

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD., a Cayman Islands  
corporation,

Petitioner,

vs.

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Electronically Filed  
Case Number: 2015-08:33 a.m.  
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District Court Case Number  
A627691-B

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

**Volume XXXI of XXXIII  
(PA43432 – 43601)**

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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 XXXI of XXXIII (PA43432 – 43601)** to be served as indicated below, on the date and to the addressee(s) shown below:

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

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

### **Respondent**

### **VIA ELECTRONIC SERVICE**

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DATED this 20th day of March, 2015.

By: /s/ PATRICIA FERRUGIA

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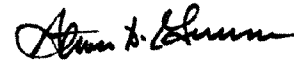
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CLERK OF THE COURT

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

**EVIDENTIARY HEARING RE MOTION FOR SANCTIONS - DAY 6  
(CLOSING ARGUMENTS)**

TUESDAY, MARCH 3, 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.  
IAN P. MCGINN, ESQ.  
STEVE L. MORRIS, ESQ.

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, TUESDAY, MARCH 3, 2015, 10:58 A.M.

2 (Court was called to order)

3 THE COURT: Mr. Bice, you're up.

4 PLAINTIFF'S CLOSING ARGUMENT

5 MR. BICE: Thank you, Your Honor.

6 Your Honor, I'm going to start with just a brief  
7 recall, although I know the Court knows this, but a lot of  
8 time has passed, and not only are memories of witnesses  
9 fading, but memories of the Court and memories of the parties  
10 to this case are fading over the passage of time. We got here  
11 and we are here today because of a long series of  
12 misrepresentations, both affirmative statements and material  
13 omissions, regarding the location and access to evidence that  
14 started in 2011 with this Court. And as we point out, Your  
15 Honor, the purpose of any judicial proceeding, evidentiary  
16 hearing, trial determine the truth, what is the truth. And  
17 that's what the rules of discovery are designed to do, they're  
18 designed -- they're a tool by which the litigants and the  
19 Court make an ultimate determination about what is the truth.

20 And I would submit that this hearing that we have  
21 had that lasted a lot longer than the Court had originally  
22 planned has highlighted just how many light years away we are  
23 from knowing the truth. And that is wherein the problem lies.  
24 And that inability to know the truth, to ascertain the truth  
25 stems from one thing, Sands China's continuing refusal to

1 comply with this Court's orders.

2           And, unfortunately, Your Honor -- I know that the  
3 defendants won't like this characterization, but I think, even  
4 stripping aside the rhetoric, it's obvious that this is their  
5 position. Their position is that misrepresentations and lack  
6 of candor that started in 2011, at least in 2011, continue to  
7 yield benefits for them to this very day. The one substantive  
8 sanction that this Court imposed precluding their continued  
9 use of this MPDPA excuse has been, under their version of  
10 events, completely thwarted, it has been rendered meaningless.  
11 So four years later -- you resolved this MPDPA issue against  
12 Sands China over two and a half years ago. And to this very  
13 day, even today it is being used by them to continue to delay  
14 and obstruct this case.

15           So what at the end of the day is the message from  
16 Sands China's position in the proposed findings of fact that  
17 they have proffered to the court and conclusions of law? That  
18 message is that deception to the judiciary, a lack of candor  
19 to the Judiciary, and a compromising of the factual finding  
20 process to the judiciary, it actually works, you can achieve,  
21 as a litigant, material advantages by doing those things. And  
22 that's what their proposal is to you today. It is no answer  
23 that they give you that, well, we have spent a lot of money  
24 looking for documents here that we found in Macau. I'll come  
25 back to this in a little while. But isn't it odd, Your Honor,

1 that they claim that they'd already searched for documents  
2 here? Why are they -- under the search terms that they claim  
3 that they were using in Macau why are they now finding,  
4 according to them, thousands -- we'll get into just how many  
5 that really is -- they're finding thousands of documents here  
6 that they claim that they'd already searched for. And is  
7 there any explanation for that? We certainly didn't get it  
8 from Mr. Ray.

9           So I want to start, Your Honor, with a comparison.  
10 Let's look at how Sands China and Las Vegas Sands conduct  
11 themselves relative to this Court's order and conduct  
12 themselves when somebody else is seeking information from  
13 them. Then we'll analyze why the difference in attitude and  
14 actions.

15           And, Dustin, will you pull up the first slide of the  
16 PowerPoint -- not the first slide, it's actually the second  
17 slide.

18           Your Honor, you remember this word? And we found it  
19 fascinating, because we'd never heard it, and we haven't heard  
20 it in this case until Mr. Raphaelson. And let's remember how  
21 this came up. Mr. Raphaelson wanted to say something to the  
22 Court. After all of his examination Mr. Peek stood here, Mr.  
23 Raphaelson is there something you wanted to tell the Court;  
24 and Mr. Raphaelson went on to tell the Court about this  
25 discussion and the full vesting of the power of the board and

1 the Audit Committee, and then these were his words. He worked  
2 out with Mr. Fleming that there would be maximum access given  
3 regarding the O'Melveny investigation which was prompted by  
4 the United States Government. And that's what I'll come back  
5 to, Your Honor. Let's compare how Sands reacts when the  
6 United States Government wants information compared to how  
7 they react and how they act when this Court tells them they  
8 have to provide information.

9 "Maximum access was pledged," that was Mr.  
10 Raphaelson's words. You've never heard those words in the  
11 four years of this litigation about maximum access regarding  
12 this Court's orders. Then as Mr. Raphaelson acknowledged, a  
13 number of consents were obtained under the MPDPA. Now isn't  
14 that an interesting revelation that came from Mr. Raphaelson?  
15 Sands China and Las Vegas Sands had been telling you that they  
16 can't get consents, they risk liability by even asking for  
17 them, Your Honor. They can't even seek them, that's why they  
18 didn't do it, Your Honor. It's not that we were being  
19 disrespectful to the Court and the judicial process, it's  
20 because we faced potential liability if we even asked any of  
21 these executives in Macau or Macau personnel for consents.  
22 Interestingly, Mr. Raphaelson says, because the United States  
23 comes knocking, a number of consents were obtained under the  
24 MPDPA. Those were his words.

25 U.S. lawyers, as Mr. Toh acknowledged, U.S. lawyers

1 searched and reviewed documents there. Now, that's  
2 interesting, because that's not what Sands China has been  
3 telling you for at least three years or LVSC had been telling  
4 you for at least three years. In fact, Your Honor, I would  
5 submit their proposed findings of fact that they submitted  
6 tell us a little bit more than they actually were willing to  
7 say during the evidentiary hearing. Because if you look at  
8 their Proposed Finding of Fact Number 43, they acknowledge,  
9 even though no one testified to this, they acknowledged that  
10 this review began in the spring of 2011.

11           Okay. The spring of 2011. This is what happens  
12 when so much time passes between all these events that  
13 everybody seems to forget, because if you go back to July 19  
14 of 2011, there was a hearing in front of you. Ms. Glaser  
15 appeared, Justin Jones appeared. And this is what they told  
16 you about U.S. lawyers going to Macau. Could not happen. No  
17 one from LVSC was allowed to go. No one could review  
18 documents there, had to be done only in Macau, and it had to  
19 be done only by Sands China lawyers. This is Ms. Glaser's  
20 words, "I need to be very clear about that, Your Honor." She  
21 was quite clear, as they have been throughout this case.

22           Now, they tell the Court, Mr. Toh didn't testify  
23 that he saw unredacted documents. That's in their proposed  
24 findings. We disagree with that, and we think that the record  
25 shows quite the contrary. But you know what's interesting



1 about this, Your Honor? They know the answer. That answer's  
2 readily available to the defense. It's actually their  
3 company's. And what is the -- they're trying to tell you they  
4 -- Mr. Toh, you know, he said he didn't recall the documents  
5 being redacted, that that somehow -- he doesn't know whether  
6 they were redacted or not. Well, he testified that he was  
7 shown his own emails.

8 But this is what -- what does the Nevada Supreme  
9 Court say about a party who says, well, there's no evidence of  
10 this, but they're the ones that possess the evidence? The  
11 Nevada Supreme Court says -- and this is in one of the  
12 Berosini cases, Your Honor, it says, "The failure of a party  
13 to produce evidence on an issue peculiarly within his own  
14 knowledge raises an inference that the concealed information  
15 is unfavorable." So it's no answer for the defendants over  
16 here to sit and say, well, you know, Mr. Toh couldn't recall  
17 so therefore there's no evidence about what O'Melveny looked  
18 at, showed these witnesses and interviewed them about. That's  
19 just simply not the law. They know this information.

20 And, Your Honor, respectfully, as the Court long ago  
21 said, lawyers have a duty of candor to the Court. These  
22 litigants represented to you in July of '11, 2011, that none  
23 of this was happening. And now they've got the nerve to say,  
24 well, you know, we're going to sit on our hands and not  
25 disclose what was really going on and correct the record.

1 That is what is -- we said this to you a long time ago, Your  
2 Honor, that the course of conduct from Sands China is  
3 unchanged. And it is unchanged. It is going on as we speak  
4 right now. Unfortunately, your first sanctions order did not  
5 change this conduct.

6 And so what else do we know from Mr. Toh? O'Melveny  
7 lawyers, U.S. lawyers got to question witnesses, and they got  
8 to do so with unredacted documents. And we also know from Mr.  
9 Raphaelson that findings were purportedly shared with  
10 government officials here in the United States, including at  
11 least one federal law enforcement official. And we'll get to  
12 that issue at a later proceeding in front of the Court about  
13 what are the consequences of that. But this is the attitude,  
14 Your Honor, of the defendants under those circumstances when  
15 the government asked them for information.

16 Now let's go to the next slide, and let's talk about  
17 what was the attitude then, when the Court entered its orders.  
18 Again, the sanctions stem in this case, as the Court has  
19 already ruled, from misrepresentations and a lack of candor to  
20 the Court. That is what the sanctions flow from. And then  
21 what happens after this Court enters its sanctions order that  
22 says, you will no longer be allowed to do this because you got  
23 caught deceiving the Court and Mr. Jacobs? The sanction order  
24 gets entered. Is the full power of the board vested with  
25 anybody, Your Honor? They take that Court's order seriously

1 like they did the request from the United States for  
2 information? No. According to Mr. Fleming, he didn't even  
3 inform the board and he didn't even involve them in the  
4 decision making process about the consequences of this Court's  
5 order. That's his position. That's what he testified to.

6           Was there anybody testify that there were -- maximum  
7 access was directed? Mr. Raphaelson testify to that, Your  
8 Honor, when it came time to address this Court's order over  
9 the misconduct that had been found? Oh, no. Mr. Raphaelson's  
10 testimony is he could recall vividly, because these words,  
11 Your Honor -- I apologize -- the words "maximum access" have  
12 significance for the United States Government in these  
13 investigations. So he wanted to make sure that he'd blurted  
14 those out into record. But, of course, when it came time to  
15 recall his far more recent conversation with Mr. Fleming about  
16 what to do relative to this Court's order, nothing. He had no  
17 recollection of anything. Couldn't recall that communication,  
18 which was years more recently than his communications with Mr.  
19 Fleming back in the spring of 2011.

20           Then we know this. Again, Mr. Fleming didn't even  
21 involve the board. This is such a serious matter, they took  
22 this Court's order so seriously, didn't even inform the board,  
23 involve the board in the decision-making process.

24           What did they tell you about consents, Your Honor?  
25 Couldn't run the risk, can't run the risk of getting consents

1 of people in Macau, too dangerous, might expose us to  
2 liability because it might be deemed that we're putting  
3 pressure on people. Of course, that's contrary to what their  
4 attitude was relative to the government's request. In fact,  
5 as they said, Your Honor, they didn't seek a single, not one  
6 single consent from people in Macau -- from their Macau  
7 executives, even though, Your Honor, they were the custodians  
8 that you had ordered them to search. They didn't even ask  
9 them. Too dangerous.

10 Now their position in front of you is, no U.S.  
11 lawyers can review any of the documents to determine what  
12 should be produced and what should be redacted. They can't  
13 even look at them, that's their attitude with you. And that's  
14 the position that they have taken. What's the end effect,  
15 their attitude also with you? Mr. Jacobs cannot examine  
16 witnesses about these redactions, because he can't know what's  
17 under them. We can. We, as Sands China, can know that and  
18 O'Melveny can know that, but Mr. Jacobs can't and the Court  
19 can't. And the end effect is what? All of those facts, all  
20 of those documents -- and I'll come to this in a moment --  
21 stay out of evidence because of the redactions. That is the  
22 effect of what they have -- the attitude they have taken with  
23 the Court's attitude in this proceeding.

24 So I ask the Court a simple question -- I don't  
25 really, that's rhetorical -- what is the difference? Why is

1 there one attitude when the United States asks for information  
2 and there's a different attitude when the Eighth Judicial  
3 District Court enters an order and says this is what's going  
4 to happen, folks? The answer, Your Honor, I would submit is  
5 self evident. It's about money.

6           The United States and the Nevada Gaming Control  
7 Board have the ability to take away the golden ticket of a  
8 gaming license or Las Vegas Sands Corporation's status with  
9 the Securities and Exchange Commission, that's a serious  
10 matter. Mr. Adelson is the majority owner of Las Vegas Sands  
11 Corporation. He and his family own more than 50 percent. And  
12 Las Vegas Sands Corporation owns 70 percent of Sands China.  
13 That's why there's a different attitude, Your Honor. The  
14 United States or the Gaming Control Board, whether it's in  
15 Nevada, Pennsylvania, Singapore, can impose consequences that  
16 will have a significant financial impact upon these litigants.  
17 What is their attitude concerning the Court's order? The  
18 Court can't take away any of those things from them. And the  
19 Court imposed a \$25,000 sanction upon them for deceiving it  
20 and stalling the case. That's why, Your Honor, there is a  
21 difference in attitude. That's why there's a difference in  
22 access, and that's why there is a difference in how they have  
23 conducted themselves. It's about money. It's about who can  
24 inflict injury on them, or what are the consequences of not  
25 complying in that forum as opposed this one. And so they have

1 decided that because Her Honor -- the worst thing a Court can  
2 do is strike our answer, we're not going to comply. That's  
3 why they have taken that attitude, and that's why it is  
4 fundamentally different than what they did when the government  
5 sought the information from them, as opposed to Mr. Jacobs.

6           Then we come back to this point, Your Honor. They  
7 tell us that, you know, Mr. Fleming just acted in good faith.  
8 He got all this input from various people. He acted in good  
9 faith. Let's think, though, about what -- other than the  
10 self-serving words, I acted in good faith, let's show what --  
11 let's examine what the real actions were as he admitted them  
12 to be.

13           When the order came in, Your Honor, he knew what it  
14 meant.

15           Dustin, I'm going to ask you to jump to Slide 5.

16           He knew exactly what it meant, and he admitted so  
17 under questioning. He understood that it precluded them from  
18 making the redactions, and he understood that that order  
19 applied to the documents that were then located in Macau. The  
20 order was very clear to him. But is that how they actually  
21 conducted themselves, Your Honor? No. They, of course,  
22 claimed confusion, claimed that they didn't know to which  
23 documents it applied. Mr. Fleming even authorized a brief to  
24 the Nevada Supreme Court, as he admitted, that claimed that  
25 they thought that the order only applied to documents that

1 were located in the United States and didn't even apply to the  
2 documents that were then located in Macau. He knew that was  
3 untrue, but that's the arguments they were going to make in  
4 any event, just like he acknowledged that he understood the  
5 order said that there could not be any redactions, but then  
6 somebody --

7 THE COURT: Except for privilege issues.

8 MR. BICE: Except for privilege issues, Your Honor,  
9 absolutely. That's why your order says "or other" in the foot  
10 note. But isn't it fascinating that he can't remember who  
11 supposedly gave him this information after the fact that gave  
12 more comfort. He'd already made the determination that they  
13 were going to do the redactions. He understood that that was  
14 precluded by the order, but some unknown person told him that  
15 Her Honor had told them they could go ahead and redact, just  
16 can't remember who that one was.

17 But let's back up even before the order gets  
18 entered, Your Honor, even before the order gets entered, and  
19 let's see about this good faith.

20 Remember, they have introduced some of their  
21 communications, at least the ones that we are aware of, with  
22 the Office of Data Protection, the OPDP. And as Mr. Fleming  
23 acknowledged under oath, Your Honor, OPDP told them in one of  
24 those letters, you're citing the wrong provision, you're not  
25 even giving us the right information, we can't really even

1 process this and we're going to hold it in abeyance until you  
2 correct all of that. What did Mr. Fleming say in response to  
3 that? What did you do, Mr. Fleming, I believe is how I  
4 phrased it to him, what did you do in response to that? His  
5 answer was, candidly, nothing. He claimed that originally --  
6 this was back in 2012, Your Honor, his story was originally,  
7 well, I didn't have time because the Court's deadline upon us  
8 was too narrow, I didn't have time to supplement what they  
9 were requesting or to do anything about that. Well, that's  
10 interesting, Your Honor, because it's now 2015, and they were  
11 continuing to produce redacted documents to us until January  
12 of this year, just last month -- or actually not last month  
13 because it's now March, I'm losing track of time -- and they  
14 were still producing thousands of redacted documents to us.

15           So they've had two and a half years to correct that  
16 information that OPDP told them it needed to see from them.  
17 And as Mr. Fleming says -- what did you do about that, Mr.  
18 Fleming? Nothing. Nothing. Then we come to the point of,  
19 Your Honor, is the Office of Data Protection also told them,  
20 you can go to court, by the way, under Macau law you can go to  
21 court. What did they do about that, Your Honor, from 2012?  
22 As Mr. Fleming says, no, didn't do that, either.

23           And that's interesting to us, because one of the  
24 expressed provisions under the MPDPA, Your Honor, that  
25 authorizes transfers is a court order. Again, did they take



1 any steps to -- they're claiming this law is so draconian and  
2 exposes them to such grand consequences, Your Honor. They  
3 don't tell the board, they don't submit additional information  
4 as the office says, and they don't even take it to court in  
5 Macau. But it pretends this serious devastating catch-22 that  
6 they are now asking you to just accept because it serves to  
7 completely undo the substantive sanction that this Court  
8 imposed.

9           And, again, Your Honor, and I forgot this one  
10 additional point, I would have addressed it earlier on the  
11 other slide, but nor did they seek any consents of this  
12 supposed devastating consequence should we choose or should we  
13 have to follow this Court's order? Not one from anybody in  
14 Macau. And let me just, while they're on this point, address  
15 this. The suggestion that they should be congratulated for  
16 obtaining consents from four people, four Nevada residents at  
17 the time, Adelson, Goldstein, Leven and Kay, nearly two years  
18 after you had ordered the production should hardly be evidence  
19 of good faith. That fact in and of itself is evidence that  
20 this was not undertaken in good faith. This is simply a  
21 cosmetic to give the appearance that they are trying to do  
22 something. Those four witnesses are in Nevada. Their emails  
23 are here. If you really wanted to act in good faith, just  
24 like you wanted to tell the United States Government that you  
25 were acting in good faith, you would have obtained consents

1 from the people in Macau. But it was so serious consequences  
2 -- you faced serious consequences as a result of this Court's  
3 order.

4           And then let's not forget this fact, Your Honor,  
5 because the defendants certainly know their way to Carson  
6 City. They've been there, I kind of lost track of the number  
7 of times they've been there on this case already, but it is  
8 noteworthy that, despite their well-travelled route to Carson  
9 City, this is the one order, the September 14 order as the  
10 Supreme Court says, this is the one order they did not  
11 challenge. They did not challenge that sanction, and that's  
12 right in the Supreme Court's decision. They chose not to seek  
13 relief concerning the sanctions order, and they chose not to  
14 seek relief concerning the imposition of that sanction of  
15 barring them from asserting the MPDPA as a defense.

16           Then let's turn, Your Honor, to again this issue  
17 about serious consequences that we've heard them argue about  
18 and we heard Mr. Fleming argue about. Serious consequences.  
19 Consequences were so serious, Your Honor, that they didn't do  
20 any of the things that we just went over, didn't present any  
21 of this information to the board, didn't have the full power  
22 of the board vested in the Audit Committee like they did at  
23 LVSC when the United States came knocking. There is no  
24 evidence whatsoever, Your Honor, of serious consequences, let  
25 alone any consequences at all from complying with a U.S. court

1 order. In fact, Sands China has proven that best itself. As  
2 Mr. Fleming acknowledged, Your Honor, they violated this thing  
3 in the past. One of them concerned their massive data  
4 transfer before this lawsuit even started. They were under no  
5 legal compulsion to transfer anything, and they went ahead and  
6 did it. And what were the consequences of that violation not  
7 even in response to a U.S. court order to comply? About  
8 \$2500. That's how serious this was for them. Then, as Mr.  
9 Fleming acknowledged, Your Honor, there was another breach of  
10 it. He didn't specify when. He said it was a separate  
11 breach, didn't specify exactly how it came to light. What  
12 does he acknowledge? What was the consequence of that breach,  
13 that data transfer? Again, not in response to any U.S. court  
14 order or anything, what was the consequences of that? Again,  
15 roughly 2500 U.S. Dollars. That's how serious the  
16 consequences are for Sands China when it transfers data not  
17 pursuant to a court order.

18           Then we come to this other point. As Mr. Fleming  
19 says, Your Honor, the Macau Government's very much aware of  
20 this litigation, they've brought this to their attention.  
21 They've even shown them the Court's order, and this is, of  
22 course, quite significant. What has been the response from  
23 the Macau Government to this Court? Has it filed any  
24 documents with this Court saying, wait, Your Honor, we have  
25 important state interest at heart here, we have important

1 interests that need to be protected? No, they haven't done  
2 that. Have they sought to intervene in any fashion? Have  
3 they even sought to just submit any form of a written  
4 communication to the Court of any sort regarding this? Nope.  
5 Not a word. Not one peep. And, Your Honor, it's pretty  
6 evident why that has happened, there has been no such peep.  
7 Because this isn't how they have applied it in practice,  
8 except when Sands China doesn't want to produce documents in  
9 the United States. As Mr. Fleming acknowledged, they travel  
10 all the time. It's obvious that they travel a lot, their  
11 executives travel a lot. Seventy percent controlled by Las  
12 Vegas Sands. They have a facility in Singapore, as well, one  
13 of the premier gaming destinations in the world in Singapore  
14 and in Macau. There's no requirement that these executives  
15 surrender their data, their laptops in the ordinary course of  
16 business when they're traveling. And they leave Macau, I  
17 would wager, quite frequently with probably volumes of data,  
18 just like Mr. Jacobs did when he was there. Again, has there  
19 been any evidence presented by Sands China of some special  
20 accommodation for that? No. The best Mr. Fleming can say is,  
21 well, he had some discussion with somebody who -- because --  
22 Mr. Fleming says you couldn't even operate a business without  
23 being able to do so, it's completely unfeasible. And  
24 somebody, unidentified again because we can't utter the names  
25 of people in Macau even when we're testifying in open court

1 under Sands China's view -- Your Honor, I'd be willing to --  
2 just as a segue, be willing to wager that they did not have  
3 that problem when O'Melveny was asking questions about people,  
4 but I digress. These people travel, they take this data out  
5 of the country all of the time. They come here, Your Honor.  
6 It's already in the United States that that information could  
7 be subpoenaed and produced here. That's it.

8           At the end of the day, Your Honor, on this issue  
9 they say that this decision that they came to was not wilful.  
10 It is the very definition of wilful. They could transfer this  
11 data out. They do it. It's a matter of business course.  
12 They made the decision they don't want to. They don't want to  
13 because they are a defendant in litigation where transferring  
14 the data out won't help them. Communicating, whether it's  
15 transferring or communicating the data out for them when it  
16 came to the United States Government, that helped them, they  
17 needed to do that. They needed to get Uncle Sam -- they have  
18 to convince Uncle Sam that there's nothing here to see,  
19 there's no need to take action against us, whether it's the  
20 Gaming Control Officials or the United States Government,  
21 don't, there's no need, we went over there, we interviewed  
22 people, we looked at the documents, here's what we found,  
23 everything is under control, everything is fine. But then  
24 when they're here in front of Her Honor, even pursuant to  
25 Court order having gotten caught misleading the Court, then

1 all of a sudden everything is shut down, it's no longer  
2 maximum access or maximum cooperation, it is the exact  
3 opposite. This was, at the end of the day, nothing but a  
4 business decision that was made by the company because it's  
5 preferable for them. We'd rather face the consequences in the  
6 United States of not complying than face the consequences in  
7 Macau, assuming that there any, which, again, they presented  
8 no evidence of. The only evidence is that they paid two token  
9 small fines.

10 And so dealing with this slide here, Your Honor, is  
11 just to recap. This is wilful. We know it was wilful  
12 because, as Mr. Fleming admitted, he knew what the order said.  
13 He had no problem with understanding the order, it was quite  
14 clear to him. Notwithstanding that, they then sought to  
15 manufacture excuses, to say that the order was somehow  
16 confusing to them, to the Supreme Court. And then to claim  
17 that you had somehow told them, well, you can redact these  
18 documents, none of which -- and they repeated that, of course,  
19 to the Supreme Court. None of that was true. And there was  
20 no confusion, as Mr. Fleming acknowledged.

21 Then we come to this point, which they actually try  
22 to cite as evidence of their good faith. And that is, look at  
23 all the money we spent, Your Honor, we spent -- according to  
24 Mr. Ray, we spent \$2 million extra to not comply. As Mr. Ray  
25 said, had they -- had this just been an ordinary matter where

1 they've had adequate time to address this, it would have cost  
2 maybe 400 grand to comply. But they, according to them -- by  
3 the way, that's just on FTI, Your Honor. That sets aside the  
4 issue about attorneys fees', this is just with FTI. But with  
5 FTI they spent 2.4, according to Mr. Ray, precisely because  
6 they weren't going to comply with the order. When you have a  
7 litigant, Your Honor, that will spend millions to not comply,  
8 sanctions or fines less than that are not going to cause them  
9 to yield. They profit. This litigant has virtually unlimited  
10 resources, and it's made that clear, and it will spend them to  
11 not comply with court orders.

12           And what's the consequence? We are here two and a  
13 half years after you entered that sanction having the exact  
14 same debate. Two and a half years later the exact same  
15 discussion. Now they're just saying, well, let's just undo  
16 it, that's the one substantive sanction you entered for  
17 deceit, now we get to undo it, just eliminate it for us.

18           Dustin, if you could pull up for the Court  
19 Exhibit 216.

20           Now, this is Exhibit 216, and this is what we  
21 ultimately agreed to do, as opposed to depositing all of the  
22 productions from Sands China into the Court's record. And I'm  
23 going to get to that a little bit later, as well, as to the  
24 attempts to now in their proposed findings gain some advantage  
25 over that, and I'll address that. But this is what I want the

1 Court to just sort of see from a visual stand point.

2 The white documents, Your Honor, are the redacted  
3 productions. Now, that does not mean, Your Honor, that every  
4 document in there is redacted. And I want to explain that a  
5 little bit. As a prime example, Your Honor, in these  
6 productions you're going to have emails.

7 Do we have a hard copy?

8 THE COURT: It's okay. Dulce will get me a copy  
9 later. I'm going to look on your thing. But I just wanted to  
10 get a copy for myself later.

11 MR. BICE: I have it right here, Your Honor. May I  
12 approach?

13 THE COURT: Yes. Thank you.

14 MR. BICE: The white ones are the documents that  
15 were produced in a redacted form, but it's not all the  
16 documents that are redacted. And let me explain why that is  
17 the case, Your Honor. Obviously all the emails were redacted,  
18 because the emails are what contained the to, the from, the  
19 sender, et cetera. So the emails get redacted. But there  
20 will be some documents in here that weren't redacted. For  
21 example, if an email has an attachment to it of a contract,  
22 the contract isn't going to contain names in it. So there  
23 will be one document that's not redacted, because it doesn't  
24 contain a name in it. But the point being that no significant  
25 redactions, Your Honor, are to the emails, because all of the



1 to, the from, all get redacted, and if a name is discussed in  
2 there, they all get redacted. And that's obviously oftentimes  
3 or -- I shouldn't say oftentimes -- a number of times is going  
4 to the subject matter itself is going to end up being  
5 redacted. So the white are productions that occurred that had  
6 redactions in them. The yellow are the replacement, what they  
7 have characterized as the replacement images, Your Honor. And  
8 that's where they claim to have found documents outside of  
9 Macau that are the substantive same as the documents that they  
10 had previously redacted.

11           Okay. Now, this we find interesting, Your Honor,  
12 obviously for the following point. If you did all the  
13 searches that you're now saying that you had already done in  
14 the United States or outside of the Macau data set, how is it  
15 that thousands of documents were apparently found after the  
16 fact? Not until you started -- you claimed to have run the  
17 data -- the search terms against the Macau data, and then you  
18 brought these documents out, and then you search for  
19 duplicates. But you already claimed previously you'd already  
20 searched the non-Macau data. That is only one of the many  
21 complete contradictions that are coming out of Sands China and  
22 LVS.

23           But the one substantive point I need you to note  
24 from this agreed acknowledgement by the defendants is they  
25 acknowledge that at least, and the word "at least" is

1 important, because we don't think this number is right, we  
2 think it's more than this, but they acknowledge that at least  
3 7,904 documents, that's not pages that documents, remain  
4 redacted to today.

5 THE COURT: And this document, because I did not ask  
6 the question yesterday when you admitted it, includes  
7 duplicate Bates numbers used for redacted and non-redacted  
8 documents.

9 MR. BICE: Correct. But we're going to talk about  
10 that a little bit today, too.

11 THE COURT: All right.

12 MR. BICE: Because we think that there's some  
13 inconsistency from the defense on that point, as well. But  
14 regardless of what this deduplication process, Your Honor,  
15 they acknowledge at least 7,900 documents are redacted as we  
16 speak today under the MPDPA. And, of course, Your Honor,  
17 what's that really mean? That's going to be principally, it's  
18 not going to be exclusively I acknowledge that, but it's  
19 principally going to be the emails, because the emails are  
20 where the names are, and that's what they're redacting out.

21 So as of today, 7,900 documents, they acknowledge  
22 that, are unavailable in an unredacted form. And they insist,  
23 Your Honor, they will never be available in an unredacted form  
24 because they've searched for them everywhere outside of Macau.  
25 So those documents, that universe of evidence is off the

1 table, according to the defendants. We decree because we  
2 prefer to not follow the order we've taken that set of  
3 evidence, nearly 8,000 documents, and we've taken it and set  
4 it aside.

5           Mr. Ray, Your Honor, testified to this, and I think  
6 this is important to remember. Mr. Ray testified that when  
7 they ran the search terms they had approximately 70,000 hits  
8 in terms of documents, 70,000 documents that were hit by the  
9 search terms in Macau. They then combed through those and  
10 they determined, and we'll get to this process in a minute,  
11 that ultimately they produced, these were his numbers, Your  
12 Honor, 15,000 documents. So according to their own  
13 individual, and we'll get into his expertise in a moment, over  
14 half of the production, 15,000 documents as compared to nearly  
15 8,000 that they acknowledge are still in redaction, and again,  
16 as I said to the Court, you can understand that this is mostly  
17 going to be the emails, are still -- over half of the  
18 production is excluded. Of what they found via the search  
19 terms in Macau, we, the defendants, get to take that data set  
20 and we get to tell you you don't get it, you get documents  
21 that their -- and I'll talk about this in a little bit, that  
22 their own witnesses basically acknowledge are useless, and not  
23 only useless, they seek to gain an advantage by making them  
24 useless.

25           So they do this search, they come up and Mr. Ray

1 says, 70,000. And then, Your Honor, we come to this, which  
2 was the first time we had heard this story was during the  
3 evidentiary hearing. As Mr. Ray says, Your Honor, and as Mr.  
4 Fleming acknowledged, they didn't even try to start engaging  
5 Macau attorneys to do this review until December 18, when you  
6 put the proverbial foot down on them. You had entered this  
7 order back in September about the MPDPA. The discovery  
8 requests had been served on them a year earlier in 2011, Your  
9 Honor, they had not engaged Macau lawyers to even review the  
10 documents until the December 18 date. And this is when Mr.  
11 Ray now says, well, because of this they couldn't find a  
12 sufficient number of, quote, "competent Macau lawyers," end  
13 quote, those are his words, to conduct the review.

14           So this is when he revealed that we had non-lawyer  
15 paralegals, legal secretaries, and again, his terms, Your  
16 Honor, "other people" with supposed, again his words, "legal  
17 knowledge" that were then the decision makers on relevancy and  
18 responsiveness to discovery. And they acknowledge this, no  
19 lawyers that are involved in this case were involved in making  
20 those determinations. They could not see the documents. They  
21 did not look at the documents. We have Macau citizens, these  
22 were Mr. Ray's words, Macau citizens making these  
23 determinations.

24           Now, Your Honor, that is quite a striking revelation  
25 to us, because on January 8 of 2013, when they gave these

1 documents to us in a redacted form the first time, this is  
2 what they told us. And this is what they told you, because  
3 you'll remember they filed a status report with you trying to  
4 rationalize what they had done notwithstanding your sanctions  
5 order. And this is what they represented to you and to us.  
6 "Macau attorneys reviewed each of the documents identified as  
7 potentially responsive to determine whether the document was  
8 in fact relevant to jurisdictional discovery, and, if so,  
9 whether it contained any personal data within the meaning of  
10 the MPDPA." They told us and they told you that this was all  
11 -- you know, this was all kosher, all Macau lawyers; but, of  
12 course, we now know through Mr. Ray that isn't what happened.  
13 We now have unidentified people, paralegals, legal  
14 secretaries, other people of -- did I say that, I don't mean  
15 that in a dismissive manner. I have paralegals, we have legal  
16 secretaries. But let's think about the problematic nature of  
17 what this revelation is, Your Honor, in terms of how it  
18 corresponds to these redactions. Your Honor, the lack of  
19 transparency in this process is alarming to anyone, would be  
20 alarming to any litigant, and would be alarming to any court,  
21 but that is particularly so in this case.

22           Every time we're over here on this case, Your Honor,  
23 we hear from the defendants that we are trying to embarrass  
24 them, that we are interjecting documents into the case that  
25 are embarrassing or sensitive. Because there's no question,

1 Your Honor, this is a highly charged case. There are  
2 allegations in it about improprieties by government officials.  
3 There are allegations in it about investigations of government  
4 officials both in China and in Macau. But Sands China says to  
5 Your Honor and to Mr. Jacobs, this process where we've got  
6 unidentified Macau citizens making the relevancy and  
7 responsiveness determinations you just have to trust that  
8 documents that might be embarrassing or sensitive to people in  
9 Macau are making their way out of the production, and by the  
10 way -- or are being produced, you're just going to have to  
11 trust us on that, because no lawyers get to look at these  
12 documents, no U.S. lawyers get to look, and they don't get to  
13 make the relevancy and responsiveness determination, these  
14 unnamed individuals do. And they -- remember, Your Honor, how  
15 Mr. Ray described the process. They're looking at the  
16 documents, they're making that relevancy determination at the  
17 same moment in which they're making the redactions. And since  
18 nobody else gets to see it, they are the sole judges of  
19 responsiveness, relevancy, embarrassment, et cetera. That's  
20 what has gone on over there.

21 And we now are told, you guys don't, "you guys"  
22 being Mr. Jacobs -- here's this pool of nearly 8,000  
23 documents, which, of course, are going to be emails, a lot of  
24 them, you can't get search them because we've redacted all the  
25 names out of them, you don't get to see what the search terms

1 yielded relative to that regard, you just have to trust these  
2 citizens that they gave you what you are entitled to see.

3 Your Honor, in no case in the United States would  
4 that be tolerated. Never would that be tolerated. Let alone  
5 can it be tolerated in a case like this, where we already have  
6 a finding, a judicial finding that Sands China was dishonest  
7 with the Court, was concealing the location of evidence, was  
8 not producing responsive documents. And now they're saying,  
9 you should just trust this process, this fatally flawed  
10 process. You couldn't imagine a process that is more rife  
11 with pitfalls and potential abuse than the process that they  
12 have engaged in, which is contrary to what they told you and  
13 told us back in 2013.

14 THE COURT: Would this be a good place to take our  
15 break, since you've now taken a break and you look like you're  
16 near the end of a slide?

17 MR. BICE: It is, Your Honor.

18 THE COURT: 1:15.

19 MR. BICE: Thank you, Your Honor.

20 (Court recessed at 11:58 a.m., until 1:15 p.m.)

21 THE COURT: Thanks. You can be seated.

22 Mr. Bice, you may continue.

23 MR. BICE: Thank you, Your Honor.

24 //

25 //

1 PLAINIFF'S CLOSING ARGUMENT (Continued)

2 MR. BICE: Your Honor, at the time of the break it  
3 was a good time to call a break, because I was switching into  
4 the issue about prejudice, obviously. And, again, going back  
5 to what brought us here regarding this prejudice issue, your  
6 October 14th sanctions order was designed to undo that  
7 prejudice to us, the prejudice that they had achieved through  
8 their prior misrepresentations and noncompliance with the  
9 discovery obligations and their claiming -- making claims  
10 under the Macau Data Privacy Act. That sanctions order, in  
11 our view, would have deprived them of the benefit had it been  
12 followed. Had they complied with that order, it would have  
13 deprived them of the benefit.

14 Now, we maintain, obviously, a lot of that prejudice  
15 secured lengthy delay and gave them a strategic advantage,  
16 because, as you'll recall, one of the things that they were  
17 doing was they were making this claim about the MPDPA in order  
18 to not disclose the fact that a lot of these documents were  
19 already here and they didn't want to produce them until they  
20 could get to see for themselves what Mr. Jacobs already  
21 possessed. So that sanctions order would have addressed a lot  
22 of this prejudice. It would have deprived them of the  
23 benefits of that wrongdoing had it in fact been followed.

24 The problem, of course, as we now know, is it's not  
25 -- it hasn't been followed and, taking the defendants at their



1 word, it will never be followed. They are not going to follow  
2 it, and they have said that over and over. It would have been  
3 nice, quite frankly, it would have saved a lot of time and a  
4 lot of money, and it would have eliminated a lot of the delay  
5 had they just been honest with you and the Supreme Court about  
6 that fact, had they just simply said, Your Honor, we're not  
7 going to follow the order, we understand what it says, as Mr.  
8 Fleming acknowledged, he knows what it says, we're not going  
9 to follow it, we've made the choice that we're not going to  
10 comply.

11 But now we're here two and a half years later, after  
12 all of these assertions of confusion and the like that weren't  
13 genuine, having the exact same argument because finally now  
14 the evidence is exposed, we're not going to follow it and we  
15 never were going to. And Mr. Fleming essentially had to  
16 concede that in his testimony. He never intended to comply.

17 So that takes us, Your Honor, to this question about  
18 prejudice. And let me sort of turn -- I had started on that  
19 before we took the break, and I want to come back just a  
20 little bit, because, remember, there was objections to, some  
21 of them sustained, some of them overridden by the Court, about  
22 playing videotaped depositions of some witnesses concerning  
23 emails about Leonel Alves, Chung Chi Tai and the like. And  
24 their accusation was, well, you're just doing that, you're  
25 just introducing that stuff to embarrass us or because it's

1 sensational and because those are bad facts. And that's not  
2 true.

3           But what we wanted to show the Court, and the  
4 defendants accommodated us with all of the protests over  
5 playing that information, is to show again how sensitive they  
6 are and how unwilling they are to let the evidence come to  
7 light. And what they're now telling the Court is you have to  
8 just accept having Macau citizens or even Macau lawyers making  
9 the determination that what we and the Court and everybody  
10 else should be allowed to see concerning Macau officials and a  
11 very prominent Macau lawyer by the name of Leonel Alves. We  
12 played the video about Leonel Alves from Mr. Leven about the  
13 \$300 million payment that even Mr. Leven says stunk. Those  
14 were his words, it stunk, it smelled of illegality. But yet  
15 this is -- and again, it's one of the central issues in this  
16 case, this is the same lawyer that Mr. Adelson insisted be  
17 employed.

18           And the point is we're told, you don't get to see  
19 whether or not his name appears in any of those redactions,  
20 you don't get to see the identity of the other people. Again,  
21 sensitive subject matters, you don't get to see that in the  
22 redactions because we redact all their names under the MPDPA.

23           That's why, Your Honor, again, this process that  
24 they have employed is so fundamentally unfair, so  
25 fundamentally foreign to what is acceptable in the Nevada

1 courts, or, quite frankly, any court in the United States.  
2 What they are trying to ask you to allow them to do is, allow  
3 us to violate an order that was designed to alleviate the  
4 prejudice to Jacobs, allow us to continue that, but allow us  
5 to pick and choose what he gets to see and what he does not  
6 get to see because that is in our interest as the defendant,  
7 the same defendant that misled the Court all along.

8           And let's not forget, Your Honor, another point of  
9 why the trust us story doesn't work and shouldn't be accepted  
10 by the Court, that, we act in good faith so trust us on this,  
11 and I know it's not an issue presently before the Court, but  
12 let's just remember it, though, when this defendant tells us  
13 how good they behave. We get a privilege log of 11,000  
14 documents. And remember, they ran up to the Supreme Court  
15 about how egregious your order was about the question of  
16 Jacobs getting access to that, trumpeting from on high about  
17 these 11,000 documents. But then when the Court says, okay,  
18 folks, I'm going to look at each one of these documents, guess  
19 what happens? Well, Your Honor, if you're going to look at  
20 all the documents, we're going to -- you know, we stand behind  
21 that privilege log -- oh, you're going to look at the  
22 documents, well, now we want to look at the documents first  
23 and we'll get back to you on what we want to maintain are  
24 privileged, really privileged and really not. And then what's  
25 revealed? Well, maybe we overstated it by 70 percent.

1           Okay. So transpose that course of conduct onto the  
2 remainder of this process over in Macau, and you can see  
3 exactly what's going on and what's going to continue to go on.  
4 We now have purportedly Macau lawyers making privilege  
5 determinations over there. And, again, I wonder what  
6 standard. Which standard was applied, the standard that was  
7 applied before this Court said it was going to look at every  
8 document? Because you, by the way, don't get to look at these  
9 privileged documents, either, they've been redacted. You can  
10 look at them in a redacted form.

11           Again, as I was saying before we took the break for  
12 lunch, that -- this process that they are asking you to  
13 approve with these redactions is so fundamentally flawed it  
14 cannot become -- it cannot become an acceptable standard in  
15 the Eighth Judicial District Court or anywhere else, for that  
16 matter. The process is just ripe -- ripe with abuse. There's  
17 no transparency, no one can verify, no one can challenge these  
18 things. They just simply get to decide for themselves what we  
19 get to see and what we don't get to see.

20           And by the way, again, because of the redactions,  
21 because most -- as Your Honor knows better than I, most -- and  
22 Jason Ray testified to this -- most of these search terms are  
23 going to be people's names, because that's how you generally  
24 do searches. They're going to be people's names. Mr. Jacobs,  
25 his team, we can't even use the search terms against the

1 redacted documents, because the names are redacted. You want  
2 to find documents that -- you want to find the documents that  
3 have been redacted that might reference Leonel Alves? Well,  
4 you can't do that because the documents are redacted. Or if  
5 his name comes up, it's because it's in some other unredacted  
6 document. But in terms of the near 8,000 documents it's not  
7 there and you can't search them.

8 Now, that takes us to the defendants' response, and  
9 that response, Your Honor, is in paragraphs 45 -- there's only  
10 five paragraphs where they talk about prejudice in their  
11 proposed findings of fact and conclusions of law, and that's  
12 45 through 49. And these are -- this is their response to the  
13 prejudice issue, Your Honor.

14 THE COURT: And I have to stop for a second. Did  
15 you both submit your proposed findings some way that can be  
16 maintained, or are they just given to me? Because if they  
17 were just given to me, I'll print them and have them marked as  
18 Court's exhibits, just since they're being referenced.

19 MR. RANDALL JONES: I believe we just gave them to  
20 you, Your Honor.

21 THE COURT: Okay. I'll have them printed and made  
22 Court's exhibits.

23 MR. BICE: We filed ours, I believe. Yes, we filed  
24 ours, Your Honor.

25 THE COURT: Okay. I'll just make them Court's

1 exhibits --

2 MR. BICE: All right.

3 THE COURT: -- both of them, so there's no issue.

4 MR. BICE: I thank the Court.

5 So this is their claims about the prejudice. Their  
6 grand point, Your Honor, is Mr. Jacobs only -- we worked out a  
7 stipulation to avoid the introduction of all the documents in  
8 the record. Thus, they come along and say Mr. Jacobs's sole  
9 response is to put 27 documents before the Court and, not  
10 shockingly, we found about half of them in an unredacted form.  
11 I say not shockingly, Your Honor, because that's exactly -- or  
12 not exactly, but that's about the math that Mr. Ray  
13 acknowledged exists. They acknowledge that 79,000-plus remain  
14 redacted. Mr. Ray acknowledged that there was 15,000 of them  
15 or so is what they found. It's about 50 percent -- over  
16 50 percent.

17 But their big grand point in these five paragraphs  
18 is, we found about half of what Mr. Jacobs had previously  
19 alerted the Court to and, of course, we found those, of  
20 course, after all the depositions were done. But, again, Your  
21 Honor, that's only half of the documents. That's their big  
22 defense. Fifty percent of the documents, Your Honor, we have  
23 found in some unredacted form somewhere, we aren't going to  
24 get into -- again, we have Mr. Ray up here unable to explain  
25 how come we didn't find those the first time around. And I'll

1 come back to Mr. Ray in just a moment.

2 But these are just examples, Your Honor. And we  
3 showed that to you with Mr. Leven. We played Mr. Leven's  
4 video clip because the defendants didn't want to make Mr.  
5 Leven available concerning these documents. And their  
6 criticism of us is, well, you know, you only showed Mr. Leven  
7 about nine documents, we found about half of them afterwards  
8 in an unredacted form, you didn't spend -- you didn't waste  
9 Mr. Leven's time, as a senior executive for Las Vegas Sands at  
10 that time you didn't waste his time and march him through the  
11 more than -- at that point in time, Your Honor, it was clearly  
12 more than 8,000 documents that remained redacted -- you didn't  
13 march him through each one of those redactions and get him to  
14 say the same thing on the record that he already testified  
15 about the numerous ones that he was shown, and that is, I  
16 don't know what this is about, I don't know who's on it, I  
17 can't make heads or tails out of it because of all the  
18 redactions.

19 That's their grand point. You, Mr. Jacobs, only  
20 used 27 documents, you didn't march every witness, whether it  
21 was Mr. Toh -- I guess we could have -- this one-day hearing  
22 that has turned into now -- I've lost count of the number of  
23 days in which we've been here.

24 THE COURT: We're on Day 6.

25 MR. BICE: Day 6, Your Honor. I could have spent, I

1 don't know, five or six more days and marched Mr. Toh through  
2 the other 7900-plus redacted documents and get him to say the  
3 same thing over and over and over again. That's apparently  
4 their grand point. You didn't do that, so hence you're really  
5 not prejudiced. Well, obviously, Your Honor, our point was  
6 not to waste everybody's time, waste the Court's time. And,  
7 again, they didn't want all of those documents in the record.  
8 That was exactly why we entered into the agreement which is  
9 Exhibit 216, where they had to acknowledge that there are at  
10 least, at least 7900 documents still in a redacted form under  
11 the MPDPA, which is 7900 different violations of this Court's  
12 order and counting.

13           So I don't want to -- I don't need to march the  
14 Court back through the evidence, Your Honor, which is, you  
15 know, just Exhibit 16 which we introduced, again, Exhibit 23  
16 we introduced, Exhibit 32 we introduced, just to -- I'm not  
17 going to take up the Court's time to march them through,  
18 showing you all the redactions and why Mr. Toh and Mr. Leven,  
19 the only witnesses who were ever shown any of these documents,  
20 conceded, I have no idea what these are about.

21           If these documents are so usable, Your Honor -- and  
22 we heard Mr. Jones say, oh, he could lay a foundation for  
23 them, you'll notice he didn't dare try to even do that with  
24 any of these witnesses, because the documents are, by Mr.  
25 Leven's own words, useless. They're useless. They might as



1 well have taken these redacted documents and shoved them  
2 through a shredder. That's how valuable they are. And that,  
3 of course, exactly works out just as they wanted it to. And  
4 their grand response is, well, you know, we found some of  
5 them.

6 But, Your Honor, it then gets even worse, because  
7 remember -- and they accommodated us on this -- when we tried  
8 to offer these examples into evidence just to show the Court  
9 the documents they objected, lack of foundation, you can't  
10 show that these witnesses know anything about these documents,  
11 they don't -- they can't even testify as to who the authors,  
12 the recipients or any of them are, you can't ask these  
13 witnesses about these documents, Mr. Bice, objection,  
14 foundation. And so that right there tells you what the  
15 prejudice is.

16 But then they compounded that, because they  
17 demonstrated exactly how they seek to even profit from their  
18 noncompliance, actually gain an advantage from their  
19 noncompliance. Their grand proposal on this is, Your Honor,  
20 well, we'll stipulate to the foundation of these documents  
21 which we produced -- which were being offered to show that  
22 foundation couldn't be laid for them and they were effectively  
23 useless -- we'll stipulate to that, Your Honor, if they'll  
24 stipulate that we can get into evidence that we want to get  
25 in. In other words, we won't allow documents that we have

1 mutilated with this redaction, we won't allow those into  
2 evidence unless we can get a strategic advantage for  
3 ourselves. That's what they tried to do.

4           And you can bet your bottom dollar that is exactly  
5 what would have gone on at the evidentiary hearing concerning  
6 personal jurisdiction. That process would have repeated it  
7 over and over and over again. Oh, you can't lay a foundation,  
8 can't get these documents into evidence, can't examine  
9 witnesses about them because they can't possibly know what  
10 these documents are about.

11           This set of documentation, Your Honor, by their own  
12 acknowledgment more than 7900 documents, is junk. And it's  
13 junk, Your Honor -- let's even assume for the sake of argument  
14 that this Macau review process had legitimacy, that these  
15 Macau reviewers could be trusted to determine relevancy,  
16 responsiveness and that they would produce stuff  
17 notwithstanding whether or not they thought it was sensitive  
18 and about people in Macau, some of whom are important, and  
19 that they would not -- they would not not produce documents on  
20 that basis. Assume that all happened, that it was all just  
21 kosher. So what we now have an admission from the defendants,  
22 Your Honor, is there are approximately 8,000 documents that  
23 are relevant even in the eyes of the Macau reviewers that Mr.  
24 Jacobs doesn't get to use. He doesn't get to be able to read  
25 them, decipher them or understand how they could be used in

1 this case. They're triggered by the jurisdictional search  
2 terms and even our reviewers determined that they're relevant  
3 and responsive, but you don't get them, you don't get to use  
4 them.

5           Again, Your Honor, what would the Court's reaction  
6 be if someone came into court and said, well, Your Honor,  
7 there's 8,000 or more documents or approximately 8,000  
8 documents that were triggered by the search terms that we have  
9 deemed to be responsive to someone's case but we decided to  
10 put them through the shredder, they don't really need to see  
11 them, they don't really need to be able to use them, we just  
12 decided we're going to run them through a shredder? The  
13 judicial response to that would be, when is your answer going  
14 to be stricken, when would you like to hold a hearing about  
15 striking your answer? That's what the response would be and  
16 should be in any case.

17           But their position is, no, no, we redacted them,  
18 they're not useable, but it's really more important our  
19 interests take precedence over the Court's interest and the  
20 search for the truth, our interests in Macau take precedent,  
21 it didn't when the United States Government wanted documents  
22 and we needed to provide some information, but that's  
23 different, that's an important circumstance when we've got to  
24 comply, this is just a court order, so now, when balancing  
25 out, now our interest takes precedence over a court order.

1 I don't know where to start. I don't want to spend  
2 much time on it. I mean, I could spend a day on Mr. Ray,  
3 because I don't -- I mean, to call him a boomerang is an  
4 understatement. He first is here telling you that everything  
5 was searched except the sequestered documents. And he was  
6 very adamant about that, well, now, okay, sequestered  
7 documents, but it was a very, very small subset. But then as  
8 yesterday went on, Your Honor, I don't have the foggiest clue,  
9 and neither does he, by the way, about what was really  
10 searched. He's got a mantra down, and his mantra is we  
11 searched what was available to us. That's his grand mantra.  
12 But then, of course, he really can't articulate what was  
13 available to them. He can't explain and he didn't explain how  
14 it is -- remember he brought into the court those two exhibits  
15 that he had made just for the case the day before. One of  
16 them was big and thick, one of them was little.

17 THE COURT: 379 and 380.

18 MR. BICE: Right. So 379 and 380.

19 THE COURT: 379 is the thick one.

20 MR. BICE: What did I do with my copies? Well, I  
21 don't have them handy, so I'm not going to worry about it,  
22 Your Honor, because I don't want to take a lot of time.

23 Your Honor, if in fact the searches had been done,  
24 as he's now claiming, or somehow it was done in the United  
25 States, how were there duplicate documents that only showed up

1 in Macau that needed to be relocated in the United States? He  
2 couldn't explain that. He has no idea how could that happen.  
3 And, Your Honor, if there were all these documents that they  
4 found in the United States from -- and remember, this is only  
5 the Jacobs data, only Jacobs -- he's got -- your stack is  
6 double this because we've tried to save some paper and it's  
7 two-sided. This is the thick one that they say, well, here,  
8 these are documents we produced from within the United States  
9 about Jacobs. How come these weren't found in Macau, if the  
10 duplicates are this much, much, much, much smaller set, Your  
11 Honor? He can't explain this, because there is no  
12 explanation. He has no idea, legitimate idea about what is  
13 the data that they supposedly were given access to by their  
14 client. We've got drives, as he testifies to, that were  
15 created before the data was even transferred here. Well,  
16 those dates could be off, might not be, maybe, I don't know,  
17 we did an investigation into it and really couldn't determine  
18 anything.

19           So when they tell you all of the extraordinary  
20 things that they have done to supposedly find these duplicate  
21 documents, all they end up demonstrating, Your Honor, is that  
22 their searches weren't adequate to begin with; because, if  
23 they were, you wouldn't be finding duplicate documents. Those  
24 documents would have presumably already have existed and have  
25 already been produced.

1           And Mr. Ray was brought into this courtroom as an  
2 expert. They claim, no, not an expert, we just went into his  
3 whole history and his knowledge and qualifications, but we  
4 really weren't meaning to call him as an expert, just that he  
5 was going to be supposedly the most knowledgeable person in  
6 the room about how to do searches and how it was done in this  
7 particular case, and he ended up, I think, demonstrating that  
8 even he has no ability to explain what was done, how it was  
9 done, when it was done, and why.

10           So, Dustin, just put up the rest of the points on  
11 this slide as just sort of a summary at this point.

12           So we have from them an admission, because this is  
13 the words they were using, relevant responsive documents that  
14 is unusable. They admit that it's at least 7900 documents,  
15 half or more, more than half of their production. It's not  
16 admissible, as they demonstrated front and center for us in  
17 the courtroom, front and center, hey, none of these documents  
18 are admissible, you can't lay a foundation for them, you can't  
19 question witnesses about them because you can't even show the  
20 witness who was involved in the document.

21           The search itself, as we point out, Your Honor,  
22 is completely unreliable and untrustworthy, and there's no  
23 ability to verify it. There's no transparency. You can't  
24 check anything that they are doing with respect to these near  
25 8,000 documents that they admit. You've got Macau citizens of

1 unspecified qualifications -- and again, Mr. Ray was clear, we  
2 didn't train them, we taught them how to use the tool, I don't  
3 know whether or not anybody -- who it was that told them how  
4 they decide which documents the people in the United States  
5 get to see or not, I don't know who did that, but it wasn't  
6 us. And then I'm going to give them the benefit of the doubt  
7 that it was Macau lawyers actually making privilege  
8 determinations. I'll give them the benefit of the doubt.  
9 Under what criteria and what standard, I don't know.

10           Now, we've heard from them arguments that, well,  
11 this doesn't relate to the issue about redactions, this is a  
12 defect that is independent of the -- an argument independent  
13 of the redactions. No, it is not. And I believe that the  
14 Court recognized that as the evidence was coming out. The  
15 reasons that the redactions are so problematic -- this process  
16 is flawed to begin with, but the redactions are all the more  
17 -- they compound this defect, because you can't conduct any  
18 sort of verification process. They gained yet another  
19 advantage. We don't get the ability to test what they are  
20 doing and to challenge what they are doing, because you can't  
21 search the documents yourself. And as I said before, Your  
22 Honor, they could have just saved us all a huge amount of time  
23 and money.

24           Go to the next slide, Dustin.

25           Just tell the Court the truth, we're not going to

1 comply. Tell the Nevada Supreme Court the truth, we're not  
2 going to comply. Don't go telling them, oh, we thought that  
3 that order only applied to documents that were located in the  
4 United States, to which the MPDPA doesn't even apply. But,  
5 no, we've got to buy time and the way to buy time is to claim  
6 that we were confused, that the Court said we could redact or  
7 that the order only applied to documents that weren't  
8 otherwise subject to the MPDPA. So we have wasted attorneys'  
9 fees and wasted years in this case yet again.

10 And why has this happened, Your Honor? It has  
11 happened for one reason and one reason only. They chose to  
12 violate your order. Had they followed your order, which was  
13 designed to undo the prejudice to us, we wouldn't even be  
14 having this debate. We could at least verify what's going on  
15 and challenge it, because we could at least see these redacted  
16 -- these names redacted from the documents.

17 Next slide, Dustin.

18 Now, Your Honor, just sort of closing out on the  
19 legal points. Delay, as we cite to you -- and you had said to  
20 me that delay enough -- isn't prejudice enough, I think,  
21 during our presentation. I understand the Court's point on  
22 this. What the Nevada Supreme Court says is that violation of  
23 a court order that perpetuates delay, prejudice is presumed.  
24 That is simply the law.

25 The next point. They -- by their own



1 acknowledgment, they produced all these documents originally  
2 in a redacted format. Now, of course, the depositions were  
3 then completed in early February. And they say, well, you  
4 know, a few days before that we produced some of these  
5 documents in an unredacted format and you should have been  
6 able to try and piece this together because, after all, we've  
7 got these redactions going on and we produced duplicates with  
8 the same numbers, you should have been able to navigate this  
9 minefield prior to these depositions and you should have been  
10 able to figure this out. As Mr. Leven's, I think, Your Honor,  
11 testimony proves, that was not feasible. And we still have  
12 all these redacted documents and we just gave him some  
13 examples and he acknowledged they're useless, they're  
14 absolutely useless.

15           And, as we point out, Your Honor, the passage of  
16 time -- even Mr. Raphaelson acknowledges memories fade. Your  
17 Honor's memory, my memory has faded. The longer they can drag  
18 this out, the more they gain from it. And that is -- this  
19 case is over four years old. Not a single piece of merits  
20 evidence has been preserved to the extent it doesn't overlap  
21 with jurisdictional discovery.

22           THE COURT: One would hope its been preserved.

23           MR. BICE: Well, the Court hadn't remembered the  
24 envelope that --

25           THE COURT: The foil envelope.

1 MR. BICE: The foil envelope.

2 THE COURT: Yeah.

3 MR. BICE: But even -- it sounded pretty obvious to  
4 me that Mr. Ray had been put on the task of trying to  
5 investigate that at some point in time, it sounded like from  
6 his testimony yesterday. Nonetheless, but even memories have  
7 faded, Your Honor. Witnesses are now allowed to claim -- and  
8 you can't challenge them, to claim I don't remember, it's been  
9 too long. Mr. Schwartz is now deceased. Mr. Leven is no  
10 longer, quote, unquote, "with the company." Mr. Siegel,  
11 another board member, no longer with the company. There are  
12 -- the witnesses, what happens over time, witnesses scatter,  
13 witnesses disappear, memories are gone. And that of course is  
14 prejudicial to a plaintiff who is seeking to prosecute a case.

15 Again, Your Honor, we come back and we make this  
16 additional point. It's not just that is the prejudice, but  
17 this unlevel playing field that they have obtained by not  
18 producing the documents to us. They're -- here's their  
19 position. They get to know, Sands China gets to know what is  
20 in these redacted documents; we don't. We get to know, we  
21 being Sands China, get to know what we can -- what additional  
22 searches might be able to be derived from those if you looked  
23 at them and could determine who's involved, et cetera, perhaps  
24 additional custodians and the like, we get to know that. You  
25 don't, and we don't. That completely unlevel playing field is

1 exactly contrary to the entire point of the discovery process,  
2 which is give us the search for the truth.

3 So, Your Honor, sort of in closing, I want to get  
4 to --

5 Next point, Dustin, next slide.

6 This is Sands China's position. And I know they  
7 don't like -- they won't like this, because they'll say, oh,  
8 this is pejorative. All right. But it's the truth. This is  
9 their position, you don't get my evidence, we do, you don't  
10 get it, you, Jacobs, don't get it and the Court doesn't get to  
11 see it. If that happened in -- any litigant who says that to  
12 the Court, what is the remedy under the law? The remedy --  
13 because we're here in jurisdictional discovery, the remedy is  
14 that that defense is gone, you do not get to take that  
15 position. That is your choice. You want to sacrifice that by  
16 not giving over the documents that you were ordered to produce  
17 in an unredacted form like you were ordered to do, that's the  
18 consequence. Your defense is gone. You've advanced this  
19 defense. You're now trying to withhold evidence that goes to  
20 that defense that even your Macau reviewers have determined is  
21 responsive to that defense, but you don't get to see it.

22 Then the other point we want to make, Your Honor,  
23 and we make this in our brief and in our findings of fact.  
24 There are a long series of cases, a long series of cases  
25 concerning the -- they're kind of referred to as the Chevron

1 cases that deal with the judgment that was obtained down in  
2 Ecuador, which a federal judge in New York -- you know, it's  
3 been in the newspapers, he basically determined that that  
4 judgment was the product of what he had determined was fraud.

5           Nonetheless, there is a lot of litigation around the  
6 country and one of the pieces of litigation that came up  
7 throughout all these court cases was claims about data privacy  
8 and producing documents from foreign countries. And in one of  
9 those cases that we cite to you, the one at 296 Federal Rules  
10 Digest, the court said, I'm going to strike your defense,  
11 you're not producing the documents, you're claiming, well, I  
12 can't produce them because of these foreign laws, that's not a  
13 defense, you don't produce them, fine, I'm striking the  
14 defense, I'm nonetheless going to proceed and at time of trial  
15 I'll still adjudicate your claims about a lack of personal  
16 jurisdiction so that there is an evidentiary record for the  
17 Court of Appeals to review, but I'm striking your defense and  
18 we'll take up your defense at the time of trial just to  
19 preserve the record.

20           I know that in the past this Court has expressed  
21 concerns to us that it feels compelled by the Supreme Court to  
22 allow this defense to go forward notwithstanding the conduct  
23 that has occurred. I understand that. I don't believe that  
24 that's what the Supreme Court meant. I don't believe that  
25 when the Supreme Court says, Your Honor, please hold an

1 evidentiary hearing on personal jurisdiction --

2 THE COURT: Well, they told me that three years ago.

3 MR. BICE: I understand that.

4 THE COURT: I've been trying.

5 MR. BICE: But I don't believe, Your Honor, what  
6 they meant by that is whatever the defendant does, no matter  
7 how badly the defendant behaves and no matter how badly the  
8 defendant doesn't comply with discovery, you hold that hearing  
9 no matter what they do. If they come back to you and they  
10 say, Your Honor, we're shoving every piece of documentary  
11 evidence in Macau through a shredder, I don't think that the  
12 Nevada Supreme Court is telling Her Honor you go ahead and  
13 hold that evidentiary hearing anyway. What I believe and I  
14 think is fair for the Court to infer is that when the Nevada  
15 Supreme Court says, you hold an evidentiary hearing on  
16 jurisdiction, the ordinary rules of conduct and civil  
17 procedure apply. And if someone breaches them, if someone  
18 transcends them, the ordinary rules and conduct about the  
19 consequences for that also apply. And that's what this Court  
20 should do.

21 And if the Court is so inclined and wants to follow  
22 the Chevron decision that we cite, the Court can nonetheless  
23 say, well, I'm going to still adhere to the Supreme Court's  
24 directive, I'm striking this defense, but I'm still going to  
25 hold the evidentiary hearing to create a record so that the

1 Nevada Supreme Court could review it if they are so inclined  
2 notwithstanding my determination that this defendant has  
3 forfeited the right to advance this defense in light of their  
4 conduct. If that's what the Court wants to do, then that's  
5 what it should do.

6 But let's be clear. This defendant has told you  
7 they are not going to comply. Your Honor, the best evidence  
8 you can have that this is wilful, look at what happened after  
9 you told them, you can't do the redactions. If it wasn't  
10 wilful, you know what they would have done? They would have  
11 unredacted the documents. But as Mr. Fleming has told you,  
12 Your Honor, with all due respect, we're not going to change  
13 our course of conduct, we are going to decide what Mr. Jacobs  
14 gets and we are going to decide which of your orders we are  
15 going to follow, we will pay the \$25,000 fine, but we will not  
16 follow the other part of the order.

17 THE COURT: So, Mr. Bice, can you address for me,  
18 and I think you did a little bit earlier, what you think the  
19 significance of the change in the business practice of how the  
20 documents were handled for purposes of the wilfulness  
21 analysis?

22 MR. BICE: I'm sorry, Your Honor, I'm not following  
23 what you're asking me, and I apologize.

24 THE COURT: The changed in the way documents were  
25 made available from Macau --

1 MR. BICE: Yes.

2 THE COURT: -- prior to my September order --

3 MR. BICE: Yes.

4 THE COURT: -- and they way they were handled after  
5 my September order, O'Melveny & Myers, Mr. Kostrinsky,  
6 internal emails with the company.

7 MR. BICE: Well, Your Honor, I think if the Court  
8 recalls all of the testimony, Mr. Singh had testified before  
9 the Court that in fact prior to the requests coming from  
10 -- and I believe my recollection is he had indicated that it  
11 was the request for information from the United States  
12 Government or the gaming regulators, whichever, however one  
13 wants to characterize it, there was a complete free flow of  
14 data between the two organizations. And, of course, this  
15 lawsuit had been pending well before that happened. It was  
16 -- that evidence was accessible, because this case started in  
17 the end of -- October of 2010. That evidence was accessible.  
18 They took the position -- they, by Mr. Singh's own  
19 acknowledgment, they turned it off. And there was no  
20 indication and there has been no evidence presented that the  
21 Macau government had anything to do with that. There has been  
22 no one who has come to you and testified, we turned it off  
23 because the Macau officials told us to turn it off, or they  
24 told us there would be consequences if we didn't turn it off.  
25 I think that the evidence that came out during the first

1 sanctions hearing is this was an internal decision to turn it  
2 off for themselves. And then to send -- as we now know, we'll  
3 send O'Melveny over there and they can look at what this is.  
4 And we have Ms. Glaser telling the Court how even that  
5 supposedly wasn't happening.

6           This -- again, this is the litigant -- this is the  
7 path that they have chosen. And what they're asking you to do  
8 is let them be the arbiters of what the rules are going to be.  
9 That's what they're asking you to do. And I'm asking the  
10 Court, don't let that happen. Because if it happens in this  
11 case, when does it then cease? What litigants then don't  
12 -- what litigant wouldn't love to be able to come into the  
13 court and say, you know, Your Honor, I want to decide what  
14 gets produced, I want to decide which rules are going to be  
15 followed, I want to decide what are the consequences for me  
16 deceiving the Court, I can deceive the Court, I can tell the  
17 Court things that weren't true, I can tell the Court -- I can  
18 omit facts before the Court and if I get caught doing that I  
19 want to decide my own punishment because the punishment that  
20 the Court doles out is not to my liking.

21           Your Honor, they should have -- they should have  
22 made that decision before they pursued that course of conduct  
23 starting in 2011. They chose the contrary path, the path that  
24 anybody knew was improper and it was wrongful. And they  
25 gained material advantage by doing it. And short of enforcing



1 the order, short of the Court saying, the order is binding on  
2 you, you don't get to pick and choose, they will continue to  
3 profit. And they've already told you it makes no -- Your  
4 Honor, you can tell us a hundred more times to follow that  
5 order, we're not going to do it.

6           So there's no need to put us all back on the  
7 treadmill, Your Honor. I know that one of the things that the  
8 Court had indicated before was, well, gee, could one of the  
9 remedies be that we redo the discovery? They've told us  
10 that's off the table. By their own admission, that serves no  
11 purpose because we've still got, by our own admission we've  
12 still got approximately 8,000 documents, of course, which are  
13 principally going to be emails and the like, and you're never  
14 going to see them. So it does no good to say, well, let's  
15 redo the discovery, because they've already told you, we're  
16 never going to give them those documents, we searched for  
17 duplicates in the United States, we've found what we can,  
18 that's the end of it. Their entire pitch to you is the Court  
19 just has to live with that, and, Jacobs, you just have to live  
20 with that. That's their position in their findings of fact.

21           And I'm going over my -- the time I had planned, so  
22 I'm going to save the rest for rebuttal, Your Honor.

23           THE COURT: Thank you.

24           Mr. Jones.

25           You used 92 minutes, Mr. Bice.

1 MR. MORRIS: What was the time?

2 THE COURT: He used 92 of his 2 hours, which is 120.  
3 He's got 28 left.

4 MR. RANDALL JONES: Your Honor, you had I believe  
5 asked if we were going to use a PowerPoint that we give you  
6 the slides.

7 THE COURT: Yes.

8 MR. RANDALL JONES: I have those for you.

9 THE COURT: And, Mr. Bice, you'll need to give us  
10 your slides, too, for a Court's exhibit.

11 MR. BICE: Oh. I apologize.

12 MR. RANDALL JONES: Here's one for the clerk, Your  
13 Honor.

14 THE COURT: Thanks.

15 MR. RANDALL JONES: And here is one for the Court.  
16 I'd also given -- I gave -- I'd actually --

17 THE COURT: Mark Mr. Bice's before you mark Mr.  
18 Jones'. Here it comes.

19 MR. RANDALL JONES: I don't have a copy of my slides  
20 for you. I have them --

21 THE COURT: Here, you can -- I don't need it,  
22 because I'm going to watch it. And then if I need --

23 Here, Mr. Bice.

24 (Pause in the proceedings)

25 THE COURT: Did someone want this one? Because I'm

1 going to watch it and then if I need to refer to it later, I  
2 can use Dulce's copy.

3 MR. RANDALL JONES: That's fine, Judge. We actually  
4 had an extra -- a copy.

5 THE COURT: You have another copy? Okay. And, Mr.  
6 Jones, do you want me to remind you at any point to give Mr.  
7 Peek any time?

8 MR. RANDALL JONES: Your Honor, if you could remind  
9 me. I hope I don't go more than an hour and 45 minutes. I've  
10 never done that practicing this, so I don't think I'm going to  
11 go that long. But if I get to an hour and 45 minutes, I would  
12 ask the Court, let me know.

13 THE COURT: All right.

14 MR. PEEK: And, Your Honor, based upon what Mr.  
15 Bice's argument has been so far, it doesn't implicate Las  
16 Vegas Sands Corporation so much.

17 THE COURT: So you don't need me to tell Mr. Jones  
18 to save time for you?

19 MR. PEEK: I don't believe you need -- exactly. Mr.  
20 Jones can address those remarks that were made by Mr. Bice. I  
21 don't want to duplicate them.

22 THE COURT: Okay. Thank you.

23 MR. RANDALL JONES: Your Honor, I show -- according  
24 to my watch, it's 2:00 o'clock straight up pretty much.

25 THE COURT: I've got 1:59, but I'll go with 2:00

1 o'clock.

2 MR. RANDALL JONES: Your Honor, you just took an  
3 hour -- or a minute away from me.

4 THE COURT: I'm going to add it back in.

5 MR. RANDALL JONES: Thank you.

6 DEFENDANTS' CLOSING ARGUMENT

7 MR. RANDALL JONES: Your Honor, I'm going to  
8 actually answer your question to Mr. Bice before I start any  
9 of my prepared remarks, where you said can you tell me about  
10 this issue of the change of procedure as it relates to -- at  
11 least as I understood your question, as it relates to the  
12 order that I handed down in September of 2012.

13 THE COURT: What I was referring to was the change  
14 in the business practice at the company before I handed down  
15 my order.

16 MR. RANDALL JONES: And that's what I understood.  
17 So, and this, Your Honor, I think goes to the whole discussion  
18 by Mr. Bice. And I -- it's a closing argument so it's  
19 argument, so I don't mean this personally, but as has been the  
20 case, I believe, certainly since I've been involved in this  
21 case, it was very long on rhetoric and very short on  
22 substance. And I will show you, hopefully I will show you  
23 graphically exactly what I mean.

24 I'm going to start with this point. I'm going to  
25 refer you to -- and this is found actually on page 10 of our

1 proposed findings and conclusions where we answer that  
2 question for the Court under paragraph 33, where we cite to  
3 the record or actual exhibits that are in the record in this  
4 case. At the 2012 sanctions hearing a former Las Vegas Sands  
5 company in-house attorney, Michael Kostrinsky, testified,  
6 there was a change in practice in March of 2011 regarding how  
7 information was obtained from Macau. Previously there had  
8 been no restrictions on his ability to obtain data from Macau  
9 starting in March 2012 -- or excuse me, 2011; however, he was  
10 denied access to information he was requesting from a Macau  
11 subsidiary and thereafter had to make requests for information  
12 to the legal department in Macau, citing to the transcript.

13 Similarly, there's reference to the IT, the head of  
14 IT, Mr. Singh, who Mr. Bice I believe inaccurately referred to  
15 as saying that they adopted a new policy in transfers in April  
16 2011 and in July of 2011 action was taken to shut down the  
17 network-to-network connection between Las Vegas Sands and  
18 Sands China and VML to make sure there was -- to quote, "make  
19 sure there was compliance with their current understanding of  
20 the data privacy issue," end quote, citing the transcript.

21 Again, referencing paragraph -- or Sands China  
22 exhibit in evidence 346, a number of communications in  
23 meetings of the OPDP --

24 THE COURT: And just for historical reference --

25 MR. RANDALL JONES: Yes, Your Honor.

1 THE COURT: -- these events being described in  
2 paragraphs 33 and 34 are events that are occurring at the same  
3 time I'm trying to do the initial disclosures pursuant to  
4 Rule 16.1 in my Rule 16 conference.

5 MR. RANDALL JONES: And I do understand that, Your  
6 Honor. And here's the point.

7 THE COURT: I mean, these are at exactly the same  
8 time I'm having Ms. Glaser telling me no, no, no, I'm not  
9 giving you anything.

10 MR. RANDALL JONES: And I would ask the Court -- and  
11 I know you take copious notes, I would ask the Court, look at  
12 your notes and look at what Mr. Fleming said. This was a new  
13 law that had been passed, and they were all, including what he  
14 said, the OPDP trying to figure out what it meant and how to  
15 enforce it. And that's why in Mr. Fleming's affidavit, which  
16 is 346, he said, starting in May of 2011, right at the time  
17 that you're talking about, Judge, they started having meetings  
18 with the OPDP to try to figure this out because there was a  
19 concern.

20 And let me ask you, Judge, it doesn't make any  
21 difference for purposes of what you're concerned about, at  
22 least as I understand it here today, whether the issue was  
23 because of an SEC subpoena or because of hearings that you  
24 were having here in Las Vegas related to this case, there were  
25 issues implicating the MPDPA that were both -- in two

1 different places, in Macau with the SEC and DOJ investigation  
2 or subpoena and right here in Las Vegas.

3 And so to suggest -- for Mr. Bice to suggest one  
4 thing didn't have to do with the other, there's certainly no  
5 evidence of that, Judge. And certainly the common-sense and  
6 logical conclusion would be there's now being a lot of  
7 inquiries being made on this company about what information  
8 they can give up. And so they do what any prudent company  
9 would do, they start to investigate and they start to ask the  
10 authority that has control over this issue.

11 And, Judge, I think it has to be kept in mind, my  
12 client, Sands China, is a Cayman Islands company whose home is  
13 in Macau. They don't believe they should be here. Now, I  
14 understand that's an issue you're going to ultimately decide,  
15 but they didn't voluntarily come --

16 THE COURT: Only if I actually get to the  
17 evidentiary hearing.

18 MR. RANDALL JONES: At some point there is going to  
19 be -- I'm confident there will be a decision by this Court.  
20 But the bigger point is, Judge, they didn't come here  
21 voluntarily. Mr. Jacobs sued them in the Eighth Judicial  
22 District Court. It's very easy -- it's very easy for Mr. Bice  
23 to say that my client, which is a Macau company, it's licensed  
24 to do business there, that has a -- it's a publicly traded  
25 company who is required to comply with the laws of that

1 country, to say to you, they are just making this up, Judge.  
2 They believe -- and I'm going to get to this in much more  
3 detail. They believe they are required and have made a  
4 substantial inquiry into this issue multiple times and have  
5 had correspondence, which we'll talk about, multiple times, in  
6 spite of what Mr. Bice says, to try to find this out. And  
7 also, as you have seen and heard from the testimony, for my  
8 client to try to get a waiver so that they could produce more  
9 information, and have been told in every instance -- there is  
10 no evidence in this record that they have ever been given  
11 permission to provide you this information unredacted.

12 So it's very easy for Mr. Bice --

13 THE COURT: Okay, Mr. Jones, hold on a second. You said  
14 something that caused me to have some concerns.

15 MR. RANDALL JONES: Okay.

16 THE COURT: It appears from my quick Internet search  
17 that the Macau Data Privacy Act was adopted first in 2005, so  
18 it couldn't have been a recent adoption of that law.

19 MR. RANDALL JONES: As I understand Mr. Fleming's  
20 testimony, that that law had not been -- nobody had ever dealt  
21 with that law, it had not been well understood, and that they  
22 were --

23 THE COURT: Those are different issues.

24 MR. RANDALL JONES: Well, again, Your Honor, I don't  
25 know exactly when it was passed. If the Court's understanding



1 is from the Internet --

2 THE COURT: I just did a quick Internet search.

3 MR. RANDALL JONES: If the Internet says it's  
4 2005 --

5 THE COURT: I don't know if the Internet is right.

6 MR. RANDALL JONES: All I can tell you, Judge, is I  
7 don't know the answer to that question. It's my understanding  
8 from the testimony that this was a relatively new law that had  
9 never been really something that the companies were made aware  
10 of or felt they had to comply with until this issue started  
11 coming up in the spring of 2011. And that -- yeah, 2011. And  
12 that's the only evidence we have. You don't have any contrary  
13 evidence.

14 And, Your Honor, I think in terms of this rhetoric  
15 over substance argument, you know, Mr. Bice has done what  
16 seems to be their best weapon in this case. They talk  
17 about --

18 THE COURT: And August 2005 is what you have on your  
19 exhibit list in the description of 341. So I'm going to take  
20 your exhibit list as being accurate --

21 MR. RANDALL JONES: And I'm certainly not going to  
22 argue with --

23 THE COURT: -- for the adoption, and that's six years  
24 before 2011.

25 MR. RANDALL JONES: And, Judge, again, all I can

1 tell you is from the evidence as I understand it there had not  
2 been any issue with the MPDPA that my client was aware of  
3 until the spring of 2011.

4 THE COURT: Okay.

5 MR. RANDALL JONES: So, and if the Court certainly  
6 can point me out to any other evidence, I'd certainly be  
7 interested in seeing it.

8 THE COURT: I just confirmed the date that I found  
9 on the Internet on your exhibit list description of the Act.

10 MR. RANDALL JONES: And, Your Honor, again, my point  
11 is that, as I understood the testimony, this was not an issue  
12 that my client had to contend with up until --

13 THE COURT: Well, and that's sort of my point, Mr.  
14 Jones, and that was why I asked the question of Mr. Bice, to  
15 frame the issue so that we could talk about it. Because based  
16 upon the testimony I heard at the prior sanctions hearing, at  
17 which you were not involved but you've had the opportunity to  
18 look at transcripts, there appeared to be a change in the  
19 business practice during the course of my litigation that's  
20 going on here. Whether it was related to the SEC  
21 investigation, the investigations by the other governmental  
22 entities or related to this litigation, it appears that the  
23 timing is while my litigation is in its inception, the first  
24 couple of years of my litigation.

25 And so that's why I am concerned that there was a --

1 what was described by some at the prior hearing as a free flow  
2 of information from Macau up to a point during my litigation,  
3 and then somebody turned the spigot off. And that change in  
4 the business practice and the delays that have occurred as a  
5 result of that is part of that prejudice factor I have to  
6 evaluate, and it's part of the prejudice I tried to ameliorate  
7 during the first sanctions hearing with my order. And it also  
8 goes, based upon whatever reason it was for the change in  
9 business practice, and I've heard Mr. Fleming's explanation,  
10 it goes to the wilfulness factor.

11           So, I mean, this change in the business practice to  
12 me is an important issue, which is why I've been asking about  
13 it. So I'm making sure you're not blindsided, and I asked Mr.  
14 Bice the question so you could hear it and have a few minutes  
15 to think about it as you were getting ready to get up. But  
16 I'm trying to frame that issue, because to me it's an  
17 important issue in making the determinations at this hearing.

18           MR. RANDALL JONES: I understand, Your Honor. I do  
19 understand, and I believe there has been testimony from Mr.  
20 Fleming as to why that happened and the circumstances  
21 surrounding how that happened. And, if anything, it does not  
22 appear, based on the testimony, to be tied to this case. If  
23 anything, it's been suggested by Mr. Bice that it was due to a  
24 subpoena from the Justice Department.

25           And by the way, Judge, is that a logical connection

1 or not? It would seem to me the evidence would be pretty  
2 clear that if you get this -- if you did get a subpoena from  
3 any party and there is now an issue as to whether or not  
4 complying with that subpoena would be a violation of the laws  
5 where your company is at home and does business, would be  
6 something you would want to be careful about, which any  
7 prudent business would want to do. And so if the company had  
8 been inadvertently violating the law prior to the date of that  
9 subpoena, then the company would certainly not want to  
10 continue on with that behavior.

11 In that regard, Your Honor, that's why I think this  
12 whole argument Mr. Bice makes, which by the way, I believe he  
13 totally misstated or misunderstood the testimony, there was  
14 only one incident that gave rise to a fine. It was two fines  
15 of approximately \$2,500 U.S. They were both in connection  
16 with the inadvertent publication of private data related to  
17 this case. And that's what I understood --

18 THE COURT: You mean Mr. Kostrinsky bringing the  
19 information to the U.S.?

20 MR. RANDALL JONES: That's my understanding, and  
21 that's what I believe --

22 THE COURT: I haven't heard that before.

23 MR. RANDALL JONES: And I don't know if that's the  
24 case. You know what, Your Honor, I shouldn't say that,  
25 because I don't know that. I do know that it was one -- from

1 Mr. Toh's testimony that there was two different fines related  
2 to whatever inadvertent release there was. And that's my  
3 understanding, is the first release was inadvertent and they  
4 got fined. And that's what Mr. Fleming testified to, is if  
5 you're going to have another incident and we do it wilfully,  
6 we do it where we have been told don't do this, that subjects  
7 the company to all kinds of other potential sanctions and  
8 that's what he could not do.

9 THE COURT: But that decision was not made until I'm  
10 a year into this litigation.

11 MR. RANDALL JONES: Your Honor, I'll be happy to  
12 address that. I'm going to address that in my discussion  
13 today, and I have to -- honestly, Your Honor, I understand  
14 I've got to answer your questions, but I also -- I want to  
15 make sure that I have enough time to do my presentation.

16 THE COURT: Sure.

17 MR. RANDALL JONES: But your questions are more  
18 important than my presentation.

19 THE COURT: And we also need to make sure we have a  
20 good record for when whoever decides to go up to Carson City  
21 again.

22 MR. RANDALL JONES: That's correct. And, Your  
23 Honor, I will say this, that, again, we were under the  
24 impression this case was going to be an issue about  
25 redactions. Mr. Bice has tried to conflate this into an issue

1 that goes back to issues long before there were any redacted  
2 documents from Sands China, and he talks about searches and he  
3 talks about the reviewers. We've never had an order saying  
4 that we had inadequately searched any documents. We've never  
5 had -- we've never even had a meet and confer about that.

6 And I'm going to get to those search issues, Judge,  
7 so I ask the Court's indulgence to let me get to that, because  
8 I'm going to address that with documents, as opposed to  
9 rhetoric about these searches issues and about meet and  
10 confers and about putting somebody on notice of an issue that  
11 you have before you come into court and ask for essentially  
12 having the sanction of jurisdiction being imposed on my  
13 client.

14 So with that said, Your Honor, I would like to start  
15 my PowerPoint presentation. So, Your Honor, as I understand  
16 it, this is a Rule 37 hearing, which means that the moving  
17 party has the burden, although I understand this Court's  
18 comment about wilfulness and I'm going to address that, but  
19 there's two factors under Rule 37 under the Rules of Procedure  
20 in Nevada, wilfulness, the degree of willfulness of the  
21 offending party, if any, and the prejudice suffered by the  
22 non-offending party.

23 The first part of my closing, Your Honor, is going  
24 to focus on the alleged prejudice, and I will demonstrate to  
25 you -- in spite of the rhetoric, I'm going to demonstrate to

1 you, I believe graphically with actual evidence, how there has  
2 been no showing of evidence -- or excuse me, of prejudice by  
3 Mr. Bice. And that, Your Honor, is relevant to the issue of  
4 wilfulness. If we have not prejudiced this party in any  
5 respect, then that is a clear issue that needs to be  
6 considered when deciding what wilfulness, if any, we had with  
7 respect to the conduct that we undertook in this case or my  
8 client undertook.

9           These are the five factors the Supreme Court told us  
10 in this case this Court should consider in having this  
11 hearing. And the first one, the importance of the  
12 investigation or litigation of the documents or other  
13 information requested. In this case you will see that the  
14 information redacted has no importance to this investigation  
15 or litigation. And I know that sounds like a bold statement,  
16 but I'm going to show you graphically how that's true.

17           The degree of specificity of the request, number  
18 two. In this case the requests were very broad. And in this  
19 case my client we believe complied by producing hundreds of  
20 thousands of -- searching millions of pages and producing  
21 hundreds of thousands of documents.

22           The next issue is whether the information originated  
23 in the United States. We know it did not.

24           Number four, the availability of alternative means  
25 of securing the information. Your Honor, that is a factor

1 that comes to play clearly in this case. As I said, my  
2 clients -- between my client and Las Vegas Sands, according to  
3 Mr. Ray, over 18 million pages were searched, over 4 terabytes  
4 of information in all, with a total cost of \$4.4 million, 2.4  
5 from Sands China and 2 million for Las Vegas Sands. And  
6 finally the fifth issue is -- and that was done to find  
7 alternative means of securing the information.

8           And then finally, the extent to which the  
9 noncompliance with the request would undermine important  
10 interests of the United States or compliance with the request  
11 would undermine important interest of the state where the  
12 information is located.

13           Well, what are the interests of the United States?  
14 The interest of the United States is for disclosure of  
15 evidence that is reasonably -- or information that is  
16 reasonably calculated to lead to the discovery of admissible  
17 evidence, Rule 26. That's the goal. And so I'm going to show  
18 you why I don't believe that goal has been interfered with or  
19 obstructed in any way as a result of these redactions. And  
20 again, I know that's a bold statement, but based on the  
21 evidence that's been presented to you, which what I understood  
22 you would be -- the only evidence you would be considering in  
23 these proceedings, there has not been a showing of that.

24           Then what are the interests of Macau? Macau has  
25 told us their interest in letter after letter, many of which



1 are in evidence in this case, their interest is protecting  
2 this private data and disallowing its production.

3         The next slide, Your Honor, is an important slide to  
4 consider in the context of this case. And I'll -- I've quoted  
5 from the Daimler case, which controls this case, as does -- as  
6 we know from the Viega litigation where the Supreme Court  
7 cited Daimler as part of its holding, where Justice Sotomayer  
8 was saying that she feared "the holding would lead to greater  
9 unpredictability by radically expanding the scope of  
10 jurisdictional discovery." And the majority opinion said,  
11 "It's hard to see why much in the way of discovery would be  
12 needed to determine where a corporation is at home."

13         And this goes right to a point that Mr. Bice tried  
14 to make to you which was completely inappropriate in this  
15 proceeding. He used as his example Mr. Alves and the  
16 deposition of Mr. Leven where he said, I don't know -- talked  
17 about Mr. Alves. And Mr. Bice said, yeah, and guess what,  
18 Judge, we can't see Mr. Alves's name in these documents.  
19 Well, Judge, who cares? It is completely irrelevant to this  
20 proceeding. As you know, the Supreme Court has stayed  
21 discovery on merits. Mr. Alves, if he's relevant at all, is  
22 only relevant to merits. My client -- until there's  
23 jurisdiction found against my client we know merits discovery  
24 is stayed. So how in the world could Mr. Alves's name, if it  
25 appears on any document, show you that Las Vegas Sands is at

1 home in Las Vegas --

2 MR. PEEK: Sands China at home. You said, Las Vegas  
3 Sands at home in Las Vegas.

4 MR. RANDALL JONES: I'm sorry.

5 -- that Sands China is at home in Las Vegas because  
6 of Mr. Alves's name appearing on an email? It does not equate  
7 to proving jurisdiction in any way, shape, or form. Mr. Alves  
8 does not control Las Vegas Sands, never did, and there's no  
9 evidence whatsoever that he did, let alone that he controlled  
10 Las Vegas -- excuse me, Sands China from Las Vegas.

11 Okay. This goes to this issue of jurisdictional  
12 discovery that has been done and this point that Mr. Bice  
13 raises about maximum access. He said that Mr. Raphaelson  
14 testified that O'Melveny & Myers was given maximum access to  
15 information. Well, first of all, Your Honor, the evidence I  
16 think graphically demonstrates that maximum access was given  
17 to the lawyers that produced documents in this case and FTI.  
18 The difference is in fact Mr. Ray --

19 THE COURT: Yeah. I said they couldn't look at any  
20 of the documents.

21 MR. RANDALL JONES: But they were given access  
22 through the process in Macau. And what Mr. Ray testified to  
23 there --

24 THE COURT: They were able to run searches on the  
25 data sources available in Macau. They could not look at any

1 of the documents.

2 MR. RANDALL JONES: And, Judge, there is no evidence  
3 -- and I would ask Mr. Bice to show me where there is, and I  
4 think he was careful to make sure that he didn't misspeak on  
5 this. There's no evidence the Gaming Control Board, the  
6 Justice Department, or anybody else got to see unredacted  
7 information in Macau.

8 THE COURT: No, that's not what I'm saying. I'm  
9 saying that FTI, the ESI company that was chosen by both  
10 defendants, did not look at the documents in Macau. He  
11 testified they ran searches. They resulted in hits. Those  
12 hits were reviewed by Macau citizens.

13 MR. RANDALL JONES: My point, Judge, is this.  
14 There's no evidence that O'Melveny & Myers got to see  
15 unredacted documents in Macau, with the possible exception of  
16 Mr. Toh's emails. And, Judge, Mr. Toh was in Macau, and they  
17 were his emails.

18 THE COURT: And he said he signed a consent.

19 MR. RANDALL JONES: That is not evidence that  
20 anybody else got more access than O'Melveny & Myers. If that  
21 was maximum access to O'Melveny, there's no indication that  
22 FTI got any less access in this case. And that's my point.  
23 He can talk about he thinks or he hopes or maybe they got to  
24 see some stuff, but there's no evidence in this record that  
25 they did.

1           So let's see what we did do. And Mr. Bice I guess  
2 would think we would want to run away from this information.  
3 We don't. We think it's important to note that in this case  
4 we produced -- Las Vegas Sands produced 24,000 documents,  
5 168,000 pages; Sands China over 17,500, more than 124,000  
6 pages, and unredacted --

7           MR. BICE: Your Honor, I just want to note, just  
8 because the Supreme Court always says that you waive  
9 objections if you don't make them, there is zero evidence of  
10 any -- no one testified to this. This is lawyer argument. I  
11 just want to note that for the record.

12           MR. RANDALL JONES: And, Judge, I would say all Mr.  
13 Bice has to do is look at his own exhibit, which is the chart  
14 that he put into evidence. I believe if he does a count, he  
15 will find that information. So I believe it's in the record  
16 even though he -- and I would put it this way, as well. If  
17 you do the math, I think you come up with about 7,900  
18 unredacted documents, which is what he agrees at least has  
19 been -- remains, excuse me, redacted. Of the remaining MPDPA  
20 redacted documents Sands China obtained consents from four Las  
21 Vegas executives and produced those documents with the names  
22 unredacted, Mr. Adelson, Mr. Leven, Mr. Goldstein, and Mr.  
23 Kay. And, Judge, it should be noted by this Court that those  
24 are the individuals they said they were primarily interested  
25 in, those are the individuals that they asked to have their

1 depositions taken, and we got those consents because that  
2 didn't implicate this issue of a coercive consent.

3 But what else do we know? We know that Mr. Jacobs  
4 was asked to give a consent way back -- and we're going to  
5 talk about this later -- I believe in 2012, and he refused to  
6 give a consent. So Mr. Jacobs, when given the opportunity to  
7 help this process along, showed his true motive. He doesn't  
8 want to help the process along. They are interested in  
9 discovery by tort. Every opportunity they've had to cooperate  
10 in this process to give them more information they have  
11 steadfastly refused to do. And I will get to that in graphic  
12 detail here shortly. But most importantly, Judge, as the last  
13 line indicates, the redacted Sands China documents have no  
14 jurisdictional importance.

15 Now, Your Honor, as you know, the plaintiff has had  
16 many different jurisdictional theories that they've come up  
17 with in this case. They've come up with agency theories,  
18 alter ego theories, de facto headquarter nerve center  
19 theories. They seem to not want to talk about the theory from  
20 the Supreme Court where the company is at home, but their  
21 theory du jour seems to be this headquarters or nerve center  
22 theory. So if you think about that, Judge, if the -- if  
23 that's their best theory, then what would be the most  
24 important documents for them to find? They would be documents  
25 produced by Las Vegas Sands, not Sands China, because then

1 they would have -- they want documents to show control of  
2 Sands China from Las Vegas. Documents in China cannot,  
3 presumably, show control emanating from Las Vegas. But I'd  
4 ask the Court to just keep that in mind as we go through the  
5 actual evidence that was presented.

6 THE COURT: So you don't think emails between two  
7 employees at VML related to conversations with somebody in Las  
8 Vegas would be part of the jurisdictional analysis?

9 MR. RANDALL JONES: Your Honor, anything's possible.  
10 But it is much more likely --

11 THE COURT: Remember, I did a review of privileged  
12 documents with lots of information on them.

13 MR. RANDALL JONES: I would say, Your Honor,  
14 anything's possible. It is much more likely that any  
15 documents that are going to implicate where the company is at  
16 home and who controls the company are going to emanate from  
17 Las Vegas in order to prove jurisdiction over Sands China in  
18 Las Vegas. But, be that as it may, we'll talk about why even  
19 that argument doesn't hold water for the plaintiff in this  
20 case.

21 And, Your Honor, here's where we get what I would  
22 say is where the rubber meets the road. As you said to Mr.  
23 Bice so there was no misunderstanding going into this, Mr.  
24 Bice -- or Mr. Jacobs, more appropriately, has the burden of  
25 showing prejudice. What you heard was about 45 minutes of

1 rhetoric from Mr. Bice about prejudice. But what Mr. Bice did  
2 not show you was one single document. Mr. Bice said I want to  
3 show you a document, because the redacted, there's thousands  
4 of them out there and they found a few unredacted so what's  
5 the problem. Mr. Bice had the burden to prove in this hearing  
6 that they've been prejudiced by redactions. He has utterly  
7 and completely failed to do so. I'm going to go through every  
8 single document that they have ever posited or proffered to  
9 this Court as proof of prejudice, every one they've proffered,  
10 from Mr. Leven's deposition, which we saw in the video clip,  
11 to the Rule 37 sanctions motion that they filed back in I  
12 believe February of 2013, to the hearing that we had in the  
13 last two weeks. And, Judge, we didn't restrict their ability  
14 to produce evidence at this hearing. We didn't go in and say,  
15 you can't pull out of the 7,000, 8,000 documents that are  
16 redacted -- don't pull that one out. And Mr. Bice says, well,  
17 we weren't going to belabor this hearing with going out every  
18 single document and talking to Mr. Toh about them.

19           You may remember Mr. Bice insisted that if we were  
20 going to have to delay Mr. Fleming's testimony or it was going  
21 to be truncated, he insisted that Mr. Toh testified, because  
22 he wanted to talk to him about documents. That process went  
23 forward. And, Judge, there was not one document he offered  
24 into evidence that didn't come into evidence. So for him to  
25 suggest he was in any way restricted is just not true. They

1 put into evidence every document they chose or wanted to or  
2 picked out of whatever number they wanted to pick. So we're  
3 going to go through every one of them and see if they've  
4 demonstrated prejudice to you. And that burden is on them.

5           So here's the Leven exhibits. There were actually  
6 five exhibits. And these are the exhibit numbers from the  
7 exhibits in this case. Okay. First exhibit, that's Exhibit  
8 -- turns out to be Exhibit 62, which happens to be the same  
9 exhibit number as the exhibit in this case. This is a  
10 document where we have an unredacted replacement. And, Judge,  
11 if you look at that document, you will see -- I think I missed  
12 a slide there; yeah, that's what I wanted to talk about. This  
13 is the unredacted document. So this couldn't possibly have  
14 prejudiced them. Now, Mr. Bice never showed you this  
15 document, Judge. This is our Exhibit 374, the unredacted  
16 version. He certainly -- if he talks about candor to the  
17 Court, why didn't he show you this in his case in chief?  
18 Well, they did give us the unredacted version, we didn't have  
19 it for the deposition. And I understand that. That's a  
20 problem. But they got it before this hearing. But they  
21 didn't give it to you.

22           Now let's look at the content. Let's look at -- he  
23 says these are rendered unintelligible. This is an email from  
24 Mr. Edwards to Mr. Leven. And you'll see Mr. Leven's name was  
25 not redacted, because he gave a consent. If you look at this



1 email and you look at the substance, you could put in whatever  
2 name you wanted to and it wouldn't change whether or not this  
3 document implicated jurisdiction under the Daimler case  
4 regardless of whose name you put in there. And so, Your  
5 Honor, rather than belabor it with the other documents, that's  
6 why in your binder you'll see Exhibits 57, 59, and 60 are all  
7 unredacted just like the slide I just showed you, 62. So  
8 obviously there could be no prejudice for those documents.

9           So I'm going to show you the one remaining exhibit  
10 that was unredacted -- or, excuse me, that remained redacted  
11 that we didn't find a replacement for. It's Plaintiff's  
12 Exhibit 76. So here it is. It was 58 of the Leven  
13 deposition. Now, Judge, if you look at that, that's Exhibit  
14 -- that's from Exhibit 327. That's the redaction log. That's  
15 the other extent to which Mr. Ray testified he's never had a  
16 company that's gone to this extent to provide this kind of  
17 information. That gives you the Bates number, it gives you  
18 information on who it was from, who it was to, and if there  
19 are any carbon copies to anybody. And it tells you the  
20 redactions in the document, how many total redactions there  
21 are.

22           And so let's go to the next document, which is our  
23 Exhibit 731, which I don't believe again Mr. Bice provided  
24 you. But what does that show you? That actually shows you  
25 this is partially unredacted, and it shows that Mr. Leven's

1 and Mr. Adelson's names have been included in this document.  
2 But, more importantly, Judge, if you look at that document,  
3 this is the document that -- one of the documents that Mr.  
4 Bice says would implicate jurisdictional discovery or they  
5 can't tell. Well, regardless of who you put in the names, if  
6 you just say, we know these are all VML employees, so let's  
7 just plug in one of the names from their own custodial list of  
8 VML employees. So pick a name, Judge. If you pick any name  
9 on that list and you look at the substance of the document,  
10 the document says, "Mr. Leven is waiting for you at Mr. A's  
11 suite. Please call Amy when you arrive," so and so. That  
12 document cannot implicate jurisdictional discovery. It  
13 certainly did not cause prejudice to Mr. Jacobs in this case.  
14 Now let's go to the next group of documents. Now we  
15 go to their Rule 37 sanctions hearing, Exhibits 9 through 23.  
16 This is a quote from that brief back in, what was it -- I  
17 believe it was in February or March of 2013. "Sands China  
18 redacted everything and anything that might reveal whose  
19 document it was or who had access to the document.  
20 Specifically, they redacted names, titles, telephone numbers,  
21 fax numbers, and email addresses of everyone and anyone  
22 associated with the documents." And it references these  
23 examples. "The effect of these redactions was precisely what  
24 Sands China intended. Any document of substance was  
25 transformed into a useless piece of paper from which neither

1 Jacobs nor any witness could ever glean real information."

2 I want the Court to keep that in mind when we go  
3 through these examples of these useless pieces of paper that  
4 they refer to in this case.

5 "Sands China did not want to produce anything of  
6 substance, so they made sure they did not by redacting the few  
7 documents it actually searched for."

8 Well, Your Honor, as we said, the few documents were  
9 over 100,000 pages that were actually produced. But let's  
10 look at the first example they provided this Court back in  
11 2013. This is a redacted document, Exhibit 9. There's an  
12 unredacted replacement. That certainly did not cause them any  
13 prejudice due to redactions. I only brought this up because  
14 Mr. -- especially since Mr. Bice talks about Mr. Alves. This  
15 actually re-placed Mr. Alves's name in the document so they  
16 can see that Mr. Alves is referred to in the document, and you  
17 can see that. And if you read that document, you will see  
18 that, regardless of whose name you put into that -- the  
19 substance of that document, it does not and could not  
20 implicate jurisdictional discovery or help prove discovery  
21 under the Daimler holding in the United States.

22 So -- and with respect to a contract, we know under  
23 the Helicopteros case that even if it was an American law firm  
24 they were going to talk to and negotiate with, it would not  
25 prove jurisdiction over Sands China.

1           The next example, Judge, their document, Exhibit 15  
2 from the Rule 37 sanctions motion. I just did this real  
3 quick. This is what they got, the replacement, which was our  
4 Exhibit 360A.

5           THE COURT: So can I ask a question.

6           MR. RANDALL JONES: Sure.

7           THE COURT: The unredacted replacements that you've  
8 demonstrated in the last few slides, when were those  
9 unredacted replacements provided?

10          MR. RANDALL JONES: Your Honor, I certainly can get  
11 that information. And, if you'd like, I can get it to you  
12 hopefully by tomorrow. I don't have it off the top of my  
13 head.

14          THE COURT: Were they provided after I did the  
15 privilege review on the redaction review?

16          MR. RANDALL JONES: I just don't know, Judge.  
17 Honest, I was involved with other aspects of the case --

18          THE COURT: It's okay.

19          MR. RANDALL JONES: -- and I wasn't really one of  
20 the --

21          THE COURT: It's okay. The only reason I ask is it  
22 appears there's about 1800 that were produced on November  
23 14th, 2014, and January 23rd, 2015, which should have been  
24 after I did my review.

25          MR. RANDALL JONES: And, Your Honor, Mr. McGinn

1 knows better than I do. He thinks he knows, but as the  
2 precise answer I can get that for the Court if the Court's  
3 interested in --

4 THE COURT: No. If you don't know, that's okay. I  
5 was just using Exhibit 216, which is my handy color-coded  
6 chart that you stipulated to --

7 MR. RANDALL JONES: Right.

8 THE COURT: -- and looking at the goldenrod entries  
9 to see if I could guess.

10 (Pause in the proceedings)

11 MR. RANDALL JONES: Mr. McGinn tells me that these  
12 should be -- if they don't have the consent redactions of Mr.  
13 Leven, Mr. Adelson, Mr. Goldstein, and Mr. Kay, they would  
14 have been -- in early 2013 is when these would have been  
15 produced.

16 THE COURT: Okay. Thank you.

17 MR. RANDALL JONES: All right. So, Your Honor, now  
18 we go to Exhibit 21. There's a redacted version, there's our  
19 unredacted Exhibit 367A. This could not possibly result in  
20 prejudice to Mr. Jacobs. This is -- again, these are his  
21 exhibits that they proffered to the Court to prove -- to prove  
22 prejudice, Your Honor.

23 And, again, Your Honor, rather than take the time  
24 and go through every one of these, I've shown you slides of  
25 examples for three of these. Nine of the fifteen exhibits

1 they offered have been unredacted. And that's in your binder  
2 there as additional exhibits, if you want to take a look at  
3 those specifically.

4 THE COURT: And they were unredacted after the  
5 motion was filed, but while other issues were pending?

6 MR. RANDALL JONES: After the motion to -- that's  
7 correct. After the motion. But, again, the point, Judge, is  
8 they've got a burden of proof. And why didn't they present  
9 those to the Court and show you -- they talked about candor.  
10 They have never said, these are things we've offered in this  
11 -- this is related to this hearing, Judge.

12 THE COURT: No, I know. But the issue is, even if  
13 there was prejudice that occurred that's now be ameliorated,  
14 what's the appropriate sanction. And it may be a time issue,  
15 and it may be a money issue. But if it's not been completely  
16 ameliorated, then it's a different issue. So that's what I'm  
17 trying to determine with you, because it looks like some of it  
18 was done as a result of the motion process that occurred.

19 MR. RANDALL JONES: Well, Your Honor, I think that  
20 -- and this is my belief -- that it was done in an effort to  
21 try to make sure that we presented --

22 Mr. McGinn has just verified that the one you've  
23 just asked about, the one exhibit, was produced on  
24 February 6th, which was a couple of days or a day or so before  
25 the motion was filed.

1 THE COURT: Okay.

2 MR. RANDALL JONES: So the point is, Judge, is that  
3 I believe -- and I believe the testimony is they started  
4 looking for duplicates as soon as possible, and, because there  
5 were so many documents, it took a period of time to be able to  
6 do that.

7 THE COURT: All right. Thank you.

8 MR. RANDALL JONES: So as to that one it appears it  
9 was produced before the motion was even filed.

10 With respect to the next group -- so all of those --  
11 nine of the fifteen were unredacted. But then there's a  
12 different issue that comes up, Judge. This is our Exhibits 10  
13 and our Exhibit 356. And I would note, Judge, this was never  
14 brought to the Court's attention. We finally noticed it when  
15 we were going back through this. This date is before Sands  
16 China was even formed. It cannot implicate jurisdictional  
17 discovery against Sands China. The company didn't even exist.  
18 Yet they proffered this to the Court. And I would note for  
19 the Court that when Mr. Williams, Colby Williams was still  
20 involved in this case long before that Rule 37 motion was  
21 filed he filed a document with this Court acknowledging when  
22 the company was formed, and the IPO actually didn't happen  
23 until I believe November of 2009. And a part of that motion  
24 Mr. Jacobs gave an affidavit as to when the company was  
25 formed, noting it was in he believed the fall of 2009. So

1 this document on its face shows it cannot under any  
2 circumstance implicate jurisdictional discovery.

3           But look what they showed you, Judge. They offered  
4 this to show -- this is an issue of jurisdictional discovery.  
5 Look at the content. We could go to the redaction log and see  
6 who the person was that sent it and who received it from the  
7 company. We don't need to do that, because we know it was  
8 before the company existed. But what's it talking about? The  
9 spring festival gala dinner and where it's going to be held  
10 at, the hall -- the International House of Pancakes or  
11 wherever they're going to hold it at. The point is, Judge,  
12 this could not possibly implicate -- the subject matter of the  
13 text, regardless of what names you put in that document, it  
14 couldn't implicate jurisdictional discovery. That's what they  
15 offered this Court back then to show it did and to suggest to  
16 you and imply to you that somehow this type of document would  
17 implicate jurisdictional discovery even if redacted. These  
18 documents are all documents -- I just showed you Exhibit 10.  
19 Exhibits 12 and 14, the other two, are in your binder, you  
20 could check them yourself, also predate the existence of Sands  
21 China and cannot as a matter of law implicate jurisdictional  
22 discovery.

23           Here's another example, Exhibit 16, our Exhibit 362.  
24 There's a redaction log. If you look at it, Judge, it tells  
25 you that who sent and received this, this is all unaffiliated



1 third parties. Nothing to do -- it has to do with some  
2 purchase orders with unaffiliated third parties, not with Las  
3 Vegas Sands, not with Sands China, unaffiliated third parties.  
4 Does not implicate jurisdictional discovery.

5           Then we have a couple of redactions where we have  
6 the last two -- these are 13 and 14. This is what they  
7 proffered to you back then to show prejudice. These are  
8 apparently out of a public filing, and out of an abundance of  
9 caution individuals on the public -- the documents were  
10 redacted. That certainly doesn't implicate jurisdictional  
11 discovery.

12           Here's the last one of the 15. So we've gone  
13 through all 15 of them, Judge. Not one of them implicates  
14 jurisdictional discovery. So we got nine of them were  
15 unredacted, three were before the company even existed, one  
16 was with unaffiliated third parties about some purchase  
17 orders, and two were photos of people in a public filing.

18           Now we get to what presumably would be the real  
19 evidence they would want to show you at this hearing to prove  
20 prejudice. These would presumably be the documents, the cream  
21 of the crop they've had now all the time -- as they say, years  
22 to cull through and find the documents they wanted to show you  
23 to prove to you the prejudice they have incurred as a result  
24 of this case. So I would like to have this Court -- there's  
25 seven documents in total.

1           The first one, Exhibit 59, is irrelevant to  
2 jurisdiction, and it contains only redactions pursuant to the  
3 confidentiality order under paragraph 7. So there's the  
4 order, and it says under paragraph 7, "can redact personal and  
5 nonresponsive information such as a Social Security number."  
6 Here's their Exhibit 59. This -- first of all, Judge, it has  
7 no MPDPA redactions. You'll note down in the bottom left-hand  
8 corner under (b) there is a redaction. It's the name of a  
9 customer that owes money to the company. That name is not  
10 redacted. You might note there is another name there, up in  
11 the -- the first one (b), there's another name that's not  
12 redacted. That's because the plaintiffs asked about certain  
13 individuals that they wanted in their discovery request. So  
14 we went and actually gave that to them, because we found that  
15 outside of the United States. But all those other names that  
16 are in this document have been unredacted under the MPDPA. So  
17 this certainly does not create any prejudice to Mr. Jacobs due  
18 to MPDPA redactions.

19           And I would show you, Judge, our Exhibit 376. Just  
20 for point of reference, we gave you the redacted version that  
21 Mr. Bice did not show you to show you what it looked like  
22 before we found the duplicate. So the significance of that,  
23 Judge, is that Mr. Bice talked to Mr. Toh about that. That's  
24 one of the documents he talked about, and at page 69 of the  
25 transcript he said:

1 "So, Mr. Toh, is it fair to say that looking at this  
2 document you cannot tell me whether you were in this  
3 communication whatsoever; is that correct?"

4 "I have to say I've never seen this document. It's  
5 the first time I've seen this document."

6 Let's go to the next exhibit. And actually I think  
7 I was talking about the wrong exhibit. I think this is the  
8 exhibit I wanted to talk about.

9 THE COURT: Well, can we stop for a second?

10 MR. RANDALL JONES: Sure, Judge.

11 THE COURT: So let me see if I understand, because  
12 I'm trying to look at -- and I'm going to give you more time  
13 if you run out. Trying to look at 216 and compare it to the  
14 slide you're showing me of Plaintiff's Exhibit 59, which has  
15 Bates Number 209127, which based on 217 would have been  
16 produced as a replacement document on January 23rd, 2015. Is  
17 that right?

18 MR. RANDALL JONES: Mr. McGinn?

19 THE COURT: Well, I'm trying to figure out if that's  
20 how I read the chart.

21 MR. MCGINN: Yeah. That's [inaudible] have been  
22 replaced.

23 THE COURT: Okay.

24 MR. RANDALL JONES: Then you've got it right, Judge.

25 THE COURT: And this was replaced as a result of the

1 in-camera review that I did and I ordered certain redactions  
2 to be taken off. Because this is one of the documents I  
3 reviewed.

4 MR. RANDALL JONES: Actually, Judge, as Mr. McGinn  
5 said, that is not correct. That's -- that involves Advance  
6 Discovery privilege redactions. This is different. This  
7 is --

8 THE COURT: Okay. Well, I reviewed this particular  
9 document in the redacted form.

10 MR. RANDALL JONES: But this is -- so that may be  
11 that there are other -- maybe that's why Li Chi Ming  
12 [phonetic] was taken off. I don't know.

13 THE COURT: Okay.

14 MR. RANDALL JONES: But, again, this -- the  
15 unredacted document has nothing to do with Advance Discovery.

16 THE COURT: Right. It may be a duplicate or a very  
17 similar version or a draft or something.

18 MR. RANDALL JONES: It could be. I don't know.

19 THE COURT: But, according to the chart that we have  
20 that's 216, if I cross-reference the Bates number that is on  
21 this document with the Bates numbers in the third column on  
22 216, that's how I can tell when a document was replaced as  
23 unredacted.

24 MR. RANDALL JONES: That's my understanding.

25 MR. MCGINN: If it's a replacement document, yes.

1 THE COURT: Right. Okay.

2 MR. RANDALL JONES: So, looking at the next exhibit  
3 of their exhibits, which is -- their Exhibit 23 to this  
4 hearing, again we have a document -- this is number two out of  
5 the seven exhibits, a document that was created prior to the  
6 existence of Sands China. As a matter of law this document  
7 cannot implicate jurisdictional discovery, and it tells you  
8 that on its face. Mr. Bice offered that document to this  
9 Court as evidence of prejudice due to redactions.

10 Now we have Exhibit 15. And again I've got the  
11 testimony -- the questioning on page 72 of the transcript.  
12 Mr. Bice says:

13 "Have you looked at Exhibit Number 15, Mr. Toh?"

14 "Yes. I'm looking at it. Yeah."

15 "And can you tell me whether you sent or received  
16 this email or not, Mr. Toh, by looking at --"

17 THE COURT: Can I ask a question.

18 MR. RANDALL JONES: Sure.

19 THE COURT: Let's go back to Plaintiff's Exhibit 23.

20 MR. RANDALL JONES: Pardon me?

21 THE COURT: Go back to Plaintiff's Exhibit 23. It  
22 was it the prior slide?

23 MR. RANDALL JONES: Yes.

24 THE COURT: One more before. Can you back up?

25 MR. RANDALL JONES: Back up to 23?

1           THE COURT: Because I'm trying to read as you're  
2 going, because some of these documents I don't recall. If you  
3 can take out your blowup. See at the bottom where it says,  
4 "Personal redaction," and then underneath it says, "Las Vegas  
5 Sands Corp."

6           MR. RANDALL JONES: Right.

7           THE COURT: Can you tell me why we're redacting  
8 personal information for Las Vegas Sands Corp. people?

9           MR. RANDALL JONES: So, as Mr. McGinn just  
10 explained, it's a document they only found in Macau. So,  
11 again, the searches were done --

12          THE COURT: So your client thinks that the Macau  
13 Data Privacy Act applies to redact personal information of the  
14 identity, regardless of whether this is before or after the  
15 formation of the entity, of the person from Las Vegas Sands  
16 Corp. sending the email which is Bates Number SCL173842?

17          MR. RANDALL JONES: Well, Your Honor, if the only  
18 place the document is found is in Macau, then if there wasn't  
19 a copy, they couldn't find a copy in the U.S. --

20          THE COURT: All I'm trying to find out does your  
21 client, Mr. Jones, believe that the Macau Data Privacy Act  
22 requires the redaction of the name of the individual from Las  
23 Vegas Sands Corp. who sent the email which has been produced  
24 as SCL173842, or was it a mistake? That's all I'm trying to  
25 find out.

1 MR. RANDALL JONES: If you're asking me if my  
2 client, Sands China, believes that there's a document in Macau  
3 that has the name of somebody from Las Vegas Sands on it that  
4 they need to redact that before they produce it, that is my  
5 understanding.

6 THE COURT: Okay. Thank you.

7 MR. RANDALL JONES: And I have heard no testimony  
8 from Mr. Fleming or anyone else or Mr. Toh to suggest  
9 otherwise. It doesn't matter the country of origin of the  
10 person. If their name is on a document in Macau, before it  
11 can be produced to a third party without consent it has to be  
12 redacted. That's my understanding.

13 THE COURT: Even though it was sent from the United  
14 States, from Las Vegas Sands Corp.?

15 MR. RANDALL JONES: From whoever the person is that  
16 was -- name is on the document. That's my understanding,  
17 Judge.

18 With respect to Exhibit 15, again, Mr. Bice tried to  
19 create the inference --

20 THE COURT: Mr. Jones, I have to take a short break.  
21 We're going to note your time here, plus you're getting extra  
22 time because I've been bothering you so much.

23 MR. RANDALL JONES: Yes, Your Honor.

24 THE COURT: Okay.

25 (Court recessed at 2:49 p.m., until 2:54 p.m.)

1           THE COURT: We did good. We did five minutes. You  
2 can go, Mr. Jones.

3           MR. RANDALL JONES: Your Honor, maybe I should --  
4 can I wait a second? Want me to go?

5           Judge, with that said, I would like -- I have to  
6 tell you I'm a little concerned, and maybe I just want to --  
7 I've been rushing, and I've been speaking very quickly, and  
8 I've been sometimes sort of fumbling my words, so -- I want to  
9 get through this, Judge, but I also don't want to feel like  
10 I'm speaking so quickly I don't make my point. So with that  
11 said, I'm going to try to slow it down a little bit.

12           And Ian, could you please --

13           THE COURT: Are you guys done?

14           Okay. Now, Mr. Jones, I'm listening.

15           MR. RANDALL JONES: All right, Judge. Let me talk  
16 about Exhibit 15. So here's another one, Judge. And Mr.  
17 Bice, again, he didn't talk about these except in general to  
18 say that they have shown this Court that Mr. Toh wouldn't  
19 understand this document. And this is one they used. So  
20 looking at -- this is Mr. Toh's response to a question from  
21 Mr. Bice at page 73.

22           "By looking at the content of the email I don't  
23 recall I've seen this email."

24           He goes on to say:

25           Question, "If you could see that, then you would



1 know whether or not you were on it; right?"  
2 Answer, "Also by looking at contents -- the contents  
3 that you -- you know, I can recall and probably I  
4 could tell whether I had seen it or not, yeah."  
5 "But you can't recall; right?"  
6 Answer, "Yeah. The content itself."  
7 Question, "It's too long ago?"  
8 "It's not familiar to me."  
9 So the point is that Mr. Bice tried to show that  
10 this was a prejudicial document. But what he didn't point out  
11 and, did you, is that this document was before the creation of  
12 the company. If it's before the creation of the company, it  
13 cannot possibly implicate jurisdictional discovery. So  
14 another one of his documents that they proffered to you to  
15 show prejudice does not do that.  
16 Exhibit 16. Here's another one, Judge. This is  
17 four out of seven. Now we're up to four of his seven exhibits  
18 they brought to this hearing to prove prejudice before the  
19 existence of the company.  
20 Now we've got Exhibit 205. This is the fifth of  
21 seven. So so far we've seen a fully unredacted document for  
22 the MPDPA, which was the first exhibit we showed you, and then  
23 we showed you three other ones that have been -- that were  
24 created before the existence of the company. Now we're up to  
25 the fifth document. This is the document they showed you,

1 their Exhibit 205. And it was offered through Mr. Toh to  
2 demonstrate prejudice. This shows you that this is a meeting  
3 of the blank company, you can't tell what it is. Prejudice.  
4 And here we talk about the testimony of Mr. Toh.  
5 "Mr. Toh, have you had a chance to look at  
6 Exhibit 205?"  
7 "I'm looking at it now."  
8 "Can you tell me who was -- this is for the board  
9 meeting; is that correct?"  
10 "Yes."  
11 "Can you tell me all who was present and absent at  
12 this board meeting?"  
13 "I can't. I can't recall that."  
14 He's trying to create an improper inference from  
15 this document, Judge. And I'll tell you why graphically.  
16 Here's why. Exhibit 378, which is a fully unredacted copy of  
17 this exhibit produced, as you'll see in the lower right-hand  
18 corner, by Las Vegas Sands. It's fully unredacted. And look  
19 what else it shows. It shows that Mr. Jacobs himself actually  
20 chaired this meeting, which is, by the way, the point with all  
21 these board meetings, that Mr. Jacobs either was there  
22 personally or certainly was there telephonically or knew of  
23 all these board meetings while he was there. But, be that as  
24 it may, this was produced in June of 2012, Judge, well before  
25 the Rule 37 motion. And what do we also know from this

1 document? The unredacted version that was produced by Las  
2 Vegas Sands actually has Mr. Jacobs's signature on it. Yet  
3 Mr. Bice didn't show you that, didn't tell you about it, but  
4 he told you this document is proof of prejudice based on  
5 redactions. There's the actual list of all the people that  
6 were at that particular meeting that was also produced with  
7 this document.

8 But it gets worse, Judge. And when I say worse I  
9 don't mean worse for Sands China, I mean it gets worse for Mr.  
10 Jacobs. Because we now go to Exhibit 377, which was produced,  
11 as you'll see down there in the lower right-hand corner, by  
12 Sands China. If you look at it, it's the same document, and  
13 it was produced on June 27th, 2013.

14 MR. BICE: Can you hold that document on the screen  
15 for a moment.

16 MR. RANDALL JONES: Sure.

17 MR. BICE: Thank you. Appreciate it.

18 MR. RANDALL JONES: You're welcome.

19 Now, what we do have, we had a draft of those  
20 minutes from the first production that was redacted. But the  
21 final minutes signed by Mr. Jacobs were the official version  
22 that was the company documents, which was produced fully  
23 unredacted.

24 Now we'll go to Exhibit 51, the sixth of the seven  
25 exhibits offered to this Court to prove prejudice based on

1 redactions.

2 THE COURT: So why are the documents 378 and 377  
3 different?

4 MR. RANDALL JONES: Your Honor, because they were  
5 different iterations of drafts. And that's why we produced  
6 -- also produced -- I guess Las Vegas Sands produced the copy  
7 they had, which was the final official version that is signed  
8 off on by Mr. Jacobs. The other documents are unofficial  
9 drafts and -- as I understand it, and I think the documents  
10 demonstrate that. But that's certainly something that can be  
11 inquired into --

12 THE COURT: Okay.

13 MR. RANDALL JONES: -- in merits discovery at some  
14 point in time about -- but the point is, Judge, if you have an  
15 unredacted draft, Sands China found an unredacted draft, they  
16 should produce it. Which they actually did.

17 So now we go to the sixth of the seven exhibits they  
18 proffered to show prejudice, Exhibit 51. This is stamped  
19 right on it "Draft." And it's for a minute -- minutes of the  
20 Audit Committee. You'll note, Judge, that it says right on it  
21 that it was in Hong Kong, which would seem to be contrary to  
22 implicating jurisdictional discovery of control of Sands China  
23 in Las Vegas. But, be that as it may, what Mr. Bice didn't  
24 show you, although he tried to infer again an improper  
25 inference from the testimony of Mr. Toh:

1 "All right, Mr. Toh. Let me ask you this -- let me  
2 ask you this way. Tell me which members of the  
3 Audit Committee were absent at the meeting that is  
4 referenced in Exhibit Number 51. Tell me who wasn't  
5 there."

6 "I can't. I can't remember that."

7 "You can't remember, and the document doesn't tell  
8 us who was or wasn't there; right?"

9 Answer, "Yes."

10 Now, Judge, that would seem to be an attempt by an  
11 attorney to indicate to this Court, we've been prejudiced  
12 because we got this unredacted -- or we got this redacted  
13 document. But Mr. Bice had in his possession Sands China's  
14 Exhibit 375. And 375 is a fully unredacted version of this  
15 document. It was produced on November 20th, 2012.

16 Now we're going to go to the seventh and final  
17 document that was raised or proffered to this Court as  
18 evidence of prejudice based on the documents. And this one is  
19 redacted. We couldn't find an unredacted version of it. So  
20 you go to the redaction log which we provided to them. What  
21 does that redaction log tell us? It tells us who it was from,  
22 who it was to, and how many redactions are contained in the  
23 document.

24 So if you go to this document, Your Honor, you'll  
25 say you've got two Venetian Macau employees and they're having

1 emails back and forth to each other. But you look at the  
2 substance of the document, Your Honor. And if you look at the  
3 substance of the documents, you'll see that it's two Venetian  
4 Macau employees talking about some possible contract  
5 negotiations with Cirque in the United States. We again know  
6 under the Helicopteros case that going to the United States to  
7 negotiate a contract is not grounds to find jurisdiction  
8 against Sands China in the United States. Even if they came  
9 to the United States and they came to Las Vegas to negotiate  
10 that contract, it would not implicate jurisdiction over Sands  
11 China by this document.

12           So of the seven documents they've proffered to you  
13 in this hearing, again, unrestricted by us, contrary to what  
14 Mr. Bice said about laying a foundation that we wouldn't  
15 stipulate to things, we didn't have to stipulate to anything,  
16 because this Court admitted into evidence every document he  
17 asked this Court to admit that he wanted to use with Mr. Toh.  
18 So he -- he apparently wants to turn the burden around on my  
19 client and say my client has the burden to show prejudice when  
20 he knows that's contrary to the law and your holding and  
21 rulings in this case. Yet he has completely failed to show  
22 this Court.

23           Now, I've simply taken this quote out of a hearing  
24 back in December of 2014 where we talked about this issue.  
25 And you said to me, "And if your client makes a decision to

1 redact the name of the bellman who was instructed to pick up  
2 Mr. Leven to bring him to the board meeting, then I'm probably  
3 not going to sanction you for redacting that individual's  
4 name." Then you go on to say, "However, if the redactions are  
5 more significant and relate to people who are more senior in  
6 the operation and who are people who were directly involved in  
7 dealing with Las Vegas Sands and delegating work and adopting  
8 a shared services agreement, I think we may have a different  
9 issue."

10 Judge, we didn't redact the content. We redacted  
11 the names. They have never proffered you any documents, even  
12 though you gave them guidance with respect to this issue back  
13 in December, as well as giving me some guidance. Yet with  
14 that guidance you now know the universe of documents they have  
15 provided to you to demonstrate prejudice. And I would submit  
16 to you nothing they have shown you demonstrates they have been  
17 prejudiced by redactions.

18 Now, may they be prejudiced, could they be? Is  
19 there a document out there somewhere out of the 8,000 that  
20 potentially prejudices them on a jurisdictional basis?  
21 Perhaps. I don't believe so. But what I know for a fact,  
22 they didn't present one to you. And that was their burden,  
23 and they have utterly failed to carry it in this proceeding.

24 Now let's go talk about their next issue where they  
25 allege prejudice. Delay is only to be considered with respect

1 to the January 4th redactions. So they claim the redactions  
2 caused delay. So I'm talking -- let's look at what was said  
3 back in February of 2013 with respect to this very hearing,  
4 the Rule 37 sanctions hearing. You said --

5 THE COURT: That's two years ago; right?

6 MR. RANDALL JONES: Two years ago, Judge.

7 -- "The concern that I have are the redactions, the  
8 redactions, especially the ones that have the word 'personal'  
9 on them, appearing to be in violation of my order. And while  
10 there may be a very good business reason --"

11 Let me digress here for a moment, Your Honor. And I  
12 want to make sure to point out to you there was some testimony  
13 about this point. And Mr. Fleming was -- you'd made a comment  
14 about a business decision. And Mr. Fleming testified that  
15 this was not a business decision. Why he made the decision --  
16 he testified he made a legal decision, he did not make a  
17 business decision. He told you that he didn't even have  
18 authority to make a legal decision -- or, excuse me, a  
19 business decision. And I would also point out the Mr. Bice  
20 said, well, Mr. Fleming never even went to the board. We have  
21 his testimony, and he admitted that he didn't think this was  
22 an issue that he needed to take to the board. But he did say  
23 he told the board about his decision.

24 THE COURT: No. What he said is he told certain  
25 board members about his decision.



1 MR. RANDALL JONES: I agree. He said he didn't --  
2 we never heard whether he told all the board members. He said  
3 certain board members --

4 THE COURT: That's what he said.

5 MR. RANDALL JONES: -- but we don't know -- and  
6 there was no inquiry about that, followup inquiry, as I  
7 recall. But the point --

8 THE COURT: He couldn't remember.

9 MR. RANDALL JONES: Maybe he said he couldn't  
10 remember. But the point is he did inform board members of  
11 this decision. But there's certainly no evidence it was a  
12 business decision, and he said he couldn't make a business  
13 decision.

14 Any event, you went on to say, "-- that has  
15 generated that decision. It is still a violation of my order,  
16 and I need to have a hearing related to that as to the degree  
17 of wilfulness and the prejudice related to those redaction  
18 issues."

19 So you go on to say, "Sands China violated this  
20 Court's September 14, 2012, order by redacting personal data  
21 from its January 4, 2013, document production based upon the  
22 MPDPA, and therefore an evidentiary hearing on the renewed  
23 motion shall commence on May 13, 2013, at 1:00 p.m. to  
24 determine the degree of wilfulness related to those redactions  
25 and the prejudice, if any, suffered by Jacobs."

1           So the point I'm making here, Judge, is the delay  
2 has to be related to the redaction from January 4th of 2013.  
3 So let's look --

4           THE COURT: So are you telling me you want me to  
5 have more hearings related to the redactions on January 7th,  
6 January 11th, January 14th, January 23rd, January 28th,  
7 April 12th, June 27th, August 20th, November 14th, 2014, and  
8 January 6th, 2014?

9           MR. RANDALL JONES: No, Judge, I'm not.

10          THE COURT: Okay.

11          MR. RANDALL JONES: What I'm telling you is that you  
12 started the clock, as I understood it, ticking on January 4,  
13 2013. And that's where we start. We don't start before that  
14 time, we don't start after that time, we start at that time  
15 and we move from that time forward. And I assume the Court  
16 agrees with me on that point. But, in any event, that's the  
17 way I understand it.

18          THE COURT: Let me ask you a question. And I know  
19 I'm interrupting you a lot. With respect to the process by  
20 which documents were unredacted --

21          MR. RANDALL JONES: Yes, Your Honor.

22          THE COURT: -- how many depositions were taken where  
23 unredacted versions had not been produced at least a week  
24 before the deposition?

25          MR. RANDALL JONES: Your Honor, I don't -- I don't

1 recall when all the depositions were taken. I believe Mr.  
2 Bice, I'm sure, or Mr. Pisanelli can come up with those dates  
3 sooner than I can. But that's certainly information that's  
4 readily available.

5 THE COURT: Okay.

6 MR. RANDALL JONES: So now let's talk about this  
7 point that Mr. Bice raised about the unavailability of  
8 witnesses. He talks about in particular Mr. Schwartz, who  
9 passed away. And, Your Honor, I will show you again, I  
10 believe graphically, how Mr. Schwartz's death is not an issue  
11 that would prejudice Mr. Jacobs in this case on the basis of  
12 redactions or any delay they believe associated with  
13 redactions, because I don't believe there was any delay  
14 associated with the redactions. And I'll show you that here  
15 momentarily.

16 And the point then is that if there's no delay  
17 directly associated with redactions, then the unavailability  
18 of any other witnesses has nothing to do with redactions. And  
19 here's why. On this chart, Your Honor, is a timeline going  
20 from January 4th of 2013 up essentially to the present time.  
21 And you'll see the blue on this chart relate to MPDPA  
22 redaction issues. The black relate to Advance Discovery or  
23 other non-MPDPA issues. The red also show you issues that are  
24 not MPDPA related.

25 So let's look at the blue first. So the first

1 issue, we produce a first batch of documents based upon the  
2 December 18th, 2012, hearing. We serve our second  
3 supplemental responses. We serve our third supplemental  
4 responses in February, on the 7th. On the 8th of February we  
5 see the plaintiff renewing their Rule 37 motion for sanctions.  
6 That's essentially the continuation of that hearing up to  
7 today. On the March 27th the renewed motion for sanctions  
8 order is granted, and on the 5th of April the defendants filed  
9 a petition for a writ regarding the Rule 37 sanctions order.  
10 On April 9th the defendants file a motion to stay their  
11 Rule 37 sanctions order, all related to redactions. On  
12 May 13th the Court grants in part the motion to stay regarding  
13 the sanctions in light of the petition for the writ.  
14           Now we go to June 18th. On June 18th there's a  
15 status check. The plaintiff agrees that even if the motion  
16 for sanctions stay is not lifted the evidentiary hearing  
17 should proceed. And it says, quote, "I would like to schedule  
18 the evidentiary hearing." On June 27th the motion to stay  
19 hearing regarding Advance Discovery privileged documents --  
20 you'll see that's in black, because it's not related to  
21 redaction -- the Court says it could "narrowly tailor a stay  
22 to allow the evidentiary hearing to go forward if it were just  
23 dealing with the Macau documents. But with this evidentiary  
24 hearing I can't narrowly tailor a stay with respect to the  
25 Advance Discovery documents." We cite the transcript.

1           So let's start talking about Advance Discovery and  
2 what happened with Advance Discovery. February 15th plaintiff  
3 files a motion to return remaining documents from Advance  
4 Discovery, and plaintiff fails to conduct a meet and confer  
5 conference to address these issues. On April 12th the Court  
6 hears the Advance Discovery document issue in chambers.  
7 June 19th the Court enters an order regarding Advance  
8 Discovery privileged documents and requires they all be  
9 returned. On the 21st of June the defendants file a partner  
10 for writ regarding the Advance Discovery privileged documents,  
11 and again the Court states that you could narrowly tailor the  
12 stay if it was just the Macanese documents, meaning the  
13 redactions, but because you're dealing with the Advance  
14 Discovery documents you can't narrowly tailor that stay. And  
15 I say to you that we very much want to proceed on July 15th  
16 and we believe you could fashion a stay that would allow us to  
17 proceed. In other words, Your Honor, we said at that time we  
18 were willing to go forward with the hearing as it relates to  
19 the MPDPA redactions, and you said you couldn't do that.

20           So what happens next? The Supreme Court issues a  
21 directive or an order directing answer granting the temporary  
22 stay, requiring a full production of the Advance Discovery  
23 documents, including privileged documents. And, as a result,  
24 you cancel the sanctions hearing and the evidentiary hearing  
25 set for July 16th. That cancellation and stay is not related

1 to the MPDPA redaction issues.

2           Then we go to October 1st, 2013. The Supreme Court  
3 issues an order granting stay regarding the Advance Discovery  
4 privileged documents not relating to MPDPA. For the next  
5 10 months multiple motions are filed, including confidential  
6 designations, requests for an amended complaint, summary  
7 judgment, and extensions of stay of non Advance Discovery  
8 related writ issues, none of which affected the evidentiary  
9 hearing. That period of time is not related to redactions.

10           2014, August 7th, the Supreme Court issues its  
11 opinion regarding Advance Discovery privileged documents,  
12 ordering the District Court to conduct an in-camera review of  
13 the privileged documents per the privilege log. Nothing to do  
14 with MPDPA redactions. On August 26th the defendants file a  
15 motion to establish the protocol for ruling on privilege for  
16 Advance Discovery, beginning the process of revising the  
17 privilege log and providing the Court with the documents for  
18 your in-camera review. Not MPDPA related.

19           September 26th the plaintiff files a motion for  
20 release of documents from Advance Discovery on the grounds of  
21 waiver. Not MPDPA related.

22           Fall and winter of last year, due to the volume of  
23 privileged documents for review and the Court's obligation in  
24 the CityCenter trial, the privileged documents are not  
25 completely reviewed until the end of 2014. Motions for

1 reconsideration are filed regarding the Court's decisions on  
2 the privileged documents. Nothing to do with MPDPA  
3 redactions.

4 Finally, on November 5th the Court denies the  
5 plaintiff's request for a waiver of the Advance Discovery  
6 privileged documents under the argument of waiver, but sua  
7 sponte decides that any privilege related to the Vickers  
8 reports has been waived -- privilege has been waived. We get  
9 to then November 7th. The defendants --

10 THE COURT: It wasn't exactly sua sponte, but okay.  
11 We can talk about that another day.

12 MR. RANDALL JONES: All right. Well, that's my  
13 recollection, Your Honor. But, in any event, you did say that  
14 those documents had to be produced.

15 THE COURT: I did.

16 MR. RANDALL JONES: And on November 7th we filed a  
17 motion to reconsider your order regarding the Vickers reports.  
18 Again nothing to do with MPDPA redactions.

19 On the 14th of December other motions regarding the  
20 Vickers reports and the third amended complaint and  
21 reconsiderations are briefed. And then finally on  
22 December 16th the CityCenter case settles, much to the  
23 Court's relief, and here we are with this hearing.

24 So that timeline demonstrates graphically while  
25 certainly there's been a lot of delay, the delay, when you go

1 back and look at it, is just tied to the Advance Discovery  
2 issues, not to redactions. And when Mr. Bice says, wait a  
3 minute, you go all the way back to January of 2012, when they  
4 first sent out their discovery requests to Sands China, and it  
5 took until December of 2012 before we finally started  
6 producing anything, Your Honor, that's not a delay that should  
7 be the subject of sanctions. They never -- there were lots of  
8 things going on during that time period. They never filed a  
9 motion to compel -- and we have an issue with them with  
10 respect to meet and confers; but put that aside -- they never  
11 filed a motion to compel until I believe December of 2012. So  
12 any delay between January of 2012 when they filed their  
13 request for production of documents on Sands China and  
14 December of 2012 should not be considered as part of a  
15 sanction of my client, because that was a part of the dispute  
16 resolution process under discovery. So that issue should not  
17 be taken into consideration in this hearing, in this  
18 proceeding.

19           With that said, Your Honor, I want to talk now  
20 specifically about wilfulness. Your Honor, in the case  
21 authority that we believe is appropriate in this case the rule  
22 says in order for an act to constitute wilfulness "the Court's  
23 order must be clear, with no misunderstandings of the intent  
24 of the order, and, further, there is no other factor beyond  
25 the parties' control which contributed to the noncompliance."



1           Factors to be considered and the degree of  
2 wilfulness is in this case the MPDPA and the fear of criminal  
3 prosecution, and that, of course, we cite the authority for  
4 that proposition. And as an additional part of that  
5 consideration of wilfulness is Sands China's efforts to  
6 accommodate the discovery requests with MPDPA and also with  
7 the plaintiff.

8           I don't want to belabor this point, Your Honor, but  
9 I think it is a point worth making. Mr. Bice says that my  
10 client spent \$2.4 million in an attempt to not comply with  
11 discovery. That proposition is absurd on its face. My client  
12 -- Mr. Bice condemns my client for not saying at the get go  
13 you're not going to produce these documents way back when and  
14 so we could have avoided this whole process. My client has  
15 been consistent with this Court that they could not produce  
16 these documents unredacted from Macau from the very beginning.  
17 So there's been no mistake here.

18           With respect to Mr. Fleming's testimony -- and Mr.  
19 Bice, I appreciate, did acknowledge that Mr. Fleming said,  
20 yes, I had to make a decision whether I could comply with this  
21 Court's order or I had to comply with the Macanese law, the  
22 company where my client or my employer is located. But he did  
23 say, I did take comfort -- and I've got the quote in the  
24 transcript, if need be, where he said, I did not understand --  
25 originally the order said we could not redact and I took

1 comfort in that. But after that point in time, Your Honor --

2 THE COURT: Don't you think that's silly when the  
3 conference about that redaction issue was purely about  
4 privilege issues?

5 MR. RANDALL JONES: Your Honor, all I can tell you  
6 is that it was certainly not clear to us and Sands China about  
7 what was going to be required in that instance. And so, you  
8 know, Mr. Fleming even specifically talked about the order and  
9 said that he did not understand that the September 2012 order  
10 disallowed redactions. It referenced Macanese law -- and I'll  
11 bring that up here in a moment. But the bigger point is,  
12 Judge, is that -- and I certainly understand you appear to be  
13 troubled by this. But a company doesn't spent \$2.4 million  
14 and the affiliated company doesn't spend another \$2 million  
15 going to the extremes that they went to try to find unredacted  
16 copies and produce them. If we were going to simply stand on  
17 the law, we would have said, these are all we've got, and that  
18 would have been the end of it. But it's more than that,  
19 Judge. And I'm going to get into the evidence of the  
20 intentional non-cooperation of the plaintiff, which we believe  
21 proves our point that the real motive here is a discovery tort  
22 by the plaintiff because he clearly feels that's the best way  
23 to get jurisdiction over Sands China, since jurisdiction  
24 otherwise won't exist.

25 And here I want to go through -- this is what Mr.

1 Bice seems to think is irrelevant or insignificant as it  
2 relates to my client. But my client, as we said, has  
3 testified and Mr. Fleming testified, and Exhibit 346 attests  
4 to this, as early as May of 2011 they started having multiple  
5 meetings with the OPDP to try to resolve these issues and be  
6 able to produce unredacted documents. This is the -- a letter  
7 -- this is Exhibit 349. And, unfortunately, these weren't  
8 blown up, but you could see probably on your screen better  
9 than I can. And I've just highlighted the critical points.  
10 "Therefore, under Article 743 your company does not have the  
11 legitimacy to process personal data for the purposes above  
12 referred." And it goes on to talk about Article 6.2, that  
13 compliance with the obligations for which a data is controller  
14 is subject does not include compliance with legal requirements  
15 from jurisdictions other than Macau. We've got -- I'm sorry.  
16 I just brought that up.

17           Then we've got the Exhibit 333, where again -- just  
18 citing the last sentence, "As a result, your company does not  
19 qualify for the legitimacy defined by Article 7, Item 3.4."

20           These letters go on. These are two separate letters that  
21 talk about the company has asked if they can redact, and  
22 they're specifically told they cannot. Again, two different  
23 letters, two different places. These are just but a few  
24 quotes that we've taken out of some of these documents.

25           And just to kind of summarize, these are all

1 different quotes, Your Honor. "The company's claim is  
2 invalid. By stating your intent to transfer related documents  
3 or data to the United States being in compliance with the  
4 guidelines defined as Personal Data Privacy Act, Article 19,  
5 Item 1." Then they cite Item 3. This has to do with the SEC  
6 and the DOJ-related subpoena. The next one, "This office --  
7 it is impossible to permit these personal data to be  
8 transferred to a destination outside of Macau." Next one,  
9 "Additionally, as they have been clearly stated at Parts 2 and  
10 Part 3, your company's transferring personal data to the  
11 United States does not qualify for the legitimate conditions  
12 defined at the Personal Data Privacy Act, Article 6, Item 2  
13 and Item 5." "Because your company does not have the  
14 legitimacies to process personal data, it is not even  
15 applicable to mention transferring personal data to a  
16 destination outside Macau." And finally, "Therefore, your  
17 company again does not qualify the legitimacy defined by  
18 Article 6, Item 5."

19           Your Honor, these are all specific statements to my  
20 client saying, you can't do this, by the authority under which  
21 they are required to live, where the company is at home, where  
22 the company has its principal place of business, where it is  
23 licensed to do business, it is asking for permission and being  
24 expressly denied that by the governing authority.

25           This has to do -- these are quotes from the letters

1 referencing the liabilities that they would potentially  
2 suffer. And in particular the top one, "The person  
3 responsible for such transfer shall be liable for breaching  
4 the professional secrecies, Article 18 of the Act, and shall  
5 be considered to have committed a crime foreseen in Article 41  
6 of the Act," et cetera, et cetera. And the other one, again  
7 below you'll see the other letter, Exhibit 333, references  
8 that again, "In accordance with Article 41 it might be a crime  
9 if the data is transferred."

10           So here you have the governing body telling my  
11 client in writing that transfers does not only expose them to  
12 civil penalties, but it exposes them potentially to criminal  
13 penalties.

14           What do we have? This is -- I want to just bring  
15 this up, Your Honor -- is a part of again an attempt to I  
16 think create inferences for this Court that are inappropriate  
17 to try to create this discovery tort. This is the cross-  
18 examination of Mr. Raphaelson at this hearing. If I go back,  
19 you'll see this is questions with respect to the prior  
20 sanctions hearing, and Mr. Peek is asking -- Mr. Bice, excuse  
21 me, is asking Mr. Raphaelson about the prior sanctions  
22 hearing.

23           Question, "You were not. All right. Well, I will  
24 represent to you that Mr. Peek testified that he was  
25 constrained to disclose to the Court that data

1               existed in the United States. Are you the one that  
2               constrained him?"

3               And I objected, Your Honor, and you sustained that  
4               objection.

5               The problem that we have with this kind of  
6               examination and why we believe this is all a pattern of this  
7               discovery tort issue is because Mr. Bice knew full well what  
8               the answer to that question was when Mr. Peek talked about  
9               being constrained. And here's a quote from that --

10              MR. BICE: Your Honor, I'm going just going to note  
11              my objection, shield/sword, because Mr. Peek asserted  
12              privilege in the other portions of this transcript as to who  
13              he had had these communications with. So if they're going to  
14              claim now that Mr. Peek never had any such communications and  
15              it's not in the other portions of this transcript, then it's a  
16              waiver. This is a constant tactic by the defendants of, well,  
17              we assert privilege when it suits us but then we waive it when  
18              it doesn't help or where we think it helps us.

19              MR. RANDALL JONES: Your Honor, this is a constant  
20              refrain from somebody. It's a constant refrain from the  
21              plaintiff's counsel where they try to twist reality. Because  
22              I'm not doing anything but quoting from Mr. Peek's testimony.  
23              So I'm not trying to hide behind anything, Your Honor.

24              THE COURT: Mr. Jones, to the extent you're quoting  
25              from the testimony Mr. Peek gave in the other hearing it's

1   okay.

2               MR. RANDALL JONES:  Thank you, Your Honor.  I --

3               THE COURT:  Because I ruled on the objections and  
4   the privilege issues at that time when the company was being  
5   represented by Mr. Lionel and Mr. McCrea.

6               MR. RANDALL JONES:  And I would certainly point out  
7   that again Mr. Bice did exactly what I was -- the point I was  
8   trying to make.  They're not interested in the truth as they  
9   claim to be.  This proceeding is a perfect example, and that  
10  objection was another example of they're simply interested in  
11  a discovery tort and trying to twist the truth, as opposed to  
12  get to it.  Because here the actual testimony where Mr. Peek  
13  said that in his judgment he went as far as he could, because  
14  he was constrained by the MPDPA, as he has characterized it.  
15  He went on to say, "I did not feel I could specifically  
16  identify that data as a result of the constraints of the  
17  MPDPA."  Not Mr. Raphaelson or anybody else.

18              Now let's talk about Mr. Fleming's testimony about  
19  wilfulness, Your Honor.  Mr. Fleming, as you will recall,  
20  testified that he made it clear to the OPDP that it was his  
21  intention wherever possible to meet the requirements of the  
22  Las Vegas Court's, but at the same time obviously he could not  
23  breach Macau law.  He went on to say, "I therefore --" sorry,  
24  I lost my place.  "I therefore was in a difficult position,  
25  Your Honor.  I wanted to [inaudible] assist the Las Vegas

1 Court wherever I could, but, on the other hand, I could not  
2 expose the company nor its officers or indeed the interests --  
3 prejudice the interests of the shareholders of Sands China  
4 limited, so therefore I chose not to allow the unredacted  
5 documents to be sent out to Macau -- sent out of Macau."  
6 Excuse me.

7 And with respect to this issue of what Mr. Fleming  
8 understood about the order -- I don't have this in my  
9 slideshow, but I wanted to refer to it, since Mr. Bice brought  
10 it up, page 150, lines 13 through 23 of the transcript, where  
11 this question was asked of him:

12 "Now we can hear you. Okay. My question to you  
13 before was when you got the Court's order -- all  
14 right. When you first saw the Court's order you  
15 understood that it precluded you from making or the  
16 company from making redactions; right?"

17 I objected.

18 And the witness said, Mr. Fleming, "No, I didn't. I  
19 did not understand that. I understood the Judge's  
20 order to say that we couldn't rely on Macau law."

21 So whether Mr. Fleming's understanding was correct  
22 or not, Your Honor, that's his testimony. And it was  
23 emphatically made, and I leave it to the Court to judge his  
24 credibility, but it was very obvious to I believe anybody in  
25 the courtroom that he was speaking the truth when he made that



1 statement in this proceeding.

2 Now, Your Honor --

3 You can go back to the slideshow. Thank you.

4 Your Honor, and this issue of wilfulness, you know,  
5 the plaintiff continues this refrain that we have done  
6 everything we can thwart the discovery process in this case.  
7 We have graphically demonstrated to you that they have  
8 presented no evidence to show prejudice due to redactions.  
9 But what they continue to refuse to show you or fail to show  
10 you, whether it's based on a lack of candor with the Court,  
11 which they're always accusing the defendants of in this case,  
12 or just that they haven't looked very hard for it or they  
13 don't realize the evidence is out there, like all the  
14 unredacted documents they didn't show you in this proceeding,  
15 when they tried to show you the redacted versions to  
16 demonstrate prejudice, for whatever reason they don't ever  
17 want to talk about their lack of cooperation in this process.  
18 And here's a perfect example of that.

19 This is from our -- defendants' opposition to  
20 plaintiff's renewed motion for Rule 37 sanctions February 25th  
21 of 2013, Judge, long time ago. This goes back on their  
22 question -- this shows you, according to them, this whole big  
23 long time frame of where they've been prejudiced even though  
24 we showed you a timeline that shows you it had virtually  
25 nothing to do with redactions. But way back in February of

1 2013 we filed this document with the Court. So obviously they  
2 got a copy of it. And we said specifically, "If plaintiff can  
3 point to any document for which the personal information that  
4 has been redacted might actually be relevant to the  
5 jurisdictional discovery the Court has ordered, defendants  
6 will cooperate in determining whether there are alternative  
7 means by which that information can be provided, whether by  
8 seeking consent of the person whose information was redacted  
9 or by searching for a copy of the document that is available  
10 in the United States."

11 Now, Judge, there's a couple of interesting things  
12 about that statement to this Court and to the plaintiff. We  
13 talk about redactions that might actually be relevant to  
14 jurisdictional discovery. That's the point here, Judge. If  
15 it's not relevant to jurisdictional discovery, who cares? Yet  
16 they never asked us to look for one single document. And we  
17 go on to say, if there's a document you really want out there  
18 that you think you need we'll see if we can find an unredacted  
19 version or get consent. What did I show you in this  
20 presentation? I showed you multiple documents, some of which  
21 they used at this hearing, the seven exhibits they used in  
22 this hearing, that were fully unredacted. They never showed  
23 those to you. And if they didn't know about them before this  
24 hearing even though the two that were the board minutes or --  
25 either Audit Committee meeting minutes or the board meeting

1 minutes, were made available to them in 2012, before there  
2 ever was a Rule 37 motion. If they didn't know about those  
3 documents up to the present day and they were worried about  
4 finding them, why didn't they come and ask us for them? They  
5 cannot come in here and talk about my client's wilfulness when  
6 they have utterly refused to participate in the process and  
7 help resolve this issue.

8           And I will show you another example of that.  
9 Jacobs's request to sign an MPDPA consent was refused. This  
10 is an email that goes back to October of 2014 where Mr. Mark  
11 Jones sends an email to Todd Bice saying, look, if you want to  
12 give us his consent we'll use that and try to find documents.  
13 What is their response? It's a letter from Mr. Bice dated  
14 October 8, 2014, on this subject. Mr. Bice says effectively,  
15 no. And he goes on to say, the last sentence of his letter,  
16 "Your attempt to require Mr. Jacobs or any other person to  
17 provide a consent contravenes the Court's orders imposing  
18 sanctions and will not be condoned." Well, that's a  
19 convenient way for him to try to put the blame back on my  
20 client. But if you're really interested, if that's what you  
21 really -- your goal is really to get the information that you  
22 claim you need, then what's the harm of signing the consent,  
23 Judge? Why wouldn't you do that? His behavior speaks louder  
24 than certainly my client's behavior of who really is seeking  
25 the truth here.

1           But it goes on. This is an email that goes all the  
2 way back to October 30 of 2012, when our firm first got  
3 involved in this case right after the sanctions hearing. And  
4 it was sent to Ms. Spinelli. And this was right before Mark  
5 Jones and Mike Lackey actually went to Macau to try to see one  
6 more time if they could get the OPDP to give them unredacted  
7 documents. And Mr. Jones says, Mark Jones says,  
8 "Specifically, we need to reach an agreement during the  
9 meeting as to the custodians for whom information should be  
10 reviewed and the search terms to be used to identify  
11 potentially responsive jurisdictional information from those  
12 custodians. We would request the meeting this Thursday or  
13 Friday, and we'll make ourselves available on those dates at  
14 your convenience." Never responded, Judge.

15           Mr. Bice has got up here and he went through with  
16 Mr. Pisanelli hours of testimony from Mr. -- with Mr. Ray and  
17 other people about search terms and why didn't you use these  
18 other search terms. These were -- and, by the way, if you may  
19 recall, you look at those exhibits, those discussions were  
20 back I believe in July of 2012, June of 2012. Well, here it  
21 is in October of 2012 when they're specifically asked if they  
22 want to meet to talk about the custodians and the search  
23 terms. And they don't respond, Judge. Again, who's really  
24 searching for the truth here? This is another example of what  
25 their real motive is here, discovery by tort. They don't need

1 this information, there's nothing in this which would help  
2 them prove jurisdictional discovery over Sands China based on  
3 the relevant caselaw. And so if you can't win that way, you  
4 win by trying to get a discovery tort on somebody. That needs  
5 to be taken into this Court's consideration when you decide  
6 what sanction, if any, is appropriate in this particular case.  
7 When Mr. Bice comes in here and says they should sanction my  
8 client he needs to look at his own house before he starts  
9 suggesting significant sanctions against my client.

10 Finally -- oh. These were removed, Your Honor.  
11 This was Okada stuff.

12 THE COURT: Skip ahead.

13 MR. RANDALL JONES: This was Okada, so that's not in  
14 there anymore.

15 Your Honor, now, it wasn't mentioned, although I  
16 guess it was mentioned very briefly. Anyway, Your Honor, they  
17 talk about Richmark in their findings and conclusions and they  
18 actually talk about it in their brief. Richmark doesn't apply  
19 at all. They're asking for -- well, now apparently they've  
20 decided that they can't use Richmark because they aren't  
21 talking about some gargantuan fine, although I don't know if  
22 they've withdrawn that or not, because they didn't mention it,  
23 as I understood it, in their closing. But now they want to  
24 get a presumption or they want to just find jurisdiction  
25 against my client. But clearly if you read Richmark, it

1 doesn't apply, because it was -- the holding in that case was  
2 if you're going to punish for past conduct that's a criminal  
3 contempt type of a sanction, which clearly doesn't apply in  
4 this case based upon the proceedings we're going under  
5 Rule 37. Nevada caselaw also says Rule 37 is not a criminal  
6 contempt process.

7           With respect to the Chevron case, the Chevron case  
8 doesn't apply at all. First of all, Chevron involved a  
9 finding by the Court that the parties relying on the foreign  
10 law colluded with the Ecuadorian courts to obtain orders  
11 blocking the protection of the information. No evidence to  
12 suggest that ever occurred in this case. Secondly, Chevron  
13 also is distinguishable because the plaintiffs didn't produce  
14 any documents from Ecuador, whereas we produced hundreds of  
15 thousands of pages of documents even though the personal data  
16 is redacted. And finally, Chevron has a good faith test in it  
17 that says -- that holds that, "Good faith may be demonstrated  
18 by showing the party sought a waiver of the foreign law,  
19 attempted to obtain the documents from other sources, or  
20 produced the documents to the extent they were not protected  
21 by the foreign law," every single one of which my client did  
22 in this case.

23           So getting back to, then, those five factors, Judge,  
24 the importance to the investigation or litigation of the  
25 documents or other information requested. As we have shown

1 you graphically today, there is no evidence that the redacted  
2 documents are important to this case. In fact, the only  
3 evidence that's been proffered to this Court and is in  
4 evidence in this hearing shows just the contrary. Now, while  
5 Mr. Bice again wants to say, well, there could be thousands  
6 more out there that are redacted and those could be bad for  
7 us, that certainly does not comport with his burden in this  
8 case.

9           Secondly, the degree of specificity of their  
10 requests. Again, we talked about that. While we think they  
11 were exceedingly broad, we produced everything that we  
12 believed we could and should have produced in this case  
13 subject to those requests even though some of that information  
14 was redacted under the MPDPA and also under paragraph 7 of the  
15 confidentiality agreement.

16           Number three, whether the information originated in  
17 the United States. Again, the redacted documents did not  
18 originate in the United States.

19           The availability of alternative means of securing  
20 the information. As I've explained, the great cost and extent  
21 to which my client went to try to find alternative means and  
22 methods to produce that information, which is in my experience  
23 unprecedented in these kind of cases.

24           And then finally the extent to which the  
25 noncompliance with the requests would undermine important

1 interests of the United States or compliance with the request  
2 would undermine important interests of the state where the  
3 information is located. Your Honor, the redacted documents  
4 are not reasonably calculated to lead to the discovery of  
5 admissible evidence under Rule 26(a). And under Daimler and  
6 the Viega cases there has been demonstrated -- and I believe  
7 the plaintiff not only has not done it here, but can't do it  
8 under any circumstances or they would have done it here, have  
9 never been able to show you that any of these redacted  
10 documents implicate jurisdiction under any legal theory of  
11 jurisdiction over Sands China. They just haven't been able to  
12 do it. And that's what this hearing was all about. That was  
13 their burden. They haven't been able to do it, where we have  
14 clearly shown and as Mr. Fleming has testified my client was  
15 stuck in this incredibly terrible position of having a court  
16 order from Nevada saying, I want you to produce this, versus  
17 the lawful authority where his company is located saying, you  
18 can't do this. And, as he said, he did everything he could to  
19 try to produce what he could in compliance with your order.  
20 And that is the state of the evidence as it stands today.

21           So that gets us, Judge, to the final point here that  
22 the Supreme Court said that, "The District Court shall  
23 evaluate the relevant factors," the five factors we just  
24 talked about, "and determine what sanctions, if any, are  
25 appropriate." And, Your Honor, I would say it this way.



1 While we believe that there was a miscommunication about the  
2 redactions back in 2012, I acknowledge, as did Mr. Fleming,  
3 that the Court later cleared up any miscommunication about  
4 that issue. Having said that, Your Honor, I would echo Mr.  
5 Fleming's testimony that, faced with the challenge of choosing  
6 to risk sanctions in this Court and civil and criminal  
7 prosecution in Sands China's principal place of business, he  
8 had no choice and Sands China had no choice but to comply with  
9 the laws of Sands China's home country while doing everything  
10 possible to comply with your order.

11 Under Nevada law, without more, that is not a wilful  
12 violation of your order. And, Your Honor, wilfulness in the  
13 context of this proceeding also must assume that a party was  
14 purposely trying to obstruct, hinder, or impair discovery of  
15 relevant information. In other words, Judge, they have not  
16 offered you any evidence to show that my client has wilfully  
17 tried to obstruct, hinder, or delay the production of relevant  
18 information. We acknowledge we redacted the personal data,  
19 but we did not try to obstruct the production of relevant  
20 information. That goes to wilfulness, Your Honor. In other  
21 words, it must be taken into consideration when considering a  
22 party's wilfulness whether there is any evidence that the  
23 party tried to wilfully hide relevant documents from the  
24 opposing party or the Court. And that's what I believe the  
25 evidence has shown in this case we have not done.

1           There has been no evidence presented to show that  
2 Sands China tried to hide relevant evidence from the  
3 plaintiff, and it has clearly been shown none of the few  
4 documents that they proffered to this Court show that any of  
5 the redacted information was relevant to jurisdictional  
6 discovery. In other words, Your Honor, while we understand  
7 the Court's comments about you believe we have violated your  
8 order, we understand now, certainly as of March 27th of 2013,  
9 when you gave us that other order, you spelled out, this is  
10 not what I wanted y'all to do. And we still redacted  
11 information. What I would say to this Court and I would say  
12 it again, we have not wilfully tried to violate your order.  
13 We have tried to comply with the laws of Macau and provide all  
14 relevant information to the plaintiff. And I would hope this  
15 Court would take into consideration the extremely difficult  
16 position my client was put in and acknowledge and note that  
17 there has been no showing that by doing what my client did --  
18 under the extremely difficult circumstances it was in it did  
19 not delay or hinder the discovery process for Mr. Jacobs as it  
20 relates to jurisdiction, because that's the issue before this  
21 Court.

22           And so, Your Honor, you know, I would ask this Court  
23 in consideration of all those factors to understand my  
24 client's already spent \$2.4 million trying to make sure it did  
25 everything it could under these difficult circumstances to

1 comply and that we would hope that would be enough under these  
2 circumstances.

3 Do you have any questions, Your Honor?

4 THE COURT: Was that the end of your -- well, I do.  
5 But I want to make sure is now not running anymore while I ask  
6 this series of questions that I have.

7 You understand that the order that previously was  
8 entered was a sanctions order that precluded your client from  
9 relying on the Macau Data Privacy Act in making their document  
10 productions? You understand that? We weren't at the first  
11 step where you get to rely on it the first time.

12 MR. RANDALL JONES: Your Honor, I clearly understand  
13 that is what the Court is telling me now. I would fall back  
14 to Mr. Fleming's testimony, who is -- as you know, is the  
15 person who -- you wanted to know who made that decision, and  
16 we made a decision that was a very difficult decision for us  
17 to make, to put a lawyer on the witness stand. We did that  
18 because we knew how important you said to us that decision was  
19 and who made that decision. So we put Mr. Fleming on the  
20 witness stand. And what I have to say to the Court in  
21 response to that is that's why in light of your questions to  
22 Mr. Bice and Mr. Bice's comments in his closing I found --  
23 that was not a part of my presentation, I found that testimony  
24 from Mr. Fleming -- I believe those were your questions  
25 actually, Your Honor, maybe it was Mr. Bice, I can't recall --

1 where he said, no, I did not understand that the order said  
2 that, it said we couldn't rely on Macau law. Now, whatever  
3 distinction he made in his mind, as he later said, he took  
4 comfort in the fact that he believed based on the information  
5 he got that in December you said we could redact. And  
6 mistakes are made and things go wrong in this process.

7 And so the answer to your question is, Your Honor,  
8 my client did not understand that issue, as he's testified in  
9 this court about that. And he did understand, at least in  
10 December, that he could redact. You made it clear to us later  
11 that we couldn't. And, as Mr. Bice pointed out --

12 THE COURT: No. I said you could redact, but only  
13 on privilege issues.

14 MR. RANDALL JONES: And I understand.

15 THE COURT: And I've tried to make that clear,  
16 because I was not trying to remove your ability to claim  
17 privilege. I was trying to remove the ability to claim the  
18 Macau Data Privacy Act to prevent the disclosure given the  
19 lack of forthrightness with me about what had happened with  
20 the data previously. And I understand that, you know, that  
21 puts you at a disadvantage as you coming into this case as the  
22 second or third set of -- fourth -- however many sets of  
23 lawyers it is since you've come in. But I made a ruling I  
24 tried to resolve a prejudice issue previously by restricting  
25 your client's ability to rely upon that, understanding that

1 there were challenges they were facing. And then they made  
2 the decision again.

3 MR. RANDALL JONES: And I would answer you this way,  
4 Your Honor. As Mr. Fleming testified -- and that's where I  
5 have to go back to, because, as he testified, he made the  
6 decision. And as Mr. Bice points out and he points it out as  
7 a bad thing that Mr. Fleming said he was going to redact  
8 regardless. Well, Mr. Fleming said, look, I had a decision I  
9 had to make for the company, people could potentially go to  
10 jail who made this decision -- who would redact information  
11 and this is a publicly traded company, this is a company that  
12 I have to answer to shareholders, this company is licensed  
13 here, it has an agreement with the government to do business  
14 and I had to take all those issues into consideration and I  
15 believe in December that we could redact based on MPDPA, but  
16 even if that wasn't the case I could not and would not have  
17 been in a position to have made a different decision. So the  
18 first decision was not made in bad faith, but the second  
19 decision was not made in bad faith. As Mr. Fleming said, Your  
20 Honor -- and you have to again take this into the context of  
21 the circumstances -- you have a company that has a  
22 responsibility to a lot of people, not just all the  
23 shareholders, but to all the people that work for that  
24 company, and they are called into court in Nevada, they are  
25 told that they're going to have to violate the law under which

1 they do business. And so the choice Mr. Fleming had was -- he  
2 had essentially three choices. He could ignore the law of  
3 Macau and suffer the consequences -- and they say it's a petty  
4 consequence, we absolutely disagree with that and we think the  
5 documentation from the OPDP graphically contradicts that, but  
6 he could have done that; he could have ignored your order; or  
7 there was a third way, he could have tried to comply with your  
8 order and Macanese law as the best possible way he could. And  
9 to that end my client spent \$2.4 million. And I know Mr. Bice  
10 thinks that's a trivial thing, but I personally have never  
11 seen -- and I've been doing some pretty complex litigation in  
12 the 33 years I've been practicing, and I've never seen a  
13 company spend that much money trying to do ESI discovery or  
14 any kind of discovery. So from my perspective, Your Honor,  
15 that is proof positive of the efforts by which -- or to which  
16 my client went to try to make sure to comply with your order  
17 so that no harm was done. And so if -- and I know this Court  
18 would not issue an order that it thought was a frivolous order  
19 and require somebody to comply with it. So if there was a  
20 part of the order that would require unnecessary and frivolous  
21 action, I don't believe this Court wouldn't want to -- feel  
22 that you would have to sanction somebody for not complying  
23 with it.

24 My point is simply this. We have shown you, I  
25 believe graphically, and, more importantly, Mr. Bice has not

1 shown you that any of the redactions caused any harm to the  
2 jurisdictional theories of Mr. Jacobs. And so even though  
3 there was a difficulty with complying with the exact words of  
4 your order, we complied with the spirit and intent of your  
5 order, and no harm was done. And so in that sense, Your  
6 Honor, our conduct was not wilful. We did not wilfully  
7 violate your order.

8           And I would also say this. With respect to the law  
9 on wilfulness, where you have another law in another country  
10 where you are doing business and you are told you cannot  
11 violate that law, that is -- that in and of itself is -- and  
12 you comply with law that you have to live under, that is not  
13 wilful of your order. We didn't wilfully, in other words,  
14 just ignore your order and say, we don't care what Judge  
15 Gonzalez said. We said, look, we want to comply. And that's  
16 the testimony you have. But we can't comply in every literal  
17 respect to this order, so we're going to do what we believe is  
18 the next best thing and give them all the information, and  
19 then we're not going to stop there, Judge, we're going to give  
20 them all the information we believe they need. But if they  
21 come to us -- and we told them this at the beginning of this  
22 process, in February of 2013, if you find something that you  
23 claim you can't live without, then you tell us and we'll see  
24 what we can do to find a way to get that information to you,  
25 maybe we can get a consent. In other words, Mr. Bice's

1 resolution is just give a shotgun approach to consents, which  
2 we know from the letters from the OPDP would probably not be  
3 legitimate. But if we get a specific request for a particular  
4 document or series of documents, then we can go to those  
5 people and see if we can get the consent. And we were turned  
6 down. How is that a search for the truth on the plaintiff's  
7 part? We went to them and said, tell us the search terms you  
8 want to use. They said, we're not going to respond to that.  
9 Tell us the custodians you want to use. They didn't respond  
10 to that. We said, give us Mr. Jacobs's consent. They said  
11 no.

12           So, Judge, in terms of wilful conduct I believe --  
13 as strange as this may sound to you, I believe the only wilful  
14 conduct here is Mr. Jacobs's. And I know Mr. Bice is going to  
15 get up here and make all kinds of pejorative comments about my  
16 statement to you about that, but look at the facts. We tried  
17 -- Mr. Fleming testified we did everything we could to comply  
18 with your order. We asked the plaintiff to help us, help us  
19 help you. And what was the response? A resounding no in  
20 every situation. Judge, that's not wilful conduct on my  
21 client's part. My client did their best under very difficult  
22 circumstances, and I would hope that this Court would  
23 understand that and look at the totality of the circumstances,  
24 the fact that Mr. Bice has been unable to prove to you any  
25 actual bias or any actual prejudice, as opposed to his



1 rhetoric, and what my client did. And if you -- if the Court  
2 looks at all that information and all the evidence, the actual  
3 evidence, as opposed to the rhetoric, then I believe that you  
4 will see that we were not wilful and that there is no reason  
5 to sanction my client in this instance.

6 And I understand what your attitude is or your  
7 comments are about, I had my order and you should have  
8 followed it. But there's no harm done, Judge.

9 THE COURT: Okay. Let me go to the next question,  
10 because I've got about three more. But your time is not  
11 running.

12 MR. BICE: Your Honor, if you're going to ask a  
13 question, would it be possible for us to take a break very  
14 shortly?

15 THE COURT: Yes. We can have a break for personal  
16 convenience.

17 MR. BICE: Yes.

18 THE COURT: And then I'll come back, since I wrote  
19 my questions down so I won't forget them.

20 MR. BICE: Okay. Thank you, Your Honor.

21 (Court recessed at 3:59 p.m., until 4:02 p.m.)

22 THE COURT: Okay. Then let me go to the next  
23 question, if it's okay, Mr. Bice.

24 So, Mr. Jones, can you explain to me why the  
25 transferred data was not searched and unredacted portions of

1 the -- I'm sorry, unredacted portions of the transferred data  
2 that were responsive to the searches produced.

3 MR. RANDALL JONES: Let me answer it this way, Your  
4 Honor. If you're talking about Jason Ray's testimony?

5 THE COURT: No. The transferred data is here in the  
6 U.S.

7 MR. RANDALL JONES: Okay.

8 THE COURT: Apparently some issue may or may not  
9 have happened with the OPDP and your client about something  
10 that may have involved the transferred data, I don't know,  
11 because nobody's ever told me really what the scoop is. But  
12 the transferred data's here in the U.S. My question is can  
13 you explain to me why the transferred data was not searched  
14 with the search terms that were otherwise applied to the data  
15 sources and then unredacted documents from the transferred  
16 data produced.

17 MR. RANDALL JONES: I don't agree that it was not,  
18 Judge. I listened to all the testimony of Mr. Ray, and what I  
19 believe -- this is my own -- Your Honor, we've tried to be  
20 professional, I would appreciate it -- I keep hearing the ah,  
21 and the --

22 THE COURT: Don't ah. No big breaths. No rolling  
23 of the eyes.

24 MR. RANDALL JONES: -- and you know, and the other  
25 kind of -- that's unprofessional.

1 THE COURT: I did. I just cautioned them and gave  
2 them a hard time.

3 MR. RANDALL JONES: I appreciate it. I tried to  
4 restrain myself, but it finally got to the point I couldn't  
5 deal with it.

6 THE COURT: Okay. Well, let's talk about --

7 MR. RANDALL JONES: I just -- Your Honor, I believe  
8 it was searched. I understand that there was -- it got to the  
9 point where the testimony of Mr. Ray got so confused that I  
10 believe Mr. Ray got confused about the questioning. So it's  
11 my understanding that that information was searched.

12 THE COURT: And then was produced in an unredacted  
13 form?

14 MR. RANDALL JONES: That'd be --

15 THE COURT: That's the question I'm asking.

16 MR. RANDALL JONES: That would be my belief.

17 THE COURT: Okay. Here's the next one. There was  
18 an appeals process that was outlined in at least one of the  
19 letters from the OPDP and a request for additional information  
20 or at least an offer to review additional information by the  
21 OPDP. Can you tell me why your client made the decision not  
22 to pursue those avenues.

23 MR. RANDALL JONES: The only thing I can tell you is  
24 what Mr. Fleming said about that, that he believed that there  
25 was insufficient time to do that. And I understand what Mr.

1 Bice's argument is about followup. I can only tell you this,  
2 Your Honor, is that when we produced that and we got the  
3 direction that you can't redact after January, we were focused  
4 on those issues, and whether anything should have -- could  
5 have been done, I don't know. But I can tell you that -- all  
6 I can tell you is the testimony of Mr. Fleming, and that's  
7 what I know about the subject.

8 THE COURT: Okay. And here's my last question for  
9 you, but it may have subparts. Understanding that some of the  
10 unredacted versions of the redacted documents were produced  
11 close or after certain depositions, does your client have a  
12 position about how any prejudice related to that issue could  
13 be ameliorated?

14 MR. RANDALL JONES: Your Honor, I certainly  
15 understand the import of your question, and as I stand here  
16 today I understand what some potential options are. And that  
17 would be a question that I would want to talk to my client  
18 about, but I certainly can do that. And I'd be happy to get  
19 back to the Court as --

20 THE COURT: Well, today's the day we're supposed to  
21 submit so I can then issue a decision hopefully by the end of  
22 the week, which may be a nice aspirational goal.

23 MR. RANDALL JONES: I understand, Your Honor.  
24 Unfortunately, that is a question I feel I would really need  
25 to talk to my client about.

1 THE COURT: Okay.

2 MR. RANDALL JONES: I may get an answer that the  
3 Court likes or doesn't like, I don't know. I just have to get  
4 to my client --

5 THE COURT: It's all right. I'm not trying to put  
6 you on the spot, I'm trying to get information so that I can  
7 make a better decision, rather than a worse decision, because  
8 none of them are going to be good.

9 Anything else in this before I let you go with  
10 15 minutes remaining to use later?

11 MR. RANDALL JONES: No, with just one caveat, Your  
12 Honor. May I consult with co-counsel?

13 THE COURT: Yes.

14 And then, Mr. Bice, you're up, and you had saved 28  
15 minutes --

16 MR. BICE: Thank you, Your Honor.

17 THE COURT: -- which you don't have to use all of.

18 (Pause in the proceedings)

19 MR. RANDALL JONES: Your Honor, I have nothing  
20 further.

21 THE COURT: Thank you.

22 MR. RANDALL JONES: Thank you.

23 MR. BICE: Your Honor, can I have just one minute to  
24 set up?

25 THE COURT: You can while I answer this question

1 from my law clerk.

2 MR. BICE: Thanks.

3 (Pause in the proceedings)

4 PLAINTIFF'S REBUTTAL

5 MR. BICE: Your Honor, I think I got this -- I wrote  
6 this down fairly accurately. One of the things that Mr. Jones  
7 said, Your Honor, is he'd like you to think about the  
8 extremely difficult position that his client was in. I'd like  
9 the Court to think about the extremely difficult position that  
10 Mr. Jacobs has been put in because Sands China, this publicly  
11 traded company, as it wants to talk about, decided to deceive  
12 a United States Court and do so in a knowing fashion by making  
13 affirmative false representations of fact to a U.S. Court,  
14 knowing that those statements were false, and then compounding  
15 it by making material omissions of facts that it knew would  
16 have corrected the record, but consciously chose not to do  
17 that because doing so would have put it at a material  
18 disadvantage in the litigation. That, of course, is what is  
19 completely glossed over by Sands China. I don't blame them.

20 You know why they didn't take that order to the  
21 Supreme Court, Your Honor, the September 14 order, as the  
22 Supreme Court says they didn't challenge it? Is because the  
23 record of that misconduct is unquestioned. The record of that  
24 misconduct and the deception that they perpetrated on you and  
25 on us and our client they couldn't address. They didn't want

1 to take it up to the Supreme Court because the Supreme Court  
2 would have seen front and center the type of activities under  
3 which they had engaged.

4           That's why we're here. We're here because they  
5 engaged in that misconduct, which the Nevada Supreme Court has  
6 called lesser misconduct a fraud on the judiciary. One of the  
7 things that they told you is none of these documents are  
8 relevant, and I'm going to get into that in just a moment,  
9 Your Honor; but this assertion is so absurd on its face I  
10 would like the Court to remember these facts. The search  
11 terms -- the Court granted our motions regarding the discovery  
12 request. The search terms were derived therefrom. The Court  
13 then approved who the custodians would be that those search  
14 terms would be run against and ordered them to be run. SCL  
15 and its counsel at MTO created those search terms -- or Mayer  
16 Brown, it's unclear to me a little bit, but the back and forth  
17 that we had -- when I say, we, and I'll get into that in just  
18 a moment -- which of course is omitted by the defendants, the  
19 back and forth we had about search terms was with MTO. They  
20 created those, they tailored them for jurisdictional  
21 discovery. As Mr. Ray said, that yielded 70,000 documents,  
22 and then they were vetted to make sure that they were  
23 responsive and related to jurisdiction.

24           They then admit, well, we redacted over half of  
25 those documents. And now Mr. Jones says, Your Honor, none of

1 these documents even relate to jurisdiction. They're the ones  
2 who vetted them and determined that they did and gave them to  
3 us. And now he says, because you can't read them, you can't  
4 know what they relate to. And I'll get into the specific  
5 documents he wants to cite. So to come in here after this  
6 process that they are the ones who are responsible for and  
7 claim none of this stuff relates to jurisdiction -- so in  
8 other words, we gave them a bunch of junk is what their  
9 argument is, we gave them a bunch of junk.

10 So let's just briefly do this. He says, none of  
11 these documents relate. Let's look at Exhibit Number 16.

12 Dustin, pull up Exhibit 16.

13 Mr. Jones's grandstanding on this document is to  
14 say, Your Honor, this predates jurisdiction, this predates the  
15 date that Sands China was formed so therefore it can't  
16 possibly have anything to do with jurisdiction. This  
17 document's redacted. And by the way, Your Honor, this is  
18 unredacted in one fashion. After just last year, I think it  
19 was in October of last year they claimed that they got  
20 consents from Mr. Adelson. They got consents from four people  
21 in the United States, that's the sole extent of who they got  
22 consents from. So you finally now can see this document SJ is  
23 actually mentioned. But they had redactions from Mr. Adelson  
24 previously. Now their story is, well, Your Honor, this can't  
25 this relate to jurisdiction because it predated the formation



1 of the company. That doesn't mean that it doesn't relate to  
2 jurisdiction, Your Honor. It demonstrates who was in charge  
3 of these types of events in Macau both before and as the  
4 company was formed. That's why they were ordered to produce  
5 this stuff to us, and that's why their Macau reviewers did  
6 produce it to us.

7           There are a couple of these that are real gems, and  
8 I'm going to try and save some time and show them to you in  
9 this fashion. Oh. Exhibit 32. Mr. Jones says, this one  
10 doesn't have anything to do with this case, because again,  
11 Your Honor, this predates the company's formation. Again,  
12 Your Honor, if you set up the false premise, as they like to  
13 do, to come in and define what it means to be subject to  
14 jurisdiction, they can rationalize non production of  
15 everything, which is exactly what -- you'll remember that's  
16 what they tried to do. No jurisdictional discovery is needed,  
17 Your Honor, you should just decide this on your own. That was  
18 Patty Glaser's position, which is why they opposed all the  
19 jurisdictional discovery from day one.

20           This document, Your Honor, relates to jurisdiction.  
21 You know how, Your Honor? You see the reference to Cirque,  
22 which was one of the search terms, Your Honor? You know why  
23 it was --

24           THE COURT: I'm aware of the Cirque Macau issue,  
25 because, unfortunately, it's an issue in the trial I'm in

1 right now in CityCenter. So --

2 MR. BICE: Right. But Mr. Jones says, well, how can  
3 this possibly relate to jurisdiction. Because it's in the  
4 search terms because it was one of the grounds supposedly from  
5 Mr. Jacobs's termination, which we have specific jurisdiction,  
6 as well. Again, conveniently ignored. But there are some  
7 other ones. Where's their PowerPoint? I must have it up  
8 here. And I apologize. I'm looking at my colleagues asking  
9 them things.

10 THE COURT: It's a notebook, a small, white,  
11 1-inch notebook.

12 MR. BICE: All right. Exhibit Number 9, Your Honor,  
13 they produced this one to us unredacted, of course, after the  
14 depositions were over with. And I'll get to that in a minute  
15 and what possible example that has. And then they try to tell  
16 you, you know, Your Honor, there are so many of these  
17 documents that they found about half of them after the  
18 depositions were over and produced them to us. Right? Here's  
19 another one, Your Honor. Look at Exhibit Number 21.

20 Dustin, pull up 21, please.

21 Look at this document, Your Honor. This document is  
22 -- that's not 21. Oh. No. I apologize. Yes. You're wrong.  
23 This is on, Your Honor, this is on their PowerPoint, page 19.  
24 This is the easier one. This is the redacted document that  
25 they gave us; right? It was a different one. I apologize.

1 This is the redacted one they gave us. Now go to the  
2 unredacted version, which is the next page, Your Honor.  
3 Again, no real dispute that this would relate to  
4 jurisdictional discovery, Your Honor, because it relates to  
5 the board meetings and the board members, et cetera. But  
6 again, this is the type of stuff that were being hit by the  
7 search terms and then they were redacting. And then, well,  
8 they're saying is, well, of this 15,000 documents that we  
9 found we didn't introduce all -- nearly 8,000 of them, Your  
10 Honor. So because we did a stipulation with them, Your Honor,  
11 they asked us not to put them into the record. But now Mr.  
12 Jones is saying we didn't put them into the record after he  
13 asked us not to do that.

14 We'll be happy -- and we will. We're going to file  
15 a motion to supplement, and we're going to put all of them  
16 into the record, because his position is he didn't want us to  
17 do that, but then he turns around and comes in and says, see,  
18 Judge, there's no harm here, none of these documents have  
19 anything to do with jurisdictional discovery, even though all  
20 of them are hit by their jurisdictional search terms and their  
21 Macau officials looked at them and determined that they were.

22 So let me go into a few more, because I think this  
23 one is a real treat. If you'd look at their Exhibit Number --  
24 or not -- their page 22 of the PowerPoint, Your Honor. Mr.  
25 Jones made a big deal out of this one, and I don't blame him,

1 because I think it really nicely proves the point. And then  
2 the next page, yeah, it's the next page that shows the same  
3 document and just a closeup. And Mr. Jones made the joke  
4 about well, this refers to the International House of  
5 Pancakes, how could this possibly have anything to do with  
6 jurisdiction. I completely agree with him, Your Honor. So  
7 how did it get hit by the search terms?

8 THE COURT: Well, isn't that the problem with using  
9 search terms in ESI instead of doing the manual review of all  
10 the documents, and that's one of the reasons that, while we  
11 use ESI searches, we understand there's got to be some  
12 transparency in the review process?

13 MR. BICE: Yep. So we, of course, inferred, Your  
14 Honor, when we got this document that obviously the search  
15 terms must be the names that are all redacted from it. But.  
16 of course, we're not allowed to see that, and we're not  
17 allowed to know who was all involved in this, because it's  
18 redacted. But. of course, Mr. Jones says, well, see this  
19 doesn't possibly relate to jurisdiction. But, of course, Your  
20 Honor, the point of the jurisdiction order was to see who was  
21 directing what from where, when and how, as well as we have  
22 other theories of jurisdiction of which the Court has already  
23 told them their story about general jurisdiction being the  
24 only one does not fly.

25 Go to Exhibit Number 33, Dustin. No. I take that

1 back. I take that back.

2 I'm losing a little track here, Your Honor, of my  
3 exhibit numbers.

4 Now, Your Honor, to Mr. Jones's point he says, aha,  
5 Your Honor, we've got them, because Mr. Bice asked some  
6 questions of Mr. Toh about some board meeting minutes, and  
7 they had produced us some different ones that weren't the same  
8 in a final version. But you remember, Your Honor, their story  
9 on this was how everybody can know that because they produced  
10 them with the same Bates number and that's how you could know  
11 whether or not they had produced that document in an  
12 unredacted form in the United States? Look at the Bates  
13 numbers, Your Honor, actually on Exhibit 377, which they cite.

14 THE COURT: Well, I noticed they were different.

15 MR. BICE: Huh?

16 THE COURT: I noticed they were different.

17 MR. BICE: They're all different.

18 THE COURT: I know, Mr. Bice.

19 MR. BICE: All three of those are different on the  
20 exact same document that they're telling you we somehow missed  
21 the fact that they produced the same document in an unredacted  
22 form.

23 THE COURT: Well, they said they were slightly  
24 different versions of the same document.

25 MR. BICE: And by the way, none of those are --

1 THE COURT: Because I asked the question.

2 MR. BICE: None of those are marked "Draft." But  
3 they're now telling you those are the replacement documents,  
4 even though they previously had told us the replacements have  
5 the same Bates numbers on them. That is exactly what has gone  
6 on in this case because of this activity.

7 According to Mr. Jones, Your Honor, the search terms  
8 that they ran and the process in which they conducted that  
9 review yielded nothing but junk, because none of the documents  
10 pertained to jurisdiction. That's essentially their position  
11 in a nutshell, it's all junk, can't possibly relate to  
12 jurisdiction. That, of course, is exactly, as you use the  
13 word, the lack of transparency here that has infected this  
14 entire process. And why has it infected it? For one reason  
15 and one reason only, because they have chosen to violate the  
16 Court's order.

17 Now, there are a lot of these documents I'd like to  
18 take my time and go through, but I'm going to run out of time  
19 if I do that, Your Honor. But suffice to say the story about  
20 how none of these documents pertained to jurisdiction in this  
21 case is rubbish, and it is just simply this defendant trying  
22 to, after the fact, rationalize its conduct of violating a  
23 court order. A court order, by the way, is the product of a  
24 finding that they had knowingly deceived the judiciary.

25 Now, let's go to this Mr. Fleming quote in the

1 transcript that Mr. Jones pulled up.

2 Dustin, I need of you to start on page 148.

3 Mr. Jones quoted from page 150, but we're going to  
4 start on 148 so that the Court can see exactly how this  
5 testimony came to be from Mr. Fleming. I'm going to read  
6 starting at line 11. This was my questions before some  
7 speaking objections found their way into the record in the  
8 presence of the witness, of course.

9 "Okay. And when you saw it did you understand that  
10 it precluded you -- or I'm sorry, it precluded the  
11 company from redacting any documents pursuant to the  
12 MPDPA?"

13 Mr. Jones tries to interrupt Mr. Fleming, but Mr.  
14 Fleming didn't stop.

15 "Yes, of course I did. I told Her Honor exactly  
16 that a few minutes ago."

17 "All right. So you were -- you did not understand  
18 as to -- you did not misunderstand as to which  
19 documents applied; correct?"

20 Answer, "Of course not."

21 "You knew that it applied to all the documents that  
22 were located in Macau; correct?"

23 Answer, "Correct."

24 Now, Dustin, go to the next page.

25 So as you'll see, Your Honor, I then start following

1 up on this, and then we get what happened throughout this  
2 proceeding, which is we've got a half-a-page speaking  
3 objection about legal advice, et cetera. Then we're told to  
4 follow up, and this is then, when Mr. Jones quotes on the next  
5 page from Mr. Fleming where Mr. Fleming now reverses gears and  
6 says, "Oh. No. I was confused, they're right."

7 MR. RANDALL JONES: Well, Your Honor, objection.  
8 His testimony there, I didn't talk about the question, I made  
9 an objection. That's a misstatement of the record and it's  
10 not contained --

11 MR. PISANELLI: It says it at the top of the next  
12 page.

13 THE COURT: Guys.

14 Mr. Pisanelli, be quiet.

15 MR. RANDALL JONES: Your Honor, my objection is the  
16 testimony speaks for itself, and Mr. Bice's statement as to  
17 what was said is in the record.

18 THE COURT: The objection to the argument is  
19 overruled.

20 MR. BICE: Let's go to the top of page 150, and --

21 THE COURT: Can we go to the next.

22 MR. BICE: -- let's see what Mr. Jones -- we'll see  
23 what Mr. Jones said.

24 MR. RANDALL JONES: We just read it.

25 MR. BICE: I want to just make sure we read it, Your



1 Honor. Then he goes on, "with respect to my --

2 THE COURT: Guys.

3 MR. BICE: -- second objection --

4 THE COURT: I remember the speaking objections and  
5 the way that they affected the testimony of witnesses in all  
6 of this situation, and it's always better, as I tell you, if  
7 the information comes from the witness's mouth in an  
8 unadulterated fashion.

9 So if we could skip ahead and not deal with Mr.  
10 Jones's speaking objections --

11 MR. BICE: Okay.

12 THE COURT: -- or your objections or Mr. Peek's  
13 objections or any of the other arguments that occurred during  
14 the course of this --

15 MR. BICE: Understood, Your Honor.

16 THE COURT: -- half-day hearing that is now in its  
17 sixth day.

18 MR. BICE: So we now hear the story of, we did our  
19 best to comply with the statute. First of all, they were  
20 already precluded from using this as their defense. The Court  
21 had already told them that. They chose not to challenge that  
22 at the Nevada Supreme Court despite their propensity to  
23 challenge virtually every order. And we know why they didn't  
24 on this one.

25 So then we get to this issue, Your Honor, of, well,

1 you know, we did absolutely everything we could to act in good  
2 and everything we did was in good faith. But, as Mr. Fleming  
3 says -- and again I ask you to compare it to what they did  
4 when the United States came looking for information, Your  
5 Honor. And you'll notice that they didn't address any of  
6 this. They try to act like, well, it's unclear whether  
7 O'Melveny got to review documents unredacted. I would submit  
8 it's not unclear from Mr. Toh's testimony. But, you know  
9 what, Your Honor, again, the litigants in this courtroom, the  
10 two of them, know the answer, and they're not offering it.

11           You don't think for one minute that if O'Melveny and  
12 Myers was only allowed to review redacted documents in Macau  
13 they would come racing in here and provide that testimony to  
14 Your Honor as fast as they could? Of course they would. They  
15 haven't, and, as the Nevada Supreme Court says, we know why  
16 they haven't, because it's adverse to them, just like Mr. Toh  
17 was reviewing documents with O'Melveny and Myers lawyers, not  
18 withstanding the representations they made to you to the  
19 contrary back in 2011. But look at what they did as we showed  
20 you before, maximum access, vesting full power with the board.  
21 O'Melveny and Myers lawyers are given numerous -- a number of  
22 consents are obtained, all that process. Why? Because  
23 they're concerned about the government.

24           What's the reaction to the Court's order? We know  
25 what it was, the exact opposite. The board's not even

1 informed and brought into the decision-making process. No  
2 appeal is taken of the order, because the conduct it stems  
3 from was so egregious. When Mr. Fleming reads the order he  
4 knows precisely what it precluded, and he acknowledged that on  
5 the record. Mr. Fleming had been told by OPDP that he could  
6 submit additional information and cite the right provisions of  
7 the statute and try and get permission to transfer. As he  
8 admits, I didn't do that. He hasn't done it for two and a  
9 half years ever since, Your Honor. He was also told, you  
10 could go to the Macau courts if you don't agree with us; and  
11 of course, he didn't do that, either. He also knew that he  
12 could obtain consents, and they all knew that because actually  
13 they had done it, as Mr. Raphaelson acknowledged, with respect  
14 to when they want to get the information or they needed to  
15 because it's important to tell the government, we've had  
16 maximum access, so there's no need to be concerned. They  
17 could obtain consents. What was Mr. Fleming's testimony about  
18 consents, Your Honor? Didn't even try. It's too cumbersome.  
19 Didn't even try, even though there were custodians identified  
20 that you ordered them to produce. That's not evidence of good  
21 faith, Your Honor. That's evidence of, we don't care what  
22 that order provides, we're not doing it.

23           And by the way, that's the definition of  
24 willfulness. As we cite to you the Ninth Circuit's decision,  
25 the standard of willfulness is not what Mr. Raphaelson -- or

1 I'm sorry, Mr. Jones says. The standard is could you -- were  
2 the documents within your possession, custody, and control and  
3 could you provide them. The answer is a yes or a no. And if  
4 the answer is yes and you don't do it, it's willful under the  
5 law. And that's exactly what they did. They made a choice, a  
6 business choice, that the consequences of violating the  
7 Court's order were preferable to producing the documents.  
8 That's exactly what they did, and that's why we're here,  
9 because that's the choice they made, a choice that they are  
10 now making after deceiving you and deceiving us for two years  
11 before then, which resulted in the sanction that was supposed  
12 to alleviate the prejudice to my client. That's what the  
13 prejudice was, and the Court recognized that. And the one  
14 substantive sanction that was to address that prejudice, they  
15 have completely ignored it and they're just now saying, it  
16 doesn't matter, we're not doing it, we don't have to comply.

17 Just another segue, because one of the documents  
18 that Mr. Jones said, you know, talked about Mr. Alves and how  
19 this can't -- Mr. Alves doesn't control the company, can't  
20 possibly have anything to do with jurisdiction. Apparently,  
21 Your Honor, again they have forgotten Mr. Alves was one of the  
22 subject matters the Court specifically referenced in the  
23 request for production that it ordered them to answer. And  
24 also, Your Honor, he was one of the search terms because of  
25 that very reason. And you know why he was one of the search

1 terms, Your Honor? Because, as alleged in the complaint and  
2 as the jurisdictional discovery, the deposition from Mr.  
3 Adelson showed, Mr. Alves played a central role and who was  
4 dictating the course of action and where from, and that  
5 included Mr. Adelson insisting upon Mr. Alves's retention,  
6 notwithstanding Mr. Alves's emails, which even Mr. Leven  
7 conceded smacked of illegality, which is exactly what gives  
8 rise to this lawsuit, and that is precisely why those things  
9 were ordered produced. And they have chosen to redact them.

10           So to say that none of these documents and none of  
11 these search terms relate to jurisdiction, this Court has  
12 already ruled otherwise. And to sit there and say, well, Your  
13 Honor, because they chose at our request not to parade 8,000  
14 documents in here in front of the Court, we should now assume  
15 that none of those documents could have any plausible basis in  
16 relationship to jurisdiction, because they can't search them  
17 using the search terms, because the search terms aren't going  
18 to show up due to the redactions, and they can't even, as Mr.  
19 Leven conceded, it can't even be deciphered in many respects.  
20 And that's why, Your Honor, we didn't waste their time and we  
21 didn't waste your time parading each one of those redacted  
22 documents. But if that's what they want, we'll file a  
23 supplement and we'll put them right into the record, since  
24 that's what they want everybody to see, all the documents that  
25 they redacted and did not produce to us.

1           In short, Your Honor, you'd asked a question of Mr.  
2 Jones, about some of the prejudice of unredacted documents  
3 being provided after the depositions. Your Honor, I would  
4 tell you this. Rewarding them by saying that we can have a do  
5 over now is just further inflicting prejudice on my client.  
6 It just does. They have an unlimited budget, unlimited  
7 resources. They will spend us all into the grave, which is  
8 exactly what they've done. They want this big pat on the back  
9 for -- Mr. Jones says \$2 million, I mean, that's the most  
10 money he's ever seen a client spend on ESI. Yeah. It was  
11 spent to not comply. And as their own ESI expert  
12 acknowledged, it was incurred because of the haste that at  
13 which things had to be done, because of their own inaction.  
14 They had known for a long time they were obligated to provide  
15 discovery. They chose not to do it. And then now they have  
16 the audacity to claim, because we waited and waited and waited  
17 until the Court had finally had enough of us and finally said,  
18 the deadline is January 4, that's it, well now it cost us a  
19 lot to comply in that two-week window, we should get the  
20 benefit, we should be congratulated that we spent all that  
21 money to do that. The opposite is true, Your Honor. The fact  
22 that they spent all that money is just further proof that  
23 there is no amount of monetary sanction that is going to cause  
24 them to change their course of conduct, because they will  
25 spend it, rather to give the phony appearance of compliance

1 when there is no compliance.

2 THE COURT: You have two minutes left.

3 MR. BICE: Thank you, Your Honor.

4 We have asked the Court to do several things. One,  
5 I don't believe there is any case in Nevada where this sort of  
6 conduct where there was a finding by the court of actual  
7 misrepresentation, deceit by a litigant, that has not resulted  
8 in that litigant's answer being stricken.

9 I understand Your Honor's concerns about this is  
10 just limited to jurisdiction. So what we've said is, all  
11 right, Your Honor. But their defense, this phoned-up  
12 defense, needs to be stricken. They need -- if it's not, Your  
13 Honor, then they win. This conduct is a victory for them.  
14 Violation of a court order is a victory. They now get the  
15 benefit of violating it. We can't use these documents. They  
16 know it. Their own witnesses acknowledged it. They're  
17 unusable. You can't even search them. Again, that's what  
18 they have done to us. And if -- anything short of striking  
19 that defense rewards them. If the Court wants to, as I said,  
20 proceed and hold that -- strike the defense and proceed to  
21 hold it, just like was done in one of the Chevron cases, so be  
22 it. That's within the Court's prerogative.

23 But one of the -- there has to be a substantive  
24 sanction for a party that knowingly violates a court order,  
25 that they violated a court order that stemmed from a

1 intentional misrepresentation of facts to this Court by which  
2 they profited for more than a year with that  
3 misrepresentation. And that's why we say they have got to be  
4 fined by this Court. We're not seeking the money for us.  
5 We're not saying that. We're not saying they should be fined  
6 a monetary amount for each and every day that they've been  
7 violating this Court. That money goes to the Treasury,  
8 because it's an assault upon the judicial process. It's an  
9 assault upon the integrity of the judicial process, because an  
10 order to them to do X and they thumbed their nose at it. And  
11 they say, well, we've got an excuse for thumbing our nose at  
12 it. No, you didn't have an excuse. It's an excuse that  
13 you're now using after the fact, after you were told you  
14 couldn't do it. And so with that, Your Honor, if you're going  
15 to them say, fine, I'm not going to strike your defense, then  
16 you have to impose a consequence that all the redacted  
17 documents, all the violations of your order result in an  
18 adverse inference that those documents contradict Sands  
19 China's denials of jurisdiction. They can't be allowed to  
20 profit. Otherwise, they are profiting. And the minimum  
21 sanction, as the Court said, the minimum sanction one must pay  
22 for violating a court order, even a discovery order, let alone  
23 a sanction is being deprived of the benefits of your  
24 violation.

25 THE COURT: Mr. Bice --



1 MR. BICE: Yes.  
2 THE COURT: -- before you leave the courtroom.  
3 MR. BICE: Yes.  
4 THE COURT: -- but while Mr. Jones is making his  
5 last argument can you find for me the exhibit number for the  
6 document that has the search terms in it?  
7 MR. BICE: I can.  
8 THE COURT: Okay. Mr. Jones, you have 15 minutes or  
9 less.  
10 MR. PEEK: Your Honor, that was filed as a court  
11 pleading?  
12 THE COURT: I -- Mr. Peek, I don't know. It's an  
13 exhibit for today -- from our hearing. I just want the  
14 number --  
15 MR. BICE: I think it's --  
16 THE COURT: -- so when I cross-reference it --  
17 MR. BICE: I know what it is.  
18 THE COURT: I don't need it yet.  
19 MR. BICE: It's like 216 or --  
20 THE COURT: I need Mr. Jones to finish --  
21 MR. BICE: 213, Your Honor.  
22 THE COURT: -- so I can leave.  
23 213?  
24 MR. BICE: Yes.  
25 THE COURT: Thank you.

1                   Mr. Jones, you have 15 minutes or less.

2                   MR. RANDALL JONES: Your Honor, if I understand Mr.  
3 Bice's -- the foundation -- in fact, now it appears clear to  
4 me what the foundation of his whole argument is. And the  
5 foundation of his argument is false. It's just false. His  
6 whole argument now that he's made his rebuttal completely  
7 fails, it undermines his -- his whole position in this case.  
8 I know that's a bold statement, and I want to wait until you  
9 finish looking for whatever it is you're looking for.

10                  THE COURT: I found it. I'm just trying to figure  
11 out how to write it down, 213.

12                  All right. Go.

13                  MR. RANDALL JONES: Your Honor, Mr. Bice bases his  
14 entire argument, his entire rebuttal on this publicly traded  
15 company knowingly misrepresenting information to the Court,  
16 this deceit -- deception they perpetrated on the Court and the  
17 plaintiff is undeniable that they engaged in fraudulent  
18 misconduct, that he's never seen a case in Nevada where  
19 there'd been a finding by the court where there was actual  
20 finding of deceit by the litigant where the answer has not  
21 been stricken and this has to be -- our defense now to  
22 jurisdiction has to be stricken.

23                  My client has never found -- Sands China has never  
24 been found, to my knowledge -- I'd like to see the order -- to  
25 be in deceit of this Court. And, in fact, I would submit to

1 this Court that Las Vegas Sands has not found to have lied to  
2 this Court. I understand there's an order, but I don't  
3 believe Las Vegas Sands ever -- well, I understand what your  
4 order says, I don't believe there was ever any evidence  
5 adduced at the hearing by a witness from Las Vegas Sands where  
6 there was deceit to the Court. That's my understanding,  
7 Judge.

8 But I certainly would assume you would agree that my  
9 client has not -- my client, Sands China, has never been found  
10 to have been deceitful with this Court. And that's the  
11 premise of his argument. So if that's the premise of his  
12 argument --

13 THE COURT: So why do you think I issued that  
14 sanctions order before, then?

15 MR. RANDALL JONES: Your Honor, you issued a  
16 sanctions order, as I understood it, to Las Vegas --

17 THE COURT: Because people lied to me. And people  
18 lied to me, and the evidence at the hearing was the people who  
19 lied to me and made decisions about lying to me were the  
20 people in charge of the company, not the lawyers.

21 MR. RANDALL JONES: I understand that there is --

22 THE COURT: And that was the testimony that was  
23 adduced during the evidentiary hearing.

24 MR. RANDALL JONES: I don't -- well, Your Honor, I  
25 have read that transcript, and I don't believe I recall any

1 evidence or testimony where somebody from Las Vegas Sands was  
2 ever allegedly lying to this Court. That's my understanding.  
3 But, in any event, it was not Sands China, and you cannot  
4 conflate Sands China with that earlier order and say that this  
5 is some continuation of the conduct. There has been no  
6 finding of an alter ego that I'm aware of.

7 THE COURT: No, there has not been.

8 MR. RANDALL JONES: These are two separate  
9 companies. This is a publicly traded company in Hong Kong.  
10 So Mr. Bice is just flat out wrong, and that premise will not  
11 fly under any circumstances, any stretch of the law. No  
12 matter how badly Mr. Bice wants it to apply, it just doesn't.  
13 And that's the foundation of his argument, Judge. So if the  
14 foundation is no good, his argument is no good. Well, I  
15 don't --

16 THE COURT: You understand if I disagree with you  
17 and I find that the order that I previously entered and the  
18 lesser sanction that was previously requested and was then  
19 documented in Exhibit 98 was in fact a sanction because of  
20 misconduct and now I have a further violation of that prior  
21 sanctions order, we usually have very serious sanctions  
22 associated with it, despite the fact there may be mitigating  
23 circumstances.

24 MR. RANDALL JONES: And, Your Honor, all I can say  
25 is my understanding that Sands China Limited was not found to

1 have been deceitful to this Court. That's my understanding.

2 THE COURT: Okay.

3 MR. RANDALL JONES: In any event, with respect to  
4 Exhibit 16 predating the foundation of the company Mr. Bice is  
5 just incorrect. This will obviously be an issue that we may  
6 have to take up at the -- at the hearing itself. This is the  
7 -- one of the emails that was prior to the foundation -- or  
8 the formation of the company. It's up on the screen, Your  
9 Honor. These are emails between Venetian Macau employees that  
10 have to do with issues before the company existed. And so in  
11 spite of the fact that Mr. Bice doesn't want to believe that  
12 this doesn't relate to jurisdictional proof, or proof of  
13 jurisdiction under Daimler or Viega, you know, that's his  
14 argument, but that I believe the law contradicts that.

15 With respect to Exhibit 32, the Cirque document.  
16 Again, under Daimler and the Helicopteros case that evidence  
17 does not -- thank you -- does not prove jurisdiction over  
18 Sands China under Daimler. So what he just said is just  
19 incorrect. Negotiating agreements, regardless of who  
20 negotiated those agreements in the U.S., does not show that  
21 Sands China is at home in the United States.

22 And, Your Honor, if you want to -- I notice you're  
23 reading there. I'd be happy to --

24 THE COURT: No. I'm listening.

25 MR. RANDALL JONES: Exhibit 21 is the board minutes,

1 Your Honor. I'm not sure how that -- whatever argument he  
2 made about that, how that is a problem for them. We gave them  
3 the unredacted version. And again, the burden's on them. I  
4 know Mr. Bice now wants to put up every document in evidence.  
5 That's why we had a hearing. We had -- parties had notice of  
6 when this hearing was going to be, Mr. Bice didn't suggest  
7 that he needed more time. In fact, Mr. Bice seemed to be  
8 constantly complaining that he wanted to get this done. And  
9 so it would be completely inappropriate and a violation of my  
10 client's due process rights to now try and supplement the  
11 record with new documents that I would not get a chance to  
12 review or cross-examine, which demonstrates the very issue  
13 we're here about today. When I've actually got to see the  
14 documents he wanted to use at this hearing, I was able to  
15 debunk his jurisdictional argument as to every single one of  
16 them.

17 With respect to Exhibit 10, the International Spring  
18 Gala. He said this document somehow or other still implicates  
19 jurisdictional discovery -- I'm sorry.

20 MR. BICE: What is this exhibit?

21 MR. RANDALL JONES: This is the International Gala  
22 one, as I recall.

23 MR. BICE: It's not even in evidence.

24 MR. RANDALL JONES: Then I miswrote down the exhibit  
25 you talked -- we were talking about, as I understood it, the

1 International Spring Gala. But that was a document that Mr.  
2 Bice chose to submit to this Court, not me. But all you have  
3 to do is look at the content, and, redacted or not, you can  
4 see that it involves people from Macau, it's not Mr. Adelson,  
5 Mr. Leven, Mr. Goldstein, or Mr. Kay, and it's talking about  
6 the Spring Gala and where they're going to hold it. All  
7 you've got to do is look at the content, Judge, and you should  
8 know that has nothing to do with jurisdictional discovery.

9 With respect to Exhibit 33, clearly Mr. Bice  
10 misunderstood the testimony. That's the minutes that we  
11 showed that were final minutes with Mr. Jacobs. There's  
12 actually three exhibits, Exhibit 33 -- their Exhibit 33, I  
13 believe, Exhibit 337 -- I'll tell you what, I've got my  
14 exhibit numbers all screwed up.

15 Exhibit 51 -- what are the ones that are the three  
16 replaced ones? Our exhibits, they're 377 and 378, aren't  
17 they?

18 MR. MCGINN: Yeah. That's ours.

19 MR. RANDALL JONES: Yeah. That's right.

20 So Exhibits -- their Exhibit 51 and our Exhibits 377  
21 and 378. And they said, how could those be replacements, they  
22 should have the same Bates numbers. Actually, that's not  
23 true, Judge. As Mr. Ray said, and apparently -- I don't know  
24 if Mr. Bice just didn't hear this, if they're not the exact  
25 same document they don't have the same hash codes, and they

1 were not using the same Bates number. Every one of those  
2 documents, as you pointed out, actually. But all you have to  
3 do is look at them. They're different, so they would not be  
4 the same Bates numbers, because they have different content.  
5 If they can tell they're exact same document and all they had  
6 is redacted -- MPDPA redactions, then they use the same Bates  
7 number. So that's just incorrect.

8           Mr. Fleming's testimony -- in any event, Your Honor,  
9 Mr. Bice goes on to say we should have gotten consents from  
10 everyone. As we said, we showed him we offered to get  
11 consents if he had a particular issue or document that they  
12 thought they needed. Yet Mr. Bice again in his quest for the  
13 truth refuses to give the consent of Mr. Jacobs. That speaks  
14 volumes of his real intent to get to the truth of the matter  
15 as he claims to want to do.

16           With respect to Mr. Alves. First of all, as I said  
17 before, Mr. Alves issue goes to the merits. But I understand  
18 Mr. Bice trying to work around that argument and say that it  
19 actually goes to jurisdiction, but as it relates to the  
20 document at issue it does not go to jurisdiction, as you can  
21 see from the document itself. And, again, they had the burden  
22 of proving prejudice.

23           Mr. Bice again -- the old refrain that \$2.4 million  
24 spent shows that there was intent not to comply. The actual  
25 evidence in the record shows that's exactly why that money was



1 spent so in order to comply in every way possible. My client  
2 didn't have to spend that money. It could have just produced  
3 the redacted documents and been done with it. It spent a  
4 substantial amount money going to -- hiring people in the  
5 U.S., Hong Kong, and Macau to try to make sure that it did in  
6 fact produce everything possible pursuant to your order.

7           Again, I would say with respect to the requested  
8 relief that Mr. Bice is asking it comes back to the same  
9 issue, Judge. His requested relief, which is striking the  
10 defense of lack of personal jurisdiction, shows his real  
11 motive. They cannot ever prove jurisdiction under the laws of  
12 the United States against Sands China. And so the only  
13 opportunity they have to ever try to call my client into court  
14 in the State of Nevada is to try to get them on a discovery  
15 tort. We have shown this Court we have not been willful, we  
16 have done everything we could. And in that regard with  
17 respect to the fifth factor, I'm going to talk about that  
18 again, this is what the Supreme Court indicated you have to  
19 consider, you must consider in this situation.

20           The fifth factor says, "The extent to which the  
21 noncompliance with the request would undermine important  
22 interests to the United States or compliance with the request  
23 would undermine important interests of the state where the  
24 information is located." That goes to the degree of  
25 willfulness, the degree of willfulness. That's a balancing

1 test. This Court is required to do a balancing test of the  
2 degree of willfulness that my client allegedly exhibited here  
3 in respect to this issue.

4           We have put into evidence documentation from the  
5 government of Macau indicating that if my client violated this  
6 law they would be susceptible to not only civil penalties and  
7 fines, but criminal sanctions, as well. The individuals would  
8 be susceptible to criminal sanctions. That is a requirement  
9 this court has to take into consideration in the balancing  
10 test. And there has been no evidence to refute that my client  
11 received those letters. Mr. Fleming testified that he was  
12 about to comply with the laws of Macau, and there's been no  
13 evidence to suggest otherwise. So what he was faced with was  
14 a balancing test, does he comply with the laws of this company  
15 -- or excuse me -- of the jurisdiction where his company is at  
16 home and must continue to do business, or does he comply with  
17 this Court's orders. And he said he had the decision -- based  
18 on all the factors we've already talked about, he had to  
19 comply with the laws of Macau while doing everything possible  
20 to comply with your Court's order. And he has demonstrated to  
21 this Court through the evidence we've shown you that they did  
22 do everything they could to comply with your order without  
23 violating Macanese law and subjecting themselves to the  
24 violations of the laws where they're at home.

25           And so, Your Honor, again -- and in terms of the

1 willfulness, the degree of willfulness, the degree of  
2 willfulness is countered by the efforts they went to to make  
3 sure that they did not prejudice the plaintiff with respect to  
4 the productions of the documents that they did provide. And  
5 in spite of what Mr. Bice says, he has not demonstrated, and  
6 that's his burden as you told us from the beginning to do, to  
7 show that they have in fact been prejudiced, and they failed  
8 to do that.

9 THE COURT: Thank you.

10 Anything else?

11 I'm going to issue a written decision. My plan is  
12 to try and get it fleshed out before the end of the week.  
13 That may not be completely done, given my other obligations,  
14 but I hope to have it to you by the end of the week or early  
15 next week.

16 Anything else?

17 Have a nice day. Have a good weekend. Thank you,  
18 again.

19 THE PROCEEDINGS CONCLUDED AT 4:53 P.M.

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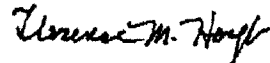
**CERTIFICATION**

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

**AFFIRMATION**

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

**FLORENCE HOYT  
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER