CERTIFICATE OF MAILING

I hereby certify that I am an employee of GLASER WEIL FINK JACOBS HOWARD AVCHEN & SHAPIRO LLP, and on the 23rd day of January, 2012, I deposited a true and correct copy of the foregoing **DEFENDANT SANDS CHINA LTD.'S RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS** via U.S. Mail at Las Vegas, Nevada, in a sealed envelope upon which first class postage was prepaid and addressed to the following:

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RELATIONS LAW § 442 cmt. c) (bold added). In the absence of earlier statements of interest, a foreign government can express its interests by formally intervening in an action or filing an amicus brief. *See Chevron Corp.*, 296 F.R.D. at 206-07 (government can intervene); *see also In re Rubber Chemicals Antitrust Litig.*, 486 F. Supp. 2d 1078, 1082 & n.2 (N.D. Cal. 2007) (foreign government offering to submit amicus brief as it had done in other matters).

Sands China must submit actual evidence – not argument – that it faces serious consequences and show the extent to which Macau enforces its privacy laws. *See In re Air Crash at Taipei, Taiwan on Oct. 31, 2000*, 211 F.R.D. at 379. Letters to litigants are not such proof. *Id.* ("This letter is not persuasive proof that defendant or its officers or managing agents will be criminally prosecuted for complying with an order of this Court. Nor has defendant presented any evidence regarding the manner and extent to which Singapore enforces its secrecy laws."). Naked fear of prosecution is not sufficient. *Linde v. Arab Bank, PLC*, 269 F.R.D. 186, 197 (E.D.N.Y. 2010) *cited with approval Las Vegas Sands*, 130 Nev. Adv. Op. 61, 331 P.3d at 880.

The United States has an overwhelming interest in ensuring that Jacobs – and all of its citizens – receive full and fair discovery to uncover the truth of their judicial claims. Nevada's interest is no different. Sands China has no ***official*** statement of the Macanese government ***outside of this litigation*** regarding its interests in preventing Sands China's disclosure of information. To be sure, Sands China has letters purportedly from the OPDP but those letters did not express interest in the redaction of this information before the case. *See Richmark Corp*, 959 F.2d at 1476 (letters from PRC's State Secrecy Bureau sent during litigation ***do not*** constitute statement of interest because they were sent in response to the litigation in question).

And, despite being aware of this litigation and the grandiose claims of wide-reaching implications, the Macanese government has not moved to intervene or file an *amicus* brief to state its actual interests (if any). *Chevron Corp.*, 296 F.R.D. at 206-07; *In re Rubber Chemicals Antitrust Litig.*, 486 F. Supp. 2d at 1082 & n.2. And the evidence at the evidentiary hearing will show that this is no accident. Even Sands China's own witnesses will have to acknowledge that they transmit so-called personal data out of their Macau casinos every day in communications

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with individuals at the parent company, LVSC. They just do not want to release that information when it can be used against them as opposed to when they do so in pursuit of their own interests.

Additionally, Sands China has no evidence that it will actually be subject to any form of sanction, let alone a serious one. Again, the letters to Sands China do not constitute sufficient evidence and Sands China has no proof of any other material consequences for supposed violations of the MPDPA stemming from a court ordered production in the United States. *In re Air Crash at Taipei, Taiwan on Oct. 31, 2000*, 211 F.R.D. at 379.

6. Additional factors – Sands China is willfully disregarding the Court's orders in bad faith.

This is the case where the Court must also recognize the party's willful noncompliance. A party's good faith efforts to produce documents and to comply with the Court's Order may also be considered. *Chevron Corp.*, 296 F.R.D. at 213 ("[T]he final factor: whether defendants have acted in good faith in their attempts to produce the requested documents . . . and to comply with the Court's order."). Nevertheless, good faith and willful non-compliance is only relevant when the requesting party attempts to obtain the harshest sanctions – dismissal, default, or contempt. *Id.* Lesser sanctions, such as adverse evidentiary presumptions, can be imposed even in the absence of bad faith or willfulness. *Id.*

A party is willfully disregarding a court's order unless it is "factually impossible" to comply. For example, in *Richmark Corporation*, the resisting party made the same argument that Sands China advances here. It "contend[ed] that it has no 'present ability' to comply with the discovery order because doing so would violate PRC law." 959 F.2d at 1481. The Ninth Circuit soundly rejected this position. The court held "[t]o prevail here, [the resisting party] bears the burden of proving that it is *'factually impossible* ' to comply with the district court's order – for example, because the documents are not in [the party's] possession or no longer exist." *Id.* Like Sands China, the resisting party never disputed that it had the ability to produce the documents, it only argued "that disclosing the information will result in negative consequences for it, in that it might be prosecuted by the PRC." *Id.* This was not enough to "make out a showing of present inability to comply." *Id.*

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Sands China's plea that it "cannot comply" is but empty rhetoric. It is not impossible for Sands China to comply with this Court's orders. Sands China could have told this Court the truth all along before it improperly stalled this case through the misuse of the MPDPA. And even as to its redactions, Sands China (and its vendor) can remove the redactions and produce the documents with ease. Again, Sands China routinely sends personally data out of Macau and into Las Vegas as part of its daily business operations without MPDPA problems. In other words, Sands China does not view the MPDPA as an obstacle if the transmission of personal data facilitates doing business, but the MPDPA is somehow an impediment to this Court's lawfully ordered discovery. Sands China is *choosing* to use the MPDPA to avoid this Court's orders because it does not want to be exposed. Selective use of the MPDPA does not make Sands China's non-compliance any less "willful."

In addition, Sands China's role in influencing Macanese officials to interpret the MPDPA in a draconian manner is also relevant to Sands China's good faith. *See Chevron Corp.*, 296 F.R.D. at 201 ("As will be seen below, there are troubling aspects as to the manner in which the *Córdova* ruling was sought and procured, matters that go to the good faith of the LAPs and their attorneys."). Previously, the MPDPA was never applied to prohibit the export of email address or names of senders and recipients. Sands China proposes that it is just a coincidence that the Macau government developed its current MPDPA policy at almost precisely the same moment that Sands China and LVSC needed an excuse not to comply with discovery in this case and with the subpoenas issued by the United States government. But as LVSC's own technology officer, Mangit Singh, confirmed, this was anything but a coincidence.

The correspondence exchanged between Sands China and the OPDP is not evidence of good faith as these letters were designed to be rejected. *See Linde*, 269 F.R.D. at 199 ("Defendant's letters requesting permission from foreign banking authorities to disclose information protected by bank secrecy laws are not reflective of an "extensive effort" to obtain waivers . . . . Instead, the letters were calculated to fail."). Sands China purposefully neglected to provide the OPDP with all of the necessary information. (Pl.'s proposed Ex. 102 at 305 ("However, since your company has provided our Office with no information evidencing that

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your company has obtained the express consent of the parties relating to such information, nor any contract of employment . . . our Office cannot deem that your company's authorization of a law firm in Hong Kong to inspect relevant documents complies with relevant stipulation of the *Personal Data Protection Act*.").) Sands China also failed to invoke the proper provision of the MPDPA when asking for permission. (*Id.* at 305-06.)

"Finally, the years of delay caused by defendant's refusals to produce weigh against a finding of good faith . . . It is now apparent that the delay was for no purpose at all; defendant never intended to produce certain documents, regardless of this court's rulings . . . ." *Linde*, 269 F.R.D. at 200.[8] Sands China has willfully disobeyed the Court's discovery order and has not acted in good faith.

B. NRCP 37 Supports the Issuance of Sanctions.

Nevada Rule of Civil Procedure 37 authorizes sanctions for "willful noncompliance with a discovery order of the court." *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990). In addition to Rule 37, the Court has "inherent equitable powers" to impose sanctions for "abusive litigation practices." *Id.* (citing *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 916 (9th Cir. 1987)) (citations omitted); *see also GNLV Corp. v. Serv. Control Corp.*, 111 Nev. 866, 869, 900 P.2d 323, 325 (1995) (noting that courts have the inherent authority to impose discovery sanctions "where the adversary process has been halted by the actions of the unresponsive party."). As the Nevada Supreme Court warned, "[l]itigants and attorneys alike should be aware that these [inherent] powers may permit sanctions for discovery and other litigation abuses not specifically proscribed by statute." *Young*, 106 Nev. at 92, 787 P.2d at 779.

"Fundamental notions of fairness and due process require that discovery sanctions be just and that sanctions relate to the specific conduct at issue." *GNLV Corp.*, 111 Nev. at 870, 900 P.2d at 325 (citing *Young*, 106 Nev. at 92, 787 P.2d at 779-80). The minimum sanction a court should impose is one that deprives the wrongdoer of the benefits of their violations. *See Burnet v.*

[8] As part of Sands China's delay, the Court can consider Sands China's other efforts to slow discovery, including its awful privilege log. *See Chevron Corp.*, 296 F.R.D. at 219 (accounting for "Defendants' Further Efforts to Block Discovery" and noting "Defendants' recalcitrance in the discovery process is not limited to the dispute over the Ecuadorian documents.").

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Spokane Ambulance, 933 P.2d 1036, 1041 (Wash. 1997) (*en banc*) ("The purpose of sanctions generally are to deter, punish, to compensate, to educate, and ***to ensure that the wrongdoer does not profit from the wrongdoing.***" (emphasis added)); *Woo v. Lien*, No. A094960, 2002 WL 31194374, at *6 (Cal. Ct. App., Oct. 2, 2002) (upholding trial court's imposition of sanctions because not doing so "would allow the abuser to benefit from its actions.").

In cases similar to the case at hand, the United States Supreme Court has approved the striking of a party's personal jurisdiction defense. *See, e.g., Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982). As another court has recognized under like circumstances, the "sanction striking their personal jurisdiction defense would be appropriate for failure to comply with the order to produce insofar as it required production of documents bearing on their personal jurisdiction defense in this action." *Chevron Corp.*, 296 F.R.D. at 220. Indeed, that court decided to strike the personal jurisdiction defense but proceeded to make evidentiary findings as well so as to protect the record on appeal. *Id.* at 221 ("Nonetheless, the Court recognizes that a reviewing court may disagree with this resolution of the personal jurisdiction issue. Accordingly, in order to afford a reviewing court a full record on the issue, the Court will take evidence and making findings at trial on the question whether it has personal jurisdiction over the LAP Representatives independent of this sanctions order.").

At a minimum, Jacobs is entitled to both adverse evidentiary sanctions for the jurisdictional hearing and serious monetary sanctions. The RESTATEMENT (THIRD) OF FOREIGN RELATIONS Law § 442(1)(b) states that the "[f]ailure to comply with an order to produce information may subject the person to whom the order is directed to sanctions, including . . . a determination that the facts to which the order was addressed are as asserted by the opposing party." "[A] court or agency may, in appropriate cases, make findings of fact adverse to a party that has failed to comply with the order for production, even if that party has made a good faith effort to secure permission from the foreign authorities to make the information available and that effort has been unsuccessful." *Id.* at (2)(c). NRCP 37(b)(2) imposes a similar sanction for disobeying a court's discovery order. It provides that the "designated facts shall be taken to be

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established for the purposes of the action in accordance with the claim of the party obtaining the order." NRCP 37(b)(2).

"An adverse inference serves the remedial purpose of restoring the prejudiced party to the same position he would have been in absent the wrongful destruction of [or willful refusal to produce] evidence by the opposing party." *Chevron Corp.*, 296 F.R.D. at 222. Adverse inferences restore the evidentiary balance. *Linde*, 269 F.R.D. at 203. Again, a showing of bad faith is not required. "The inference is adverse to the [nonproducing party] not because of any finding of moral culpability, but because the risk that the evidence would have been detrimental rather than favorable should fall on the party responsible for its [nonproduction]." *Id.* at 200 (quotations omitted).

As this Court knows well, Sands China misused the MPDPA to disrupt and delay the jurisdictional hearing. The law presumes that the delay has imposed severe prejudice upon Jacobs. *Foster v. Dingwall*, 126 Nev. Adv. Op. 6, 227 P.3d 1042 (2010). Although that prejudice is irreparable at this point, this Court must, at a minimum, deprive Sands China of the benefits of its misuse of the MPDPA and draw all adverse inferences that Sands China's use of the MPDPA would contradict its denials of being subject to personal jurisdiction in Nevada.

Additionally, this is a case where serious monetary sanctions must be imposed. Tellingly, a case upon which Sands China relies[9] approves a sanction of $10,000 a day for refusing to produce documents based upon an alleged foreign privacy statute. In *Richmark Corporation v. Timber Falling Consultants*, a company resisted discovery, and refused to comply with court orders, based upon "State Secrecy Laws" of the People's Republic of China. 959 F.2d 1471-72. As a sanction, the district court awarded the discovery party its attorneys' fees and costs and $10,000 a day in contempt fines. *Id.* at 1472. The Ninth Circuit affirmed the sanction even though, by the time of the appeal, the sanction amount "surpassed the amount of the underlying [$2.2 million dollar] judgment . . . ." *Id.* at 1481. The Court further held that if $10,000 a day is insufficient to coerce compliance, that amount should be increased. *Id.* at 1482.

[9] (Def.'s Revised Pre-Hearing Memorandum at 7:3-4 (citing *Richmark*).

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The same level of monetary sanction should be imposed on Sands China. *i.e.* $10,000 a day from the January 4, 2013 date of compliance established at the December 18, 2012 hearing until the February 9, 2015 sanctions hearing. Such a fine would equal $7,660,000.00 and continue until Sands China stops making MPDPA redactions.[10] Respectfully, Jacobs believes that this Court's small $25,000 sanction had the effect of encouraging Sands China's ongoing belligerence. Sands China is more than happy to pay such nominal sums to avoid having to comply with its discovery obligations. This litigant has immeasurable financial resources and only a substantial sanction will have any hope of influencing its conduct and reducing the benefit that it has obtained from interminable delay.

Finally, Jacobs should be awarded his reasonable attorneys' fees and costs incurred in attempting to obtain discovery and dealing with Sands China's MPDPA redactions. Once granted, Jacobs will submit a proper and substantiated motion for attorneys' fees.

Jacobs' requested sanction comports with Nevada Supreme Court precedent. The Supreme Court has announced a number of factors to consider when assessing the propriety of a sanction.

> The factors a court may properly consider include, but are not limited to, the degree of willfulness of the offending party, the extent to which the non-offending party would be prejudiced by a lesser sanction, the severity of the sanction of dismissal relative to the severity of the discovery abuse, whether any evidence has been irreparably lost, the feasibility and fairness of alternative, less severe sanctions, such as an order deeming facts relating to improperly withheld or destroyed evidence to be admitted by the offending party, the policy favoring adjudication on the merits, whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney, and the need to deter both the parties and future litigants from similar abuses.

Young, 106 Nev. at 93, 787 P.2d at 780.

Sands China has knowingly and willfully failed to comply with its discovery obligations, including violating the Court's September 2012, December 18, 2012, and March 2013 Orders.

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[10] Alternatively, the Court could account for the stay pending the Nevada Supreme Court's consideration of Sands China's writ petition. In that case, the sanction would amount to $3,080,000. (1/4/13 to 2/9/15 = 766 days. 5/13/13 stay pending writ to 8/14/14 hearing lifting stay = 458 days. 766-458 = 308 days un-stayed X $10,000 = $3,080,000).

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This is not a litigant that has any entitlement to rely upon restrictions of the MPDPA. It lost that right when it got caught deceiving this Court as to the location of documents and the application of the MPDPA so as to delay this case and thwart jurisdictional discovery. Sands China does not get a do-over of the sanction simply because the sanction is now an inconvenience for it. It is not impossible for Sands China to comply. *Richmark Corp.* 959 F.2d at 1481. Rather, Sands China is choosing this Court's sanction over a hypothetical slap on the wrist from Macau. There are no other feasible sanctions to remedy the delay and evidentiary imbalance that have been caused by Sands China's misuse of the MPDPA. Even significant and severe monetary sanctions will not undo the harm that Sands China has already caused nor deprive it of the benefit that it has achieved.

IV. CONCLUSION

Sands China has successfully paralyzed this case through misuse of the MPDPA. Once that misuse was uncovered, this Court held that Sands China could no longer rely upon it for the jurisdictional phase of this case. Yet, Sands China thinks itself above the law. Thus, it secured another two years of delay by doing exactly what this Court said it could not do.

DATED this 6th day of February, 2015.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 6th day of February, 2015, 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' BRIEF ON SANCTIONS FOR FEBRUARY 9, 2015 EVIDENTIARY HEARING** properly addressed to the following:

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ORIGINAL

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

Defendants.

AND ALL RELATED MATTERS.

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

BENCH BRIEF REGARDING SERVICE ISSUES

Date: February 9, 2015
Time: 8:30 a.m.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

> Service of process is carefully prescribed by the Legislature, which affords litigants ample methods for serving natural persons. Regularity of process, certainty and reliability for all litigants and for the courts are highly desirable objectives to avoiding generating collateral disputes. These objectives are served by adherence to the statute and disserved by judicially engrafted exceptions. . . .[1]

Service of process is not simply a procedural nicety; it is a threshold requirement of due process and obtaining jurisdiction over a person. The Nevada Supreme Court has long recognized that "personal service or a **legally provided** substitute must still occur in order to obtain jurisdiction over a party." *C.H.A. Venture v. G.C. Wallace Consulting Eng'rs, Inc.*, 106 Nev. 381, 384, 794 P.2d 707, 709 (1990) (emphasis added). Nevada's rules of procedure and statutory framework define the legally acceptable methods of service. While a court has inherent authority to manage its affairs and the litigants before it, that authority does not extend to exercising jurisdiction over individuals that have not been afforded basic due process in the service of legal process.

"Nevada Rules of Civil Procedure 45[b] **requires** that a subpoena be **personally** served." *Consolidated Generator-Nevada, Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (emphasis added). The Nevada Legislature created a substitute for the narrow circumstance when a process server is denied access to a "residence." NEV. REV. STAT. § 14.090. Plaintiff asks this Court to expand the statute to include the circumstance when a process server is denied access to the non-public, restricted area of a business. But "'it is not the business of this court to fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done.'" *So. Nev. Homebuilders Assn. v. Clark County*, 121 Nev. 446, 451, 117 P.3d 171, 174 (2005). Accordingly, Las Vegas Sands Corp. ("LVSC"), Sands China, Ltd. ("SCL"), and Sheldon Adelson (collectively "Movants")

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[1] *Dorfman v. Leidner*, 76 N.Y.2d 956, 958, 565 N.E.2d 472 (N.Y. 1990) (citations omitted).

respectfully submit the following points and authorities supporting their position that creating alternative methods to serve individuals that a party wants to hail into court as involuntary testimonial witnesses—what Plaintiff seeks to have the Court do regarding Ms. Hyman and Messrs. Adelson, Goldstein, and Rubenstein—would be error.

II.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

The evidentiary hearing on February 9, 2015 concerns SCL and whether or not sanctions are appropriate for SCL's alleged violation of the Court's order that the company could not redact documents to comply with Macanese law. Plaintiff has designated a number of executives for LVSC[2] that he intended to subpoena to appear and offer testimony at the hearing. Movants filed an emergency motion to quash the subpoenas, on various grounds. Plaintiff opposed that motion and included a countermotion to deem each of the six executives served, none of which had been personally served with a subpoena.

On February 6, 2015, the Court heard Movants' motion to quash and Plaintiff's countermotion to deem the LVSC executives served. Despite asking the Court to "deem served" six LVSC executives, Plaintiff presented affidavits of service for only two of the executives—Messrs. Adelson and Raphaelson.[3] Plaintiff argued that the Court should find he had satisfied his service obligation because NRS 14.090 permits substitute service when the intended party resides in a guard-gated community and the process server is **denied** entry into the community. The Court orally ruled that Mr. Raphaelson, general counsel for LVSC, would be deemed served with process by substitute service on the front office at his residence on a day when Mr.

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[2] Plaintiff listed the following witnesses: Michael Leven (formerly the President and COO of LVSC); Robert Goldstein (the current President and COO of LVSC); Ira Raphaelson (Executive Vice President and General Counsel of LVSC); Robert Rubenstein (Senior Vice President and Deputy General Counsel of LVSC); Sheldon Adelson (CEO of LVSC); and Gayle Hyman (Senior Vice President of Corporate Affairs for LVSC). Mr. Leven no longer works for the company and on information and belief, no longer even lives in the State of Nevada.

[3] Mr. Adelson was travelling outside the country on the date of the purported service to him. Mr. Raphaelson was traveling outside the State of Nevada (in Washington D.C. and then Chicago)—departing Las Vegas on January 23 and returning the afternoon of February 1, 2015—including on the date of the purported service to him.

Raphaelson was not in the State of Nevada. The Court declined to "deem served" the other executives that Plaintiff also had not personally served. However, the Court expressed "concern" when Plaintiff claimed his process server had been refused entry into the LVSC's corporate offices and threatened with eviction if he tried to serve anyone on the premises, and suggested the Court *might* extend NRS 14.090 and deem the other unserved executives personally served if presented with evidence that efforts to serve them at the corporate offices were thwarted. The hearing adjourned shortly before noon.

Plaintiff wasted no time and immediately sent his process server to exploit the loophole for substituted service that he believed the Court had created. At 5:36 p.m. on February 6, Plaintiff served Defendants a "Notice of Submission of Affidavits" purporting that Plaintiff's process server had attempted to serve Ms. Hyman and Messrs. Adelson, Goldstein, and Rubenstein at The Venetian, but was denied access and told he was "totally restricted from approaching the Corporate Offices," and for each of the individuals he sought, was told security "would not ask ... to come to the security booth, because of his monetary worth." All five of the affidavits have identical language—even attributing to Ms. Hyman the masculine gender.

But the security officers that Plaintiff's process server approached have a much different recollection of what transpired than what the server records in his affidavits. The officers' statements confirm that an attempt to serve certain executives at The Venetian was made at approximately 1 p.m. on February 6. A man approached the security podium near the casino cage—not the security podium near the executive offices—and asked to be escorted into the non-public executive offices. *See* Voluntary Statement of Ruben Reyes, attached as **Exhibit A.** The request was denied. Exhibit A. The man then stated that "he would just go up there without an escort" and was told that he could be trespassed if he went to a restricted area without proper authorization. Exhibit A; *accord* Voluntary Statement of Raul Marquez, attached as **Exhibit B.** The man then asked if the persons he wished to serve "could be brought down to the casino to be served." Exhibit B. He was informed "that would not be possible either." Exhibit B. When the man asked to speak with a manager, one responded. The manager asked the man for identification, which he refused to provide, but did identify himself as "Mark"—although the

affidavit provides the name Matthew Watts. Voluntary Statement of Christopher Mosier, attached as **Exhibit C**; *accord* Voluntary Statement of Jacob Johnson, attached as **Exhibit D** ("Upon arrival, Mosier and I identified ourselves to the male, who identified himself as Mark."). The man likewise refused to identify "his client or the business he works for." Exhibit C. The man did not allow The Venetian's security manager to look at the papers he claimed he was there to serve, which appeared disheveled and hand-written. Exhibit C. Officer Mosier advised the man that based on the information he provided (and declined to provide), that he could not allow him access into the corporate offices, and then referred him to the legal department. Exhibit C. The man then demanded the security manager call the four individuals and have them come down to meet him, which the officer explained was an unreasonable request (and as a practical matter would have been impossible because three of them were out of the country). Exhibit C. The man, who was confrontational and appeared to be trying to goad the officers, then said he was going to the legal offices. Exhibit C; *accord* Exhibit D. The officer confirmed the address for the man and suggested he call ahead for an appointment. Exhibit C; *accord* Exhibit D.

III.

ARGUMENT

A. Granting Plaintiff's request to engraft "business" onto NRS 14.090 would be error.

"[D]ifficulties in obtaining service of process cannot form the basis for ignoring the clear statutory requirements." *Geldermann & Co., Inc. v. Dussault*, 384 F.Supp. 566, 570 (N.D. Ill. 1974). Indeed, "**[t]he rule that requires personal service is not a technicality but rather a mainstay in the foundation of due process upon which our legal system is built.** The Court cannot lightly ignore the requirements of the rule merely because plaintiff has made a good—yet unsuccessful—attempt at compliance." *Id.* (emphasis added). But that is precisely what this Plaintiff seeks. Plaintiff asks this Court to engraft onto NRS 14.090 an exception for when a process server is denied access to a non-public, restricted area of a business. There is no basis in law or fact for the Court to acquiesce to Plaintiff's unprecedented request.

1. Rule 45 subpoenas must be personally served.

Rule 45 and Nevada Supreme Court precedent interpreting that rule state, in no uncertain terms, that "Nevada Rules of Civil Procedure 45(c) **requires** that a subpoena be **personally** served." *Consolidated Generator*, 114 Nev. at 1312, 971 P.2d at 1256 (emphasis added).[4] The Nevada Supreme Court held in *Consolidated-Generator* that the district court did not exceed its authority by quashing the subpoenas for out-of-state company employees who had been served through counsel, rather than in person. *Id.* Even the materials that the Clark County Courts make available to *pro se* litigants recognize: "[e]ach defendant must be personally served with their own copy of your summons and complaint, even if they live at the same address," and "**'personal service' means that the defendant must be handed a copy of your summons and complaint.**" *See* **Exhibit E** (emphasis added).[5] It would be improper and fundamentally unfair to hold a sophisticated Plaintiff with a cadre of seasoned lawyers to a different and lower standard for service of process. And Nevada is not alone in requiring Rule 45 subpoenas be personally served. A majority of federal decisions interpreting FRCP 45, in fact, require personal service and do not allow Rule 4 to supplement that requirement. Charles Alan Wright et al., *Federal Practice and Procedure* vol. 9A, § 2454 (3d ed., West 2014) ("The longstanding interpretation of [federal] Rule 45 has been that personal service of subpoenas is required.").

In view of the Rule's requirement for personal service, and the Nevada Supreme Court's holding in *Consolidated-Generator*, Plaintiff's suggestion that service of process was effectuated by listing the individuals on his list of witnesses and requesting that counsel accept service is wrong. *See also Nicholas M. v. Eighth Jud. Dist. Ct.*, No. 62955, 2013 WL 5763107

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[4] Now NRCP 45(b). *See* NEV. R. CIV. PROC. 45, Editors' Note, Drafter's Note 2004 Amendment ("Subdivision (b)(1) retains the text of former subdivision (c) with some minor changes to delete reference to the sheriff or his deputy and to limit the requirement for one day's attendance and mileage to subpoenas that command a person's attendance."). The Nevada Supreme Court's *Consolidated* decision appears in the "Case Notes" following NRCP 45 under the heading **"Personal service required."**

[5] Obtained from Clark County Courts Website, http://www.civillawselfhelpcenter.org/self-help/lawsuits-for-money/pleading-stage-filing-a-complaint-or-responding-to-a-complaint/242-serving-your-complaint (last accessed February 8, 2015, at 11:56 a.m.).

*1 (Nev. Oct. 18, 2013) (citing *C.H.A. Venture v. G.C. Wallace Consulting Eng'rs, Inc.*, 106 Nev. 381, 384, 794 P.2d 707, 709 (1990) (holding that "notice is not a substitute for service of process. Personal service or a legally provided substitute must still occur in order to obtain jurisdiction over a party."). Plaintiff's assertion that the Court can expand NRS 14.090 to cover these circumstances is equally wrong.

2. A narrow substituted service exception exists only with regard to a "residence."

The Nevada Legislature created a single substitute for the narrow circumstance of when an individual "**resides**" behind a gate and the process server is denied access to the "**residence.**" NEV. REV. STAT. § 14.090 (emphasis added). The statute plainly applies only to individuals and then only to their place of residence. *See generally* NEV. REV. STAT. § 14.090. The statute does not apply to entities nor does it apply to an individual's place of business. This substitute method of service was added by the Nevada Legislature in 1993 in response to a request by process servers who sought to "make [their] job a little easier." Hrg. Before Nev. Senate Comm. J. on SB413, May 5, 1993 at 5. As previously noted, Plaintiff offered "affidavits of service" attempting service at the executives' homes for only two individuals. The statute, by its plain terms, permits substituted service to a guard when a process server is **denied access** to the intended recipient's residence in a guard-gated community.

The Nevada Supreme Court explained in *So. Nev. Homebuilders Assn. v. Clark County* that the Legislature's failure to include language in a statute or court rule will be interpreted as intentional. 121 Nev. 446, 451, 117 P.3d 171, 174 (2005). When a statute does not express a specific or heightened requirement, a court should "not take it upon itself to fill in such requirements, for 'it is not the business of this court to fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done.'" *Id.* "When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode." *Botany Worsted Mills v. U.S.*, 278 U.S. 282, 289, 49 S.Ct. 129 (1929). Application of this "maxim of statutory construction" is referred to as "'*expressio unius est esclusio alterius*'" and its application here to preclude substitute service when a process server is denied access to the restricted, non-public area of a business is logical and consistent with the Nevada Legislature's

purpose. *U.S. v. Crane*, 979 F.2d 687, 690 n. 2 (9th Cir. 1992) (quoting *Botany Worsted Mills*, 278 U.S. at 289)). Because the Nevada Legislature failed to include an individual's place of business in NRS 14.090, this Court cannot read such a provision into that statue or Rule 45.

Statutes must be interpreted according to their plain meaning, unless doing so would "run contrary to the spirit of the statutory scheme." *Mineral County v. State, Bd. Equalization*, 121 Nev. 533, 535, 119 P.3d 706 (2005). The Nevada Supreme Court has held that it must be presumed that "the legislature intended to use words in their usual and natural meaning." *State v. Stu's Bail Bonds*, 115 Nev. 436, 439, 991 P.2d 469, 470 (1999); *see also City of Henderson v. Kilgore*, 122 Nev. 331, 334, 131 P.3d 11, 13 (2006) ("when the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and **not go beyond it**" (emphasis added)). The plain and unequivocal meaning of the words in this statute, when read in their usual and ordinary manner, limit application of the statute to service on individuals where he or she "resides." NEV. REV. STAT. § 14.090; *Kilgore*, 122 Nev. at 334, 131 P.3d at 13.

Even if any ambiguity existed, and here it does not, the rules of statutory construction require that the statute be construed as the Legislature intended. The Nevada Supreme Court has reiterated that when construing ambiguous statutes, the objective of the judiciary is to give effect to the Legislature's intent. *Mason v. Cuisenaire*, 122 Nev. 43, 50, 128 P.3d 446, 450 (2006). Intent may also be discerned from the title of a statute. *Coast Hotels and Casinos, Inc. v. State, Labor Commn*, 117 Nev. 835, 841, 34 P.3d 546, 551 (2001). Moreover, statutes should be construed so as to give effect to all of their parts and language and make each word meaningful "within the context of the purpose of the legislation." *Id.* at 841, 34 P.3d at 550. Here, the legislative history clearly does not demonstrate any intent beyond easing a process server's job in serving individuals residing within gated communities. The title of the statute "Service of process **at residence** accessible only through gate" also evidences an intent to limit application of this statute to residences. NEV. REV. STAT. § 14.090 (emphasis added); *Coast* at 841, 34 P.3d at 551. The statute says nothing about places of employment. On its face, NRS 14.090 must be construed to apply to what it plainly says—service at a residence. Accordingly, the Court must

deny Plaintiff's request to deem Ms. Hyman and Messrs. Adelson, Goldstein, and Rubenstein personally served with the subpoenas.

B. Plaintiff asks the Court to exceed its authority.

Courts have broad inherent authority, including the authority to manage a case, *Dornbach v. Tenth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 33, 324 P.3d 369, 374 (2014), sanction counsel for misconduct, *Hooker v. Eighth Judicial Dist. Court of State*, No. 65016, 2014 WL 1998741 *2 n.1 (Nev., May 12, 2014), and ensure the "orderliness of the proceedings." *Mitchell v. State*, 124 Nev. 807, 813, 192 P.3d 721, 725 (2008). This authority, however, is not without limit. The commonality between the cases recognizing inherent authority is that all involve subjects and persons properly before the court.

The doctrine of inherent authority does not empower a court to invade the province of the Legislature by rewriting a statute addressing substitute service to create a new basis for asserting jurisdiction over individuals without affording them due process of law. NEV. CONST. art. 3 § 1 (Distribution of Powers "no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases expressly directed or permitted in this constitution."). "Extending" the application of NRS 14.090 to service of employees at their workplace, as Plaintiff seeks, is beyond the province of the judiciary. The plain meaning of NRS 14.090's language limits its application to service at an individual's residence. By asking the Court to craft additional methods of service beyond those provided by the Legislature, Plaintiffs ask this Court to infringe on the province of the Legislature and violate the separation of powers doctrine. NEV. CONST. art. 3 § 1. Nevada law requires an individual called as a witness to appear before the court and testify, but only after that individual is "**duly served**." Nev. Rev. Stat. § 50.165 (emphasis added) ("A witness, **duly served with a subpoena**, shall attend ..., to answer all pertinent and legal questions. . . ."). Plaintiff has failed to "duly serve" any of the individuals over which he seeks to extend NRS 14.090's application. The Court must therefore refuse Plaintiff's invitation to expand that statute and deem those witnesses personally served.

C. Extending NRS 14.090 to cover a business creates a slippery slope.

All legitimate businesses have valid reasons to control access to specific areas, e.g., health, welfare, and safety of their employees and members of the general public, security of information and property. *See e.g. Schramm v. Mineta*, No. 3:03-cv-7655, 2008 WL 397592 * 3 (N.D. Ohio Feb. 11, 2008) (unpublished) (finding decision to deny process server's request to enter radar tower at airport reasonable because it "reflects a neutral policy, meant to foster airport security and to insure the safety of employees, as well as incoming and outgoing flights"), *affirmed by Schramm v. LaHood*, 318 Fed. Appx. 337 (6th Cir. 2009) (unpublished) (finding district court's determination that plaintiff's conduct in assisting process server not protected because it violated FRCP 45(b)(1) erroneous, but not disturbing district court's finding regarding reasonableness of denying process server access to radar tower). Access to the LVSC corporate offices within The Venetian is limited, for the personal safety of LVSC's employees, to those invited into the offices. The general public, of which a process server is a member, is not permitted access to the private offices of LVSC's executives. This is a neutral policy that is geared to protect the health, safety, and welfare of The Venetian's employees as well as the security of The Venetian's confidential information and property. It has nothing to do with possible attempts at service of process. The slippery slope Plaintiff's request creates is evident when it is taken to the extreme. Court personnel, for example, could be personally served with process if the bailiff or marshal rightly refuses a process server access to chambers and the process server leaves the documents with the guard, or court personnel would be deemed served simply because the bailiff or marshal correctly refused the process server access to chambers. Plaintiff's request to expand application of NRS 14.090 from an individual's residence to his place of employment is an unjustifiable invasion into businesses' right to restrict access to their private property and provide a safe and orderly workplace, and should be rejected for that reason.

D. Plaintiff was neither reasonable nor diligent.

These circumstances do not present a good case for expanding coverage of NRS 14.090 to service at an individual's place of employment. The statements of The Venetian's security

officers who encountered Plaintiff's process server demonstrate that they were neither recalcitrant nor evasive. To the contrary, they show that Plaintiff's process server was unreasonable. Plaintiff's process server refused to identify his company, refused to identify his client, refused to provide identification, and identified himself as "Mark"—although the affiant's name is Matthew. Exhibits A–D. Plaintiff's process server made unreasonable demands—to be taken into a non-public area of a casino or have the employees he wanted to serve brought to him. Exhibits A–D. Worse, Plaintiff's process server acted in a cavalier fashion and "had a confrontational demeanor and tone, which became more pronounced throughout the conversation." Exhibit D. Plaintiff's process server appeared to be "trying to goad" The Venetian's security officers "into a stronger response, and held his phone ... in such a manner as to lead [Officer Mosier] to believe that he was recording" the events, although consent to record the conversations was neither requested or granted. Exhibit D. And Plaintiff's process server refused to allow the security officers to review the paperwork he intended to serve, which "appeared to be hand-written [on] unprofessional letterhead." Exhibit D. Given the appalling manner in which Plaintiff's process server presented himself, The Venetian's security personnel would have been remiss had they allowed him to proceed into a non-public area of a casino. And access would have been fruitless; Messrs. Adelson, Goldstein, and Rubenstein were not even in Nevada then.

Rule 45 requires reasonable notice, and provides that upon timely motion,[6] the court must quash a subpoena that "fails to allow a reasonable time for compliance." NEV. R. CIV. P. 45(c)(3)(A). Plaintiff cannot claim that good service on Ms. Hyman and Messrs. Adelson, Goldstein, and Rubenstein was made on Friday, February 6, 2015, with **less than a single judicial day notice before the hearing.** To allow such service would be patently unreasonable. *See In re Stratosphere Cor. Sec. Litig.*, 183 F.R.D. 684, 687 (D. Nev. 1999) (finding six days was "unreasonably short" notice). And to the extent that Plaintiff claims service under an expanded version of NRS 14.090, service would nonetheless fail because the process server

[6] Given the unreasonable notice in this case, Movants anticipate that they will present an oral motion at the commencement of the Monday hearing.

would not even allow the Security Manager to look at the paperwork he was holding, which he then took with him. *See* NEV. REV. STAT. 14.090 (when access to a guarded community is denied for purpose of service of process, "service of process is effective **upon leaving a copy** thereof **with the guard.**").

IV.

CONCLUSION

The Court should not allow Plaintiff to circumvent the methods of effectuating service of legal process that the Nevada Legislature has prescribed. And it should not assist Plaintiff in those efforts. To do so would violate Ms. Hyman and Messrs. Adelson, Goldstein, and Rubenstein's due process rights. Accordingly, Movants respectfully request that the Court refuse Plaintiff's request to deem those witnesses personally served with hearing subpoenas.

DATED this 8th day of February, 2015.

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Exhibit A

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DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND ALL RELATED MATTERS.

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

DECLARATION OF RUBEN REYES IN SUPPORT OF BENCH BRIEF REGARDING SERVICE ISSUES

Date: February 9, 2015
Time: 8:30 a.m.

I, Ruben Reyes, hereby declare and under penalty of perjury state as follows:

1. I have personal knowledge of the facts set forth herein.
2. I am currently employed as a security officer at The Venetian | The Palazzo.
3. I was working at the security podium in The Venetian casino on February 6, 2015, when, at approximately 12:30 p.m., I was approached by a man who requested to be escorted into the corporate office.
4. The attached Security Department Voluntary Statement is a true and correct copy of my statement about my encounter with that man, which I executed and provided to my employer on February 7, 2015.

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

Dated this ___ day of February, 2015.

Ruben Reyes—Las Vegas, Nevada

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SECURITY DEPARTMENT
VOLUNTARY STATEMENT

PAGE 1 OF 1 IR _____

TYPE OF INCIDENT: _____

DATE OCCURRED: 02-06-15 TIME OCCURRED: 1257 am / pm

LOCATION OF OCCURRENCE: Venetian Security Podium

NAME OF PERSON GIVING STATEMENT: Ruben Reyes

GUEST OF THE HOTEL? YES: ☐ NO: ☐ HOME PHONE #: _____ CELL PHONE #: _____

SUITE #: _____ BUSINESS PHONE #: _____ PAGER #: _____

LOCAL ADDRESS OR PHONE IF DIFFERENT FROM HOME: _____

RESIDENCE ADDRESS: On File with HR

BUSINESS ADDRESS: _____

SOCIAL SECURITY NUMBER: _____ DATE OF BIRTH: _____

BEST TIME TO CONTACT: _____ (am / pm) BEST PLACE TO CONTACT: _____

DETAILS:

On 02-06-2015, at approximately 12:30 while working as Venetian Security Officer on the Podium. I was approached by a White Male Adult casually dressed and and requested that he be escorted to the corporate Office. I asked what would be his reason to go and he stated that he had papers that he wanted to serve to a few employees and did not state who he was referring to. I advised him that he would not be able to go to the offices. He then stated that he would just go up there without an escort and I told him that he could be Trespassed for being in an unauthorized area. He then requested to speak to someone that would allow him to be escorted. I then asked Field Training Officer (FTO) Marquez to speak to the male. He at no time would identify himself and who he represented. He just kept pointing to the envelope he had in his hand. I at this time called the Venetian surveillance department to look at him in case he was to become disruptive. The person then told FTO Marquez to call our manager for further assistance. I contacted the Security Shift Manager Mosier, Chris and explained the person's request. During this time FTO Marquez was talking to the person. Upon arrival of the security manager the person then directed his attention to him. The security manager spoke to the person and they walked away.

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (location): Venetian Security Office

ON THE 7th DAY OF February AT 4:28 pm ~~(am/pm)~~ 20 15

WITNESS: _____

25769
signature of person giving statement

WITNESS: _____

Exhibit B

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DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND ALL RELATED MATTERS.

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

DECLARATION OF RAUL MARQUEZ IN SUPPORT OF BENCH BRIEF REGARDING SERVICE ISSUES

Date: February 9, 2015
Time: 8:30 a.m.

I, Raul Marquez, hereby declare and under penalty of perjury state as follows:

1. I have personal knowledge of the facts set forth herein.
2. I am currently employed as a security officer at The Venetian | The Palazzo.
3. I was working at the security podium in The Venetian casino on February 6, 2015, when, at approximately 12:57 p.m., I was approached by a man who requested to be escorted into the corporate office.
4. The attached Security Department Voluntary Statement is a true and correct copy of my statement about my encounter with that man, which I executed and provided to my employer on February 7, 2015.

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

Dated this 8th day of February, 2015.

Raul Marquez—Las Vegas, Nevada

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SECURITY DEPARTMENT
VOLUNTARY STATEMENT

PAGE 1 OF 1 IR _____

TYPE OF INCIDENT: _____

DATE OCCURRED: 1-6-15 TIME OCCURRED: 12:57 am / pm

LOCATION OF OCCURRENCE: Venetian Security Podium

NAME OF PERSON GIVING STATEMENT: Raul Marquez 18796

GUEST OF THE HOTEL? YES: ☐ NO: ☐ HOME PHONE #: _____ CELL PHONE #: _____

SUITE #: _____ BUSINESS PHONE #: _____ PAGER #: _____

LOCAL ADDRESS OR PHONE IF DIFFERENT FROM HOME: _____

RESIDENCE ADDRESS: ON FILE WITH HR

BUSINESS ADDRESS: _____

SOCIAL SECURITY NUMBER: _____ DATE OF BIRTH: _____

BEST TIME TO CONTACT: _____ (am / pm) BEST PLACE TO CONTACT: _____

DETAILS:

I was standing at the Venetian Security Podium when a white male casually dressed in biege shorts and a t-shirt approached and asked if he could go to corporate offices to serve a subpoena. The male did not give any information on who he was going to serve or any personal information of his own. Security Officer Reyes advised the male that per Venetian policy he could not go to corporate office to serve subpoenas. The male asked if the persons could be brought down to the casino to be served. Both myself and Mr. Reyes advised the male that would not be possible either. I advised the male that per Venetian policy he would have to contact Venetian Legal Department to get the information he needed to serve his subpoena. The male advised that he did not want to be a "dick" but was there any way he could be allowed to go up to corporate. Again we advised that he would not be allowed in Corporate offices. The male asked Mr. Reyes if he could go to corporate

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (location): Venetian Security Office

ON THE 7th DAY OF February AT 4:30 (am /pm) 20 15

WITNESS: _____

signature of person giving statement

WITNESS: _____

VOLUNTARY STATEMENT CONTINUATION

offices on his own and Mr. Reyes advised him that if he went to that area unauthorized he could possibly be trespassed. The male asked "So your going to trespass me?" and I advised him that no we are not going to trespass you however if you go to the corporate offices without proper authorization he could possibly be trespassed. The male again stated that he was not trying to give us a hard time or trying to be a "dick" but he would like to speak with a Supervisor or Manager. The male stated he needed to hear this from someone with authority and that Myself and Mr. Reyes were not managers. At that time Mr. Reyes telephoned Assistant Security Manager Mosier, Christopher and advised him of the situation. Mr. Mosier advised Mr. Reyes that he would be en route to the Security podium and speak with the male. Shortly after being advised of the situation Mr. Mosier and Assistant Security Manager Johnson, Jacob arrived and spoke with the male for several minutes. After speaking with the male the male departed the area without further incident.

WITNESS:_____

WITNESS:_____

SIGNATURE OF PERSON GIVING STATEMENT

PRINT NAME OF PERSON GIVING STATEMENT

Exhibit C

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DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND ALL RELATED MATTERS.

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

DECLARATION OF CHRISTOPHER MOSIER IN SUPPORT OF BENCH BRIEF REGARDING SERVICE ISSUES

Date: February 9, 2015
Time: 8:30 a.m.

I, Christopher Mosier, hereby declare and under penalty of perjury state as follows:

1. I have personal knowledge of the facts set forth herein.
2. I am currently employed as a managing security officer at The Venetian | The Palazzo.
3. I was working in The Venetian casino on February 6, 2015, when, at approximately 1:00 p.m., I was asked by officers Ruben Reyes and Raul Marquez to offer assistance at the casino security podium regarding a man who had asked to be escorted into the corporate office.
4. The attached Security Department Voluntary Statement is a true and correct copy of my statement about my encounter with that man, which I executed and provided to my employer on February 7, 2015.

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

Dated this 8th day of February, 2015.

Christopher Mosier—Las Vegas, Nevada

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SECURITY DEPARTMENT
VOLUNTARY STATEMENT

PAGE 1 OF 2 IR _____

TYPE OF INCIDENT: Process Server

DATE OCCURRED: 2/6/15 TIME OCCURRED: 1:00 am / (pm)

LOCATION OF OCCURRENCE: Security Podium

NAME OF PERSON GIVING STATEMENT: CHRISTOPHER MOSIER #26118

GUEST OF THE HOTEL? YES: ☐ NO: ☐ HOME PHONE #: _____ CELL PHONE #: (702) 672-2146

SUITE #: _____ BUSINESS PHONE #: _____ PAGER #: _____

LOCAL ADDRESS OR PHONE IF DIFFERENT FROM HOME: _____

RESIDENCE ADDRESS : _____

BUSINESS ADDRESS: _____

SOCIAL SECURITY NUMBER: _____ DATE OF BIRTH: _____

BEST TIME TO CONTACT: _____ (am / pm) BEST PLACE TO CONTACT: _____

DETAILS:

On 2/6/15, at approximately 1:00pm, Security officers Ruben Reyes and Raul Marquez requested my assistance at the casino podium. When I arrived I was directed to a man standing at the podium, wearing shorts and a t-shirt. He was carrying a stack of paperwork. I introduced myself as the Security manager, and he responded by telling me his name is "Mark." The man stated the company he works for represents a client in a legal matter, and he was here to serve subpoenas to four people in the Corporate offices. "Mark" stressed that the subpoenas were for "witnesses," and that he needed access to the Corporate offices so he could personally serve the subpoenas. I asked "Mark" if he had a business card or identification, but he refused to provide either. He also refused to identify his client, or the business he works for. He stated the subpoenas are for four individuals, Sheldon Adelson, Rob Goldstein, Gail Hyman, and Robert Rubenstein, but he would not provide any further information. He would not allow me to examine the paperwork her was holding, however the papers appeared to have hand-written, unprofessional letterhead. I told "Mark" that based on the information he had provided to me, I would not allow him access to the Corporate

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (location): VENETIAN SECURITY OFFICE

ON THE 7th DAY OF FEB AT 4:52 (am / (pm)) 20 15

WITNESS: _____

WITNESS: _____

Christopher Mosier 26118
signature of person giving statement

VOLUNTARY STATEMENT CONTINUATION

Offices. "Mark" then demanded that I call the aforementioned individuals, and have them come down to meet him. I told "Mark" this was an unreasonable request, and that business such as his needed to be conducted via the Legal department. "Mark" then asked me, "Are you refusing to allow me to serve these papers?" I one again explained that his business should be conducted via the Legal department. "Mark" had a confrontational demeanor and tone, which became more pronounced throughout the conversation. "Mark" seemed to be trying to goad me into a stronger response, and held his phone in his hand in such a manner as to lead me to believe that he was recording us. I did not at any point consent to being audio recorded. "Mark" ended our conversation by saying, "I'm going to the Legal department now. On Howard Hughes, right?" I told "Mark" that he ought to call to schedule an appointment first, however he ignored me and said nothing further as he departed. As Mark left the area, I noticed that he met up with another man and immediately departed the area together with him. Video coverage shows that Mark and the unknown male arrived together shortly before going to the Security podium.

WITNESS:_____

SIGNATURE OF PERSON GIVING STATEMENT

WITNESS:_____

CHRISTOPHER MOSIER

PRINT NAME OF PERSON GIVING STATEMENT

Exhibit D

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DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND ALL RELATED MATTERS.

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

DECLARATION OF JACOB JOHNSON IN SUPPORT OF BENCH BRIEF REGARDING SERVICE ISSUES

Date: February 9, 2015
Time: 8:30 a.m.

I, Jacob Johnson, hereby declare and under penalty of perjury state as follows:

1. I have personal knowledge of the facts set forth herein.
2. I am currently employed as ~~a security officer~~ Assistant Security Manager at The Venetian | The Palazzo.
3. I was working at The Venetian casino on February 6, 2015, when, at approximately 1:03 p.m., I accompanied ~~officer~~ Assistant Security Manager Christopher Mosier, who was asked to offer assistance at the casino security podium regarding a man who requested to be escorted into the corporate office.
4. The attached Security Department Voluntary Statement is a true and correct copy of my statement about my encounter with that man, which I executed and provided to my employer on February 7, 2015.

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

Dated this 9th day of February, 2015.

Jacob Johnson – Las Vegas, Nevada

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3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169
(702) 385-6000 • Fax (702) 385-6001
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THE VENETIAN® | THE PALAZZO®

SECURITY DEPARTMENT
VOLUNTARY STATEMENT

PAGE 1 OF 2 IR _____

TYPE OF INCIDENT: Process Server

DATE OCCURRED: 02/06/15 TIME OCCURRED: 1:03 pm am / pm

LOCATION OF OCCURRENCE: Venetian Security Podium

NAME OF PERSON GIVING STATEMENT: Johnson, Jacob TM# 25575

GUEST OF THE HOTEL? YES: ☐ NO: ■ HOME PHONE #: _____ CELL PHONE #: 702-332-3891

SUITE #: _____ BUSINESS PHONE #: _____ PAGER #: _____

LOCAL ADDRESS OR PHONE IF DIFFERENT FROM HOME: _____

RESIDENCE ADDRESS : _____

BUSINESS ADDRESS: _____

SOCIAL SECURITY NUMBER: _____ DATE OF BIRTH: _____

BEST TIME TO CONTACT: 10:00 (am / pm) BEST PLACE TO CONTACT: Cellphone

DETAILS:

On 02/06/2015 at 1303 I accompanied Security Assistant Manager Mosier, Christopher TM# 26118 to the Venetian Security Podium in reference to a process server. Upon arrival, Mosier and I identified ourselves to the mate, who identified himself as Mark. Mark reported he has some subpoenas for Mr. Adelson, Mr. Goldstein, Hyman, Gayle and Rubenstein, Robert. Mark reported all four were listed as witnesses in a case. Mark reported he promised his client he would deliver the subpoenas personally. Mosier notified Mark that he could not gain access to the corporate Office and I explained we would not accept service on their behalf. Mosier asked if Mark had a business card for him or his client, to which he reported he did not. Mark refused to provide the name of his client or attorney involved in the subpoena. Mosier directed Mark to contact the legal department via telephone. Mark reported he would visit the Office of the legal department and asked if it was still in the Howard Hughes building. Mosier

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (location): Venetian Security Office

ON THE 7th DAY OF February AT 1619 (am /pm) 20 15

WITNESS: _____

WITNESS: _____

signature of person giving statement

VOLUNTARY STATEMENT CONTINUATION

answered in the affirmative and advised Mark he should call prior as they may not meet with him without a phone call in advance. Mark departed the area with an unknown associate who was watching the interaction from a nearby slot machine. Mark and the unknown associate exited using the escalators leading to the self-parking garage.

WITNESS: _____

WITNESS: _____

25575
SIGNATURE OF PERSON GIVING STATEMENT

Johnson Jacob
PRINT NAME OF PERSON GIVING STATEMENT

Exhibit E

Serving Your Complaint

Learn the requirements for "serving" (delivering) your summons and complaint to the party you are suing, including tips on how to serve individuals, how to serve businesses, and what to do if you are unable to serve your summons and complaint.

Overview

After you file your complaint and have the summons issued, a copy of the summons and complaint must be delivered to each defendant. This is called "service of process." It is good practice to serve all defendants immediately after filing the complaint. After the defendants have been served, proof of that service must be filed with the court.

Q&A – Service Of Process

Who can serve my summons and complaint?

Service of process must be completed by a person who is not a party in the lawsuit and who is over the age of eighteen. Service of process can be performed by the constable, sheriff, or a private process service.

The fee for service is usually about $17.00 plus $2.00 for each mile traveled, but it varies widely so check.

If you use the constable, you will need to provide the constable with four copies of your summons complaint and other documents to be served. If you use the sheriff or a private process service, check to see how many copies they will require.

Click to visit Constables & Sheriffs for contact information.

How do I prove to the court that my summons and complaint was served?

The person who serves your summons and complaint must complete an Affidavit of Service that states when and how your summons and complaint was served. The affidavit must be filed with the court to show that the defendant was properly served.

If you use the constable, sheriff, or a private process server, they will either file the Affidavit of Service with the court or give it to you to file in your case. Proof of service should be filed with the court as soon as possible.

If the court is not satisfied that the defendant was served, your case might not be heard. If service is incorrect for any reason, your case could be dismissed or continued.

If you use the Self-Help Center summons form, that form contains an Affidavit of Service. You can also get an Affidavit of Service, free of charge, at the Self-Help Center, or you can download the form on your computer by clicking one of the listed formats underneath the form's title below:

DISTRICT COURT AFFIDAVIT OF SERVICE

Pdf Nonfillable

JUSTICE COURT AFFIDAVIT OF SERVICE

Pdf Nonfillable

Click to visit Basics of Court Forms and Filing for information about how to file in the district and justice court. Or click to visit District Court or Justice Courts for links and contact information for your court.

How long do I have to serve a defendant?

Your summons and complaint must be served within 120 days after you file the complaint. (NRCP 4(i); JCRCP 4(i).) If you fail to serve the defendants within 120 days, your complaint will be dismissed.

If you will not be able to serve within 120 days, file a motion asking the court to enlarge time for service before your 120 days run. (NRCP 4(i); JCRCP 4(i).) You can file the motion after the 120 days too, but you will need to explain to the court why you failed to file you motion earlier.

A generic motion you can use (just title it "Motion to Enlarge Time for Service") is available for free at the Self-Help Center, or you can download the form on your computer by clicking one of the listed formats underneath the form's title below:

DISTRICT COURT MOTION (GENERIC)

Pdf Nonfillable

JUSTICE COURT MOTION (GENERIC)

Pdf Fillable | **Pdf Nonfillable**

Click to visit Basics of Court Forms and Filing for specific information about how to fill out forms and file in the district and justice court. Or click to visit District Court or Justice Courts for links and contact information for your court.

How do I serve an individual?

Each defendant must be personally served with their own copy of your summons and complaint, even if they live at the same address. (And a separate Affidavit of Service must be completed and filed for each defendant served.)

"Personal service" means that the defendant must be handed a copy of your summons and complaint. The only exception to this rule is if the summons and complaint are served at the defendant's home. A process server can leave the summons and complaint at defendant's home address with any suitable adult (someone at least fourteen years old who lives there). However, the summons and complaint must be given to a person and cannot simply be left in the doorway.

You may want to research the Nevada Revised Statutes to determine whether there is any alternative method of service allowed in your type of case. For example:

- If your case involves damages or loss you suffered as the result of the defendant's use of a motor vehicle in Nevada, you might be able to serve the defendant through the Nevada Department of Motor Vehicles. (NRS 14.070:)
- If your defendant lives in a guard-gated community, you may be able to serve the defendant by leaving a copy of the summons complaint with the guard. (NRS 14.090.)
- In an action against a landlord, you may be able to serve your summons and complaint on the property manager or the party who entered into the rental agreement on the landlord's behalf (when there is no other agent designated in the lease). (NRS 118A.260.)

How do I serve a business?

If you are suing a corporation or other business, you generally must serve a person called the "registered agent." All corporations, limited partnerships ("LPs"), and limited liability companies ("LLCs") are required by law to designate an agent to accept service of lawsuits. (NRS 14.020, 78.090.) Corporations must provide the name and address of this agent to the Nevada Secretary of State's office. To find a company's registered agent, click to visit the Nevada Secretary of State Business Entity Search page.

If a business has designated a registered agent, you can serve your lawsuit on the business by arranging to have your summons and complaint delivered to the registered agent. (NRS 14.020, 78.090.) You can have the registered agent served personally or by leaving a copy of the summons and complaint with a person of suitable age and discretion at the registered agent's address listed on the Secretary of State's website.

TIP! Don't name the registered agent as a defendant in your lawsuit! The registered agent is simply an entity that accepts paperwork on behalf of the business. Think of the registered agent as a mailbox for the business you're suing.

Sometimes businesses change their registered agent, but do not update their information with the Secretary of State's office. In such a case, you may have several alternatives for service. For instance, a corporation incorporated in Nevada may also be served by personal service on the corporation's president, secretary, cashier, or managing agent. (NRCP 4(d)(1); JCRCP 4(d)(1).) If the corporation is incorporated outside the State of Nevada, a lawsuit may be served on the foreign corporation's managing agent, cashier, or secretary if they are within Nevada. (NRCP 4(d)(1); JCRCP 4(d)(2).)

If a corporation, LP, or LLC has not complied with the requirement to provide an agent who will accept lawsuits, and there is no other person you can serve, you may be able to serve the business by mailing a copy to the Nevada Secretary of State, posting another copy in the office of the court clerk in the court where you filed your suit, and mailing copies of the complaint to any corporate representative located out of state. (NRCP 4(d); JCRCP 4(d); see also NRS 14.030.) However, before you do this, you will need to get permission from the court by submitting an affidavit to the court explaining everything that you did to try to serve the corporation or partnership and why serving the Secretary of State's office is your only viable alternative.

The rules on serving businesses and other entities can be complicated. If you are not sure how to serve your opposing party you can click to visit District Court Rules or Justice Court Rules and study Rule 4 on service. You can also click to visit Nevada Statutes to review Chapter 14 of the Nevada Revised Statues.

TIP! You may want to research whether there's a Nevada statute that provides some alternate way to serve your particular type of defendant. For example, there are statutes that discuss service on banks (NRS 666A.120, 666A.390), dance studios and health clubs (NRS 598.944), employment agencies (NRS 611.150), real estate brokers and salespersons (NRS 645.495), and the State of Nevada (NRS 41.031).

Generally, a domestic corporation that has gone out of business can be sued up to two years after the corporation dissolves. If you are planning on suing a corporation that has gone out of business, click to visit Nevada Statutes and read NRS 78.585 to make sure you are fulfilling all the requirements.

What if I have been unable to serve the defendant?

If you have made several failed attempts to serve your defendant, you can ask the court for permission to serve the defendant by publication. (NRCP 4(e)(1); JCRCP 4(e)(1).) The court can authorize service by publication if the defendant resides outside Nevada, has departed from Nevada, cannot be found in Nevada (after you have tried), or is trying to avoid being served.

To get the court's permission to serve by publication, you must file a motion. You will need to demonstrate to the court that you have a valid cause of action against the defendant and that the defendant you are trying to serve is necessary to the case. You will also need to describe all your past attempts to serve the defendant.

The Self-Help Center does not currently have forms to request service by publication. But you might be able to find them at your local law library. Click to visit Law Libraries for location and contact information.

Electronically Filed
09/14/2012 10:39:25 AM

CLERK OF THE COURT

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN JACOBS,

Plaintiff(s),

vs

LAS VEGAS SANDS CORP, ET AL,

Defendants.

Case No. 10 A 627691
Dept. No. XI

Date of Hearing: 09/10-12/12

DECISION AND ORDER

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

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

I.
PROCEDURAL POSTURE

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

II.
FINDINGS OF FACT[1]

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. At no time did Las Vegas Sands or Sands China disclose the existence of this data to the Court.[4]

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

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

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

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

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

III.
CONCLUSIONS OF LAW

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

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

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

25. EDCR Rule 7.60 provides in pertinent part:

* * *

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

* * *

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

---

[5] The Court notes that there have also been significant issues with the production of information from Jacobs. On appropriate motion the Court will deal with those issues.

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

May 26, 2011

June 9, 2011

July 19, 2011

September 20, 2011[6]

October 4, 2011[7]

October 13, 2011

January 3, 2012

March 8, 2012

May 24, 2012

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

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

29. The change in corporate policy regarding Las Vegas Sands access to Sands China data made during the course of this ongoing litigation was made with an intent to prevent the disclosure of the transferred data as well as other data.[8]

30. The Defendants concealed the existence of the transferred data from this Court.

---

[6] This hearing was conducted in a related case, A648484.

[7] This hearing was conducted in a related case, A648484.

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

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

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

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

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

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

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

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

---

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

[10] As a result of the stay, the court does not address the discoverability of the transferred data and the effect of the conduct related to the entire case.

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

d. Based upon the evidence currently before the Court it does not appear that any evidence has been irreparably lost;[11]

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

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

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

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

IV.

ORDER

Therefore the Court makes the following order:

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

---

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

[12] This does not prevent the Defendants from raising any other appropriate objection or privilege.

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

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

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

Dated this 14th day of September, 2012

ELIZABETH GONZALEZ
District Court Judge

Certificate of Service

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

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

Samuel Lionel, Esq. (Lionel Sawyer & Collins)

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

James J. Pisanelli, Esq. (Pisanelli Bice)

Dan Kutinac

[13] This does not prevent the Defendants from raising any other appropriate objection or privilege.

RPD
James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com
Todd L. Bice, Esq., Bar No. #4534
TLB@pisanellibice.com
Debra L. Spinelli, Esq., Bar No. 9695
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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 **PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO SANDS CHINA, LTD. (Nos. 1-24)**

TO: DEFENDANT SANCS CHINA, LTD.; and

TO: Patricia Glaser, Esq., Stephan Ma, Esq., Craig Marcus, Esq., Andrew D. Sedlock, Esq.; GLASER WEIL, FINK, JACOBS, HOWARD, AVCHEN & SHAPIRO, LLP, its Attorneys

Pursuant to Rule 34 of the Nevada Rules of Civil Procedure, Plaintiff Steven C. Jacobs ("Jacobs" and/or "Plaintiff") requests that Defendant Sands China Ltd. produce for inspection and copying the documents described in these papers. Production shall occur within thirty (30) days of service hereof, at the offices of PISANELLI BICE PLLC, 3883 Howard Hughes Parkway, Suite 800, Las Vegas, Nevada, 89169.

DEFINITIONS AND INSTRUCTIONS

A. Definitions

1. Communication. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

2. Document. The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Rule 34(a) of the Nevada Rules of Civil Procedure. This term encompasses any written or paper material in Sands China Ltd.'s possession, under its control, available at the request of any of its agents or attorneys and includes without limitation any written or graphic matter of every kind or description, however produced or reproduced, whether in draft, in final, original or reproduction, signed or unsigned, and regardless of whether approved, sent, received, redrafted or executed, including but not limited to written communications, letters, correspondence, memoranda, notes, records, business records, photographs, tape or sound recordings, contracts, agreements, notations of telephone conversations or personal conversations, diaries, desk calendars, reports, computer records, data compilations of any type or kind, or materials similar to any of the foregoing, however denominated and to whomever addressed. "Document" shall exclude exact duplicates when originals are available, but shall include all copies made different from originals by virtue of any writings, notations, symbols, characters, impressions or any marks thereon.

3. Person. The term "person" is defined as any natural person or business, legal or governmental entity or association.

4. The terms "concerning," "related to," and "relating to" include "refer to," "summarize," "reflect," "constitute," "contain," "embody," "mention," "show," "compromise," "evidence," "discuss," "describe," "pertaining to" or "comment upon."

5. All/Each. The terms "all" and "each" shall be construed as all and each.

6. And/Or. The connectives "and/or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be construed to be outside of its scope.

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7. Number. The use of the singular form of any word includes the plural and vice versa.

8. You, Your, and/or Sands China. The terms "You," "Your," and "Sands China" are synonymous and mean "Sands China, Ltd.," a defendant in this Action, and/or any of its pre-incorporation, pre-spin-off, pre-IPO identities (*e.g.*, LISTCO, NEWCO), subsidiary entities and/or any other affiliated entities, as well as its owners, shareholders, officers, employees, attorneys, accountants, agents, investigators, and/or anyone else acting on its behalf and/or its direction and instruction.

9. Action. The term "Action" refers to the above-captioned matter entitled *Steven C. Jacobs v. Las Vegas Sands Corp., et al.*, commenced in the Eighth Judicial District Court, Clark County, Nevada, Case No. A-10-627691.

10. Parcels 5 and 6. The term "Parcels 5 and 6" refers to parcels of property owned by Sands China located on the Cotai Strip.

B. Instructions.

1. If You contend that any document responsive to these requests is privileged or otherwise beyond the scope of Rule 26 of the Nevada Rules of Civil Procedure, please identify the document with the following information:

a. The type of document (*e.g.*, report, letter, notes, notice, contract, etc.);

b. The number of pages it comprises;

c. The name of the person(s) who prepared or authored the document;

d. The name of the person(s) to whom the document was addressed, distributed, and/or shown;

e. The date on the document purporting to reflect the date the document was prepared or transmitted;

f. The general description of the subject matter of the document; and, if applicable,

g. The name of the person(s) who asked that the document be prepared.

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2. If You contend that only a portion of any document responsive to these requests is privileged or otherwise not subject to production, please produce a copy of the document redacting the privileged or objectionable portion. With respect to the redacted portion, to the extent that the produced portion of the document does not do so, You should provide the same information which would be provided if the entire document were withheld as privileged.

3. These requests reach all documents that are within Your possession, custody or control if You have the legal right to obtain it, whether or not You now have physical possession of it. Thus, You must obtain and produce all documents within the possession or custody of people or entities over which You have control, such as attorneys, agents or others. If You have knowledge of the existence of documents responsive to these requests but contend that they are not within Your possession, custody or control, please provide the following information:

a. A description of the documents, including in the description as much detail as possible;

b. The identity of the person or entity, including his, her or its address, believed by You to have possession or custody of the document or any copies of them at this time; and

c. A description of the efforts, if any, You have made to obtain possession or custody of the documents.

4. These requests to produce shall be deemed to be continuing, and any additional documents relating in any way to these requests to produce or Your original responses that are acquired subsequent to the date of responding to these requests, up to and including the time of trial, shall be furnished to Plaintiff promptly after such documents are acquired as supplemental responses to these requests to produce.

REQUESTS

REQUEST NO. 1:

Please identify and produce all documents that reflect the date, time, and location of each Sands China Board meeting (including the meeting held on April 14, 2010, at 9:00 a.m. Macau Time/April 13, 2010, at 6:00 p.m. Las Vegas time), the location of each Board member who

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participated in each and every meeting, and the manner/method by which each Board member participated in each and every meeting, during the period of January 1, 2009, to October 20, 2010.

REQUEST NO. 2:

Please identify and produce all documents that reflect the travels to and from Macau/China/Hong Kong by Sheldon G. Adelson for work performed on behalf of or directly for Sands China (including, but not limited to, flight logs, travel itineraries) during the time period of January 1, 2009, to October 20, 2010.

REQUEST NO. 3:

Please identify and produce all documents that reflect the travels to and from Macau/China/Hong Kong by Michael A. Leven for work performed on behalf of or directly for Sands China (including, but not limited to, flight logs, travel itineraries) during the time period of January 1, 2009, to October 20, 2010.

REQUEST NO. 4:

Please identify and produce all documents that reflect the travels to and from Macau/China/Hong Kong by Robert G. Goldstein for work performed on behalf of or directly for Sands China (including, but not limited to, flight logs, travel itineraries) during the time period of January 1, 2009, to October 20, 2010.

REQUEST NO. 5:

To the extent not produced in response to the preceding requests, please identify and produce all documents that reflect the travels to and from Macau/China/Hong Kong by any LVSC executive and/or employee for work performed on behalf of or directly for Sands China (including, but not limited to, flight logs, travel itineraries) during the time period of January 1, 2009, to October 20, 2010.

REQUEST NO. 6:

Please identify and produce all documents and/or communications that reflect and/or are related to Michael A. Leven's service as CEO of Sands China and/or the Executive Director of Sands China Board of Directors, and/or the Special Assistant to the Board during the time period of January 1, 2009, to October 20, 2010.

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REQUEST NO. 7:

Please identify and produce all documents that reflect the location of the negotiation and execution of agreements related to the funding of Sands China, during the time period of January 1, 2009, to October 20, 2010, including, but not limited to, the raising of pre-IPO funds, the IPO, underwriting for sites 5 & 6, loan refinancing and/or covenant relief/term modifications pre-IPO, the services of Bank of China to bring in high net worth investors/gamblers to buy the Four Seasons Serviced Apartments, and the written proposal of Leonel Alves to obtain strata-title for the Four Seasons Apartments involving Beijing government officials.

REQUEST NO. 8:

Please identify and produce all contracts/agreements that Sands China (and/or any individual and/or entity acting for or on behalf of Sands China) entered into with individuals and/or entities based in or doing business in Nevada, including, but not limited to, any agreements with BASE Entertainment and Bally Technologies, Inc., construction, design, signage, retail mall operations, and/or banking during the time period of January 1, 2009, to October 20, 2010.

REQUEST NO. 9:

Please identify and produce all documents that reflect work Robert G. Goldstein performed for or on behalf of Sands China, during the time period of January 1, 2009, to October 20, 2010, including global gaming and/or international player development efforts, such as active recruitment of VIP players to share between and among LVSC and Sands China properties, details concerning trips with Larry Chu into China to recruit new VIP players, dinners and/or meetings with Cheung Chi Tai, Charles Heung Wah Keung, and/or other VIP promoters, player funding, the transfer of player funds, and the use of Venetian Marketing Services Limited ("VMSL") and/or other entities to secure players and facilitate money transfers.

REQUEST NO. 10:

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

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REQUEST NO. 11:

Please identify and produce all documents, memoranda, emails, and/or other correspondence that reflect services performed by LVSC (including LVSC's executives and/or employees and/or 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, during the time period of January 1, 2009, to October 20, 2010.

REQUEST NO. 12:

Please identify and produce all documents, memoranda, emails, and/or other correspondence that reflect services performed by LVSC (including LVSC's executives and/or employees and/or consultants and/or agents) for or on behalf of Sands China, related to and/or concerning recruitment and interviewing of potential Sands China executives, during the time period of January 1, 2009, to October 20, 2010.

REQUEST NO. 13:

Please identify and produce all documents, memoranda, emails, and/or other correspondence that reflect services performed by LVSC (including LVSC's executives and/or employees and/or consultants and/or agents) for or on behalf of Sands China, related to and/or concerning marketing of Sands China properties, including its frequency program, the issuance of "Chairman's Club" cards by Sheldon G Adelson to Cheung Chi Tai, Jack Lam and others, credit limits, floor layouts, the removal of Cheung Chi Tai, Charles Heung Wah Keung, and others from the Guarantor list of VIP promoters, nightclub operations and approval, including but not limited to Lotus Night Club, and/or the hiring of outside consultants, during the time period of January 1, 2009, to October 20, 2010.

REQUEST NO. 14:

Please identify and produce all documents, memoranda, emails, and/or other correspondence that reflect services performed by LVSC or the involvement of LVSC executives (including LVSC's executives and/or employees and/or consultants and/or agents) for or on behalf of Sands China, related to and/or concerning negotiation of a possible joint venture between Sands China and Harrah's, during the time period of January 1, 2009, to October 20, 2010.

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REQUEST NO. 15:

Please identify and produce all documents, memoranda, emails, and/or other correspondence that reflect services performed by LVSC (including LVSC's executives and/or employees and/or consultants and/or agents) for or on behalf of Sands China, related to and/or concerning the negotiation of the sale of Sands China's interest in sites to Stanley Ho's company, SJM, during the time period of January 1, 2009, to October 20, 2010.

REQUEST NO. 16:

Please identify and produce all documents that reflect communications by and between Sands China and/or LVSC (and/or any individual and/or entity acting for or on Sands China's behalf) and BASE Entertainment during the time period of January 1, 2009 to October 20, 2010.

REQUEST NO. 17:

Please identify and produce all documents that reflect communications by and between Sands China and/or LVSC (and/or any individual and/or entity acting for or on Sands China's behalf) and Cirque de Soleil during the time period of January 1, 2009 to October 20, 2010.

REQUEST NO. 18:

Please identify and produce all documents that reflect communications by and between Sands China and/or LVSC (and/or any individual and/or entity acting for or on Sands China's behalf) and Bally Technologies, Inc. during the time period of January 1, 2009 to October 20, 2010.

REQUEST NO. 19:

Please identify and produce all documents that reflect communications by and between Sands China and/or LVSC (and/or any individual and/or entity acting for or on Sands China's behalf) and Harrah's during the time period of January 1, 2009 to October 20, 2010.

REQUEST NO. 20:

Please identify and produce all documents that reflect communications by and between Sands China and/or LVSC (and/or any individual and/or entity acting for or on Sands China's behalf) and any potential lenders for the underwriting of Parcels 5 and 6, during the time period of January 1, 2009 to October 20, 2010.

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REQUEST NO. 21:

Please identify and produce all documents that reflect communications by and between Sands China and/or LVSC (and/or any individual and/or entity acting for or on Sands China's behalf) and site designers, developers, and specialists for Parcels 5 and 6, during the time period of January 1, 2009 to October 20, 2010.

REQUEST NO. 22:

To the extent not produced in response to the preceding requests, please identify and produce all documents, memoranda, emails, and/or other correspondence that reflect services performed by LVSC (including LVSC's executives and/or employees and/or consultants and/or agents) for or on behalf of Sands China, during the time period of January 1, 2009, to October 20, 2010, including, but not limited to, Yvonne Mao, directions given to Mr. Yueng and/or Eric Chu relating to Hengquin Island, Chu Kong Shipping ("CKS"), the basketball team, the Adelson Center in Beijing, and investigations related to the same; negotiations with Four Seasons, Sheraton and Shangri-La; bonus and remuneration plans; outside counsel's review of Leonel Alves, Foreign Corrupt Practices Act issues and his suitability to serve as counsel for Sands China Limited; International Risk reports on Cheung Chi Tai, Charles Heung, and others commissioned in response to the Reuters' article alleging organized crime; and collection activities relating to patrons and junkets with large outstanding debts due Sands China and/or its subsidiaries.

REQUEST NO. 23:

Please identify and produce all documents that reflect reimbursements made to any LVSC executive and/or employee and/or consultant for work performed or services provided for or on behalf of Sands China, during the time period of January 1, 2009, to October 20, 2010.

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REQUEST NO. 24:

Please identify and produce all documents that Sands China provided to Nevada gaming regulators, during the time period of January 1, 2009 to October 20, 2010.

DATED this 23rd day of December, 2011.

PISANELLI BICE PLLC

By: /s/ Debra L. Spinelli
James J. Pisanelli, Esq., Bar No. 4027
Todd L. Bice, Esq., Bar No. #4534
Debra L. Spinelli, Esq., Bar No. 9695
3883 Howard Hughes Parkway, Suite 800
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Attorneys for Plaintiff Steven C. Jacobs

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RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing **PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO SANDS CHINA, LTD. (Nos. 1-24)** is hereby acknowledged this 27th day of December, 2011, by:

GLASER, WEIL, FINK, JACOBS,
HOWARD, AVCHEN & SHAPIRO, LLP

By: _____
Patricia Glaser, Esq.
Stephen Ma, Esq.
Craig Marcus, Esq.
Andrew D. Sedlock, Esq.
3763 Howard Hughes Parkway, Suite 300
Las Vegas, NV 89169

HOLLAND & HART 12/27/11

By: J. Stephen Peek /SD
J. Stephen Peek, Esq.
Brian G. Anderson, Esq.
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134 10:15 a.m.

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RFP
Patricia L. Glaser, (Pro Hac Vice Admitted)
Stephen Ma, (Pro Hac Vice Admitted)
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Attorneys for Defendant Sands China Ltd.

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS, Plaintiff, v. LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Island corporation; DOES I through X; and ROE CORPORATIONS I through X, Defendants.	Case No. A-10-627691 Dept. No.: XI **DEFENDANT SANDS CHINA LTD.'S RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (Nos. 1-24)**

TO: STEVEN C. JACOBS, plaintiff

TO: JAMES J. PISANELLI, ESQ., TODD L. BICE, ESQ. and DEBRA L. SPINELLI, ESQ.
Counsel for Plaintiff

Defendant Sands China Ltd. ("SCL") hereby responds and objects to Plaintiff Steven C. Jacobs' ("Plaintiff") First Request For Production Of Documents to Sands China Ltd. ("Requests") as follows:

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PRELIMINARY STATEMENT

1. SCL's responses and objections are made without waiver of the following rights, and are intended to preserve and do preserve the following:

(a) the right to raise all questions of competence, authenticity, foundation, relevance, materiality, privilege, and admissibility as evidence for any purpose of the information identified in response to the Requests which may arise in any subsequent proceedings in, or trial of, this or any other action;

(b) the right to object on any ground to the use of such information and/or documents identified in response to the Requests which may arise in any subsequent proceeding in, or trial of, this or any other action;

(c) the right to object on any ground to the introduction into evidence of such information and/or documents identified in response to the Requests;

(d) the right to object on any ground at any time to other discovery involving such information and/or documents;

(e) the right to amend or supplement these responses and objections in the event that any information or documents are unintentionally omitted. Inadvertent identification or production of privileged documents or information by SCL is not a waiver of any applicable privilege; and

(f) any and all rights to supplement these responses and objections inasmuch as it may ascertain further information from its own discovery.

GENERAL OBJECTIONS

1. SCL objects to the Requests to the extent that they purport to impose obligations upon the party greater than those contemplated in Rule 26(b) of the Nevada Rules of Civil Procedure.

2. SCL objects to the Requests to the extent that it seeks the identification and/or production of documents not in its possession, custody or control.

3. SCL objects to the term "Communication" as defined in the Requests, on the grounds that it is vague, ambiguous, and overbroad, including without limitation, the inclusion of

"transmittal of information (in the form of facts, ideas, inquiries or otherwise)" within the definition.

4. SCL objects to the terms "concerning," "related to," and "relating to" as defined in the Requests, on the grounds that they are vague, ambiguous, and overbroad as worded.

5. SCL objects to the terms "You, Yours, and/or Sands China" as defined for the Requests, on the grounds that they are vague, ambiguous, overbroad, and unintelligible as worded, including without limitation, the inclusion of "any of [SCL's] pre-incorporation, pre-spin-off, pre-IPO entities" and "and/or anyone else acting on its own behalf and/or its direction and instruction" within the definition.

6. SCL objects to the terms "Parcels 5 and 6" as defined for the Requests, on the grounds that they are vague, ambiguous, overbroad, and unintelligible as worded, including without limitation, the inclusion of "parcels of property owned by Sands China located on the Cotai Strip" within the definition.

7. SCL also objects to the extent that the Requests call for the disclosure of confidential, personal, or proprietary business information, including without limitation, (i) confidential information protected by contractual confidentiality obligations, (ii) confidential information protected by rights of privacy held by SCL and/or other third parties, and (iii) personal information protected from disclosure under Macau law. Such confidential, personal, or proprietary business information will be produced pursuant to a protective order to be entered between the parties and/or ordered by the Court.

8. SCL further objects to each and every definition and instruction in the Requests to the extent that it attempts or purports to impose obligations exceeding those authorized and imposed by the Nevada Rules of Civil Procedure.

Without waiving these General Objections, SCL responds to the Requests as follows:

RESPONSES

REQUEST FOR PRODUCTION NO. 1:

Please identify and produce all documents that reflect the date, time, and location of each Sands China Board meeting (including the meeting held on April 14, 2010, at 9:00 a.m. Macau Time/April 13, 2010, at 6:00 p.m. Las Vegas time), the location of each Board member who

participated in each and every meeting, and the manner/method by which each Board member participated in each and every meeting, during the period of January 1, 2009, to October 20, 2010.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to this request on the grounds that it is overbroad, vague, ambiguous, and unduly burdensome.

SCL also objects to this request to the extent it calls for the disclosure of information protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence. In this regard, SCL objects to this request because telephonic participation in SCL's Board meetings is insufficient to establish personal jurisdiction over SCL.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that Plaintiff can derive the information sought by this request from the non-privileged SCL Board of Directors meeting minutes for the time period of January 1, 2009 to October 20, 2010, which SCL will produce.

REQUEST FOR PRODUCTION NO. 2:

Please identify and produce all documents that reflect travels to and from Macau/China/Hong Kong by Sheldon G. Adelson for work performed on behalf of or directly for Sands China (including, but not limited to, flight logs, travel itineraries) during the time period of January 1, 2009, to October 20, 2010.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to the phrase "on behalf of or directly for Sands China" on the grounds that it is vague, ambiguous, and calls for a legal conclusion. To the extent that it produces documents in response to this request, SCL is not making any admission as to the legal significance

of those documents and specifically denies that LVSC acted as the agent for SCL. SCL further objects to this request as overbroad and unduly burdensome insofar as it seeks "all documents" responsive to the request, rather than an illustrative subset of documents that are sufficient for Plaintiff to make his arguments on personal jurisdiction. SCL also objects to this request on the grounds that it is overbroad, vague, ambiguous, and unduly burdensome.

SCL also objects to this request to the extent it calls for the disclosure of information protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence. In this regard, SCL objects to this Request because Mr. Adelson's travel to Macau, China or Hong Kong pursuant to his position as SCL Chairman of SCL's Board of Directors, is irrelevant to whether SCL has sufficient contacts with Nevada such that a Nevada court may assert personal jurisdiction over SCL.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that it will produce non-privileged documents sufficient to show Mr. Adelson's travel to Macau, China and Hong Kong in connection with his work as Chairman of SCL's Board during the time period of January 1, 2009 to October 20, 2010 to the extent such documents can be located through reasonable diligence.

REQUEST FOR PRODUCTION NO. 3:

Please identify and produce all documents that reflect the travels to and from Macau/China/Hong Kong by Michael A. Leven for work performed on behalf of or directly for Sands China (including, but not limited to, flight logs, travel itineraries) during the time period of January 1, 2009, to October 20, 2010.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to the phrase "on behalf of or directly for Sands China" on the grounds that it is vague, ambiguous, and calls for a legal conclusion. To the extent that it produces

documents in response to this request, SCL is not making any admission as to the legal significance of those documents and specifically denies that LVSC acted as the agent for SCL. SCL further objects to this request as overbroad and unduly burdensome insofar as it seeks "all documents" responsive to the request, rather than an illustrative subset of documents that are sufficient for Plaintiff to make his arguments on personal jurisdiction.

SCL also objects to this request to the extent it calls for the disclosure of information protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence. In this regard, SCL objects to this Request because Mr. Leven's travel pursuant to his position as special advisor to SCL's Board of Directors and/or interim President and Executive Director, is irrelevant to whether SCL has sufficient contacts with Nevada such that a Nevada court may assert personal jurisdiction over SCL.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that it will produce non-privileged documents sufficient to show Mr. Leven's travel to Macau, China and Hong Kong in connection with his work for SCL during the time period of January 1, 2009 to October 20, 2010, to the extent such documents can be located through reasonable diligence.

REQUEST FOR PRODUCTION NO. 4:

Please identify and produce all documents that reflect the travels to and from Macau/China/Hong Kong by Robert G. Goldstein for work performed on behalf of or directly for Sands China (including, but not limited to, flight logs, travel itineraries) during the time period of January 1, 2009, to October 20, 2010.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to the phrase "on behalf of or directly for Sands China" on the grounds that it is vague, ambiguous, and calls for a legal conclusion. To the extent that it produces

documents in response to this request, SCL is not making any admission as to the legal significance of those documents and specifically denies that LVSC acted as the agent for SCL. SCL further objects to this request as overbroad and unduly burdensome insofar as it seeks "all documents" responsive to the request, rather than an illustrative subset of documents that are sufficient for Plaintiff to make his arguments on personal jurisdiction.

SCL also objects to this request to the extent it calls for the disclosure of information protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence. In this regard, SCL objects to this Request because Robert G. Goldstein's travel on behalf of SCL is irrelevant to whether SCL has sufficient contacts with Nevada such that a Nevada court may assert personal jurisdiction over SCL.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that it will produce non-privileged documents sufficient to show Mr. Goldstein's travel to Macau, China and Hong Kong in connection with his work for SCL during the time period of January 1, 2009 to October 20, 2010, to the extent such documents can be located through reasonable diligence.

REQUEST FOR PRODUCTION NO. 5:

To the extent not produced in response to the preceding requests, please identify and produce all documents that reflect the travels to and from Macau/China/Hong Kong by any LVSC executive and/or employee for work performed on behalf of or directly for Sands China (including, but not limited to, flight logs, travel itineraries) during the time period of January 1, 2009, to October 20, 2010.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to the phrase "on behalf of or directly for Sands China" on the grounds that it is vague, ambiguous, and calls for a legal conclusion. To the extent that it produces

documents in response to this request, SCL is not making any admission as to the legal significance of those documents and specifically denies that LVSC acted as the agent for SCL. SCL further objects to this request as overbroad and unduly burdensome insofar as it seeks "all documents" responsive to the request, rather than an illustrative subset of documents that are sufficient for Plaintiff to make his arguments on personal jurisdiction. SCL also objects to the terms "executive," and "employee" because those terms are overbroad, vague, and ambiguous.

SCL also objects to this request to the extent it calls for the disclosure of information protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence. In this regard, SCL objects to this Request because the travel by any LVSC representative outside of Nevada is irrelevant to whether SCL has sufficient contacts with Nevada such that a Nevada court may assert personal jurisdiction over SCL.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that it will produce non-privileged documents sufficient to show travel by officers of LVSC to Macau, China and Hong Kong in connection with work for SCL during the time period of January 1, 2009 to October 20, 2010, to the extent such documents can be located through reasonable diligence.

REQUEST FOR PRODUCTION NO. 6:

Please identify and produce all documents and/or communications that reflect and/or are related to Michael A. Leven's service as CEO of Sands China and/or the Executive Director of Sands China Board of Directors, and/or the Special Assistant to the Board during the time period of January 1, 2009 to October 20, 2010.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to this request on the grounds that it is vastly overbroad and

unduly burdensome insofar as it seek "all documents and/or communications that reflect and/or are related to" Mr. Leven's service as CEO, Executive Director, or Special Assistant to the Board of SCL, regardless of where those services were performed. There are many documents that fall within the literal scope of this request, most if not all of which are wholly irrelevant to the issue of personal jurisdiction. The burden and expense on SCL of searching for and producing all responsive documents far outweighs the probative value, if any, of those documents. SCL further objects to this request on the ground that the phrase "related to" is vague, ambiguous, and incapable of precise definition.

SCL also objects to this request to the extent it calls for the disclosure of information protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence. In this regard, SCL notes that actions taken and decisions implemented outside of Nevada by Mr. Leven in connection with his work with SCL are not relevant to whether a Nevada court has personal jurisdiction over SCL.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that it will produce non-privileged documents sufficient to show the nature of Mr. Leven's services as interim CEO/Executive Director and/or special advisor to the SCL Board during the time period of January 1, 2009 to October 20, 2010 to the extent such documents can be located through reasonable diligence.

REQUEST FOR PRODUCTION NO. 7:

Please identify and produce all documents that reflect the location of the negotiation and execution of agreements related to the funding of Sands China, during the time period of January 1, 2009, to October 20, 2010, including, but not limited to, the raising of pre-IPO funds, the IPO, underwriting for Sites 5 & 6, loan refinancing and/or covenant relief/term modifications pre-IPO, the services of Bank of China to bring high net worth investors/gamblers to buy the Four Seasons

Serviced Apartments, and the written proposal of Leonel Alves to obtain strata-title for the Four Seasons Apartments involving Beijing government officials.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to this request on the grounds that it is overbroad, unduly burdensome, and not reasonable calculated to lead to the discovery of admissible evidence. SCL further objects to this request on the ground that it exceeds the scope of discovery authorized by the Court insofar as it is not limited to documents that reflect negotiations and execution of the agreements for the funding of SCL that occurred, in whole or in part, in Nevada. SCL also objects to the terms "reflect," "location of the negotiation and execution of agreements," "related to," "funding," and "Sites 5 & 6" because those terms are overbroad, vague, and ambiguous. SCL construes the term "Sites 5 & 6" to refer to the properties known as Parcels 5 &6 in the Cotai Strip, Macau.

SCL also objects to this request to the extent it calls for the disclosure of information protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence. In that regard, SCL notes that efforts in Nevada to provide funding or acquire financing for SCL's business activities to be implemented in Macau are insufficient to establish that personal jurisdiction exists over SCL.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that it will produce non-privileged documents that reflect the negotiation and execution of agreements to provide funding for SCL that occurred, in whole or in part, in Nevada during the time period of January 1, 2009 and October 20, 2010, to the extent such documents can be located through reasonable diligence.

REQUEST FOR PRODUCTION NO. 8:

Please identify and produce all contracts/agreements that Sands China (and/or any individual and/or entity for or on behalf of Sands China) entered into with individuals and/or entities based in or doing business in Nevada, including, but not limited to, any agreements with BASE Entertainment and Bally Technologies, Inc., construction, design, signage, retail mall operations, and/or banking during the time period of January 1, 2009, to October 20, 2010.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to the phrase "for or on behalf of Sands China" on the grounds that it is vague, ambiguous, and calls for a legal conclusion. To the extent that it produces documents in response to this request, SCL is not making any admission as to the legal significance of those documents and specifically denies that LVSC acted as the agent for SCL. SCL further objects to this request as overbroad, unduly burdensome, and beyond the scope of discovery authorized by the Court insofar as it purports to require SCL to search for and produce agreements with individuals, as opposed to entities. SCL also objects to the terms and phrases "based in . . . Nevada," and "construction, design, signage, retail mall operations, and/or banking," because those terms are overbroad, vague, ambiguous, and force SCL to speculate as to the meaning of this request. SCL construes "based in" to refer to a business's primary place of business.

SCL also objects to this request to the extent it calls for the disclosure of information protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence. In that regard, SCL notes that SCL's contracts with any individuals or entities for business to be implemented in Macau are insufficient to establish personal jurisdiction over SCL.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that it will produce non-privileged agreements

executed from January 1, 2009 to October 20, 2010 between SCL, on the one hand, and any entity with its primary place of business in Nevada, on the other hand, to the extent these documents can be located through reasonable diligence.

REQUEST FOR PRODUCTION NO. 9:

Please identify and produce all documents that reflect work Robert G. Goldstein performed for or on behalf of Sands China, during the time period of January 1, 2009, to October 20, 2010, including global gaming and/or international player development efforts, such as active recruitment of VIP players to share between and among LVSC and Sands China properties, details concerning trips with Larry Chu into China to recruit new VIP players, dinners and/or meetings with Cheung Chi Tai, Charles Heung Wah Keung, and/or other VIP promoters, players funding, the transfer of players funds, and the use of Venetian Marketing Services Limited ("VMSL") and/or other entities to secure players and facilitate money transfers.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to this request on the grounds that it exceeds the scope of discovery authorized by the Court insofar as it is not limited to documents reflecting global gaming and/or international player development efforts by Mr. Goldstein. SCL objects to the phrase "for or on behalf of Sands China" on the grounds that it is vague, ambiguous, and calls for a legal conclusion. To the extent that it produces documents in response to this request, SCL is not making any admission as to the legal significance of those documents and specifically denies that LVSC acted as the agent for SCL. SCL further objects to this request as overbroad and unduly burdensome insofar as it seeks "all documents" responsive to the request, rather than an illustrative subset of documents that are sufficient for Plaintiff to make his arguments on personal jurisdiction. SCL also objects to the term and phrases "global gaming and/or international player development efforts," "active recruitment of VIP players to share between and among LVSC and Sands China properties," "new VIP players," and "players funding," because those terms are overbroad, vague, and ambiguous.

SCL also objects to this request to the extent it calls for the disclosure of information

protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence. In this regard, SCL notes that Mr. Goldstein's work (if any) relating to SCL's business in Macau is insufficient to establish that personal jurisdiction exists over SCL.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that it will produce non-privileged documents sufficient to identify Mr. Goldstein's work in Nevada related to SCL during the time period of January 1, 2009 to October 20, 2010, to the extent such documents can be located through reasonable diligence.

REQUEST FOR PRODUCTION NO. 10:

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

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to this request on the grounds that it is overbroad, vague, ambiguous, and unduly burdensome. In particular, SCL objects to the term "shared services" because the term is overbroad, vague, and ambiguous. For the purposes of this Request, SCL construes the term "shared services" to refer to contracts entered into by SCL and/or LVSC in connection with the November 8, 2009 Shared Services Agreement.

SCL also objects to this request to the extent it calls for the disclosure of information protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence. In this regard, SCL notes that such contracts between a parent and subsidiary are insufficient to establish that personal jurisdiction exists over SCL.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that it will produce non-privileged documents, to the extent they can be located through reasonable diligence, sufficient to show shared services agreements that were in place between LVSC and SCL during the time period of January 1, 2009 to October 20, 2010.

REQUEST FOR PRODUCTION NO. 11:

Please identify and produce all documents, memoranda, emails, and/or other correspondence that reflect services performed by LVSC (including LVSC's executives and/or employees and/or 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, during the time period of January 1, 2009, to October 20, 2010.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to the phrase "for or on behalf of Sands China" on the grounds that it is vague, ambiguous, and calls for a legal conclusion. To the extent that it produces documents in response to this request, SCL is not making any admission as to the legal significance of those documents and specifically denies that LVSC acted as the agent for SCL. SCL also objects to this request as overbroad and unduly burdensome insofar as it seeks "all documents" responsive to the request, rather than an illustrative subset of documents that are sufficient for Plaintiff to make his arguments on personal jurisdiction. SCL further objects to the terms "reflect," "services performed by LVSC," "consultants," "agents," "related to," "concerning site design," "development oversight," and "Parcels 5 and 6" because those terms are overbroad, vague, and ambiguous.

SCL also objects to this request to the extent it calls for the disclosure of information

protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence. In this regard, SCL objects to this Request because any work by LVSC in Nevada relating to SCL's operations in Macau is insufficient to establish that personal jurisdiction exists over SCL.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that it will produce non-privileged documents sufficient to show work performed in Nevada relating to site design and development of Parcels 5 & 6, to the extent they can be located through reasonable diligence, during the time period of January 1, 2009 to October 20, 2010.

REQUEST FOR PRODUCTION NO. 12:

Please identify and produce all documents, memoranda, emails, and/or other correspondence that reflect services performed by LVSC (including LVSC's executives and/or employees and/or consultants and/or agents) for or on behalf of Sands China, related to and/or concerning recruitment and interviewing of potential Sands China executives, during the time period of January 1, 2009, to October 20, 2010.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to the phrase "for or on behalf of Sands China" on the grounds that it is vague, ambiguous, and calls for a legal conclusion. To the extent that it produces documents in response to this request, SCL is not making any admission as to the legal significance of those documents and specifically denies that LVSC acted as the agent for SCL. SCL also objects to this request as overbroad and unduly burdensome insofar as it seeks "all documents" responsive to the request, rather than an illustrative subset of documents that are sufficient for Plaintiff to make his arguments on personal jurisdiction. SCL further objects to the terms "reflect," "services performed by LVSC," "related to," "concerning," and "recruitment and interviewing of potential

Sands China executives" because those terms are overbroad, vague, and ambiguous.

SCL also objects to this request to the extent it calls for the disclosure of information protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence. In this regard, SCL objects to this Request because any work performed by LVSC relating to SCL's operations in Macau is insufficient to establish that personal jurisdiction exists over SCL.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that it will produce non-privileged documents sufficient to show any work by LVSC in Nevada to recruit senior executives for SCL during the time period of January 1, 2009 to October 20, 2010, to the extent such documents can be located through reasonable diligence.

REQUEST FOR PRODUCTION NO. 13:

Please identify and produce all documents, memoranda, emails, and/or other correspondence that reflect services performed by LVSC (including LVSC's executives and/or employees and/or consultants and/or agents) for or on behalf of Sands China, related to and/or concerning marketing of Sands China properties, including its frequency program, the issuance of "Chairman's Club" cards by Sheldon G. Adelson to Cheung Chi Tai, Jack Lam and others, credit limits, floor layouts, the removal of Cheung Chi Tai, Charles Heung Wah Keung, and others from the Guarantor list of VIP promoters, nightclub operations and approval, including but not limited to Lotus Night Club, and/or the hiring of outside consultants, during the time period of January 1, 2009, to October 20, 2010.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to this request on the grounds that it exceeds the scope of discovery authorized by the Court and appears calculated to obtain merits discovery on the pretense

of seeking jurisdictional discovery, contrary to the stay imposed by the Supreme Court. SCL further objects to the phrase "for or on behalf of Sands China" on the grounds that it is vague, ambiguous, and calls for a legal conclusion. To the extent that it produces documents in response to this request, SCL is not making any admission as to the legal significance of those documents and specifically denies that LVSC acted as the agent for SCL. SCL also objects to this request as overbroad and unduly burdensome insofar as it seeks "all documents" responsive to the request, rather than an illustrative subset of documents that are sufficient for Plaintiff to make his arguments on personal jurisdiction. SCL also objects to the terms "reflect," "services," "consultants," "agents," "related to," "concerning marketing of Sands China properties," "frequency program," "credit limits," "floor layouts," and "hiring of outside consultants," because those terms are overbroad, vague, and ambiguous.

SCL also objects to this request to the extent it calls for the disclosure of information protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence. In this regard, SCL notes that any work by LVSC in Nevada relating to SCL's operations in Macau is insufficient to establish that personal jurisdiction exists over SCL.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that it will produce non-privileged documents sufficient to show the nature of any work by LVSC in Nevada relating to the marketing of SCL properties and/or hiring of outside consultants for SCL during the time period of January 1, 2009 to October 20, 2010, to the extent such documents can be located through reasonable diligence.

REQUEST FOR PRODUCTION NO. 14:

Please identify and produce all documents, memoranda, emails, and/or other correspondence that reflect services performed by LVSC or the involvement of LVSC executives (including LVSC's executives and/or employees and/or consultants and/or agents) for or on behalf of Sands China,

related to and/or concerning negotiation of a possible joint venture between Sands China and Harrah's, during the time period of January 1, 2009, to October 20, 2010 if such documents exist.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to the phrase "for or on behalf of Sands China" on the grounds that it is vague, ambiguous, and calls for a legal conclusion. To the extent that it produces documents in response to this request, SCL is not making any admission as to the legal significance of those documents and specifically denies that LVSC acted as the agent for SCL. SCL also objects to this request as overbroad and unduly burdensome insofar as it seeks "all documents" responsive to the request, rather than an illustrative subset of documents that are sufficient for Plaintiff to make his arguments on personal jurisdiction. SCL also objects to the terms "reflect," "services performed by LVSC," "involvement of LVSC executives," "related to," "concerning," "consultants," and "agents" because those terms are overbroad, vague, and ambiguous.

SCL also objects to this request to the extent it calls for the disclosure of information protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence. In this regard, SCL notes that any negotiations that occurred in Nevada for business or actions to be taken and implemented in Macau are insufficient to establish that personal jurisdiction exists over SCL.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that it will produce non-privileged documents sufficient to show any negotiations in Nevada relating to a possible joint venture between SCL and Harrah's during the time period of January 1, 2009 to October 20, 2010 to the extent such documents can be located through reasonable diligence.

REQUEST FOR PRODUCTION NO. 15:

Please identify and produce all documents, memoranda, emails, and/or other correspondence that reflect services performed by LVSC (including LVSC's executives and/or employees and/or consultants and/or agents) for or on behalf of Sands China, related to and/or concerning negotiation of the sale of Sands China's interest in sites to Stanley Ho's company, SJM, during the time period of January 1, 2009, to October 20, 2010.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to the phrase "for or on behalf of Sands China" on the grounds that it is vague, ambiguous, and calls for a legal conclusion. To the extent that it produces documents in response to this request, SCL is not making any admission as to the legal significance of those documents and specifically denies that LVSC acted as the agent for SCL. SCL also objects to this request as overbroad and unduly burdensome insofar as it seeks "all documents" responsive to the request, rather than an illustrative subset of documents that are sufficient for Plaintiff to make his arguments on personal jurisdiction. In particular, SCL objects to the terms "related to," "concerning," "reflect services performed by LVSC," "consultants," "agents," and "Sands China's interest in" because those terms are overbroad, vague, and ambiguous.

SCL also objects to this request to the extent it calls for the disclosure of information protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence. In that regard, SCL notes that any negotiations that occurred in Nevada for business or actions to be taken and implemented in Macau are insufficient to establish that personal jurisdiction exists over SCL.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that it will produce non-privileged documents sufficient to show any negotiations in Nevada relating to the possible sale of Sands China's interest

in sites to Stanley Ho's company during the time period of January 1, 2009 to October 20, 2010, to the extent such documents can be located through reasonable diligence.

REQUEST FOR PRODUCTION NO. 16:

Please identify and produce all documents that reflect communications by and between Sands China and/or LVSC (and/or any individual and/or entity acting for or on Sands China's behalf) and BASE Entertainment during the time period of January 1, 2009 to October 20, 2010.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to this request as beyond the scope of discovery authorized by the Court insofar as it is not limited to communications that occurred in Nevada. SCL objects to the phrase "for or on Sands China's behalf" on the grounds that it is vague, ambiguous, and calls for a legal conclusion. To the extent that it produces documents in response to this request, SCL is not making any admission as to the legal significance of those documents and specifically denies that LVSC acted as the agent for SCL. SCL also objects to this request as overbroad and unduly burdensome insofar as it seeks "all documents" responsive to the request, rather than an illustrative subset of documents that are sufficient for Plaintiff to make his arguments on personal jurisdiction. SCL also objects to the terms "reflect," and "communications" because those terms are overbroad, vague, and ambiguous.

SCL also objects to this request to the extent it calls for the disclosure of information protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence. In that regard, SCL notes that any communications between SCL or LVSC, on the one hand, and Base Entertainment, on the other, relating to SCL's business in Macau are insufficient to establish that personal jurisdiction exists over SCL.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that it will produce non-privileged documents sufficient to show any communications taking place in Nevada between SCL or LVSC, on one hand, and Base Entertainment, on the other hand, from January 1, 2009 to October 20, 2010, relating to SCL's operations in Macau, to the extent such documents can be located through reasonable diligence.

REQUEST FOR PRODUCTION NO. 17:

Please identify and produce all documents that reflect communications by and between Sands China and/or LVSC (and/or any individual and/or entity acting for or on Sands China's behalf) and Cirque de Soleil during the time period of January 1, 2009 to October 20, 2010.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to this request as beyond the scope of discovery authorized by the Court insofar as it is not limited to communications that occurred in Nevada. SCL objects to the phrase "for or on Sands China's behalf" on the grounds that it is vague, ambiguous, and calls for a legal conclusion. To the extent that it produces documents in response to this request, SCL is not making any admission as to the legal significance of those documents and specifically denies that LVSC acted as the agent for SCL. SCL also objects to this request as overbroad and unduly burdensome insofar as it seeks "all documents" responsive to the request, rather than an illustrative subset of documents that are sufficient for Plaintiff to make his arguments on personal jurisdiction. SCL also objects to the terms "reflect," and "communications" because those terms are overbroad, vague, and ambiguous.

SCL also objects to this request to the extent it calls for the disclosure of information protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence. In this regard, SCL notes any

communications between SCL or LVSC, on the one hand, and Cirque de Soleil, on the other, relating to business to be implemented in Macau are insufficient to establish that personal jurisdiction exists over SCL.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that it will produce non-privileged information sufficient to show any contract negotiated or executed in Nevada between SCL and Cirque de Soleil, to the extent these documents can be located through reasonable diligence, from January 1, 2009 to October 20, 2010.

REQUEST FOR PRODUCTION NO. 18:

Please identify and produce all documents that reflect communications by and between Sands China and/or LVSC (and/or any individual and/or entity acting for or on Sands China's behalf) and Bally Technologies, Inc., during the time period of January 1, 2009 to October 20, 2010.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to this request as beyond the scope of discovery authorized by the Court insofar as it is not limited to communications that occurred in Nevada. SCL objects to the phrase "for or on Sands China's behalf" on the grounds that it is vague, ambiguous, and calls for a legal conclusion. To the extent that it produces documents in response to this request, SCL is not making any admission as to the legal significance of those documents and specifically denies that LVSC acted as the agent for SCL. SCL also objects to this request as overbroad and unduly burdensome insofar as it seeks "all documents" responsive to the request, rather than an illustrative subset of documents that are sufficient for Plaintiff to make his arguments on personal jurisdiction. SCL also objects to the terms "reflect," and "communications," because those terms are overbroad, vague, and ambiguous.

SCL also objects to this request to the extent it calls for the disclosure of information protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence. In this regard, SCL notes that communications between SCL or LVSC, on the one hand, and Bally Technologies, Inc., on the other, relating to business to be implemented in Macau are insufficient to establish that personal jurisdiction exists over SCL.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that it will produce non-privileged documents information sufficient to show contracts between SCL and Bally Technologies, Inc., from January 1, 2009 to October 20, 2010, to the extent such documents can be located through reasonable diligence.

REQUEST FOR PRODUCTION NO. 19:

Please identify and produce all documents that reflect communications by and between Sands China and/or LVSC (and/or any individual and/or entity acting for or on Sands China's behalf) and Harrah's during the time period of January 1, 2009 to October 20, 2010.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to this request as beyond the scope of discovery authorized by the Court insofar as it is not limited to communications that occurred in Nevada. SCL objects to the phrase "for or on Sands China's behalf" on the grounds that it is vague, ambiguous, and calls for a legal conclusion. To the extent that it produces documents in response to this request, SCL is not making any admission as to the legal significance of those documents and specifically denies that LVSC acted as the agent for SCL. SCL also objects to this request as overbroad and unduly burdensome insofar as it seeks "all documents" responsive to the request, rather than an illustrative subset of documents that are sufficient for Plaintiff to make his arguments on personal jurisdiction. SCL also objects to the terms "reflect, and "communications," because those terms are overbroad, vague, and ambiguous.

SCL also objects to this request to the extent it calls for the disclosure of information

protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence. In this regard, SCL notes that any communications between SCL and/or LVSC, on the one hand, and Harrah's, on the other, relating to SCL business to be implemented in Macau are insufficient to establish that personal jurisdiction exists over SCL.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that it will produce non-privileged documents sufficient to show contracts executed in Nevada between SCL and Harrah's from January 1, 2009 to October 20, 2010, to the extent such documents can be located through reasonable diligence.

REQUEST FOR PRODUCTION NO. 20:

Please identify and produce all documents that reflect communications by and between Sands China and/or LVSC (and/or any individual and/or entity acting for or on Sands China's behalf) and any potential lenders for the underwriting of Parcels 5 and 6, during the time period of January 1, 2009 to October 20, 2010.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to this request as beyond the scope of discovery authorized by the Court insofar as it is not limited to communications that occurred in Nevada. SCL objects to the phrase "for or on Sands China's behalf" on the grounds that it is vague, ambiguous, and calls for a legal conclusion. To the extent that it produces documents in response to this request, SCL is not making any admission as to the legal significance of those documents and specifically denies that LVSC acted as the agent for SCL. SCL also objects to this request as overbroad and unduly burdensome insofar as it seeks "all documents" responsive to the request, rather than an illustrative subset of documents that are sufficient for Plaintiff to make his arguments on personal jurisdiction. SCL also objects to the terms "reflect," "communications," "potential lenders," and "underwriting

of Parcels 5 and 6" because those terms are overbroad, vague, and ambiguous.

SCL also objects to this request to the extent it calls for the disclosure of information protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence. In this regard, SCL notes that any efforts in Nevada to provide funding or acquire financing for SCL's business activities to be implemented in Macau are insufficient to establish that personal jurisdiction exists over SCL.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that it will produce non-privileged documents sufficient to show any contracts negotiated or executed in Nevada between SCL or LVSC, on the one hand, and lenders, on the other hand, for financing and underwriting of Parcels 5 & 6, from January 1, 2009 to October 20, 2010 to the extent such documents can be located through reasonable diligence.

REQUEST FOR PRODUCTION NO. 21:

Please identify and produce all documents that reflect communications by and between Sands China and/or LVSC (and/or any individual and/or entity acting for or on Sands China's behalf) and site designers, developers, and specialists for Parcels 5 and 6, during the time period of January 1, 2009 to October 20, 2010.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to this request as beyond the scope of discovery authorized by the Court insofar as it is not limited to communications that occurred in Nevada. SCL objects to the phrase "for or on Sands China's behalf" on the grounds that it is vague, ambiguous, and calls for a legal conclusion. To the extent that it produces documents in response to this request, SCL is not making any admission as to the legal significance of those documents and specifically denies that LVSC acted as the agent for SCL. SCL also objects to this request as overbroad and unduly

burdensome insofar as it seeks "all documents" responsive to the request, rather than an illustrative subset of documents that are sufficient for Plaintiff to make his arguments on personal jurisdiction. SCL also objects to the terms "reflect," "communications," "site designers," "developers," "specialists," and "Parcels 5 and 6" because those terms are overbroad, vague, and ambiguous.

SCL also objects to this request to the extent it calls for the disclosure of information protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence. In this regard, SCL notes that any actions taken by SCL or LVSC in Nevada for SCL business to be implemented in Macau is insufficient to establish that personal jurisdiction exists over SCL.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that it will produce non-privileged documents sufficient to show contracts negotiated or executed in Nevada between SCL, on the one hand, and designers, developers or specialists for Parcels 5 & 6, on the other hand, from January 1, 2009 to October 20, 2010 to the extent such documents can be located through reasonable diligence.

REQUEST FOR PRODUCTION NO. 22:

To the extent not produced in response to the preceding requests, please identify and produce all documents, memoranda, emails, and/or other correspondence that reflect services performed by LVSC (including LVSC's executives and/or employees and/or consultants and/or agents) for or on behalf of Sands China, during the time period of January 1, 2009, to October 20, 2010, including, but not limited to, Yvonne Mao, directions given to Mr. Yueng and/or Eric Chu relating to Hengquin Island, Chu Kong Shipping ("CKS"), the basketball team, the Adelson Center in Beijing, and investigations related to the same; negotiations with Four Seasons, Sheraton and Shangri-La; bonus and remuneration plans; outside counsel's review of Leonel Alves, Foreign Corrupt Practices Act issues and his suitability to serve as counsel for Sands China Limited; International Risk reports on Cheung Chi Tai, Charles Heung, and others commissioned in response to the Reuters' article

alleging organized crime; and collection activities relating to patrons and junkets with large outstanding debts due Sands China and/or its subsidiaries.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to this request on the grounds that it far exceeds the scope of discovery authorized by the Court and instead appears calculated to obtain discovery concerning the merits of this case, rather than personal jurisdiction, contrary to the stay that has been imposed by the Supreme Court. SCL further objects to this request as beyond the scope of discovery authorized by the Court and irrelevant, unduly burdensome, and not reasonable calculated to lead to the discovery of admissible evidence insofar as it is not limited to services that occurred in Nevada. SCL also objects to the phrase "for or on behalf of Sands China" on the grounds that it is vague, ambiguous, and calls for a legal conclusion. To the extent that it produces documents in response to this request, SCL is not making any admission as to the legal significance of those documents and specifically denies that LVSC acted as the agent for SCL. SCL also objects to this request as overbroad and unduly burdensome insofar as it seeks "all documents" responsive to the request, rather than an illustrative subset of documents that are sufficient for Plaintiff to make his arguments on personal jurisdiction. SCL also objects to the terms "reflect," "services," and "performed by" because those terms are overbroad, vague, and ambiguous.

SCL also objects to this request to the extent it calls for the disclosure of information protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 23:

Please identify and produce all documents that reflect reimbursements made to any LVSC executive and/or employee and/or consultant for work performed or services provided for or on behalf of Sands China, during the time period of January 1, 2009, to October 20, 2010.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL also objects to the phrase "for or on behalf of Sands China" on the grounds that it is vague, ambiguous, and calls for a legal conclusion. To the extent that it produces documents in response to this request, SCL is not making any admission as to the legal significance of those documents and specifically denies that LVSC acted as the agent for SCL. SCL also objects to this request as overbroad and unduly burdensome insofar as it seeks "all documents" responsive to the request, rather than an illustrative subset of documents that are sufficient for Plaintiff to make his arguments on personal jurisdiction.

SCL also objects to this request to the extent it calls for the disclosure of information protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence. In this regard, SCL notes that any work performed by LVSC in Nevada for SCL business to be implemented in Macau is insufficient to establish that personal jurisdiction exists over SCL.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that any documents that are produced in response to Request Nos. 2-5 will include any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 24:

Please identify and produce all documents that Sands China provided to Nevada gaming regulators, during the time period of January 1, 2009 to October 20, 2010.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

SCL incorporates the Preliminary Statement and each of the General Objections as though fully set forth herein. SCL objects to this request on the grounds that it is overbroad, vague and ambiguous.

SCL also objects to this request to the extent it calls for the disclosure of information

protected from disclosure under the attorney-client privilege, the attorney work-product privilege and any other privileges by statute, common law, or otherwise, including but not limited to NRS 463.120, NRS 463.3407, and other provisions of the Nevada Gaming Control Act.

SCL further objects to this request to the extent that it seeks documents and information that are not relevant to the determination of personal jurisdiction over SCL in Nevada's district courts and not calculated to lead to the discovery of admissible evidence.

Subject to and without waiver of the foregoing objections (including the Preliminary Statement and General Objections), SCL states that it does not have documents responsive to this Request because SCL, as an entity, did not submit documents to the Nevada Gaming Commission or the State Gaming Control Board.

DATED this 23rd day of January, 2012.

GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP

By: _____
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Attorneys for Defendant Sands China Ltd.

as I indicated previously, if we can have video testimony, which may help accommodate scheduling of an expert witness. Otherwise to bring that expert here is extremely expensive, and it's also logistical and a nightmare to get him here.

THE COURT: What else?

MR. RANDALL JONES: We have an issue about the witness list. Are we going to get, as we had in the past, both sides exchanged witness lists and exchanged documents, which has been ordered in the past. So we'd like to -- we don't think it's practical by any stretch of the imagination to have that process completed so there could be an orderly exchange of witnesses and documents within the next two to three weeks.

With respect to discovery I believe they said in their brief that they don't need any more discovery. That's fine. I do want to address the point that Mr. Bice raised with respect to the documents that were produced. These are all the remaining redacted documents from Advanced Discovery, 7600 documents. And so those have all now been delivered. And if there are some technical issues with that, obviously -- I'm sorry, the Macau documents, not the Advanced Discovery documents.

THE COURT: What else? Trying to get your whole laundry list, Mr. Jones. Trying to get your whole laundry list.

MR. RANDALL JONES: Thank you. So I just want to confirm with the plaintiff that there's no other discovery that they want to do or they think is necessary, that we have the universe of the documents.

Dispositive motions. There is a motion to amend the complaint -- excuse me. There is a third amended complaint that got filed on December 22nd. They never filed a second amended complaint, which they were authorized to do in August, which added two new claims against my client. So they just bypassed that. And they talk about dilatory conduct. Now they want to have an evidentiary hearing within two to three weeks on a complaint that we've never answered, Judge, which has new allegations that implicate jurisdiction. So we would like to file a dispositive motion as to those claims, because we think that those are vulnerable to a dismissal.

THE COURT: That's fine. Go ahead and file one.

MR. RANDALL JONES: So that needs to be briefed. So that --

THE COURT: Well, do it. Just do it.

MR. RANDALL JONES: I'm just alerting the Court. I'm just telling the Court --

THE COURT: That doesn't have anything to do with my jurisdictional hearing. If you need to file a motion to dismiss, go ahead and do it.

MR. RANDALL JONES: Here's how we think it does

implicate your jurisdictional hearing. The question is, Your Honor, is if the motion to dismiss is granted, then it will change what happens at the evidentiary hearing. If the motion is denied, there'll be different evidence presented at the jurisdictional hearing based upon the additional claims. So we think it makes a lot more sense efficiencywise -- and we wonder why they waited so long to file that complaint ultimately, but that was their choosing. I'm just noting for the record they waited until the 22nd of December even though they had an order going back to August 14th of last year to file those claims. So we believe it makes no sense, that it does not serve judicial economy or the parties to have a hearing on jurisdiction until the Court resolves the motions to dismiss on their third amended complaint and we know exactly what issues are going to be discussed at the evidentiary hearing.

We've talked about motions in limine. You yourself in the order that you just made -- the ruling that you just made with respect to the Vickers reports talk about the admissibility of the Vickers reports. Now that we understand your ruling there are certain things that are going to occur which certainly at a minimum would be our motion in limine to prohibit the introduction of those documents into the record because they're not relevant.

So that is my laundry list, Your Honor.

THE COURT: Okay. So let me summarize it and make sure that I've got it, because I've got it in a slightly different shape than you do.

MR. RANDALL JONES: Okay.

THE COURT: I have disclosure issues related to there hearing, that being witnesses, experts, and documents. I've got pretrial briefs, I've got the sanctions hearings position related to that, I have a definition of theories, and then I have a motion in limine. Did I miss anything?

MR. RANDALL JONES: Well, I think --

THE COURT: Because I'm leaving your motions to dismiss over on the other side, because those are something you're going to file and then we're going to hear them one way or the other, hopefully sooner, rather than later.

MR. RANDALL JONES: That was the only thing I was going to add, is that unless somebody else can point out something that I said that I --

MR. PEEK: I don't think so, Your Honor, because, although I think the motion to dismiss, as Mr. Jones says, will define --

MR. RANDALL JONES: That's the only other point I would make. But I think you've got everything that I mentioned.

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

MR. PEEK: Because they have to be heard before

that.

THE COURT: Anything else on your laundry list before I go back to my questions?

MR. RANDALL JONES: The only, I guess, is a clarification with respect to the sanctions hearing in terms of the procedure. I believe you did get about the disclosure of documents and witnesses.

THE COURT: I have --

MR. RANDALL JONES: I assume the same thing will apply to the sanctions hearing.

THE COURT: -- disclosure of witnesses, documents, and experts. Well, no. I'm probably going to have one disclosure list that goes because the whole point we're on the sanctions hearing at this point, Mr. Jones, we're way past the sanctions issue. I'm merely at the prejudice issue at this point, which is part of that balancing test that I make.

MR. RANDALL JONES: I understand the Court's position, and I believe I understand what you're telling me now is that essentially the disclosure -- requirement for disclosure to the extent you order that witnesses and documents will relate to both sanctions and to evidentiary -- to jurisdiction.

THE COURT: Yes. Because the prejudice issue is all I'm limited to at this point on the sanctions. I already made all the other findings on the sanctions. I'm just on the

evaluation of the prejudice and the appropriate sanction, if any.

MR. RANDALL JONES: You've clarified that issue for me. Thank you.

THE COURT: I keep trying to clarify it, but nobody listens.

All right. I've got a writ that the Nevada Supreme Court issued, just in case we forgot, on August 26, 2011, that told me to have an evidentiary hearing and make findings of fact related to personal jurisdiction. There does not appear to be any limitation as to the theories that the Nevada Supreme Court is imposing upon me, and I'm not going to impose any limits on theories. However, your request related to disclosure of witnesses, documents, and experts is an appropriate request. So somebody talk to me about when we should do those and how long it takes to get those together and what we're going to do so I can come up with a timeline so I can then give you a date that we're going to have a lot of time we're going to spend together.

MR. RANDALL JONES: Oh. Your Honor, no, I did not address the length of the hearing. I don't know if you asked me that question. I think you asked it of Mr. Bice.

THE COURT: I asked you a couple times. You said it depended on your laundry list, and then we went through your laundry list.

MR. RANDALL JONES: In any event, Your Honor, it certainly -- it does depend on the laundry list. And it really -- well, part of it depends on the number of witnesses that are disclosed by the other side. That would help me determine how long we're going to go. But my belief would be we're talking about two to three weeks of what I would consider to be real court time. And I know you have --

THE COURT: Five-hour days.

MR. RANDALL JONES: Yes. And again I understand sometimes a particular day might be taken up more than half a day with --

THE COURT: You guys take up a lot of my time. In fact, most cases Mr. Peek is on, even though he's not talking today, take up a lot of my time.

MR. RANDALL JONES: So with that in mind, based on my understanding of what the Court's calendar would be for the real availability of hearing, it would be two to three weeks realistically.

And I didn't address the issue of the trial setting, and I would at least like to --

THE COURT: I'm not there yet. I can't do anything on trial setting yet.

MR. RANDALL JONES: That's fine. Mr. Bice did. I just didn't want to --

THE COURT: I know he did. And I'm going to make

sure you get set before the five year rule runs, and it may mean that you guys don't like the date I give you. But, unless you stipulate, that's going to be the date you get.

MR. RANDALL JONES: And, Judge, just to clarify, I'm not asking the Court to limit their jurisdictional theories. That is not what I meant. I'm just asking him to tell me what they are, just to confirm what they actually are, not -- they can be every one that they could ever come up with and they could invent some new ones, I don't care. It's just I would like to know definitively at some point as soon as possible what they intend to pursue. Because if they are going to actually abandon some of the theories -- because they've thrown out pretty much every jurisdiction theory I ever understood from law school, but they may -- maybe they don't, but maybe they will abandon one. If they do, that would mean that the hearing would be shorter. It would also mean I would have to call less witnesses. So it impacts how we prepare for this. So I'm not trying to limit him, I'm just trying to find out exactly what they are.

MR. PEEK: Just a moment?

THE COURT: Yes, please.

(Off-record colloquy - Mr. Peek and Mr. Jones)

THE COURT: That's a legal argument that he can make later.

MR. RANDALL JONES: Actually, Mr. Peek -- I

appreciate him saying this, actually, or I would have regretted it if he had not. I strike my prior comment that we have not said at some point in time that they are barred from pursuing certain theories.

THE COURT: Said it repeatedly in written briefs.

MR. RANDALL JONES: Yeah. But I know if Mr. Peek had not corrected me that statement would have come back to haunt me in future hearings where Mr. Bice would have picked that statement up and said, Mr. Jones said they are not waiving any theory -- or waiving any arguments about jurisdiction.

So we would like to know exactly what they are, whether we contend they've waived them or not. Still I think it's appropriate for them to tell us beforehand, and the Court, what they believe they are going to pursue. And then the Court can decide whether they should be able to do that. Thank you.

THE COURT: All right. Because the Nevada Supreme Court has said I have to do an evidentiary hearing, I have to make findings, and I have to determine whether a prima facie basis for personal jurisdiction has been established, the burden of proof is the plaintiffs must demonstrate through the evidentiary hearing and I must make factual findings that there's a prima facie basis for jurisdiction. That's really low. I think we all understand it's really low. But the

Nevada Supreme Court has commanded that I do that. So we're going to spend the time necessary to do that.

With respect to the sanctions hearing I would like to do the sanctions hearing immediately before the start. In my mind, and this is what I've been trying to communicate to everyone, it is primarily issue at this point related to prejudice. And if the defendants wish to present evidence related to amelioration of their activities and why the what I think has been include a catch-22 by Mr. Jones affected them because of the Macau Data Privacy Act, I'm happy to weigh that in concern in making a determination as to the appropriate sanction, if any.

I do not need a disclosure of additional witnesses and evidence for that particular hearing. I think it can be done in conjunction with the disclosure for the evidentiary hearing on the jurisdictional issue, since they're interrelated.

I haven't gotten an answer yet as to how much advance notice you want on the disclosure for witnesses, of documents, and experts. And those may be different, but I need you to tell me the answer so I can figure out a schedule.

MR. BICE: I want to be heard on this purported expert issue, Your Honor.

THE COURT: I'm happy for you all to answer my question. And it doesn't matter who talks.

MR. BICE: I'm not aware of any expert report. They say they have an expert. I'm unaware of any report that's ever been done, that it's ever been disclosed. So if there is such an expert report, maybe I've overlooked it. But I don't believe one exists.

THE COURT: Well?

MR. RANDALL JONES: The expert is Christopher Howe, H-O-W-E.

THE COURT: Okay.

MR. BICE: Again, that doesn't -- I mean, there's no report, so I don't know where this supposed expert witness is coming from. I mean, you have to do a report if it's a retained expert. Rule says that. And I've not seen --

THE COURT: Well, it doesn't say that for evidentiary hearings on personal jurisdictions ordered by the Nevada Supreme Court pursuant to a writ.

MR. BICE: Any testimony -- actually the rule provides any testimony by an expert, a specially retained expert is not limited to trial. Any witness who's going to offer testimony under Rule 50 --

THE COURT: 26(c)(3).

MR. BICE: -- 26(c), but anyone who's going to offer testimony under it's 50.275 --

MR. PEEK: You mean the NRS?

MR. BICE: Yes. Anyone who's going to offer such

testimony, Your Honor, has to prepare a report.

THE COURT: Okay. So let's step back, then, and find out about reports. Does anybody intend --

MR. BICE: We talked about this --

THE COURT: -- to have experts?

MR. BICE: We talked about this two years ago.

THE COURT: I know.

MR. BICE: And the Court I believe -- we'll go back and find the transcripts, but I believe the Court even said that they had to have a report. So I'm a little surprised that we're now hearing that we have an expert and no report and we're just hearing the name now.

THE COURT: The rule only says at trial. I haven't read the statute lately, but the rule only says at trial.

MR. BICE: I'm sorry. What's that?

THE COURT: The rule only says expert at trial.

MR. RANDALL JONES: Your Honor, I believe what we're referring to is that we -- you asked -- you said, anybody who wants to call an expert -- this was a year ago or so -- has to designate or disclose the expert and provide a summary of their testimony to opposing counsel. Which we did. So we followed the Court's directive.

THE COURT: So you did that?

MR. RANDALL JONES: We did.

THE COURT: Okay.

MR. RANDALL JONES: Be that as it may, with respect to your other question about the timing --

THE COURT: Experts disclosures. Tell me how long.

MR. RANDALL JONES: We would like to know -- I would certainly like to have -- well, let me make sure I understand your question. You say expert disclosures. How long between now and when they get disclosed, or witnesses and documents?

THE COURT: If an expert has not been previously disclosed, what my typical thing is for a preliminary injunction hearing or other type of pretrial evidentiary hearing I require the old synopsis that people used to be able to do under our rules where you could say what the expert was going to say that providing a report, and the designation of them. Depending upon the case, I've had those earlier, I've had them later. It just depends on the case. So I'm trying to get input from you as to when you think it is important that you have that information if you don't already have it in your possession, and then to establish dates for disclosure of witnesses and documents to be used at the hearing to determine if there's anything else I've got to do before I set a hearing.

MR. RANDALL JONES: I understand. I have a better understanding of your question, Judge. So what I believe would be appropriate or necessary from our perspective, two to three weeks before we have those disclosures --

MR. PEEK: Two to three weeks before the hearing.

MR. RANDALL JONES: Yes. Two to three weeks before the hearing that we have those disclosures.

THE COURT: And can you have all the disclosures at the same time, or do you need them staggered? Do you need the experts and the documents different than the witness, or can they all be at the same time?

MR. RANDALL JONES: Well, let me put it this way. First of all, I at least want to preserve my right -- I understand where you're going, but I want to preserve my right to argue that they had the opportunity to designate an expert and they didn't do it, so we believe they've waived that.

THE COURT: Sure. We can always argue about stuff like that later.

MR. RANDALL JONES: I just wanted to make that on the record. And I understand your question, so with that said I think it'd be better to stagger them. So I would like to have the expert reports actually prior to the designation of the witnesses. So I would like to have those four weeks before the hearing. And then preferably the designation of witnesses and documents within three weeks before the hearing.

THE COURT: Mr. Bice. I'm trying to get timing down right now.

MR. BICE: Your Honor, I'm not quite sure what the basis for -- I think we'll have this -- if the defendants have

their way, we'll have this evidentiary hearing a year from now, because --

THE COURT: No. We're going to have the --

MR. BICE: -- the deadline just keeps getting --

THE COURT: We're going to have the evidentiary hearing in the next 60 days or so.

MR. BICE: -- pushed and pushed and pushed.

THE COURT: They're not going to get to do that. Let's finish this up.

MR. BICE: If they have their expert, we are not going to call any expert. So they have their expert. Let's depose their expert and be done with it. Let's just get this over with. If we're going to have an expert --

THE COURT: Are you going to depose their expert?

MR. BICE: Am I going to depose the expert? I would prefer to depose the expert. There's no report. We'll just depose them and get it over with.

MR. RANDALL JONES: I believe we complied with the Court's order to provide the summary and designate the expert. They've had that information for --

THE COURT: Do I have it?

MR. RANDALL JONES: You should have it, Your Honor.

THE COURT: Is it something filed with the Court?

MR. RANDALL JONES: I believe so.

THE COURT: When was it filed with the Court?

MR. McGINN: Before the last hearing, sometime in 2012.

MR. RANDALL JONES: Yeah, it was -- well, just in terms of the timing, you had ordered us to do all this -- we were going to have a hearing when the one writ was accepted and everything got stayed, so that was back more than a year ago.

MR. PEEK: Your Honor, I think it was -- and please correct me. I may have to correct myself. But I thought we did all of this back in May, June 2012. Because remember at that time --

THE COURT: No, I don't remember, Mr. Peek. I've been working on CityCenter --

MR. PEEK: No, no. I know you have, Your Honor. But I recall that we were trying to get the hearing set in June 2012, and then it got interrupted by the --

THE COURT: By the writ.

MR. PEEK: Well, no. By the sanctions -- the sanctions request on the part of the Court.

THE COURT: And a writ.

MR. RANDALL JONES: In any event, I think Mr. Peek is right, that it was either --

THE COURT: Hold on.

MR. RANDALL JONES: And he may have --

THE COURT: Just a moment, please.

MR. RANDALL JONES: It was either 2012 or 2013.

MR. PEEK: I thought it was 2012. And that's -- because that was the first time that we were really seriously --

THE COURT: No. I'm guessing it's not 2012, because you didn't enter into the confidentiality agreement and protective order until March of 2012, so --

MS. SPINELLI: Your Honor, I think that's right, though. If you recall, Ms. Glaser was pushing that hearing to have it when we first -- Pisanelli Bice first came aboard. So we did disclosures before what was supposed to be that evidentiary hearing in the fall.

MR. PEEK: Of '11 you think, Debbie?

MS. SPINELLI: Yeah. I think we came in in '11; right?

MR. BICE: Correct.

MS. SPINELLI: Yeah, in September of 2011.

MR. PEEK: You may be right.

MS. SPINELLI: So it had to have been in the fall of 2011, Your Honor. It would have been the pretrial -- or pre-evidentiary hearing disclosures.

MR. RANDALL JONES: Not for --

MS. SPINELLI: I don't know the answer to that. That's the only one that would have been filed before.

MR. PEEK: I believe we disclosed experts, though,

Your Honor.

THE COURT: My concern is I'd like to look at it if the disclosure was filed with the Court. Discovery and disclosure documents do not have to be filed with the Court, which is why I'm asking. And I don't see anything. That's why -- I'm trying to look at the scope of the witnesses' disclosure so I can make a determination as to whether I think it's broad or not broad, if I'm going to let a depo happen or not.

MR. RANDALL JONES: I'm pretty confident it was 2013, because it was after the March 27 -- June 28th of 2013. And you had --

THE COURT: Hold on a second.

MR. RANDALL JONES: And you had said we're going to have a hearing.

THE COURT: I was going to have a hearing.

MR. RANDALL JONES: Right. And you'd ordered that there be disclosures --

THE COURT: And I got a stay.

MR. RANDALL JONES: -- and we started doing that process. We engaged Mr. -- and I know it had to be then, because our firm was involved in that process, and we engaged Mr. Howe.

THE COURT: There it is. Expert Witness Designation. Hold on a second. Let me read.

MR. RANDALL JONES: Sure.

(Pause in the proceedings)

THE COURT: What's a heads for expert evidence?

MR. RANDALL JONES: What's a what, Your Honor?

THE COURT: Heads for expert evidence. Paragraph 1.7 of your disclosure.

MR. RANDALL JONES: I don't recall.

THE COURT: Hmm. So he's primarily going to talk about the Stock Exchange.

MR. RANDALL JONES: Well, he's going to talk about -- yes, how the Stock Exchange works with the -- in Macau with these kind of companies, how they're organized.

THE COURT: Have the sharing services agreement ever been provided?

MR. RANDALL JONES: Yes, Your Honor.

MR. BICE: Yes.

THE COURT: I only ask because the expert talks about it.

MR. RANDALL JONES: Right.

THE COURT: Have the notification transaction tests been provided?

MR. PEEK: The what, Your Honor?

THE COURT: Listed company activities policed by notification transaction tests in Chapter 14 and by connected transaction tests in Chapter 14(a) of the listing rules. Have

those documents been produced?

MR. RANDALL JONES: I can't say off the top of my head. But what I think you're referring to are regulations from Macau. Is that --

THE COURT: I don't think so.

MR. PEEK: It's the Hong Kong Stock Exchange, I think, regulations.

MR. RANDALL JONES: I'm sorry. Hong Kong, not Macau.

THE COURT: So we'll have those documents that are related to those analysis that are provided and been produced.

MR. RANDALL JONES: I can't say that they have, I cannot say that they have not, Your Honor. They -- I guess my other question is whether or not they're a matter of public record. And I believe they are, but we'll verify that. And I certainly don't think they've been requested.

MR. BICE: Your Honor, I don't have that in front of me, but it's Ms. Spinelli's recollection -- does he even state what his opinions are?

THE COURT: Oh, he does. Do you want me to read it to you? Because I'm not sure it's helpful. It says, "I conclude from what I have seen for the reasons set out above that it is highly unlikely that SCL could have been operated at the relevant time and presently other than is required by the listing rules and other regulatory instruments in Hong

Kong, and I see no difficulty, and neither did the regulatory regime in Hong Kong, and in particular the Stock Exchange with the compliance of SCL with the regulatory regime of Hong Kong.

"It is my opinion that SCL is a Cayman Island company," I think we all agree about that, "listed in Hong Kong," I think we all agree about that, "and it is operating independently and has complied and is complying with the regulatory regime in Hong Kong in its entirety."

MR. BICE: I'm not sure that that's an admissible opinion. But --

THE COURT: Well, I don't know, either.

MR. BICE: -- nonetheless -- but Your Honor is -- what is it that he supposedly has seen I guess is --

THE COURT: Well, there's a listing of documents, which is why I asked about the heads of opinions.

MR. BICE: And we also, of course, are entitled to see his communications with counsel --

THE COURT: Well, here's --

MR. BICE: -- I don't believe have been produced to us.

THE COURT: -- one of my concerns. I've got this list of things that he says that he's seen, but then he's got all this other stuff that he's talking about. And so I'm not entirely clear as to what he's seen or what he's used.

MR. RANDALL JONES: Judge, I mean, I would certainly

-- first of all, I would hope that the Court would not pre judge whether or not this testimony is --

THE COURT: I'm not pre judging. I'm just reading.

MR. RANDALL JONES: Well, you said you don't think this is very helpful. And I obviously haven't had a chance to hear the evidence. You've seen a part of the report, so I just want to be clear that I -- I assume the Court is not making a ruling at this point about the admissibility or appropriateness of Mr. Howe's testimony.

THE COURT: I am not.

MR. RANDALL JONES: Okay.

THE COURT: But I did read the conclusion, and based on the conclusion, which I read into the record, it doesn't seem particularly helpful to the evidentiary hearing that I have to conduct on jurisdictional issues.

MR. RANDALL JONES: And I understand you ultimately will make that call. But at this point --

THE COURT: It's a weight issue.

MR. RANDALL JONES: -- we're -- well, not just a weight issue. Obviously you haven't heard how I believe that might be relevant to the jurisdictional issues. And so I would ask the Court to simply wait to make that decision until the appropriate time.

THE COURT: Sure.

MR. RANDALL JONES: Having said --

THE COURT: I'm hopeful he will say more than he has in his conclusion.

MR. RANDALL JONES: As most experts do. But, having said that, my response to Mr. Bice's concern is --

THE COURT: Can I stop you.

MR. RANDALL JONES: Sure.

THE COURT: The whole reason I read it was to decide if I was going to let Mr. Bice take his deposition.

MR. RANDALL JONES: Okay.

THE COURT: Based upon what he put in his report I'm going to let Mr. Bice take his deposition. But I'm not going to require the witness to come here.

MR. RANDALL JONES: And that was I guess my next point, is that logistically Mr. Howe is not here, and --

THE COURT: He's in Hong Kong.

MR. RANDALL JONES: And so I just -- if you're going to allow that, that has to be taken into account with respect to this whole process and how we're going to do it.

THE COURT: That was why I was doing it this way. Okay.

MR. RANDALL JONES: And a related question, Judge. I understand Mr. Bice is saying they don't want an expert. And the only point here is that if they decide they want an expert after Mr. Howe's testimony, obviously that would change things, and I at least want to keep that -- make sure the

Court's aware. Our position would be if they do decide they want an expert at some point in time, that's going to affect the schedule.

THE COURT: Okay. So, Mr. Bice, how long is it going to take you to figure out if you want to go to Hong Kong to take Mr. Howe's deposition?

MR. BICE: We will decide that within a couple of days, whether we're going to go or whether we're going to arrange it by video. We will make a determination one way or the other on that.

THE COURT: Regardless of whether he's going or arranging to take it by video, all of his work file -- and if you need my 6-inch-long description of what a work file is -- needs to be provided. How long is it going to take to provide that? Because they need it before they take the depo.

MR. RANDALL JONES: I don't know, because I have to talk to Mr. Howe. But obviously we'll do what we can to make sure to expedite that process. And as soon as we leave the courtroom we'll start making calls. I think it's the middle of the night right now in Hong Kong, so we've got to deal with that. But we'll -- Judge, I will just say this. We will do whatever we can to expedite that process.

THE COURT: All right. So, Mr. Bice, if you get the work file and the work papers a week before the depo, will that be enough time?

MR. BICE: Should be, Your Honor.

THE COURT: Okay. So you will work together to make a determination if you're going to take the deposition. If you make a decision to take the deposition, if you're going to Hong Kong or if you're going to take it by videoconference, then you're going to let Mr. Jones know in the next week.

MR. BICE: I will.

THE COURT: Okay. Once you select a date you have one week prior to that date to produce the work papers related to Mr. Howe.

With respect to any additional expert disclosures or reports or any rebuttal expert disclosures or reports, those will be due two weeks after Mr. Howe's deposition completes.

MR. PEEK: And will we have time to take a deposition, Your Honor?

THE COURT: Yes.

MR. PEEK: Should we choose to do so.

THE COURT: If you choose to do so, and also get the work papers and all the stuff. But I don't know that they're going to actually have an expert. That's part of where my schedule is going to fall apart here in a minute.

So we're going to assume that sometime in the next 30 days you're going to have finished the deposition of Mr. Howe. So let's assume that's February 5th.

We're then going to have maybe some other stuff to

do, and you're going to produce your documents and hopefully all of your witness disclosures by March 13th. Those are any witnesses that you intend to use for either the evidentiary hearing or the remaining portions of the sanction hearing and the disclosure of any documents you intend to use.

MR. PEEK: That's on the 13th?

THE COURT: Of March.

Any pretrial briefs that you want to use or any dispositive motions related to issues or motions in limine that you want resolved prior to the evidentiary hearing need to be filed by March 22nd.

Any pretrial briefs that you want me to read and consider prior to the hearing need to be filed by April 10th.

Any proposed findings of fact and conclusions of law that you want me to consider as part of the hearing need to be submitted to me by April 17th, along with two copies, three-hole punched, in binders of any exhibits you actually intend to use at the hearing and the exhibit list. If you choose to submit them electronically, you can talk to the clerk about how we do that. We're happy to take them electronically.

And we will plan to start the hearing on April 20th at 1:00 p.m.

MR. PEEK: How much time are you giving us, Your Honor?

THE COURT: As long as it takes, Mr. Peek.

MR. PEEK: Okay. I want to be able to know that it's not the two to three days that Mr. Bice --

THE COURT: Are you in trial in here on April 20th on another case?

MR. PEEK: I hope not, Your Honor.

THE COURT: RSN? Your Harkavy case?

MR. PEEK: I thought that all got moved, Your Honor, consolidated and moved.

(Off-record colloquy - Clerk and Court)

MR. PEEK: So it's commence hearing until completed, then, Your Honor?

THE COURT: Yes.

MR. PEEK: So we will have --

THE COURT: And Dulce has reminded me that because I have a District Judges conference I'll be out probably half a day on the 22nd, the 23rd, and 24th.

MR. PEEK: What days are you gone?

THE COURT: I think the conference is Thursday and Friday, but it's up in Reno, so I've got to fly up there.

MR. PEEK: So -- but what dates?

THE COURT: 22, 23, 24. 22 will probably be a half day.

MR. PEEK: So gone 22 half day, all day 23, and all day 24?

THE COURT: Yes.

MR. PEEK: So we're back here on the 27th?

THE COURT: Yes. Hold on a second. I'm trying to figure something out here. I'm trying to figure out --

MR. PEEK: I just want to know what date we may be dark, Your Honor.

THE COURT: 23rd and 24th.

MR. PEEK: And afternoon of the 22nd?

THE COURT: Don't know yet. I haven't tried to make my flight arrangements, and the legislature's in session, so it's hard to tell, Mr. Peek.

Okay. That should be okay. You're not on that stack, Mr. Peek.

MR. PEEK: So on the week of the 27th, then, we'll have all that week, as well?

THE COURT: Yeah. We're going to just keep going until we're done.

MR. PEEK: Okay.

THE COURT: Did I miss anything that you think is important for you to know about the deadlines?

MR. RANDALL JONES: Let me double check, Your Honor.

Well, I just want to make sure -- I'm trying to write this all down. With respect to the briefing schedule do --

THE COURT: What briefing schedule?

MR. RANDALL JONES: The briefing schedule you gave

us as to when different briefs are due.

THE COURT: You mean the motions, or the briefs?

MR. RANDALL JONES: I'm sorry?

THE COURT: The motions, or the briefs?

MR. RANDALL JONES: Well, the motions and the briefs.

THE COURT: There are two different sets of briefing schedules.

MR. RANDALL JONES: Right.

THE COURT: The motions -- any motions related to issues you want me to dispose of or motions in limine where you want me to preclude things from being involved, those are the March 22nd date.

MR. PEEK: But are there hearing dates that we can schedule I think is where he's going with that, because we're going to be back here on the --

THE COURT: I don't know. You may not file any motions.

MR. PEEK: I understand, Your Honor. I'm just trying to --

THE COURT: I'm not setting the date ahead of time.

MR. PEEK: If we have a hearing on the 20th, just commence, obviously want to have all these decided before the 20th.

THE COURT: That's why I gave you March 22nd as the

date.

MR. PEEK: Okay.

MR. RANDALL JONES: And my question also went to -- with this briefing schedule, since --

THE COURT: That brief schedule on the motions or --

MR. RANDALL JONES: Both of them. It really applies theoretically to both of them. But I guess it depends on the type of motion. But if it's a motion with respect to a particular issue, it may be something that the plaintiffs have the burden and they have to file a motion and we have to file an opposition. My question is this briefing schedule contemplates a particular type of issues and that all parties would file that motion on that particular day. So my question is are there going to be any motions where -- well --

THE COURT: How's this? I don't want to see a single countermotion. If there's a motion, you need to file it. Don't wait and see if you can file it as a countermotion.

MR. RANDALL JONES: That helps clarify what you're telling us.

THE COURT: Okay. The brief which is April 10 is just you're both giving me briefs simultaneously if you want me to look at them. You don't have to give me a brief on the April 10th date. March 22nd you haven't got to file any motions if you don't want to. But if you want to file any motions related to the hearing or evidence that's going to

come in at the hearing, it has to be filed prior to -- March 22nd or before.

MR. RANDALL JONES: So here's my question, Judge. I'd asked you earlier, and I know you said you're not going to limit them to their jurisdictional theories. We've taken a position that some of those theories are barred. But, be that as it may, we would still like to know if they have -- what theories they're going to move forward on, and we would like that obviously sometime before at least April 10th, because then we would be in a better position to file our briefs.

THE COURT: So if you want to limit any of their theories, file a motion on or before March 22nd that limits their theories.

MR. RANDALL JONES: It would --

THE COURT: Because we've had so much discussion in the last two years about what theory they're pursuing. In fact, we had a motion for summary judgment on jurisdiction at one point in time that I denied. So, I mean, we've done a lot of this work already, and I'm not going to require them to limit.

If you want to file a motion and then they say, yeah, we're going to waive that one, great, it'll be off our list and we won't have to worry about it anymore.

MR. RANDALL JONES: I understand. I guess it just seemed like a more efficient process if they've abandoned some

theories, if they're not going to pursue them, why couldn't they tell us. But I understand your ruling.

THE COURT: Well, because we've had hearings and they've told me they haven't abandoned any.

MR. RANDALL JONES: That was then and this is now. So that was my only point, Judge.

THE COURT: Yeah. Well --

Mr. Morris, anything?

Mr. Peek, anything?

MR. PEEK: No, Your Honor. But may I consult just a moment?

THE COURT: Yeah.

(Pause in the proceedings)

MR. RANDALL JONES: Judge, the one thing that I did mention and you did not specifically address is the fact that we filed our motion -- or our brief related to sanctions originally on September 14th, and then we renewed that brief on October 17th, and they have never responded. So I guess my question is are they going to file -- are you going to allow them to file a brief with respect to the sanctions motions, and, if so, when is that due. Is that due on the April the 10th, or is that due on the 22nd of March?

THE COURT: If either of you wish to file additional briefing related to the sanctions issue, which I've already fully ruled on, went up to the Nevada Supreme Court, and came

back, you may file such a brief simultaneously on or before April 10th.

MR. RANDALL JONES: Okay.

MR. PEEK: And, Your Honor, that actually brought up another question, too. When you say commence the hearing on the 20th, are you starting, as you suggested, with the sanctions hearing on the --

THE COURT: I am. Because I may issue an evidentiary sanction related to that hearing. Because I did issue evidentiary sanctions at the last hearing. I'm not saying I will, but I may.

MR. PEEK: But certainly that, Your Honor, calls into question what --

THE COURT: So you want to do the sanctions hearing today, Mr. Peek?

MR. PEEK: No, I don't want to do it today, Your Honor.

THE COURT: You want to do it tomorrow? How about the next day?

MR. PEEK: No. I understand. But --

THE COURT: I've been trying to get this hearing done for six months, Steve.

MR. PEEK: Well, if you'd let me talk so I can make my -- so that I can just -- it seems to me that we'd have to have notice of what those evidentiary sanctions might be to be

able to address those issues as we go forward into the actual jurisdictional hearing. So I'm only just trying to make sure we have enough notice and opportunity to be heard and they were put on notice of what the Court is going to do.

THE COURT: And what and how long do you think you need for that? It's not sanctions against your client, it's sanctions against Sands China for --

MR. PEEK: Well, my client's also Sands China, Your Honor. I represent both. But I -- so I --

THE COURT: I forget that sometimes, Mr. Peek.

MR. RANDALL JONES: Well, I think Mr. Peek's point is well taken. And I hadn't really thought about that, but he makes a good point, depending on what the ruling is, is that I understand you want to get this done. That is abundantly clear, Your Honor. And that's fine. We also want to make sure we protect our clients' due process rights at that part of the process. So depending on what your decision is on sanctions, it may impact the evidentiary hearing in one way or the other. And so, yeah, I mean, some period of time I don't know. It's hard for me to gauge that in a vacuum. But, you know, a minimum of a day or so. If you're going to be dark anyway on the 22nd, 23rd, and 24th, then that may facilitate that process for us to understand --

THE COURT: So let me ask a question. Do you want to do the sanctions hearing next week?

MR. RANDALL JONES: We do not, Your Honor.

THE COURT: Okay. When do you want to do it?

MR. RANDALL JONES: April 20th at 1:00 p.m.

THE COURT: No. If you're telling me that because I may issue an evidentiary sanction in order to protect your clients' due process rights you need to have more notice, then tell me when within the next 10 days you'd like to conduct that hearing, Mr. Jones.

MR. RANDALL JONES: Your Honor, in light of your question to me and the schedule that you proposed I don't want to be put in a position to accelerate that date, because I don't think my client would have time to properly -- I certainly can tell you I wouldn't have time to properly prepare for that sanction hearing. Therefore, if you've set it for the 20th, we'll live with the schedule that you've set.

THE COURT: Okay. Then I'm not going to set it for -- it's now on the 9th, February 9th.

MR. BICE: Your Honor, they said --

THE COURT: No. Wait, guys. This is bullshit. It's not a legal term, it's not a judicial term. I have been trying to get this sanction issue resolved, which is very narrow. It's balancing your clients' challenges with the Macau Government and the production of items under the Macau Data Privacy Act with the disclosure obligations that I imposed on you. We've already done most of it. All I have

left is listening to an explanation from your client, listening to an explanation from the plaintiffs about what the prejudice is, and then making a determination as to what sanction, if any, is appropriate under the circumstances.

If you guys tell me you're concerned that an evidentiary sanction that I issue at the beginning of the hearing we've set up currently is going to cause a prejudice of your clients' due process rights, then, you know what, we'll do the hearing right away. And I've got time on February 9th before I start the last part of the CityCenter trial.

MR. RANDALL JONES: Your Honor, respectfully I would ask you to reconsider setting it earlier. I appreciate your willingness to put it on the 20th. We'll deal with it. I've heard --

THE COURT: No. You've raised an important point, which is your clients' ability to plan for the evidentiary sanction that may or may not be issued. I previously issued an evidentiary sanction as part of a sanctions hearing. I agree with the point you made that it is important that that issue be done well in advance of the other hearing, so we'll do it on February 9th.

What else?

THE CLERK: What time?

THE COURT: 1:00 o'clock.

MR. RANDALL JONES: Your Honor, how does that affect the schedule with respect to disclosure and briefing?

THE COURT: It doesn't. If anybody wants to have any witnesses or documents that you're going to use at the February 9th hearing, except for experts, which I don't think you're going to use, that's two weeks before the hearing you have to exchange them.

Anything else?

MR. RANDALL JONES: What does it do with respect to briefing, Your Honor?

THE COURT: If you want to give me any briefs, please give me a brief on February 6th. They're simultaneous.

Anything else?

MR. PEEK: How long have you set that sanctions hearing, Your Honor? I don't know --

THE COURT: As long as it takes. But my guess is it won't take you more than a few hours, because it's a very limited issue. It's for me to listen to an explanation from your client as to the challenges that they faced given the Macau laws, the Macau Data Privacy Act, and my disclosure requirements, and then the issue of prejudice raised by the plaintiffs. It's really limited. I've been trying to tell you guys that. Nobody listens.

So February 6th if you want to give me any additional briefs, two weeks before February 9th at 1:00

o'clock we'll do that hearing.

Anything else?

Okay. So I'm going to issue two orders. One order is going to be related to the evidentiary hearing on the amount, if any, of sanctions. The other is going to be related to the jurisdictional hearing that the Nevada Supreme Court ordered me to conduct when they issued the writ.

Anything else that you want me to talk about?

MR. BICE: Trial date.

THE COURT: I don't know that I can do a trial date. I think I would be violating the Nevada Supreme Court's order if I set a trial date before I finish the evidentiary hearing and issue my findings.

MR. BICE: All right.

THE COURT: But, believe me, there will be a trial date way before your five year rule. Maybe you might think about what your availability is the week of June 29th. But that's a different issue.

MR. PEEK: Your Honor, that's a pretty significant issue, because we don't even have a discovery schedule.

THE COURT: Then how on earth are you going to get done before the five year rule runs, Mr. Peek?

MR. PEEK: I understand where people are trying to put us in a position as to whether or not the five year rule has been tolled as a result of the Supreme Court order. I

know that's exactly where everybody's going here.

THE COURT: That's why I ordered briefing on the issue.

MR. PEEK: I understand that Your Honor. And perhaps that's something -- well, I'm not going to address that issue right here, just stand up, off the cuff address that issue.

THE COURT: No.

MR. PEEK: But I will say that it doesn't give us much time to have a discovery schedule on a very, very significant date.

THE COURT: Well, the reason I'm mentioning that date to you is because I previously asked for briefing on the 41(e) issue. Given the positions the parties take -- have taken, it's my intention that your trial is going to get set so that there is no doubt that I have commenced trial, however anyone defines that, prior to the expiration of the period under Rule 41(e) unless you all stipulate to a different time frame. And I'm happy to have you do that, but I'm not going to be the one who runs the risk that my analysis of the stays under Rule 41(e) is different than the positions ones of the parties has taken in this case.

MR. PEEK: Understood, Your Honor.

THE COURT: So that's a date that I just ask you to look at as pencilled in. Anything else?

So I will see you -- if you're going to file your motions to dismiss on this new complaint, please do it sooner, rather than later, so that I can resolve those issues which may in fact narrow other issues. Then I will issue orders on the sanction hearing, and I will issue orders on the jurisdictional hearing. Then hopefully one day we'll actually get to the part where you get to start real discovery in the case.

MR. BICE: Thank you, Your Honor.

THE COURT: That might be before your trial date and the discovery cutoff.

MR. PEEK: Thank you.

THE COURT: Goodbye.

THE PROCEEDINGS CONCLUDED AT 11:15 A.M.

* * * * *

CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt

FLORENCE M. HOYT, TRANSCRIBER

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN JACOBS, Plaintiff(s), vs LAS VEGAS SANDS CORP, ET AL, Defendants.	**Case No.** 10 A 627691 **Dept. No.** XI **Date of Hearing:** 02/09/15

ORDER SETTING EVIDENTIARY HEARING

IT IS HEREBY ORDERED THAT:

A. The above entitled case is set for an evidentiary hearing pursuant to the March 27, 2013 order and Nevada Supreme Court order, 130 Nevada Advance Opinion 61, issued August 7, 2014 to begin **February 9, 2015 at 1:30 p.m.**

B. A calendar call will be held on **February 5, 2015 at 8:45 a.m.** Parties must bring to Calendar Call the following:

(1) Exhibit lists;
(2) List of depositions; and
(3) List of equipment needed for trial, including audiovisual equipment.[1]

MCF 10

[1] If counsel anticipate the need for audio visual equipment during the trial, a request must be submitted to the District Courts AV department following the calendar call. If you anticipate a witness appearing by videoconference, such must be arranged 3 judicial days in advance with the the District Courts AV department. The witness must agree in writing to be bound by the oath given by the Court's clerk, prior to appearing by videoconference. Any exhibits to be used by the witness must bear the same identifiers as those marked in conjunction with the proceeding in court and the wtiness must be provided with a set of those exhibits prior to testifying. You can reach the AV Dept at 671-3205 or via E-Mail at SLATW@clarkcountycourts.us

C. Prior to **5:00 p.m. on January 26, 2015**, parties must disclose any witness they intend to call at this hearing, and any exhibits, including impeachment, that they intend to use at the evidentiary hearing.

D. Parties may submit hearing briefs if they choose on or before noon on **February 6, 2015.**

Failure of the designated trial attorney or any party appearing in proper person to appear for any court appearances or to comply with this Order shall result in any of the following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation of hearing; and/or any other appropriate remedy or sanction.

Counsel is required to advise the Court immediately when the case settles or is otherwise resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy should be given to Chambers.

DATED this 6th day of January, 2015.

Elizabeth Gonzalez, District Judge

Certificate of Service

I hereby certify, that on the date filed, this Order was served on the parties identified on Wiznet's e-service list.

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

Randall Jones, Esq. (Kemp Jones)

Steve Morris, Esq. (Morris Law Group)

James J. Pisanelli, Esq. (Pisanelli Bice)

Dan Kutinac

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN JACOBS, Plaintiff(s), vs LAS VEGAS SANDS CORP, ET AL, Defendants.	**Case No.** 10 A 627691 **Dept. No.** XI **Date of Hearing:** 04/20/15

ORDER SETTING EVIDENTIARY HEARING

IT IS HEREBY ORDERED THAT:

A. The above entitled case is set for an evidentiary hearing pursuant to the Nevada Supreme Court order granting Petition for Writ of Mandamus, issued on August 26, 2011, to begin **April 20, 2015 at 1:30 p.m.**

B. A calendar call will be held on **April 16, 2015 at 8:45 a.m.** Parties must bring to Calendar Call the following:

(1) Exhibit lists;
(2) List of depositions; and
(3) List of equipment needed for trial, including audiovisual equipment.[1]

[1] If counsel anticipate the need for audio visual equipment during the trial, a request must be submitted to the District Courts AV department following the calendar call. If you anticipate a witness appearing by videoconference, such must be arranged 3 judicial days in advance with the District Courts AV department. The witness must agree in writing to be bound by the oath given by the Court's clerk, prior to appearing by videoconference. Any exhibits to be used by the witness must bear the same identifiers as those marked in conjunction with the proceeding in court and the witness must be provided with a set of those exhibits prior to testifying. You can reach the AV Dept. at 671-3205 or via E-Mail at SLATW@clarkcountycourts.us

C. Prior to **5:00 p.m. on March 13, 2015**, parties must disclose any witness they intend to call at this hearing, and any exhibits, including impeachment, that they intend to use at the evidentiary hearing.

D. All dispositive motions, motions for summary judgment or motions in limine, must be in writing and filed no later than **March 22, 2015. Order(s) shortening time will not be signed except in extreme emergencies**.

E. All original depositions anticipated to be used in any manner during the hearing must be delivered to the clerk prior to the calendar call. If deposition testimony is anticipated to be used in lieu of live testimony, a designation (by page/line citation) of the portions of the testimony to be offered must be filed and served by facsimile or hand, two (2) judicial days prior to the calendar call. Any objections or counterdesignations (by page/line citation) of testimony must be filed and served by facsimile or hand, one (1) judicial day prior to the calendar call. Counsel shall advise the clerk prior to publication.

F. Prior to calendar call, counsel shall meet, review, and discuss exhibits. All exhibits must comply with EDCR 2.27. Two (2) sets must be three hole punched placed in three ring binders along with the exhibit list. The sets must be delivered to the clerk prior to the calendar call. Any demonstrative exhibits including exemplars anticipated to be used must be disclosed prior to the calendar call. At the calendar call, counsel shall be prepared to stipulate or make specific objections to individual proposed exhibits. Unless otherwise agreed to by the parties, demonstrative exhibits are marked for identification but not admitted into evidence.

G. Parties may submit hearing briefs if they choose on or before **noon on April 10, 2015**.

H. Each side shall provide the Court, by **noon on April 17, 2015**, proposed findings of facts and conclusions of law with an electronic copy in Word format.

Failure of the designated attorney or any party appearing in proper person to appear for any court appearances or to comply with this Order shall result in any of the following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation of hearing; and/or any other appropriate remedy or sanction.

Counsel is required to advise the Court immediately when the case settles or is otherwise resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy should be given to Chambers.

DATED this 6th day of January, 2015.

Elizabeth Gonzalez, District Judge

Certificate of Service

I hereby certify, that on the date filed, this Order was served on the parties identified on Wiznet's e-service list.

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Randall Jones, Esq. (Kemp Jones)

Steve Morris, Esq. (Morris Law Group)

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND RELATED CLAIMS

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

ORDER DENYING DEFENDANTS' LIMITED MOTION TO RECONSIDER THE COURT'S RULINGS CONTAINED IN COURT'S EXHIBITS 13 AND 17

Hearing Date: December 12, 2014

Hearing Time: In Chambers

Before the Court is Defendants' Limited Motion to Reconsider the Court's Rulings Contained in Court's Exhibits 13 and 17 (the "Motion"). Having considered the papers filed on behalf of the parties in Chambers, and being fully informed with good cause appearing, the Court makes the following findings:

1. Sands China Ltd. ("Sands China") has not presented any new evidence or law demonstrating that the Court's earlier rulings were clearly erroneous. *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997); *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976).

2. The subject documents, including SJACOBS0038124-001, appear to be business communications where the legal discussion (if any) does not outweigh or predominate the business purpose of the communication. *Phillips v. C.R. Bard, Inc.*, 290 F.R.D. 615, 628-29 (D. Nev. 2013); *Lindley v. Life Investors Ins. Co. of Am.*, 267 F.R.D. 382, 392 (N.D. Okla. 2010); *Neuder v. Battelle Pac. Nw. Nat. Lab.*, 194 F.R.D. 289, 292 (D. D.C. 2000).

3. To the extent any privilege existed, Sands China waived its privilege over SJACOBS00028080 through SJACOBS00028082 by attaching those documents to communications with third parties. *Whitehead v. Nevada Comm'n on Judicial Discipline*, 110 Nev. 380, 412 n.28, 873 P.2d 946, 966 n. 28 (1994); *Wardleigh v. Second Judicial Dist. Court In & For Cnty. of Washoe*, 111 Nev. 345, 353-54, 891 P.2d 1180, 1185 (1995). Sands China does not present any declaration or other evidence corroborating the job function(s) of each of the Sands China employees that were privy to the communications and attachments, and Sands China offers no competent evidence explaining why the documents were necessary to the performance of the employees' job duties.

4. As the proponent of the privilege, the burden was on Sands China to support its claims of privilege. Sands China failed to satisfy its burden.

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ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion is DENIED.

DATED: February 2, 2015

THE HONORABLE ELIZABETH GONZALEZ
EIGHTH JUDICIAL DISTRICT COURT

Respectfully submitted by:

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DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND ALL RELATED MATTERS.

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

SCL's MEMORANDUM REGARDING PLAINTIFF'S RENEWED MOTION FOR SANCTIONS

Date: February 9, 2015
Time: 10:30 a.m.

Defendant Sands China Ltd. ("SCL") submits the following memorandum, which (i) sets forth the legal standards that apply to Plaintiff's Renewed Motion for Sanctions in light of the Nevada Supreme Court's August 7, 2014 decision on Defendants' Petition for Writ of

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Prohibition or Mandamus and (ii) discusses how those standards apply to the evidence SCL expects to present at the hearing on Plaintiff's Motion.[1]

I.

INTRODUCTION

In its August 7, 2014 Order, the Nevada Supreme Court outlined a number of factors this Court must consider in deciding "what sanctions, ***if any***, are appropriate" in light of SCL's redaction of personal information from documents it produced out of Macau in January 2013. August 7 Order at 10 (emphasis added). Those factors include: "(1) 'the importance to the investigation or litigation of the documents or other information requested'; (2) 'the degree of specificity of the request'; (3) 'whether the information originated in the United States'; (4) 'the availability of alternative means of securing the information'; and (5) 'the extent to which noncompliance with the request would undermine important interests of the United States or compliance with the request would undermine importance interests of the state where the information is located.'" *Id.* at 7-8 (quoting the Restatement (Third) of Foreign Relations Law § 442(1)(c) (1987)).

A review of these factors leads inevitably to the conclusion that sanctions are not appropriate in this case. First, SCL has not withheld information that is important to Plaintiff's attempt to prove that the Court has personal jurisdiction over it. That has become increasingly clear as Plaintiff's general jurisdiction theories have been winnowed down to a single claim—that in October 2010, when this lawsuit was filed, SCL's "nerve center" was located in Las Vegas. Most of the categories of documents Plaintiff sought are wholly irrelevant to that theory. To the extent that a small handful of Plaintiff's requests may remain relevant, the redacted documents produced from Macau are entirely cumulative of the hundreds of unredacted documents already produced—documents relating to such narrow topics as where SCL's Board meetings were held and who was traveling from Las Vegas to Macau and Hong Kong in 2009

[1] SCL submitted an earlier version of this memorandum on September 4, 2014 and a revised version on October 17, 2014 to reflect certain subsequent events. For the Court's convenience, this memorandum incorporates all of SCL's arguments.

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and 2010. In any event, as a matter of common sense, the documents Plaintiff needs to support his claim that SCL's "nerve center" was located in Las Vegas are documents found in Las Vegas. Plaintiff has not even attempted to explain why he needs ***any*** documents located in Macau—let alone the personal data that was redacted from documents produced out of Macau.

Second, Plaintiff's requests were not specific, but rather sought broad categories of information. To the extent Plaintiff believed he needed more specific information about particular documents or particular redactions, SCL offered almost two years ago to conduct additional searches to determine whether near-duplicates could be located in the U.S. or to ask for consents that would be necessary to undo particular personal redactions. Plaintiff never took SCL up on its offer, thus confirming just how irrelevant the redacted information is. Nevertheless, as a show of good faith and in light of the recent narrowing of Plaintiff's general jurisdiction theories to a single "nerve center" theory, in October 2014 Defendants secured consents from the four individuals whose depositions Plaintiff took—Messrs. Adelson, Leven, Goldstein and Kay—to the transfer and disclosure of their personal data in documents responsive to jurisdictional discovery that were produced from Macau. Defendants also asked Plaintiff to provide his consent under the Macau Personal Data Protection Act (the "MPDPA") to have his name unredacted from documents produced from Macau, but he refused to do so.[2] Thereafter, Macau attorneys employed by SCL's subsidiary Venetian Macau Ltd. ("VML") re-reviewed all of the remaining redacted documents from the January 2013 production that contained references to the four deponents' names and other personal information to "unredact" all such information. Those documents were produced on November 14, 2014.

Third, the redacted documents all originated in Macau and were all found ***only*** in Macau. Defendants have not made redactions pursuant to the MPDPA in ***any*** documents that

[2] Plaintiff sought to defend his refusal to consent by claiming that this Court's prior orders 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 unredacted form and Macau's data privacy laws by securing appropriate consents.

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either originated in the United States or were previously transferred to the United States from Macau.

Fourth, Plaintiff had alternative avenues for obtaining all of the discovery he sought and in fact was able to obtain all that he could possibly need. In addition, after SCL produced the documents in redacted form in early 2013, LVSC undertook an elaborate search of its own documents to find duplicates or near-duplicates in the United States, which could be produced in unredacted form. This process enabled Defendants to cut the number of redacted documents down to approximately 2600. And, as noted above, Defendants were willing to do even more, if Plaintiff had not refused to consent under the MPDPA to the unredaction of his own personal data or if Plaintiff had identified specific documents that warranted additional investigation (which he never did).

Finally, SCL's redaction of personal data does not undermine any important U.S. interest, but punishing SCL for complying with Macanese law would fly in the face of the Macanese government's strongly-held views about data privacy. As SCL's General Counsel previously explained in an affidavit, SCL's understanding of the MPDPA has evolved over time. By January 2013, however, there was no doubt that the only way that SCL and its operating subsidiary, Venetian Macau Ltd. ("VML"), could ***lawfully*** review and produce a large number of documents from Macau was by having all personal data redacted by Macanese lawyers before the documents were transferred to the United States. That the Office of Personal Data Protection ("OPDP") subsequently fined VML for allowing LVSC to transfer a copy of Jacobs' hard-drive to the United States in 2010 and separately fined Wynn's Macau subsidiary for transferring documents to its parent in the United States confirms how important compliance with the MPDPA is to the government of Macau.

The conclusion that SCL should not be sanctioned—or that any sanctions should be minimal—is reinforced by the standards Nevada courts ordinarily apply in deciding whether Rule 37 sanctions are warranted and, if so, what those sanctions should be. "Generally, sanctions may only be imposed where there had been willful noncompliance with a court order or where the adversary process has been halted by the actions of the unresponsive party." *GNLV*

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Corp. v. Service Control Corp., 111 Nev. 866, 869; 900 P.2d 323, 325 (1995). If the court concludes that sanctions are warranted, "[f]undamental notions of fairness and due process require that discovery sanctions be just and that sanctions relate to the specific conduct at issue." *Id.* at 870; 900 P.2d at 325. In selecting the sanction to be imposed, the court must consider a number of factors, including "the degree of willfulness of the offending party" and "the extent to which the non-offending party will be prejudiced by a lesser sanction." *Young v. Johnny Ribiero Bldg, Inc.*, 106 Nev. 88, 93; 787 P.2d 777, 780 (1980). If a sanction is imposed, "the district judge must design the sanction to fit the violation." *City of Sparks v. Second Judicial Dist.*, 112 Nev. 952, 955; 920 P.2d 1014, 1016 (1996).

In this case, there was no willful noncompliance with this Court's order. The Court's September 14, 2012 Order did not clearly preclude MPDPA redactions, and the colloquy at the December 18, 2012 hearing suggested that such redactions were permissible. SCL's redactions also did not interrupt or delay the adversary process: had Plaintiff ***wanted*** to litigate his jurisdictional theories, rather than playing a game of discovery "gotcha," he had more than enough information to do so.

In any event, there is no conceivable justification for the sanctions Plaintiff seeks—an order striking SCL's defense of personal jurisdiction and the imposition of unidentified "substantive and adverse inferences." Pl. Renewed Motion for Sanctions at 16. Even if the Court were to find willful noncompliance on SCL's part, it is largely (if not entirely) excusable in light of the conditions OPDP imposed in giving VML permission to transfer documents outside of Macau. Moreover, plaintiff suffered no prejudice. Because SCL's compliance with the MPDPA has not hampered Plaintiff's ability to make his jurisdictional case, punishing SCL by deeming jurisdiction admitted would not "fit the violation." For the same reasons, an evidentiary sanction, such as deeming some facts to be admitted, would not be warranted.

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II.

ARGUMENT

A. No Sanctions Are Warranted Under The Balancing Test Mandated By The Nevada Supreme Court.

At a hearing held on August 14, 2014, this Court stated that "[t]here's going to be a sanction, because I already had a hearing and I made a determination there is a sanction," suggesting that the only issue left to be decided is "the level of the sanction" to be imposed on SCL. 8/14/14 Tr. at 29:10-13. With all due respect, limiting the issue to the "level of the sanction" would be contrary to the direction provided by the Nevada Supreme Court's August 7 Order.

The Supreme Court was well aware that this Court had held a sanctions hearing in the summer of 2012 and had issued an order on September 14, 2012 that precludes LVSC and SCL "for purposes of jurisdictional discovery" from "raising the MDPA as an objection or as a defense to admission, disclosure or production of any documents." *See* Aug. 7 Order at 4-5. The Supreme Court also understood that this Court had already concluded that SCL had disobeyed that order by redacting personal data from documents it produced from Macau. *Id.* at 5. Nevertheless, the Supreme Court did not treat that conclusion as dispositive of the question of ***whether*** sanctions should be imposed. On the contrary, the Court made it clear that even when an order compelling production is disobeyed, a district court must still balance the five Restatement factors listed above "in determining what sanctions, ***if any***, are appropriate." *Id.* at 10 (emphasis added). *See also id.* at 2 ("because the district court has not yet held the hearing to determine ***if***, and the extent to which, sanctions may be warranted, our intervention at this juncture would be inappropriate") (emphasis added); *id.* at 11 ("because the district court properly indicated that it intended to 'balance' Sands' desire to comply with the foreign privacy law in determining ***whether*** discovery sanctions are warranted, our intervention at this time would inappropriately preempt the district court's planned hearing") (emphasis added).

Thus, the question of whether any sanctions should be imposed on SCL remains open. The Court must analyze the five Restatement factors in deciding that issue and, if it decides

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sanctions are warranted, in deciding what type of sanction to impose. For the reasons outlined below, all of those factors militate against the imposition of any sanction.

1. The Redacted Information Is Not "Important" To The Issue Of Jurisdiction.

The first factor the Court must consider is whether the redacted information was "important" to Plaintiff's ability to prove his jurisdictional theories. Courts are more likely to impose sanctions where, as in *Linde v. Arab Bank, PLC*, 269 F.R.D. 186, 193 (E.D.N.Y. 2010), the information withheld is "essential" to the proof of the opposing parties' case. *See also id.* at 196 ("some sanction must be imposed if for no other reason than to restore the evidentiary balance that has been disturbed by the non-production of important evidence") (internal quotation marks omitted). On the other hand, courts are generally "unwilling to override foreign secrecy laws" in cases where "the outcome of the litigation does not stand or fall on the present discovery order, or where the evidence sought is cumulative of existing evidence." *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1475 (9th Cir. 1992) (internal quotation marks omitted). Here, the personal data that was redacted clearly falls within the category of "unimportant," if not wholly irrelevant, information. At most, the redacted documents are cumulative of evidence that Plaintiff already has, whether from the thousands of documents Defendants have produced in unredacted form or from the 95,000 documents Jacobs took with him when he left Macau as to which Defendants no longer claim any privilege.[3]

The analysis begins with the eleven categories of document discovery the Court permitted Plaintiff to take (over Defendants' objections). *See* March 8, 2012 Order. Plaintiff selected those categories to bolster three very different theories of general jurisdiction. Plaintiff's first theory—which bore some similarity to his current "nerve center" theory—was 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'rng Tr. at 21:8-10. Based on

[3] Jacobs and his lawyers have had full access to 84,000 of these documents since September 15, 2012 and to the other 3,000 documents since November 2012, after Defendants completed their privilege review. On October 1, 2014, Defendants instructed Advanced Discovery to release an additional 8,240 documents that were de-designated and another 2,071 documents that were redacted to remove privileged information.

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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 (Messrs. Adelson. Leven, Goldstein and Kay) and other LVSC employees traveled to China on SCL-related business (Request #7).[4] 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).

Plaintiff's second theory was that SCL had sufficient contacts in Nevada to be deemed to be doing business here. 9/27/11 H'rng 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. Plaintiff's third theory was 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.[5]

In December 2011, Plaintiff issued Requests for Production of Documents ("RFPs") to SCL and LVSC based on the categories of documents the Court had permitted him to discover. Not counting the documents that were produced in response to the expanded search the Court ordered SCL to conduct in March 2013, Defendants produced nearly 30,000 documents in response to Plaintiff's 24 jurisdictional RFP's, consisting of almost 200,000 pages. LVSC produced about 24,000 documents (168,000 pages), while SCL produced close to 5,700

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[4] References are to the numbered paragraphs in the Court's March 8, 2012 Order.

[5] Notably absent from Plaintiff's requests for documents were ***any*** requests relating to his option agreement with SCL or his termination as SCL's CEO. Although Jacobs' termination has become the focal point of his specific jurisdiction argument, Plaintiff has ***never*** sought any jurisdictional document discovery on that issue.

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documents (totaling close to 32,000 pages).[6] Of the SCL documents, around 4700 were originally produced 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. As a result, only about 2600 of the universe of documents produced in response to the Court's December 18, 2012 ruling still have personal data redacted—or less than 7% of the total number of documents produced prior to April 2013.[7]

Today, it is clear that many categories of documents that Plaintiff sought are entirely irrelevant to the jurisdictional issue. As Plaintiff appears to concede, two of his general jurisdiction theories are no longer viable in light of the U.S. Supreme Court's decision in *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014). Under *Daimler AG*, 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,* 764 F.3d 1062, 1070 (9th Cir. 2014) (*Daimler AG* established a "demanding . . . standard for general jurisdiction over a corporation"; 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]

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[6] Certain documents produced by SCL and LVSC are identified in and attached to the Declaration of Mark M. Jones, which is included as Exhibit A in the Appendix to SCL's Memorandum Regarding Plaintiff's Renewed Motion for Sanctions filed contemporaneously herewith ("SCL's Appendix"). LVSC's and SCL's responses to Plaintiff's RFP's are included in Exhibit B to SCL's Appendix.

[7] In response to the Court's March 27, 2013 Order requiring SCL to expand both the custodians whose documents it searched and the search terms it applied to all custodians, SCL produced an additional 4,161 documents that were found outside of Macau between April and August 2013. Those documents were produced in unredacted form. The Court stayed its Order to the extent that it required SCL to produce documents found in Macau pending a ruling on SCL's petition for a writ of mandamus to the Nevada Supreme Court. After the Supreme Court ruled, SCL sought reconsideration of the Court's March 27, 2013 Order to the extent that it required SCL to produce documents from Macau without redacting personal data, pointing out that the vast majority of documents produced by the expanded search related to topics that are no longer even arguably relevant to any viable jurisdictional theory. *See* SCL Motion to Reconsider, filed 10/17/14. After the Court denied that motion on December 2, 2014, SCL produced another 7,626 documents, on which all personal information was redacted except for information concerning Messrs. Adelson, Goldstein, Leven and Kay, who consented to the disclosure of their personal data. LVSC then conducted another manual search for duplicates in the U.S. and was able to produce 563 of those documents in unredacted form.

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to general jurisdiction in California"). Thus, Plaintiff's RFP's ## 16-19, which sought all communications by SCL or LVSC, acting on its behalf, with Nevada-based companies, including BASE, Cirque de Soleil, Bally and Harrah's, are all irrelevant—as are the 500 or so redacted documents that SCL produced in early 2013 in response to these RFP's.[8]

Daimler also forecloses Plaintiff's "agency" theory of jurisdiction under which he argued that LVSC's presence in the forum could be attributed to SCL if LVSC was found to be acting as SCL's agent. *Daimler AG* holds that the presence of an agent doing the principal's business in the jurisdiction is ***not*** enough to give rise to general jurisdiction over the principal; the question is not whether an agency relationship exists or whether the agent is subject to general jurisdiction, but rather whether the principal itself is "at home" in the jurisdiction—either because it is incorporated or has its principal place of business there. 134 S.Ct. at 759-60. At least seven of Plaintiff's RFP's were aimed at gathering evidence to support his agency theory, asking for documents reflecting "services performed by LVSC (including LVSC's executives and/or employees and/or consultants and/or agents) for or on behalf of Sands China" with respect to particular issues, such as site development, marketing, recruiting and the like. *See* RFP's # 11-15, and 22; *see also* RFP # 23 (seeking documents relating to reimbursement of LVSC executives for work performed for or on behalf of SCL). These RFP's too are now irrelevant, as are the nearly 1500 redacted documents SCL produced in early 2013 in response to them.[9]

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[8] In any event, Defendants have produced in unredacted form (i) agreements and draft agreements between SCL and service providers such as BASE Entertainment (LVS00111192, LVS00111218) and Bally Technologies (LVS00115330, SCL00100033); (ii) communications with BASE Entertainment personnel, related primarily to locating, hiring, and managing talent to perform at SCL properties (LVS00111354, LVS00232578, and LVS00111962); (iii) communications with Cirque du Soleil related to the staging and managing of long-term performance arrangements (*e.g.*, LVS00111458, LVS00111409, and LVS00111410); (iv) communications between SCL and Bally Technologies related to the purchase of Bally equipment (*e.g.*, LVS00115297, LVS00213301); and (v) communications with Harrah's (*e.g.*, LVS00112736, LVS00118246). The redacted documents, most of which related to Cirque du Soleil, would have added nothing, even if SCL's interactions with Nevada companies were somehow relevant to jurisdiction (which they are not). The foregoing documents are all attached to Exhibit C to SCL's Appendix.

[9] LVSC produced over 7000 documents responsive to these requests and SCL produced approximately 2200 additional documents that did not contain any MPDPA redactions. The unredacted documents produced include the various agreements between LVSC and SCL that Plaintiff specifically requested in RFP #10, including the shared

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A dozen RFP's remain when all of these wholly irrelevant requests are eliminated. No redacted documents were produced in response to four of these twelve.[10] And even if the other eight RFP's are all somehow relevant to Plaintiff's new theory that Las Vegas is SCL's "nerve center," the redacted documents produced in response to those RFP's are either cumulative or irrelevant.[11]

RFP #6, for example, sought all documents reflecting or relating to Michael Leven's service as Acting CEO and Executive Director of SCL after Jacobs' departure and his prior service as Special Adviser to the Board.[12] Before SCL produced any documents from Macau, LVSC had already produced almost 6,500 documents in response to this request. And since Plaintiff deposed Mr. Leven on two separate days, they had ample opportunity to determine the services that Mr. Leven had performed with respect to SCL. In any event, SCL obtained Mr.

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services agreement (SCL00100017), the trademark license agreement (LVS00100106), and the intellectual property license agreement (LVS00100058), as well as communications and documents reflecting LVSC's involvement in the development of Parcels 5 and 6 (LVS00100106, LVS00112442), the search for and interview of executive candidates (*e.g.*, LVS00235376, LVS00123776), and the marketing of SCL properties (*e.g.*, LVS00111282). Defendants also have produced documents reflecting meetings and communications with Harrah's (*e.g.*, LVS00118241) and reflecting summaries of options to enter into business arrangements with Mr. Ho and others (*e.g.*, LVS00236902) in response to Plaintiff's specific requests. Thus, even if these documents were relevant to Plaintiff's remaining "nerve center" theory (which they are not), Defendants' production of unredacted documents, along with the depositions Plaintiff was allowed to take of four LVSC executives, should provide Plaintiff with all of the information he needs about the services that LVSC rendered to SCL. The documents cited in this footnote are included in Exhbit C to SCL's Appendix.

[10] No redacted documents were produced in response to RFP # 8 (contracts with Nevada businesses), RFP #20 (SCL/LVSC communications with potential lenders for the underwriting of Parcels 5 and 6), RFP #21 (SCL/LVSC communications with site designers, developers, and specialists for Parcels 5 and 6), or RFP #24 (requesting any documents that SCL provided to Nevada gaming regulators). Thus, these RFP's are irrelevant to the analysis.

[11] SCL continues to believe that the "nerve center" theory does not apply in determining where a foreign corporation is subject to general jurisdiction. In *Martinez*, the Ninth Circuit observed that a French corporation that had no offices, staff or other physical presence in California and whose activities in California were "minor compared to its other worldwide contacts" was not subject to general jurisdiction in California. 764 F.3d at 1070. The court also affirmed the district court's denial of additional discovery, noting that it was "apparent that nothing plaintiffs could discover about [a subsidiary's] contacts with California would make [the French parent] 'essentially at home' in California." *Id.*

[12] It is worth noting that the *Martinez* case specifically rejects the "transient" jurisdiction argument Plaintiff has raised based on the fact that he served his complaint on Mr. Leven in Las Vegas. The Ninth Circuit explained at length why jurisdiction over a corporation can only be based on general or specific jurisdiction and cannot be predicated on where a corporate officer happened to be when he or she was served with the complaint. *See* 764 F.3d at 1067-69.

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Leven's consent to the transfer and disclosure of his personal data in all of the redacted documents produced from Macau and "unredacted" that information in all of the documents it produced from Macau in early 2013. Accordingly, Plaintiff has all of the documents necessary to determine what services Mr. Leven provided to SCL.

Similarly, RFP #9 sought all documents reflecting work that Robert Goldstein performed for or on behalf of SCL. LVSC has produced over 2700 documents in response to this request and Plaintiff also deposed Mr. Goldstein. After Mr. Goldstein consented to the transfer and disclosure of his personal data, SCL unredacted his personal information from the documents produced in early 2013. As a result, Plaintiff has all of the documents necessary to determine what work Mr. Goldstein did for or on behalf of SCL.

Approximately 600 of the redacted documents were produced in response to RFP #7, which seeks documents relating to the location of the negotiation and execution of agreements to provide funding for SCL, including funding through SCL's initial public offering ("IPO"), which was completed in November 2009. Together, defendants have produced over 7600 unredacted documents relating to SCL's initial public offering and the financing of Sites 5 & 6, including audit committee meeting memoranda (*e.g.,* LVS00203529), funding prospectuses (*e.g.*, LVS00129801), offering memoranda (*e.g.,* LVS00113776), and financing analyses for sites 5 and 6 (*e.g.,* SCL00113758). [13] The 600 additional redacted documents from Macau are simply more of the same.

None of these documents provides any insight into the question of where SCL's "nerve center" was located at the only time that counts—when Plaintiff filed his lawsuit in October 2010. SCL was not formed until July 2009 and had no significant assets until November 2009, when VML became an indirect subsidiary of SCL as a result of a reorganization undertaken in connection with SCL's IPO. Moreover, the fact that LVSC was heavily involved in the IPO says nothing about where SCL's principal place of business was located when this lawsuit was brought in October 2010. After all, one of LVSC's other subsidiaries was the selling

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[13] These documents are included in Exhibit C to SCL's Appendix.

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stockholder in the IPO. Given the size and scope of the transaction, it would have been extremely odd if LVSC had ***not*** been deeply involved in the planning for SCL's IPO. In *Doe v. Unocal Corp.*, 248 F.3d 915, 927 (9th Cir. 2001), the Ninth Circuit observed that "[a] parent corporation may be directly involved in financing and macro-management of its subsidiaries. . . without exposing itself to a charge that each subsidiary is merely its alter ego." The same analysis applies to a "nerve center" analysis—a parent corporation may be directly involved in financing and macro-management of its subsidiary without exposing itself to a charge that it controls the subsidiary for purposes of locating the subsidiary's principal place of business.

The remaining redacted documents were produced in response to two categories of RFP's: (i) RFP's #2-5 sought information "reflect[ing] the travels to and from Macau/China/Hong Kong" by Messrs. Adelson, Leven and Goldstein, as well as other LVSC executives and employees, during the period January 1, 2009-October 20, 2010 and (ii) RFP #1 sought "all documents" reflecting the date, time and location of each SCL Board meeting during that period, the location of each Board member who participated, and the manner/method by which they participated. By their very nature, these are all objective questions, which can be 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.

In fact, Plaintiff 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 knew the facts concerning these trips, he had no need for additional documents from SCL identifying when particular individuals arrived in or left Hong Kong or Macau. The 160 or so redacted documents that SCL produced in response to RFP's ##2-5 were entirely cumulative, dealing with such mundane issues as rearranging the time for a limo pick-up at the Hong Kong airport in light of an earlier arrival (SCL00108450), rescheduling a lunch meeting

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in Macau (SCL00108539), and requests for hotel reservations in Macau (SCL00108968).[14] These kinds of documents are of no importance to the issue of jurisdiction. In any event, with the consents obtained from Messrs. Adelson, Leven, Goldstein and Kay, Plaintiff now has these kinds of documents as well, without redactions of the four deponents' names and other personal information.

The final category of documents—the location of SCL Board meetings—is undoubtedly relevant to the "nerve center" analysis. Indeed, it is the ***only*** category of documents that Plaintiff sought that is relevant to his theory. But there too Plaintiff had no need for the redacted SCL documents to determine the location of those meetings. 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 person and by telephone.[15] Defendants also produced minutes of all of the SCL Board meetings within the period Plaintiff selected, which generally contain information about attendance and whether the meeting was in-person or via teleconference.[16] As these documents show, Jacobs himself was present at all of the meetings prior to his termination in July 2010 and thus has personal knowledge of when, where and how the meetings were conducted.

SCL produced another 230 redacted documents from Macau that were responsive to RFP #1. But again the redacted documents add nothing of significance and were not necessary to ensure that Plaintiff obtained the simple information he sought in RFP #1—the location of

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[14] SCL00108450 and 00108539 are included in Exhibit B to SCL's Appendix. SCL00108968 is included in Exhibit C.

[15] The meeting notices (LVS00123450, LVS00137693, LVS00137694, LVS00127435, LVS00220725, LVS00220328, LVS00220278, LVS00220243, LVS00240531, LVS00126799, LVS00234165) show that all in-person meetings were held either in Macau or in Hong Kong. These documents are included in Exhibit B to SCL's appendix.

[16] LVSC produced minutes for SCL Board meetings without any MPDPA redactions for the meetings 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 (LVS00117236), and August 26, 2010 (LVS00265528). The foregoing are included in Exhibit C to SCL's Appendix.

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Board meetings and attendees. Many of the redacted documents involve emails between SCL personnel discussing the logistics of in-person Board meetings in Macau. *See, e.g.,* SCL00101578 (noting that for the April 30, 2010 meeting, there would be 11 people for lunch); SCL00107765 (asking, in advance of the July 27, 2010 meeting, "[w]hat time is their lunch?").[17] Others are emails among SCL personnel preparing for Board meetings. *See, e.g.*, SCL00105336, SCL00106228, SCL00106260 (internal SCL emails exchanged regarding draft operating plan).[18] To the extent the documents have any even marginal significance, the redactions of personal data do not obscure any of the relevant facts surrounding either the location of the SCL Board meetings, the information provided to the Board, or the subjects that were discussed.

2. Plaintiff's Requests Were Not "Specific."

The second factor the Court must consider is whether the document requests were "specific." The *Linde* case is again instructive. In that case, the plaintiffs had requested "highly specific" account information from the defendant bank that was "essential" to prove their allegations that the bank had knowingly and intentionally aided and abetted terrorist activities. 269 F.R.D. at 193. Here, by contrast, Plaintiff's requests for documents were broad and generalized. Furthermore, Plaintiff insisted on obtaining documents from SCL in Macau in response to ***all*** of his RFP's even though he had already gotten the answers he sought from documents located in the U.S. that LVSC produced in unredacted form. Plaintiff's requests for documents regarding the travels of Messrs. Adelson, Leven, and other LVSC executives and the location of SCL Board meetings illustrate the point. Plaintiff already knew, before SCL produced documents from Macau, who traveled there and when; he also knew where and when the SCL Board meetings were held. Nevertheless, he insisted on discovery of "all documents" that related to those topics—despite the fact that the additional documents could not possibly provide him with any additional information.

3. All Of The Documents Originated In Macau.

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[17] These documents are included in Exhibit B to SCL's Appendix.

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This is not a case where a U.S. entity is attempting to hide behind foreign laws to shield documents that originated or are located in the United States. All of the documents that contain personal data redactions originated in Macau and were in the custody or control of SCL's operating subsidiary, VML, in Macau. To the extent that duplicates or near-duplicates could be located in the United States, they were produced without any MPDPA redactions. Similarly, to the extent that documents that had originated in Macau had already been transferred to the United States (such as the image of Plaintiff's hard-drive that was copied and transferred to the United States in 2010), they were searched and produced without any MPDPA redactions. Thus, the only documents SCL produced with MPDPA redactions were documents that originated in Macau and could be located only in Macau.

4. There Were Many Alternative Means For Plaintiff To Obtain The Information He Sought.

In the *Linde* case, the district court imposed evidentiary sanctions on the defendant bank not only because the information it withheld was essential to the plaintiffs' case, but also because the plaintiffs there had no other reasonable means of obtaining the information in question. 269 F.R.D. at 193. Here, by contrast, Plaintiff had already obtained all of the information he sought that is relevant to his current jurisdictional theory from the production of documents in the United States even before SCL produced any documents from Macau. Furthermore, after SCL produced documents with MPDPA redactions in January 2013, Defendants took additional steps to minimize the impact of those redactions.

First, SCL's contract lawyers in Macau created a 163-page redaction log, which identified for each redacted document the entity or entities that employed the persons whose personal data was redacted. That redaction log providers a reviewer with a number of important pieces of information.[19] A reviewer can use it to identify documents that were only circulated internally among SCL employees. For example, SCL00110538 is a January 22, 2010 email

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[18] These documents are included in Exhibit C to SCL's Appendix.
[19] Because the redactions were done by Macanese lawyers before the documents were transferred to the United States, SCL's U.S. lawyers know no more about the redacted documents than Plaintiff's lawyers do.

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from an SCL executive to various SCL employees noting that the next SCL Board meeting was scheduled for February 9, 2010 and that SCL's "Senior Management" needed to address certain points through documents and presentations to be circulated to the Board before the meeting.[20] The log also enables a reviewer to determine whether LVSC employees or SCL directors were involved in an exchange. One example is SCL00100529, which is an email string regarding the scheduling of a meeting of the SCL Board's Audit Committee in conjunction with the Board meeting in Macau on July 27, 2010.[21] The log explains that the top email (which notes a revised time for the meeting) was from one SCL employee to another. It also explains that the individuals whose names were redacted in the series of emails below worked for LVSC and SCL, as well as for the various entities that employ the outside directors who served on the Audit Committee. The log also allows a reviewer to see when there were communications with individuals employed by third parties. For example, SCL00100184 is an email chain between SCL employees and employees of Goldman Sachs concerning a planned tour and events scheduled for potential investors in Macau in March 2010.[22] In most cases the redaction log will provide a reviewer with all of the information necessary to analyze the document's relevance to the only general jurisdiction theory Plaintiff has left—where SCL's "nerve center" was located.

The second step SCL took was to request LVSC to search for duplicates and near-duplicates of the redacted documents in the United States. LVSC was able to locate some identical documents through an automated process using metadata, but it had to search for other documents using a more labor-intensive process.[23] When documents were found in the U.S., Defendants provided Plaintiff with unredacted replacement documents with the same SCL Bates numbers. This process resulted in the replacement of more than 2100 documents

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[20] SCL00110538 is included in Exhibit B to SCL's Appendix.

[21] SCL00100529 is included in Exhibit B to SCL's Appendix.

[22] This document was produced in response to RFP #7, which sought all documents reflecting the location of the negotiation and execution related to the funding of SCL. It is included in Exhibit C to SCL's Appendix.

[23] This is due to the fact that SCL's lawyers outside Macau do not have access to identifying information and thus had to search for individual documents by using search terms and then manually comparing the results to the redacted version of the document.

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produced in early 2013 with unredacted documents found in the U.S., in addition to the approximately 950 unredacted documents SCL had originally produced.[24]

Third, in its February 25, 2013 Opposition to Plaintiff's Renewed Motion for Sanctions (at 25-26), Defendants offered to take additional steps if Plaintiff identified specific redacted documents that were relevant to jurisdiction for which they needed more information. Specifically, Defendants offered either to conduct additional searches for a duplicate or near-duplicate of such documents in the U.S. or to have Macanese lawyers seek consent of the person or persons whose information was redacted. Plaintiff chose not to take Defendants up on this offer. That alone demonstrates that Plaintiff has no real interest in obtaining unredacted versions of relevant documents, but rather hopes to use the dispute over MPDPA redactions to gain an advantage in the litigation.

Finally, in light of the narrowing of Plaintiff's general jurisdiction theories to a "nerve center" theory and in a show of good faith, Defendants secured MPDPA consents from the four individuals Plaintiff chose to depose who, according to Plaintiff, were responsible for directing and controlling SCL from Las Vegas.[25] Thus, Plaintiff now has documents from Macau in which the personal data for these four individuals is unredacted. Plaintiff could have had the documents with his own personal data unredacted as well, but he ***refused to waive the protections of the MPDPA by consenting to having his personal data transferred to the U.S.***[26] That refusal once again shows that Plaintiff has no genuine interest in obtaining information

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[24] As the Court may recall, in his Renewed Motion for Sanctions, Plaintiff offered 15 documents in support of his assertion that the MPDPA redactions made SCL's production "unintelligible." But Plaintiff had ***eleven*** of those documents in unredacted form even before he filed his motion. The other four documents, while still redacted, provided sufficient information so that it was obvious that they were not relevant to any conceivable jurisdictional theory—even if they were technically responsive to Plaintiff's broad RFP's.

[25] These consents are included in Exhibit B to SCL's Appendix as are SCL's request for Plaintiff's consent and the letter from Plaintiff's counsel refusing to do so.

[26] It is still not practical to attempt to secure consents from all of the many individuals whose names and other personal information were redacted from the documents—particularly since the MPDPA requires each individual to "freely" give "specific" and "informed" consent to have his or her personal data processed. The OPDP specifically warned VML that "in the employment relation, it is particularly important to pay special attentions to whether the data subject is influenced by his or her employer and might not freely make choices." *See* OPDP August 8, 2012 Letter at 10-11. Under these circumstances, VML could not have sought a blanket consent to

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relevant to his "nerve center" theory, but instead seeks to manufacture a discovery tort in the transparent hope of avoiding having to litigate the merits of that theory. For if Plaintiff had not refused his consent, he would have documents that unredacted not only his own name everywhere it appeared, but also the names of Messrs. Adelson, Goldstein, Leven and Kay. Together, that information would have provided all of the facts necessary to prove—or disprove—his theory that SCL's "nerve center" was in Las Vegas, rather than Macau.

5. The Balance Of Interests Between The U.S. And Macau Weighs Heavily In Favor Of Respecting Macau's Interest In Protecting Personal Data.

SCL's MPDPA redactions do not undermine any important interest of the United States, but punishing SCL for making those redactions—and thus pressuring it to disobey Macanese law—would undermine important privacy interests that the Macanese government clearly feels very strongly about.

The U.S. interest in discovery disputes in civil cases is ordinarily relatively low. *See In re Westinghouse Elec. Corp. Uranium Contracts Litig.*, 563 F.2d 992, 999 (10th Cir. 1977).[27] That is particularly true in a case like this, where the party from whom discovery is sought is a foreign corporation that is disputing whether the court even has jurisdiction over it. Although there is case law allowing a plaintiff to obtain discovery over a foreign corporation on the issue of jurisdiction, basic principles of comity require a court to ensure that such discovery is undertaken with appropriate deference to the interests of a foreign sovereign. *Daimler AG* reinforces that conclusion, both by noting the "risks to international comity" posed by an "expansive view of general jurisdiction" and by indicating that an assertion of general jurisdiction ordinarily should not require "much in the way of discovery . . . to determine where a corporation is at home." 134 S.Ct. at 762.

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disclosure from employees of VML or SCL.

[27] Although *Linde* is also a civil case, the court there found that "important interests of the United States would be undermined by noncompliance with the discovery orders issued by the court. . . . [T]hose interests are articulated in statutes on which some of the claims in this litigation rest: Congress has expressly made criminal the providing of financial and other services to terrorist organizations and expressly created a civil tort remedy for American victims of international terrorism." *Linde v. Arab Bank PLC*, 463 F.Supp.2d 310, 315 (E.D.N.Y. 2006) (internal quotation marks omitted) (magistrate's reasoning adopted by the district court in *Linde*, 269 F.R.D. at 193.

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By contrast, sanctioning SCL would significantly undermine important policies adopted by the government of Macau to protect personal data from disclosure. In *Societe Nationale Industrielle Aerospatiale v. United States District Court*, 482 U.S. 522, 546 (1987), the U.S. Supreme Court observed that American courts should "take care to demonstrate due respect for any special problem confronted by [a] foreign litigant on account of its nationality or the location of its operations, and for any sovereign interest expressed by a foreign state."

In briefing in the Nevada Supreme Court, Plaintiff argued for the first time that SCL had not proven that the redactions were actually required or that it faced any real punishment if it violated the MPDP's restrictions. But by refusing to consent to the transfer of his personal data, Plaintiff himself invoked the protections of the MPDPA. Furthermore, Plaintiff's own counsel has recognized that businesses that operate in Macau must follow the requirements of the MPDPA, by interposing the MPDPA as an objection to discovery on behalf of Wynn Resorts in *Wynn Resorts, Ltd. v. Okada*, No. A-12-656710-B, which is pending before this Court. *See* Ex. B to SCL's Appendix, Wynn Resorts, Ltd.'s 12/18/14 Responses and Objections to Second Request for Production of Documents (objecting on the ground that "to the extent the Request seeks documents from Wynn Macau that reside only in Macau, the Request seeks documents containing personal information of third parties protected by the Macau Personal Data Protection Act"). Having relied on the MPDPA as a basis for objecting to U.S. discovery in another case, Plaintiff's counsel should not be heard to argue here that the MPDPA did not actually require SCL to redact personal data from documents that reside only in Macau before producing them in the U.S.

In any event, the record here demonstrates that the MPDPA stands as a very real obstacle to the production of documents from Macau. As the "data controller," VML is responsible for all of the data housed on its servers in Macau, including SCL documents. Beginning in May 2011, representatives of VML had a number of communications and meetings with OPDP, which is responsible for administering the MPDPA, regarding the collection, review and transfer of documents to respond to (among other things) production requests made to SCL in this case. In those communications, OPDP instructed VML that

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personal data of any kind could not be transferred outside of Macau absent either consent by the data subject or advance consent from OPDP. VML sought OPDP's advance consent in a letter dated June 27, 2012. But OPDP denied VML's request on August 8, 2012, telling VML that SCL's lawyers were not even permitted to ***review*** documents in Macau that are subject to the MPDPA in order to determine whether they are responsive to U.S. discovery requests.[28]

Shortly before OPDP advised VML that its request had been rejected, LVSC announced that VML was under investigation by OPDP for previous data transfers to the United States.[29] On the heels of that announcement, Francis Tam, Macau's Secretary for Economy and Finance, was quoted in the press as stating that if OPDP found "any violation or suspected breach" of the MPDPA, the government "will take appropriate action with no tolerance. Gaming enterprises should pay close attention to and comply with relevant laws and regulations."[30]

After this Court issued its September 14, 2012 Order, SCL's new counsel flew to Macau in the hope of persuading OPDP to change its position, which would have made it impossible for SCL to produce any documents from Macau. On November 29, OPDP relented in part, giving VML permission to review documents containing personal data by automated means for responsiveness so long as Macanese lawyers reviewed all potentially responsive documents and redacted any personal data (or obtained individual consents) before those documents were transferred out of Macau. VML complied with the OPDP's directive when the Court ordered SCL to produce documents on an expedited basis, by January 4, 2013.

On April 16, 2013, the OPDP concluded its investigation into the 2010 processing and transfer of plaintiff's email and other electronically stored information to the United States by imposing administrative penalties totaling 40,000 patacas on VML. Although the fine (equivalent to $5,000) was relatively modest, the warning was unmistakable. OPDP reiterated

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[28] The correspondence between VML and the OPDP is collectively attached as Exhibit E to SCL's Appendix. These letters are authenticated by the affidavit and Declaration of David Fleming, collectively attached as Exhibit F to SCL's Appendix.

[29] *See* 8-K filing attached as Exhibit G to SCL's Appendix.

[30] *See* articles attached as Exhibit H to SCL's Appendix.

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that a data controller like VML may "transfer the data [outside of Macau] only after notifying [the OPDP], [and] having received a decision or obtained an authorisation from [OPDP]." Having been the subject of one investigation, which resulted in a penalty, VML clearly would have risked much more severe penalties, including substantially higher penalties and even imprisonment of the responsible parties for up to one year, had it chosen to transfer documents outside Macau in violation of the conditions OPDP imposed.[31]

There is no American interest in imposing sanctions in an attempt to force a company doing business in Macau to violate Macanese disclosure law. That is particularly true when the information Plaintiff seeks is not relevant to the only issue currently before the Court.

* * * *

For all of these reasons, the balancing test the Nevada Supreme Court directed this Court to apply leads to the conclusion that no sanctions should be imposed on SCL for redacting personal data from the documents it produced in January 2013. At the very least, there is no even colorable basis for the kinds of drastic sanctions Plaintiff has suggested.

B. Traditional Rule 37 Standards Also Support Denial Of The Sanctions Plaintiff Seeks.

1. There Was No Willful NonCompliance With The Court's Orders.

"Under NRCP 37(b)(2), a district court has discretion to sanction a party for its failure to comply with a discovery order, which includes document production under NRCP 16.1." *Clark Co. School Dist. v. Richardson Const. Co.,* 123 Nev. 382, 391; 168 P.3d 87, 93 (2007). But a district court can impose sanctions "only when there has been ***willful noncompliance*** with the discovery order or willful failure to produce documents as required under NRCP 16.1." *Id.* (emphasis added). "In order for an act to constitute willfulness, the court's order must be clear ***with no misunderstanding of the intent of the order*** and, further, there is ***no other factor beyond the party's control which contributed to the non-compliance***." *LeGrande v. Adecco*, 233 F.R.D. 253, 257 (N.D.N.Y. 2005) (emphasis added).

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[31] *See* Articles 30 through 44 of the MPDPA. The English translation of the MPDPA provided by the Macau government is attached as Exhibit I to SCL's Appendix.

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In this case, the Court's September 14, 2012 Order did not unambiguously prohibit SCL or VML from complying with OPDP's direction to redact personal data from documents before they were transferred out of Macau. The Court precluded the Defendants from raising any objection or defense to the "admission, disclosure or production" of any document based on the MPDPA. But there was no mention of redactions of personal information from documents produced from Macau. Furthermore, SCL specifically told the Court in December 2012 about VML's communications with OPDP, including OPDP's directive that no documents containing personal data be transferred out of Macau absent redaction or consent. After some discussions, the Court seemed to agree that MPDPA redactions were permissible when it ordered SCL to produce the documents at issue here on an expedited basis. 12/18/12 H'ring Tr. at 24:12-27:18. That should be enough, in and of itself, to demonstrate that the Court's September Order was at least ambiguous, precluding the imposition of sanctions.

From his list of witnesses for the sanctions hearing, it appears that Plaintiff intends to attempt to delve into SCL's subjective understanding of the Court's September 2012 order. *See* Plaintiff's Witness List at 2 (naming an SCL "designated witness" to testify concerning SCL's "claims" that the September 14, 2012 and December 18, 2012 orders were ambiguous or permitted MPDPA redactions).[32] That, however, would necessarily intrude into work product and attorney-client privilege, which SCL does not intend to waive. Thus, in deciding whether SCL acted in good faith, the Court should view its orders objectively, considering whether a reasonable person in SCL's position would have found them at least ambiguous on the question of whether personal data could be redacted from documents that were located only in Macau in order to comply with the MPDPA.[33]

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[32] As Defendants have argued in their motion to quash—and as the Court ruled in August 2012—Plaintiff cannot demand the presence of a designated corporate representative at an evidentiary hearing. *See* 8/29/12 Hearing Tr. at 23:20-21 (granting motion for protective order "with respect to the 30(b)(6) witness. 30(b)(6) is a discovery device, not a device to compel attendance at evidentiary hearings or trials").

[33] No adverse inferences can be drawn from SCL's decision not to waive the privileges and work product protection afforded to it by Nevada law, under NRS 49.095 and Nevada Rule of Civil Procedure 26(b)(3). *See, e.g., Nabisco, Inc. v. PF Brands, Inc.*, 191 F.3d 208, 226 (2d Cir. 1999) (there is "no precedent supporting . . . an [adverse] inference based on the invocation of the attorney-client privilege"). In its September 14, 2012 Order, the

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That analysis supports the conclusion that the Court's orders were at least ambiguous. Apart from the language of the September order and the colloquy in December 2012, the context in which the September order was issued suggests that it was not aimed at precluding SCL from complying with the MPDPA by redacting personal data on documents that had *not* been transferred to the U.S. "[I]mplicit in the district judges' authority to sanction is that the district judge must design the sanction to fit the violation." *City of Sparks v. Second Judicial District*, 112 Nev. 952, 920 P.2d 1014, 1016 (1996). Here, the violation was defendants' failure to volunteer at an earlier point in time that LVSC had transferred Jacobs' ESI and other documents from Macau to Las Vegas. Forcing *SCL* to violate the MPDPA in the future with respect to documents that had never been transferred to the U.S.—or imposing additional sanctions on it for refusing to do so —simply would not fit that violation.

In any event, the fact that OPDP required VML to redact personal data as the price of being able to transfer documents to the U.S. demonstrates that there were factors beyond SCL's control that contributed to any non-compliance with the Court's orders. In *Societe Internationale Pour Participations Industrielles et Commericales, S.A. v. Rogers*, 357 U.S. 197, 211 (1958), the Supreme Court noted that "[i]t is hardly debatable that fear of criminal prosecution constitutes a weighty excuse for nonproduction, and this excuse is not weakened because the laws preventing compliance are those of a foreign sovereign." Yet that is precisely what VML and/or its directors would have faced had they decided to disobey the directives VML received from OPDP.[34]

That the threat of sanctions was real is apparent from how SCL and VML behaved.

Court stated that it had not drawn adverse inferences from LVSC's assertions of privilege and work product protection. Order at 2, n.1. Unfortunately, however, the Court did just that in erroneously concluding (at 6) that a July 2011 change in corporate policy restricting LVSC's access to SCL data that was subject to the MPDPA "was made with an intent to prevent the disclosure of the transferred data as well as other data." The Court also appears to have drawn improper inferences from the assertion of attorney-client privilege in concluding that "Defendants and their agents" engaged in varying "degrees of willfulness" in "concealing the existence of the transferred data and failing to disclose the transferred data to the Court."

[34] Although VML is SCL's subsidiary, VML has its own Board with its own fiduciary duties. Because VML was and 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 would have had the power to compel VML to violate OPDP's directives had

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Having Macanese counsel review and redact personal data added an enormous cost burden to the document production process. If SCL and VML could have produced the documents without those redactions, they could have transferred the documents to the U.S. for review, produced those that were not privileged, and avoided any possibility of a renewed sanctions motion. Instead, SCL sent FTI to Macau to prepare the electronic documents for review, and VML hired nearly two dozen Macanese lawyers over the Christmas holidays to conduct the initial review and redact the documents before they were transferred out of Macau. Then SCL incurred even more costs to produce the redaction log, and LVSC incurred significant additional costs hunting for duplicate or near-duplicate documents in the United States that could be produced without redactions. The evidence will show that the cost of these procedures, which enabled SCL to comply with the MPDPA while producing as much unredacted information as possible, exceeded $2.4 million.[35] That alone proves that SCL acted in good faith, by taking extraordinary steps to meet its obligations to this Court while at the same time not trying to force VML to violate its obligations under Macanese law.[36]

2. Plaintiff's Ability To Make His Case On Jurisdiction Was Not Prejudiced.

In any event, the conduct at issue here cannot possibly warrant the sanctions Plaintiff requests. For the reasons outlined above, SCL did not act in bad faith. And Plaintiff's ability to make his jurisdictional case was not compromised because the redacted personal data—and in most cases the documents themselves—are simply not relevant to any viable jurisdictional theory. This lack of jurisdictional relevance makes the notion that SCL acted in bad faith, out of some desire to conceal documents, even more far-fetched. If SCL had been trying to hide information by redacting documents, FTI would not have conducted a search for whatever

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it chosen to do so.

[35] *See* Declaration of Jason Ray, attached as Exhibit J to SCL's Appendix.

[36] Whether SCL acted in good faith in this respect is again an issue that the Court should decide based on the objective facts, rather than attempting to determine who ultimately made the decision to proceed as SCL did and then trying to figure out whether that person acted with subjective good faith. As SCL has already explained, an inquiry into those issues would necessarily invade attorney-client privilege and work product protections, which SCL will not waive. For the reasons outlined above, the Court may not draw any adverse inferences from SCL's assertion of privilege.

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duplicates existed in the U.S. SCL also would not have obtained consents from the four deponents or attempted to obtain Plaintiff's consent. Nor would it have repeatedly offered to take additional steps to try to find duplicates of, or seek consents to unredact personal data in, specific documents that Plaintiff identified as having particular relevance to the jurisdictional inquiry.

Under these circumstances, the kinds of extreme sanctions Plaintiff has suggested—such as a finding by the Court that jurisdiction has been established—would be entirely unwarranted and inappropriate. *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee,* 456 U.S. 694, 698 (1982), which Plaintiff typically cites as authority for the proposition that such a sanction ***can*** be imposed, proves the point. In that case, the insurance companies that were resisting jurisdiction had no excuse at all for withholding documents. Indeed, they had promised on a number of occasions to produce documents showing the extent of the business they conducted in the U.S., but never did so. Even then, the court gave the defendants the opportunity to show that they were not subject to the general jurisdiction of the court, but they failed even to attempt to make such a showing.[37] Here, by contrast, Plaintiff obtained thousands of documents without MPDPA redactions in response to his document requests; the relatively small amount of information that has been withheld based on the MPDPA will have no impact whatsoever on his ability to prove his remaining general jurisdictional theory.

For the same reasons, evidentiary sanctions would also not be appropriate here. In *Linde*, the district court sanctioned the defendant bank for its failure to produce documents by allowing the jury to make adverse inferences as to what was in those documents and precluding the bank from introducing evidence that the withheld documents might have been offered to contradict. But the court selected that sanction because the plaintiffs had shown both that the withheld documents were "essential" and that it was likely that those documents would have

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[37] The plaintiff in that action sought to prove that the foreign insurance companies did business in the forum by writing policies there. Ironically, under *Daimler AG,* the discovery the plaintiff sought would have been irrelevant to jurisdiction.

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substantiated plaintiffs' claims. 269 F.R.D. at 196. Here, by contrast, Plaintiff has never even attempted to show (nor could he show) that any of the redacted personal data was likely to substantiate his claim that SCL is "at home" in Las Vegas. Indeed, Plaintiff's current theory—that SCL's "nerve center" is in Las Vegas—proves how unimportant documents that could be found only in Macau truly are. For if Plaintiff cannot prove his "Las Vegas as nerve center" theory based on the thousands of documents that were produced out of ***Las Vegas*** and the testimony of the individuals in Las Vegas on whose presence Plaintiff relies, he could not possibly do so based on names or other personal data that was redacted from documents that could be located only in Macau.

3. SCL Is Not Responsible For The Delay In The Proceedings.

Plaintiff's *modus operandi* in this litigation has been to accuse Defendants of misconduct on a routine basis, in every court paper he files and in every appearance before this Court; to ignore the extensive discovery he has received and act as though Defendants have produced nothing at all; and to blame the 3-1/2 year delay since the Nevada Supreme Court's decision to vacate this Court's jurisdictional ruling on Defendants' supposed recalcitrance. The reality, however, is very different than the fiction Plaintiff relentlessly repeats.

When the Court granted Plaintiff the right to take jurisdictional discovery, it did so based on Plaintiff's representation that he had "tried to narrowly confine what it is that we want to do" with respect to jurisdictional discovery. 9/27/11 H'rng Tr. at 20. The U.S. Supreme Court's decision in *Daimler* confirms that discovery on the issue of general jurisdiction should be narrowly confined; as the Supreme Court observed, it is "hard to see why much in the way of discovery would be needed to determine where a corporation is at home." 134 S.Ct. at 762 n.20. But notwithstanding his representations to the Court, Plaintiff has pursued the broadest possible discovery on the specific topics on which the Court allowed discovery—without regard to whether that discovery is likely to result in any evidence that is evenly remotely relevant to any viable theory of jurisdiction. Furthermore, when SCL's then-counsel attempted to shortcut the need for extensive discovery by offering to stipulate to a detailed set of facts, Plaintiff's counsel refused even to discuss possible stipulations on even the most basic facts (such as travel to and

from Macau and where SCL Board meetings were held).[38]

Once this Court issued its sanctions order in September 2012, Plaintiff dropped any pretense of cooperating in discovery. In hindsight, it is apparent that Plaintiff's entire strategy was to attempt to win the jurisdictional argument through a "discovery tort" rather than on the merits. This strategy should not be countenanced: any jurisdictional determination involving a non-U.S. corporation should be made based on the facts and the law, rather than on litigation gamesmanship.

III.

CONCLUSION

For the reasons outlined above and to be presented at the hearing, no sanctions should be imposed on SCL.

DATED this 6th day of February, 2015.

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[38] See Letter from John Owens, Esq. attached as Exhibit K to SCL's Appendix.

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of February 2015, the foregoing **SCL's MEMORANDUM REGARDING PLAINTIFF'S RENEWED MOTION FOR SANCTIONS** was served on the following parties through the Court's electronic filing system:

ALL PARTIES ON THE E-SERVICE LIST

/s/ Erica Bennett

An employee of Kemp, Jones & Coulthard, LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

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

Defendants.

AND RELATED CLAIMS

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

PLAINTIFF STEVEN C. JACOBS' BRIEF ON SANCTIONS FOR FEBRUARY 9, 2015 EVIDENTIARY HEARING

I. INTRODUCTION

There can no longer be any pretending that Defendant Sands China Ltd. ("Sands China") has not engaged in a longstanding and willful violation of its discovery obligations, including (but hardly limited to) this Court's September 14, 2012, December 18, 2012,[1] and March 27, 2013 Orders. This Court imposed sanctions against Sands China and its Co-Defendant Las Vegas Sands Corp. ("LVSC"), precluding any use of the Macau Personal Data Privacy Act ("MPDPA") as grounds for nonproduction of documents in jurisdictional discovery. That sanction, which Sands China now seeks to circumvent and relitigate, stems from what can only be fairly

[1] The written order was entered January 16, 2013.

characterized as fraud upon the judicial process. Concealing evidence and making false arguments that the MPDPA precluded a production of documents in this action, Sands China and LVSC hid from this Court as well as Jacobs that volumes of highly relevant documents had long been located in the United States. On top of that, all the while that Sands China and LVSC were representing to this Court that the data could not be accessed, their counsel was secretly reviewing that same material while repeating the false representations that the data was inaccessible. There can be no debate as to the wholesale assault upon the integrity of the judicial process.

Sands China deployed false representations about its access and location to evidence for the very purpose of delaying this case. And, it worked. This action has been pending now for over four years. Yet, no merits discovery has occurred, precisely because of Sands China's longstanding and continuing misconduct. Thus, for good reason, this Court precluded Sands China from any further reliance upon the MPDPA for jurisdictional discovery or the jurisdiction hearing.

Contrary to Sands China's apparent hopes, it does not get to relitigate the propriety of that sanction under the guise of debating the consequences for violating the sanctions order. The evidence of Sands China's deceit of the Court has already been determined, as has been the sanction. Sands China's request that it receive a do-over – whether it should be sanctioned for using the MPDPA to delay and obstruct discovery – must fail. Indeed, what Sands China seeks is to undo the prior sanction altogether.[2] Sands China wants to ignore all of the prejudice inflicted upon Jacobs that resulted in the sanction in the first place, and then contend that all that prejudice should be disregarded and only the individual redactions – undertaken in violation of this Court's Sanctions Order – should be considered.

The sad fact is that Sands China has continually disregarded multiple Court orders with the express purpose of delaying this action and denying Jacobs access to long-ago-ordered jurisdictional discovery. From the near inception of this case, Sands China fraudulently employed the MPDPA to obstruct discovery and delay this case. It did so for the simple purpose of trying to

[2] A decision, as the Supreme Court agreed, Sands China and LVSC had failed to challenge in any of their various writ proceedings.

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preclude evidence from coming to light as to its jurisdictional contacts with Nevada. The law presumes prejudice from unnecessary delay and that is certainly true here where the case has largely been frozen for the benefit of Sands China because of its knowing noncompliance.

Because this Court's prior sanction has proven insufficient to bring this intransigent litigant into compliance, the time has come for severe sanctions, including striking its baseless affirmative defense as well as the imposition of other evidentiary and monetary sanctions. Accepting Sands China's present position, it wants to reargue to which documents it should be allowed to enlist the MPDPA. Brazenly, Sands China contends that this Court must examine its entitlement to enlist the MPDPA on a document-by-document basis, as opposed to examining the entirety of its conduct relative to the MPDPA and the prejudice that it has inflicted. In this convenient fashion, Sands China claims that the benefits of noncompliance necessarily outweigh any consequences.

II. STATEMENT OF RELEVANT FACTS

A. The Court's First Sanction Does Not Deter Further Discovery Abuses.

Ever since the Nevada Supreme Court ordered an evidentiary hearing on Sands China's personal jurisdiction defense, it has waged a near endless campaign of discovery obstruction. First, under cover of the MPDPA, Sands China knowingly and purposefully deceived this Court (and Jacobs) regarding the location and review of discoverable information. (Decision and Order, Sept. 14, 2012, on file.) Once it learned of Sands China's deception, the Court convened its first evidentiary sanctions hearing. (*See id.*)

Because Sands China appears to think that it can reargue its ability to rely upon the MPDPA, it bears recalling the conduct it employed against this Court and Jacobs for nearly two years: Sands China claimed that it could not produce any documents in the United States because of the MPDPA and that it would be a long, drawn out process to get any documents out of Macau. It went on to affirmatively represent that all of the documents were located in Macau and that they could not be reviewed in the United States. But, as established at the evidentiary hearing, these representations were repeatedly made to the Court by counsel for Sands China and these representations were false. To the contrary, even before this litigation commenced, Sands China

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had transferred volumes of relevant information to the United States and concealed its existence. Yet, all the while representations were being made of how documents could not be reviewed and accessed here in the United States, counsel was affirmatively reviewing them at the offices of LVSC's in-house counsel. Indeed, LVSC's Director of Information Technology openly admitted that Sands China and LVSC had a free flow of data until the fallout of this litigation and then a "stone wall" was erected so as to preclude access to data for purposes of complying with discovery obligations in this case as well as subpoenas from the United States government.

The Court determined that Sands China's "lack of disclosure appears to the Court to be an attempt to stall discovery, and in particular, the jurisdictional discovery in these proceedings .... Given the number of occasions the MPDPA and the production of ESI by Defendants was discussed there can be no other conclusion than that the conduct was repetitive and abusive." (*Id.* ¶¶ 32-32.) The Court found "willful and intentional conduct with an intent to prevent" Jacobs and the Court from accessing, and ruling upon, discoverable information in the jurisdictional proceedings. (*Id.* ¶¶ 35(a)-(b).) The Court recognized "[t]he delay and prejudice to the Plaintiff in preparing his case is significant ...." (*Id.* ¶ 36.)

In the face of this unprecedented lack of candor and deceit, this Court ordered that "[f]or jurisdictional discovery and the evidentiary hearing related to jurisdiction, Las Vegas Sands and Sands China will be precluded from raising the MPDPA as an objection or as a defense to admission, disclosure or production of any documents." (*Id.* at p. 8(a).) Sands China was also ordered to make a $25,000 contribution to the Legal Aid Center of Southern Nevada and to pay Jacobs' reasonable attorneys' fees. (*Id.* at p. 9(c)-(d).)

B. Sands China Refuses to Produce Documents From Macau and Misleads the Court Again.

Unfortunately, this Court's first round of sanctions did not dissuade Sands China's conduct. It paid a nominal fine but continued to secure delay upon delay, and there have been no consequences ever since. In fact, even two months after the first sanctions were imposed, Sands China admitted that it had not even started producing documents from Macau. As a consequence, Jacobs filed a Motion for NRCP 37 Sanctions and Sands China reactively filed a

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Motion for Protective Order on Order Shortening Time. (Pl.'s Mot. for NRCP 37 Sanction, Nov. 21, 2012, on file; Def.'s Mot. Protective Order, Dec. 4, 2012, on file.)

During the December 18, 2012 hearing, the Court again recognized Sands China's history violating court orders. (Hr'g Tr. at 28:17, Dec. 18, 2012, on file ("Well, they've violated numerous orders.").) In a familiar refrain, the Court was understandably perturbed by Sands China's ongoing runaround by the revolving door of attorneys.

> The Court: I've had people tell me how they're complying. I've had people tell me how they're complying differently, I've had people tell me how they tried to comply but now apparently they're in violation of law. I mean, I've had a lot of things.

(*Id.* at 28:20-23.)

Again confronted with Sands China's continuing stalling and noncompliance, this Court ordered Sands China to produce all documents by January 4, 2013. (Court Minutes, Dec. 18, 2012, on file; Order, Jan. 16, 2013, on file ("Sands China shall produce all information in its possession, custody, or control that is relevant to jurisdictional discovery, including electronically stored information ('ESI'), within two weeks of the hearing, on or before January 4, 2013;").) But even then, the maneuvering continued, with Sands China attempting to renegotiate the consequences of its deception and its prohibited use of the MPDPA. Attempting to hedge, Sands China raised the question of redactions, which this Court made clear it was permitted to do for issues like privilege, but it was not modifying sanctions that the MPDPA was no longer a basis for continuing noncompliance:

> Mr. Peek: Yeah. We need to have redactions as part of that, as well, as that's - - I understood - -
>
> The Court: I didn't say you couldn't have redactions.
>
> Mr. Peek: That's what I thought.
>
> The Court: I didn't say you couldn't have ***privilege logs***. I didn't say any of that, Mr. Peek.

(*Id.* at 27:8:-14.)

Since it had paid a nominal $25,000 fine for its prior affirmative misrepresentations to this Court – and thereby delaying this case for well over a year – Sands China was not deterred from

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continuing noncompliance. At the deadline for production, Sands China represented that it had completed a Holiday miracle: the review and production of 5,000 documents. Of course, if this were true, then Sands China simply was admitting that its two years of delay in not complying with discovery in Macau had all been a ruse. If it could have actually complied with the production in just weeks, then it cannot pretend that it had any excuse for noncompliance for over two years.

Sands China filed a "Report on Its Compliance with the Court's Ruling of December 18, 2012." (Def.'s Report on Its Compliance with the Ct.'s Ruling of Dec. 18, 2012, Jan. 8, 2013, on file.) However, Sands China's Report admitted a violation of the Court's September 2012 Order.

> Macau attorneys reviewed each of the documents identified as potentially responsive to determine whether the document was, in fact, relevant to jurisdictional discovery, and if so, whether it contained any 'personal data' within the meaning of the MPDPA. ***If the documents did contain 'personal data,' the reviewers then redacted that personal information.***

(*Id.* at 7:2-6 (emphasis added).) Sands China boasted that it spent $500,000 to violate the Court's directive. (*Id.* at 7:7-9.) On February 7, 2013, Sands China produced a so-called "Redaction Log" for the 2,680 documents it redacted in violation of the Court's Order. Many of these documents were redacted beyond recognition or use.

Because Sands China's MPDPA redactions plainly violated the Court's September 2012 and December 18, 2012 Orders, Jacobs filed a Renewed Motion for NRCP 27 Sanctions on Order Shortening Time. (Pl.'s Renewed Mot. for NRCP 27 Sanctions on OST, Feb. 8, 2013, on file.) The Court granted Jacobs' Motion and found "Jacobs has made a prima facie showing as to a violation of this Court's orders which warrants an evidentiary hearing." (Order Regarding Pl.'s Renewed Mot. for NRCP 37 Sanctions on OST, March 27, 2013, p. 2, on file.) The Court stated, "Sands China violated this Court's September 14, 2012 Order by redacting personal data from its January 4, 2013 document production based upon the MPDPA . . . ." (*Id.*) The Court ordered Sands China to search and produce records for twenty custodians identified by Jacobs, including Jacobs' Court-approved discovery requests, by April 12, 2013. (*Id.*) The Court reiterated "as

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previously ordered, LVSC and Sands China are precluded from redacting or withholding documents based upon the MPDPA." (*Id.* at p.3.)

C. Sands China's Misdirection at the Nevada Supreme Court.

To secure further delay, Sands China sought writ review at the Nevada Supreme Court, challenging this Court's scheduling of an evidentiary hearing on additional sanctions. Pursuing that relief, Sands China made an incredible representation to the Supreme Court: It claimed that this Court's September 2012 Order did not preclude redactions of documents from Macau because, it says, the Court's order only applied to documents that were already located in the United States. (Pet'rs' Notice of Filing in Related Case Re: Correction of Record of March 3, 2014 Oral Argument at p. 4, March 24, 2014, S. Ct. Case No. 62944, on file.) Sands China went so far as to represent that this Court's September 2012 Order did not pertain to documents that were still located in Macau. (*Id.*) According to Sands China, this Court's sanction was meaningless because the MPDPA sanction only pertained to documents that were located in the United States, while it had already admitted to this Court that the MPDPA did not even apply to documents if they were in the United States.

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

D. Sands China's Continues to Willfully Disregard the Court's Orders.

Although this Court vacated the partial stay of its March 2013 Order after the Nevada Supreme Court's ruling, Sands China's noncompliance and obstruction has continued to this very day. It did not take any steps to remedy its noncompliance, and it has continued to use the MPDPA as a basis for nonproduction notwithstanding this Court's sanctions order which already precludes such redactions. As of October 2014, Sands China admits that approximately

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2,600 documents were improperly redacted. (Def.'s Revised Pre-Hearing Memorandum Re: Pl.'s Renewed Mot. for Sanctions at 3:24-4:1, Oct. 17, 2014, on file.) Confirming that its ongoing contempt is knowing and willful, just last month, January 5, 2015, Sands China produced approximately 7,627 additional documents with MPDPA redactions.

Although Sands China purports to have located some documents in the United States and subsequently produced them without redactions ("replacement images"), a large number of documents allegedly do not have counterparts in the United States. On January 23, 2015, Sands China provided only 569 replacement images related to its production earlier in the month.[3] Its "Second Supplemental Redaction Log" demonstrates that at least 5,876 documents contain MPDPA redactions. Sands China has even made MPDPA redactions to certain "replacement images" allegedly located in the United States and outside the jurisdiction of the MPDPA. Furthermore, the replacement images were effectively produced *after* Jacobs deposed Sands China's witnesses. Thus, these documents were rendered unavailable to Jacobs during the most useful part of discovery.

Sands China's engineered delay of the discovery process[4] has led to the irreplaceable loss of evidence. Key witnesses have left the companies, passed away, or have otherwise disappeared. The unending delay has brought this case to the brink of the five-year rule just as Sands China prefers. Sands China's maneuvering will force Jacobs to rush through merits discovery in an extremely shortened timeframe based upon its attempts to profit from its delays. The time has come for substantial – and meaningful – sanctions. Nothing short of that is going to convince this litigant that it cannot profit from violating Court orders.

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[3] These documents were produced after Sands China represented on December 18, 2012 that "[w]e've given them everything we have in Las Vegas, including the ghost image information of the Jacobs ESI." (Hr'g Tr. at 14:23-25, Dec. 18, 2012, on file.) Given the volume of subsequent productions, Sands China plainly had no basis for making such a representation.

[4] Including the three month holding pattern caused by Sands China's untenable privilege log.

III. ARGUMENT

A. Sands China's Noncompliance is Knowing, Intentional and Longstanding Which Warrants Severe Sanctions.

In *Las Vegas Sands v. Eighth Judicial District Court*, 130 Nev. Adv. Op. 61, 331 P.3d 876, 880 (2014), the Nevada Supreme Court upheld this Court's refusal "to excuse [Sands China] for [its] noncompliance with the district court's previous [discovery] order." The Supreme Court determined that this Court acted well within its jurisdiction and did not act arbitrarily or capriciously in finding that Sands China had violated the Court's discovery orders. *Id.* The High Court also approved this Court's balancing approach wherein this Court indicated that "it intended to 'balance' [Sands China's] desire to comply with the foreign privacy law in determining whether discovery sanctions are warranted . . . ." *Id.* But as the Supreme Court also made clear, Sands China "did not challenge" this Court's Sanctions Order which precluded it from relying upon the MPDPA. *Id.* at 878.

The Nevada Supreme Court explained that "the mere presence of a foreign international privacy statute itself does not preclude Nevada courts from ordering foreign parties to comply with Nevada discovery rules. Rather, the existence of an international privacy statute is relevant to the district court's sanctions analysis in the event that its order is disobeyed." *Id.* Citing the United States Supreme Court's opinion in *Societe Nationale Industrielle Aerospatiale v. United States District Court*, 482 U.S. 522 (1987) and the RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 442(1)(c) (1987), the Supreme Court identified five factors to consider:

> (1) "the importance to the investigation or litigation of the documents or other information requested"; (2) "the degree of specificity of the request"; (3) "whether the information originated in the United States"; (4) "the availability of alternative means of securing the information"; and (5) "the extent to which noncompliance with the request would undermine important interests of the United States, or compliance with the request would undermine important interests of the state where the information is located."

Id. Each of these factors weighs heavily in favor of substantial sanctions.

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1. The MPDPA was repeatedly and continuously misused to bar access to volumes of jurisdictional discovery.

Sands China attempts to neuter this Court's MPDPA sanction by claiming that this Court should only look at its application relative to redactions, as opposed to the nearly two-year delay Sands China secured through its wholesale use of the MPDPA to obstruct all jurisdictional discovery. Through this sleight of hand, Sands China wants to go through document-by-document as to the redactions it used under the MPDPA after years of wholesale obstruction – to argue over whether any single document (considered in isolation) is needed to establish jurisdiction. But of course, that is not the standard. Sands China has secured delay for years through misuse of the MPDPA, and that misuse is ongoing. Had Sands China not misused the MPDPA, the incessant delay would not have occurred.

Documents are considered "important" to the litigation where they are "directly relevant." *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1475 (9th Cir. 1992). "A court need consider ***only the relevance*** of the requested documents to the case; it need not find that the documents are vital to a proper [cause of] action." *Chevron Corp. v. Donziger*, 296 F.R.D. 168, 204-05 (S.D.N.Y. 2013) (quotations omitted) (emphasis added).

Here, there can be no question as to the importance and relevancy to the documents which Sands China obstructed access to through use of the MPDPA relative to establishing jurisdiction. *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014) holds that the proper inquiry "is whether that corporation's affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State." *Id.* at 761 (quotations omitted). Under *Daimler AG*, general jurisdiction will be found in the place of incorporation, the principal place of business, and where the corporate "nerve center" is located and primary decisions are made. *Id.* at 760 (citing *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010)); *see also Hertz Corp.*, 559 U.S. at 92-93 (a corporation's principal place of business is determined by its "nerve center," which is the "place where the corporation's officers direct, control and coordinate the corporation's activities).[5]

[5] *See also Topp v. CompAir Inc.*, 814 F.2d 830, 836 (1st Cir. 1987) ("[T]he method for deciding whether a parent is doing business in a state for the purpose of finding personal jurisdiction can be applied to the analogous issue of determining the principal place of business

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As this Court knows all too well, Sands China enlisted the MPDPA to block access to virtually all evidence relating to personal jurisdiction. It was not until it got caught deceiving this Court as to the MPDPA that virtually any documents were produced by Sands China. Indeed, even if the Court ignored that wholesale misuse, its continuing improper use of the MPDPA to make redactions is also withholding relevant information. For instance, Jacobs requested documents related to the location of Sands China's board meetings and participants, executive travel to Macau, the work of Leven and Goldstein, the decision to obtain financing, the execution of contracts with Nevada entities, decisions related to Parcels 5 and 6, the decision to terminate Jacobs, and other operational decisions. Jacobs also requested documents related to decisions to purchase goods, services, or financing, which are relevant to determining the location of Sands China's headquarters and nerve center.[6]

The redacted personal data obstructs Jacobs from ascertaining who attended the board meetings in person or telephonically; who traveled to Macau and from where; who made daily decisions, where were they made, to whom were the decisions communicated, and to which location were the decisions communicated. Moreover, the redacted documents and personal data are relevant to Jacobs' "agency theory" of jurisdiction. *Daimler AG* did not eliminate the agency theory of personal jurisdiction. The Supreme Court only rejected the Ninth Circuit's "less rigorous" approach based upon the "importance" of the activity and hypothetical readiness to

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for diversity jurisdiction."); *Suzanna Sherry, Don't Answer That! Why (and How) the Supreme 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).

[6] Merely entering into agreements in the forum may not give rise to general jurisdiction, but demonstrating where the decision was made to enter into the contracts is relevant to establishing a corporation's nerve center. Sands China's continued reliance on *Martinez v. Aero Caribbean*, 764 F.3d 1062 (9th Cir. 2014), is unavailing. In *Martinez*, a 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.* By contrast, every decision is made in Nevada which, in conjunction with its contractual activities, confers jurisdiction in Nevada.

perform. *See Daimler AG*, 134 S. Ct. at 759 ("Daimler argues, and several Courts of Appeals have held, that a subsidiary's jurisdictional contacts can be imputed to its parent only when the former is so dominated by the latter as to be its alter ego . . . . But we need not pass judgment on invocation of an agency theory in the context of general jurisdiction, for in no event can the appeals court's analysis be sustained."). The redacted personal information is relevant to determining who was acting as an agent of whom and from where.

As this Court has already observed, the redacted documents and information are relevant to jurisdictional discovery and merits the imposition of sanctions. After all, each of these documents was triggered by the jurisdictional search terms confirming that they satisfy the requirement of "relevancy." (*See* Hr'g Tr. at 27:22-23, Aug. 14, 2014, on file ("I've already made a determination that you should produce them. You said you're not going to. I said, okay, that's bad, I'm going to sanction you.").)

2. Jacobs' discovery requests were specific.

Predictably, Sands China next tries to relitigate the propriety of Jacobs' discovery requests, pretending as though this Court has not already done so. Yet, on September 27, 2011, the Court held a hearing on Jacobs' Motion to Conduct Jurisdictional Discovery. (Order Re: Pl.'s Mot. to Conduct Jurisdictional Discovery & Def.'s Mot. for Clarification, March 8, 2012, on file.) The Court detailed the documents to which Jacobs is entitled. (*See generally id.*) The Court granted Jacobs' document requests regarding the following:

(1) The date, time, and location of each Sands China Board meeting, the location of each Board member, and how they participated in the meetings;

(2) Travels to and from Macau/China/Hong Kong by Adelson, Leven, Goldstein, and/or *any other LVSC executive* who has had meetings related to Sands China, provided services to Sands China or traveled to Macau/China/Hong Kong for Sands China business;

(3) Leven's service as CEO of Sands China and/or the Executive Director of Sands China Board of Directors;

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(4) The negotiation and execution of agreements for the funding of Sands China that occurred, in whole or in part, in Nevada.

(5) Contracts/agreements that Sands China entered into with entities based in or doing business in Nevada;

(6) The work Robert Goldstein performed for Sands China, including while acting as an employee, officer, or director of LVSC;

(7) Shared services agreements;

(8) Memoranda, emails, and/or other correspondence that reflect services performed by LVSC on behalf of Sands China;

(9) Work performed on behalf of Sands China in Nevada including, but not limited to, documents related to Cirque du Soleil and Harrah's;

(10) Reimbursements made to any LVSC executive for work performed or services provided related to Sands China; and

(11) Documents provided to Nevada gaming regulators.

(*Id.*) The Court also denied some of Jacobs' discovery requests. (*Id.*)

Thus, all of Jacobs' document requests were already vetted by this Court and sufficiently specific. Sands China's attempt to characterize Jacobs' approved discovery requests as "broad and generalized" is simply revisionist history attempting to manufacture an excuse for its knowing contempt of this Court's Orders. (Def.'s Revised Pre-Hearing Memorandum at 14:18-19.); *See Pershing Pac. W., LLC v. MarineMax, Inc.*, No. 10-CV-1345-L DHB, 2013 WL 941617, at *7 (S.D. Cal. Mar. 11, 2013) (finding discovery requests sufficiently specific where "the Court has imposed limitations on the scope of production for several of the Requests.").

3. Sands China redacted documents originating from the United States.

Sands China incorrectly states that "the only documents SCL produced with MPDPA redactions were documents that originated in Macau and could be located only in Macau." (*Id.* at 15:7-8.) It claims that it located duplicates and near duplicates in the United States and produced them without MPDPA redactions. (*Id.* at 15:3-4.) However, a number of documents produced as "replacement images" from the United States contain MPDPA redactions.

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Sands China is not employing the MPDPA to redact only documents emanating from Macau. It is utilizing the blocking statute to redact documents purportedly produced from this jurisdiction. This practice is inappropriate even under Sands China's own tortured interpretation of the MPDPA.

Furthermore, "where the information cannot be *easily obtained* through alternative means, the origin of the information can be counterbalanced with the inability to obtain the information through an alternative means, thus favoring disclosure." *Chevron Corp.*, 296 F.R.D. at 206 (S.D.N.Y. 2013) (emphasis in original, internal quotations omitted). But, as this Court already knows, none of the documents were "easily obtained" through alternative means. It was only after Sands China had got caught deceiving Jacobs and this Court that any of the documents were produced. Incredibly, Sands China wants to pretend that the Court can ignore the years of delay Sands China achieved through that course of conduct.

4. Sands China fails to prove that alternate means are available..

Sands China further misstates the law when it suggests that alternate means are available to obtain the redacted information. That is not what the law contemplates. "[T]he alternative means must be 'substantially equivalent' to the requested discovery." *Richmark Corp.*, 959 F.2d at 1475. Even if some documents can be obtained from the United States, there is no legitimate alternative means of securing the information when there is difficulty in obtaining *all* documents and when some of the requests do not relate to communications with other parties. *Pershing Pac. W., LLC*, 2013 WL 941617, at *8. Sands China must show that its feigned alternatives are substantially equivalent to the requested information. *See In re Air Crash at Taipei, Taiwan on Oct. 31, 2000*, 211 F.R.D. 374, 378 (C.D. Cal. 2002) ("However, defendant has not shown that the ASC report is substantially equivalent to the requested documents.")

In this case, Jacobs has no alternative means of obtaining "substantially equivalent" information. While some duplicative documents were located in the United States, and were produced without MPDPA redactions, Sands China admits that *thousands* of documents have no counter-part in the United States and will not be produced without redaction. Jacobs has no other method of obtaining the personal data identifying the decision-makers, attendees, senders,

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recipients, of subject(s) of the documents and communications. Sands China's so-called redaction logs are not an adequate substitute. The entity that created a document, or sent and received a communication, is not as important as the precise identity of the individuals involved. A directive from the Chairman is more relevant to the jurisdictional "nerve center" analysis than an email from a slot host.

And, the belated MPDPA consents from *only four witnesses* proves the point. These four witnesses were apparently involved in a suspiciously low number of email communications and thousands of other relevant documents involved people that Sands China has not even attempted to ask for consent. Sands China admits it has not made any other efforts to obtain MPDPA consent. Instead, it shrugs, "[i]t is not practical ***to attempt*** to secure consents from all of the ***many*** individuals whose names and other personal information were redacted from documents . . . ." (Def.'s Revised Pre-Hearing Memorandum at 17 n.16 (emphasis added).)[7] If it is not practical for Sands China to obtain consents, then it is not a substantially equivalent alternative. *See United States v. Vetco Inc.*, 691 F.2d 1281, 1290 (9th Cir. 1981) ("It is not substantially equivalent because of the cost in time and money of attempting to obtain those consents.").

5. The United States' interest outweighs Macau's supposed interests.

The balance of national interests is the most important factor. *Richmark Corp.*, 959 F.2d at 1476. The United States has a "substantial" interest in "vindicating the rights of American plaintiffs" and a "vital" interest "in enforcing the judgments of its courts." *Id.* at 1477. "[T]he United States has a substantial interest in fully and fairly adjudicating matters before its courts, [and] [a]chieving that goal is only possible with complete discovery." *Chevron Corp.*, 296 F.R.D. at 206 (internal quotations omitted).

When considering the strength of Macau's interests, the Court must consider "'expressions of interest by the foreign state,' 'the significance of disclosure in the regulation . . . of the activity in question,' and 'indications of the foreign state's concern for confidentiality ***prior to the controversy***.'" *Richmark Corp.*, 959 F.2d at 1476 (quoting RESTATEMENT (THIRD) OF FOREIGN

[7] Assuming *arguendo* that consent under the MPDPA must be "freely" given, Sands China has not made any efforts – gentle or otherwise – to obtain consents.

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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.

Case Number: 67271

District Court Case Number A627691-B

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

Volume XV of XXXIII (PA2849 – 3095)

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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 XV of XXXIII (PA2849 – 3095)** 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
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Respondent

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DATED this 20th day of March, 2015.

By: /s/ PATRICIA FERRUGIA

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

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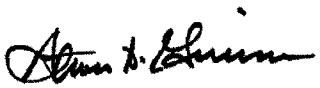

CLERK OF THE COURT

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 RE VICKERS REPORT AND PLAINTIFF'S MOTION FOR SETTING OF EVIDENTIARY HEARING

TUESDAY, JANUARY 6, 2015

APPEARANCES:

FOR THE PLAINTIFF:	JAMES J. PISANELLI, ESQ. TODD BICE, ESQ. DEBRA L. SPINELLI, ESQ. JORDAN T. SMITH, ESQ.
FOR THE DEFENDANTS:	J. STEPHEN PEEK, ESQ. JON RANDALL JONES, ESQ. MARK M. JONES, ESQ. IAN P. McGINN, ESQ. STEVE L. MORRIS, ESQ.
COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

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

LAS VEGAS, NEVADA, TUESDAY, JANUARY 6, 2015, 8:34 A.M.

(Court was called to order)

THE COURT: 'Morning, counsel. Happy New Year. You can be seated.

Everybody had an opportunity to check in?

MR. PISANELLI: Yes, Your Honor.

MR. PEEK: Yes, Your Honor.

THE COURT: Remember them all?

THE CLERK: Yes, Your Honor.

THE COURT: All right. Since the issues related to the Vickers report are all interrelated and I've now received a request for an evidentiary hearing, I'd like to handle them all together. I'm going to have Mr. Jones go first.

Mr. Jones, if you could start by asking me why on earth I'd want to conduct an evidentiary hearing related to this.

MR. JONES: I would be happy to address that issue first, Your Honor. Your Honor, the reason we asked for that evidentiary hearing is, as we looked at this issue and the whole manner in which this came up it became very apparent to us that these documents should never have been -- well, they should have never been taken in the first place, and they should not be a part of this case. And so unless -- and we have an order from the Supreme Court and this Court has stayed merits discovery, so --

THE COURT: Of course, there's a blurring of the line as to what's merits and what's jurisdictional in some times.

MR. RANDALL JONES: Certainly there can be, Your Honor. In this case we don't believe that any such blurring exists. But, having said that, if these documents are not relevant to jurisdiction, then they should not be a part of this case certainly at this point in time. And we believe that the reports -- according to Mr. Jacobs, the reports were generated by Las Vegas Sands and demonstrate somehow that the evidence that Las Vegas Sands is doing business in Nevada. So that's the premise. That comes out of their brief. So we believe that you need to establish first who commissioned these reports and what the purpose of the reports were in order to make that call.

They claim that they're relevant to jurisdictional discovery. We believe they are absolutely not. And so in order for them to establish that those reports were ordered in fact by Mr. Adelson for the purpose of Sands China doing business in Nevada they need to put on some evidence. That burden is theirs to demonstrate that those documents are relevant to jurisdictional discovery.

And I went through and tried my best, and maybe they can point out some other place in their brief where they made some references to their relevance, but the only place I could

find is on page 2 of their reply brief to their motion to compel where they say that they, quote, "bear on jurisdiction because they were commissioned by, directed by, and paid for by Las Vegas Sands Corporation. The Vickers reports are yet another example of the systematic and continuous control experienced from --" excuse me, "exercised from Las Vegas which demonstrates that Sands China is operated from Nevada," end quote. That is a completely conclusory self-serving statement of which there's no evidence in the record to conclude that they are.

THE COURT: But don't you think they're allowed to do discovery related to that during the jurisdictional period?

MR. RANDALL JONES: Well, that's actually what we're suggesting happens. First of all, Judge, we believe these documents are the type of documents, as you know from our motion to --

THE COURT: I've already ruled on the waiver issue by Ms. Glaser on these documents.

MR. RANDALL JONES: Well, I'm talking about confidentiality.

THE COURT: That's a different issue.

MR. RANDALL JONES: That was the point I was going to raise.

THE COURT: Confidentiality is clearly a different issue.

MR. RANDALL JONES: But with respect to privilege I would like to address that issue at some point. But that's not the point I was going to make just now. I was going to make the point about confidentiality. So --

THE COURT: Okay.

MR. RANDALL JONES: -- these documents we believe absolutely fit the definition of highly confidential. And I understand there's some interesting nuances that relate to that issue and that definition that are addressed in their opposition to our motion because of the unique nature by which these documents were taken from my client. But putting that aside for the moment, if these documents are of a sensitive nature that we believe they are and they're not relevant to jurisdictional discovery, then why in the world should they be allowed to be used?

And I want to make a related point. We pulled their disclosure statements that they made, because in the past -- and I know there's been a long history of this case, but there were going to be --

THE COURT: About four years.

MR. RANDALL JONES: -- there were going to be evidentiary hearings set previously.

THE COURT: We may hit the five year rule before I do a jurisdictional hearing.

MR. RANDALL JONES: And it may be five years from

the time this case was filed before we get to a trial. That's a different issue. But with respect to these particular documents, Judge, we pulled their statement that they were required to file as to what documents they intended to use and what witnesses they intended to call at the evidentiary hearing. And this goes back to -- so this is a while back, but we've never seen a supplement. And it goes back to September 23rd of 2011. And in this document there's no reference to the Vickers reports. So they never intended to use that document in jurisdictional -- in the jurisdictional evidentiary hearing. And they have certainly not indicated since then that they intend to use them. In fact, Judge, I think it's critical for this Court to note the only reason these documents came up and the only time that they ever started asserting that there was any need for these documents in the jurisdictional evidentiary hearing is after you said they were not subject to privilege. Only then --

THE COURT: That's not what I said. I said there was a waiver.

MR. RANDALL JONES: Irrespective of that, my point was simply that that's the only time we've ever had them come up and say, oh, now we want to use these documents.

THE COURT: That's not true. I've had discussions about that letter with Ms. Glaser, and the documents related to that letter, for years.

MR. RANDALL JONES: I'm talking about with respect to jurisdictional discovery for this case, the evidentiary hearing. They've never indicated at any time prior to this Court bringing it up in your order that they wanted to use them for the evidentiary hearing. And so it's pretty blatantly obvious that the real reason, which is consistent with their agenda from the beginning, they're using these documents for leverage to try to do something they hope will embarrass the clients, to harass the clients, and to gain leverage over my clients and the other parties in this case that have nothing to do with the issues before this Court on jurisdiction. And they have the burden. They have the burden to bring a claim to show they have jurisdiction over my client. They have to show this Court that there's some relevance to these documents other than self-serving statements.

And the point is they've had these documents. They've had these documents, at least two of the three documents, from the inception. They have moved to compel the production of the Keong report until you --

THE COURT: Can I stop you. Weren't they returned?

MR. RANDALL JONES: That's the point. They had -- well, they've said they never had the Keong report.

THE COURT: Right. I understand. But the two they said they found, they were returned.

MR. RANDALL JONES: They gave the originals. They gave the originals back. They kept copies. Oh, they've had copies since the inception. That was the point and why they said there was a waiver of the privilege, because they kept two of them. And they claim we've never asked for them back in a timely way. So my point is that these documents are not relevant to jurisdictional discovery. We have an order saying that jurisdictional discovery is the only discovery that's going to be allowed until the jurisdictional hearing has been held.

THE COURT: That's what the Nevada Supreme Court said.

MR. RANDALL JONES: That's right. And so if these documents are not relevant to jurisdictional discovery, then they should not be compelled to be produced even though at this point they have two of the documents they're asking to be produced.

The bigger point is, Judge, confidentiality is really irrelevant to the initial determination. The first issue is should they even be a part of the evidentiary hearing and should they be something that is even brought up in the jurisdictional discovery.

THE COURT: Isn't that a determination that I will make at a time closer to the conducting of the evidentiary hearing after jurisdictional discovery has finally been

completed?

MR. RANDALL JONES: Well, the problem with that, Your Honor, is what happens in the meantime. It's sort of -- I guess from my perspective it would be putting the cart before the horse. I need to know what this Court's determination is in order to prepare for the jurisdictional discovery hearing as to whether or not they're going to be allowed to use them and under what circumstances. How do I prepare if this Court says, no, those are not relevant, you can't use those documents, at the evidentiary hearing on jurisdiction. Then that takes out a whole big part of the evidentiary hearing process for both sides. If the Court rules that they are, then these are kind of records that we feel are important enough that we need to protect my client's rights. And we need to consider every option, which is -- and I know the Court has seen too many writs in this case, but these are documents that we believe are sensitive enough that we would consider filing a writ if the Court ruled that they were something that would be relevant to jurisdictional discovery.

So these are important issues that we believe need to be decided now before we get down the track so everybody will have a road map of where to go.

THE COURT: So you're asking me to make a determination on a discovery issue that the Vickers report, to

which I've already determined the privilege has been waived, are not relevant to the jurisdictional hearing?

MR. RANDALL JONES: Correct. And --

THE COURT: Okay. Just trying to make sure we all understand what you're asking me today.

MR. RANDALL JONES: And as part of that process we believe that there was never any direct discussion about the Vickers reports in terms of the waiver of the privilege, because it was related to the Advanced Discovery documents.

THE COURT: That's not true. The specific items that were identified in Ms. Glaser's letter that we discussed during the hearing are the Vickers reports.

MR. RANDALL JONES: I understand.

THE COURT: They may not have used the words, I may not have used the words, but those are the specific items that she identified in the letter that she sent and then took no further action on.

MR. RANDALL JONES: I understand that, Judge. But they have to file a motion with respect to the Vickers reports in order to have that issue determined. They didn't file a motion with respect to the Vickers reports. They filed a motion with respect to Advanced Discovery. These documents have not and were never part of the Advanced Discovery documents, so we never directly addressed the privilege issue with respect to the Vickers reports. Your ruling may be the

same. It may not be, however, because there is evidence that we never got an opportunity to present to you and legal arguments we never had an opportunity to present to you that relates to that issue which we believe would potentially change this Court's mind.

So in fact that's why you gave us -- granted our motion for reconsideration, so that then the issue with respect to the Vickers reports could be directly addressed, as opposed to the manner in which it came up.

THE COURT: And that's what we're doing today.

MR. RANDALL JONES: That's right. And that's all I'm asking the Court to do --

THE COURT: I understand.

MR. RANDALL JONES: -- is to allow that process to proceed and to not preemptively rule on the issue of privilege with respect to the Vickers reports, since it was not directly addressed in the motion that was filed previously; it was, if you will, inadvertently referenced in some form or fashion, but we never were put directly on notice that they were claiming that those documents were subject to the Advanced Discovery production. There's been no evidence presented by the plaintiff to show that their motion included the Vickers reports. It was directly related to and limited to the Advanced Discovery documents. Yeah. Thank you. Advanced Discovery documents. Too many acronyms.

THE COURT: Those documents that are at Advanced Discovery.

MR. RANDALL JONES: Thank you. Yes.

So that's why we believe an evidentiary hearing -- and this could be a short hearing. We're not talking about a lengthy period of time. We're happy to do it as quickly as possible as a prelude to what we're going to do next in the evidentiary hearing so we'll all be on the same page as to what's going to happen, what evidence is going to come out, and we can all have all of our due process rights be adequately protected and presented to the Court.

THE COURT: Okay.

MR. RANDALL JONES: Now, I don't know if you want me to address the other issues related to these pending motions, the motion for confidentiality or --

THE COURT: I'd like to address all issues related to the Vickers reports at one time, and then I'll make a decision as to whether I'm denying, granting, or setting an evidentiary hearing.

MR. RANDALL JONES: All right. Well, then let me go to --

THE COURT: Because I've got all sorts of relief being requested related to these reports.

MR. RANDALL JONES: Understood and agreed.

So then let me move, if I can, then, to the motion

to compel filed by the plaintiff. They are compelling -- their motion is two things. Now, one specifically does talk about waiver of privilege of the Vickers reports. That's the first time that's been specifically at issue. And the other issue is the motion to compel. So with respect to the motion to compel you can't compel production of a document you already have. That seems to me the pretty logical conclusion. So they have --

THE COURT: Since when?

MR. RANDALL JONES: Well, they have it. So --

THE COURT: You have it, too.

MR. RANDALL JONES: But why would they need --

THE COURT: You have to produce documents in regular litigation. Let's assume it's not this case, any particular case. They send you a request for production that says, send me all of the reports you have related to A, B, and C. Aren't you required to provide it even though they already have it, or at least identify it as part of your response?

MR. RANDALL JONES: Well, then I would answer your question this way, Judge. They've never specifically asked in any of their discovery, and I defy them to show you where they have, for the Vickers reports. In Interrogatory I believe it's Request Number 22 they have asked for documents related to two of these reports, the Keong, the Cheung Chi Tai reports that they say any document related to those two reports,

presumably because they had at least one of them. We don't know if they have the other one or not, because they've never confirmed absolutely that they don't have it. They said, we've done a real thorough search, we can't seem to find it. So while we understand this Court doesn't trust our client with respect to discovery issues, we don't trust statements made by Mr. Jacobs with respect to documents he stole from our client. So we're not convinced he doesn't have it.

But, be that as it may, Your Honor, they have the document, and they've never asked for it. Now they file a motion to compel without ever having a meet and confer, which is mandatory under our rules of procedure, as to those documents. They've never cited to you anywhere in their pleadings that I could see -- and I read them again this morning just to be sure -- where they've said they've asked for them before. They've certainly never cited to -- in fact, the request to produce that I just referred you to, they didn't even refer to that in their briefs. We double checked ourselves, and we did, interestingly enough, give them all the documents we believe that were responsive to that request, the documents that related to those documents. So how do they move to compel without having satisfied their procedural obligations? I've never been in front of you where you've allowed a motion to compel to be granted without a meet and confer.

THE COURT: Well, didn't I tell them to file this motion, Mr. Jones?

MR. RANDALL JONES: Your Honor, you telling them to file a motion presumably didn't mean they could file a motion without following the rules of procedure. I would have to assume if you told me to do that then I would go back and I'd say, okay, you know what, I need to file a motion to compel but first I need to follow the rules. I would not presume that the Court told me that I could avoid following the rules simply because the Court told me to do it and that the Court would sanction such conduct.

So here we are -- by the way, this goes hand in glove with their continual accusations that our clients are trying to delay and obfuscate this case and do everything we can to try to put this off. They never want to accept responsibility for their own conduct.

So I would suggest, Your Honor, that the plaintiff step up to the plate and acknowledge -- if he wants to do something, he's always accusing our clients of doing something incorrect or wrong, they step up to the plate, follow the rules before they start castigating my client and criticizing my client for doing something wrong. We have done nothing wrong. We are certainly intending to follow the rules and not comply with something we are not required comply with under Nevada law until those rules are met. So that's my answer to

that.

With respect to compelling, they do have the documents, with the exception of Keong, they've never specifically asked for them, they've never had the meet and confer, and with respect to the other document, if they don't have the Keong report, how could they first of all be entitled to it if they've never asked for it, and, secondly, how could we have waived the privilege on that document if they don't have it? So clearly there's been no privilege waived as to that document, and I would presume the Court would agree with me on that. They cannot claim a waive of a privilege of a document that they don't have.

That brings me to next point. How did they get these documents? They stole the documents. I know Mr. Jacobs doesn't like the reference to that manner in which he got these documents, but that's what he did. Mr. Jacobs was the CEO of Sands China. He was also an employee of VML. As a CEO of the company he had fiduciary obligations to that company. And it defies belief to me that a CEO of the company can think that he can take documents that he clearly had a hand in. Whether he claims somebody else ordered him to do it or not, he is -- certainly was involved in the chain of this process, especially with the government official's report. And as a CEO of the company he knew, he knew, and I defy him, I'd love to get him on the witness stand and ask him, are you telling

me, Mr. Jacobs, you didn't know when you had a document that they admit is all over it stamped confidential, highly private information, that you could steal that document from the company you worked for when you left and try to use it with the press to gain advance against my client, leverage.

In some cases, Judge, they call that blackmail, where you take a document from a company and then you try to sell it back for them. And they don't like these allegations any more than my client likes the allegations that -- they are saying these terrible things about my client without we believe any substance whatsoever.

So here's the deal. You've got a CEO who steals these documents, tries to use them against my client to gain a financial advantage. In addition, he has a confidentiality agreement with VML that tells him, you've got to return or destroy any documents you take from the company when you leave. And he violated that contract. So that doesn't meet the test.

And they talk about these various different tests. There are various different federal legal tests that are referenced by them in these briefs. They don't really want to talk about the involuntary disclosure cases; they want to talk about the inadvertent disclosure cases. There's a big difference, Judge. Inadvertent is you give them accidentally to the opposing party and then you don't do anything about it.

Involuntary is a different analysis. involuntary is what happened here. Involuntary means -- one way you have an involuntary disclosure is you steal the documents. In that case courts have held you generally do not find waiver of privilege unless the party seeking to maintain privilege failed to take adequate steps to prevent disclosure of the information.

What steps did we take? He had a fiduciary duty which would lead any reasonable company to believe that he wouldn't steal documents of this nature when he left the company, he had a confidentiality agreement which would further indicate that the company took steps to try to protect the documents. The documents were stamped "Confidential" all over them. And the company sought the return of the documents as soon as they learned that he had them.

Now, did they go to the next step and actually file a motion immediately after those series of letters back in 2009 and 2010? No, they did not. But, you know, Your Honor, that goes to this issue, is what did they do that they could do and was reasonable under the circumstances. We all know that -- well, it's my belief based upon the history of this case that this plaintiff loves to play gotcha. And we've seen that happen over and over again. And one of the ways they play gotcha is if you file your motion, Sands China, to get the documents back, you have submitted yourself to the

jurisdiction of the Court.

THE COURT: You could have filed the motion in Macau.

MR. RANDALL JONES: Your Honor, under the circumstances they were suing here, and getting those documents back in Macau wouldn't have made a difference with Mr. Jacobs living in Florida. That's an issue. So -- but what did happen? The parent company, Las Vegas Sands, did file to try to recover the documents. So we believe that is an indication that they did pursue their remedies as best they could under the very difficult circumstances. You're faced with this Hobson's choice or catch-22 that they now are trying to use against us.

And I would go this one point further. As soon as this Court, which is November of last year, November of 2014 -- and I say this with due respect -- erroneously ruled that those documents were not privilege -- and I say that because, as you noted in our motion for reconsideration, you were under the misapprehension that those documents were a part of Advanced Discovery --

THE COURT: I was.

MR. RANDALL JONES: -- and it was pointed out to you they were not. You granted our motion for reconsideration. And as soon as that motion was granted we've taken steps now to make sure those documents are not released into the world.

THE COURT: Six years after Mr. Glaser's letter.

MR. RANDALL JONES: I'm sorry?

THE COURT: Five years after Ms. Glaser's letter.

MR. RANDALL JONES: Five years after Ms. Glaser's letter. I don't --

MR. PEEK: Four, Your Honor. 2010.

MR. RANDALL JONES: Yes. Four years.

THE COURT: Four years after Ms. Glaser's letter.

MR. RANDALL JONES: Thank you, Mr. Peek.

THE COURT: Good job, Mr. Peek.

MR. PEEK: I was here, Your Honor, one of the few.

THE COURT: I was here, too, unfortunately.

MR. RANDALL JONES: And so there was no intent to waive the privilege.

With respect to the designation of these documents as confidential the first issue I would like to address, and I would ask in fact if this is of issue or concern to the Court, they bring up this procedural issue that I think it was 14 days after my letter that we had the meet and confer, and that was past the 10-day deadline, but the motion was filed 19 days after my letter, and so we certainly complied with the confidentiality order with respect to filing the motion. And there's been no evidence of prejudice of any kind to them, because we didn't have the meet and confer until four days after that initial deadline. So I don't know if the Court has

a concern about that. If the Court think there's any prejudice that was occasioned upon the plaintiff, if so, I'd be happy to try to address that, if the Court thinks that's a serious concern that would have resulted in the waiver of the privilege.

THE COURT: Nineteen days isn't a big deal. Four years is a big deal; 19 days isn't.

MR. RANDALL JONES: Thank you, Your Honor.

With respect to the cases that they have cited, they cite this one Colorado case that says, oh, there's this presumption, you've got to disclose all this information and confidentiality is a bad thing. That was a federal case in Colorado Federal Court. It was a claim under federal law, and it was against a public institution with a special rule that provided that there should be a presumption of public access in consideration of a public entity. That clearly doesn't apply in this case.

And then with respect to the definition of these -- of confidentiality -- or confidential and highly confidential, Your Honor, I don't know if I need to go over those tests. I'm sure the Court is very familiar with them. These documents certainly come within the definition of either one, and obviously we would submit to the Court that they should be designated highly confidential. This Court has ruled previously that in the interim they will remain confidential

until determined to be otherwise. Your Honor, if there's any serious contention -- or let me rephrase that. If there's any serious concern in this Court's mind that they do not fall within either of those definitions, I'd be happy to address it, rather than just tell you why I think they are.

THE COURT: No. I understand the issue about the confidentiality.

MR. RANDALL JONES: Does the Court feel that I need to explain why they would fall within either of those categories?

THE COURT: Only if you really believe they're highly confidential.

MR. RANDALL JONES: I do really believe they're highly confidential even though the argument they make at least as to two of these reports is that Mr. Jacobs has already had them and seen them. That still doesn't mean they're not highly confidential and that other people would potentially have access to those documents even if Mr. Jacobs already has them. So we believe highly confidential would apply in this case, because it's important as it relates to other parties that work for counsel, such as experts or that kind of thing, potentially would have access to these documents if they're not highly confidential.

And I think it -- well, I think it goes without saying that the type of documents we're talking about and the

descriptions -- even though the Court has not seen these documents, the descriptions that both parties agree relate to these documents generally that the information that they include extremely sensitive, highly confidential, non-public information consists of either trade secrets or proprietary or highly confidential business, financial, regulatory, or strategic information is at this point not refuted -- I don't see any evidence that they're saying that they don't contain that kind of information -- and that the disclosure of the information would create a substantial risk of competitive or business injury to the producing party.

I've only seen in fact evidence from the plaintiff that would suggest that's exactly what would happen, because that's exactly what Mr. Jacobs seems to be wanting to use these documents for, is to gain a competitive advantage in this litigation through the publication of this information to further harass and try to cast my client in a bad light.

So I think it's clear even with this Court having not had the opportunity to read these documents that's what they are, highly confidential. And if they were not, I would suggest that Mr. Jacobs wouldn't be fighting so hard to make sure he can get them so he can disseminate them to the world.

And, Your Honor --

THE COURT: He can't disseminate them to the world if they're confidential, Mr. Jones.

MR. RANDALL JONES: I agree with that. I don't disagree with that.

THE COURT: Okay. Just so we're clear.

MR. RANDALL JONES: I do agree with that, Your Honor.

THE COURT: Okay.

MR. RANDALL JONES: So -- well, our fallback position is that they are at a minimum confidential. We believe that the highly confidential designation would be more appropriate under these circumstances because, as the definition reads, they are extremely sensitive, highly confidential, non-public information. That is a different definition than confidential. And we certainly think that applies in this particular case, and we think the evidence, limited as it is, still supports that proposition based upon the statements that have been made by Mr. Jacobs to his counsel himself.

And I don't believe there are any other issues that relate to the Vickers reports that I need to address. I think those are the motions.

THE COURT: Thank you. I appreciate that.

MR. RANDALL JONES: Unless the Court has any other issues --

THE COURT: No. I've asked you enough questions, I think.

MR. RANDALL JONES: Thank you.

THE COURT: Mr. Bice.

MR. BICE: Thank you, Your Honor.

Seems to be a hodgepodge of parties that are making a hodgepodge of different arguments. Let me try and sort of sort them out as best I can.

I'd like to begin by pointing out I think we lost track of a number of arguments that were made in contravention of the Court's order entered on September 14 of 2012 concerning claiming that these documents were stolen when the Court has already expressly precluded Sands China and Las Vegas Sands from making that very claim for purposes of these proceedings. So once again we just disregard orders when it serves the interests of Sands China.

Let me try and deal with the motions in some sort of a chronological order, Your Honor. Let's deal with the issue about the waiver question. First of all, Your Honor, Sands China seems to want to forget that they're the party who interjected this. As the Court will recall, when we were here on the waiver question the first time it was Mr. Jones who at the end of the hearing -- after the Court had made its intentions clear relative to the question about waiver, it was Mr. Jones who interjected and threw out these reports as the only thing to which that ruling could apply. That was their pitch to the Court to try and salvage the consequences of the

Court's ruling, number one. So they are the parties that have interjected this issue, as the Court will recall.

What I find fascinating, Your Honor, is there's absolutely no evidence before this Court, zero evidence, that these reports are privileged in the first place. Set aside the issue about waiver. Where's the declaration of counsel that these reports are attorney-client, that they were generated in the facilitating of legal services, that there's an attorney even involved in these matters. Your Honor, there's absolutely zero evidence before this Court to even substantiate any claim of privilege with respect to Mr. Vickers. Mr. Vickers -- my belief as to his background is, Your Honor, is that he's not an attorney, he is a former Hong Kong police detective that now runs an investigative agency in Hong Kong, is my belief as to his background. And there's certainly been no evidence that he was an attorney or that any attorneys were involved in the creation of these reports. In fact, Your Honor, remember one of these reports they claim they had no involvement in, period, that this is all Mr. Jacobs's doings on his own and in fact it was supposedly one of the bases for his termination. We maintain fabricated, but, nonetheless, that's their position. They put that in a pleading before the Court, nonetheless. But that's their representation.

So the story about, number one, being privileged is

there is zero evidence before the Court. And how is it, Your Honor, this -- and I submit they say, well, we criticize them as constantly trying to delay. They are right. The request last night, filed at 7:00 p.m. last night for an evidentiary hearing is a request for delay. Let's just call it what it is. How did they suddenly decide they wanted an evidentiary hearing? An evidentiary hearing on what, Your Honor? Evidentiary hearing on privilege? Why isn't that in their opposition to our motion? Evidentiary hearing on confidentiality? Again, why isn't that in their motion? Yes, that request last night at 7:00 p.m. is a request for delay. It just be styled that, defendants request that the Court not rule and that we just delay this proceeding even further. Because that's all it really is. They didn't figure out last night at 7:00 p.m. that they wanted an evidentiary hearing for something. They figured out that they needed some basis to continue to pump this kick the can down the hill, is what the basis of that request last night was.

So coming back to this issue about privilege, Your Honor, there's absolutely no evidence to sustain any claim of privilege with respect to Mr. Vickers and his reports in any event. That's the critical problem, number one.

Number two, as the Court has recognized, even if there ever was a claim of privilege, let's entertain it, let's just assume that one ever existed. As the Court recognized,

They have known that Mr. Jacobs possessed these reports since November of 2010. It's confirmed in a letter. And Mr. Campbell reviewed the reports and made it clear he's going to use the reports, and he made it clear in his response, we're not giving them back to you. He returned the originals but explicitly stated, we are keeping copies and we intend to use them.

Now, in response to that what happened by Ms. Glaser? Nothing. And that was the point of this Court's original ruling. She did absolutely nothing in the face of this clear back in November of 2010. So what we cite the caselaw for, Your Honor, is when that happens, when you know that your adversary is in possession of documents -- and what's fascinating is even Ms. Glaser never claimed that they were privileged. Mr. Campbell was reviewing them. It's all of a sudden now we have never heard the explanation for how these documents became privileged, we just want to somehow make the assumption so that we can use this to say that Mr. Jacobs's present legal team can't look at the documents and can't use them. That's what this is really about. It's to just try and create more and more obstacles for the use of evidence that they're embarrassed about. Let's just be honest. This is -- this motion about confidentiality and the motion about privilege, this is a motion about keeping under wraps evidence that is embarrassing to these defendants while

their chairman is out barking in the media about Mr. Jacobs and delusional and Mr. Jacobs fabricating all of this stuff and fabricating things about the Foreign Corrupt Practices Act when their own auditors turn around and say, we think that there is -- we think that there were likely violations of the Foreign Corrupt Practices Act.

Nonetheless, Your Honor, that's what this is really about. These documents substantiate what Mr. Jacobs says was going on in Macau, and that's why they don't want them to see the light of day. And that's why they were never privileged until now that we're drawing upon the evidentiary hearing we suddenly want them to become privileged or highly confidentiality, which the same objective is, notwithstanding the fact that they've been in Mr. Jacobs's possession as his own -- as their counsel acknowledges, since 2010.

Your Honor, and the other thing -- so shifting now to the confidentiality. So let me just conclude, Your Honor, on the privilege question. No evidence of privilege whatsoever. And even if there were, Your Honor, there's been a plain waiver, as this Court has previously recognized. Because they didn't do anything with respect to the documents once they knew Mr. Jacobs possessed them and once Mr. Campbell made clear he intended to use them. In fact, they noticeably didn't claim Mr. Campbell couldn't review them.

Now let's turn to this confidentiality question,

Your Honor. I would like the Court to note something, because I think it's a telling revelation in their late filing last night. The motion on confidentiality, Your Honor, is brought by Sands China, not Las Vegas Sands. But now we have a revelation in the last-minute pleading last night that Las Vegas Sands is the one that commissioned the reports that are the subject of Ms. Glaser's letter, it appears. So Las Vegas Sands has never held any sort of a meet and confer, has never complied with the terms of the confidentiality order, et cetera. So we've got this sort of double speak going on here between these two defendants, one claiming an argument when it suits them and then another one now suddenly claiming, well, they're the ones that commissioned these reports, or at least two of these reports. And, of course, the other one is, according to them, something that Mr. Jacobs did all on his own, had no -- the companies had no involvement, but it's somehow their confidential information even though he had no -- they had no involvement in it.

And that, of course, then begs the question, Your Honor, is how is this confidential information to begin with. These are reports generated by an investigator. They say it's non-public information. How do they know that? Where did Mr. Vickers acquire all of this information if it was supposedly non public? There's been absolutely no showing to back up any of this. We just use this conclusory story. Because it's

embarrassing information, they don't want -- they want to accuse Mr. Jacobs of all sorts of improprieties but not let this evidence see the light of day to contradict their chairman, who wants to make statements in the media, to contradict him and show that it's not Mr. Jacobs who is in fact delusional, it's not Mr. Jacobs who is making up things about what was going on in Macau. It's the defendants who want to go around making statements, but then when evidence comes to like or there's evidence out there that contradict these self-serving public statements, well, we've got to keep the wraps on that, Your Honor.

So let me deal, then, Your Honor, with just the timing of this. They now tell you this is such explosive evidence, so highly confidential, Your Honor, it's just -- it just has to be treated as highly confidential or at a minimum confidential. Your Honor, 2010 there was no protective order in place in this case. Mr. Jacobs had these documents. They didn't come to you and say, wait a minute, Your Honor, we've got to have -- he's got these two reports and he won't give them back, at a minimum he's got two, we think he has more, he won't give them back. No motion to designate these as confidential, no motion to make him maintain them as confidential. There wasn't even a protective order in place at that point in time. These documents were in no way subject to any such treatment under our -- under the terms of the

Court's order.

Then we go to the timing of this motion, Your Honor. Now, Mr. Jones kind of brushes this issue aside, but I don't believe it's appropriate to be brushing it aside. We have a stipulated protective order in this case that sets forth various timelines and deadlines for the parties if you're going to claim that something is confidential under the terms of the order and if you're going to contest that confidentiality. We did that. They designated these as confidential under the terms of the order, or attempted to. We objected to that designation. By agreement -- we have an agreement that the Court has approved that they have 10 days in which then to schedule the 2.34 conference, and then after that they have 10 days in which to file their motion. It's not a 20-day window, as they now try to rewrite their agreement to say, well, we can just fudge those dates a little bit as long as it sort of suits our end, if we shave off some days on this end of it we can add them to this date over here. That's not what the stipulated order says. That's not the agreement. The parties agreed to these deadlines. And now what they're saying is, well, they should just be ignored because we can't show prejudice. Well, I'm sorry. With all due respect to Mr. Jones, he's got the law exactly upside down. The question is what's the good cause for deviating from the order.

What's the good cause for deviating from the order, Your Honor? There is none. And there's been none offered to the Court. It's just, well, we didn't do it, we didn't comply with the order and we would now ask that the Court just again disregard an order and allow us to do something that we're not allowed to do. So once again that is a problem that they do not explain and do not overcome.

But even if we ignore that problem, Your Honor, one of the grounds of waiver of attorney-client privilege is a lack of confidentiality. You lose confidentiality over the document. That's the essence of waiver. So what they're trying to say to you is, well, even if there's a waiver you should still treat the documents as confidential even though that's inconsistent with the doctrine of waiver. And again the Court, with all due respect, must reject that contradiction. That's what they're attempting to get you to do, is enter a contradictory position, that the document is somehow confidential simultaneously and not confidential with respect to the waiver question.

So at the end of the day, Your Honor, I ask the Court simply this question. What is the good-faith basis for the claim of privilege over these documents? Have you seen any? We were assured -- remember, we've heard this before now by this evolving door of counsel that has appeared for Sands China -- it's always going to change, they're not going

to do this, they're not going to do that, they're going to comply with the orders. What is the good-faith basis for the claim of privilege? There's no evidence, there's nothing presented. What's the good-faith basis for claiming there was no waiver of the privilege, Your Honor, when you knew and your own counsel, prior counsel knew that the documents were in his possession and did nothing about it? There is none. What this is is this is yet another request to grind Mr. Jacobs down, make him file motions with the Court, make the Court consume time on these collateral issues because that benefits these defendants. And there's no basis for continuing on with that. The only reason that we're here yet again is because Mr. Jones threw out these reports as the basis for trying to limit the Court's prior waiver ruling, and then turns around after doing that and saying, well, they weren't even the subject of that original motion to begin with, even though he's the one that threw them out as trying to limit the Court's ruling.

So we followed the Court's instructions. We filed a motion on these, and that's the basis for our request.

THE COURT: So can I ask you a question.

MR. BICE: Yes, sir -- yes, ma'am.

THE COURT: Why do you believe that the Vickers reports, the two that were admittedly in your client's possession that were copied and returned, are relevant to the

jurisdictional hearing that I've been ordered by the Nevada Supreme Court to conduct before I let anything else happen in this case?

MR. BICE: Well, there's two things I want to -- let me answer the question first, but then I want to clarify why I think that question is not particularly germane to what we're asking for. Number one, with respect to jurisdictional discovery they are relevant, and I would submit this request for evidentiary hearing only confirms it; because they're now saying --

THE COURT: So tell me why you think they're relevant.

MR. BICE: Because this demonstrates who was really in charge, Your Honor, and who was calling the shots, and Sands China says it.

THE COURT: That's all I need you to say. Thank you, Mr. Bice. Anything else?

MR. BICE: But the point I was making, remember, Your Honor, there's nothing in the stay order that says we can't review Mr. Jacobs's documents. And that's what this is really about. Even if these weren't relevant to jurisdiction, which they are, but even if they weren't, this is an attempt to try and hamstring us to say we can't look at documents that are in Mr. Jacobs's possession because we make false claims of privilege, just like -- remember what they did. They claimed

a privilege log of how many pages, Your Honor? And then when forced by the Court to --

THE COURT: It was a really crappy privilege log.

MR. BICE: -- own up to it, over 50 percent weren't even privileged to begin with. By their own admission. That was all designed to do what, Your Honor? To preclude us from looking at our client's own evidence to move this case forward.

THE COURT: Okay. Anything else?

MR. BICE: Thank you.

THE COURT: Mr. Jones, I've got a couple questions, and you may want to decide to handle things differently as I ask these questions.

Last night you guys served a request for an evidentiary hearing related to this. If I decide to schedule an evidentiary hearing -- and I haven't made that decision -- when would you be ready to conduct that evidentiary hearing?

MR. RANDALL JONES: Within a week.

THE COURT: Well, no. If you're going to do, you're going to do it today. Because I'm not moving this hearing again. Today's the day of the hearing. So if you want to do an evidentiary hearing, I'll do it at either 10:30 or 1:00.

MR. RANDALL JONES: Well, Your Honor, I don't know if I can get witnesses here that quickly to do that.

THE COURT: So why'd you ask for an evidentiary

hearing at 7:00 o'clock last night, as opposed to some other time?

MR. RANDALL JONES: Because, Your Honor, I was certainly planning on addressing this, we got a motion to compel on December 15th, 2014, with respect to these documents. I have to tell the Court that I was out of town on vacation. I actually tried to take a vacation.

THE COURT: You got a vacation?

MR. RANDALL JONES: I actually tried to take a vacation. I was doing a lot of work while I was on vacation. Mark Jones was also out of town on vacation, and so were other people in our office. So in terms of trying to figure this out we've been doing our best, Judge. And we're also anticipating that we're going to have an evidentiary hearing on the jurisdictional issue in relative short order, which has now been requested specifically in a motion by the plaintiff, so --

THE COURT: That's on for today. We're going to talk about that next.

MR. RANDALL JONES: I assumed we were. So we were trying to prepare for that. And so -- and to answer the other question that Mr. Bice raised as to why we -- he assumes we didn't come up with this idea to file this request at 7:00 o'clock last night. No, we didn't.

THE COURT: I got it this morning.

MR. RANDALL JONES: We decided to -- we looked at this and decided to do this at 3:00 o'clock yesterday afternoon. I was in a mediation all day. I'm trying to prepare for this, as well, and looked at this, and, you know, I guess I'm just not quite as astute as plaintiff's counsel, because these are complex issues and there's a lot of things going on. And this came out -- from my perspective this came out of left field. This was never an issue on the table until, as I said, the Court raised it in a motion -- or in the order with respect to the Advanced Discovery documents.

So we get a motion to compel on December 15th, and we're still trying to figure out exactly how this all plays in together. So we want to do whatever we can to protect our clients' rights, as I know this Court would expect us to do. And I'm certainly not going to not file anything, even if I do it late and know I'm going to be criticized for doing it late. I figured it's better to have it on file with this Court than not do it at all. So I will just tell you, Your Honor, I'm doing the best I can to try to do my job. And I don't have a reputation and I certainly resent any suggestion otherwise that I try -- use delay tactics as a strategy for my client. I don't. And if we were going to play that tit for tat game, I believe I could go back and if I wanted to nitpick everything that the plaintiffs have done here, I could come up with a laundry list of them, too. But I don't think that's

helpful.

THE COURT: That's true in every case.

MR. RANDALL JONES: I don't think that moves the ball forward. So I have tried to avoid that gamesmanship and just address the issues. And so the answer to the question is, Judge, I cannot be ready by 10:30 or 1:00 o'clock today to do this. But I will tell the Court that I will become as ready as quickly as possible. I have to make -- I didn't know if you were going to grant this request, so --

THE COURT: Well, I didn't say I would. I'm just trying to find out if it's going to further delay issues. If I can do it in the next -- today, maybe tomorrow, I'm more likely to give it to you than if you say, I can't do it till next week.

MR. RANDALL JONES: The more time you give me the more ability I would have to try and put up some evidence on these issues of who commissioned it and what was the purpose of the report. I think we can do that without getting into the substance of the report, because right now it's interesting to me that Mr. Bice, who has told me personally that he's never read these reports, that he now can tell this Court what's in them and who commissioned them. Now, he may have been able to talk to his client about that. I don't know. But all I can tell you is that he's told me he hasn't read them. So if he hasn't read them, then I find it

interesting that they could give you details about what's in the reports.

And I would simply say this. The fundamental question is are they related to jurisdictional discovery or not. Because if they are not --

THE COURT: That's why I asked Mr. Bice the question.

MR. RANDALL JONES: And Mr. Bice gave you what is his opinion.

THE COURT: That's okay. That's what he's supposed to --

MR. RANDALL JONES: That is not evidence. My argument to this Court are not evidence.

THE COURT: But that's part of the discovery issue. There's two issues. There's a discovery issue, and there's an admissibility issue. Today we seem to be dealing with a discovery issue at which I'm supposed to give a broader analysis of whether it's potentially relevant.

MR. RANDALL JONES: Understood. But we have a unique circumstances here, Judge, where we have a Supreme Court order that says we will not get into merits discovery, assuming these even apply to the merits, which I suggest they do not.

THE COURT: Some people recognize that things may apply to both sometimes.

MR. RANDALL JONES: And you made that point early on. I'm just suggesting to you that we believe the evidence will show they do not relate to jurisdictional discovery. And if they do, then we have potentially an error with respect to that evidence coming into the --

THE COURT: I would like you to go caucus with other related defendants, make some phone calls, I'd like people on the other side of the room to check their calendars and come back in about 15 minutes and tell me what time, if any, this week you have available.

MR. PEEK: Your Honor, before you leave, just may I -- I'll let Mr. Jones say something.

THE COURT: He's not stopped. I'm going to let him talk some more.

MR. PEEK: I know that.

THE COURT: He can talk as much as he wants, but I've got all of these other people from Judge Scann's calendar who would love to leave the room.

MR. BICE: I also need to address the Court on this timing question, Your Honor, about this claim that this issue -- they didn't have to address this --

THE COURT: I'm not worried about it. I'm merely trying to get some information so I can make a determination on this. I'm not shutting you down. I understand you may want to say some more things --

MR. BICE: Understood.

THE COURT: -- but I need some reality check as to whether in a very limited time I might consider for an evidentiary hearing it's doable. If it's not doable, then I will just go ahead and rule after I listen to all of you for as many times as you want to talk --

MR. BICE: Thank you, Your Honor.

THE COURT: -- after I get rid of Judge Scann's calendar.

MR. RANDALL JONES: Understood, Your Honor. But one question I have is while we make these phone calls would the Court allow a video conference testimony?

THE COURT: Maybe.

MR. RANDALL JONES: And I want to say --

THE COURT: The answer's maybe. I -- as you may notice, my courtroom is not in the condition that it was maybe last summer. As a result of the condition my courtroom is currently in and the fact they've put out to bid putting my court back together -- courtroom back together, I can't necessarily do all the things I used to be able to do in my courtroom with respect to video conferencing. The answer is I always entertain videoconferencing. I have some technical issues right now, and I don't know if I can get those fixed.

MR. RANDALL JONES: All right. Well, that's -- because that may affect our ability to have witnesses

available on short notice. But thank you.

MR. BICE: Well, and we, Your Honor, are going to want to be able to call the witnesses that we believe have information on this.

THE COURT: Absolutely.

MR. BICE: And that comes from the defendants' side.

THE COURT: Go to the hallway.

MR. BICE: Thank you, Your Honor.

THE COURT: I'm going to deal with Judge Scann's calendar and talk to you guys in a few minutes.

(Court recessed at 9:28 a.m., until 10:05 a.m.)

THE COURT: I'm trying to get an answer on the videoconferencing issues. I don't have it yet. That was one of the things that I've been trying to do while you guys were doing your part in the hallway.

MR. BICE: I wanted to address this issue first, if I might, this issue about surprise that was claimed. And I just want to remind the Court about the timing of this motion. We filed this motion originally several months ago, and there was full briefing on it, we had a hearing. As you'll recall, at the end of that hearing Mr. Jones's position was, well, your ruling only applies to the Vickers reports. That was a proffer that they made. An order was entered. They then filed a motion for reconsideration. That motion gets fully briefed, we come back here in front of the Court because

they're now saying, well, those are not part of Advanced Discovery, even though these reports were -- we dispute that. But, nonetheless, we come along, and now we're -- the Court directs us to file a motion. And we were essentially told to do that on a day's notice, which we did. We filed it on December 12th. By agreement of the parties at the hearing the last time we were here they were supposed to file their -- we were supposed to have the hearing on December the 18th, and we were -- they were supposed to file their opposition the day before the hearing.

What happened is after we filed the motion I got a call from Mark Jones, who I don't believe was at that hearing, saying that the agreed schedule wasn't doable because he was planning on being out of town or Randall Jones was planning on being out of town, I don't recall the exact details, but could we work on some rescheduling to give them time. They wanted to file a more robust opposition than what they had filed in the first round of motions on this issue.

We agreed to -- we got in contact with your chambers regarding today's hearing date, and we ultimately agreed to it. There was some discussion about holding it on Thursday, the 8th, which I did not want to do because of other commitments. So we gave them a lengthy extension of time in order to oppose this motion. They ultimately did not have to file their opposition by agreement until December the 24th.

And then we got to file a reply, and this hearing has been set. There is no so-called surprise here that we now -- yesterday at 3:00 o'clock in the afternoon they suddenly decided that they wanted an evidentiary hearing, Your Honor, because this is somehow -- they're trying to portray this as this motion was somehow on an order shortening time and unexpected and there was no opportunity, fair opportunity to respond to it. This motion has really been before this Court now -- this is about the third time ultimately it's been in front of the Court.

And, Your Honor, I have the question what is this evidentiary hearing about supposedly. If you look at what they've requested of you, it's not about privilege, which is the motion that's before the Court; it's not about confidentiality, which is the other motion before the Court. Let's be honest about what this motion is. This is a disguised motion in limine saying, we want to hold an evidentiary hearing about whether or not these reports would be admissible at an evidentiary hearing on jurisdiction. Well, that's no basis, Your Honor, for saying whether or not the documents are -- we can review the documents in preparation for the evidentiary hearing, Your Honor. That's what the present motion before the Court is about. There's no basis to yet secure another delay, another extension of time by saying, well, we want to now hold an evidentiary hearing on

whether or not these documents will ultimately be admissible at the Court's evidentiary hearing on jurisdiction which is yet to be scheduled.

And that's the basis why, Your Honor, there is no motion for an evidentiary hearing before you. We got this notice yesterday at -- like I said, we got it at around 7:00 o'clock or so or sometime after that. And so I maintain that it's not on the Court's calendar and there's no basis to delay this matter yet again on the basis of this last-minute maneuver. And I maintain that it is a last-minute maneuver. If that's what they wanted, they've had many, many months to address this issue and tell the Court they needed or wanted an evidentiary hearing on this issue. We've had these documents -- Mr. Jacobs has possessed these documents for years, as you observed. It's a little too late to now at 7:00 o'clock at night before a hearing saying, well, now we want an evidentiary hearing. I thank the Court.

THE COURT: Okay. We had a homework assignment.

MR. RANDALL JONES: Yes, Your Honor. General counsel Ira [unintelligible] is out of town or out of the country, but I did get a hold of associate general counsel, Mr. Rubenstein. He was making phone calls and was doing his best to contact the witnesses and find out their availability. He said that he figured the best he could do is -- give him 24 hours, by noon tomorrow. And I explained the urgency to the

Court, and that's what we're doing to comply with your request, Your Honor. So --

THE COURT: Okay. Anything else you want to tell me on these motions, then?

MR. RANDALL JONES: Yes, Your Honor.

THE COURT: And I'm not on the motion to set the evidentiary hearing for the jurisdictional issue yet. I'm going to do that when I finish with the Vickers report issue.

MR. RANDALL JONES: The first thing I would like to say is, addressing Mr. Bice's comments about the lateness, there was an accommodation. We appreciate it. It was set on the 15th -- it was filed on the 15th of December on an order shortening time, and it was filed right before Christmas, and the parties have been -- in spite of the seriousness of the allegations going back and forth, the parties have tried to work together in spite of some of the assertions of revolving door of lawyers, which we don't appreciate. We still try to work at a professional basis and work together. So I appreciate Mr. Bice giving us that accommodation. Doesn't change the facts that they didn't file a motion at any time ever with respect to the Vickers documents until this Court brought it up.

So going back to his specific arguments, the first argument he made to you, Your Honor, was that these documents are not stolen, and he says -- I forget the order where this

Court said we couldn't say that --

THE COURT: It was the sanctions order.

MR. RANDALL JONES: That order is dated September 14th of 2012, and it does not by specific statement relate to the Vickers documents. At paragraph (b) of the order it talks about the 20 gigabytes of electronic data. So Mr. Bice is incorrect. It never related to the Vickers documents. So he is wrong about that point. We've never been precluded by order or otherwise of saying Mr. Jacobs stole those documents.

And, you know, the other point -- the next point he made was about a gratuitous comment that I made where I never said that we had waived privilege on the Vickers documents. I made reference to the fact that based upon their argument that they were making, the only argument that they could support with their statement, was related to a couple of reports. So, you know, shame on me for making a gratuitous statement. But I never suggested -- and I've read the transcripts many times, especially after they brought it to the Court's attention, to see if I had made some completely stupid comment. And I would agree it was not the most articulate I've ever been in court, but it was a gratuitous comment, and it never was a waiver of the privilege as to those documents. And it was -- and I don't know if the Court based its decision on that or something else, but it certainly was never my client's intent

and certainly was never my intent that I was somehow or other giving up the Vickers documents by that gratuitous statement at the end of the argument. I was simply acknowledging that that's the only argument they were making in their briefs and it didn't apply to the Advanced Discovery that was the subject of the motion.

As to why we need an evidentiary hearing, I'll say it again, Judge, if these documents are not related to jurisdictional discovery, they should not be a part of the process. And the Court we believe needs to make that determination before the evidentiary hearing.

Another comment that was made was that Mr. Campbell said way back in 2010 that he was reviewing those documents, the Vickers reports. I don't have those letters in front of me. I know they're in the record. But my recollection is that he said he was specifically not looking at those documents until there was some further resolution of the Court. So, again, that was part of the argument about the privilege, is that there was no waiver of privilege. Because when counsel said they weren't going to look at them, that leads you to believe you don't have a pressing issue you need to pursue immediately.

Mr. Bice says these documents substantiate what was going on in Macau. Mr. Bice and his client have presented no evidence to this Court that provides -- excuse me. Mr. Bice

and Mr. Jacobs have presented no evidence to this Court to demonstrate that these documents substantiate anything that was going on in Macau. They just don't. And, again, the burden's on them, not on my client.

He also says that -- makes a comment that in our brief we say that the Las Vegas Sands commissioned the reports -- two of these reports. So what? So what if Las Vegas Sands did commission two of the reports? How does that substantiate anything to do with jurisdiction over Sands China? Las Vegas Sands has its own interests to protect, and it certainly has a right to engage counsel or investigators to investigate issues that relate to its issues. So there is no circumstantial evidence that they have proffered that would suggest that just because Sands -- or, excuse me, Las Vegas Sands initiated investigation that somehow proves or even is likely to lead to discovery of admissible evidence that Sands China was doing business in Las Vegas, which is the fundamental rule this Court must follow under Bauman and Viega -- the Viega precedents.

Mr. Bice said Jacobs's documents have been in his -- these documents have been in Mr. Jacobs's possession since 2010 so why are they confidential now. They've always been confidential. Just because those documents were in his possession doesn't mean they were not confidential.

I don't think this is a big point, but he makes an

issue we've never explained why we deviated from the order with the 10 days. We did explain that, Your Honor. Mr. Spencer Gunnerson of our office, who was the one that had that meet and confer, provided the Court with an affidavit as to how that occurred and how it was inadvertence on his part.

The ultimate point is, Your Honor, is that until this Court has some evidence before it that these documents are relevant to jurisdictional discovery, which is their burden to prove, we believe it would be inappropriate for the Court to allow them to become evidence in this case, confidential or not, and that they have failed in that burden, and we are asking the Court for an evidentiary hearing, brief as it may be, to allow us to demonstrate that point to the Court so that we are not in violation of the Supreme Court's order that merits discovery not go forward until the evidentiary hearing on jurisdiction is concluded.

THE COURT: Okay.

MR. RANDALL JONES: Thank you.

THE COURT: The motion to designate the Vickers report as highly confidential is denied. The Vickers reports will be designated as confidential.

The motion that relates to the waiver, jurisdictional issues related to the production of the Vickers report has previously been addressed by the Court. The privilege, if any, is waived as to the two reports that were

Jacobs's possession at the time of Ms. Glaser's November 2010 letter. Those may be treated as confidential. They will not be treated as highly confidential. And plaintiff's counsel may review those documents that were in Jacobs's possession at the time of Ms. Glaser's letter for any purpose they think is appropriate.

The request for an evidentiary hearing specifically asks me to resolve the issues of privilege and confidentiality of the Vickers reports. It is unnecessary for me to conduct an evidentiary hearing for those two purposes. While it may be appropriate for me to conduct an evidentiary hearing as to whether those reports will be admitted for purposes of the jurisdictional hearing, for purposes of the discovery issue I am denying the request for evidentiary hearing filed at 7:04:59 last night.

Can we now go to the motion for the evidentiary hearing to be set.

MR. BICE: Yes, Your Honor. Thank you.

We are asking the Court to set an evidentiary hearing, as well as to give us a trial date for this action, Your Honor, and we are actually asking that the Court set the trial date prior to the five year date of this action, because it seems to us that the defendants are sort of being coy about that issue. We don't believe it applies. But to the extent that they are intending to argue that they cannot be allowed

to benefit from the status of this case, because the status of this case is largely the byproduct of their own actions, as I think evidenced by the privilege log issue that has consumed an extensive amount of the parties' time and the Court's time.

So we are asking the Court to set the trial date prior to October the 20th of this year, as well as set the evidentiary hearing as soon as possible under the Court's schedule, as well as once the Court sets the trial date we're going to ask the Court for a streamlined discovery process and after the evidentiary hearing a streamlined discovery process shortening the time frame in which to respond to written discovery and shortening the time frame for notice of depositions in light of the need to accelerate this case.

THE COURT: Let me ask you a question.

MR. BICE: Yes, Your Honor.

THE COURT: How long before you'll be ready to conduct the evidentiary hearing?

MR. BICE: If the Court can give us the timetable, I would ask the Court to set that within the next two weeks to three weeks. I qualify it only with this, Your Honor, is yesterday -- and we don't know what we received; we received what we think are, by at least appearances, although the database was corrupted and there'd been some discussion, we received a whole bunch of documents yesterday from Mr. Peek's office. I don't know what they are. I haven't had a chance

to look at them. Perhaps he can tell us what they are. But absent something extraordinary being in there, I'm not sure why we're getting them now. But we'll address that at a point in time. So I would ask the Court to schedule it, if it could, within the next two to three weeks and allow us to proceed.

THE COURT: Let me ask my next question.

MR. BICE: Yes, Your Honor.

THE COURT: How many days do you believe that hearing will take?

MR. BICE: Three. Three to five.

THE COURT: Okay. So you'll be ready for the hearing two weeks from today, it'll take a week basically.

MR. BICE: We can do it.

THE COURT: Okay.

MR. BICE: And we're obviously contemplating the sanctions issue being scheduled, as well, Your Honor. As you will recall, that's also going to be addressed by the Court.

MR. RANDALL JONES: I guess I would just like some clarification. If they're also addressing the sanctions issue, they think that will happen within these same three to five days? I don't know.

THE COURT: Well, let me ask you a question. How long before you're ready to do the evidentiary hearing on the jurisdictional issues that the Nevada Supreme Court ordered me

to do a long time ago?

MR. RANDALL JONES: Your Honor, based upon all the information and evidence -- and we don't have -- I've got a whole laundry list of things that I think we would like to have decided before we have that evidentiary hearing. So I'd like to have it set within the next 90 days.

THE COURT: Well, give me your laundry list.

MR. RANDALL JONES: My list are things -- I don't know what the procedure is going to be either for the sanctions hearing or for the evidentiary hearing. Who has the burden of proof? I'd like -- presumably the plaintiff does, but they keep making noise like --

THE COURT: Well, but remember, it's a lower burden of proof. It's a really low burden of proof on the jurisdictional issue.

MR. RANDALL JONES: Whatever the burden of proof is, it's my understanding of the law that they have it. And so --

THE COURT: That's true. They have it. But it's not very big.

MR. RANDALL JONES: Again, whatever it is, do they have it? Are we going to file briefs before that hearing?

THE COURT: Absolutely you're going to file briefs. And then I'll read them.

MR. RANDALL JONES: So here's my question, Judge. I would like to know from the Court what the procedure is,

because this obviously has great significance, the impact of this hearing has great significance to my client. So I'd like to know exactly what it is I'm facing. Then I can give you a better idea of what I need to do to prepare for that. And I've been through evidentiary hearings before, but under the circumstances I have been told I'm going to have a sanctions hearing sometime, potentially immediately before the evidentiary hearing, and I don't know exactly what the rules are going to be with respect to the sanctions hearing, if it's going to be an evidentiary hearing, are both sides going to call witnesses, what --

THE COURT: The answers to those are yes.

MR. RANDALL JONES: So --

THE COURT: We actually did a sanctions hearing before you got involved. Both sides called witnesses. I asked questions, and I even asked for some additional information that neither party wanted to provide.

MR. RANDALL JONES: And I am aware of that hearing previously, and I've read those transcripts. So, again, how does that play into the -- is it the same day, is it -- how long is that going to take? I haven't heard from Mr. Bice as to how long he thinks the sanctions hearing's going to take, so how do I plan for that? Are -- Mr. Bice's office has never filed a brief with respect to the sanctions hearing. We filed one months ago. He talks about delay and dilatory conduct.

We believe that when the Court asked us to get together we talked about this issue and we filed our brief. They've never filed one. My position would be, then, since they like to talk about waiver all the time, they've waived their right to file a brief. They put a footnote in their motion to set the trial, and we note that the defendants have filed their brief months ago and we'll file one when the Court sets the hearing. Well, that's not how it works, Judge. You don't get to do this. The Court tells you to do something, which they like to remind us of --

THE COURT: No, it's exactly how it works. They file briefs, I decide I'm going to issue sanctions, you take a writ, the Nevada Supreme Court says it's okay for me to issue sanctions but I have to consider the Macau Data Privacy Act as part of my balancing test that I'm going to do. So then I hear evidence about what the prejudice is, and then I make a determination. Just like under the Nevada Power-Fluor case, if you want an evidentiary hearing since you're the parties who may be sanctioned, I'm going to give you that evidentiary hearing. Somebody's going to convince me there's a little teeny bit of prejudice or there's a lot of prejudice. I'll then look on the balancing test under the Ribiero factors, and I'm going to decide whether I should sanction somebody a little bit of money, whether I should sanction them with an evidentiary sanction, whether I should sanction them with

something else, just like any other evidentiary hearing. It's not that complicated.

MR. RANDALL JONES: That was my point, Judge. I was talking about the briefs. It's not how it works where --

THE COURT: But we already did all the briefs.

MR. RANDALL JONES: They --

THE COURT: You guys went up on appeal. You've been to the Supreme Court. You've come back.

MR. RANDALL JONES: The only brief that's been filed with respect to the sanctions hearing since the Supreme Court order has been filed by Sands China. And they even acknowledge they were -- there was a discussion with this Court about a briefing schedule months ago, before CityCenter was resolved. We filed our brief in conformance with your direction. They have failed or refused, whatever it is they want to describe it as, to do that. Now -- and they put a footnote in their motion for -- asking for a trial setting, saying, oh, and we note that they filed their brief months ago, we'll file ours when you set the hearing. That's what I'm saying is not the way it works, Judge. That's not fair. That's -- they want to hold us to every procedural rule, but when they violate the rules we'd like to see some consequence to them. And the consequence we think would be appropriate is that they don't get to file a brief because they've missed their opportunity, as they like to try to remind this Court

about things they claim that my client have done. So that issue --

THE COURT: So I've got two issues. I've got the burden of proof issue, I've got the sanctions hearing. What else is on your laundry list?

MR. RANDALL JONES: I don't know what their theories are. I don't know what their theories are. How do I plan to protect my client? They claim they've reserved every theory, they've never waived a theory. Well, what does that mean? I would like it set out clearly and concisely so my client's due process rights are protected. Don't just tell me, every theory of jurisdiction out there we still have and we claim we can provide it. Tell us exactly what it is so that we can then prepare. Because we believe some of the theories that we think they're going to pursue are absolutely barred as a matter of law, and we would like to brief those issues if they still are trying to maintain some of these theories that we think do not apply. So we need to know what their theories are. Concrete, not some vague reference that, oh, yeah, you know what they all are and we're still maintaining we're going to pursue every one of them.

THE COURT: What else?

MR. RANDALL JONES: Experts. In this case we have an expert that we have designated. That expert is overseas, so we need sufficient lead time to schedule and/or determine,