

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

v.

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

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Case No.: 67576

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Tracie K. Lindeman,
Clerk of Supreme Court

**SUPPLEMENTAL APPENDIX IN
SUPPORT OF REAL PARTY IN
INTEREST, STEVEN C. JACOBS',
CONSOLIDATED ANSWER TO
PETITION FOR WRIT OF
PROHIBITION OR MANDAMUS;
AND OPPOSITION TO
EMERGENCY TO STAY**

VOLUME I OF II

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice, and that on this 27th day of March, 2015, I electronically filed and served by United States Mail a true and correct copy of the above and foregoing **SUPPLEMENTAL APPENDIX IN SUPPORT OF REAL PARTY IN INTEREST, STEVEN C. JACOBS', CONSOLIDATED ANSWER TO PETITION FOR WRIT OF PROHIBITION OR MANDAMUS; AND OPPOSITION TO EMERGENCY TO STAY VOLUM I OF II** properly addressed to the following:

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**SERVED VIA REGULAR MAIL ON 3/27/2015 AND
HAND-DELIVERY ON 3/30/2015**

The Honorable Elizabeth Gonzalez
Eighth Judicial District Court, Dept. XI
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/s/ Cinda Towne
An employee of Pisanelli Bice, PLLC

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Ann D. Quinn

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants
.....

CASE NO. A-627691

DEPT. NO. XI

Transcript of
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON DEFENDANTS' MOTIONS TO DISMISS

THURSDAY, JUNE 9, 2011

APPEARANCES:

FOR THE PLAINTIFF:

DONALD JUDE CAMPBELL, ESQ.
COLBY WILLIAMS, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
JUSTIN C. JONES, ESQ.
PATRICIA GLASER, ESQ.
STEVE L. MORRIS, ESQ.
DAVID FLEMING, 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.

RECEIVED

JUN 16 2011

CLERK OF THE COURT

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SUPP. APP. 00001

1 LAS VEGAS, NEVADA, THURSDAY, JUNE 9, 2011, 10:03 A.M.
2 (Court was called to order)
3 THE COURT: All right. Are we ready with the hookup
4 to Macau? I see you. Can you see us? Can you hear us?
5 Why don't you guys come on up. I apparently have --
6 MR. PEEK: This is 1:00 o'clock in the morning
7 there, Your Honor.
8 THE COURT: I see a conference room.
9 MS. GLASER: Your Honor, that is Mr. David Fleming,
10 who's general counsel of Sands China.
11 THE COURT: Good morning, Mr. -- Mr. Fleming, I
12 think it's good morning for you.
13 MR. FLEMING: It certainly is, Judge. Good morning
14 to you.
15 THE COURT: Thank you.
16 MS. GLASER: Good morning, Your Honor.
17 THE COURT: Good morning. Can I have everyone
18 please identify themselves for purposes of the record,
19 starting with Mr. Campbell.
20 MR. CAMPBELL: Good morning, Your Honor. Donald J.
21 Campbell appearing on behalf of the plaintiff in this action,
22 Campbell & Williams.
23 MR. WILLIAMS: Good morning, Your Honor. Colby
24 Williams, Bar Number 5549, appearing on behalf of the
25 plaintiff.

1 MR. JACOBS: Good morning, Your Honor. Steve
2 Jacobs, plaintiff.

3 MS. GLASER: Good morning, Your Honor. Patricia
4 Glaser for Sands China. And Mr. Fleming is here by whatever
5 you call this device.

6 THE COURT: Video conference I think is what we're
7 calling it today.

8 MR. PEEK: And good morning, Your Honor. Stephen
9 Peek on behalf of Las Vegas Sands.

10 And good morning, David. How are you this morning?

11 MR. FLEMING: I'm not too bad, Steve.

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

14 THE COURT: All right. I would like to start with
15 the defamation claim motion first, since I have three that are
16 basically identical with an omnibus response. However you
17 want to start.

18 And, Mr. Fleming, if you cannot hear because counsel
19 are either not using robust voices or they've strayed away
20 from a microphone, please let me know, and I will try and get
21 them back in a position where you can hear them.

22 MR. FLEMING: I will, Your Honor.

23 THE COURT: All right. Mr. Morris, I'm going to
24 start with you.

25 MR. MORRIS: Your Honor, thank you. Good morning

1 and greetings on behalf of Mr. Adelson.

2 I'm here to argue our motion to dismiss the
3 defamation claim in this context. The claim made against Mr.
4 Adelson was one to which he was invited to respond. The
5 statement he made was by invitation of Mr. Jacobs in his
6 pleadings that were completely and entirely unnecessary to
7 support his claim for wrongful termination in breach of
8 contract. That's the sum and substance of this lawsuit. Not
9 a single characteristic that was attributed to Mr. Adelson was
10 necessary to state Mr. Jacobs's claim for discharge in breach
11 of contract. Not one requirement or interpretation of Rule 8
12 with respect to a plain and simple statement of claim required
13 him to describe in the complaint Sheldon Adelson's
14 characteristics that he said led to or contributed to his
15 discharge.

16 This isn't Mr. Jacobs's counsel's first rodeo with
17 this defendant. This complaint was prepared, I submit and as
18 we submitted in our papers with supporting reasons, to invite
19 Mr. Adelson to respond to the allegations Mr. Jacobs makes
20 against him in his complaint of criminal misconduct. And in
21 so doing and in adopting this theatrical method of pleading
22 and then publishing worldwide the allegations that were
23 altogether unnecessary to support his single claim for
24 wrongful termination in breach of contract Mr. Adelson,
25 following the proceedings here on March the 15th, when all of

1 these allegations against him personally, rude and
2 obstreperous, mercurial, demanding Mr. Jacobs engage in
3 illegal conduct when all of those were republished again
4 worldwide to the media which was present in court and to which
5 this complaint and those allegations was plain, it is in this
6 context during this judicial proceeding, during this lawsuit
7 in this courtroom that Mr. Adelson made the single statement
8 that he did on the evening of March the 15th to the Wall
9 Street Journal, one of the media present in court and
10 reporting and recycling the claims that Mr. Jacobs made
11 against him in his complaint.

12 This is the context in which this fifth claim for
13 defamation should be evaluated. And if it is evaluated in
14 this context, the law that pertains to it, in particular as
15 discussed in Circus Circus Enterprises versus Witherspoon and
16 the Clark County -- excuse me, the VESI case involving this
17 court, this Eighth Judicial District Court --

18 THE COURT: Not me that time.

19 MR. MORRIS: Not you. Not you.

20 -- the statements that Mr. -- the statement that Mr.
21 Adelson made on the evening of March the 15th in the course of
22 this proceeding was absolutely privileged. And Circus Circus
23 tells us that absolute privilege is not something that we need
24 to defer for discovery and for later summary judgment practice
25 or trial, if necessary; that's a determination that can be

1 made here and now and should be made by you to dismiss this
2 defamation claim which is altogether collateral. It's
3 ornamental and is unnecessary to advance and to adjudicate the
4 claim Mr. Jacobs comes to court on. And that is was he
5 discharged in breach of contract or not.

6 The opposition to this motion is long on rhetoric
7 and very short on specifics and almost silent, and that's why
8 in our reply I called it an empty opposition, on the question
9 whether in the context in which we face this claim Nevada law
10 will support continuing this lawsuit for defamation against
11 Mr. Adelson beyond today. But plaintiff makes a good deal in
12 his papers in opposition to this motion that there is a
13 question of fact here that has got to be fleshed out. That
14 question, although not clearly articulated by the plaintiff,
15 appears, from reading the opposition twice, to be this. New
16 York law says that the question of malice with respect to the
17 statement Mr. Adelson made is something that should be decided
18 by the trier of fact. I won't quarrel with whether that is an
19 accurate statement of the law in New York, because the law of
20 New York, if that is the law, is not the law in Nevada.

21 This is what our court had to say on this subject in
22 Circus Circus Enterprises versus Witherspoon. Even where --
23 and I'm now looking at 99 Nev., page 57 -- I'm sorry, 61
24 "The public interest in having people speaking freely
25 outweighs the risks that individuals will occasionally abuse

1 the privilege by making false and malicious statements." That
2 conclusion, Your Honor, was reached after the court said on
3 the preceding page, even where the defamatory statements --
4 and we're not saying or contending that Mr. Adelson's
5 statement was defamatory itself, but assuming that it was, as
6 the plaintiffs say it was, even where the defamatory
7 statements are published with knowledge of their falsity and
8 personal ill will toward the plaintiff, the absolute privilege
9 still protects them.

10 With respect to relevance to this proceeding that is
11 raised elliptically in the opposition to this motion the court
12 in Witherspoon went on to say, "The defamatory material need
13 not be relevant in the traditional evidentiary sense, but need
14 have only 'some relation' --" and "some relation" is in quotes
15 by the court, "to the proceeding. So long as the material has
16 some bearing on the subject matter of the proceeding it is
17 absolutely privileged."

18 Now, consider what Mr. Adelson said on March 15th
19 following the hearing in this court which gave rise to, as he
20 said in his statement, the recycling of the allegations made
21 by Mr. Jacobs against him that are wholly extraneous to the
22 issues that arise as the consequence of his breach of contract
23 action against the corporate defendants. All he said in
24 response to that was, because of this recycling -- and we
25 cited and have appended some examples -- at the time we wrote

1 this motion there were 90,000, 90,000 online hits for the
2 search term "Steven Jacobs" and "Adelson." It is in that
3 context of worldwide distribution of altogether scurrilous and
4 insulting allegations unnecessary to support a claim for
5 breach of contract made by Mr. Jacobs in his complaint and
6 recycled as a consequence of the hearing in this Court on
7 March the 15th that Mr. Adelson said, Mr. Jacobs's allegations
8 that are now being republished against me are not true,
9 they're based on lies and fabrications and seem to him to be
10 the product of delusion. You don't make, I submit to you on
11 the law that applies to this case, a claim for defamation out
12 of responding to someone who says, you're a crook, by saying
13 that that is a fabrication and a lie and it is delusional.
14 There is nothing wrong, and the law does not say that all you
15 can do in response to in attack like this that is initiated by
16 the plaintiff is file an answer and say "denied," which is
17 about all that opposition has to say.

18 Mr. Adelson was entitled to, and he did, accept Mr.
19 Jacobs's invitation to dispute the personal and hostile and
20 altogether unnecessary allegations of criminal misconduct made
21 against him. And all he said was, they're not true and
22 they're imagined.

23 The law says -- whether you call that absolute
24 privilege or conditional privilege, the law says it's
25 privileged, it isn't actionable. And the fact that it

1 occurred outside the immediate environs of this courtroom is
2 immaterial. As the court pointed out in Clark County School
3 District versus Virtual Education Software, Incorporated,
4 that's the VESI case I referred to a moment ago, in that case
5 what I told you a moment ago the court said several years ago
6 in Witherspoon was brought forward and confirmed by the
7 Supreme Court in 2009, and it said in that opinion that is
8 applicable to the situation and the statement that brings us
9 here today, "The absolute privilege affords parties to
10 litigation the same protection from liability that exists for
11 an attorney for defamatory statements made during or in
12 anticipation of judicial proceedings." You can apply that
13 statement in this manner. If the lawyers representing a party
14 initiate an action accusing a defendant of criminal misconduct
15 and the defendant replies and says, it isn't true, those are
16 lies being told about me, that the defendant has a privilege
17 to make that statement.

18 THE COURT: An absolute privilege under the Clark
19 County-VESI case.

20 MR. MORRIS: Correct. And as I said a moment ago,
21 and I'll close with this, Your Honor, even if this were an
22 issue of conditional privilege as arises from time to time in
23 New York, including the case relied on by the plaintiff in his
24 opposition, it doesn't raise an issue of fact that must be
25 determined by the jury. Our court said in the Anzalone case,

1 which is State versus Eighth Judicial District Court -- that's
2 not you, either, Your Honor, it was Judge Mahan --

3 THE COURT: No, it's not me, either. You found a
4 couple that weren't me today, Mr. Morris.

5 MR. MORRIS: -- applying this privilege is a
6 question of law. And then the court went on to say with
7 respect to the conditional privilege of reply, if somebody
8 calls you a crook or a liar, you're free to respond to that so
9 long as the reply does not include substantial defamatory
10 matter that is irrelevant or nonresponsive.

11 Mr. Adelson's statement in this case was specific
12 and wholly responsive to the allegations that had been made
13 against him of criminal misconduct in discharging Mr. Jacobs
14 or in the -- related to the discharge of Mr. Jacobs. The
15 alleged defamatory material would have to be disproportionate
16 to the initial statement. All Mr. Adelson said was, I can't
17 remain silent while these terrible accusations made against me
18 in a privileged pleading are being recycled by Mr. Jacobs.

19 So we have two of the four requirements of Anzalone
20 being met. What's the third? It's the statement shall not be
21 excessively publicized. The statement Mr. Adelson made was
22 publicized to one of the many media that was invited to this
23 court. But even if he had publicized it to all of them, the
24 result wouldn't be any different, because this is the media to
25 which Mr. Jacobs is playing, the same media that he encouraged

1 and invited to come to court to film and to report and to talk
2 about and to distribute worldwide all of the nasty and vicious
3 things he was saying about Sheldon Adelson is the same
4 audience to whom Mr. Adelson made this response. And it is
5 under State versus Eighth Judicial District Court entirely
6 appropriate and not excessive.

7 And the fourth issue is whether a statement was made
8 with malice in the sense of actual spite or ill will. Well,
9 you've looked at the cases that we have and the opposition has
10 cited to with respect to statements much more personal and
11 inflammatory than those made by Mr. Adelson which were held to
12 be within the privilege of reply, such as the plaintiff is
13 insane, he or she is crazy, he is or she is delusional. These
14 are the statements that courts have looked at and said in
15 context, as I ask you to do here, if someone says of you
16 publicly in a pleading, you're a vicious, nasty, evil person
17 and you are a criminal, you have the absolute right to reply.
18 And unless the law changes, you can say, you know, Mr. Jacobs,
19 in my opinion those statements are based on lies and
20 fabrications, some of the same lies that were articulated to
21 you, Your Honor, in this courtroom on March the 15th by
22 Patricia Glaser on behalf of Sands China, and in my opinion
23 claiming that I have or am responsible for your discharge
24 because I'm rude and obstreperous, I'm mercurial, I'm a
25 difficult person to deal with and I'm a criminal in my opinion

1 is a lie. Those statements and my characterization of those
2 statements are absolutely privileged under the circumstances
3 and facts of this case. And even if they were not, if the
4 conditional privilege applies, we have demonstrated and there
5 isn't any argument to the contrary other than rhetoric, that
6 the statement made by Mr. Adelson on March the 15th included
7 substantial defamatory statement that was irrelevant or
8 nonresponsive, that it was -- included material that was
9 disproportionate to the initial statement, that it was
10 excessively publicized, or that it was made in the sense of
11 actual spite or ill will.

12 And on that last point consider what the court
13 concluded with in discussing conditional privilege for
14 defamation in State versus Eighth Judicial District Court.
15 "The test for whether a statement constitutes fact or opinion
16 is whether a reasonable person would be likely to understand
17 the remark as an expression of the source's opinion or as a
18 statement of existing fact." And I submit to you, Your Honor,
19 and I don't want to say that I'm abandoning the proposition
20 that Mr. Adelson's statement was absolutely privileged, but if
21 you look at that statement in the context it was made, you
22 can't conclude, I suggest, can't reasonably conclude other
23 than Mr. Adelson was expressing his God-given and legally
24 supported opinion that Mr. Jacobs was simply dead wrong in
25 accusing him of the misconduct and criminal offenses that led

1 to his termination as an employee in Macau.

2 On that basis, Your Honor, I ask you to terminate
3 this claim in this litigation and let this case move on
4 without the distraction of an altogether unnecessary and
5 spiteful claim of defamation that was, as I said in our
6 initial motion, not only invited, but was expected, and it
7 exemplifies, I think, the adage that we closed with, and that
8 is lawyers should be careful, lawyers speaking for parties
9 should be careful what they ask for in their pleadings,
10 because they may just get it. And in this case they did, and
11 what they got is absolutely privileged, and it is not
12 actionable. Thank you.

13 THE COURT: Thank you, Mr. Morris.

14 Ms. Glaser, as to the defamation claim which is a
15 part of your motion would you like to add anything in addition
16 to what Mr. Morris told us?

17 MS. GLASER: I would not at this time, Your Honor.

18 THE COURT: Mr. Peek, since you have a separate
19 issue on this same basis --

20 MR. PEEK: Your Honor, I would not.

21 THE COURT: Thank you.

22 MR. PEEK: I wish Mr. Urga were here to see this so
23 that he'd know I didn't speak.

24 THE COURT: Well, we'll make a note.

25 MR. PEEK: Thank you.

1 THE COURT: Perhaps we'll have the transcript made
2 and send it around.

3 Mr. Campbell. Mr. Campbell, I again want to thank
4 you for the cases that your office delivered while I was
5 sitting in my car. With all my child's activity last night it
6 made it a lot easier to read some of the cases. I had
7 forgotten what they said.

8 MR. CAMPBELL: All right, Your Honor. I'm pleased
9 to do so. Get myself organized here, if I could just a
10 moment, Your Honor.

11 I'd like to begin today, Your Honor, by hopefully
12 clarifying the positions of the parties. Now, in the reply
13 that Mr. Morris filed he said that our opposition was
14 disjointed and scattergunned and somewhat confusing. I do not
15 believe that to be the case. In fact, I believe that what Mr.
16 Adelson has filed is very disjointed and scattergunned and
17 confuses a lot of issues, and I'd like to try to put those to
18 rest.

19 What we're talking about in this particular case are
20 three different things, essentially. Number one, we're
21 talking about an absolute privilege; number two, we are then
22 talking about conditional privileges; and number three is part
23 of number two, we're talking about reply and opinion.

24 But let us begin before we address any of that with
25 what we're here on. We're here on a 12(b)(5). Now, there's

1 been an awful lot of fugitive documents filed and, quite
2 frankly, extrajudicial and fugitive statements that have been
3 made by Mr. Morris. He's a fine advocate, but he knows as
4 well as I do this is neither the time nor the place. We're
5 dealing here with the pleadings. Accordingly, everything that
6 he attached and is relying upon in such statements as somehow,
7 I think he said in his reply, that Mr. Jacobs spoke to the
8 press after this case was last in court and that Mr. Jacobs
9 invited all of the press in are absolutely not only false, but
10 they're simply, even if they were true, not a part of these
11 proceedings.

12 THE COURT: And they don't make a difference to me
13 in my consideration of the determination of the privilege.

14 MR. CAMPBELL: No. I appreciate it, and I'll move
15 off that point.

16 THE COURT: Now, in a minute I'll get to that with
17 Ms. Glaser on her request for judicial notice, but I'm not
18 there yet on that motion.

19 MR. CAMPBELL: Your Honor, we are also not dealing
20 with any sort of admission here, as Mr. Adelson has claimed in
21 his reply brief, to the effect that Mr. Jacobs had admitted
22 that the defamatory statements made were made during -- quote,
23 "during the course of this judicial proceeding." We do not
24 admit that. In fact, it is just the opposite contention that
25 Jacobs advances. Jacobs advances the contention that it was

1 an extrajudicial statement that we are dealing here with and
2 that was completely and totally unprivileged in all regards.
3 And we also know, Your Honor, that there's not a single case
4 that is cited, including the Witherspoon case that was cited
5 -- and I'll deal with that because it did apply to an absolute
6 privilege -- or didn't apply to the issue of malice, rather --
7 that was decided at a 12(b)(5) stage.

8 So let me begin. At the time that Mr. Adelson
9 issued this press release he had issued this press release to
10 the Wall Street Journal, and what he said in the press release
11 was that my client was a liar, essentially, and that he was
12 fired for cause.

13 Now, let's deal first with respect to whether or not
14 that was absolutely privileged. I agree with Mr. Morris. Mr.
15 Morris is correct. When we are dealing in the realm of
16 absolute privileges it makes no difference if malicious intent
17 was part of that, it makes no difference if ill will was part
18 of that. I agree with him with respect to absolute privilege.
19 But the cases that we cited with respect to issues of ill will
20 and malice and how that must be decided by the jury related
21 and were cited by the court, and I'll point them out, on
22 conditional privilege, not on absolute privilege. Mr. Morris
23 is confused, and I hope to basically take him through the --
24 and the Court to show how that distinction is made.

25 THE COURT: But at this stage, Mr. Campbell, isn't

1 the legal determination as to whether the absolute privilege
2 exists really one the Court needs to make under the dictates
3 the Nevada Supreme Court gave us in the Clark County School
4 District versus Virtual Education Software, Inc. or VESI case?

5 MR. CAMPBELL: No, Your Honor. We don't believe so.
6 And we'll tell you why. We believe first of all that we're
7 entitled to a full exploration of exactly what was done here.
8 All we know is that there was apparently some sort of a press
9 release. We get to find out the following and explore the
10 following. We get to find out exactly who prepared it, we get
11 to find out how many drafts of it were there, we get to find
12 out what preceded it, a and what it and what it was in reply
13 to. We also get to find out whether or not anything
14 supplementary was distributed pursuant to it. As we stated,
15 Your Honor, in our pleadings, we believe and we forecast we're
16 going to be able this libel was enhanced by Mr. Adelson at the
17 end -- at the -- what was it, I'll get the precise term so
18 it's in the record and very clear -- at the JP Morgan Gaming
19 Seminar when he engaged this --

20 THE COURT: Well, but let me stop you.

21 MR. CAMPBELL: -- ad homily attack. And with --

22 THE COURT: In your fifth amended complaint, Mr.
23 Campbell, the only statement that you are basing your pleading
24 on as being defamatory is the statement that was made to the
25 Wall Street Journal, and you've quoted it.

1 MR. CAMPBELL: Yes.

2 THE COURT: And we all agree, I guess, that this
3 statement was made shortly following a very long hearing that
4 we had that day, the day before you filed the complaint.

5 MR. CAMPBELL: Correct, Your Honor. Yes, Your
6 Honor.

7 THE COURT: And that's the only statement that
8 you've included in this cause of action.

9 MR. CAMPBELL: That is -- that is true. And the
10 reason for that, Your Honor, is that after we filed our
11 complaint is when Mr. Adelson went out and made all sorts of
12 additional statements.

13 THE COURT: Well, but that's not what's in this.

14 MR. CAMPBELL: And you're exactly right. But you're
15 asking whether or not essentially you're limited at this stage
16 of the proceedings. And we don't think so, because that's one
17 of the considerations that you make, is there additional
18 discovery that will help illuminate all of this. And our
19 answer to that is yes, there is.

20 Number two, with respect to the VESI case what you
21 were dealing with there was a very, very modest exchange that
22 was -- and the Witherspoon case, that was a very modest
23 exchange that was between two potential litigants in the form
24 of letters going back and forth, and then with respect to
25 Witherspoon there was an absolute privilege for letters that

1 were written by in that case hotel HR directors to the
2 Department of Employment Security detailing why this person
3 was fired, we fired this person because this person was
4 stealing at a blackjack or a craps game.

5 THE COURT: And why they didn't want him to get
6 unemployment benefits.

7 MR. CAMPBELL: That's exactly right. And there's a
8 specific privilege for that. There's a statute that says that
9 is absolutely, totally, and completely privileged.

10 But that's not what we have here, Your Honor, not at
11 all what we have here. What we have here is something far
12 different. Now, what I'd like to do, Your Honor, today is
13 address the issue of absolute privilege with the two principal
14 cases that were cited by the defendants and the two principal
15 cases that were cited by us.

16 Let's deal first with Rothman. This is precisely
17 what Sands China placed in their brief and what they said was
18 the applicable standard. They said that the absolute
19 privilege has been recognized in other jurisdictions.

20 THE COURT: But it doesn't really matter what they
21 say comes from other jurisdictions, because I have Nevada
22 authority that is very clearly on point on this issue. So, I
23 mean, I don't have that often, but I have that today.

24 MR. CAMPBELL: Tell me what it is. I'm happy to
25 address it, Your Honor.

1 THE COURT: It's the Clark County-Virtual Education
2 Software, Inc. case.

3 MR. CAMPBELL: But, Your Honor, what that deals
4 with is that's just an exchange of letters to a very discrete
5 group of people that were involved --

6 THE COURT: Correct.

7 MR. CAMPBELL: -- or potentially involved in
8 litigation. That is not a situation where a complaint has
9 been filed and then they go out and make extrajudicial
10 statements about that. In fact, all of the caselaw, all of
11 it, says that if you do that that it takes it completely out
12 of the realm.

13 Look, for example, at the Rothman case, and this is
14 the very point I wanted to make. In the Rothman case they
15 said, lookit, if you file a complaint or whatever it is in a
16 court of law, that is absolutely, totally, and completely
17 privileged, but if you then go out and repeat the same
18 allegations in an extrajudicial statement, you're on your own.

19 THE COURT: Not according to the Nevada Supreme
20 Court in this VESI case, because this was pre litigation.

21 MR. CAMPBELL: Your Honor, that's fine if it's pre
22 litigation. But the point of it is -- what VESI is relying on
23 and all these cases are relying upon is the Restatement. And
24 the Restatement basically says, lookit, if it's incidental to
25 impending, that's also covered. But what they're talking

1 about is attorneys engaging in this essentially. They extend
2 it to the actual parties there because it's extremely limited.

3 That's not what we have here, Your Honor. We have
4 something completely different. And every single case that
5 has been cited to the Court on this in which the individual
6 made extrajudicial statements, every single one, including the
7 Oprah Winfrey case which was decided by the Seventh Circuit
8 Court of Appeals and is directly on point, she said after the
9 complaint was filed, it's a pack of lies and he's a liar and
10 I'm going to fight it and I'm not paying him a penny. The
11 Seventh Circuit Court of Appeals said, that is not privileged,
12 that is absolutely subject to a cause of action and it should
13 not have been dismissed by the court.

14 It's exactly the situation that we have here,
15 precisely the situation we have here. The situation that we
16 have here is not lawyers or the principals exchanging letters
17 in a very modest, discrete, confined way. What you have here
18 is something far different, Mr. Adelson going to an award-
19 winning journalist from the Wall Street Journal, saying that
20 my client is a liar and that he was fired for cause. And both
21 of those, both of those have been held by the court -- those
22 claims of liar and fired for cause, both of them have been
23 held to be defamatory, absolutely defamatory.

24 And let me raise something with respect to that
25 particular issue, all right. So we don't have this very, very

1 confined -- this very, very confined setting. They cited a
2 case in the reply, and I think it was Mr. Morris. But Mr.
3 Peek also made this statement, and the statement was, you
4 haven't cited any case which says that this reply that's being
5 made to a statement that's been made in a pleading has to be
6 exactly the same. In other words, our position is, wait a
7 second, you weren't a lawyer, Mr. Adelson, you weren't a party
8 in this case at that point personally, you weren't even a
9 witness in the case. Protection occurs in and only in the
10 courtroom or the quasi judicial proceeding. That is the
11 teaching of Rothman and Green Acres. That's exactly what it
12 is. That's exactly what the law holds.

13 So when he goes outside the courtroom and he says,
14 I'm just replying, the courts say, nonsense, that's not at all
15 what you're doing, Mr. Adelson, not at all what you're doing.

16 When you're dealing with discrete and conditionally
17 privileged, conditionally privileged defense --

18 THE COURT: I understand the difference between the
19 privilege issues.

20 MR. CAMPBELL: Okay. When you're dealing with the
21 conditional privilege of reply it has to be in the same forum.
22 It has to be in the same forum. And you don't have to believe
23 me for this. Look at -- look at this case that they cited,
24 this Foretich case. Here it is. It's at the bottom of --
25 Foretich is 37 F.3d 1541. At the bottom of the page 1563 it

1 says, "The counterattack must be made primarily in the forum
2 selected by the original attacker." I don't quibble with the
3 suggestion that if my client went out and was talking to Ms.
4 Berzon outside the courtroom and saying these things that Mr.
5 Adelson would have been entitled to say, no, I disagree,
6 that's a lie. He would have been entitled to do that if Mr.
7 -- if that was what Mr. Jacobs did. Mr. Jacobs didn't do
8 that. Mr. Jacobs did not do that. Mr. Jacobs hasn't said
9 anything to the press other than they asked him what he
10 thought, he said he had no comment, that he was looking
11 forward to his trial. Nothing else, okay.

12 What they're saying is, lookit, he put this in a
13 publicly filed complaint and he went overboard. Mr. Morris is
14 right. This isn't my first rodeo on retaliatory discharge.
15 On retaliatory discharge --

16 THE COURT: We all knew that Mr. Campbell.

17 MR. CAMPBELL: I beg your --

18 THE COURT: We all knew it wasn't your first rodeo.

19 MR. CAMPBELL: But on retaliatory discharge. As the
20 Court knows, I represent a lot of executives, there've been a
21 lot of decisions that have dealt with retaliatory discharge.
22 I know what those decisions are, and there's an awful lot of
23 decisions dealing with when you're dealing with retaliatory
24 discharge in the public policy setting. When you're saying, I
25 was fired as retaliatory discharge, in the public policy

1 setting you must plead with particularity. If we didn't put
2 everything down in there, Mr. Morris, being the very fine
3 lawyer that he is, would be storming in here saying, dismiss
4 this. And I can give you multiple cites to cases on that,
5 because I've had to deal with him in other cases where they
6 said I didn't plead with particularity.

7 So let's also deal now and continuing on with the
8 absolute privilege, with exactly what the holding of Clemens
9 was, the precise same factual setting. What the court said
10 there is with respect to the allegation that was made by
11 Clemens and Mr. Hardin, who, incidentally, used to be Mr.
12 Adelson's lawyer in another case that we had against him, Mr.
13 Hardin called Mr. Clemens's trainer, McNamee, a liar. Mr.
14 Clemens also went on "60 Minutes" and said, it's all lies,
15 he's lying. And the court said, too bad, yes, you had this
16 does underway, yes indeed there had been appearances before
17 Congress, doesn't make a difference, that's not where this
18 took place, you went out of your way to impugn him and he's
19 entitled to sue you for it. And it's a long and exhaustive
20 opinion, and I won't go all the way there.

21 But if you read the Green Acres case, a case cited
22 by them, which in fact was -- the original case cite by them
23 was reversed, and there's no other way of putting it kindly,
24 that case was reversed and they said just the opposite of what
25 Mr. Adelson said the case stood for. If you look at Rothman,

1 a case cited by Sands China as controlling, okay, that, too,
2 is exactly the opposite. And they make the very point in
3 there, lookit, if you're talking to the press, too bad, all
4 bets are off.

5 Now, let me -- let me cite one thing, if I could,
6 Your Honor, on that point before I move to conditional
7 privileges. In Rothman, "An analysis of the policies --" and
8 this is at -- this is at 1146. "An analysis of the policies
9 which underline the litigation privilege compels our
10 conclusion that similarity or even identity of subject matter
11 is not connection or logical relation between litigation and
12 communication, which is alone sufficient to trigger the
13 litigation privilege." It goes on to say, "The litigation
14 privilege exists so that persons who have been harmed or have
15 other grievances calling for redress through the judicial
16 process can and will use the judicial process, the courts,
17 rather than self help," as Mr. Adelson did, "to obtain relief.
18 The privilege thus affords its extraordinary protection to the
19 uninhibited airing, discussion, and resolution of disputes,"
20 and these words are in bold italics of the court, "**and only in**
21 **judicial or quasi judicial arenas.**" Public mud slinging,
22 while a less physically destructive form of self help than a
23 public brawl, is nevertheless one of the kinds of unregulated
24 and harmful feuding that the courts and their process exist to
25 prevent. It would be counterproductive to afford it the same

1 protections."

2 Accordingly, when an individual goes out, the court
3 held, you are on your own, you take the risk that you're going
4 to be sued for those statement.

5 Now, moving to the issue of conditional privilege,
6 in speaking about conditional privileges, Your Honor, you'll
7 see that -- and I'll make it fast on this point -- you'll see
8 it's all fact driven and that universally the courts --

9 THE COURT: I agree. Conditional privilege is fact
10 driven.

11 MR. CAMPBELL: It's all fact driven. So, you know,
12 I'm really not going to get into all that. But there's one
13 thing that has been cited in the Del Papa case, it's actually
14 State versus --

15 THE COURT: And that's the Anzalone case.

16 MR. CAMPBELL: Yeah. It's State versus Eighth
17 Judicial District Court.

18 THE COURT: It's the Attorney General firing their
19 investigator case.

20 MR. CAMPBELL: Yeah. It's Frankie Sue Del Papa and
21 one of her investigators, a guy by the name of Anzalone. And
22 in Mr. Adelson's reply he states as follows. He -- and we'll
23 get to this with respect to the issue of opinion, that this
24 was just opinion. They've mixed apples and oranges there.
25 There were multiple defendants in that case, multiple

1 defendants. It was Frankie Sue Del Papa, it was two of her
2 senior deputies, and it was another investigator. And Mr.
3 Adelson in his reply says that in State versus Eighth Judicial
4 District Court there the court, quote, "issued a finding that
5 a statement which reflected negatively on plaintiff's
6 character, professional integrity, and honesty," end quote,
7 was a statement of opinion. That is not what the court said
8 there. He said that in his reply at page 9, lines 7 to 8.
9 That is wholly incorrect.

10 If you look at the case, specifically 42 P.3d at
11 page 240, what they're talking about is yet another defendant.
12 It was J. T. Healy who was the investigator. And the court is
13 grappling with the claim on the investigator, not Ms. Del
14 Papa. And what they say there is that, "Anzalone says that
15 his -- the statement by Healy reflected negatively on the
16 plaintiff's character, professional integrity, and honesty.
17 That was Anzalone's claim. That's not what the court said.
18 And parenthetically, what the statement that Healy said was, I
19 think the investigation that Anzalone conducted was crappy.
20 And the court rightly said, that's an opinion, that's entirely
21 absolutely protected, that's an opinion. So their citation in
22 that regard is wrong.

23 Now, they also -- and we've also talked about the
24 Lubin case in both of our pleadings. And, as Her Honor
25 pointed out, the falsity of the statements in question in

1 Lubin were not subject to dismissal at the stage of 12(b)(5).
2 So, Your Honor, I'm not going to go any further if that's the
3 Court's position, as well, and the Court is abiding by it.

4 They also said something else. "A statement that is
5 capable of defamatory construction is not actionable if the
6 communication is privileged. We observe, however, that
7 privileges are defenses to a defamation claim and therefore
8 the defendant has the initial burden of properly alleging the
9 privilege and then proving the allegations at trial."

10 Now, there has also been a schizophrenia of sorts
11 between what they're claiming -- and this is even more reason
12 why we want to take some depositions in this case. Mr. Morris
13 says this press release that was issued by Sheldon Adelson,
14 the chairman of the board of Las Vegas Sands Corporation, was
15 issued because --

16 MR. PEEK: Could you direct your comments to the
17 Judge.

18 MR. CAMPBELL: -- what had been said had been put in
19 a pleading and Mr. Adelson was responding to it. Mr. Peek
20 says something completely different.

21 MR. PEEK: Address your remarks to her, please.

22 MR. CAMPBELL: I am addressing them -- Mr. Peek says
23 something completely different. Mr. Peek says --

24 THE COURT: Don't point at -- don't point at Mr.
25 Peek. It makes him get riled up, and then we have trouble.

1 MR. CAMPBELL: I don't want to get him emotional.
2 Mr. Peek says something different. He says the
3 reason, okay, that this was done was something far different.
4 And he says, you know, what we're dealing here with is a
5 republication of what was said in the courtroom by Ms. Glaser,
6 that's what Mr. Adelson was doing, he was republishing and
7 that's privileged. Well, Mr. Peek, respectfully, has cited
8 something that's not privileged, there's no such thing as
9 republication privilege. I think what he's trying to say is
10 that there -- it was a fair report privilege. But he's never
11 pled that. He raises that for the first time in his reply.
12 And, by the way, it doesn't apply in this particular setting,
13 because Mr. Adelson wasn't saying, lookit, you know, I'm
14 dealing here with a specific event that took place in court
15 and I'm commenting on it and that's what I'm doing here. He
16 doesn't say any of that. So none of that even applies.
17 But it's interesting that Las Vegas Sands is saying
18 one thing and Mr. Adelson is saying something exactly the
19 opposite. And Mr. Adelson, no matter how they try to paint
20 this, has made this an extrajudicial statement in response
21 supposedly to things that were happening in a courtroom.
22 Every single case that has been cited says that that is not
23 privileged.
24 Now, to sum up, Your Honor, I'd like to make a few
25 observations. They've cited a case and relied upon it heavily

1 that was reversed. They then cited another case, Rothman, for
2 a proposition of law that was not the proposition of law for
3 which it stood. It stood for just the opposite. They also
4 said that we didn't properly plead because we didn't put in
5 our pleading that the statement was unprivileged. We did in
6 fact say exactly that. There's a whole paragraph where we
7 said this statement by Mr. Adelson was unprivileged, and we
8 cited it to the Court. So, you know, that's three strikes
9 right there.

10 And with respect to this commentary that this is
11 merely ornamental, this claim of defamation is merely
12 ornamental, it is not merely ornamental. It's his life. He's
13 an executive who has been harmed as being fired for cause.
14 Mr. Adelson went out and said, I fired him for cause and
15 there's lots of reasons for that. We've cited cases that have
16 held just that exact statement, there are reasons that we did
17 this, as saying that's defamatory, in and of itself, that's
18 defamatory, and he's a liar, we have cited case after case
19 after case, including the Oprah Winfrey and the Clemens case
20 that says the same thing. The Pease case, all of these cases,
21 when you say that extrajudicially, that is not privileged.

22 And while it's not my first rodeo on these issues,
23 neither is it Mr. Adelson's first rodeo when it comes to
24 defamation. Mr. Adelson knows exactly what he's doing and
25 what he thinks he can get away with. He can't get away with

1 what he did here. When he -- and there's a demonstration of
2 it. He thinks he knows, but he doesn't know. Mr. Adelson has
3 had a long and rich and sordid history of suing individuals
4 for defamation in this district, and you can take judicial
5 notice of that fact.

6 THE COURT: I'm not going to, though.

7 MR. CAMPBELL: But that's -- but this is an issue
8 that's certainly, that's certainly, Your Honor, going to be --
9 going to be something that you should take notice of,
10 particularly when we're dealing with an individual here that
11 he's saying one thing, the counsels are saying another thing,
12 and he's engaged in this process extrajudicially. So our
13 point is this, Your Honor. Our point is that Mr. Adelson went
14 ahead and made these statements to the Wall Street Journal,
15 and they weren't a reply to anything. Nothing. The proper
16 way to reply to what is in a complaint -- if that's the reason
17 he did it, the proper way to reply to a complaint is with an
18 answer. And if he didn't like the complaint because it was
19 pled with particularity as is required by the courts, too bad.
20 Then he shouldn't have fired him, and he shouldn't have
21 engaged in the illegal conduct which resulted in my client
22 being forced to say that he wouldn't do it.

23 So that's the bottom line in the case, Your Honor.
24 I'm happy to address any other issues that the Court may
25 believe are germane at this point. But, Your Honor, this is

1 something that should certainly all be flushed out in
2 depositions and discovery, because there's a lot more here
3 than meets the eye.

4 THE COURT: Thank you, Mr. Campbell.

5 Paragraph 62 of the amended complaint is the basis
6 for the fifth cause of action which cites to only one
7 statement alleged to be defamatory, the statement we've been
8 speaking about to the Wall Street Journal. The circumstances
9 of that statement made by Mr. Adelson are not one in which
10 there are factual issues. As I have indicated, there is a
11 single statement, which leads the Court to believe that this
12 particular statement is absolutely privileged as it relates to
13 the litigation, and under the decision made by the Nevada
14 Supreme Court in Clark County School District versus Virtual
15 Education Software, Inc., which we've referred to today on the
16 record as VESI, would provide for the Court making a legal
17 determination as to the application of the privilege, and for
18 purposes of this single statement that has been briefed today
19 the Court grants the motion to dismiss.

20 Anybody want this certified?

21 MR. WILLIAMS: We would, Your Honor.

22 THE COURT: Mr. Morris, any objection to 54(b)
23 certification in the -- getting you out of the case?

24 MR. MORRIS: I think it's completely unnecessary.
25 This is a motion to dismiss.

1 THE COURT: But your guy's now all gone. Mr.
2 Adelson as a party is totally out of this case as an
3 individual, because that's the only claim for relief he was
4 in.
5 MR. MORRIS: And you've dismissed -- you've
6 dismissed this fifth claim.
7 THE COURT: As to all of you and as to Mr. Adelson
8 only it would appear appropriate for me to certify it --
9 MR. PEEK: Oh. Okay.
10 THE COURT: -- even under the new 54(b) standard.
11 MR. MORRIS: You can. You can. I have no objection
12 to that.
13 THE COURT: Okay.
14 MR. PEEK: So this is just as to Mr. Adelson?
15 THE COURT: Well, he's the only party who's been
16 totally resolved.
17 MS. GLASER: Correct.
18 MR. PEEK: Correct.
19 THE COURT: All the rest of you are stuck with me
20 for a while.
21 MR. PEEK: I just want to make sure, because it's
22 also been dismissed as to Ms. Glaser's --
23 THE COURT: Well, but as to Mr. Adelson it appears
24 clearly appropriate for 54(b) certification --
25 MR. MORRIS: Yes, Your Honor.

1 THE COURT: -- which will get the issue you want in
2 front of the Nevada Supreme Court. If they decide to
3 entertain it, that's a different issue.

4 All right. If I can go to the rest of the motion to
5 dismiss that Ms. Glaser filed, and if I could first go to the
6 request for judicial notice. I typically do not take judicial
7 notice of anything that is not already in this court or
8 another court's file. For that reason I am going to decline
9 to take judicial notice of Exhibit H of your proposed
10 documents, which is a newspaper article. The others were
11 previously attached as exhibits to other pleadings or are
12 pleadings or transcripts themselves, so they're fair game.

13 MS. GLASER: Thank you, Your Honor. I will note,
14 and it's minor, there was no objection to the request for
15 judicial notice. But I take -- I heard Your Honor very
16 clearly.

17 THE COURT: I have paranoia about it.

18 MS. GLASER: Your Honor, what I did was -- and I
19 have extra copies, small copies if it -- because I'm not sure
20 Your Honor can read this.

21 THE COURT: I can read it, but, if you'd like,
22 please give a copy to everybody. I'll mark it as a Court's
23 exhibit. If anybody feels like they need to move to see the
24 big boards, please feel free to do so, unless, of course,
25 you're in the gallery, in which case you're stuck.

1 MS. GLASER: Thank you, Your Honor.
2 THE COURT: Do you want me to mark it as a Court's
3 exhibit?
4 MS. GLASER: I do, Your Honor.
5 THE COURT: If you have an extra copy, I will. Is
6 it a two-page, or one page?
7 MS. GLASER: It's two pages, Your Honor. This is
8 the first, and there's a second.
9 THE COURT: Mark those as Court's Exhibit 1 and 2.
10 The longer one is 1, the shorter one is 2.
11 Okay. You may proceed.
12 MS. GLASER: Okay. Your Honor, thank you. And let
13 me address this, because this is the motion to dismiss the
14 second claim for breach of contract against Sands China, and
15 we believe it should be granted, and we think there's plenty
16 of authority, both factual in terms of what the Court can take
17 judicial notice of and what the complaint says and what has
18 been acknowledged by all the parties, including plaintiff.
19 Let me start. The plain and unambiguous language of
20 the only contract Mr. Jacobs alleges is with Sands China,
21 Limited, is the stock option grant letter. I've referred to
22 it as SOGL. And it provides that unvested options are
23 extinguished upon termination for any reason, cause, no cause.
24 And that's unequivocal and unambiguous.
25 Now, what do I have for that? I have the SOGL,

1 appendix to subsection 2.1(2)(i). Quote, "If the grantee's
2 employment with the company and its subsidiaries is terminated
3 for any reason, including for cause, the unvested portion of
4 the option shall expire on the date of termination." There is
5 -- it's undisputed, it's alleged by plaintiff that he was
6 terminated -- Mr. Jacobs was terminated in July of 2010 and no
7 options by the terms of this agreement had vested under
8 anybody's theory, and everyone acknowledges that. He is suing
9 separately in the terms sheet for the options that are listed
10 there. He got some of them under the terms sheet. He
11 acknowledges that. And he says, you know what, there were
12 250,000 more options in the terms sheet with Las Vegas Sands
13 that need to be moved up so I can exercise those 250,000
14 options. So it's completely disingenuous to suggest, oh, wait
15 a minute, the terms sheet was referring to those -- you know,
16 they're going to be converted when there was an IPO. He's
17 claiming both all of the options under the terms sheet from
18 Las Vegas Sands and two and a half million options from China,
19 Sands China, in a completely separate document that comes
20 literally months, almost a year after the terms sheet that he
21 says is enforceable against Las Vegas Sands.

22 Now, there is no reference, of course, to the terms
23 sheet in the SOGL. And that's Exhibit B to the request for
24 judicial notice, Your Honor. Then we go to another port of
25 authority, when a single transaction is evidenced by multiple

1 writings, which is what his contention is, seems to be his
2 argument. Hong Kong courts -- and I -- you know, Your Honor,
3 we sort of warned you about this before.

4 THE COURT: It's not my first case where we've had
5 experts on foreign law have to come in. Mr. Peek knows how to
6 do it.

7 MS. GLASER: And we did provide Your Honor copies of
8 everything we relied on, and, of course, to the other side.
9 Hong Kong courts will interpret those documents consistently
10 unless this would result in a breach of the terms of the
11 documents. And that's the HSH Nord Bank case that we cited,
12 2009 Hong Kong case.

13 Lastly on this point, in Nevada the interpretation
14 and construction of contractual terms is a question of law
15 that can be and, based on the law as we understand it, should
16 be determined by the Court at a motion to dismiss stage.

17 Now, the Court in our view is both entitled and
18 required to interpret claim and unambiguous language of the
19 alleged agreement at this stage. The plain -- our second
20 point, the plain and unambiguous language of the SOGL requires
21 Jacobs to sign and return it within 28 days. And you say to
22 yourself, oh, come on, what's the big deal. Well, I'll tell
23 you what the big deal is. The first amended complaint doesn't
24 and cannot allege that he did so, and until that offer is
25 accepted it may be rescinded at any time. How do we know

1 that? We gave you authority for that, Your Honor, Hong Kong
2 authority, which is also Hong Kong authority that in itself is
3 clear and unambiguous. If you don't accept within 28 days,
4 you are deemed to have declined it. And I'm going to just
5 porch the language here. Subsection (5), if you wish to
6 accept this offer of the option, you're supposed to sign it,
7 pay a dollar -- we're not focusing on the dollar, Your Honor
8 -- to a specific individual of the company within 28 days of
9 the date, and if you don't receive that acceptance within
10 28 days, it's gone. And the language is clear and
11 unambiguous.

12 Now, if it's not enough, in their opposition to Las
13 Vegas Sands's motion to add an indispensable party that we
14 were talking about that hearing a few minutes ago, Your Honor,
15 in another context, that was on March 15, 2011. And if you go
16 -- if Your Honor has a chance to go to pages 26 to 37 of the
17 transcript, which we were able to order, over and over and
18 over again that terms sheet Mr. Campbell describes is with Las
19 Vegas Sands. He says it over and over and over again. I
20 won't even go to something which arguably is extrajudicial.
21 When Mr. Campbell first made his claim on September 24, 2010,
22 to Las Vegas Sands he actually says in that letter, that claim
23 his deal, the terms sheet is -- again, not only does he say it
24 in the complaint, not only does he say it in his initial
25 disclosures which are before the Court, not only does he say

1 it in this court on March 15, when he starts this action he
2 acknowledges, my fight, my terms sheet is with Las Vegas
3 Sands. He does not say Sands China. He couldn't. Sands
4 China hadn't even gone public by then. Sands China wasn't in
5 existence then.

6 Let me go to my next point, if I might, Your Honor.
7 And that's the second board. There are arguments that have
8 been raised by the other side, and I wanted to address those
9 directly. Which is slightly smaller print. I hope the Court
10 can still see it.

11 Mr. Jacobs has several arguments. He argues that
12 the terms sheet governs the rights and obligations of SCL
13 under stock option agreement. Well, you say to yourself, wait
14 a minute, there isn't even a reference to the terms sheet in
15 the stock option grant letter. Sands China is not a party to
16 the terms sheet. Everybody acknowledges that. And it's only
17 a party to the stock option agreement. The stock option grant
18 letter again contains no language that adopts or incorporates
19 any provisions of the terms sheet. Mr. Jacobs argues that his
20 allegation -- and this is a little odd, but I think it's just
21 an apples and oranges confusion. He argues in his allegation
22 that he performed all the contractual obligations under the
23 SOGL -- that's in paragraph 46 of the first amended complaint
24 -- alleges acceptance. Respectfully, Your Honor, so what?
25 This isn't -- this isn't anything other -- what he alleges is,

1 I performed everything I was supposed to perform except what I
2 was prevented from performing. Not an unusual provision. The
3 problem is this goes to contract formation. This does not go
4 to whether or not he performed everything he was supposed to
5 perform under the contract and therefore I breached. We're
6 not there. We never get to that step. We never get over this
7 big bass canyon called offer and acceptance whether there's a
8 contract or not.

9 Now, what we do is we tell you in I think no
10 uncertain terms that we cite to Hong Kong law which stands for
11 the propositions we articulated in our briefs. The terms
12 sheet -- and I -- to say it to you once again, the terms sheet
13 has 500,000 options it references, some of which he
14 acknowledges he already received. They were not converted at
15 the time of the IPO. Everybody concedes that. He's suing for
16 all the options in the terms sheet plus and separately two and
17 a half million options under the SOGL.

18 Now, he cites to paragraph 8.1, if I might, of the
19 -- it's Exhibit B to your -- to the request for judicial
20 notice. 8.1 says, "The grant of options and these terms and
21 conditions shall not form part of any contract of employment
22 between the Company or any subsidiary and any employee and the
23 rights and obligations of any employee under the terms of this
24 office or employment shall not be affected thereby."

25 Your Honor, the first sentence of 8.1 provides that

1 the stock option grant letter will not affect the terms of any
2 contract of employment, quote, "between the Company," capital
3 C, "or any subsidiary and any employee." The company is
4 defined in the same document in the notice of exercise portion
5 of the stock option grant letter as Sands China. By its terms
6 8.1 refers only to employment agreements with Sands China and
7 subsidiaries of Sands China. It goes without saying that Las
8 Vegas Sands is not a subsidiary of Sands China. Contrary to
9 what Mr. Jacobs suggests, therefore, the terms sheet between
10 Jacobs and Las Vegas Sands is not referenced, and you can't
11 make up a phony argument to suggest it is in 8.1.

12 At paragraph 47 of the first amended complaint
13 that's the only reference to any contract breached by Sands
14 China, and that's a reference to the stock option grant
15 letter. In short, the first amended complaint does not allege
16 any other contract, including any employment agreement,
17 between Mr. Jacobs and Sands China.

18 Now, Mr. Jacobs says -- talked about how he
19 performed all the contractual obligations under the SOGL.
20 Again I say to you he confuses, and I say it respectfully,
21 acceptance with performance. Without acceptance there is no
22 contract.

23 Now, we then cite to you an enforceable contract
24 must include a valid offer and acceptance. We cite to you
25 Chitty on Contracts, which is the thirtieth edition, 2008.

1 And the acceptance must be in writing, and we cite to you the
2 Yates Building case, which is again a 1976 case under Hong
3 Kong law. And we also cite to you the stock option grant
4 letter subsection (5), which requires it to be in writing.

5 Pursuant to Hong Kong law an offer may be terminated
6 at any time. And that's the Payne versus Kay case. I
7 apologize. It is a 1789 case, Your Honor, and I rarely go
8 back one century, much less more than one century, to find
9 authority. This is the prevailing authority in Hong Kong, and
10 it's unequivocal. And in that case the facts were actually
11 somewhat similar. He's essentially alleging, well, wait a
12 minute, you terminated me before the 28 days was up, how could
13 I possibly have done anything, how could I possibly have
14 exercised it, my time wasn't up. And the response is, and
15 Payne teaches us this, so what, it's an offer that can be
16 rescinded at any time. That offer has no consideration until
17 it's accepted. It was never accepted. He acknowledges it
18 wasn't accepted.

19 Mr. Jacobs then argues, wait a minute, I was
20 wrongfully terminated so I'm allowed to seek damages for the
21 loss of the option to purchase the stock of Sands China. And
22 I think, and again I say this respectfully, he seems to rely
23 on a bunch of -- I say irrelevant, and I'm not being flippant,
24 has nothing to do with this case. Hong Kong law applies
25 pursuant to the SOGL. Its terms state SOGL, Hong Kong law

1 applies.

2 The irrelevant American cases on which Jacobs
3 relies, however, if you want to look at American law, each
4 provide that an employment contract with the entity granting
5 the option is a prerequisite for this argument. In other
6 words, most of those -- I think all those cases -- I can -- I
7 could even give you some of them, Your Honor. One of them was
8 a Knox case, another one was a Morschbach case. Morschbach
9 was particularly interesting. But those cases, and those are
10 just examples, are cases where you had an employment agreement
11 that one of the provisions of the employment agreement was
12 stock options were granted. That's not here. There's no
13 employment agreement alleged with Sands China. Sands China
14 does not belong in this lawsuit. The only reason it's here is
15 because of the stock option grant letter, and that doesn't
16 belong here, either, Your Honor. There is not any reason not
17 to dismiss the motion.

18 Now, I just want to speak for a second about the
19 Morschbach case. That's a 2002 case, and we cited that to
20 Your Honor. There the plaintiff was a CEO of a defendant's
21 subsidiary through a merger, her employment agreement with the
22 parent. The claim was entitled to -- the claim is he was
23 entitled to exercise options to purchase the subsidiary's
24 stock after the merger which caused his wrongful termination.
25 The court found the subsidiary's stock option agreement in

1 plan governed which had express clauses that there was no
2 right to purchase once the employment ceased. Quote, "The
3 stock option agreements are stand-alone grants which do not
4 tie into any other contract." By its terms the stock option
5 grant letter is a stand-alone agreement that does not tie into
6 anything else, Your Honor. And the motion to dismiss should
7 be granted.

8 I'm glad to answer any other questions the Court may
9 have.

10 THE COURT: Thank you.

11 Mr. Williams.

12 MR. WILLIAMS: Yes, Your Honor.

13 We can leave these up, because I think they'll be
14 helpful. I appreciate the review of basically what's been in
15 the briefs. And I know Your Honor has read them, so I'll try
16 to focus my statements on some of the new issues that have
17 been touched on, or the inaccuracies that have just been
18 presented to the Court.

19 First of all, back to the first board, obviously,
20 Your Honor, we're here on a motion to dismiss. I don't need
21 to rehash what those standards are. Your Honor's very well
22 versed in them. And I think the defendants recognize that
23 we're here on that, so they make this statement to you. They
24 come down here and they say, "In Nevada interpretation of and
25 construction of contractual terms is a question of law that

1 can be determined in a 12(b)(5) motion to dismiss." And they
2 cite for that NGA #2 LLC versus Rains. Now, if you read NGA 2
3 LLC versus Rains, that is a case dealing with summary
4 judgment. It is not a motion to dismiss at all. And in fact
5 the Nevada Supreme Court reversed the case because there were
6 questions of fact that existed.

7 The same is true -- they cited -- it's not on this
8 board, but they cited the Angooey [phonetic] case for the same
9 proposition. Same thing, Your Honor. It, too, was summary
10 judgment. None of the cases that they have cited to you are
11 motion to dismiss cases.

12 So, having gotten that out of the way, let's talk
13 about this issue of Mr. Jacobs's alleged nonacceptance of the
14 stock option grant letter. We've alleged in the second cause
15 of action that there is a contract, that the contract was
16 breached. Your Honor, I submit for purposes of this motion
17 that's sufficient. We don't need to come in and present
18 evidence of how he accepted it, when he accepted it, or any of
19 that. We don't need to do it at this stage. If we did,
20 however, Your Honor, I could present to you evidence from
21 Sands China's public filings wherein they are telling the
22 public that Mr. Jacobs had 2.5 million stock options in the
23 company. And what they state is that those options lapsed,
24 not because he didn't accept them, but because he was
25 terminated. So they are representing to the public that he

1 had the options, in other words, he accepted them. So this
2 whole issue in my opinion is a red herring, Your Honor.

3 The Hong Kong cases they cite inaccurately described
4 by Ms. Glaser, respectively, the Payne case was dealing with
5 an auction. The bidder bid a certain amount, and the
6 auctioneer required him to accept certain additional
7 obligations as part of that bid. He said, I'm not doing it;
8 and they said, okay, you're not obligated on that bid.

9 The Dixon v. Dodds case is the other Hong Kong case
10 they cited, and I think that's the one she was actually
11 reciting the facts for. And in that case it is true the Hong
12 Kong court stated that an offer that is held to be open for a
13 specified period of time can be withdrawn prior to that time
14 by the offeror. But what would that -- so I take it what
15 they're saying is that's essentially what we did here with
16 Jacobs. But, Your Honor, what would that require? That would
17 require evidence. There's no evidence in the record that they
18 withdrew this offer. If that's their position, then they're
19 going to have to prove that. And we're entitled to get into
20 discovery to go over that. So I think the issue of acceptance
21 is a non issue.

22 Now, as I just touched on, the other three cases
23 that they've cited with respect to contract interpretation
24 being a question of law, the two Nevada cases were summary
25 judgment cases reversed on appeal because genuine issues of

1 fact existed. The other one was the Morschbach case which Ms.
2 Glaser referenced at the end of her presentation. That was
3 cited by them in response to our position that the terms sheet
4 and the stock option grant letter should be construed
5 together. And, as the Court knows, we've cited a number of
6 cases saying that whether two documents are to be construed
7 together is a question of fact.

8 In Morschbach the court -- again, this is summary
9 judgment, Your Honor. It was not a motion to dismiss. In
10 Morschbach the court found that the plaintiff's employment
11 contract and the stock option agreements were stand alone
12 because the employment agreement never referenced the issue of
13 stock options at all. And, as Your Honor knows, that is not
14 what we have here. The terms sheet expressly references stock
15 options and contemplates that Mr. Jacobs is going to be
16 getting stock options not just in Las Vegas Sands, but in
17 Sands China. So we would submit that Morschbach is certainly
18 distinguishable on that basis.

19 Now, Your Honor, a couple of other comments that
20 were made was that Sands China was not in existence at the
21 time of the terms sheet, didn't go public, and then was -- the
22 statement was amplified on to say it wasn't in existence.
23 Your Honor, if you go back to their motion to dismiss based on
24 jurisdiction, and I'm talking about Sands China's, the
25 lawyers', they state that Sands China was formed on July 15th,

1 2009. The terms sheet is in early August 2009. So it
2 absolutely was in existence. I don't know if they just forgot
3 that they put that in their brief or if they aren't familiar
4 with the corporate formation history, but that's the state of
5 facts on that.

6 Ms. Glaser also said we acknowledge that the terms
7 sheet -- or that the stock option agreement was never
8 accepted. That is not what we say, Your Honor. We went
9 through and presented an example with respect to his ability
10 -- his potential inability to have accepted or performed
11 because he was terminated before the expiration period lapsed.
12 But we're not saying he didn't accept it. We're saying he
13 did. And we'll get into discovery and we'll establish that.

14 So, Your Honor, I don't want to rehash everything
15 else that's in the briefs. I know you've read everything.
16 But I'm happy to answer any other questions you have on it.

17 THE COURT: I don't have any.

18 Because this is a motion to dismiss, the Court
19 cannot make the determination that is being requested of it
20 today. This is an issue that, if you believe appropriate,
21 should be renewed on a motion for summary judgment. At this
22 point the allegations that have been made have to be taken by
23 the Court as true. And while I will make a legal
24 determination about the scope and interpretation of the
25 contract provisions, I'm not going to do it at the motion to

1 dismiss stage.

2 MR. WILLIAMS: Thank you, Your Honor.

3 THE COURT: Thank you for including the foreign
4 authorities. It's helpful, since there's no other way for me
5 to access Hong Kong law.

6 MS. GLASER: Your Honor, I have two questions, if I
7 might.

8 THE COURT: Yep.

9 MS. GLASER: One is I need to understand one thing,
10 and if the Court would enlighten me.

11 THE COURT: Sure.

12 MS. GLASER: And if the Court doesn't choose to,
13 it's fine, too. One is may we make a motion for summary
14 adjudication now --

15 THE COURT: Yes.

16 MS. GLASER: -- and avoid the discovery? Because it
17 is a -- it's in our view senseless.

18 THE COURT: File your motion for summary judgment.
19 There's a different standard that applies on a motion for
20 summary judgment. So file it, characterize it as a motion for
21 summary judgment, they'll do what they're going to do, which
22 may include some issues related to some other stuff, and then
23 we'll talk about it.

24 MS. GLASER: Second issue, if I might. Thank you.
25 I appreciate it. That's -- I needed that guidance.

1 The second issue is we -- and I don't know if the
2 Court wants to hear about this, but we have some not disputes,
3 we're all working together --

4 THE COURT: How about before you go to those I hear
5 the other case that's still waiting. You guys make sure all
6 of you know what the issue is you want to talk to me about,
7 and unless somebody objects, I'd be happy to talk to you about
8 it. But I want to get those other folks out of here.

9 MS. GLASER: Thank you, Your Honor.

10 (Court recessed at 11:27 a.m., until 11:34 a.m.)

11 THE COURT: Mr. Morris, you're the one who's
12 preparing the order on the defamation motion.

13 MR. MORRIS: Yes, I will, Your Honor.

14 THE COURT: And send it over to everybody to look
15 at.

16 MR. MORRIS: Circulate it? Certainly I will.

17 THE COURT: Please.

18 MR. CAMPBELL: Your Honor, and I presume it's just
19 basically going to reiterate what was in --

20 THE COURT: One would hope.

21 MR. CAMPBELL: -- the statement that the Court made.

22 THE COURT: I've found there's an absolute
23 privilege, no factual issues related to the nature of the
24 statement, motion granted, go up to the Supreme Court.

25 MR. CAMPBELL: On the basis of the VESI case.

1 THE COURT: Absolute privilege.

2 MR. PEEK: You didn't need to get to the reply
3 issue.

4 THE COURT: Correct. Nor did I need to deal with
5 conditional privileges since I found it to be an absolute
6 privilege.

7 Okay. What do you want to talk to me about?

8 MS. GLASER: Your Honor, we want to just alert you,
9 and we've alerted the other side, and we -- we think we have a
10 general sort of understanding. There is --

11 THE COURT: And Mr. Fleming is back.

12 MS. GLASER: Good morning, good morning, good
13 morning very early, Mr. Fleming.

14 Two things. One, we will be filing a motion for
15 summary adjudication, and I appreciate the Court's guidance.
16 It's not a surprise.

17 THE COURT: No problem.

18 MS. GLASER: Two, with --

19 THE COURT: There's a \$250 filing fee with that.

20 MS. GLASER: Oh.

21 MR. PEEK: Is that all you get for reviewing it,
22 Your Honor?

23 THE COURT: I don't get anything.

24 MS. GLASER: Not a problem.

25 Second, and this is what we were about to discuss

1 with Your Honor, there's something called the Privacy Act in
2 Macau, and the Privacy Act is a pretty laborious piece of
3 legislation which requires something like the following. And
4 we have explained it to the other side. They're going to get
5 their own counsel, Macau counsel, because I don't want them to
6 rely on us. And I'm sure they wouldn't anyway.

7 This is what happens. Documents get -- must be
8 reviewed in Macau. We're starting that process now. We have
9 gone through the process and represent to the Court we have
10 gathered electronic documents, as well as hard copy.

11 THE COURT: Correct.

12 MS. GLASER: They're in Macau. They are not allowed
13 to leave Macau. We have to review them there, and then to the
14 extent that the Privacy Act, which is read very broadly --
15 according to our Macau written opinion counsel, it's read very
16 broadly, it then -- then you go to the office that supervises
17 the Privacy Act, say, okay, with respect to these group of
18 documents, not the whole universe, but these group of
19 documents we want to take them out of Macau, produce them in
20 this litigation, and we do that pursuant to a stipulation and
21 hopefully court order that says, of course, these are only
22 going to be used in connection with this litigation and for no
23 other purpose.

24 We then hope to and anticipate being able to
25 convince the Macau court, not a problem, okay, go -- Macau

1 office that we -- indeed the government says, yes, you can do
2 these in the Jacobs litigation. Mr. Campbell said to me,
3 well, okay, fine, we'll get our own counsel, no problem, and
4 can you give me a date by which you think you will be able to
5 produce whatever you can produce.

6 THE COURT: Is this related to the document
7 production we issued -- talked about last time where you said
8 there be a violation of Macau law? You didn't, you did.

9 MS. GLASER: Yes, ma'am.

10 THE COURT: And I said, well, then that would be the
11 time to ask me about the stay.

12 MS. GLASER: Okay. So --

13 THE COURT: Is that what you're trying to intimate
14 to me, we're getting closer to that time?

15 MS. GLASER: We're getting closer to that time.

16 THE COURT: Okay. Well, some day we'll actually get
17 there; right?

18 MS. GLASER: But I simply -- somebody -- there's a
19 rumor out there in Las Vegas that if people don't raise issues
20 early with you, you might get a little testy with the lawyers.

21 THE COURT: I get frustrated.

22 MS. GLASER: And I don't want to get -- I don't want
23 anybody being testy with me.

24 THE COURT: So are you entering into a stipulation
25 and confidentiality order related to the Privacy Act in Macau?

1 MS. GLASER: They haven't agreed to that yet, Your
2 Honor.
3 MR. PEEK: Yeah, we did.
4 THE COURT: It was just a question.
5 MR. PEEK: It's --
6 THE COURT: There was a question mark at the end of
7 my statement.
8 MR. PEEK: And the reason for that is we'd be able
9 to tell the Office of Data Privacy counsel that we're --
10 they're being used for this purpose so --
11 THE COURT: But I still need to hear Mr. Campbell's
12 answer to my question.
13 MR. CAMPBELL: Thank you, Your Honor. The answer to
14 that is no.
15 THE COURT: Okay.
16 MR. CAMPBELL: Would you like me to elaborate?
17 THE COURT: No. You're going to consult with
18 somebody in Macau.
19 MR. CAMPBELL: No.
20 THE COURT: All right. You're not going to consult
21 with somebody in Macau. They're going to do what they're
22 going to do, they're going to produce documents with a
23 privilege log which may include this unusual entry for us,
24 which is Macau privacy law, and then we will deal with that
25 some day.

1 MS. GLASER: Not a problem.
2 THE COURT: Right?
3 MR. PEEK: Your Honor --
4 MR. CAMPBELL: I just -- now --
5 MR. PEEK: -- let me just add one thing, because I
6 didn't address this. That same Data Privacy Act, Your Honor,
7 also implicates communications that may be on servers and
8 email communication and hard document -- hard-copy documents
9 in Las Vegas --
10 THE COURT: Here in the States?
11 MR. PEEK: -- Sands, as well.
12 THE COURT: Well, you can take the position --
13 MR. PEEK: Well, we are told that by the --
14 THE COURT: It's okay.
15 MR. PEEK: -- the Office of Data Privacy --
16 THE COURT: You can take the position --
17 MR. PEEK: -- counsel, Your Honor. And I'll --
18 we'll brief that with the Court. Again --
19 THE COURT: And then I'll decide.
20 MS. GLASER: No problem. Your Honor, the only
21 reason I want to emphasize this is this isn't a function of
22 jumping through hoops. If we're in violation of the Privacy
23 Act, there are criminal implications --
24 THE COURT: I understand.
25 MS. GLASER: -- and we treat that seriously.

1 THE COURT: We had that discussion about a month
2 ago.

3 MR. PEEK: We did, yeah.

4 THE COURT: And I said I thought it was premature
5 and that when we got there we could talk about a stay.

6 MR. PEEK: And the reason why we're bringing it is,
7 you may recall it, in our joint status report, Your Honor, we
8 told the Court that we thought we would be able to produce
9 documents by July 1. We're not going to be able to make that
10 date, because --

11 THE COURT: Why not? You've had documents that
12 aren't covered by this that you didn't produce --

13 MR. PEEK: Well, no, no. We will -- those documents
14 that are not implicated, Your Honor, by the --

15 THE COURT: Certainly.

16 MR. PEEK: -- Data Privacy Act we will.

17 THE COURT: Okay.

18 MR. PEEK: The other --

19 THE COURT: Don't wait and produce all the documents
20 after you think you can comply with --

21 MR. PEEK: Let me -- let me finish, Your Honor. The
22 other thing is we haven't completed the ESI protocol
23 negotiations and the search terms with Mr. Campbell and Mr.
24 Williams yet. We have had many meetings with them, and we're
25 I think at the last stage. Perhaps Mr. Williams could tell

1 us, because we had a couple meet and confers on that, and we
2 haven't completed that process, so we haven't been able to
3 even run search terms.

4 THE COURT: When are you going to finish the
5 process?

6 MR. PEEK: I guess it's -- Mr. Williams can --

7 THE COURT: Mr. Justin Jones is going to come help
8 us. He and Mr. Williams are probably the two who labored on
9 this.

10 MR. PEEK: And Mr. Krum, as well, Your Honor.

11 THE COURT: And Mr. Krum.

12 MS. GLASER: Your Honor, the only thing that you
13 said that --

14 THE COURT: Hold on a second.

15 MS. GLASER: -- I just didn't want you to --

16 THE COURT: So when is the ESI going to be
17 completed, the negotiations on the scope of the ESI search?

18 MR. JONES: Mr. Williams and I talked a minute ago,
19 and I think we'll get it wrapped up tomorrow. We met last
20 week. There were a couple of issues that needed --

21 THE COURT: So you now have a 2:00 o'clock
22 conference call with me to say, yes, Judge, we got it worked
23 out, okay.

24 MR. JONES: 2:00 o'clock tomorrow?

25 THE COURT: 2:00 o'clock tomorrow. Mr. Jones,

1 you're --

2 Justin Jones is charge of organizing the call and
3 calling in.

4 MR. JONES: I'll be in a vehicle at the time, but I
5 will make sure that it happens.

6 THE COURT: It's okay. All right.

7 MS. GLASER: Your Honor, you made a comment, well,
8 you should be able to start producing documents now.

9 THE COURT: True.

10 MS. GLASER: My only comment to you is that we have
11 to get permission to get documents out of Macau.

12 THE COURT: All documents from Sands China have to
13 get permission from the Office of Privacy?

14 MS. GLASER: Oh, yeah. Absolutely.

15 MR. PEEK: Yes.

16 THE COURT: Well, if that's -- if that's what you
17 think the answer is, then somebody should file a protective
18 order soon if you don't have a stip.

19 MS. GLASER: Understood. We'll -- we will do that,
20 Your Honor, and be guided accordingly. Thank you.

21 MR. PEEK: Yeah. And that's -- we're also going to
22 say we're going to do this on a briefing schedule, Your Honor,
23 as well.

24 THE COURT: It's like I've been trying to say. At
25 some point in time it's going to be ripe, and I'm almost

1 there, it sounds like. But I can't just do it on the fly with
2 you guys telling me this at the last minute.

3 Mr. Campbell, you're waving at me.

4 MR. CAMPBELL: Thank you, Your Honor.

5 Your Honor, we don't accept nor deny what Ms. Glaser
6 has proffered to the Court. We don't know what the situation
7 is there. That's our position. We certainly would like to
8 talk to someone with respect to some of the representations
9 that have been made that has the knowledge of Macau law. But,
10 irrespective of that, we are not waiving anything in that
11 regard. There's a United States Supreme Court case right on
12 point that says, we don't care what foreign law says, you've
13 got to produce documents, particularly when they're in the
14 jurisdiction in which the litigation is taking place like they
15 are here.

16 But separate and apart from all that, she left
17 something out. And that was she wants to hold back on
18 producing Mr. Adelson and Mr. Levin for their depositions that
19 I've been asking to take for weeks and weeks and weeks. So I
20 talked to her about that, and I said, okay, here's the deal, I
21 said, when do you want to hold back until; she says, about mid
22 August. I said, not a problem. Mr. Peck says, we might need
23 a little additional more time; I said, fine, let's go
24 beginning September. We're all playing -- as the Court's fond
25 of saying, we're all playing nicely.

1 THE COURT: Play nice in the sandbox, yeah.

2 MR. CAMPBELL: Let's go September. So I wanted to
3 take, you know, Mr. Adelson and Mr. Levin a couple months ago,
4 okay. But they want until September, that's fine, I want to
5 take them in September. That's all I have to say.

6 THE COURT: Okay.

7 MS. GLASER: Your Honor, I have to say one thing. A
8 month ago -- we sat in a meet confer approximately a month
9 ago, and we urged Mr. Campbell to then hire Macau counsel to
10 get separate advice from anything we were telling him, and
11 that apparently has not occurred, number one. Number two --
12 and that's not our fault. And we've had, believe me, four
13 different opinions on this point from different Macau counsel
14 because it's of such concern to us.

15 Number two, absolutely we had a conversation about
16 Mr. Levin and Mr. Adelson. There was never -- and we have
17 always told everyone that depositions will start once we
18 review the documents.

19 THE COURT: Technically depositions can start March
20 15th, when I suspended the requirement of a joint case
21 conference report unless you file a protective order --

22 MR. PEEK: Your Honor --

23 THE COURT: -- after being properly noticed.

24 MR. PEEK: -- you may recall we filed a joint status
25 report.

1 MS. GLASER: Yes.

2 MR. PEEK: In that joint status report we both
3 agreed, which we both signed, is that they would --

4 THE COURT: I know. That's why I said technically.

5 MR. PEEK: I know.

6 THE COURT: All right. So you guys have a dispute.
7 Somebody's going to either notice a deposition or not. If
8 somebody notices a deposition, maybe somebody will file a
9 protective order motion if you guys can't work it out, and
10 then, if you do, we'll talk about it.

11 MR. CAMPBELL: I don't think we have a dispute.
12 That's the point.

13 THE COURT: I don't know if you -- I don't think you
14 have a dispute yet.

15 MR. PEEK: We don't. We don't, Your Honor.

16 MS. GLASER: We're working on it.

17 MR. CAMPBELL: I didn't mean to suggest -- I didn't
18 mean to suggest that Ms. Glaser and I had a dispute --

19 THE COURT: You will have disputes.

20 MR. CAMPBELL: -- on the deposition issue. I'm
21 advising you --

22 THE COURT: It's okay.

23 MR. CAMPBELL: I'm advising you she's asked for --

24 THE COURT: When are you going to be ready for
25 trial?

1 MR. CAMPBELL: Your Honor, could I just finish one
2 thing?

3 MS. GLASER: Tomorrow.

4 MR. PEEK: Ms. Glaser thinks she's ready right now,
5 Your Honor.

6 MR. CAMPBELL: Your Honor, so I we don't have a
7 dispute on that. I have told Ms. Glaser, yes, let's move the
8 depositions out. I've also told Ms. Glaser I'll put on the
9 record she asked me if I would take Mr. Levin first. I will
10 take Mr. Levin first, and then we will take Mr. Adelson,
11 beginning sometime on or after the 1st of September.

12 One additional matter. If they're coming back to
13 the Court on this Macau issue, one of the things that Mr.
14 Adelson has been saying publicly is that the United States
15 Department of Justice and/or the Securities and Exchange
16 Commission have been serving subpoenas and they have been
17 producing documents to the United States Government either in
18 a civil proceeding or criminal proceeding, I don't know. But
19 we want to know if they're -- if they're producing documents
20 to the United States Government. That certainly I think would
21 have an impact upon what we're doing here.

22 MS. GLASER: Mr. Campbell, I'm sure unintentionally,
23 is just wrong. And I'll be glad to discuss it out of Your
24 Honor's presence.

25 THE COURT: I don't need to worry about it. Mr.

1 Campbell, you can always serve a document request or something
2 asking for that sort of information, or an interrogatory, and
3 I'm sure you'll get an answer, or you could just talk.

4 When will you be ready for trial? Assume we work
5 through the document production issue in say a period of time
6 that the documents have been ruled on and either I've decided
7 you don't have to produce them or I decide you have to produce
8 them and then get them produced by October. With that
9 assumption, when will you be ready for trial?

10 MS. GLASER: I'm hoping to be out of the case, so
11 I'm going to not say anything right now, Your Honor.

12 MR. CAMPBELL: Well, I think we're currently set for
13 end of June.

14 MR. PEEK: We --

15 THE COURT: You're not set.

16 MR. PEEK: We told the Court, Your Honor, based upon
17 the schedule that we presented to the Court in the joint
18 status report and we -- and we then attended it in August 22nd
19 of this year. We told the Court that based on the schedule
20 that we were hopeful we could meet that we should be able to
21 be ready for trial by June of 2011 [sic]. Because the process
22 with the Data Privacy Counsel is process and very laborious,
23 we're not going to be able to meet the Sands China part of
24 this equation, the production of documents, until I don't know
25 when. I'm hopeful that we can get it done very soon. But

1 when they say to us that they have to review each and every
2 document that we propose to produce to determine whether or
3 not, one, we have consent, whether it meets their statute,
4 whether or not we have a stipulated protective order from Mr.
5 Campbell that says that it will only be used in this
6 proceeding -- that was one of the steps that we thought would
7 be helpful to the data privacy counsel. So that process is
8 very laborious. I don't think we can make this case in trial
9 in June, Your Honor, of 2011.

10 THE COURT: Well, you're not going to make June
11 2011, because it's June 2011 now. I think --

12 MR. PEEK: Excuse me. June 2012. My apologies.

13 THE COURT: I think we talked about June 2012 --

14 THE COURT: I apologize.

15 THE COURT: -- which leads me back to my burning
16 question of Mr. Morris.

17 Mr. Morris, have you heard anything about a decision
18 on the CityCenter case?

19 MR. MORRIS: You know, Your Honor, I wish I had, but
20 I haven't.

21 THE COURT: Okay. All right.

22 MR. MORRIS: I know that it's coming.

23 THE COURT: Some day. They're worried about
24 elections right now. Special elections I think is going to be
25 their hot button topic for a little bit.

1 MR. PEEK: So I would be hopeful that we could make
2 it June 2012, but I think it's going to be later than that,
3 Your Honor.

4 THE COURT: Okay. Assume with me for a minute that
5 you only get five and a half hours of trial time a day. How
6 many days of trial, Mr. Campbell?

7 MR. CAMPBELL: Two weeks.

8 THE COURT: So I'm doubling that. So that's four to
9 six.

10 MR. PEEK: Four to six, Your Honor.

11 THE COURT: Okay. Here's the problem. If you don't
12 make the June date, I've already given the September date,
13 which would be probably the next place I could put you with a
14 firm setting, to the Planet Hollywood West Tower litigation,
15 which is a four- to six-week. And I will have to give you a
16 firm date because of your international witnesses. So I would
17 encourage you to file whatever you're going to file about the
18 Macau issue very soon. And if you do it on an OST, I'm going
19 to set it out two to three weeks, even though that's shortened
20 time technically, so that the briefing can be thorough so that
21 we will have a well-reasoned discussion when we have the
22 chance. But I don't want to have you guys just sitting
23 around.

24 MR. PEEK: We are not, Your Honor.

25 THE COURT: Okay. I'm going to give you the trial

1 date in June 2012 for the record, with the understanding there
2 may be problems. And if there are problems, you'll tell me
3 about them sooner, rather than later. That trial stack starts
4 on June 25th, 2012. That is a firm setting for you.

5 The calendar call is June 21, 2012.

6 You've demanded a jury; right, Mr. Campbell?

7 MR. CAMPBELL: Yes.

8 THE COURT: June 1st, 2011 [sic], for the pretrial.

9 And my typical day for people to file their last set
10 of motions, which for your purposes would be evidentiary
11 motions and motions in limine, would be May 4th.

12 Motions for summary judgment, motions to dismiss,
13 other dispositive motions would be due on April 13th, which
14 means your discovery cutoff's probably going to be sometime
15 around March 23rd.

16 MR. PEEK: And we'll back up from that the expert
17 disclosures, as well.

18 THE COURT: I guess so. But I really need to get
19 the document issue decided sooner, rather than later, because
20 it impacts a number of other issues.

21 MR. PEEK: Your Honor, we do, as well.

22 MS. GLASER: Thank you, Your Honor.

23 MR. PEEK: Thank you very much.

24 THE COURT: Anything else? All right. Goodbye.

25 THE PROCEEDINGS CONCLUDED AT 11:50 A.M.

CERTIFICATION

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

AFFIRMATION

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

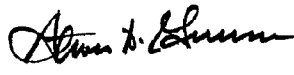
FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt

6/15/11

FLORENCE HOYT, TRANSCRIBER

DATE



CLERK OF THE COURT

Glaser Weil Fink Jacobs
Howard Avchen & Shapiro LLP

1 **MSTY**
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13 *Attorneys for Defendant Sands China Ltd.*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 STEVEN C. JACOBS,
12 Plaintiff,
13 v.
14 LAS VEGAS SANDS CORP., a Nevada
15 corporation; SANDS CHINA LTD., a Cayman
16 Island corporation; DOES I through X; and
17 ROE CORPORATIONS I through X,
18 Defendants.
19
20

Case No.: A-10-627691-C

Dept. No.: XI

**DEFENDANT SANDS CHINA LTD.'S
MOTION TO STAY PROCEEDINGS
PENDING WRIT PETITION ON ORDER
SHORTENING TIME**

DATE:

TIME: **FILE WITH
MASTER CALENDAR**

21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 Defendant Sands China Ltd. ("SCL" or "Defendant"), respectfully moves this Court, on
2 shortened time pursuant to EDCR 2.26, to stay the proceedings in this case as against SCL only
3 pending disposition by the Nevada Supreme Court of SCL's Petition for Writ of Mandamus or in
4 the Alternative, Writ of Prohibition (the "Writ Petition"), filed on May 5, 2011. On June 24, 2011,
5 the Nevada Supreme Court issued an Order Directing Answer to the Writ Petition, stating, among
6 other things, that SCL's Writ Petition "set forth issues of arguable merit." The Writ Petition
7 demonstrates that (i) an important issue of law requires clarification, (ii) considerations of sound
8 judicial economy and administration militate in favor of granting the Writ Petition, and (iii) SCL has
9 no "plain, speedy or adequate remedy" to challenge the Court's ruling denying SCL's Motion to
10 Dismiss for Lack of Personal Jurisdiction. This Motion to Stay Proceedings Pending Writ Petition
11 (the "Motion to Stay") is made to preserve SCL's due process rights which are the subject of the
12 Writ Petition, conserve limited judicial resources and prevent the parties (and SCL in particular)
13 from incurring substantial costs and expenses in proceeding with this case before the Nevada
14 Supreme Court issues its ruling on the Writ Petition.

15 This Motion is made and based on the papers and pleadings on file herein, the following
16 Memorandum of Points and Authorities, the Affidavits of Andrew D. Sedlock, Esq. and David
17 Fleming, the Writ Petition previously served on this Court, and any oral argument allowed by the
18 Court.

19 DATED this 13th day of July, 2011.

20 GLASER WEIL FINK JACOBS
21 HOWARD AVCHEN & SHAPIRO LLP

22 By: 

23 Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)
24 Andrew D. Sedlock, Esq. (NBN: 9183)
25 3763 Howard Hughes Pkwy., Ste. 300
26 Las Vegas, Nevada 89169
27 Telephone: (702) 650-7900
28 Facsimile: (702) 650-7950

Attorneys for Defendant Sands China Ltd.

APPLICATION FOR ORDER SHORTENING TIME

SCL applies for an Order Shortening Time for the hearing on its Motion to Stay Proceedings Pending Writ Petition based upon the following Affidavit of Andrew D. Sedlock, Esq.

DATED this 13th day of July, 2011.

GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP

By: 

Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)
Andrew D. Sedlock, Esq. (NBN: 9183)
3763 Howard Hughes Pkwy., Ste. 300
Las Vegas, Nevada 89169
Telephone: (702) 650-7900
Facsimile: (702) 650-7950

Attorneys for Defendant Sands China Ltd.

**AFFIDAVIT OF ANDREW D. SEDLOCK, ESQ. IN SUPPORT OF APPLICATION
FOR ORDER SHORTENING TIME**

STATE OF NEVADA }
 }ss:
COUNTY OF CLARK }

I, Andrew D. Sedlock, being first duly sworn, deposes and says as follows:

1. I am an associate with the law firm of GLASER WEIL FINK JACOBS HOWARD AVCHEN & SHAPIRO LLP, counsel of record for Sands China Ltd. ("SCL") in the above-referenced matter. I have personal knowledge of the facts set forth herein, and I am competent to testify thereto if called upon to do so. I make this Affidavit pursuant to EDCR 2.26 in support of SCL's Motion to Stay.

2. This Motion requests a stay of this case as against SCL pending disposition by the Nevada Supreme Court of SCL's Writ Petition, filed on May 5, 2011 and served on this Court on May 18, 2011.

3. Shortly after filing and serving the Petition, SCL filed its first Motion to Stay (the "First Motion to Stay") which was denied without prejudice as premature following the hearing with this Court on May 26, 2011. (A true and accurate copy of the Order denying First Motion to Stay is attached hereto as **Exhibit A.**)

1 4. On June 24, 2011, the Nevada Supreme Court issued and served an Order Directing
2 Answer, which stated that SCL “has set forth issues of arguable merit” in the Petition and further
3 ordered real party in interest, Steven C. Jacobs (“Jacobs”) to file an Answer on or before July 25,
4 2011. (A true and accurate copy of the Order Directing Answer is attached hereto as **Exhibit B.**)

5 5. As addressed by the Court at the April 22, 2011 early case conference and reflected
6 in the Joint Status Report filed on April 22, 2011, the parties previously anticipated “that [Las
7 Vegas Sands Corp’s] LVSC’s and SCL’s respective disclosures will consist of a high volume of
8 documents which include Electronically Stored Information (ESI).” (A true and accurate copy of
9 the April 22, 2011 Joint Status Report is attached hereto as **Exhibit C.**)

10 6. After receiving Jacobs’ “Initial Identification of ESI Search Terms and Date Ranges”
11 (the “Search Terms”), both SCL and LVSC undertook an analysis of the applicable law of the
12 jurisdiction, Macau, Special Administrative Region of the People’s Republic of China (“Macau”), in
13 which the overwhelming majority of this information is currently located.

14 7. SCL’s counsel has previously advised Jacobs’ counsel that a Macau statute [the
15 Macau Personal Data Protection Act (the “Macau Act”)] may be an impediment, if not a bar, to the
16 parties retrieving, reviewing and producing certain personal information and documents, including
17 ESI, that may be subject to Nevada Rule of Civil Procedure (“NRCP”) 16 disclosure requirements
18 or that Jacobs may demand be produced.

19 8. Counsel for SCL have since undertaken an analysis of the Macau Act as well as met
20 with the Macau Office for Personal Data Protection (the “Macau OPDP”) to determine the most
21 efficient and compliant method to review and produce ESI currently stored in Macau in compliance
22 with the Macau Act.

23 9. The Macau OPDP has confirmed that, SCL’s Macau subsidiaries are prohibited from
24 producing or otherwise transferring ESI or other documents containing personal information, to
25 anyone outside of Macau (including Jacobs’ counsel), unless (i) the data subjects of the document
26 consent to the transfer of personal data outside of Macau, and/or (ii) the Macau OPDP consents to
27 such transfer of personal data outside of Macau, depending on the sensitivity of the personal data in
28 question. In the event consent is given by the data subjects of the relevant documents, SCL’s Macau

1 subsidiaries must still provide notice to the OPDP that consent has been received before the transfer
2 of data outside of Macau. In order to seek such consent from the data subjects or the Macau OPDP,
3 SCL will need to conduct a significant amount of work at considerable expense exceeding One
4 Million Dollars (U.S.) (\$1,000,000.00) based on the information presently available to SCL.

5 10. Currently, SCL has identified potentially responsive documents and ESI ranging
6 from approximately 2 terabytes (2000 gigabytes) to 13 terabytes (13,000 gigabytes), or more, that
7 may have to be reviewed in order to comply with the requirements set forth by the Macau OPDP as
8 discussed above.

9 11. This amount is approximately equivalent to nearly ten percent (10%) of all of the
10 information currently catalogued on the U.S. Library of Congress' web archives. A true and
11 accurate copy of the U.S. Library of Congress Web Archive FAQ page,
12 www.loc.gov/webarchive/faq, is attached hereto as **Exhibit D**.

13 12. SCL's counsel has been advised that failure to comply with these requirements could
14 result in significant civil and/or criminal penalties.

15 13. Pursuant to meet and confer discussions regarding outstanding discovery issues, the
16 parties have agreed to the foregoing tentative deadlines for the parties to produce responsive
17 documents in this case:

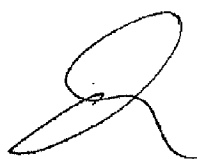
- 18 • Jacobs: complete production on August 15, 2011
- 19 • LVSC: complete production on August 31, 2011
- 20 • SCL: complete production on August 31, 2011

21 Given the significant amount of work to review and process documents in advance of the foregoing
22 deadline, SCL would unfairly be required to perform significant work at enormous cost, which will
23 be unnecessary if the Nevada Supreme Court grants SCL's Writ Petition and rules that the Court
24 lacks personal jurisdiction over SCL.

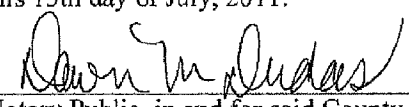
25 14. If the Motion to Stay is fully briefed by the parties and heard in the ordinary course,
26 SCL may be unnecessarily required to undertake actions it maintains are in violation of its due
27 process rights, which are the subject of the Writ Petition.

15. It is respectfully submitted that this Court is justified in shortening the time for briefing and hearing on the Motion to Stay and that the Motion to Stay should be set for hearing at the Court's earliest available calendar date.

EXECUTED July 13, 2011.


Andrew D. Sedlock, Esq.

Subscribed and Sworn to before me on this 13th day of July, 2011.


Notary Public, in and for said County and State.

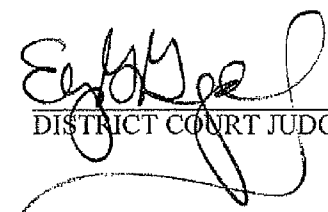


ORDER SHORTENING TIME

The Court, having considered Defendant's Application for an Order Shortening Time, the Affidavit of Andrew D. Sedlock, Esq., the Memorandum of Points and Authorities submitted with the Motion to Stay Proceedings Pending Writ Petition on Order Shortening Time, and good cause appearing therefore,


IT IS HEREBY ORDERED that the time for hearing Defendant's Motion to Stay Proceedings Pending Writ Petition is shortened to the 19 day of July, 2011, at the hour of 9:00 a.m. in the above-entitled Court.

DATED this ____ day of July, 2011.


DISTRICT COURT JUDGE

Respectfully Submitted by:

GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLC

By: 
Andrew D. Sedlock, Esq. (NBN: 9183)
3763 Howard Hughes Pkwy., Ste. 300
Las Vegas, Nevada 89169
Telephone: (702) 650-7900
Facsimile: (702) 650-7950

Attorneys for Defendant Sands China Ltd.

NOTICE OF MOTION


TO: ALL INTERESTED PARTIES; and

TO: COUNSEL FOR ALL INTERESTED PARTIES;

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion to Stay Proceedings Pending Writ Petition on Order Shortening Time on for hearing before the above-entitled Court on the _____ day of _____, 2011, at the hour of _____ o'clock _____.m. on said date, in Department XI, or as soon thereafter as counsel can be heard.

DATED this 13 day of July, 2011.

GLASER WEIL FINK JACOBS
HOWARD, AVCHEN & SHAPIRO LLP

By: 
Patricia L. Glaser, Esq. (Pro Hac Vice Admitted)
Andrew D. Sedlock, Esq. (NBN: 9183)
3763 Howard Hughes Pkwy., Ste. 300
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Attorneys for Defendant Sands China Ltd.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Following the denial of SCL's First Motion to Stay, the Nevada Supreme Court issued an Order Directing Answer (the "Order") on June 24, 2011. *See* Ex. B. The Order stated that SCL's Petition "set forth issues of arguable merit and that an answer to the petition is warranted." *Id.* The Order provides a briefing schedule, ordering Jacobs to file his answer to the Writ Petition on or

1 before July 25, 2011, with SCL's reply due fifteen (15) days after service of Jacobs' answer. *Id.*¹ In
2 light of the foregoing, SCL respectfully submits this new motion to stay proceedings.

3 Pursuant to the parties' meet and confer discussions regarding outstanding discovery issues,
4 the parties have tentatively agreed to produce relevant documents in August 2011 subject to further
5 meet and confer discussions. However, based upon recent input from the Macau OPDP, SCL must
6 ensure that any such production of documents by its Macau subsidiaries complies with Macau law,
7 including the Macau Act, which will require that SCL cause its Macau subsidiaries to review an
8 enormous amount of documents and ESI in order to (i) seek consent from the data subjects that
9 transfer of personal data outside of Macau is authorized, and/or (ii) seek such consent from the
10 Macau OPDP, depending on the sensitivity of the personal data at issue.² For example, even if a
11 data subject gives consent, SCL's Macau subsidiaries must still notify the OPDP before transferring
12 the personal data outside of Macau. In order to perform this significant amount of work by the end
13 of August 2011, SCL would be unfairly (and perhaps unnecessarily) forced to expend a significant
14 amount of resources and expenses, exceeding One Million Dollars (\$1,000,000.00), including but
15 not limited to SCL's outside lawyers traveling to Macau to review and analyze these materials,
16 hiring outside vendors to process between approximately 2 to 13 terabytes of ESI, or possibly more,
17 and hiring contract lawyers to travel to Macau to review these materials.

18 As described in greater detail below, a stay is warranted at this time pursuant to the analysis
19 of the following four factors set forth by Nevada law: (1) the purpose of SCL's Writ Petition, which
20 is to protect SCL's due process rights and prevent further improper exercise of personal jurisdiction;
21 (2) SCL will suffer irreparable harm if the stay is denied, including the continued deprivation of due
22 process rights, the inevitable conflict between Macau's data privacy laws and Nevada's rules
23

24 ¹ Separately, the Nevada Supreme Court now has before it Plaintiff Jacobs' recent Notice of Appeal challenging the
25 decision of this Court to grant the motion to dismiss Jacobs' defamation claim and the resulting dismissal of former
26 defendant Sheldon G. Adelson ("Adelson") from the pending lawsuit.

27 ² Based upon information presently available to SCL, it is unclear whether the Macau OPDP will provide such consent
28 to produce or otherwise transfer personal data outside of Macau. Even before SCL approaches the OPDP to seek such
data at issue in order to identify the potentially personal data subject to the Macau Act. See Affidavit of David Fleming.

1 regarding production of documents, along with the staggering cost of reviewing and producing such
2 documents; (3) Jacobs will suffer no harm by the issuance of a stay; and (4) as established by the
3 Nevada Supreme Court's recent Order, SCL's Writ Petition has merit and will be ruled upon
4 following the submission of the parties' briefs.

5 Therefore, SCL now respectfully requests that this Court stay the proceedings pending the
6 disposition of SCL's Writ Petition, which is warranted to protect SCL's due process rights and
7 conserve both the parties' and the Court's resources.

8 II. STATEMENT OF PERTINENT FACTS

9 While the Court is now familiar with the underlying facts in this case, SCL submits an
10 abridged summary of the factual and procedural history preceding this Motion to Stay.

11 A. SCL's Writ Petition Regarding its Motion to Dismiss for Lack of Personal 12 Jurisdiction

13 SCL is a Cayman Islands company that does business exclusively in Macau and Hong Kong
14 SAR of the People's Republic of China ("Hong Kong"). *See* Affidavit of Anne Salt ("Salt Aff'd")
15 at ¶ 3, attached to SCL's December 22, 2010 Motion to Dismiss.³ Jacobs' remaining claim against
16 SCL, as set forth in his First Amended Complaint ("FAC"), is for breach of contract and alleges that
17 while employed in Macau as SCL's President and Chief Executive Officer, SCL presented Jacobs
18 with a letter (the "Stock Option Grant Letter") that allegedly provided for a grant to Jacobs of an
19 option to purchase 2.5 million shares of SCL stock. *See* First Amended Complaint at ¶ 44. The
20 Stock Option Grant Letter states that it is governed by and construed in accordance with Hong Kong
21 law and further conditioned Jacobs' ability to exercise the option to purchase SCL stock on, among
22 other things, Jacobs' continued employment for SCL. *See* true and accurate copy of Stock Option
23 Grant Letter, attached to SCL's December 22, 2010 Motion to Dismiss at Exhibit F. Jacobs was
24

25
26
27 ³ SCL is required by the Rules Governing the Listing of Securities of the Stock Exchange of Hong Kong Limited to
28 carry on its business independently of, and at arms' length from, its "controlling shareholder," namely, LVSC. *See* true
and accurate copy of the Rules Governing the Listing of Securities of the Stock Exchange of Hong Kong Limited,
attached as Exhibit B to SCL's Reply in Support of December 22, 2010 Motion to Dismiss.

1 subsequently terminated before any of his options vested pursuant to the Stock Option Grant Letter.
2 See Salt Aff'd at ¶ 15.

3 SCL responded to Jacobs' Complaint on December 22, 2010 by filing the Motion to Dismiss
4 for Lack of Personal Jurisdiction (the "Jurisdiction Motion").⁴ The Court denied the Jurisdiction
5 Motion and ruled that it could exercise general personal jurisdiction over SCL due to the actions
6 taken in Nevada by Adelson, a non-executive director and Chairman of SCL's Board of Directors
7 (the "Board"), and by Michael Leven ("Leven"), a special advisor to SCL's Board of Directors. See
8 Transcript of March 15, 2011 Hearing, p. 62, lines 11-13. Adelson and Leven also are officers and
9 directors of Las Vegas Sands Corp. ("LVSC"), which is SCL's majority shareholder by virtue of its
10 ownership of approximately seventy percent (70%) of SCL's outstanding shares. See Salt Aff'd at
11 ¶¶ 4, 5.

12 SCL subsequently filed the Writ Petition, which requests an Order from the Nevada
13 Supreme Court compelling this Court to grant the Jurisdiction Motion, dismiss SCL from the
14 pending suit and cease the continued exercise of personal jurisdiction over SCL. See May 6, 2011
15 Writ Petition.

16 **B. SCL's Significant Work to Comply With Macau Law In Order to Gather and**
17 **Produce Documents in this Action**

18 Following the Court's denial of SCL's First Motion to Stay as premature, the parties have
19 continued to meet and confer regarding the scope of defendants' initial production of documents,
20 and have tentatively agreed that SCL and LVSC shall complete their respective initial production of
21 documents on or before August 31, 2011, with Jacobs scheduled to complete his production on or
22 before August 15, 2011. In anticipation of reviewing and producing documents located in Macau,
23 SCL's General Counsel and Company Secretary, David Fleming, met with the Macau OPDP to
24

25
26
27 ⁴ SCL also filed a Motion to Dismiss for Failure to State a Claim on April 20, 2011, which was scheduled for hearing
28 with this Court on June 9, 2011. That motion was denied in part, as to the breach of contract claims, and granted in part,
in regard to the defamation claims included in Jacobs' First Amended Complaint.

1 confirm the proper procedure required by the Macau Act and enforced by the Macau government.
2 See Affidavit of David Fleming (the "Fleming Aff'd").

3 According to the Macau OPDP, production of ESI and other documents stored in Macau will
4 require strict compliance with relevant Macau law. *Id.* First, SCL's Macau subsidiaries will be
5 required to review a vast amount of documents and ESI in order to (i) identify and obtain consent
6 from relevant data subjects before transferring any personal data outside of Macau, and/or (ii) obtain
7 consent from the Macau OPDP before transferring such personal data outside of Macau, depending
8 on the sensitivity of the personal data at issue. *Id.* In the event consent is given by the data subjects,
9 SCL's Macau subsidiaries must still provide notice to the OPDP that consent has been received
10 before the transfer of data outside of Macau. *Id.*

11 In order to perform this amount of work before the August 31, 2011 deadline, SCL's Macau
12 subsidiaries must bring several of its outside counsel to Macau to review and analyze this
13 information after hiring vendors to process between approximately 2 to 13 terabytes of information,
14 or possibly more. *Id.* Strict protocols must be adhered to in order to ensure that no personal data
15 leaves Macau in breach of the Macau Act. *Id.* For the Court's perspective, the lowest estimate of 2
16 terabytes (2000 gigabytes) is equivalent to nearly ten percent (10%) of all of the information
17 currently catalogued by the U.S. Library of Congress. See Ex. D. It is currently estimated that this
18 process will cost in excess of One Million Dollars (\$1,000,000.00) to complete. See Fleming Aff'd.
19 Lastly, SCL has also been informed that the Macau Act and its requirements will be strictly
20 enforced, and failure to comply may result in civil and criminal penalties. *Id.*

21 SCL now submits its renewed Motion to Stay, which is warranted due to the mounting
22 burdens posed by the discovery process and the Nevada Supreme Court's recent decision to hear
23 SCL's Writ Petition challenging the Court's continued exercise of personal jurisdiction over SCL in
24 derogation of SCL's due process rights.
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III. ARGUMENT

A. The Legal Standard.

In ruling on a motion to stay proceedings pending the Nevada Supreme Court's review of a writ petition, the Court should consider the following factors under Nevada law:

(1) Whether the object of the appeal or writ petition will be defeated if the stay is denied;

(2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied;

(3) Whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and

(4) Whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

Hansen v. Eighth Jud. Dist. Ct., 116 Nev. 650, 657, 6 P.3d 982, 986 (2000) (explaining that the requirements in NRAP 8(a) apply to writ petitions when the petitioner "seeks to challenge" a decision "issued by the district court") (citing *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948)).

As demonstrated below, the foregoing factors provide the Court with good cause to stay the proceedings in this case pending the Nevada Supreme Court's disposition of the Writ Petition.

B. The Object of the Petition Will be Defeated Unless A Stay is Granted in the Underlying Proceedings.

As stated above, the Nevada Supreme Court issued the Order on June 24, 2011 which confirmed that, after its review of the Writ Petition, SCL had "set forth issues of arguable merit and that an answer to the petition is warranted." See Ex. A. The Order further required Jacobs to file an Answer within thirty (30) days of the filing of the Order (or July 25, 2011), with SCL's Reply due fifteen (15) days after service of the Answer. *Id.*

The willingness of the Nevada Supreme Court to consider SCL's Writ Petition regarding personal jurisdiction issues reflects the fact that matters concerning the determination of personal jurisdiction necessarily involve threshold, fundamental due process considerations. See *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); see also *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). As stated in the Writ Petition and in SCL's First Motion to Stay, the due process protections at issue in a challenge to personal jurisdiction are recognized as

1 “fundamental rights and liberties which are, objectively, ‘deeply rooted in this Nation’s history and
2 tradition,’” and are “implicit in the concept of ordered liberty,” such that “neither liberty nor justice
3 would exist if they were sacrificed.” *See Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934).

4 The Nevada Supreme Court has recognized the arguable merits of the Petition’s arguments,
5 and that SCL may not be subject to personal jurisdiction in this Court. In the absence of personal
6 jurisdiction, the Court cannot enter or enforce any orders against SCL, and SCL is not subject to
7 service, discovery requests, or any other demands whatsoever incident to an ongoing litigation. *See*
8 *Monteverde, et al. v. Selnick*, 223 B.R. 755, 757 (D. Nev. 1998) (ruling that without personal
9 jurisdiction, the court cannot enter or enforce any orders, even by contempt proceedings). In the
10 absence of a stay, the object of the Writ Petition will be defeated as SCL will continue to be subject
11 to the Court’s jurisdiction and any further orders or obligations imposed by the NRCP.

12 While reserving its respective rights as set forth in the Writ Petition, the discovery process
13 has commenced and the parties have already exchanged initial lists of witnesses, and have continued
14 the formidable task of identifying and producing relevant documents. A stay is now warranted and
15 indeed required to avoid any further exercise of personal jurisdiction over SCL before that very
16 issue is decided by the Nevada Supreme Court.

17 Therefore, to avoid defeating the purpose of the Writ Petition and interfering with the
18 Nevada Supreme Court’s consideration of the arguments set forth in the Writ Petition, this Court
19 should stay these proceedings against SCL.

20 **C. SCL Will Suffer Irreparable Harm Unless the Stay is Granted.**

21 The Nevada Supreme Court has stated that when a party can demonstrate that it will face
22 irreparable or serious harm if a stay is denied, that should be considered in the stay analysis. *See*
23 *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253 (2004). With the recent filing of the Order
24 and the Nevada Supreme Court’s decision to consider the Writ Petition’s meritorious arguments, the
25 possibility of irreparable harm has now become timely and more tangible.

26 In the absence of a stay, SCL must continue with the ongoing costly and time-consuming
27 discovery process and will be under an obligation to produce documents and information pursuant
28 to the discovery requirements set forth in Nevada law. However, if the Nevada Supreme Court

1 grants the relief requested in the Writ Petition and issues an order dismissing SCL from the lawsuit
2 at some future date, how can this process be undone? Jacobs will be in possession of information of
3 which he may otherwise not be entitled to receive, with no mechanism in place to “un-ring the bell.”
4 This affects not only SCL, but the other defendant in this case, LVSC (and possibly Adelson if the
5 Nevada Supreme Court grants Jacobs’ appeal of the Court’s Order dismissing the defamation cause
6 of action against Adelson).⁵ Simply put, the harm potentially caused by a failure to grant a stay has
7 no remedy, and the impact of that harm strongly supports the imposition of a stay as to SCL.

8 In addition to the irreparable harm directly caused by SCL’s production of documents and
9 information in this case is the heavy burden of reviewing and producing the information currently
10 stored and controlled by SCL’s subsidiaries in Macau (which makes up a significant portion of all
11 information in SCL’s possession). As explained above, this herculean task will necessarily involve
12 the processing of an overwhelming amount of information, after which consent must be given by
13 each generating user of the relevant document or ESI and/or representatives of the Macau
14 government before any personal data can be transferred out of Macau. *See Fleming Aff’d at ¶¶ 5,*
15 *6.* The sheer cost, in terms of time and resources, of engaging in this process would severely
16 prejudice SCL, particularly considering the Nevada Supreme Court’s possible subsequent ruling that
17 this Court cannot exercise personal jurisdiction over SCL in this case. Given the due process issues
18 addressed in the Writ Petition, SCL respectfully requests that this Court stay the proceedings to
19 avoid causing irreparable harm and further violating SCL’s due process rights.

20 **D. Jacobs Will Suffer No Harm Through A Stay of These Proceedings.**

21 Jacobs will suffer no harm by waiting for the Nevada Supreme Court to decide whether to
22 consider the Writ Petition. Jacobs’ only claimed “harm” that could be caused by the stay would be a
23

24
25 ⁵ Jacobs’ recent Notice of Appeal further complicates this matter because if the Nevada Supreme Court subsequently
26 grants Jacobs’ appeal to overturn the Court’s dismissal of the defamation claim against Adelson, SCL may be forced to
27 revisit and perhaps repeat its work to gather, process and review documents and ESI in order to include discovery
28 regarding the defamation cause of action, that is currently not part of this litigation. Additionally, the scope of discovery
and discovery obligations of SCL’s Chairman of the Board of Directors (Adelson) will also change depending on
whether Mr. Adelson is a non-party to this litigation (as he is now), or becomes a party (if the Nevada Supreme Court
grants Jacobs’ appeal).

1 delay in the proceedings, and “a mere delay in pursuing discovery and litigation normally does not
2 constitute irreparable harm.” *See Mikohn*, 120 Nev. at 253. This factor therefore weighs in favor of
3 granting SCL’s Motion to Stay.

4 Additionally, given Jacobs’ recent filing of an appeal challenging the Court’s decision to
5 dismiss his defamation claim and Adelson from this case, Jacobs would benefit from a stay while
6 the Nevada Supreme Court considers Jacobs’ appeal.

7 Therefore, as Jacobs will suffer no harm as a result of a stay, SCL’s request is warranted and
8 the Court should issue an order staying this case as to SCL.

9 **E. SCL is Likely to Prevail on the Merits of Their Petition.**

10 The Order filed by the Nevada Supreme Court made clear that it has reviewed the Writ
11 Petition and found it to be arguably meritorious. In summary, the Writ Petition addresses the
12 following important issues:

13 First, Nevada should join the majority of jurisdictions which require a showing of alter ego
14 before a domestic entity’s in-forum contacts can be attributed to a foreign affiliate for jurisdictional
15 purposes. *See Doe v. Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001) (“[I]f the parent and
16 subsidiary are not really separate entities, or one acts as the agent of the other, the local [entity’s]
17 contacts with the forum may be imputed to the foreign [entity]”); *see also Newman v.*
18 *Comprehensive Care Corp.*, 794 F.Supp. 1513 (D. Or. 1992); *AT&T v. Lambert*, 94 F.3d 586 (9th
19 Cir. 1996). It is undisputed that Jacobs did not introduce any evidence, nor did the Court make any
20 findings, that SCL is the alter ego of LVSC. If the Nevada Supreme Court adopts the prevailing
21 standard, the Writ Petition will be granted and an order will be issued to grant the Motion and
22 dismiss SCL.

23 Second, a minority of jurisdictions that have addressed this issue have held that only when
24 evidence is presented that shows the in-forum entity exerts a level of control over the foreign entity
25 that exceeds its investment status in the foreign entity, can the in-forum entity’s actions be
26 considered in the jurisdictional analysis regarding the foreign entity. *See Reul v. Sahara Hotel, Inc.*,
27 372 F.Supp 995, 998 (S.D. Tx. 1974). Again, Jacobs presented no evidence, and the Court made no
28 findings, that LVSC exerted an excessive degree of control over SCL, considering LVSC’s status as

majority shareholder. Thus, even adopting a minority standard, the Nevada Supreme Court should grant the Writ Petition and dismiss SCL from this case.

Third, Nevada should join the consensus that the mere presence of directors or officers in the Nevada, and the corresponding performance of their duties, cannot (without a showing of alter ego or excessive control by the in-forum entity) be used to confer general personal jurisdiction over a foreign entity in Nevada. *See Transure, Inc. v. Marsh and McLennan, Inc.*, 766 F.2d 1297, 1299 (9th Cir. 1985). To the extent that the Court's denial of SCL's Motion was based on the activities of Adelson and Leven in Nevada without regard to the degree of control exercised by LVSC over SCL, such a decision is contrary to established due process requirements and the basic tenet of corporate law that recognizes a legal separation between entities and their officers, directors, shareholders, and affiliates. The Nevada Supreme Court should recognize the nearly universal application of this principle and grant the Petition.

Finally, and perhaps most fundamentally, in order to satisfy the "substantial or continuous and systematic" requirements under Nevada law, courts examine a defendant's intentional conduct that is actually directed at the forum state. *See Kumarelas v. Kumarelas*, 16 F.Supp.2d 1249, 1254 (D. Nev. 1998). In this case, Jacobs' allegations concern actions taken by Adelson and Leven that were directed at SCL in Macau, not actions taken by SCL directed to Nevada. The alleged actions of Adelson and Leven therefore cannot be used to demonstrate any "substantial or continuous and systematic" contact necessary for general jurisdiction⁶.

⁶ To the extent Jacobs attempts to introduce evidence that Adelson and Leven performed their duties as Chairman of the SCL Board of Directors and Special Advisor to the SCL Board of Directors, respectively, from Las Vegas and that SCL allegedly directed or participated in actions with its parent company, LVSC, in Las Vegas, the Writ Petition addresses those arguments as insufficient to establish general personal jurisdiction. First, the presence of directors in the forum state and the discharge of their duties from the forum state is inadequate to confer general personal jurisdiction. *See Gordon et al. v. Greenview Hosp., Inc.*, 300 S.W.3d 635, 648 (Tenn. 2009) (noting that a corporation is separate and distinct from its officers and directors, and declining to find personal jurisdiction based on resulting actions taken by directors in forum state). Second, evidence of SCL's interaction with LVSC or participation in shared services cannot form the basis of general jurisdiction, as such participation or oversight by a parent corporation does not denote alter ego or an "excessive degree of control" as required to apply general personal jurisdiction over a foreign subsidiary. *See Fletcher v. Atex, Inc.*, 68 F.3d 1451, 1459-60 (2d Cir. 1995) (appropriate parental involvement includes overseeing accounting procedures and other corporate functions); *Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1177 (9th Cir. 1980) (co-marketing efforts insufficient to demonstrate unity of interest between entities).

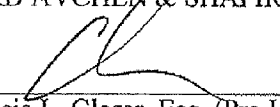
1 Because SCL is likely to prevail on the merits of its Writ Petition, this Motion to Stay should
2 be granted.

3
4 **IV. CONCLUSION**

5 For the reasons set forth above, SCL respectfully requests that the Court grant this Motion to
6 Stay pending disposition by the Nevada Supreme Court of SCL's Writ Petition.

7 Dated this 13th day of July, 2011.

8 GLASER WEIL FINK JACOBS
9 HOWARD AVCHEN & SHAPIRO LLP

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17 *Attorneys for Defendant Sands China Ltd.*
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1 **AFFD**

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12 *Attorneys for Defendant Sands China Ltd.*

13
14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 STEVEN C. JACOBS,
17
18 Plaintiff,
19
20 v.

21 LAS VEGAS SANDS CORP., a Nevada
22 corporation; SANDS CHINA LTD., a Cayman
23 Island corporation; DOES I through X; and
24 ROE CORPORATIONS I through X,
25
26 Defendants.

27 Case No.: A-10-627691-C
28 Dept. No.: XI

29 **AFFIDAVIT OF DAVID FLEMING IN**
30 **SUPPORT OF DEFENDANT SANDS**
31 **CHINA LTD.'S MOTION TO STAY**
32 **PROCEEDINGS PENDING WRIT**
33 **PETITION ON ORDER SHORTENING**
34 **TIME**

35
36)
37)ss:
38)

39 David Fleming, being first duly sworn, deposes and states:

40 1. I am the General Counsel and Company Secretary of Sands China Ltd. ("SCL"). I
41 have personal knowledge of the matters stated herein except those stated upon information and
42 belief and I am competent to testify thereto.

43 2. I make this Affidavit in support of SCL's Motion to Stay Proceedings Pending Writ
44 Petition on Order Shortening Time (the "Motion to Stay").

1 3. On June 28, 2011, I met with representatives of the Macau government's Office for
2 Personal Data Protection (the "Macau OPDP") to identify the proper procedures required by Macau
3 law and enforced by the Macau government, in particular the Personal Data Protection Act (the
4 "Macau Act"), in connection with SCL's work to gather, review and produce documents.

5 4. According to the Macau OPDP, production of Electronically Stored Information
6 ("ESI") and other documents stored in Macau will require strict compliance with relevant Macau
7 law.

8 5. For example, in order to comply with the Macau Act, SCL's Macau subsidiaries will
9 be required to review a vast amount of documents and ESI in order to (i) obtain consent from
10 relevant data subjects before transferring any personal data outside of Macau, and/or (ii) obtain
11 consent from the Macau OPDP before transferring such personal data outside of Macau, depending
12 on the sensitivity of the personal data at issue, as required by the Macau Act.

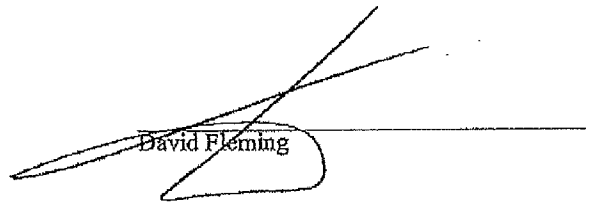
13 6. In the event consent is given by the data subjects, SCL's Macau subsidiaries must
14 still provide notice to the Macau OPDP that consent has been received for the transfer before the
15 initiation of the transfer of the data outside of Macau. Even before SCL approaches the data
16 subjects or the Macau OPDP to seek such consent, SCL would be required to expend a significant
17 amount of resources and expenses to process and review the data at issue in order to identify the
18 potentially personal data subject to the Macau Act.

19 7. In order to perform this amount of work before the tentative August 31, 2011
20 deadline as discussed with Jacobs' counsel, SCL's Macau subsidiaries will need to bring more than
21 ten (10) of its outside counsel and ESI consultants to Macau to review, analyze, and process
22 between approximately 2 to 13 terabytes of information, or possibly more. Strict protocols must be
23 adhered to in order to ensure that no personal data leaves Macau in violation of the Macau Act.
24 Based on information provided to SCL by vendors, it is currently estimated that this process will
25 cost in excess of One Million U.S. Dollars (\$1,000,000.00) to complete.
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8. SCL has also been informed that the Macau Act and its requirements will be strictly enforced by the Macau government, in particular the Macau OPDP, and failure to comply may result in civil and criminal penalties.

9. Nothing in this declaration is intended to be a waiver of any privileges, including but not limited to, the attorney-client privilege and the attorney work product privilege, all of which are expressly reserved.



David Fleming

Subscribed and sworn to before me
this ____ day of July, 2011

NOTARY PUBLIC in and for

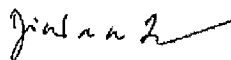
My Commission expires _____

CARTÓRIO DO NOTÁRIO PRIVADO DIAMANTINO DE OLIVEIRA FERREIRA

Reconheço a assinatura retro de **DAVID ALEC ANDREW FLEMING**, por confronto com a assinatura aposta no seu Passaporte nº **EB641239**, emitido em 20 de Agosto de 2009, pelo Governo da Nova Zelândia, cuja pública-forma me foi exibida.
Conta nº 96

\$7,00

Macao, 13 de Julho de 2011
O Notário,



TRANSLATION

OFFICE OF THE PRIVATE NOTARY DIAMANTINO DE OLIVEIRA FERREIRA

I certify the signature on the front page, of **DAVID ALEC ANDREW FLEMING** by confront with the signature shown on his Passport nº **EB641239**, issued on the 20th August 2009, by the Government of New Zealand, which notarized copy was shown to me.
Account nº 96

\$7,00

Macao 13th July 2011
The Notary
(signature)

Translation made in Macao, on 13th July 2011, by me Diamantino de Oliveira Ferreira in my capacity of Attorney at Law in the SAR of Macao, and its according to the original.



Diamantino de Oliveira Ferreira



EXHIBIT "A"

EXHIBIT "A"

Ann L. Shuman

CLERK OF THE COURT

1 **ORDR**
2 **CAMPBELL & WILLIAMS**
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4 **djc@campbellandwilliams.com**
5 **J. COLBY WILLIAMS, ESQ. (#5549)**
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9 **Telephone: (702) 382-5222**
10 **Facsimile: (702) 382-0540**

11 *Attorneys for Plaintiff*
12 *Steven C. Jacobs*

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

15 **STEVEN C. JACOBS,**
16 **Plaintiff,**

17 **vs.**

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

24 **Defendants.**

) **CASE NO. A-10-627691-C**
) **DEPT. NO. XI**

) **ORDER DENYING DEFENDANT**
) **SANDS CHINA LTD.'S MOTION**
) **TO STAY PROCEEDINGS**
) **PENDING WRIT PETITION ON**
) **ORDER SHORTENING TIME**

) **Hearing Date: May 26, 2011**
) **Hearing Time: 9:00 a.m.**

25 Defendant Sands China Ltd.'s Motion to Stay Proceedings Pending Writ Petition was heard
26 on shortened time on May 26, 2011; Plaintiff Steven C. Jacobs having been represented by Donald J.
27 Campbell, Esq. and J. Colby Williams, Esq.; Defendant Las Vegas Sands Corp. having been
28 represented by Stephen J. Peek, Esq.; Defendant Sands China, Ltd. having been represented by Mark
G. Krum, Esq.; Defendant Sheldon G. Adelson having been represented by Steve Morris, Esq.; and
the Court having considered all of the papers and pleadings on file herein as well as the oral
argument of the parties, hereby enters the following Order:

Page 1 of 2



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PHONE: 702/382-5222
FAX: 702/382-0540

07-01-11P02:39 RCVD

1 The Court finds that the Motion to Stay is premature for the reasons set forth more fully on
2 the record at the time of hearing. Accordingly, the Motion is DENIED without prejudice.

3 DATED this ____ day of June, 2011.

4
5 DISTRICT COURT JUDGE

6 Submitted by:

7 CAMPBELL & WILLIAMS

8
9 By: 

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11 J. COLBY WILLIAMS, ESQ. (#5549)

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13 Las Vegas, Nevada 89101

14 *Attorneys for Plaintiff*

15 *Steven C. Jacobs*

16 Approved as to form:

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GLASER, WEIL, FINK, JACOBS

HOWARD & SHAPIRO, LLP

18 By:

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23 *Attorney for Defendant*

24 *Las Vegas Sands Corp.*

25 MORRIS PETERSON

26 By:

27 STEVE MORRIS, ESQ. (#1543)

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By: 

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ANDREW SEDLOCK, ESQ. (#9183)

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Attorneys for Defendant

Sands China, Ltd.



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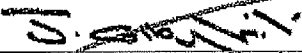
1 The Court finds that the Motion to Stay is premature for the reasons set forth more fully on
2 the record at the time of hearing. Accordingly, the Motion is DENIED without prejudice.

3 DATED this 5th day of July, 2011.

4
5 
DISTRICT COURT JUDGE

6 Submitted by:


7 CAMPBELL & WILLIAMS

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1 The Court finds that the Motion to Stay is premature for the reasons set forth more fully on
2 the record at the time of hearing. Accordingly, the Motion is DENIED without prejudice.

3 DATED this ____ day of June, 2011.

4
5 _____
6 DISTRICT COURT JUDGE

7 Submitted by:

8 CAMPBELL & WILLIAMS

9 By: 

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15 *Steven C. Jacobs*

16 Approved as to form:

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24 *Las Vegas Sands Corp.*

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EXHIBIT "B"

EXHIBIT "B"

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD.,
Petitioner,

vs.

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

Respondents,

and

STEVEN C. JACOBS,
Real Party in Interest.

No. 58294

FILED

JUN 24 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DIRECTING ANSWER

This original petition for a writ of mandamus or prohibition challenges a district court order denying a motion to dismiss.

Having reviewed the petition, it appears that petitioner has set forth issues of arguable merit and that an answer to the petition is warranted. Therefore, real party in interest, on behalf of respondents,¹ shall have 30 days from the date of this order to file and serve an answer,

¹Based on the documents before us, it appears that petitioner has not served its petition and appendices on respondents, the Eighth Judicial District Court of the State of Nevada in and for the County of Clark and the Honorable Elizabeth Goff Gonzalez. Petitioner shall therefore have five days from this order's date to serve respondents with a copy of the petition and appendices. Within that same time period, petitioner shall file in this court a certificate of service demonstrating that respondents were served with these documents. We caution petitioner that its failure to comply with this directive may result in the dismissal of this petition.

including authorities, against issuance of the requested writ. Petitioner shall have 15 days from the date of service of real party in interest's answer to file and serve any reply.

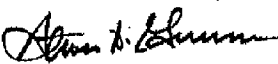
It is so ORDERED.

Dwyer, C.J.

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Glaser, Weil, Fink, Jacobs, Howard & Shapiro, LLC
Campbell & Williams

EXHIBIT "C"

EXHIBIT "C"


CLERK OF THE COURT

1 **STAT**
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13 *Attorneys for Defendant Las Vegas Sands Corp.*

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

16 **STEVEN C. JACOBS,**

17 Plaintiff,

18 v.

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

24 Defendants.

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

Date: April 22, 2011
Time: 9:00 a.m.

JOINT STATUS REPORT

25 On April 18, 2011 the parties, by and through their respective counsel, met to discuss an
26 agreeable discovery and briefing schedule. Patricia Glaser appeared on behalf of Defendant
27 Sands China Ltd. ("SCL"); Stephen Peek appeared on behalf of Defendant Las Vegas Sands
28 Corp. ("LVSC"); Steve Morris appeared on behalf of Defendant Sheldon G. Adelson
("Adelson"); and Donald Campbell and Colby Williams appeared on behalf of Plaintiff Steven
C. Jacobs ("Jacobs"). This Joint Status Report is provided to the Court in anticipation of the
Mandatory Rule 16 Conference scheduled for 9:00 a.m. on April, 22, 2011. The parties have
agreed as follows:

Initial Briefing Schedule

On or before **April 20, 2011**, LVSC will respond to Plaintiffs' First Amended Complaint
("FAC") with the filing of an answer and counterclaim and a motion to dismiss Plaintiff's fifth

1 cause of action; SCL will respond to the FAC with the filing of a motion to dismiss.

2 On or before **May 3, 2011**, Adelson will file a motion to dismiss the FAC. (The
3 Defendants' respective motions to dismiss are referred to collectively as the "Motions to
4 Dismiss".)

5 On or before **May 24, 2011**, Jacobs will file his opposition briefs to the Motions to
6 Dismiss.

7 On or before **June 3, 2011**, Defendants will file their respective reply briefs in support of
8 the Motions to Dismiss.

9 The parties request the Court schedule the hearing for the Motions to Dismiss for **June 9,**
10 **2011** or as soon thereafter as the Court will allow.

11 **Discovery Schedule**

12 **Initial Disclosure of Documents:**

13 The parties anticipate that LVSC and SCL's respective initial disclosures will consist of a
14 high volume of documents which will include Electronically Stored Information ("ESI").
15 Accordingly, on or before **May 2, 2011**, Jacobs will provide LVSC and SCL with search terms
16 and date ranges to be used by LVSC and SCL for the collection, review, and production of
17 documents. Thereafter, and as soon as practicable, LVSC and SCL will begin production of
18 initial disclosures on a rolling basis which will be completed by **July 1, 2011**.

19 The parties will make a good faith effort to resolve any dispute relating to the ESI terms
20 and/or dates provided by Jacobs. To the extent the Court's assistance is needed to resolve any
21 potential ESI dispute, the parties agree to seek the Court's assistance on an expedited basis and
22 LVSC and SCL will move forward with production of documents related to the *undisputed*
23 search terms and dates insofar as practicable.

24 On or before **May 16, 2011**, Jacobs will make his initial document disclosures. Jacobs
25 will continue to produce any remaining documents on a rolling basis which will be completed on
26 or before **July 1, 2011**.

27 **Initial Disclosure of Witnesses:**

28 On or before **May 16, 2011**, the parties will provide their initial lists of witnesses of each

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1 individual likely to have information discoverable under Rule 26(b).

2 Depositions:

3 The parties agree that no depositions will be taken until after **July 18, 2011**.

4 Discovery and Motion Deadlines

5 The final date to file motions to amend pleadings or add parties without a further court
6 order will be **November 1, 2011**.

7 The parties will make initial expert disclosures on or before **December 1, 2011**.

8 The parties will make their rebuttal expert disclosures on or before **February 1, 2012**.

9 The parties will complete discovery by **March 12, 2012**.

10 The final date to file dispositive motions will be **April 2, 2012**.

11 Trial

12 The parties estimate the trial will last **three to four weeks** and request a trial setting on
13 the **June 2012** stack, or as soon thereafter as the Court's calendar will allow.

14 DATED this ____ day of April, 2011.

DATED this ____ day of April, 2011.

16 /s/ J. Stephen Peek
17 J. Stephen Peek, Esq.
18 Holland & Hart LLP
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, Nevada 89169

19 *Attorneys for Defendant Las Vegas Sands*
20 *Corp.*

21 DATED this ____ day of April, 2011.

/s/ Patricia Glaser
Patricia Glaser, Esq.
Glaser Weil Fink Jacobs Howard Avchen &
Shapiro LLP
3763 Howard Hughes Parkway, Suite 300
Las Vegas, NV 89169

Attorneys for Defendant Sands China Ltd.

DATED this ____ day of April, 2011.

22 /s/ Steve Morris
23 Steve Morris, Esq.
24 Morris Peterson
900 Bank of America Plaza
300 South Fourth Street
25 Las Vegas, Nevada 89101

26 *Attorneys for Defendant Sheldon G. Adelson*

/s/ J. Colby Williams
Donald J. Campbell, Esq.
J. Colby Williams, Esq.
Campbell & Williams
700 S. Seventh St.
Las Vegas, Nevada 89101

Attorneys for Plaintiff Steven C. Jacobs

EXHIBIT "D"

EXHIBIT "D"

Library of Congress Web Archiving



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- [Digital Collections](#)
- [Library Catalogs](#)

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About the Library of Congress Web Archives

1. **What is the Library of Congress Web Archive?**

The Library of Congress Web Archive is a collection of archived websites grouped by theme, event, or subject area. Web archiving is the process of creating an archival copy of a website. An archived site is a snapshot of how the original site looked at a particular point in time. The Library's goal is to document changes in a website over time. This means that most sites are archived more than once. The archive contains as much as possible from the original site, including text, images, audio, videos, and PDFs.

2. **Why is the Library of Congress archiving websites?**

The Library of Congress is working with other libraries and archives from [around the world \(external link\)](#) to collect and preserve the web because an increasing amount of information can only be found in digital form on websites. A lot of cultural and scholarly information is created only in a digital format and not in a physical one. If it is not archived, it may be lost in the future.

Creating a web archive also supports the goals of the Library's Digital Strategic Plan. The Plan focuses on the collection and management of digital content and the [National Digital Information Infrastructure and Preservation Program's \(NDIIPP\)](#) strategic goal to manage and sustain at-risk digital content.

3. **What kinds of websites does the Library archive?**

The Library archives websites that are selected by recommending officers, or curators, based on the theme or event being documented. The types of sites archived include, but are not limited to: United States government (federal, state, district, local), foreign government, candidates for political office, political commentary, political parties, media, religious organizations, support groups, tributes and memorials, advocacy groups, educational and research institutions, creative expressions (cartoons, poetry, etc.), and blogs.

In 2010, the Library launched a program to archive sites not related to a particular theme or event. The sites are selected based on the subject expertise of recommending officers in three divisions: Humanities and Social Sciences; European Division; and Science, Business and Technology.

For a list of all current and previous collections, visit our [collections](#) page. To view publicly available collections, visit the [Library of Congress Web Archives](#).

4. **How large is the Library's archive?**

As of April 2011, the Library has collected about 235 terabytes of data (one terabyte = 1,024 gigabytes). The archives grow at a rate of about 5 terabytes a month.

5. **Are other organizations doing similar work?**

Yes, there are a variety of other organizations that archive websites, including non-profits, the U.S. government, libraries, and archives.

The [Internet Archive \(external link\)](#) is a non-profit organization that has archived billions of web pages since 1996. The Library of Congress contracts with the Internet Archive for many of its web archiving projects.

A number of U.S. federal government agencies collect official web content, including the [National Archives and Records Administration \(external link\)](#) (NARA) and the [Government Printing Office \(external link\)](#) (GPO).

The Library of Congress also works closely with members of the [International Internet Preservation Consortium \(external link\)](#) (IIPC). The IIPC was formed in 2003 to collect of a rich body of Internet content from around the world and to foster the development and use of common tools, techniques and standards. The Library of Congress is a founding member of the IIPC. Other members include the national libraries of Australia, Canada, Denmark, Finland, France, Iceland, Italy, Norway, Sweden and the United Kingdom, the Internet Archive, and many others. Visit the [IIPC Member Archives \(external link\)](#) portal to learn more about their programs.

6. **Why is the Library archiving websites if others are doing it as well?**

Libraries and other organizations that archive the web have different collection strategies and collect different URLs at varying frequencies and depths. The Internet Archive is often thought to be archiving "the entire web" but

in reality it is just a slice of what's available. It is important for libraries and archives to also select and create collections of web content. By working together, libraries, historical associations, archives, state governments, universities, and others focusing on specific collecting areas, can make sure that a larger amount digital content is archived and preserved for the future.

7. How do I contact the Library of Congress about its web archive?

Use the [online form](#) to ask a question about web archiving activities or to send a message to the Library's Web Archiving Team.

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How Web Archiving Works

1. How does the Library archive websites?

The Library or its agent makes a copy of a website using an open-source archival-quality web crawler called [Heritrix \(external link\)](#). The Library uses other in-house tools to manage the selection and permissions process.

2. What is a web crawler?

A web crawler is a software agent that traverses the web in an automated manner, making copies of the content it finds as it goes along. Web crawlers are used to create the index against which search engines search, or, in the context of archival crawling, to capture web content intended for longer-term preservation.

3. How much of a website is collected in the archive?

The Library's goal is to create an archival copy—essentially a snapshot—of how the site appeared at a particular point in time. Depending on the collection, the Library archives as much of the site as possible, including html pages, images, flash, PDFs, audio, and video files, to provide context for future researchers. The Heritrix crawler is currently unable to archive streaming media, "deep web" or database content requiring user input, and content requiring payment or a subscription for access. In addition, there will always be some websites that take advantage of emerging or unusual technologies that the crawler cannot anticipate.

4. Do you archive all identifying site documentation, including URL, trademark, copyright statement, ownership, publication date, etc.?

The Library attempts to completely reproduce a site for archival purposes.

5. Is there any personal information in the web archive?

The Library collects websites that are publicly accessible. These may include pages with personal information.

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Information Especially for Webmasters and Site Owners

1. Why was my website selected?

Websites are selected by Library subject experts according to collection strategies developed for each thematic or event collection. The Library maintains a [collections policy statement](#) and other internal documents to guide the selection of electronic resources, including websites.

2. How often and for how long will you collect my site?

Typically the Library crawls a website once a week or once monthly, depending on how frequently the content changes. Some sites are crawled more infrequently—just once or twice a year.

The Library may crawl your site for a specific period of time or on an ongoing basis. This varies depending on the scope of a particular project. Some archiving activities are related to a time-sensitive event, such as before and immediately after a national election, or immediately following an event. Other archiving activities may be ongoing with no specified end date.

3. What should I do if your crawler causes problems with my site?

The Library or its agent always tries to politely crawl sites in order to minimize server impact. Occasionally there may be problems. Please [contact us](#) immediately if you have problems or questions.

4. My site has a password-protected area that requires a user ID and password. Will this protected content be archived?

The Library does not archive password-protected content, unless by special permission from the site owner.

5. I have a robots.txt exclusion on my website to block crawlers from certain parts of my site. How does this affect your collecting activity?

The Library attempts to collect as much of the site as possible in order to create an accurate snapshot for future researchers. The Library notifies site owners before crawling which means we generally ignore robots.txt exclusions. Please [contact us](#) immediately if you have questions about this policy.

6. Do we need to contact you if our URL changes?

We periodically monitor websites for changes that might affect the crawler, however, it is helpful if you [notify us](#) with any changes to the URL.

7. How do researchers access the archived websites?

Public web archives are available on the [Library of Congress Web Archives](#) site. Researchers will access the collections through this main page. Each collection has a homepage where researchers can search or browse the catalog records for that collection.

Users may also [browse](#) or [search](#) across all of the available archives. Please note that the archives sites themselves are not full-text indexed, only the records about the archived sites are searchable.

If off-site access is available for an archived website, the catalog record will contain a page that links to all of the dates the site was archived. If off-site access is not available, the record will state "Access restricted to on-site users at the Library of Congress." Off-site access is only available if the site owner granted permission.

8. What will people see when they access the archived site?

Your archived site will appear much like it was on the day it was archived. The Library tries to get capture the content as well as the look and feel. It will have a [banner](#) at the top of the page that alerts researchers that they are viewing an archived version. The date that the site was archived also appears in this banner. Researchers will be able to navigate the site much like the live web. Some items don't work in the archive, such as mailto links, forms, fields requiring input (e.g. search boxes), some multimedia, and some social networking sites.

9. When will my archived site be available to researchers?

Web archive collections are made available as permissions, Library policies, and resources permit. There is normally a 6 month to a year lag time before the collection is made available to researchers. This is due to production and cataloging work that occurs for each archived site.

10. Will the archived page compete with my current site?

This is generally not a problem due to the time it takes for the archive to be available to researchers. The public will need to visit your live website in order to retrieve current information. If you have concerns about public access to the archived version of your website, you may deny the Library permission to provide access to researchers off-site.

11. Will there be a link from your archive to my site as it currently exists?

The catalog record will record the original URL—see the "[URL at time of capture](#)" field, but it will not be hyperlinked. Also, the original URL will also be listed on the page that displays all of the archived [dates](#).

12. What if I change my mind about allowing access to offsite researchers?

Please [contact](#) the Library if you change your mind about access via the public website, and you are a copyright owner of or otherwise have exclusive control over materials presently in the archive.

In your request, please identify the specific website, collection name (if you know it), (e.g., [www.mysite.com](#); Election 2004 Web Archive). If you have the original email the Library sent you for permission, please reply to that; it has tracking information in it to help the Library identify your URL in its collections.

13. What are the copyright implications of the archiving of our site?

The copyright status of your site remains with you. We have a statement on each [collection homepage](#) about copyright.

14. Will Library of Congress take over hosting of my site?

No. By archiving your site, the Library of Congress is preserving a snapshot of your site at a particular time. You are still responsible for hosting and maintaining your live website.

15. I would like to archive my website. Can you help me?

At this time, the Library of Congress does not have a program to help individuals archive their personal websites. However, the Library's Digital Preservation website has information about [personal archiving](#).

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The Library of Congress Permission Process**1. I was contacted via e-mail by the Library of Congress about archiving of my site. Is this a real request? Is it safe to click on the link?**

The Library notifies each site that we would like to include in the archive (with the exception of government websites), prior to archiving. In some cases, the e-mail asks permission to archive. All notifications request permission to provide off-site access to researchers.

The Library uses a permissions tool that allows easy contact with site owners via e-mail, and enables the site owners to respond to permissions requests using a web form. The responses are then recorded in a database.

The e-mail you receive from the Library of Congress contains webcapture@loc.gov in the "from" address, and "Library of Congress Permission Request" in the subject line. At the bottom of the e-mail message is the line, "LC Reference: [record ID, blanket id]", which is the Library's internal tracking information.

If you would like to confirm that the Library sent the permission e-mail, please [contact](#) us and a member of the Web Archiving Team will assist you.

2. What does it mean to grant or deny permission to allow the Library to display off-site?

If you grant the Library permission to display your archived website off-site, it means the Library of Congress will provide public access to the archived copies of your website. If you deny off-site access, the Library may catalog and identify the site as part of a particular collection on our public website, but your archived site will only be available to researchers who visit the Library of Congress buildings in Washington, D.C.

3. I am having difficulty filling out your permissions form.

Please [contact](#) us if you have problems with the form, or reply to the e-mailed permission request and someone from the Library's project team will assist you.

4. Why have I received multiple permission requests from the Library of Congress?

In previous years, the Library was required to send permission notices to all selected websites in every collection it initiated, even if the site had previously granted or denied permission. Policies changed in 2006 and the Library can now request and apply blanket permission. This means that if a site owner granted permission after 2006, the Library can use that permission for future collections. This has minimized duplication in permission requests, however the Web Archiving Team occasionally contacts site owners for additional permissions if required.

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ORIGINAL

Alvin D. Shuman

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al.

Defendants

CASE NO. A-627691

DEPT. NO. XI

Transcript of
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON DEFENDANT SANDS CHINA'S MOTION TO STAY
PROCEEDINGS PENDING WRIT PETITION

TUESDAY, JULY 19, 2011

APPEARANCES:

FOR THE PLAINTIFF:

COLBY WILLIAMS, ESQ.

FOR THE DEFENDANTS:

JUSTIN C. JONES, ESQ.
PATRICIA GLASER, ESQ.

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

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

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1 LAS VEGAS, NEVADA, TUESDAY, JULY 19, 2011, 9:03 A.M.

2 (Court was called to order)

3 THE COURT: Anyone who has a plane to catch and
4 wants the other lawyers to wait for you? Come on up.

5 MS. GLASER: Good morning, Your Honor.

6 THE COURT: 'Morning.

7 MR. JONES: 'Morning, Your Honor. Justin Jones on
8 behalf of Las Vegas Sands.

9 MR. WILLIAMS: Good morning, Your Honor. Colby
10 Williams on behalf of plaintiff Steve Jacobs.

11 MS. GLASER: Good morning, Your Honor. Patricia
12 Glaser for Sands China.

13 THE COURT: And you want to thank all the counsel
14 for letting you go first.

15 All right. So here's my question for you. Because
16 I read through all the briefs last night and I read the
17 affidavit and I've looked at everything, and it looks like the
18 only thing that has changed since the last time we discussed
19 the stay issue is that additional investigation has been done
20 by your in-house counsel and other people working with the
21 Macau Government to make a determination as to the extent of
22 the work that is necessary to comply with the document
23 requests.

24 MS. GLASER: Both the extent and the ramifications
25 if the statute is not complied with, Your Honor.

1 THE COURT: And the cost.
2 MS. GLASER: And the cost.
3 THE COURT: Okay.
4 MS. GLASER: That's not accurate. The -- since the
5 last time we were here talking about a stay, the additional
6 thing, if you're asking for what else has occurred, are two
7 other things.
8 THE COURT: Okay.
9 MS. GLASER: One is that the Nevada Supreme Court on
10 July 24th issued an order. I'm not suggesting for a moment it
11 dictates what --
12 THE COURT: They want an answer.
13 MS. GLASER: They want an answer.
14 THE COURT: Okay.
15 MS. GLASER: We have a reply brief due, which I
16 believe is August 9. The opposition is due July 25th.
17 THE COURT: And how long do you think it's going to
18 take them to rule on a writ given how long CityCenter's been
19 up there?
20 MS. GLASER: Your Honor, based on what I have been
21 told, it is not able to be predicted.
22 The third thing --
23 THE COURT: The answer is it's a long time.
24 MS. GLASER: I respect that.
25 And the third thing, Your Honor, is that Your Honor

1 ruled on Mr. Adelson's and our, actually, corporate
2 defendants' motion on --

3 THE COURT: The defamation motion.

4 MS. GLASER: -- the fifth cause of action. That has
5 been appealed by the other side. And while it's been somewhat
6 pooh-poohed in the papers as, you know, what difference does
7 that make, it does make a difference; because it is -- it goes
8 to the very heart of the allegations. One of the claims is --
9 in the quote was that Mr. Jacobs was fired for cause. And the
10 claim is that's not true. And that is going up to the Supreme
11 Court. And that goes to the very heart of a lot of this --
12 the fight that's here, number three, and --

13 THE COURT: Well, but I dismissed the defamation
14 claim --

15 MS. GLASER: Yes.

16 THE COURT: -- not because the statement may or may
17 not have been appropriate, but because it was privileged.

18 MS. GLASER: Absolutely, Your Honor.

19 THE COURT: So still discovery related to that is
20 fair game, don't you think, because the statement is made in
21 the context of this litigation, and it's a statement that one
22 of the witnesses has made and I'm sure that people are going
23 to do discovery related to whether I dismiss the claim for
24 relief or not. Right?

25 MR. WILLIAMS: Correct.

1 THE COURT: Okay. So that's not -- that doesn't
2 make a difference.

3 MS. GLASER: The other thing that I -- Mr. Fleming's
4 declaration, which Your Honor's had the opportunity to read,
5 of course, is very clear that we have a huge row to hoe in
6 terms of time and in terms of what's ultimately going to be
7 produced. The other side actually cited to you the Societe
8 Generale case, and I do want to comment on that, because that
9 case is -- it's somewhat disingenuous to talk about that.
10 They are a plaintiff claiming that -- the plaintiff comes into
11 the court voluntarily and says, I don't want to produce
12 documents because I've got a discovery problem with the
13 statute back in the country where I come from; and the court
14 said, wait a minute, you can't have it both ways, you came in
15 and used our jurisdiction and to be a plaintiff you've got to
16 live with the rules here. We did not do that. We are not the
17 plaintiff here. We are a defendant and certainly, Your Honor
18 has probably guessed by now, unwilling defendant in this
19 jurisdiction.

20 THE COURT: You and I have a disagreement about
21 that, and Carson City's going to work that out some day.

22 MS. GLASER: I hundred percent agree. But at least
23 our position is that we are -- we were dragged into this
24 unwillingly. And the most important thing I could add to that
25 is twofold. One, the Court has before it what we understand

1 the Macau law to be. And I understand that nobody's conceding
2 that, but we are -- you said the last time we were here -- I
3 wasn't here, so I'm quoting one of my partners, who said, when
4 you get on -- in words or substance you said, when you're on
5 the cusp of violating the law come back and see me. We are on
6 the cusp of violating the law, Your Honor.

7 THE COURT: You're not there yet.

8 MS. GLASER: Pardon me?

9 THE COURT: I don't think you're there yet.

10 MS. GLASER: Well --

11 THE COURT: I don't think you are in the position
12 where the production of documents that has been requested is
13 going to cause you a problem. I think what you need to do at
14 this point is you need to disclose the documents that are
15 relevant and which will not in your opinion, not anybody
16 else's, your opinion, get you in trouble with the Macau
17 authorities. Once you have done that, I assume that Mr.
18 Campbell and Mr. Williams are going to file a motion to
19 compel. And then they are going to say, gosh, Judge, Sands
20 China hasn't produced enough documents, they really need to
21 produce all these more documents. And then you're going to
22 say, Judge, I can't because I'd be in trouble with the Macau
23 folks. And then I'm going to say, gosh, maybe now is the time
24 to stay you from producing those additional documents. But
25 I'm not there yet, because you haven't produced anything.

1 MS. GLASER: I'm going to try -- I need to say this
2 one more time. And I know that we touched on Mr. Fleming's
3 declaration. In order to get to the point that Your Honor's
4 articulating -- I certainly understand what you just said. In
5 order to get to that point the amount of review, the 2 to 13
6 whatever it's called, megabytes --

7 THE COURT: Terabytes.

8 MS. GLASER: -- terabytes of documents is going to
9 require us to go to Macau. We're not allowed to look at
10 documents at a station here in --

11 THE COURT: Mr. Jones is going to go. He's already
12 brought dolls back that broke.

13 MS. GLASER: Actually, Mr. Jones can't go.

14 MR. JONES: I'm prohibited from going, actually, by
15 the Macau Government.

16 MS. GLASER: He is prohibited from going.

17 THE COURT: I'm sorry to hear that, Mr. Jones.

18 MS. GLASER: The only people that can go are people
19 that represent Sands China, and they to do it in Macau. We
20 then go document by document, and all that work has to be done
21 before we ever get to a chat with the other side with respect
22 to what we're able to produce and what we aren't. But what
23 has to be done is not only do you have to -- we have to review
24 the documents in Macau --

25 THE COURT: Correct.

1 MS. GLASER: -- which will take six to eight weeks,
2 having done that we then must present everybody who's named on
3 any of these emails, for example --

4 THE COURT: A consent form.

5 MS. GLASER: -- a consent form.

6 THE COURT: Right.

7 MS. GLASER: Once the consent form is signed, we
8 then must go back to the government document by document, not
9 just the ones that we believe may or may not be subject to the
10 Privacy Act, because we're not taking that risk, because there
11 are criminal sanctions, we literally are going to be in a
12 position of having to show every document that we intend to
13 take out of Macau and show to the other side. We must
14 actually go to the government and get their permission. That
15 is not only an enormously expensive task, because we will have
16 to have reviewed all those documents, obviously, but it is a,
17 to be kind, an unpredictable one other than being told the
18 likelihood of us being able to produce any volume is not
19 significant at all. And in order to avoid that huge expense
20 and that ten -- eight to ten weeks in Macau, I think it is
21 appropriate for Your Honor to say, you know what -- and I get
22 your -- I get your problem about the Nevada Supreme Court
23 acting promptly, and I understand the CityCenter comment. But
24 the truth of the matter is --

25 THE COURT: Well, it's not because they don't work

1 hard, because they do.

2 MS. GLASER: I'm sure.

3 THE COURT: It's because their caseload is very
4 high.

5 MS. GLASER: I appreciate that, and I --

6 THE COURT: Just so we're clear --

7 MS. GLASER: I'm not suggesting --

8 THE COURT: -- so this is on the record. And it
9 will go to Carson City some day.

10 MS. GLASER: We're recording it, Your Honor, I
11 understand.

12 THE COURT: I know. Just so it's clear, it's not
13 that they don't work hard. They do work hard. They just have
14 a tremendous workload.

15 MS. GLASER: Tremendous workload. And what I'm
16 effectively saying is that one of the issues raised by the
17 other side in their opposition is, well, we're controlled by
18 Las Vegas Sands anyway. Actually, it cuts the other way.
19 When they say they're controlled, let's test that with your
20 discovery plan, Your Honor. Because indeed, if we're
21 controlled by Las Vegas Sands, then they should have no
22 problem getting the documents whether we're parties or whether
23 there's a stay or not. So the control issue, in our judgment,
24 is a phony issue.

25 Bottom line, the enormous expense, the -- yes, I

1 understand that there may be some delay if we're stayed and
2 Your Honor is correct and we are incorrect with respect to
3 whether or not the Court has jurisdiction over us, it is a
4 very significant issue. The cases that have been cited by the
5 other side are inapposite, and in our view, respectfully, Your
6 Honor, I think you're doing tremendous damage to Sands China,
7 which is by law required -- under the Hong Kong Stock Exchange
8 rules by law required to act independently and separate from
9 Las Vegas Sands.

10 THE COURT: I understand.

11 Mr. Williams.

12 MR. WILLIAMS: Your Honor, I know you've had a
13 chance to read everything. I don't want to repeat what's in
14 the briefs. I'll just focus on what I believe to be the main
15 argument, which is not the issue of what documents are
16 ultimately going to be withheld and not produced and thus
17 potentially the subject of a motion to compel. They don't
18 want to do any search at this point.

19 THE COURT: I understand.

20 MR. WILLIAMS: And so I think we've addressed it in
21 the brief by saying they're going to have to do that search
22 anyway. Even if they get out on jurisdiction, I think the
23 control issue is not a phony issue. Las Vegas Sands does
24 control Sands China, and by directing discovery requests
25 ultimately to Las Vegas Sands seeking Sands China documents,

1 they're still going to have to engage in the same exercise
2 they're trying to avoid now. And I realize we're not there
3 yet. I agree it's premature, but I just want that made clear
4 for the record.

5 The second component out there that I don't know the
6 answer to, they can address it, is this isn't the only piece
7 of I'll call it litigation or legal proceedings involving some
8 or all of these issues, that the companies have announced, you
9 know, publicly in their disclosures that there are government
10 investigations that are seeking documents from them, as well.
11 And my point on that is that, irrespective of the Jacobs
12 lawsuit, they may be having to engage in this exact same
13 process anyway, irrespective of this litigation or not. So
14 for that reason, as well, I don't think that the argument they
15 don't want to engage in the process at all merits a stay in
16 this action. And I'll just leave it at that.

17 MS. GLASER: May I respond to both points?

18 THE COURT: You may.

19 MS. GLASER: The control issue test ought to be if
20 Las Vegas -- if Counsel's accurate and Las Vegas Sands
21 controls us, which is not the case, and I want to be very
22 clear about that, then the way to test that is serve a
23 subpoena on Las Vegas Sands asking Las Vegas Sands to require
24 us to produce all the Sands China documents, and then you'll
25 be able to test the argument. Because it's not true, number

1 one.

2 Number two, this control -- the government
3 investigations that are occurring, they have the same
4 roadblock, the same stone wall that every else has. They are
5 not -- they are not even permitting the government to come in
6 and look at documents, period. It is only Sands China lawyers
7 who are being allowed to even start the process of reviewing
8 documents. There are no documents that have been produced
9 that have -- from Sands China to the federal government in any
10 way, shape, or form. And I need to be very clear about that,
11 Your Honor.

12 So I appreciate that Counsel doesn't have knowledge
13 of that. I'm representing that to the Court. We understand
14 that that is an issue that will have to be dealt with down the
15 road. But it is certainly not happening now.

16 THE COURT: Okay. The motion is denied. At this
17 time it is premature. As I indicated, my anticipation is that
18 the initial document production for those documents that Ms.
19 Glaser and her other co-counsel believe are appropriate for
20 production need to initially be produced. If there is a
21 limitation that is appropriate in order to avoid violation of
22 Macau law, you should, of course, limit the production. There
23 will then be a motion to compel, and at that point we may be
24 in a position to address the motion for stay. Today's not the
25 day. I keep saying that.

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Anything else?

MR. JONES: Thank you, Your Honor.

MS. GLASER: Thank you, Your Honor.

THE COURT: Have a nice day.

THE PROCEEDINGS CONCLUDED AT 9:15 A.M.

* * * * *

CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt
FLORENCE HOYT, TRANSCRIBER

7/19/11

DATE

Alan D. Quinn

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

STATUS CHECK

THURSDAY, MAY 24, 2012

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.
HENRY WEISSMAN, 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.

RECEIVED

MAY 29 2012

CLERK OF THE COURT

60

1 LAS VEGAS, NEVADA, THURSDAY, MAY 24, 2012, 9:12 A.M.

2 (Court was called to order)

3 THE COURT: That takes me to the last case on my
4 calendar this morning. Is anybody here on something other
5 than Sands Jacobs?

6 Okay. Good morning.

7 All right. Somebody want to tell me what's going
8 on? I guess you should identify yourselves for purposes of
9 the record first.

10 MR. PEEK: Good morning, Your Honor. Stephen Peek
11 on behalf of Las Vegas Sands and on behalf of Sands China
12 Limited.

13 MR. WEISSMAN: Good morning, Your Honor. My name is
14 Henry Weissman from the Munger Tolles & Olson firm. I
15 represent Sands China. And I also wanted to extend my
16 greetings and apologies for my partner Brad Brian, who
17 unfortunately threw out his back and is unable to be here this
18 morning.

19 THE COURT: It's okay. You're going to do fine.

20 MR. BICE: Good morning, Your Honor. Todd Bice on
21 behalf of Mr. Jacobs.

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

24 MR. PISANELLI: Good morning, Your Honor. James
25 Pisanelli on behalf of Mr. Jacobs.

1 THE COURT: Good morning. All right. This was
2 our status check for us to figure out how we were going to
3 do our evidentiary hearing on jurisdiction that the Supreme
4 Court has ordered that I do before we do anything else on this
5 case. And we had initially planned to start this the week of
6 June 25th.

7 MR. PEEK: 25th, Your Honor.

8 THE COURT: And I will be back, ready to go on
9 June 26th in the morning if you guys are ready to start then
10 if you can give me a little bit of idea on your timing and
11 issues like that.

12 MR. BICE: Well, I think, Your Honor, from our
13 perspective we are likely going to be asking you to move that
14 date in light of where we are at and where --

15 THE COURT: And then where am I going to put the
16 Corrigan case, and where am I going to put the Harmon Tower,
17 whatever they're doing with that evidentiary hearing?

18 MR. BICE: I understand, Your Honor. I am involved
19 in the Corrigan case.

20 THE COURT: And then there's the Planet Hollywood
21 case that goes for eight weeks starting right at Labor Day,
22 and then there's a couple of -- about five weeks where I'm
23 going to try and try every case I have except CityCenter, and
24 then I'm going to start CityCenter.

25 MR. BICE: Understood.

1 THE COURT: Okay. So?

2 MR. PEEK: And, Your Honor, we obviously want to go
3 in that week.

4 MR. BICE: Well --

5 THE COURT: I've had that week set aside for a
6 period of time. So let's talk about it.

7 MR. BICE: Well, all right. Let's talk about it. I
8 mean, where we are at right now is we have received some
9 documents, I believe last week, from Las Vegas Sands.
10 Yesterday we were told that they have not searched Mr.
11 Jacobs's emails. We are supposed to get --

12 THE COURT: You mean his company emails?

13 MR. BICE: His company emails.

14 THE COURT: Okay.

15 MR. BICE: We were also told yesterday, I believe,
16 that Sands China had not searched any of its emails, from what
17 we could gather. We have not received anything from Mr.
18 Levin, although we have been told that we will get those
19 perhaps tomorrow and that we will get documents from Mr.
20 Adelson maybe tomorrow or sometime in the future. And these
21 were, by the way, just -- we received -- what we received were
22 just documents. We don't have responses, we don't have any
23 indication of what they are responsive to, except during a
24 phone call yesterday where we got a little bit of color on
25 what some of the documents are.

1 So with that in mind, I think it's a little -- I
2 mean, I understand their position is, well, we'd like to go,
3 and, of course, that's easy to say when we don't have the
4 documents and we've got to take these depositions yet. And
5 we're clearly, based on yesterday's call, going to have to
6 have a motion to compel because of what we were told.

7 THE COURT: Or a motion to exclude.

8 MR. BICE: Well, it's a little -- or a motion for
9 adverse inferences for failure to produce.

10 THE COURT: Or a motion for adverse inferences.

11 MR. BICE: And the Court can --

12 THE COURT: There's a lot of different things you
13 could do in conjunction with this that doesn't cause me to
14 have to move that date --

15 MR. BICE: Okay.

16 THE COURT: -- which we set about six months ago.
17 Well, no. Three months ago?

18 MR. PEEK: More than that, Your Honor.

19 MR. BICE: No. This was --

20 THE COURT: Set it in January or February, didn't
21 we?

22 MR. BICE: No, because we -- this was the original
23 start of the trial date. We were on this track for the trial
24 date. That's how this got set. So --

25 THE COURT: Well, no. We had -- originally I had a

1 date around Thanksgiving, and then I had a date of January,
2 and then I had a date in March. Now I have this date. I've
3 always had this date for the trial, but I can't do the trial,
4 because everything's stayed till resolve the jurisdictional
5 issue. So you're going to file some motions, huh?

6 MR. BICE: Well, I think we are going to file some
7 motions. The status where we are at is we have produced Mr.
8 Jacobs's -- and this is again where we're at a little bit of a
9 disadvantage. We have produced Mr. Jacobs's electronic
10 storage equipment per an agreement we have worked out to
11 advance discovery. Advance discovery I think has done its
12 first round of segregation of the information or is in the
13 process of completing that. Then the documents are going to
14 go to them for review, sort of as we had previously outlined.
15 We've modified that somewhat by agreement amongst the parties.

16 So part of our other problem is we -- they obviously
17 have said before, and you've granted their motion, about
18 deposing Mr. Jacobs. Well, we aren't allowed to look at Mr.
19 Jacobs's own documents. So, again, we think it's a little
20 unfair for us to be defending our client at a deposition when
21 we can't review his own documents. So that again is another
22 problem.

23 I think another problem is we got a letter, I don't
24 remember what day it was, I think it was a couple of days ago,
25 and I think it's pretty clear we're going to have a little

1 tussle about Mr. Adelson's deposition. Even though you've
2 ordered it, we got a letter -- it's been noticeable to us that
3 we haven't been provided a date for Mr. Adelson's deposition,
4 and now we get a letter saying that, well, they're reserving
5 the right to come back to the Court not to have Mr. Adelson's
6 deposition. So we've got to bring that issue to a head, too.

7 THE COURT: They can always ask me not to let it.
8 But you've got to set it first. Then they'll file a motion
9 that says, hey, Judge, don't let take his depo.

10 MR. BICE: Well, I'm trying to -- I don't -- I don't
11 want to have to set them unilaterally, but apparently that's
12 what we're going to have to do with respect to him. But,
13 again, we've got to get documents from them.

14 THE COURT: Isn't Steve Morris his lawyer in this
15 case?

16 MR. BICE: Not --

17 THE COURT: Not anymore, huh?

18 MR. BICE: Well, yes. In the defamation component
19 of it, yes, that's right, he is.

20 But again, we don't have documents from Mr. Adelson,
21 Mr. Levin, or Mr. Goldstein.

22 THE COURT: And when are the depos scheduled?

23 MR. BICE: Well, we -- they have proposed dates for
24 them, Mr. Kay I think sometime next -- the 2nd, and then
25 they've given us dates that they propose for Mr. Levin and Mr.

1 Goldstein. But again, that's a little bit advantageous for
2 them to give us dates when we don't have the documents.

3 THE COURT: Really -- we're really slipping
4 backwards. So why haven't we produced the documents sooner?

5 MR. PEEK: Well, Your Honor, I guess I can address
6 the Las Vegas Sands issues, and then [inaudible], and Mr. --

7 THE COURT: Weissman. Mr. Weissman.

8 MR. PEEK: -- Weissman, excuse me.

9 THE COURT: I wrote the name down so I'd get it
10 right.

11 MR. PEEK: I know. I talk to him all the time, and
12 I was just -- I had a senior moment, Your Honor.

13 THE COURT: I'm not saying anything about that, Mr.
14 Peek.

15 MR. PEEK: I don't want to say anything about it.
16 That 40 years I think has gotten to me.

17 Your Honor, we have produced documents in response
18 to their requests for production sometime ago in rolling
19 production. We did produce documents in March, we produced
20 documents last week. Additional documents -- we're going to
21 produce additional documents this Friday. We have proposed
22 dates to them for -- on at least two occasions asking them to
23 select a date for Mr. Kay, Mr. Goldstein, and Mr. Levin, and
24 they have refused to take a date. But when Mr. Bice stands up
25 and says we haven't produced any documents till just the other

1 day, that's not correct. We produced documents back in March,
2 and then we identified, as well, Your Honor, in a first
3 supplement documents that had been previously produced -- you
4 may recall that we had started production of documents under
5 the ESI protocols back in summer of last year.

6 THE COURT: Correct.

7 MR. PEEK: And so we --

8 THE COURT: Prior to the stay.

9 MR. PEEK: Pardon?

10 THE COURT: Prior to the stay.

11 MR. PEEK: Prior to the stay. And so we identified
12 documents within that grouping that were responsive to their
13 request. We have -- I gave him a disk last week, and then I
14 identified by Bates numbers this week the documents -- which
15 document is responsive to each request. They've insisted on
16 an index. We're going to provide them with an index, as well,
17 of the documents.

18 THE COURT: Smart decision on your part.

19 MR. PEEK: I've got to argue these issues, Your
20 Honor. I think -- well, I'll leave that for another day.

21 So when they say that they don't have documents,
22 they do.

23 With respect to Jacobs, Jacobs -- I'll have to let
24 Mr. Weissman deal with Mr. Jacobs, because those are issues
25 that are of Sands China, because he was a Sands China

1 executive, not a Las Vegas Sands executive. So we don't have
2 documents on our server related to Mr. Jacobs. So when he
3 says we haven't searched Mr. Jacobs, he is correct; because we
4 don't have things to search for Mr. Jacobs.

5 THE COURT: So he didn't have a separate email
6 address within the Las Vegas Sands server --

7 MR. PEEK: That is my understanding, Your Honor.

8 THE COURT: -- email server?

9 MR. PEEK: His was a .mo, which is the designation
10 for Macau --

11 THE COURT: Okay.

12 MR. PEEK: -- as opposed to a .com, which would be
13 the Las Vegas Sands or the venetian.com. So he didn't have
14 that. With respect to the ESI of Mr. Jacobs, I'll let Mr.
15 Weissman address that issue.

16 So I guess that my issue is that my clients, who are
17 executives of Las Vegas Sands, are ready and prepared to go
18 forward with their depositions on the dates that we've
19 suggested to them. We've suggested them twice, you know, pick
20 a date.

21 THE COURT: And at this point you believe you have
22 fully complied with your discovery obligations in preparation
23 for this jurisdictional hearing?

24 MR. PEEK: Yes, Your Honor, in the sense that we
25 have commenced production and we will continue to produce.

1 THE COURT: Okay.

2 MR. PEEK: And they --

3 THE COURT: When do you anticipate --

4 MR. PEEK: They quarrel with I think some of the
5 depositions -- excuse me, some of the discovery.

6 THE COURT: When do you anticipate completing your
7 rolling disclosures?

8 MR. PEEK: We will have Mr. Levin and Mr. Goldstein
9 by this Friday. We're working on Mr. Adelson, and we should
10 have Mr. Adelson hopefully by the end of next week, but, if
11 not, no later than the following week, which is the first week
12 of June.

13 THE COURT: Okay.

14 MR. PEEK: But we hope to have it next week.

15 THE COURT: Understanding there may be an issue
16 about whether they agree with your production, do you believe,
17 given that rolling production schedule, you will have fully
18 complied with your discovery obligations in preparation for
19 the evidentiary hearing by the first week of June?

20 MR. PEEK: Yes, Your Honor --

21 THE COURT: Okay. Thanks.

22 MR. PEEK: -- I do.

23 THE COURT: Mr. Weissman. I know you've sort of
24 been thrown in this because somebody's back went out, but I
25 appreciate you being here, and to the extent you can

1 intelligently answer questions, I will truly appreciate it.

2 MR. WEISSMAN: I'll do my best. And it's a pleasure
3 to be here, Your Honor. Thank you.

4 First of all, let me just start by saying we, too,
5 feel very strongly that the hearing should go forward as
6 planned on June 25th or 26th. Sands China Limited doesn't
7 believe it should be in this case to begin with, and we're
8 eager to get that issue heard and decided as soon as possible.

9 THE COURT: I've been ordered to conduct an
10 evidentiary hearing, and I'm doing my best to get there.

11 MR. WEISSMAN: Thank you. We appreciate that.

12 And to that end, as the Court may recall, we don't
13 believe that the facts that are relevant to the jurisdictional
14 issue are in dispute. So we offered to stipulate to those
15 facts some time ago. Plaintiffs felt that that stipulation
16 didn't go far enough, they wanted more detail, so hence the
17 document production and deposition process that we have
18 ongoing. But we think this -- it's ready to -- it's
19 appropriate to bring this to a conclusion.

20 With respect to Mr. Jacobs's ESI, we thought that
21 was the purpose of the protocol that has been discussed many
22 times with the Court since last October of delivering the
23 documents that he has to the ESI vendor so they can be
24 reviewed. I'm assuming that contains his email, since there's
25 quite a lot of data.

1 THE COURT: Don't make that assumption.
2 MR. WEISSMAN: Well, I think the first thing that
3 should --
4 THE COURT: It would be bad for your to make that
5 assumption, because one would hope that his emails were on
6 your server.
7 MR. WEISSMAN: Another image of them presumably
8 would be.
9 THE COURT: Well, that's where they should be, is on
10 the email server. He may have an extra or a duplicate copy
11 that's on his laptop and the other storage devices he has.
12 MR. WEISSMAN: Right.
13 THE COURT: But they'd better be on your email
14 server.
15 MR. WEISSMAN: Sure.
16 THE COURT: Because if they're not on your email
17 server, boy, we'll have a lot of problems.
18 MR. WEISSMAN: Understood. But in terms of --
19 THE COURT: Okay. So when are they going to get
20 produced?
21 MR. WEISSMAN: In terms of process, Your Honor,
22 we're going to go through a very elaborate and lengthy and
23 costly process to review Mr. Jacobs's ESI. It seems to us
24 that process should run its course before we're obligated to
25 go back and look at whatever emails we have of his, as well.

1 Why would we do it twice?

2 THE COURT: So you're telling me you haven't
3 produced any of them and you haven't begun the process.

4 MR. WEISSMAN: That's correct.

5 THE COURT: Okay. The hearing is vacated. I will
6 see you to discuss rescheduling of the hearing on June 28th.
7 At that time I want an update as to where Sands China is with
8 respect to the production of the ESI of Mr. Jacobs and the
9 fulfillment of all of the discovery obligations which we have
10 discussed for the evidentiary hearing to occur.

11 Anything else?

12 MR. PEEK: Your Honor, I know you did -- I knew you
13 did --

14 THE COURT: Thank you -- thank you for being
15 grilled, Mr. Peek. I really appreciate you going first and
16 being grilled, because I got -- I set it up for the way that
17 hopefully we'd get the right answers.

18 MR. PEEK: Yeah. Well, there's one thing that I
19 don't think Mr. Weissman was allowed to even really address,
20 because I know that you asked him a question. But Mr. Bice
21 made much of the fact that, well, we've complied with the
22 production of the Jacobs ESI to the vendor.

23 THE COURT: Well, you don't have it yet. I know
24 that.

25 MR. PEEK: That's --

1 THE COURT: I got that part.
2 MR. PEEK: Okay. They just now --
3 MR. BICE: And I don't think -- I don't think I made
4 much of it.
5 THE COURT: How do you think I missed that, Mr.
6 Peek?
7 MR. PEEK: They just now produced that, Your Honor.
8 So those issues that related to the Jacobs ESI --
9 THE COURT: We do not stagger discovery obligations,
10 period, end of story. The only time I stagger discovery
11 obligations is where I have expert issues where I know the
12 expert opinions are dependent on others, and then I frequently
13 stagger them. I do not stagger initial discovery disclosures.
14 And having someone tell me they're not going to begin the
15 search of their own email server until they've had a chance to
16 review Mr. Jacobs's email off of his laptop is not an
17 appropriate response.
18 MR. PEEK: Your Honor, you may recall -- and I don't
19 mean to argue with -- respectfully.
20 THE COURT: It's okay, Mr. Peek. You and I have
21 argued for 25 years.
22 MR. PEEK: We have, Your Honor. And I don't mean to
23 cut --
24 THE COURT: And I finally get to get the better of
25 your every once in a while now.

1 MR. PEEK: Yeah. This is certainly one of them.
2 Well, this is not -- this is more Mr. Weissman's fight than
3 mine. But you may recall that the issues that were raised by
4 Sands China, as well as by Las Vegas Sands, with respect to
5 the Jacobs ESI is that motion in limine which was filed a long
6 time ago that Jacobs doesn't even get an opportunity to have
7 access to the Sands China emails because of his conduct of how
8 what he has come into his possession.
9 THE COURT: And I'm not ready to hear the motion in
10 limine and make that decision --
11 MR. PEEK: But if we produce all those documents --
12 THE COURT: -- until I get to the discovery. You
13 haven't done the discovery yet.
14 MR. PEEK: But -- I guess where I'm going with that
15 is -- I'm not trying to -- in terms of the staggering, that's
16 where I was kind of going, Your Honor, is that Sands China is
17 kind of put into that position of --
18 THE COURT: Remember, you don't represent them
19 today.
20 MR. PEEK: Yes, I do represent Sands China Limited,
21 Your Honor. I am local counsel for them.
22 THE COURT: Oh. Are you?
23 MR. PEEK: Yes, I am.
24 THE COURT: Okay.
25 MR. PEEK: You may recall, Your Honor, they have to

1 have somebody here, and it's me. I got the long straw, Your
2 Honor, the winning straw.

3 But in terms of staggering, the way the motion in
4 limine had been set up and what you had least addressed to
5 Sands China at the time, Ms. Glaser, was, well, that's
6 something that we only can address once you have an
7 opportunity to see what's on the --

8 THE COURT: True.

9 MR. PEEK: -- the Jacobs ESI that he has in his
10 possession. So if we give them all of the ESI from our own,
11 it defeats the whole notion of giving them access to documents
12 in that motion in limine. So that's why I think there was a
13 staggering of it.

14 THE COURT: I disagree with your analysis.

15 MR. PEEK: Okay.

16 THE COURT: I certainly respect there are going to
17 be issues about the admissibility of certain evidence at the
18 time of our evidentiary hearing, which is why I'm shocked we
19 haven't got to the deposition stage yet, because I won't have
20 any time to do evidentiary issues at this point. So I don't
21 know when you're going to be ready, but clearly you're not
22 going to be ready for a hearing at the end of June.

23 MR. PEEK: Well, we don't even know, Your Honor,
24 whether a search of the Jacobs on the Macau server is going to
25 be such that we couldn't be ready. So that's why -- I mean, I

1 appreciate you vacated that date, but we very well --

2 THE COURT: It's less than five weeks before our
3 scheduled hearing and the search has yet to begin. I
4 understand what you're telling me, and I would love to find a
5 place to reset you. It may not be very easy given my ongoing
6 schedule for the next year.

7 MR. PEEK: Well, that raises an interesting
8 question, as well, Your Honor, that perhaps when we come back
9 on the 28th we can talk about -- maybe this is just something
10 that needs to be briefed. I don't know that you really need
11 live witnesses. You can certainly --

12 THE COURT: I'm always happy to take that approach,
13 and it may be that after you guys have been able to complete
14 the depositions and the exchange of documents that are
15 appropriate that we can do this on briefing. But until you've
16 done what you're supposed to have done since November of last
17 year I'm not in a position to have a hearing or even set a
18 briefing schedule.

19 MR. PEEK: Well, you say since November of last
20 year. We didn't get requests for production until much after
21 November, and they were also ordered to give the Jacobs
22 protocol in November we just got it in May.

23 THE COURT: We've been talking about how to get this
24 evidentiary hearing scheduled in accordance with the writ that
25 was issued since, what, last October?

1 MR. PEEK: We did, Your Honor, because we started.
2 THE COURT: And right after that writ came down I
3 called you all in for a status hearing --
4 MR. PEEK: You did. You did.
5 THE COURT: -- to try and figure out what we needed
6 to do to get that evidentiary hearing set. And we have been
7 struggling with that since that time.
8 MR. PEEK: And we want it to go forward as quickly
9 as we can, Your Honor.
10 THE COURT: I want it resolved one way or the other
11 so that I can finish the assignment the Nevada Supreme Court
12 gave me and we can either do something with the case or it can
13 be stayed again while you all go up there.
14 MR. PEEK: Well, hopefully you'll resolve it
15 favorably, Your Honor, and Sands China will be gone, we'll
16 proceed to trial on Las Vegas Sands.
17 THE COURT: That might happen.
18 Anything else?
19 MR. BICE: I have a lot of disagreement with what
20 Mr. Peek was arguing --
21 THE COURT: It doesn't matter.
22 MR. BICE: -- but I'm not going to --
23 MR. PEEK: You won, Todd.
24 MR. BICE: Yeah, it doesn't matter.
25 THE COURT: All right. Mr. Bice, that means you

1 need to communicate to your colleagues in the Corrigan case --
2 MR. BICE: I do.
3 THE COURT: -- that it looks like you're going.
4 MR. BICE: Okay. So I'm free to contact Mr. Kennedy
5 and tell him that -- is it the 26th is going to be the date?
6 THE COURT: A Tuesday.
7 MR. BICE: 26th.
8 THE COURT: And you guys said you needed two weeks.
9 MR. BICE: I believe that is correct.
10 MR. PEEK: We just picked up a week, Your Honor.
11 THE COURT: Well, no. We'd already talked about
12 when their two weeks were. They were going to wait till you
13 were finished, and we were worried about the Harmon Hotel
14 thing, too.
15 MR. PEEK: So we come back on the 28th, Your Honor,
16 which is a --
17 THE COURT: You're coming back on the 28th, and
18 somebody's going to tell me -- and I'd like a status report
19 the day before; I know it's hard for you sometimes to get them
20 to me -- that tells me, Judge, we have made our best efforts
21 and I can certify to you we did X, Y, and Z and either we
22 found stuff or we didn't find stuff and now we have to review
23 it for privilege, blah, blah, blah, and it's going to take
24 this long.
25 MR. PEEK: Thank you, Your Honor.

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MR. BICE: Thank you, Your Honor.

THE COURT: Goodbye.

MR. WEISSMAN: Thank you.

MR. PEEK: Goodbye.

THE PROCEEDINGS CONCLUDED AT 9:33 A.M.

* * * * *

CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt
FLORENCE HOYT, TRANSCRIBER

5/28/12

DATE

**Filed
Under
Seal
Pursuant to
Stipulated
Confidentiality
Agreement and
Protective Order**

DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,)	
)	
Plaintiff,)	
)	
vs.)	CASE NO. A-10-627691
)	
LAS VEGAS SANDS CORP., a)	
Nevada corporation; SANDS)	
CHINA LTD., a Cayman Islands)	
corporation; DOES I through)	
X; and ROE CORPORATIONS I)	
through X,)	
)	
Defendants.)	
)	
_____)	
AND RELATED CLAIMS)	
_____)	

VIDEOTAPE AND ORAL DEPOSITION OF MICHAEL LEVEN
LAS VEGAS, NEVADA
TUESDAY, DECEMBER 4, 2012

REPORTED BY: CARRE LEWIS, CCR NO. 497

JOB NO. 169458

000113

SUPP. APP. 00157

1 DEPOSITION OF MICHAEL LEVEN,
2 taken at 3883 Howard Hughes Parkway, Suite 800,
3 Las Vegas, Nevada, on Tuesday, December 4, 2012, at
4 9:00 a.m., before Carre Lewis, Certified Court
5 Reporter, in and for the State of Nevada.
6

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I N D E X

WITNESS: MICHAEL LEVEN

EXAMINATION

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	Jacobs vs Las Vegas Sands Corporation	
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1 LAS VEGAS, NEVADA; TUESDAY, DECEMBER 4, 2012;

2 9:00 A.M.

3 -oOo-

4 THE VIDEOGRAPHER: This is the beginning of
5 Videotape No. 1 in the deposition of Michael Leven
6 in the matter of Jacobs versus Las Vegas Sands, held
7 at 3883 Howard Hughes Parkway, Suite 800, Las Vegas,
8 Nevada, 89169 on December 4, 2012, at 9:05 a.m.

9 The court reporter is Carre Lewis. I'm
10 Matthew Riggio, the videographer, an employee of
11 Litigation Services, located at 3770 Howard Hughes
12 Parkway, Suite 300, Las Vegas, Nevada 89169.

13 This deposition is being videotaped at all
14 times unless specified to go off of the video
15 record.

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

18 THE WITNESS: Michael Leven.

19 MR. PEEK: Stephen Peek, Holland & Hart
20 representing Las Vegas Sands, the witness, as well
21 as Sands China Limited.

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

24 MR. RAPHAELSON: Ira Raphaelson for the Las
25 Vegas Sands.

1 **matter?**

2 A. I never had a discussion in Las Vegas with
3 Mr. Adelson, phone or in person, about terminating
4 Mr. Jacobs.

5 Q. Did you have any discussions with
6 Mr. Adelson about going to -- while either one of
7 you were in Las Vegas, going to Macau in July
8 of 2010 to meet with Mr. Jacobs?

9 A. Of course.

10 Q. What was the purpose of your meeting with
11 Mr. Jacobs in July of 2010?

12 A. The purpose in July of 2010 was to
13 terminate Mr. Jacobs after I received the board
14 approval to do so.

15 Q. And when was that?

16 A. That was on July 23 of 2010, I believe, or
17 something around that time.

18 Q. And where were you when you received that
19 board approval?

20 A. I -- I don't remember.

21 Q. Do you know where Mr. Adelson was?

22 A. When the board approved it?

23 Q. Yes.

24 A. I believe he was -- well, I would be
25 guessing. I would assume --

1 MR. PEEK: Don't guess.

2 THE WITNESS: He was not in Hong Kong.

3 BY MR. BICE:

4 Q. Is it your belief that he was in Las Vegas?

5 A. Yes.

6 Q. Did Mr. Adelson chair the board meeting
7 that you were referencing?

8 A. I didn't reference a board meeting.

9 Q. I apologize.

10 Did Mr. Adelson -- was he a participant in
11 what you have characterized as the board approval?

12 A. Mr. Adelson approved my recommendation and
13 asked that I go to the board and get that -- and get
14 that approval from the board.

15 Q. Where was Mr. Adelson when he approved your
16 recommendation?

17 A. He was in Singapore.

18 Q. When was this?

19 MR. PEEK: Jurisdiction --

20 Don't answer that.

21 BY MR. BICE:

22 Q. Approximate time frame?

23 MR. PEEK: We are not going to answer that.

24 The directive of the Court in the March
25 order is that the parties are only permitted to

1 A. I had it by the time I ended up in Macau on
2 July 23. I don't remember how early or how late
3 that was.

4 Q. On July 23, did anyone travel with you to
5 Macau?

6 A. Yes.

7 Q. Who was that?

8 A. Irwin Siegel.

9 Q. When you traveled to Macau, where did you
10 leave from, Las Vegas or elsewhere?

11 A. I don't remember. Probably it was
12 Las Vegas, but I'm not -- I'm not sure.

13 Q. Well, prior to your departure from Macau,
14 did you have any additional discussions with
15 Mr. Adelson?

16 A. Yes.

17 Q. About the termination?

18 A. I'm sorry. Prior to -- before July 23?

19 Q. Yes. When you departed for Macau?

20 A. Yes.

21 Q. What instructions did he give you?

22 MR. PEEK: Don't answer that.

23 You are allowed to do where the decisions
24 were made, when the decisions were made, and who
25 made the decisions.

1 MR. BICE: I'm entitled to know what
2 instructions he was given in order to know who made
3 the decisions. But we will take that up the Court.
4 BY MR. BICE:

5 Q. Did you prepare any form of board minutes
6 or board authorizations for the action that you were
7 about to take?

8 A. I didn't.

9 Q. Did anyone, to your knowledge?

10 A. I don't know.

11 Q. Had you ever seen any?

12 A. I haven't seen any.

13 Q. Did you consult -- other than with the
14 board members of Las Vegas or of SCL, did you
15 consult with anyone else about terminating
16 Mr. Jacobs?

17 A. Yes.

18 Q. Who?

19 A. Mr. Goldstein, Mr. Kay.

20 Q. Why did you consult with them?

21 A. I thought that they should know that that
22 was the plan that we were going to use and what plan
23 we were going to use and what we were going to do,
24 because they had issues to deal with if, in fact,
25 there was no CEO there at the moment.

1 Q. When would you have had those discussions
2 with them?

3 A. Sometime between June 23 and July 23.

4 Q. Can you give me any greater specificity
5 than that month window?

6 A. I can't.

7 Q. Other than Mr. Kay and Mr. Goldstein, did
8 you speak to anyone else about it? And the board
9 members, obviously. I apologize.

10 A. I may have spoken to the general counsel,
11 Gayle Hyman, probably, but I can't -- I can't think
12 of anybody else, actually.

13 Q. Did you speak to Leonel Alves?

14 A. I don't recall speaking to Leonel Alves.

15 Q. Did Mr. Adelson give you any instructions
16 regarding your meeting with -- or your going to meet
17 with Mr. Jacobs?

18 MR. PEEK: Don't answer that.

19 It's the same question you asked before
20 which I objected, so you are just trying to do it a
21 different way.

22 MR. BICE: No, I'm just trying to make sure
23 that the questions have all been asked and that the
24 record is clear.

25 BY MR. BICE:

1 Q. Did you carry with you a letter to give to
2 Mr. Jacobs?

3 MR. PEEK: Don't answer that.

4 MR. BICE: Mark this as Exhibit 1, I guess.
5 (Exhibit 1 marked.)

6 BY MR. BICE:

7 Q. I will show you what's been marked as
8 Exhibit 1, Mr. Leven. Have you seen this document
9 before?

10 A. Yes.

11 Q. When is the first time you saw it?

12 A. I don't remember.

13 Q. Did you see it prior to July 23 of 2010?

14 A. Yes.

15 Q. Did you play a role in preparing it?

16 A. I don't remember.

17 Q. Do you know who did?

18 A. I don't.

19 Q. Do you know where it was prepared?

20 A. I don't know. I can make an assumption,
21 but I don't know.

22 Q. What's your belief?

23 A. Las Vegas.

24 Q. Do you know whether or not the legal
25 department in Las Vegas was involved in its

1 preparation?

2 A. I don't.

3 Q. Do you know who all reviewed any earlier
4 drafts of it?

5 A. I don't know.

6 Q. Did you review an earlier draft of it?

7 MR. PEEK: Objection. Foundation. Assumes
8 that there was earlier drafts.

9 BY MR. BICE:

10 Q. Were there earlier drafts that you
11 reviewed?

12 A. No, I don't remember.

13 Q. Who gave you this letter -- or was it given
14 to you?

15 A. I carried this letter with me for the
16 meeting with Mr. Jacobs.

17 Q. So you departed Las Vegas with this letter
18 in hand?

19 A. I'm not a hundred percent sure.

20 Q. Did you have or did -- was there Sands
21 China letterhead here in Las Vegas, to your
22 knowledge?

23 A. I don't know.

24 Q. Does this letter look like the Sands China
25 letterhead that you had seen?

1 A. I don't recall Sands China's letterhead.
2 I'm sure there is some, but I don't recall.

3 **Q. Did this letter fall under the shared**
4 **services agreement, in your view?**

5 A. No.

6 **Q. Why not?**

7 A. This is a letter from the chairman of Sands
8 China LTD terminating the CEO, so it would not be a
9 shared service agreement.

10 **Q. Did human resources in Las Vegas, does that**
11 **fall under the shared services agreement?**

12 A. Yes.

13 **Q. You have already said that the legal**
14 **department does, correct?**

15 A. Yes.

16 **Q. And so would any role that human resources**
17 **or the legal department prepared in the preparation**
18 **of this letter, would that fall within the shared**
19 **services agreement?**

20 MR. PEEK: I'm going to object to the lack
21 of foundation. I mean, he has already answered
22 this. It's just your way of trying to get a
23 different answer because you didn't like the first
24 one.

25 MR. BICE: No, it's actually --

1 MR. PEEK: You asked him whether it was
2 part of the shared services agreement and he says
3 "no."

4 MR. BICE: I'm trying to follow up.

5 MR. PEEK: And now you are trying to say it
6 was.

7 MR. BICE: No, I'm trying to say whether
8 the services that went into the creation of the
9 letter, and your coaching is inappropriate.
10 BY MR. BICE:

11 Q. Were the services -- if services in
12 Las Vegas were used in the preparation of this
13 letter, Mr. Leven, were they -- are those services
14 that fall within the shared services agreement?

15 MR. PEEK: Objection. That's an incomplete
16 hypothetical. Doesn't go to jurisdiction here.

17 MR. BICE: Absolutely does.

18 MR. JONES: And lack of foundation as well.

19 MR. PEEK: It's an incomplete hypothetical,
20 you know. If there were this, then this.

21 MR. BICE: He still has to answer it and
22 you both know it.

23 MR. PEEK: No, he doesn't.

24 MR. BICE: So I would appreciate stopping
25 the witness coaching because you don't like the

1 answer.

2 MR. PEEK: I like the answers, Mr. Bice.

3 BY MR. BICE:

4 Q. Mr. Leven, the services go into this
5 agreement?

6 A. If, in fact, Mr. Adelson used the legal
7 department of -- of LVS to write the letter for him,
8 since the legal department in Sands China was in
9 Macau, and if, in fact, he wanted a letter written
10 in a confidential way so that it wasn't exposed to
11 the legal department in Macau, you could make the
12 argument that it would be a shared service part, but
13 I would doubt very highly whether we would charge
14 for that service as shared service. So you are
15 trying to define what shared services is.
16 Mr. Adelson had every right to use anybody in
17 Las Vegas to help him as the chairman of Macau, of
18 Sands China, to deliver the letter, so whether you
19 define it shared service or not shared service I
20 don't see where it's relevant.

21 Q. You say that Mr. Adelson had the right to
22 use anyone in Las Vegas -- I apologize. Let me make
23 sure I got your answer.

24 "Mr. Adelson had every right to use anybody
25 in Las Vegas to help him as the chairman of Macau,

1 that.

2 Did you let Mr. Jacobs know in advance you
3 were coming?

4 MR. PEEK: Don't answer that.

5 BY MR. BICE:

6 Q. How long after you arrived did you meet
7 with him?

8 MR. PEEK: Go ahead.

9 THE WITNESS: The plan was to meet with
10 Mr. Jacobs very early in the morning.

11 BY MR. BICE:

12 Q. You say the "plan." What plan are you
13 talking about?

14 A. Mr. -- Mr. Siegel and I were going to meet
15 with Mr. Jacobs to have the meeting with Mr. Jacobs
16 about his termination.

17 Q. Is that -- is that a plan that you and
18 Mr. Siegel had reached with Mr. Adelson?

19 A. Yes.

20 Q. And did you reach that plan in Las Vegas
21 prior to your departure?

22 A. I advised Mr. Adelson of my recommendation
23 as to how to handle it. He added or subtracted by
24 his wish one way or the other. And the plan was to
25 meet with Mr. Jacobs early in the morning and have

1 that meeting quickly.

2 Q. Where did this adding or subtracting occur?

3 A. In Las Vegas, probably.

4 Q. And that was a meeting between you and
5 Mr. Adelson?

6 A. Uh-huh.

7 Q. Okay. What was it that was added or
8 subtracted?

9 A. We discussed the elements of the
10 termination or the resignation and any subsequent
11 arrangement with Mr. Jacobs that Mr. Adelson agreed
12 with.

13 Q. You said you "discussed the elements of the
14 termination or the resignation"?

15 A. Uh-huh.

16 Q. What do you mean by that?

17 MR. PEEK: Don't answer that. He is
18 getting into the merits now.

19 BY MR. BICE:

20 Q. This discussion occurred in Las Vegas,
21 correct?

22 MR. PEEK: Asked and answered.

23 MR. BICE: The Judge has already
24 overruled --

25 MR. PEEK: You are wasting our time,

1 Steve Jacobs were going to resign on the basis of
2 our meeting, that I would take over as temporary
3 acting CEO, and that I was going to hope to put
4 somebody there to sit there and watch while we were
5 in the process of recruiting a replacement.

6 Q. Is that -- when you departed for Macau, was
7 that your understanding?

8 A. That was my understanding.

9 Q. Had you discussed that issue, you becoming
10 acting CEO, with any of the other board members of
11 SCL?

12 A. I don't remember.

13 Q. Well, did you -- after you and Mr. Adelson
14 had had that discussion -- it sounds like shortly
15 before you departed for Macau; is that fair?

16 A. Uh-huh. Yes. Yes.

17 Q. Shortly before you departed for Macau, did
18 you contact any of the other SCL board members
19 regarding your plan?

20 MR. PEEK: Objection. Vague and ambiguous.
21 There were a number of plans that you have had him
22 discuss with you. I don't know -- when you say
23 "that plan," what do you mean by "that plan"? Maybe
24 the witness knows.

25 THE WITNESS: During the course of time

1 between June 23 and July 23 plans were made as to
2 what would happen as to how we would replace
3 Steve -- excuse me -- Mr. Jacobs --

4 BY MR. BICE:

5 Q. Understood.

6 A. -- and what would be -- what would be
7 the -- how we would manage the transition time after
8 he departed.

9 Q. Who was involved in that planning?

10 A. I was recommending the plan. I would be
11 talking to Mr. Adelson, the chair, and we would
12 present that plan to the board.

13 Q. Was that plan presented to the board?

14 A. I think board members were -- it was
15 discussed with board members. I don't know how many
16 board members, but it was discussed.

17 Q. Did you discuss it with them?

18 A. I don't remember.

19 Q. Was there ever any sort of formal action
20 taken, to your knowledge, to implement this plan?

21 A. I -- I don't remember any formal knowledge.

22 Q. Was there ever any board meeting regarding
23 this plan, to your knowledge?

24 A. There would be a record of such. I don't
25 remember myself.

1 Q. When you say some of the board members were
2 consulted, were the independent board members
3 consulted?

4 A. Certainly David Turnbull was consulted.

5 Q. Any of the others?

6 A. I don't remember anybody else.

7 Q. During that month-long period, was the
8 legal department in Las Vegas involved in that
9 planning?

10 A. I don't recall that they were.

11 Q. Was the legal department in Macau involved
12 in that planning?

13 A. No.

14 Q. Is it a fair inference that if there was a
15 legal department involved in it, it would have been
16 in Las Vegas?

17 A. If there were a legal department involved
18 and not if there was a legal department involved,
19 right?

20 Q. Yes, sir.

21 A. If there were a legal department
22 involvement it would have been in Las Vegas, not in
23 Macau.

24 Q. Understood.

25 Would it be your belief that if a legal

1 department were involved in that planning, that it
2 would have been under the terms of the shared
3 services agreement?

4 A. It might have been under the shared service
5 agreement, and in fact that would be a shared
6 service. Whether or not it was charged for or not,
7 I wouldn't know.

8 Q. Understood.

9 Was a press release prepared at some point
10 regarding the termination?

11 A. Yes.

12 Q. And were you involved in its preparation?

13 A. Yes.

14 Q. Where was it prepared at?

15 A. In Las Vegas.

16 Q. Was it prepared prior to your departure?

17 A. You know, I don't remember. I don't
18 remember. In fact -- let me take it back. I'm
19 pretty sure it was done in Las Vegas but I don't
20 remember exactly when. As part of the plan, it
21 would be likely that we had a press release prepared
22 for that day.

23 Q. And who would have been involved in the
24 preparation of such a press release?

25 A. Legal department and the public relations

1 department.

2 Q. And those would be both here in Las Vegas,
3 correct?

4 A. Under this circumstance, they would be.
5 They wouldn't be if it was a termination of a
6 lower-level employee in Macau.

7 Q. Who in 2010 would have been heading up the
8 public relations department that would be involved
9 in such a press release?

10 A. Ron Reese, VP communications.

11 Q. Do you recall meeting with Mr. Reese about
12 this subject matter?

13 A. I don't remember.

14 Q. Do you recall meeting with anyone in -- not
15 about substance. I'm just asking do you recall
16 meeting with anyone in the legal department about
17 this subject matter?

18 A. Yes.

19 Q. Who was it that you would have met with?

20 A. I would have met with the general counsel.

21 Q. Would that at that time have been Gayle?

22 A. Gayle.

23 Q. Did you meet with anyone affiliated with
24 the Las Vegas Sands compliance committee?

25 A. No.

1 Q. Did you meet with Rob Rubenstein regarding
2 this subject matter?

3 A. I don't recall meeting with Rob Rubenstein.

4 Q. What was going to be the terms of -- well,
5 strike that.

6 What were the terms of your becoming CEO of
7 SCL?

8 A. When you say "terms," you are talking about
9 remuneration, you are talking about time? What are
10 you talking about?

11 Q. You know what, that's a fair request for
12 clarification, so let's break it down.

13 You were going to become -- what was your
14 title going to be?

15 A. I was the acting CEO in the transition.

16 Q. All right. Did you have any expectation
17 for how long that was going to last?

18 A. As short as possible.

19 Q. That was your desire anyway?

20 A. That was my expectation.

21 Q. What was the financial arrangement going to
22 be in terms of either to you personally or to
23 Las Vegas Sands for your services?

24 A. There was no financial arrangement.

25 Q. You were doing it without compensation?

1 A. Uh-huh.

2 Q. Okay. What was the purpose of this
3 meeting, do you recall?

4 A. It looks to me like this really is a major
5 design meeting for 5 and 6, for the restart of 5 and
6 6 or to plan to restart 5 and 6.

7 Q. Do you recall how many days this meeting
8 lasted?

9 A. I don't.

10 Q. Do you recall, were there others in
11 attendance other than the people listed on the
12 e-mail?

13 A. I don't. It's too long.

14 MR. BICE: I said we were going to stop so
15 you can go because I know you are eager to leave, so
16 we will suspend at this point and we will argue
17 later about whether you will be back.

18 So, thank you for your time, Mr. Leven.

19 MR. PEEK: Thank you, Mr. Bice.

20 THE VIDEOGRAPHER: Off the record at 4:52.

21 (Deposition concluded at 4:52 p.m.)

22 -oOo-

23

24

25

CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE	REASON
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* * * * *

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

Michael Leven, Deponent

Date

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

I, Carre Lewis, a duly commissioned and licensed Court Reporter, Clark County, State of Nevada, do hereby certify: That I reported the taking of the deposition of the witness, Michael Leven, commencing on Tuesday, December 4, 2012, at 9:00 a.m.

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

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

IN WITNESS HEREOF, I have hereunto set my hand, in my office, in the County of Clark, State of Nevada, this 12th day of December 2012.

Carre Lewis

CARRE LEWIS, CCR NO. 497

**Filed
Under
Seal
Pursuant to
Stipulated
Confidentiality
Agreement and
Protective Order**

DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,)	
)	
Plaintiff,)	
)	
vs.)	CASE NO. A-10-627691
)	
LAS VEGAS SANDS CORP., a)	
Nevada corporation; SANDS)	
CHINA LTD., a Cayman Islands)	
corporation; DOES I through)	
X; and ROE CORPORATIONS I)	
through X,)	
)	
Defendants.)	
)	
_____)	
AND RELATED CLAIMS)	
_____)	

VIDEOTAPE AND ORAL DEPOSITION OF MICHAEL LEVEN
VOLUME II
PAGES 268-456
LAS VEGAS, NEVADA
FRIDAY, FEBRUARY 1, 2013

REPORTED BY: CARRE LEWIS, CCR NO. 497

JOB NO. 173048

000494

SUPP. APP. 00213

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

7 APPEARANCES:

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16 Also Present:

17 Steven Jacobs

18 LITIGATION SERVICES & TECHNOLOGIES - (702) 648-2595

19 000496

20 SUPP. APP. 00215

I N D E X

WITNESS: MICHAEL LEVEN

EXAMINATION

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By Mr. Bice

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

2 11:24 A.M.

3 -oOo-

4 THE VIDEOGRAPHER: This is the beginning of

5 Videotape Number 1 in the deposition of Michael 11:24:10

6 Leven in the matter of Jacobs versus Las Vegas Sands

7 Corporation, held at Pisanelli Bice at 3883 Howard

8 Hughes Parkway, Suite 800, Las Vegas, Nevada 89169

9 on the 1st of February, 2013 at approximately

10 11:28 a.m. 11:24:33

11 The court reporter is Carre Lewis. I am

12 Benjamin Russell, the videographer, an employee of

13 Litigation Services.

14 This deposition is being videotaped at all

15 times unless specified to go off the record. 11:24:45

16 Would all present please identify

17 themselves, beginning with the witness

18 THE WITNESS: Michael Leven.

19 MR. PEEK: Stephen Peek representing Sands

20 China Limited and Las Vegas Sands Corp. 11:25:00

21 MR. JONES: Mark Jones on behalf of Sands

22 China Limited.

23 MR. RAFAELSON: Ira Rafaelson on behalf of

24 Las Vegas Sands Corp.

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

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

3 A. Yes.

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

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

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

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

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

16 A. His role was an advisor to me.

17 Q. All right.

18 A. In whatever capacity I was in.

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

22 A. Yes.

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

1 (Exhibit 41 marked.)

2 BY MR. BICE:

3 Q. Showing you what's been marked as
4 Exhibit 41.

5 Have you reviewed this, Exhibit 41, 03:16:57
6 Mr. Leven?

7 A. Uh-huh.

8 Q. Do you have any reason to believe that you
9 did not receive this?

10 A. No. 03:17:02

11 Q. And Ron Reese is based here in Las Vegas,
12 correct?

13 A. Correct.

14 Q. Okay. And is it true that the plan for
15 terminating Mr. Jacobs was being carried out here in 03:17:14
16 Las Vegas?

17 A. No. The plan -- the -- the arrangements
18 for carrying out the termination of Steve Jacobs was
19 developed here and executed there.

20 Q. Where -- 03:17:29

21 (Discussion held off the record.)

22 BY MR. BICE:

23 Q. The -- you say that the plan was -- let me
24 get your words right.

25 The arrangements for carrying out the 03:17:49

1 termination was developed here and executed there?

2 A. That's correct.

3 Q. Okay. Where was the press release sent out
4 from?

5 A. I can't tell you that. 03:17:59

6 Q. Okay. Where was it generated?

7 A. Ron Reese is the VP of communications here.
8 The -- generally, I would say it would -- it says
9 here, "Here's a draft," so I don't know where the
10 thing went out from. It could have gone out from 03:18:18
11 Hong Kong or Macau or from here.

12 Q. Okay. Where was it prepared?

13 A. I'm sure it was prepared here.

14 Q. Were there any documents surrounding
15 Mr. Jacobs's termination that were actually prepared 03:18:30
16 in Macau, to your knowledge?

17 A. I don't know how many documents were
18 prepared in either place. I have no idea.

19 Q. Weren't the documents for his removal as an
20 officer prepared in Las Vegas? 03:18:46

21 A. I don't -- frankly, I don't think so. I
22 think there were documents prepared in Macau that we
23 had to sign and do there, but I'm not a hundred
24 percent certain.

25 Q. Did any of the board members for Sands 03:19:07

1 China give any input, to your knowledge, on the
2 termination statement?

3 MR. PEEK: Don't answer that.

4 Getting into, again, the merits, Mr. Bice.

5 MR. BICE: No. I'm getting into who's 03:19:24
6 making the decisions, so we'll take that up.

7 MR. PEEK: Go ahead and answer that
8 question that I'd given the instruction. I'll
9 withdraw my objection.

10 THE WITNESS: Am I supposed to answer now? 03:19:47

11 MR. PEEK: Go ahead and answer the
12 question again.

13 THE WITNESS: Ask it again.

14 MR. BICE: Sure.

15 BY MR. BICE: 03:19:51

16 Q. The question was did any of the Sands China
17 board members give any input on the termination
18 statement.

19 A. I don't believe so.

20 (Exhibit 42 marked.) 03:20:08

21 BY MR. BICE:

22 Q. I show you now what's been marked as
23 Exhibit 42.

24 A. Uh-huh.

25 Q. You did provide comments though, it looks 03:20:29

1 BY MR. BICE:

2 Q. Exhibit 51, Mr. Leven, did you have any
3 role in its preparation?

4 A. Well, I didn't write it, but I was asked
5 for a variety of reasons to summarize some of the 04:00:36
6 reasons of why this event occurred.

7 Q. Okay. And who were you asked by?

8 A. By the chairman and by the legal
9 department.

10 Q. And "the legal department" being which 04:00:48
11 legal department?

12 A. At that point, it was Gayle Hyman. The
13 legal department in Macau was not qualified.

14 Q. Okay.

15 A. So we did it with -- we did it with -- with 04:00:58
16 her.

17 MR. PEEK: You asked him all of these same
18 questions: Do you know where it was drafted?

19 No.

20 Did you know -- did you have any 04:01:09
21 involvement in drafting it?

22 You asked him all of these questions
23 already, previously.

24 MR. BICE: And obviously he has developed
25 some different recollection of it today, hasn't he, 04:01:15

1 Q. All right. Any information you provided
2 after becoming acting CEO of Sands China, you would
3 have provided in that capacity; is that correct?

4 A. I would think so.

5 Q. When was the earliest date you can recall 04:03:33
6 providing any information -- any of these reasons to
7 the legal department in Las Vegas?

8 A. Probably sometime between the last week of
9 June and the time this letter had come out, there
10 were discussions. 04:03:55

11 Q. Okay. How about prior to -- had you
12 provided any of these reasons to the legal
13 department in Las Vegas prior to your meeting with
14 Mr. Jacobs in Macau, where you asked for his
15 resignation? 04:04:09

16 A. Yes.

17 Q. Do you believe you had provided all of
18 them --

19 A. No.

20 Q. -- prior to that date? 04:04:13

21 A. No.

22 Q. Can you tell me, in looking at Exhibit 51,
23 which ones do you believe you provided to the legal
24 department in Las Vegas prior to --

25 A. I could not remember which ones I talked 04:04:25

1 of, and that's all I'm trying to get clear.

2 So we'll let -- we'll let Eric go get it.

3 And we'll show it to you, and then we'll clear it
4 up. Okay?

5 And while we're waiting on that -- 04:43:09

6 THE WITNESS: Go on to the next one.

7 MR. BICE: Let's go on to something else.

8 (Discussion held off the record.)

9 (Exhibit 57 marked.)

10 BY MR. BICE: 04:44:19

11 Q. Showing you what's been marked as
12 Exhibit 57, Mr. Leven. Can you tell me what
13 Exhibit 57 is, Mr. Leven?

14 A. I don't have the slightest idea what this
15 is. 04:44:50

16 Q. Can you make heads or tails out of even
17 what it addresses by reading it?

18 A. I'm looking at it three times, and I don't
19 have the slightest idea what it is.

20 Q. Okay. 04:45:01

21 A. Am I supposed to know? I have no idea.
22 (Exhibit 58 marked.)

23 BY MR. BICE:

24 Q. This is 58. Mr. Leven, can you tell me
25 what 58 is? 04:45:35

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MR. JONES: Thank you.

THE VIDEOGRAPHER: Going off the record at
5:14 p.m.

(Deposition concluded at 5:14 p.m.)

-oOo-

CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE	REASON
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* * * * *

I, Michael Leven, deponent herein, do hereby
certify and declare the within and foregoing
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deposition.

Michael Leven, Deponent

Date

CERTIFICATE OF REPORTER

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) SS:
COUNTY OF CLARK)

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

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

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


CARRE LEWIS, CCR NO. 497