macau in order to comply with the MPDPA. *See* 12/18/12 Hearing Tr. at 26:13-  
24 27:18.

25 Immediately after SCL produced approximately 4700 documents in redacted form in  
26 early January 2013, Defendants took a number of steps to provide Plaintiff with as much  
27 information as possible about those documents. First, at SCL's request, LVSC undertook a  
28 laborious search for duplicate documents in LVSC's database, which could be produced to

1 Plaintiff in unredacted form.<sup>5</sup> That process led to the production of 2100 unredacted duplicates  
2 or near-duplicates, leaving only about 2600 redacted documents from the January 2013  
3 production. Second, VML's Macanese lawyers created a redaction log, which enables Plaintiff  
4 to determine who employed the individuals whose names were redacted from the remaining  
5 2600 documents. Finally, in their February 25, 2013 Opposition to Plaintiff's Renewed Motion  
6 for NRCP 37 Sanctions (at 11, 24-25), Defendants offered to conduct additional searches or  
7 seek consents if Plaintiff identified redacted documents that were important to his jurisdictional  
8 case. Plaintiff never took Defendants up on either offer.

9 In light of the recent narrowing of Plaintiff's theories of general jurisdiction to a single  
10 "nerve center" theory, Defendants have taken yet another step to provide Plaintiff with  
11 additional, unredacted documents by securing MPDPA consents from the four individuals  
12 whose depositions Plaintiff took—Messrs. Adelson, Leven, Goldstein and Kay. Defendants also  
13 asked Jacobs to provide his consent to have his own name and other personal information  
14 unredacted from documents produced from Macau, but he declined to do so.<sup>6</sup> In light of the  
15 consents they have received, VML's Macau attorneys have re-reviewed all of the redacted  
16 documents that contain the names or email addresses of the four deponents and have  
17 "unredacted" all references to their personal information.

18 SCL is prepared to produce the remaining documents from Macau with personal data  
19 redacted except for the personal data for which VML received consents, along with a redaction  
20 log that will once again allow Plaintiff to determine who employed the individuals whose names  
21 and other personal data have been redacted. Before it does so, however, SCL urges the Court to  
22 reconsider its March 27 Order to produce additional documents without any MPDPA redactions  
23

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24 <sup>5</sup> That process involved identifying unique text in a redacted document, searching LVSC's database in  
25 an attempt to find a document with the same words, and then manually comparing any documents found  
26 by LVSC with the redacted document to see if there was an apparent match. Defendants have not  
undertaken this time-consuming process for the redacted documents whose production was previously  
stayed, but would do so if Plaintiff identifies documents that are relevant to the issue of jurisdiction.

27 <sup>6</sup> Jacobs' counsel sought to defend his refusal to consent by claiming that this Court's prior orders  
28 somehow precluded SCL from seeking consents. That is nonsense. Nothing in this Court's orders  
precludes SCL from attempting to comply with *both* this Court's order to produce documents in

1 in light of (i) the Supreme Court's August 7 Order, (ii) the dramatic narrowing of Plaintiff's  
2 theories of general jurisdiction that has occurred since this Court issued its Order in March  
3 2013, and (iii) the nature of the documents at issue, most of which have no conceivable  
4 relevance to Plaintiff's new, pared-down jurisdictional theories and/or are entirely cumulative of  
5 documents that Plaintiff has already received.

6 **II.**

7 **ARGUMENT**

8 **A. The Court Has The Power To Entertain SCL's Motion To Reconsider.**

9 In August 2014, this Court reconsidered its June 2011 Order dismissing Plaintiff's  
10 defamation claims against LVSC and SCL. In support of his motion to reconsider, Plaintiff  
11 argued that this Court has inherent authority to reconsider earlier interlocutory rulings and that  
12 "[i]t is appropriate to grant reconsideration based upon new issues of law or an intervening  
13 change in controlling law." Plaintiff's Motion to Reconsider Dismissal of Defamation Claims  
14 Against Defendants Las Vegas Sands Corp. and Sands China Ltd., filed 7/1/2104, at 5-6. The  
15 same analysis applies here. The Court has the power to reconsider its March 27 Order in light of  
16 changes in the legal landscape, which even Plaintiff apparently acknowledges have eliminated  
17 two of his three general jurisdiction theories. In addition, the Court can and should reconsider  
18 its decision in light of the Nevada Supreme Court's August 7 Order, which requires the Court to  
19 consider the impact of foreign data privacy laws in deciding whether and how to sanction a  
20 party for disobeying a discovery order and recognizes that the district court has the discretion to  
21 do so in fashioning its discovery rulings.

22 As demonstrated below, it has become apparent that the vast bulk of the documents the  
23 March 27 Order required SCL to produce from Macau are no longer relevant to any viable  
24 theory of jurisdiction. And to the extent any such documents could be deemed relevant, they are  
25 entirely cumulative of hundreds, if not thousands, of documents that Plaintiff already has (or  
26 will soon have) that provide him with all of the evidence he needs. Under those circumstances,  
27

28 unredacted form and Macau's data privacy laws by securing appropriate consents.

1 SCL urges the Court to exercise its discretion to reconsider its March 27 Order to the extent  
2 necessary to avoid putting SCL in a position where it is forced to choose between either  
3 disobeying a directive issued by this Court or attempting to force its subsidiary, VML, to violate  
4 the laws of its home jurisdiction.

5 **B. The Documents Yet To Be Produced Are Either Wholly Irrelevant**  
6 **To Plaintiff's Remaining "Nerve Center" Theory Of General Jurisdiction**  
7 **Or Are Simply Cumulative.**

8 **1. What LVSC Did "On Behalf Of" SCL Is Irrelevant.**

9 In the wake of the U.S. Supreme Court's decision in *Daimler AG v. Bauman*, 134 S.Ct.  
10 746 (2014), Plaintiff had no choice but to abandon his "agency" theory of jurisdiction. That  
11 theory was based on the premise that SCL would be subject to general jurisdiction in Nevada if  
12 LVSC acted as its agent because LVSC is subject to general jurisdiction here. *Daimler AG*  
13 specifically rejects this argument, holding that the presence of an agent doing the principal's  
14 business in the jurisdiction is *not* enough to give rise to general jurisdiction over the principal.  
15 Instead, the critical question is whether the principal itself is "at home" in the jurisdiction—  
16 either because it is incorporated or has its principal place of business there. 134 S.Ct. at 759-60.  
17 Many of Plaintiff's RFPs sought evidence to support his agency theory by asking for documents  
18 reflecting "services performed by LVSC (including LVSC's executives and/or employees  
19 and/or consultants and/or agents) for or on behalf of Sands China" with respect to particular  
20 issues, such as site development, marketing, recruiting and the like. *See* Ex. A, RFPs ## 10-15,  
21 21; 22; *see also* RFP # 23 (seeking documents relating to reimbursement of LVSC executives  
22 for work performed for or on behalf of SCL).

23 The overwhelming majority of documents that SCL has yet to produce under the March  
24 27 Order are responsive to these kinds of RFPs, which seek documents relating to the services  
25 LVSC provided to or on behalf of SCL. Specifically:

- 26 • almost 1800 documents are responsive to RFP # 11, which seeks documents reflecting  
27 "services performed by LVSC (including LVSC's executives and/or employees and/or  
28 consultants and/or agents) for or on behalf of Sands China related to and/or concerning  
site design and development oversight of Parcels 5 and 6";
- almost 1500 documents are responsive to RFP # 21, which seeks documents reflecting  
"communications by and between Sands China and/or LVSC (including LVSC's

1 executives and/or employees and/or consultants and/or agents) and site designers,  
2 developers, and specialists for Parcels 5 and 6”;

- 3 • more than 2800 documents are responsive to RFP # 22, which is a catch-all request for  
4 documents reflecting any “services performed by LVSC (including LVSC’s executives  
5 and/or employees and/or consultants and/or agents) for or on behalf of Sands China”  
6 during the period January 1, 2009, to October 10, 2010; and
- 7 • about 350 documents are responsive to RFP #13, which seeks documents reflecting  
8 “services performed by LVSC (including LVSC’s executives and/or employees and/or  
9 consultants and/or agents) for or on behalf of Sands China related to and/or concerning  
10 marketing of Sands China properties.”<sup>7</sup>

11 That the great bulk of the documents are limited to these categories is not surprising,  
12 given the identity of the additional custodians in Macau. A number of the added custodians  
13 were VML executives who were responsible for construction or design, including Ian  
14 Humphreys (VML’s Vice President of Construction (Asia)) and Iain Fairbairn (VML’s Director  
15 of Design), or for VML’s operations, including Pete Wu (VML’s Vice President of Operations),  
16 Andrew Billany (VML’s Vice President of P2 & Paiza Macao Operations), and Kerry  
17 Andrewartha (VML’s Director of Casino Operations). Plaintiff also sought documents from  
18 VML’s Vice President of Strategic Marketing, Allidad Tash. All of these individuals would  
19 have had contacts with services LVSC provided to SCL because, under the Shared Services  
20 Agreement, LVSC provided SCL and its subsidiaries with Design, Development and  
21 Construction Consultancy Services (for which SCL expected to pay about \$5 million in 2010),  
22 as well as Global Procurement and Consultancy Services, and Administrative Services. *See*  
23 Shared Services Agreement, attached hereto as Ex. B, at 3, 20; SCL’s Nov. 10, 2010 HK Stock  
24 Exchange filing regarding Continuing Connected Transactions, attached hereto as Ex. C.<sup>8</sup> That

25 <sup>7</sup> Documents were responsive to more than one request; thus, there is necessarily some double-counting  
26 embedded in these figures. Another approximately 170 documents are responsive to one or more of the  
27 following RFPs: RFP #10 (agreements between LVSC and SCL); RFP #12 (documents reflecting  
28 services performed by LVSC for or on behalf of SCL related to recruitment or interviewing of potential  
SCL executives); RFP #14 (documents relating to LVSC’s involvement on behalf of SCL with respect to  
a potential joint venture with Harrah’s); and RFP #23 (seeking documents relating to reimbursement of  
LVSC executives or other employees or consultants for services provided to SCL). No additional  
documents were found responsive to RFP #15, which sought documents relating to LVSC’s services on  
behalf of SCL concerning the negotiation of the sale of SCL’s interests in sites to SJM.

<sup>8</sup> SCL entered into the Shared Services Agreement with LVSC when it launched its IPO in 2009. The



1 LVSC provided such services to SCL says nothing about where SCL's "nerve center" was  
2 located—even assuming that a "nerve center" test applies in identifying SCL's principal place  
3 of business. Thus, the vast bulk of the documents yet to be produced from Macau would be  
4 wholly irrelevant to Plaintiff's sole remaining theory of general jurisdiction.

5 In any event, to the extent such documents might have some conceivable utility in  
6 pinpointing SCL's "nerve center," Plaintiff does not need the documents from Macau.  
7 Defendants have already produced over 9000 *unredacted* documents responsive to these  
8 requests. Furthermore, the bulk of those documents (approximately 7000) came from LVSC  
9 which, according to Plaintiff, was calling the shots from Las Vegas. If Plaintiff cannot make his  
10 case based on documents that were produced out of Las Vegas, he cannot possibly do so based  
11 on documents that were located in Macau. That is particularly true now that SCL has secured  
12 consents from Messrs. Adelson, Leven, Goldstein and Kay and their names will not be redacted  
13 from *any* of the documents produced out of Macau.

14 As to the remaining personal data that VML is required to redact, SCL stands ready to  
15 give Plaintiff a redaction log that will enable Plaintiff to determine what entity employed the  
16 parties whose names were redacted. That should give Plaintiff all of the information he needs to  
17 evaluate the documents himself. But, as SCL has said all along, if Plaintiff identifies any  
18 documents as to which the redacted names are actually relevant to jurisdiction, Defendants will  
19 do all they can to find duplicates or near-duplicates in the United States or to obtain consents to  
20 the disclosure of the redacted personal data.

21  
22  
23 "whereas" clause of that Agreement specifically notes that VML had "benefited" in the past from  
24 services provided by LVSC and its subsidiaries "[b]oth in the construction and operation of" the casinos,  
25 hotels, integrated resorts and associated facilities that had already been built in Macau, that VML was in  
26 the process of developing and constructing additional facilities on parcels 5 and 6, and that SCL wanted  
27 to continue to benefit from LVSC's services, which were to be made available on "competitive terms."  
28 Ex. B at 3. The two largest categories of services LVSC was expected to provide were (i) "[d]esign,  
development and construction consultancy services with respect to the design, development and  
construction of casinos, casino hotel and integrated resort projects" and (ii) "[j]oint international  
marketing services targeting VIP players and premium players" who would want to patronize properties  
in Macau and the U.S. and "[r]etail leasing, management and marketing services related to the retail  
malls owned or operated" by SCL and its subsidiaries. *Id.* at 20.

2. Where SCL Purchased Goods Or Services Is Also Irrelevant.

About 90 of the documents that have yet to be produced are responsive to Plaintiff's various RFPs (## 8, 17-19) seeking documents relating to SCL's purchases of goods or services from Nevada-based companies, including Bally's, Harrah's, and Cirque de Soleil.<sup>9</sup> Under *Daimler AG*, however, general jurisdiction cannot be based on the fact that SCL bought goods and services from, or communicated with, companies that are headquartered in Nevada. See also *Martinez v. Aero Caribbean*, 2014 U.S. App. LEXIS 16163, at \*16-17 (9th Cir. Aug. 21, 2014).<sup>10</sup> Thus, all of these documents are wholly irrelevant.

There are about another 100 additional documents responsive to RFP #7's request for documents relating to the location of the negotiation and execution of agreements to provide funding for SCL, including its IPO documents. These documents too are entirely irrelevant. *Where* SCL got its funding has nothing to do with where it is "at home" or where its "nerve center" is located. Also irrelevant are the dozen or so as-yet-unproduced documents responsive to RFP # 20, which seeks communications by and between SCL or LVSC and potential lenders for the underwriting of Parcels 5 and 6. Again, where SCL got its financing is irrelevant. So too is any assistance LVSC provided to SCL in an attempt to obtain financing for one of its major projects. A parent company's involvement in its subsidiary's "financing and macro-management" is utterly routine and typical of the parent-subsidiary relationship, *Doe v. Unocal Corp.*, 248 F.3d 915, 927 (9th Cir. 2001), and therefore cannot provide a basis for a claim that SCL was somehow operated and controlled from Las Vegas.

<sup>9</sup> No additional documents were found that were responsive to RFP #16, which sought documents reflecting communications by SCL or any entity acting on its behalf with BASE Entertainment.

<sup>10</sup> In *Martinez*, the Ninth Circuit described *Daimler AG* as establishing a "demanding standard for general jurisdiction over a corporation" and held that evidence that the defendant (a French corporation) had signed contracts to sell airplanes worth \$225-\$450 million to a California company, had contracts to purchase components from 11 California companies, and sent representatives to California to attend conferences and promote its products was "plainly insufficient to subject [the defendant] to general jurisdiction in California."

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3. **Documents Relating To LVSC Executives' Travel To China And The Location Of Board Meetings Are Entirely Cumulative.**

The additional searches in Macau produced a relatively small number of additional documents relating to the location of the SCL Board meetings (RFP #1, approximately 140 documents) and to travels by Messrs. Adelson, Leven and other LVSC executives to Macau or Hong Kong (RFPs ## 2-5, about 150 documents). By their very nature, these RFPs seek answers to objective questions about when and where meetings were held and individuals traveled, which are capable of being definitively answered with a minimum of documentation. And, since Plaintiff's counsel deposed Messrs. Adelson, Leven, Goldstein and Kay, they had the opportunity to ask them about both their travels to Macau and Hong Kong and their attendance at SCL Board meetings.

Plaintiff already has numerous documents, including spreadsheets, itineraries and travel logs, that show when Messrs. Adelson, Leven and Goldstein, as well as other LVSC executives and employees, traveled to Macau, China or Hong Kong during the period in question. Because Plaintiff already knows the facts concerning these trips, he has no need for any additional documents from SCL identifying when particular individuals arrived in or left Hong Kong or Macau. That is apparent from the types of documents SCL produced in January 2013, in response to this request—emails in which SCL employees discussed times at which visitors would be picked up or dropped off at the Hong Kong airport or relayed information about visitors' hotel or dinner reservations or meetings while in Macau. All of these kinds of documents are entirely beside the point. Nevertheless, Plaintiff will have these types of documents as well, with the names and other personal information of Messrs. Adelson, Leven, Goldstein and Kay unredacted.

Plaintiff also does not need any more documents to determine when and where the SCL Board met. Defendants have produced almost 2500 unredacted documents in response to this request, including Board of Directors attendance records (SCL00100030, SCL00100032) and meeting notices, which show precisely where the meetings were held and who attended in

1 person and by telephone.<sup>11</sup> Defendants also produced minutes of all of the SCL Board meetings  
2 within the period Plaintiff selected, which generally contain information about attendance and  
3 whether the meeting was in-person or via teleconference.<sup>12</sup> *As these documents show, Jacobs*  
4 *himself was present at all of the meetings prior to his termination in July 2010, and thus has*  
5 *personal knowledge of when, where and how the meetings were conducted.*

6 **4. SCL Will Be Producing Documents Relating To The Services Mr. Leven**  
7 **And Mr. Goldstein Rendered To SCL In Largely Unredacted Form.**

8 Two final RFPs (## 6 and 9) also seek documents that could conceivably be relevant to  
9 Plaintiff's new "nerve center" theory. RFP #6 seeks documents reflecting or relating to Mr.  
10 Leven's service as a Special Adviser to the SCL Board and later as Acting CEO and an  
11 Executive Director. RFP #9 seeks documents relating to work Mr. Goldstein performed for or  
12 on behalf of SCL. SCL has now obtained Mr. Leven's and Mr. Goldstein's MPDPA consents  
13 and will provide Plaintiff with all documents responsive to these and any other requests without  
14 redacting their names (or Mr. Adelson or Mr. Kay's names). That, along with the more than  
15 9,000 unredacted documents Defendants have already produced in response to these two  
16 requests out of LVSC's files, should provide Plaintiff with everything he needs to have a  
17 complete picture of whatever work Messrs. Leven and Goldstein may have performed during  
18 the period in question for SCL.

19 **C. SCL Should Not Be Burdened With Making A Choice Between Obeying**  
20 **This Court's Order Or Trying To Compel Its Operating Subsidiary To**  
21 **Violate Its Obligations Under Macau's Data Privacy Laws.**

22 Although we recognize that the Court is not required to do so, SCL urges it to exercise  
23 its discretion to consider the restrictions imposed on VML by Macau's data privacy laws in

24 <sup>11</sup> The meeting notices (LVS00123450, LVS00137693, LVS00137694, LVS00127435, LVS00220725,  
25 LVS00220328, LVS00220278, LVS00220243, LVS00240531, LVS00126799, LVS00234165) show  
that all in-person meetings were held either in Macau or in Hong Kong.

26 <sup>12</sup> LVSC produced minutes for SCL Board meetings without any MPDPA redactions for the meetings  
27 held on October 14, 2009 (LVS00134180), November 8, 2009 (LVS00117204), February 9, 2010  
(LVS00133993), March 1, 2010 (LVS00117228), April 14, 2010 (LVS00135122), April 30, 2010  
(LVS00117248), May 10, 2010 (LVS00117269), July 23, 2010 (LVS00117233), July 27, 2010  
28 (LVS00117236), and August 26, 2010 (LVS00265528).

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1 “deciding whether to limit discovery that is either unduly burdensome or obtainable from some  
2 other sources.” August 7 Supreme Court Order at 9 n.4. For the reasons outlined above, all of  
3 the redacted documents yet to be produced in response to the Court’s March 27 Order are either  
4 irrelevant or cumulative of documents that Plaintiff already has or will shortly have—  
5 documents that are more than enough to enable Plaintiff to make his case on his sole remaining  
6 general jurisdiction theory. And an analysis of the five factors that must be applied under the  
7 Nevada Supreme Court’s August 7 Order in deciding whether sanctions should be imposed also  
8 counsels against putting SCL in the position of having to decide whether to disobey this Court’s  
9 order to produce documents in unredacted form in violation of the MPDPA.

10 The first factor is whether the information in question is “important” to Plaintiff’s  
11 attempt to prove that the Court has personal jurisdiction over it. For the reasons outlined above,  
12 the information is not only unimportant, it is either entirely irrelevant or wholly unnecessary.  
13 This is not a case where there is likely to be a “smoking gun” document somewhere in Macau:  
14 if SCL’s “nerve center” were in Las Vegas (which it is not), that fact would be apparent from  
15 the thousands of documents that have been produced in unredacted form from Las Vegas.  
16 Thus, this case is nothing like *Linde v. Arab Bank, PLC*, 269 F.R.D. 186, 193 (E.D.N.Y. 2010),  
17 where the court granted a motion to compel and imposed sanctions when its order was  
18 disobeyed, because it found the information withheld to be “essential” to the proof of the  
19 opposing parties’ claims. Furthermore, by obtaining MPDPA consents from the four individuals  
20 Plaintiff himself chose to depose and unredacting all references to those individuals, Defendants  
21 have ensured that Plaintiff will have any and all documents that have any conceivable relevance  
22 to his remaining “nerve center” claim.

23 The second factor to be considered is whether the requests were “specific,” seeking  
24 particular information that cannot be obtained from other sources. Here too, the answer is “no”:  
25 Plaintiff sought broad categories of information, most of which is no longer relevant and all of  
26 which is obtainable from other sources that are not subject to the MPDPA.

27 The third factor is where the redacted documents originated. This is not a case where a  
28 U.S. entity was trying to protect documents that originated in the United States from disclosure.

1 Here, the documents all originate in Macau and the new custodians whose documents have yet  
2 to be produced are all located in Macau. As noted above, all of the new custodians whose  
3 documents are located in Macau are or were employees of VML, which does business only in  
4 Macau and holds a gambling concession issued by the Macanese government.

5 The fourth factor is whether Plaintiff has alternative avenues for obtaining the discovery  
6 he seeks. Here, Plaintiff has already obtained thousands of unredacted documents in discovery,  
7 most of which are irrelevant to his sole remaining theory of general jurisdiction. To the extent  
8 the categories of documents remain relevant, he has all of the information he needs, for  
9 example, to determine where SCL's Board meetings were held and when and how often LVSC  
10 executives went to Macau and Hong Kong. Nevertheless, Defendants will unredact the names  
11 of the key individuals who Plaintiff contends were directing SCL's affairs from Las Vegas. In  
12 addition, SCL continues to be willing to attempt to find duplicates or near-duplicates in the  
13 United States of particular documents, if Plaintiff can identify specific documents that he  
14 believes are important to his jurisdictional case.

15 Finally, there can be no doubt that VML cannot *lawfully* provide documents responsive  
16 to Plaintiff's requests without first redacting personal data or securing consents. In *Societe*  
17 *Nationale Industrielle Aerospatiale v. United States District Court*, 482 U.S. 522, 546 (1987),  
18 the U.S. Supreme Court observed that American courts should "take care to demonstrate due  
19 respect for any special problem confronted by [a] foreign litigant on account of its nationality or  
20 the location of its operations, and for any sovereign interest expressed by a foreign state."

21 As we have previously explained to the Court, beginning in May 2011, representatives  
22 of VML had a number of communications and meetings with OPDP, which is responsible for  
23 administering the MPDPA, regarding the collection, review and transfer of documents to  
24 respond to (among other things) production requests made to SCL in this case. In those  
25 communications, OPDP instructed VML that personal data of any kind could not be transferred  
26 outside of Macau absent either consent by the data subject or advance consent from OPDP.  
27 VML sought OPDP's advance consent in a letter dated June 27, 2012. But OPDP denied  
28 VML's request on August 8, 2012, telling VML that SCL's lawyers were not even permitted to

1 *review* documents in Macau that are subject to the MPDPA in order to determine whether they  
2 are responsive to U.S. discovery requests.

3 After this Court issued its September 14, 2012 Order, SCL's new counsel flew to Macau  
4 in the hope of persuading OPDP to change its position, which would have made it impossible  
5 for SCL to produce any documents from Macau. On November 29, OPDP relented in part,  
6 giving VML permission to review documents containing personal data by automated means for  
7 responsiveness so long as Macanese lawyers reviewed all potentially responsive documents and  
8 redacted any personal data (or obtained individual consents) before those documents were  
9 transferred out of Macau.

10 That the government of Macau is serious about enforcing the MPDPA is apparent not  
11 only from the communications between VML and OPDP, but also from public statements  
12 government officials have made. In August 2012, LVSC disclosed that VML was under  
13 investigation by OPDP for previous data transfers to the United States. On the heels of that  
14 announcement, Francis Tam, Macau's Secretary for Economy and Finance, was quoted in the  
15 press as stating that if OPDP found "any violation or suspected breach" of the MPDPA, the  
16 government "will take appropriate action with no tolerance. Gaming enterprises should pay  
17 close attention to and comply with relevant laws and regulations." See Declaration of David  
18 Fleming at ¶ 15, Ex. E hereto.

19 On April 16, 2013, the OPDP concluded its investigation into the 2010 processing and  
20 transfer of Plaintiff's email and other electronically stored information to the United States by  
21 imposing administrative penalties totaling 40,000 patacas on VML. Although the fine  
22 (equivalent to \$5,000) was relatively modest, the warning was unmistakable. OPDP reiterated  
23 that a data controller like VML may "transfer the data [outside of Macau] only after notifying  
24 [the OPDP], [and] having received a decision or obtained an authorisation from [OPDP]." See  
25 Ex. F hereto. Having been the subject of one high-profile investigation, which resulted in a  
26 penalty, VML would risk much more severe penalties, including substantially higher penalties  
27 and even imprisonment of the responsible parties for up to one year, if it were to transfer  
28 documents outside Macau in violation of the conditions OPDP imposed.

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1 Given Plaintiff's pared-down theory of general jurisdiction, the documents already  
2 produced, and the nature of the documents that have been identified in response to the Court's  
3 March 27 Order, there is simply no good reason to put SCL in the position of having to choose  
4 between obeying this Court's Order and trying to compel its subsidiary to violate the MPDP.<sup>13</sup>

5 **D. SCL Should Not Be Required To Produce A Relevancy Log.**

6 SCL also urges the Court to rescind its March 27 Order to produce a relevancy log with  
7 respect to the documents that were produced from Macau. The relevancy log SCL created for  
8 the documents that were already produced, in unredacted form, did not identify any documents  
9 that SCL had specifically decided to withhold on the ground that they were relevant to the  
10 merits, rather than to jurisdiction. Instead, the log merely explains why documents that were  
11 identified through a computerized search using search terms keyed to Plaintiff's 24 RFPs were  
12 not in fact responsive to those RFPs. Plaintiff has had that log for close to a year and has not  
13 disputed any of the choices Defendants made. Under those circumstances, Plaintiff has no need  
14 for a log of the tens of thousands of documents that were initially identified as potentially  
15 responsive to Plaintiff's requests in Macau, but then "withheld" on the ground that they were  
16 not in fact responsive to any of Plaintiff's RFPs.

17 ///

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27 <sup>13</sup> Although VML is SCL's subsidiary, VML has its own Board with its own fiduciary duties. Because  
28 VML is the data controller, it is VML's directors and employees that are potentially at risk. Under those  
circumstances, it is not clear that SCL has the power to compel VML to violate OPDP's directives.



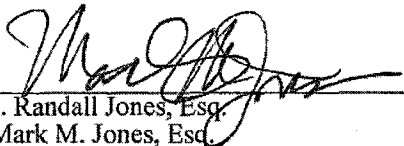
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III.

CONCLUSION

For the foregoing reasons, SCL urges the Court to reconsider its March 27 Order to the extent that it requires SCL to produce additional documents from Macau, without MPDPA redactions, and to provide a "relevancy" log.

DATED this 1<sup>st</sup> day of October, 2014.

  
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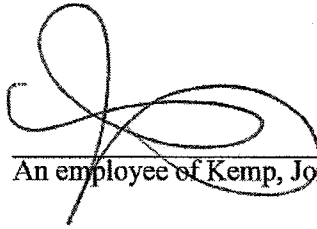
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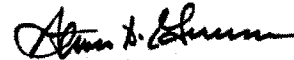
**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of October, 2014, the foregoing SANDS CHINA LTD.'S MOTION TO RECONSIDER THE COURT'S MARCH 27, 2013 ORDER was served on the following parties through the Court's electronic filing system:

ALL PARTIES ON THE E-SERVICE LIST



An employee of Kemp, Jones & Coulthard, LLP

  
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

**PLAINTIFF STEVEN C. JACOBS'  
OPPOSITION TO SANDS CHINA LTD.'S  
MOTION TO RECONSIDER THE  
COURT'S MARCH 27, 2013 ORDER**

Hearing Date: November 21, 2014

Hearing Time: In Chambers

AND RELATED CLAIMS

**I. INTRODUCTION**

Rather than diluting the case for sanctions, Sands China Ltd.'s ("Sands China") Motion for Reconsideration tightens the noose. Sands China unabashedly reiterates its willful noncompliance with the Court's Order by emphasizing that Sands China has no intention of producing unredacted documents. Instead of fulfilling its Court-ordered discovery obligations, Sands China unilaterally declares almost 8,000 documents "irrelevant," "cumulative," and asks to be relieved of even providing a "relevancy log." There has been no intervening change in the law that justifies reconsideration or Sands China's flouting of the Court's March 27, 2013 Order. The withheld documents remain relevant, discoverable, and were ordered produced long ago. And, contrary to

1 Sands China's wishes, the MDPDA does not shield relevant and discoverable information; the  
2 MDPDA is only relevant to the level of sanction imposed for failing to comply with the discovery  
3 obligations set forth in the Nevada Rules of Civil Procedure. As the Nevada Supreme Court has  
4 already ruled, Sands China's use of the MDPDA as a basis to oppose discovery is invalid. Its only  
5 relevancy is to the degree of sanctions that Sands China must bear for its continuing flaunting of  
6 this Court's orders.

7 **II. STATEMENT OF FACTS**

8 **A. The Saga of Sands China's Continuing Discovery Misconduct.**

9 The history of Sands China's discovery abuses is long and well-documented. This Court  
10 has already well documented Sands China's surreptitious review of Jacobs' documents in the  
11 United States and its lack of candor with Jacobs and this Court. As a result of this Court's  
12 detailed findings and the evidenced gleaned at the September 2012 evidentiary hearing, this Court  
13 ordered that Sands China is "precluded from raising the MDPDA as an objection or as a defense to  
14 admission, disclosure or production of any documents." (Decision & Order, Sept. 14, 2012, p. 8,  
15 on file.)

16 But as this Court knows, Sands China continued to flaunt the Court's order. On  
17 December 18, 2012, the Court entered an Order requiring Sands China to produce all documents  
18 and ESI relevant to jurisdictional discovery by January 4, 2013. (*See Order Regarding Pl.'s*  
19 *Renewed Mot. for NRCP 37 Sanctions on Order Shortening Time*, March 27, 2013, p. 2, on file.)  
20 Despite the apparent ability to comply with the Court's Order to produce documents without  
21 redactions by simply obtaining consents from affected individuals, Sands China made no effort to  
22 do so. (Mot. at 7:13-14.) On the deadline, Sands China produced what it claimed to be all  
23 responsive documents and subsequently filed a status report representing to the Court that Sands  
24 China had complied with the Court's Order. (*See Order Regarding Pl.'s Renewed Mot. for*  
25 *NRCP 37 Sanctions on Order Shortening Time*, March 27, 2013, p. 2, on file.)

26 However, in direct violation of this Court's September 14 Order, Sands China enlisted the  
27 MDPDA as an objection as a basis to redact and not produce compliant documents. As a  
28 consequence, Jacobs filed a Motion for NRCP 37 Sanction. (*Id.*) The Court granted Jacobs'

1 Motion and found "Jacobs has made a prima facie showing as to a violation of this Court's orders  
2 which warrants an evidentiary hearing." (*Id.*) The Court ordered Sands China to search and  
3 produce records for twenty custodians identified by Jacobs, including Jacobs' Court-approved  
4 discovery requests, by April 12, 2013. (*Id.*) The Court permitted Sands China to withhold  
5 documents on the basis of privilege and relevance to merits discovery provided Sands China  
6 produced privilege and redaction logs. (*Id.*)

7 Further delaying this action, Sands China again sought writ review at the Nevada Supreme  
8 Court. In challenging this Court's scheduling of an evidentiary hearing on further sanctions,  
9 Sands China further proved its knowing contempt. Sands China asserted that the reason it did not  
10 comply with this Court's September 14 Order is because that Order only applied to those  
11 documents already located in the United States. (Pet'rs' Notice of Filing in Related Case Re:  
12 Correction of Record of March 3, 2014 Oral Argument at 4, March 24, 2014, S. Ct. Case  
13 No. 62944, Ex. 1.) Sands China went so far as to represent that this Court's September 14 Order  
14 did not concern documents that were still located in Macau. (*Id.*) But of course, it made this  
15 claim after having simultaneously represented to *this* Court that the MPDPA does not even apply  
16 once documents are located in the United States. Thus, they claimed that this Court's  
17 September 14 Order was meaningless because it only precluded use of the MPDPA for documents  
18 for which the MPDPA has no application. (See Resp. to Pet'rs' Notice of Filing in Related Case  
19 Re: Correction of Record of March 3, 2014 Oral Argument, Apr. 3, 2014, S. Ct. Case No. 62944,  
20 Ex. 2.) It is just such positioning that underscores Sands China's continuing contempt.

21 On August 7, 2014, the Nevada Supreme Court denied Sands China's writ petition and  
22 endorsed the approach taken by this Court. *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 130 Nev.  
23 Adv. Op. 61, 331 P.3d 876, 877 (2014) ("Here, the district court properly employed this  
24 framework when it found that the existence of a foreign international privacy statute did not  
25 excuse petitioners from complying with the district court's discovery order."). The  
26 Supreme Court held that MPDPA does not relieve a litigant of its obligation to comply with  
27 discovery orders. *Id.*, 331 P.3d at 880. Rather, the MPDPA is only relevant to the level of  
28 sanction levied for violation of a discovery order. *Id.*

1 Contrary to the latest argument advanced by Sands China in hoping to escape sanctions,  
2 the MPDPA is not relevant to whether the documents are discoverable; this Court has already  
3 rejected that contention, as did the Supreme Court. The only relevance of the MPDPA is as to the  
4 *degree* of the sanctions imposed for Sands China's continuing failure to comply with the Court's  
5 Orders.

6 **B. Sands China's Ongoing Disregard of the Court's Discovery Orders.**

7 Following the Nevada Supreme Court's decision, this Court vacated the partial stay of its  
8 March 27, 2013 Order. Even though almost three months have elapsed since the Nevada  
9 Supreme Court reaffirmed Sands China's obligation to comply with this Court's discovery orders,  
10 Sands China still has not produced the remaining documents from Macau without redactions and  
11 it has no intention of doing so. Instead, Sands China has continued its violations by redacting the  
12 documents it must now produce. (Mot. at 6:12-16 ("Since this Court declined to further extend its  
13 stay, SCL has been working to prepare the documents . . . . *Those documents were then redacted*  
14 *to remove all personal information . . . .*") (emphasis added).)<sup>1</sup> Sands China has made no effort  
15 to locate duplicate documents in LVSC's database to produce without redactions. (*Id.* at 8 n.5.)  
16 Sands China has not bothered to obtain consents from the twenty custodians, except from  
17 Adelson, Leven, Goldstein, and Kay. (*Id.* at 8:6-12.)

18 In the face of the Court's Order, Sands China maintains that it will only produce  
19 documents with personal data redacted. (*Id.* at 8:18-21 ("SCL is prepared to produce the  
20 remaining documents from Macau *with personal data redacted . . . .*") (emphasis added); *id.*  
21 at 15:6-7 ("SCL Will Be Producing Documents Relating to the Services Mr. Leven and  
22 Mr. Goldstein Rendered to SCL *In Largely Unredacted Form.*") (emphasis added).)  
23 Sands China continues to ignore that it is precluded from redacting any documents and its  
24 ongoing refusal to abide by the Court's Order warrants sanctions – not reconsideration.

25 ...

26  
27 <sup>1</sup> Inexplicably, Sands China was able to review documents devoid of personal identifying  
28 information and determine that approximately 400 additional documents should be withheld as  
privileged, even though the existence of a privilege hinges, in large part, upon the presence of an  
identifiable attorney or accountant. (Mot. at 6:12-19.)

1 **III. DISCUSSION**

2 **A. The Withheld Documents Remain Discoverable for Jurisdictional Purposes.**

3 Although courts retain inherent authority to reconsider any interlocutory orders at any time  
4 before entry of final judgment, reconsideration is only appropriate when there has been a  
5 subsequent change in controlling law that renders a prior decision clearly erroneous. *Masonry &*  
6 *Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486,  
7 489 (1997); see also *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976)  
8 (new issues of law); *Rich v. TASER Int'l, Inc.*, 917 F. Supp. 2d 1092, 1094-95 (D. Nev. 2013)  
9 (intervening change in controlling law). There has been no change in controlling law that  
10 warrants reconsideration of the Court's March 27, 2013 Order, the underlying sanction, or Jacobs'  
11 discovery requests.

12 Sands China argues that the United States Supreme Court's decision in *Daimler AG v.*  
13 *Bauman*, 134 S. Ct. 746 (2014), renders the withheld documents, and Jacobs' document requests,  
14 irrelevant to Jacobs' jurisdictional discovery. Not so. *Daimler AG* holds that the proper inquiry  
15 "is whether that corporation's affiliations with the State are so 'continuous and systematic' as to  
16 render [it] essentially at home in the forum State." *Id.* at 761 (quotations omitted). Under  
17 *Daimler AG*, general jurisdiction will be found in the place of incorporation, the principal place of  
18 business, and where the corporate "nerve center" is located and primary decisions are made.  
19 *Id.* at 760 (citing *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010)); see also *Hertz Corp.*, 559 U.S.  
20 at 92-93 (a corporation's principal place of business is determined by its "nerve center," which is  
21 the "place where the corporation's officers direct, control and coordinate the corporation's  
22 activities).<sup>2</sup>

23  
24 <sup>2</sup> See also *Topp v. CompAir Inc.*, 814 F.2d 830, 836 (1st Cir. 1987) ("[T]he method for  
25 deciding whether a parent is doing business in a state for the purpose of finding personal  
26 jurisdiction can be applied to the analogous issue of determining the principal place of business  
27 for diversity jurisdiction."); *Suzanna Sherry, Don't Answer That! Why (and How) the Supreme*  
28 *Court Should Duck the Issue in Daimlerchrysler v. Bauman*, 66 Vand. L. Rev. En Banc 111, 118  
(2013) ("A year before *Goodyear*, *Hertz Corp. v. Friend* had defined "principal place of business"  
for purposes of diversity jurisdiction as the corporation's "nerve center [], typically ... [its]  
headquarters." Putting the two cases together suggests that MBUSA's maintenance of three  
facilities in California, none of them headquarters or a nerve center, was not sufficient to  
constitute continuous and systematic contacts.") (footnotes omitted).

1 As an initial matter, the Nevada Supreme Court has already rejected the prior incantation  
2 of Sands China's argument. In January 2014, Sands China filed a Motion to Recall the Mandate  
3 with the Supreme Court. Sands China asserted that *Daimler AG* "compel[ed]" the conclusion that  
4 the district court lacked personal jurisdiction over Sands China in this action." (Order Denying  
5 Motion to Recall Mandate, May 19, 2014, on file.) The Nevada Supreme Court rejected  
6 Sands China's contention and concluded that "even under *Daimler AG*, factual findings must be  
7 made with regard to Sands China's contacts with Nevada in order to resolve the jurisdictional  
8 issue." (*Id.*) All of Jacobs' document requests – and the documents Sands China willingly admits  
9 it is withholding – are relevant to assessing personal jurisdiction and ascertaining where  
10 Sands China's real "nerve center" is located.

11 Indeed, this Court has already determined that the documents are relevant and should be  
12 produced. (Hr'g Tr. at 27:22-23, Aug. 14, 2014, on file ("I've already made a determination that  
13 you should produce them. You said you're not going to. I said, okay, that's bad, I'm going to  
14 sanction you.")) Jacobs requested documents related to the location of Sands China's board  
15 meetings and participants, executive travel to Macau and China, Leven's service as  
16 Executive Director of Sands China, the decision to obtain financing, the execution of contracts  
17 with Nevada entities, decisions related to Parcels 5 and 6, and other operational decisions.  
18 Documents related to LVSC's actions are hardly "irrelevant" if they show (and they will) that  
19 LVSC and Adelson were making all major business decisions and directing Sands China's  
20 corporate activities from Las Vegas.

21 Likewise, documents showing where the decision was made to purchase goods, services,  
22 or financing is relevant to determining the location of Sands China's headquarters and nerve  
23 center. Merely entering into agreements in the forum may not give rise to general jurisdiction, but  
24 demonstrating where the decision was made to enter into the contracts is relevant to establishing a  
25 corporation's nerve center.<sup>3</sup> In addition to proving that Sands China's actual headquarters is in

26  
27 <sup>3</sup> Sands China's reliance on *Martinez v. Aero Caribbean*, 764 F.3d 1062 (9th Cir. 2014), is  
28 misplaced. There, the French company had "no offices, staff, or other physical presence in  
California, and it [was] not licensed to do business in the state." *Id.* at 1070. Under those  
circumstances, entering into contracts to purchase, advertising, and visits by representatives were  
insufficient to confer general jurisdiction. *Id.*



1 Las Vegas, all of the document requests are relevant to demonstrating that Sands China's activities  
2 in the forum are of a sufficient magnitude to confer general jurisdiction. *Daimler AG* reaffirmed  
3 that "a corporation's operations in a forum other than its formal place of incorporation or principal  
4 place of business may be so substantial and of such a nature as to render the corporation at home  
5 in that State." 134 S. Ct. at 761 n.19 (citing *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 437  
6 (1952)). The withheld documents are relevant and discoverable and must be produced.<sup>4</sup>

7 Moreover, Jacobs has not "abandon[ed] his 'agency' theory of jurisdiction. (Mot. at 10:9.)  
8 *Daimler AG* did not foreclose the possibility that the actions of a corporation's agent may give rise  
9 to general jurisdiction. The Supreme Court only rejected the Ninth Circuit's "less rigorous"  
10 approach based upon the "importance" of the activity and hypothetical readiness to perform. *See*  
11 *Daimler AG*, 134 S. Ct. at 759 ("Daimler argues, and several Courts of Appeals have held, that a  
12 subsidiary's jurisdictional contacts can be imputed to its parent only when the former is so  
13 dominated by the latter as to be its alter ego . . . . *But we need not pass judgment on invocation*  
14 *of an agency theory in the context of general jurisdiction, for in no event can the appeals*  
15 *court's analysis be sustained.*") (emphasis added). Sands China recognizes that "[m]any of  
16 [Jacobs'] RFPs sought evidence to support his agency theory . . . ." (Mot. at 10:16-17.) Thus,  
17 Sands China concedes the documents' relevancy and discoverability.

18 **B. Sands China Cannot Unilaterally Limit Jacobs' Discovery.**

19 Next, Sands China advances the argument of all parties facing sanctions for their  
20 discovery noncompliance – claiming that the Court should just take its word for it that Jacobs  
21 "has all the evidence he needs" or that "Plaintiff does not need the documents from Macau."  
22 (Mot. at 9:26, 12:6.)<sup>5</sup> Conveniently, Sands China wants to limit discovery to only the documents  
23 that it chooses to produce. It is this same cavalier approach to discovery that caused Sands China  
24

25 <sup>4</sup> Tellingly, Sands China does not suggest that Jacobs' discovery requests and the withheld  
26 documents are not relevant to Jacobs' specific jurisdiction claims. (*See, e.g.*, Pl.'s Req. # 22.)

27 <sup>5</sup> (*Id.* at 12:9-11 ("If Plaintiff cannot make his case based on the documents that were  
28 produced out of Las Vegas, he cannot possibly do so based on documents that were located in  
Macau."); *id.* at 12:15-16 ("[H]e has no need for any additional documents from SCL identifying  
when individuals arrived in or left Hong Kong or Macau."); *Id.* at 14:24-25 ("Plaintiff also does  
not need any more documents to determine when and where the SCL Board met.").)

1 to be sanctioned in the first place. Nevertheless, the scope of relevancy during discovery is much  
2 broader than relevancy at trial. *F.T.C. v. AMG Servs., Inc.*, 291 F.R.D. 544, 553 (D. Nev. 2013).  
3 "The objecting party must specifically detail the reasons why each request is irrelevant and may  
4 not rely on boilerplate, generalized, conclusory, or speculative arguments." *Id.* (quotations  
5 omitted). Further, document productions are not cumulative simply because depositions have  
6 occurred. *See Byrd v. D.C.*, 259 F.R.D. 1, 4-5 (D. D.C. 2009) (additional depositions were not  
7 cumulative or duplicative of investigative reports and documents).

8 All of the documents sought by Jacobs are relevant to the Court's jurisdictional  
9 determination. And, the documents withheld by Sands China are not cumulative merely because  
10 four individuals have been deposed. Jacobs is entitled to discover documents (which he knows  
11 exist) demonstrating that most executives attended Sands China board meetings by phone from  
12 Las Vegas, rarely went to Macau or Hong Kong, and Sands China's nerve center is located on  
13 Las Vegas Boulevard. Jacobs can present his proof in any admissible form and is not limited to  
14 the form that Sands China prefers because it wants to ignore a sanction imposed by this Court.

15 **C. The MDPDA Does Not Limit the Scope of Relevant Discovery.**

16 Sands China now begs the Court "to avoid putting SCL in a position where it is forced to  
17 choose between either disobeying a directive issued by this Court or attempting to force its  
18 subsidiary, VML, to violate the laws of its home jurisdiction." (Mot. at 10:2-4.) But of course,  
19 this manufactured catch-22 is the product of Sands China's own misconduct, misleading the Court  
20 about the presence of Jacobs' ESI in the United States and earning the sanction that was imposed.  
21 Contrary to Sands China's hopes and wants, it cannot simply beg off this Court's sanctions  
22 because it has bought time through various procedural maneuverings, hoping that the Court's  
23 memory of its outrageous deception will somehow wane.

24 Moreover, the Nevada Supreme Court's August 7, 2014 decision does not constitute an  
25 intervening change in law which warrants reconsideration. The Nevada Supreme Court approved  
26 this Court's approach of requiring Sands China to produce all relevant documents, while  
27 accounting for the MDPDA when issuing any sanction for Sands China's failure to comply.  
28 *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 61, 331 P.3d 876, 877 (2014)

1 ("Here, the district court properly employed this framework when it found that the existence of a  
2 foreign international privacy statute did not excuse petitioners from complying with the district  
3 court's discovery order."). The Nevada Supreme Court determined that this Court did not act  
4 arbitrarily, capriciously, or in excess of its jurisdiction by "declin[ing] to excuse petitioners for  
5 their noncompliance with the district court's previous order . . . ." *Id.* at 880. Therefore, the  
6 Supreme Court's decision reaffirmed this Court's correct approach.

7 The Nevada Supreme Court was unequivocal that "the mere existence of an applicable  
8 foreign international privacy statute does not itself preclude Nevada district courts from ordering  
9 foreign parties to comply with Nevada discovery rules. Thus, civil litigants may not utilize  
10 foreign international privacy statutes as a shield to excuse their compliance with discovery  
11 obligations in Nevada courts." *Id.* The MDPDA is only "relevant to a district court's sanctions  
12 analysis if the court's discovery order is disobeyed." *Id.* Sands China conflates the five factors that  
13 are examined when imposing sanctions with the issue of whether the documents should be  
14 produced in this first instance. The Nevada Supreme Court specifically rejected this approach.  
15 *Id.* at 879-80. The factors do not relate to the documents' discoverability. *Id.* at 880. As  
16 explained, the documents are relevant, discoverable, and must be produced without redactions as  
17 long ago ordered by this Court. The five factors are only related to the level of sanction that will  
18 be imposed and are more appropriately analyzed in the context of the forthcoming evidentiary  
19 hearing, not in the context of a Motion to Reconsider.

20 **D. Sands China Did Not Provide a Relevancy Log as Required.**

21 Under the guise of being relieved of the requirement to provide a relevancy log,  
22 Sands China admits a further violation of the Court's March 27, 2013 Order. The Court required  
23 Sands China to provide a relevancy log for any documents withheld or redacted "because the  
24 documents are only relevant to merits-based discovery." (Order Regarding Pl.'s Renewed Motion  
25 for NRCP 37 Sanctions on Order Shortening Time, March 27, 2013, on file.) But now,  
26 Sands China reveals that "[t]he relevancy log SCL created for the documents that were already  
27 produced . . . *did not identify any documents that SCL had specifically decided to withhold on*  
28 *the ground that they were relevant to the merits, rather than jurisdiction.*" (Mot. at 19:7-10.)

1 Sands China's failure to provide a relevancy log that identified documents that were being  
2 withheld because they are related to merits discovery, instead of jurisdictional discovery, is just  
3 another violation of the Court's March 27, 2013 Order. Sadly, Sands China continues to believe  
4 that it is above the orders of the Court as well as applicable rules. It simply decrees when it wants  
5 to comply. Its ongoing violations cannot be countenanced.

6 **IV. CONCLUSION**

7 Sands China lost the debate about the MPDPA both before this Court as well as the  
8 Nevada Supreme Court. Notwithstanding that adverse ruling, it continues to flaunt this Court's  
9 September 14 Order to this very day. The stay of that Order long ago dissipated and yet the  
10 noncompliance continues. Sands China's request for reconsideration is just a further attempt to  
11 delay the consequences of its longstanding misconduct and noncompliance. The motion lacks  
12 legal and factual merit and should be denied.

13 DATED this 3rd day of November, 2014.

14 PISANELLI BICE PLLC

15 By: /s/ Todd L. Bice

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 3rd day of November, 2014, I caused to be served via the Court's E-Filing system, true and correct copies of the above and foregoing **PLAINTIFF STEVEN C. JACOBS' OPPOSITION TO SANDS CHINA LTD.'S MOTION TO RECONSIDER THE COURT'S MARCH 27, 2013 ORDER** properly addressed to the following:

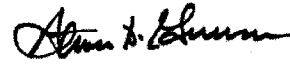
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13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

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.

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

**REPLY IN SUPPORT OF SANDS  
CHINA LTD.'S MOTION  
TO RECONSIDER THE COURT'S  
MARCH 27, 2013 ORDER**

**[ORAL ARGUMENT REQUESTED]**

Date: November 21, 2014  
Time: In Chambers

22 AND ALL RELATED MATTERS.  
23

24 **I.**

25 **INTRODUCTION**

26 More than three years ago, when Jacobs moved for jurisdictional discovery in  
27 September 2011, his counsel stated that he had "*tried to narrowly confine what it is that we*  
28 *want to do,*" so that discovery could be completed before the evidentiary hearing that was then

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1 scheduled for November 21, 2011. 9/27/11 H'ring Tr., Ex. A hereto, at 20:16-17 (emphasis  
2 added). Since then, discovery has mushroomed out of control, as Plaintiff has continued to  
3 demand more and more documents. Although changes in the law governing assertions of  
4 general jurisdiction have made much of the discovery the Court allowed in its March 27, 2013  
5 Order wholly irrelevant, he continues to insist that he wants "more" and that SCL should be  
6 forced to provide it, no matter what costs it may incur or what foreign laws it may violate.

7 As he typically does, Plaintiff also continues to ignore the extensive document discovery  
8 he has already received and to complain that he needs documents he already has. For example,  
9 Plaintiff claims that he needs more documents to show a simple objective fact: where attendees  
10 at SCL Board meetings were physically located during those meetings. Pl. Opp. at 8. But, as  
11 SCL's Motion to Reconsider points out, Plaintiff already has thousands of unredacted  
12 documents that enable him to answer the simple questions on which the Court granted him  
13 permission to take document discovery, such as "documents that will establish the date, time,  
14 and location of each Sands China Board meeting . . . the location of each Board member, and  
15 how they participated in the meeting during the period of January 1, 2009, to October 20,  
16 2010." March 8, 2012 Order, ¶ 6.

17 Indeed, since Jacobs himself was present at most of those meetings, he *knows* who was  
18 there. What possible reason could he have, other than harassment, to insist that SCL must  
19 produce even more documents, so that he has every email dealing with the logistics of SCL  
20 Board meetings? And, more to the point of SCL's Motion, why does Plaintiff need the personal  
21 information that has been redacted from the utterly routine emails SCL will produce in response  
22 to this request—such as emails between SCL employees confirming airport arrivals and pick-  
23 ups and setting up lunches for executives and SCL Board members visiting Macau? Plaintiff's  
24 Opposition does not even attempt to answer these fundamental questions. Instead, he offers  
25 only erroneous arguments and irrelevant diversions.

II.

ARGUMENT

A. Plaintiff Fails to Show that the Remaining Documents from Macau Have Any Relevance to Any Viable Theory of General Jurisdiction.

Plaintiff makes no credible attempt to address the two major arguments made by SCL showing that the documents remaining to be produced from Macau no longer have any jurisdictional significance.<sup>1</sup> First, Plaintiff does not directly address SCL's showing that documents relating to the services that LVSC provided to or on behalf SCL—which are the overwhelming majority of documents that SCL has yet to produce—are not relevant to any viable jurisdictional theory under *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014). To be sure, Plaintiff claims that he has not abandoned his “agency” theory of jurisdiction. Pl. Opp. at 7. But he nowhere explains how his agency theory differs from the Ninth Circuit theory that he previously relied on—and that the *Daimler* Court expressly rejected. 134 S.Ct at 759-60. In *Daimler*, the Court held that general jurisdiction over a foreign principal cannot be predicated on the fact that the court has general jurisdiction over the principal's U.S.-based agent. *Id.* Thus, determining the extent of the services LVSC performed on behalf of SCL as its agent (as Plaintiff sought to do) would not advance the ball one inch: no matter what LVSC did as SCL's purported “agent,” that would not be a basis for exercising general jurisdiction over SCL.

Second, Plaintiff fails to address SCL's showing that the actual information redacted from the remaining 7,200 non-privileged documents to be produced out of Macau has no jurisdictional relevance. Instead, Plaintiff makes conclusory assertions of relevance based exclusively on the requested *documents*, whereas the relevant inquiry should focus on the redacted data. For example, Plaintiff claims that *documents* relating to board meetings,

---

<sup>1</sup> Plaintiff says in a footnote (at 7 n.4) that “[t]ellingly” SCL does not argue that his discovery requests and the documents at issue are irrelevant to his theory of specific jurisdiction. That is absurd. As SCL has repeatedly pointed out, Plaintiff's discovery requests were directed *only* at his general jurisdiction theories. Plaintiff has *never* sought document discovery related to his specific jurisdiction theory, which revolves around his options agreement with SCL and (according to Plaintiff) his termination. *See, e.g.*, SCL's Revised Pre-Hearing Mem. in Opposition to Plaintiff's Renewed Motion for Sanctions, filed October 17, 2014, at 8 n.4.



1 executive travel to Macau, Mr. Leven's service as the Executive Director of Sands China, and  
2 various decisions concerning Parcels 5 and 6 could show that "LVSC and Adelson" "direct[ed]  
3 Sands China's corporate activities from Las Vegas." Pl. Opp. at 4. But Plaintiff fails to  
4 explain exactly how the personal data redacted from the Macau documents—dealing with such  
5 things as the names and email addresses of SCL's Macau employees--could possibly help him  
6 in showing that Las Vegas was the "nerve center" for Sands China's business operations. That  
7 is particularly true in light of the consents SCL has obtained from Messrs. Adelson, Leven,  
8 Goldstein and Kay. Since they are the ones who supposedly were "directing Sands China's  
9 corporate activities from Las Vegas," the fact that their names and other personal information  
10 will *not* be redacted from the documents should address any legitimate concerns Plaintiff might  
11 have.<sup>2</sup>

12 Similarly, Plaintiff makes the conclusory assertion that documents relating to services  
13 provided by LVSC to SCL could be relevant in showing that Las Vegas was Sands China's  
14 "headquarters and nerve center." Pl. Opp. at 6. But Plaintiff again makes no attempt to explain  
15 how the personal data VML was required to redact from the Macau documents could possibly  
16 help him in showing that *Las Vegas* is the nerve center for Sands China's operations.

17 Defendants have repeatedly expressed their willingness to work with Plaintiff to provide  
18 as much information as they possibly can, whether by seeking consents to unredact personal  
19 information in specific documents or by conducting searches in LVSC's database for duplicates  
20 or near-duplicates of specific documents. Plaintiff did not take Defendants up on that offer with  
21 respect to any of the redacted documents that were produced in January 2013, so LVSC  
22

---

23 <sup>2</sup> Plaintiff suggests that SCL could and should have forced all of the custodians who reside in  
24 Macau to give consents. Pl. Opp. at 4. But, as SCL pointed out in its Motion to Reconsider, the  
25 OPDP has cautioned VML that each individual must "freely" give "specific" and "informed"  
26 consent to have his or her personal data processed and specifically warned that "in the  
27 employment relation, it is particularly important to pay special attentions to whether the data  
28 subject is influenced by his or her employer and might not freely make choices." See OPDP  
August 8, 2012 Letter (Ex. D to Motion to Reconsider at 10-11). Thus, VML cannot simply  
command consent. Furthermore, obtaining consents from all of the custodians would not solve  
the problem of seeking and obtaining consents from the individuals whose names and other  
personal information appear in each custodian's documents.

1 ultimately conducted a painstaking, manual search for duplicates of *all* of the redacted  
2 documents it had produced.<sup>3</sup> In their Motion to Reconsider (at 17) Defendants once again  
3 pledged to assist Plaintiff with respect to the as-yet unproduced documents from Macau by  
4 searching LVSC's database for duplicates or near-duplicates of specific documents. Plaintiff's  
5 only response is to argue that LVSC should have conducted such a search for *all* of the more  
6 than 7,000 documents in the production—regardless of their relevance or (more to the point) the  
7 relevance of the redacted personal data. That is simply another example of Plaintiff's  
8 unreasonable approach to discovery—an approach that has mired the case in collateral issues for  
9 years and prevented the Court from even hearing the jurisdictional issues the Supreme Court  
10 directed it to decide.

11 **B. The Court Should Not Ignore The Thousands Of Documents Defendants Have**  
12 **Already Produced.**

13 Plaintiff argues (at 7) that SCL should not be allowed to “unilaterally limit” his  
14 discovery and urges the Court to disregard SCL's assertion that Jacobs already has more  
15 documents than he could possibly need. Nowhere in his Opposition, however, does Plaintiff  
16 challenge SCL's detailed description of the number, nature and source of the thousands of  
17 documents Defendants have already produced in response to what was supposed to be *limited*  
18 jurisdictional discovery. Instead, he resorts to diversion, arguing that the documents are not  
19 “cumulative merely because four individuals have been deposed.” Pl. Opp. at 8. But that is not  
20 SCL's argument. SCL did point out that the depositions gave Plaintiff the opportunity to ask  
21 simple questions, such as who attended various meetings and whether they did so by phone or  
22 in person. But the key point is that Plaintiff has also obtained thousands of documents in  
23 response to his RFPs. Plaintiff has never even attempted to explain why the additional  
24

25 <sup>3</sup> The reason why that is a painstaking, manual process is that LVSC does not have access to the  
26 unredacted documents and thus must conduct word searches looking for the use of the same  
27 words in documents housed on its database. In his Opposition, Plaintiff insinuates that SCL's  
28 U.S. counsel must have seen the unredacted documents in order to put together the privilege  
log. But, as SCL's Motion to Reconsider explained, an initial draft of the privilege log was  
created in the U.S. by lawyers who saw only the redacted documents. Then it had to be  
reviewed by the Macanese lawyers, who are the only ones authorized to review the unredacted

1 documents SCL will provide to him are anything other than cumulative of what he already has.  
2 And if the documents themselves are entirely cumulative, Plaintiff can have no conceivable  
3 need for the redacted personal information in those documents.

4 In two recent decisions, the Nevada Supreme Court has declined to allow plaintiffs in  
5 cases like this to conduct unlimited fishing expeditions in the hope of finding some way to  
6 assert general jurisdiction over a non-U.S. parent company based on the parent's relationship  
7 with a U.S. subsidiary. *See Viega GmbH v. Eighth Judicial District Court*, 130 Nev. \_\_\_, 328  
8 P.3d 1152, 1161 (2014) (denying additional discovery, where plaintiff had thus far "shown no  
9 more than a typical parent-subsidary relationship"); *Uponor Corp. v. Eighth Judicial District*,  
10 No. 64121 (Nov. 14, 2014), slip op. at 2 n.1 (same). Had these decisions been issued three  
11 years ago, when Plaintiff sought jurisdictional discovery, they would have largely, if not  
12 entirely, precluded the discovery Plaintiff sought. At the very least, these cases demonstrate that  
13 Plaintiff is not entitled to the unlimited jurisdictional discovery he has demanded.

14 **C. The Balancing Test Adopted by the Nevada Supreme Court Is Relevant to SCL's**  
15 **Motion**

16 Plaintiff offers no response to SCL's analysis of the five factors in the balancing test the  
17 Nevada Supreme Court ordered this Court to consider in deciding whether sanctions should be  
18 imposed with respect to SCL's January 2013 production. Plaintiff contends that these factors  
19 are relevant *only* in deciding whether sanctions should be imposed and have no bearing on  
20 whether SCL's Motion to Reconsider should be granted. That argument misreads the Nevada  
21 Supreme Court's opinion. As SCL's Motion to Reconsider points out, although the Supreme  
22 Court held that a district court is not *required* to utilize the balancing test in deciding whether to  
23 compel discovery, it has "wide discretion" to consider foreign privacy statutes in "deciding  
24 whether to limit discovery that is either unduly burdensome or obtainable from some other  
25 sources." August 7 Order at 9 n.4. That is precisely what SCL is asking the Court to do: to limit  
26 discovery that is unduly burdensome, that is cumulative of massive discovery Plaintiff has

27  
28 documents, to ensure that the privilege was properly asserted.

1 already obtained from other sources, and that is now largely irrelevant in light of *Daimler*. The  
2 Court has “wide discretion” to consider whether, under those circumstances, it should force  
3 SCL to a choice between violating this Court’s order or trying to compel its subsidiary, VML, to  
4 violate Macanese law.<sup>4</sup> SCL urges the Court to exercise that discretion to grant its Motion to  
5 Reconsider.

6 **D. SCL Should Not Be Required To Produce A Relevancy Log.**

7 The Court’s March 27, 2013 Order (at 2-3) directed SCL to provide a “relevancy log,”  
8 which it defined as a log of “any and all documents withheld or redacted . . . because the  
9 documents are only relevant to merits-based discovery.” As it turned out, however, SCL  
10 produced all non-privileged documents that it concluded were responsive to Plaintiff’s RFPs,  
11 and did not withhold or redact *any* responsive documents on the ground that they were “merits”  
12 documents. Thus, there was nothing to log. Nevertheless, out of an abundance of caution, SCL  
13 took the extra step of producing a log of all documents it had identified through a computerized  
14 search (using search terms keyed to Plaintiff’s 24 RFPs) but did not produce because it  
15 determined upon further review that those documents were not responsive to Plaintiff’s RFPs.

16 No good deed goes unpunished. Plaintiff hopes that by saying SCL’s “relevancy log”  
17 did not contain any documents withheld as “merits” documents, the Court will leap to the  
18 conclusion that SCL violated its Order. But there is a simple reason *why* SCL’s log did not  
19 contain any documents responsive to jurisdiction that were withheld because they were relevant  
20 to the merits: no such documents exist. To repeat: SCL did not withhold any documents  
21 responsive to Plaintiff’s jurisdictional RFPs on the ground that they were relevant to the  
22 “merits.” The log SCL produced for the January 2013 production simply lists documents that  
23 SCL determined to be non-responsive. As even Plaintiff appears to acknowledge, that log  
24 serves no purpose and SCL should be excused from providing another one. It is simply absurd  
25 for Plaintiff to suggest that SCL be sanctioned for *not* withholding documents, and for doing  
26

27 <sup>4</sup> As SCL pointed out in its Motion to Reconsider, VML is a separate company with its own  
28 Board, which has its own fiduciary duties to protect VML’s interests. Accordingly, it is not  
clear that SCL has the power to compel VML to violate OPDP’s directives.

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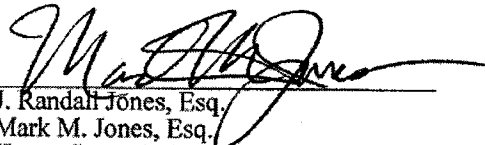
1 *more* than the Court's order required.

2 III.

3 CONCLUSION

4 For the foregoing reasons and the reasons set forth in its Motion to Reconsider, SCL  
5 urges the Court to reconsider its March 27 Order to the extent that it requires SCL to produce  
6 additional documents from Macau, without MPDPA redactions, and to provide a "relevancy"  
7 log.

8 DATED this 17<sup>th</sup> day of November, 2014.

9  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 22th day of November, 2014, the foregoing **REPLY IN SUPPORT OF SANDS CHINA LTD.'S MOTION TO RECONSIDER THE COURT'S MARCH 27, 2013 ORDER** was served on the following parties through the Court's electronic filing system:

ALL PARTIES ON THE E-SERVICE LIST

  
An employee of Kemp, Jones & Coulthard, LLP

TRAN

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

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants  
.....

CASE NO. A-627691

DEPT. NO. XI

**Transcript of  
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON MOTION FOR RECONSIDERATION**

TUESDAY, DECEMBER 2, 2014

APPEARANCES:

FOR THE PLAINTIFF:

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TODD BICE, ESQ.  
JORDAN SMITH, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
JON RANDALL JONES, ESQ.  
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STEVE L. MORRIS, ESQ.

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, TUESDAY, DECEMBER 2, 2014, 8:06 A.M.

2 (Court was called to order)

3 THE COURT: Good morning, counsel.

4 MR. BICE: Good morning, Your Honor.

5 MR. PEEK: Good morning, Your Honor.

6 THE COURT: Jacobs versus Sands.

7 (Pause in the proceedings)

8 THE COURT: All right. It's your motion. By the  
9 way, the Advanced Discovery site hates me, just so we're  
10 clear. That Website, I'll never use it again. And it may be  
11 just that I'm old and I don't learn new tricks well.

12 MR. PEEK: Which Website is that, Your Honor?

13 THE COURT: Advanced Discovery.

14 MR. PEEK: Oh. The Advanced Discovery one. Yeah.

15 MR. JONES: Your Honor, you're younger than I am,  
16 and so I really try to avoid that. That's why I have very  
17 smart young people who understand that stuff.

18 THE COURT: Yeah.

19 MR. JONES: Your Honor, first of all, we appreciate  
20 you allowing us a hearing on this matter, as opposed to in  
21 chambers.

22 THE COURT: It's an important issue, Mr. Jones.  
23 Whether I agree to reconsider or not, it's still an important  
24 issue.

25 MR. JONES: And I appreciate that, Your Honor. And



1 I guess it leads me to I guess a point that -- I've practiced  
2 before you for many years, and I've been on both sides of  
3 cases, and I know I think you have a great appreciation of the  
4 discovery process, and I think the point I want to try to make  
5 here, hope to make here is that, you know, discovery is very  
6 important in litigation, but there are appropriate limits to  
7 it. And the reason we're asking you to reconsider just one  
8 part of your March 27, 2013, order as it relates to the  
9 redactions is because of the current circumstances and whether  
10 or not it's appropriate or necessary to essentially order  
11 Sands China to produce the remaining unredacted documents --  
12 excuse me, the remaining redacted documents in unredacted form  
13 in light of the -- what I certainly believe to be a legitimate  
14 concern about the laws of China and Macau. And so, not that  
15 it's hopefully not clear already, but just to make it  
16 abundantly clear, we're asking you to only reconsider that  
17 part of your order that requires us to produce the documents  
18 that -- the remaining redacted documents in an unredacted  
19 form.

20 THE COURT: And those redacted documents that you  
21 believe might be affected by the Macau Data Privacy Act.

22 MR. JONES: That's right.

23 THE COURT: Okay.

24 MR. JONES: And I --

25 THE COURT: You've got to say that part on the

1 record.

2 MR. JONES: Yes. And, Judge, just in terms of a  
3 history here, you know, this thing has evolved I think beyond  
4 anybody's imaginations as to how this whole case has evolved,  
5 and when -- and by the way, in terms of the motion for  
6 reconsideration I think the Court has acknowledged as it  
7 relates to the defamation order that you reconsidered from  
8 June of 2011 there was a change in the law from the Supreme  
9 Court, and that's what we believe has occurred here. Not just  
10 a change in the factual situation, but also the change in the  
11 law in terms of this further instruction we have from both the  
12 United States Supreme Court, the Supreme Court in the form of  
13 the Viega -- the Nevada Supreme Court in the form of the Viega  
14 case and the Uponor case, both of which, by the way, I was on  
15 the plaintiff's side of.

16 THE COURT: You were on the losing side,  
17 unfortunately.

18 MR. JONES: I was. And, ironically, I was on the  
19 losing side where we were asking that these documents be  
20 produced and that we were asking for discovery, and the  
21 Supreme Court told us in light of the Daimler case, no, that's  
22 not relevant, you don't get it anymore. And we didn't get to  
23 do it. And I'll -- obviously I have a biased perspective,  
24 because I was involved in those cases and I know the facts I  
25 would presume better than anybody else in this courtroom, but

1 it's my belief that the facts showing the relationship between  
2 the foreign entities and the local entities was much stronger  
3 to show a connection to Nevada. In the Viega case we actually  
4 had a building in the Reno area that they were involved with.  
5 Now, of course, the Supreme Court didn't see it that way.  
6 That's fine. But the point is that in light of the Daimler  
7 case our Nevada Supreme Court has said you have to really look  
8 at whether or not this is relevant and it's discoverable from  
9 a jurisdictional standpoint of a foreign entity, and they said  
10 no.

11           So let's take a look for a moment at what has been  
12 produced. So since the order came out in March of 2013 we  
13 have produced another I think it's 4100 documents from Macau  
14 that are completely unredacted. So those are new documents.  
15 This was based upon the expanded custodian search. And then  
16 we've got a remaining I think it's 7100 documents that are  
17 redacted in some -- I'm sorry, seventy-six nonprivileged  
18 documents that have been produced with redactions. So that as  
19 far as we're concerned this is based upon the expanded  
20 custodial research that you ordered and the order that says we  
21 can produce those documents and withhold privileged, but we  
22 had to do a privilege log, but we couldn't redact under the  
23 MPDPA. So out of a concern for violating foreign law we've --  
24 we're ready to produce all this additional information, and  
25 we've gone back and we've culled through the duplicates, we've

1 done whatever we can to take documents to Macau and have them  
2 looked at by lawyers with the documents produced in the U.S.  
3 to see where we can take a document that is redacted in Macau  
4 and see if it's also been available in the U.S. Which case we  
5 have that duplicate, we have then given it in an unredacted  
6 form.

7           So what we're left with, Judge, is we're left  
8 with --

9           Oh. And the other important point here is with  
10 respect to Mr. Adelson, Mr. Leven, Mr. Goldstein, and Mr. Kay  
11 we have gotten the consents from them, because they're  
12 obviously senior management people. So we got their consents,  
13 so we've been able to give those documents completely  
14 unredacted, which, by the way, presumably would be of most  
15 concern to the plaintiff, because they really are left with,  
16 at least as far as I can see, this nerve center type of an  
17 argument, as opposed to some of the other theories. I know  
18 they say they haven't abandoned them. That's fine and --

19           THE COURT: I think that's part of the factual  
20 analysis, whether you call it the nerve center or not. But  
21 it's part of the factual analysis that needs to be made.

22           MR. JONES: And so the point being is that clearly  
23 those people they believe to be the most critical witnesses in  
24 the case they've identified. And they've taken those  
25 depositions, and clearly they hold important positions within

1 the company. And they have been -- their documents have been  
2 produced with their names on them unredacted. So they have  
3 that information.

4           So what we're left with, Judge, is we're left with  
5 essentially documents that have -- that only the name, not the  
6 content, as you know, or the subject matter that's been  
7 redacted. And we're talking about documents literally that  
8 show -- as an example, we want to have documents that talk  
9 about board meetings. Well, there's some reference here to  
10 the board meeting because these board members have come in and  
11 who's going to pick them up to take them -- pick them up from  
12 the airport. And we've redacted that name.

13           THE COURT: Mr. Jones, these are business  
14 communications. These are not personal privacy issues. If  
15 you were talking to me about personal privacy issues that were  
16 inadvertently included in business emails, you would have an  
17 argument that I would be much more inclined to agree with.  
18 And while I understand the government of Macau has their  
19 rules, their rules do not operate in Nevada. And a \$5,000  
20 fine and a warning after somebody makes a determination to  
21 carry all of the data from Macau to Las Vegas Boulevard South  
22 here in Las Vegas, Nevada, may be an appropriate determination  
23 for the Macau government. But their rules don't operate here.

24           MR. JONES: Judge, I understand that. But here's  
25 the dilemma, you know. And I was fascinated when I was

1 watching the case about Pistorius, the guy in South Africa,  
2 and I watched how their system worked, and it's --

3 THE COURT: Different than ours.

4 MR. JONES: Very different than ours. But that's  
5 their system. And some of it was actually not only confusing  
6 to me, but seemed somewhat bizarre from my perspective. In  
7 fact, I had an opportunity recently to go over to London with  
8 the American College, and they had a mock trial in London. It  
9 was fascinating. You know, we all come from the perspective  
10 of English common law, and they did a civil trial with English  
11 lawyers, barristers, and American lawyers.

12 THE COURT: Did they wear the wigs?

13 MR. JONES: They did. And they had a United States  
14 federal judge, and then they had a senior English judge. And  
15 the system there, what I thought was identical to ours, was so  
16 much different. And so even though we have that connection  
17 with England, we still -- our laws are different and they  
18 follow different rules. So essentially that's why I believe  
19 the Supreme Court has said you have to do a balancing test.

20 THE COURT: That's on sanctions. I have to do a  
21 balancing test when I get to sanctions. Right now I'm on  
22 discovery.

23 MR. JONES: All right.

24 THE COURT: Your client can make a business decision  
25 after weighing the different interests that it has and do what

1 it needs to do. I then someday may be further addressing  
2 sanctions issues. Someday. Don't know when it's going to be,  
3 because I've got to get documents produced first.

4 MR. JONES: Understood. But let me address your  
5 point specifically, then. So what this Court would always  
6 have the right to do is to decide what information is relevant  
7 and necessary in discovery irrespective of the Macanese  
8 privacy laws. So if you look at this -- and this goes to sort  
9 of a retailed point where they said, well, you withheld  
10 documents, you put together this relevancy list. No, it was  
11 not a relevancy list, it was a nonresponsive list. And sort  
12 of the no good deed goes unpunished, we went beyond what was  
13 required and we produced all relevant documents. What we did  
14 not produce -- what we did is we did a list of documents that  
15 were not responsive to the 24 requests to produce or had  
16 anything to do with those custodians. That what we did --  
17 that's what that list was.

18 So we have produced what we believe to be all  
19 relevant documents. We have redacted a few of them. So my  
20 question to the Court is what is -- and I think the Court does  
21 have the right and actually I think it's totally appropriate  
22 and necessary to balance the interests of the parties. So,  
23 for example, I ask this Court if you're balancing the idea of  
24 our client, even though we don't necessarily understand why  
25 this privacy law exists -- as you said, well, what difference

1 does it make if you have just the name of somebody. I  
2 personally agree with you. I understand your point. Why  
3 would that make a difference? But it does make a difference  
4 to the Macanese Government. They have said, without that  
5 person's express permission you can't produce that  
6 information. And so we are faced with this dilemma whether we  
7 like it or not, and certainly I know you don't like it, but  
8 what's --

9 THE COURT: Doesn't matter whether I like it or not.  
10 The issue is if it's a business communication that your client  
11 is involved with with someone else, one of your employees is  
12 involved, and almost all of these are with your own employees  
13 who are communicating among each other. That's not something  
14 that I am probably going to recognize as an appropriate  
15 exercise of your balancing if we ever get there. If you're  
16 talking to me about third parties -- for instance, we had some  
17 issues of people who became ill while they were visiting the  
18 casinos and investigations related to that. If instead the  
19 emails relate to those persons' individual health conditions,  
20 as opposed to the government investigation related to that  
21 outbreak, I think that is a very wise exercise of a data  
22 privacy protection that your client may want to rely upon,  
23 because it affects a third party not related to this action.  
24 You've got all these employees that are your employees that if  
25 you don't want to go get their consent that's okay. You have



1 the ability to get their consent. You can certainly put a  
2 little screen on their email every time they sign in that  
3 says, I understand that by using the email system I am  
4 consenting that my emails are going to not be protected by the  
5 Macau Data Privacy Act. You haven't done that. There are  
6 lots of ways that your client can deal with this issue from a  
7 business perspective. You haven't decided to do it, and  
8 that's okay.

9 MR. JONES: Two things, Judge, two points I would  
10 make. First of all, the Macanese Government doesn't recognize  
11 this discretion, as you suggested. So that unfortunately is  
12 not an option to my client. Secondly, the --

13 THE COURT: Your client decided to hand-walk all the  
14 data out of the country.

15 MR. JONES: That data has been produced.

16 THE COURT: I understand. But your client decided  
17 to make that decision. So it's sort of hard for me to listen  
18 and say, gosh, Judge, we have to abide by the Macau Data  
19 Privacy Act when you already decided it didn't really apply to  
20 you.

21 MR. JONES: Well, actually, Judge, that I think was  
22 clearly a mistake by the client, and they paid for that  
23 mistake. And here's the other problem, is, you know, you make  
24 the mistake once, which they did, and they got admonished for  
25 it and fined for it. If they make the mistake twice, it

1 becomes a much more serious concern. And that is the concern  
2 that they have had, and that's the concern they've expressed  
3 to this Court. So it's not --

4 THE COURT: I understand.

5 MR. JONES: So it's not a hypothetical concern, it's  
6 a legitimate concern. You have an actual law in place that  
7 says we can't do this.

8 With respect to your other point, first of all, at  
9 least for the record I want to make the point that they're VML  
10 employees, they're not Sands China employees. But be that as  
11 it may, irrespective of any other argument related to that,  
12 this is after the fact. We're not talking about issues going  
13 forward in the future. So we can't go back and put a note on  
14 their computer screen and say, you know, in the past you did  
15 this, we want you to know we're going to produce it because  
16 we've now been told we have to produce it. We can't go back  
17 there. And more importantly, even if we put -- it's my  
18 understanding that even if we put such a disclaimer on the  
19 computer screen it doesn't matter under Macanese law. That  
20 doesn't work. They have to have a certificate that shows  
21 they've done it completely voluntarily. And there's this  
22 whole issue they have, as is put forth in the brief, of a  
23 concern about a coercive effect of an employer saying, look, I  
24 want you to do this but I want you to do it voluntarily. And  
25 again, whether I agree with it, you agree with it, that is the

1 way it is. So that's the dilemma we're faced with.

2 So getting back --

3 THE COURT: Mr. Jones, most of the documents we're  
4 talking about are communications with people here in the  
5 United States. They're communications that are going through  
6 the Las Vegas Sands servers. It's not like this is all  
7 information that is solely housed in Macau. This is  
8 information that is being communicated between Macau and Las  
9 Vegas. So there's two options. Either we can have Mr. Peek  
10 and his client produce it off of the servers or explain to me  
11 why it's not there anymore, or your client, who was  
12 communicating with people who are not Macanese citizens, can  
13 go ahead and produce the information. If you decide you're  
14 not, I've got other options, and I can deal with it at a  
15 sanctions hearing.

16 MR. JONES: I think that there's a misunderstanding,  
17 first of all, a fundamental misunderstanding about the nature  
18 of the documents. It's my understanding -- and that's what it  
19 says actually in the briefs -- that if we have the documents  
20 here in unredacted form, in other words, they already exist in  
21 the U.S., then we produce them. That's the point where we've  
22 gone and where we have given that information. The documents  
23 that I believe that are really at issue are internal documents  
24 in Macau, employee to employee in Macau.

25 For instance -- and this is where I think -- Your

1 Honor, I would think you would understand this point, that if  
2 you have somebody -- an employee, say a VML employee writing  
3 to another VML employee in Macau saying, Mr. Leven is coming  
4 into town today for the board meeting, who's going to pick him  
5 up, and that's the subject of that email, so they're two  
6 Macanese employees -- excuse me, two Macanese residents that  
7 work for the company, so it's a company email, but they're  
8 simply saying something to the effect that -- which, by the  
9 way, they have that information, they have the substance, they  
10 just don't have the names, what is the possible relevance to  
11 this case on jurisdiction as to why they need that person's  
12 name when it -- that's what we're talking about, Judge. For  
13 the most part that's what we're talking about. They have the  
14 substance. If they could point out to you an email that goes  
15 to a substantive jurisdiction issue, not just that says --  
16 somewhere in it they're talking about a board meeting, because  
17 some of them do talk about board meetings, where's the board  
18 going to have lunch, who's going to pick up the board member  
19 at the airport, how --

20 THE COURT: Mr. Jones, I would love to be able to  
21 say that that category of documents does not need to be  
22 produced. But given the information that I went through when  
23 I did the original review, not the one when she went back and  
24 reviewed the privilege logs and cut a bunch of stuff off,  
25 given initial review, I'm not willing to trust them. Now, if

1 you want to submit those for me to do an in-camera review on  
2 whether something is relevant to the jurisdictional issues or  
3 not, I've got Mondays available to do stuff like that, and I'm  
4 happy to. But I'm not going to rely on your client, who's had  
5 a history of not being accurate in the disclosures that  
6 they've made in the privilege logs, and I'm talking about your  
7 predecessor counsel, not you, and I'm not going to rely upon  
8 them for that.

9 Now, if what you want me to do is to review them for  
10 relevance, I'll review them, I'll get them done. If there's  
11 only 7,000 documents, you can get it through it in a day.

12 MR. JONES: Your Honor, I very much appreciate your  
13 comment. What we want to try to do is -- and I've said this  
14 before and I'm going to say it again, we want to be a  
15 transparent as we can with the Court and with opposing  
16 counsel. I don't want to be in a position -- I don't ever  
17 want to be in a position where the Court feels that my client  
18 and I am not producing everything I'm supposed to produce.  
19 This is a unique circumstance in my experience in doing this  
20 for over 30 years where we have this foreign law that comes  
21 into play. And I know it's very troubling to the Court, but I  
22 think there is --

23 THE COURT: It's not troubling to me, Mr. Jones. I  
24 am aware of the various Data Privacy Acts that exist in Europe.  
25 I'm aware of the different Data Privacy Acts that exist in

1 Asia. They are very different. And while I certainly  
2 understand the importance to those individual countries of  
3 protecting their citizens, this is an issue of jurisdictional  
4 discovery as to whether the conduct of your client that  
5 occurred between citizens of the United States, activities  
6 related to citizens of the United States will subject it to  
7 jurisdiction.

8 MR. JONES: And I get that. So getting to your  
9 comment, all we want to do is make sure that to the greatest  
10 extent possible we can comply with this order -- this Court's  
11 order and also comply with Macanese law in a way that gets the  
12 other side all information they need for the jurisdictional  
13 hearing. And I think that's a fair proposition. And I  
14 understand there's been a lot of history and the Court has  
15 concerns about the candor of counsel and the client producing  
16 this information, but I think things have transpired in the  
17 interim that give us a lot more guidance of what we need to do  
18 and where we need to go, and I'm asking the Court in  
19 reconsideration of the order -- because right now the order is  
20 extremely board, it just says, you cannot redact under MPDPA,  
21 and we would ask the Court to give us some latitude --

22 THE COURT: But I gave you other abilities to make  
23 redactions [inaudible].

24 MR. JONES: And we did. And by the way, we did.  
25 And we've gone back and we've unredacted thousands of

1 documents where we found the duplicates, where we found ways  
2 to avoid violating the Macanese law and still comply with this  
3 Court's order. So we have been trying to do it in good faith  
4 and make sure that we don't get our client in trouble with the  
5 Macanese Government, but also don't get the client in trouble  
6 with you. And that's all we're trying to do, Judge, and we'd  
7 just simply like the opportunity to do that.

8           So we would ask if you would reconsider your order  
9 to that extent, that we can then -- maybe what we need to do  
10 is like you said, if we need to go through and maybe be more  
11 specific as to why a particular document is violative of your  
12 order and gives the other side all the information they need  
13 to have. And if we could have some kind of order like that,  
14 that would certainly be helpful.

15           THE COURT: Okay. Thanks.

16           Mr. Pisanelli.

17           MR. PISANELLI: So let's remind ourselves, Your  
18 Honor, that these problems that we're hearing about this  
19 morning are all of Sands China's making, the fact that they  
20 were sanctioned for the call it misbehavior and lack of  
21 transparency and really untruths that were brought to your  
22 attention, it is now being brushed aside as if we were just  
23 having a simple new debate over whether the Macau Data Privacy  
24 Act should govern how we conduct our discovery here. The  
25 problem was resolved by this Court a long time ago through the

1 sanction that said, you cannot rely upon it anymore, despite  
2 that they continue to do so.

3 It's also a problem of Sands China's making --

4 THE COURT: But you understand that I may make a  
5 determination someday that redacting a bellman's name from an  
6 email may not be enough for a sanction?

7 MR. PISANELLI: All in the balancing test of -- that  
8 you're going to do on what the appropriate sanction should be.  
9 I understand that. Just -- you made my point, my primary  
10 point already, that being that this is -- those balancing  
11 factors have to do with what the sanction will be, not whether  
12 it's discoverable.

13 We also, you know, can't lose sight of the fact that  
14 this problem is also of Sands China's making through this  
15 dragging this matter out for several years now by pretending  
16 to have nothing to do with Nevada when so much evidence that  
17 we accumulate daily by pulling teeth, figuratively anyway, we  
18 find more and more contacts, and we're still sitting here now  
19 years later waiting for 8,000-some-odd documents to be  
20 produced that were ordered to be produced long ago.

21 And so what do we have? The writing's on the wall,  
22 right. Your Honor, the reason we're here, and you can see it  
23 in their papers, is that Sands China has decided that it will  
24 not comply with what you say either for its own business  
25 motivations or because it doesn't want a \$5,000 from the Macau



1 Government or because whatever reason they're not going to  
2 disclose, and it doesn't really matter, they have made it  
3 clear in their papers they are not going to comply.

4           So this motion is an attempt to get you to rewrite  
5 the rules. You told us, Judge -- from Sands China's  
6 perspective, you told us, Judge, to do not redact for the  
7 Macau Data Privacy Act anymore or there will be sanctions,  
8 we've done that, we're going to be sanctioned but we're asking  
9 you now to reconsider, change the rules so that the sanction  
10 will be nothing. That's in essence what we're doing here.  
11 And the problem is that they come to you, in our view, with  
12 two fundamentally flawed bases for asking you to rewrite the  
13 rules of the game and to pretend like the history of this case  
14 never happened. The first, of course, is their claim, their  
15 self-proclaimed declaration that what we are seeking in these  
16 documents are irrelevant because the law has changed. And we  
17 heard today a little added supplement on the law changing in  
18 both Nevada and at the United States Supreme Court level. We  
19 have cited to you, you'll see at page 7, starting with the  
20 Daimler decision. The Daimler decision didn't, as Counsel  
21 would have this Court believe, say that the agency theory is  
22 no longer available and therefore our discovery is no longer  
23 relevant. As a matter of fact, the Supreme Court specifically  
24 said that it need not pass on invocation of an agency theory  
25 in the context of general jurisdiction. So that issue,

1 exactly as you said, is one that will be developed on a  
2 factual basis when we get to our jurisdictional hearing. The  
3 agency theory, just like the nerve center theory, just like  
4 specific jurisdiction are all still very much in play despite  
5 what Sands China would hope.

6 Now, on the Uponor side, an unpublished opinion that  
7 we've heard about, and I will never pretend even with my  
8 limited involvement in the case to know as much about it as  
9 Mr. Jones does, so I'm not going to dare spar him on that.  
10 But what I do have the benefit of is actually reading the  
11 unpublished opinion that cites the Viega case, and it says  
12 quite the contrary about whether the law has changed and  
13 whether this agency theory is gone. Court said there in  
14 Uponor, when characterizing what it did in Viega, that, "We  
15 concluded that in order to assert jurisdiction over the  
16 foreign parent corporation a parent must do more than show the  
17 amount of control typical and a parent-subsidiary  
18 relationship. Rather, the plaintiff must show that the parent  
19 has moved beyond the establishment of general policy and  
20 direction for the subsidiary and in effect taken over  
21 performance of the subsidiary's day-to-day operations in  
22 carrying out that policy." That doesn't sound like an  
23 abrogation of an agency theory to me. Sounds like it's a  
24 standard that maybe it's a little more heightened, the same  
25 way that the Daimler court did in rejecting the less stringent

1 standard of the Ninth Circuit. So to claim that now 8,000  
2 documents are irrelevant because we don't have an agency  
3 theory anymore, respectfully, is just not the case.

4           And the second flaw of their request to rewrite the  
5 rules from you is simply that we don't need it, they said.  
6 Peppered throughout this motion is Sands China's declaration  
7 that we don't need these documents, we have enough already, go  
8 ahead and give your best shot with what we decided to give you  
9 through our own filters, through our own different sets of  
10 lawyers and the judgment that was imposed on discovery  
11 responses that you do have you've got enough. And again,  
12 respectfully, that's not for Sands China or its counsel or its  
13 chairman or its in-the-house lawyers or any of them on this  
14 side of the debate tell us what we need. It's for Your Honor  
15 to decide. And Your Honor already decided that going on two  
16 years ago, the order that they're now asking you to  
17 reconsider.

18           So what do we have left, then? We know that there  
19 is no foundation for this request; but what do we have in  
20 their papers of what they plan to do? We know, Your Honor,  
21 that the order required the production of these documents in  
22 March 2013, and we know August of this year the Supreme Court  
23 rejected their attempts for a writ to stop the entire process.  
24 Now, three months later, we still don't have any documents.  
25 But what we do have, you'll see throughout their papers, and

1 let me just quote a sentence or two, because it is most  
2 remarkable thing about this debate, is Sands China telling you  
3 at page 6 of their motion that, "The documents were redacted  
4 to remove all personal information." That's what it says.  
5 "Since this Court declined to further extend a stay, SCL has  
6 been working to prepare the documents. Those documents were  
7 then redacted."

8           They then say on page 8, "SCL is prepared to produce  
9 the remaining documents from Macau with personal data  
10 redacted." And they even said that the four people that they  
11 are congratulating themselves over, who they did get consent  
12 from, that they're going to produce their documents, quote,  
13 "in largely unredacted form."

14           There's the writing on the wall. They've told you,  
15 they've told us that they understand your order but they're  
16 not going to comply with it. They went ahead and redacted  
17 anyway, and before they give them to us they're asking you to  
18 change the rules of the game so that the sanction will be  
19 zero, that they end up now going full circle starting with non  
20 production, redacting, go through the entire two-year process  
21 we did in and out of the Supreme Court only to get to the same  
22 exact spot and ask you to say that there will be no  
23 consequence for that behavior.

24           They also went even so far to tell us that when you  
25 told them to produce the records of 20 custodians -- and we

1 all know, Your Honor's already pointed out, that one way to  
2 solve this whole thing is get consents even if they had not  
3 been sanctioned for all of the bad behavior that we don't need  
4 to rehash, they still could have complied with the law by  
5 simply getting consents, and they made the efforts to get  
6 four. That's it. Now, they said that it's stringent and you  
7 have to be careful on how you deal with employees. Fair  
8 enough. True statement. But you notice not a single word --  
9 and Counsel will correct me, but not a single word I saw that  
10 they tried, that they did anything.

11 THE COURT: Well, the only people they got consents  
12 for are people who live here in the Las Vegas area who are  
13 U.S. citizens.

14 MR. PISANELLI: Four people who by all measures are  
15 in charge of the whole mess. So not a surprise that they  
16 didn't bother to do that.

17 They also told us, which was a little confusing to  
18 me, they asked for relief not to have to do the relevance log,  
19 and then condemn us in their reply by saying how dare we claim  
20 that they have to give the relevance log that also was part of  
21 Your Honor's order. If there is no relevance log, I guess  
22 what they're saying is that every single document at issue  
23 goes directly to the issue of jurisdiction. And they're  
24 conceding that fact; otherwise we would have had all these  
25 documents on some type of log that says that they're merits

1 based.

2           So, Your Honor, we know what's going on here. They  
3 said that they won't comply, you told them not to redact, and  
4 they redacted. You told them to do what they can to get  
5 things produced in a timely manner going all the way back to  
6 2013. We now stand here months after the Supreme Court has  
7 ruled, still without any documents, still with the same  
8 circular arguments that just never seem to get exhausted from  
9 Sands China's perspective. They bemoan the fact that this  
10 matter has dragged on, but we all know that it's dragged on as  
11 an open choice of Sands China. And it's time to put an end to  
12 it. There's no reason for reconsideration, there's no change  
13 in the law, there's no change in the history of this case, and  
14 there certainly hasn't been any change in the behavior of  
15 Sands China. They continue to fly by their own rules, and  
16 it's time to put an end to it.

17           THE COURT: Thank you.

18           Mr. Jones, anything else?

19           MR. JONES: Yes, Your Honor. First of all I would  
20 say that I categorically disagree that we fly by our own  
21 rules. That's not what's going on here, Judge. And I'll tell  
22 you the other thing that Mr. Pisanelli said, is that he said  
23 we won't comply. And that's not the case. We can't comply.  
24 And there is a --

25           THE COURT: That's not true, Mr. Jones. The Nevada

1 Supreme Court said if you make a business decision not to  
2 comply, which you are perfectly able to do, your client can  
3 make that business decision. I am then to make a balancing  
4 test and analyze the issues that you were facing in making  
5 that decision in order to determine what appropriate sanctions  
6 are. So it's not that you can't comply, it's not that you  
7 have to follow the Macau rules. Your client has the right to  
8 make a business decision. There may be consequences to that  
9 business decision, but you've got the right to make the  
10 decision. And then if I decide that the reasons for the  
11 business decision were very valid and should be honored given  
12 the long history of this case, then maybe your sanction will  
13 be very minor. But if you don't go forward and do what you  
14 need to do, I'm never going to get to that point of going  
15 through that balancing test.

16 MR. JONES: Well, and, Judge, I want to also address  
17 that point about, you know, my being referred to by Mr.  
18 Pisanelli as bemoaning the time its taken. We quoted I think  
19 it was Mr. Bice way back when when they said they were going  
20 to make these very narrow requests related just to  
21 jurisdiction. This has blown all out of proportion. Again,  
22 I've never seen anything like this. We produced hundreds of  
23 thousands of pages of documents. We are now down to about  
24 7600 that have redactions on them of names. They don't have  
25 the subject matter redacted, what we're talking about.

1           And I want to make another point. Mr. Pisanelli  
2 said the balancing test only relates to sanctions. That's not  
3 true. The court order from August of this year says that,  
4 "The District Courts have wide discretion to consider foreign  
5 policy statutes in deciding whether to limit discovery that is  
6 either unduly burdensome or obtainable from other sources."  
7 So that relates to discovery, not just to sanction. And  
8 that's what we're asking for here.

9           THE COURT: This isn't unduly burdensome. And  
10 you're telling me it's not available from other sources.

11           MR. JONES: No. And that's actually what I hope I  
12 was trying to make --

13           THE COURT: Because if it's in the servers on Las  
14 Vegas Boulevard South, we need to make sure that it's been  
15 produced.

16           MR. JONES: They have been. And that's a point I  
17 think maybe has been missed by the Court. We're not talking  
18 about documents in the U.S. If we have those documents, even  
19 if the same document is in Macau that's redacted, we produced  
20 it unredacted in the U.S. So they have that. That's where we  
21 went and we compared the documents that we had in Macau with  
22 what we do already have in the U.S. And if we had it here in  
23 unredacted form, we gave -- actually I should say that if we  
24 had it here it wasn't redacted, we gave it to them because it  
25 was already here. So just so it's clear, Judge, we're only



1 talking about documents that are in Macau that have otherwise  
2 not been produced by some other source unredacted. So we have  
3 complied. We're only talking about Macanese documents.

4 And with respect to the Daimler issue the point I  
5 think is being missed here is -- and I certainly do know what  
6 Uponor said. We're talking about an agency theory where --  
7 this is their theory, not our theory. Their theory is Las  
8 Vegas Sands is the principal -- excuse me, is the agent of its  
9 affiliated company. That's completely opposite of what --

10 THE COURT: They're saying it's not a typical  
11 parent-subsidary relationship is basically what they're  
12 saying. And I don't know what the facts are, because someday  
13 I'm going to do a jurisdictional hearing and make that  
14 determination as your fact finder. But right now we're doing  
15 discovery for the jurisdictional hearing, and I am typically,  
16 just like in any other case, going to give them a little more  
17 latitude than what I might admit at the hearing. Because the  
18 question is is it discoverable for purposes of the  
19 jurisdictional hearing. And if your client makes a decision  
20 to redact the name of the bellman who was instructed to pick  
21 up Mr. Leven to bring him to the board meeting, then I'm  
22 probably not going to sanction you for redacting that  
23 individual's name.

24 However, if the redactions are more significant and  
25 relate to people who are more senior in the operation and who

1 are people who were directly involved in dealing with Las  
2 Vegas Sands and delegating work and adopting a shared services  
3 agreement, I think we may have a different issue.

4           So if what you're asking me to do is to pre judge  
5 and tell you what the answer is to how I'm going to sanction  
6 your client if they don't comply with the order, I've given  
7 you a little bit of guidance.

8           MR. JONES: And, Judge, really what I was hoping to  
9 do is to have you reconsider the fact that the breadth of the  
10 order as it is was we thought too board and that in fact under  
11 the circumstances of the case as it's evolved with the Nevada  
12 Supreme Court decisions in combination with the Daimler case  
13 that the information they're seeking now from these emails is  
14 essentially what we're talking about is -- will not move their  
15 claim forward one iota with respect to jurisdiction.

16           THE COURT: But you're not the one who gets to make  
17 that decision.

18           MR. JONES: I understand. I understand. And so  
19 we're asking that you balance that information again, since we  
20 -- in terms of the burdensome nature of it and the ability to  
21 get it from other sources. We've given the information of  
22 other sources, and the burden here is in weighing that burden,  
23 which we believe the Supreme Court said you do have discretion  
24 to deal with at the discovery stage that the burden is  
25 minimal, in fact, we don't think it exists all with respect to

1 these documents that are still redacted as to Jacobs, and the  
2 burden on our client is substantial because it's not just  
3 another \$5,000 fine that Mr. Pisanelli said, well, you're  
4 subjecting yourself to. The point is that when you violate a  
5 law twice -- and this goes to your point. You know, if we  
6 essentially say to Macau at this point, well, the Judge told  
7 us we had to do it, they're not going to be sympathetic to  
8 that. That's the problem. They're going to say, well, you  
9 made that choice and you're going to have to pay the  
10 consequences and you're a licensee. And so the burden on my  
11 client under these circumstances we believe far outweighs the  
12 relative burden to Mr. --

13 THE COURT: Then make that choice and we'll deal  
14 with it at the sanctions hearing.

15 MR. JONES: Well, Your Honor, again we would ask you  
16 to reconsider your order.

17 THE COURT: The motion to reconsider is denied. But  
18 I thought about it.

19 Now let me ask a followup question. I went through  
20 and did the in-camera review and the review of the redacted  
21 documents in camera. I issued some minute orders, and I asked  
22 for some supplemental information. I have three supplemental  
23 filings. I want to make sure I have everything you were going  
24 to give me or you intend to give me. I have one on Campanina  
25 Ferrara, I have one on Captain Sick [phonetic], which is

1 11/10, and then I have another one on Campanina Ferrara,  
2 because I didn't realize that you had done one, and another  
3 one on the CCKS folks, which was November 18th. Was there any  
4 more you intended to give me, or is this it so I can finish up  
5 the review?

6 MR. JONES: That's all from us, Your Honor.

7 THE COURT: Okay. Then I'll finish that up.  
8 Anything else?

9 MR. JONES: Not today, Your Honor.

10 THE COURT: Have a lovely weekend. Oh. Today's  
11 only Tuesday; right?

12 MR. PEEK: Today's only Tuesday, Your Honor.

13 THE PROCEEDING CONCLUDED AT 8:48 A.M.

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CERTIFICATION

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

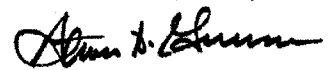
AFFIRMATION

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

FLORENCE HOYT  
Las Vegas, Nevada 89146

*Florence M. Hoyt*

FLORENCE M. HOYT, TRANSCRIBER



CLERK OF THE COURT

TRAN

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

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants  
.....

CASE NO. A-627691

DEPT. NO. XI

**Transcript of  
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON DEFENDANTS' MOTION FOR  
PARTIAL RECONSIDERATION OF NOVEMBER 5, 2014, ORDER**

THURSDAY, DECEMBER 11, 2014

APPEARANCES:

FOR THE PLAINTIFF:

TODD BICE, ESQ.  
DEBRA L. SPINELLI, ESQ.  
JORDAN T. SMITH, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
JON RANDALL JONES, ESQ.  
IAN P. MCGINN, ESQ.

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, THURSDAY, DECEMBER 11, 2014, 8:04 A.M.

2 (Court was called to order)

3 THE COURT: Jacobs versus Sands. Good morning,  
4 gentlemen.

5 MR. JONES: Good morning, Your Honor.

6 (Pause in the proceedings)

7 MR. JONES: We will try to make this brief.

8 THE COURT: Well, it's not a complicated issue.

9 MR. JONES: It's not.

10 THE COURT: It's like, Judge, did you know what you  
11 were doing last time.

12 MR. JONES: And, Your Honor, you know, it's -- as  
13 you said, it's pretty straightforward. These documents were  
14 not in the possession of Advanced Discovery. They came up, as  
15 I see it, as a side issue. And by the name of the motion  
16 itself, clearly it's requesting release of Advanced Discovery  
17 documents. These are hard-copy documents that have watermarks  
18 on them. They -- and really, Judge, what we're just trying to  
19 do is make sure that the order accurately reflects what the  
20 motion -- the relief the motion was seeking. And I don't know  
21 that I need to say a whole lot more than that. As you said,  
22 it's a pretty straightforward issue.

23 THE COURT: Okay.

24 MR. JONES: There is a separate motion on that you  
25 probably haven't even seen yet, because it's not fully

1 briefed. It has to do with the confidentiality of these  
2 documents. And so --

3 THE COURT: That's a different issue.

4 MR. JONES: It is. Absolutely. And so today all  
5 we're talking about is just trying to make sure that the  
6 record accurately reflects the relief requested, and that's  
7 all that we're talking about.

8 THE COURT: Okay. Anything else?

9 MR. JONES: That's -- unless you have any other  
10 questions, like you said, I think it's pretty straightforward.

11 THE COURT: Fairly easy. That's why I didn't call  
12 and move you guys.

13 Mr. Bice, good morning. How are you?

14 MR. BICE: Yes, Your Honor.

15 THE COURT: Don't you like the lovely chairs that  
16 Mr. Ogilvie and his team have chosen to sit in?

17 MR. BICE: Yes, they're very nice. They're a lovely  
18 color, too.

19 MR. JONES: I just want to know who gets the big TVs  
20 when the trial's over.

21 THE COURT: They are actually County TVs.

22 MR. BICE: Your Honor, with respect to the motion I  
23 believe that everybody in the courtroom when we were here last  
24 time believed that the reports were buried somewhere in this  
25 privilege log. The plaintiffs thought that, as did the



1 defendants, because the defendants are the ones that offered  
2 up the reports as the only plausible thing that could have  
3 been waived in light of the position that they had taken at  
4 their letter. And now they're essentially claiming, well, we  
5 should get the benefit because that privilege log is such a  
6 mess no one could figure out where and if these reports were  
7 somehow buried in that I don't remember how many volumes of  
8 log. And so now they're saying, well, because we've now  
9 decided that it's not buried in that log anywhere these  
10 documents somehow couldn't have been the subject of the  
11 motion, even though they took the position when we were here  
12 that they were the subject of the motion. We took the  
13 position that they were the subject of the motion, and the  
14 Court took the position that they were the subject of the  
15 motion and ruled accordingly.

16           And so now all we're saying is the Court has already  
17 ruled on this issue. Those documents have -- are in Mr.  
18 Jacobs's possession, except for the one we cannot find. But,  
19 nonetheless, their position has been that it is in his  
20 possession. And the Court ruled appropriately that you knew  
21 that those documents were in his possession, it's confirmed by  
22 their own legal counsel Ms. Glaser that she was aware of that  
23 fact, and then she and their client made the conscious  
24 decision not to take any form of action anywhere concerning  
25 their claims of privilege. And so how can they --

1 First of all, Your Honor, if it's not on the  
2 privilege log, how is it privileged? That seems to be their  
3 argument now. And what is the privilege? Have they  
4 established any basis for privilege of an investigative report  
5 conducted by a non lawyer, a former Hong Kong Police detective  
6 I believe is what his role was years ago?

7 So, again, accordingly, Your Honor, the motion --  
8 the documents were properly before this Court on this waiver  
9 question, and the Court has appropriately ruled upon them.  
10 All they're essentially trying to do is make us file the exact  
11 same motion and have a short do over right again. I mean, if  
12 the Court tells me, file that on an OST and the Court will  
13 hear it next week, fine. But --

14 THE COURT: That's what I'm probably going to say,  
15 Mr. Bice, because I think it's --

16 MR. BICE: Well, you know -- but again --

17 THE COURT: -- important enough that we do it the  
18 right way so that somebody in Carson City doesn't make a  
19 decision later that we missed a step.

20 MR. BICE: That's fine, Your Honor. If the Court  
21 would like me to, I'll file a motion, and --

22 THE COURT: That's what we should do, after reading  
23 it.

24 MR. BICE: -- I'll submit it on an OST to you.

25 THE COURT: Okay. So your motion is granted.

1 However, I've already made factual determinations related to  
2 the document, but I understand they may not arguably be  
3 covered under the scope of this particular motion. So I'm  
4 directing Mr. Bice to file a motion that deals specifically  
5 with these particular documents, and then I can enter an  
6 appropriate order after I have an opportunity to hear anything  
7 else you have to say related to it.

8 MR. JONES: Your Honor, understood. And I will  
9 prepare the order and provide it to Mr. Bice before we submit  
10 it to the Court.

11 THE COURT: Okay.

12 MR. PEEK: Your Honor, you say --

13 THE COURT: Wait. There's one other thing. Until a  
14 separate order is entered these documents, if they're  
15 produced, are going to be treated as confidential until I  
16 enter a separate order, okay.

17 MR. PEEK: Highly confidential, Your Honor?

18 MR. BICE: They're in Mr. Jacobs's possession today.  
19 How can they be highly confidential with just attorneys' eyes  
20 only?

21 THE COURT: I'm not going to call them highly  
22 confidential. I'm going to call them confidential. Then at  
23 some point you can file motion practice as to other stuff.  
24 But at this point in time I just want to make sure they're not  
25 released in the public sphere because of some of the

1 commercially sensitive information that's contained in that.

2 MR. JONES: And, Your Honor, in that regard, as I  
3 said, we have a motion pending that's not fully briefed. So  
4 we are pursuing that issue.

5 THE COURT: I understand. I'm just trying to make  
6 sure that if I enter the order on the OST before that we don't  
7 miss a step and for some reason somebody thinks they're not  
8 confidential for about five minutes. Sort of what happened  
9 over at the U.S. Attorney's Office the other day with that  
10 other case.

11 Anything else? Why are you looking at me that way,  
12 Mr. Peek?

13 MR. PEEK: Actually, Your Honor, I was going to ask  
14 you a question about another case, but I just -- because I  
15 have a hearing on the 15th for which we submitted a  
16 stipulation to vacate and to move.

17 THE COURT: Laura says it's moved.

18 MR. PEEK: Okay. Well, we didn't -- I thought it  
19 was moved. I just -- we hadn't had the Court sign off on it  
20 yet, so I just --

21 THE LAW CLERK: It's actually in the box.

22 MR. PEEK: It is in the box? Okay. Thanks.

23 (Off-record colloquy)

24 THE COURT: Okay. 'Bye.

25 MR. PEEK: And, Your Honor, with respect to this

1 motion that Mr. Bice is going to file, is that going to be  
2 heard next week?

3 THE COURT: That's my hope.

4 MR. PEEK: Because I won't be here during that  
5 Christmas week. I'd like to spend it with my children in  
6 Reno.

7 THE COURT: Well, I was going to try and hear Mr.  
8 Bice's motion next week. He said he's going to get it over  
9 here. It's not a very complicated motion.

10 MR. BICE: I hope to get it over here by tomorrow.  
11 Is there a date --

12 You don't want to hold it next week at all?

13 MR. PEEK: No, no. I'm fine next week. I just  
14 didn't want to do it Christmas week.

15 THE COURT: He wants to hear it next week.

16 MR. BICE: Oh. He wants to. Can we just set a  
17 hearing date now?

18 THE COURT: You want to hear it next Thursday at  
19 8:00 o'clock?

20 MR. BICE: Next Thursday at 8:00 a.m. Will that  
21 work?

22 THE COURT: We all decided that we'll pick that day.  
23 So when it comes in, Laura, remember that's the day  
24 we picked.

25 MR. PEEK: Thank you, Your Honor.

1           THE COURT: And just call it a hearing, Dulce, and  
2 then you'll have more than one entry for that day.  
3           MR. BICE: Okay.  
4           THE COURT: 'Bye.  
5           MR. BICE: Thank you.  
6           MR. PEEK: Thank you.  
7           THE PROCEEDINGS CONCLUDED AT 8:11 A.M.  
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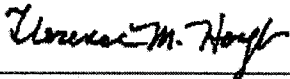
**CERTIFICATION**

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**AFFIRMATION**

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FLORENCE HOYT  
Las Vegas, Nevada 89146

  
\_\_\_\_\_  
FLORENCE M. HOYT, TRANSCRIBER

  
CLERK OF THE COURT

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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; SHELDON  
ADELSON, an individual; DOES I through  
X; and ROE CORPORATIONS I through X,

Defendants.

Case No.: A-10-627691

Dept. No.: XI

**THIRD AMENDED COMPLAINT**

**AND RELATED CLAIMS**

Plaintiff, for his causes of action against Defendants, alleges and avers as follows:

**PARTIES**

1. Plaintiff Steven C. Jacobs ("Jacobs") is a Florida resident who also maintains a residence in Georgia.

2. Defendant Las Vegas Sands Corp. ("LVSC") is a publicly-traded Nevada corporation with its principal place of business in Clark County, Nevada. More than 50% of the voting power in LVSC is controlled, directly or indirectly, by its Chairman and CEO, Sheldon G. Adelson ("Adelson").

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3. Defendant Sands China Ltd. ("Sands China") is a Cayman Islands corporation and is 70% owned by LVSC. Sands China is publicly traded on the Hong Kong Stock Exchange. While Sands China publicly holds itself out as being headquartered in Macau, its true headquarters are in Las Vegas, where all principle decisions are made and direction is given by executives acting for Sands China.

4. Defendant Adelson is a Nevada resident who directs and operates his gaming enterprise from Las Vegas, Nevada.

5. The true names and capacities, whether individual, corporate, partnership, associate or otherwise of Defendants named herein as DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, and each of them are unknown to Plaintiff at this time, and he therefore sues said Defendants and each of them by such fictitious names. Plaintiff will advise this Court and seek leave to amend this Complaint when the names and capacities of each such Defendants have been ascertained. Plaintiff alleges that each said Defendant herein designated as a DOE or ROE is responsible in some manner for the events and happenings herein referred to as hereinafter alleged.

6. Each Defendant is the agent of the other Defendants such that each Defendant is fully liable and responsible for all the acts and omissions of all of the other Defendants as set forth herein.

## JURISDICTION AND VENUE

7. The Court has personal jurisdiction over the Defendants and the claims set forth herein pursuant to NRS 14.065 on grounds that such jurisdiction is not inconsistent with the Nevada Constitution or United States Constitution.

8. Venue is proper in this Court pursuant to NRS 13.010 *et seq.* because the material events giving rise to the claims asserted herein occurred in Clark County, Nevada.

COMMON ALLEGATIONS

LVSC's Dysfunction and Infighting

9. LVSC and its subsidiaries develop and operate large integrated resorts worldwide. The company owns and operates properties in Las Vegas, Nevada, Macau (a Special Administrative Region of China), Singapore, and Bethlehem, Pennsylvania.

10. The company's Las Vegas properties consist of The Palazzo Resort Hotel Casino, The Venetian Resort Hotel Casino, and the Sands Expo and Convention Center.

11. Macau, which is located on the South China Sea approximately 37 miles southwest of Hong Kong, was a Portuguese colony for over 400 years, and is the largest and fastest growing gaming market in the world. LVSC opened the Sands Macau, the first Las Vegas-style casino in Macau. Thereafter, LVSC opened the Venetian Macau and the Four Seasons Macau on the Cotai Strip section of Macau where the company has resumed development of additional casino-resort properties.

12. Beginning in or about 2008, LVSC's business was in a financial freefall, with its own auditors subsequently issuing a going concern warning to the public. LVSC's problems due to the economic decline were exacerbated when the Chinese government imposed visa restrictions limiting the number of permitted visits by Chinese nationals to Macau. Because Chinese nationals make up more than half the patrons of Macau casinos, China's policy significantly reduced the number of visitors to Macau from mainland China, which adversely impacted tourism and the gaming industry in Macau. LVSC insiders viewed these visa restrictions as a message from the Chinese Central Communist government's displeasure over a number of activities by LVSC and its Chairman, Adelson.

13. Indeed, LVSC's Board members and senior executives internally expressed concern over Adelson's oftentimes erratic behavior, but failed to inform shareholders or take corrective action. Adelson's behavior had become so corrosive that some government officials in Macau, one of LVSC's principal markets, were no longer willing to even meet with Adelson. On a fact-finding tour of Asia by select LVSC Board members and senior executives – where they met to discuss LVSC's declining fortunes with Asian business leaders and government officials –

1 a common theme was that Adelson had burned many bridges in Macau and specific reference was  
2 made to an often-discussed confrontation between Macau's then-Chief Executive, Edmund Ho,  
3 and Adelson. Indeed, in the fact-finding tour's meeting with Chief Executive Ho, he informed the  
4 LVSC executives of his views that while Adelson had done much to improve Macau's economic  
5 fortunes, the time had come for him to spend more time with his family and leave the company's  
6 operations to others. Translated into blunt businessman's terms: Adelson needed to retire.

7 14. Adelson's behavior did not just alienate outsiders, it effectively paralyzed the  
8 management's ability to respond to the financial calamity. LVSC faced increased cash flow  
9 needs, which, in turn, threatened to trigger a breach of the company's maximum leverage ratio  
10 covenant in its U.S. credit facilities. Due to Adelson's erratic behavior, LVSC's then-president  
11 and Chief Operating Officer William Weidner ("Weidner") lost confidence in Adelson's abilities,  
12 and undertook steps that Adelson would characterize as an attempted coup. Because Adelson  
13 controls more than fifty percent (50%) of LVSC's voting power, Adelson forced Weidner's  
14 removal from the company so as to preserve his own control.

15 15. Weidner was replaced as President and COO by Michael Leven ("Leven"), a  
16 member of LVSC's Board of Directors.

17 16. Because of the dysfunction and paralysis Adelson created, LVSC failed to access  
18 capital markets in a timely fashion, which then forced the company to engage in a number of  
19 emergency transactions to raise funds in late 2008 and early 2009. Ironically for LVSC's  
20 shareholders – all of those except for Adelson, that is – this unnecessary delay resulted in  
21 Adelson's personal wealth as the financing source for a quick influx of liquidity. But, to access  
22 those funds, Adelson would charge LVSC a hefty price, obtaining convertible senior notes,  
23 preferred shares, and warrants. Later, Adelson would reap a staggering windfall as a result of  
24 these highly-favorable (for him) financing terms. Conveniently, Adelson was the principal  
25 beneficiary, to the detriment of all other shareholders, of the very financial calamity that he  
26 helped create.

1 **LVSC Hires Jacobs to Run Its Macau Operations**

2 17. It is in this poisonous environment that Jacobs enters the LVSC picture. Even  
3 before Leven became LVSC's President and COO, he had reached out to Jacobs to discuss  
4 potential COO candidates to replace Weidner. Leven and Jacobs had known each other for  
5 many years having worked together at U.S. Franchise Systems in the 1990's and in subsequent  
6 business ventures thereafter. When Leven received an offer from LVSC's Board to become the  
7 company's President and COO, he again reached out to Jacobs to discuss the opportunity and the  
8 conditions under which he (Leven) would accept the position. The conditions included but were  
9 not limited to Leven's compensation package and a commitment from Jacobs to join Leven for a  
10 period of 90-120 days to "ensure my [Leven's] success."

11 18. Jacobs travelled to Las Vegas in March 2009 where he met with Leven and  
12 Adelson for several days to review the company's Nevada operations. While in Las Vegas, the  
13 parties agreed to a consulting contract between LVSC and Jacobs' company, Vagus Group, Inc.  
14 Jacobs then began assisting LVSC in restructuring its Las Vegas operations.

15 19. Jacobs, Leven, and Adelson subsequently travelled to Macau to conduct a review  
16 of LVSC's operations there. While in Macau, Leven told Jacobs that he wanted to hire him to run  
17 LVSC's Macau operations. Jacobs and Leven returned to Las Vegas after spending  
18 approximately a week in Macau. Jacobs then spent the bulk of the next 2-3 weeks working on the  
19 Las Vegas restructuring program and also negotiating with Leven regarding LVSC's desire to hire  
20 him as a full-time executive.

21 20. On May 6, 2009, LVSC announced that Jacobs would become the interim  
22 President of Macau Operations. Jacobs was charged with restructuring the financial and  
23 operational aspects of the Macau assets. This included, among other things, lowering operating  
24 costs, developing and implementing new strategies, building new ties with local and national  
25 government officials, and eventually spinning off the Macau assets into a new company to be  
26 taken public on the Hong Kong Stock Exchange.

27 21. Notwithstanding that Jacobs would be spending the majority of his time in Macau  
28 focusing on LVSC's operations in that location, he was also required to perform duties in

1 Las Vegas including, but not limited to, working with LVSC's Las Vegas staff on reducing costs  
2 within the company's Las Vegas operations, consulting on staffing and delayed opening issues  
3 related to the company's Marina Bay Sands project in Singapore, and participating in meetings of  
4 LVSC's Board of Directors.

5 22. On June 24, 2009, LVSC awarded Jacobs 75,000 stock options in the company to  
6 reward him for his past performance as a LVSC team member and to incentivize him to improve  
7 his future performance as well as that of the company. LVSC and Jacobs executed a written  
8 Nonqualified Stock Option Agreement memorializing the award.

9 23. On or about August 4, 2009, Jacobs received LVSC's "Offer Terms and  
10 Conditions" (the "Term Sheet") for the position of "President and CEO Macau[.]" The  
11 Term Sheet reflected the terms and conditions of employment that had been negotiated by Leven  
12 and Jacobs while Jacobs was in Vegas working under the original consulting agreement with  
13 LVSC and during his subsequent trips back to Las Vegas. With Adelson's express approval,  
14 Leven signed the Term Sheet on or about August 3, 2009, and had his assistant, Patty Murray,  
15 email it to Jacobs who was then in Macau. Jacobs signed the Term Sheet accepting the offer  
16 contained therein and delivered a copy to LVSC. LVSC's Compensation Committee approved  
17 Jacobs' contract on or about August 6, 2009. LVSC thereafter filed a copy of the Term Sheet with  
18 the United States Securities and Exchange Commission, disclosing it as Jacobs' employment  
19 contract with LVSC.

20 **Jacobs Saves the Titanic**

21 24. The bases for Jacobs' full-time position were apparent. The accomplishments for  
22 the four quarters over which Jacobs had presided created significant value. From an operational  
23 perspective, Jacobs and his team removed over \$365 million of costs from LVSC's Macau  
24 operations, repaired strained relationships with local and national government officials in Macau  
25 who would no longer meet with Adelson due to his obstreperous behavior, and refocused  
26 operations on core businesses to drive operating margins and profits, thereby achieving the then-  
27 highest EBITDA figures in the history of the company's Macau operations.

28

1           25. Due in large part to the success of its Macau operations under Jacobs' direction,  
2 LVSC was able to raise over \$4 billion dollars from the capital markets, spin off its Macau  
3 operations into a new company – Sands China Limited – which became publicly traded on the  
4 Hong Kong Stock Exchange in late November 2009, and restart construction on a previously  
5 stalled expansion project on the Cotai Strip known as "Parcels 5 and 6." Indeed, for the second  
6 quarter ending June 2010, net revenue from Macau operations accounted for approximately 65%  
7 of LVSC's total net revenue (i.e., \$1.04 billion USD of a total \$1.59 billion USD).

8           26. To put matters in perspective, when Jacobs began performing work for the  
9 company in March 2009, LVSC shares were trading at just over \$1.70 per share and its market  
10 cap was approximately \$1.1 billion USD. At the time of Jacobs' departure in July 2010, LVSC  
11 shares were over \$28 per share and its market cap exceeded \$19 billion USD.

12           27. Jacobs' success was repeatedly confirmed by Board members of LVSC as well as  
13 those of the new spinoff, Sands China. When Leven was asked in February 2010 to assess Jacobs'  
14 2009 job performance, he advised: *"there is no question as to Steve's performance[,] the Titanic*  
15 *hit the iceberg[,] he arrived and not only saved the passengers[,] he saved the ship."*  
16 Unremarkably, Jacobs received a full bonus in 2009 and no more than three months later, May,  
17 2010, he was awarded an additional 2.5 million stock options in Sands China. The options had an  
18 accelerated vesting period of less than two years.

19           28. But Adelson would make sure that Jacobs was cheated out of what he was owed, a  
20 practice that Adelson has honed in dealing with many executives and companies that refused to  
21 do as Adelson demanded.

22 **Jacobs' Confrontations with Adelson**

23           29. Jacobs' success was in spite of numerous ongoing debates he had with Adelson,  
24 including Adelson's insistence that as Chairman of both LVSC and Sands China, and the primary  
25 shareholder, he was ultimately in charge, including on day-to-day operations as well as such  
26 minute issues as carpeting, room design, and the choice of paper towel dispensers to be used in  
27 the men's room. As Leven would remind Jacobs, both orally and in writing, Adelson was in  
28

1 charge and the substantive decisions, including such things as construction in Macau, were  
2 controlled and made in Las Vegas:

3 Per my discussion with sga [Adelson] pls be advised that input  
4 from anyone [in Macau] is expected and listened to but final design  
5 decisions are made by sga and las vegas[.] [T]here appears to be  
6 some confusion and I want to clear the matter once and for all  
7 [that] everyone has inputted [sic] but sga makes the final  
8 decisions[.]

9 30. But a greater impediment concerned the unlawful and/or unethical business  
10 practices put in place by Adelson and/or under his watch, as well as repeated outrageous demands  
11 Adelson made to pursue illegal and illegitimate ends. The demands included, but were not  
12 limited to:

- 13 a. Demands that Jacobs use improper "leverage" against  
14 senior government officials of Macau in order to  
15 obtain Strata-Title for the Four Seasons Apartments in  
16 Macau;
- 17 b. Demands that Jacobs threaten to withhold Sands  
18 China business from prominent Chinese banks unless  
19 they agreed to use influence with newly-elected  
20 senior government officials of Macau in order to  
21 obtain Strata-Title for the Four Seasons Apartments  
22 and favorable treatment with regards to labor quotas  
23 and table limits;
- 24 c. Demands that secret investigations be performed  
25 regarding the business and financial affairs of various  
26 high-ranking members of the Macau government so  
27 that any negative information obtained could be used  
28 to exert "leverage" in order to thwart government  
regulations/initiatives viewed as adverse to LVSC's  
interests;
- d. Demands that Sands China continue to use the legal  
services of Macau attorney Leonel Alves despite  
concerns that Mr. Alves' retention posed serious risks  
under the criminal provisions of the United States  
code commonly known as the Foreign Corrupt  
Practices Act ("FCPA"); and
- e. Demands that Jacobs refrain from disclosing truthful  
and material information to the Board of Directors of  
Sands China so that it could decide if such  
information relating to material financial events,  
corporate governance, and corporate independence  
should be disclosed pursuant to regulations of the  
Hong Kong Stock Exchange. These issues included,  
but were not limited to, junkets and triads,

government investigations, Leonel Alves and FCPA concerns, development issues concerning Parcels 3, 7 and 8, and the design, delays and cost overruns associated with the development of Parcels 5 and 6.

31. Jacobs reported these improprieties to Leven and LVSC's general counsel, in accordance with LVSC's company whistleblower guidelines.

32. When Jacobs objected to and/or refused to carry out Adelson's illegal demands, Adelson repeatedly threatened to terminate Jacobs' employment. This is particularly true in reference to: (i) Jacobs' refusal to comply with Adelson's edict to terminate Sands China's General Counsel, Luis Melo ("Melo"), and his entire legal department and replace him/it with Leonel Alves and his team; (ii) Adelson's refusal to allow Jacobs to present to the Sands China Board information that the company's development of Parcels 5 and 6 was at least 6 months delayed and more than \$300 million USD over-budget due to Adelson-mandated designs and accoutrements the Sands China management team did not believe would be successful in the local marketplace; (iii) Adelson's refusal to allow Jacobs to disclose to the Board LVSC findings relating to the allegations contained in a Reuters article that LVSC was conducting business with Chinese organized crime syndicates, known as Triads; and (iv) Adelson's refusal to allow Jacobs to discuss his concerns with the Board regarding the use and rehiring of Leonel Alves after Alves had requested a \$300 million payment for government officials in China.

33. During this same time, Jacobs began developing suspicions concerning the propriety of certain financial practices and transactions involving LVSC and other LVSC subsidiaries, including, but not limited to: (i) certain transactions related to Hencing island, the basketball team, the Adelson Center, and the Macau ferry contract which all involved payments that LVSC made; (ii) allegations concerning LVSC's practice of couriering undeclared monies into the United States to repay gambling debts of third parties and/or to be used to fund accounts for non-residents once they arrived in the country; (iii) LVSC's practice referred to as the Affiliate Transaction Advise ("ATA"), which allowed third parties and gamblers to move money into the United States by depositing monies with an LVSC overseas affiliate or marketing office, creating an account in Las Vegas from which the depositor or their designee would be issued chips with which to gamble, and then transferring the "winnings" back offshore either to the original



1 depositor or to a third party designee not involved in the transaction; (iv) using the ATA process  
2 to move monies for known and/or alleged members of Triads; and (v) structuring and/or using  
3 offshore subsidiaries to funnel monies onto the gaming floor.

4 34. One such suspicious entity was WDR, LLC, a wholly-owned subsidiary set up by  
5 LVSC at the apparent behest of Robert Goldstein. When Jacobs raised that entity and certain  
6 transactions with Sands China's then-existing CFO, he similarly considered the transactions  
7 involving WDR as suspicious and expressed concerns over potential money laundering. Of  
8 course, Jacobs would be fired before he could further pursue the matter. When LVSC's  
9 then-existing CFO, Ken Kay, was asked about WDR at a deposition, he professed to have no  
10 knowledge of WDR or what purpose it would serve. But, just a few months after Kay was  
11 questioned about WDR, Leven quietly had the entity dissolved.

12 35. Jacobs' disagreements with Adelson came to a head in late June 2010 when they  
13 were in Singapore to attend the grand opening of LVSC's Marina Bay Sands. While in  
14 Singapore, Jacobs attended several meetings of LVSC executives including Adelson, Leven, Ken  
15 Kay (LVSC's Chief Financial Officer), and others. During these meetings, Jacobs disagreed with  
16 Adelson's and Leven's desire to expand the ballrooms at Parcels 5 and 6, which would add an  
17 incremental cost of approximately \$30 million to a project already significantly over budget when  
18 Sands China's existing facilities were already underutilized. In a separate meeting, Jacobs  
19 disagreed with Adelson's desire to aggressively grow the junket business within Macau as the  
20 margins were low, the decision carried credit risks, and based upon recent investigations by  
21 Reuters and others alleging LVSC's involvement with Chinese organized crime groups, known as  
22 Triads, connected to the junket business.

23 36. Following these meetings, Jacobs re-raised the issue about the need to advise the  
24 Sands China Board of the delays and cost overruns associated with the development of Parcels 5  
25 and 6 in Macau so that a determination could be made of whether the information must be  
26 disclosed. Jacobs also raised the need to disclose LVSC's involvement with Triads and the  
27 implications of Adelson's desire to grow Sands China's junket business in Macau, as well as  
28 Adelson's rehiring of Leonel Alves, given Jacobs' and others' FCPA concerns. Once again,

1 Adelson reminded Jacobs that he was both the chairman and the controlling shareholder and that  
2 Jacobs should "do as I please." This was consistent with Adelson's attitudes and Jacobs' belief  
3 that Adelson considered himself untouchable. Indeed, on a prior occasion when Jacobs had  
4 voiced his concern over how Nevada's gaming regulators might view Adelson's actions, Adelson  
5 scoffed at the suggestion, informing Jacobs that he (Adelson) controlled the regulators, not the  
6 other way around.

7 37. When Jacobs refused, Adelson commenced carrying out a scheme to fire and  
8 discredit Jacobs for having the audacity to blow the whistle and confront Adelson. Adelson has  
9 admitted his personal animus and malice toward Jacobs even before firing him. Adelson had  
10 privately been angling for some excuse to terminate Jacobs.

11 **LVSC and Sands China Implement Adelson's "Exorcism Strategy"**

12 38. In or about July 2010, Adelson directed executives from LVSC in Las Vegas,  
13 Nevada to begin the process of terminating Jacobs. This process, which would be referred to as  
14 the "exorcism strategy," was planned and carried out from Las Vegas and included (1) the  
15 creation of fictitious Sands China letterhead upon which a notice of termination was prepared,  
16 (2) preparation of the draft press releases with which to publicly announce the termination, and  
17 (3) the handling of all legal-related matters for the termination. Again, all of these events took  
18 place in Las Vegas, ostensibly by agents acting for both LVSC and Sands China.

19 39. Indeed, it was LVSC in-house attorneys, claiming to be acting on behalf of  
20 Sands China, who informed the Sands China Board on or about July 21, 2010, about Adelson's  
21 decision to terminate Jacobs, and directed the Board members to sign the corporate documents  
22 necessary to effectuate Jacobs' termination. These same attorneys promised to explain the basis  
23 for the termination to the Board members during the following week's Board meeting (after the  
24 termination took place). Predictably, as Adelson is all-controlling, he took action first and then  
25 decreed how the Board thereafter reacted.

26 40. Promptly thereafter, the team that Adelson had placed in charge of overseeing the  
27 sham termination – Leven, Kenneth Kay (LVSC's CFO), Irwin Siegel (LVSC/Sands China Board  
28 member), Gayle Hyman (LVSC's general counsel), Daniel Briggs (LVSC's VP of investor

1 relations), Ron Reese (LVSC's VP of public relations), Brian Nagel (LVSC's chief of security),  
2 Patrick Dumont (LVSC's VP of corporate strategy), and Rom Hendler (LVSC's VP of strategic  
3 marketing) – left Las Vegas and went to Macau in furtherance of the scheme.

4 41. On the morning of July 23, 2010, Jacobs attended a meeting with Leven and  
5 Siegel, which had been represented to him (albeit falsely) as pertaining to the upcoming  
6 Sands China Board meeting. During the meeting, Leven unceremoniously advised Jacobs that he  
7 was being terminated effective immediately. When Jacobs asked whether the termination was  
8 purportedly "for cause" or not, Leven responded that he was "not sure" but that the severance  
9 provisions of the Term Sheet would not be honored. Leven then handed Jacobs the letter drafted  
10 by LVSC's attorneys and signed by Adelson advising him of the termination.

11 42. Cognizant that he had no legitimate basis to terminate Jacobs for cause, Adelson  
12 authorized and expected Leven to meet with Jacobs and implement the termination strategy. As is  
13 now a well-documented Adelson tactic, he had no regard for the contractual terms of Jacobs'  
14 employment agreement. Instead, Adelson's tried and true tactic is to demand a discount off of  
15 what is contractually owed for a lesser amount. If Jacobs, or anyone else for that matter, will not  
16 acquiesce in Adelson's strong arm tactics, Adelson retorts to "sue me, then." And, that is  
17 essentially how the Adelson game-plan played out with Jacobs.

18 43. When Leven could not persuade Jacobs to "voluntarily" resign, Jacobs was  
19 escorted off the property by two members of security in public view of many company  
20 employees, resort guests, and casino patrons. Jacobs was not permitted to return to his office to  
21 collect his belongings, but was instead escorted to the border to leave Macau.

22 44. Because Leven had not been able to persuade Jacobs to resign, the next play from  
23 the Adelson playbook went into effect – fabricating purported cause for the termination. Once  
24 again, this aspect of the plan was also carried out in Las Vegas by executives professing to act for  
25 both LVSC and Sands China. Indeed, this time they prepared a false letter in Las Vegas and put it  
26 on Venetian Macau, Ltd. letterhead and identified twelve manufactured "for cause" reasons for  
27 Jacobs' termination. Transparently, one of the purported reasons is an attempt to mask one of  
28 Adelson's personal transgressions: The letter absurdly claimed that Jacobs exceeded his authority

1 and failed to keep the companies' Boards of Directors informed of important business decisions.  
2 Not surprisingly, not only are the after-the-fact excuses a fabrication, they would not constitute  
3 "cause" for Jacobs' termination even if they were true, which they are not.

4 45. All but conceding that fact, Adelson would later claim to have developed  
5 (i.e., fabricated) some 34 "for cause" reasons for Jacobs' termination.

6 46. Confirming what Jacobs had complained about regarding Adelson's improper  
7 demands and concealment of information from the Board, Adelson subsequently arranged the  
8 termination of Sands China's then-General Counsel, Luis Melo, and made sure that Leonel Alves  
9 was retained to perform services for Sands China despite knowledge of Alves acting with  
10 disregard for the United States Foreign Corrupt Practices Act. Also with Jacobs' departure, and  
11 with complete disregard for internal concerns regarding junket affiliations with Triads, Adelson  
12 announced that Sands China would be implementing a new junket strategy whereby it would  
13 partner with existing and established junkets to grow its VIP business. In or about the same time  
14 frame, LVSC and Sands China also publicly disclosed a material delay in the construction of  
15 Parcels 5 and 6 and a cost increase of \$100 million to the project, further confirming the  
16 appropriateness of Jacobs' insistence upon disclosure despite Adelson's insistence otherwise.

17 47. Jacobs was not terminated for cause. He was terminated for blowing the whistle  
18 on improprieties and placing the interests of shareholders above those of Adelson. Indeed, in just  
19 one candid communication Leven sent to executives (including Adelson) just days before Jacobs'  
20 termination, Leven claimed that the problem with Jacobs was that "he believes he reports to the  
21 board, not the chair [Adelson]."

22 **FIRST CAUSE OF ACTION**

23 **(Breach of Contract - LVSC)**

24 48. Plaintiff restates all preceding and subsequent allegations as though fully set forth  
25 herein.

26 49. Jacobs and LVSC are parties to various contracts, including the Term Sheet and  
27 Nonqualified Stock Option Agreement identified herein.  
28

50. The Term Sheet provides, in part, that Jacobs would have a 3-year employment term, that he would earn an annual salary of \$1.3 million plus a 50% bonus upon attainment of certain goals, and that he would receive 500,000 LVSC stock options (in addition to the previously awarded 75,000 LVSC options) to vest in stages over three years.

8 52. Jacobs has performed all of his contractual obligations except where excused.

54. On September 24, 2010, Jacobs made proper demand upon LVSC to honor his right to exercise the remaining stock options he had been awarded in the company. LVSC rejected Jacobs' demand and, thus, further breached the Term Sheet and the stock option agreement by failing to honor the vesting and related provisions contained therein based on the pretext that Jacobs was terminated for "cause."

55. LVSC has wrongfully characterized Jacobs' termination as one for "cause" in an effort to smear him and deprive him of what he is owed. As a direct and proximate result of LVSC's wrongful termination of Jacobs' employment and failure to honor the "Not For Cause" severance provisions contained in the Term Sheet, Jacobs has suffered damages in an amount to be proven at trial but in excess of \$10,000.

**(Breach of Contract - LVSC and Sands China)**

24 56. Plaintiff incorporates all preceding and subsequent allegations as though fully set  
25 forth herein.

57. On or about May 11, 2010, LVSC caused Sands China to grant 2.5 million Sands China share options to Jacobs. Fifty percent of the options were to vest on January 1, 2011.

1 and the other fifty percent was to vest on January 1, 2012. The grant is memorialized by a written  
2 agreement between Jacobs and Sands China.

3 58. Pursuant to the Term Sheet agreement between Jacobs and LVSC, Jacobs' stock  
4 options are subject to an accelerated vest in the event he is terminated "Not for Cause." The  
5 Term Sheet further provides Jacobs with a one-year right to exercise the options post-termination.

6 59. Jacobs has performed all his contractual obligations except where excused.

7 60. On September 24, 2010, Jacobs made proper demand upon LVSC and  
8 Sands China to honor his right to exercise the remaining 2.5 million stock options he had been  
9 awarded in Sands China. LVSC and Sands China rejected Jacobs' demand and, thus, further  
10 breached the Term Sheet and the Sands China share grant agreement by characterizing Jacobs'  
11 termination as being for "cause" when, in reality, the purported bases for Jacobs' termination, as  
12 identified in the belatedly-manufactured August 5, 2010 letter, are pretextual and in no way  
13 constitute "cause."

14 61. LVSC and Sands China have wrongfully characterized Jacobs' termination as one  
15 for "cause" in an effort to deprive him of contractual benefits to which he is otherwise entitled.  
16 As a direct and proximate result, Jacobs has suffered damages in an amount to be proven at trial  
17 but in excess of \$10,000.

### 18 **THIRD CAUSE OF ACTION**

#### 19 **(Breach of the Implied Covenant of Good Faith and Fair Dealing - LVSC)**

20 62. Plaintiff incorporates all preceding and subsequent allegations as though fully set  
21 forth herein.

22 63. All contracts in Nevada contain an implied covenant of good faith and fair dealing.

23 64. The conduct of LVSC described herein including, but not limited to, the improper  
24 and illegal demands made upon Jacobs by Adelson, Adelson's continual undermining of Jacobs'  
25 authority as the President and CEO of LVSC's Macau operations (and subsequently Sands China),  
26 and the wrongful characterization of Jacobs' termination as being for "cause," is unfaithful to the  
27 purpose of the agreements between Jacobs and LVSC and was not within the reasonable  
28 expectations of Jacobs.

65. As a direct and proximate result of LVSC's wrongful conduct, Jacobs has suffered damages in an amount to be proven at trial but in excess of \$10,000.

#### FOURTH CAUSE OF ACTION

##### (Tortious Discharge in Violation of Public Policy - LVSC)

66. Plaintiff incorporates all preceding and subsequent allegations as though fully set forth herein.

67. LVSC retaliated against Jacobs by terminating his employment because he (i) objected to and refused to participate in the illegal conduct requested by Adelson, and (ii) attempted to engage in conduct that was required by law and favored by public policy. In so doing, LVSC tortiously discharged Jacobs in violation of public policy.

68. As a direct and proximate result of LVSC's tortious discharge, Jacobs has suffered damages in an amount to be proven at trial but in excess of \$10,000.

69. LVSC's conduct, which was carried out and/or ratified by managerial level agents and employees, was done with malice, fraud and oppression, thereby entitling Jacobs to an award of punitive damages.

#### FIFTH CAUSE OF ACTION

##### (Defamation Per Se - Adelson, LVSC, Sands China)

70. Plaintiff incorporates all preceding and subsequent allegations as though fully set forth herein.

71. In an attempt to cover their tracks and distract from their improper activities, Adelson, LVSC and Sands China have waged a public relations campaign to smear and spread lies about Jacobs. One such instance is a press release made by Adelson, LVSC and Sands China after an adverse court ruling on March 15, 2011. Having been unable to obtain a procedural victory in Court, the Defendants undertook to smear Jacobs in the media, issuing a statement to Alexander Berzon, a reporter for the Wall Street Journal, which provided:

*"While I have largely stayed silent on the matter to this point, the recycling of his allegations must be addressed," he said. "We have a substantial list of reasons why Steve Jacobs was fired for cause and interestingly he has not refuted a single one of them. Instead, he has attempted to explain his*

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*termination by using outright lies and fabrications which seem to have their origins in delusion."*

72. The Defendants' media campaign stating that; (1) Jacobs was justifiably fired "for cause" and (2) Jacobs had resorted to "outright lies and fabrications" were false and constitute defamation per se.

73. All of the offending statements made by Adelson concerning Jacobs and identified in Paragraph 71, *supra*, were (1) false and defamatory; (2) published to a third person or party for the express intent of republication to a worldwide audience; (3) maliciously published knowing their falsity and/or in reckless disregard of the truth thereof; (4) intended to and did in fact harm Jacobs' reputation and good name in his trade, business, profession, and customary corporate office; and (5) were of such a nature that the law presumes significant economic damages.

74. Adelson's malicious defamation of Jacobs was made in both his personal as well as his representative capacities as Chairman of the Board of LVSC and as Chairman of the Board of its affiliate, Sands China; both of which ratified and endorsed either explicitly or implicitly Adelson's malicious invective.

75. The comments and statements noted in Paragraph 71, *supra*, were made without justification or legal excuse, and were otherwise not privileged because they did not function as a necessary or useful step in the litigation process and did not otherwise serve its purposes.

76. As a direct and proximate result of Adelson, LVSC, and Sands China's defamation, Jacobs has suffered damages in an amount to be proven at trial but in excess of \$10,000. Moreover, Jacobs is entitled to the imposition of punitive damages against Adelson, LVSC, and Sands China, said imposition not being subject to any statutory limitations under NRS 42.005.

### SIXTH CAUSE OF ACTION

**(Tortious Discharge in Violation of Public Policy - Adelson)**

77. Plaintiff incorporates all preceding and subsequent allegations as though fully set forth herein.

78. Corporate officers, directors and/or agents are personally liable for tortious conduct which they undertake, including engaging in a tortious discharge in violation of public policy.



1           79.     Adelson retaliated against Jacobs by terminating his employment because Jacobs  
2 (i) objected to and refused to participate in the illegal conduct demanded by Adelson, and  
3 (ii) attempted to engage in conduct favored by public policy. In so doing, Adelson tortiously  
4 discharged Jacobs in violation of public policy.

5           80.     Adelson terminated Jacobs' employment with the intent to harm Jacobs for  
6 refusing to comply with Adelson's illegal and unethical demands.

7           81.     Adelson terminated Jacobs' employment for his own personal benefit, and not for  
8 the benefit of Sands China, LVSC or their shareholders, to whom Adelson owes a fiduciary duty  
9 of loyalty.

10          82.     As a direct and proximate result of Adelson's tortious discharge, Jacobs has  
11 suffered damages in an amount to be proven at trial but in excess of \$10,000.

12          83.     Adelson's conduct was done with malice, fraud and oppression, thereby entitling  
13 Jacobs to an award of punitive damages.

14                   **SEVENTH CAUSE OF ACTION**

15                   **(Aiding and Abetting Tortious Discharge in Violation of Public Policy – Sands China)**

16          84.     Plaintiff incorporates all preceding and subsequent allegations as though fully set  
17 forth herein.

18          85.     LVSC and Sands China are separate legal entities, each capable of making  
19 agreements.

20          86.     LVSC wrongfully terminated Jacobs' employment because he (i) objected to and  
21 refused to participate in the illegal conduct requested by Adelson, and (ii) attempted to engage in  
22 conduct that was required by law and favored by public policy. In so doing, LVSC tortiously  
23 discharged Jacobs in violation of public policy.

24          87.     Sands China, through its agents, substantially assisted LVSC's tortious discharge  
25 of Jacobs by, among other things, making agreements with LVSC, carrying out overt acts to  
26 effectuate the termination and ratifying the termination for the benefit of Adelson and LVSC, and  
27 not for the benefit of Sands China's shareholders, to whom they owed a fiduciary duty of loyalty.

28

1 88. As a direct and proximate result of Sands China's conduct, Jacobs has suffered  
2 damages in an amount to be proven at trial but in excess of \$10,000.

89. Sands China's conduct was undertaken with malice, fraud and oppression, thereby entitling Jacobs to an award of punitive damages.

**6 (Civil Conspiracy Tortious Discharge in Violation of Public Policy- LVSC and Sands China)**

7 90. Plaintiff incorporates all preceding and subsequent allegations as though fully set  
8 forth herein.

9 91. LVSC and Sands China are separate legal entities, each capable of making  
0 agreements.

1           92. LVSC and Sands China agreed, acted in concert and conspired to effectuate  
2 Jacobs' tortious discharge.

93. LVSC and Sands China intended to harm Jacobs for refusing to follow the illegal and improper demands of their common-chairman, Adelson.

94. As a direct and proximate result of LVSC's and Sands China's civil conspiracy, Jacobs has suffered damages in an amount to be proven at trial but in excess of \$10,000.

7 95. LVSC and Sands China's conduct was done with malice, fraud and oppression,  
8 thereby entitling Jacobs to an award of punitive damages.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For compensatory damages in excess of Ten Thousand Dollars (\$10,000.00), in an amount to be proven at trial;

2. For punitive damages in excess of Ten Thousand Dollars (\$10,000.00), in an amount to be proven at trial;

3. For pre-judgment and post-judgment interest, as allowed by law;

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1           4.     For attorney fees and costs of suit incurred herein, as allowed by law, in an amount  
2 to be determined; and

3           5.     For such other and further relief as the Court may deem just and proper.

4           DATED this 22th day of December, 2014.

5                           PISANELLI BICE PLLC

6  
7 By: 

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**CERTIFICATE OF SERVICE**

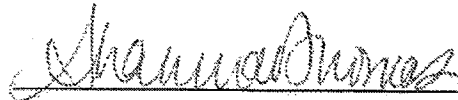
I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 22<sup>nd</sup> day of December, 2014, I caused to be served via the Court's E-Filing system, true and correct copies of the above and foregoing **THIRD AMENDED COMPLAINT** properly addressed to the following:

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9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 STEVEN C. JACOBS,

12 Plaintiff,

13 v.

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

17 Defendants.

Case No.: A-10-627691

Dept. No.: XI

18 PLAINTIFF'S MOTION TO SET  
19 EVIDENTIARY HEARINGS AND TRIAL  
ON ORDER SHORTENING TIME

20 AND RELATED CLAIMS

21 Plaintiff Steven C. Jacobs ("Jacobs") hereby moves the Court to set the long-awaited  
22 evidentiary hearings on sanctions and jurisdiction. As soon as the Court's in camera review is  
23 complete, this matter should be extricated from jurisdictional purgatory so that it may proceed  
24 expeditiously. Considering the inordinate amount of delay in this action, Jacobs requests that this  
25 Court fast track the evidentiary hearing as well as the trial in this action. Because the parties will  
26 be before this Court on motions on January 6, 2015, Jacobs requests that this Court enter an order  
27 shortening time to address this Motion at the same time.

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1 This Motion is based upon the accompanying Memorandum of Points and Authorities and  
2 exhibits thereto, as well as the papers and pleadings on file in this case, and any additional  
3 argument this Court chooses to consider at the time of hearing.

4 DATED this 23<sup>rd</sup> day of December, 2014.

5 PISANELLI BICE PLLC

6  
7 By: 

James J. Pisanelli, Esq., Bar No. 4027  
Todd L. Bice, Esq., Bar No. 4534  
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8 Attorneys for Plaintiff Steven C. Jacobs  
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**DECLARATION OF TODD L. BICE, ESQ. IN SUPPORT OF PLAINTIFF'S MOTION TO  
SET EVIDENTIARY HEARINGS AND TRIAL**

I, TODD L. BICE, ESQ., being duly sworn, declare as follows:

1. I am a partner at the law firm of PISANELLI BICE PLLC, attorneys of record for Plaintiff Steven C. Jacobs ("Jacobs") in the above entitled action. I make this Declaration in support of Plaintiff's Motion to Set Evidentiary Hearings and Trial on order shortening time (the "Motion"). I have personal knowledge of the facts stated herein and I am competent to testify to those facts.

2. This action commenced on October 20, 2010 and, as set forth more fully in the Motion, it has been delayed by an extraordinary number of writ proceedings and maneuvering by the Defendants. The Nevada Supreme Court has directed this Court to proceed with evidentiary hearings on jurisdiction and sanctions. Three years have passed since the Nevada Supreme Court ordered the jurisdictional hearing and more than a year and half has expired since the Court first indicated that it would hold another sanctions hearing.

3. Now that the CityCenter litigation has been removed from the Court's calendar, and the Court's in camera review of the Advanced Discovery documents is almost complete, Jacobs requests that the Court set the evidentiary hearing immediately and further set a trial date for this long-delayed action.

4. The fifth year anniversary for this action will occur in October 2015. No litigant should have to endure the inordinate delays that the Defendants have secured.

5. Because the parties will be before this Court on January 6, 2015, Jacobs requests an order shortening time as he anticipates that the Court will address the timing of the evidentiary hearing on that date and Jacobs further wishes to set a firm date for the long awaited trial in this action.

6. This request for an order shorting time is not made for any improper purpose and is not meant to vex, harass, or annoy the opposing parties.

DATED this 23<sup>rd</sup> day of December, 2014.

  
TODD L. BICE, ESQ.

PISANELLI BICE PLLC  
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**ORDER SHORTENING TIME**

Before this Court is the Request for an Order Shortening Time accompanied by the Declaration of counsel. Good cause appearing, the undersigned counsel will appear at Clark County Regional Justice Center, Eighth Judicial District Court, Las Vegas, Nevada, on the 10<sup>th</sup> day of January, 2015, at 8<sup>00</sup> a.m., in Department XI, or as soon thereafter as counsel may be heard, to bring this **PLAINTIFF'S MOTION TO SET EVIDENTIARY HEARINGS AND TRIAL** on for hearing.

  
DISTRICT COURT JUDGE

Respectfully submitted by:

PISANELLI BICE PLLC

By: 

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



**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. STATEMENT OF FACTS**

**A. The Nevada Supreme Court Orders a Jurisdictional Hearing**

Jacobs initiated this action against Defendants Las Vegas Sands Corp. ("LVSC") and Sands China on October 20, 2010. (Compl., Oct. 20, 2010, on file.) Both Defendants responded with separate motions to dismiss. (Defs.' Mots. Dismiss, Dec. 22, 2010, on file, respectively.) While LVSC's motion was based upon its assertion that Jacobs had failed to join a necessary and indispensable party, Sands China argued that all claims against it should be dismissed for lack of personal jurisdiction or, alternatively, for failure to join a necessary and indispensable party. This Court denied both motions during a March 15, 2011, hearing. (Order Denying Defs.' Mots. Dismiss, Apr. 1, 2011, on file.)

Sands China thereafter sought and obtained a writ of mandamus from the Nevada Supreme Court instructing this Court "to hold an evidentiary hearing on personal jurisdiction, to issue findings of fact and conclusions of law stating the basis for its decision following that hearing, and to stay the action as set forth in this order until after entry of the district court's personal jurisdiction decision." *Sands China Ltd. v. Eighth Judicial Dist. Court of State ex rel. Cnty. of Clark*, No. 58294, 2011 WL 3840329, at \*2 (Nev. Aug. 26, 2011). This litigation has been treading water ever since.

**B. This Court Orders (Another) Sanctions Hearing**

Jacobs will not detail the Defendants' misconduct during jurisdictional discovery which led to this Court's September 2012 sanctions order "preclud[ing] [Sands China] from raising the MDPA as an objection or as a defense to admission, disclosure or production of any documents." (Decision & Order, Sept. 14, 2012, p. 8, on file.) Instead, the present request has its genesis in December 2012, when the Court entered an order requiring Sands China to produce all documents and ESI relevant to jurisdictional discovery by January 4, 2013. (*See* Order Regarding Pl.'s Renewed Mot. for NRC 37 Sanctions on Order Shortening Time, March 27, 2013, p. 2, on file.) Despite Sands China's representation in a status report that it had complied with the Court's Order, Sands China employed the MPDPA as a basis to redact and not produce responsive documents.

1 (See Order Regarding Pl.'s Renewed Mot. for NRCP 37 Sanctions on Order Shortening Time,  
2 March 27, 2013, p. 2, on file.)

3 As a result, Jacobs filed a Motion for NRCP 37 Sanction. (*Id.*) The Court granted Jacobs'  
4 Motion and found "Jacobs has made a prima facie showing as to a violation of this Court's orders  
5 which *warrants an evidentiary hearing.*" (*Id.*) (emphasis added). However, Sands China further  
6 delayed these proceedings by again seeking writ review at the Nevada Supreme Court. On  
7 August 7, 2014, the Nevada Supreme Court denied Sands China's writ petition and endorsed the  
8 approach to the sanctions hearing taken by this Court, *Las Vegas Sands v. Eighth Jud. Dist. Ct.*,  
9 130 Nev. Adv. Op. 61, 331 P.3d 876, 877 (2014) ("Here, the district court properly employed this  
10 framework when it found that the existence of a foreign international privacy statute did not  
11 excuse petitioners from complying with the district court's discovery order."). The  
12 Supreme Court held that MPDPA does not relieve a litigant of its obligation to comply with  
13 discovery orders. *Id.*, 331 P.3d at 880. Rather, the MPDPA is only relevant to the level of  
14 sanction levied for violation of a discovery order. *Id.* The Supreme Court encouraged this Court  
15 to proceed with its planned evidentiary hearing. *Id.*, 331 P.3d at 880-81.

16 **C. The Nevada Supreme Court Orders an In Camera Review and Requests Findings**  
17 **of Fact Regarding Waiver of Privilege.**

18 In a separate writ proceeding regarding the Advanced Discovery documents, the Nevada  
19 Supreme Court instructed this Court to "resolve any disputes regarding Sands's privilege log by  
20 conducting an in-camera review of the purportedly privileged documents to determine which  
21 documents are actually protected by a privilege." *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 130  
22 Nev. Adv. Op. 69, 331 P.3d 905, 914 (2014). The Supreme Court also "direct[ed] the district court  
23 to make findings of fact and resolve whether Sands waived any privileges" by failing to timely  
24 object to Jacobs' possession of Sands China's documents. *Id.* at n.9, 331 P.3d at 909 n.9.

25 **D. Sands China's Deficient Privilege Log Has Delayed the In Camera Review and**  
26 **Planned Evidentiary Hearings.**

27 Following the Supreme Court's Orders on Sands China's writ petitions, the Court held a  
28 hearing on August 8, 2014. At the hearing, the Court indicated that it intends to hold the sanctions  
hearing before conducting the jurisdictional hearing or, at least, both hearings would occur

1 consecutively. (Hr'g Tr. at 28:15-24; 37:1-10, Aug. 8, 2014, on file.) Sands China agreed that the  
2 evidentiary hearings should occur "seriatim." (*Id.* at 30:9-12 ("We think that that is the most  
3 appropriate way. If not having the sanctions hearing second, that at a minimum these should  
4 happen seriatim as you've said you were willing to consider."); *id.* at 30:21-31:2 ("[W]e're  
5 requesting. . .at minimum that these hearings occur simultaneously or seriatim - - in seriatim, as  
6 you say, and that - - I think that's our position, Your honor."))<sup>1</sup>

7 Ironically, Sands China expressed a desire to hold the jurisdictional hearing as soon as  
8 possible. (Hr'g Tr. at 8:6-7, Aug. 8, 2014, on file) ("And so we would like to get to the  
9 jurisdictional hearing as soon as possible, because we think there is no jurisdiction against Sands  
10 China."). Nevertheless, the deplorable state of Sands China's privilege log has exponentially  
11 delayed the Court's in camera review and hindered both evidentiary hearings.

12 A firm and immediate date for evidentiary hearings should be set so that the parties can  
13 time their preparations to coincide with the completion of the in camera review and move this case  
14 forward.

## 15 II. DISCUSSION

### 16 A. The Evidentiary Hearings Should Be Set Immediately

17 As a general rule, evidentiary hearings should be held as soon as possible. *See Ray v.*  
18 *Mabry*, 556 F.2d 881, 883 n.3 (8th Cir. 1977) ("*Since an evidentiary hearing should be held as*  
19 *soon as possible*, the court notes that the magistrate now has the power to hold such a hearing and  
20 recommends that the district court consider that possibility.") (emphasis added); *Berrio-Callejas v.*  
21 *United States*, 129 F.3d 1252, at \*1 (1st Cir. 1997) ("In light of how long this petition has been  
22 pending, the court should appoint counsel forthwith and endeavor to hold the evidentiary hearing  
23 as soon as possible.").

24 Here, Sands China's successive writ proceedings have tied this matter in knots for four  
25 years and brought this case to a standstill. The jurisdictional hearing has been languishing for  
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27 <sup>1</sup> Additionally, the Court requested briefing on the sanctions issue prior to evidentiary  
28 hearing. (*Id.* at 37:11-16.) Sands China has already filed its brief, (SCL's Revised Pre-Hearing  
Memo, Oct. 17, 2014, on file), and Jacobs will file his brief as soon as the evidentiary hearing is  
set.

1 more than three years and the evidentiary hearing on sanctions has been delayed for more than a  
2 year and a half. These delays have prevented Jacobs from pursuing the merits of his claims. "That  
3 the adage 'justice delayed is justice denied' may by now be trite, that makes it no less true."  
4 *Laforge v. Consol. Rail Corp.*, No. CIV A 87-6314, 1988 WL 38321, at \*1 (E.D. Pa. Apr. 22,  
5 1988). Jacobs is entitled to his day in court and the evidentiary hearings should be firmly set to  
6 place this litigation on the path to a resolution.

7 **B. A Trial Date Should Also Be Set.**

8 The complaint in this matter was filed October 20, 2010. Although a court ordered stay  
9 tolls NRCP 41(e)'s five year rule, *Boren v. City of N. Las Vegas*, 98 Nev. 5, 6, 638 P.2d 404, 405  
10 (1982), that provides no basis for the delay of Jacobs' rights. Considering the inordinate delay,  
11 this case should be fast tracked for discovery and trial. A firm trial setting will further discourage  
12 more stalling and reduce costs to the litigants and the Court. *See R & D Bus. Sys. v. Xerox Corp.*,  
13 150 F.R.D. 87, 90 (E.D. Tex. 1993) ("The Court notes that numerous commentators have  
14 recognized the value of firm trial dates in reducing cost and delay in our civil justice system.").  
15 Accordingly, this matter should be firmly set for trial.

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1 **III. CONCLUSION**

2 Based upon the foregoing, Jacobs respectfully requests that the Court schedule the  
3 evidentiary hearings on sanctions and jurisdiction as soon as possible and set this matter for trial.

4 DATED this 23<sup>rd</sup> day of December, 2014.

5 PISANELLI BICE PLLC

6 By: 

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 24<sup>th</sup> day of December, 2014, I caused to be served via the Court's E-Filing system, true and correct copies of the above and foregoing **PLAINTIFF'S MOTION TO SET EVIDENTIARY HEARINGS AND TRIAL ON ORDER SHORTENING TIME** properly addressed to the following:

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